

COMPARISON TABLE: NSW, QLD, VIC AND WA

	NEW SOUTH WALES	QUEENSLAND	VICTORIA	WESTERN AUSTRALIA
Main local legislation	<i>Building and Construction Industry Security of Payment Act 1999 (NSW)</i>	<i>Building Industry Fairness (Security of Payment) Act 2017 (Qld)</i>	<i>Building and Construction Industry Security of Payment Act 2002 (Vic)</i>	<i>Construction Contracts Act 2004 (WA)</i>
What amounts can be claimed?	Payment for “construction work” or the supply of related goods or services undertaken under a construction contract.	Payment for “construction work” or the supply of related goods or services undertaken under a construction contract. Payment claims are either “standard” or “complex”. Complex payment claims are claims for an amount more than \$750,000 (exclusive of GST).	Payment for “construction work” or the supply of related goods or services undertaken under a construction contract. Excludes most variations and claims for “excluded amounts”.	Amounts relating to the performance (or non-performance) by a contractor of obligations under a construction contract.
Do any specific exclusions apply?	In NSW, the following does not qualify as “construction work”: drilling for and extracting oil or natural gas; or extraction of minerals, including tunnelling, boring or constructing underground works for that purpose.	In QLD, the following does not qualify as “construction work”: drilling for, or extracting of, oil or natural gas; or extraction of minerals, including tunnelling, boring or constructing underground works for that purpose.	In VIC, the following does not qualify as “construction work”: drilling for and extracting oil or natural gas; or extraction of minerals, including tunnelling, boring or constructing underground works for that purpose. There are also a number of “excluded amounts” that cannot be claimed as part of a progress payment: non-claimable variations that are disputed (subject to the terms of the contract); time-related costs; latent condition related costs; costs for changes in regulatory requirements; damages for breach of contract; and amounts in relation to a claim other than under the construction contract.	In WA, the following does not qualify as “construction work”: drilling for and extracting oil or natural gas; or constructing a shaft, pit or quarry, or drilling, for the purpose of discovering or extracting any mineral bearing or other substance; fabricating or assembling plant used to extract or process oil, natural gas or any mineral bearing or other substance (referred to as the “mining exclusion”); and constructing watercraft (i.e., shipbuilding).

	NEW SOUTH WALES	QUEENSLAND	VICTORIA	WESTERN AUSTRALIA
Party that may make adjudication application under the Act	Claimant only (i.e., party entitled to make a payment claim).	Claimant only (i.e., party entitled to make a payment claim).	Claimant only (i.e., party entitled to make a payment claim).	Both parties up and down the contract chain (contractor and principal) (i.e., the party entitled to make a payment claim and the party that receives a payment claim).
Timing for service of payment claim (or similar)	By the later of: the period determined under the construction contract; or 12 months after the construction work was last carried out (or related goods or services were last supplied).	Unless payment claim is for a “final payment”, by the later of: the period determined under the construction contract; or 12 months after the construction work was last carried out (or related goods or services were last supplied). If the claim is for a “final payment”, see s 75(3).	By the later of: the period determined under the construction contract; and 3 months after the reference date applicable to the payment claim.	Within the period determined under the construction contract. If the contract does not include a written provision about how a party is to make a claim for payment: the implied provision provided by the Act will be applicable; and the contractor will be entitled to claim a progress payment at any time after it has performed any of its obligations.
Does the payment claim need to be endorsed as a claim under the Act?	Yes. The payment claim must state that it is made under the Act.	No.	Yes. The payment claim must state that it is made under the Act.	No.
Timing for service of response to payment claim (payment schedule or similar)	By the earlier of: the period determined under the construction contract; or 10 business days after the payment claim is served.	By the earlier of: the period determined under the construction contract; or 15 business days after the payment claim is served.	By the earlier of: the period determined under the construction contract; and 10 business days after the payment claim is served.	Within the period determined under the construction contract. If the contract does not include a written provision about how a party is to respond to a payment claim: the implied provision provided by the Act will be applicable; and the responding party must serve a notice of dispute within 14 days if it disputes all or any part of the payment claim.

