



**Australian Government**  
**Australian Building and  
Construction Commission**

# Security of Payment

**NEW SOUTH WALES**



# What is 'Security of Payment'?

In general terms, 'security of payment' refers to a building contractor's right to receive payments that are due as outlined in their contract. For example, a head contractor must pay a subcontractor's progress payments on time.

Each state and territory has its own security of payment laws. Broadly, the laws provide a rapid statutory mechanism for resolving payment disputes on an interim basis. This is known as adjudication. There are however, significant differences in how the laws operate and strict timeframes required for adjudication applications.

This fact sheet sets out the key requirements for the New South Wales security of payment regime to assist you in ensuring that you get paid on time and that you pay your subcontractors on time.

## Security of Payment Laws – New South Wales

In New South Wales, security of payment is governed by the *Building and Construction Industry Security of Payment Act 1999* (the NSW SOP Act).

### Object

- The object of the NSW security of payment laws is to ensure that any person who undertakes to carry out construction work or who undertakes to supply related goods and services under a construction contract is entitled to receive, and is able to recover, progress payments in relation to the carrying out of that work and the supplying of those goods and services.
- The laws ensure that a person is entitled to receive a progress payment by granting a statutory entitlement to that payment, regardless of whether the relevant construction contract makes provision for progress payments.
- The laws ensure that a person is able to recover a progress payment by establishing a procedure that involves the making a payment claim, the provision of a payment schedule, the referral of any disputed claim to an adjudicator for determination and the payment of the amount of the progress payment determined by the adjudicator.

Substantial amendments to the NSW SOP Act came into effect on 21 October 2019. Security of payment for construction contracts entered into prior to that date, are not affected by the amendments (even if a payment claim is issued after this date).

To recover money due and owing to you, you must meet certain criteria and strict timeframes for the provision of certain information:

- The criteria, timeframes and process to use the **pre-21 October 2019** NSW SOP Act are summarised in Attachment A to this fact sheet.
- The criteria, timeframes and process to use the **post-21 October 2019** NSW SOP Act are summarised in Attachment B to this fact sheet.

**Disclaimer:** The checklist is intended only to provide a general overview of the Security of Payment legislation in each State and Territory. It is not intended to be a comprehensive statement of the requirements of the Security of Payment Legislation and nor does it constitute legal advice. You should refer to the specific provisions of the relevant Security of Payment legislation to ensure compliance with the applicable requirements.

# The role of the ABCC

The Australian Building and Construction Commission (ABCC) monitors and promotes compliance with the *Building and Construction Industry (Improving Productivity) Act 2016* (BCIIP Act), designated building laws and the *Code for the Tendering and Performance of Building Work 2016* (Code) by building industry participants.

Building contractors and building industry participants become subject to the Code (code covered entities) from the first time they submit an expression of interest or tender for Commonwealth funded building work on or after 2 December 2016.

The Code imposes a number of security of payment obligations on code covered entities.

## I'm owed money. How can the ABCC help me?

The ABCC may be able to assist you if:

- you are not getting paid, or have been paid late for building work you have undertaken; and
- you have been engaged on a project in respect of that building work, by a building contractor who does Commonwealth funded building work (a code covered entity).

The ABCC may determine that the code covered entity has breached the Code. In these circumstances, the ABCC can intervene and seek that the code covered entity voluntarily rectify its Code breach, which may include making overdue payments.

Depending on the seriousness of the breach, the ABCC may also recommend to the Attorney-General and Minister for Industrial Relations that a sanction be imposed on the code covered entity. If a sanction is imposed by the Minister, the code covered entity may be prevented from tendering for Commonwealth funded work in future for a period of time.

Unfortunately, the ABCC cannot order a code covered entity to pay amounts that are due and owing in the same way that a court can.

To report to the ABCC that you are owed money, please complete and submit the Security of Payment Reporting Claimant form accessible at <https://www.abcc.gov.au/building-code/contractors/construction-phase/security-payment>.

