



CTI Lawyers Series Webinar: Session 5

When and how to use the Security
of Payments Act
(Tasmania only)





Webinar Agenda

1. Purpose and Definitions under the Act
2. Rights and Obligations
3. Understanding the SOPA
4. Payment Claims
5. Payment Schedules
6. Scenarios
7. Adjudication Application
8. Adjudication Response
9. Adjudication Determination
10. Enforcement of Judgement Debt
11. Right to Suspend Works

Presenter:



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1. Purpose and Definitions under the Act



Purpose of the Act

Section 3 states the object of the *Building and Construction Industry Security of Payment Act 2009* (Tas) as follows:

'... to ensure that any person who undertakes to carry out building work or construction work (or who undertakes to supply building or construction-related goods and services) under a building or construction contract, including such a contract that relates to a residential structure, is entitled to receive, and is able to recover, progress payments in relation to the work or goods and services.'



Building Work and Construction Work

- Section 5(1) of the Act – Meaning of building or construction work
- The construction, erection, re-erection, alteration, repair, restoration, maintenance, extension, adding to, underpinning, removal, demolition, or dismantling of:
 - Buildings;
 - Structures;
 - Walls;
 - Roads;
 - Powerlines;
 - Docks;
 - Railways; and
 - Pipelines
- Energy infrastructure and telecommunications facilities;
- Heating, ventilation, air-conditioning and cooling systems;
- Power supply, lighting and communications systems;
- Passenger lifts and goods lifts;
- Plumbing installations; and
- Fire safety systems and security systems.

Not limited to.



Building and Construction Related Goods and Services

Section 6(1)

- Related goods – includes all materials or machinery used over the duration of the construction work
- Related services – provision of labour to carry out the construction work, along with any related architectural, design, surveying and advisory services



Construction Contracts

Defined in section 4 as “a contract, or other arrangement, under which one party undertakes to carry out building work or construction work for, or to supply building or construction related goods and services to, another party.”





2. Rights and Obligations



Contractual Rights and Obligations

- Know and understand your contractual rights and obligations.
- For example, check your contract to know when and how to submit claims for payment. This is important because submitting claims at the wrong time may invalidate your claim under the *Building and Construction Industry Security of Payment Act 2009*(Tas).





