



Proposed Security of Payment changes – Revolution not evolution

Michael Creedon
Partner

1 March 2017

MinterEllison

Queensland SOP Reform

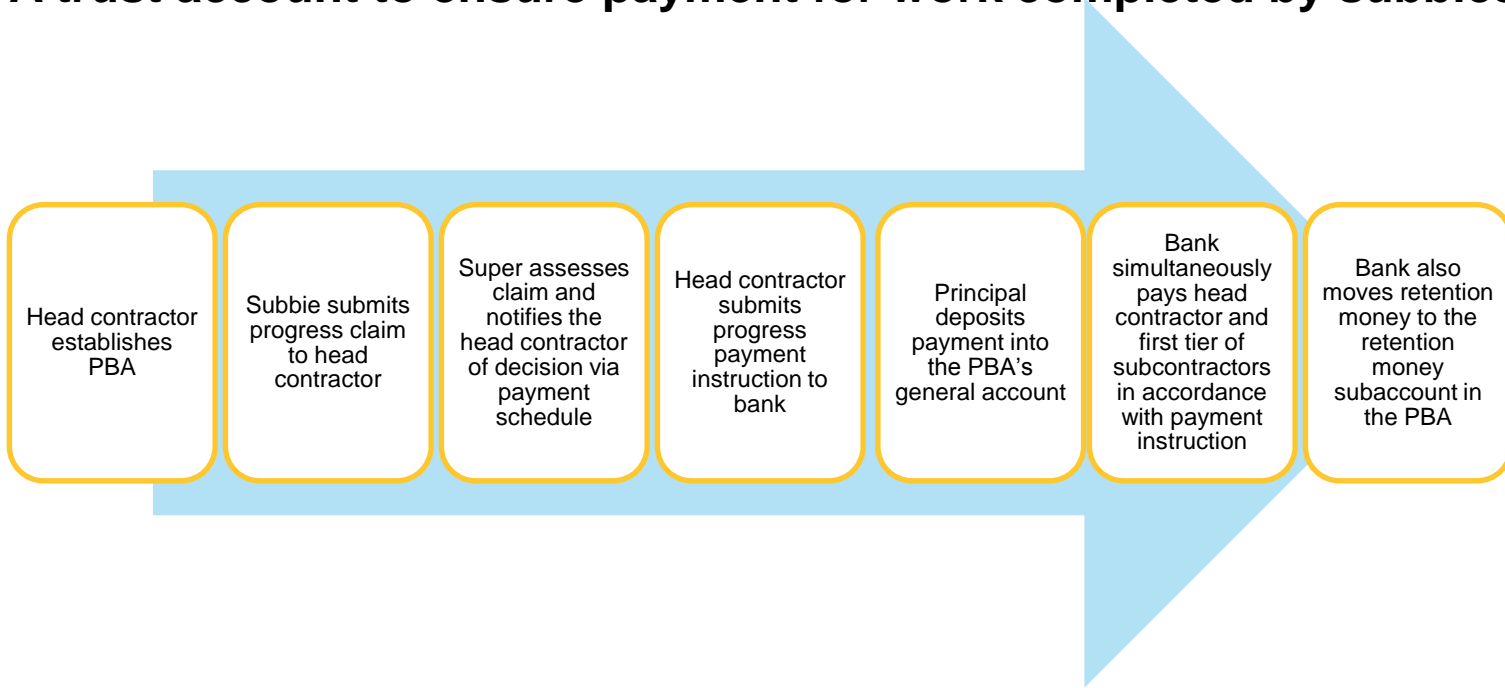
PBAs are coming! (and other proposed reforms)

- PBAs to apply to government projects valued between \$1million and \$10 million by 1 January 2018 (excluding engineering projects)
- PBAs to apply to government and private projects over \$1million from January 2019 (excluding engineering projects)
- Amendments to BCIPA
- Redrafting the *Subcontractors' Charges Act* 1974
- Education programs for QBCC licensees
- Combining legislation that relates to SOP into one act



So what is a PBA?

