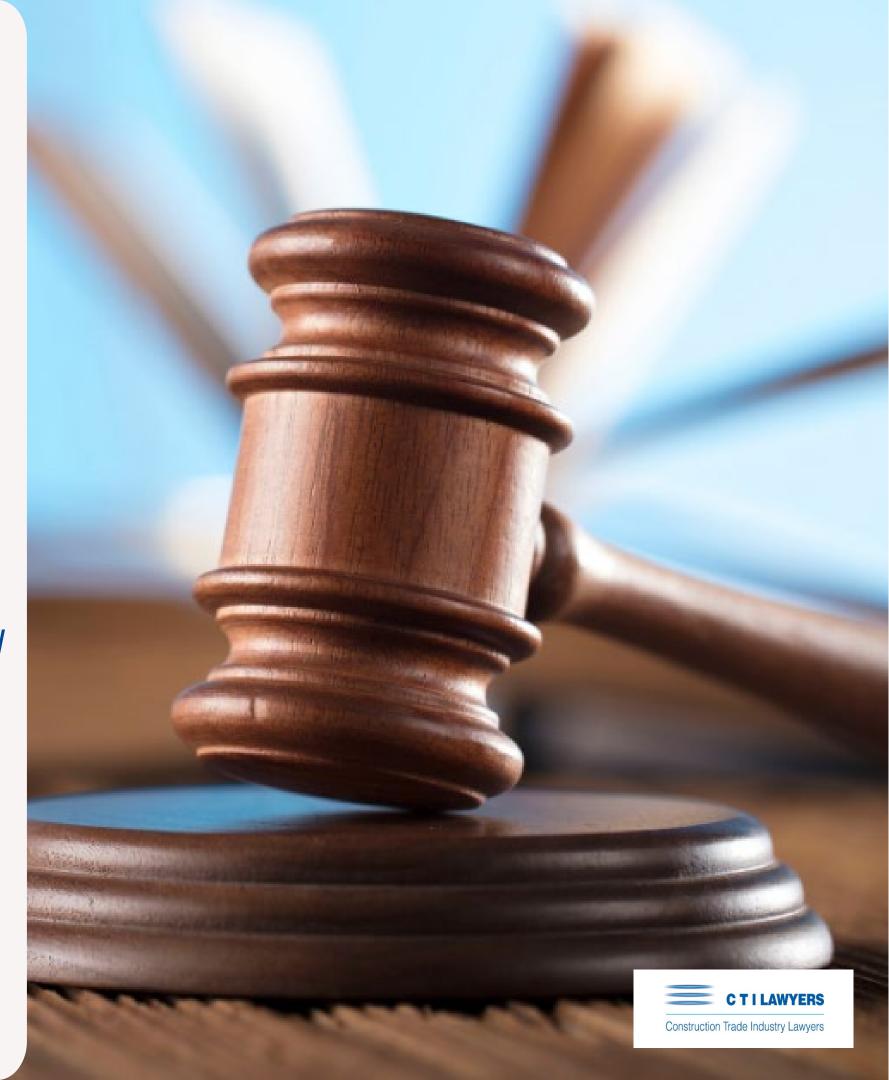


When and how to use the Security of Payments Act (Tasmania only)



#### Presenter:



Stafford Poyser

### 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







# 1. Purpose and Definitions under 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:
  - o Buildings;
  - o Structures;
  - o Walls;
  - Roads;
  - o Powerlines;
  - o Docks;
  - o Railways; and
  - o 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.





