



Security of Payment Guide

Projects and Construction Team

February 2010

Comparison of security of payment legislation - February 2010

Note: This table is a summary only and must not be relied upon in substitution for legal advice.

	EASTERN MODEL						WESTERN MODEL	
	NSW	VIC	QLD	SA	ACT	TAS	WA	NT
NAME	<i>Building and Construction Industry Security of Payment Act 1999 (NSW).</i>	<i>Building and Construction Industry Security of Payment Act 2002 (VIC).</i>	<i>Building and Construction Industry Payments Act 2004 (QLD).</i>	<i>Building and Construction Industry Security of Payment Act 2009 (SA).</i> (Act commences on proclamation, Section 2; uncommenced as at 3 February 2010)	<i>Building and Construction Industry (Security of Payment) Act 2009 (ACT).</i> (Act commences on 1 July 2010; Section 2)	<i>Building and Construction Industry Security of Payment Act 2009 (TAS).</i>	<i>Construction Contracts Act 2004 (WA).</i>	<i>Construction Contracts (Security of Payments) Act (NT).</i>
OBJECT	<u>Section 3(1):</u> "To ensure that any person who undertakes to carry out construction work (or who undertakes to supply related goods and services) under a construction contract is entitled to receive, and is able to recover, progress payments in relation to the carrying out of that work and the supplying of those goods and services."	<u>Section 3(1).</u> Identical drafting to NSW.	<u>Section 7.</u> Substantially the same as NSW. Drafting differs.	<u>Section 3(1).</u> Identical drafting to NSW.	<u>Section 6(1).</u> Substantially the same as NSW. Drafting differs.	<u>Section 3.</u> Substantially the same as NSW. However, unlike NSW, the Act also applies to residential structures.	No general object section. In the long title section, it says it is an Act to: <ul style="list-style-type: none"> prohibit or modify certain provisions in construction contracts; imply provisions in construction contracts about certain matters if there are no written provisions in the contract; and provide a means for adjudicating payment disputes. There is an object section in relation to adjudications (s30): "The object of an adjudication of a payment dispute is to determine the dispute fairly and as quickly, informally and inexpensively as possible."	<u>Section 3(1):</u> "To promote security of payments under construction contracts."
MEANS TO ACHIEVE OBJECT	<u>Section 3(2):</u> In regard to ensuring a person may claim progress payments, by granting a statutory entitlement to progress payments (irrespective of whether there is a contractual right).	<u>Sections 3(2),3(3):</u> Substantially the same as NSW. Drafting differs.	<u>Section 8.</u> Substantially the same as NSW. Drafting differs.	<u>Sections 3(2),3(3).</u> Identical drafting to NSW.	<u>Section 6(2).</u> Substantially the same as NSW. Drafting differs.	No provisions.	No provisions.	<u>Section 3(2).</u> "The object of this Act is to be achieved by - (a) facilitating timely payments between the parties to construction contracts; (b) providing for the

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	<p><u>Section 3(3).</u></p> <p>In regard to recovering progress payments, by establishing a procedure involving payment claims, payment schedules and referral of disputes to an Adjudicator for determination.</p>							<p>rapid resolution of payment disputes arising under construction contracts; and</p> <p>(c) providing mechanisms for the rapid recovery of payments under construction contracts."</p>
<p>EFFECT OF ACT ON ALTERNATE REMEDIES (SEE ALSO EFFECT OF ADJUDICATION ON OTHER CIVIL PROCEEDINGS)</p>	<p><u>Section 3(4).</u></p> <p>The Act does not limit:</p> <p>(a) any other entitlement the Claimant may have under a construction contract, or</p> <p>(b) any other remedy the Claimant may have for recovering any such other entitlement.</p>	<p><u>Section 3(4).</u></p> <p>Identical drafting to NSW.</p>	<p><u>Section 5.</u></p> <p>Substantially the same as NSW. Drafting differs.</p>	<p><u>Section 3(4).</u></p> <p>Identical drafting to NSW.</p>	<p>See section "Effect of adjudication on other civil proceedings".</p>	<p><u>Section 9.</u></p> <p>Substantially same as NSW. Drafting differs.</p>	<p>See section "Effect of adjudication on other civil proceedings".</p>	<p>See section "Effect of adjudication on other civil proceedings".</p>
<p>APPLICABILITY</p>	<p><u>Section 7.</u></p> <p>Applies to any construction contract (written or oral), even if the contract is expressed to be governed by the law of another jurisdiction.</p> <p>"Construction contract" is defined to mean a contract or other arrangement under which one party undertakes to carry out construction work, or to supply related goods and services, for another party (Section 4).</p> <p><u>Section 7(2):</u></p> <p>Does not apply to:</p> <ul style="list-style-type: none"> construction contract that forms part of a loan agreement, a contract of guarantee or a contract of insurance under which a recognised financial institution undertakes: (i) to lend money or to repay money lent; (ii) to guarantee payment of money owing or repayment of 	<p><u>Section 7.</u></p> <p>Substantially the same as NSW except as stated below.</p> <p>Note: The Victorian equivalent to the <i>Home Building Act 1989</i> (NSW) is the <i>Domestic Building Contracts Act 1995</i> (VIC).</p> <p>Note: The residential building work/domestic building contract exclusion does not apply to:</p> <ul style="list-style-type: none"> contracts where the building owner is in the business of building residences and the contract is entered into the course of that business (s7(2)(b)); or contract is incidental to work carried out under another construction contract (s7(2)(ba)(ii)). 	<p><u>Section 3.</u></p> <p>Substantially the same as NSW except as stated below</p> <p>Note: The Queensland equivalent to the <i>Home Building Act 1989</i> (NSW) is the <i>Domestic Building Contracts Act 2000</i> (QLD).</p> <p>Note: In QLD subcontractors may choose between the Act and the <i>Subcontractors' Charges Act 1974</i> (QLD): Section 4.</p>	<p><u>Section 7.</u></p> <p>Identical drafting to NSW.</p> <p>Note: The SA equivalent of the <i>Home Building Act 1989</i> (NSW) is the <i>Building Work Contractor Act 1995</i> (SA).</p>	<p><u>Section 9.</u></p> <p>Substantially the same as NSW except as stated below.</p> <p>Note: The Act does not apply to a construction contract entered into before the commencement of the Act (s9(6)) (1 July 2010).</p> <p>Note: The ACT equivalent of the <i>Home Building Act 1989</i> (NSW) is the <i>Building Act 2004</i> (ACT).</p>	<p><u>Section 7.</u></p> <p>Substantially the same as NSW except as stated below.</p> <p>Note: The Act applies to a supply in Tasmania, even though the construction work is being carried out outside Tasmania (s7(3)).</p> <p>Note: Unlike NSW, the Act also applies to residential structures and resident owners.</p>	<p><u>Section 7.</u></p> <p>Applies to any construction contract (written or oral or part thereof), irrespective of where the contract was entered into or whether it is expressed to be governed by the law of another jurisdiction (s7(2)).</p> <p>"Construction contract" is defined to mean a contract or other agreement, whether in writing or not, under which the contractor has one or more of the following obligations:</p> <ul style="list-style-type: none"> carry out construction work; supply to the site any goods that are related to the construction work; provide (on or off site) professional services which are related to the construction work; 	<p><u>Sections 5 and 9.</u></p> <p>Identical drafting to WA.</p>

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	<p>money lent;</p> <p>(iii) to provide an indemnity with respect to construction work carried out, or related goods and services supplied, under the construction contract;</p> <ul style="list-style-type: none"> • construction contract for the carrying out of residential building work (within the meaning of the <i>Home Building Act 1989</i> (NSW)) on a site (or part of a site) used or proposed to be used as a residence by the party for whom the work is carried; or • construction contract under which it is agreed that the consideration payable is to be calculated otherwise than by reference to the value of the work carried out or the value of the goods and services supplied. <p>The exclusions below are only applicable to the extent that the construction contract contains the provisions specified below (Section 7(3)):</p> <ul style="list-style-type: none"> • provisions under which a party undertakes to carry out construction work, or supply related goods and services, as an employee of the party for whom the work is to be carried out or the related goods and services are to be supplied; • provisions under which a party undertakes to carry out construction work, or to supply related goods and services, as a condition of a loan agreement with a recognised financial institution undertaking to 						<p>and</p> <ul style="list-style-type: none"> • provide on site services that are related to the construction work. <p>(s3).</p> <p>“related to the construction work” is defined as:</p> <ul style="list-style-type: none"> • relating to goods (s5(1)); • relating to professional services (s5(2)). Excludes accounting, legal and financial services (s5(2)(a)(ii)); and • relating to on-site services (s5(3)). <p><u>Section 7(3).</u></p> <p>Does not apply to contracts to the extent to which it contains provisions under which a party undertakes to carry out construction work, or supply related goods and services, as an employee of the party for whom the work is to be carried out or to whom the related goods and services are to be supplied.</p> <p><u>Section 7(4).</u></p> <p>The Act does not apply to any contracts or classes of contracts as prescribed by Regulations from time to time.</p>	

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	<p>the same activities as identified above; or</p> <ul style="list-style-type: none"> provisions under which a party undertakes to lend or repay money, to guarantee repayment of money owing, or repayment of money lent, or to provide indemnity regarding construction work or related goods and services supplied under the construction contract. <p>Act does not apply to any construction contract, or class of construction contracts, prescribed by the Regulations for the purposes of this section. Currently, the Regulations do not prescribe any types or classes of construction contracts.</p>							
CONSTRUCTION WORK?	<p><u>Section 5</u></p> <p>Construction work has a broad definition. See section 5(1) for the work covered.</p> <p>Exclusions include:</p> <ul style="list-style-type: none"> the drilling for, or extraction of, oil or natural gas; the extraction of minerals, including tunnelling or boring, or constructing underground works, for that purpose; any other work of a kind prescribed by the Regulations. <p>(s5(2))</p> <p>Currently, the Regulations do not prescribe any other kind of excluded work.</p>	<p><u>Section 5.</u></p> <p>Identical drafting to NSW.</p>	<p><u>Section 10.</u></p> <p>Substantially the same as NSW. Drafting differs.</p> <p>Construction work also includes building work within the meaning of the <i>Queensland Building Services Authority Act 1991</i> (QLD) ("QBSA Act").</p>	<p><u>Section 5.</u></p> <p>Substantially the same as NSW. Drafting differs.</p>	<p><u>Section 7.</u></p> <p>Substantially the same as NSW. Drafting differs.</p> <p>Construction work also includes building work within the meaning of the <i>Building Act 2004</i> (ACT).</p>	<p><u>Section 5.</u></p> <p>Substantially the same as NSW. Drafting differs.</p>	<p><u>Section 4(2).</u></p> <p>Although drafted differently to NSW and the other Acts based on the NSW model, the definition of construction work is also very broad.</p> <p>However, unlike NSW and the other Acts based on the NSW model, it excludes the construction of any plant for the purpose of discovering or extracting or processing oil, natural gas or any mineral bearing or other substance (all of the other Acts only exclude the actual process of extraction from the definition) (s4(3)).</p> <p>Construction work also does not include any dealings with wholly artistic works (including sculptures, installations and murals) or any watercraft (s4(4)).</p> <p>Note also the Act uses</p>	<p><u>Section 6.</u></p> <p>Identical drafting to WA.</p>

