



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

# Security of Payment

TASMANIA



# 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 Tasmanian 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 – Tasmania

In Tasmania, the *Building and Construction Industry Security of Payment Act 2009* (Tas) (Tas SOP Act) governs security of payment.

The object of the Tas SOP Act is to ensure that any person who undertakes to carry out building work or construction work under a building or construction contract, including such a contract that relates to a residential structure, is entitled to receive, and is able to recover, progress payments in relation to the work.

To use the mechanisms in the Tas 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.

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**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 2009 (Tas)***

<https://www.legislation.tas.gov.au/view/html/inforce/current/act-2009-086>

**Department of Justice – Consumer, Building and Occupational Services**

<https://www.cbos.tas.gov.au/topics/products-services/problems/resolving-a-building-dispute/disputes-security-of-payment>

# Attachment A

## Key Tas SOP Act Requirements

REQUIREMENT	DETAILS
<b>You must be a party to a construction contract for the Tas 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 has undertaken to carry out building work or construction work under a building or construction contract is entitled, on and from each reference date, to a progress payment (section 12(1) Tas SOP Act).</p> <p><b>'reference date'</b> 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 does not provide a reference date, the last day of each month in which building work or construction work is carried out under the contract (section 4 Tas SOP Act).</li> </ol>
<b>Issuing a payment claim</b>	<p>If entitled to a progress payment, claimant may issue a payment claim to respondent liable to make payment (section 17(1) Tas SOP Act).</p> <p>Payment claim must be in writing; must be addressed to person on whom it is served; must state name of claimant; must identify the building work or construction work to which progress payment relates in sufficient detail to enable the person on whom it is served to assess the claim; must specify the amount of the progress payment that the claimant claims is due; and must state that it is made under the Tas SOP Act (section 17(2) Tas SOP Act).</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 (section 17(4) and (5) Tas SOP Act).</p> <p>Payment claim may be served only within the later of the following periods: the period determined by the terms of the building or construction contract; or the period of <b>12 months</b> after the building work or construction work to which the claim relates was last carried out (section 17(6) Tas SOP Act).</p>

REQUIREMENT	DETAILS
<b>Responding to or disputing a payment claim (issuing a payment schedule)</b>	<p>Respondent who is given a payment claim may provide to the claimant a payment schedule in relation to the claim (section 18(1) Tas SOP Act).</p> <p>Payment schedule must identify payment claim to which it relates; and must schedule the amount of the payment that respondent proposes to make (section 18(2) Tas SOP Act).</p> <p>If scheduled amount is less than claimed amount, payment schedule must explain why and provide reasons for withholding payment (section 18(3) Tas SOP Act).</p> <p>Respondent must issue payment schedule as per contractual timeframe; or within <b>10 business days</b> after payment claim is served, whichever expires earlier (section 19(2) Tas SOP Act).</p> <p>If respondent does not provide a payment schedule to claimant within statutory timeframes, respondent becomes liable to pay entire claimed amount by due date (section 19(2) Tas SOP Act).</p>
<b>Due date for payment</b>	<p>Either:</p> <ul style="list-style-type: none"> <li>• Date on which payment becomes due and payable per contract; or</li> <li>• In absence of contractual terms, 10 business days after payment claim is served on respondent (section 15(2) and 19(3)(b) Tas SOP Act).</li> </ul>

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# Key Tas SOP Act Requirements

REQUIREMENT	DETAILS
Consequences of not paying claimant	<p><b>No payment schedule issued</b></p> <p>If respondent becomes liable under section 19(2) Tas SOP Act 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 under Tas SOP Act in relation to claim; and</li> <li>May serve notice on respondent of intention to suspend construction work under contract (Sections 19(4) and (5) Tas SOP Act).</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>May make adjudication application under Tas SOP Act in relation to claim; and</li> <li>May serve notice on respondent of intention to suspend construction work under contract (Sections 20(1) and (2) Tas SOP Act).</li> </ul>

