



Australian Government
**Australian Building and
Construction Commission**

Security of Payment Laws Checklist

Security of Payments

Each State and Territory has its own Security of Payment laws that provides legislative protections for contractors to receive payment for building work performed under a contract. The laws provide rapid mechanisms to speed up payment of disputed monies – this is known as adjudication.

While the adjudication schemes in each state and territory provide similar protections, there are differences in how the laws operate and the steps you need to follow. It is important to understand how the law works in your region.

The checklist below breaks up key responsibilities by State and Territory. Should you require further assistance, please call the ABCC hotline on **1800 003 338** or your local State or Territory security of payment regulator.

Disclaimer: The checklist is intended only to provide a general overview of the Security of Payment legislation in each State and Territory. It is not intended to be a comprehensive statement of the requirements of the Security of Payment Legislation and nor does it constitute legal advice. You should refer to the specific provisions of the relevant Security of Payment legislation to ensure compliance with the applicable requirements.

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Payment Claim Requirements

Under State and Territory laws, your payment claim may be valid if it includes the following:

¹ Certain provisions of the Building Industry Fairness (Security of Payment) Act 2017 (Qld) (the **BIF Act**), including those that grant an entitlement to, and establish a procedure for progress payments commenced on 17 December 2018. This resulted in the repeal of the Building and Construction Industry Payments Act 2004 (Qld) (the **QLD SOP Act**). However, transitional arrangements apply to preserve the operation of the QLD SOP Act for payment claims given to respondents before the commencement of the BIF Act and any unfinished matters for the claim.

² The BIF Act also states that if a construction contract is terminated and the contract does not provide for, or purports to prevent, a reference date surviving beyond termination, the final reference date for the contract is the date the contract is terminated.

³ The Amending Act states that if an offence against subsection (7) or (8) of s13 is committed by a corporation, it is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation.

Payment claim must:	NSW	ACT	VIC	TAS	SA	QLD	WA	NT
	From 21 Oct 2019					¹ Current legislation – Building Industry Fairness (Security of Payment) Act 2017	in absence of contractual terms	in absence of contractual terms
Identify construction work (or related goods and services) to which it relates	✓	✓	✓	✓	✓	✓		
Indicate / specify monetary amount claimed	✓	✓	✓	✓	✓	✓	✓	✓
Be served on person, who under the construction contract is or may be liable to make payment	✓	✓	✓	✓	✓	✓	✓	✓
State that it is made under the Act	✓ <i>Every claim must state that it is made under the Act.</i>	✓	✓	✓	✓			
Be the first payment claim in respect of a reference date under the contract								
Be in writing	✓	✓	✓	✓	✓	✓	✓	✓
Be addressed to the person to whom it is served				✓			✓	✓
State the name of claimant				✓			✓	✓
State the date of the claim							✓	✓
Itemise and describe the obligations that the contractor has performed in sufficient details							✓	✓
Be signed by the claimant							✓	✓
Head contractor must provide a supporting statement with payment claim	✓ ³							

Concept of reference date is deleted and replaced with entitlement of a claimant to submit 1 payment claim per month, for work carried out up to the last day of that month, and thereafter on and from the last day of the month (for subsequent months).

²

³

Payment Claim Timeframes and Payment Terms

State and Territory laws provide timeframes for submitting a claim and being paid:

	NSW From 21 Oct 2019	ACT	TAS	VIC	SA	QLD <small>Current legislation - Building Industry Fairness (Security of Payment) Act 2017</small>	WA	NT
Timeframe for submission of payment claim	Later of: <ul style="list-style-type: none"> period prescribed by the contract; or 12 months period after the construction work to which the claim relates was last carried out. 			Later of: <ul style="list-style-type: none"> period prescribed by the contract; or 3 month period after the reference date. 	Later of: <ul style="list-style-type: none"> period prescribed by the contract; or 6 months period after the construction work to which the claim relates was last carried out. 	<ul style="list-style-type: none"> Progress payment – within the longest of the following periods: as per contractual terms; or within 6 months of construction work to which claim relates being last carried out (or related goods and services were last supplied). Final payment – within the longest of the following periods: as per contractual terms; or 28 days after the end of the last defects liability period for the contract; or 6 months after completion of all construction work to be carried out (or related goods and services to be supplied). 	<ul style="list-style-type: none"> As per contractual terms; or In the absence of contractual terms, any time after the contractor has performed any of its obligations. 	