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							different terminology. s4 uses terms such as "civil works". Currently, the Regulations do not prescribe any other kind of excluded work.	
DOES ACT APPLY TO WORK OUTSIDE THE STATE/ TERRITORY?	<u>Section 7(4).</u> No - Excluded from scope of Act. Act does not apply to a construction contract to the extent to which it deals with construction work or related goods and services supplied in respect of construction work carried out outside the State.	<u>Section 7(4).</u> No - Excluded from scope of Act. Substantially the same as NSW. Drafting differs.	<u>Section 3(4).</u> No - Excluded from scope of Act. Substantially the same as NSW. Drafting differs.	<u>Section 7(4).</u> No - Excluded from scope of Act. Substantially the same as NSW. Drafting differs.	<u>Section 9(4).</u> No - Excluded from the scope of the Act. Substantially the same as NSW. Drafting differs.	<u>Section 7(2), (3) and (4).</u> No - Excluded from the scope of the Act. The Act applies to a supply in this State, even though the construction work is being carried out outside the State (s7(3)).	<u>Section 4(2).</u> No - Definition of 'construction work' to which a construction contract must relate is limited to "work on a site in WA".	<u>Section 6(1).</u> No - Definition of 'construction work' to which a construction contract must relate is limited to "work on a site in the Territory".
DEFINITION OF TIME	<u>Section 4.</u> "business day" means a day other than: <ul style="list-style-type: none">a Saturday or Sunday;a public holiday; or27 to 31 December inclusive.	<u>Section 4.</u> "business day" means a day that is not: <ul style="list-style-type: none">a Saturday or Sunday; ora day that is wholly or partly observed as a public holiday throughout Victoria.	<u>Section 9, Schedule 2 and Acts Interpretation Act 1954 (QLD).</u> "business day" means a day that is not, in the place where the act is to be done: <ul style="list-style-type: none">a Saturday or Sunday;public holiday;special holiday;bank holiday, or27 to 31 December inclusive.	<u>Section 4.</u> "business day" means any day other than: <ul style="list-style-type: none">a Saturday or Sunday;public holiday;27 to 31 December inclusive; orany other day on which there is a Statewide shut-down of the operations of the building and construction industry.	<u>Section 3, Dictionary and Legislation Act 2001 (ACT).</u> "business day" means a day other than: <ul style="list-style-type: none">a Saturday or Sunday;a public holiday or bank holiday in the ACT under the <i>Holidays Act 1958 (ACT)</i>; or27 to 31 December inclusive.	<u>Section 4.</u> "business day" means a day other than: <ul style="list-style-type: none">a Saturday or Sunday; ora statutory holiday as defined in the <i>Statutory Holidays Act 2000 (TAS)</i>.	<u>Section 23.</u> If the contract does not provide a definition, the Act implies such terms by reference to the <i>Interpretation Act 1984 (WA)</i> . The <i>Interpretation Act 1984 (WA)</i> provides that if a period by which an act must be done ends on an Excluded Day, it is deemed to be due on the next day that is not an Excluded Day: s61. Excluded Days are: <ul style="list-style-type: none">a Saturday or Sunday;a public service holiday;a bank holiday; orpublic holiday throughout the State or in that part of the State which is relevant to the event. (s 61(2))	<u>Section 4.</u> "working day" means a day other than: <ul style="list-style-type: none">a Saturday or Sunday; ora public holiday within the meaning of the <i>Public Holidays Act (NT)</i>. Note: "working day" is not always used and is often substituted by "day" which is not defined in any Act. If a period by which an act must be done does not end with a working day, it is deemed to be due on the next working day: s28 <i>Interpretation Act (NT)</i> .
CAN A PARTY CONTRACT OUT?	No (s34). A provision of any	No (s48). Identical drafting to NSW.	No (s99). Substantially the same as	No (s32). Identical drafting to	No (s42). Substantially the same as	No (s11). Substantially the same	No (s53).	No (s10). Identical drafting to WA.

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	<p>agreement (whether in writing or not) is void if:</p> <p>(a) the operation of this Act is, or is purported to be, excluded, modified or restricted (or that has the effect of excluding, modifying or restricting the operation of this Act); or</p> <p>(b) it may reasonably be construed as an attempt to deter a person from taking action under this Act.</p>		NSW. Drafting differs.	NSW.	NSW. Drafting differs.	as NSW. Drafting differs.		
WHAT CONTRACTUAL TERMS ARE PROHIBITED?	<p><u>Section 12.</u></p> <p>Pay if paid and pay when paid (s12).</p> <p>Note: These clauses provide that the entitlement for payment or the due date for payment is contingent or dependent on the payment (in whole or in part) to the Respondent by a third party, or the operation of another contract.</p> <p>(A typical example arises when a contractor includes a provision in a subcontract stating that the contractor is not required to pay the subcontractor for a particular item of work or the supply of certain goods or services unless or until the Principal pays the contractor for such work, goods or services.)</p>	<p><u>Section 13.</u></p> <p>Pay if paid and pay when paid (s13).</p> <p>Substantially the same as NSW. Drafting differs.</p>	<p><u>Section 16.</u></p> <p>Pay if paid and pay when paid (s16).</p> <p><u>Void terms under the QBSA Act</u></p> <p>In a commercial building contract, for a progress payment to be paid >15 business days after submission of a payment claim (s67W <i>QBSA Act</i>).</p> <p>In a construction management trade contract, for a payment to be made >25 business days after submission of a payment claim (s67U <i>QBSA Act</i>).</p>	<p><u>Section 12.</u></p> <p>Identical drafting to NSW.</p>	<p><u>Section 14.</u></p> <p>Substantially the same as NSW. Drafting differs.</p>	<p><u>Section 16.</u></p> <p>Substantially the same as NSW. Drafting differs.</p>	<p><u>Sections 9, 10 and 11.</u></p> <p>Pay if paid and pay when paid clauses (s9).</p> <p>Provisions requiring payment >50 days after being claimed are to be read as requiring payment within 50 days (s10).</p> <p>Provisions declared prohibited in the Regulations (s11). Currently, the Regulations do not specify any other prohibited provisions.</p>	<p><u>Sections 12, 13 and 14.</u></p> <p>Pay if paid and pay when paid (s12).</p> <p>Provisions requiring payment >50 days after being claimed are to be read as requiring payment within 28 days (s13).</p> <p>Provisions declared prohibited in the Regulations (s14).</p>
STATUTORY ENTITLEMENT TO PROGRESS PAYMENTS	<p><u>Sections 8 and 11.</u></p> <p>Progress payments</p> <p>Contractors are entitled to progress payments for work they have undertaken on and from each reference date under the contract (s8(1)).</p> <p>Reference date - Express provision</p> <p>Where progress payments are contractually provided for</p>	<p><u>Section 9.</u></p> <p>Progress payments</p> <p>Identical drafting to NSW (s9(1)).</p> <p>Reference date - Express provision</p> <p>Where progress payments are contractually provided for the reference date is to be determined in accordance with the terms of the contract as a date on</p>	<p><u>Sections 12 and 15.</u></p> <p>Progress payments and reference date</p> <p>Substantially the same as NSW. Drafting differs.</p> <p>Due date for payment</p> <p><u>Section 15.</u></p> <p>A progress payment under a construction contract becomes payable:</p>	<p><u>Sections 8 and 11.</u></p> <p>Substantially the same as NSW. Drafting differs.</p> <p>For the definition of "reference date", see s4 (definitions). Definition is identical to NSW.</p>	<p><u>Section 10.</u></p> <p>Progress payments</p> <p>Substantially the same as NSW. Drafting differs.</p> <p>Further, a progress payment may include:</p> <ul style="list-style-type: none"> the final payment; a single or one-off payment; or a milestone payment (payment based on an event or date). 	<p><u>Section 12.</u></p> <p>Progress payments and reference date</p> <p>Substantially the same as NSW. Drafting differs.</p> <p>For the definition of "reference date", see s4 (definitions).</p> <p><u>Sections 15 and 19.</u></p> <p>Due date for payment</p>	<p>Unlike the other Acts, the WA Act does not refer to a "reference date". The contract may provide for an entitlement to progress payments.</p> <p>Implied terms (where the contract contains no provision regarding that matter)</p> <p>The parties are to apply the terms of the</p>	<p><u>Section 18 and Schedule, Div 3, Clauses 3 and 4.</u></p> <p>Identical drafting to WA.</p>

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	<p>the reference date is to be determined in accordance with the terms of the contract (s8(2)(a)).</p> <p>Reference date - No express provision</p> <p>Where the contract makes no express provision for the reference date, payment claims can be made on the last day of the named month in which the construction work was first carried out (or the related goods and services were first supplied) under the contract and the last day of each subsequent named month (s8(2)(b)); and <u>Section 11.</u></p> <p>Due date for payment</p> <p>A progress payment becomes due and payable:</p> <ul style="list-style-type: none"> on the date on which the payment becomes due and payable in accordance with the terms of the contract; or if the contract makes no express provision, payment claims are due and payable 10 business days after it has been made (s11(1)(b)). <p>Note: The “due date for payment” is different concept to the date a payment schedule is due.</p> <p>This is because the date a payment schedule is due is calculated in accordance with the contract, or within 10 business days after a payment claim is served, <i>whichever time expires earlier.</i></p> <p>The rationale behind this is that the contract mechanism and the statutory mechanism operate as a “dual railroad track” system. The Claimant can elect to</p>	<p>which progress claims can be made or the amount of a progress payment is to be calculated (s9(2)(a)).</p> <p>Reference date - No express provision</p> <p>Where the contract makes no express provision for the reference date, payment claims can be made 20 business days after the previous reference date or (in the case of the first reference date) the date occurring 20 business days after:</p> <p>(a) construction work was first carried out under the contract; or</p> <p>(b) related goods and services were first supplied under the contract.</p> <p>(see s9(2)(b)).</p> <p>Reference date - Single or one-off payment</p> <p>If the contract has no express provision for this matter, the reference date is the date immediately following the day that:</p> <p>(i) construction work was last carried out under the contract; or</p> <p>(ii) related goods and services were last supplied under the contract.</p> <p>(s9(2)(c)).</p> <p>Reference date - Final payment</p> <p>If the contract makes no express provision for this matter, the reference date is the date immediately following:</p> <p>(i) the expiry of any period provided in the contract for the rectification of defects or omissions in the</p>	<p>(a) if the contract contains a provision about the matter that is not void under section 16 or under the QBSA Act, section 67U or 67W – on the day on which the payment becomes payable under the provision; or</p> <p>(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 QBSA Act, section 67U or 67W – 10 business days after a payment claim for the progress payment is made under part 3 of the Act.</p>			<p>Reference date</p> <p>Substantially the same as NSW. Drafting differs. (s10).</p> <p>Due date for payment</p> <p>Substantially the same as NSW. Drafting differs. (s13).</p>	<p>A progress payment becomes due and payable in accordance with the terms of the contract (s15).</p> <p>If the contract does not contain such provisions, the due date for payment is:</p> <ul style="list-style-type: none"> 20 business days after the claim is served on the Respondent if the claim relates to a residential structure, and the respondent is the owner of the land and is not a building practitioner; or In any other case, 10 business days after the claim is served on the Respondent. <p>(s19(3)).</p> <p>Note that “residential structure”, “owner” and “building practitioner” are defined terms, see s4 (definitions).</p>	<p>contract, or if the contract does not contain provisions about certain matters, the Act contains implied terms including the following:</p> <ul style="list-style-type: none"> Payment claims must be made in certain ways (s16); Principals must respond to contractors’ Payment Claims in certain ways (ss17-18); Interest is payable on overdue payments (s19); Ownership of goods related to construction work passes from the contractor at certain times (s20); and Obligations as to retention money (s22). <p>Implied term: progress payments</p> <p>The contractor is entitled to make one or more claims for a progress payment regarding the obligations it has performed and for which it has not received payment by the principal (implied term: Schedule 1, cl3).</p> <p>A claim by the contractor for a progress payment can be made at any time after the contractor has performed its obligations (implied term: Schedule 1, cl4(1)).</p> <p>Implied term: due date for payment</p>	

