

Bad debts and slow payment of monies owed for work done have been ongoing problems in the building and construction industry for decades. Now, in Queensland, the *Building and Construction Industry Payments Act 2004* creates a system which means quicker payment for everyone in the construction industry.



New payment alternative

From October 2004 the Building and Construction Industry Payments Act 2004 will provide a new alternative for contractors, subcontractors, consultants and suppliers in Queensland to obtain payment for construction work carried out or the supply of related goods or services.

Persons taking advantage of the Act will find that costly and lengthy disputes over payment are far less likely to occur.

The Act:

- Applies to all contracts (written or oral) for construction work, or the supply of related goods or services in Queensland with the exception of contracts with home owners, certain contracts with financial institutions, contracts where payment other than by reference to the value of the work and where a notice of claim of charge under the *Subcontractors Charges Act 1974* is in effect.

Who does the Act apply to?

The Building and Construction Industry Payments Act 2004 covers the following construction work carried out or related goods or services provided under a construction contract:

- Building work
- Civil engineering
- Demolition
- Electrical
- Hire of plant or equipment
- Landscaping
- Maintenance
- Mechanical
- Professional services such as architectural design, surveying and soil testing
- Supply of building materials



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Building and Construction Industry Payments Agency

Get paid quicker!

- Provides rights to progress payments through payment claims for completed work or the supply of goods or services
- Requires early notice to be given of any disputed payment claim
- Imposes default provisions where a construction contract is silent on payment terms
- Bans "pay when paid" clauses
- Allows suspension of work for non-payment

The following persons may make progress claims under the Act:

- Contractors against clients
- Subcontractors against contractors
- Suppliers of building components against purchasers
- Architects, engineers and others providing building advice against clients
- Plant and equipment hirers against clients

Note: The Act cannot be used to claim payment from a home owner who is not an owner builder.

www.bcipa.qld.gov.au

Now there's a new, fairer, quicker payment system for everyone in the building and construction industry.

A new, faster and cheaper alternative to the court system.



Hon. Robert Swarten MP
Minister for Public Works, Housing
and Racing

In May 2004 the *Building and Construction Industry Payments Act 2004* was passed by State Parliament.

This new legislation which comes into effect from 1 October 2004 is a major step forward for the building and construction industry in Queensland and clearly indicates the Beattie Government's ongoing commitment towards improving the industry in Queensland.

Over the past two years the Queensland Building Services Authority has worked hard to deliver a new system to improve payment outcomes for workers in the building and construction industry.

While I cannot and will not guarantee that all parties will get payment 100 per cent of the time, this legislation provides a tool for them to secure interim payment for work performed or goods supplied.

The *Building and Construction Industry Payments Act 2004* will make a significant difference to the working and payment culture of the building and construction industry and I am proud to bring to the industry this important piece of legislation.

This new rapid adjudication system will help individual parties and the industry with cash flow issues. Above all, the Act gives claimants a quicker and cheaper means of being paid.

I encourage all parties operating in the building and construction industry to fully inform themselves of how the new laws will affect them.

Hon. Robert Swarten MP
Minister for Public Works, Housing
and Racing



YOUR QUESTIONS ANSWERED:

Q: What are the objectives of the Act?

A: To ensure persons are entitled to **receive** and **recover** progress payments if they carry out construction work or supply related goods or services under a construction contract.

Q: How are the objectives carried out?

A: The Act creates a right to **receive** progress payments and a further right to **recover** progress payments by the 'claimant' making a payment claim, the 'respondent' responding to a payment claim (payment schedule), the 'claimant' having the opportunity to refer a disputed claim to adjudication and having an 'Adjudicator' decide a disputed matter.

Q: Who is a 'claimant'? Who is a 'respondent'?

A: A 'claimant' is a person who claims to be entitled to a progress payment. A 'respondent' is a person liable to make payment.

Q: When should a claimant make a payment claim?

A: A 'claimant' should make a claim for a progress payment at the time shown in their contract. If a construction contract does not mention a payment time, the Act allows the 'claimant' to make a progress claim every four weeks after they have started construction work or supplied related goods or services. This default right continues every four weeks until the job is completed.

