



**AUSTRALIA AND NEW ZEALAND**

**CONSTRUCTION INDUSTRY  
SECURITY OF PAYMENTS LEGISLATION  
FREQUENTLY ASKED QUESTIONS**



**ALFA**<sup>®</sup>INTERNATIONAL<sup>SM</sup>  
THE GLOBAL LEGAL NETWORK

**ALFA International – Construction Industry Security of Payments Legislation  
Frequently Asked Questions Compendium  
INTRODUCTION**

The Australasian member firms of ALFA International are pleased to present this compendium of security of payment legislation across the region and trust that it will be a useful guide for those working in the construction industry.

ALFA International, the Global Legal Network, was founded in 1980 and is one of the largest legal networks in the world. It has over 140 independent law firms as members and provides a full international law capability without compromising the independence of its members. ALFA International members offer high quality, timely, seamless, innovative and cost-effective legal services around Australasia and around the world.

Just as our businesses take us interstate and overseas, our clients in the construction industry are taking opportunities to broaden their client bases and expand their businesses. With security of payment legislation now in place around Australasia, everyone involved in the construction industry has to deal with this legislation from time to time. Unfortunately for those in the industry, the various governments have decided to introduce their own legislation rather than trying to agree on a series of uniform Acts and this often causes difficulty and confusion for those moving into new jurisdictions. The problems which our clients have experienced in adapting their practices from jurisdiction to jurisdiction led the Australasian member firms of ALFA International to create this compendium - in the hope that it might make life easier for those who have to deal regularly with this legislation.

Many people from the ALFA International member firms in Australasia contributed to this work and I thank them all for their contributions. Particular thanks go to Peter Macnish and Katherine Payne at Cornwall Stodart, who did the hard work of putting all this material together.

We hope that readers of this work find it useful and would certainly appreciate feedback and suggestions for future editions.

**Alistair Little**  
**Partner, TressCox Lawyers, Sydney**  
**Chairman**  
**ALFA International Australasian Management Committee**



## Australia and New Zealand ALFA International Firms

### Adelaide

Cowell Clarke  
Level 5, 63 Pirie Street  
Adelaide SA 5000  
Contact: Jamie Watts  
Tel: +61 8 8228 1111  
Email:  
[jwatts@cowellclarke.com.au](mailto:jwatts@cowellclarke.com.au)



### Brisbane

TressCox Lawyers  
Level 40, Central Plaza 1  
345 Queen Street  
Brisbane QLD 4000  
Contact: Leo Hopsick  
Tel: +61 7 3004 3500  
Email:  
[leo\\_hopsick@tresscox.com.au](mailto:leo_hopsick@tresscox.com.au)



### Canberra

Meyer Vandenberg Lawyers  
Level 3, 1 Farrell Place  
Canberra City ACT 2601  
Contact: Hugh Chalmers  
Tel: +61 2 6279 4444  
Email:  
[hugh.chalmers@meyervandenberg.com.au](mailto:hugh.chalmers@meyervandenberg.com.au)



### Melbourne

Cornwall Stodart  
Level 10, 114 William Street  
Melbourne VIC 3000  
Contact: Peter Macnish  
Tel: +61 3 9608 2000  
Email:  
[p.macnish@cornwalls.com.au](mailto:p.macnish@cornwalls.com.au)



### Perth

Talbot Olivier Lawyers  
Level 8, 40 The Esplanade  
Perth WA 6000  
Contact: Brendan Taylor  
Tel: +61 8 9420 7100  
Email:  
[btaylor@talbotolivier.com.au](mailto:btaylor@talbotolivier.com.au)



### Sydney

TressCox Lawyers  
Level 20, 135 King Street  
Sydney NSW 2000  
Contact: Alistair Little  
Tel: +61 2 9228 9200  
Email:  
[alistair\\_little@tresscox.com.au](mailto:alistair_little@tresscox.com.au)



### New Zealand

Anthony Harper Lawyers  
Level 5,  
Anthony Harper Building  
47 Cathedral Square  
Christchurch 8011  
Contact: Hamish Grant  
Tel: +64 3 379 0920  
Email:  
[hamish.grant@ah.co.nz](mailto:hamish.grant@ah.co.nz)

A handwritten signature in green ink that reads "Anthony Harper".

AUSTRALIAN CONSTRUCTION INDUSTRY  
SECURITY OF PAYMENTS LEGISLATION

**FREQUENTLY ASKED QUESTIONS**

**TABLE OF CONTENTS**

1.	Application of the Act	4
1.1.	What is the applicable legislation in each state and territory?	4
1.2.	What construction contracts does the Act apply to?	4
1.3.	What construction contracts are not subject to the application of the Act?	4
1.4.	Who can make payment claims under the Act?	6
1.5.	What can payment claims be made for?	7
1.6.	Does the Act preclude 'contracting out' and if so, to what extent?	18
1.7.	What is the effect of a 'pay when paid' provision in a construction contract?	19
2.	Payment claims	20
2.1.	When is a progress payment due?	20
2.2.	What interest is payable on unpaid progress payments?	21
2.3.	When is a contractor entitled to a progress payment under the Act?	22
2.4.	What is the definition of a reference date?	22
2.5.	What amount is the contractor entitled to for each progress payment?	23
2.6.	Can a claimant serve more than one payment claim for each reference date?	24
2.7.	What must a payment claim do?	24
2.8.	How must documents be served under the Act?	25
2.9.	When can a contractor suspend work for non-payment?	27
3.	Payment schedules	29
3.1.	What are the requirements for a valid payment schedule?	29
3.2.	How must a payment schedule be served?	29
4.	Timeframes	30
4.1.	When is the reference date for the purposes of making a payment claim?	30
4.2.	What is the deadline for making a payment claim?	30
4.3.	What is the time limit for issuing a payment schedule?	31
4.4.	What is the timeframe for making an adjudication application?	31
4.5.	What is the time limit for filing an adjudication response?	34

4.6.	What is the timeframe in which the adjudicator must determine the dispute?	35
4.7.	When must the adjudicator make a determination by?	36
4.8.	How long does the respondent have to pay the adjudicated amount?	37
5.	Dispute resolution/adjudication/enforcement	38
5.1.	What are the options if no payment schedule is served in response to a payment claim and no payment (or an amount less than full payment) is received for the payment claim or the amount is not paid in accordance with the scheduled amount under the payment schedule?	38
5.2.	What are the requirements of a valid adjudication application?	39
5.3.	What must an 'adjudication response' do?	39
5.4.	What options are available for enforcement of an adjudication certificate?	40
5.5.	What are the options for reviewing an adjudicator's decision?	41
	<a href="#">NEW ZEALAND LEGISLATION</a>	<a href="#">45</a>

1. Application of the Act

1.1. What is the applicable legislation in each state and territory?

<b>State/ territory</b>	<b>Act</b>
<b>ACT</b>	<i>Building and Construction Industry (Security of Payment) Act 2009</i>
<b>NSW</b>	<i>Building and Construction Industry Security of Payment Act 1999</i>
<b>QLD</b>	<i>Building and Construction Industry Payments Act 2004</i>
<b>VIC</b>	<i>Building and Construction Industry Security of Payment Act 2002</i>
<b>WA</b>	<i>Construction Contracts Act 2004</i>
<b>TAS</b>	<i>Building and Construction Industry Security of Payment Act 2009</i>
<b>NT</b>	<i>Construction Contracts (Security of Payments) Act</i>
<b>SA</b>	<i>Building and Construction Industry Security of Payment Act 2009</i>

1.2. What construction contracts does the Act apply to?

<b>State/ territory</b>	<b>Section</b>	<b>Position</b>
<b>All</b>	ACT s 9(1) NSW s 4 and 7(1) QLD s 3(1) VIC s 7(1) TAS s 7(1) SA s 7(1) WA s 7(1) NT s 9(2)	A construction contract or other arrangement under which one party undertakes to carry out 'construction work' or to supply 'related goods and services', whether written or oral, whether partly written or partly oral and whether or not expressed as being governed by the law of another jurisdiction.

1.3. What construction contracts are not subject to the application of the Act?

<b>State/ territory</b>	<b>Section</b>	<b>Position</b>
<b>All states and territories except WA and NT</b>	ACT s 9 NSW s 7 QLD s 3 VIC s 7 TAS s 7 SA s 7	<p>A construction contract:</p> <ol style="list-style-type: none"> <li>1. that forms part of a loan agreement, contract of guarantee or contract of insurance in which a recognised financial institution undertakes to:               <ol style="list-style-type: none"> <li>(a) lend money or repay money lent;</li> <li>(b) guarantee payment of money owing or repayment of money lent; or</li> <li>(c) provide an indemnity with respect to the construction work or related goods and services (not included in Tasmanian Act) under the construction contract;</li> </ol> </li> <li>2. for residential building work if a resident owner is party to</li> </ol>

State/ territory	Section	Position
		<p>the contract, to the extent that the contract relates to work where the owner intends to live;</p> <p>3. for the carrying out of 'residential building work' (as defined in the Home Building Act 1989 (NSW)) on such part of premises as the party for whom the work is carried out resides or proposes to reside (NSW);</p> <p>4. where the consideration for the works is to be calculated other than by reference to the value of the works or goods and services;</p> <p>5. to the extent to which it contains provisions:</p> <p>(a) whereby a party will carry out 'construction work' or supply 'related goods and services' as an employee of the other party;</p> <p>(b) whereby a party undertakes to carry out construction works or supply related goods and services as a condition of a loan agreement;</p> <p>(c) under which a party undertakes:</p> <p>i. to lend money or repay money lent;</p> <p>ii. to guarantee payment of money owing or repayment of money lent;</p> <p>iii. to provide an indemnity with respect to the construction work carried out or related goods and services provided;</p> <p>6. for work or goods or services outside of the state;</p> <p>7. prescribed by regulation.</p> <p><u>Notes:</u></p> <ul style="list-style-type: none"> <li>• The Tasmanian Act also applies to the supply by a person in the state of building and construction related goods or services, even where the building project is outside of the state (s 7(3)). It does not contain the above stipulation with respect to residential building projects.</li> <li>• The Victorian Act stipulates that the Act does not apply to: <ul style="list-style-type: none"> <li>- a construction contract which is a domestic building contract in accordance with the <i>Domestic Building Contracts Act 1995</i> (VIC) between a builder and builder owner for the carrying out of domestic building work other than a contract where the building owner is in the business of building residences and the contract is entered into in the course of or in connection with that business;</li> <li>- a construction contract for the type of work specified in s 6 of the <i>Domestic Building Contracts Act 1995</i> (VIC) unless:</li> </ul> </li> </ul>

State/ territory	Section	Position
		<ul style="list-style-type: none"> <li>➤ the person carrying out the work is in the business of building residences; or</li> <li>➤ the work is incidental to another construction contract.</li> </ul> <ul style="list-style-type: none"> <li>• The SA Act stipulates that it does not apply to a construction contract to the extent that it deals with goods and services supplied for works carried out outside the state.</li> <li>• The ACT Act does not bind the Crown in right of the Commonwealth, meaning that head contractors cannot make payment claims against the Commonwealth.</li> </ul>
<b>WA/NT</b>	WA s 7 NT s 9	The Act does not apply to a construction contract where: <ol style="list-style-type: none"> <li>1. a party is bound to carry out construction works or supply goods or services as an employee of the person for whom the works are to be supplied;</li> <li>2. it is a contract or class of contracts prescribed by regulations to which this Act does not apply.</li> </ol>

#### 1.4. Who can make payment claims under the Act?

State/territory	Section	Position
<b>All states and territories except WA and NT</b>	ACT s 15(1)/10(1) NSW s 13(1)/8(1) QLD s 17(1)/12 VIC s 14(1)/9(1) SA s 13(1)/8 TAS s 17(1)/12(1)	A person who is or claims to be entitled to a progress payment and who has undertaken to carry out construction work or is supplying related goods and services under a construction contract.
<b>WA and NT</b>	WA s 3 NT s 5(1)	<p>The contractor, being a person who under a construction contract has one or more of the following obligations:</p> <ol style="list-style-type: none"> <li>1. to carry out construction work;</li> <li>2. to supply to the site where construction work is being carried out any goods related to the construction work (WA: by virtue of s 5(1));</li> <li>3. to provide, on or off the site where construction work is being carried out, professional services that are related to the construction work (WA: by virtue of section 5(2)); or</li> <li>4. to provide, on the site where construction work is being carried out, on-site services that are related to the construction work (WA: by virtue of section 5(3)(b)).</li> </ol> <p>The principal can make a payment claim to the</p>

State/territory	Section	Position
		contractor for payment of an amount in relation to the non performance by the contractor of its obligations under the contract (WA: s 3).