## I owe my subcontractors money. What are my Code obligations?

If you are a code covered entity, you must comply with the security of payment obligations under the Code which include the following:

- Comply with state and territory security of payment laws.
- Ensure payments that are due and payable are made in a timely way and not unreasonably withheld.
- Have documented dispute settlement processes detailing how disputes about payments to subcontractors will be resolved.
- Ensure disputes about payments are resolved in a reasonable, timely and co-operative way.
- Comply with any project bank account or trust arrangement that may apply on a Commonwealth funded project.
- Report disputed or delayed progress payments to the ABC Commissioner.

You must **report disputed or delayed progress payments to the ABC Commissioner** in the following circumstances:

1. An amount is certified by a Principal (or Superintendent) under a contract and not paid within the contractual timeframe.
2. An amount is specified in a payment schedule/notice of dispute issued under the security of payment laws and not paid by the date prescribed by those laws.
3. Other than in Western Australia and the Northern Territory, no payment schedule/notice of dispute is issued in response to a valid payment claim and the full amount of the payment claim is not paid by the date prescribed by the security of payment laws.
4. An adjudicator makes a determination under the relevant state and territory security of payment legislation and the adjudicated amount is not paid by the date prescribed by the security of payment laws.
5. A third party such as a court, arbitrator, or expert issues a binding determination and the amount determined is not paid in accordance with the determination.

To report a disputed or delayed progress payment to the ABCC, please complete and submit the Code Covered Entity Security of Payment reporting from accessible at:

[abcc.gov.au/building-code/contractors/construction-phase/security-payment](https://abcc.gov.au/building-code/contractors/construction-phase/security-payment)

# Contact the ABCC

For further information and assistance, contact the ABCC via the avenues below:



**ABCC hotline**  
1800 003 338



abcc.gov.au

**ABCC – Security of Payment information**  
[abcc.gov.au/building-code/contractors/construction-phase/security-payment](https://abcc.gov.au/building-code/contractors/construction-phase/security-payment)



**ABCC – Presentation**  
ABCC representatives are available to present an information session at your workplace.  
[abcc.gov.au/book-presentation](https://abcc.gov.au/book-presentation)

# Where else can I go for help?

**Protecting your small business (ASIC)**

[asic.gov.au/for-business/small-business/protecting-your-small-business/](https://asic.gov.au/for-business/small-business/protecting-your-small-business/)

***Building and Construction Industry Security of Payment Act 1999 (NSW) Pre-21 October 2019***

<https://www.legislation.nsw.gov.au/#/view/act/1999/46/historical2017-06-27/full>

**Building and Construction Industry Security of Payment Amendment Act 2018 (NSW)**

<https://www.legislation.nsw.gov.au/#/view/act/2018/78/full>

**Building and Construction Industry Security of Payment Act 1999 (NSW) Post-21 October 2019**

<https://www.legislation.nsw.gov.au/#/view/act/1999/46/full>

**Fair Trading NSW**

<https://www.fairtrading.nsw.gov.au/trades-and-businesses/construction-and-trade-essentials/security-of-payment>

**Authorised Nominating Authorities**

<https://www.fairtrading.nsw.gov.au/trades-and-businesses/construction-and-trade-essentials/security-of-payment/authorised-nominating-authorities>

