

FAQs

Invoices and Payment Practices

General

Who do the new laws apply to?

The new laws apply to the majority of people who have organised construction work or the supply of related goods and services under a construction contract in Queensland. This includes (but not limited to) construction work carried out for developers, head contractors and subcontractors, owner builders, investment property owners, property managers, and commercial property owners.

The laws do not apply to construction contracts for domestic building work and the resident owner is a party to the contract or for work completed on a site outside of Queensland. They also do not apply when the contract forms part of a loan agreement, contract of guarantee or a contract of insurance and when the work payable under the contract is not calculated by reference to the value of the work carried out or goods and services supplied.

Anyone who has carried out construction work or the supplied related goods and services under a construction contract in Queensland may be afforded the protections of the legislation if the requirements of the legislation are followed. This may include suppliers and consultant services such as architects, engineers, surveyors and designers.

Do the new laws apply to suppliers and or subcontractors?

Yes, the new laws apply to construction work or the supply of related goods and services construction work that is carried out in Queensland. Related goods and service is defined under section 66 of the BIF Act and does include the supply of materials and components that form part of any building, structure or work arising from construction work.

What this means is that if a supplier or subcontractor has a payment dispute regarding construction work they are afforded the protections of the legislation.

If a subcontractor is further contractoing out work or ordering supplies in relation to construction work in Queensland then they are required to comply with the laws and must action invoices received.

Do the new laws apply to professional consulting services (e.g. consulting engineers)?

Yes, the new laws apply to construction work or supply of related goods and services construction work that is carried out in Queensland. Related goods and service is defined under section 66 of the BIF Act and does include work completed by engineers, architects, interior or exterior designers. What this means is that if you have a payment dispute regarding construction work that you have completed you are afforded the protections of the legislation.

If you are further contractoing out work or ordering supplies in relation to construction work in Queensland then you are required to action invoices received within the required timeframes.

Do the new laws apply to consultants undertaking the engagement of subconsultants or contractors related to construction work?

Yes, if you are further contracting out construction work or organising for the supply of related goods or services for construction work then the requirements apply to the invoices that you receive for this work.

Where the principal is the owner of a small commercial property, do the new laws apply?

Yes, the new laws apply to the majority of people who have organised construction work or the supply of related goods and services under a construction contract in Queensland. This includes (but not limited to) construction work carried out for developers, head contractors and subcontractors, owner builders, investment

property owners, property managers, and **commercial property owners.**

The laws do not apply to construction contracts for domestic building work and the resident owner is a party to the contract or for work completed on a site outside of Queensland. They also do not apply when the contract forms part of a loan agreement, contract of guarantee or a contract of insurance and when the work payable under the contract is not calculated by reference to the value of the work carried out or goods and services supplied.

Do the new laws apply to building surveyors?

Yes, the definition of 'related goods and services' includes architectural, design, surveying or quantity surveying services relating to construction work. See section 66 of the BIF Act.

Do the new laws apply to the principal for payment owed to the head contractor?

Yes, the new laws regarding progress payments apply to contracts for the completion of construction work or supply of related goods and services. The new laws do not apply to construction contracts for the carrying out of domestic building work where the resident owner is a party to the contract or for work on a building site that is outside of Queensland. More information is available in the Protecting your payment rights booklet:
https://www.qbcc.qld.gov.au/sites/default/files/Protecting_your_payment_rights.pdf.

What if a work for an interstate builder carrying out building and construction work in Queensland and I am not being paid?

The new laws apply to construction work or supply of related goods and services construction work that is carried out in Queensland. This is even if it for an interstate builder. The building site where the work was carried out must be in Queensland. If the building site was in another state or jurisdiction then there is different legislation in that State or jurisdiction that would apply. If you need advice on the payment options available or the Adjudication process, contact QBCC on 139 333 and select number 3 or send an email to Registry@qbcc.qld.gov.au.

If the job site is in another state, but both client and contractor are based in Queensland, do these rules apply?

The legislation does not apply to a construction contract to the extent it deals with construction work carried out outside Queensland, or related goods and services supplied for construction work carried out outside Queensland. The job site must be in Queensland.

