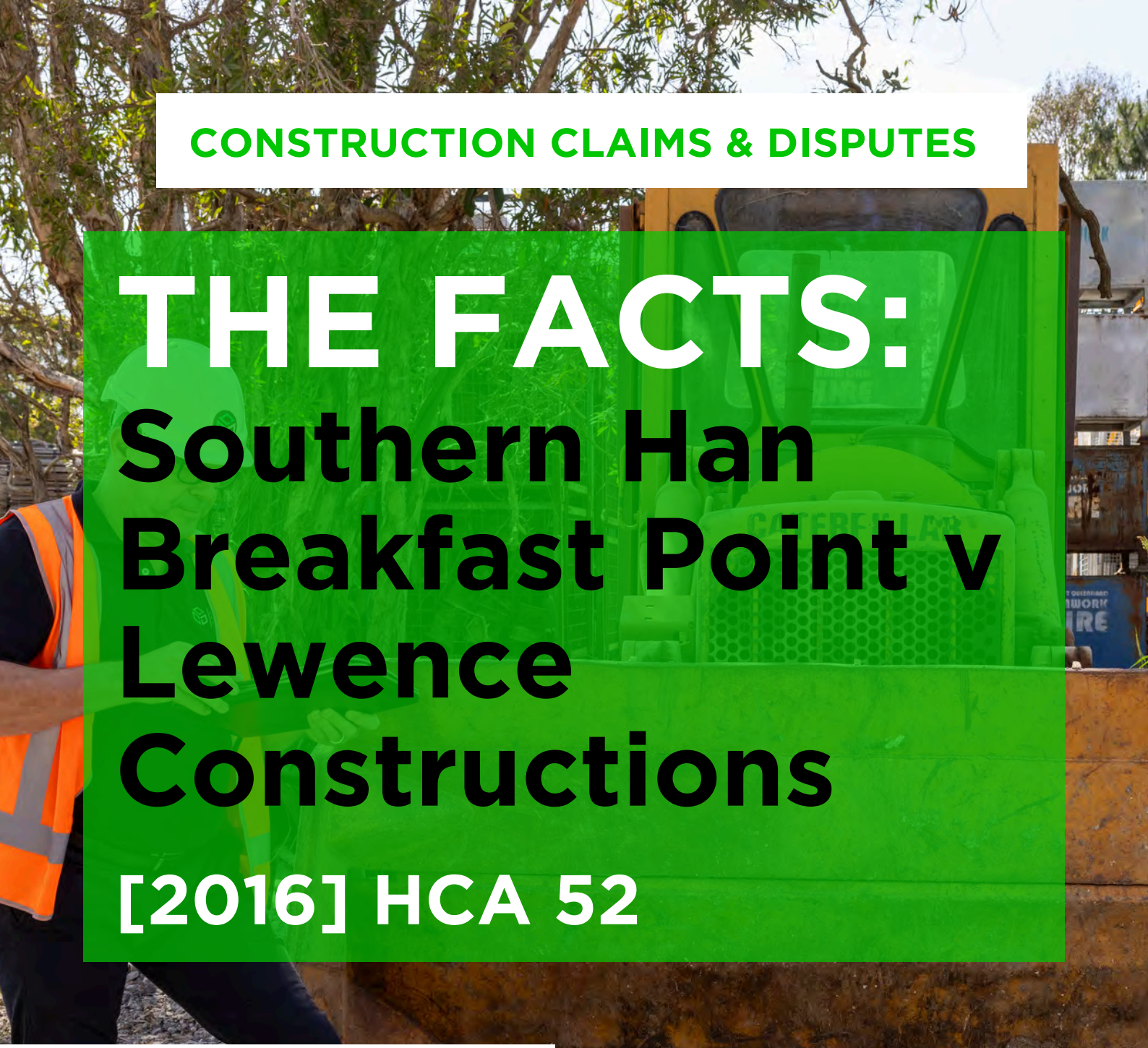


CONSTRUCTION CLAIMS & DISPUTES

THE FACTS:

Southern Han Breakfast Point v Lewence Constructions

[2016] HCA 52

A SUMMARY OF THE CASE THAT STOPS BUILDERS BULLYING SUBBIES WITH FAKE DEADLINES OR LATE CLAIM EXCUSES



FACT SHEET

Why builders can't bully subbies with fake deadlines

The High Court case that explains EXACTLY when you can make a payment claim

What was this case about?

A developer and a builder had a fight over whether a payment claim was valid when the developer said:
"There was no reference date — so you can't make a claim."
The whole punch-up ended up in the High Court, which had to answer one big question:
When does a builder or a subcontractor actually get the right to make a payment claim?

What was the problem?

The developer argued:

- There was no reference date,
- Therefore the builder had no entitlement to make a claim,
- Therefore the payment claim was invalid.



FACT SHEET

Why builders can't bully subbies with fake deadlines

The builder argued:

- "Doesn't matter — we can claim anyway"

The High Court said:

- "No reference date = no right to claim."