#### Section 6(1)

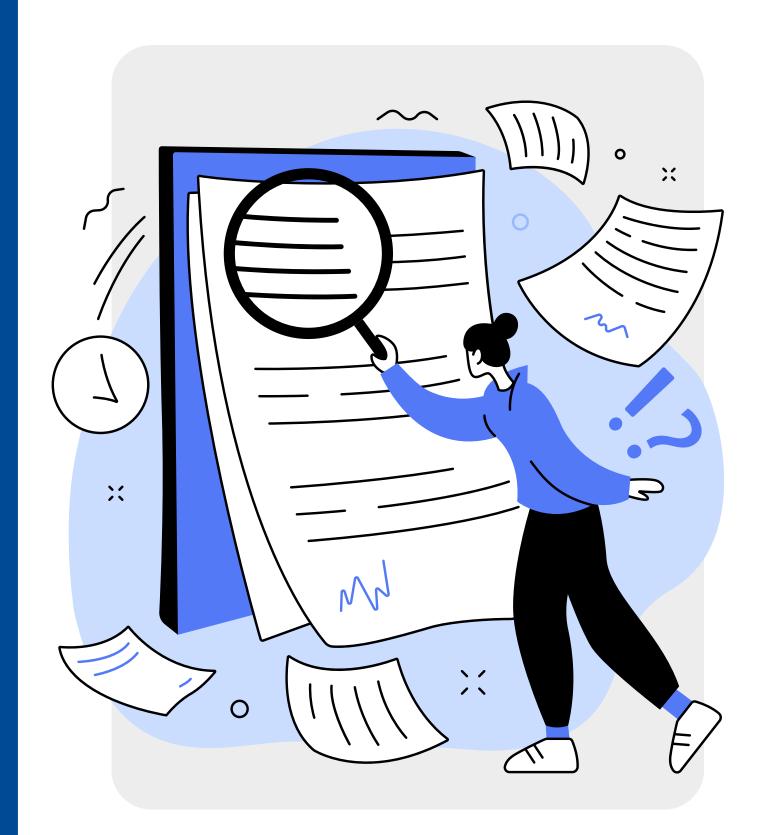
- Related goods includes all materials or machinery used over the duration of the construction work
- Related services provision of labour to carry out the construction work, along with any related architectural, design, surveying and advisory services

