

Enforcing Claims for Progress Payments

What do you do if you've served your Payment Claim but still remain unpaid beyond due date? Or if the person owing you insists on paying less than the amount you've claimed? In this article, we let you in on the different ways to enforce progress payments.

Security of Payment Act: A quick rundown

Under the Building and Construction Industry Security of Payment Act 1999 (NSW), a.k.a. Security of Payment Act (NSW), you may claim progress payments by simply serving a Payment Claim on the person who owes you (let's call them the "Respondent").

The Respondent may then either pay your claimed amount on the due date (in your construction contract), or serve you a Payment Schedule, if they propose to pay a different (usually, lesser) amount.

How Can Payment Be Enforced?

If you disagree with their proposed payment amount ("scheduled payment,"), or if they refuse to pay the amount they promised, or if they neither serve a Payment Schedule nor pay your claimed amount, you need not worry.

The Security of Payment Act (NSW) gives you options for enforcing payment. These are:



Adjudication



Litigation



Suspension of Works

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Adjudication

Adjudication may be resorted to in any of the following instances:

1. When the Respondent serves a Payment Schedule, and the Scheduled Amount is less than your Claimed Amount.
2. When the Respondent serves a Payment Schedule, but does not pay the Scheduled Amount when it's due;
3. When the Respondent does not serve a Payment Schedule at all, and does not pay the Claimed Amount;

IMPORTANT! : Adjudication Timelines

There are strict deadlines you need to adhere to, if you want to enforce your claim via adjudication.

Scenario	When to lodge Adjudication Application
You received a Payment Schedule, and the Scheduled Amount is LESS than your Claimed Amount	You have 10 business days from the day you received the Payment Schedule
You received a Payment Schedule, but by the time the due date for payment rolls around, no payment is made	You have 20 business days from the day you received the Payment Schedule

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You did **NOT RECEIVE** a Payment Schedule at all (and the Respondent does not pay the Claimed Amount by the due date)

1. First, you need to send the Respondent a written notice of your **INTENTION TO APPLY FOR ADJUDICATION**

- to be done within 20 business days after the due date has passed

2. Respondent will now have a chance to serve a Payment Schedule

- they need to do this within 5 business days from receipt of notice

3. If, within that 5-day period, Respondent still does not reply with a Payment Schedule, then you now have 10 business days (counted from the end of the 5-day period) to lodge your Adjudication Application

In other words, in the third scenario:

- Respondent does not serve a Payment Schedule. As a result, the entire Claimed Amount becomes due.
- In this case, adjudication is not your immediate recourse.
- If Respondent does not pay said Claimed Amount by the time it is due, you need to give them another chance to serve a Payment Schedule (by sending them a notice that you intend to apply for adjudication - this is like a warning shot).

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- Hence, for failure to serve a Payment Schedule coupled with failure to pay Claimed
- Amount, Respondent will nonetheless be given a fresh period of 5 business days (from receipt of Notice of Intention to Apply for Adjudication) to serve a Payment Schedule.
- You may only commence adjudication if Respondent thereafter still fails to serve a Payment Schedule, despite having been given a chance to do so.
- So, if after 5 business days, they still don't serve a Payment Schedule, your Claimed Amount will be an enforceable debt.
- You will then be given 20 business days from the due date for payment, to prepare and serve an Adjudication Notice (a.k.a. "S.17(2) Notice re: No Payment Schedule).

Litigation

You may also opt to bring the collection case to court instead of going through adjudication. This would take longer and entail a greater expense, though.

Suspension of Works

Another option you have, if you don't want to commence adjudication or enforcement proceedings in court, is to send the Respondent a 2-day Notice that you are suspending the works, until they pay the amount you're owed.

How We Can Help

Contracts Specialist has over 10 years experience in debt recovery and Security of Payment. Should you wish to learn more about how to enforce your claim under the Act, or should you require assistance in facilitating your payment claims, feel free to give us a call. Your first consult is free.

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