

Australia: Changes to the Security of Payment Act in Victoria which will broaden the scheme to apply retrospectively

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Security of Payment Act

In brief

The *Building Legislation Amendment (Fairer Payments on Jobsites and Other Matters) Bill* ("**Bill**"), which proposes amendments to the *Building and Construction Industry Security of Payment Act 2002* (Vic) ("**SOP Act**"), is currently under review by the Legislative Council of the Victorian Government. If the Bill is passed, the proposed reforms are set to come into force on 1 September 2026 or on an earlier date to be proclaimed.

Significantly, the reforms will apply retrospectively to construction contracts that are on foot or were signed before the amendments to the SOP Act come into force. However, the reforms will not apply retrospectively to payment claims or adjudication applications if they have already been served.

The reforms are expected to broaden the scope of the SOP Act further in favour of claimants. This is largely due to the excluded amounts regime being removed, which will allow a wider variety of claims to be pursued. As such, it is expected that where possible, claimants may choose to delay issuing payment claims until the reforms come into force.

Participants in the construction industry should understand the reforms to ensure their contracts are drafted in accordance with the reforms and to ensure they are prepared for the predicted increase in the number and size of claims likely to be brought once the amendments to the SOP Act come into effect.

Background and key reforms

Recommendations for reforms to the SOP Act were initially published in the report "Employers and contractors who refuse to pay their subcontractors for completed works", which was presented by the Environment and Planning Committee in the Victorian Legislative Assembly in November 2023. The report followed an inquiry by the Environment and Planning Committee into the issue of financial insecurity in the construction industry stemming from failures to pay contractors and subcontractors for completed works.

The Victorian Government responded to the report in October 2024 by supporting 16 of the 28 recommendations in full and 12 recommendations in principle or in part. The reforms are intended to better align the Victorian legislation with equivalent legislation in other Australian jurisdictions.

The Bill incorporating the reforms passed the Legislative Assembly on 16 October 2025 and is currently at the second reading stage in the Legislative Council of the Victorian Government.

If the reforms to the SOP Act come into effect the key changes will include:

- The removal of the excluded amounts regime
 - This reform will allow a greater variety of claims to be made, including claims related to time-related costs and latent conditions. This will align the Victorian legislation with its counterparts in other jurisdictions.
- The removal of 'reference dates'
 - The Bill removes the concept of a 'reference date'. This reform will allow a payment claim to be made on or from the last day of the month in which the relevant construction work was carried out or goods or services were supplied under the construction contract.
- Changes to the definition of a 'business day'
 - The definition of 'business day' will be changed to exclude the days during the period commencing 22 December and ending 10 January.
- The introduction of claims for performance security
 - The SOP Act will include a statutory right to claim performance security.
- Notice-based time bar provisions may be invalid
 - The reforms will allow notice-based time bars to be declared unfair and of no effect by an adjudicator if they are not 'reasonably possible' to comply with or would be 'unreasonably onerous' to comply with.
- Certain payments to be made within 20 days
 - Payment of a progress payment or the release of a performance security must be made no later than 20 days after a payment claim or a performance security claim is served. Any clause in a construction contract that allows such payments to be made beyond the 20 day period will have no effect.
- Extension of time to make a claim
 - The reforms will extend the time that a claimant has to bring a payment claim from three to six months following practical completion where the claim relates to construction work or the supply of goods and services under a construction contract.

Recommendations

Participants in the construction industry operating in Victoria should be prepared for:

1. The retrospective application of the reforms

- Parties should review the contracts they are negotiating to ensure they are drafted to be in line with the reforms. For example:
 - Clauses relating to payment dates should be reviewed to ensure they are in line with the new maximum of 20 days for the payment of claims for progress payments and the release of performance security.
 - Clauses involving notice-based time bars should be reviewed to ensure that they are reasonably possible to comply with and it would not be unreasonably onerous for a party to comply.

- Reference dates should be removed from construction contracts.
- The definition of a business day should be updated to reflect the exclusion of the period from 22 December to 10 January.

2. An increased number and size of claims

- Parties should anticipate an increased number of claims being made once the amendments come into force.
- Parties should also be prepared for the claims made to be for larger amounts of money.

3. A greater variety of claims being made

- With the removal of the 'excluded amounts' regime, claimants will be able to make a wider variety of claims, including those related to latent conditions and time-related costs. Parties should therefore prepare for novel arguments to be made in Victoria in relation to such claims.

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