

## Common mistakes made by claimants and respondents (QLD and NSW)

### CLAIMANTS

#### Failing to issue a valid 'payment claim'

Ensure your payment claim:

- identifies the relevant construction work or related goods and services;
- states the claimed amount; and
- is endorsed (**Qld only**) as being made under the SOP Act.

#### Failing to comply with strict timeframes prescribed by SOP Act

Ensure payment claims are served within the period prescribed in construction contract, and the relevant SOP Act.

#### Claiming for works excluded by the SOP Act

The relevant SOP Acts do not apply to construction work involving (but not limited to only):

- drilling or extraction of oil / natural gas;
- Extraction of minerals (underground or surface working), including tunnelling or boring or construction underground works; and
- Residential building work if the contract is with the owner, who is living or intends to live in the building.

#### Failing to issue a 'second chance notice' correctly or at all

If no payment schedule is served within time, and before a claimant submits adjudication application or to summary judgment, a QLD claimant must (**Note** – in NSW a second chance notice is not required before enforcement or adjudication can take place) give second chance notice within 20 business days of the due date for payment, stating:

- the respondent may serve a payment schedule within 5 business days of notice; and
- the notice is made under the SOP Act.

#### Making a payment claim before the reference date

You must submit a payment claim on or after the reference date in a contract. If a contract does not state a reference date, it is the last day of the month.

#### Including work performed after the reference date in a payment claim

Ensure you check your contract, to ensure that period for claimable work is adhered to. For example, if your contract provides for payment claims being issued on the last day of each month, but only for work performed up to the 25th day of that month.

### RESPONDENTS

#### Not serving a Payment Schedule

Issue a payment schedule in response to a payment claim even when:

- the contractor promises not to proceed to adjudication; and/or
- the contractor always issues a payment claim pursuant to SOP Act but takes no further action.

A payment schedule **must** identify:

- state the amount the respondent proposes to pay, and if it is less than the claimed amount, then provide all reasons why;
- identify all reasons for withholding payment; and
- identify any issues that could affect the ability of the claimant using the SOP legislation (i.e. jurisdictional issues).

#### Not expressing all reasons for withholding payment (in detail)

**In Qld**, a respondent to a standard claim (less than \$750k and which do not contain complex latent condition claims or time related claims) can only rely upon reasons contained within their payment schedule.

**In Qld**, a respondent to a complex claim (greater than \$750k (excl GST) or contains complex latent condition claims or time related claims) can rely on new reasons not contained in a payment schedule

**Note** – A claimant is entitled to respond to those new reasons.

**In NSW**, a respondent to a payment claim cannot rely upon a reason for withholding payment if it has not included that reason or reasons in its payment schedule.

#### Missing the time to respond

**In Qld**, a respondent has 10 business days to provide a payment schedule to a payment claim (or earlier if the contract expressly provides), and 10 business days (15 business days for a complex claim) to serve its adjudication response after being served with an adjudication application (or 7 business days (12 business days for a complex claim) after receiving notice of an adjudicator's acceptance of the application, whichever is later).

**In NSW**, a respondent has 5 business days to provide a payment schedule to a payment claim (or earlier if the contract expressly provides), and 10 business days to serve its adjudication response after being served with an adjudication application (or 2 business days after receiving notice of an adjudicator's acceptance of the application, whichever is later)

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