Do the new laws apply to invoices issued before 17 December 2018?

No. the new laws apply to invoices issued on or after 17 December 2018. The Building and Construction Industry Payments Act 2014 (BCIPA) applies to payment claims issued before 17 December 2018. There are different timeframes and requirements to adhere to this legislation, if you need advice on BCIPA, please contact the QBCC on 139 333.

Do the new laws make it more difficult for smaller businesses to get paid because they now have to wait until the end of the month to issue an invoice?

If you would like to issue invoices (or payment claims) more frequently, you need to specify your payment terms in your contract. If your contract doesn't specify a reference date, the default reference date is the last day of the month.

Will the QBCC be monitoring Monies Owed Complaints for insights on a contractor's ability to pay debts before they enter into bankruptcy or liquidation?

Yes. The QBCC will continue to investigate Monies Owed Complaints received. From 1 January 2019, licensed contractors are also required to satisfy the new minimum financial requirements for licensing through annual reporting of their financial status. This will give the QBCC greater oversight of a contractor's operation of a financially sustainable business and better mitigate the risks for potential insolvencies and corporate collapses.

Can I get your confirmation of listening/attendance for CPD purposes?

Please send an email to gldbldingplan@qbcc.qld.gov.au requesting a letter of attendance.

Is there any documentation which outlines these changes that we can give a client?

Yes. You can also give your client a copy of the QBCC's *Protecting your Payment Rights* booklet, which provides guidance for both parties: https://www.qbcc.qld.gov.au/sites/default/files/Protecting_your_payment_rights.pdf.

Can you contact the QBCC for advice on invoices and payment claims?

Yes. Our Registry staff are available to assist you. Please contact us on 139 333 and select option 3 or send an email to Registry@qbcc.qld.gov.au.

Payment claims

What is the maximum period that I can give a payment claim for progress payment?

Unless a payment claim relates to a final payment, the claim must be given:

- before the end of the period stated in your contract; or within 6 months from when the related construction work was carried out or goods and services supplied (whichever period is longer).

If the payment claim relates to a final payment, the payment claim must be given:

- before the end of the period stated in your contract;
- within 28 days after the end of the last defect liability period for the construction contract; or
- within 6 months after completion of all construction work (whichever is longer).

Is there an example of a payment claim (invoice) on the QBCC website?

Yes, an example payment claim is available here: https://www.qbcc.qld.gov.au/sites/default/files/Payment_Claim.pdf

Invoices

What do I do if you receive an invoice with incorrect details (e.g. amount)?

You would need to respond with a payment schedule identifying the invoice/payment claim you are responding to, outlining the amount, if any, you are willing to pay and include all reasons for withholding payment (e.g. amount claimed in incorrect). You are required to give a payment schedule within 15 business days of receiving an invoice (or within the time specified in your contract if that period is shorter).

Is each progress claim under a contract with a builder considered a separate invoice/payment claim?

Yes. You should refer to the terms and conditions of your contract on how you can claim progress payments.

Facilities management companies receive invoices ad hoc. If an invoice has been issued incorrectly (i.e. invalid reference date), do we have to respond with a payment schedule to each invoice?

If you do not agree with an invoice that you receive and do not intend to pay in full by the due date for payment then you are required to respond with a payment schedule. Even if you receive an invoice that you believe is invalid or was incorrectly issued, it is recommended that you respond with a payment schedule if you do not intend to pay. This is because you may lose your right to provide a response if the matter proceeds to Adjudication.

What if the invoice is sent to an address other than the address given in the contract?

Documentation should be given in accordance with your contract. It's recommended that you contact the other party and remind them of the correct details, as per your agreement.

Payment schedules

What does a payment schedule look like?

A payment schedule is a written document that identifies the payment claim that it relates to,

states the amount (if any) you are willing to pay and includes reasons for withholding all or part payment. An example payment schedule is available here:

https://www.qbcc.qld.gov.au/sites/default/files/Payment_Schedule.pdf

If I pay the full amount claimed by the due date, do I have to respond with a payment schedule?

