

## Payment schedules: why they need to be *Spotless*

**Technical requirements for payment schedules can be a trap for the unwary, and errors by the paying party can cause it to have no choice but to pay even if it has a genuine reason to dispute the amount.**

### Paperwork with serious consequences

Under the Construction Contracts Act 2002 (the **Act**), if a **valid** payment schedule is not issued in response to a payment claim then:

- the claiming party may recover its claimed sum from the paying party as a debt due (ie the claiming party can serve a statutory demand); or
- suspend work until paid in full.

Courts have described this process as "sudden death". For principals and head contractors, this can have significant financial consequences and can leave them feeling hard done by if the sums are genuinely and credibly disputed.

### Devil in the detail

It is not enough to merely dispute a payment claim. The payment schedule must provide enough detail to indicate the basis of the paying party's calculations and the reasons for differences in amounts.

This was well illustrated in the High Court case of *The Fletcher Construction Company Limited v Spotless Facility Services (NZ) Limited*:

- Fletcher engaged Spotless as a subcontractor for Auckland's Commercial Bay project. Spotless issued a payment claim for around \$2 million, and Fletcher countered with a payment schedule disputing the payment and counter-claiming around \$6 million.

- Spotless claimed the calculations and reasoning behind the deductions weren't detailed enough. This meant that the payment schedule was not a 'valid' payment schedule, entitling Spotless to issue a notice to suspend the works.

Ruling in favour of Spotless, the Court held that Fletcher's payment schedule failed to meet the requirements under section 21(3) of the Act. This meant that Fletcher was required to pay the full amount of the payment claim, and Spotless was entitled to issue a notice of suspension if payment was not made.

### Tips for payment schedules

- Set out responses line-by-line against the payment claim, paying particular attention to higher value items.
- Provide details of any calculations for the deductions.
- Provide clear reasons for deductions:
  - if the reasons are set out in detail in correspondence, then refer to the specific correspondence. Phrases such as "*as discussed*" or "*as set out in notices*" are not enough, and neither is correspondence that fails to provide a detailed breakdown; and
  - "*under assessment*" is not enough.
- Reasons can be the same across subsequent payment schedules.

### Key takeaways

It's worth spending a little extra energy to get payment schedules right. Principals and head contractors should consider:

- having an experienced quantity surveyor or project manager prepare the payment schedules; and
- ensuring that the construction contract provides a payment schedule period that is long enough to allow a line-by-line response.

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**Payment schedules: why they need to be *Spotless***  
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Want to know more?

If you have any questions about payment claims process or managing disputes on projects, please contact [Anton Trixi](#) or [Steve O'Dea](#) from our specialist [Construction Team](#).

Other articles in the construction essentials series

- [The risks of attaching too many documents to a construction contract](#)

*Large construction contracts are a common source of complaint from principals and contractors alike, and with good reason: unintended risk allocations may lurk in that pile of paper.*