1.5. What can payment claims be made for?

State/territory	Section	Position
ACT	ACT s 10	<p>On and from each <u>reference date</u> under a construction contract, a person is entitled to a payment (a <b>progress payment</b>) if the person has undertaken, under the contract, to:</p> <ul style="list-style-type: none"> <li>(i) carry out <u>construction work</u>; or</li> <li>(ii) supply <u>related goods and services</u>.</li> </ul> <p><b>Construction work meaning:</b>  'Construction work' includes:</p> <ol style="list-style-type: none"> <li>1. the construction, alteration, repair, restoration, maintenance, extension, demolition or dismantling of buildings or structures, whether permanent or not, forming, or to form, part of land;</li> <li>2. the construction, alteration, repair, restoration, maintenance, extension, demolition or dismantling of any works forming, or to form, part of land, including walls, roadworks, powerlines, telecommunication apparatus, aircraft runways, docks and harbours, railways, inland waterways, pipelines, reservoirs, water mains, wells, sewers, industrial plant and installations for purposes of land drainage or coast protection;</li> <li>3. the installation in any building, structure or works of fittings forming, or to form, part of land, including heating, lighting, air-conditioning, ventilation, power supply, drainage, sanitation, water supply, fire protection, security and communications systems; and</li> <li>4. the external or internal cleaning of buildings, structures and works, so far as it is carried out in the course of their construction, alteration, repair, restoration, maintenance or extension.</li> </ol> <p><b>Meaning of related goods or services:</b>  Includes goods of the following kind:</p> <ol style="list-style-type: none"> <li>1. materials and components to form part of any building, structure or work arising from <u>construction work</u>;</li> <li>2. plant or materials (whether supplied by sale, hire or otherwise) for use in connection with carrying out construction work; and</li> </ol>



State/territory	Section	Position
		<p>(b) the laying of foundations;</p> <p>(c) the erection, maintenance or dismantling of scaffolding;</p> <p>(d) the prefabrication of components to form part of any building, structure or works, whether carried out on-site or off-site;</p> <p>(e) site restoration, landscaping and the provision of roadways and other access works; and</p> <p>(f) the painting or decorating of the internal or external surfaces of any building, structure or works.</p> <p><b>Meaning of related goods and services:</b></p> <p>Goods of the following kind:</p> <ol style="list-style-type: none"> <li>1. materials and components to form part of any building, structure or work arising from construction work;</li> <li>2. plant or materials (whether supplied by sale, hire or otherwise) for use in connection with the carrying out of construction work,</li> </ol> <p>Services of the following kind:</p> <ol style="list-style-type: none"> <li>1. the provision of labour to carry out construction work;</li> <li>2. architectural, design, surveying or quantity surveying services in relation to construction work;</li> <li>3. building, engineering, interior or exterior decoration or landscape advisory services in relation to construction work.</li> </ol> <p>Note that a reference to 'related goods <b>and</b> services' in the Act also includes a reference to 'related goods <b>or</b> services'. This approach has also been taken in this document.</p>
NT	NT s 5, s 6	<p>A payment claim can be issued for one or more of the following:</p> <ol style="list-style-type: none"> <li>1. to carry out construction work;</li> <li>2. to supply to the site where construction work is being carried out any goods that are related to construction work;</li> <li>3. to provide, on or off the site where construction work is being carried out, professional services that are related to the construction work;</li> <li>4. to provide, on the site where construction work is being carried out, on-site services that are related to the construction work.</li> </ol> <p><b>Meaning of construction work:</b></p> <p>Goods are related to construction work if they are:</p> <ol style="list-style-type: none"> <li>1. materials or components (whether or not</li> </ol>

State/territory	Section	Position
		<p>prefabricated) that will form part of anything mentioned in section 6(1)(b) or (c) or of any fittings mentioned in section 6(1)(d); or</p> <ol style="list-style-type: none"> <li>2. any fittings mentioned in section 6(1)(d) (whether or not prefabricated); or</li> <li>3. plant or materials (whether supplied by sale, hire or otherwise) for use in connection with the carrying out of the construction work at the site of the construction work.</li> </ol> <p><b>Meaning of professional services:</b></p> <ol style="list-style-type: none"> <li>1. services that are provided by a profession and that relate directly to construction work or to assessing its feasibility (whether or not it proceeds), including surveying, planning, costing, testing, architectural, design, plan drafting, engineering, quantity surveying and project management services, but not including accounting, financial or legal services; or</li> <li>2. services that are provided by a profession that are prescribed by the Regulations to be professional services related to construction work for this Act.</li> </ol> <p><b>Meaning of services (other than professional services):</b> services that relate directly to construction work, including providing labour to carry out construction work.</p>
QLD	QLD s 10, 11 & 12	<p>From each reference date under a construction contract, a person is entitled to a progress payment if the person has undertaken to carry out construction work, or supply related goods and services, under the contract.</p> <p><b>Meaning of construction work:</b></p> <ol style="list-style-type: none"> <li>1. the construction, alteration, repair, restoration, maintenance, extension, demolition or dismantling of buildings or structures, whether permanent or not, forming, or to form, part of land;</li> <li>2. the construction, alteration, repair, restoration, maintenance, extension, demolition or dismantling of any works forming, or to form, part of land, including walls, roadworks, powerlines, telecommunication apparatus, aircraft runways, docks and harbours, railways, inland waterways, pipelines, reservoirs, water mains, wells, sewers, industrial plant and installations for land drainage or coast protection;</li> <li>3. the installation in any building, structure or works of fittings forming, or to form, part of land, including heating, lighting, airconditioning, ventilation, power supply, drainage, sanitation, water supply, fire</li> </ol>

State/territory	Section	Position
		<p>protection, security and communications systems;</p> <p>4. the external or internal cleaning of buildings, structures and works, so far as it is carried out in the course of their construction, alteration, repair, restoration, maintenance or extension;</p> <p>5. any operation that forms an integral part of, or is preparatory to or is for completing, work of the kind referred to in paragraph 1, 2 or 3, including:</p> <ul style="list-style-type: none"> <li>(a) site clearance, earthmoving, excavation, tunnelling and boring;</li> <li>(b) the laying of foundations;</li> <li>(c) the erection, maintenance or dismantling of scaffolding;</li> <li>(d) the prefabrication of components to form part of any building, structure or works, whether carried out on-site or off-site;</li> <li>(e) site restoration, landscaping and the provision of roadways and other access works;</li> <li>(f) the painting or decorating of the internal or external surfaces of any building, structure or works; and</li> <li>(g) carrying out the testing of soils and road making materials during the construction and maintenance of roads.</li> </ul> <p><b>Meaning of related goods and services:</b></p> <p>Goods of the following kind:</p> <ul style="list-style-type: none"> <li>1. materials and components to form part of any building, structure or work arising from construction work;</li> <li>2. plant or materials (whether supplied by sale, hire or otherwise) for use in connection with the carrying out of construction work;</li> </ul> <p>Services of the following kind:</p> <ul style="list-style-type: none"> <li>1. the provision of labour to carry out construction work;</li> <li>2. architectural, design, surveying or quantity surveying services relating to construction work;</li> <li>3. building, engineering, interior or exterior decoration or landscape advisory services relating to construction work;</li> <li>4. soil testing services relating to construction work.</li> </ul>
<b>SA</b>	SA s 5, 6 & 8	<p>On and from each reference date under a construction contract, a person:</p> <ul style="list-style-type: none"> <li>1. who has undertaken to carry out <u>construction work</u> under the contract; or</li> </ul>

State/territory	Section	Position
		<p>2. who has undertaken to supply <u>related goods and services</u> under the contract, is entitled to a progress payment.</p> <p><b>Meaning of construction work:</b></p> <p>1 the construction, alteration, repair, restoration, maintenance, extension, demolition or dismantling of buildings or structures forming, or to form, part of land (whether permanent or not);</p> <p>2. the construction, alteration, repair, restoration, maintenance, extension, demolition or dismantling of works forming, or to form, part of land, including walls, roadworks, powerlines, telecommunication apparatus, aircraft runways, docks and harbours, railways, inland waterways, pipelines, reservoirs, water mains, wells, sewers, industrial plant and installations for purposes of land drainage or coast protection;</p> <p>3. the installation in any building, structure or works of fittings forming, or to form, part of land, including heating, lighting, air-conditioning, ventilation, power supply, drainage, sanitation, water supply, fire protection, security and communications systems;</p> <p>4. the external or internal cleaning of buildings, structures and works, so far as it is carried out in the course of their construction, alteration, repair, restoration, maintenance or extension;</p> <p>5. any operation that forms an integral part of, or is preparatory to or is for rendering complete, work of the kind referred to in paragraph 1, 2 or 3, including:</p> <p>(a) site clearance, earthmoving, excavation, tunnelling and boring;</p> <p>(b) the laying of foundations;</p> <p>(c) the erection, maintenance or dismantling of fences or scaffolding;</p> <p>(d) the prefabrication of components to form part of any building, structure or works, whether carried out on-site or off-site;</p> <p>(e) site restoration, landscaping and the provision of roadways and other access works; and</p> <p>(f) the painting or decorating of the internal or external surfaces of any building, structure or works.</p> <p><b>Meaning of related goods or services:</b></p> <p>Goods of the following kind:</p>

State/territory	Section	Position
		<ol style="list-style-type: none"> <li>1. materials and components to form part of any building, structure or work arising from <u>construction work</u>;</li> <li>2. plant or materials (whether supplied by sale, hire or otherwise) for use in connection with the carrying out of <u>construction work</u>,</li> </ol> <p>Services of the following kind:</p> <ol style="list-style-type: none"> <li>1. the provision of labour to carry out <u>construction work</u>;</li> <li>2. architectural, design, surveying or quantity surveying services in relation to <u>construction work</u>;</li> <li>3. building, engineering, interior or exterior decoration or landscape advisory or technical services in relation to <u>construction work</u>.</li> </ol>
TAS	TAS s 5, 6 & 12	<p>A person:</p> <ol style="list-style-type: none"> <li>(a) who has undertaken to carry out building work or construction work under a building or construction contract; or</li> <li>(b) who has undertaken to supply building or construction-related goods and services under a building or construction contract,</li> </ol> <p>is entitled, on and from each reference date, to a progress payment.</p> <p><b>Meaning of building or construction work:</b></p> <ol style="list-style-type: none"> <li>1. the construction, erection, re-erection, alteration, repair, restoration, maintenance, extension, adding to, underpinning, removal, demolition, or dismantling, of: <ol style="list-style-type: none"> <li>(a) buildings; or</li> <li>(b) structures that form, or are to form, part of land;</li> </ol> </li> <li>2. the construction, alteration, repair, restoration, maintenance, extension, removal, demolition or dismantling of works that form, or are to form, part of land, including: <ol style="list-style-type: none"> <li>(a) walls;</li> <li>(b) road infrastructure;</li> <li>(c) energy infrastructure and telecommunications facilities;</li> <li>(d) aviation landing facilities and railway infrastructure;</li> <li>(e) marine infrastructure, water and sewerage infrastructure, drainage infrastructure, dams and canals and installations for the purposes of irrigation, land drainage or coast or river protection;</li> <li>(f) structures, such as poles, wires and netting,</li> </ol> </li> </ol>

State/territory	Section	Position
		<p>erected to support or protect agricultural, horticultural or forestry products; and</p> <p>(g) structures (other than underground structures constructed to enable access to minerals) to enable persons to gain access to places on which agricultural, horticultural, forestry, tourist or mining activities are being, or are to be, carried out;</p> <p>3. the installation or alteration in, or removal from, any building, structure or works, of systems, and services, that form, or are to form, part of land, including:</p> <p>(a) heating, ventilation, air-conditioning and cooling systems;</p> <p>(b) power supply, lighting and communication systems;</p> <p>(c) passenger lifts and goods lifts;</p> <p>(d) plumbing installations; and</p> <p>(e) fire safety systems and security systems;</p> <p>4. any operation that forms an integral part of, is preparatory to, or completes, work referred to in paragraph 1, 2 or 3, including –</p> <p>(a) site clearance, earthmoving, excavation, tunnelling, boring and filling;</p> <p>(b) the preparation of foundations;</p> <p>(c) the erection, maintenance or dismantling of plant and equipment;</p> <p>(d) the prefabrication of components to form part of any building, structure or works, whether the prefabrication is carried out on-site or off-site; and</p> <p>(e) site restoration, landscaping and the provision of road infrastructure and other works to enable access to land or a part of land;</p> <p>5. the internal or external cleaning of buildings, structures, or works, that is carried out in the course of the construction, alteration, repair, restoration, maintenance, extension, removal, demolition or dismantling of the buildings, structure or works;</p> <p>6. the painting or decoration of the internal or external surfaces of any building, structure or works.</p> <p><b>Meaning of building or construction related goods or services:</b></p> <p>Goods of the following kind:</p> <p>(a) materials and components that are to form</p>

State/territory	Section	Position
		<p>part of any building, structure or work arising from building work or construction work;</p> <p>(b) plant or materials (whether supplied by sale, hire or otherwise) for use in connection with the carrying out of building work or construction work;</p> <p>Services of the following kind:</p> <p>(a) the provision of labour to carry out building work or construction work;</p> <p>(b) architectural, design, land surveying, quantity surveying, engineering, building surveying or project management services in relation to building work or construction work;</p> <p>(c) inspection, reporting, or advisory, services provided in respect of buildings, building systems and services, energy and sustainability systems and services, geotechnical, engineering, interior decoration, exterior decoration or landscape services provided in relation to building work or construction work.</p>
VIC	VIC s 5, 6 & 9	<p>On and from each reference date under a construction contract, a person:</p> <p>(a) who has undertaken to carry out construction work under the contract; or</p> <p>(b) who has undertaken to supply related goods and services under the contract,</p> <p>is entitled to a progress payment under this Act, calculated by reference to that date.</p> <p><b>Meaning of construction work:</b></p> <ol style="list-style-type: none"> <li>1. the construction, alteration, repair, restoration, maintenance, extension, demolition or dismantling of buildings or structures forming, or to form, part of land (whether permanent or not);</li> <li>2. the construction, alteration, repair, restoration, maintenance, extension, demolition or dismantling of any works forming, or to form, part of land, including walls, roadworks, powerlines, telecommunication apparatus, aircraft runways, docks and harbours, railways, inland waterways, pipelines, reservoirs, water mains, wells, sewers, industrial plant and installations for the purposes of land drainage or coast protection;</li> <li>3. the installation in any building, structure or works of</li> </ol>