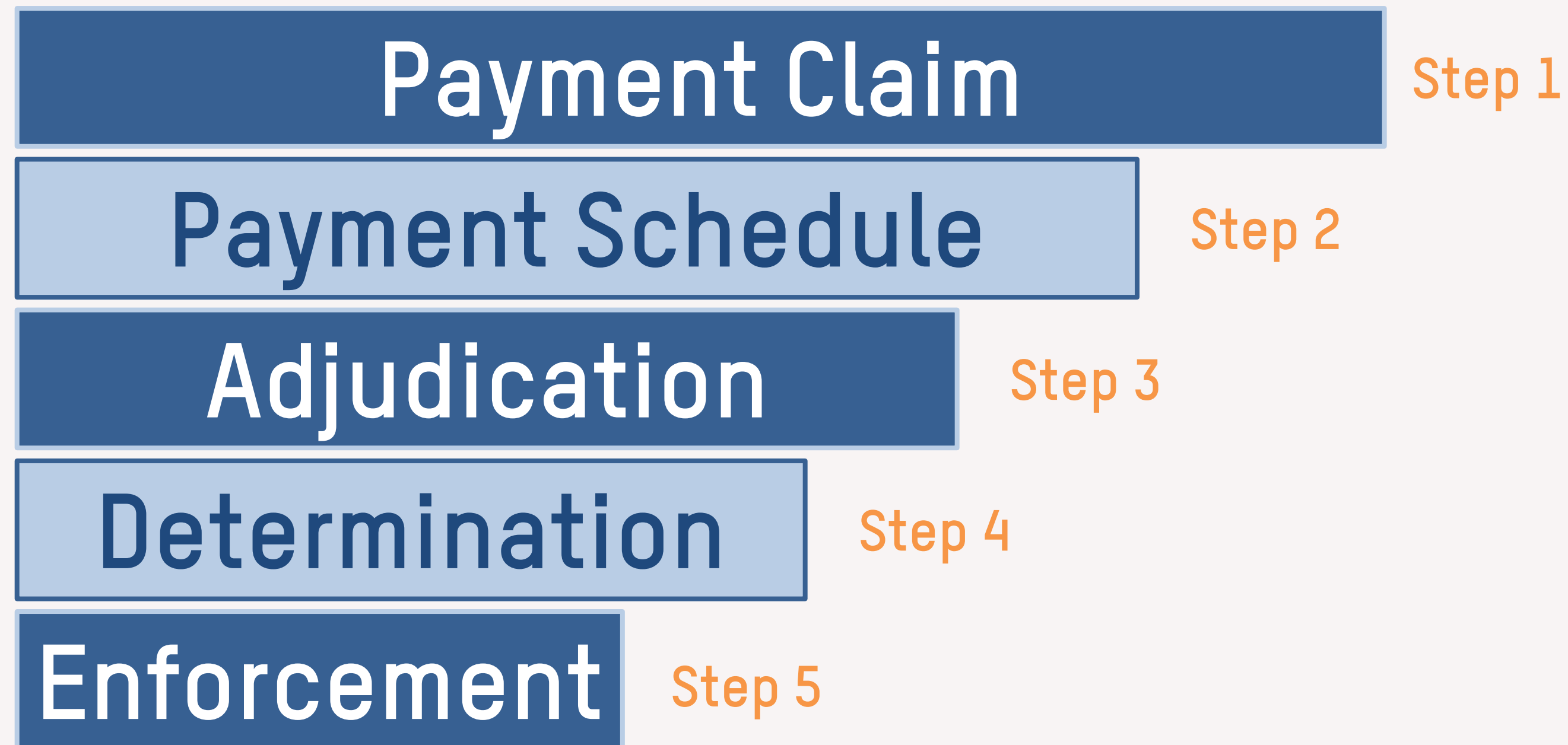
Rights to Progress Payments

Section 12

- A person who has undertaken to carry out building and construction work or supply building and construction-related goods and services under a building and construction contract is entitled to a progress payment.
- The amount is to be calculated in accordance with the terms in the contract.



3. Understanding SOPA





4. Payment Claims



Payment Claims

- Must relate to work performed prior to a Reference Date*
- Must be issued on or from the date stipulated in the Contract OR the last day of each month
- The manner of which a Claim should be served is usually stipulated in the Contract – where this is not the case, service can take effect in the following ways:
 1. In person;
 2. By email or fax; or
 3. Sending it to the principal place of business or the company's registered office.

*Reference Date – the date that both parties agree to for the lodgment of a Payment Claim – where it is not provided, it defaults to the last day of each month



S 17 – What must a Payment Claim identify?

- The name of the Claimant and Respondent
- The building and construction work or related goods and services to which the claim relates
- The claimed amount
- The amount that the Respondent is liable to pay the claimant
- The Magic Words:

“This is a Payment Claim made under the *Building and Construction Security of Payment Act 2009* (Tas).”



Serving a Payment Claim

- Must be served by or on behalf of the Claimant
- A Claimant must not serve more than 1 payment claim in respect of each reference date under the contract
- S 17 - A payment claim may be served only within whichever of the following periods occurs later:
 1. The period determined by or in accordance with the terms of the Contract; or
 2. The period 12 months after the building works or related goods and services to which the claim relates was last carried out or supplied.



