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PAYMENT CLAIMS - Construction Contracts Act

The Construction Contracts Act 2002 (“Act”) was enacted with the purpose of facilitating regular and timely payment to tradesmen under the contract and to provide remedies for the recovery of payments that have not been made under the contract.

The basic plank to the construction contract process is the “payment claim”. A payment claim, while looking much like the old tax invoice that most contractors are used to using, and I dare say still are, is specifically defined in the Act and to be enforceable it must have the following features; it must:

- Be in writing; and
- Contain sufficient details to identify the construction contract to which it relates; and
- Identify the construction work and relevant period to which it relates; and
- Indicate a claimed amount and due date for payment; and
- Indicate the manner in which the payee calculated the claimed amount; and
- State that it is made under the Construction Contracts Act 2002.

These features are mandatory and cumulative and without them or any one of them, the invoice is not a payment claim for the purposes of the Act and therefore none of the remedies or protections afforded under the Act can be relied on.

Most of the requirements listed above will already be standard on existing tax invoices, i.e. they are in writing, will identify the relevant contract, identify the work carried out in the relevant period, and indicate a claimed total amount.

The difference is there must be an indication of the due date for payment, an indication of the manner in which the claim is calculated and a statement that it is made under the Act.

Joe the Plumber contracted to provide plumbing services for a major apartment renovation. The contract specified that all

payments and claims were to be made under the Act and also provided for due dates for service of each claim and for payment. At the end of each month Joe served his claims for payment but after several were not paid he sued the principal under the Act for non-payment.

The principal defended the case saying that the claims did not comply with the Act and were not therefore payment claims and so Joe was not able to use the Act to get his money by taking his men off the site or suing using the Act’s fast track method. If Joe wanted to sue he would have to use the more expensive and slower ordinary method.

The Judge agreed with the principal. Even though Joe had complied with nearly every single requirement, and even though the Court of Appeal has said that the claims do not have to be absolutely perfect, Joe had not filled in the last claims as well as he should have.

Joe’s problem was that each claim was for extra labour. The principal had moved the time frame of the job forward and to comply with the new timing Joe needed to hire extra staff, which he was allowed to do under the contract. On each claim Joe had written “Labour” and the total amount.

The Judge said that wasn’t enough to comply with the Act’s requirement to “indicate the manner in which the claim is calculated”, because at the least Joe could have written “Labour—4 staff x 8hrs per day x 5 days = \$ XXXX.00”. This would have complied with the Act.

Joe finally got the money from the principal, it just took longer than it should have done if he had made sure his claims complied with all the requirements of the Act so that they were ‘Payment Claims’. If you think you need someone to check over your documents to ensure they comply give Eugene, Michael or Amy a call.

- **Next newsletter covers Easements—Rights and Obligations by Amy Haste**