

Security of payment for sub-contractors



Some sub-contractors go long periods of time without being paid. If you work as a sub-contractor in the NSW building and construction industry, and if you haven't been paid for a long time, you can seek help.

The Building and Construction Industry Security of Payment Act seeks to resolve payment disputes.

How does it work

- 1) If a sub-contractor believes he or she has not been paid for work, they can apply for adjudication under the Building and Construction Industry Security of Payment Act. You lodge a claim with an adjudicator. An adjudicator is the person responsible for deciding who gets paid and how much they get paid.
 - a. The sub-contractor is called the 'claimant'
 - b. The contractor that has allegedly not paid is called the 'respondent'
- 2) You then fill in a form called a **payment withholding request** and send it to the **principal contractor**. This is the party responsible for paying the **respondent**.
- 3) The principal contractor is not allowed to pay the respondent until after the adjudication process is finished.
- 4) The adjudicator then decides whether you should be paid.

Important information

- The Security of Payment Act is used to decide commercial disputes. You can take action against another contractor, or even the principal, but you cannot use it to seek payment from a private homeowner.

- If you haven't been paid to work on someone's house, you should speak to your legal adviser, your union or someone from your community.
- A sub-contractor is only able to freeze payments equivalent to the value of the claim.
- The 'principal' is not responsible for paying you. The principal can only stop from paying the respondent.

Further information

Legal, financial or professional advice

Sub-contractors are advised to discuss this matter with their legal advisers, trade unions or advocates.

Payment withholding request form

In addition to the application for adjudication, sub-contractors need to lodge a payment withholding request form and a signed statutory declaration.

Independent adjudication

Responsibility for determining progress payments under the Security of Payment Act lies with independent adjudicators, which are appointed Authorised Nominating Authorities.

For more information visit www.services.nsw.gov.au/securityofpayment or call 1800 679 289.

For language assistance call the Translating and Interpreting Service (TIS) on 13 14 50 and ask for an interpreter in your language.

Disclaimer: This publication must not be relied on as legal advice. For more information, refer to the appropriate legislation.