

Dealing with Payments Under the Building and Construction Industry Security of Payment Act 1999 (NSW) (“SOPA”)

Key Features of SOPA

SOPA sets out a statutory framework for:

- Making a progress payment claim;
- Responding to a progress payment claim;
- Determining by adjudication the amount of a disputed progress payment; and
- Payment of a determined progress claim amount.

Generally, in comparison to litigating in a court or tribunal, the SOPA process can be a quicker interim method to resolve progress payment disputes and obtain progress payments.

With the commencement of the Building and Construction Industry Security of Payment Regulation 2020 (NSW), owner occupier construction contracts entered into on or after 1 March 2021 are now caught by the SOPA regime. This change provides additional relief to residential builders as owner occupier residential contracts were previously exempt from SOPA. Residential builders will now be able to serve payment claims on owner occupiers and refer payment claims to adjudication under SOPA.

Strict time limits apply and construction industry participants should consider obtaining legal advice on the SOPA process to ensure they are not caught out by any non-compliance with the technicalities of the SOPA process. Failure to comply may have serious financial consequences.

For general information see: [SOPA workflow](#) and [SOPA flowchart](#).

Applicability

- Principals including individuals, home owners, corporations or owners corporations.
- Contractors and Subcontractors carrying out construction work.
- Contractors and Subcontractors carrying work related to construction work including architectural, engineering, contract administration, and project management services.

Generally, the SOPA regime is applicable to a written or oral contract for:

- Commercial construction work in NSW;
- Construction work to common property in a strata scheme; and
- Residential construction work in NSW, including where the principal is the owner who resides in or proposes to reside in the premises.

Goods being:

1. Materials and components that form part of any building, structure or work arising out of construction work of the type set out above; or
2. Plant or materials for use in connection with the carrying out of construction work of the type set out above.

Services being:

1. Labour to carry out construction work of the type set out above; or
2. Architectural, design surveying or quantity surveying services in relation to construction work of the type set out above; or
3. Building, engineering, interior or exterior decoration or landscape advisory services in relation to construction work of the type set out above.

Bannermans can provide the legal expertise you need to guide you through any part of the SOPA process. Contact us for help.

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