



**BCIPA**

Building and Construction Industry  
Payments Agency

# Get paid quicker!



A fairer, quicker  
payment system for  
everyone in the building  
and construction industry.

# A faster and cheaper alternative

## YOUR QUESTIONS ANSWERED

The *Building and Construction Industry Payments Act 2004* (the Act) provides an alternative for contractors, subcontractors, consultants and suppliers in Queensland to get paid for carrying out construction work or supplying related goods or services. People that use the Act find they are far less likely to have costly and lengthy payment disputes.

### Summary of the Act

- The Act applies to all written and oral contracts for construction work, or the supply of related goods or services in Queensland. Exceptions include: contracts with resident owners\*; certain contracts with financial institutions; contracts where payment is other than by reference to the value of the work; and contracts where a notice of claim of charge under the *Subcontractors Charges Act 1974* is in effect.
- The Act gives you the right to progress payments for completed work or the supply of goods or services by serving payment claims.
- The Act requires respondents to give early notice if any payment claim is disputed.
- The Act imposes default provisions if a construction contract is silent on payment terms.
- The Act bans "pay when paid" clauses.
- The Act lets you suspend work if you have not been paid and claim interest on overdue payments.

### Who does the Act apply to?

The Act covers the following construction work 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

The following people may make progress claims under the Act:

- Contractors against clients and/or owner builders
- 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:** Refer to the Act and the *Domestic Building Contracts Act 2000* for the definition of resident owner.

### Frequently Asked Questions

#### **What is the Act aiming to achieve?**

To ensure people can **receive** and **recover** progress payments if they carry out construction work or supply related goods or services under a construction contract.

#### **How is this achieved?**

- 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' must respond to a payment claim (payment schedule)
- The 'claimant' has the opportunity to refer a disputed claim to Adjudication, and have an 'Adjudicator' decide a disputed matter.

#### **Who is a 'claimant'? Who is a 'respondent'?**

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

#### **When should a claimant make a payment claim?**

A 'claimant' should make a claim for a progress payment at the time shown in their contract. If the contract does not mention a payment time, the Act allows the 'claimant' to make a progress claim on the last day of each month after they started the construction work, or supplied the related goods or services.

#### **What should a 'claimant' include in their payment claim?**

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

#### **If a construction contract does not outline how a progress payment is to be calculated, how is the payment calculated?**

The Act states 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

#### **What does a person do if they receive a payment claim?**

A person receiving a payment claim is called a 'respondent'. If a 'respondent' wants 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; and the amount that will be paid.

# native to the court system.

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

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

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

**What happens if a 'claimant' does not agree with the payment schedule, or the 'respondent' does not give them a payment schedule or does not pay the 'claimant' the amount stated in the payment schedule?**

A 'claimant' in these circumstances may lodge an adjudication application to resolve the dispute. The 'respondent' is still liable to pay by the due date any amount being claimed that is not in dispute.

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

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' does not 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 pay the 'claimant' or give them a payment schedule; and
  - On the expiry of this response period, the 'claimant' has 10 business days to lodge an application.

**When a 'respondent' does not serve a payment schedule, does a 'claimant' have to lodge an adjudication application or is there something else they can do?**

In these circumstances a 'claimant' can proceed to adjudication, or sue in a court to recover the total amount claimed.

## The Adjudication process

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

### **What is an Authorised Nominating Authority (ANA)**

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

### **Who is an 'Adjudicator' ?**

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

### **What is the Adjudication process?**

Independent registered 'Adjudicators' with relevant expertise will be contracted by ANAs 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 share these fees and expenses between the 'claimant' and 'respondent' in any manner they see fit. An 'Adjudicator' must give both parties the 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.



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

For more advice, information and training materials, contact the Building and Construction Industry Payments Agency.

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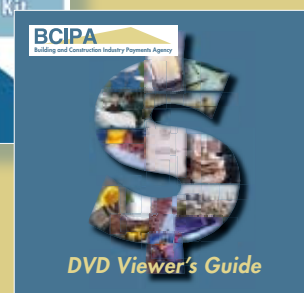
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