



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

# Security of Payment

VICTORIA



# 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 Victorian 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 – Victoria

In Victoria, the *Building and Construction Industry Security of Payment Act 2002* (Vic) (Vic SOP Act) governs security of payment.

- The object of the Vic SOP Act 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 Vic SOP Act ensures that a person is entitled to receive a progress payment by granting a statutory entitlement to that payment in accordance with the Vic SOP Act.
- The Vic SOP Act ensures 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.

To use the mechanisms in the Vic 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 2002 (Vic)***

<https://www.legislation.vic.gov.au/in-force/acts/building-and-construction-industry-security-payment-act-2002/012>

**Victorian Building Authority**

<https://www.vba.vic.gov.au/building/security-of-payment>

**Authorised Nominating Authorities**

<https://www.vba.vic.gov.au/building/security-of-payment/authorised-nominating-authorities>

# Attachment A

## Key Vic SOP Act Requirements

REQUIREMENT	DETAILS
You must be a party to a construction contract for the Vic 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 9(1) Vic 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>subject to (c) and (d), if the contract does not provide a reference date, <b>20 business days</b> after the previous reference date or (in the case of the first reference date) the date occurring 20 business days after construction work was first carried out under the contract (section 9(2)(b) Vic SOP Act); or</li> <li>in the case of a single or one-off payment, if the contract does not provide a reference date, the date immediately following the day that construction work was last carried out under the contract (section 9(2)(c) Vic SOP Act); or</li> <li>in the case of a final payment, (i) if the contract does not provide a reference date, the date immediately following the expiry of any defects liability period, unless (ii) applies; or (ii) the issue under the contract of a certificate specifying the final amount payable under the contract; or if neither conditions (i) or (ii) apply, the day that construction work was last carried out under the contract (section 9(2)(d) Vic SOP Act).</li> </ol>

REQUIREMENT	DETAILS
Issuing a payment claim	<p>If entitled to a progress payment, claimant may issue a payment claim to respondent who is liable to make payment (section 14(1) Vic SOP Act).</p> <p>Payment claim must identify the construction work to which progress payment relates; must indicate the amount of the progress payment that the claimant claims to be due; and must state that it is made under the Vic SOP Act (section 14(2) Vic SOP Act).</p> <p>A payment claim (other than a payment claim for a final, single or one-off payment) may be served in accordance with the terms of the construction contract; or the period of <b>3 months</b> after the reference date referred to in section 9(2) Vic SOP Act that relates to that progress payment – whichever is the later (section 14(4) Vic SOP Act).</p> <p>A payment claim for a progress payment that is a final, single or one-off payment may be served in accordance with the terms of the construction contract; or if no such period applies, within <b>3 months</b> after the reference date referred to in section 9(2) Vic SOP Act that relates to that progress payment (section 14(5) Vic SOP Act).</p> <p>Once a payment claim for a claimed amount in respect of a final, single or one-off payment has been served under the Vic SOP Act, no further payment claim can be served under the Vic SOP Act in respect of the construction contract to which the payment claim relates (section 14(6) Vic SOP Act).</p> <p>However, this does not prevent a further payment claim for a claimed amount in respect of a final, single or one-off payment being served under the Vic SOP Act if the initial claim for the payment of that amount has been made; and the amount was not paid by the due date under the contract (section 14(7) Vic 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 14(8) and (9) Vic SOP Act).</p>

# Attachment A

## Key Vic SOP Act Requirements

REQUIREMENT	DETAILS
<b>Responding to or disputing a payment claim (issuing a payment schedule)</b>	<p>Person on whom payment claim is served may reply to claim with a payment schedule (section 15(1) Vic SOP Act).</p> <p>Payment schedule must identify payment claim to which it relates; must schedule the amount of the payment that respondent proposes to make and must identify any excluded amounts (section 15(2) Vic SOP Act).</p> <p>If scheduled amount is less than claimed amount, payment schedule must explain why and provide reasons for withholding payment (section 15(3) Vic 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 15(4) Vic 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 15(4) Vic 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, <b>10 business days</b> after payment claim is made (section 12 Vic SOP Act).</li> </ul>
<b>Consequences of not paying claimant</b>	<p><b>No payment schedule issued</b></p> <p>If respondent becomes liable under section 15(4) Vic 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 Vic SOP Act in relation to claim; and</li> <li>• May service notice on respondent of intention to suspend construction work under contract (Sections 16(1) and (2) Vic SOP Act).</li> </ul>

