



Topic 2

Making a payment claim

How do you make a payment claim?

Before exercising your rights to get paid and recover debts under the Act, it is important to ensure that you have followed the correct process by making a valid payment claim under the Act. A payment claim can be made either as part of the normal progress payment or final payment claim process under the construction contract, provided the specific requirements of the Act are met. Or, if you have not been paid, you can make a claim under the Act.

The Act creates a statutory right to a progress payment and to make a claim for payment:

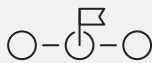


Once a month for the works
or supply done



More frequently if provided for in the
construction contract

Claims for a progress payment can be made for construction work and related goods and services as defined in the Act, and can include:



A milestone
payment



A single or one-off
payment



A final payment

Claims can be made even if the construction contract is oral, written or absent, or if the contract states the contractor cannot claim progress payments. A payment claim can also seek the return of performance security, including cash retention or bank guarantees, due for release under the construction contract. Claims to substitute cash retention for a bank guarantee or other performance bond can also be made subject to certain conditions being met and where the contract is entered into **after** 1 February 2024.

When can a payment claim be made?

For progress payments, claims can be made from the last day of the month in which the work or goods or services was supplied, and the last day of each subsequent month. A payment claim can also include amounts from previous months or the unpaid amount of a claim from a previous month.






Claims for progress payments can be made within six months of the carrying out of the work or supply of the goods and services, or a longer period if there is one specified in the contract.

For final payment claims, this will either be:

- the date specified in the contract; or
 - before the day that is 28 days after the defects liability period in the contract ends; or
 - six months after the completion of the work or supply of goods and services,
- whichever of these is the latest.

When does a payment claim need to be paid?

Once a payment claim has been given under the Act, the due date for payment depends upon the claimant's position in the contractual chain.

Pathway 1	Pathway 2	Pathway 3
You are the main builder or head contractor on the project and you have subcontracted some or all of the work.	You are a subcontractor, sub-subcontractor, supplier on the project or there is no head contractor.	The contract is for home building work (as defined in the <i>Home Building Contracts Act 1991 (WA)</i>) (for example the job is on a residential house or strata lot) and you are the main builder, head contractor, subcontractor, sub-subcontractor or supplier.
 <p>Due date either 20 business days from the date of giving the claim, or any earlier time stipulated in the contract.</p>	 <p>Due date either 25 business days from the date of giving the claim, or any earlier time stipulated in the contract.</p>	 <p>Due date either the date stipulated in the contract or 10 business days after giving the payment claim. This due date for payment applies irrespective of where you are in the project chain.</p>



It is important to be aware that a 'business day' is defined in the Act as any day other than a Saturday, Sunday, state public holiday or a day between 22 December in one year and 10 January the next year inclusive.

How do you prepare a payment claim?

A payment claim is just like an invoice issued under a contract. It should contain all information and supporting documentation necessary for the party to whom the claim is given (the respondent) to identify the work and how the amount claimed is calculated. This will allow the respondent to make an informed decision as to whether to approve payment or not.

However, you must be careful to ensure that your payment claim complies with the requirements of the Act, otherwise you will not be able to have any dispute about the claim dealt with by an adjudicator, or enforce other rights to payment under the Act.

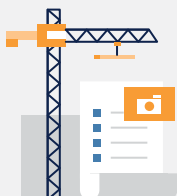


A payment claim must:

- be in writing;
- clearly indicate the amount claimed; and
- describe the items and quantities of work done or related goods and services supplied.

It is important to be aware that whilst a payment claim does not need to be signed, it needs to include an **'endorsement'** or statement that it is made under the Act. To do this, simply write on the payment claim words to the effect of:

“ This is a payment claim made under
the *Building and Construction Industry (Security of Payment) Act 2021*. ”



A payment claim may also have attached substantiating documentation, including:

- completion certificates;
- records evidencing the nature and extent of the works completed; and/or
- dockets confirming the delivery of goods.



A recommended form for preparing a payment claim is available for download
from the Building and Energy website.



How do you give a payment claim?

A payment claim must be 'given' to the party to which the claim is made (the respondent) in the correct way to start the clock running.

If the contract stipulates a way for giving claims, such as to a particular person or email address, the payment claim must be given to the respondent in that way.



Alternatively, if the contract does not stipulate a way for giving claims, it can be given in a number of ways. The payment claim can be given by either:

- delivering it to the respondent personally;
- leaving it at the respondent's ordinary place of business;
- sending it by post to the respondent's ordinary place of business; or
- emailing it to an address specified by the person for giving payment claims under the contract.

In order for a payment claim to be valid, it is vital that it is given in the manner stipulated under the contract or in one of the ways described above.

Are there special rules for claiming payment for home building work and prescribed building services?

**Contract
value
>\$500,000**

Special rules apply where a payment claim is being given to an individual residential homeowner for home building work and the total value of the contract is over \$500,000.

A 'notice to the homeowner' must be attached to the claim letting the homeowner know about the Act and what must be done.



A copy of the required notice is available for download from the Building and Energy website.



Where the type of construction work or related goods and services required under the contract requires a registration issued under the *Building Services (Registration) Act 2011 (WA)*, a valid claim for a progress payment cannot be made if the claimant does not hold the necessary registration.

Registration is required under that Act for:



Builder work



Building surveying work







Painter work



Further details about registration requirements for these types of work can also be found on the Building and Energy website.



Tips for preparing a payment claim

- 1  A payment claim must be made in accordance with the requirements of the Act. You cannot exercise your rights to get paid and recover debts under the Act unless you give a valid payment claim.
- 2  A payment claim should include sufficient information with copies of all substantiating documents referred to in the payment claim attached to allow the respondent to confidently value the payment claim and approve payment or otherwise.
- 3  Ensure that you keep a record of the manner (for example post, personal service, etc.) that you used for giving the payment claim together with the relevant times and dates. If the payment claim was not in fact received, you must be able to evidence the date it was given.
- 4  The Building Commissioner has published a recommended template to assist with preparing a payment claim.

Important terminology

Adjudicator	is an individual registered under the Act as an adjudicator.
Business day	is any day other than a Saturday, Sunday or public holiday or day between 22 December and 10 January inclusive.
Claimant	is the person who is or who claims to be entitled to a progress payment and who makes a payment claim.
Give	means to give a document under the Act (for example a payment claim, payment schedule, application or response) either in accordance with the method stipulated in the construction contract, or, if the contract is silent (or there is no contract), the document can be given by either: <ul style="list-style-type: none"> • delivering it personally to the person who is to receive the document (for example the claimant, respondent, adjudicator, etc.); • leaving the document at the person's ordinary place of business; • sending the document by post to the person's ordinary place of business; • emailing the document to an address specified by the person; or • if an authorised nominating authority allows for the use of an electronic lock-box, submitting documents via that facility.
Payment claim	is a claim given under the Act.
Respondent	is the person who has been given the payment claim.

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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