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	choose the statutory mechanism rather than the contract mechanism (which is very often the case).	<p>construction work carried out under the contract or in related goods and services supplied under the contract, unless subparagraph (ii) below applies; or</p> <p>(ii) the issue under the contract of a certificate specifying the final amount payable under the contract (the final certificate); or</p> <p>If neither subparagraph (i) nor subparagraph (ii) above applies, the day that construction work was last carried out under the contract or related goods and services were last supplied under the contract (9(2)(d)).</p>					<p>Within 28 days after a party receives a payment claim, the party must:</p> <ul style="list-style-type: none"> pay the part of the claim that is not disputed; or pay the whole of the claim. <p>This requirement does not apply if the Respondent wholly rejects or disputes the claim via a notice of dispute (implied term: Schedule 1, cl7(3)).</p>	
STATUTORY ENTITLEMENT TO A LIEN	<p><u>Section 11.</u></p> <p>If a progress payment becomes due and payable, the Claimant is entitled to exercise a lien in respect of the unpaid amount over any unfixed plant or materials supplied by the Claimant for use in connection with the carrying out of construction work (s11(3)).</p> <p>Subsection (3) does not confer on the Claimant any right against a third party who is the owner of the unfixed plant or materials (s11(5)).</p>	<p><u>Section 12A.</u></p> <p>The same drafting to NSW, except that a Claimant must serve a notice in the prescribed form on the Respondent before exercising the lien. The lien is extinguished upon the Claimant receiving payment.</p>	<u>Not applicable.</u>	<p><u>Sections 11 (3), (4) and (5).</u></p> <p>Identical drafting to NSW.</p>	<p><u>Sections 13(3), (4) and (5).</u></p> <p>Identical drafting to NSW.</p>	<p><u>Section 14.</u></p> <p>Substantially the same as NSW. Drafting differs.</p>	<u>Not applicable.</u>	<u>Not applicable.</u>
PROCESS FOR RECOVERING PROGRESS PAYMENTS	<p><u>Section 13(1).</u></p> <p>A Claimant may serve a payment claim on a person who, under the construction contract, is or may be liable to make the payment.</p>	<p><u>Section 14(1).</u></p> <p>Identical drafting to NSW.</p>	<p><u>Section 17(1).</u></p> <p>Identical drafting to NSW.</p>	<p><u>Section 13(1).</u></p> <p>Identical drafting to NSW.</p>	<p><u>Section 15 (1).</u></p> <p>Substantially the same as NSW. Drafting differs.</p>	<p><u>Section 17 (1).</u></p> <p>Substantially the same as NSW. Drafting differs.</p>	<p><u>Section 16.</u></p> <p>The parties can expressly agree on a process in the contract otherwise <u>Division 4 of Schedule 1</u> applies which provides for the submission of a payment claim by the party seeking payment.</p>	<p><u>Section 19 and Schedule Div 4.</u></p> <p>Substantially the same as WA. Drafting differs.</p>
WHAT IS REQUIRED IN A PAYMENT	<u>Section 13(2).</u>	<u>Section 14(2).</u>	<p><u>Section 17(2).</u></p> <p>Substantially the same as</p>	<p><u>Section 13(2).</u></p> <p>Identical drafting to</p>	<p><u>Section 15 (2).</u></p> <p>Substantially the same as</p>	<p><u>Section 17 (2).</u></p> <p>Substantially the same</p>	Implied term: payment claim	<p><u>Section 19 and Schedule Clause 5(1).</u></p>

	EASTERN MODEL						WESTERN MODEL	
	NSW	VIC	QLD	SA	ACT	TAS	WA	NT
CLAIM	<p>A payment claim must:</p> <ul style="list-style-type: none"> identify the construction work (or related goods and services) to which the progress payment relates; indicate the amount claimed; must state that it is made under the Act: ie. "This is a payment claim made under the Building and Construction Industry Security of Payment Act 1999" or a similar statement. 	<p>A payment claim must:</p> <ul style="list-style-type: none"> be in the relevant prescribed form; contain the prescribed information; identify the construction work or related goods and services to which the progress payment relates; indicate the amount of the progress payment that the Claimant claims to be; and state that it is made under this Act. <p>A payment claim must not include any "excluded amounts" (s14(3)(b)). See <i>Valuation of Construction Work and Related Goods and Services</i> below for expansion of "excluded amounts".</p>	NSW. Drafting differs.	NSW.	NSW. Drafting differs. Note: Future regulations may prescribe a standard form (s47).	as NSW. Drafting differs. Note: There are some additional details required, including: (a) must be in writing; (b) be addressed to the person on whom it is served; (c) state the name of the claimant; and (d) include the prescribed details, if any.	<p>Schedule 1, Div 4 Clause 5(2).</p> <p>Note, the below applies only if the contract does not provide for how a party may make a claim (s16).</p> <p>A payment claim must:</p> <ul style="list-style-type: none"> be in writing; be addressed to the party to which the claim is made; state the name of the Claimant; state the date of the claim; state the amount claimed; for a claim by the contractor - itemise and describe the obligations the contractor has performed and to which the claim relates in sufficient detail for the principal to assess the claim; for a claim by the principal - describe the basis for the claim in sufficient detail for the contractor to assess the claim; be signed by the Claimant; and be given to the party to which the claim is made. <p>The amount claimed is to be calculated in accordance with Schedule 1, cl 5(3).</p>	Substantially the same as WA. Drafting differs.
LIMITS ON PAYMENT CLAIMS	<p>Section 13</p> <p>May only be served within the later of:</p> <ul style="list-style-type: none"> the period allowed under 	<p>Section 14</p> <p>May only be served within the later of:</p> <ul style="list-style-type: none"> the period allowed 	<p>Sections 17(4) and (5).</p> <p>Substantially the same as NSW. Drafting differs.</p>	<p>Sections 13(4), 13(5), 13(6).</p> <p>Substantially the same as NSW, except that a payment claim may only</p>	<p>Sections 15 (4), (5) and (6).</p> <p>Substantially the same as NSW. Drafting differs.</p>	<p>Sections 17 (4), (5) and (6).</p> <p>Substantially the same as NSW. Drafting</p>	<p>The Act does not contain a statutory time limit in which to make payment claims (cf. s13(4) of the NSW Act).</p>	<p>Section 18 and Schedule clause 4(1).</p> <p>Identical drafting to WA.</p>

	EASTERN MODEL						WESTERN MODEL		
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	<p>the contract; and</p> <ul style="list-style-type: none"> 12 months after the construction work to which the claim relates was last carried out (s13(4)). <p>A Claimant cannot serve more than 1 payment claim in respect of each reference date under the construction contract (s13(5)).</p> <p>However, this does not prevent the inclusion in later payment claims of amounts that have been the subject of a previous claim (s13(6)).</p>	<p>under the contract; and</p> <ul style="list-style-type: none"> 3 months after the reference date which relates to that progress payment (s14(4)). <p>A Claimant cannot serve more than 1 payment claim in respect of each reference date under the construction contract (s14(8)).</p> <p>However, this does not prevent the inclusion in later payment claims of amounts that have been the subject of previous and unpaid claims (s14(9)).</p> <p>Regarding final, single or one-off payment claims may only be served within the period determined by the contract or if no such period applies, within 3 months after the applicable reference date (ss14(5), 14(6) and 14(7)).</p>		<p>be served within the later of:</p> <ul style="list-style-type: none"> the period allowed under the contract; and 6 months after the construction work to which the claim relates was last carried out s13(4) 423(A)). 			differs.	<p>The parties may make a provision for a time limit in the construction contract.</p>	
<p>VALUATION OF CONSTRUCTION WORK AND RELATED GOODS AND SERVICES</p>	<p><u>Section 10.</u></p> <p>Construction work (or related goods and services) is to be valued:</p> <ol style="list-style-type: none"> in accordance with the terms of the contract; or if the contract makes no express provision with respect to the matter, having regard to: <ul style="list-style-type: none"> (a) the contract price for the work or related goods and services; (b) any other rates or prices set out in the contract; (c) any variation agreed to by the parties to the contract by which the contract price, or any other rate or price set out in the contract, is to be adjusted by a 	<p><u>Section 11.</u></p> <p>Section 11 deals with how construction work is to be valued and is substantially the same as NSW. Drafting differs.</p> <p>In Victoria, unlike in the other states, there are 2 classes of variations: those that are claimable and may be taken into account when calculating the value of a progress payments and those which may not (ss 10A and 10B). Only claimable variations are taken into account when valuing construction work (s11(1)(b)(iii)).</p> <p>Claimable variations (Section 10A)</p> <p>The first class of variation (section 10A(2))</p> <p>Variation where the parties to the contract agree as to the work, scope, variation, entitlement, value and time</p>	<p><u>Section 14.</u></p> <p>Substantially the same as NSW. Drafting differs.</p>	<p><u>Section 10.</u></p> <p>Identical drafting to NSW.</p>	<p><u>Section 12.</u></p> <p>Substantially the same as NSW. Drafting differs.</p>	<p><u>Section 13.</u></p> <p>Substantially the same as NSW. Drafting differs.</p>	<p>Implied terms</p> <p><u>Schedule 1 Div 1-2.</u></p> <p>Note, the below applies only if the contract does not provide for variations to the contractor's obligations (s13), and/or amount, or means of determining the amount, that the contractor is entitled to be paid (s14).</p> <p><u>Schedule 1, Div 2</u></p> <p>A contractor is entitled to be paid a reasonable amount for the obligations the contractor performs (Schedule 1, Div 1 s2(1)).</p> <p><u>Schedule 1, Division 1</u></p> <p>Contractor is not bound to perform any variation of its obligations in the absence of agreement as to the nature and extent of variations and</p>	<p><u>Sections 16, 17 and Schedule Div 1-2.</u></p> <p>Identical drafting to WA.</p>	

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	<p>specific amount;</p> <p>(d) if any of the work or goods is defective, the estimated cost of rectifying the defect.</p> <p>In the case of materials and components that are to form part of any building, structure or work arising from construction work, the materials are to be valued on the basis that the only materials and components to be included in the valuation are those that have become (or, on payment, will become) the property of the party for whom construction work is being carried out.</p>	<p>of that claim.</p> <p>The second class of variation / disputed variations (section 10A(3))</p> <p>Variation where the parties to the contract do not agree as to one or more of the following:</p> <p>(i) that the doing of the work/supply constitutes a variation to the contract;</p> <p>(ii) that the Claimant is entitled to a progress payment that includes an amount in respect of the work or the goods and services;</p> <p>(iii) the value of the amount payable in respect of the work or the goods and services;</p> <p>(iv) the method of valuing the amount payable in respect of the work or the goods and services;</p> <p>(v) the time for payment of the amount payable in respect of the work or the goods and services.</p> <p>Limits on claimable variations</p> <p>Variation claims in the second class can only be claimed under the Act where:</p> <p>(i) the original contract price is less than \$5m; or</p> <p>(ii) the original contract price is more than \$5m but the relevant contract does not contain a dispute resolution clause (s10A(3)(d)).</p> <p>If the total amount of the</p>						<p>the amount, or means of calculating the amount, that the contractor is to be paid (Schedule 1, Div 1 cl1).</p>	