State/territory	Section	Position
		<p>fittings forming, or to form, part of land, including heating, lighting, air-conditioning, ventilation, power supply, drainage, sanitation, water supply, fire protection, security and communications systems;</p> <p>4. the external or internal cleaning of buildings, structures or works, so far as it is carried out in the course of their construction, alteration, repair, restoration, maintenance or extension;</p> <p>5. any operation which forms an integral part of, or is preparatory to or is for rendering complete, work of the kind referred to in paragraph 1, 2 or 3, including:</p> <p>1.1.1. site clearance, earthmoving, excavation, tunnelling and boring;</p> <p>1.1.2. the laying of foundations;</p> <p>1.1.3. the erection, maintenance or dismantling of scaffolding;</p> <p>1.1.4. the prefabrication of components to form part of any building, structure or works, whether carried out on-site or off-site;</p> <p>1.1.5. site restoration, landscaping and the provision of roadways and other access works; and</p> <p>1.1.6. the painting or decorating of the internal or external surfaces of any building, structure or works.</p> <p><b>Meaning of related goods or services:</b></p> <p>Goods of the following kind:</p> <p>(a) materials and components to form part of any building, structure or work arising from construction work;</p> <p>(b) plant or materials (whether supplied by sale, hire or otherwise) for use in connection with the carrying out of construction work;</p> <p>Services of the following kind:</p> <p>(a) the provision of labour to carry out construction work;</p> <p>(b) architectural, design, surveying or quantity surveying services in relation to construction work;</p> <p>(c) building, engineering, interior or exterior decoration or landscape advisory or technical services in relation to construction work.</p>
WA	WA s 4 (2), s 5	The contractor is entitled to be paid for performing or undertaking construction work or for providing goods and

State/territory	Section	Position
		<p>services relating to construction work.</p> <p><b>Meaning of construction work:</b></p> <ol style="list-style-type: none"> <li>1. reclaiming, draining, or preventing the subsidence, movement or erosion of, land;</li> <li>2. installing, altering, repairing, restoring, maintaining, extending, dismantling, demolishing, or removing, any works, apparatus, fittings, machinery, or plant, associated with any work referred to in paragraph 1;</li> <li>3. constructing the whole or a part of any civil works, or a building or structure, that forms or will form, whether permanently or not and whether in WA or not, part of land or the sea bed whether above or below it;</li> <li>4. fixing or installing on or in any thing referred to in paragraph 3 any fittings forming, or to form, whether permanently or not, part of the thing, including: <ol style="list-style-type: none"> <li>(a) fittings for electricity, gas, water, fuel oil, air, sanitation, irrigation, telecommunications, air-conditioning, heating, ventilation, fire protection, cleaning, the security of the thing, and the safety of people;</li> <li>(b) lifts, escalators, insulation, furniture and furnishings;</li> </ol> </li> <li>5. altering, repairing, restoring, maintaining, extending, dismantling, demolishing or removing any thing referred to in paragraph 3 or any fittings described in paragraph 4 that form part of that thing;</li> <li>6. any work that is preparatory to, necessary for, an integral part of, or for the completion of, any work referred to in paragraph 1, 2, 3, 4 or 5, including: <ol style="list-style-type: none"> <li>(a) site or earth works, excavating, earthmoving, tunnelling or boring;</li> <li>(b) laying foundations;</li> <li>(c) erecting, maintaining or dismantling temporary works, a temporary building, or a temporary structure including a crane or other lifting equipment, and scaffolding;</li> <li>(d) cleaning, painting, decorating or treating any surface; and</li> <li>(e) site restoration and landscaping.</li> </ol> </li> </ol> <p><b>Related goods or services:</b></p> <p>Goods of the following kind:</p> <ol style="list-style-type: none"> <li>1. materials or components (whether prefabricated or not) that will form part of any thing referred to in</li> </ol>

State/territory	Section	Position
		<p>paragraph 2 or 3 or of any fittings referred to in section 4;</p> <ol style="list-style-type: none"> <li>2. any fittings referred to in paragraph 4 (whether prefabricated or not);</li> <li>3. plant or materials (whether supplied by sale, hire or otherwise) for use in connection with the carrying out of the construction work at the site of the construction work; or</li> <li>4. goods prescribed by the regulations to be related to construction work for the purposes of this Act.</li> </ol> <p><b>Related professional services means:</b> Services that are provided by a profession and that relate directly to construction work or to assessing its feasibility (whether or not it proceeds):</p> <ol style="list-style-type: none"> <li>1. including surveying, planning, costing, testing, architectural, design, plan drafting, engineering, quantity surveying, and project management, services; but <ol style="list-style-type: none"> <li>(a) not including accounting, financial, or legal, services; or</li> <li>(b) services that are provided by a profession that are prescribed by the regulations to be professional services related to construction work for the purposes of this Act.</li> </ol> </li> </ol> <p><b>On-site services are:</b></p> <ol style="list-style-type: none"> <li>1. services other than professional services referred to in paragraph 1 above; and</li> <li>2. related to construction work if they are: <ol style="list-style-type: none"> <li>(a) services that relate directly to construction work, including the provision of labour to carry out construction work; or</li> <li>(b) services prescribed by the regulations to be on-site services related to construction work for the purposes of this Act.</li> </ol> </li> </ol>

1.6. Does the Act preclude 'contracting out' and if so, to what extent?

State/territory	Section	Position
<b>ACT/NSW/QLD/V</b>	ACT s 42	Yes. Any provision of a contract (written or otherwise) that purports to do so will be void to the extent that it:
<b>IC/SA/TAS</b>	NSW s 34	1. is inconsistent with the Act;
	QLD s 99	2. purports to, or has the effect of, excluding, modifying or restricting the operation of the Act; and
	VIC s 48	3. may reasonably be construed as an attempt to deter
	SA s 33	
	TAS s 11	

<b>State/territory</b>	<b>Section</b>	<b>Position</b>
		a person from taking action under the Act.
<b>WA and NT</b>	WA s 53 NT s 10	Yes. Any provision in an agreement (written or otherwise) that purports to exclude, modify or restrict the operation of the Act has no effect. Any such provision that has no effect does not prejudice the operation of other provisions of the agreement. Any purported waiver (whether in the construction contract or not, whether in writing or not) of an entitlement under the Act has no effect.

1.7. What is the effect of a 'pay when paid' provision in a construction contract?

<b>State/territory</b>	<b>Section</b>	<b>Position</b>
<b>All states and territories and NT</b>	ACT s 14 NSW s 12 QLD s 16 VIC s 13 SA s 12 TAS s 16 NT s 12 WA s 9	Such a provision has no effect in relation to any payment for construction work or related goods and services.

## 2. Payment claims

### 2.1. When is a progress payment due?

State/territory	Section	Position
<b>ACT/NSW/VIC</b>	ACT s 13(1) NSW s 11 VIC s 12(1)	1. A progress payment is payable on the date specified in the contract.  <u>or</u> 2. If no date is specified, 10 business days after a payment claim is made under the Act.
<b>QLD</b>	s 15(1)	Either: (a) If the contract contains a provision about the matter that is not void under s 16 or under the <i>Queensland Building Services Authority Act 1991</i> (QLD), ss 67U or 67W – on the day on which the payment becomes payable under the provision.  <u>or</u> (b) If the contract does not contain a provision about the matter or contains a provision that is void under section 16 or under the <i>Queensland Building Services Authority Act 1991</i> (QLD), section 67U or 67W – 10 business days after a payment claim for the progress payment is made under Part 3 of the Act.
<b>TAS</b>	s 15, s 19(3)	1. A progress payment is payable on the date specified in the contract.  <u>or</u> 2. If no date is specified and the payment claim is made under section 17, the applicable date under s 19(3), being: (a) 20 business days after the payment claim is served on the respondent if: (i) the claim relates to the building of a residential structure; (ii) the respondent owns the land; and (iii) the respondent is not a building practitioner,  <u>or</u> (b) 10 business days after the payment claim is served on the respondent.
<b>SA</b>	s 11(1)	1. A progress payment is payable on the date specified in the contract.  <u>or</u> 2. If no date is specified, 15 business days after a payment claim is made under the Act.
<b>WA and NT</b>	WA s 18 s 20	NT Sched 1, Div 5 applies where there is no written contractual term regarding whether the contractor is able to make a

State/territory	Section	Position
		claim for a progress payment.
	Schedule 1, Div 5	Sched 1, Div 5 states that where: <ol style="list-style-type: none"> <li>1. a party intends to dispute a claim, they must give the claimant a notice of dispute within 14 days;</li> <li>2. 28 days has passed since the claim was provided by the claimant (unless the claim has been rejected or wholly disputed), the recipient must either pay the full amount of the claim or pay the undisputed amount of the claim.</li> </ol>

2.2. What interest is payable on unpaid progress payments?

State/territory	Section	Position
<b>All states and territories except WA and NT</b>	ACT s 13(2) NSW s 11(2) QLD s 15(2) TAS s 15(3) SA s 11(2) Vic s 12(2)	Interest on unpaid progress payments is payable at the greater of: <ol style="list-style-type: none"> <li>1. The rate of interest available under: <ul style="list-style-type: none"> <li><u>ACT</u>: Sched 2, Part 2.2 of the <i>Court Procedures Rules Act 2006</i> (ACT);</li> <li><u>NSW</u>: s 101 of the <i>Civil Procedure Act 2005</i> (NSW);</li> <li><u>QLD</u>: s 48(1) of the <i>Supreme Court Act 1995</i> (QLD) for debts under a judgment or order;</li> <li><u>VIC</u>: s 2 of the <i>Penalty Interest Rates Act 1983</i> (VIC);</li> <li><u>TAS</u>: the <i>Supreme Court Civil Procedure Act 1932</i> (TAS) in relation to judgment money payable to a person; or</li> <li><u>SA</u>: the <i>Supreme Court Act 1935</i> (SA) in relation to judgment debts,</li> </ul> </li> </ol> <p><u>or</u></p> <ol style="list-style-type: none"> <li>2. The rate stated in the contract.</li> </ol>
<b>WA and NT</b>	WA s 19 NT s 21  Schedule 1, Div 6	Sched 1, Div 6 applies where a construction contract does not have a provision about interest to be paid on any payment that is not made at the time required by the contract. Sched 1, Div 6 provides: <ol style="list-style-type: none"> <li>(a) Interest is payable on so much of an amount that is payable under this contract by a party to another party on or before a certain date but which is unpaid after that date.</li> <li>(b) The interest is to be paid for the period beginning on the day after the date on which the amount is due and ending on and including the date on which the amount payable is paid.</li> <li>(c) The rate of interest at any time is equal to</li> </ol>

State/territory	Section	Position
		that prescribed for that time under s 8(1)(a) of the <i>Civil Judgments Enforcement Act 2004</i> (WA).

2.3. When is a contractor entitled to a progress payment under the Act?

State/territory	Section	Position
<b>All states and territories except WA and NT</b>	ACT s 10 NSW s 8 QLD s 12 TAS s 12 SA s 12 Vic s 9	On and from each reference date.
<b>WA and NT</b>	s 15 (WA) s 18 (NT)  Schedule 1, Div 3	Sched 1, Div 3 applies where there is no written contractual term regarding whether the contractor is able to make a claim for a progress payment.  A claim by the contractor for a progress payment can be made at any time after the contractor has performed any of its obligations.  The making of a claim for a progress payment does not prevent the contractor from making any other claim for moneys payable to the contractor under or in connection with this contract.

2.4. What is the definition of a reference date?

State/territory	Section	Position
<b>All states and territories except for VIC, WA and NT</b>	ACT s 10(3) NSW s 8(2) QLD Sched 2 TAS s 4 SA s 4	1. The date specified in the contract when a claim for progress payment can be made.  <u>or</u> 2. If no date is specified, the last day of the month in which the construction work was first carried out (or related goods and services provided) and the last day of every subsequent month.
<b>VIC</b>	s 9(2)	1. A date determined by either the date specified in the contract on which progress payments are to be made or the amount of a progress payment is to be calculated.  <u>or</u> 2. If the contract does not expressly provide a date, 20 business days after previous reference date or 20 days after construction work or related goods and services were first carried out or supplied and every 20 days after that first reference date.  Single one-off payment s 9(2)(c) Final payment s 9(2)(d)

State/territory	Section	Position
WA and NT	N/A	The WA and NT legislation does not use the terminology 'reference date'.

2.5. What amount is the contractor entitled to for each progress payment?

State/territory	Section	Position
All states and territories except for VIC, TAS, WA and NT	ACT s 11 NSW s 9 and s 10 QLD s 13 SA s 9	The amount calculated in accordance with the contract or, where the contract makes no express provision, the amount calculated on the basis of the value of the 'construction work' carried out or undertaken to be carried out or the 'related goods and services' supplied or undertaken to be supplied under the contract.  'Construction work' and 'related goods and services' are to be valued in accordance with the terms of the contract or, if there is no express provision with respect to the matter in the contract, having regard to the contract price for the work/goods and services, any other rates or prices set out in the contract, any variation agreed to by the parties, and if any work/goods and services are defective, the estimated cost of rectifying the defect.
VIC	s 10	As above, but with the additional qualifications that despite s 10(1) and the contractual provisions:  1. a claimable variation may be taken into account in calculating the value of a progress payment; and  2. an excluded amount must not be taken into account in calculating the value of a progress claim.
TAS	s 13	Value to be determined in accordance with the terms of the contract or, where the contract does not expressly determine the value of the building work or provides a method for determining the value, value is to be determined having regard to:  1. the contract price (inc. GST); 2. any other rates in the contract; 3. any other agreed variation by which the contract price is to be adjusted by a specific amount; 4. if any of the works is defective, the cost of rectifying the defect.  If construction related goods and services supplied consist of materials or components that form part of a building, structure or work, the only materials included in the valuation are those that have become the property of the party for whom the work is being carried out.
WA and NT	s 14 (WA) s 17 (NT)	Sched 1, Div 2 applies where there is no written contractual term regarding the amount, or means of determining the amount, that the contractor is entitled to be paid for the

State/territory	Section	Position
	Schedule 1, Div 2	obligations it performs. A contractor is entitled to be paid a reasonable amount for performing its obligations under the contract. This clause applies whether or not the contractor has performed all of its obligations under the contract.

2.6. Can a claimant serve more than one payment claim for each reference date?

State/territory	Section	Position
<b>All states and territories except WA and NT</b>	ACT s 15(5) NSW s 13(5) and s 13(6) QLD s 17(5) VIC s 14(8) TAS s 17(4) SA s 13(5)	A claimant must not serve more than one payment claim for each reference date under the contract. However, a claimant may include in a 'payment claim' an amount that has been the subject of a previous claim.
<b>WA and NT</b>	WA Sched 1, Div 4	Refer to FAQs re: reference dates and entitlement to progress payments. Depends on whether the contract provides dates for progress payments. If not, default provisions apply that allow a contractor to make a claim for payment ' <i>at any time after it has performed its obligations</i> '.