No, if the claimed amount is paid in full by the due date for payment then there is no requirement to give a payment schedule.

What do I do if I respond with a payment schedule and receive no response?

You can contact the other party and enquire if they have received the payment schedule and if they have any concerns with what was outlined. The key to payment dispute issues is to maintain contact to assist with resolution.

If the claimant disagrees with the payment schedule they may be considering the payment dispute options available to them such as Adjudication. This is why it is important that you include all reasons for withholding payment. You are still required to pay any amounts due by the due date if your payment schedule outlined a part payment (pay the scheduled amount by the due date).

You should also check your contract to ensure that you are giving documents and notices to the other party as per the requirements of your contract or as per the agreed practice between both parties as an email may not be considered a valid method of service.

Do you have to respond with a payment schedule to fraudulent invoices? If you don't, are you liable to pay?

If you receive a fraudulent invoice it is recommended you seek legal advice. Failing to respond with a payment schedule is an offence and if the claimant lodges an adjudication application you waive your right to give reasons for not paying.

I received a payment schedule but I was not paid the scheduled amount by the due date for payment.

You need to consider the payment dispute options available to you such as Adjudication, Subcontractor's Charges or starting court proceedings. If you need advice on the payment options available or the Adjudication process, contact QBCC on 139 333 and select number 3 or email Registry@qbcc.qld.gov.au.

You may also wish to lodge a Monies Owed Compliant with the QBCC as it is regarding an undisputed amount. More information is available here: <https://www.qbcc.qld.gov.au/payment-disputes-1/monies-owed-complaint>.

Payment schedule not issued

How does the QBCC become aware of money owed or if a payment schedule has not been issued?

The QBCC rely on complaints received from industry to inform us of money owed or offences against the legislation such as a failure to give a payment schedule. We may also become aware through the adjudication process and proactive investigations.

You can lodge a Monies Owed Complaint or a Notification of Offence Form. More information is available:

- <http://www.qbcc.qld.gov.au/payment-disputes-1/monies-owed-complaint>
- <http://www.qbcc.qld.gov.au/contractor-complaints/contractor-offences>

What if the terms and conditions issued by a supplier conflict with the purchase order issued by the contractor?

If you have agreed to particular terms and conditions with a supplier, issue a purchase order that is consistent with those terms and conditions. If you are unsure of your payment terms and conditions, speak with your supplier.

Part payments

If a payment schedule provides for only part payment of the claimed amount, when is the remaining amount due?

Providing a payment schedule is not an excuse to avoid or delay payment, there should be valid reasons for non-payment. For example; not receiving the goods or services, defective work or invalid issuing of a payment claim. When you receive the payment schedule it should outline the reasons for non-payment and payment of the scheduled amount should still be made by the due date for payment.

If you don't agree with a payment scheduled received then you should consider your rights to dispute the matter.

Adjudication is a payment dispute process that allows for a quick and cost effective decision to be made on a payment dispute. You can choose to apply for adjudication if you receive a payment schedule that you don't agree with. Please call the Adjudication Registry on 139 333 and select option 3 or email Registry@qbcc.qld.gov.au if you would like more information on the adjudication process. There is also information available on the QBCC website: <https://www.qbcc.qld.gov.au/adjudication/what-adjudication>.

For part payment of a payment claim, do you still need to respond with a payment schedule within 15 business days, or can this be issued at the same time as the part payment?

You must pay any amount owed by the due date for payment AND issue your payment schedule within 15 business days (or earlier if specified in the contract) stating the reasons why you are only paying part of the amount claimed. This may be on the same day or your due date or timeframes for a response may be different. Your payment schedule will need to state the invoice which the payment schedule relates to, the partial amount you are willing to pay and all reasons for withholding payment.

Retentions

If a contract specifies that retentions can only be withheld to the end of the defect liability period, can the contractor rely on the 'maintenance period' (e.g. 2 years) before releasing retention amounts?