A trust account to ensure payment for work completed by subbies



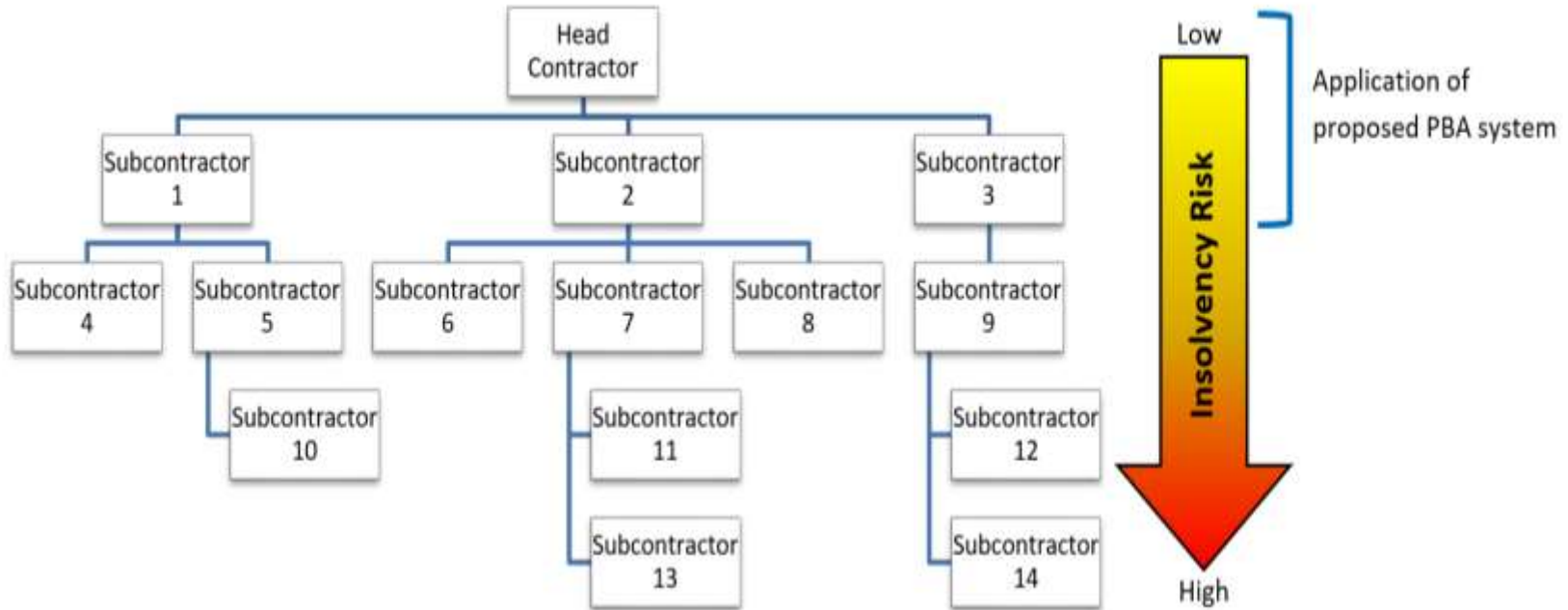
The Deloitte Report

Key assumptions to benefit / cost ratio results

- Project costs will reduce by 2.5% as a result of subcontractors reducing the risk premium they charge to compensate for the extra risk of non-payment (based on Highways England review indicating of 1 - 2.5% but this applies for whole supply chain)
- Only benefits first tier of subcontractors (not whole supply chain)
- Additional administration:
 - for head contractors of 8 hours per project per month
 - for subcontractors 0.5 hours per project per monthusing a construction manager at \$52/hr
- Head contractor's financing at 9% and subcontractor's at 12%

PBAs

Australian Contractors Association view of insolvency risk



PBAs in operation

the devil is in the details...

- Lack of information
 - Release of monies
 - First tier subcontractors and beyond
 - Work in Progress
- Implementation by Head Contractors
- Underlying assumptions
 - Reduction of project costs and prices
 - Burden placed on Head Contractors
 - Multi tiered projects



Amendments to BCIPA

- Changes to the adjudication process, including a limitation on the level of fees that can be charged by adjudicators
- Changes to the BCIPA claims process, including:
 - No need to state that a payment claim is made 'under BCIPA
 - The extension of the timeframe to lodge an application
 - Introducing a reference date for contracts terminated for convenience
 - Removing the 'second chance' rule
 - Changes to adjudicators discretions to order costs and interest

Other Amendments

- *Subcontractors' Charges Act 1974* (Qld)
 - Changes to make it easier to lodge subcontractor charges
- *Queensland Building and Construction Commission Act 1991* (Qld)
 - Combining the QBCC Act, BCIPA and SCA into one single piece of legislation so that the Security of Payment regime is contained in one place creating a 'one stop shop' for SOP

Conclusion



Contact



Michael Creedon

Partner

T +61 7 3119 6146

M +61 402 453 199

EMAIL michael.creedon@minterellison.com