Payment Claim Timeframes and Payment Terms

State and Territory laws provide timeframes for submitting a claim and being paid:

	NSW From 21 Oct 2019	ACT	TAS	VIC	SA	QLD <small>Current legislation – Building Industry Fairness (Security of Payment) Act 2017</small>	WA	NT
Timeframes for claimants to be paid are:	<ul style="list-style-type: none"> • Payment to be made to a head contractor by a principal, earlier of: <ul style="list-style-type: none"> • 15 business days after a payment claim is made; or • date prescribed by contract. <p>Payment to be made to a subcontractor, earlier of:</p> <ul style="list-style-type: none"> • 20 business days after a payment claim is made; or • date prescribed by contract. 	<ul style="list-style-type: none"> • Date prescribed by the contract; or • if no date is prescribed under the contract, 10³ business days after a payment claim is made. 			<ul style="list-style-type: none"> • Date prescribed by the contract; or • if no date is prescribed under the contract, 15 business days after a payment claim is made. 	<ul style="list-style-type: none"> • As per contractual terms (unless void under the QBCC Act or a 'pay when paid' provision); or • If no (or void) contractual terms, then 10 business days after the day the payment claim is made. 	<ul style="list-style-type: none"> • As per contractual terms (but cannot be more than 42 days after the payment is claimed); or • Within 28 days of receiving a payment claim if it has not been disputed. 	<ul style="list-style-type: none"> • As per contractual terms (but cannot be more than 50 days after the payment is claimed); or • Within 28 days of receiving a payment claim if it has not been disputed.

⁴In Tasmania it is 20 days after a payment claim is made if it relates to a residential structure.

Payment Schedule/Notice of Dispute Timeframes and Requirements

State and Territory laws provide timeframes for respondents to dispute a payment claim by issuing a payment schedule/notice of dispute:

	NSW <small>From 21 Oct 2019</small>	ACT	VIC	TAS	SA	QLD <small>Current legislation – Building Industry Fairness (Security of Payment) Act 2017</small>	WA	NT
Timeframe for submission of payment schedule/notice of dispute	Earlier of: <ul style="list-style-type: none"> time required by the contract; or 10 business days after the payment claim is served. 			Earlier of: <ul style="list-style-type: none"> time required by the contract; or 10 business days after a payment claim is served. Where the claim relates to a residential ⁴ structure, later of: <ul style="list-style-type: none"> time required by the contract; or 20 business days after a payment claim is served. 	Earlier of: <ul style="list-style-type: none"> time required by the contract; or 15 business days after the payment claim is served. 	The shorter of the following periods: <ul style="list-style-type: none"> If the contract is written, as per contractual terms; or The period that is 15 business days after the day the payment claim is given to the respondent 	<ul style="list-style-type: none"> As per contractual terms; or In absence of contractual terms, within 14 days after the payment claim is served. 	

⁵See s 19(3)(a) of the TAS Act.

Payment Schedule/Notice of Dispute Timeframes and Requirements

Under State and Territory laws, payment schedules / notices of dispute may be valid if they include the following:

Payment Schedule / Notice of Dispute must:	NSW	ACT	VIC	TAS	SA	QLD	WA	NT
	Payment Schedule From 21 Oct 2019	Payment Schedule	Payment Schedule	Payment Schedule	Payment Schedule	Payment Schedule Current legislation – Building Industry Fairness (Security of Payment) Act 2017	in absence of contractual terms	in absence of contractual terms
Identify payment claim to which it relates	✓	✓	✓	✓	✓	✓	✓	✓
Indicate / state amount of payment the respondent proposes to make	✓	✓	✓	✓	✓	✓		
Reason why payment is lower & why money is being withheld (if applicable)	✓	✓	✓	✓	✓	✓	✓	✓
Identify amount of claim which is an excluded amount			✓					
Include any other information prescribed / be in the prescribed form		✓	✓ Note – Nothing currently prescribed			✓ Note – Nothing currently prescribed		
Be in writing	✓	✓	✓	✓	✓	✓	✓	✓
Be addressed to the claimant and signed							✓	✓
State the name of the party giving notice and the date of the notice							✓	✓
State the reasons for why the claim is not in accordance with the contract (if applicable)							✓	✓

Consequences of Failing to Pay Undisputed Amount

State and Territory laws provide consequences for respondents failing to provide a payment schedule / notice of dispute within time:

	NSW Payment Schedule From 21 Oct 2019	ACT Payment Schedule	VIC Payment Schedule	TAS Payment Schedule	SA Payment Schedule	QLD Payment Schedule Current legislation – Building Industry Fairness (Security of Payment) Act 2017	WA Notice of Dispute	NT Notice of Dispute
Respondent is liable to pay the entire amount claimed on the due date for payment	✓	✓	✓	✓	✓	✓		

State and Territory laws provide consequences for respondents failing to make payment by the due date or in accordance with a payment schedule / notice of dispute⁶:

	NSW Payment Schedule From 21 Oct 2019	ACT Payment Schedule	VIC Payment Schedule	TAS Payment Schedule	SA Payment Schedule	QLD Payment Schedule Current legislation – Building Industry Fairness (Security of Payment) Act 2017	WA in absence of contractual terms	NT in absence of contractual terms
Payment Schedule / Notice of Dispute must:								
Recover unpaid portion of claimed amount as a debt due in court	✓	✓	✓	✓	✓	✓		
Make an adjudication application	✓	✓	✓	✓	✓	✓	✓	✓
Serve notice on the respondent of the claimant's intention to suspend carrying out construction work or supply goods and services ⁷	✓	✓	✓	✓	✓	✓		
Exercise a lien over any unfixured plant or materials.	✓	✓	✓	✓	✓			

⁶In NSW, ACT, VIC, TAS, SA and QLD, when a valid Payment Schedule / Notice of Dispute is not issued within the timeframes the laws provide, the respondent becomes liable for the full amount claimed.