5. Payment Schedule



Payment Schedules

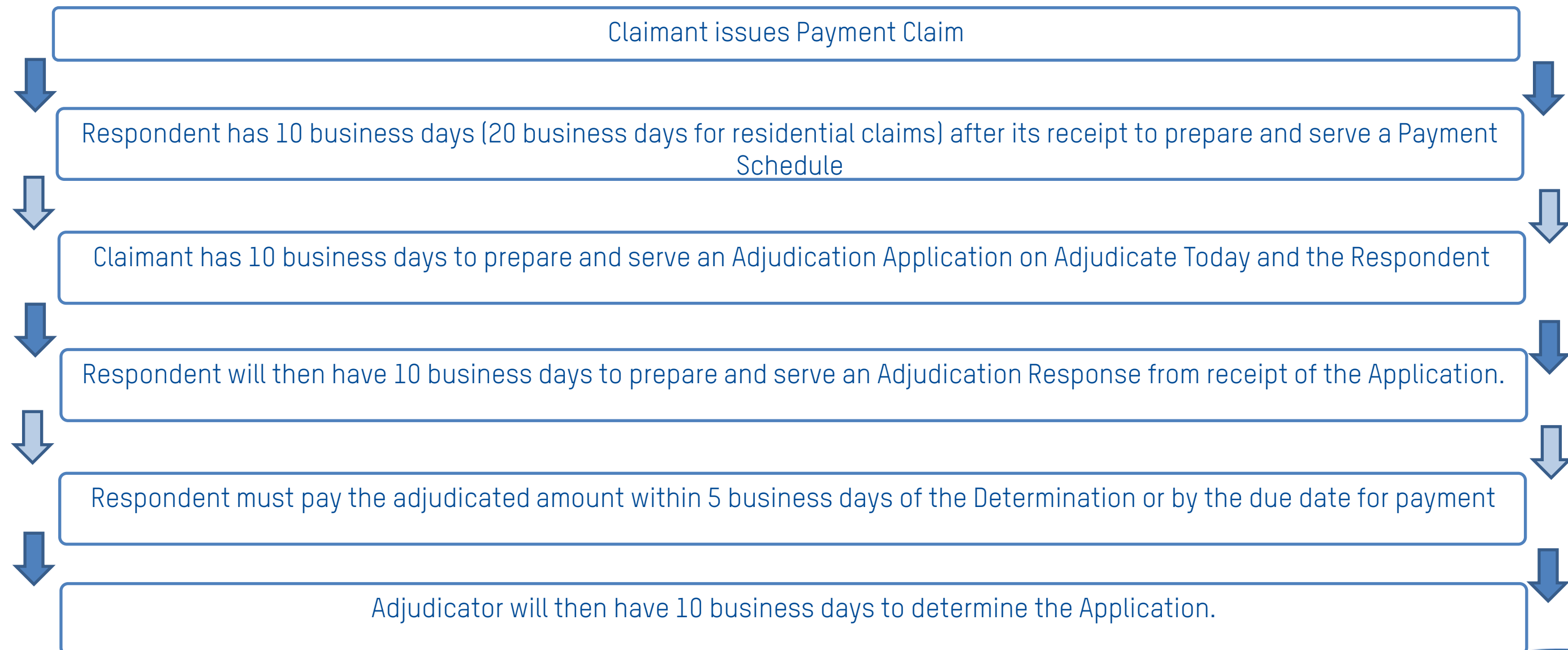
- Served on the Claimant by the Respondent in response to a Claim
- Indicates the Payment Claim to which it relates to
- Indicates the amount of payment (if any) that the Respondent intends to make
- Provides reasons for withholding or reducing payment to an amount less than that claimed
- Must be served on the Claimant either by the date stipulated in the Contract, or within 10 business days after the Payment Claim was served on the Respondent (20 business days for residential works).



