

Quick Guide to:

ACT Building and Construction Security of Payment Act.



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Introduction

The Building and Construction Industry (Security of Payment) Act 2009 (ACT) ("the Act") is a piece of legislation designed to facilitate the speedy recovery of payments under contracts in the building and construction industry. The Act aims to ensure people are able to recover payments related to construction work and related goods and services under certain construction contracts.

This regime provides an informal, inexpensive and quick process by which an authorised nominating authority can appoint an adjudicator, and parties can resolve their dispute over payment more quickly, and without the stress and cost of litigation.

Whom does the Act apply to?

Under the Act any person who undertakes to carry out construction work or supply related goods and services in the ACT under certain contracts can make a claim under the Act including:

- (a) Contractors against principals/developers;
- (b) Subcontractors against contractors;
- (c) Suppliers against customers;
- (d) Plant and equipment hirers against clients; and
- (e) Consultants against clients.

The types of costs that can be claimed under the Act are wide ranging, and include:

- (a) Construction work you have done;
- (b) Construction materials or plant you have provided;
- (c) Consulting services you have provided;
- (d) Interest on overdue progress payments;
- (e) Your losses and additional expenses due to work being deleted from your contract while you suspended work under the protection of the Act; and
- (f) Cash security and retention monies if allowed for in the contract; At the end of a contract, a claim under the Act can be made for the final payment.

How do you make a claim for payment under the Act?

The process for making a payment claim under the Act is to issue a claim for payment in writing to the respondent (the party responsible for paying your work, typically a head contractor). The claim must contain the following information:

- (a) A description of the work or related goods and services for which you are claiming;
- (b) The amount you claim is payable; and
- (c) The words "This is a payment claim pursuant to the Building and Construction Industry Security of Payment Act (2009) ACT".

Unlike the Building and Construction Industry Security of Payment Act 1999 (NSW), the ACT legislation requires a payment claim to explicitly state that it is being made under the Act for it to be valid.

Any payment claim that fails to meet the above criteria would be an invalid claim. An invalid payment claim means you cannot access the benefits of the Act to seek payment of overdue debts, such as being able to file an adjudication application or suing under the statutory debt.

Conclusion

The Security of Payment Act provides a powerful tool for contractors experiencing delayed or disputed payments in the ACT. It not only provides an alternative to litigation for debt recovery, but it is also a useful supplement to formal proceedings. It is important to be fully aware of your rights under the Act as well as the formal requirements contained within it, including strict compliance with certain time periods.

Need advice on the ACT Building & Construction Security of Payment Act?
Talk to those in the know.

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