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12 June 2019

Committee Secretary  
Economic Policy Scrutiny Committee  
Committee Office  
Department of the Legislative Assembly

Attention: Ms Jennifer Buckley

By email: [Jennifer.buckley@nt.gov.au](mailto:Jennifer.buckley@nt.gov.au)

***Submission in Respect of Construction Contracts (Security of Payments)  
Legislation Amendment Bill 2019 (the Bill)***

On behalf of the Civil Contractors Federation NT Ltd, I am responding to the invitation from Ms Jennifer Buckley, the Committee Secretary, to make a submission in respect of the Bill.

Except in respect of one matter, where the Federation believes an amendment to the proposed Bill is appropriate, the Federation supports the Bill and believes the assembly should pass the Bill.

The Federation submits that an amendment is necessary either to s7A of the Bill or to s8 of the Act to clarify an uncertainty which the proposed s7A engenders.

S7A(2) provides that:

“a payment claim may include a matter:

- a. That was included in a previous payment claim; and
- b. That has not been the subject of a termination under s33(1)(b).”

Three examples are then given, including, “An amount that was included in a previous claim, but that has been subsumed into a later claim (such as a rolling claim).” However, the Federation notes that it is not proposed to amend s8 of the Act which relevantly provides that a payment dispute arises if, “when the amount claimed is due to be paid, the amount has not been paid in full...”

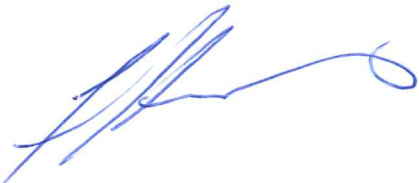
This leaves it uncertain as to whether s7A(2) is intended to allow a contractor to bring an adjudication application for a rolled-up amount included in a later payment claim, even though part of that amount was included in an earlier payment claim, and that part would otherwise be out of time.

For example, is s7A(2) intended to allow a contractor to bring a valid adjudication application for \$100,000 on 2 July, in circumstances where:

- a. The contractor's progress claim 1 was for \$40,000 and was due for payment on 28 February, but remains unpaid, and
- b. On 1 May the contractor rendered progress claim number 2, which was due for payment on 1 June, and which was for \$100,000 made up of \$60,000 for works performed since progress claim 1, and the unpaid amount of progress claim one itself?

The answer is not clear. The Federation submits that this uncertainty is undesirable and needs to be clarified by further appropriate amendment, one way or the other.

Yours Faithfully,



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