



SECURITY OF PAYMENT UPDATE - ABCC IMPOSES NEW SECURITY OF PAYMENT REPORTING REQUIREMENTS

The Australian Building and Construction Commission (ABCC) has established new mandatory reporting requirements for when code covered contractors must report payment disputes or delays to the ABCC. Industry participants must transition to these reporting requirements by **1 September 2018**.

What is changing?

Under the changes, entities who are covered by the Building Code 2016 ('code covered entities'), will be required to report any disputed or delayed progress payments to the ABCC as soon as practicable after the date on which the payment falls due. Contractors are required to report to the ABCC using the "security of payment reporting form", which is available from the ABCC website. The obligation to report applies to both claimants and respondents.

When are disputed or delayed payments reportable to the ABCC?

A code covered entity will be required to report a disputed or delayed payment where:

- An amount is certified by a Principal (or Superintendent) under a contract and not paid within the contractual timeframe;
- An amount is specified in a payment schedule or notice of dispute issued under security of payment legislation and not paid by the date prescribed by the legislation;
- No payment schedule or notice of dispute is issued in response to a valid payment claim and the full amount of the payment claim is not paid by the date prescribed by the security of payment laws (this does not apply in Western Australia and the Northern Territory);
- An adjudicator makes a determination under security of payment legislation and the adjudicated amount is not paid by the date prescribed by the security of payment laws;
- A court, arbitrator, or expert issues a binding determination and the amount determined is not paid in accordance with the determination.

There is no obligation to report repeated individual instances of disputed or delayed payments under the same contract.

What do I need to do?

Code covered entities should ensure that their internal processes provide for the reporting of disputed or delayed payments to the ABCC in accordance with the above guidelines. Head contractors should review and amend existing Workplace Relations Management Plans (WRMPs) to reflect the new reporting requirements.

What are the consequences for failing to report?

From 1 September 2018, any failure to report disputed or delayed payments to the ABCC may constitute a breach of the Building Code 2016. This may affect a contractor's ability to tender for, or be awarded, Commonwealth funded building work.

Where do I find out more?

To find out more about the changes and how they affect your business, please contact Sam Condon, Lawyer and Manager Workplace Relations on 8211 7466, or the ABCC on 1800 003 338.