	NEW SOUTH WALES	QUEENSLAND	VICTORIA	WESTERN AUSTRALIA
Effect of not serving a valid response to a payment claim	If a payment schedule is not served in time, the respondent is liable to pay the full claimed amount by the due date for payment. However, a claimant may not bring an adjudication application seeking payment of the same unless it provides the respondent with a further opportunity to serve a payment schedule under s 17(2).	If a payment schedule is not served in time, the respondent is liable to pay the full claimed amount by the due date for payment. Failure to respond to a payment claim is an offence under the Qld legislation, and respondents could face penalties (up to 100 penalty units) or, if the respondent holds a QBCC licence, disciplinary action under the <i>Queensland Building and Construction Commission Act 1991</i> (Qld) ("QBCC Act").	If a payment schedule is not served in time, the respondent is liable to pay the full claimed amount by the due date for payment. However, a claimant may not bring an adjudication application seeking payment of the same unless it provides the respondent with a further opportunity to serve a payment schedule under s 18(2).	In WA, this depends on the terms of the construction contract. If the contract does not include a written provision about how a party is to respond to a payment claim, the implied provision provided by the Act will apply, and a respondent will be liable to pay the full claimed amount if it does not serve a notice of dispute. However, even where this implied provision is applicable, it does not preclude a respondent from defending an adjudication application despite any failure to dispute the whole or part of a payment claim.
Maximum payment terms	The maximum period for a progress payment to be payable in NSW is: for payments to head contractor, 15 business days after the service of a payment claim; and for payments to a subcontractor, 20 business days after the service of a payment claim.	The maximum period for a progress payment to be payable in QLD is: for a construction management trade contract or subcontract, 25 business days; and for a commercial building contract, 15 business days. Contractual provisions that purport to provide for a longer period are void pursuant to ss 67U and 67W of the QBCC Act.	No specific maximum period applicable under the Act, unless the construction contract does not provide a term for when payment falls due. In that case, a progress payment will be payable within 10 business days after the service of a payment claim.	No specific maximum period applicable under the Act, unless the construction contract does not provide written a term for when payment falls due. In that case, the implied provisions will apply and a progress payment will be payable within 28 days after the respondent receives a payment claim.

	NEW SOUTH WALES	QUEENSLAND	VICTORIA	WESTERN AUSTRALIA
Timeframe for serving adjudication application	<p>The timeframe depends on the nature of the application:</p> <p>if respondent has scheduled an amount less than the amount claimed in the payment claim, within 10 business days after the payment schedule is served; or</p> <p>if respondent has failed to pay all or part of a scheduled amount, within 20 business days from the due date for payment.</p>	<p>The timeframe depends on the nature of the application:</p> <p>if respondent has failed to serve a payment schedule, within 30 business days after the later of the due date for payment and the due date of the payment schedule;</p> <p>if respondent has failed to pay all or part of a scheduled amount, within 20 business days from the due date for payment; or</p> <p>if respondent has scheduled an amount less than the amount claimed, within 30 business days after the payment schedule is served.</p>	<p>The timeframe depends on the nature of the application:</p> <p>if respondent has scheduled an amount less than the amount claimed in the payment claim, within 10 business days after the payment schedule is served; or</p> <p>if respondent has failed to pay all or part of a scheduled amount, within 20 business days from the due date for payment.</p>	<p>Within 90 business days after a payment dispute arises.</p> <p>A payment dispute will arise where a payment claim is disputed in full or in part, or when a payment is not made at the time it becomes due.</p>
Appointment of adjudicator by appointing authority	As soon as practicable (no set timeframe).	<p>The registrar must refer an application to an adjudicator within four business days after it is served.</p> <p>The adjudicator must then accept or reject the appointment within four business days after the referral is made.</p>	As soon as practicable (no set timeframe).	Within five business days after service of an adjudication application, failing which, an adjudicator will be appointed by the Building Commissioner.
Timeframe for serving adjudication response	<p>By the later of:</p> <p>five business days after receipt of the application; or</p> <p>two business days after receipt of notice of adjudicator's acceptance of the application.</p>	<p>By the later of:</p> <p>10 business days after receipt of the application (15 business days for complex claims); or</p> <p>seven business days after receipt of adjudicator's acceptance of the application (12 business days for complex claims).</p> <p>For complex claims, adjudicator may extend timeframe by up to 15 business days.</p>	<p>By the later of:</p> <p>five business days after receipt of the application; or</p> <p>two business days after receipt of notice of adjudicator's acceptance of the application.</p>	Within 10 business days after being served with the application.