⁷Each Act has specific requirements relating to such notices.

Adjudication Application Timeframes

State and Territory laws provide means of resolving payment disputes through adjudication. The following timeframes relating to making an application for adjudication are:

⁸In the ACT an application can also be made on the date of receipt of the payment schedule (if any).

Application for adjudication in relation to:	NSW <small>From 21 Oct 2019</small>	ACT	TAS	VIC	SA	QLD <small>Current legislation – Building Industry Fairness (Security of Payment) Act 2017</small>	WA	NT
Disputed amount indicated on a payment schedule (but undisputed amount paid)	Within 10 business days following receipt of the payment schedule.	Within 10 business days following receipt of the payment schedule.		Within 10 business days following receipt of the payment schedule.	Within 15 business days following receipt of the payment schedule.	Within 30 business days following receipt of the payment schedule	Not applicable	
Respondent failing to pay the whole or any part of the scheduled amount by the due date (after providing a payment schedule)	Within 20 business days following the due date for payment.	Within 20 business days following the due date for payment.		Within 10 business days following the due date for payment.	Within 20 business days following the due date for payment.	Within 20 business days following the due date for payment.	Not applicable	
Respondent fails to provide a payment schedule and fails to pay the whole or any part of the claimed amount by the due date	<ul style="list-style-type: none"> Notice of intention to make application has to be in writing and given to respondent within 20 business days of due date of payment Respondent may serve payment schedule within 5 business days of receiving notice Application can be made within 10 business days after the 5 business day period has ended 	<ul style="list-style-type: none"> Notice of intention to make application must be given to respondent within 20 days of due date of payment. Respondent may serve payment schedule within 5 business days of receiving notice. Application can be made within 10 business days after the 5 business day period has ended⁸. 		<ul style="list-style-type: none"> Notice of intention to make application must be given to respondent within 10 days of due date of payment. Respondent may serve payment schedule within 2 business days of receiving notice. Application can be made within 5 business days after the 2 business day period has ended. 	<ul style="list-style-type: none"> Notice of intention to make application must be given to respondent within 20 days of due date of payment. Respondent may serve payment schedule within 5 business days of receiving notice. Application can be made within 15 business days after the 5 business day period has ended. 	With 30 business days after the later of: <ul style="list-style-type: none"> the due date for payment; or the last day the respondent could have given a payment schedule (response period). 	Not applicable	
Any dispute	Not applicable	Not applicable		Not applicable	Not applicable	Not applicable	Within 90 days of the dispute arising.	

Adjudication Application Requirements

The following requirements relate to making an application for adjudication:

Application for adjudication must:	NSW From 21 Oct 2019	ACT	VIC	TAS	SA	QLD <small>Current legislation – Building Industry Fairness (Security of Payment) Act 2017</small>	WA	NT
Be issued to: ⁹	An ANA selected by the claimant.	An ANA selected by the claimant.	<ul style="list-style-type: none"> An ANA listed in the contract (if 3 or more are listed); or Otherwise, to an ANA selected by the claimant. 	An ANA selected by the claimant.	An ANA selected by the claimant.	The Register by a claimant.	In the absence of an agreement between the parties to the appointment of a registered adjudicator, or a prescribed appointer, a prescribed appointer selected by the claimant.	
Relate to a valid payment claim under the Act	✓	✓	✓	✓	✓	✓	✓	✓
Be in the approved form / prepared in accordance with the regulations		✓				✓	✓	✓
Be in writing	✓	✓	✓	✓	✓	✓	✓	✓
Identify the payment claim and schedule (if any)	✓	✓	✓	✓	✓	✓	✓	✓
May contain submissions	✓	✓	✓	✓	✓	✓	✓	✓
Accompanied by an application fee (if any)	✓	✓	✓	✓	✓	✓		
Be served on the respondent	✓		✓	✓	✓	✓	✓	✓
Provide any deposit or security for the costs of the adjudication							✓	✓
Set out the details of, or have attached to it: <ul style="list-style-type: none"> The construction contract; any payment claim that has given rise to the payment dispute; and all information, documentation and submissions. 							✓	✓

⁹ANA is an authorised nominating authority.

Consequences of Failing to Pay Determined Amount

State and Territory laws provide consequences for respondents failing to make payment in accordance with an adjudicator's determination¹⁰:

	NSW From 21 Oct 2019	ACT	VIC	TAS	SA	QLD Current legislation – Building Industry Fairness (Security of Payment) Act 2017	WA	NT
Request an adjudication certificate from the ANA or registrar (as applicable) which may be filed as a judgment for a debt in court	✓	✓	✓	✓	✓	✓ Note – no request required. Registrar is obliged to give the claimant an adjudication certificate within 5 business days of the decision.		
File adjudication determination as a judgment for a debt in court							✓	✓
Serve notice on the respondent of the claimant's intention to suspend carrying out construction work or supply of goods and services ¹¹	✓	✓	✓	✓	✓	✓	✓	✓

¹⁰Section 11D(1) of the 2016 Code also requires compliance with an adjudication determination.

¹¹Each Act has specific requirements relating to such notices.



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