



Payment Claims and Payment Schedules

Info-sheet: Payment Claims and Schedules under the Construction Contracts Act 2002

Sarah Holderness: March 2019

1. Does the Construction Contracts Act 2002 apply to me?

The [Construction Contracts Act 2002 \(CCA\)](#) 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 and also any works forming part of the land including roads, wharves, docks, railways, canals, pipelines, services reticulation, and including works preparing for any of those things. Since 1 September 2016, “construction work” has included design, engineering and quantity surveying work.

2. What is the payment regime under the Construction Contracts Act 2002?

It is centred around cashflow and provides a process for regular and timely payments during the course of a project. Payees serve “Payment Claims” for work done. The payer must respond within strict timeframes by paying in full, or by providing a “Payment Schedule” and paying a lesser amount set out in that Payment Schedule.

3. What are the benefits to a contractor / consultant of issuing a Payment Claim?

If the payer fails to pay the full amount claimed or issue a “Payment Schedule”, the full amount in the Payment Claim is treated as a debt due, which can be enforced. The payer may also have a right under the CCA to suspend works for non payment (even if there is no right to suspension in the contract).

4. What is a Payment Claim?

A (sub)contractor / consultant’s claim for payment from its client in accordance with the contract and the CCA. A detailed invoice may suffice, but all of the following requirements must be met for each Payment Claim:

- a) In **writing**; and
- b) Contain **sufficient details to identify the contract** to which it relates; and
- c) **Identify the work and relevant period** to which the payment claim relates; and
- d) **State a claimed amount and the due date for payment**; and
- e) Indicate **how the payee calculated the claimed amount** (eg by attaching or incorporating a spreadsheet table); and
- f) State on it that it is a **payment claim made under the CCA**; and
- g) Be **accompanied by the prescribed information** (attached).

5. When can I make a Payment Claim?

Generally once per month unless the contract specifies a different interval. 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 may be short). Further claims are then calendar month by month.

6. What if I'm late with my Payment Claim?

The contract may spell out the consequences – eg your Payment Claim may be treated as being received on the next due date (by default, in a month's time). If the contract is silent, a late Payment Claim may not be valid (which means the pressure mechanisms in the CCA are not available to you – and you would need to wait until the next month to issue a further valid one).

7. When will I get paid?

Within 20 working days of a Payment Claim, unless the contract specifies a different time. The due date will need be stated on the payment claim itself.

A payer has two options when it receives a Payment Claim: (1) make payment in full by the due date; or (2) use a Payment Schedule to dispute the amount claimed and pay a lesser amount (possibly \$0). The Payment Schedule must be served *and* the lesser amount must be paid within the due date.

8. What is a Payment Schedule?

A Payment Schedule allows a payer to dispute up to 100% of the payment claim. There is no set form, but the schedule must:

Be in writing; and

Identify the Payment Claim to which it relates; and

State an amount which it proposes to pay (possibly \$0) (**scheduled amount**); and

If the scheduled amount is less than the claimed amount, the Payment Schedule must also:

- a) Indicate how the scheduled amount has been calculated;
- b) Explain the reasons why the scheduled amount is less; and
- c) If the difference is because the payer is withholding payment, the reasons why payment is being withheld.

9. When will I get a Payment Schedule?

If the payer wishes to serve one, within the time frame for payment (refer to 7).

10. What if I disagree with the Payment Schedule?

You may initiate the dispute process under the contract, or adjudication under the CCA.

11. What if the payer does nothing? Or gives me a Payment Schedule and doesn't pay the scheduled amount?

You could suspend work, adjudicate (including seeking a charging order except in residential projects), or commence a Court action (simple debt claim).

12. What if I receive a Payment Claim?

You will be entitled to serve a Payment Schedule and pay a lesser amount if there is a basis to do so. You will need to respond in time (refer to 7).

13. What is adjudication under the Construction Contracts Act 2002?

Adjudication is a quick and relatively inexpensive way of resolving construction disputes, to keep projects moving. There are tight timeframes for responding to an adjudication claim, and for the appointed adjudicator issue a decision. In limited cases, extensions of time may be granted. Adjudications usually take between five to seven weeks, compared with months or years for arbitration or litigation.

a) Do I have to adjudicate?