# Attachment A

## Key NSW SOP Act Requirements (pre 21 Oct 2019)

REQUIREMENT	DETAILS
You must be a party to a construction contract for the NSW SOP Act to apply	Construction contract can be either <b>written, oral or both</b> .
Entitlement to claim progress payment	<p>On and from each reference date under a construction contract, a person who has undertaken to carry out construction work under the contract is entitled to a progress payment (section 8(1)).</p> <p><b>'reference date'</b> in relation to a construction contract means:</p> <ol style="list-style-type: none"> <li>a date pursuant to the contract for a progress payment claim to be made; or</li> <li>if the contract makes no express provision—the last day of the month in which the construction work was first carried out under the contract and the last day of each subsequent named month (section 8(2)(b)).</li> </ol>
Issuing a payment claim	<p>If entitled to a progress payment, claimant may issue a payment claim (section 13(1)).</p> <p>Payment claim must identify the construction work to which progress payment relates and must indicate the amount of the progress payment that the claimant claims to be due (section 13(2)).</p> <p>Unless the progress claim is connected with an exempt residential construction contract, it is not necessary for it to state that it is made under the NSW SOP Act ((section 13(2)(c)).</p> <p>A payment claim may be served only within the later of the period determined by or in accordance with the terms of the construction contract; or the period of 12 months after the construction work to which the claim relates was last carried out (section 13(4)).</p> <p>A claimant cannot serve more than 1 payment claim in respect of each reference date under the construction contract. However, this does not prevent claimant from including in a payment claim an amount that has been the subject of a previous claim (sections 13(5) and 13(6)).</p> <p>A head contractor must not serve a payment claim on the principal:</p> <ul style="list-style-type: none"> <li>unless the claim is accompanied by a supporting statement that indicates that it relates to that payment claim (section 13(7)) <i>Maximum penalty: 200 penalty units.</i></li> <li>accompanied by a supporting statement knowing that the statement is false or misleading (sections 13(8)) <i>Maximum penalty: 200 penalty units or 3 months imprisonment, or both.</i></li> </ul>

REQUIREMENT	DETAILS
Responding to or disputing a payment claim (issuing a payment schedule)	<p>Person on whom payment claim is served may reply to claim with a payment schedule (section 14(1)).</p> <p>Payment schedule must identify payment claim to which it relates; and must indicate the amount of the payment (if any) that respondent proposes to make (section 14(2)).</p> <p>If the scheduled amount is less than claimed amount, the payment schedule must explain why and provide reasons for withholding payment (section 14(3)).</p> <p>Respondent must issue payment schedule within the <u>earlier of</u>:</p> <ul style="list-style-type: none"> <li>time required by the contract; or</li> <li><b>10 business days</b> after the payment claim is served (section 14(4)).</li> </ul> <p>If the respondent does not provide a payment schedule to claimant within statutory timeframes, the respondent becomes liable to pay entire claimed amount by due date (section 14(4)).</p>
Due date for payment	<p>A progress payment to be made by a principal to a head contractor, becomes due and payable on the earlier of:</p> <ul style="list-style-type: none"> <li>15 business days after a payment claim is made; or</li> <li>date prescribed by contract.(section 11(1A)).</li> </ul> <p>A progress payment to be made to a subcontractor, becomes due and payable on the earlier of:</p> <ul style="list-style-type: none"> <li>30 business days after a payment claim is made; or</li> <li>date prescribed by contract.(section 11(1B)).</li> </ul>

# Attachment A

## Key NSW SOP Act Requirements (pre 21 Oct 2019)

REQUIREMENT	DETAILS
Consequences of not paying claimant	<p><b>No payment schedule issued</b></p> <p>If respondent becomes liable under section 14(4) to pay claimed amount to claimant by not issuing a payment schedule within statutory timeframe; and fails to pay whole or part of claimed amount on or before due date, claimant may:</p> <ul style="list-style-type: none"> <li>Recover unpaid portion of claimed amount as a debt in court of competent jurisdiction; or</li> <li>May make adjudication application in relation to claim; and</li> <li>May service notice on respondent of intention to suspend construction work under contract (sections 15(1) and (2)).</li> </ul> <p><b>Payment schedule issued</b></p> <p>If respondent provides a payment schedule to claimant within statutory timeframes; and payment schedule indicates scheduled amount; and respondent fails to pay whole or part of scheduled amount on or before due date, claimant may:</p> <ul style="list-style-type: none"> <li>Recover unpaid portion of claimed amount as a debt in court of competent jurisdiction; or</li> <li>Make adjudication application in relation to claim; and</li> <li>Serve notice on respondent of intention to suspend construction work under contract (sections 16(1) and (2)).</li> </ul>
Adjudication of payment dispute	<p><b>Requirements to access adjudication</b></p> <p>Claimant may apply for adjudication of payment claim if:</p> <ul style="list-style-type: none"> <li>Respondent provides a payment schedule but the scheduled amount is less than the claimed amount (section 17(1)(a)(i)); or</li> <li>Respondent fails to pay whole or any part of the scheduled amount by the due date (section 17(1)(a)(ii)); or</li> <li>Respondent fails to provide a payment schedule and fails to pay whole or part of the claimed amount by due date (section 17(1)(b)).</li> </ul> <p><b>Notice of intention to apply for adjudication</b></p> <p>Claimant cannot make application under section 17(1)(b) unless:</p> <ul style="list-style-type: none"> <li>claimant notified respondent, within <b>20 business days</b> immediately following due date for payment, of claimant's intention to apply for adjudication (section 17(2)(b)); and</li> <li>respondent has been given an opportunity to provide a payment schedule within <b>5 business days</b> after receiving the claimant's notice (section 17(2)(b)).</li> </ul>

