



THE UNIVERSITY
of ADELAIDE

Legal Compliance Education and Awareness



CRICOS PROVIDER 00123M

Building and Construction Industry Security of Payments Act 2009

(South Australian)

adelaide.edu.au

seek LIGHT

What does the Act do?

- Establishes a process to provide construction work contractors (including suppliers of related goods & services) with a quick & inexpensive way to get paid
- Provides contractors with a legal right to “progress payments”
 - Payments to which a contractor is entitled as specified in the contract
 - Payments may be;
 - the final payment for construction work carried out
 - a single or one-off payment for carrying out construction work
 - a “milestone payment” that is based on an event or date
- Imposes a rapid & mandatory adjudication process in the event that a progress claim is disputed
 - *Essentially a “pay now, argue later” scheme*
- Imposes potentially severe consequences for missing payment deadlines

How does the Act apply to the University?

- The Act grants additional rights to contractors of the University & to subcontractors to University contractors
- The Act applies to all “construction contracts”
- contracts for the undertaking of construction work or the supply of related goods and services
- The Act applies to most types of contracting including;
 - Contracts to supply goods or services (in relation to construction work)
 - Residential & non-residential building
 - Civil engineering
 - Demolition
 - Plumbing
 - Electrical
 - Hire of plant & equipment
 - Landscaping
 - Maintenance
 - Air conditioning
 - Supply of building materials

How does the Act apply to the University? (Cont)

- The Act applies at all levels of contracting, including;
 - Head contracts
 - Subcontracts
 - Supply agreements
 - Consultancy Services Agreements
- In most instances, “The University” (as the client) will act as respondent & the contractor will act as claimant under the Act

Payment Claims

- On each “reference date” under a construction contract, a person who has undertaken to carry out construction work (or supply related goods & services) is entitled to a progress payment
- A supplier of work, goods or services serves a payment claim, which specifies the work, amount of claim & that the payment claim is made under the Act
- Sufficient detail must be provided to identify the work & value of the work
- The claimed amount is to be calculated;
 - in accordance with the contract; or
 - on the basis of the value of the construction work
 - The Act only allows for one payment claim for each reference date
- Payment is due;
 - on the date on which the contract provides payment becomes due & payable; or
 - otherwise, 15 business days after a payment claim is made

Payment Schedules

- The client must respond to a payment claim with a payment schedule
 - Within either 15 business days or the period specified in the contract (whichever is earlier)
 - Indicating the amount the client proposes to pay
 - Identifying any withheld amounts
 - Giving reasons for withholding any payment
- Various consequences flow if the client;
 - Fails to respond to a payment claim
 - Fails to pay the whole or part of the claimed amount on or before the due date
- If the client does not respond or pay, the contractor may;
 - Issue debt proceedings in court
 - Exercise a lien for the unpaid amount over unfixed plant & materials
 - Give notice of intention to suspend work
 - Refer the non-payment to adjudication

Adjudication

- If a progress payment is not made within the specified time period or the payment schedule is for less than the payment claim amount, the claimant can choose to have the payment claim independently assessed & determined by an adjudicator
- The adjudication process is intended to be quick & inexpensive
- An adjudication application must be served on the respondent within strict time limits & in compliance with the requirements of the Act
- Adjudicator's fees are shared
- There is no option of recovery of parties' costs

What can happen if I don't comply?

- Non compliance with a payment schedule will give the claimant the option to;
 - Issue debt proceedings in Court for the full amount claimed
 - Issue a notice of intention to suspend work
 - Apply for an adjudication determination
 - Exercise a lien for the unpaid amount over unfixed plant & materials
- All options are likely to adversely impact the University financially & otherwise
- A right to lodge a lien over University property is also available under the Workers' Liens Act 1893 (SA)
- If progress payments are not prompt, interest is payable on the unpaid amount

If you are a Project Manager involved in administering or managing a works or supply contract on behalf of the University...

- Obtain advice from Legal & Risk if necessary
 - Contact Kim Evans (Senior Counsel)
 - 8313 6103
- Agree a format for making progress claims & progress payments with contractors & know when progress payments are claimable
- Review contract provisions for progress payments. Make sure you know;
 - What needs to be included in a progress claim
 - The method for valuing progress claims
 - The agreed time period for processing payment claims
 - ensure this time period is adequate
- Implement a process to ensure you receive notice of all progress claims on the date the claim is made

If you are a Project Manager involved in administering or managing a works or supply contract on behalf of the University (cont.)

- Ensure a payment schedule is always provided to the Claimant within the time required by the contract or within 15 business days after the payment claim is served (which ever is earlier)
- Ensure the payment schedule;
 - Identifies the payment claim to which it relates
 - Indicates the scheduled amount
 - Is served as required by the construction contract or by hand delivery, post or facsimile
- Ensure that if the scheduled amount is less than the claimed amount in the payment claim, the payment schedule indicates why the scheduled amount is less

If you are a Project Manager involved in administering or managing a works or supply contract on behalf of the University (cont.)

- Ensure that if the respondent is withholding payment for any reason, the reasons for withholding are expressed
- REMEMBER all reasons must be included as new reasons cannot be raised in an adjudication application
- Be prompt with payment to avoid severe consequences & interest payments
- Reply to an adjudication application on time
- REMEMBER the Act only allows 5 business days for lodging a response

Additional Resources

- [Kim Evans \(Senior Legal Counsel\)](#)
 - 8313 6103
- Building & Construction Industry Security of Payment Act 2009 (SA)
- Building & Construction Industry Security of Payment Regulations 2009 (SA)
- Flow Chart of the processes & time limits for claiming, resisting & enforcing payment claims under the Act



THE UNIVERSITY
of ADELAIDE

Disclaimer

The content of this material is intended only to provide a summary & general overview of the *Building & Construction Industry Security of Payments Act* as it applies to the University of Adelaide.

It is not intended to be comprehensive nor does it constitute legal advice.

Please contact *Kim Evans* if you are unsure of your compliance obligations under the Act.