If you and/or your subcontractor are carrying out “construction work”, the other party to the contract may adjudicate (even if the contract specifies another method for dispute resolution). If you have a claim, you can decide whether to adjudicate or follow the dispute resolution method specified in your contract.

b) What should I do if I receive a notice to adjudicate?

Immediately contact your lawyer. The timeframes for responding to adjudication are very short. The usual period (from receiving a notice of adjudication to submitting a response) is 10-12 working days, but it can be as short as 5 working days. This does not allow much time to prepare submissions and any written evidence.

c) What if I don't agree with the adjudication decision?

You may have the claim re-heard by arbitration (if this is specified in your contract) or otherwise by the courts. However, the adjudicator's decision is binding in the meantime.

We would be happy to assist with ensuring your terms and conditions of engagement and payment practices comply with the CCA.

For more information, or to discuss any aspect of construction law, please contact:

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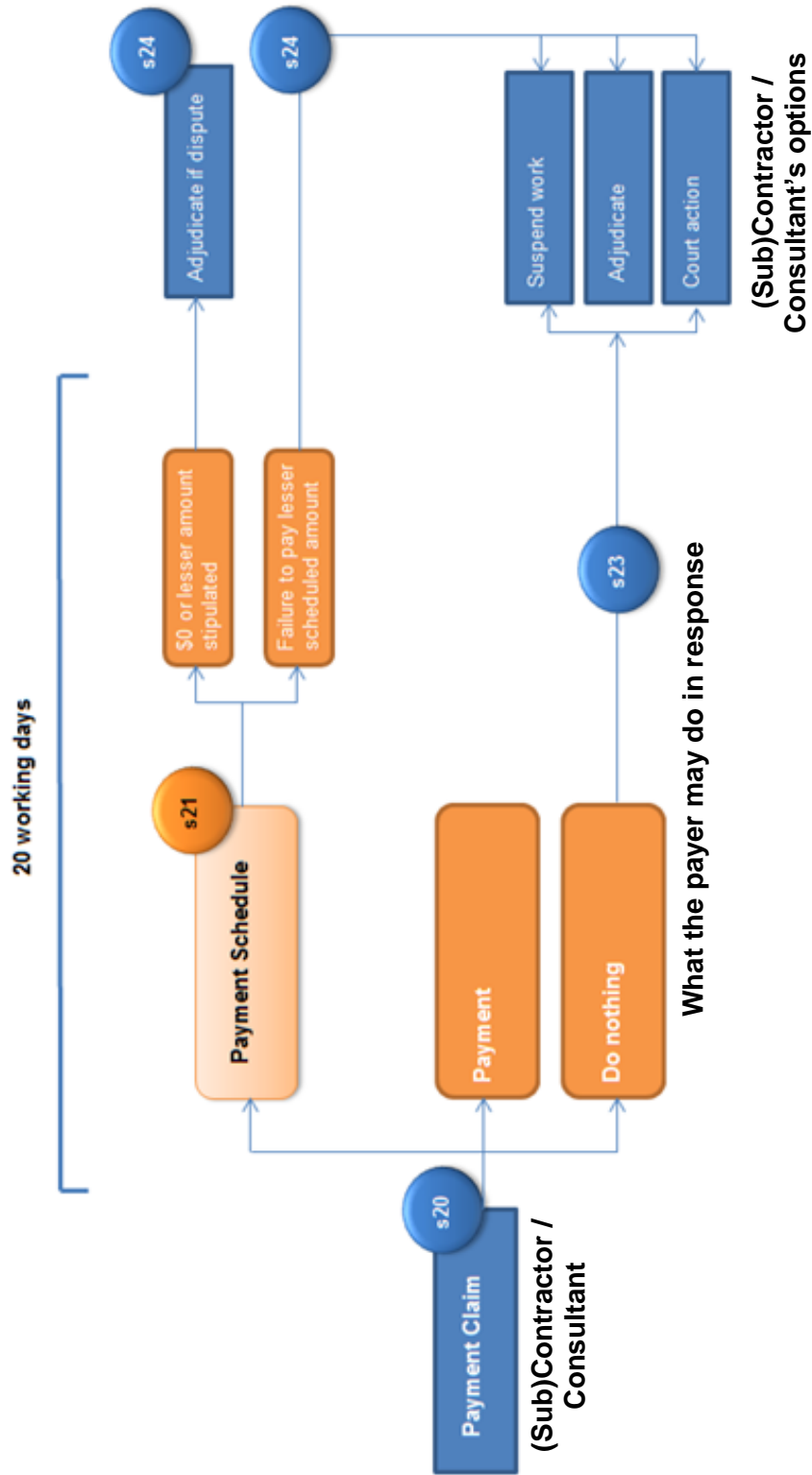
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Summary of CCA Payment Regime



