

# Timing and the Building and Construction Security of Payment Act 1999

The Building and Construction Security of Payment Act 1999 ("the Act") is one of the shortest yet most litigated pieces of legislation. The inherent litigious nature of this legislation stems from the fact that people rarely understand their obligations or their rights under the Act.

This article aims to give a short, yet insightful, interpretation of the provisions of the legislation and its applicability to people in the building and construction industry.

The object of the Act is contained in section 3(1) and states:

"The object of this Act is to ensure that any person who undertakes to carry out construction work (or who undertakes to supply related goods and services) under a construction contract is entitled to receive, and is able to recover, progress payments in relation to the carrying out of that work and the supplying of those goods and services."

## What constitutes a Valid Payment Claim?

### Timing

A payment claim may be served only within:

1. the period in the construction contract; or
2. 12 months after the construction work (or related service).

### Contents of the Claim:

In order to constitute a valid payment claim under the Act, the claim must include the following:

- It must be in writing and addressed to the respondent.
- It must describe the work or related goods and services in sufficient detail.
- It must state the amount you claim is due.
- It must state that it is a claim under the Act e.g. 'This is a claim under the Building & Construction Industry Security of Payment Act 1999 NSW'.

- It can include attachments such as delivery dockets or completion certificates.
- It should be served as per your construction contract or if nothing is stated, then by delivering, posting or faxing it to the respondent. Record the date the respondent receives it.
- The time for payment will be stated in your contract, or if not, the Act says it is 10 business days after delivery of the payment claim, whichever time is earlier.

## What are the requirements of the Payment Schedule?

### Timing

A respondent has 10 days from receipt of a valid payment claim to serve a payment schedule.

### Contents of the Schedule:

- It must identify the payment claim to which it relates, and
- It must indicate the amount of the payment (if any) that the respondent proposes to make (the "scheduled amount").
- If the scheduled amount is less than the payment claim than the respondent must indicate the reasons for this and why they are withholding the payment.

## Adjudication Application

### Timing

There are three bases upon which an Adjudication Application can be filed, and depending on which one, the timing of an adjudication application will differ.

- Payment Schedule served disputing amount:

Within 10 business days after the claimant receives the payment schedule.

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- Payment Schedule served but failure to pay scheduled amount:

Within 20 business days after the due date for payment.

- No Payment Schedule served:

The claimant must notify the respondent within 20 business days immediately following the due date for payment of the claimant's intention to apply for adjudication and give the respondent the opportunity to provide a payment schedule to the claimant within 5 business days after receiving the claimant's notice.

If no Payment Schedule provided within 5 days of Notice, then within 10 business days after the end of the 5 day period.

### Contents of Adjudication Application

An application:

- Must be in writing.
- Must be made to an authorised nominating authority chosen by the claimant.
- Must identify the payment claim and the payment schedule (if any) to which it relates.
- Must be accompanied by such application fee (if any).
- May contain such submissions relevant to the application as the claimant chooses to include, together with any evidence.

### The Adjudication Response

#### Timing

It must be within 5 business days after receiving an Adjudication Application or 2 days after acceptance by an adjudicator, whichever is the later.

#### Contents of Response

The response:

- Must be in writing.
- Must identify the Adjudication Application to which it relates.
- May contain such submissions relevant to the application as the respondent chooses to include, together with any evidence.

For more information on the Building & Construction Security of Payment Act, or if you need advice regarding a dispute over payment, contact one of our experienced building and construction lawyers on 02 9635 6422 or email [amrdjen@colemangreig.com.au](mailto:amrdjen@colemangreig.com.au) to discuss the options available to you.