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		<p>claims under a contract for the second class of variations exceeds 10% of the original contract price, then these variations are "claimable variations" where:</p> <ul style="list-style-type: none"> (i) the original contract price is less than \$150,000; or (ii) the original contract price is more than \$150,000 but the relevant contract does not contain a dispute resolution clause (s10A(4)). <p>Excluded Amounts (section 10B(2))</p> <p>The excluded amounts are:</p> <ul style="list-style-type: none"> (a) any amount that relates to a variation of the construction contract that is not a claimable variation; (b) any amount (other than a claimable variation) claimed under the construction contract for compensation due to the happening of an event including any amount relating to: <ul style="list-style-type: none"> (i) latent conditions; (ii) time-related costs; and (iii) changes in regulatory requirements; (c) any amount claimed for damages for breach of the construction contract or for any other claim for damages arising under or in connection with the contract; (d) any amount in relation to a claim arising at law other than under the construction 						

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		contract; and (e) any amount of a class prescribed by the Regulations as an excluded amount (s10B(2)).						
CAN INTEREST BE CLAIMED ON OVERDUE AMOUNTS?	Yes (s11(2)). Rate: greater of rate in contract or s101 <i>Civil Procedure Act 2005</i> . Currently 9% after 5 March 2009.	Yes (s12(2)). Rate: greater of rate in contract or s2 <i>Penalty Interest Rates Act 1983</i> (VIC). Currently 10% on and from 23 February 2009.	Yes (s15). Rate for construction contract to which s67P of QBSA Act does not apply: greater of rate in contract or s48(1) <i>Supreme Court Act 1995</i> (QLD). Currently 10%. Rate for construction contract to which s67P of Queensland Building Services Authority Act does apply: penalty rate under that section.	Yes (s11). Rate: greater of rate in contract or <i>Supreme Court Act 1935</i> (SA). Currently 10%.	Yes (s13(2)). Rate: greater of the rate stated in the contract or Schedule 2 Part 2.2 of the <i>Court Procedure Rules 2006</i> (ACT) (interest after judgment). Currently 11% after 9 January 2005.	Yes (s15(3)). Rate: greater of the rate stated in the contract or under the <i>Supreme Court Civil Procedure Act 1932</i> (TAS). The prescribed rate of interest in any calendar year is the last large business variable indicator published by the Reserve Bank of Australia before the close of business on the last day of business in the preceding calendar year (see the <i>Supreme Court Rules 2000</i> (s5A)). Rate: as at 3 February 2010, the rate has not yet been released. The 2009 rate was 6.3%.	Implied term Yes (s19) Note, the below applies only if the contract does not provide for interest on overdue amounts (s19 and Schedule 1, Div 6). Rate: as per s8(1)(a) <i>Civil Judgments Enforcement Act 2004</i> (WA). Currently 6%.	Yes (s 21, Schedule s7, Construction Contracts (Security of payments) Regulations (reg 9). Rate: rate specified in the contract or that prescribed under s85 of the <i>Supreme Court Act</i> . Currently 8%.
ENTITLEMENT TO SERVE PAYMENT SCHEDULE	<u>Section 14(1)</u> . A person on whom a payment claim is served (the Respondent) may reply to a payment claim by providing a payment schedule to the Claimant.	<u>Section 15(1)</u> . Identical drafting to NSW.	<u>Section 18(1)</u> . Substantially the same as NSW. Drafting differs.	<u>Section 14(1)</u> . Identical drafting to NSW.	<u>Section 16(1)</u> . Substantially the same as NSW. Drafting differs. Note: Future regulations may prescribe a standard form (s47).	<u>Section 18(1)</u> . Substantially the same as NSW. Drafting differs.	<u>Schedule 1 Division 5 Clause 7(1)</u> . Implied term: Notice of dispute The Act does not refer to a payment schedule. According to the implied terms, the document which responds to a payment claim is a notice of dispute. Note, the below applies only if the contract does not provide for when and how a party is to respond to a payment claim (s17). If a party that receives a payment claim may issue a notice of dispute if they: <ul style="list-style-type: none">believe the claim	<u>Section 20 and Schedule, Division 5 clause 6</u> . Substantially the same as WA. Drafting differs.

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							<p>should be rejected because the claim has not been made in accordance with this contract; or</p> <ul style="list-style-type: none"> dispute the whole or part of the claim. <p>If the Respondent provides a notice of dispute, this will give rise to a payment dispute.</p> <p>Payment dispute</p> <p>Section 6 of the Act refers to a payment dispute. A payment dispute arises if, by the time the claim is due to be paid:</p> <ul style="list-style-type: none"> the amount has not been paid in full; or the claim has been rejected/disputed (in part or in whole). <p>A payment dispute will also arise if retention is no paid by the due date, or security has not been returned by the due date (ss7(3) and (4)).</p> <p>If adjudication under the Act is desired, the Claimant must make an application within 28 days after the payment dispute arises (s26).</p>	
CONTENT OF PAYMENT SCHEDULE	<p><u>Section 14(2), 14(3).</u></p> <p>A payment schedule must:</p> <ul style="list-style-type: none"> identify the payment claim to which it relates; and indicate the amount of the payment (if any) that the Respondent proposes to make (the scheduled amount), and if the scheduled amount is less than the claimed amount, provide reasons why the amount is less or 	<p><u>Section 15(2).</u></p> <p>In addition to the NSW payment schedule requirements a Victorian payment schedule must:</p> <ul style="list-style-type: none"> identify any amount of the claim that the Respondent alleges is an excluded amount (eg. non claimable variations, quantum meruit claims, delay claims, latent conditions claims - s10B); be in the relevant 	<p><u>Section 18(2), 18(3).</u></p> <p>Substantially the same as NSW. Drafting differs.</p>	<p><u>Section 14(2).</u></p> <p>Identical drafting to NSW.</p>	<p><u>Sections 16(2) and (3).</u></p> <p>Substantially the same as NSW. Drafting differs.</p>	<p><u>Sections 18(2)-(4).</u></p> <p>Substantially the same as NSW. Drafting differs.</p>	<p><u>Schedule 1 Division 5 Clause 7(2).</u></p> <p>Implied term</p> <p>Note, the below applies only if the contract does not provide for when and how a party is to respond to a payment claim (s17).</p> <p>A notice of dispute must:</p> <ul style="list-style-type: none"> be in writing; be addressed to the 	<p><u>Schedule Division 5 clause 6(3).</u></p> <p>Identical drafting to WA.</p>

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	reasons for withholding payment.	<p>prescribed form (if any); and</p> <ul style="list-style-type: none"> contain the prescribed information (if any). <p>If the amount of the payment that the Respondent proposes is less than the claimed amount, provide reasons for withholding payment (s15(3)).</p>					<p>Claimant;</p> <ul style="list-style-type: none"> state the name of the party giving the notice; state the date of the notice; identify the claim to which the notice relates; state the reasons for the belief that the claim has not been made in accordance with this contract (if applicable); identify each item of the claim that is disputed and state, in relation to each of those items, the reasons for disputing it (if applicable); and be signed by the party giving the notice. 	
WHEN PAYMENT SCHEDULE IS DUE	<p><u>Section 14(4).</u></p> <p>Payment schedule is due <i>the earlier of</i>:</p> <ul style="list-style-type: none"> within the time required by the contract; or within 10 business days after payment claim has been served. 	<p><u>Section 15(4).</u></p> <p>Identical drafting to NSW.</p>	<p><u>Section 18(4).</u></p> <p>Substantially the same as NSW. Drafting differs.</p>	<p><u>Section 14(4).</u></p> <p>Identical drafting to NSW, except payment schedule is <i>due the earlier of</i>:</p> <ul style="list-style-type: none"> within the time required by the contract; or within 15 business days after payment claim has been served. 	<p><u>Section 16(4).</u></p> <p>Substantially the same as NSW. Drafting differs.</p>	<p><u>Sections 19(2) and (3).</u></p> <p>The payment schedule is due the earlier of:</p> <ul style="list-style-type: none"> the period required under the contract; or the period specified in the Act. <p>(s19(2)(b)).</p> <p>The period specified in the Act is:</p> <ul style="list-style-type: none"> 20 business days after the claim is served on the Respondent if the claim relates to a residential structure, and the Respondent is the owner of the land and is not a building practitioner; or 	<p>Implied term</p> <p><u>Schedule 1 Division 5 Clause 7(1).</u></p> <p>Note, the below applies only if the contract does not provide for when and how a party is to respond to a payment claim (s17).</p> <p>If the amount claimed is wholly or partially disputed, a notice of dispute is due 14 days after receiving the claim.</p>	<p><u>Schedule clause 6(2).</u></p> <p>Substantially identical to WA. Drafting differs.</p>

	EASTERN MODEL						WESTERN MODEL	
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						<ul style="list-style-type: none"> in any other case, 10 business days after the claim is served on the Respondent. (s19(3)).		
CONSEQUENCE OF FAILURE TO PROVIDE PAYMENT SCHEDULE	<u>Section 14(4).</u> The Respondent becomes liable to pay amount claimed on the due date for that progress payment. Note: A "statutory debt" is created which is enforceable in court as a debt due (s15(2)).	<u>Section 15(4).</u> Identical drafting to NSW.	<u>Section 18(5).</u> Substantially the same as NSW. Drafting differs.	<u>Section 14(4).</u> Identical drafting to NSW.	<u>Section 16(4).</u> Substantially the same as NSW. Drafting differs.	<u>Section 19(2).</u> Substantially the same as NSW. Drafting differs.	Implied term <u>Schedule 1 Division 5 clause 7(3)</u> Note, the below applies only if the contract does not provide for when and how a party is to respond to a payment claim (s17). The Respondent must pay whole claim within 28 days after receiving the payment claim if the claim is not disputed. The Respondent is liable to pay the amount of the claim which is not disputed.	<u>Schedule clause 6.</u> Must pay whole claim within 28 days after receiving the payment claim if the amount not disputed (Schedule, cl6(2)(b)). The Respondent is liable to pay the amount of the claim which is not disputed.
CONSEQUENCES OF FAILURE TO PAY CLAIMED AMOUNT WHERE NO PAYMENT SCHEDULE	<u>Section 15(2).</u> The Claimant can either seek to: 1. recover the unpaid amount as a debt due in a court (s15(2)(a)(i)). In that situation, the Respondent is not entitled to bring any cross-claim against the Claimant or raise any defence in relation to matters arising under the construction contract (section 15(4)(b)); or 2. make an adjudication application under s17(1)(b) of the Act in relation to the Payment Claim (s15(2)(a)(ii)). However, see the condition specified at section 17(2) and in the section below titled "Entitlement to make an adjudication application".	<u>Section 16(2).</u> Identical drafting to NSW.	<u>Sections 19(2) and (3).</u> Identical drafting to NSW.	<u>Section 15(2).</u> Identical drafting to NSW.	<u>Section 17(2).</u> Substantially the same as NSW. Drafting differs. Note: Future regulations may prescribe a standard form (s47).	<u>Sections 19(4)-(8).</u> Substantially the same as NSW. Drafting differs.	<u>Sections 6 and 25</u> Substantially different to the NSW modelled Acts. A failure to pay an amount claimed constitutes a payment dispute (s6(a)). Any party to a payment dispute may apply to have dispute adjudicated, unless: <ul style="list-style-type: none"> application for adjudication already made; or dispute is the subject of an order, judgment or finding by arbitrator or other person or body dealing with a matter arising out of the construction contract. (s25).	<u>Sections 8 and 27.</u> Substantially the same as WA. Drafting differs in respect of what constitutes a payment dispute (s8).

