

Very Important Information regarding payments

You have been served with a payment claim under section 20 of the Construction Contracts Act 2002 (the Act). Under the Act, the person who has served the payment claim is called the payee.

If you do not respond to the payment claim promptly, you may lose your right to object to the payment claim.

You may choose to respond to the payment claim in either of the following 2 ways:

- you may pay the payee the amount claimed in the payment claim in full on or before the due date:

Or

if you object to the payment claim, you may provide a written payment schedule to the payee, which must identify the payment claim to which it relates and indicate what you are prepared to pay (which can be nothing). The amount you so indicate is called the scheduled amount. If the scheduled amount is less than the claimed amount, the payment schedule must indicate-

- (a) how you calculated the scheduled amount; and
- (b) your reason or reasons for the difference between the scheduled amount and the claimed amount; and
- (c) in a case where the difference is because you are withholding payment on any basis, your reason or reasons for withholding payment

You must provide the payment schedule to the payee within the time required by the construction contract or, if the construction contract does not set out a time for responding to the payment claim, then within 20 working days after the payment claim is served on you. If you provide a payment schedule in this way, then you must pay the scheduled amount in full on or before the due date for the progress payment to which the payment claim relates.

Consequences of not responding to payment claim

If you do not respond to the payment claim by paying the claimed amount in full or providing a payment schedule that sets out the amount you are prepared to pay, then you will become liable to pay the claimed amount and the payee may recover from you, as a debt due, in the appropriate court, the unpaid portion of the claimed amount and the actual and reasonable costs of recovery awarded against you by the court.

Consequences of indicating that you will pay nothing or less than claimed amount

If you do respond to the payment claim by providing a payment schedule but indicate in the schedule that you are prepared to pay nothing or an amount less than the claimed amount, the payee may take issue with you doing so. The payee may bring court proceedings against you and refer the matter as a dispute for adjudication under the Act.

Consequences of not paying scheduled amount in manner indicated by payment schedule

If you do respond to the payment claim by providing a payment schedule but do not pay the scheduled amount on or before the due date for the progress payment to which the payment claim relates, the payee may recover from you, as a debt due, in the appropriate court, the unpaid portion of the scheduled amount and the actual and reasonable costs of recovery awarded against you by the court.

Advice to residential occupier

Important: If you do not understand this information or if you want advice about how best to respond to the payment claim, you should consider getting legal advice immediately.

The due date for a progress payment is the date agreed for payment of the progress payment between you and the payee as parties to the construction contract. The due date should be set out in the payment claim.

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Working day does not include Saturdays, Sundays, any day during 24 December to 5 January inclusive, national holidays, or the anniversary of the relevant province. If the last day for making a payment or providing a payment schedule falls on a day that is not a working day, you may do so on the next working day after that day.

Further to this should you need any info please get in touch urgently.

Thank you,

Troy Jury
Director.