You need to refer to the terms and conditions of your contract for the timeframe agreed for the release of retentions. If there is no timeframe, the statutory defects liability period of 12 months applies. If the contract specifies another timeframe such as a 'maintenance period' of 2 years, then this may apply. You will need to seek legal advice.

How will QBCC regulate the large contractors who have lawyers and get away with not paying and withholding retentions/ security amounts for no reason?

These new laws also apply to the larger contractors in the building and construction industry. If you are not paid and do not receive a payment schedule within the required timeframes or receive a payment schedule but disagree with the reasons for withholding payment, you should consider your payment dispute options such as Adjudication or Subcontractor's Charges. It is important to not let time pass after not being paid, as accessing some avenues of dispute resolution have strict timeframes to adhere to. If you need advice on the Adjudication process, contact the QBCC on 139 333 and select number 3 or send an email to Registry@qbcc.qld.gov.au.

If I have given a final payment claim at end of my completed works but not received retentions and they are due 12 months from practical completion, can I still claim?

A contracting party must release retention amounts to the contracted party in accordance with the building contract on or before the date that it is payable. This is a new offence and attracts a significant penalty. If your retention amounts remain unpaid, then you should look at your dispute resolution options and/or notify the QBCC via a Notification of Offence Form. For more information on the dispute options or adjudication then contact the QBCC's Adjudication Registry on 139 333 and dial number 3 to discuss your specific circumstances.

Depending on your contract you may be able to request release of some of the retention amount withheld at practical completion and the remainder at the end of the defects liability period. It is recommended that you check your contract requirements and seek legal advice is necessary.

Does a subcontractor need to invoice the contractor for the retention amounts?

When the contractor receives their Notice of End of Defects Liability Form, it should prompt them to put in their final payment claim requesting for the release of any retention amounts withheld. You should check the requirements of your contract for when a final payment claim may be issued and for how retentions is to be released.

With the number of recent builder defaults, and projections of this trend continuing in the future, does the legislation provide protection for retention monies (e.g. trust accounts)?

Project Bank Accounts (PBAs) currently only apply to all building contracts for **government work valued between \$1 million and \$10 million**. Subject to the Building Industry Fairness Reforms Implementation and Evaluation Panel's evaluation of the reform, PBAs may be required on all contracts valued more than \$1 million. More information on PBAs is available on the Department's website: <https://www.business.qld.gov.au/industries/building-property-development/building-construction/project-bank-accounts>.

Can the principal delay the release of retention amounts? Does the builder/contractor still have to give subcontractors the notice of the end of defects liability period if the principal delayed the release?

It is now an offence to withhold retention amounts without reasonable excuse. The requirement under the legislation is that where a defects liability period is linked to a defects liability period for a higher contract, the contractor needs to provide the notice within 5 business days AFTER being given the notice for the other period. If you have submitted your final payment claim requesting release of the retention amounts withheld and you received a payment schedule that you don't agree with then you should consider commencing one of the payment dispute processes.

Can you please confirm that this retention period applies to commercial construction only?

It is less common to have retention amounts withheld for residential work. You need to check

the requirements of your contract to see whether any retentions are to be withheld.

If a defect arises after retention monies are paid, will the QBCC direct subcontractors to rectify the work?

The QBCC may direct a subcontractor if they are responsible to rectify defective work if they are responsible within the statutory defect liability period.

The QBCC will ensure subcontractors are held accountable for defective building work they perform. The procedure is available here: https://www.qbcc.qld.gov.au/sites/default/files/Accountability_for_subcontractor_defects_procedure.pdf.

Timeframes

What are the timeframes for adjudication?

There are a number of timeframes that apply throughout the adjudication process. Our [protecting your Payment Rights](#) booklet page 13, there is an adjudication process flow chart which outlines each of the timeframes throughout the adjudication process. To find out more about what timeframes apply to your circumstances, please contact the QBCC on 139 333 and select number 3 or send an email to Registry@qbcc.qld.gov.au.

What do I do if I disagree with the timeframes provided on a payment schedule?

