

The Court's Interpretation – Are Project Managers & Supervisors Covered Under the Security of Payment Act?

SOPA applies to Architects, Engineers, Designers, Project Managers, Superintendents

There is often confusion amongst architects, engineers, designers and professionals who provide project management and contract management services about whether they can make a claim for payment under the Building and Construction Industry Security of Payment Act 1999 (NSW) (**SOPA**). In short, a recent NSW Court of Appeal case has determined that SOPA can be used by those parties to obtain outstanding progress payments.

Construction Contracts include 'Related Goods and Services'

SOPA applies to: "... any construction contract, whether written or oral, or partly written and partly oral" with some exceptions (section 7 of the SOPA). The definition of 'construction contract' also includes a supply of 'related goods and services' which is defined in section 6(1)(b) as follows (in relation to services):

(1) In this Act, related goods and services, in relation to construction work, means any of the following goods and services:

...

(b) services of the following kind:

- (i) the provision of labour to carry out construction work,*
- (ii) architectural, design, surveying or quantity surveying services in relation to construction work,*
- (iii) building, engineering, interior or exterior decoration or landscape advisory services in relation to construction work.*

Accordingly, the persons expressly referred to in section 6(1)(b) who provide such services in relation to construction work fall within the ambit of SOPA.

It is important to keep in mind that SOPA does not apply to construction contracts for residential building work on such part of any premises as the party for whom the work is carried out resides in or proposes to reside in.

Project management and administration services

Section 6(1) does not expressly include project managers or consultants/professionals who manage and administer construction work under contracts. The Court of Appeal determined in *Edelbrand Pty Ltd v H M Australia Holdings Pty Ltd* [2012] NSWCA 31 that section 6 should be interpreted liberally to include such services.

Therefore, the *Edelbrand* decision sets the precedent for project managers, superintendents and consultants who manage and administer construction work are able to make claims under SOPA.



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Provision of expert reports for the purpose of litigation

In *Boutique Developments Ltd v Construction & Contract Services Pty Ltd & Anor* [2007] NSWSC 1042, the court determined that the preparation and provision of an expert report did not fall within the definition of 'construction work' or work undertaken to supply 'related goods and services' under SOPA. Even if the report sets out a scope of rectification/repair works, the work performed by the expert in the preparation of a report was not itself repair work (because the definition of 'construction work' also includes repairs). It was the provision of a report to determine what repair works was necessary.

Therefore, building experts and consultants who provide expert witness services and reports are not able to make progress payment claims under SOPA.

If you have any questions in relation to your current circumstances or the operation of SOPA in general, Bannermans Lawyers can assist.

For further information on SOPA workflow see our article: [Security of Payments Workflow](#).

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