REQUIREMENT	DETAILS
(cont'd) Adjudication of payment dispute	<p><b>Adjudication process</b></p> <p>Adjudication application must be in writing, made to an authorised nominating authority chosen by claimant (with copy served on respondent) and:</p> <ul style="list-style-type: none"> <li>for application under section 17(1)(a)(i), made within 10 business days after claimant receives payment schedule; and</li> <li>for application under section 17(1)(a)(ii), made within 20 business days after due date for payment; and</li> <li>for application under section 17(1)(b), made within 10 business days after the end of the 5 day period referred to in subsection 17(2)(b) (section 17(3)).</li> </ul> <p>An authorised nominating authority may refer an adjudication application to an adjudicator to determine.</p> <p>Respondent may lodge a response to the claimant's adjudication application (the adjudication response) only if the respondent has provided a payment schedule within the timeframes specified in sections 14(4) and 17(2)(b) (section 20(2A)).</p> <p>Respondent may then lodge its adjudication response at any time <b>within 5 business days</b> after receiving a copy of the application; or <b>2 business days</b> after receiving adjudicator's acceptance of the application, whichever expires later (section 20(1)). Response must also be served on claimant (section 20(3)).</p> <p>Adjudicator must ordinarily determine application within <b>10 business days</b> (section 21(3)(a)).</p> <p>Respondent must pay adjudicated amount (if any) on or before the "relevant date" (that is, the date occurring <b>5 business days</b> after date on which determination is served on respondent; or if the adjudicator determines a later date under section 22 (1) (b)—that later date.) (section 23).</p>
Why make a payment claim under the NSW SOP Act?	<p>Allows contractor to access statutory rights:</p> <ul style="list-style-type: none"> <li>Adjudication (Part 3, Div 2)</li> <li>Stop work notice if claimed, scheduled or adjudicated amount not paid (section 15(2)(b), 16(2)(b) and 24(1)(b))</li> <li>Adjudicator's certificate can be issued for adjudication determination. Certificate can be filed as a judgment debt in court of competent jurisdiction and is enforceable accordingly (section 25)</li> </ul>
Provisions that are of no effect	<ul style="list-style-type: none"> <li>"Pay when paid" provisions (section 12).</li> <li>Provisions in agreement, whether in writing or not, that exclude, modify or restrict (or purport to; or have the effect of excluding, modifying or restricting) the operation of the NSW SOP Act (section 34).</li> </ul>

## Attachment B

# Key NSW SOP Act Requirements (post 21 Oct 2019)

ATTACHMENT B

REQUIREMENT	DETAILS
<b>You must be a party to a construction contract for the NSW SOP Act to apply</b>	Construction contract can be either <b>written, oral or both</b> .
<b>Entitlement to claim progress payment</b>	<p>A person who, under a construction contract, has undertaken to carry out construction work or to supply related goods and services is entitled to receive a progress payment (section 8).</p> <p>Concept of reference date is deleted and replaced with entitlement of a claimant to submit one (1) payment claim per month, for work carried out up to the last day of that month, and thereafter on and from the last day of each subsequent named month (section 13(1A)).</p> <p>If the construction contract concerned makes provision for an earlier date for the serving of a payment claim in any particular named month, the claim may be served on and from that date instead of on and from the last day of that month (section 13(1B)).</p>