REQUIREMENT	DETAILS
<b>(cont'd)</b> <b>Consequences of not paying claimant</b>	<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 Vic SOP Act in relation to claim; and</li> <li>• May service notice on respondent of intention to suspend construction work under contract (Sections 17(1) and (2) Vic SOP Act).</li> </ul>
<b>Adjudication of payment dispute</b>	<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 payment schedule but scheduled amount is less than claimed amount (section 18(1)(a)(i) Vic SOP Act); or</li> <li>• Respondent fails to pay whole or part of scheduled amount by due date (section 18(1)(a)(ii) Vic SOP Act); or</li> <li>• Respondent fails to provide payment schedule and fails to pay whole or part of claimed amount by due date (section 18(1)(b) Vic SOP Act).</li> </ul> <p><b>Notice of intention to apply for adjudication</b></p> <p>Claimant cannot make application under section 18(1)(b) Vic SOP Act (where respondent fails to provide payment schedule and fails to pay whole or part of claimed amount by due date) unless:</p> <ul style="list-style-type: none"> <li>• claimant notified respondent, within <b>10 business days</b> immediately following due date, of claimant's intention to apply for adjudication; and</li> <li>• respondent has opportunity to provide payment schedule within <b>2 business days</b> after receiving notice of intention to apply for adjudication (section 18(2) Vic SOP Act).</li> </ul>

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## Key Vic SOP Act Requirements

REQUIREMENT	DETAILS
<p>(cont'd)</p> <p><b>Adjudication of payment dispute</b></p>	<p><b>Adjudication process</b></p> <p>Adjudication application must be in writing, made to authorised nominating authority chosen by claimant (with copy served on respondent) and:</p> <ul style="list-style-type: none"> <li>• for application under section 18(1)(a)(i) Vic SOP Act (where respondent provides payment schedule but scheduled amount is less than claimed amount), made within 10 business days after claimant receives payment schedule; and</li> <li>• for application under section 18(1)(a)(ii) Vic SOP Act (where respondent fails to pay whole or part of scheduled amount by due date), made within 10 business days after due date for payment; and</li> <li>• for application under section 18(1)(b) Vic SOP Act (where respondent fails to provide payment schedule and fails to pay whole or part of claimed amount by due date), made within 5 business days after the end of the 2 day period for receiving notice of intention to adjudication (section 18(3) Vic SOP Act).</li> </ul> <p>Authorised nominating authority must refer application to adjudicator as soon as practicable (section 18(7) Vic SOP Act).</p> <p>Respondent may lodge adjudication response only if respondent has provided payment schedule within timeframes specified in sections 15(4) and 18(2)(b) Vic SOP Act (section 21(2A) Vic SOP Act).</p> <p>Respondent may then lodge response with adjudicator at any time within <b>5 business days</b> after receiving copy of application; or <b>2 business days</b> after receiving notice of adjudicator's acceptance of application – whichever expires later (section 21(1) Vic SOP Act).</p> <p>Adjudicator must ordinarily determine application within <b>10 business days</b> (section 22(4) Vic SOP Act).</p> <p>Respondent must pay adjudicated amount (if any) on or before relevant date (that is, the date occurring <b>5 business days</b> after date on which copy of adjudication determination is given to respondent; or if adjudicator determines a later date – that later date) (section 28M Vic SOP Act).</p>

REQUIREMENT	DETAILS
<p><b>Why make a payment claim under the Vic SOP Act?</b></p>	<p>Allows contractor to access statutory rights:</p> <ul style="list-style-type: none"> <li>• Adjudication (Part 3, Div 2 Vic SOP Act)</li> <li>• Claimant entitled to exercise lien in respect of unpaid amounts over any unfixed plant or materials supplied by claimant for use in connection with construction work carried out for respondent (section 12A Vic SOP Act).</li> <li>• Stop work notice if claimed, scheduled or adjudicated amount not paid (section 16(2)(b), 17(2)(b); 28O(1)(b) and 29 Vic SOP Act);</li> <li>• Adjudicator's certificate can be issued for adjudication determination. Certificate can be used to recover unpaid, adjudicated amount as a debt due to claimant in any court of competent jurisdiction (section 28Q and 28R Vic 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 13 Vic SOP Act).</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 Vic SOP Act; or that may reasonably be construed as an attempt to deter a person from taking action under the Vic SOP Act (section 48 Vic SOP Act).</li> </ul>





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