2.7. What must a payment claim do?

State/territory	Section	Position
<b>All states and Territories except WA, NT and TAS</b>	ACT s 13 NSW s 13(2) QLD s 17 VIC s 14(2) SA s 13	1. Identify the construction work (or related goods and services) to which the claim relates. 2. Specify the amount claimed. 3. State that it is a payment claim made under the Act.
<b>WA and NT</b>	s 16 (WA), s 19 (NT), Schedule 1, Div 4	Where the contract does not specify the requirements for a valid payment claim, the claim must: 1. be in writing; 2. be addressed to the party to which the claim is made; 3. state the name of the claimant; 4. state the date of the claim; 5. state the amount claimed; 6. where the claim is made by a contractor, specify the obligations performed by the contractor in sufficient detail to allow an assessment to be made; 7. where the claim is made by a principal, give details of the basis of the claim; 8. be signed by the claimant and given to the party against whom the claim is made; and 9. be given to the party to which the claim is made.

State/territory	Section	Position
<b>VIC</b>	S 14(2)	A payment claim must: <ul style="list-style-type: none"> <li>(i) be in the relevant prescribed form (if any);</li> <li>(ii) contain the prescribed information (if any);</li> <li>(iii) identify the construction work or related goods and services to which the progress payment relates;</li> <li>(iv) indicate the amount of the progress payment that the claimant claims to be due (the claimed amount); and</li> <li>(v) state that it is made under this Act.</li> </ul>
<b>TAS</b>	s 17(2)	A payment claim must: <ol style="list-style-type: none"> <li>1. be in writing;</li> <li>2. be addressed to the person on whom it is served;</li> <li>3. state the name of the claimant;</li> <li>4. identify the work to which it relates in enough detail to allow the recipient to assess the claim;</li> <li>5. specify the amount of the claim;</li> <li>6. state that the claim is made under the Act; and</li> <li>7. include the prescribed details, if any.</li> </ol>

2.8. How must documents be served under the Act?

State/territory	Legislation	Position
<b>ACT</b>	<i>Legislation Act 2001</i> (ACT), Part 19.5	See Part 19.5 of the <i>Legislation Act 2001</i> (ACT) which includes: <ol style="list-style-type: none"> <li>1. by pre-paid post;</li> <li>2. by fax;</li> <li>3. by email;</li> <li>4. giving document to the person in person;</li> <li>5. corporations service on registered office; or</li> <li>6. leaving it at the home or office of the person with someone who appears to be 16 years or older.</li> </ol>
<b>NSW</b>	s 31	Methods include: <ol style="list-style-type: none"> <li>1. by delivering it to the person personally;</li> <li>2. by lodging it during normal office hours at the person's ordinary place of business;</li> <li>3. by sending it by post or facsimile addressed to the person's ordinary place of business;</li> <li>4. in such other manner as may be prescribed by the regulations for the purposes of this section;</li> <li>5. in such other manner as may be provided under the construction contract concerned; or</li> <li>6. as otherwise permitted under the law.</li> </ol>
<b>QLD</b>	s 103 <i>Acts Interpretation Act 1954</i> s 39	Notices to be served in accordance with the terms of the contract. If no method is prescribed in the contract, the <i>Acts Interpretation Act 1954</i> (QLD), provides: <ol style="list-style-type: none"> <li>1. for individuals:</li> </ol>

State/territory	Legislation	Position
		<ul style="list-style-type: none"> <li>(a) delivering it personally; or</li> <li>(b) sending it by post, telex, fax, or similar facility to the place of business or residence of the person;</li> </ul> <p>2. for a body corporate, by leaving it at or sending it by post, telex, fax or similar facility to the head office, registered office or principal office of the company.</p>
<b>VIC/SA</b>	VIC s 50 s 34	SA Notices to be served by either: <ul style="list-style-type: none"> <li>1. delivering it to the person personally;</li> <li>2. lodging it during normal office hours at the person's ordinary place of business;</li> <li>3. sending it by post or facsimile addressed to the person's ordinary place of business;</li> <li>4. in such manner as may be prescribed for the purposes of this section; or</li> <li>5. in any other manner specified in the relevant construction contract.</li> </ul>
<b>TAS</b>	s 40	<p>Service on natural persons:</p> <ul style="list-style-type: none"> <li>1. giving it to the person;</li> <li>2. leaving it at or sending it by post to, the person's postal or residential address or place or address of business or employment last known to the server of the notice or other document;</li> <li>3. faxing it to the person's fax number;</li> <li>4. emailing it to the person's email address, if the person has agreed to service by email; or</li> <li>5. delivering it to the person by another electronic method, if the person has agreed to service by the method.</li> </ul> <p>Service on any other persons:</p> <ul style="list-style-type: none"> <li>1. leaving it at, or sending it by post to, the person's principal or registered office or principal place of business;</li> <li>2. faxing it to the person's fax number;</li> <li>3. emailing it to the person's email address, if the person has agreed to service by email; or</li> <li>4. delivering it to the person by another electronic method, if the person has agreed to service by the method.</li> </ul>
<b>WA</b>	<i>Interpretation Act 1984</i> (WA), s 76	The WA Act does not make express provision for the service of notices. The WA Interpretation Act stipulates: <ul style="list-style-type: none"> <li>1. personal delivery;</li> <li>2. by post, addressing the document and sending it to the last known address of the person;</li> </ul>

State/territory	Legislation	Position
		<ol style="list-style-type: none"> <li>3. leaving it at the person's last known place of abode or, (where applicable) usual or last known place of business; or</li> <li>4. (for corporations) leaving it at the corporation's principal place of business or principal office.</li> </ol>
<b>NT</b>	<i>Interpretation Act</i> (NT), s 25	<p>The NT Act does not make express provision for the service of notices. The NT Interpretation Act stipulates:</p> <ol style="list-style-type: none"> <li>1. personal delivery;</li> <li>2. delivery to an executive officer (where corporation);</li> <li>3. giving it to a person authorised to receive delivery;</li> <li>4. by post to the recipient's address;</li> <li>5. by fax; or</li> <li>6. leaving it at the recipient's address with someone who appears to be over 16.</li> </ol>

2.9. When can a contractor suspend work for non-payment?

State/territory	Section	Position
<b>All states and territories except VIC, WA and NT</b>	ACT s 28 NSW s 27 QLD s 33 TAS s 29 SA s 28	<p>A contractor can suspend work if at least 2 business days have passed since the service of a notice for either:</p> <ol style="list-style-type: none"> <li>1. failure to issue a payment schedule and pay the amount claimed (s 17 ACT; s 15 NSW; s 19 QLD; s 19 TAS; s 15 SA);</li> <li>2. failure to pay in accordance with the payment schedule (s 18 ACT; s 16 NSW; s 20 QLD; s 20 TAS; s 16 SA); or</li> <li>3. failure to pay an adjudicated amount (s 26 ACT; s 24 NSW; s 30 QLD; s 26 TAS; s 24 SA).</li> </ol> <p>Suspension of work must end no later than 3 business days after the receipt of the amount payable by the claimant in accordance with the applicable section of the Act.</p>
<b>VIC</b>	s 29	<p>A contractor can suspend work if at least 3 business days have passed since the claimant has caused a notice of intention to do so for either:</p> <ol style="list-style-type: none"> <li>1. failure to issue a payment schedule within time required by the construction contract or 10 business days after payment claim served (whichever expires earlier) and failure to pay a claimant the whole or any part of the claimed amount on or before the due date for progress payment (s 16);</li> <li>2. failure to pay in accordance with the payment schedule (s 17); or</li> <li>3. failure to pay an adjudicated amount (s 28O).</li> </ol> <p>Suspension of work must end no later than:</p> <ol style="list-style-type: none"> <li>1. where provided in the contract, 1 business day; or</li> </ol>

State/territory	Section	Position
		<p>2. in all other cases, 3 business days, after the receipt of the amount payable by the claimant in accordance with the applicable section of the Act.</p>
<p><b>WA and NT</b></p>	<p>s 42 WA s 44 NT</p>	<p>If a determination requires the principal to pay the contractor an amount and the principal does not pay in accordance with the determination, the contractor may give the principal notice of the contractor's intention to suspend the performance of its obligations.</p> <p>Notice requirements:</p> <ol style="list-style-type: none"> <li>1. in writing;</li> <li>2. in accordance with the regulations;</li> <li>3. state date on which suspension of works will commence;</li> <li>4. be provided to the principal at least 3 days prior to that date.</li> </ol> <p>If payment is not made by the date foreshadowed in the notice for suspension, the contractor may suspend works until 3 days after payment is made.</p>

### 3. Payment schedules

#### 3.1. What are the requirements for a valid payment schedule?

State/territory	Section	Position
<b>All states and territories except WA and NT</b>	ACT s 16 NSW s 14 QLD s 18 VIC s 15 TAS s 18 SA s 14	<p>A payment schedule must:</p> <ol style="list-style-type: none"> <li>1. be given to the claimant within the applicable timeframe (refer to section 4 below);</li> <li>2. identify the payment claim to which it relates;</li> <li>3. state the amount of the payment the respondent intends to make and, if the amount is less than the amount claimed:               <ol style="list-style-type: none"> <li>(a) why the amount is less; and</li> <li>(b) if the amount to be paid is less due to amounts being withheld, the reason for payment being withheld.</li> </ol> </li> </ol> <p><u>Note:</u> under the Victorian Act a payment schedule must be in the prescribed form (if any) and must contain the prescribed information (if any). It must also identify any amount of the claim that the respondent alleges is an excluded amount.</p>
<b>WA and NT</b>	WA s 17, Sched 1, Div 5 NT s 20, Sched 1, Div 5	<p>The WA and NT Acts do not use the terminology 'payment schedule' but instead use 'notice of dispute'. A notice of dispute must (if the construction contract does not have a provision dealing with the matter):</p> <ol style="list-style-type: none"> <li>1. comply with the provisions of the construction contract; or</li> <li>2. if the contract does not provide for the contents of the dispute, the notice must comply with Schedule 1, Div 5, in that it must:               <ol style="list-style-type: none"> <li>(a) be in writing;</li> <li>(b) be addressed to the claimant;</li> <li>(c) state the name of the party giving notice;</li> <li>(d) state the date of the notice;</li> <li>(e) identify the claim to which the notice relates;</li> <li>(f) if the claim is being rejected because it is not made in accordance with the contract, state the reasons why the claim has not been made in accordance with the contract;</li> <li>(g) if the claim is being disputed in whole or in part, identify each item disputed and state the reason for disputing each item; and</li> <li>(h) be signed by the party giving the notice.</li> </ol> </li> </ol>

#### 3.2. How must a payment schedule be served?

Refer to the FAQ above re service of documents under the Act.

#### 4. Timeframes

##### 4.1. When is the reference date for the purposes of making a payment claim?

State/territory	Section	Position
<b>All states and territories except VIC, WA and NT</b>	ACT s 10(3)	1. The date specified in the contract when a claim for progress payment can be made.
	NSW s 8(2)	
	QLD Sched 2	<u>or</u>
	TAS s 4 SA s 4	2. If no date is specified, the last day of the month in which the construction work was first carried out (or related goods and services provided) and the last day of every subsequent month.
<b>VIC</b>	s 9(2)	1. Either the date specified in the contract on which progress payments are to be made or the amount of a progress payment is to be calculated.  <u>or</u> 2. If the contract does not expressly provide a date, 20 business days after construction work or related goods and services were first carried out or provided and every 20 days after that first reference date.
<b>WA and NT</b>	N/A	The WA and NT legislation does not use the terminology 'reference date'.

##### 4.2. What is the deadline for making a payment claim?

State/territory	Section	Position
<b>All states and territories except VIC, SA, WA and NT</b>	ACT s 15(4)	The later of:
	NSW s 13(4)	1. the date specified in the contract;
	QLD s 17(4)	<u>or</u>
	TAS s 17(6)	2. the end of 12 months after the works to which the claim relates were last carried out or goods and services to which the claim relates were last supplied.
<b>VIC</b>	s 14(4)	In relation to a progress payment, the later of:
		1. the date specified in the contract;
		<u>or</u>
	s 14(5)	2. the end of 3 months after the reference date for that progress payment worked out in accordance with s 9(2) of the Act.
		In relation to a final payment claim:
		1. the date specified in the contract;
<b>SA</b>		<u>or</u>
	s 13	2. (if no date is specified) the end of 3 months after the reference date worked out under s 9(2) of the Act.
		The later of:
		1. the date specified in the contract;

State/territory	Section	Position
		<u>or</u> 2. the end of 6 months after the works were last carried out or goods and services supplied.
<b>WA and NT</b>	WA s 15 NT s 18 Sched 1, Div 3	Under the contract or, where not specified, at any time after the contractor has performed any of its obligations.

4.3. What is the time limit for issuing a payment schedule?

State/territory	Section	Position
<b>All states and territories except TAS, SA, WA and NT</b>	ACT s 16(4)(b) NSW s 14(4)(b) QLD s 18(4)(b) VIC 15(4)	The earlier of: 1. the time required by the relevant contract; <u>or</u> 2. 10 business days after the payment claim is served.
<b>TAS</b>	s 19 (2) s 19 (3)	Either: 1. before the end of the period in which payment is required under the contract; <u>or</u> 2. before the expiry of the applicable day in relation to the payment claim.  'Applicable day' is 10 days unless the claim relates to a residential structure where the respondent is the owner of the land and not a building practitioner, in which case, 20 days.
<b>SA</b>	S 14(4)(b)	The earlier of: 1. the time required by the relevant contract; <u>or</u> 2. 15 business days after the payment claim is given to the respondent.
<b>WA and NT</b>	s 17 WA s 20 NT Sched 1, Div 5	The WA Act refers to a 'notice of dispute' rather than payment schedule. Under the Act, the time allowed for issuing a notice of dispute is the time provided under the contract or, where not specified, 14 days after receiving the claim.

