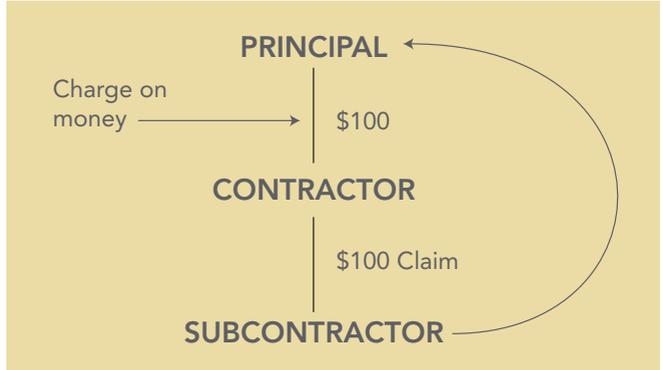


Subcontractors' Charges Act 1974

The Subcontractors' Charges Act 1974 (Qld) (the Act) is designed to help a Subcontractor ensure he or she gets paid. It enables a Subcontractor to lodge a charge over money owed to a contractor higher up in the chain by following the procedures set out in the Act, as shown in the diagram opposite:



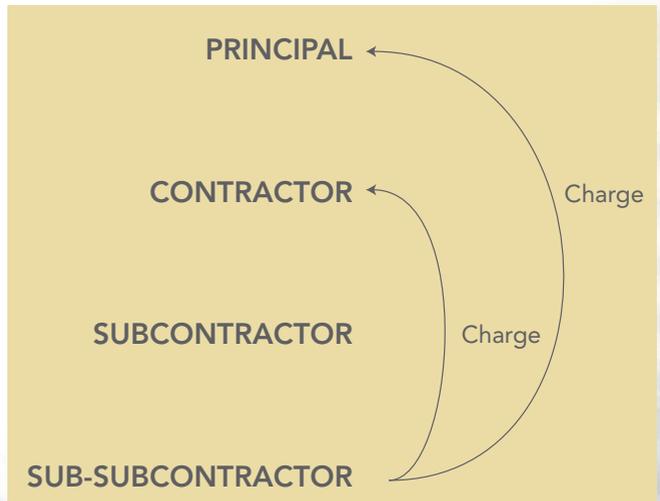
Once a charge is properly made, it freezes the Principal's right to pay the amount to the Contractor until the Subcontractor has had an opportunity to litigate its claim with the Contractor. The charge can attach to money or retention amounts. Often Subcontractors will lodge a charge without knowing whether there are in fact any monies owing to the Contractor.

The Act applies to:

- work or labour in relation to construction of a building or structure,
- the manufacture of project specific components, and
- the supply of labour.

It does not apply to the supply of goods, employment arrangements or basic equipment hire arrangements.

The charge can apply to any link in the contractual chain. So for example, a Sub-subcontractor can charge monies owing by both the Principal to the Contractor and by the Contractor to a Subcontractor. This is demonstrated in the diagram opposite:



To lodge a charge, formal notice in the approved form must be given to both the Principal and the Contractor and time limits apply. A notice of claim of charge must be made within 3 months of work having been completed or within 3 months after the expiration of the defects liability period for claims of retention monies only. Once a charge is lodged, the Subcontractor must bring action to enforce the charge:

- a) Within one month after notice of the charge for money generally or security, or
- b) four months after retention monies are due (where the notice of charge is against retention monies only),

and no later or the charge is extinguished.

If a Principal pays money to a Contractor while there is a valid subcontractors charge on the money, the Principal can be held personally liable to the Subcontractor for the monies that were subject of the charge.

One issue that is sometimes overlooked is that if a Subcontractor elects to utilise the procedure set out in the *Subcontractors' Charges Act 1974*, they cannot begin an adjudication process under the *Building and Construction Industry Payments Act 2004* (BCIPA). They need to make a choice.

However, if a Subcontractor is not satisfied at the end of the adjudication process under the BCIPA, they may lodge a notice of claim of charge and secure any outstanding money.

Often, if a Contractor is about to go broke, it is better to utilise the procedures in the *Subcontractors' Charges Act 1974* and then institute proceedings in court. The last thing a Subcontractor wants is for the Contractor to receive money from the Principal and then go bankrupt or be placed into liquidation.

The issuing of the subcontractor's charge will prevent the funds ending up in the hands of the liquidator where it is likely that a Subcontractor will receive very little (if anything) from the liquidation. If however the Contractor is solvent and the Subcontractor simply wants to speed up the payment process, then the BCIPA procedure is probably the better option

It is important to seek legal advice as there are a number of complex issues which the Subcontractor must be aware of when issuing a charge under the Act.

This information sheet is provided for general information only and does not constitute legal advice. For advice on your circumstances please contact us on 5443 1566