	EASTERN MODEL						WESTERN MODEL	
	NSW	VIC	QLD	SA	ACT	TAS	WA	NT
	In addition, the Claimant can serve a notice of intention to suspend work (s15(2)(b)). This notice must state that it is made under the Act (s15(3)).							
CONSEQUENCES OF NOT PAYING CLAIMANT IN ACCORDANCE WITH PAYMENT SCHEDULE	<p><u>Section 16.</u></p> <p>The Claimant can either seek to:</p> <ul style="list-style-type: none"> recover the unpaid amount as a debt due in any court of competent jurisdiction (s16(2)(a)(i)); or make an adjudication application under s17(1)(a)(ii) of the Act in relation to the Payment Claim (s16(2)(a)(ii)). <p>In addition, the Claimant can serve a notice of intention to suspend work (s16(2)(b)).</p> <p>The same restrictions and procedures apply as in s15 above regarding court proceedings and the making of an adjudication application.</p>	<p><u>Section 17.</u></p> <p>Identical drafting to NSW.</p>	<p><u>Section 20.</u></p> <p>Identical drafting to NSW.</p>	<p><u>Section 16.</u></p> <p>Identical drafting to NSW.</p>	<p><u>Section 18.</u></p> <p>Substantially the same as NSW. Drafting differs.</p>	<p><u>Sections 20.</u></p> <p>Substantially the same as NSW. Drafting differs.</p>	No general provision.	No general provision
ENTITLEMENT TO MAKE AN ADJUDICATION APPLICATION	<p><u>Section 17.</u></p> <p>No payment schedule</p> <p>Where no payment schedule has been served, an adjudication application must only be made if:</p> <ul style="list-style-type: none"> the Claimant notifies the Respondent of its intention to apply for adjudication within 20 business days following due date for payment (s17(2)(a));and the Respondent is given an opportunity to provide a payment schedule within 5 business days after receiving the notice (s17(2)(b)). <p>Application must be made within 10 business days of end of the 5 business day</p>	<p><u>Section 18.</u></p> <p>Substantially identical drafting to NSW except for prescribed time limits for submitting application (s18(2) and 18(3)).</p> <p>No payment schedule</p> <p>Where no payment schedule has been served, an adjudication application must only be made if:</p> <ul style="list-style-type: none"> the Claimant notifies Respondent of its intention to apply for adjudication within 10 business days following due date for payment (s18(2)(a));and the Respondent is given an opportunity to provide a payment 	<p><u>Section 21.</u></p> <p>Identical drafting to NSW.</p>	<p><u>Sections 17 and 28.</u></p> <p>Substantially the same as NSW, except for prescribed time limits for submitting application (s17(3)).</p> <p>No payment schedule</p> <p>Application must be made within 15 business days of end of the 5 business day period (s17(3)(e)).</p> <p>Amount in payment schedule less than payment claim</p> <p>Application must be made within 15 business days after Claimant receives payment schedule (s17(3)(c)).</p>	<p><u>Section 19.</u></p> <p>Substantially the same as NSW, except as specified below.</p> <p>No payment schedule</p> <p>As in NSW, the Claimant must notify the Respondent of its intention to apply for adjudication within 20 business days following the due date for payment (s19(2)(a)).</p> <p>The Respondent has 5 business days after receiving the notice to provide a payment schedule (s19(2)(b)).</p> <p>The application must be made within 10 business days after the earlier of:</p> <ul style="list-style-type: none"> the end of the 	<p><u>Section 21.</u></p> <p>Substantially the same as NSW. Drafting differs.</p>	<p><u>Sections 25 and 26.</u></p> <p>An adjudication application may be made by either party to a construction contract (s25).</p> <p>Within 28 days after the payment dispute arises, a party to the contract may apply to have the payment dispute adjudicated (s26).</p> <p>The Claimant must make the application to an Adjudicator or prescribed appointor (the WA equivalent of an ANA). The parties to the contract can appoint a registered Adjudicator (provided that Adjudicator consents to the appointment)</p>	<p><u>Sections 27, 28 and 33(1)(a)(ii).</u></p> <p>Substantially the same drafting to WA, except for prescribed time limits for submitting application (s28) and option for applicant to withdraw application before Adjudicator appointed (s28A).</p> <p>Within 90 days after the payment dispute arises, a party to the contract must apply to have the payment dispute adjudicated (s28(1)).</p>

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	<p>period (s17(3)(e)).</p> <p>Amount in payment schedule less than payment claim</p> <p>Where payment schedule provided but amount in schedule is less than payment claim, then adjudication application must be made within 10 business days after Claimant receives payment schedule (s17(3)(c)).</p> <p>Amount in payment schedule not paid</p> <p>Where payment schedule provided but Respondent does not pay the whole or any part of the scheduled amount by the due date for payment, then the adjudication application must be made within 20 business days after due date for payment (s17(3)(d)).</p> <p>Claimant must make the application to an ANA</p> <p>The adjudication application must be served on an authorised nominating authority (ANA) chosen by the Claimant (s17(3)(b)). The ANA must appoint an Adjudicator as soon as practicable (s17(6), s19).</p> <p>An ANA may be authorised by the Minister (s28).</p>	<p>schedule within 2 business days after receiving the notice (s18(2)(b)).</p> <p>Application must be made within 5 business days of end of the 2 business day period (s18(3)(e)).</p> <p>Amount in payment schedule less than payment claim</p> <p>Where payment schedule provided but amount in schedule is less than payment claim, then adjudication application must be made within 10 business days after Claimant receives payment schedule (s18(3)(c)).</p> <p>Amount in payment schedule not paid</p> <p>Where payment schedule provided but Respondent does not pay the whole or any part of the scheduled amount by the due date for payment, then the adjudication application must be made within 10 business days after due date for payment (s17(3)(d)).</p> <p>Claimant must make the application to an ANA</p> <p>Section 18(4).</p> <p>If the contract lists 3 or more ANAs, the application must be made to one of those authorities chosen by the Claimant.</p>				<p>additional 5 day period to serve a payment schedule, or</p> <ul style="list-style-type: none"> the day the Claimant receives the payment schedule. <p>(s19(3)(d)).</p>		<p>(s26(1)(c)(i)).</p> <p>OR</p> <p>The parties to the contract can appoint a prescribed appointor (s26(1)(c)(ii)).</p> <p>The Claimant must serve the application on the appointed Adjudicator / appointor (s26(1)(c)).</p> <p>If s26 is not complied with the Adjudicator must dismiss the application (s31(2)(a)(ii)).</p>	
WHAT IS REQUIRED IN AN ADJUDICATION APPLICATION?	<p><u>Section 17.</u></p> <p>An adjudication application:</p> <ul style="list-style-type: none"> must be in writing (s17(3)(a)); must identify the payment claim and the payment schedule (if any) to which it relates (s17(3)(f)); may contain such 	<p><u>Section 18.</u></p> <p>Sub-sections 3(a), (f), (g) and (h) are identical in drafting to NSW.</p>	<p><u>Section 21 (3).</u></p> <p>Identical drafting to NSW.</p>	<p><u>Section 17.</u></p> <p>Identical drafting to NSW.</p>	<p><u>Section 19.</u></p> <p>Substantially the same as NSW. Drafting differs.</p>	<p><u>Sections 21 (5)-(8).</u></p> <p>Substantially the same as NSW. Drafting differs.</p>	<p><u>Section 26.</u></p> <p>An adjudication application:</p> <ul style="list-style-type: none"> must be in writing (s26(1)(a)); must be served on the other party and the Adjudicator (s26(1)(b) and 26(1)(c)); 	<p><u>Section 28.</u></p> <p>Substantially the same as WA.</p>	

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	<p>submissions relevant to the application as the Claimant chooses to include (s17(3)(h));</p> <ul style="list-style-type: none"> • must be accompanied by the application fee determined by the ANA (s17(3)(g)); and • must be served on the Respondent (s17(5)). 						<ul style="list-style-type: none"> • must be prepared in accordance with the information prescribed by the Regulations (s26(2)(a) and reg 5 of the <i>Construction Contracts Regulations 2004</i> (WA)); • must set out the details of or attach the construction contract and the subject payment claim (s26(2)(b)); and • must set out or attach all the documents and submissions on which the Claimant relies (s26(2)(c)). <p>The Claimant must provide any deposit for security of costs of the adjudication that the Adjudicator requires (s26(1)(d)).</p>	
ENTITLEMENT TO LODGE AN ADJUDICATION RESPONSE	<p><u>Section 20.</u></p> <p>Respondent may lodge an adjudication response only if it has provided a payment schedule to the Claimant within the required time frames for serving a payment schedule (s20(2A)).</p> <p>If this is satisfied, the Respondent may lodge an response <i>within the later of</i>:</p> <ul style="list-style-type: none"> • 5 business days after receiving the adjudication application (s20(1)(a)); or • 2 business days after receiving notice of an Adjudicator's acceptance of the application (s20(1)(b)). <p>The Adjudicator will not consider an adjudication response lodged out of time</p>	<p><u>Sections 21 and 22.</u></p> <p>Identical drafting to NSW.</p>	<p><u>Section 24.</u></p> <p>Substantially the same as NSW. Drafting differs.</p>	<p><u>Section 20.</u></p> <p>Identical drafting to NSW.</p>	<p><u>Section 22(1).</u></p> <p>The Respondent may give an adjudication response) at any time before the later of:</p> <ol style="list-style-type: none"> 7 business days after the Respondent receives a copy of the application; or 5 business days after receiving notice of the Adjudicator's acceptance of the application. <p>The Adjudicator will not consider an adjudication response lodged out of time (s23(2)).</p> <p>Note: Future regulations may prescribe a standard form (s47).</p>	<p><u>Section 23.</u></p> <p>Substantially the same as NSW, except for the prescribed time limits.</p> <p>The Respondent can lodge an adjudication response <i>within the later of</i>:</p> <ul style="list-style-type: none"> • 10 business days after receiving a copy of the adjudication application; or • 5 business days after receiving notice of the Adjudicator's acceptance of the application. 	<p><u>Section 27.</u></p> <p>Within 14 days after the date on which a party to a construction contract is served with an application for adjudication, the party must prepare a written response to the application and serve it on the applicant and the appointed Adjudicator or prescribed appointor (s 27(1)).</p> <p>The response must contain information set out by the Regulations (see reg 4 and 6), and set out or attach:</p> <ul style="list-style-type: none"> • any rejection or dispute of the payment claim that has given rise to the dispute; and 	<p><u>Section 29.</u></p> <p>Substantially the same as WA, except written response must be provided 10 working days after adjudication application served.</p>

