



Construction Contracts (Former Provisions) Act 2004 (WA)

Topic 1: Overview of the Construction Contracts Act

What does the Construction Contracts Act do?

The *Construction Contracts (Former Provisions) Act 2004* (the CCA) prohibits and modifies certain provisions in construction contracts and introduces a means for the rapid adjudication of payment disputes.

The CCA applies to all construction contracts – which are defined as contracts (oral, in writing or a combination of both) to perform construction work or provide related goods and services on a site in Western Australia. It does not apply to construction work being done by an employee.

The concept of 'construction work' is very broadly defined and captures most of the commonly understood activities relating to the construction of buildings and structures, as well as certain associated activities such as:

- preparatory and completion works (such as earthmoving and landscaping);
- the installation of fixtures and fittings and building systems (such as air conditioning and heating);
- supplying materials to site for use in construction; and
- professional services agreements, including design or quantity surveying services.

It is important to note that there are exemptions for certain types of contracts for mining and oil and gas related works. These are not treated as construction contracts for the purposes of the CCA.

Often referred to as 'security of payment legislation' the CCA, like similar legislation in each State and Territory around Australia, assists parties to a construction contract in three significant ways by:

1. prohibiting certain types of terms from being included in construction contracts;
2. implying certain terms into construction contracts where particular matters are not addressed in the existing contract; and
3. providing a means for contractors to get paid by applying for rapid adjudication, to keep money flowing in the contracting chain.

What terms are prohibited by the CCA?

The CCA voids certain terms in construction contracts which put the contractor at a disadvantage. They include:

- 'pay when paid' or 'pay if paid' clauses which suggest that a contractor will not be paid until the head contractor is paid by the principal;
- payment terms that state that payment isn't due until at least 42 calendar days after the date the payment claim is submitted; and
- any terms that attempt to contract out of the operation of the CCA.

What terms are implied by the CCA?

The CCA implies or 'brings in' various provisions where the contract doesn't expressly cover those matters. This means that the terms in the CCA are taken as applying to the contract.

The implied terms are outlined in Schedule 1 of the Act and include:

- when and how to make a payment claim;
- when and how to respond to a payment claim;
- when a payment claim is due to be paid;
- variations;
- interest on overdue payments (set at six per cent per annum);
- ownership of goods;
- duties as to unfixed goods on insolvency; and
- retention money.

What is the rapid adjudication process under the CCA?

Rapid adjudication is a dispute resolution process designed to help resolve disagreements between parties over payments for construction work. It is quick, cost effective and may be an alternative to going to court or arbitration.

Under the adjudication process, an experienced construction professional, such as an engineer, quantity surveyor, builder or a lawyer, determines whether the party claiming money is entitled to payment and, if so, how much.

Rapid adjudication operates in addition to your contractual and other rights, meaning that while a decision of an adjudicator will be binding on the parties, the dispute can still be dealt with more formally. This can be done under the dispute resolution process in the contract (e.g. arbitration), or through the courts. In this instance the adjudicator's decision will be interim pending the outcome of the formal process.

If someone is refusing to pay you, withholding security, or disputing the amount they owe, then using the rapid adjudication process is just one of many options that may be available. You should act quickly to look at your options and discuss payment with the other party directly. This could be in an informal verbal discussion to identify and resolve the reasons for withholding payment, or issuing a formal letter demanding payment.

Other options may include using a mediation service, such as through the Small Business Development Corporation, using the dispute resolution clause in your construction contract for the dispute to be referred to arbitration or expert determination, or commencing court proceedings. The adjudication process is not free, and the costs you may occur depend on the size and complexity of the dispute and the professional fees of the individual adjudicator themselves.

If you are unsure of your options then you should consider seeking advice from a professional, such as a lawyer or construction contracts specialist, or from a Western Australian industry association such as the Master Builders Association, Housing Industry Association, Subcontractors WA, National Electrical and Communications Association. Registered adjudicators who are not involved with your case may also help and you can contact them directly or through a prescribed appointor listed on the [Building and Energy website](#).

Disclaimer – The information contained in this fact sheet is provided as general information and a guide only. It should not be relied upon as legal advice or as an accurate statement of the relevant legislation provisions. If you are uncertain as to your legal obligations, you should obtain independent legal advice.

Building and Energy | Department of Mines, Industry Regulation and Safety

1300 489 099

8.30am – 4.30pm

Level 1 Mason Bird Building
303 Sevenoaks Street (entrance Grose Avenue)
Cannington Western Australia 6107

M: **Locked Bag 100, East Perth WA 6892**

W: www.dmirs.wa.gov.au/building-and-energy

E: be.info@dmirs.wa.gov.au

Regional Offices

Goldfields/Esperance	(08) 9021 9494
Great Southern	(08) 9842 8366
Kimberley	(08) 9191 8400
Mid-West	(08) 9920 9800
North-West	(08) 9185 0900
South-West	(08) 9722 2888

National Relay Service: 13 36 77

Translating and Interpreting Service (TIS): 13 14 50

This publication is available in other formats on request to assist people with special needs.