

Glossary

Construction Contracts Act 2004 (WA) (the ‘Act’)

The Construction Contracts Act 2004 (WA) (the ‘Act’) supports good payment practices in the building and construction industry and provides an effective rapid adjudication process for payment disputes under construction contracts.

The Act operates on the basis of payment claims and payment disputes under construction contracts. If a payment claim under a construction contract is rejected or wholly or partly disputed or not paid in full by the due date for payment, this triggers a payment dispute.

The party who submitted the payment claim may then seek to adjudicate the payment dispute under the Act.

Adjudication

The rapid adjudication process helps individual parties and the industry with cash flow issues. This process allows an experienced and independent adjudicator to review the claim, and where satisfied that some payment is due, make a binding determination to be paid.

Payment Claim

A payment claim means a claim made under a construction contract:

1. by the contractor to the principal for payment of an amount in relation to the performance by the contractor of its obligations under the contract; or
2. by the principal to the contractor for payment of an amount in relation to the performance or non-performance by the contractor of its obligations under the contract.

Payment Dispute

Under the Act, a payment dispute arises if:

1. a payment claim is rejected or wholly or partly disputed; or
2. by the time when the amount claimed in the payment claim is due to be paid under the contract, the amount has not been paid in full; or
3. in some other circumstances relating to retention of money or security.

Construction Contract

A construction contract means a contract or other agreement, whether in writing or not, under which a person (the contractor) has one or more of these obligations:

1. to carry out construction work;
2. to supply to the site where construction work is being carried out certain goods that are related to construction work;
3. to provide, on or off the site where construction work is being carried out, certain professional services that are related to the construction work; or
4. to provide, on the site where construction work is being carried out, certain on-site services that are related to the construction work.

Construction Work

The term "construction work" is broadly defined under the Act.

It captures a wide range of building and construction works **on a site in WA** and includes all the sorts of things one would normally think of as building and construction work (like building a house or a commercial property or infrastructure) and all the trades such as plumbing, piling, concrete works and so forth which contribute to the completion of the overall structure but it does **not** include exempt work.

It also includes certain on-site services, the supply to site of certain goods, plant and materials, and professional services associated with building and construction works on a site in WA.

It does **not** include construction or building work or on-site services performed on, goods supplied to or professional services associated with a site that is **not within WA**.

It also does **not** include exempt work, even if that work is performed on a site in WA, such as:

- (i) drilling for the purposes of discovering or extracting oil or natural gas, whether on land or not;
- (ii) constructing a shaft, pit or quarry, or drilling, for the purposes of discovering or extracting any mineral bearing or other substance (which includes salt and other naturally occurring substances);
- (iii) fabricating or assembling items of plant used for extracting or processing oil, natural gas or any derivative of natural gas, or any mineral bearing or other substance (which includes salt and other naturally occurring substances); or
- (iv) constructing the whole or part of any watercraft.

If you are in any doubt, call us on 9426 6611 and we can run through this with you.

Eligibility

You can use GPQ if:

- you have done work or had work done for you;
- you have a contract to do construction work in WA;
- you have submitted a claim for payment under the contract for contract work or varied work (or liquidated damages or defect rectification costs);
- your payment claim has been rejected, wholly or partly disputed or not paid in full by the time due for payment under the contract (this triggers a 'payment dispute' under the Act);
- you are within 90 business days of the date on which the payment dispute first arose; and
- no other Court, Arbitrator or Adjudicator has made a decision on your payment dispute.