

Plumbing SA



The Plumbing Industry Association of South Australia Inc.

May / June 2011



- Call Out Fees
- RECS - LRET/SRES - Name Changes
- Compliance, Compliance, Compliance...

The Building and Construction Industry Security of Payment Act 2009

Our Industry has been plagued and crippled by delays in the payment for construction work by:

- Builders
- Contractors
- Developers
- Government and Services
- Institutions and Agencies

Any company or person that engages you to provide construction work or related goods and services will need to comply with this new Act, The Building and Construction Industry Security of Payment Act 2009.

In the view of MES Pty Ltd, this Act will have an enormous impact upon all Claimants and Respondents. I have personally witnessed similar Acts in operation in the eastern states and South Australia is the last state to adopt the legislation.

What one will witness with the new Act

Out goes the argument that we will pay you when we get paid. When the Act commences your company will be given statutory rights for claims made under your contract for construction work and or related goods and services.

Everyone in our industry will be compelled to make their progress payments systems timely, including all who participate in approving claims. The Act will create a statutory right to an approved progress payment.

How we view a claim under this new Act

Your invoice, to be referred to as your 'Payment Claims' will be required to be paid within the terms agreed to under your contract unless the amount is disputed.

If no payment terms have been agreed, payment claims will become due for payment on the date occurring 15 business days after being made under the Act. Your client will be required to provide a Payment Schedule within 15 business days of receipt of the Payment Claim.

If full payment is not to be made, the Payment Schedule must indicate why. If no Payment Schedule is provided within 15 days of receiving the Payment Claim, your client becomes responsible for the full amount of your Payment Claim under the Act.

If payment is not made in full and a Payment Schedule is provided by your client setting out reasons why monies are being withheld, there is a process under the Act to have disputes over payment determined by an adjudicator.

This process can include you formally notifying your client that you intend to apply for adjudication where there is no Payment Schedule or you proceeding directly to adjudication within 15 days after you receive a Payment Schedule.

Your client will have 5 days to provide a Response to the Adjudicator after receiving the adjudication application. Both your adjudication application and your client's response will contain written arguments supported by relevant documents. This is why it is vital that you have your records and book keeping details in order and for them to be correct.

The adjudicator has to make a decision within 10 business days after receiving the Adjudication Response. The adjudicator makes the

determination of the amount of the payment based on the written material presented to the adjudicator.

Once the adjudicator has made a determination, the determination is enforceable as a judgment subject to any successful challenge to the determination in the Supreme Court.

If payment is still not made by your client after an adjudicator's decision, there is a process within the Act that allows you to suspend work.

The right to suspend under the Act can also arise if your client does not provide you with a Payment Schedule or fails to pay the whole or part of any amount that the respondent agreed to pay in a Payment Schedule provided to you under the Act.

Once the Act commences and for you to trigger the operation of the Act, all you need to do to protect your payment terms is to add to your Progress Claims - that the 'Payment Claim is made in accordance with the Building and Construction Industry Security of Payment Act 2009'.

In triggering the operation of the Act, however, you must make sure that you are ready and your paper work is in order especially if you suspect that there will be dispute over payment.

The provision of documents under the Act must also follow certain requirements and must be served in one of the following ways:

- Personal delivery during normal business hours;
- By facsimile or
- By post;
- In such other way as permitted under the contract;
- Unless permitted by your contract, email is NOT an acceptable form of serving documents under the Act.

It is absolutely vital you have your internal records and billing processes in place and that you ensure that your mail procedures are in order and incoming and outgoing mail is properly recorded.

Check all paperwork and signoff procedures by the designated responsible person. If an envelope appears under the door of your office it must be reviewed immediately as it could be deemed as being hand delivered under the Act even if your office is closed.

We are advised that we can expect assent to the regulations in late 2011.

We will prepare a tool kit to assist industry members.

Please refer to our web site for details:

<http://www.bruceharris.com.au/MES.html>

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