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Can a respondent argue new reasons for non-payment in the adjudication response?	No. Limited to reasons already included in the payment schedule.	No. Limited to reasons already included in the payment schedule.	Yes. However, if new reasons are included, the claimant will be entitled to respond to those new reasons within two business days after being notified under s 21(2B).	Yes.
Timeframe for adjudication determination	Unless the parties consent to a longer timeframe, within 10 business days after the respondent lodges a response (or if no response is lodged, the end of the period in which the response was due).	Unless extended, within the following period after the respondent lodges a response (or if no response is lodged, the final day the response was due to be lodged): 10 business days: standard claims; or 15 business days: complex claims.	Within 10 business days after the adjudicator accepts the application. The claimant may also agree to an extension of up to 15 additional business days.	Unless the parties consent to a longer timeframe, the earlier of: 10 business days after the service of the adjudication response; or if no response is served, 10 business days after the last day for service of the response.
Recycled claims permitted?	Yes. A claimant may include an amount in its payment claim that has been the subject of a previous payment claim. However, a claimant is unlikely to be permitted to re-adjudicate a claim for payment of an amount that has been determined by a previous adjudication application.	Yes. A claimant may include an amount in its payment claim that was included in a previous payment claim. However, a claimant is unlikely to be permitted to re-adjudicate a claim for payment of an amount that has been determined by a previous adjudication application.	Yes. A claimant may include an amount in its payment claim that has been the subject of a previous payment claim, if the amount has not been paid. However, a claimant is unlikely to be permitted to re-adjudicate a claim for payment of an amount that has been determined by a previous adjudication application.	Yes. A payment claim may include matters covered in a previous payment claim (and may give rise to a new “payment dispute” which can be adjudicated). However, a claimant is unlikely to be permitted to re-adjudicate a claim for payment of an amount that has been determined by a previous adjudication application.

	NEW SOUTH WALES	QUEENSLAND	VICTORIA	WESTERN AUSTRALIA
Right to suspend for non-payment	<p>A right to suspend performance of the works arises where:</p> <p>a respondent has failed to serve a payment schedule, and failed to pay all or part of amount due to the claimant;</p> <p>a respondent has served a payment schedule, but failed to pay all or part of the scheduled amount;</p> <p>an adjudication determination has been issued, but the respondent has failed to pay all or part of the amount awarded in the determination.</p> <p>In any case, the claimant must serve a “notice of intention” indicating that it intends to suspend the works. The claimant may proceed with the suspension if the payment remains outstanding at least two business days after the service of this notice.</p>	<p>A right to suspend performance of the works arises where:</p> <p>a respondent has failed to serve a payment schedule, and failed to pay all or part of amount due to the claimant;</p> <p>a respondent has served a payment schedule, but failed to pay all or part of the scheduled amount;</p> <p>an adjudication determination has been issued, but the respondent has failed to pay all or part of the amount awarded in the determination.</p> <p>In any case, the claimant must serve a “notice of intention” indicating that it intends to suspend the works. The claimant may proceed with the suspension if the payment remains outstanding at least two business days after the service of this notice.</p>	<p>A right to suspend performance of the works arises where:</p> <p>a respondent has failed to serve a payment schedule, and failed to pay all or part of amount due to the claimant;</p> <p>a respondent has served a payment schedule, but failed to pay all or part of the scheduled amount;</p> <p>an adjudication determination has been issued, but the respondent has failed to pay all or part of the amount awarded in the determination.</p> <p>In any case, the claimant must serve a “notice of intention” indicating that it intends to suspend the works. The claimant may proceed with the suspension if the payment remains outstanding at least three business days after the service of this notice.</p>	<p>A right to suspend performance of a contractor’s obligations arises where a respondent fails to pay an amount awarded under an adjudication determination.</p> <p>In such circumstances, the claimant must comply with the following procedure:</p> <p>give a “notice of intention” to the respondent indicating that it intends to suspend the performance of its obligations;</p> <p>state in the “notice of intention” the date on which the claimant intends to suspend performance;</p> <p>serve the notice at least three business days before the date stated in the notice; and</p> <p>if the amount remains unpaid by the date stated in the notice, a claimant may then suspend performance.</p>

