

ARE YOU A CONTRACTOR IN THE BUILDING & CONSTRUCTION INDUSTRY?

YOU NEED TO BE AWARE OF THE PROVISIONS OF THE *BUILDING & CONSTRUCTION INDUSTRY SECURITY OF PAYMENT ACT 1999* ("THE ACT")

25 September 2003

Construction Work and Contracts

The Act applies to:-

- written and oral Contracts
- most Contracts for the provision of materials and labour
- most Contracts for the provision of related goods and services such as contracts relating to architectural, design, surveying or quantity surveying, building, engineering, interior or exterior decoration, or landscape advisory services.

Progress Payments

All Contractors are entitled to monthly progress payments unless the Contract provides otherwise.

Paid when Paid Provisions

You cannot agree to pay a Contractor when you get paid, even if you try to include such a provision in your Contract.

Payment Claim

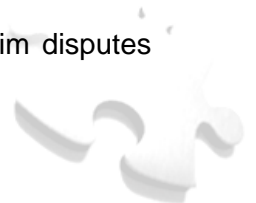
If a Contractor wants to get paid then it has to make a Payment Claim that must comply with the Act.

If it does not comply with the Act, then it has no effect under the Act.

Unless otherwise provided in the Contract, the Payment Claim must be made within twelve (12) months after completion of the relevant work.

If a Payment Claim is made then the person receiving the Payment Claim can either:-

- pay the claim if it agrees to the amount claimed; or
- prepare and serve a Payment Schedule if the person receiving the claim disputes any part of the claim.



Payment Schedule

A Payment Schedule must comply with the provisions of the Act and should specify any reasons for withholding payment.

The Payment Schedule should specify carefully the reasons for withholding payment because, in the event that the matter proceeds to adjudication, you will not have another opportunity to specify those reasons.

If you do not serve a proper Payment Schedule then you may be forced to pay the amount claimed in the Payment Claim.

You must serve a Payment Schedule within ten (10) business days unless your Contract allows a later period.

If you agree to pay part of a Payment Claim then you must pay that amount otherwise the whole claim becomes a debt and can be enforced as a debt.

Adjudication

If the person obliged to pay the claim fails to pay the whole claim then the person who is owed the money may apply for the appointment of an adjudicator.

An adjudicator must be properly appointed under the Act.

If the person liable to pay the claim is served with an Adjudication Application then they must serve a response within either five (5) business days after receiving the application or two (2) business days after learning that the adjudicator has accepted the appointment, whichever is later.

Any response made to an adjudicator must comply with the Act.

Adjudicator's Decision

Once the Adjudicator makes a decision you have five (5) business days to pay the amount claimed.

If you don't make the payment within the five (5) business days then the person entitled to be paid can enforce payment in Court.