

Relief to owners corporations in defending payment claims by unlicensed or uninsured contractors | Latest amendments to the SOP Act

Finally there is some good news for owners corporations defending payment claims by unlicensed or uninsured contractors, or contractors without the appropriate licence, under the *Building and Construction Industry Security of Payment Act 1999 (SOP Act)* for residential building work carried out on the common property of the scheme.

On **20 August 2024** the latest amendments to the SOP Act took effect, which include the addition of sub-section 2 to section 8 of the SOP Act as follows:

8 Right to progress payments

- (1) A person who, under a construction contract, has undertaken to carry out construction work or to supply related goods and services is entitled to receive a progress payment.*
- (2) A person is not entitled to a progress payment under subsection (1) if the construction contract—
 - (a) does not comply with the Home Building Act 1989, section 4, or*
 - (b) involves construction work that is residential building work done in contravention of the Home Building Act 1989, section 92.**

Section 4 of the *Home Building Act 1989 (HBA)* provides that a contractor must hold an appropriate contractor licence to carry out any residential building work or any specialist work.

Section 92 of the HBA requires that the contractor must be under a contract of insurance required under the HBA and provide a copy of a certificate of insurance to the owners corporation.

Before 20 August 2024, in defending payment claims made by unlicensed or uninsured contractors, the owners corporation may, in preparing its payment schedule in response to the payment claim, rely on:

- (a) the actual terms of the building contract entered into;
- (b) set-offs such as costs to rectify defective works and incomplete works the subject of the payment claim.

To prepare the payment schedule, the owners corporation may experience difficulties to

- (a) respond within the time required under the SOP Act. A 5-day response time is common as most contractors often seek to make the term of payment in the contract 5 days;
- (b) prepare expert evidence to support the payment schedule in relation to costs to rectify defective works and incomplete works due to the fact that the owners corporation may not engage a superintendent to oversee the building works carried out or the superintendent engaged does not have the necessary expertise to provide quantum evidence.

From 20 August 2024, pursuant to the amendments to the SOP Act mentioned above, the owners corporation may simply rely on section 8 of the SOP Act as a complete defence against payment claims made by unlicensed or uninsured contractors, or contractors without the appropriate licence.

However, there are still areas not clear in relation to the amendments. For example, where the contractor obtained the insurance required at a later stage of the building contract, the question remains whether the contractor is entitled to progress payment for works carried out before obtaining the insurance.

At Bannermans Lawyers, we assist the owners corporation by way of:

- (a) reviewing building contracts to ensure the terms of the contract are fair and reasonable to the owners corporation and comply with the current laws including the term of payment;
- (b) advising owners corporations on the obligations and rights of both the owners corporation and contractor to the building contract;
- (c) in the event of payment claims made by the contractor:
 - (i) negotiating with the contractor to resolve the dispute;
 - (ii) preparing payment schedules in response to the contractor's payment claim, and
 - (iii) preparing adjudication responses.

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Prepared By Bannermans Lawyers

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