#### **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

Payment Claim

Step 1

Payment Schedule

Step 2

Adjudication

Step 3

Determination

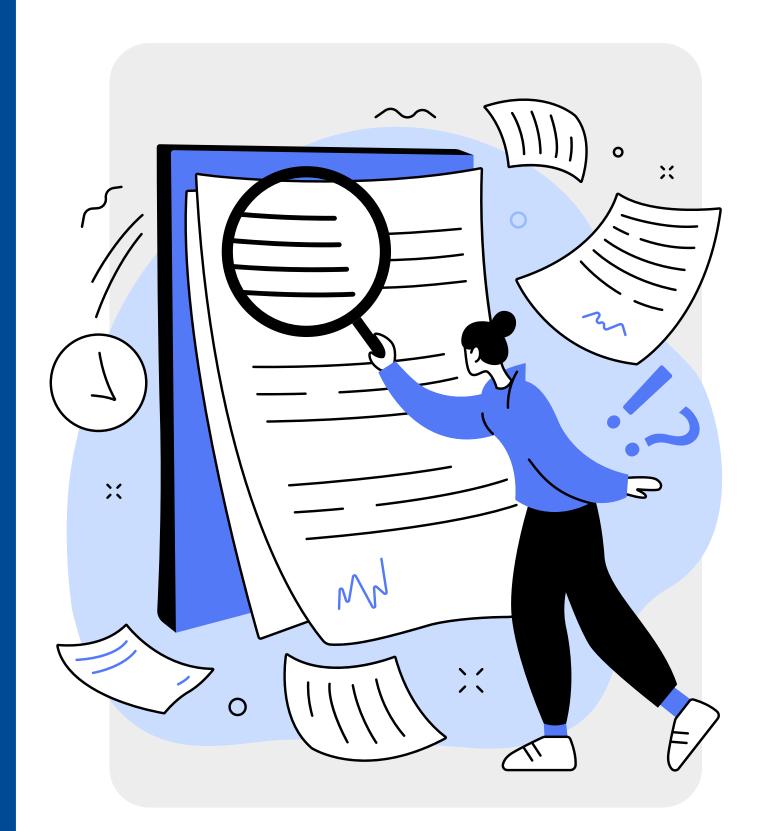
Step 4

Enforcement

Step 5







### 4. 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)."

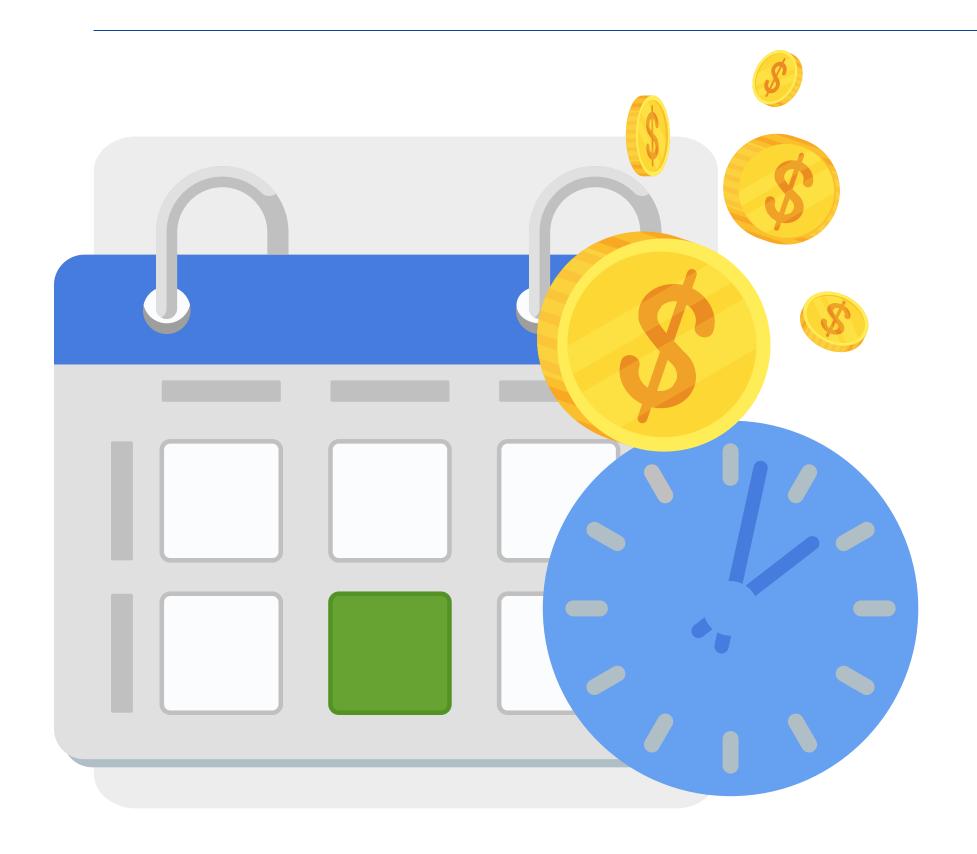




- Must be served by or on behalf of the Claimant
- A Claimant must not serve more than 1 payment claim in respect of each reference date under the contract
- S 17 A payment claim may be served only within whichever of the following periods occurs later:
  - 1. The period determined by or in accordance 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

