

# Construction Master Builders Australia - Responses to Questions on Notice

Parliamentary Joint Committee on Corporations and Financial Services

Inquiry into Corporate Insolvency in Australia

Public Hearing on Tuesday, 21<sup>st</sup> March 2023

## Question 3 from Mr Pitt (p 64)

*Just on this line of questioning, for both participants, what do you think the current terms of payment are in your industry? (p64)*

### Response from Master Builders Australia

Master Builders Australia notes that terms of payment are either influenced by, or subject to, a range of various legislative obligations in each State and Territory. These obligations vary in both the approach taken and specific terms required.

For example, in Queensland the provisions of the *Building Industry Fairness (Act 2017)* apply. Under this Act, a progress payment or final payment must be paid by the date stated in the construction contract (due date), or if the contract does not state a due date within 10 business days after the payment claim is given to the respondent. In South Australia, the law adopts a similar approach with the key difference being a standard due date of 15 days. In Tasmania, applicable legislation states that the relevant periods are 20 business days after the payment claim was served – if a claim relates to a residential structure and the respondent is the owner and not a building practitioner; or 10 business days – for other cases. Some jurisdictions adopt an approach that specifies terms that must not be exceeded (for example, Western Australia).

There are also a range of other instruments or rules that may also be relevant, dependent upon the type of work being undertaken or client type (e.g. Government procurement). For example, the recently repealed *Code for the Tendering and Performance of Building Work 2016* (which applied to Commonwealth Government funded building works) required that:

- That payments due and payable are not unreasonably withheld.
- The requirement to have a documented dispute settlement procedure (including details of the referral process for adjudication) and that disputes be resolved in a timely way.
- That any relevant requirements relating to the operation of any project bank accounts or trust arrangements are complied with.
- That any disputed or delayed progress payments are reported to the ABC Commissioner and relevant funding entity as soon as practicable after the date payment is due.
- An express prohibition of illegal or fraudulent phoenix activities for the purposes of avoiding any payment; and
- An express prohibition to coerce or apply undue influence or pressure upon a building industry participant in exercising their rights under the relevant Security of Payment legislation.