4.4. What is the timeframe for making an adjudication application?

State/territory	Section	Position
<b>ACT/NSW/QLD/ TAS</b>	ACT s 19 NSW s 17 QLD s 21 TAS s 21	1. <i>Where a payment schedule provides less than the amount claimed in the payment claim: within <u>10 business days</u> after the claimant</i>

State/territory	Section	Position
		<p>receives the payment schedule.</p> <p>2. <i>Where the respondent fails to pay the 'scheduled amount' by the due date:</i> within <u>20 business days</u> after the due date for payment.</p> <p>3. <i>Where the respondent fails to pay part or all of the claimed amount and fails to issue a payment schedule within time:</i> <u>Note:</u> prior to making an application for adjudication, and within 20 days of the expiry of the timeframe for payment, the claimant must serve the respondent with a notice that they intend to apply for adjudication and await the expiry of 5 days in which for the respondent to provide a payment schedule in response to the notice. Once the above notice requirements have been completed, the claimant can apply for adjudication within 10 days after: (in the ACT) the earlier of: (a) the end of the 5 day period in which the respondent is allowed to respond to the notice of intention to apply for adjudication; or (b) the day the claimant receives the payment schedule; (in NSW/QLD/TAS): the end of the 5 business day period in which for the respondent to provide a payment schedule in response to the notice.</p>
VIC	s 18	<p>1. <i>Where a payment schedule provides less than the amount claimed in the payment claim:</i> within <u>10 business days</u> after the claimant receives the payment schedule.</p> <p>2. <i>Where the respondent fails to pay the whole or any part of the scheduled amount by the due date:</i> within <u>10 business days</u> after the due date for payment.</p> <p>3. <i>Where the respondent fails to provide a payment schedule and fails to pay part or all of the amount within time:</i></p>

State/territory	Section	Position
		<p><u>Note:</u> prior to making an application for adjudication, and within 10 business days of the expiry of the timeframe for payment, the claimant must serve the respondent with a notice that they intend to apply for adjudication and await the expiry of 2 business days in which for the respondent to provide a payment schedule in response to the notice.</p> <p>Once the above notice requirements have been completed, the claimant must apply for adjudication within 5 business days of the 2 business day period in which the respondent is allowed to provide a payment schedule in response to the notice of intention to apply for adjudication.</p>
SA	s 17	<ol style="list-style-type: none"> <li>1. <i>Where a payment schedule provides less than the amount claimed in the payment claim: within <u>15 business days</u> after the claimant receives the payment schedule.</i></li> <li>2. <i>Where the respondent fails to pay the full amount by the due date: within <u>20 business days</u> after the due date for payment.</i></li> <li>3. <i>Where the respondent fails to pay part or all of the amount or issue a payment schedule within time:</i></li> </ol> <p><u>Note:</u> prior to making an application for adjudication, and within 20 business days of the expiry of the timeframe for payment, the claimant must serve the respondent with a notice that they intend to apply for adjudication and await the expiry of 5 business days in which for the respondent to provide a payment schedule in response to the notice.</p> <p>Once the above notice requirements have been completed, the claimant must apply for adjudication within 15 business days of the 5 business day period in which the respondent is allowed to provide a payment schedule in response to the notice of intention to apply for adjudication.</p>
NT	NT s 28/39(2)(b)	<p>Within either:</p> <ol style="list-style-type: none"> <li>1. 90 days after the dispute arises; or</li> </ol>

State/territory	Section	Position
		2. 28 days after the date that any previous application for adjudication is taken to be dismissed.
<b>WA</b>	WA s 26/37(2)(b)	Within either: 1. 28 days after the dispute arises; or 2. 28 days after the date that any previous application for adjudication is taken to be dismissed.

4.5. What is the time limit for filing an adjudication response?

State/territory	Section	Position
<b>NSW/QLD/VIC</b>	NSW s 20(1) QLD s 24(1)	The later of: 1. 5 business days after the respondent receives the application; <u>or</u> 2. 2 business days after receiving notice of the adjudicator's acceptance of the application.
<b>VIC</b>	s 21(1)	The later of: 1. 5 business days after the respondent receives the application; <u>or</u> 2. 2 business days after receiving notice of the adjudicator's acceptance of the application.  The respondent may lodge an adjudication response only if the respondent has provided a payment schedule with the claimant within the time specified by the Act.
<b>ACT</b>	s 22(1)	The later of: 1. 7 business days after the respondent receives the application; <u>or</u> 2. 5 business days after receiving notice of the adjudicator's acceptance of the application.
<b>TAS</b>	s 23	The later of: 1. 10 business days after the respondent receives the application; <u>or</u> 2. 5 business days after receiving notice of the adjudicator's acceptance of the application.
<b>SA</b>	s 20(1)	The later of: 1. 5 business days after the respondent receives the application; <u>or</u>

State/territory	Section	Position
		2. 2 business days after receiving notice of the adjudicator's acceptance of the application.
WA	s 27	Within 14 days of the respondent being served with an application for adjudication.
NT	s 29	Within 10 days of the respondent being served with an application for adjudication.

4.6. What is the timeframe in which the adjudicator must determine the dispute?

State/territory	Section	Position
NSW/QLD/VIC	NSW s 20(1) QLD s 24(1) VIC s 21(1)	The later of: 1. 7 business days after the respondent receives the application; <u>or</u> 2. business days after receiving notice of the adjudicator's acceptance of the application.
VIC	s 22(4)	The later of: 1. within 10 business days after the date on which the acceptance by the adjudicator of the application takes effect; 2. within any further time, not exceeding 15 business days after that date, to which the claimant agrees.
ACT	s 22(1)	The later of: 1. 7 business days after the respondent receives the application; <u>or</u> 2. 5 business days after receiving notice of the adjudicator's acceptance of the application.
TAS	s 24	An adjudicator is to determine the adjudication application as soon as practicable and in any case: 1. within: (a) 10 business days after the respondent receives the application; <u>or</u> (b) if the respondent lodged a payment schedule, 10 business days after the date by which the respondent may lodge an adjudication response; <u>or</u> (c) if the respondent did not lodge a payment schedule, 10 business days after the date on which the adjudicator accepted the application; <u>or</u>

State/territory	Section	Position
		2. such further period agreed to by the claimant and the respondent.
<b>SA</b>	s 20(1)	The later of: 1. 5 business days after the respondent receives the application; <u>or</u> 2. business days after receiving notice of the adjudicator's acceptance of the application
<b>WA</b>	s 31	1. Within 14 days of the adjudicator being served with a response; <u>or</u> 2. if the adjudicator is not served with a response, 14 days after the last date on which a response was required to be served.
<b>NT</b>	s 29	Within 10 days of the respondent being served with an application for adjudication.

4.7. When must the adjudicator make a determination by?

State/territory	Section	Position
<b>ACT/SA</b>	ACT s 23(3) SA s 21(3)	As soon as possible but no later than: 1. if the respondent is entitled to provide a response, 10 days after: (a) the response is received; or (b) the response is due under the Act; 2. if the respondent is not entitled to provide a response, 10 business days after the respondent receives the adjudication application; 3. if a further time is agreed between the parties, that further time. <u>Note:</u> an adjudicator cannot determine an application until the time for the respondent to file an adjudication application has passed.
<b>QLD/NSW</b>	QLD s 25(1), 25(3), NSW s 21(1), 21(3)	As expeditiously as possible but within: 1. 10 business days after the adjudicator has notified the parties of his/her acceptance of the application; <u>or</u> 2. any further time as agreed between the parties. <u>Note:</u> an adjudicator cannot determine an application until the time for the respondent to file an adjudication application has passed.
<b>VIC</b>	s 22	As expeditiously as possible but no later than:

State/territory	Section	Position
		1. 10 business days after the adjudicator's acceptance of their appointment takes effect; <u>or</u> 2. further time up to 15 business days after that date, provided the claimant agrees. <u>Note:</u> an adjudicator cannot determine an application until the time for the respondent to file an adjudication application has passed.
<b>TAS</b>	s 24	As soon as practicable but within 10 business days: <ol style="list-style-type: none"> <li>after the date on which the adjudicator received the adjudication response; or</li> <li>after the date where the respondent may lodge an adjudication response under s 23 (if the respondent provided a payment schedule in response to the payment claim); or</li> <li>after the adjudicator accepted the adjudication application; or</li> </ol> Within a further period as agreed by the parties. (Refer to comments in 4.6 above)
<b>WA</b>	s 31	Either: <ol style="list-style-type: none"> <li>14 days after receiving an adjudication response; <u>or</u></li> <li>if no response is provided, 14 days after the last date on which a response is required under s 27(1).</li> </ol>
<b>NT</b>	s 33	Either: <ol style="list-style-type: none"> <li>10 days after receiving an adjudication response; <u>or</u></li> <li>If no response is provided, 10 days after the last date on which a response is required under s 29(1).</li> </ol>

4.8. How long does the respondent have to pay the adjudicated amount?

State/territory	Section	Position
<b>ACT/QLD/NSW/ VIC/TAS</b>	ACT s 25 QLD s 29 NSW s 23 VIC s 28M TAS s 26 SA s 23	Either: <ol style="list-style-type: none"> <li>5 business days after the decision is served on the respondent;</li> </ol> <u>or</u> <ol style="list-style-type: none"> <li>if the adjudicator decides another time for payment under the Act, that other time.</li> </ol>
<b>WA and NT</b>	s 39 WA s 41(1) NT	On or before the date specified in the adjudicator's determination.

5. Dispute resolution/adjudication/enforcement

5.1. What are the options if no payment schedule is served in response to a payment claim and no payment (or an amount less than full payment) is received for the payment claim or the amount is not paid in accordance with the scheduled amount under the payment schedule?

State/territory	Section	Position
<b>All states and territories except WA and NT</b>	ACT s 17(2)/18(2) NSW s 11/15(2)/16(2)/26A/26B and s.26C QLD s 19(2)/20(2) VIC s 16(2)/17(2) SA s 15(2)/16(2) TAS s 19(5)/20(2)	<p>The respondent becomes liable for the unpaid amount and the claimant may either:</p> <ol style="list-style-type: none"> <li>1. recover the unpaid portion of the claim as a debt due to the claimant in a court of competent jurisdiction;</li> <li>2. make an adjudication application in relation to the payment claim;</li> <li>3. give notice under the Act of the claimant's intention to suspend the carrying out of construction work or supply of related goods and services; or</li> <li>4. exercise a lien over unfixed plant or materials supplied by the claimant for use in connection with the carrying out of 'construction work'.</li> </ol> <p>In NSW, a claimant who makes an adjudication application may also be able to require a person who retained the respondent to perform the 'construction work' or supply the 'related goods and services' to withhold payment of certain money to the respondent.</p>
<b>WA and NT</b>	s 25 WA s 27 NT	<p>The WA and NT Acts refer to a 'notice of dispute' rather than payment schedule. Under those Acts, where a payment dispute arises, any party to the contract may apply to have the dispute adjudicated unless:</p> <ol style="list-style-type: none"> <li>1. an application for adjudication has already been made; or</li> <li>2. the dispute is already subject to an order, judgment or finding by an arbitrator, other person, body or court dealing with a dispute under the construction contract.</li> </ol>

5.2. What are the requirements of a valid adjudication application?

State/territory	Section	Position
<b>All states and territories except WA and NT</b>	ACT s 19	An adjudication application must: <ol style="list-style-type: none"> <li>1. be in writing;</li> <li>2. be made within time (see further FAQ re timeframes above);</li> <li>3. be accompanied by the application fee (where one is set by the authorised nominating authority);</li> <li>4. identify the payment claim and any payment schedule to which it relates;</li> <li>5. be made to an authorised nominating authority chosen by the claimant (for NSW/QLD/SA/VIC/TAS applications only);</li> <li>6. (where the contract lists 3 or more authorised nominating authorities), be made to one of those or alternatively, be made to an authorised nominating authority chosen by claimant (for VIC only);</li> <li>7. contain any submissions relating to the application that the applicant thinks fit (for Tas only).</li> </ol> <p><u>Note:</u> For Vic only, an application <u>may</u> also contain any submissions relevant to the application that the claimant chooses to include.</p>
	NSW s 17	
	QLD s 21	
	VIC s 18	
	SA s 17	
TAS s 21		
<b>WA and NT</b>	NT s 28 WA s 26	An adjudication application must: <ol style="list-style-type: none"> <li>1. be in writing;</li> <li>2. be served on each party;</li> <li>3. be served on either the registered adjudicator or prescribed appointer, whichever applies;</li> <li>4. provide any required security costs for the adjudication;</li> <li>5. be prepared in accordance with and include the information prescribed by regulations;</li> <li>6. state details or have attached to it any payment claim that has given rise to the dispute and the construction contract involved or relevant extracts; and</li> <li>7. state or have attached to it all information, documents and submissions on which the party making it relies.</li> </ol>

5.3. What must an 'adjudication response' do?

State/territory	Section	Position
<b>NSW</b>	NSW s 20	An 'adjudication response' must: <ol style="list-style-type: none"> <li>1. be in writing;</li> <li>2. be made within time (see further FAQs re timeframes above);</li> <li>3. identify the 'adjudication application' to which it</li> </ol>

		relates; and 4. not include any reasons for withholding payment unless those reasons have already been included in the 'payment schedule'.
<b>VIC</b>	VIC s 21	An adjudication response must: 1. be in writing; 2. be made within time (see further FAQs re timeframes above); 3. identify the adjudication application to which it relates; 4. include the name and address of any relevant principal of the respondent and any other person who the respondent knows has a financial interest in the matters that are the subject of the adjudication application; 5. identify the amount of the payment claim the respondent alleges is an excluded amount; and 6. contain any submissions relevant to the response.
<b>TAS/QLD/SA/ACT</b>	TAS s 23 QLD s 24 SA s 20 ACT s 22	An adjudication response must: 1. be in writing; 2. be made within time (see further FAQs re timeframes above); and 3. identify the adjudication application to which it relates.  It may also contain any submissions relevant to the response.
<b>WA/NT</b>	WA s 27 NT s 29	The adjudication response must: 1. contain the information prescribed by the regulations; 2. be made within time (see further FAQ re timeframes above); 3. set out details of any rejection or dispute of the payment claim that has given rise to the dispute; and 4. set out all the information, documentation and submissions on which it relies.

