

# Security of Payments Workflow

WORKFLOW STAGE	STEP OR OPTION	EVENT	COMMENTS	SECTION OF ACT
<b>STAGE 1</b> Payment Claim	STEP 1.A	Claimant serves a Payment Claim	Unless it is made under a construction contract that is connected with a residential construction contract that is exempt under the <i>Building and Construction Industry Security of Payment Act 1999 (NSW)</i> ("the Act"), a Payment Claim does not need to state that it is made under the Act.	S13(2)
			Payment Claim must:	s13(2)
			<ul style="list-style-type: none"> <li>- Identify the construction work (or related goods and services) to which it relates; and</li> <li>- Indicate the amount due.</li> </ul>	
			Claimed amount may include any loss or expenses incurred, in exercising a right to suspend works or the supply of related goods and services, by the Respondent removing from the contract any part of the work or supply.	s27(2A)
			Claimed amount may include any amount held under the contract by the Respondent that the Claimant claims is due for release.	s13(3)(b)
		A payment claim may only be served	s13(4)	

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			<p>within the later of:</p> <ul style="list-style-type: none"> <li>- The period determined by or in accordance with the terms of the contract; or</li> <li>- The period 12 months after the construction work to which the claim relates was last carried out.</li> </ul>	
			A Claimant can only serve one payment claim per reference date under the contract.	s13(5)
			A Payment Claim can include an amount that has been the subject of a previous claim.	s13(6)
<b>STAGE 2</b> Payment Schedule	STEP 2.A	<p>Payment Schedule is served by the Respondent within the earlier of:</p> <ul style="list-style-type: none"> <li>- 10 days after the Payment Claim is served; or</li> <li>- Within the time required by the contract</li> </ul>	<p>A Payment Schedule must:</p> <ul style="list-style-type: none"> <li>- Identify the Payment Claim to which it relates;</li> <li>- Indicate the amount of the payment the Respondent proposes to make;</li> <li>- State the reasons why any proposed amount is less than the claimed amount; and</li> <li>- If payment is being withheld, the reason's why.</li> </ul>	<p>s14(2)</p> <p>s14(2)</p> <p>s14(3)</p> <p>s14(3)</p>

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			If a Payment Schedule is not served in the time in Stage 2 Step A then the Respondent becomes liable to pay the amount claimed on the due date for the progress payment the Payment Claim relates to.	s14(4)
			For a subcontractor, the due date for payment is the earlier of: <ul style="list-style-type: none"> <li>- Within 30 days after a Payment Claim is made; or</li> <li>- Any shorter time period agreed in the Contract.</li> </ul>	s11(1B)
			For a Head Contractor, the due date for payment is the earlier of: <ul style="list-style-type: none"> <li>- Within 15 days after a Payment Claim is made; or</li> <li>- Any shorter time period agreed in the Contract.</li> </ul>	s11(1A)
	OPTION 2.B	Claimant agrees with any lesser amount in the Payment Schedule	If the Respondent does not pay the whole Payment Claim by the due date then go to Stage 3E	
	<b>OR</b>			
	OPTION 2.C	Claimant disagrees with the lesser amount in the Payment Schedule.		

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		An Adjudication Application must be lodged within 10 business days after receipt of the Payment Schedule		s17(1)(a) and s17(3)(c)
<b>STAGE 3A</b> No Payment Schedule & payment made by due date	STEP 3A.A	Matter is finalised		
<b>STAGE 3B</b> No Payment Schedule & no payment made by due date or incomplete payment made by due date	Step 3B.A	Claimant should consider serving notice of intention to suspend works.	The notice of intention to suspend works must state that it is made under the Act.	s15(4)
			Claimant may suspend works under a contract if at least 2 business days have passed since the notice of intention to suspend works was served.	s27(1)
			The right to suspend works exists until the end of the period 3 business days immediately following the date the Claimant receives payment of the amount in the Payment Claim.	s27(3)
	Step 3B.B	Claimant should consider exercising lien over any unfixed	The Claimant is entitled to exercise a lien in respect of the unpaid amount over any	s11(3)

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		plant or materials supplied by the Claimant	unfixed plant or materials supplied by the Claimant for use in connection with the carrying out of construction work for the Respondent.	
	Step 3B.C	Interest is payable on the unpaid amount of a progress payment	<p>Interest is payable at the greater of:</p> <ul style="list-style-type: none"> <li>- The rate prescribed under section 101 of the <i>Civil Procedure Act 2005</i> [for a period from 1 January to 30 January in a given year, this is the rate that is 6% above the cash rate last published by the RBA before 1 January, and</li> <li>- For the period from 1 July to 31 December in a given year, this is the rate that is 6% above the cash rate last published by the RBA before 1 July]; or</li> <li>- The rate specified in the construction contract.</li> </ul>	s11(2)
	Option 3B.D	Recover due amount in Court as a debt due to the Claimant	<p>The Respondent is not entitled to:</p> <ul style="list-style-type: none"> <li>- Bring any cross-claim against the Claimant; or</li> <li>- Raise any defence in relation to matters arising under the contract</li> </ul>	s15
<b>OR</b>				