You may wish to consider your payment dispute options such as Adjudication, Subcontractors Charges or commencing court proceedings. If you need advice on the payment options available or the Adjudication process, contact QBCC on 139 333 and select option 3 or send an email to Registry@qbcc.qld.gov.au.

Why does the QBCC website state 10 business days not 15 business days as the timeframe for giving a payment schedule for payment claims up to \$750,000?

The 10 business days you are referring to is not the timeframe for responding to a payment claim. It is the timeframe for providing an adjudication response after receiving a copy of the adjudication application and/or the default due date for

payment if the contract does not provide for one or if the timeframe in the contract is invalid.

You must respond to a payment claim with a payment schedule within 15 business days or within the time specified in your contract (if that is less than 15 business days).

For more information, see here:

<https://www.qbcc.qld.gov.au/protecting-your-payment-rights/payment-schedules>.

If an invoice is for the supply of related goods and services, can the payment terms be 30 days from the end of the month or does the default 10 business days apply?

You need to consult the due date for payment in your contract. The definition of due date in the legislation is on the day on which the payment becomes payable under the contract, if the contract is silent on this matter then the due date for payment default is 10 business days after the day a payment claim is made.

Is practical completion from the date of completion of your original contract or completion of all variations?

The terms and conditions of your contract should state when practical completion is reached or how this date can be calculated. It is recommended that you seek legal advice if you are concerned with your contract requirements.

Is there a formal document whereby the subcontractor is notified that practical completion has been achieved?

There is no requirement in legislation for a contractor to notify a subcontractor that practical completion has been reached. It is recommended that you check your written contract as there may be specific requirements regarding practical completion.

There is a new requirement for contractors that are withholding retentions or securities to provide a Notice of End of Defects Liability Form to subcontractors to signal the end of the defects liability period.

Due dates

Can you specify the due date for payment on the invoice or is there a timeframe that applies?

You should refer to the timeframes outlined in your contract. If your contract doesn't specify a timeframe for payment, then the default timeframe in the legislation applies. Under the legislation, the default due date for payment is 10 business days after the day a payment claim is made.

Can a contractor specify the date to invoice?

If you would like to issue invoices (or payment claims) more frequently than the end of each month, you need to specify those payment terms in your contract. If your contract doesn't specify a reference date, the default reference date is the last day of the month.

If you are given a payment schedule and the due date has passed, what are your next steps?

If you are claiming money owed to you and have received a payment schedule in response to your payment claim and either disagree with the payment schedule or are not paid in full by the due date, you should consider the dispute options available to you (e.g. Adjudication, Subcontractors Charges etc.) and you may also have the right to suspend work on site. See the QBCC website for more information:

<https://www.qbcc.qld.gov.au/payment-disputes-1/what-payment-dispute>.

Is the due for payment no more than 25 business days?

Yes (in some cases). The QBCC Act outlines void payment provisions under a construction management trade contract or subcontracts. You cannot contract out payment later than 25 business days AFTER the submission of a payment claim. It is recommended that you seek legal advice if you are concerned with your contract requirements.

Can a contract specify a due date for payment greater than 25 business days after a payment claim is received?

The *Queensland Building and Construction Commission Act 1991* contains void payment provisions in construction management trade contracts or subcontracts. You cannot contract out payment later than 25 business days AFTER the submission of a payment claim. If you have an agreement other than a subcontract, for example with a supplier, the timeframe may be longer.

I have an invoice with a due date one day after issue date. Is this valid?

You need to consult the due date for payment stated in your contract, because the parties to the contract are free to negotiate their own payment terms. The definition of due date in the legislation is on the day on which the payment becomes payable under the contract. If the contract is silent on this matter then the due date for payment default is 10 business days after the day a payment claim is given

Reference dates

What is a reference date?

For a construction contract, a reference date means the date stated in the contract as the date on which a claim for a progress payment may be made. If the contract does not provide for the matter, the default reference date in the legislation is the last day of the month in which the construction work was first carried out, or the related goods and services were first supplied, under the contract.

What steps do I take if an invoice is issued before a reference date?

