



# A guide on the Subcontractors' Charges Act 1974

A subcontractor's charge given under the *Subcontractors' Charges Act 1974* (the SCA) provides a way for subcontractors to secure payment of amounts owed to them under a contract by someone who is higher in the contractual chain. It also potentially catches security held under such a contract.

## If you are a subcontractor, how does the SCA work to help you secure money owed to you?

The following steps give you an indication of the process involved in securing money owed to you by way of a subcontractor's charge. It is provided for general information only and is not a substitute for legal advice. It is necessary to strictly comply with the requirements of the SCA for it to be effective and it is therefore recommended that you seek the assistance of a suitably experienced lawyer before proceeding.

### Step 1: Determine whether the SCA applies to your situation

Make sure:

- you are a 'subcontractor' as defined under the SCA.
- your contract is for 'work' as defined under the SCA.

- your claim for payment is in accordance with your subcontract.
- your claim is for payment for work done under your subcontract.
- that you will be able to prove your entitlement to your claim.

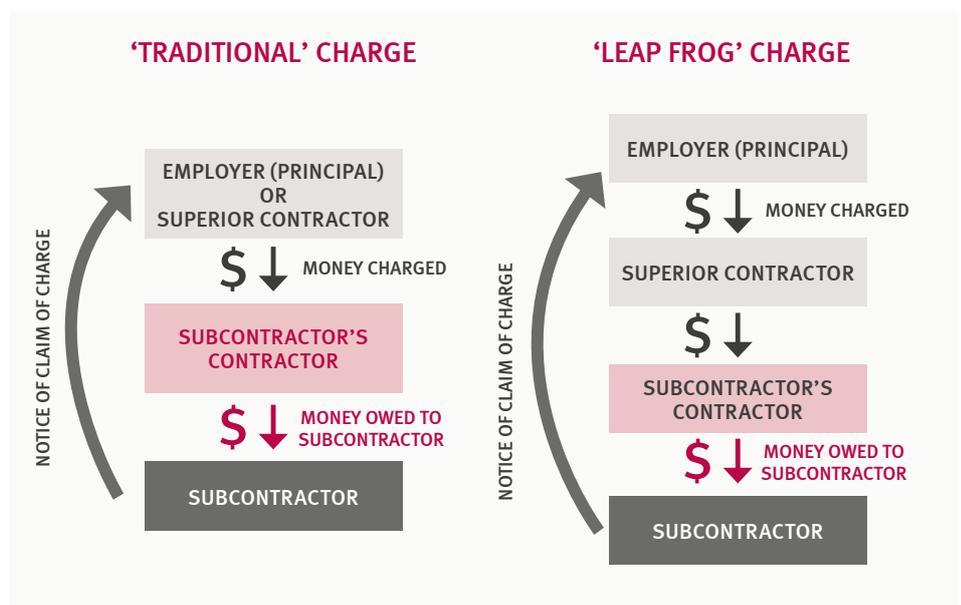
### Step 2: Give notice of your claim of charge

Use the forms available from the Queensland Building and Construction Commission (QBCC). Call 139 333 or go to [www.qbcc.qld.gov.au](http://www.qbcc.qld.gov.au).

- You can claim a charge on money payable to the contractor who owes you the money, or you can 'leap frog' up the contractual chain and claim a charge on money payable to a superior contractor, as shown in the below diagram.
- You can make a written request for certain information from the

contractor, or if necessary the superior contractor or principal, to enable you to complete your forms correctly.

- You can give a Notice of Claim of Charge even though the work is not completed or the time for payment hasn't arrived, but you MUST give it within the timeframes required by the SCA (i.e. within three months of completion, or if the claim of charge is for retention money only, within three months after the expiry of the defects liability period under the contract).
- Make sure you properly give your Notice of Claim of Charge to the superior contractor or principal, and to the contractor who owes you the money (or in the case of a 'leap frog' charge higher up the contractual chain, to the contractor to whom the money is payable).





### What happens next: Retaining money and the contractor's response

- Once you have properly given your Notice of Claim of Charge, the superior contractor or principal is required to retain money that is, or that becomes, payable by them to the contractor to satisfy the claim.
- Within 14 days after you have given your Notice of Claim of Charge to the contractor, the contractor is required to respond to the claim by giving to the superior contractor or principal and to you a notice about whether the contractor accepts or disputes liability of your claim, in whole or part.
- It is possible at this time that, if the contractor accepts liability for your claim, the superior contractor or principal may be able to make payment of money that is otherwise payable to the contractor directly to you. However, this will only occur in circumstances where there is still sufficient money retained out of money otherwise payable to the contractor to satisfy all claims of charge from all subcontractors.
- The superior contractor or principal may pay the money that it has retained into court.

### Step 3: Commence proceedings to enforce the claim of charge

You must commence court proceedings to enforce your charge within the timeframes required by the SCA (i.e. within one month of the Notice of Claim of Charge, unless it is a claim of charge

in respect of your retention money, in which case within four months after the retention money becomes payable).

A subcontractor (including one who misses the timeframe for commencing court proceedings to enforce their charge) might be able to 'piggyback' on proceedings commenced by another subcontractor.

Situation/scenario	Explanation
There is no money to be secured and no security	Only money that is payable to the contractor or security held under the relevant contract can be secured. Where there is no money payable and no available security, a subcontractor won't have secured payment of the amounts owed to them, even though they have properly completed all steps required under the SCA.
There is not enough money secured to satisfy the charges of all subcontractors	If this is the case, the secured money will be shared between the subcontractors in proportion to their claims.
Caught on a technicality	The SCA is very technical and minor errors can result in a claim of charge being invalid. Assistance from a suitably experienced lawyer is recommended.
Strict time limits	The time limits in the SCA are strict, so do not delay in taking the necessary steps if you decide to claim a charge under the SCA, otherwise it may be too late.
SCA versus other options to secure payment	Giving a claim of charge under the SCA is an alternative to using the process under the <i>Building and Construction Industry Payments Act 2004</i> (BCIPA) to secure payment. You should decide which approach is better suited to your circumstances and assistance from a suitably experienced lawyer may be of value in helping you to make that decision.

## More information

Contact the Queensland Building and Construction Commission (QBCC) on 139 333 or visit [www.qbcc.qld.gov.au](http://www.qbcc.qld.gov.au)