REQUIREMENT	DETAILS
Adjudication of payment dispute	<p><b>Requirements to access adjudication</b></p> <p>Claimant may, in writing, apply to authorised nominating authority chosen by claimant, for adjudication of payment claim (section 21(1) Tas SOP Act).</p> <p>Claimant can only make application for adjudication if:</p> <ul style="list-style-type: none"> <li>Respondent provides payment schedule but scheduled amount is less than claimed amount (section 21(2)(a) Tas SOP Act); or</li> <li>Respondent fails to pay whole or part of scheduled amount by due date (section 21(2)(b) Tas SOP Act); or</li> </ul> <p>Respondent fails to provide payment schedule and fails to pay whole or part of claimed amount by due date (section 21(2)(c) Tas SOP Act).</p> <p><b>Notice of intention to apply for adjudication</b></p> <p>Claimant can only make application under section 21(1) Tas SOP Act pursuant to section 21(2)(c) Tas SOP Act (where respondent fails to provide payment schedule and fails to pay whole or part of claimed amount by due date) if:</p> <ul style="list-style-type: none"> <li>claimant has notified respondent:             <ol style="list-style-type: none"> <li>within <b>20 business days</b> after due date, of claimant's intention to apply for adjudication; and</li> <li>the respondent may provide a payment schedule within <b>5 business days</b> after notice is given; and</li> </ol> </li> <li>respondent has not provided a payment schedule within the period of <b>5 business days</b> since the notice was given to the respondent; and</li> <li>the application is made within <b>10 business days</b> after the end of the 5-day period referred to in section 21(4)(b) Tas SOP Act (section 21(4) Tas SOP Act).</li> </ul>

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## Key Tas SOP Act Requirements

REQUIREMENT	DETAILS
<p>(cont'd)</p> <p><b>Adjudication of payment dispute</b></p>	<p><b>Adjudication process</b></p> <p>Application for adjudication:</p> <ul style="list-style-type: none"> <li>under section 21(2)(a) Tas SOP Act (where respondent provides payment schedule but scheduled amount is less than claimedw amount) must be made within <b>10 business days</b> after claimant receives payment schedule (section 21(3)(a) Tas SOP Act); or</li> <li>under section 21(2)(b) Tas SOP Act (where respondent fails to pay whole or part of scheduled amount by due date) must be made within <b>20 business days</b> after the due date for payment (section 21(3)(b) Tas SOP Act).</li> </ul> <p>A nominating authority is to refer the matter as soon as practicable to a qualified adjudicator (section 22(1) Tas SOP Act).</p> <p>Respondent who provided payment schedule to claimant within period specified may lodge with adjudicator a response to adjudication application (section 23(1) Tas SOP Act).</p> <p>Adjudication response may be lodged within <b>10 business days</b> after receiving copy of adjudication application; or <b>5 business days</b> after receiving notice of adjudicator's acceptance of application – whichever period expires later (section 23(2) Tas SOP Act).</p> <p>Adjudicator must ordinarily determine application within 10 business days (section 24 Tas SOP Act).</p> <p>Respondent must pay adjudicated amount to the claimant before the end of the period of <b>5 business days</b> immediately after the date on which the adjudicator's determination is served on respondent; or a later date if determined (section 26(1) Tas SOP Act).</p>

REQUIREMENT	DETAILS
<p><b>Why make a payment claim under the Tas SOP Act?</b></p>	<p>Allows contractor to access statutory rights:</p> <ul style="list-style-type: none"> <li>Adjudication (Part 45 Tas SOP Act)</li> <li>Claimant entitled to exercise lien in respect of unpaid amount over any unfixed plant or materials supplied by claimant for use in connection with the carrying out of building work or construction work for respondent (section 14 Tas Act).</li> <li>Stop work notice if claimed, scheduled or adjudicated amount not paid (section 19(5)(b), 20(2)(b); 26(2)(b) and 29 Tas SOP Act);</li> <li>Adjudicator's certificate can be issued for adjudication determination. Certificate may be filed as a judgment for a debt in a court of competent jurisdiction and is enforceable as such (section 26(2)(a) and 27 Tas SOP Act).</li> </ul>
<p><b>Provisions that are of no effect</b></p>	<ul style="list-style-type: none"> <li>'Pay when paid' provisions (section 16 Tas SOP Act).</li> </ul> <p>A provision of a contract or other agreement, whether in writing or not, under which the operation of the Tas SOP Act is, or is purported to be, excluded, modified or restricted, or that has the effect of excluding, modifying or restricting, the operation of the Tas SOP Act; or that may reasonably be construed as an attempt to deter a person from taking action under the Tas SOP Act (section 11 Tas SOP Act).</p>





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