



Construction Contracts (Former Provisions) Act 2004 (WA)

Topic 2: Making a payment claim

Starting the process – making a payment claim under your contract

Before applying for adjudication under the *Construction Contracts (Former Provisions) Act 2004* (the CCA) it is important to ensure that you have followed the payment process set out in your construction contract.

Generally, a construction contract will contain express terms about the rights and obligations of the parties including:

- progress payment stages;
- final payment;
- payment of retention sums; and
- return of money held in security.

It is important to understand that the right to receive payment as well as the way a payment claim should be responded to comes from the construction contract. The conditions for the release of retention money, or return of security, would also be agreed to under the contract.

The construction contract may be written or oral, or a combination of both. The parties to a contract will need to ensure that they follow the payment process outlined in the contract before an application for adjudication may be lodged.

Wait! What if my contract does not set out rights to payment?

If the contract does not include payment provisions the CCA implies or 'brings in' reasonable terms of payment. These are outlined in Schedule 1 of the Act and include:

- rights to progress payments;
- when claims for progress payments can be made;
- how claims for progress payments should be made; and
- holding of retention money.

The CCA also implies terms into the contract with regard to how a payment claim should be made. The terms include that a payment claim must:

- be in writing;
- be addressed to the party to which the claim is made;
- state the name of the claimant;
- state the date of the claim;
- state the amount being claimed;
- itemise and describe the obligations that the contractor has performed relating to the claim (if the claim is made by the contractor);
- describe the basis for the claim (if the claim is made by the principal);
- be signed by the claimant; and
- be given to the party to which the claim is made.

If a construction contract does not set out how a payment claim should be responded to, the CCA implies terms which outline what needs to happen. In this case, if a party believes a claim should be rejected (because it has not been made in accordance with the construction contract, or they dispute part or all the claim) then they must issue a "notice of dispute" to the claiming party within 14 days of receiving the claim.

The content of the notice of dispute, must:

- be in writing;
- be addressed to the claimant;
- state the name of the party giving the notice;
- state the date of the notice;
- identify the claim to which the notice relates;
- if the claim is being rejected because it is not made in accordance with the contract, give reasons why;
- if the claim is being disputed, identify each item of the claim that is disputed and give reasons why; and
- be signed by the party giving the notice.

In the event that no notice of rejection or dispute is given the payment claim must be paid within 28 days of it being received.

With retention moneys and security, if there is nothing agreed to in the contract, then under the implied provisions of the CCA a contractor may claim for payment of retention moneys or the return of security if they have not occurred by the due date under the contract.

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.

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DMIRS/JUL22/7733