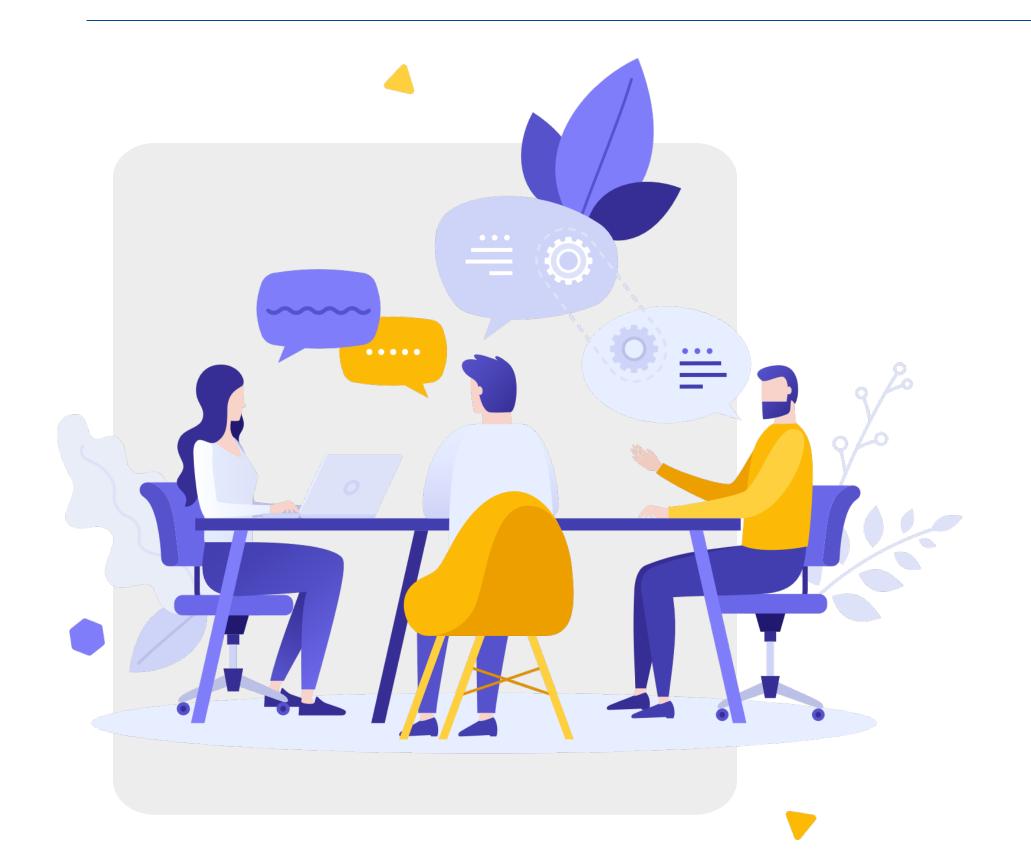




#### Payment Schedules

- 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).

