



Australian Government
**Australian Building and
Construction Commission**

Security of Payment

NORTHERN TERRITORY



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 Northern Territory 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 – Northern Territory

In the Northern Territory, the *Construction Contracts (Security of Payments) Act 2004 (Act)* (NT SOP Act) governs security of payment.

The object of the NT SOP Act is to promote security of payments under construction contracts by:

- facilitating timely payments between the parties to construction contracts
- providing for the rapid resolution of payment disputes arising under construction contracts
- providing mechanisms for the rapid recovery of payments under construction contracts.

To use the mechanisms in the NT SOP Act to recover money due and owing to you, you must meet certain criteria and strict timeframes for the provision of certain information. These are summarised in **Attachment A** 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 the Minister imposes a sanction, 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: 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

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



ABCC – Presentation
ABCC representatives are available to present an information session at your workplace.
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/

Construction Contracts (Security of Payments) Act 2004 (NT)

legislation.nt.gov.au/en/legislation/construction-contracts-security-of-payments-act-2004

Construction Contracts and Resolving Disputes

nt.gov.au/property/building-and-development/make-a-complaint-or-settle-a-dispute/construction-contracts-and-resolving-disputes

NT Registered Adjudicators

nt.gov.au/property/building-and-development/make-a-complaint-or-settle-a-dispute/construction-contracts-and-resolving-disputes/list-of-registered-adjudicators

NT Registered Appointers

nt.gov.au/property/building-and-development/make-a-complaint-or-settle-a-dispute/construction-contracts-and-resolving-disputes/list-of-registered-appointers

Attachment A

Key NT SOP Act Requirements

REQUIREMENT	DETAILS
You must be a party to a construction contract for the NT SOP Act to apply	Construction contract can be either written, oral or both . A contract remains a construction contract for the NT SOP Act even if the contract has expired or has been terminated (section 5(1A) NT SOP Act).
Due date for payment	Construction contract must require payment within 30 working days after payment claim is made. <ul style="list-style-type: none"> If payment terms are longer than 30 working days, contractual terms must be read as being amended to require payment within 30 working days (section 13 NT SOP Act); If the construction contract does not contain payment terms, default 20 working day payment terms apply (Schedule 1, Div 5, subclause 6(2)(b) NT SOP Act).
Entitlement to be paid	Arises as per contractual terms. If contract is silent, contractor entitled to be paid a reasonable amount for performing its obligations (section 17 and Schedule, Div 2 NT SOP Act)
Entitlement to claim progress payment	Arises as per contractual terms. If contract is silent, contractor: <ul style="list-style-type: none"> is entitled to make one or more claims for a progress payment for obligations it has performed and for which it has not been paid; and claim can be made at any time after contractor has performed any of its obligations (section 18 and Schedule, Div 3 NT SOP Act)
Format of payment claim	<ul style="list-style-type: none"> As per contractual terms. If contract is silent, claim must meet criteria set out in Schedule, Div 4 of NT SOP Act (section 20 NT SOP Act).
Responding to or disputing a payment claim	As per contractual terms. If contract is silent, either: <ul style="list-style-type: none"> pay whole amount claimed within 20 working days of receiving claim; or provide notice of dispute to claimant within 10 working days after receiving claim and (if applicable), pay the amount of the claim that is not disputed within 10 working days of receiving claim (section 20 and Schedule, Div 5 NT SOP Act).

REQUIREMENT	DETAILS
Why make a payment claim under the NT SOP Act?	Allows contractor to access statutory rights: <ul style="list-style-type: none"> Adjudication (Part 3 NT SOP Act) Stop work notice (section 44 NT SOP Act); Adjudicator's determination may be enforced as order of court (section 45 NT SOP Act)
Adjudication of payment dispute	Any party to contract may apply for adjudication of dispute. Application for adjudication must be made within 65 working days of payment dispute arising. Response to adjudication application must be served within 15 working days after service of adjudication application. Prescribed appointer must appoint registered adjudicator to adjudicate matter within 5 working days of being served adjudication application. Appointed adjudicator must determine or dismiss matter within 10 working days after date on which adjudication response served; or within 10 working days after last date on which adjudication response required to be served; or by extended date if extension agreed with Registrar (sections 26-34 NT SOP Act). Adjudication determination may be enforced as order of court (section 45 NT SOP Act).
Provisions that are of no effect	<ul style="list-style-type: none"> 'Pay if paid' and 'pay when paid' provisions (section 12 NT SOP ACT). Provisions in an agreement or arrangement (whether or not in a construction contract or not and whether in writing or not) that purport to exclude, modify or restrict the operation of the NT SOP Act (section 10 NT SOP Act) (subject to exemptions below).
High value construction contracts	<ul style="list-style-type: none"> High value construction contract means a construction contract for greater than 500,000,000 monetary units (\$510,000,000 until 30 June 2021, calculated in accordance with the <i>Monetary Units Act 2018</i> (NT)) (section 4A NT SOP Act). Parties to a high value construction contract may agree to have payment disputes adjudicated other than under Part 3 NT SOP Act if the agreement is a term of the contract and the contract contains a dispute resolution mechanism as per requirements in Reg 5B of <i>Construction Contracts (Security of Payments) Regulations 2005</i> (NT SOP Regs) (section 10A NT SOP Act).



Australian Government
**Australian Building and
Construction Commission**

GET THE ABCC
ON SITE APP



CONTACT US

1800 003 338

abcc.gov.au

GPO Box 9927

Melbourne VIC 3001

SIGN UP TO INDUSTRY UPDATE AT

abcc.gov.au/update

FOLLOW US ON LINKEDIN

[ABCC LinkedIn Page](#)