Q: What details should a 'claimant' include in their payment claim?

A: The 'claimant' MUST state that the claim is being made under the Act. Furthermore the claim must also describe the work carried out or goods or services supplied, as well as the amount being claimed.

Q: If a construction contract fails to outline how a progress payment is to be calculated, how will the payment be calculated?

A: The Act outlines how the amount will be calculated by considering:

- The contract price for the works or supply of goods or services;
- Any agreed variation; and
- Any cost to rectify works or goods that are defective.

Q: What does a person do if they receive a payment claim?

A: A person receiving a payment claim is called a 'respondent'. If a 'respondent' wishes to dispute the amount being claimed, they must give the 'claimant' a document called a 'payment schedule', within 10 business days of receiving the payment claim, (or an earlier date if specified in the contract). A 'payment schedule' must state:

- The reasons for not paying the full amount claimed.

NOTE: New reasons for non payment cannot be made at a later date.

- The amount that will be paid.

A 'respondent' must pay any undisputed amount of the payment claim when payment is due under the contract. If a contract is silent on this issue, payment will be 10 business days after submitting of the payment claim.

Failure by the 'respondent' to provide a 'payment schedule' to the 'claimant' within the specified period of time will result in them becoming liable to pay the full amount claimed by the due date for payment.

Q: What happens if a 'claimant' does not agree with the 'respondent's payment schedule or the 'respondent' either fails to provide the 'claimant' with a payment schedule or fails to pay the 'claimant' the amount nominated on the payment schedule?

A: A 'claimant' in these circumstances may lodge an adjudication application in an endeavour to have the dispute resolved. However, the 'respondent' is still liable to pay any amount being claimed that is not in dispute by the due date for payment.

Q: How long does a 'claimant' have to lodge an adjudication application?

A: An Adjudication Application must be made within either:

- 10 business days of receiving a payment schedule, where the payment schedule amount is less than the payment claim amount; or
- 20 business days after the due date for payment, where the 'respondent' fails to pay the whole or any part of the scheduled amount; or
- Where the 'respondent' fails to serve a payment schedule on the 'claimant' and also fails to pay the whole or any part of the claimed amount the 'claimant' must;
 - Within 20 business days of the due date for payment serve the 'respondent' with a 'notice of intention' to apply for Adjudication, and;
 - From the date when the 'respondent' receives such notice allow 5 business days for the 'respondent' to provide the 'claimant' with payment or a payment schedule, and;
 - On the expiry of this response period, the 'claimant' has 10 business days to lodge an application.

Q: When a 'respondent' fails to serve a payment schedule, does a 'claimant' have to lodge an adjudication application or is there another course of action they can pursue?

A: Yes, in these circumstances a 'claimant' can sue in a court to recover the total amount claimed.

Adjudication- "Why Wait For Payment?"

The Adjudication process is designed to resolve payment disputes in a fair, but rapid manner.

Q: What is an Authorised Nominating Authority (ANA)

A: An ANA is an organisation registered under the Act to nominate 'Adjudicators' to decide adjudication applications.

Q: Who is an 'Adjudicator'?

A: An 'Adjudicator' is a person registered under the Act to decide an adjudication application lodged by a 'claimant'.

Q: What is the Adjudication process?

A: Independent registered 'Adjudicators' with relevant expertise to hear disputes will be contracted by authorised nominating authorities to decide payment disputes.

An 'Adjudicator' must make a decision on the dispute

within 10 business days from either receiving the 'respondent's adjudication response or the expiry of the specified timeframe for receiving an adjudication response.

Both the 'claimant' and 'respondent' are jointly and severally liable to pay any fees and expenses ('Adjudicator' only) imposed by an ANA or 'Adjudicator'.

The 'Adjudicator' has the power to apportion these fees and expenses between the 'claimant' and 'respondent' in any manner they see fit. An 'Adjudicator' must provide to both parties reasons for a decision including the adjudicated amount and the payment date. If payment of the adjudicated amount is not made, the 'claimant' can request an Adjudication Certificate, which can then be lodged in a court as a judgment debt.