

## The Security of Payment Scheme

The *Building and Construction Industry Security of Payment Act 2002* establishes a process to provide contractors with a quick and inexpensive way to get paid or recover money owed to them. It applies to construction projects in Victoria, whether private or public sector.

The SOP Act came into effect on 31 January 2003 and was amended in 2006 to make it more effective in recovering payment claims. The amended legislation applies only to contracts entered into or after 30 March 2007.

### KEY FEATURES

#### Contracts Covered

The SOP Act applies to most contracts for building work or for the supply of related goods and services in Victoria. The contract may be oral, written or a combination of both.

Domestic building contracts between a builder or supplier and the home owner are **not** covered. These come under the *Domestic Building Contracts Act 1995*. However, contracts between a home owner's building contractor and any sub-contractor or supplier **are** covered.

#### Work Covered

The SOP Act applies to the following types of work:

- Residential and non-residential building
- Civil engineering
- Demolition
- Electrical
- Professional services (e.g. architecture, design, surveying)
- Hire of plant and equipment
- Landscaping
- Maintenance

- Mechanical air conditioning
- Plumbing
- Supply of building material

#### Types of payments covered

Claims may be made under the SOP Act for 'progress payments' for work done or supplies made since a date determined by the contract or under the SOP Act. For contracts entered on or after 30 March 2007, 'progress payments' include final, single and milestone payments.

#### Statutory right to payment

Contractors have a statutory right to receive progress payments. If the contract does not specify when the contractor is entitled to be paid, the SOP Act sets the date.

Any 'paid when paid' or 'paid if paid' clauses in the contract have no effect.

### HOW IT WORKS

#### 1. Payment Claim

A person who has carried out work or supplied goods or services under a construction contract in Victoria (the claimant) can claim progress payments by giving a 'payment claim' to the relevant contractor, purchaser or client (the respondent). A payment claim specifies the work, goods or services supplied and the amount claimed and states that it is made under the *Building and Construction Industry Security of Payment Act 2002*

#### 2. Payment or payment schedule

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

### 3. Adjudication option

If there is a dispute about payment, the claimant can apply for adjudication by contacting an Authorised Nominating Authority (ANA). The ANA nominates an adjudicator with the necessary skills and experience to adjudicate the dispute. After accepting nomination, the adjudicator has 10 business days (or up to 25 business days if the claimant agrees) to determine what amount (if any) the respondent should pay, and when. In some cases, if the adjudicated amount exceeds \$100,000 either party can apply for an adjudication review.

### 4. Court Assistance

A claimant may choose to go to court to resolve a payment dispute rather than apply for adjudication. This is done by lodging a complaint with the Magistrates' Court or a writ in the County Court or the Supreme Court, depending on the value of the claim.

The claimant can also go to court to enforce payment of an adjudicated amount. An adjudication certificate is filed in the court, with an affidavit attesting that the respondent has failed to pay, and the court can issue a warrant or other order requiring payment.

In certain circumstances where a respondent has failed to pay the adjudicated amount, the claimant may seek payment from the respondent's principal.

## CHANGES TO THE SECURITY OF PAYMENT FROM 30 MARCH 2007

Amendments to the SOP Act came into effect on 30 March 2007, applying to construction contracts entered into after that date. The amendments made it easier to resolve disputes about payments under construction contracts.

See [Fact Sheet No. 2: Changes to Security Payment from 30 March 2007](#).

### Want to know more?

Please [submit an enquiry](#) or call us on 1300 815 127.

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