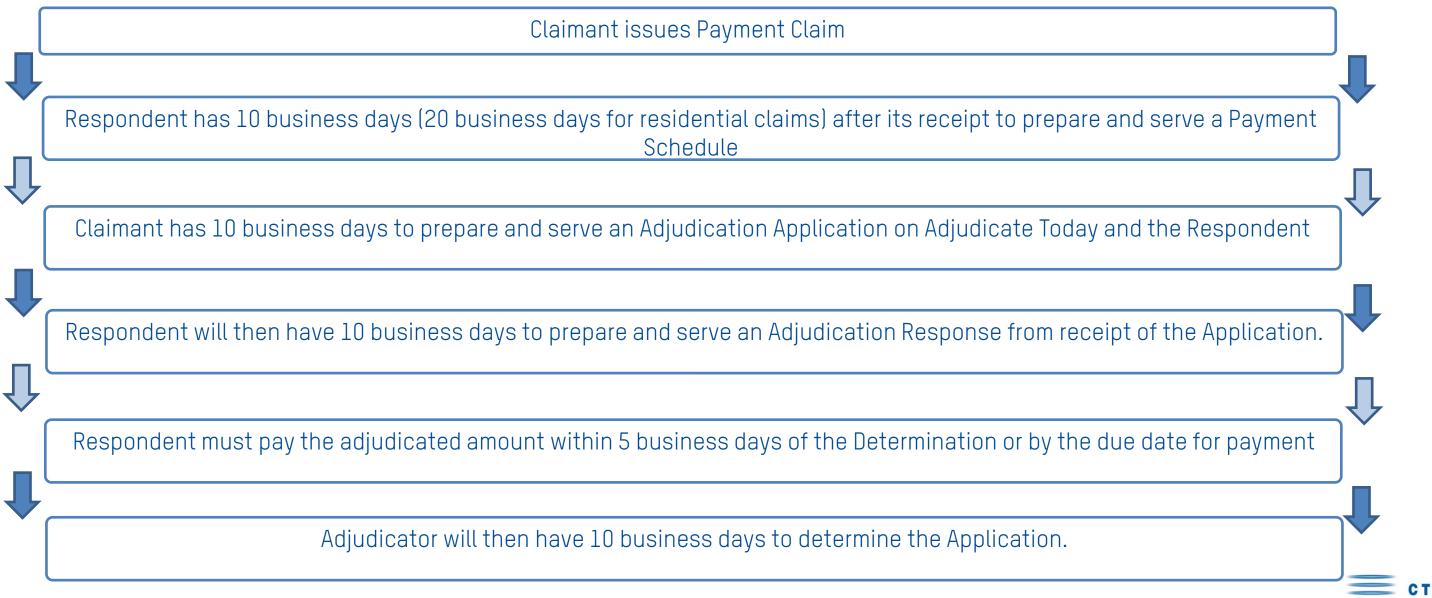




#### 6. Scenarios



#### Scenario 1 – Respondent Serves Payment Schedule



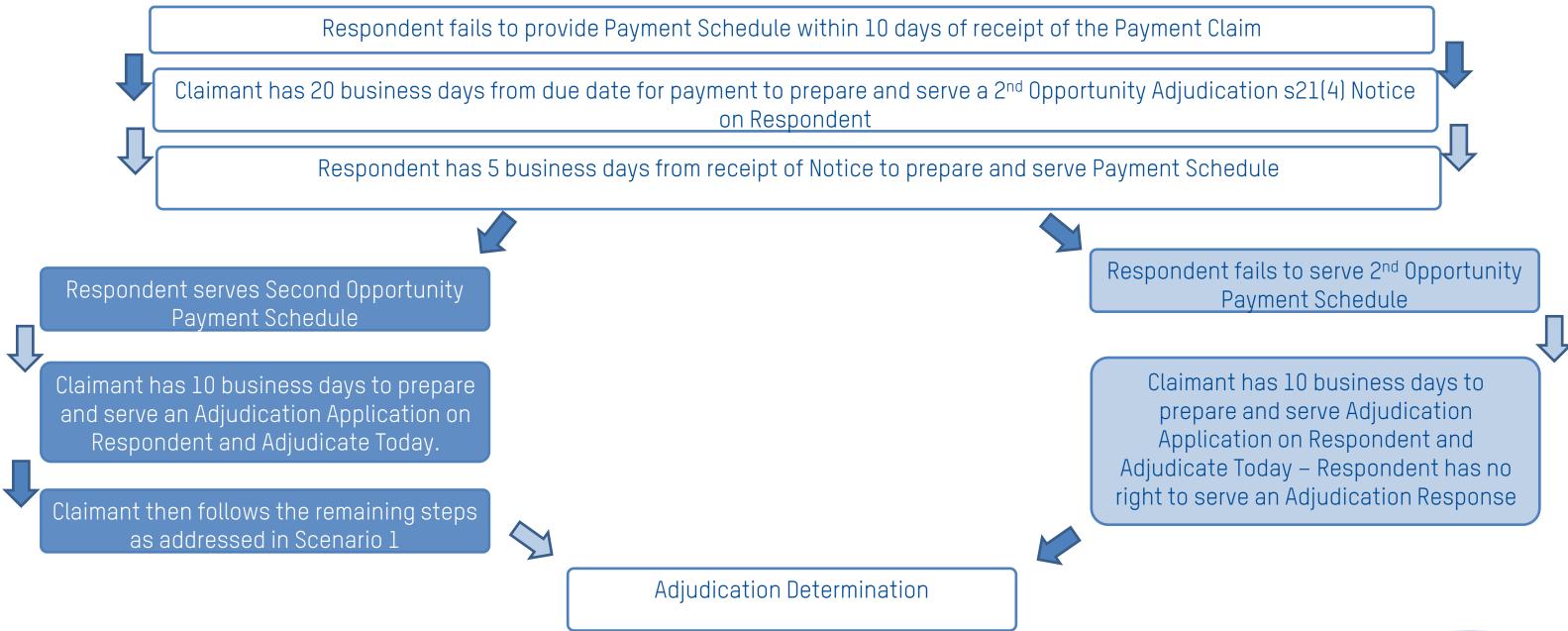


#### Scenario 2 – Claimant Accepts Payment Schedule

- 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



#### TASMANIAN FLOWCHART Reference Date Pink background on flowchart Blue background on flowchart Payment Schedule NOT served process = Payment Schedule served process Claimant prepares & serves Payment Claim pondent has 10 business days after receip espondent FAILS to serve a Payment despondent serves a Payment Schedule of the Payment Claim (20 business days in Schedule within time. within time relation to a residential claim) or shorter [In this case follow the flowchart steps [In this case follow the flowchart steps period if provided by the construction contract th the PINK and YELLOW background] ith the BLUE and YELLOW background Full or any part of Claimant accepts made by Due Date. aimed amount NOT Payment Schedule Payment Schedule yment Process unde paid by Due Date the Act complete aimant may susper laimant chooses Court action, No. made by Due Date work on giving 2 Adjudication further action under yment Process unde t paid by Due Dat imant may suspend work on giving 2 business days notice days from Due Date for Adjudication s.21(4) Notice payment to prepare & serve providing Respondent with Claimant has 20 business days second opportunity to serve to prepare & serve Adjudication 21(4) Notice on Responden Payment Schedule Application from Due Date for Payment Respondent has 5 portunity Payment Schedul espondent does not serve to prepare & serve Adjudication ousiness days from receipt second opportunity Application from