COMPARISON TABLE: NT, SA, ACT AND TAS

	NORTHERN TERRITORY	SOUTH AUSTRALIA	AUSTRALIAN CAPITAL TERRITORY	TASMANIA
Main local legislation	<i>Construction Contracts (Security of Payments) Act 2004 (NT)</i>	<i>Building and Construction Industry Security of Payment Act 2009 (SA)</i>	<i>Building and Construction Industry (Security of Payment) Act 2009 (ACT)</i>	<i>Building and Construction Industry Security of Payment Act 2009 (Tas)</i>
What amounts can be claimed?	Amounts relating to the performance (or non-performance) by a contractor of obligations under a construction contract.	Payment for “construction work” or the supply of related goods or services undertaken under a construction contract.	Payment for “construction work” or the supply of related goods or services undertaken under a construction contract.	Payment for “building work or construction work” or the supply of related goods or services undertaken under a building or construction contract.
Do any specific exclusions apply?	In the NT, the following does not qualify as “construction work”: drilling for and extracting oil or natural gas; or constructing a shaft, pit or quarry, or drilling, for the purpose of discovering or extracting any mineral bearing or other substance; or constructing watercraft (i.e., shipbuilding).	In SA, the following does not qualify as “construction work”: drilling for and extracting oil or natural gas; or extraction of minerals, including tunnelling, boring or constructing underground works for that purpose.	In the ACT, the following does not qualify as “construction work”: drilling for and extracting oil or natural gas; or extraction of minerals, including tunnelling, boring or constructing underground works for that purpose.	In TAS, the following does not qualify as “building or construction work”: drilling for and extracting oil or natural gas; or extraction of minerals, including tunnelling, boring or constructing underground works for that purpose.
Party that may make adjudication application under the Act	Both parties up and down the contract chain (contractor and principal) (i.e., the party entitled to make a payment claim and the party that receives a payment claim).	Claimant only (i.e., party entitled to make a payment claim).	Claimant only (i.e., party entitled to make a payment claim).	Claimant only (i.e., party entitled to make a payment claim).

	NORTHERN TERRITORY	SOUTH AUSTRALIA	AUSTRALIAN CAPITAL TERRITORY	TASMANIA
Timing for service of payment claim (or similar)	<p>Within the period determined under the construction contract.</p> <p>If the contract does not include a written provision about how a party is to make a claim for payment:</p> <p>the implied provision provided by the Act will be applicable; and</p> <p>the contractor will be entitled to claim a progress payment at any time after it has performed any of its obligations.</p>	<p>By the later of:</p> <p>the period determined under the construction contract; or</p> <p>six months after the construction work was last carried out (or related goods or services were last supplied).</p>	<p>By the later of:</p> <p>the period determined under the construction contract; or</p> <p>12 months after the construction work was last carried out (or related goods or services were last supplied).</p>	<p>By the later of:</p> <p>the period determined under the construction contract; or</p> <p>12 months after the building or construction work was last carried out (or related goods or services were last supplied).</p>
Does the payment claim need to be endorsed as a claim under the Act?	No.	Yes. The payment claim must state that it is made under the Act.	Yes. The payment claim must state that it is made under the Act.	Yes. The payment claim must state that it is a claim made under the Act.
Timing for service of response to payment claim (payment schedule or similar)	<p>Within the period determined under the construction contract.</p> <p>If the contract does not include a written provision about how a party is to respond to a payment claim:</p> <p>the implied provision provided by the Act will be applicable; and</p> <p>the responding party must serve a notice of dispute within 10 working days if it disputes all or any part of the payment claim.</p>	<p>By the earlier of:</p> <p>the period determined under the construction contract; or</p> <p>15 business days after the payment claim is served.</p>	<p>By the earlier of:</p> <p>the period determined under the construction contract; or</p> <p>10 business days after the payment claim is served.</p>	<p>By the earlier of:</p> <p>before the end of the period in which payment is required under the building or construction contract; or</p> <p>the expiry of either 10 or 20 business days after the payment claim is served (the longer period applying to certain residential projects).</p>