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WORKFLOW STAGE	STEP OR OPTION	EVENT	COMMENTS	SECTION OF ACT
	Option 3B.E	Commence Adjudication Process	Go to Step 3B.F	
	Step 3B.F	Within 20 business days after the due date for payment serve Notice of Intention to Apply for Adjudication on the Respondent		S17(2)(a)
	Step 3B.G	Allow a period of 5 business days after the Notice of Intention to Apply for Adjudication has been received by the Respondent for the Respondent to provide a Payment Schedule to the Claimant ("17(2) Payment Schedule")		S17(2)(b)
	Option 3B.H	If the Respondent has served a 17(2) Payment Schedule and the Claimant disagrees with the amount, lodge an Adjudication Application within 10 business days after receipt of the 17(2) Payment Schedule	Go to Step 3B.J	s17(3)(c)
<b>OR</b>				
	Option 3B.I	If the Respondent does not serve a 17(2) Payment Schedule, lodge an Adjudication	Go to Step 3B.J	s17(3)(e)

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		Application within 10 business days after the 5 business day period in which the 17(2) Payment Schedule was due	<i>Note: that the Respondent is not entitled to lodge any Adjudication Response to the Adjudication Application.</i>	
	Step 3B.J	Serve a copy of the Adjudication Application on the Respondent		s17(5)
	Step 3B.K	Require the Principal Contractor for the claim to retain sufficient money to cover the Payment Claim out of money that is, or becomes, payable by the Principal Contractor to the Respondent ("Payment Withholding Request")	A Payment Withholding Request must include a statutory declaration declaring that the Claimant genuinely believes that the money claimed is owed by the Respondent to the Claimant.  If a person is served with a Payment Withholding Request and they are not longer a Principal Contractor, they must notify the claimant within 10 business days of receipt of the request.	s26A  s26A(5)
<b>Stage 3C</b> Payment Schedule & Claimant Agrees with amount and whole Payment Claim is paid	Step 3C.A	Matter is finalised		
<b>Stage 3D</b> Payment Schedule &	Step 3D.A	Lodge Adjudication Application within 10 business days after receipt of the Payment Schedule		s17(3)(c)

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WORKFLOW STAGE	STEP OR OPTION	EVENT	COMMENTS	SECTION OF ACT
Claimant Disagrees with amount	Step 3D.B	Serve a copy of the Adjudication Application on the Respondent		s17(5)
	Step 3D.C	Serve a Payment Withholding Request on the Principal Contractor	A Payment Withholding Request must include a statutory declaration declaring that the Claimant genuinely believes that the money claimed is owed by the Respondent to the Claimant.	s26A
			If a person is served with a Payment Withholding Request and they are not longer a Principal Contractor, they must notify the claimant within 10 business days of receipt of the request.	s26A(5)
Stage 3E Payment Schedule, Claimant agrees with the Schedule & Respondent doesn't pay in accordance with the Schedule	Step 3E.A	Consider serving notice of intention to suspend works	The notice of intention to suspend works must state that it is made under the <i>Building and Construction Industry Security of Payment Act 1999</i>	s15(4)
			Claimant may suspend works under a contract if at least 2 business days have passed since the notice of intention to suspend works was served.	s27(1)
			The right to suspend works exists until the	

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			end of the period 3 business days immediately following the date the Claimant receives payment of the amount in the Payment Claim	s27(3)
	Step 3E.B	Consider exercising lien over any unfixed plant or materials supplied by the Claimant	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 for the Respondent.	s11(3)
	Step 3E.C	Interest is payable on the unpaid amount of a progress payment	Interest is payable at the greater of: <ul style="list-style-type: none"> <li>- The rate prescribed under section 101 of the <i>Civil Procedure Act 2005</i> [for period from 1 January to 30 January, this is the rate that is 6% above the cash rate last published by the RBA before 1 January, and</li> <li>For the period from 1 July to 31 December, this is the rate that is 6% above the cash rate last published by the RBA before 1 July]</li> <li>- The rate specified in the construction contract</li> </ul>	s11(2)
	Option 3E.D	Recover due amount in Court as a debt due to the Claimant	The Respondent is not entitled to: <ul style="list-style-type: none"> <li>- Bring any cross-claim against the Claimant; or</li> </ul>	s15

