

# LG 'Hot' Matters



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## UPDATE

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Time to review your contract conditions, and contract administration, because the *Building and Construction Industry Security of Payment Act 2009* now operates.

Where the Council now contracts to be provided any "construction work" (broadly defined), expect that every progress claim / invoice will be marked as a "payment claim" to attract operation of the Act.

The Council then has 15 business days to formally respond to the payment claim.

If the Council misses that deadline and does not pay the full claim when due, on short notice **the contractor may down tools** – and then become entitled to its demobilisation costs + (in due course) re-mobilisation costs + blow out the date for practical completion. The contractor might also sue in the Courts for the debt, and / or refer the matter to a binding adjudication.

If the Council meets that deadline and its response (a "payment schedule") states the Council will pay all or some of the claim, but in fact the Council fails to pay that sum when due, again **the contractor might down tools**.

If the Council's response does not fully set out grounds for disputing the claim, on any adjudication the Council's arguments for not paying are limited to those that were set out.

And that's not all. If a head-contractor fails to properly adhere to the statutory procedure, **a sub-contractor / consultant / supplier might also down tools**, and in practice imperil the head-contractor's ability to meet the date for practical completion.

If you want to know more, and perhaps see the **special condition of contract** we drafted to address topics on which the Act gives some leeway, please contact Peter Watson, Senior Associate on 8235 3010 or at [peter.whatson@wallmans.com.au](mailto:peter.whatson@wallmans.com.au).

Wallmans Lawyers have run a number of in-house council training sessions on this topic (refer to flier attached). We have a number of councils booking training sessions in 2012 and it may be possible to amalgamate councils for cost effectiveness and to ensure minimum numbers. Should your council be interested please contact Peter Watson on the details above.

***Disclaimer: This newsletter is for information only, and should not be regarded as legal advice***

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