If an invoice (payment claim) is issued before the reference date, it is recommended that you respond with a payment schedule outlining that the payment claim issued is invalid due to being issued before the reference date. The payment schedule should instruct the claimant to issue a valid payment claim after the reference date.

If our company provides a service on a “taxi-hire” basis for construction work and invoice at the time of providing the service, how do we specify a reference date?

You should ensure that your payment terms and conditions are outlined and agreed to by both parties before you invoice. You may include your

payment terms and conditions at the time of booking.

How do I go about establishing payment terms and conditions for a more frequent reference date (e.g. weekly)?

The reference date should be specified in your contract and agreed to by both parties. If a reference date is not provided for in your contract, the default timeframe applies (i.e. last day of the month).

Construction work carried out without a contract

Do the new laws apply to construction work if there is nothing in writing?

The rules apply to a construction contract, whether written or oral, or partly written and partly oral. You may need legal advice to determine whether a legally binding contract exists. Best practice is to ensure that you have your agreement in writing and that it is signed off by both parties. Some types of work requires you to have a written contract in place, this is specified here:

<https://www.qbcc.qld.gov.au/contracts/when-you-need-contract>.

Under the new legislation if an invoice is issued where there is no contract, are they required to pay within 10 business days regardless of previously agreed payment terms?

The definition of due date in the legislation is on the day on which the payment becomes payable under the contract, if the contract is silent on this matter then the due date for payment default is 10 business days after the day a payment claim is made. The new laws apply to a construction contract, whether written or oral, or partly written and partly oral. You may need legal advice to determine whether a legally binding contract exists.

If I don't have a contract and have been engaged for a one-off job earlier in the month, do I have to wait until the last day of the month to invoice? Can I specify my payment terms on my invoice?

If you don't have a contract or your contract doesn't specify a reference date, the default reference date is the last day of the month. The default timeframe for payment is 10 business days after the day a payment claim (or invoice) is made.

You may wish to consider putting your agreement in writing and including payment terms so that you can invoice more frequently.

Home owners

What if a builder is contracted for residential building work with a homeowner who withholds payment, delaying payments to contractors?

The progress payment provisions under Chapter 3 of the Building Industry Fairness (Security of Payment) Act 2017 do not apply to construction contracts for the carrying out of domestic building work where the resident owner is a party to the contract.

However, there are requirements under the Queensland Building and Construction Commission Act 1991 that apply to residential building work, which is specified under Schedule 1B. If a contractor is experiencing late or delayed payment from a resident owner prior to completion of the contract they are able to use the QBCC's Early Dispute Resolution service (EDR). More information on EDR is available here: <http://www.qbcc.qld.gov.au/defective-work-disputes/complaints-your-contract-has-been-completed>. It may also be worth seeking legal advice on what your rights are under your contract.

If I enter into a contract to carry out residential building work for an owner under \$11,000 and the contract is varied above this amount. Does this make them an owner builder? Do the new laws apply?

No. A resident owner can enter into contract to have building work carried out over \$11,000 without requiring an owner builder permit. An owner builder permit is only required if they are taking on the role of head contractor for the building project or to personally perform the building work. More information about owner builders is available on the [QBCC website](#). The

laws do not apply to a contract where the other party is a resident owner.

My clients are usually resident owners (mum and dad). What are the best practices to ensure I am paid in full and on time?

You need to ensure that you have a contract that meets the requirements of a domestic building contract under schedule 1B of the QBCC Act. It is recommended that you seek legal advice to ensure that you fully understand the contractual obligations of both parties.

If a contractor is experiencing late or delayed payment from a resident owner prior to completion of the contract they are able to use the QBCC's Early Dispute Resolution service (EDR). More information on EDR is available here: <http://www.qbcc.qld.gov.au/defective-work-disputes/complaints-your-contract-has-been-completed>. It may also be worth seeking legal advice on what your rights are under your contract or lodging an application with QCAT to resolve your dispute.

Resources

Can we get a copy of the presentation?

A copy of the presentation and handout is available on the QBCC web site:

<http://www.qbcc.qld.gov.au/education-engagement/education-engagement-industry-events>