



McKays

How to use the Payment Claim system

Learning how to use the Payment Claim system can dramatically help you improve your cash flow. And, if you don't know how it works, you could end up having to pay Payment Claims which are sent to you even though you should not have to pay the bill.

So how does the Payment Claim system work?

A quick cheap method of recovering payment

In general terms, the Payment Claim system under the *Building and Construction Industry Payments Act* ("BCIPA"), provides a quick and cheap method of recovering outstanding payments.

This is achieved through:-

1. **delivering a "Payment Claim" to the non-payer;**
2. **the non-payer has only ten (10) business days** within which to either pay the amount you are claiming in full or give you a document called a "Payment Schedule". The Payment Schedule must set out how much the non-payer is prepared to pay and provide specific reasons for refusing to pay the balance;
3. if the person who receives the Payment Claim doesn't either pay the claim in full and on time or deliver a Payment Schedule which complies with the Act within ten (10) business days, **you can:-**
 - a. **stop work.** You can stop work even if your contract says you can't (subject to giving the appropriate notice under the Act). You can stay off the job, without being in breach of your contract, until three (3) business days after you have actually been paid; and
 - b. **apply for judgment without the need for a full hearing under special rules which prevent the defendant from:-**
 - **raising any defence or counter-claim** if they didn't deliver a Payment Schedule; and
 - raising any issues other than those which were in the Payment Schedule...if they delivered one.



How to use the Payment Claim system

The important thing to understand is that this means they cannot bring up new reasons or excuses not to pay such as alleging you are in breach of contract or that they are entitled to liquidated damages – a common ploy used by non-payers to hold up court proceedings.

When a Payment Schedule has not been delivered, you should be able to receive a judgment for the full amount of the unpaid moneys within approximately forty-five (45) business days.

If a Payment Schedule has been delivered but the amount they admit is payable is not paid on time, you can receive a judgment for that admitted amount within about forty-five (45) business days.

- c. **as an alternative to going to court, you can, in addition to stopping work, have the dispute resolved by an adjudicator.** There is no court case or other hearing...it's all decided on the paperwork that goes to the adjudicator.

If you go to adjudication, you will receive a decision as to who has to pay how much, **within about forty-five (45) business days of you delivering the Payment Claim.**

Once you receive the order of the adjudicator, you can enforce it as a judgment in the courts.

Remember that if the person who owes you money holds a BSA licence, when the judgment is registered against them, they will lose ten (10) demerits points and if they lose thirty (30), they will be banned from holding a BSA licence for a period of three (3) years. This is a strong incentive for them to pay up when they are supposed to!

Who can use the Act?

Basically, everyone who you would normally consider to be involved in the building or construction industry can use the Act.

You can seek payment under the Act if you are doing either "building work" as defined under the *QBSA Act* or "construction work" as defined in the BCIPA itself.

Construction work is very widely defined to include work such as electrical, engineering, landscaping, architectural services, earthmoving, excavation and other civil works, soil testing and the provision of labour by labour hire companies for the purpose of carrying out construction work.

The BCIPA can also be used by those who supply materials and components which are to form part of a building or of construction works as well as those who supply plant and material for use in or in connection with the carrying out of construction work. So suppliers can use it against contractors and subcontractors, subcontractors can use it against contractors, contractors can use it against principals and consultants can use against their clients.



How to use the Payment Claim system

When can you use the Act?

The Act covers work and supply of related goods or services in Queensland. Similar legislation now applies in the other states.

There are a couple of exclusions where the Act cannot be used. The most important of these is where you are working directly for a “resident owner”, that is, working on someone’s house which they live in and your contract is with them. For example, if John Smith engages Bill Bloggs Builder to build his new home for him, Bill Bloggs cannot use the Act against John Smith. However, a subcontractor, whose contract is with the builder, could use it against the builder.

When can you make Payment Claims?

You can make a Payment Claim from either the date calculated in accordance with the contract if something is specified in there, or if nothing is in the contract, **on the last day of each calendar month**.

If you receive a Payment Claim, you must pay it or respond with a Payment Schedule within the time allowed under the contract or, if there is nothing about it in the contract, within ten (10) business days after the Payment Claim was delivered.

If it is building work and the contract provides for payment after more than twenty-five (25) business days in the case of a subcontract or fifteen (15) business days in the case of a commercial building contract, that time frame will be illegal and payment must be made within ten (10) business days after the Payment Claim was delivered regardless of what is in the contract.

When should you use Court and when Adjudication?

An important decision will be whether you should use the quick judgment process or the adjudication process.

There are a number of factors which will determine what will be best in each case. It is best to obtain legal advice each time before deciding which way to go. Most importantly, make sure you talk to a qualified lawyer who is experienced in using the Payment Claim system.

However, generally speaking, it will most likely be in your best interests to **go for judgment where:-**

- > **a Payment Schedule isn’t delivered;**
- > **a Payment Schedule isn’t delivered within the time allowed, or**
- > **the amount they admit is payable in the Payment Schedule is not paid on time.**



McKays

How to use the Payment Claim system

Usually this isn't ever necessary. All that's normally needed is for your lawyer to write to them explaining what you can do to them and they pay up!

Adjudication is most likely to be the best course where the amount admitted in the Payment Schedule is not acceptable to you or they deny anything is owing.

How does adjudication work?

In simple terms, if you want to bring on an adjudication, you lodge an Adjudication Application with an Authorised Nominating Authority (ANA), asking it to appoint an adjudicator. You serve the application on the person you are seeking payment from.

They usually have only five (5) business days within which to provide you and the adjudicator with a response. A decision will be made by the adjudicator within ten (10) business days after the adjudicator receives the response or should have received it.

If the adjudicator finds for you, he will make an Order that an amount of money be paid to you by the non-payer. **The non-payer then has only five (5) business days within which to pay you.** If they don't, you can enforce the order like a court judgment!

If you would like to know more about Payment Claims, contact one of our lawyers now.

- > **Michael Cope (Lawyer and Registered Adjudicator)**
E mcope@mckays.com.au
P 07 3223 5939
- > **Dannielle Sanderson (Lawyer in our Mackay office)**
E dsanderson@mckayslaw.com
P 07 4968 5431
- > **Ian Heathwood (Lawyer and Head of Business Services)**
E iheathwood@mckays.com.au
P 07 3223 5942

McKays
Solicitors Unique.Focus

Brisbane

Level 26, 10 Eagle Street Brisbane QLD 4001 Australia
GPO Box 2448 Brisbane QLD 4001 Australia
P 07 3223 5900 F 07 3223 5995 E brisbane@mckays.com.au

www.mckays.com.au

Brisbane | Mackay | Gold Coast | Surat Basin

Liability limited by a scheme approved
under professional standards legislation

McKays Group – an alliance of independently owned and operated legal
practices operating under the name McKays.