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	(s21(2)).						<ul style="list-style-type: none"> all information, documentation and submissions on which the party making it relies in the adjudication. (s 27(2))	
LIMITATION ON CONTENT OF ADJUDICATION RESPONSE	<u>Section 20(2B).</u> If reasons for withholding payment were not included in the payment schedule, they cannot be included in the adjudication response.	<u>Section 21(2B).</u> If reasons are included that were not included in the payment schedule, the Adjudicator must serve a notice on the Claimant setting out those reasons and stating that the Claimant has 2 business days to lodge a response to those reasons with the Adjudicator.	<u>Section 24(4).</u> Identical drafting to NSW.	<u>Section 20(4).</u> Identical drafting to NSW.	<u>Section 22(4).</u> Substantially the same as NSW. Drafting differs.	<u>Section 23(4).</u> Substantially the same as NSW. Drafting differs.	<u>Section 27.</u> None specified.	<u>Section 29.</u> None specified.
APPOINTMENT OF THE ADJUDICATOR	<u>Sections 17, 19 and 26.</u> The ANA must "as soon as practicable" refer adjudication application to an Adjudicator (s17(6)). The Adjudicator is appointed on its acceptance of the application by serving notice of acceptance on Claimant and Respondent (s19). The Claimant may withdraw the adjudication application and make a new application if the Claimant fails to receive an Adjudicator's notice of acceptance within 4 business days after the application is made (s26(2)). The Claimant may make new adjudication application at any time within 5 business days of becoming entitled to withdraw the previous application (s26(3)).	<u>Sections 18, 20 and 28.</u> Substantially identical to NSW except the Adjudicator is to give notice to the Building Commission within 10 business days after accepting an adjudication application (s20(4)).	<u>Sections 21(6), 23 and 32.</u> Identical drafting to NSW.	<u>Section 17, 19 and 26.</u> Substantially the same as NSW, except that there is no time limit imposed on when Claimant may make new adjudication application (s26(3)).	<u>Sections 20, 21 and 28.</u> Substantially the same as NSW, except as specified below. The Adjudicator may give a notice of acceptance of the adjudication application to the Claimant and Respondent (s21(1)). Note: Future regulations may prescribe a standard form (s47). If the Adjudicator give notice of acceptance, the Adjudicator is taken to be appointed from the later of the day the Claimant or Respondent receives the notice of acceptance (s21(3)). A person is not eligible to be an Adjudicator if that person is a party to the contract or is employed by a building organisation such as the HIA or MBA (s20(2)).	<u>Sections 22 and 28.</u> Substantially the same as NSW, except as specified below. An ANA may not refer the matter to an Adjudicator if he or she is a party to the contract or in circumstances prescribed for the section (s22(3)). <u>Section 35.</u> Deals with disqualification of the Adjudicator where he or she has a material personal interest in the contract or dispute, or is a party to the contract.	<u>Section 28.</u> If the application is served on an a prescribed appointor, the prescribed appointor must, within 5 days after being served appoint a registered Adjudicator, send the application and any response received by it to the Adjudicator; and give written notice to the parties and Registrar. If a prescribed appointor does not appoint an Adjudicator, the Registrar may appoint a registered Adjudicator to adjudicate the payment dispute. <u>Section 29.</u> An Adjudicator who has a material personal interest in the payment dispute, the contract or a party to the contract is disqualified from adjudicating the dispute.	<u>Sections 28 and 30.</u> Substantially the same as WA. The parties can also agree to the Adjudicator's appointment notwithstanding the disqualification notice (s31(6)).
ADJUDICATION PROCEDURES	<u>Section 21(4).</u> An Adjudicator:	<u>Section 22(5).</u> Identical drafting to NSW.	<u>Section 25.</u> Identical drafting to NSW.	<u>Section 21(4).</u> Identical drafting to NSW.	<u>Section 22(5).</u> A copy of the adjudication response must be given to	<u>Sections 24(2)-(6).</u> Substantially the same as NSW. Drafting	<u>Section 32.</u> Provides that the Adjudicator:	<u>Section 34.</u> Identical drafting to WA.

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	<p>(a) may request further written submissions from either party and must give the other party an opportunity to comment on those submissions, and</p> <p>(b) may set deadlines for further submissions and comments by the parties, and</p> <p>(c) may call a conference of the parties, and</p> <p>(d) may carry out an inspection of any matter to which the claim relates.</p>				<p>the Claimant not later than 2 days after the response is given to the Adjudicator. (Note reference to days rather than business days.)</p> <p><u>Section 23(4).</u></p> <p>Substantially the same as NSW. Drafting differs.</p>	differs.	<p>(a) must act informally and make the determination on the basis of the application and response (s32(1)(a));</p> <p>(b) is not bound by the rules of evidence (s32(1)(b));</p> <p>(c) may request a party to make further submissions, documents or information by a deadline (s32(2)(a));</p> <p>(d) may request that the parties attend a conference with the Adjudicator (s32(2)(b));</p> <p>(e) may inspect any work or thing related to the dispute (s32(2)(c)(ii));</p> <p>(f) may engage an expert to investigate and report on any matter relevant to the payment dispute (s32(2)(c)(ii)); and</p> <p>(g) may determine his or her own procedure (s32(6)).</p>	
TIME FOR DETERMINATION	<p><u>Section 21.</u></p> <p>An Adjudicator must determine an adjudication application within 10 business days after the date on which the Adjudicator has notified the parties as to his or her acceptance of the application (or within such time as the parties may agree) (s21(3)).</p> <p>An Adjudicator must not determine an adjudication application until after the end of period that Respondent may lodge an adjudication</p>	<p><u>Section 22.</u></p> <p>Identical drafting to NSW except that the Claimant has discretion to extend time by maximum of 15 days (s22(4)(b)).</p> <p>A Claimant must not unreasonably withhold their agreement to extend time for the Adjudicator's determination (s22(4A)).</p>	<p><u>Section 25.</u></p> <p>Substantially the same drafting to NSW, except that the Adjudicator must determine application within 10 business days after the earlier of the date adjudication response was received by the Adjudicator or the date Adjudicator should have received response (s25(3)(a)).</p>	<p><u>Section 21.</u></p> <p>Substantially the same as NSW, except the Adjudicator must determine an adjudication application within 10 business days after:</p> <ul style="list-style-type: none"> the date the response is lodged; the date on which the response is required to be lodged; or 	<p><u>Section 23(3).</u></p> <p>If the Respondent is entitled lodge an adjudication response, a determination must be made 10 business days after the earlier of:</p> <ul style="list-style-type: none"> the date the Adjudicator receives notice of the response; and the date on which is response is required to be lodged with the Adjudicator 	<p><u>Section 24(1).</u></p> <p>Substantially the same as NSW, except that the Adjudicator must determine application within:</p> <ul style="list-style-type: none"> 10 business days after the date the adjudication response was received by the Adjudicator; the date Adjudicator should have received 	<p><u>Sections 31 and 32.</u></p> <p>If the appointed Adjudicator is served with a response under <u>section 27(1)</u> — 14 days after the date of the service of the response.</p> <p>If the appointed Adjudicator is not served with a response under <u>section 27(1)</u> — 14 days after the last date on which a response is required to be served under <u>section</u></p>	<p><u>Sections 33 and 34.</u></p> <p>If the appointed Adjudicator is served with a response under <u>section 29(1)</u> — 10 working days after the date of the service of the response.</p> <p>Otherwise — 10 working days after the last date on which a response is required to be served under <u>section 29(1)</u>.</p> <p>Also note that with the</p>

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	response (s21(1)).			<ul style="list-style-type: none"> if the Respondent is not entitled to lodge a response, the date on which the Respondent receives a copy of the application. 	<p>(s23(3)(a)).</p> <p>If the Respondent is not entitled to lodge an adjudication response, a determination must be made within 10 business days after the Respondent receives a copy of the application (s23(3)(b)).</p> <p>The parties may agree to provide further time to the Adjudicator (s23(3)(c)).</p>	<p>response; or</p> <ul style="list-style-type: none"> 10 business days after the date the Adjudicator accepted the appointment (if there is no payment schedule). 	<p>27(1).</p> <p>The parties may extend the time for determination by agreement (s32(3)(a))</p>	<p>Registrar's consent the time for making a determination may be extended (s34(3)(a)).</p>
ADJUDICATOR'S FEES	<p><u>Section 29.</u></p> <p>Fees are calculated according to an amount considered "reasonable" having regard to the work done and expenses incurred by the Adjudicator, or otherwise as agreed to by the parties (including the Adjudicator) (s29(1)).</p> <p>The Claimant and Respondent are each liable to contribute to the payment of the Adjudicator's fee and expenses in equal proportions or in such proportions as the Adjudicator may determine (s29(3)).</p>	<p><u>Section 45.</u></p> <p>Identical drafting to NSW.</p>	<p><u>Section 35.</u></p> <p>Identical drafting to NSW.</p>	<p><u>Section 30.</u></p> <p>Substantially the same as NSW, except fees are to be calculated according to an amount considered "reasonable" having regard to the work done and expenses incurred by the Adjudicator, or otherwise as agreed by the parties (including the Adjudicator) or as per the hourly rate in the Regulations in addition to reasonable expenses (s30(1)).</p>	<p><u>Section 36.</u></p> <p>Substantially the same as NSW. Drafting differs.</p>	<p><u>Section 37.</u></p> <p>Substantially the same as NSW. Drafting differs.</p> <p><u>Section 25 (7).</u></p> <p>An Adjudicator may determine that a party is required to pay another party some or all of the costs that have been incurred because of frivolous or vexatious conduct, or the making of unfounded submissions.</p>	<p><u>Section 44.</u></p> <p>The Adjudicator is to be paid at rate agreed between Adjudicator and parties, or at published rate. Adjudicator is also to be reimbursed expenses reasonably incurred (s44(2)).</p> <p>As between themselves, the parties are liable to pay the costs of the Adjudicator in equal shares (s44(6)).</p>	<p><u>Section 46(1A).</u></p> <p>Identical drafting to WA.</p>
THE ADJUDICATOR'S DETERMINATION	<p><u>Section 22(1).</u></p> <p>An Adjudicator is to determine:</p> <p>(a) the amount of the progress payment (if any) to be paid by the Respondent to the Claimant (the adjudicated amount);</p> <p>(b) the date on which any such amount became or becomes payable; and</p> <p>(c) the rate of interest payable on any such amount.</p> <p><u>Section 22(2).</u></p> <p>The Act limits the factors an Adjudicator may take into</p>	<p><u>Section 23.</u></p> <p>Substantially the same as NSW. Drafting differs.</p> <p>However, the relevant section expressly excludes from the Adjudicator's consideration:</p> <p>(a) any part of the claimed amount that is an excluded amount; or</p> <p>(b) any other matter that is prohibited by this Act from being taken into account.</p> <p>(s23(2A)).</p> <p>The Adjudicator's determination is void:</p> <p>(a) to the extent that it has</p>	<p><u>Section 26(2).</u></p> <p>Substantially the same drafting to NSW, except an Adjudicator must also take into account any relevant provisions of the QBSA Act (s26(2)(a)).</p>	<p><u>Sections 22(1) and (2).</u></p> <p>Identical to NSW.</p>	<p><u>Section 24.</u></p> <p>Substantially the same as NSW. Drafting differs.</p>	<p><u>Sections 25(1) and (2).</u></p> <p>Substantially the same as NSW. Drafting differs.</p>	<p><u>Section 31.</u></p> <p>Dismissal</p> <p>The Adjudicator must, within the time allowed, dismiss the application without making a determination on the merits in the circumstances set out at s31(2). One of the circumstances is where the Adjudicator is satisfied that it is not possible to fairly make a determination because of the complexity of the matter, or because the time allowed is insufficient, or for any other reason</p>	<p><u>Section 33.</u></p> <p>Identical drafting to WA.</p>

