

Changes to Security of Payment from 30 March 2007

The *Building and Construction Industry Security of Payment Act 2002* has been in operation since January 2003.

REVIEW OF THE SOP ACT

In 2004, the Minister of Planning asked the former Building Commission (now the VBA) to review the operation of the SOP Act. The Commission consulted key industry associations to develop an Options Discussion Paper, which was widely distributed to the industry for comment. An industry/government working group, chaired by Tony Robinson MP, considered the responses to the Options Discussion Paper and proposed amendments to the SOP Act.

The *Building and Construction Industry Security of Payment (Amendment) Act 2006* was passed in July 2006 and became effective on 30 March 2007, applying to construction contracts entered into on or after that date.

KEY AMENDMENTS

Changes from 30 March 2007 strengthen and extend the SOP Act and make it more effective to ensure fair and timely payments across the building and construction industry.

More types of payments covered

- Amendments expanded the progress payments that can be claimed under the SOP Act to include final payments, single payments and milestone payments.

Clarification of what may be claimed – and what may not

- Claims for damages, delay costs and latent conditions are excluded.
- The scheme's application to contract variations is clarified and extended.
- An adjudicator's determination is void and of no effect to the extent that it takes into

account matters that are not permitted to be claimed under the SOP Act.

- A time limit of three months applies for making payment claims, including final payment claims.

Stronger protection for claimants

The amended SOP Act

- Broadened the 'pay when pay' provisions
- Strengthened the 'no contracting out' provision.
- Ensured that interest is payable on unpaid progress payments, calculated from the time the amount becomes due and payable and in accordance with the *Penalty Interest Rates Act 1983*.
- Removed the right to provide security in lieu of payment pending the final determination of the dispute if court, arbitration or other dispute resolution proceedings have commenced.
- Entitled the claimant to exercise a lien over any unfixed plant or materials supplied to a respondent when a progress payment becomes due and payable.

More access to adjudication

The amended SOP Act

- Provided the option of applying for adjudication if the respondent fails to serve a payment schedule in response to a payment claim or pay the claimed amount within time.
- Introduced a review of adjudicated determinations, available in certain circumstances.

Improved adjudication processes

The amended SOP Act

- Increased and clarified the role, functions and powers of Authorised Nominating Authorities (ANAs) and the VBA.
- Streamlined the adjudication application process, requiring all applications to be made to an ANA selected by the claimant.
- Gave ANAs broader responsibilities for the adjudication process and the quality of adjudicators.

Easier access to help from the courts

- Amendments introduce an expedited process for enforcing payment through the courts. Where a respondent fails to pay an adjudicated amount by the due date, the claimant can ask for a certificate from the ANA, which the claimant can lodge in the appropriate court, as part of an application for judgment debt.

Regulations 2013

The Building and Construction Industry Security of Payment Regulations 2013 (Vic) (the SOP Regulations) revoke the Building and Construction Industry Security of Payment Regulations 2003 (Vic).

The purpose of the SOP Regulations is to prescribe forms to be used in relation to claims made under the SOP Act. The forms are: Notice of Intention to Exercise Lien, Notice of Claim, Debt Certificate, Discharge Notice and Notice of Person from Whom Claimant may Recover.

Want to know more?

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

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