#### 5.4. What options are available for enforcement of an adjudication certificate?

<b>State/territory</b>	<b>Section</b>	<b>Position</b>
<b>All states and territories except WA</b>	VIC s 28R SA s 25 TAS s 27 ACT s38	An adjudication certificate may be filed as a judgment for a debt in a court of competent jurisdiction and enforced accordingly.

	NSW S 25 QLD s 31 NT s 45	
<b>WA</b>	WA s 43	A determination may, with the leave of a court of competent jurisdiction, be enforced in the same manner as a judgment or order of the court to the same effect, and if such leave is given, judgment may be entered in terms of the determination.

5.5. What are the options for reviewing an adjudicator's decision?

<b>State/territory</b>	<b>Section</b>	<b>Position</b>
<b>NT</b>	NT s 48	A person who is aggrieved by a decision made under section 33(1)(a) may apply to the Local Court for a review of the decision.
<b>ACT</b>	ACT s 43	<p>An appeal may be made to the Supreme Court on any question of law arising out of an adjudication decision. An appeal under this subsection may be brought by any of the parties to an adjudication decision:</p> <ol style="list-style-type: none"> <li>1 with the consent of the parties to the decision; or</li> <li>2 with the leave of the Supreme Court.</li> </ol> <p>The Supreme Court must not grant leave under this subsection unless it considers that having regard to all the circumstances, the determination of the question of law concerned could substantially affect the rights of 1 or more parties to the adjudication decision and there is:</p> <ol style="list-style-type: none"> <li>1 a manifest error of law on the face of the adjudication decision; or</li> <li>2 strong evidence that the adjudicator made an error of law and that the determination of the question may add, or may be likely to add, substantially to the certainty of the law.</li> </ol>
<b>QLD</b>	QLD s 93 & 97	<p><b>Internal review, s 93</b></p> <p>Subject to this division, a person who is given, or is entitled to be given, an information notice for a decision under part 4 (the original decision) may apply for a review of the decision under this part. The review must be, in the first instance, by way of an application for internal review under section 93.</p> <p><b>External review, s 97</b></p> <p>A person who has applied for the review of an original decision under division 1 and is dissatisfied with the review decision may apply, as provided under the QCAT Act, to the tribunal for a review of the review decision.</p>
<b>TAS</b>		No review process is specified in the legislation.

State/territory	Section	Position
NSW	NSW s 32	<p>An adjudicator's decision is susceptible to review by way of <i>certiorari</i> (see <i>Chase Oyster Bar v Hamo [2010] NSWCA 190</i>).</p> <p>An adjudicator's decision does not affect the parties' rights in civil proceedings. In such civil proceedings the court must allow for any amount paid under the Act and may make orders for restitution of amounts paid under the Act.</p>
SA		No review process is specified in the legislation.
VIC	VIC s 28A, 28B & 28C	<p><b>Threshold for review, s 28A</b></p> <p><b>Threshold for review</b></p> <p>This Division applies in respect of an adjudication determination if the adjudicated amount exceeds the higher of:</p> <ul style="list-style-type: none"> <li>(a) \$100 000; or</li> <li>(b) the amount prescribed for the purposes of this section.</li> </ul> <p><b>Review by respondent, s 28B</b></p> <ol style="list-style-type: none"> <li>1. An application under this section may only be made if the respondent provided a payment schedule to the claimant within the time specified in the legislation (see timeframes above).</li> <li>2. An application under this section may only be made on the ground that the adjudicated amount included an excluded amount.</li> <li>3. An application under this section may only be made if the respondent has identified that amount as an excluded amount in the payment schedule or the adjudication response.</li> <li>4. An application under this section may only be made if the respondent has paid to the claimant the adjudicated amount other than the amounts alleged to be excluded amounts.</li> <li>5. An application under this section may only be made if the respondent has paid the alleged excluded amounts into a designated trust account.</li> </ol> <p><b>Review by applicant, s 28C</b></p> <p>An application under this section may only be made on the ground that the adjudicator failed to take into account a relevant amount in making an adjudication determination because it was wrongly determined to be an excluded amount.</p>

State/territory	Section	Position
WA	s 46	<p data-bbox="643 239 954 275"><b>Limited right of review:</b></p> <ol data-bbox="643 284 1410 813" style="list-style-type: none"> <li data-bbox="643 284 1410 443">1. A person who is aggrieved by a decision of an adjudicator to dismiss an adjudication application may apply to the State Administrative Tribunal for a review of the decision.</li> <li data-bbox="643 452 1410 689">2. If, on a review, a decision to dismiss an adjudication application is set aside and is reversed by the State Administrative Tribunal, the adjudicator is to make a determination of the payment dispute on the balance of probabilities within 14 days or any extension of that time consented to by the parties.</li> <li data-bbox="643 698 1410 813">3. A decision or determination of an adjudicator on an adjudication cannot otherwise be appealed or reviewed.</li> </ol>

NEW ZEALAND LEGISLATION  
CONSTRUCTION CONTRACTS ACT 2002

## FREQUENTLY ASKED QUESTIONS

### TABLE OF CONTENTS

1.	Application of the Act	46
1.1.	What construction contracts does the Act apply to?	46
1.2.	What construction contracts are not subject to the application of the Act?	46
1.3.	Does the Act differentiate between residential and commercial construction contracts and, if so, how?	46
1.4.	Does the Act preclude contracting out and, if so, to what extent?	47
1.5.	Who can make payment claims under the Act?	47
1.6.	What is the effect of a 'pay when paid' provision?	48
2.	Payment Claims	49
2.1.	When is a contractor entitled to a progress payment under the Act?	49
2.2.	What amount is the contractor entitled to for a progress payment?	49
2.3.	Can a claimant serve more than one payment claim for each relevant period?	49
2.4.	What are the elements of a valid payment claim?	50
2.5.	How must documents be served under the Act?	50
2.6.	When is a progress payment due under the contract?	51
2.7.	What interest is payable on unpaid progress payments?	51
2.8.	When can a contractor suspend work for non-payment?	51
3.	Payment Schedules	52
3.1.	What are the requirements for a valid payment schedule?	52
3.2.	How must a payment schedule be served?	52
4.	Timeframes	53
4.1.	What is the relevant period for the purposes of making a payment claim?	53
4.2.	What is the deadline for making a payment claim?	53
4.3.	What is the time limit for issuing a payment schedule?	53
4.4.	What is the timeframe for making an adjudication application?	53
4.5.	What is the time limit for filing an adjudication response?	54
4.6.	What is the timeframe in which the adjudicator must determine the dispute?	54

4.7.	How long does the respondent have to pay the adjudicated amount?	55
5.	Dispute resolution/adjudication/enforcement	56
5.1.	What are the options if no payment schedule is served in response to a payment claim and no payment (or an amount less than full payment) is received for the payment claim or the amount is not paid in accordance with the payment schedule?	56
5.2.	What are the requirements of a valid adjudication notice?	57
5.3.	What are the requirements of a valid adjudication application?	58
5.4.	What options are available for enforcement of an adjudication determination?	58
5.5.	What are the options for reviewing an adjudicator's decision?	59
6.	APPENDIX A	60
7.	APPENDIX B	62
8.	APPENDIX C	64

## 1. Application of the Act

### 1.1. What construction contracts does the Act apply to?

Relevant Section(s) of the Act	Position
Section 9	The Construction Contracts Act 2002 (“the Act”) applies to a ‘construction contract’ which is written or oral, partly written or oral, whether or not it is expressed as being governed by New Zealand law. A ‘construction contract’ must relate to ‘construction work’ in New Zealand and have been entered into or renewed after 1 April 2003.
Section 6	The definition of ‘construction work’ is provided in <b>APPENDIX A</b> . It is important to note that the definition does not include ‘related goods or services’ to construction work. This means, for instance, supply of goods, materials and equipment, and similar work carried out for its own purposes (not preparatory to other work), design or architectural work, engineering work and quantity surveying are excluded from all provisions of the Act.

### 1.2. What construction contracts are not subject to the application of the Act?

Relevant Section(s) of the Act	Position
Section 11	The Act does not apply: <ul style="list-style-type: none"><li>• Where a party undertakes to carry out construction work as an employee.</li><li>• To the extent that it contains provisions under which a party undertakes to carry out construction work as a condition of a loan agreement or provisions under which a party undertakes to lend or repay money, act as guarantor, or provide an indemnity for construction work.</li></ul>

### 1.3. Does the Act differentiate between residential and commercial construction contracts and, if so, how?

Relevant Section(s) of the Act	Position
Section 5	A ‘construction contract’ includes both a residential and commercial construction contract, and variations to those contracts, and differentiates between these types of contracts in its application. A ‘residential construction contract’ is a contract for carrying out construction work where one of the parties to the contract is a ‘residential occupier’ of the property where the work is

	<p>being carried out.</p> <p>Comparatively, a 'commercial construction contract' is a contract for carrying out construction work where none of the parties to the contract are the residential occupier of the property where the work is being carried out.</p> <p>A 'residential occupier' is an individual who is living in or intends to live in a property where construction work is being carried out under a construction contract.</p>
Section 10	<p>The Act expressly excludes the application of particular provisions to residential construction contracts, such as the default provisions that relate to progress payments, the serving of a notice to suspend the carrying out of construction work under a construction contract, the issue of charging orders in respect of construction sites and other measures for securing payment under the Act.</p>

1.4. Does the Act preclude contracting out and, if so, to what extent?

<b>Relevant Section(s) of the Act</b>	<b>Position</b>
Section 12	Yes. Any provision in a construction contract which contracts out of the Act will have no effect.

1.5. Who can make payment claims under the Act?

<b>Relevant Section(s) of the Act</b>	<b>Position</b>
Section 16	A person who is or claims to be entitled to a 'progress payment' due to entitlement to a payment on or for each relevant period for undertaking construction work under a construction contract.
Section 5	<p>A 'progress payment' is defined as:</p> <ul style="list-style-type: none"> <li>• a payment for construction work carried out under a construction contract that is in the nature of an instalment (whether or not of equal value) of the contract price for the contract (other than an amount that is, or is in the nature of, a deposit under the contract); and</li> <li>• includes any final payment under the contract.</li> </ul>
Section 14	The parties to a construction contract are free to agree on a mechanism for determining the number of progress payments, the interval between them, the amount, and the due date of each payment.

Section 15	<p>However, if the parties to a construction contract fail to agree on such a mechanism, then the relevant provisions of the Act apply to the extent that those provisions have not been agreed between the parties.</p> <p>Note that the Act expressly excludes the application of Section 15 to a residential construction contract.</p>
Section 10	

1.6. What is the effect of a 'pay when paid' provision?

<b>Relevant Section(s) of the Act</b>	<b>Position</b>
Section 13	<p>A 'pay when paid' provision has no legal effect and is not enforceable in any civil proceedings.</p> <p>A 'pay when paid' provision is a provision of the contract that makes the liability to pay money owing, or the due date for payment of money owing, contingent or dependent on the operation of another contract.</p> <p>These provisions were often present in subcontract agreements which provided that a subcontractor would not be entitled to be paid for work performed under the subcontract until the head contractor had been paid under the head contract. Such provisions may no longer be used as a reason for withholding progress payments that are due and payable under the contract.</p>

## 2. Payment Claims

### 2.1. When is a contractor entitled to a progress payment under the Act?

<b>Relevant Section(s) of the Act</b>	<b>Position</b>
Section 20	The contractor is entitled to a progress payment at the end of the period provided in the construction contract. However, if there are no provisions to that effect in the contract, the contractor is entitled to serve a payment claim for a progress payment at the end of the month.

### 2.2. What amount is the contractor entitled to for a progress payment?

<b>Relevant Section(s) of the Act</b>	<b>Position</b>
Section 17	<p>If no amount is specified in the construction contract, the amount of a progress payment must be calculated by reference to:</p> <ul style="list-style-type: none"><li>• the 'relevant period' for that payment;</li><li>• the 'value of the construction work' carried out, or to be carried out, during that period; and</li><li>• any relevant provisions in the construction contract, for example, retentions or liquidated damages.</li></ul> <p>The 'relevant period' is defined as:</p> <ul style="list-style-type: none"><li>• The period commencing on the day of the month on which construction work was first carried out under the contract and ending on the last day of that month (the first period); and</li><li>• Each month after the first period.</li></ul> <p>The 'value of the construction work' is calculated with regard to the contract price for the work and any other rates set out in the contract.</p> <p>However, where the contract does not provide for the price of the work or any other rates the value is calculated with regard to the reasonable value of the work (including any variations authorised).</p> <p>Please note that the amount of a progress claim is not limited to the value of physical work and can include claims for extension of time costs etc.</p>

### 2.3. Can a claimant serve more than one payment claim for each relevant period?

<b>Relevant Section(s) of the Act</b>	<b>Position</b>
	Yes, provided that each new claim does not relate to construction work that has already been claimed – so no "double dipping". A payment claim may include amounts overlooked in an

earlier month, or a late claim, or the resubmission of previously declined or ignored claims when there is further information to support that claim.

