

The rapid adjudication process is a trade-off between speed and efficiency on the one hand, and contractual and legal precision on the other. Its primary aim is to keep the money flowing in the contracting chain by enforcing timely payment and sidelining protracted or complex disputes. The process is kept simple, and therefore cheap and accessible—even for small claims.

■ WHO ARE THE ADJUDICATORS?

Adjudicators are people experienced in construction contract administration and dispute resolution. Adjudicators are registered by the Government to ensure proper experience and training. Parties to a contract may agree on a registered adjudicator, or apply to a prescribed appointer for an adjudicator to be appointed.

People interested in finding out how to qualify as an adjudicator can contact the Registrar at the Department of Housing and Works on 1800 240188.

■ WHAT CAN AN ADJUDICATOR AWARD?

The adjudicator will review the claim made under the contract and the response, and if satisfied that some payment is justified, make a binding determination.

■ CAN I APPEAL?

In most cases the parties will be satisfied by an independent determination and will get on with the job. If a party is not satisfied, it retains its full rights to go to court or any other dispute resolution mechanism available under the contract. But in the meantime, the determination stands, and any payments ordered must be made “on account” pending an award under the more formal and precise process.

■ WHAT PROTECTION DOES THE ACT HAVE IN THE EVENT OF INSOLVENCY OF THE PRINCIPAL?

Not every security of payment issue can be remedied by this Act. Insolvency can only be addressed through Commonwealth legislation.

The *Construction Contracts Act 2004* is available online at http://www.dhw.wa.gov.au/330_350.asp



Construction Contracts Act

2004

Department of Housing and Works
Office of Policy and Planning
108 Adelaide Tce
EAST PERTH WA 6004

Telephone: 1800 240 188
Fax: (08) 9222 4979
Email: registrar@dhw.wa.gov.au

This brochure is available online at

http://www.dhw.wa.gov.au/330_350.asp

Construction Contracts Act 2004

introduction to the **construction** **contracts act** 2004



Department of Housing and Works
Government of Western Australia

June 2005



Department of Housing and Works
Government of Western Australia

Introduction

The *Construction Contracts Act 2004* came into operation on 1 January 2005.

The introduction of this new legislation is a major step forward for the building and construction industry in Western Australia and will reform the way that contractors, subcontractors, consultants and suppliers in that industry get paid.

The Act supports good payment practices in the building and construction industry by prohibiting payment provisions in contracts that slow or stop the movement of funds through the contracting chain; implying fair and reasonable payment terms into contracts that are not in writing; clarifying the right to deal in unfixated materials when a party to the contract becomes insolvent; and providing an effective rapid adjudication process for payment disputes.

The new rapid adjudication system will help individual parties and the industry with cash flow issues.

Above all, the Act gives claimants a quicker and cheaper means of being paid.

■ WHAT IS THE CONSTRUCTION CONTRACTS ACT?

The *Construction Contracts Act 2004* supports security of payment in the building and construction industry. The industry is now provided with simple and secure tools to enforce the right to be paid. Further information can be accessed online at

http://www.dhw.wa.gov.au/330_350.asp

■ WHAT IS COVERED BY THE ACT?

The Act applies to contracts for the carrying out of construction work from the head contract between a project owner and the head contractor down to all subcontractors and suppliers on site.

The Act covers construction work that is undertaken in Western Australia including but not necessarily limited to work in preparing the land, building the work and installing any fixtures that form part of the work on building. Work includes altering and repairing an existing structure.

There is provision under the Act for construction work to include the supply of goods and services, including work done by off site fabricators and the work of professions related directly to the construction work including design, drafting and management.

The Act covers contracts for:

- Building work on a site in Western Australia
- Supply of goods to the site, and fabrication off-site that includes delivery to site
- Professional work related to construction.

■ WHAT IS EXCLUDED FROM THE ACT?

There are some exclusions. Work in discovering or extracting oil or natural gas is excluded as well as the mining for minerals and the constructing of plant for the purpose of extracting oil or minerals. There is also exclusion for wholly artistic works.

■ HOW ARE CONTRACTS AFFECTED?

Some unfair provisions that were commonly used in construction contracts have been banned. These are:

1. "Pay if paid" or "pay when paid" clauses that allowed one party in a contracting chain to avoid paying its contractors simply on the basis that it had not been paid. The Act confirms that a party to a construction contract must pay for work done.

2. Extremely long payment periods in excess of 50 calendar days. Contracts will be limited to a maximum 50 day payment period.

The Act clarifies the right to deal in unfixated materials if a party to the contract becomes insolvent. Retention money is held on trust so that it can be returned in the event of insolvency.

■ WHAT HAPPENS IF THERE IS NO WRITTEN CONTRACT?

The contract need not be a written contract. The Act covers verbal agreements implying terms that allow for a party to make a progress payment claim and to receive payment for work done.

■ WHAT DO I DO IF I AM NOT PAID IN ACCORDANCE WITH MY CONTRACT?

When a party to a construction contract believes it has not been paid in accordance with the contract, the Act provides a rapid adjudication process that operates in parallel to any other legal or contractual remedy. The rapid adjudication process allows an experienced and independent adjudicator to review the claim, and where satisfied that some payment is due, make a binding determination for money to be paid.



how the Act will
affect you

