

## Claims in the Construction Industry – Subcontractors Charges Act 1974 (Qld)

If you are a subcontractor owed money, there are industry-specific legal remedies available to you, and it is important to know your rights and to act promptly to ensure that those remedies are used effectively.

### **What are the options?**

A payment claim under the *Building and Construction Industry Payments Act 2004* (BCIPA) is often the quickest, cheapest road to payment recovery. BCIPA creates a relatively fast dispute resolution process (adjudication), where industry-experienced adjudicators can make court-enforceable interim decisions about disputed payment claims usually within approx. 4 – 7 weeks. A normal court process can take years.

Strict time limits apply. People unfamiliar with the process should seek urgent legal advice because BCIPA adjudication is a powerful recovery tool that can easily be lost forever if any step is not made on time.

*Subcontractors Charges Act 1974* (SCA) is a preferable road to payment recovery only usually in limited circumstances: where the contractor is insolvent but is still owed money by someone 'up-stream' in the project supply chain.

SCA enables a subcontractor to issue a statutory charge (i.e. security) over monies owed (including retentions) for the project to the insolvent contractor direct to the Principal and/or other contracting parties 'up-stream' in the project. The statutory charge freezes those monies pending final resolution of the claim.

Unfortunately, SCA cannot be used with the fast-track BCIPA adjudication process. A subcontractor must choose.

Regular court proceedings must be issued to resolve SCA claims within one month of the charge notice, unless liability is conceded, otherwise the charge lapses and ceases to have any security effect.

### **How does SCA work?**

A subcontractor can lodge a notice of claim of charge (form 1) on the 'up-stream' party. The form 1 must be certified by a prescribed person (i.e. registered architect or engineer or quantity surveyor) and must be supported by a statutory declaration declaring the debt is owing. It must also be served within three months of the completion of the works or (where the claim is for retention money only) within three months of the expiration of the defect liability period in the contract.

A subcontractor's claim must only be for relevant work as defined under the Act, being work done or commenced upon land where the contract is performed. Note: there are exclusions, including the delivery of goods, supply of plant materials or equipment under a hire agreement (not to be incorporated in the work), domestic building work and work done in relation to testing or taking of measurements.

A subcontractor must also serve a notice (form 2) on the (usually insolvent) builder. Within 14 days of serving that form 2 the builder ought to respond with a form 4 notice either accepting liability, disputing the claim, or accepting partial liability. If liability is accepted, and there is money owing to the contractor, it will instead be paid direct to the claiming subcontractor. Otherwise, regular court proceedings must be filed within a month of the form 1 to maintain the charge. Regular court claims can be slow and expensive but at least recovery is possible despite the insolvency. Outside of the construction industry recovery in an insolvency is often hopeless.

**For advice about payment recovery in the construction industry, or related topics, please contact:**

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