

# Security of Payment

## What is Security of Payment?

Security of Payment is a process designed to provide a fast and inexpensive way to recover payments due under a construction contract, without the need for lawyers to become involved.

The Security of Payment framework is guided by the *Building and Construction Industry Security of Payment Act 2002* (known as the SOP Act).

The SOP Act helps ensure that any person who carries out construction work or supplies related goods and services under a construction contract gets paid.

## What role does the VBA have in operating the SOP Act?

The VBA monitors the operation of the SOP Act.

It does not nominate adjudicators or take part in payment disputes. This is the role of Authorised Nominating Authorities (ANAs), who are authorised by the VBA to perform this service.

## What type of contracts does the SOP Act cover?

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.

The SOP Act applies to construction contracts entered into on or after 30 March 2007.

For construction contracts entered into between 31 January 2003 and 30 March 2007, the SOP Act applies as if it had not been amended by the *Building and Construction Industry Security of Payment (Amendment) Act 2006*.

## What type of work is covered by the SOP Act?

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

### **Are domestic building contracts between a builder or supplier and the home owner covered by the SOP Act?**

Domestic building contracts between a builder or supplier and the home owner are not covered by the SOP Act. However, contracts between a home owner's building contractor and any subcontractor or supplier are covered.

For domestic building contract disputes, visit Consumer Affairs Victoria:

<https://www.consumer.vic.gov.au/housing/building-and-renovating/defects-delays-and-insolvency/disputes-defects-and-delays>

### **How do I make a Security of Payment claim?**

The Security of Payment process commences with a 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*.

### **How long does the respondent have to pay or dispute my payment claim?**

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.

### **Do I have to use a particular form?**

The SOP Act does not require you to use a particular form.

However, the VBA's website includes sample forms that provide additional information about the process, content requirements and the related timelines.

The sample forms can be adapted for your purposes and can be used to help you prepare and manage the processes under the SOP Act.

The following sample forms are available on the VBA's website:

- [Sample Form - Payment Claim](#)
- [Section 18\(2\) Notice of intention to apply for adjudication](#)
- [Payment Schedule](#)
- [Adjudication Response](#)



### **What happens if there is a dispute after I've received a payment schedule?**

If there is dispute about payment, the claimant can apply for adjudication by lodging an application with an Authorised Nominating Authority (ANA).

The ANA nominates an adjudicator with the necessary skills and experience to adjudicate the dispute.

### **Where can I find information about Authorised Nominating Authorities?**

Authorised Nominating Authorities (ANAs) are authorised under the SOP Act to undertake a range of adjudication functions and provide assistance to parties regarding the adjudication process.

The VBA publishes an ANA register, which you can access that includes information about the ANAs.

You can access the register and more information here.

### **How long does the adjudicator have to determine what amount, if any, the respondent should pay?**

After accepting nomination, the adjudicator has 10 business days (or up to 15 business days if the claimant agrees), to determine what amount (if any) the respondent should pay, and when.

### **Can I choose to go to court to resolve this matter instead of applying for adjudication?**

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.

### **What are the other options available to a claimant under the SOP Act?**

In circumstances where the respondent does not pay or does respond to a payment claim, other options available to a claimant under the SOP Act, include:

- exercising a lien over unfixed plant and materials
- suspending work or the supply of goods and services.

Information about these options is available on the VBA website: Options if a respondent does not pay or respond.

In certain circumstances, if a respondent fails to pay an adjudicated amount (the amount determined by an adjudicator), a claimant may be able to seek payment from the respondent's principal (the person who engaged the respondent to carry out work or supply related goods and services).

### **Are there consequences for a building practitioner who fails to pay an adjudicated amount?**

Yes, there can be.

If a Registered Building Practitioner fails to pay an adjudicated amount under the SOP Act, there can be registration and disciplinary action consequences for the practitioner.

### **If I have any questions about Security of Payment, who can I contact at the VBA?**

If you have any questions about SOP, please submit an enquiry or call us on 1300 815 127.



**Does the Security of Payment regime operate in other states and territories?**

The Security of Payment regime operates in all states and territories.

Contact details can be found on the VBA's Security of Payment webpage:

<https://www.vba.vic.gov.au/building/security-of-payment>