

S U C C E S S S



## **Building and Construction Industry Payment Act 2004**

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# The Act

- **Was passed on 11 May 2004**
- **The majority of it commences on 1 October 2004**
- **Applies to contracts entered into after 1 October 2004 be they oral or in writing**



## **Object of the Act**

**To establish a payment procedure involving:**

- **a payment claim made by the contractor;**
- **a payment certificate issued by the principal ('a Payment Schedule');**
- **referral of a disputed claim or an unpaid claim to an adjudicator for a decision; and**
- **the payment of a progress payment decided by an adjudicator.**



## **Applies to ‘Construction Contracts’ which is:**

**‘a contract ... under which a party undertakes to carry out construction work for, or supply related goods and services to, another party’**



## **Related Goods and Services includes:**

**‘plant or materials (whether supplied by sale, hire or otherwise) for use in connection with the carrying out of construction work’**



## **Cannot be contracted out of**

- **Any clause which seeks to annul, exclude, modify, restrict or change the effect of the Act or deter a person taking action under this Act will be void.**



## **Excluded from Act**

- **Domestic building works between builders and residential owners**
- **Loan and guarantee contracts**
- **Employees undertaking construction work**
- **Mining work**



## **A Payment Claim must:**

- **identify the construction work or related goods and services to which the progress payment relates;**
- **state the amount of the progress payment claimed; and**
- **state that it is made under the Act.**



## **A Payment Claim may only be served:**

- **within the period worked under the Construction Contract; or**
- **within 12 months from when the work was carried out,**

**whichever is the later**



## **The Payment Schedule must:**

- **identify the payment claim to which it relates; and**
- **state the amount of the payment (if any) the principal proposes to make**
- **be submitted 10 business days after the payment claim is served**



**If principal does not respond within 10 business days after the payment claim was served the Contractor can:**

- **Recover the progress claim as a debt owing in the Courts; or**
- **Make application for adjudication; or**
- **Serve notice of intention to suspend**



## **Adjudication where:**

- **Respondent serves the payment schedule but specifies an amount less than the payment claim**
- **Respondent fails to pay the scheduled amount due**
- **Respondent fails to serve a payment schedule and fails to pay the amount claimed by the due date for payment**



**Where respondent serves the payment schedule, but specifies an amount less than the payment claim the contractor must make application within 10 business days after the contractor receives the payment schedule**



**Where the Principal has failed to pay the scheduled amount due the contractor must serve the adjudication notice within 20 business days after the due date for payment**



**Where the Respondent fails to serve a Payment schedule and fails to pay the amount claimed by the due date for payment the contractor must make the adjudication application within 20 business days of the due date for payment. The Contractor must give the Principal 20 business days notice and the Principal has 5 business days to serve a payment schedule**



- **Once adjudicator appointed, Principal may give the adjudicator a response within 5 business days after receiving a copy of the application or 2 business days after receiving adjudicator's acceptance of application, whichever is later**
- **Principal cannot include in the adjudication response any reasons for withholding payment unless those reasons have been included in the payment schedule**



## **Adjudicator will, within 10 business days, decide:**

- **Amount of the progress payment**
- **Date the amount was payable**
- **Rate of interest payable**

**If an amount is payable, Respondent must pay within 5 business days from when the decision is served on the Respondent**



## **Adjudicator may only consider:**

- **The QBSA Act**
- **The construction contract**
- **The payment claim**
- **The payment schedule**
- **The results of any inspection**



**Adjudication certificate may be filed as a judgment and enforced as a judgment**



# **Subcontractors Charges Act**

**Contractor has an election to pursue unpaid monies under the Subcontractors Act or the Act**



## **Living with the Act**

- **Educate your people about operation of the Act**
- **Amend your standard contracts to reflect the operation of the Act**
- **Introduce practices and protocols to deal with the Act**