	NORTHERN TERRITORY	SOUTH AUSTRALIA	AUSTRALIAN CAPITAL TERRITORY	TASMANIA
Effect of not serving a valid response to a payment claim	<p>In the NT, this depends on the terms of the construction contract.</p> <p>If the contract does not include a written provision about how a party is to respond to a payment claim, the implied provision provided by the Act will apply, and a respondent will be liable to pay the full claimed amount if it does not serve a notice of dispute.</p> <p>However, even where this implied provision is applicable, it does not preclude a respondent from defending an adjudication application despite any failure to dispute the whole or part of a payment claim.</p>	<p>If a payment schedule is not served in time, the respondent is liable to pay the full claimed amount. However, a claimant may not bring an adjudication application seeking payment of the same unless it provides the respondent with a further opportunity to serve a payment schedule under s 17(2).</p>	<p>If a payment schedule is not served in time, the respondent is liable to pay the full claimed amount. However, a claimant may not bring an adjudication application seeking payment of the same unless it provides the respondent with a further opportunity to serve a payment schedule under s 19(2).</p>	<p>If a payment schedule is not served in time, the respondent is liable to pay the full claimed amount. However, a claimant may not bring an adjudication application seeking payment of the same unless it provides the respondent with a further opportunity to serve a payment schedule under s 21(4).</p>
Maximum payment terms	<p>No specific maximum period applicable under the Act, unless the construction contract does not provide written a term for when payment falls due. In that case, the implied provisions will apply and a progress payment will be payable within 28 days after the respondent receives a payment claim.</p>	<p>No specific maximum period applicable under the Act, unless the construction contract does not provide a term for when payment falls due. In that case, a progress payment will be payable within 15 business days after the service of a payment claim.</p>	<p>No specific maximum period applicable under the Act, unless the construction contract does not provide a term for when payment falls due. In that case, a progress payment will be payable within 10 business days after the service of a payment claim.</p>	<p>No specific maximum period applicable under the Act, unless the construction contract does not provide a term for when payment falls due. In that case, a progress payment will be payable within 10 or 20 business days after the payment claim is served (the longer period applying to certain residential projects).</p>

	NORTHERN TERRITORY	SOUTH AUSTRALIA	AUSTRALIAN CAPITAL TERRITORY	TASMANIA
Timeframe for serving adjudication application		The timeframe depends on the nature of the application: if respondent has scheduled an amount less than the amount claimed in the payment claim, within 15 business days after the payment schedule is served; or if respondent has failed to pay all or part of a scheduled amount, within 20 business days from the due date for payment.	The timeframe depends on the nature of the application: if respondent has scheduled an amount less than the amount claimed in the payment claim, within 10 business days after the payment schedule is served; or if respondent has failed to pay all or part of a scheduled amount, within 20 business days from the due date for payment.	The timeframe depends on the nature of the application: if respondent has scheduled an amount less than the amount claimed in the payment claim, within 10 business days after the payment schedule is served; or if respondent has failed to pay all or part of a scheduled amount, within 20 business days from the due date for payment.
Appointment of adjudicator by appointing authority	Within five working days after service of an adjudication application, failing which, an adjudicator will be appointed by the Registrar.	As soon as practicable (no set timeframe).	As soon as practicable (no set timeframe).	As soon as practicable (no set timeframe).
Timeframe for serving adjudication response	Within 15 working days after being served with the application.	By the later of: five business days after receipt of the application; or two business days after receipt of notice of adjudicator's acceptance of the application.	By the later of: seven business days after receipt of the application; or five business days after receipt of notice of adjudicator's acceptance of the application.	By the later of: 10 business days after receipt of the application; or five business days after receipt of notice of adjudicator's acceptance of the application.
Can a respondent argue new reasons for non-payment in the adjudication response?	Yes.	No. Limited to reasons already included in the payment schedule.	No. Limited to reasons already included in the payment schedule.	No. Limited to reasons already included in the payment schedule.
Timeframe for adjudication determination	By the earlier of: 10 business days after the service of the adjudication response; or if no response is served, 10 business days after the last day for service of the response. The timeframe may be extended by the consent of the parties or the Registrar.	Unless the parties consent to a longer timeframe, within 10 business days after the respondent lodges a response (or if no response is lodged, the end of the period in which the response was due).	Unless the parties consent to a longer timeframe, within 10 business days after the respondent lodges a response (or if no response is lodged, the end of the period in which the response was due).	Unless the parties consent to a longer timeframe, within 10 business days after the respondent lodges a response (or if no response is lodged, the end of the period in which the response was due).

