



## Payment Schedules - Is Yours Up to Scratch?

In the recent decision of *Gisley Investments v. Williams & Jones*, the Supreme Court considered whether an informal letter denying a Payment Claim constituted a Payment Schedule under s. 18 of the *Building & Construction Industry Payments Act 2004* ("the Act").

Section 18 of the Act requires a Payment Schedule to have some specific elements in order to be valid, namely:

1. Identify the Payment Claim to which it is related;
2. State any amount which the recipient of the Payment Claim proposes to make in response to it; and
3. Importantly, if that amount is less than the amount claimed in the Payment Claim, it must state why it is less.

If these three criteria are satisfied, then the document will be a Payment Schedule. In *Boydon Pty Ltd. v. Phillip Davenport*, the Court reaffirmed formality, or lack of it, and aptness or awkwardness, will not matter.

In *Gisley Investments*, the letter was criticised for failing to comply with the requirements of Section 18, however, the Court found that the letter did comply. The Court ruled that when the email said "*whilst the job continues to remain unfinished final payment is not yet owed*", the court stated it was "*clearly enough a statement of the amount of any payment proposed to be made then, namely nothing and the expression of the Applicant's reason for that approach, namely that final payment was not then owed in context because the work was said to be unfinished*". Despite the relevant informality of the document, it was found to be a Payment Schedule.

The ruling illustrates that the Courts will allow some flexibility in what constitutes a Payment Schedule. However, it is better to avoid any need for dispute and a Payment Schedule should be clearly set out in compliance with the Act by meeting each of the three specific requirements.

An invalid payment schedule may result in a judgement for the payment claim against you, despite any potential claims in reply.

At **msl**, we regularly advise upon and represent parties in respect of claims and disputes under the *Building & Construction Industry Payments Act*. We recommend you [contact us](#) if you have any queries in respect of matters of this nature.



For assistance with all your commercial & property needs, email us at [info@msslawyers.com.au](mailto:info@msslawyers.com.au) or visit our website [www.msslawyers.com.au](http://www.msslawyers.com.au). Alternatively, contact our professional team at our Gold Coast or Brisbane office.

### Gold Coast Office

9 Ouyan Street  
Bundall QLD 4217  
PO Box 9073 GCMC QLD 9726  
T +61 7 5597 8888  
F +61 7 5597 8899

### Brisbane Office

Level 10, 410 Queen Street  
Brisbane QLD 4000  
PO Box 3246 Brisbane QLD 4001  
T +61 7 3229 6099  
F +61 7 3226 9001