

# RAINEY COLLINS

## LAWYERS

### **Building and Construction Law:**

#### **Payment Claims and Payment Schedules Explained**

The Payment Claim and Payment Schedule regime in the Construction Contracts Act 2002 (CCA) can be a powerful tool in assisting cash-flow in the building and construction industry.

But how are they to be used?

When does the CCA apply?

The Act applies to contracts for carrying out “construction work”.

The definition of “construction work” is broad and includes construction, alteration, repair, maintenance, demolition, removal or dismantling of any building or structure attached to the land including roads, wharves, docks, railways, canals, pipelines, services reticulation, and including works preparing for any of those things. It now also includes design, engineering and quantity surveying work.

#### **What is the payment regime under the CCA?**

The payment regime provides for regular and timely payments during the course of a building project. The payee (or person undertaking the building works) issues “Payment Claims” for work done. The payer (or person for whom the building works are being undertaken) must respond within a strict timeframe by either paying in full or issuing a “Payment Schedule” and paying a lesser amount (as explained in that Payment Schedule) if any of the Payment Claim is disputed.

#### **The Ins and Outs of Payment Claims**

A Payment Claim is a contractor/subcontractor/consultant’s claim for payment from its client in accordance with the relevant building contract and the CCA.

A detailed invoice can suffice, however all of the following requirements must be met for each Payment Claim. It must:

- a) be in writing;
- b) contain sufficient details to identify the contract to which it relates;
- c) Identify the work and relevant period to which the Payment Claim relates;
- d) State the claimed amount and the due date for payment;
- e) Indicate how the claimed amount was calculated (for example, by attaching or incorporating a spreadsheet table); and
- f) State on the document that it is a payment claim made under the CCA.

The Act that requires all payment claims to be accompanied by:

- (a) an outline of the process for responding to that claim; and
- (b) an explanation of the consequences of—
  - (i) not responding to a payment claim; and
  - (ii) not paying the claimed amount, or the scheduled amount, in full (whichever is applicable).

The outline and explanation must be in writing, and in the prescribed form (“Form 1 – Information that must accompany all payment claims”). The Form is freely available from [building.govt.nz](http://building.govt.nz)

### **When can a Payment Claimant be made?**

Payment Claims are generally issued once per month, unless the building contract states otherwise.

If the contract is silent, the first payment is calculated for the period commencing on the day the work first started, to the end of that month. (So your first Payment Claim may be for only a short period.) Further claims are then calendar month to calendar month.

### **What if I am late issuing my Payment Claim?**

Your building contract may expressly provide for this – for example, your Payment Claim may be treated as being received on the next due date (which, by default, will be the following month). If the contract doesn't provide for late invoicing, a late Payment Claim may not be valid under the CCA. In such a case, you would be better to wait until the following month to issue one.

### **When will I be paid?**

Unless your building contract says otherwise, you should be paid within 20 working days of issuing your Payment Claim. Regardless the due date must be stated on the Payment Claim itself. If your Payment Claim is disputed (in full or in part) you should receive a Payment

Schedule from your client within the same timeframe (see further below).

### **The Ins and Outs of Payment Schedules**

A Payment Schedule is issued by a client after they have received a Payment Claim if they dispute part or all of the claimed amount.

There is no standard form for a Payment Schedule but it must:

- a) Be in writing;
- b) Identify the Payment Claim to which it relates; and
- c) State an amount of the Payment Claim (if any) which is not disputed and which it proposes to pay (which is referred to as the “scheduled amount” and can be \$0).

Where the scheduled amount is less than the claimed amount the Payment Schedule must also include:

- a) An indication of how the scheduled amount has been calculated;

- b) An explanation of why the scheduled amount is less than the claimed amount; and
- c) If the payer is withholding payment; the reasons why payment is being withheld.

### **When must the Payment Schedule be issued/received?**

If the client-payer wishes to issue a Payment Schedule they must do so within 20 working days of the Payment Claim being issued, unless the building contract expressly provides for a different timeframe.

If, within the required timeframe, a client does not pay, doesn't issue a Payment Schedule, or issues a Payment Schedule disputing a partial amount but does not pay the undisputed amount, you are entitled to suspend work under the CCA (even if there is no right to suspend works under the building contract). You are also entitled to seek an Adjudication under the Act, or commence court proceedings to recover the full debt.

### **Can a Payment Schedule be disputed?**

Yes. If you disagree with a Payment Schedule you can initiate the dispute process outlined in your building contract, or Adjudication under the CCA.

For more information about Adjudication under the CCA [click here](#).

If you are involved in a dispute and want to avoid one arising it pays to take advice from a professional experienced in the Construction Contracts Act.

Alan Knowsley