

PART 3

PAYMENT CLAIMS AND RESPONSES

Payment claims

10.—(1) A claimant may serve one payment claim in respect of a progress payment on —

- (a) one or more other persons who, under the contract concerned, is or may be liable to make the payment; or
- (b) any other person specified in or identified in accordance with the terms of the contract for this purpose.

(2) A payment claim must be served —

- (a) not later than —
 - (i) the date, or the last day of a period, specified in, or determined in accordance with, the terms of the contract relating to the purpose of this subsection; or
 - (ii) the date prescribed for the purpose of this subsection if the contract does not contain such terms; and
- (b) not later than 30 months after the following, whichever is applicable:
 - (i) the date on which the goods and services to which the amount in the payment claim relates were last supplied;
 - (ii) the latest of the following dates:
 - (A) the date on which the construction work to which the amount in the payment claim relates was last carried out;
 - (B) the issuance date of the last document, as at the time the payment claim is served, certifying the completion of the construction work under a contract;
 - (C) the issuance date of the last temporary occupation permit as at the time the payment claim is served.

[\[47/2018\]](#)

(3) In subsection (2) —

- (a) a payment claim that is served before the date or last day mentioned in

subsection (2)(a)(i) is deemed to have been served on that date or day, as the case may be; and

- (b) a payment claim that is served before the prescribed date mentioned in subsection (2)(a)(ii) is deemed to have been served on that date.

[47/2018]

(4) A payment claim —

- (a) must state the claimed amount, calculated by reference to the period to which the payment claim relates; and
- (b) must be made in such form and manner, and contain such other information or be accompanied by such documents, as may be prescribed.

(5) Nothing in subsection (1) prevents the claimant from serving an unpaid payment claim in accordance with subsection (2).

[47/2018]

(6) In this section —

“issuance date”, for a document, means the date that the document is served;

“temporary occupation permit”, in respect of a building or part of a building, means —

- (a) a temporary occupation permit granted under the Building Control Act 1989 for the building or part of the building; or
- (b) a certificate of statutory completion issued under that Act for that building or part of that building where no temporary occupation permit is granted;

“unpaid payment claim” means —

- (a) a payment claim for which full payment has not been received, and for which an adjudication application has not been brought; or
- (b) a payment claim for which —
 - (i) full payment has not been received; and
 - (ii) an adjudication application has been brought, but was withdrawn for any reason or rejected without adjudication because the claimant’s entitlement to make an adjudication application had not arisen under section 12, or because the adjudication application did not comply with the

requirements under section 13(2) or (3).

[47/2018]

Payment responses, etc.

11.—(1) A respondent named in a payment claim served in relation to a construction contract must respond to the payment claim by providing, or causing to be provided, a payment response to the claimant —

- (a) by the date as specified in or determined in accordance with the terms of the construction contract, or within 21 days after the payment claim is served under section 10, whichever is the earlier; or
- (b) where the construction contract does not contain such provision, within 14 days after the payment claim is served under section 10.

[47/2018]

(2) A respondent named in a payment claim served in relation to a supply contract may respond to the payment claim by paying to the claimant the claimed amount, or such part of the claimed amount as the respondent agrees to pay, or by raising objections in writing, by the due date.

[47/2018]

(3) A payment response provided in relation to a construction contract —

- (a) must identify the payment claim to which it relates;
- (b) must state the response amount, if any;
- (c) must state, where the response amount is less than the claimed amount, the reason for the difference and the reason for any amount withheld; and
- (d) must be made in such form and manner, and contain such other information or be accompanied by such documents, as may be prescribed.

(4) A respondent may vary a payment response which the respondent has provided to a claimant if, and only if, the variation —

- (a) is made in such form and manner as may be prescribed; and
- (b) is provided to the claimant by the date or within the period that a payment response is required to be provided under subsection (1) or within the dispute settlement period under section 12(5).

Entitlement to make adjudication applications

12.—(1) Subject to subsection (2), a claimant who, in relation to a construction contract, fails to receive payment by the due date of the response amount which the claimant has accepted in writing is entitled to make an adjudication application under section 13 in relation to the relevant payment claim.

[47/2018]

(2) Where, in relation to a construction contract —

- (a) the claimant disputes a payment response provided by the respondent; or
- (b) the respondent fails to provide a payment response to the claimant by the date or within the period mentioned in section 11(1),

the claimant is entitled to make an adjudication application under section 13 in relation to the relevant payment claim if, by the end of the dispute settlement period, the dispute is not settled or the respondent does not provide the payment response, as the case may be.

(3) For the purpose of subsection (2)(a), a claimant is considered to dispute a payment response if the claimant does not in writing accept the payment response.

[47/2018]

(4) A claimant who has served a payment claim in relation to a supply contract is entitled to make an adjudication application under section 13 in relation to the payment claim if —

- (a) the claimant fails to receive payment by the due date of the claimed amount; or
- (b) the claimant disputes the response amount, where the response amount is less than the claimed amount.

(5) During the dispute settlement period, in addition to any other action that the claimant or the respondent may take to settle the dispute —

- (a) the claimant or the respondent may seek clarification from the other party on any matter relating to the relevant payment claim; and
- (b) the respondent may provide the claimant with a payment response where the respondent has failed to do so under section 11(1), or vary the payment response provided under that section.

(6) In this section, “dispute settlement period”, in relation to a payment claim dispute, means the period of 7 days after the date on which or the period within which the payment response is required to be provided under section 11(1).