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			- Raise any defence in relation to matters arising under the contract	
		<b>OR</b>		
	Option 3E.E	Within 20 business days after the due date for payment lodge Adjudication Application		s17(3)(d)
	Step 3E.F	Serve a copy of the Adjudication Application on the Respondent		s17(5)
	Step 3E.G	Serve a Payment Withholding Request on the Principal Contractor	A Payment Withholding Request must include a statutory declaration declaring that the Claimant genuinely believes that the money claimed is owed by the Respondent to the Claimant.	s26A
			If a person is served with a Payment Withholding Request and they are not longer a Principal Contractor, they must notify the claimant within 10 business days of receipt of the request.	s26A(5)
<b>STAGE 4</b> Adjudication Application Acknowledgement	Step 4.A	If Claimant does not receive Adjudicator's notice of acceptance of Adjudication Application within 4 business days after the application is made, the Claimant may	Any new Adjudication Application may be made at any time within 5 business days after Claimant becomes entitled to withdraw the previous application.	s26

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Stage 5 Adjudication Response		withdraw Application and make a new Adjudication Application		
	Step 5.A	If a Payment Schedule has been served by the Respondent, an Adjudication Response may be lodged	An Adjudication Response must be served by the Respondent by the expiration of the later of: <ul style="list-style-type: none"> <li>- 5 business days after receipt of the Application; or</li> <li>- 2 business days after receipt of the Adjudicator's Acceptance of Application.</li> </ul> <p><i>Note: An Adjudication Response may only be lodged if the Respondent has provided a Payment Schedule to the Claimant within the timeframes allowed.</i></p>	s20  s20(2A)
	Step 5.B	Serve a copy of the Adjudication Response on the Claimant		s20(3)
Stage 6 Adjudication Determination	Step 6.A	Adjudicator must determine the Application either: <ul style="list-style-type: none"> <li>(a) within 10 business days of acceptance of the Adjudication Application; or</li> <li>(b) within such further time as the Claimant and the Respondent agree,</li> </ul>		s21(3)

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		<p><b>but not before:</b></p> <ul style="list-style-type: none"> <li>- the Respondent's time to serve any 17(2) Payment Schedule expires; or</li> <li>- or before the time within which the Respondent may lodge an Adjudication Response.</li> </ul>		
	Step 6.B	If the Adjudicator does not determine the Adjudication Application within the time allowed in Step A, the Claimant may withdraw the application and make a new Adjudication Application.	Any new Adjudication Application may be made at any time within 5 business days after Claimant becomes entitled to withdraw the previous application	s26
	Step 6.C	<p>The Respondent must pay an adjudicated amount within:</p> <ul style="list-style-type: none"> <li>- 5 business days after the date on which the adjudicator's determination is served, or</li> <li>- By a later date determined by the Adjudicator</li> </ul>		s23

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	Step 6.D	If the adjudicated amount is not paid within the time in Step 6.C, the Claimant should request the Authorised Nominating Authority (“ANA”) to whom the Adjudication Application was made to provide an Adjudication Certificate	<p>An Adjudication Certificate must state it is made under the Act and specify the following:</p> <ul style="list-style-type: none"> <li>- The name of the claimant;</li> <li>- The name of the Respondent liable to pay the adjudicated amount;</li> <li>- The adjudicated amount; and</li> <li>- The date on which payment of the adjudicated amount was due.</li> </ul> <p>The Claimant may request the ANA to specify the amount of interest payable in the Adjudication Certificate.</p> <p>The Claimant may request the ANA to specify the unpaid share of any adjudication fees in the Adjudication Certificate.</p>	s24
	Step 6.E	File Adjudication Certificate as a judgment for a debt in Court together with affidavit by the Claimant stating that the whole or any part of the Adjudicated Amount has not been paid at the time of filing	<p>Should the Respondent commence proceedings to set aside the judgment it is not entitled to:</p> <ul style="list-style-type: none"> <li>- Bring any cross-claim against the Claimant;</li> <li>- Raise any defence in relation to matters arising under the contract;</li> <li>- Challenge the Adjudicator’s determination.</li> </ul> <p>The Respondent must in any proceedings to set aside the judgment pay into the</p>	s25

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WORKFLOW STAGE	STEP OR OPTION	EVENT	COMMENTS	SECTION OF ACT
			<b>Court as security the unpaid portion of the Adjudicated Amount pending the final determination of the proceedings</b>	

