

What you need to know about

Security of Payment: The fast and easy way to get paid

What types of work or goods can a security of payment claim cover?

The construction work, or the goods and services supplied, must be provided in Victoria under a construction contract. The contract can be written or oral or a combination of both.

The work or services can include:

- Domestic and commercial building
- Civil engineering
- Demolition
- Electrical
- Hire of plant or equipment
- Landscaping
- Maintenance
- Mechanical/air-conditioning
- Plumbing
- Professional services eg. architectural, design and surveying
- Supply of building materials

The Act does not apply to a domestic building contract with a building owner, unless the building owner is in the business of building residences, and the contract is entered into in the course of, or in connection with, that business.

The payment claim should say: *'This is a payment claim under the Building and Construction Industry Security of Payment Act 2002.'*

Need more information?

The Building Commission's website provides information for both claimants and respondents on Security of Payment. Visit www.buildingcommission.com.au. It contains:

- Step-by-step guides
- Sample forms
- A list of Authorised Nominating Authorities (ANAs)
- Links to the Act and the 2003 Security of Payment brochure

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NOTE: This brochure and the information on the website are for general guidance only and must not be regarded as legal advice.



Printed February 2007

Building and Construction Industry Security of Payment Act 2002

The Building and Construction Industry Security of Payment Act 2002 (the Act) provides a quick and inexpensive way for contractors, subcontractors, consultants and suppliers to get paid or recover money owed to them.

Changes to the Act from 30 March 2007 make it easier to resolve disputes about payment for work done and services provided. The changes:

- Establish a system of adjudication as an alternative to going to court
- Create a fast track process for enforcing payment through the courts

These changes apply only to contracts entered on or after 30 March 2007.

NOTE: Some details in this brochure relate only to contracts entered after 30 March 2007. If your contract was entered before this date, see the 2003 Security of Payment brochure on the Building Commission website for more information.

How does it work?

Make a payment claim

A person who has done work or supplied goods and services under a construction contract (the 'claimant') can claim progress payments by giving a 'payment claim' to the relevant contractor, purchaser or client (the 'respondent').

A payment claim does not need to be made in any particular form (it can be an invoice) but it must specify the work, goods or services supplied and the amount claimed. It must also clearly state that the claim is made under the Act:

'This is a payment claim under the Building and Construction Industry Security of Payment Act 2002.'

Changes to the Act from 30 March 2007 make it easier to resolve disputes about payment for work done and services provided.

Get paid, or get a payment schedule

The respondent can pay in full, or, if they dispute the amount due, give the claimant a 'payment schedule'. A payment schedule must state how much the respondent is willing to pay and why it is any different from the amount claimed.

A respondent who fails to provide a payment schedule within 10 business days or as required by the contract – whichever is earlier – is liable to pay the full amount claimed.

Resolving a dispute

The Act provides two options for resolving a payment dispute. The claimant can either apply for adjudication or go to court.

Adjudication

The claimant applies for adjudication by contacting an Authorised Nominating Authority (ANA), which then nominates an adjudicator with the skills and experience to adjudicate the dispute.

After accepting the nomination, the adjudicator has 10 working days – or longer, if the claimant agrees – to determine what amount (if any) the respondent should pay, and when. The Act requires the adjudicator to act impartially and take into account information provided by both the claimant and the respondent.

If the respondent does not pay the amount the adjudicator has determined, the claimant can apply to court to enforce payment.

Resolving a payment dispute through the courts

Although adjudication under the Act is cheaper and quicker, a claimant may instead choose to go to court to resolve a payment dispute. This is done by lodging a complaint in the Magistrates' Court or a writ in the County Court or the Supreme Court, depending on the value of the claim.

What does adjudication cost?

There are two parts to the adjudication cost: the ANA's fees and the adjudicator's fees and expenses. ANAs are required to provide information about the fees they charge.

Adjudicators' fees may vary, depending on the adjudicator and the nature of the claim. The claimant and the respondent share the adjudicator's fees equally unless the adjudicator decides differently.

The adjudicator may also charge for expenses associated with the adjudication, such as the cost of visiting the construction site.

Who can make a security of payment claim?

A security of payment claim can be made by:

- Contractors
- Subcontractors
- Suppliers of materials or building components in construction work
- Architects, engineers and others providing building advice