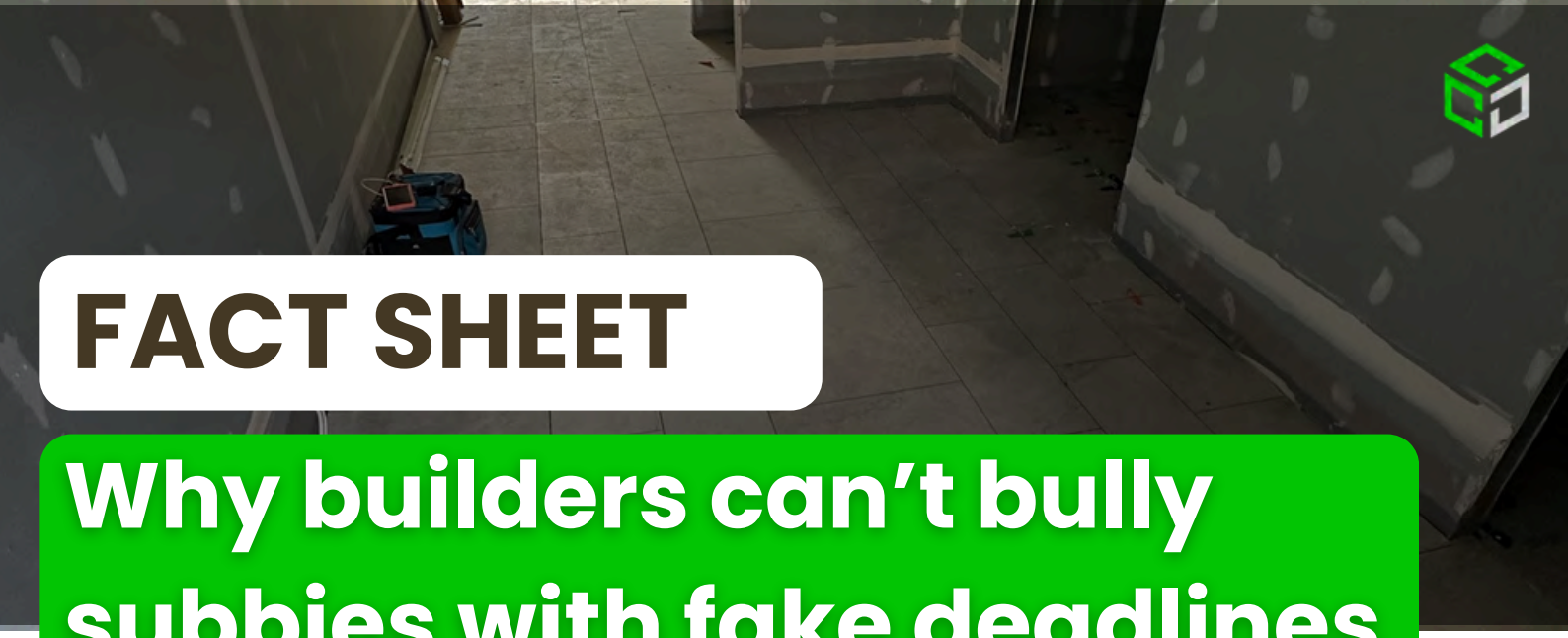
This set the foundation for the rule subbies MUST understand:

Your right to claim arises ON and FROM the reference date — never before it, never without it.

What the Court decided

The 5 justices of the High Court ruled:

- A reference date **MUST** exist before a valid payment claim can be made.
- If there's no reference date → you have **no statutory right** to claim.
- You can make a claim **ON** the reference date **OR ANY TIME AFTER** it, until the next one comes around.
- You **CANNOT** make a claim before the reference date.
- An early claim is invalid, even if the contract tries to allow it.



