

What To Do When a Contractor Won't Pay a Subcontractor?

In situations where your contractor won't pay you for subcontracting work, it's time to enforce your legal rights with our construction lawyer in Melbourne.

What Are Your Payment Rights as a Subcontractor?

Stop worrying now and do something about your statutory right to receive payment. Here are your basic legal payment rights:

- Right to make progress claims
- Right to make variation claims
- Right to exercise liens in respect of unpaid claims
- Right to suspend carrying out of works or supply of goods
- Right to enforce legal actions to recover debts and payments

VIC Laws Protecting Contractors and Subcontractors

SOP Act

The Building and Construction Industry Security of Payment Act 2002 (VIC) helps ensure that any person who carries out construction work or supplies related goods and services under a construction contract gets paid through progress payments.

Domestic Building Contracts Act

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**You Can Be Confident That You Are Getting
The Right Legal Advice.**

Contracts Specialist Is A Sydney-Based Construction Law Firm That Deals With Building Disputes, Construction Contracts, Debt Recovery, And Security Of Payment. With Contracts Specialist, You Are Ensured That You Are In Good Hands.

For how Long Does a Contractor Have to Pay a Subcontractor?

Under the Building and Construction Industry Security of Payment Act 2002 (VIC), a progress payment to be made to a subcontractor under a building contract becomes due and payable on:

- the date occurring 10 business days after a payment claim is made; or
- the due date stated in the contract.

Contractors can make payment claims every 20 business days until the job is completed or in accordance with the date(s) or period stated in the contract.

However, there is a time limitation under the SOP Act. Contractors can only issue payment claims within 3 months from the last day the contractor carried out works or supplied goods and services.

Providing a Supporting Statement when Contractor Won't Pay Subcontractor:

If your contractor refuses to pay you as a subcontractor in your building project, you can do the following:

- For construction contracts in connection to domestic construction contracts: the date specified in the contract or if no express provision, the due date for payment of payment claims is within 10 business days.
- Contractors are required to give a supporting statement to the principal when serving payment claims. They must declare in this statement they have paid their subcontractors the amounts that are due.

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What Happens When a Contractor Won't Pay a Subcontractor?

When things go worse, here are the steps that you can take with a specialist construction lawyer:

1. Building Contract Dispute Resolution

When things have gone wrong, you should proceed with applying dispute resolution methods recommended in your existing contract.

2. Apply for Adjudication and Claim the Adjudicated amount

Adjudication is an alternative building dispute resolution procedure so you won't have to resort to lengthy and expensive court proceedings. It is your right as a subcontractor to apply for this as this is an easier way to get paid with the help of an adjudicator.

3a. Applying for a Garnishee Order

After a successful adjudication, you may also opt to obtain a garnishee order. A garnishee order for debts is a court procedure that allows you to get the adjudicated amount from the other parties' bank or any third-party owing money to the other party or garnishee.

This is a much faster process to claim the adjudicated amount as you will only need to file a notice of motion for garnishee order for debt before a competent court.

Note that the garnishee has 14 days to respond to the garnishee order. But if the garnishee you specified has no connection with the other party, you may apply again for another order against a new garnishee.

3b. Serve a Request to Withhold Payment

If they are still not paying you, you can serve a payment withholding request on a principal contractor in addition to the adjudication application. You should:

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Complete the necessary documents such as payment withholding request form and statutory declaration;

Send these forms and a copy of the adjudication determination to the principal contractor.

3b. Serve a Notice of Claim

If the Contractor still refuses to pay, you can serve a notice of claim on the principal contractor. You should:

- obtain a debt certificate from a court of competent jurisdiction;
- complete a notice of claim in the prescribed form; and
- serve the notice of claim and debt certificate on the principal contractor.

4. Proceed with further legal action

If the situation is still not resolved by adjudication, you can commence legal action with the appropriate tribunal or courts. As this process involves court hearings, this can be a long and costly way forward.

Need a Lawyer to enforce your rights?

Our Construction Lawyer in Melbourne can help you.

Our principal specialist lawyer in Melbourne can help you defend and enforce your legal rights. He can assist you from payment claim preparation to adjudication application as part of your right under the Security of Payment Act and other relevant laws.

With his extensive knowledge and experience dealing with construction matters in Sydney and Melbourne for more than 10 years, you can be confident you are getting the right advice to get your contractor to pay you.

- Quick expert legal advice
- We deal with Australian construction law matters in
- Melbourne and Sydney
- FREE first consultation

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