6. Scenarios



Scenario 1 – Respondent Serves Payment Schedule



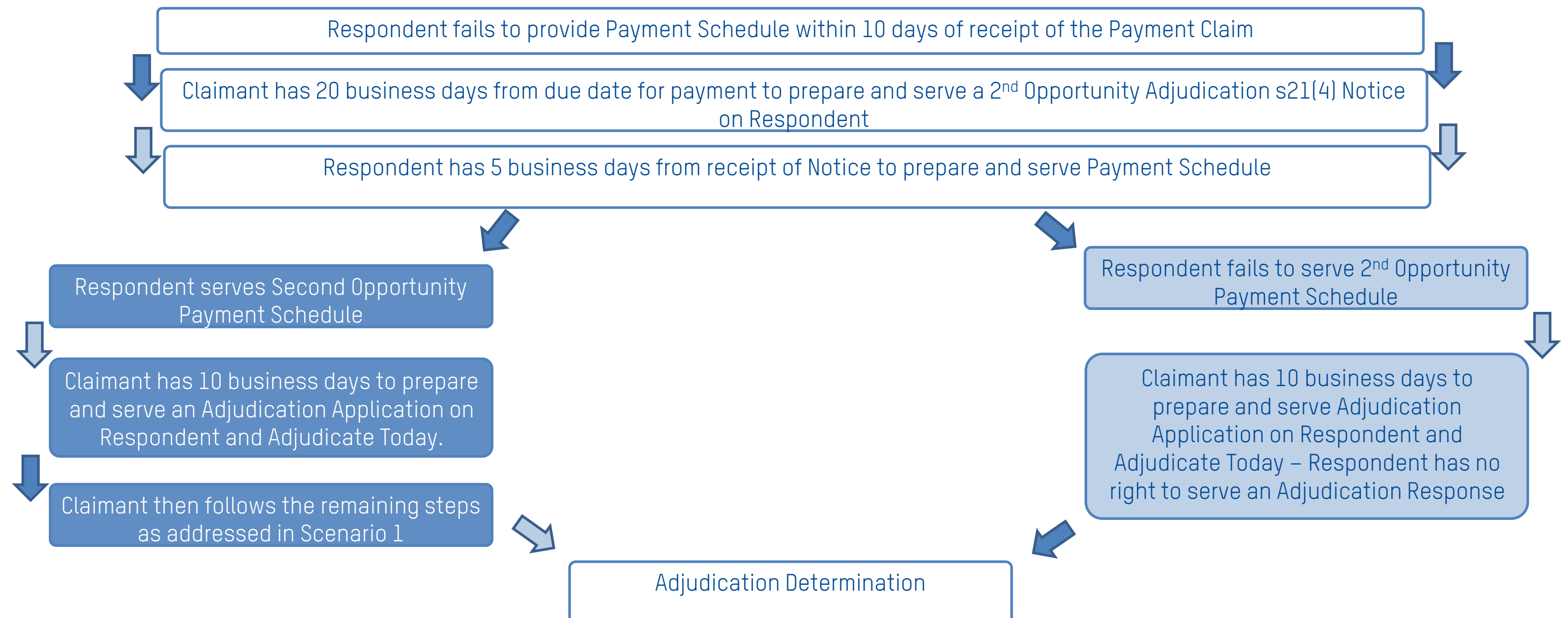


Scenario 2 – Claimant Accepts Payment Schedule

- Where a Claimant accepts the Schedule served by the Respondent, however, full or any part of the Scheduled Amount has not been paid by the due date, the Claimant may:
 1. Suspend works on giving 2 business days notice; or
 2. Prepare and serve an Adjudication Application on the Respondent and Adjudicate Today within 20 business days.
- The Claimant will then follow the remaining steps listed in Scenario 1.



Scenario 3 – Respondent Fails to Serve Payment Schedule





BUILDING & CONSTRUCTION INDUSTRY SECURITY OF PAYMENT ACT 2009 TASMANIAN FLOWCHART



Adjudicate Today (Tas SOP)

Adjudicate Today provides a printable flowchart of the process of debt recovery in Tasmania and the steps to Adjudication.



7. Adjudication Application



Adjudication Application

- A Claimant may apply to a nominating authority to have a payment claim adjudicated
- An application must be made within:
 1. 10 business days after the Claimant receives the Payment Schedule if the scheduled amount is less than the claimed amount; or
 2. 20 business days after the Claimant receives the Payment Schedule if the Respondent fails to pay all or part of the scheduled amount by the due date
- A copy of the Application must be served on the Respondent
- Before a determination is made, an Applicant may at any time withdraw the application by notice served on the Adjudicator and Respondent



Adjudication Application Inclusions

An Adjudication Application must:

1. Identify the Payment Claim and Payment Schedule, if any, to which it relates
2. Be accompanied by the application fee (determined by the Nominating Authority)

The Application may also contain any submissions relating to the application that the Applicant sees fit.



8. Adjudication Response



Adjudication Response

- A Respondent may lodge a Response to the Adjudication Application where they have provided a Payment Schedule to the Claimant within the required period
- This is to be lodged within 10 business days after receiving a copy of the Application.
- An Adjudication Response must:
 1. Be in writing; and
 2. Identify the Adjudication Application to which it relates.
- Reasons for withholding payment that have not been included in the Payment Schedule are not permitted in the Adjudication Response.
- A copy of the Response must be served on the Claimant.



9. Adjudication Determination



Adjudication Determination

- The Adjudicator has 10 business days to determine the Application
- This time may be extended by the agreement of both parties
- Once an Adjudication Determination has been made, the Respondent must make payment of the adjudicated amount (Judgement Debt) either within:
 - 5 business days of service of the Determination; or
 - by the due date of payment,

whichever is later.



10. Enforcement of Judgement Debt



Enforcement of Judgement Debt

- Where the Respondent does not pay full or any part of the Judgement Debt, including any adjudication fees and interest, the Claimant may:
 1. Suspend works on giving 2 business days notice (will discuss further); or
 2. Apply for an Adjudication Certificate.
- Enforcement options include:
 - Judgement summons and oral examination
 - Warrant for seizure and sale
 - Order for payment by instalment
 - Garnishee order



11. Right to Suspend Works



Right to Suspend Works

- A Claimant may suspend works under the Contract if at least 2 business days have passed since the Claimant served notice on the Respondent of their intention to do so.
- A Claimant who suspends this work is not liable for loss or damage suffered by the Respondent as a consequence of the Claimant not carrying out the work, or supplying the services, during the period of suspension.



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Disclaimer: This presentation does not constitute legal advice and reliance should not be placed upon material presented to solve a specific industrial relations issue.