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	<p>account.</p> <p>(a) the provisions of the Act;</p> <p>(b) the provisions of the construction contract from which the application arose;</p> <p>(c) the payment claim to which the application relates, together with all submissions (including relevant documentation) that have been duly made by the Claimant in support of the claim;</p> <p>(d) the payment schedule (if any) to which the application relates, together with all submissions (including relevant documentation) that have been duly made by the Respondent in support of the schedule; and</p> <p>(e) the results of any inspection carried out by the Adjudicator of any matter to which the claim relates.</p>	<p>been made in consideration of matters other than those allowed under the Act; or</p> <p>(b) to the extent that it is based on any amount or matter relating to excluded or prohibited matters.</p> <p>(s23(2B)).</p> <p>The ANA must give a copy of the adjudication determination to:</p> <p>(a) the parties as soon as practicable after it is made; and</p> <p>(b) the Building Commission within 5 business days after it is made.</p> <p>(s23A).</p>					<p>(s31(2)(a)(iv)).</p> <p>If an application is not dismissed or determined within the time allowed, the application is taken to have been dismissed when the time has elapsed (s31(3)).</p> <p>Determination</p> <p>The Adjudicator is to determine, on the balance of probabilities, whether any party to the dispute is liable to make a payment or to return security.</p> <p>That determination is to include:</p> <ul style="list-style-type: none"> the amount to be paid or returned and any interest payable; and the date by which the amount is to be paid or security returned. <p>(s31(2)(b)).</p>	
PARTICULARS OF THE ADJUDICATOR'S DETERMINATION	<p><u>Section 22(3).</u></p> <p>A determination must be in writing and include the reasons for determination (unless the Claimant and the Respondent have both requested the Adjudicator not to include those reasons in the determination).</p>	<p><u>Section 23(3).</u></p> <p>A determination must be in writing and must include the reasons for the determination and the basis on which any amount or date has been decided.</p> <p>There is no similar entitlement to agree to exclude reasons (cf s22(3)(b) NSW Act)</p>	<p><u>Section 26(3).</u></p> <p>Identical drafting to NSW.</p>	<p><u>Section 22(3).</u></p> <p>Identical drafting to NSW.</p>	<p><u>Section 24(3).</u></p> <p>Substantially the same as NSW. Drafting differs.</p>	<p><u>Section 25(4).</u></p> <p>Substantially the same as NSW. Drafting differs.</p>	<p><u>Section 36.</u></p> <p>Substantially the same drafting to NSW, except determination must also include information prescribed by the Regulations, state amount to be paid and security to be returned (and by when) and identify confidential information unsuitable for publishing under s50.</p>	<p><u>Section 38.</u></p> <p>Identical drafting to WA.</p>
CONSEQUENCES OF AN ADJUDICATION	<p><u>Section 23.</u></p> <p>Payment of the adjudicated amount</p> <p>If the Adjudicator determines that a Respondent is required to pay an adjudicated amount, the Respondent must pay the</p>	<p><u>Part 3 Division 2B.</u></p> <p>Similar to NSW except the Claimant cannot give notice regarding a failure to pay until end of period allowed to make an adjudication review application (s28O(3)).</p>	<p><u>Sections 29, 30 and 31.</u></p> <p>Identical drafting to NSW.</p>	<p><u>Sections 23, 24 and 25.</u></p> <p>Identical drafting to NSW.</p>	<p><u>Sections 25, 26 and 27.</u></p> <p>Substantially the same as NSW. Drafting differs.</p>	<p><u>Sections 26 and 27.</u></p> <p>Substantially the same as NSW. Drafting differs.</p>	<p><u>Division 5.</u></p> <p>Payment of the adjudicated amount</p> <p>The party liable to make payment must do so by the date specified in the determination (s39).</p>	<p><u>Refer to Division 5.</u></p> <p>Substantially the same as WA.</p>

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	<p>amount to the Claimant on or before the relevant date (which is 5 business days after the date the Adjudicator's determination is served on the Respondent or a later date as the Adjudicator may determine (s23(1)).</p> <p><u>Sections 24</u></p> <p>Notice of intention to suspend work</p> <p>If the Respondent fails to pay adjudicated amount, the Claimant is entitled to serve a notice on the Respondent of the Claimant's intention to suspend work (s24) and subsequently suspend work in accordance with section 27.</p> <p><u>Section 25</u></p> <p>Adjudication certificate and enforcement of a judgment debt</p> <p>The Claimant may also enforce the determination as a court judgment by filing an adjudication certificate in a court of competent jurisdiction.</p> <p>Setting aside the judgement</p> <p>In proceedings to have the judgment debt set aside, the Respondent is not entitled to:</p> <ul style="list-style-type: none"> bring any cross-claim against the Claimant, or raise any defence in relation to matters arising under the construction contract, or challenge the Adjudicator's determination, <p>and is required to pay into the court as security the unpaid portion of the adjudicated amount pending the final determination of</p>	<p>In proceedings to have judgment set aside, the Respondent may challenge a determination on the ground that the Adjudicator took into account a variation of the construction contract that was not a claimable variation (s29(6)).</p> <p>A Claimant may not bring proceedings to recover an adjudicated amount if the Claimant has made an adjudication review application which has not been completed (s29(7)).</p> <p><u>Part 3 Division 4</u></p> <p>Recovery from Principal</p> <p>This procedure applies if:</p> <ol style="list-style-type: none"> the Adjudicator has determined that an amount is payable by the Respondent; the Respondent fails to pay the whole or any part of the adjudicated amount; and the Claimant has obtained judgment for the adjudicated amount. <p>(s30).</p> <p>If the circumstances in s30 apply, the Claimant may obtain payment out of money that is payable or becomes payable to the Respondent by the Principal that engaged the Respondent to carry out work (if that work is part of or incidental to the work the Principal engaged the Respondent to carry out) (s31).</p> <p>The procedures to obtain payment from the Principal are set out in ss32-41.</p>					<p>Progress payments under determinations are taken to be paid on account (unless the Adjudicator make a determination regarding a final payment) (s40).</p> <p>Notice of intention to suspend work</p> <p>The notice must comply with s42 and state the date on which the contractor intends to suspend the work. The notice must be given to the principal at least 3 days before the date of suspension (s42).</p> <p>Determinations may be enforced as judgments</p> <p>A determination may, with leave of the Court, be enforced as a judgment / entered as a judgment in terms of the determination (s43(2)).</p>	

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	NSW	VIC	QLD	SA	ACT	TAS	WA	NT
	those proceedings (s25(4))							
LIMITATIONS ON SUBSEQUENT ADJUDICATION APPLICATIONS	<p><u>Section 22(4).</u></p> <p>Where an Adjudicator has determined the value of the construction work carried out under a construction contract or the value of any related goods and services supplied under a construction contract (in accordance with s10), then the Adjudicator (or any other adjudicator) is, in any subsequent adjudication, bound to give the work (or the goods and services) the same value unless the Claimant or Respondent satisfies the Adjudicator that the value of the work (or the goods and services) has changed since the previous determination.</p> <p>In <i>Dualcorp Pty Ltd v Remo Constructions Pty Ltd [2009] NSWCA 69</i>, court held that valuation in a prior adjudication is not the only matter from the earlier adjudication that is binding on the subsequent Adjudicator. If questions of entitlement have been determined in one adjudication, they cannot be reopened in a subsequent adjudication.</p>	<p><u>Section 23(4).</u></p> <p>Identical drafting to NSW.</p> <p>The <i>Dualcorp</i> decision may apply, given the identical drafting in the Victorian Act, but as at 3 February 2010, Victorian courts have not decided the issue.</p>	<p><u>Section 27.</u></p> <p>Substantially the same as NSW. Drafting differs. The</p> <p>As the <i>Dualcorp</i> decision was considered favourably in <i>Securcorp Ltd v Civil Mining & Construction Pty Ltd [2009] QJC 249</i>, future Queensland courts may apply the <i>Dualcorp</i> decision.</p>	<p><u>Section 22(4).</u></p> <p>Identical drafting to NSW.</p> <p>The <i>Dualcorp</i> decision may apply, given the identical drafting in the South Australian Act, but as at 3 February 2010, South Australian courts have not decided the issue.</p>	<p><u>Section 24(4).</u></p> <p>Substantially the same as NSW. Drafting differs.</p> <p>The <i>Dualcorp</i> decision may apply, given the similar drafting in the Australian Capital Territory Act, but as at 3 February 2010, Australian Capital Territory Courts have not decided the issue.</p>	<p><u>Section 25(5).</u></p> <p>Substantially the same as NSW. Drafting differs.</p> <p>The <i>Dualcorp</i> decision may apply, given the similar drafting in the Tasmanian Act, but as at 3 February 2010, Tasmanian Courts have not decided the issue.</p>	<p><u>Section 41(1).</u></p> <p>A party to a dispute cannot apply for subsequent adjudication as the Adjudicator's determinations are final (s41(1)).</p>	<p><u>Section 43(1).</u></p> <p>Identical drafting to WA.</p>
REVIEW OF DETERMINATIONS	<p>Judicial review may be available (see for example <i>Brodyn Pty Limited t/as Time Cost and Quality v. Davenport & Anor. [2004] NSWCA 394</i>).</p>	<p>Judicial review may be available, on a wider basis than that set out in the <i>Brodyn</i> decision (see <i>Grocon Constructors v Planit Cocciardi Joint Venture (No. 2) [2009] VSC 426</i>, where the court held that the <i>Constitution Act 1975</i> (VIC) gave the Supreme Court of Victoria unlimited jurisdiction to review decisions (at [94] - [102])).</p> <p>Statutory entitlement to a review</p>	<p>Judicial review may be available under the <i>Judicial Review Act 1991</i> (QLD) (see for example <i>Intero Hospital Projects Pty Limited v Empire Interior (Australia) Pty Limited & Anor [2008] QCA 83</i> at [61]).</p>	<p>As at 3 February 2010, South Australian courts have not considered whether judicial review may be available.</p>	<p>As at 3 February 2010, Australian Capital Territory courts have not considered whether judicial review may be available.</p> <p>Statutory entitlement to a review</p> <p><u>Part 6.</u></p> <p>Except as provided in the part, a court does not have jurisdiction to set aside or remit an adjudication decision on the ground of error of fact or law on the face of the</p>	<p>As at 3 February 2010, Tasmanian courts have not considered whether judicial review may be available.</p>	<p>Judicial review may be available (see <i>O'Donnell Griffin Pty Ltd v John Holland Pty Ltd [2009] WASC 19</i> at [100] - [102] and [128]).</p> <p>Statutory entitlement to a limited review</p> <p>A person who is aggrieved by a decision to dismiss the application (under s31(2)(a)) may apply to the State Administrative Tribunal for a review of the decision (s46(1)).</p>	<p>Judicial review may be available (see for example <i>AJ Lucas Operations Pty Ltd v Mac-Attack Equipment Hire Pty Ltd [2009] NTSC 48</i> which notes the Northern Territory authority following the <i>Brodyn</i> decision at [28]).</p> <p><u>Sections 48 and 59.</u></p> <p>Substantially the same as WA except that the appeal is to the Local Court.</p> <p>Applications must be</p>

