



**Foundations**



**February 2011**

A NEWSLETTER FOR THE BUILDING AND CONSTRUCTION INDUSTRY

## **New Year Due Diligence Guide**

For many businesses, the beginning of the year is used to reflect on the past year and plan for the future. This period of review and reflection should include a review of your business operations, processes and strategies. For the building and construction industry, this will include your standard documentation, staffing and any intellectual property (IP). These areas should be checked regularly so they remain consistent with any revised business strategies. This means making the time to undertake a due diligence of your business operations.

### **Top 10 areas to review:**

1. Do you use invoicing which is compliant with the Building and Construction Industry Payments Act (BCIPA)? Are your invoices and claims properly endorsed? The BCIPA gives you important rights to recover outstanding monies quickly and effectively, provided you have used compliant forms.
2. Do you have a system of checking invoices and claims received so that any Payment claims are dealt with in time? If you dispute a claim or any part of a claim, do you use a Payment Schedule which is compliant with the BCIPA? A failure to use compliant format and/or to respond on time can mean that you are liable to suffer a judgement for a claim you could otherwise dispute in whole or in part.
3. Do you get written directions and instructions and properly issue and record any extras and variations to contractual works? Good process and documentary records can save you from costly and drawn out disputes.
4. Have you properly priced construction works? Many contractors/builders have discovered errors in pricing too late to recover.
5. Has your quote/tender pricing covered the full scope of works required? If not, you may have difficulty in recovering any additional works required.
6. Was your quote/tender based on accurate drawings, plans and specifications? If not, you may be able to recover for additional works based on misrepresentation.
7. Do you have strong workplace policies that cover employee conduct in areas such as workplace health and safety, conflict of interest, and fiduciary obligations in areas such as tenders and selection of sub-contractors? If not, you may face personal liability as a company director in the event of a successful claim.
8. Are your contractor agreements and documentation up to date? If not, you run the risk of serious consequences, such as incurring additional tax liabilities, unexpected liability for injuries, increased Workcover premiums, etc.
9. Is your business' IP protected? Are all trade marks currently registered and protected? Are all of your confidential documents marked as confidential and treated as

such? This may mean using password protection for computer files so that only employees who require access in order to meet the requirements of their jobs have access. Do all your employee agreements protect the IP of your business? Now is the time to review employee contracts to ensure that any IP created by employees in the course of their employment is assigned to the employer.

10. Do you have a lawyer who understands the specialised area of building and construction disputes? If you are not sure what to do in relation to a dispute, it is important to contact a lawyer who is experienced in dealing with building and construction issues.

If you own or operate a building and construction business, and think you have issues that require attention to protect your business, have a dispute over unpaid works, or a problem with workplace policies or contracts, or you need assistance performing a due diligence for your business, contact our professional team at our Gold Coast or Brisbane office.

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**Gold Coast Office**

9 Ouyan St  
Bundall QLD 4217  
PO Box 9073 GCMC QLD 9726  
T +61 7 5597 8888  
F +61 7 5597 8899

**Brisbane Office**

Level 10, 410 Queen Street  
Brisbane QLD 4000  
PO Box 3246 Brisbane QLD 4001  
T +61 7 3229 6099  
F +61 7 3226 9001

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