



## Insights on the Murray Review: Will We Be Freed From Time Bars?

Each Australian State has laws to ensure subcontractors in the construction industry are paid in a timely way.

Last year, the Australian Government commissioned John Murray AM to review those laws. His final report was published this week. He made 86 recommendations for harmonisation and improvement of security of payment laws.

His central themes were that the statutory mechanism should guarantee prompt payment of progress claims, provide a quick and efficient adjudication process and ensure payments are passed quickly along the contractual chain.

One key recommendation is that unfair time-bar provisions should not prevent subcontractors pursuing payment. At the same time, it acknowledges that a principal or head contractor has a valid commercial interest in receiving timely notice of potential claims, so it can make its own investigations about the factual basis as well as the cost and time ramifications.

Mr Murray's consultations unearthed a broad range of opinions about time bars. Nobody thought that time bars should be banned entirely. There was little enthusiasm for prescriptive interferences with contractual freedom, but no one came up with an alternative formulation for reasonable notice. The consensus was that time bars encourage a claims culture and don't assist good contractual relationships.

The report enthusiastically recommended the following amendment to the legislation, drafted by a well-known, Adelaide-based barrister,

*(1) A provision in a construction contract which purports to make a right to claim or receive payment, or a right to claim or receive an extension of time, conditional upon the*

*provision of any notice shall be of no effect if and insofar as:*

*(i) Compliance with the requirements of the provision would not be reasonably possible or would be unreasonable onerous, or*

*(ii) The requirements of the provision are not reasonably justifiable by any legitimate commercial purpose*

*(a) For the purposes of clause 1, 'notice' includes any notice, claim for payment, narrative or calculation as to actual or estimated time or money.*

*(b) The failure of any provision or part of a provision to satisfy the requirement of reasonableness at subsection (1) (a) of this section in relation to a right or claim to money and/or time shall not of itself render that provision ineffective for the purpose of any right or claim to other time and /or money*

The review also cited with approval a paper presented by Smiley and Rawal, (2017) "Locked Behind Time Bars", SoCLA National Conference. They suggest that the *Insurance Contracts Act 1984* (Cth) provides an appropriate model. That Act prevents insurers declining indemnity for technical procedural oversights, unless the insurer is plainly disadvantaged by the failure.

Other recommendations in the report will be examined in future articles. Refer to our article ["Security of Payment Review Report Released."](#)

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