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		<p><u>Division 2A</u></p> <p>This process applies if the adjudication amount exceeds \$100,000 or a higher amount prescribed by the Regulations (s28A).</p> <p>Application for review by Respondent</p> <p>Ground for review is where the adjudicated amount included an excluded amount (and this was notified in the payment schedule or adjudication response) (s28B).</p> <p>Review requirements:</p> <ul style="list-style-type: none"> Respondent must pay the adjudicated amount (other than the alleged excluded amounts) (s28B(5)); and Respondent must pay the alleged excluded amounts into a designated trust account (s28B(6)). <p>Application for review by Claimant</p> <p>Ground for review is where the Adjudicator failed to take into account a relevant amount in making a determination because it wrongly determined an excluded amount (s28C(2)).</p> <p>Procedure for making an application</p> <p>Must be made to the same ANA as the original application (s28D(1)).</p> <p>Must be made within 5 business days after the Respondent or Claimant (as the case may be) receives a copy of the adjudication determination (s28D(2)).</p> <p>The Respondent to the application for review may make a submission to the</p>			<p>decision (s43(1)).</p> <p>Appeals on questions of law</p> <p>An appeal may be made to the Supreme Court on any question of law arising out of the adjudication decision if:</p> <ul style="list-style-type: none"> the parties to the decision agree; or with leave of the Supreme Court. <p>(s43(3)).</p> <p>Leave to appeal</p> <p>The Supreme Court must not grant leave to appeal unless it considers that having regard to all the circumstances, the determination of the question of law concerned could substantially affect the rights of one or more parties to the adjudication determination and there is:</p> <ul style="list-style-type: none"> a manifest error of law on the face of the adjudication decision; or 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. <p>(s43(4)).</p> <p>The Supreme Court may impose conditions to any orders it makes for leave to appeal (s43(5)).</p> <p>Determination of appeals</p> <p>On the determination of an appeal, the Supreme</p>		<p>Otherwise, a decision or determination of an Adjudicator cannot be appealed or reviewed (s46(3)).</p>	<p>made within 28 days after the person receives notice of the decision (s59).</p>

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		<p>ANA within 3 business days after being given a copy of the application (s28E).</p> <p>The ANA must within 5 business days after receiving the application appoint a review Adjudicator (s28G(1)) not directly or indirectly involved with the original determination (s28G(3)).</p> <p>The review Adjudicator must complete the review within 5 business days after his or her appointment, or within any further time as agreed by the review applicant (but not exceeding 10 business days from appointment) (s28I(1)).</p>			<p>Court may:</p> <ul style="list-style-type: none"> confirm, amend or set aside the decision; or remit the decision, together with the Court's opinion on the question or law that was the subject of the appeal to the Adjudicator (or a different adjudicator appointed by the Supreme Court). <p>(s43(6)).</p> <p>If the adjudication decision is remitted to an Adjudicator, the Adjudicator must make a new decision within 10 business days after the decision was remitted or within the time directed by the Supreme Court</p> <p>(s43(7)).</p> <p>Referral of questions of law to the Supreme Court</p> <p>The Supreme Court has jurisdiction to determine any questions of law arising in an application. The application may be made by any of the parties to an adjudication decision with the consent of the Adjudicator or the parties to the decision (s44(1)).</p> <p>The Supreme Court must not consider a question of law being referred to it unless:</p> <ul style="list-style-type: none"> the determination of the question might produce a substantial savings in costs to the parties; and the question of law is one in respect of 			

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					which leave for appeal would be likely to be granted under s43(4). (s44)			
EFFECT OF ADJUDICATION ON OTHER CIVIL PROCEEDINGS (SEE ALSO EFFECT OF ACT ON ALTERNATE REMEDIES)	<p><u>Section 32.</u> Adjudication does not affect the rights of either party to the construction contract from pursuing civil proceedings (s32(2)).</p> <p>Note: The Adjudicator's determinations as to payments under the Act are interim only, and do not affect the parties' rights to seek a different result in civil proceedings.</p> <p>An example is where a Principal has a claim for defective work or some other breach of contract or actionable wrong by the contractor, the Principal may pursue that claim regardless of the findings of the Adjudicator: see for example <i>Jem Developments Pty Ltd v Hansen Yuncken Pty</i> [2006] NSWSC 1087.</p>	<p><u>Section 47.</u> Identical drafting to NSW.</p>	<p><u>Section 100.</u> Identical drafting to NSW.</p>	<p><u>Section 38.</u> Identical drafting to NSW.</p>	<p><u>Section 38.</u> Substantially the same as NSW. Drafting differs.</p>	<p><u>Section 10.</u> Substantially the same as NSW. Drafting differs.</p>	<p><u>Section 38.</u> Determinations are binding on the parties even though other proceedings relating to the payment dispute have been commenced before an arbitrator, court or other body.</p> <p><u>Section 45.</u> The parties are not prevented from instituting proceedings and:</p> <ul style="list-style-type: none"> where such proceedings are instituted, an adjudication is to proceed unless all of the parties, in writing, require the appointed Adjudicator to discontinue the adjudication (s45(2)); and evidence of anything said or done in an adjudication is not admissible in any proceedings (s45(3)). 	<p><u>Sections 40 and 47.</u> Identical drafting to WA.</p>
SUSPENSION OF WORK	<p><u>Section 27.</u> A Claimant may suspend work or the supply of goods and services 2 business days after it has issued a notice of intention to suspend where the Respondent has failed to pay the (s27(1)):</p> <ul style="list-style-type: none"> claimed amount where there is no payment schedule under s15; claimed amount in 	<p><u>Section 29.</u> Substantially the same as NSW except for:</p> <ul style="list-style-type: none"> prescribed time limits for when Claimant may suspend and when Claimant's right to suspend ends (s29(1) and 29(2)); and express statement that suspension in accordance with the section does not 	<p><u>Section 33.</u> Identical drafting to NSW.</p>	<p><u>Section 28.</u> Identical drafting to NSW.</p>	<p><u>Section 29.</u> Substantially the same as NSW. Drafting differs.</p>	<p><u>Section 29.</u> Substantially the same as NSW. Drafting differs.</p>	<p><u>Section 42.</u> Drafted differently to the Acts based on the NSW model.</p> <p>The Claimant may suspend only if the Respondent has failed to pay the adjudicated amount (s42(1)).</p> <p>The notice must comply with s42 and state the date on which the Claimant intends to</p>	<p><u>Section 44.</u> Identical drafting to WA.</p>

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	<p>accordance with the payment schedule under s16; and</p> <ul style="list-style-type: none"> adjudicated amount under s24. <p>Claimant's right to suspend ends 3 business days after date which the Claimant is paid (s27(2)).</p> <p>If the Claimant, in exercising the right to suspend, incurs any loss or expenses as a result of the removal by the Respondent from the contract of any part of the work or supply, the Respondent is liable to pay the Claimant the amount of any such loss or expenses (s27(2A)).</p> <p>A Claimant who suspends work or the supply of goods and services under this section is not liable for any loss or damage suffered by the Respondent as a consequence of the Claimant not carrying out that work during the period of suspension (s27(3)).</p>	<p>constitute breach of contract by Claimant (s29(3)).</p>						<p>suspend the work. The notice must be given to the Respondent at least 3 days before the date of suspension (s42).</p> <p>The Claimant's right to suspend ends 3 days after the date on which the amount is paid (s42(3)).</p> <p>The Claimant that suspends the work in accordance with this section is not liable for loss or damage suffered by the Respondent and retains its rights under the contract (s42(5)).</p>	
SERVICE OF NOTICES	<p><u>Section 31.</u></p> <p>A notice to be served under the Act may be served:</p> <ul style="list-style-type: none"> by delivering it to the person personally; by lodging it during normal office hours at the person's ordinary place of business; by sending it by post or facsimile addressed to the person's ordinary place of business; in such other manner as may be prescribed by the Regulations for the purposes of this section (currently none are prescribed); or in such other manner as may be provided under 	<p><u>Section 50.</u></p> <p>What constitutes service identical drafting to NSW.</p> <p>Service is effective:</p> <ul style="list-style-type: none"> in the case of posting – 2 business days after the day on which the notice or document was posted; and in the case of a facsimile - at the time the facsimile is received. <p>Faxes received after 4pm are deemed to be received the following business day (s50(3)).</p>	<p><u>Section 103(1).</u></p> <p>Authorises service of notices in the manner provided for in the contract as expressed in s39 of the <i>Acts Interpretation Act 1954</i> (section 103(2)) or any other law about the service of notices.</p> <p>On an individual:</p> <p>(a) by delivering it to the person personally; or</p> <p>(b) by leaving it at, or by sending it by post, telex, facsimile or similar facility to, the address of the place of residence or business of the person last known to the person serving the document.</p>	<p><u>Section 34.</u></p> <p>Identical drafting to NSW.</p>	<p><u>Part 19.5 of the <i>Legislation Act 2001 (ACT)</i>.</u></p> <p>Service is per the above Act (see, for example, Note 2 to s16(1)).</p>	<p><u>Section 40.</u></p> <p>In the case of a natural person, service is valid if it is:</p> <ul style="list-style-type: none"> given to the person, or left at or sent 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; faxed to the person's fax number; emailed to the person's email address, if the person has agreed to service by email; 	<p>Service must be in accordance with the contract. If the contract does not have provisions about that matter, the implied terms apply (s23).</p> <p><i>Interpretation Act 1984 (WA)</i> states:</p> <ul style="list-style-type: none"> service shall be deemed to be effected by properly addressing and posting (by pre-paid post) the document as a letter to the last known address of the person to be served, and, unless the contrary is proved, to have been effected at the time when the letter would have been 	<p>Service must be in accordance with the contract. If the contract does not have provisions about that matter, the implied terms apply (s25).</p> <p>Service is per the <i>Interpretation Act</i>.</p>	

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	<p>the construction contract concerned.</p> <p>Service of a notice that is sent to a person's ordinary place of business is taken to have been effected when the notice is received at that place (s31(2)).</p> <p>The provisions in this section are in addition to other laws regarding service of notices (s31(3)).</p> <p>Note: Documents served by facsimile pursuant to 31(1)(c) of the Act, are not required to be served in 'normal office hours'.</p>		<p>On a corporation:</p> <p>(a) by leaving it at; or</p> <p>(b) sending it by post, telex, facsimile or similar facility to,</p> <p>the head office, a registered office or a principal office of the body corporate.</p>				<p>or</p> <ul style="list-style-type: none"> delivered to the person by another electronic method, if the person has agreed to service by the method. <p>In the case of any other person, service is valid if it is:</p> <ul style="list-style-type: none"> left at, or sent by post to, the person's principal or registered office or principal place of business; faxed to the person's fax number; emailed to the person's email address, if the person has agreed to service by email; or delivered to the person by another electronic method, if the person has agreed to service by the method. 	<p>delivered in the ordinary course of post (s75);</p> <ul style="list-style-type: none"> by delivering the document to him personally (s76(a)); by leaving it for him at his usual or last known place of abode, or if he is a principal of a business, at his usual or last known place of business (s76(c)); or in the case of a corporation or of an association of persons, by delivering or leaving the document or posting it as a letter, addressed in each case to the corporation or association, at its principal place of business or principal office in the State (s76(d)). 	

If you have any questions in relation to this table or the security for payment legislation, please contact us:



Paul Deschamps

Partner

pdeschamps@herbertgeer.com.au
Phone: 02 9239 4546



Josh Marchant

Partner

jmarchant@herbertgeer.com.au
Phone: 03 9641 8863



Doron Rivlin

Partner

drivlin@herbertgeer.com.au
Phone: 02 9239 4531



Andrew Venables

Partner

avenables@herbertgeer.com.au
Phone: 03 9641 8712

Sydney Melbourne Brisbane

Level 12
77 King Street
Sydney NSW 2000
Tel: +61 2 9239 4500

Level 20
385 Bourke Street
Melbourne VIC 3000
Tel: +61 3 9670 6123

Level 10
175 Eagle Street
Brisbane QLD 4000
Tel: +61 7 3853 8888