REQUIREMENT	DETAILS
<b>Issuing a payment claim</b>	<p>If entitled to a progress payment, claimant may issue a payment claim (section 13(1)).</p> <p>Payment claim must identify the construction work to which progress payment relates and must indicate the amount of the progress payment that the claimant claims to be due (section 13(2)).</p> <p>Unless the progress claim is connected with an exempt residential construction contract, it is not necessary for it to state that it is made under the NSW SOP Act ((section 13(2)(c)).</p> <p>All progress claims must be endorsed with words that say they are being made under the (section 13(2)(c)).</p> <p>A payment claim may be served only within the later of the period determined by or in accordance with the terms of the construction contract; or the period of 12 months after the construction work to which the claim relates was last carried out (section 13(4)).</p> <p>A claimant cannot serve more than 1 payment claim in respect of each reference date under the construction contract. However, this does not prevent claimant from including in a payment claim an amount that has been the subject of a previous claim (sections 13(5) and 13(6)).</p> <p>A head contractor must not serve a payment claim on the principal:</p> <ul style="list-style-type: none"> <li>• unless the claim is accompanied by a supporting statement that indicates that it relates to that payment claim (section 13(7)) <i>Maximum penalty—1,000 penalty units in the case of a corporation or 200 penalty units in the case of an individual.</i></li> <li>• accompanied by a supporting statement knowing that the statement is false or misleading (sections 13(8)) <i>Maximum penalty—1,000 penalty units in the case of a corporation or 200 penalty units or 3 months imprisonment (or both) in the case of an individual.</i></li> </ul> <p>An offence against sections 13(7) or (8) committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation (section 34D).</p>



# Attachment B

## Key NSW SOP Act Requirements (post 21 Oct 2019)

REQUIREMENT	DETAILS
Responding to or disputing a payment claim (issuing a payment schedule)	<p>Person on whom payment claim is served may reply to claim with a payment schedule (section 14(1)).</p> <p>Payment schedule must identify payment claim to which it relates; and must indicate the amount of the payment (if any) that respondent proposes to make (section 14(2)).</p> <p>If the scheduled amount is less than claimed amount, the payment schedule must explain why and provide reasons for withholding payment (section 14(3)).</p> <p>Respondent must issue payment schedule within the <u>earlier of</u>:</p> <ul style="list-style-type: none"> <li>time required by the contract; or</li> <li><b>10 business days</b> after the payment claim is served (section 14(4)).</li> </ul> <p>If the respondent does not provide a payment schedule to claimant within statutory timeframes, the respondent becomes liable to pay entire claimed amount by due date (section 14(4)).</p>
Due date for payment	<p>A progress payment to be made by a principal to a head contractor, becomes due and payable on the earlier of:</p> <ul style="list-style-type: none"> <li>15 business days after a payment claim is made; or</li> <li>date prescribed by contract (section 11(1A)).</li> </ul> <p>A progress payment to be made to a subcontractor, becomes due and payable on the earlier of:</p> <ul style="list-style-type: none"> <li>20 business days after a payment claim is made; or</li> <li>date prescribed by contract (section 11(1B)).</li> </ul>

