

KQ NEWSLETTERS

February 2010

The Building and Construction Industry (Security of Payments Act) 2009 (ACT)

From 1 July 2010 the Building and Construction Industry (Security of Payments Act) 2009 ('the Act') will commence operation in the ACT. The Act has been operating in NSW since 1999. Similar legislation also operates in Queensland, Victoria and Western Australia.

INTENTION OF THE ACT

The objective of the Act is to entitle sub contractors and contractors ('Claimants') who carry out construction work (or who supply related goods and services) to timely payment for the work that they carry out and the goods that they supply.

In short the Act aims to guarantee cash flow for Claimants involved in the construction industry by establishing a system for the interim resolution of payment disputes involving building and construction work – not domestic building work where an ordinary 'resident owner' is a party to the contract.

HOW DOES THE ACT WORK?

In the event that the company ('the Respondent') receiving a Payment Claim from a Claimant disputes the amount claimed must attend to payment within 10 business days, or in accordance with payment provisions of the Contract.

If the Respondent disputes the amount claimed by the Claimant the Respondent must serve the Claimant with Payment Schedule which states the amount of the Payment Claim, if any, it proposes to pay and the reasons why.

Should a Respondent fail to respond to a Payment Claim within 10 business days the following remedies immediately become available to a Claimant:

- Application for interim Judgment in a Court of competent jurisdiction.
- Application for Adjudication with a Nominated Authority for an interim determination.
- The right to suspend work with immunity.
- The right to exercise a lien over unfixed plant and materials.

INTERIM RELIEF

It is important to understand that the relief obtained by a Claimant under the Act does not extinguish a Respondent's contractual rights to obtain a final resolution of a payment dispute by a Court of competent jurisdiction.

REQUIREMENTS FOR CLAIMING / RESPONDING UNDER THE ACT

The Act imposes strict obligations upon both Claimants and Respondents who seek to utilise it.

The obligations imposed under the Act relate both to time limits and formatting of Claims and Responses.

SUMMARY

Traditionally sub contractors and contractors engaged in construction have been vulnerable to the 'pay when paid' culture of the industry.

Since its implementation in other jurisdictions the Act has had a significant impact on the way payment is made to Claimants in the Construction industry. It is anticipated that the impact in the ACT will be no less dramatic.

From 1 July 2010 it is vital that companies involved in the Construction industry become aware of how to utilise the Act and, if necessary, respond to claims brought under it.

If you have any questions in relation to the operation of the Act do not hesitate to contact Paul Quinn of this office on 4862 2020.

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