	NORTHERN TERRITORY	SOUTH AUSTRALIA	AUSTRALIAN CAPITAL TERRITORY	TASMANIA
Recycled claims permitted?	<p>Yes. A payment claim may include matters covered in a previous payment claim (and may give rise to a new “payment dispute” which can be adjudicated).</p> <p>However, a claimant is unlikely to be permitted to re-adjudicate a claim for payment of an amount that has been determined by a previous adjudication application.</p>	<p>Yes. A claimant may include an amount in its payment claim that has been the subject of a previous payment claim.</p> <p>However, a claimant is unlikely to be permitted to re-adjudicate a claim for payment of an amount that has been determined by a previous adjudication application.</p>	<p>Yes. A claimant may include an amount in its payment claim that has been the subject of a previous payment claim.</p> <p>However, a claimant is unlikely to be permitted to re-adjudicate a claim for payment of an amount that has been determined by a previous adjudication application.</p>	<p>Yes. A claimant may include an amount in its payment claim that has been the subject of a previous payment claim.</p> <p>However, a claimant is unlikely to be permitted to re-adjudicate a claim for payment of an amount that has been determined by a previous adjudication application.</p>
Right to suspend for non-payment	<p>A right to suspend performance of a contractor’s obligations arises where a respondent fails to pay an amount awarded under an adjudication determination.</p> <p>In such circumstances, the claimant must comply with the following procedure:</p> <p>give a “notice of intention” to the respondent indicating that it intends to suspend the performance of its obligations;</p> <p>state in the “notice of intention” the date on which the claimant intends to suspend performance;</p> <p>serve the notice at least three working days before the date stated in the notice; and</p> <p>if the amount remains unpaid by the date stated in the notice, a claimant may then suspend performance.</p>	<p>A right to suspend performance of the works arises where:</p> <p>a respondent has failed to serve a payment schedule and failed to pay all or part of amount due to the claimant;</p> <p>a respondent has served a payment schedule but failed to pay all or part of the scheduled amount;</p> <p>an adjudication determination has been issued, but the respondent has failed to pay all or part of the amount awarded in the determination.</p> <p>In any case, the claimant must serve a “notice of intention” indicating that it intends to suspend the works. The claimant may proceed with the suspension if the payment remains outstanding at least two business days after the service of this notice.</p>	<p>A right to suspend performance of the works arises where:</p> <p>a respondent has failed to serve a payment schedule and failed to pay all or part of amount due to the claimant;</p> <p>a respondent has served a payment schedule but failed to pay all or part of the scheduled amount;</p> <p>an adjudication determination has been issued, but the respondent has failed to pay all or part of the amount awarded in the determination.</p> <p>In any case, the claimant must serve a “notice of intention” indicating that it intends to suspend the works. The claimant may proceed with the suspension if the payment remains outstanding at least two business days after the service of this notice.</p>	<p>A right to suspend performance of the works arises where:</p> <p>a respondent has failed to serve a payment schedule and failed to pay all or part of amount due to the claimant;</p> <p>a respondent has served a payment schedule but failed to pay all or part of the scheduled amount; or</p> <p>an adjudication determination has been issued, but the respondent has failed to pay all or part of the amount awarded in the determination.</p> <p>In any case, the claimant must serve a “notice of intention” indicating that it intends to suspend the works. The claimant may proceed with the suspension if the payment remains outstanding at least three business days after the service of this notice.</p>