2.4. What are the elements of a valid payment claim?

Relevant Section(s) of the Act	Position
Section 20(2)	<p>The payment claim must:</p> <ul style="list-style-type: none"> <li>(a) be in writing;</li> <li>(b) contain sufficient details to identify the construction contract to which it relates;</li> <li>(c) identify the construction work in the relevant period to which the progress payment relates;</li> <li>(d) indicate a claimed amount and the due dates for payment;</li> <li>(e) indicate the manner in which the contractor calculated the claimed amount; and</li> <li>(f) state that the claim is made under the Act.</li> </ul> <p>If a payment claim is served on a residential occupier (defined above), it must be accompanied by an outline of the process for responding to that claim, and an explanation of the consequences of not responding to a payment claim and not paying the claimed or scheduled amount in full. This must be done in writing and in the prescribed form (Form 1) pursuant to the Construction Contracts Regulations 2003 which is provided in <b>Appendix B</b>.</p>

2.5. How must documents be served under the Act?

Relevant Section(s) of the Act	Position
Section 80	<p>Any document required to be served on, or given to, any person under the Act, or any regulation made under this Act, is sufficiently served if -</p> <ul style="list-style-type: none"> <li>• The document is delivered to that person; or</li> <li>• The document is left at the person's usual or last known place of residence or business in New Zealand;</li> <li>• The document is posted in a letter addressed to the person at that person's place of residence or business in New Zealand; or</li> <li>• The document is sent in the prescribed manner (if any pursuant to the Construction Contracts Regulations 2003) <ul style="list-style-type: none"> <li>• Note that the Construction Contracts Regulations 2003 provide that the document may also be served by fax, email or other means of electronic communication provided the recipient consents to</li> </ul> </li> </ul>

the information being given in electronic form.

- Further information is provided within the Construction Contracts Regulations 2003 in respect of date of receipt and further requirements for service by email or other electronic communication.

2.6. When is a progress payment due under the contract?

Relevant Section(s) of the Act	Position
Section 18	A progress payment under a construction contract becomes due and payable on the date specified in the contract; or If no date is specified, a progress payment under a construction contract becomes due and payable <b>twenty working days</b> after a payment claim is served in accordance with the Act.

2.7. What interest is payable on unpaid progress payments?

Relevant Section(s) of the Act	Position
	The Act provides no express reference to the interest payable on unpaid progress payments. Thus, whether, and what amount of, interest is payable on unpaid progress payments is dependent upon the terms and conditions of the construction contract.

2.8. When can a contractor suspend work for non-payment?

Relevant Section(s) of the Act	Position
Section 72	A contractor has the right to suspend work under a commercial construction contract where there is a failure to pay a claimed amount or scheduled amount in full by the due date or there is a failure to comply with an adjudicator's determination. The party suspending the work must serve notice on the other party of its intention to suspend work. Where the amount due is not paid, or the adjudicator's determination not been complied with, the right to suspend work crystallises within five working days after the date of the notice.
Section 10	Note that the Act expressly excludes the application of Section 72 to a residential construction contract.

### 3. Payment Schedules

#### 3.1. What are the requirements for a valid payment schedule?

<b>Relevant Section(s) of the Act</b>	<b>Position</b>
Section 21	<p>A payment schedule must be in writing; identify the payment claim to which it relates; and indicate a scheduled amount. If the scheduled amount is less than the claimed amount, the payment schedule must indicate the manner in which the payer calculated the scheduled amount; the payer's reason or reasons for the difference between the scheduled amount and the claimed amount; and, in a case where the difference is because the payer is withholding payment on any basis, the payer's reason or reasons for withholding payment.</p> <p>The payment schedule must be provided within the time required by the relevant construction contract or, if the contract does not provide for the matter, twenty working days after the payment claim is served.</p> <p>A 'payment schedule' is provided by the payee to the contractor in response to a payment claim.</p>

#### 3.2. How must a payment schedule be served?

<b>Relevant Section(s) of the Act</b>	<b>Position</b>
	<p>Please refer to the FAQ 'How must documents be served under the Act?' above.</p>

#### 4. Timeframes

##### 4.1. What is the relevant period for the purposes of making a payment claim?

<b>Relevant Section(s) of the Act</b>	<b>Position</b>
Section 20	<p>A payment claim for each progress payment may be served:</p> <ul style="list-style-type: none"><li>• If the contract provides for the matter, at the end of the relevant period that is specific in, or is determined in accordance with the terms of, the contract; or</li><li>• If the contract does not provide for the matter, at the end of the relevant period. As referred to above, the 'relevant period' is the period commencing on the day of the month on which construction work was first carried out under the contract and ending on the last day of that month (the 'first period'); thus, the end of the month.</li></ul>

##### 4.2. What is the deadline for making a payment claim?

<b>Relevant Section(s) of the Act</b>	<b>Position</b>
	<p>The Act provides no express reference to a deadline for making a payment claim.</p> <p>It is however important to understand the timeframe for making an adjudication application (please see the FAQ 'What is the timeframe for making an adjudication application?' below) to the extent that a payment claim may later become subject to an adjudication application.</p>

##### 4.3. What is the time limit for issuing a payment schedule?

<b>Relevant Section(s) of the Act</b>	<b>Position</b>
Section 22	<p>The payment schedule must be provided within the time required by the relevant construction contract or, if the contract does not provide for the matter, twenty working days after the payment claim is served.</p>

##### 4.4. What is the timeframe for making an adjudication application?

<b>Relevant Section(s) of the Act</b>	<b>Position</b>
Section 71	<p>The Act provides no express reference to a timeframe for making an adjudication application.</p> <p>For construction work which was carried out under a construction contract after 1 January 2011, the Limitation Act 2010 applies to adjudications as it applies to claims (as defined in section 4 of that Act). Section 11 of the Act provides the following:</p> <ul style="list-style-type: none"><li>• It is a defence to a claim if the defendant proves that</li></ul>

the date on which the claim is filed is at least 6 years after the date of the act or omission on which the claim is based (the “primary period”).

- A claim may be brought within 3 years after the date the claimant knew or ought reasonably to have known certain facts giving rise to the claim (the “late knowledge period”), even if the primary period has expired.
- However, in no circumstances can claims be brought more than 15 years from the date of the act or omission on which the claim is based (the “longstop period”).

For construction work which was carried out under a construction contract before 1 January 2011, the Limitation Act 1950 applies to adjudications as it applies to actions (as defined in section 2(1) of that Act). Section 4 of the Act provides the following:

- An action shall not be brought after the expiration of 6 years from the date on which the cause of action accrued.

#### 4.5. What is the time limit for filing an adjudication response?

<b>Relevant Section(s) of the Act</b>	<b>Position</b>
Section 37	<p>The respondent of an adjudication claim must serve a written response within five working days after receiving the claim, or within any further time that the parties to the adjudication may agree, or that the adjudicator may allow.</p> <p>If a response is served later than the five-working days' period or additional time allowed, the adjudicator is not entitled to have regard to the response in determining the dispute.</p>

#### 4.6. What is the timeframe in which the adjudicator must determine the dispute?

<b>Relevant Section(s) of the Act</b>	<b>Position</b>
Section 46(1)	<p>The adjudicator must not determine a dispute:</p> <ul style="list-style-type: none"> <li>• Until after the end of the period within which the respondent may serve on the adjudicator a written response to an adjudication claim;</li> <li>• Unless it was served on the adjudicator before the end of that period.</li> </ul> <p>The adjudicator must determine the dispute:</p> <ul style="list-style-type: none"> <li>• Within 20 working days after the time for the service of the written adjudication response; or</li> <li>• Within a further 10 working days (30 working days in</li> </ul>

total) if the adjudicator determines that further time is reasonably required; or

- Within any further time that the parties to the adjudication agree.

4.7. How long does the respondent have to pay the adjudicated amount?

<b>Relevant Section(s) of the Act</b>	<b>Position</b>
Section 48(3)(ii)	A party that is liable to pay an amount under a determination must do so on or before the date specified in the determination.

5. Dispute resolution/adjudication/enforcement

5.1. What are the options if no payment schedule is served in response to a payment claim and no payment (or an amount less than full payment) is received for the payment claim or the amount is not paid in accordance with the payment schedule?

Relevant Section(s) of the Act	Position
Sections 23(2)(a) & 24(2)(a)	<p>As the respondent becomes liable for the unpaid amount, in those circumstances:</p> <ol style="list-style-type: none"><li data-bbox="667 528 1412 763">1. The contractor may recover from the payer, as a debt due to the contractor, the unpaid portion of the claimed amount in Court, together with actual and reasonable costs of recovered awarded against the payer. The Court is defined as the New Zealand High Court or District Court.</li><li data-bbox="667 779 1412 1099">2. The contractor can serve a notice on the payer of the contractor's intention to suspend the carrying out of construction work under the construction contract. The notice must specify the ground(s) on which the suspension is based, and that it is given under the Act. (Note however that the Act expressly excludes the right to suspend work in respect of a residential construction contract).</li></ol>
Section 23(2)(b), 23(3) & 24(2)(b), 24(3) Section 25	<p>The contractor can take its default claim to adjudication, and if successful, register the determination as a judgment in the District Court. If the dispute is determined by adjudication and a payment is not made in accordance with the determination then:</p> <ol style="list-style-type: none"><li data-bbox="667 1339 1412 1574">1. The contractor may recover from the payer, as a debt due to the contractor, the unpaid portion of the claimed amount in Court, together with actual and reasonable costs of recovered awarded against the payer. The Court is defined as the New Zealand High Court or District Court.</li><li data-bbox="667 1590 1412 1910">2. The contractor can serve a notice on the payer of the contractor's intention to suspend the carrying out of construction work under the construction contract. The notice must specify the ground(s) on which the suspension is based, and that it is given under the Act. (Note however that the Act expressly excludes the right to suspend work in respect of a residential construction contract).</li></ol>

Section 59(2)(a)	3. The contractor can take its default claim to adjudication, and if successful, register the determination as a judgment in the District Court.
Section 59(2)(b)	4. If the adjudicator's determination approves the use of a charging order in respect of the construction site, the application to the District Court can include an application for a charging order. (Note however that a charging order may not be approved against an owner who is a residential occupier of the construction site; section 31).
Section 59(2)(c)	
Section 76	

5.2. What are the requirements of a valid adjudication notice?

<b>Relevant Section(s) of the Act</b>	<b>Position</b>
Section 28	<p>Adjudication is initiated by the service of a notice of adjudication by the claimant. It must be served on the other party to a construction contract, and on the owner of the construction site where a charging order, or a determination of the owner's liability, is sought.</p> <p>The notice of adjudication must state:</p> <ul style="list-style-type: none"> <li>(a) The date of the notice;</li> <li>(b) The nature and a brief description of the dispute and of the parties involved;</li> <li>(c) Details of where and when the dispute arose;</li> <li>(d) The relief or remedy that is sought;</li> <li>(e) Whether approval for the issue of a charging order is being sought;</li> <li>(f) Whether a determination of an owner's liability and an approval for the issue of a charging order are being sought;</li> <li>(g) Details sufficient to identify the construction contract to which the dispute relates, including: <ul style="list-style-type: none"> <li>The names and addresses of the parties to the contract; and</li> <li>If available, the addresses that the parties have specified for the service of notices.</li> </ul> </li> </ul>
Section 62	<p>In addition to the requirements of section 28, a notice of adjudication served on a residential occupier must set out prominently:</p> <ul style="list-style-type: none"> <li>(a) A statement of the residential occupier's rights and obligations in the adjudication; and</li> <li>(b) A brief explanation of the adjudication process.</li> </ul> <p>This must be complied with in the prescribed form (Form 2) pursuant to the Construction Contracts Regulations Act 2003</p>

which is provided in **Appendix C**.

5.3. What are the requirements of a valid adjudication application?

<b>Relevant Section(s) of the Act</b>	<b>Position</b>
Section 36	The adjudication claim must specify the nature or the grounds of the dispute and, to the extent that it remains relevant, be accompanied by a copy of the notice of adjudication and may be accompanied by any other documents.

5.4. What options are available for enforcement of an adjudication determination?

<b>Relevant Section(s) of the Act</b>	<b>Position</b>
Section 59(2)(a)	If the dispute is determined by adjudication and a payment is not made in accordance with the determination then: <ol style="list-style-type: none"><li>1. The contractor may recover from the payer, as a debt due to the contractor, the unpaid portion of the claimed amount in Court, together with actual and reasonable costs of recovered awarded against the payer. The Court is defined as the New Zealand High Court or District Court.</li><li>2. The contractor can serve a notice on the payer of the contractor's intention to suspend the carrying out of construction work under the construction contract. The notice must specify the ground(s) on which the suspension is based, and that it is given under the Act. (Note however that the Act expressly excludes this method of securing payment in respect of a residential construction contract).</li><li>3. The contractor can apply for the adjudicator's determination to be enforced by entry as a judgment. (Note however that the Act expressly excludes this method of securing payment in respect of a residential construction contract).</li><li>4. If the adjudicator's determination approves the use of a charging order in respect of the construction site, the application to the District Court can include an application for a charging order. (Note however that a charging order may not be approved against an owner who is a residential occupier of the construction site; section 31). The application may be made to a District Court and must be made in the manner provided by the rules of that court (if any).</li></ol>
Section 59(2)(b)	
Section 59(2)(c)	
Section 76	

5.5. What are the options for reviewing an adjudicator's decision?

Relevant Section(s) of the Act	Position
Section 52	An owner of a construction site, who is not the respondent ("the payer"), may apply to the District Court for review of an adjudicator's determination that the owner is jointly and severally liable with the respondent to make a payment to the contractor and an adjudicator's approval for the issue of a charging order in respect of the construction site.
Section 60	A party may alternatively choose to seek judicial review and challenge an adjudicator's decision pursuant to Section 8 of the Judicature Amendment Act 1972.

