



Brentnalls SA
With you **for** life.

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Building & Construction

Security of Payment Act 2009

The Building & Construction Industry Security of Payment Act 2009 entitles a person who carries out construction work or who supplies related goods and services under a building and construction contract to receive and recover progress payments for carrying out that work or supplying those goods and services. The Act provides a quick and inexpensive way to resolve payment disputes and enables contractors and suppliers to claim money that is owing to them.

Who can make a claim?

Those who can make a claim under the Act in relation to construction work include:

- Contractors;
- Subcontractors – for example, builders, plumbers, gas fitters and electricians;
- Suppliers of materials for construction work;
- Suppliers of plant and equipment (whether supplied by sale, hire or otherwise) for use in connection with construction work; and
- Service providers providing services related to construction work such as Labour, Architectural, Design, Surveying, Engineering, Interior or exterior decoration, Landscaping, Contract management, Consultancy and Project management.

The Act doesn't apply to Employees (as other laws deal with workers' claims and entitlements) and Domestic Building work with direct contracts with the homeowner.

How to make a payment claim?

A person must comply with all the rules as to when they can make a payment claim and write to the owing party (known as the respondent) stating the type of construction work the claim is in relation to, the date at which the construction work occurred or alternatively the last day of the month in which the work occurred and the amount being claimed.

The letter should also include the wording "This is a payment claim under the Building & Construction Industry Security of Payment Act 2009" or a similar statement with that meaning.

In addition, it is important that the claim may also include attachments containing; statements detailing the extent and quality of the work completed, completion certificates, delivery dockets, photographs, and other applicable contract document requirements.

What can you claim for?

You can make a claim on the respondent for the following:

- Construction work you have done;
- Construction materials or plant you have provided;
- Services such as project management, contract management or consultancy that you have provided;
- Interest on overdue progress payments;
- Cash security and retention monies; and
- At the end of the contract, a claim under the Act can be made for the final payment.

The Security of Payment Act also entitles contractors to suspend work if payment is not made in accordance with its provisions.

Disclaimer

The information provided in this brochure does not constitute advice. The information is of a general nature only and does not take into account your individual objectives, financial situation or needs. It should not be used, relied upon, or treated as a substitute for specific professional advice. We recommend that you contact Brentnalls SA before making any decision to discuss your particular requirements or circumstances.



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Security of Payment Act 2009 Continued

What steps can be taken if payment is not made?

If you do not receive a payment or payment schedule within the required time period, you can apply for an independent adjudicator to investigate your claim by applying to a Nominating Authority via the Small Business Commissioner website (www.sasbc.sa.gov.au). The Nominating Authority will then choose an adjudicator to investigate your claim. There are specific time limits and requirements that must be met throughout this process.

The Nominating Authority will forward a copy of your paperwork to the adjudicator. In most cases, the adjudicator will make the determination based on the paper work provided, but may call an adjudication conference if necessary. The adjudicator may also carry out an inspection or ask for further documentation to assist in determination.

If the evidence supports your claim, then the adjudicators ruling will state the amount payable and in most cases this will resolve the issue. However, if the other party does not want to make the payment in accordance with adjudicators ruling, then the adjudication certificate can be filed in the court or work or supply of goods could be suspended.

How can Brentnalls Construction help?

If further assistance is required or you wish to make a payment claim, please contact one of our Brentnalls Construction advisors with any questions. Alternatively, please visit the South Australian Small Business Commissioner website (www.sasbc.sa.gov.au) for more information.

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