Information to accompany all payment claims

Schedule 1 Forms

r 3(2)

Form 1 Information that must accompany all payment claims

r 4

Section 20, Construction Contracts Act 2002

Important notice

What is this?

This notice is attached to a claim for a payment (a **payment claim**) under the Construction Contracts Act 2002 (the **Act**).

The person who sent this payment claim (the **claimant**) is claiming to be entitled to a payment for, or in relation to, the construction work carried out to date under a construction contract.

Whether that person is entitled to a payment, and how much they are entitled to, will depend on whether you have a construction contract and what you have agreed between yourselves about payments. If you haven't agreed on payments, there are default provisions in the Act.

What should I do with this payment claim?

You can either—

- pay the amount claimed in the payment claim (in full) on or before the due date for payment; or
- if you dispute the payment claim, send the claimant a written payment schedule that complies with section 21 of the Act (a **payment schedule**) stating the amount you are prepared to pay instead (which could be nothing).

The **due date** for a payment is the date agreed between you and the claimant. That due date must be set out in the payment claim. If you haven't agreed on a due date, then the Act says that a payment is due within 20 working days after the payment claim is served on you. (For the purposes of the Act, a **working day** is any day other than a Saturday, a Sunday, a public holiday, or any day from 24 December to 5 January.)

When do I have to act?

You should act promptly. Otherwise, you may lose the right to object.

What if I do nothing?

If you don't pay the amount claimed by the due date for payment or send a payment schedule indicating what you will pay instead, the claimant can go to court to recover

the unpaid amount from you as a debt owed. In addition, the court may decide that you have to pay the claimant's costs for bringing the court case.

Can I say that I will not pay, or pay less than, the claimed amount?

Yes, by sending a written payment schedule.

Note: If you do not send a written payment schedule, the claimant can bring court proceedings against you or refer the matter to adjudication (or both).

How do I say I will not pay, or pay less than, the claimed amount?

To say that you will pay nothing or indicate what you will pay instead, you must send the claimant a written payment schedule.

You must indicate the amount that you are prepared to pay, which could be nothing. This amount is called the **scheduled amount**.

If the scheduled amount is less than the claimed amount, you must explain in the payment schedule—

- how you calculated the scheduled amount; and
- why the scheduled amount is less than the claimed amount; and
- your reason or reasons for not paying the full amount claimed.

Note: The written payment schedule must also state which payment claim the payment schedule relates to.

Note: If you state in the payment schedule that you will pay less than the claimed amount or pay nothing at all, the claimant may refer the dispute about how much is owing for adjudication.

How long do I have?

You must send a payment schedule by the date agreed in the contract or, if no date was agreed, within 20 working days after the payment claim was served on you.

If I say I will pay another amount instead, when do I have to pay it?

You must still pay the scheduled amount by the due date for payment.

What if I don't pay the scheduled amount when I say I will?

If you send a payment schedule but do not pay the scheduled amount by the due date, the claimant can go to court to recover the unpaid amount from you as a debt owed or refer the matter to adjudication (or both).

Note: A court may also require you to pay the claimant's costs.

Advice

Important: If there is anything in this notice that you do not understand or if you want advice about what to do, you should consult a lawyer immediately.

Schedule 1 form 1: replaced, on 1 December 2015, by regulation 8 of the Construction Contracts Amendment Regulations 2015 (LI 2015/256).