## SECTION 6 – MEANING OF ‘CONSTRUCTION WORK’

### 6 Meaning of construction work

- (1) In this Act, unless the context otherwise requires, **construction work** means any of the following work:
- (a) the construction, erection, installation, carrying out, alteration, repair, restoration, renewal, maintenance, extension, demolition, removal, or dismantling of any building, erection, edifice, or structure forming, or to form, part of land (whether permanent or not and whether constructed wholly or partly on, above, or below ground level):
  - (b) the construction, erection, installation, carrying out, alteration, repair, restoration, renewal, maintenance, extension, demolition, removal, or dismantling of any works forming, or to form, part of land; including—
    - (i) any road, motorway, aircraft runway, wharf, docks, harbour works, railway, cableway, or tramway:
    - (ii) any canal, inland waterway, pipeline, reservoir, aqueduct, water main, well, or sewer:
    - (iii) any electricity, water, gas, or telephone reticulation:
    - (iv) any telecommunication apparatus or industrial plant:
    - (v) any installation for the purposes of land drainage or coast protection:
  - (c) the installation in any building or structure of fittings forming, or to form, part of land; including heating, lighting, air conditioning, ventilation, power supply, drainage, sanitation, water supply or fire protection, security, and communications systems:
  - (d) the alteration, repair, maintenance, extension, demolition, or dismantling of the systems mentioned in paragraph (c):
  - (e) the external or internal cleaning of buildings and structures, so far as it is carried out in the course of their construction, erection, alteration, repair, restoration, or extension:
  - (f) any operation that forms an integral part of, or is preparatory to or is for rendering complete, work of the kind referred to in paragraphs (a) to (d); including—
    - (i) site clearance, earthmoving, excavation, tunnelling, and boring; and
    - (ii) laying foundations; and
    - (iii) erecting, maintaining, or dismantling scaffolding or cranes; and
    - (iv) prefabricating customised components of any building or structure, whether carried out on the construction site or elsewhere; and
    - (v) site restoration, landscaping, and the provision of roadways and other access works:
  - (g) the painting or decorating of the internal or external surfaces of any building or structure.
- (2) Despite subsection (1), **construction work** does not include any of the following work:

(a) drilling for or extracting oil or natural gas:

(b) extracting (whether by underground or surface working) minerals, including tunnelling or boring, or constructing underground works, for that purpose.

**FORM 1:  
INFORMATION THAT MUST ACCOMPANY PAYMENT CLAIM  
SERVED ON RESIDENTIAL OCCUPIER**

**IMPORTANT NOTICE**

You have been served with a payment claim under **section 20** of the Construction Contracts Act 2002 (the **Act**). Under the Act, the person who has served the payment claim is called the **payee**.

If you do not respond to the payment claim promptly, you may lose your right to object to the payment claim.

You may choose to respond to the payment claim in either of the following 2 ways:

- you may pay the payee the amount claimed in the payment claim in full on or before the due date; or
- if you object to the payment claim, you may provide a written payment schedule to the payee, which must identify the payment claim to which it relates and indicate what you are prepared to pay (which can be nothing). The amount you so indicate is called the **scheduled amount**. If the scheduled amount is less than the claimed amount, the payment schedule must indicate -
  - (a) how you calculated the scheduled amount; and
  - (b) your reason or reasons for the difference between the scheduled amount and the claimed amount; and
  - (c) in a case where the difference is because you are withholding payment on any basis, your reason or reasons for withholding payment.

You must provide the payment schedule to the payee within the time required by the construction contract or, if the construction contract does not set out a time for responding to the payment claim, then within 20 working days after the payment claim is served on you. If you provide a payment schedule in this way, then you must pay the scheduled amount in full on or before the due date for the progress payment to which the payment claim relates.

**Consequences of not responding to payment claim:**

If you do not respond to the payment claim by paying the claimed amount in full or providing a payment schedule that sets out the amount you are prepared to pay, then you will become liable to pay the claimed amount and the payee may recover from you, as a debt due, in the appropriate court, the unpaid portion of the claimed amount and the actual and reasonable costs of recovery awarded against you by the court.

**Consequences of indicating that you will pay nothing or less than claimed amount:**

If you do respond to the payment claim by providing a payment schedule but indicate in the schedule that you are prepared to pay nothing or an amount less than the claimed amount, the payee may take issue with you doing so. The payee may bring court proceedings against you and refer the matter as a dispute for adjudication under the Act.

**Consequences of not paying scheduled amount in manner indicated by payment schedule:**

If you do respond to the payment claim by providing a payment schedule but do not pay the scheduled amount on or before the due date for the progress payment to which the payment claim relates, the payee may recover from you, as a debt due, in the appropriate court, the unpaid portion of the scheduled amount and the actual and reasonable costs of recovery awarded against you by the court.

**Advice to residential occupier:**

**Important: If you do not understand this information or if you want advice about how best to respond to the payment claim, you should consider getting legal advice immediately.**

The **due date** for a progress payment is the date agreed for payment of the progress payment between you and the payee as parties to the construction contract. The due date should be set out in the payment claim.

**Working day** does not include Saturdays, Sundays, any day during 24 December to 5 January inclusive, national holidays, or the anniversary of the relevant province. If the last day for making a payment or providing a payment schedule falls on a day that is not a working day, you may do so on the next working day after that day.

**FORM 2:  
INFORMATION THAT MUST BE SET OUT IN NOTICE OF ADJUDICATION SERVED ON  
RESIDENTIAL OCCUPIER**

**IMPORTANT NOTICE**

You have been served with a notice of adjudication under the Construction Contracts Act 2002 (the **Act**). You have certain rights and obligations under the Act in relation to the notice of adjudication.

This notice of adjudication means that the person who served the notice (the **claimant**) intends to refer a matter in dispute in relation to a construction contract between you and that person for adjudication under the Act. As the respondent, you have certain rights and strictly limited times in which to respond.

This notice briefly explains the adjudication process under the Act and provides a statement of your rights and obligations in the adjudication. It summarises the effect of the Act, but is not a substitute for the Act. If you want more detailed information about exactly what the Act states, you should consult the Act or a lawyer.

**Important: If you do not understand this information or if you want further advice about how to respond to the notice of adjudication, or if you do not think you are a party to a construction contract, you should consider getting legal advice on the matter immediately.**

**(A) Adjudication process:**

The adjudication process may be used for any dispute arising under a construction contract, including residential construction contracts. If your dispute does not arise under a construction contract, the adjudicator does not have jurisdiction to hear it. If you think that your dispute does not arise under a construction contract, you should tell the adjudicator and the other parties at once and consider consulting a lawyer immediately.

The adjudication is intended to give a quick determination of the dispute by an adjudicator. If an adjudicator determines that you are, or any other party is, liable to pay money under the contract, that determination is binding and enforceable until the dispute has been finally determined through court or arbitration proceedings. Any other determination by the adjudicator about the rights and obligations of the parties is not enforceable as such, but the parties may bring proceedings in court to enforce their contractual rights.

You or the other parties to a construction contract can still submit your dispute to the courts, arbitration, mediation, or any other dispute resolution procedures, as well as to adjudication. When a court has made a judgment, that judgment will either stop an adjudication that is underway or override the effect of an adjudicator's determination. Until then, those proceedings do not stop the adjudicator making a determination or the claimant enforcing any monetary determination against you.

Unless extended by written agreement between the parties, an adjudicator's role is limited to determining the following:

- if the claimant is claiming money, whether or not any of the parties to the adjudication are liable to make a payment under the contract; and
- any questions in dispute about the parties' rights and obligations under the contract; and
- any other matters that are ancillary or consequential to the determination.

An adjudicator has 20 working days to determine a dispute after the end of the period during which the parties may serve a written response to the adjudication claim. However, the period during which the adjudicator must determine the dispute may be extended to 30 working days if the adjudicator considers that further time is reasonably required, or any further time period that the parties may agree upon. For the purposes of this form, **working day** does not include Saturdays, Sundays, any day during 24 December to 5 January inclusive, national holidays, or the anniversary of the relevant province.

If an adjudicator gives you notice that an amount is payable by you, you must pay it within 2 working days or within any longer time specified by the adjudicator. If you do not, the claimant may recover that amount as a debt from you through the courts.

**It is important that you read the following statement of your rights and obligations and act promptly, and within the stated times, to exercise your rights.**

**(B) Your rights and obligations in adjudication:**

*(C) Choice of adjudicator:*

The claimant may contact you to discuss the choice of adjudicator for the dispute and you may agree between yourselves as to who that person should be. If the person you have agreed on has already indicated that he or she is unwilling or unable to act, you and the claimant may agree on another choice of adjudicator. If you and the claimant do not agree upon an adjudicator, you may together agree on a nominating body to select an adjudicator. That nominating body may be any person, company, or other body (whether incorporated or not) who nominates adjudicators. If you have not agreed on a nominating body and no agreed adjudicator is willing and able to act within 5 working days of you receiving the notice of adjudication, then the claimant may request any nominating authority that has been authorised by the Minister of Commerce under the Act (an **authorised nominating authority**) to nominate an adjudicator.

Any agreement about the choice of an adjudicator or a nominating body or an authorised nominating authority that was made before the dispute arose is not binding on you or the other parties to the adjudication.

The adjudicator may **not** be someone who is a party to the construction contract. If the person asked to act as an adjudicator has a conflict of interest (whether financial or otherwise), he or she must disclose it to you and that person may not act as an adjudicator unless all of the parties to the adjudication, including you, agree.

If a person agrees to act as an adjudicator, he or she must serve a notice of acceptance on you. The notice must confirm that the person has no undisclosed conflict of interest, or else it will have no effect.

*(D) Adjudication claim and your response:*

Once an adjudicator has been appointed, the claimant must, within 5 working days of receiving the adjudicator's notice of acceptance, serve an adjudication claim on you. This claim must specify the nature or the grounds of the dispute and, to the extent that it remains relevant, be accompanied by a copy of the notice of adjudication. It may be accompanied by any other documents.

You may serve a written response to the adjudication claim on the adjudicator. You have 5 working days after you receive the adjudication claim to do this, or any further time that you and the other parties to the adjudication agree or the adjudicator allows. If you do not serve a written response within that time, the adjudicator may draw any inferences from that failure that he or she thinks fit and may determine the dispute on the basis of the information that is available to him or her. Your response may be accompanied by any other documents that you consider useful. You must serve a copy of the response and any accompanying documents on the claimant and any other party to the adjudication either before or immediately after they are served on the adjudicator. If you want to argue the adjudication claim, it is essential that you respond promptly, setting out your side of the case.

You may serve your response by delivering it to the adjudicator and claimant, or by leaving it at their usual or last known place of residence or business in New Zealand, or by posting it in a letter addressed to them there. You may also serve your response by fax, email, or other means of electronic communication.

*(E) Adjudication proceedings:*

Adjudicators must act independently, impartially, and in a timely manner. They must avoid incurring unnecessary expense and comply with the principles of natural justice. If they become aware of any conflict of interest, they must disclose it to the parties to the adjudication and resign unless those parties agree otherwise. Within these requirements, an adjudicator may conduct the adjudication in any manner he or she thinks fit. An adjudicator may—

- request further written submissions from the parties to the adjudication, but must give the relevant parties an opportunity to comment on those submissions:
- request the parties to provide copies of any documents that he or she may reasonably require:
- set deadlines for further submissions and comments by the parties:
- appoint an expert adviser to report on specific issues (as long as the parties are notified before the appointment is made):
- call a conference of the parties:
- carry out an inspection of any construction work or any other thing to which the dispute relates:
- request the parties to do any other thing during the course of an adjudication that he or she considers may reasonably be required to enable the effective and complete determination of the questions that have arisen in the adjudication:
- issue any other reasonable directions that relate to the conduct of the adjudication.

*(F) Confidentiality:*

Any information disclosed in the course of the adjudication for the purposes of the adjudication, and any statement, admission, or document created or made for the purposes of an adjudication, is confidential, to the extent it is not already publicly known. Neither the adjudicator nor any party to the dispute may disclose the information except—

- with the consent of the relevant party; or
- to the extent that disclosure is necessary for the purposes of, or in connection with, the adjudication or the enforcement of the adjudicator's determination; or
- in statistical or summary form arranged in a manner that prevents any information disclosed from being identified by any person as relating to any particular person; or
- if the information is to be used for statistical or research purposes and will not be published in a form that could reasonably be expected to identify any particular person.

*(G) Representation:*

You and the other parties may be represented by legal or other representatives, subject to the adjudicator's power to limit the number of representatives present at a conference to allow for the efficient conduct of proceedings.

*(H) Consolidation of adjudication proceedings:*

If 2 or more adjudication proceedings are pending, the adjudicator may, with your written consent and the consent of all the other parties to those proceedings, determine all those adjudication proceedings at the same time.

*(I) Liability of adjudicators and expert advisers:*

Neither adjudicators nor any expert advisers they appoint are under any liability to you for anything done or omitted in that capacity unless it was done or omitted in bad faith.

*(J) Adjudicator's determination:*

The determination of the questions in dispute must be in the written form prescribed by the Construction Contracts Regulations 2003 and must contain the reasons for the determination. The adjudicator must give a copy of the determination to you as soon as practicable after making it. If the adjudicator determines that a party is liable to pay money, the adjudicator must also determine the amount payable, when it is payable, and whether any conditions must be met before it is payable.

*(K) Costs of adjudication proceedings:*

An adjudicator may determine that costs and expenses must be met by any of the parties to the adjudication if the adjudicator considers that the party has caused those costs and expenses to be incurred unnecessarily by bad faith or by allegations or objections by that party that are without substantial merit. Otherwise, the parties to the adjudication must meet their own costs and expenses.

Any agreement made before the dispute arose about how the costs and expenses in adjudication proceedings are to be apportioned is not binding.

An adjudicator's fees must be borne equally by the parties to the adjudication, unless the adjudicator determines that the claimant's adjudication claim or your response was without substantial merit or that one of you acted in a contemptuous or improper manner during the adjudication. Those fees are payable only if the adjudicator determines the dispute within the time allowed. An adjudicator may require payment before communicating his or her determination on a dispute to you.

If an adjudication claim is withdrawn or terminated, or the dispute between the parties is resolved, an adjudicator is entitled to be paid the fees and expenses incurred in the adjudication to that date.