either receipt of s.21(4) Notice from Payment Schedule As Payment Schedule now of Payment Schedule or after Claimant to prepare & s.21(4) Notice has expired, if issued, process reverts to Claimant has 10 business Claimant serves lays after the 5 business day Claimant serves Adjudication Adjudication Application om receipt of s.21(4) notice Application on Adjudicate Today and Respondent has expired to prepare & Today and Respondent rve Adjudication Application Respondent has 10 business days to udgement of Adjudication prepare & serve Adjudication Response from Respondent has no right to serve an Adjudication receipt of Application from the Claimant or Certificate, Enforcement of Response 5 business days after receiving notice of Adjudicator's acceptance of the Application, Process under the Act whichever is the late The Adjudicator has 10 business days to determine the Application from the date of receipt of the Adjudication Response or the date the Response Claimant applies for and Respondent serves Adjudication Response would have been due or, if the Respondent has no obtains Adjudication on Adjudicate Today and Claimant right to serve an Adjudication Response, 10 business Certificate from Adjudicate days from the date of acceptance of the Adjudication Application by the Adjudicator. Time may be extended by agreement of both parties Respondent must pay any adjudicated Claimant may suspend amount either within 5 business days of work on giving 2 business Adjudication Determination service of the Determination or by Due Date of Payment, whichever is the later

adjudication fees paid. Payment Process under

Light yellow

background =

Adjudication &

Enforcement process

Legend for Flowchart Activities:

Pink background

NOT Served process

= Payment Schedule

Blue background

= Payment Schedule

Served process

Respondent does not pay full or any part of

Process

Information

adjudicated amount, including any adjudication

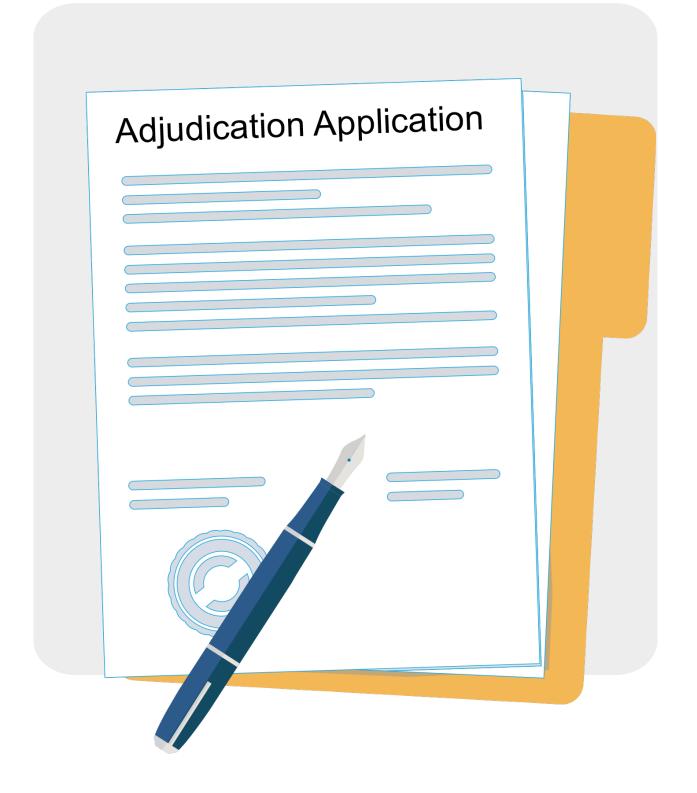
Respondent

BUILDING & CONSTRUCTION INDUSTRY SECURITY OF PAYMENT ACT 2009

### 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





- A Claimant may apply to a nominating authority to have a payment claim adjudicated
- An application must be made within:
  - 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

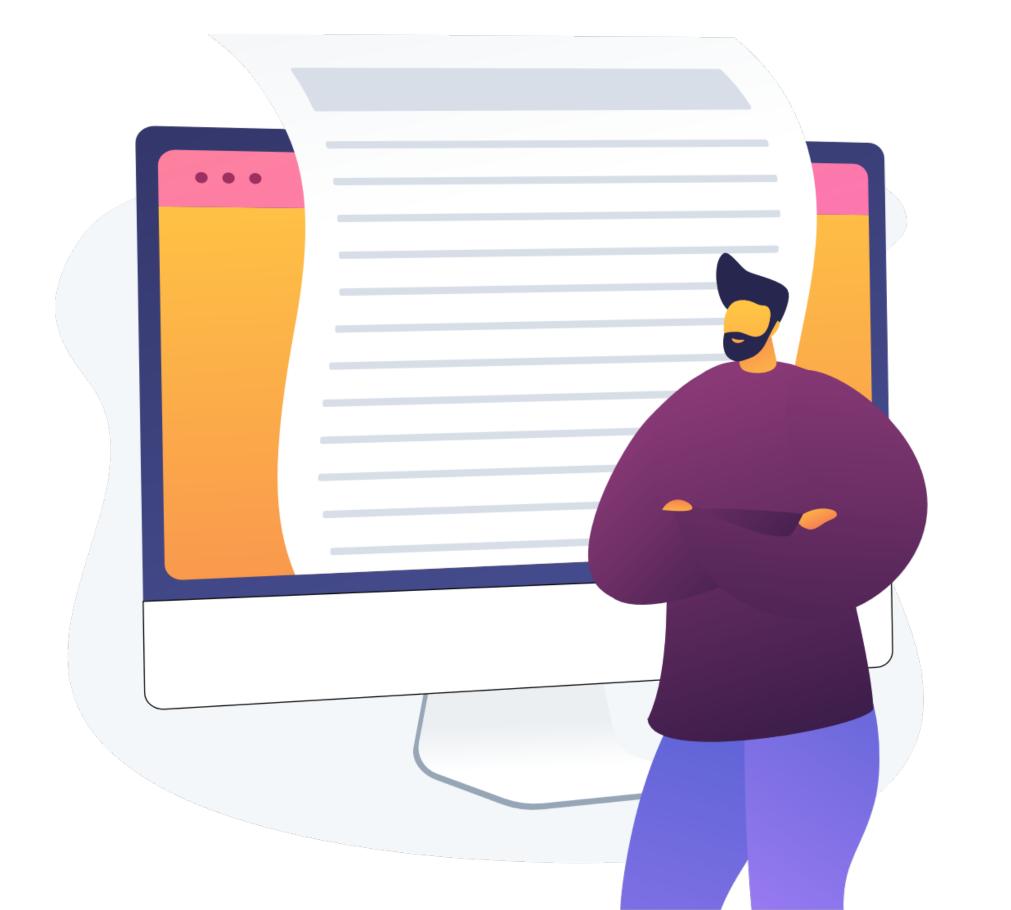
An Adjudication Application must:

- 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:
  - o 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





- 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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