FACT SHEET

Why builders can't bully subbies with fake deadlines

- Termination stops new reference dates — that's now **old law.**

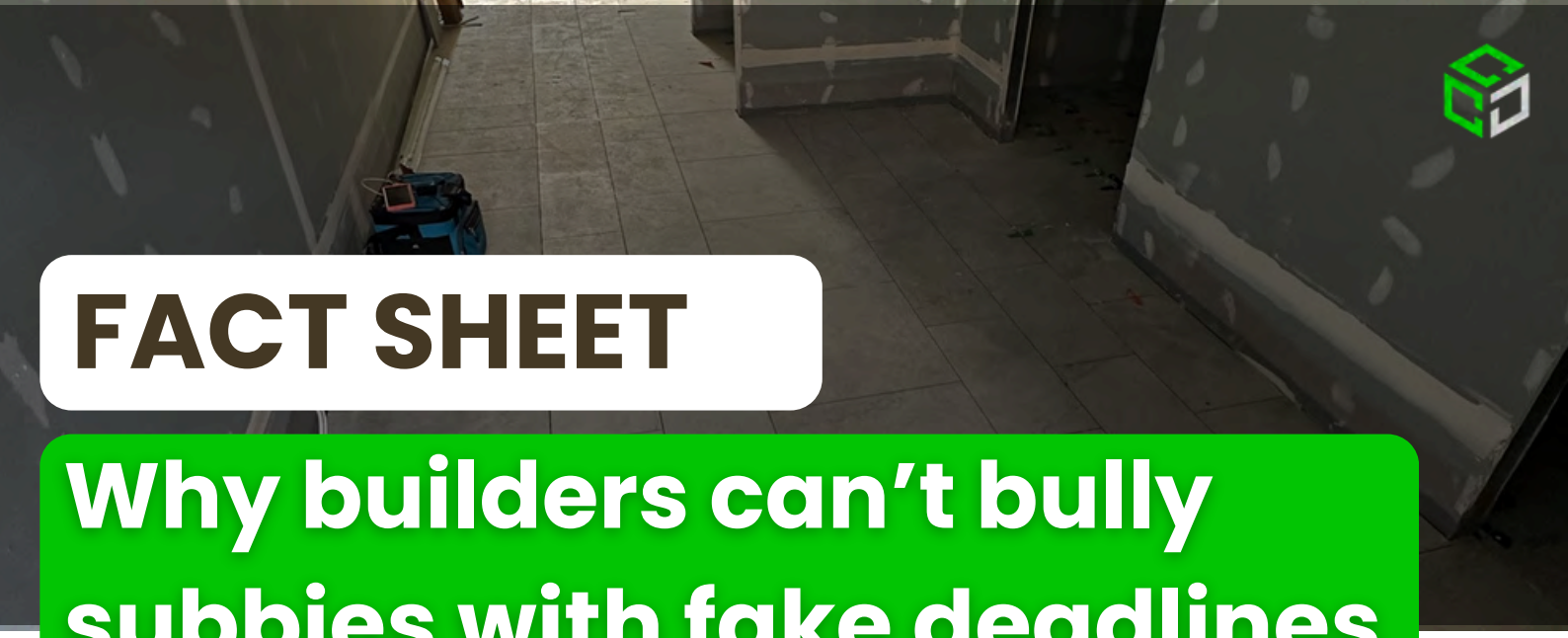
  (QLD BIFA now gives you one final reference date after termination, but the "on and from" rule remains exactly the same.)

In simple terms

- Your right to claim **starts on the reference date**.
- You can make your claim **on the date OR after it** — not just on the exact day the builder demands.
- A payment claim delivered **too early is INVALID**.
- If the contract doesn't state a date → your reference date defaults to the **last day of the month.**

One Exception - in Victoria!!

- Victoria changed its Act on 15 April 2026.
- The earliest day you can claim is the last day of the month you did the work in.
- And if you go early in Victoria, your claim is not dead. Section 14A(5) treats it as served on that earliest day instead.



FACT SHEET

Why builders can’t bully subbies with fake deadlines

- That is not a free kick. You are not paid any sooner, and the builder's clock to answer you does not start until that day either.
- Queensland and New South Wales have no rule like it. **Early is still fatal**.
- So the rule does not change. On or after, never before.

The reference date doesn’t limit you — it EMPOWERS you.

It tells you when your right begins, not when it ends.

What this means for subbies

- Builders can’t force you to claim on a specific date.
- Your claim is valid **anywhere** **between one reference date and the day before the next**.



FACT SHEET

Why builders can't bully subbies with fake deadlines

- If your contract is silent, your reference date is the **last day of the month.**
- If you lodge early, the builder can ignore it — legally.
- If a builder refuses to assess your claim because you "missed the date", they're bluffing.
- The law gives you flexibility. Builders cannot take that away.

Quick example

Reference date: 25th of each month

This month: the 25th falls on a Saturday

A subbie thinks they're being organised and sends the claim on **Friday the 24th.**

What happens?

✗ **Invalid**. Too early. **No** entitlement yet.

Correct move?

✓ Lodge the claim on Monday the 27th (next business day).



FACT SHEET

Why builders can't bully subbies with fake deadlines

Bottom Line

- "You only get your right to make a payment claim **ON and FROM** the reference date — never before" — High Court of Australia
- The entire payment claim process hinges on **ONE** thing:

  ? Did the reference date arrive?

  If yes ✓ your claim is **alive**.

  If no ✗ your claim is **dead**.
- Builders can't rewrite this rule.
- Contracts can't override it.
- Emails can't change it.
- It's locked in by the highest court in the country.
- One exception - Victoria changed its Act on 15 April 2026 and now saves an early claim instead of killing it. Everywhere else, early is still dead.

Suffer from insomnia? - read the full judgement

If you're really keen to hear exactly what the Justices had to say, or you just want something to put you to sleep tonight, you can read the full judgement here.



Need Help Getting Your Payment Sorted?

If your builder's pulling this stunt with you, reach out and I'll show you exactly how to get your cash released — fast, legal, and without the sleepless nights.



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