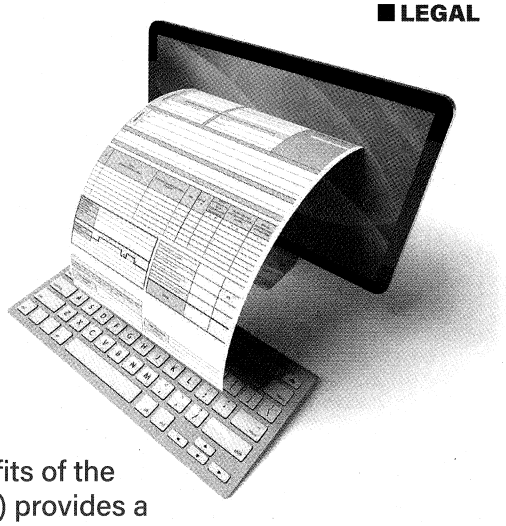
This article is of a general nature and is not intended to be relied upon as legal advice.

Making sure you get paid



BY ANDREW SKINNER

Despite the payments claim regime having been in place for some time it still surprises me how many builders do not maximise the benefits of the statutory payment process. The Construction Contracts Act 2002 (Act) provides a clear and certain process for claiming and processing payments. Cash flow is always extremely important in the building industry and so builders need to unlock the benefits of this process to unblock cash flow and reduce disputes.

The process starts with a builder issuing a payment claim (commonly referred to as an invoice). Effectively, payment claims should give the customer enough information as to what they owe and why they owe the specified amount. The payment claim can be made of multiple documents (for example, the invoice and the accompanying details). In order for the payment claim to be effective, the requirements in the Act must be followed and adhered to carefully, otherwise a claim cannot be made.

FOR PAYMENT CLAIMS TO BE VALID THEY MUST MEET THE 9 STRICT CRITERIA IN THE ACT:

1. Be in writing
2. Identify the construction contract to which the payment relates
3. Identify the construction work you are requesting payment for
4. Identify the relevant period to which the payment relates
5. State the amount claimed
6. State the due date for payment
7. Indicate the manner in which you calculated the claimed amount
8. Contain the words: "This is a payment claim issued under the Construction Contracts Act 2002"
9. The payment claim must also be accompanied by a prescribed form which states the process for responding to the claim, as well as setting out the consequences for: (1) not responding to the claim; and (2) not paying the claimed amount in full.

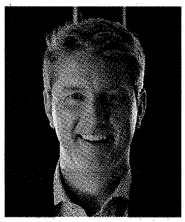
The major benefit of issuing a statutory payment claim is that within 20 working days (unless otherwise specified in the building contract) your customer needs to either pay the amount stated on the payment claim or dispute the payment claim by serving a payment schedule. If the amount in the payment schedule is less than the amount claimed by the builder, the payment schedule must indicate:

- the manner in which the customer calculated the scheduled amount;
- the customer's reason or reasons for the difference between the scheduled amount and the claimed amount; and where the difference is because the customer is withholding payment on any basis, the customers reason for doing so.

If the payment schedule is not issued in accordance with the Act or the payment is not made within the prescribed timeframe, the amount owed to the builder becomes a due debt. The due debt may be awarded to the builder in a litigation process through the courts.

The Act also provides for builders to suspend work if the customer does not provide a payment schedule or pay what is owed within the relevant time specified. Builders may do so by serving a notice to their customer stating the grounds on which they are suspending work and that notice is given under the Act.

Although it is not mandatory for builders to send invoices to customers as payment claims, the Act provides an effective way for builders to progress payment through the prescriptive process. Issuing payment claims forces customers to respond and identify any issues (otherwise payment is due). It is therefore very important to review your payment claims to make sure they meet all of the requirements under the Act so you can maximise the benefits of issuing payment claims.



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