

Building and Construction Industry Security of Payment Act 2009

Advice for Industry

Consumer, Building and Occupational Services
Department of Justice Tasmania

Objective of the Act

- The Act entitles a person to recover progress payments for building or construction work completed, and goods and services supplied for building and construction work.



Who can make a claim under the Act?

- contractors including builders and plumbers
- sub-contractors
- suppliers of construction materials
- suppliers of plant and equipment for use in connection with construction work (supply can be by sale, hire, or otherwise)
- service providers in relation to the construction work

When does it apply

- To any building or construction contract, whether it is written or oral
- Applies only to class 1 or a class 10 building



When doesn't the Act apply

- If the work is carried on outside of Tasmania
- Contract forms part of a loan, guarantee, or insurance agreement
- As an employee
- A party undertakes to lend money
- A class of building which has been prescribed
- To any Class 2-9 and class 11 buildings or structures

What you can claim for

- construction work you have done
- construction materials or plant you have provided
- services such as project or contract management, consultancy
- interest on overdue progress payments
- cash security and retention monies
- a claim for final payment at the end of the contract.

Rights to progress payments

What is a progress payment?

- can be the final payment for building or construction work carried out or goods and services supplied, under the contract
- a single or one-off payment for carrying out building or construction work or goods and services supplied, under the contract
- a payment that is based on an event or date;

How do I make a claim?

To make a claim for payment you must:

- establish the reference date for your claim
- decide how much you are entitled to be paid calculated to the reference date
- serve the claim by sending it to the Respondent.
- record the date of service on which the Respondent receives the claim.



Claim for payment (cont)

- You need to serve your claim within whichever of the following periods occurs later:
 - (a) the period determined by, or in accordance with, the terms of the contract; or
 - (b) the period of 12 months after the building work or construction work or the building or construction-related goods and services were last supplied.



Value of the work or supplies

- the contract price for the work, including any GST
- any other rates or prices set out in the contract;
- Any variations or adjustments agreed to by the parties
- if any of the work is defective, the estimated cost of rectifying the defect.

When can you expect to be paid?

- You are entitled to be paid by any date or period of payment provided for in the contract
- If there is no date provided in the contract, then you are entitled to be paid 10 business days after you serve a Payment Claim on the Respondent. This extends to 20 business days if the Respondent is a residential home owner.

Payment schedules

- the respondent may provide a payment schedule which identifies the payment claim and amount of payment to be made (what they are willing to pay)
- If the schedule payment amount is less than the claim, or payment is to be withheld, reasons must be provided

Payment schedule not provided

- The timeframe for payment :
 - (a) is the day 20 business days after the payment claim is served on the respondent, if –
 - the claim relates to a residential structure to be built on land; and
 - the respondent is the owner of the land; and
 - the respondent is not a building practitioner; or
 - (b) in any other case, the day 10 business days after the payment claim is served on the respondent.

Payment schedule provided

- If a payment schedule is provided within the required timeframe and the respondent does not pay all of the amount on or before the due date, then you can-
 - a) Apply to a court as a debt due; or
 - b) Make an adjudication application;
 - c) May serve a notice on the respondent about your intention to suspend carrying out building work or construction work, or supplying goods and services, under the building or construction contract
- A notice served must specify that the notice is made under the *Building and Construction Industry Security of Payment Act 2009*

Nominating Authorities

- Nominating authorities have been authorised by the Tasmanian government to perform the administration of adjudication services to Claimants under the Building and Construction Industry Security of Payment Act 2009 .

Application for Adjudication

- You must notify the Respondent of your intention to proceed to adjudication, within 20 business days of the Payment Schedule being due. This means 30 days of you issuing a claim, or 40 days if the Respondent is a residential home owner. The Respondent then has 5 business days to provide a Payment Schedule after receiving your notice.

Application response

- If the respondent did provide a payment schedule, the respondent may provide a response to your adjudication application within 10 days of the application, or 5 days after receiving the adjudicator's acceptance of the application (which ever is the later)
- The response :
 - (a) must be in writing; and
 - (b) must identify the adjudication application to which it relates; and
 - (c) may contain any submissions relevant to the response that the respondent thinks fit.

Adjudication proceedings

- The Adjudicator is to determine the application as soon as practicable and it must be within-
 - (i) 10 business days after the date on which the adjudicator receives the adjudication response; or
 - (ii) 10 business days after the date by which the respondent has lodged a response with the adjudicator; or
 - (iii) if the respondent did not lodge a payment schedule in relation to the payment claim to which the application relates, 10 business days after the date on which the adjudicator accepted the application; or
 - (iv) within a further period, if any, agreed to by the claimant and the respondent

Respondent must pay

- If an adjudicator determines that a respondent is required to pay an adjudicated amount, the respondent must pay that amount to the claimant
- If a respondent does not pay to the claimant all of the adjudicated amount, you may-
 - (a) request the nominating authority to which the adjudication application was made to issue an adjudication certificate under this section;
 - (b) serve notice on the respondent of your intention to suspend carrying out building or construction work, or the supply of building or construction-related goods and services, under the contract.

Adjudication certificate may be filed as judgment for debt

- The adjudication certificate may be filed as a judgment for a debt in a court
- The certificate must be accompanied by an affidavit by the claimant stating that a part or all of the adjudicated amount has not been paid at the time the certificate is filed

CBOS Regulatory Compliance Unit & Security of Payment

- Typically enquiries about Security of Payments legislation are referred to CBOS Regulatory Compliance Unit by consumers.
- Usually as result of a standard of work certificate (building or plumbing) being withheld as leverage to encourage payment at, or near, the completion of a contract.
- Failure to comply with requirements under the Building Act 2016 for provision of standards of work certificates at the completion of works may constitute a breach of that Act.

Further Information

- www.cbos.tas.gov.au/topics/products-services/problems/resolving-a-building-dispute/making-a-claim
- <https://www.cbos.tas.gov.au/topics/products-services/problems/resolving-a-building-dispute/responding>
- <https://www.cbos.tas.gov.au/topics/products-services/problems/resolving-a-building-dispute/nominating-authorities>