REQUIREMENT	DETAILS
Consequences of not paying claimant	<p><b>No payment schedule issued</b></p> <p>If respondent becomes liable under section 14(4) to pay claimed amount to claimant by not issuing a payment schedule within statutory timeframe; and fails to pay whole or part of claimed amount on or before due date, claimant may:</p> <ul style="list-style-type: none"> <li>Recover unpaid portion of claimed amount as a debt in court of competent jurisdiction; or</li> <li>May make adjudication application in relation to claim; and</li> <li>May serve notice on respondent of intention to suspend construction work under contract (sections 15(1) and (2)).</li> </ul> <p><b>Payment schedule issued</b></p> <p>If respondent provides a payment schedule to claimant within statutory timeframes; and payment schedule indicates scheduled amount; and respondent fails to pay whole or part of scheduled amount on or before due date, claimant may:</p> <ul style="list-style-type: none"> <li>Recover unpaid portion of claimed amount as a debt in court of competent jurisdiction; or</li> <li>Make adjudication application in relation to claim; and</li> <li>Serve notice on respondent of intention to suspend construction work under contract (sections 16(1) and (2)).</li> </ul>
Adjudication of payment dispute	<p><b>Requirements to access adjudication</b></p> <p>Claimant may apply for adjudication of payment claim if:</p> <ul style="list-style-type: none"> <li>Respondent provides a payment schedule but the scheduled amount is less than the claimed amount (section 17(1)(a)(i)); or</li> <li>Respondent fails to pay whole or any part of the scheduled amount by the due date (section 17(1)(a)(ii)); or</li> <li>Respondent fails to provide a payment schedule and fails to pay whole or part of the claimed amount by due date (section 17(1)(b)).</li> </ul> <p><b>Notice of intention to apply for adjudication</b></p> <p>Claimant cannot make application under section 17(1)(b) unless:</p> <ul style="list-style-type: none"> <li>claimant has served a <u>written notice</u> on the respondent, within <b>20 business days</b> immediately following due date for payment, of claimant's intention to apply for adjudication (section 17(2)(b)); and</li> <li>respondent has been given an opportunity to provide a payment schedule within <b>5 business days</b> after receiving the claimant's notice (section 17(2)(b)).</li> </ul>

# Attachment B

## Key NSW SOP Act Requirements (post 21 Oct 2019)

REQUIREMENT	DETAILS
(cont'd) Adjudication of payment dispute	<p><b>Adjudication process</b></p> <p>Adjudication application must be in writing, made to an authorised nominating authority chosen by claimant (with copy served on respondent) and:</p> <ul style="list-style-type: none"> <li>• for application under section 17(1)(a)(i), made within 10 business days after claimant receives payment schedule; and</li> <li>• for application under section 17(1)(a)(ii), made within 20 business days after due date for payment; and</li> <li>• for application under section 17(1)(b), made within 10 business days after the end of the 5 day period referred to in subsection 17(2)(b) (section 17(3)).</li> </ul> <p>An authorised nominating authority may refer an adjudication application to an adjudicator to determine.</p> <p>Respondent may lodge a response to the claimant's adjudication application (the adjudication response) only if the respondent has provided a payment schedule within the timeframes specified in sections 14(4) and 17(2)(b) (section 20(2A)).</p> <p>Respondent may then lodge its adjudication response at any time <b>within 5 business days</b> after receiving a copy of the application; or <b>2 business days</b> after receiving adjudicator's acceptance of the application, whichever expires later (section 20(1)). Response must also be served on claimant (section 20(3)).</p> <p>Adjudicator must ordinarily determine an adjudication application <b>within 10 business days</b>.</p> <p>Respondent must pay adjudicated amount (if any) on or before the "relevant date" (that is, the date occurring <b>5 business days</b> after date on which determination is served by the adjudicator on respondent; or if the adjudicator determines a later date under section 22 (1) (b)—that later date.) (section 23).</p>

REQUIREMENT	DETAILS
Why make a payment claim under the NSW SOP Act?	<p>Allows contractor to access statutory rights:</p> <ul style="list-style-type: none"> <li>• Adjudication (Part 3, Div 2)</li> <li>• Stop work notice if claimed, scheduled or adjudicated amount not paid (section 15(2)(b), 16(2)(b) and 24(1)(b))</li> <li>• Adjudicator's certificate can be issued for adjudication determination. Certificate can be filed as a judgment debt in court of competent jurisdiction and is enforceable accordingly (section 25)</li> </ul>
Provisions that are of no effect	<ul style="list-style-type: none"> <li>• "Pay when paid" provisions (section 12).</li> <li>• Provisions in agreement, whether in writing or not, that exclude, modify or restrict (or purport to; or have the effect of excluding, modifying or restricting) the operation of the NSW SOP Act (section 34).</li> </ul>



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## CONTACT US

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