

## ***Alan Conolly & Co v Commercial Indemnity [2005] NSWSC 339 (29 April 2005) : Palmer J***

*Citing Brodyn Pty Ltd t/as Time Cost and Quality v Davenport & Anor [2004] NSWCA 394 regarding the validity of an adjudicator's determination.*

At para [21]: “The prohibition which is contained in s 13 (5) of the Act is against serving "more than one payment claim in respect of each reference date". Are three documents, each of which complies with the requirements of the Act, served practically at the same time one payment claim, or are they three payment claims? I should consider the mischief that the Act is seeking to avoid in this provision. Plainly, responding to a payment claim imposes burdens of time and effort in its response. The provisions of the Act have clearly specified how often such a claim could be made. Monthly claims in cases of contracts which do not have their own provisions are clearly what is permitted.”

At para [22]: “In this case the person receiving the payment claim would be immediately aware, on receipt of all documents, that the contractor was claiming the total of the amount shown in the documents. All were received on the same day and plainly refer to the period up to 31 January 2005. All documents were in respect of progress claims which on their face covered three separate items of building work. The first related to three variations, the second to what are traditionally referred to as progress claims and the third to a claim for after hours labour costs.”

At para [23]: “Turning to the language, and having regard to the description of the different types of work, it seems to me that the three documents constituted one payment claim as it is clear to the recipient what was being claimed...”

**[To read the judgment, please click here](#)**