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Appendix 1 - Timeline for progress payment claims, responses, adjudication applications and responses - Australian Security of Payments Legislation (Timeline for progress payment claims, responses, adjudication applications and responses, 2007).

	New South Wales	Northern Territory	Queensland	Victoria	West Australia	Tasmania	Australian Capital Territory	South Australia
Name of Act	<i>Building and Construction Industry Security of Payment Act 1999</i>	<i>Construction Contracts (Security of Payments) Act 2004</i>	<i>Building and Construction Industry Payments Act 2004</i>	<i>Building and Construction Industry Security of Payment Act 2002</i>	<i>Construction Contracts Act 2004</i>	<i>Building and Construction Industry Security of Payment Act 2009</i>	<i>Building and Construction Industry (Security of Payment) Act 2009</i>	<i>Building and Construction Industry Security of Payment Act 2009</i>
Definition of time	<p>“business day” A day other than Saturday, Sunday, public holiday, or 27 - 31 December.</p>	<p>“working day” is defined but not always used in the Act.</p> <p>The term “day” is often used where one would expect “working day” to be used.</p> <p>“day” is not defined in the <i>Interpretation Act</i>. If the period ends on a Saturday, Sunday or public holiday, the period ends on the next day that is not one of these.</p>	<p>“business day” means a day that is not a Saturday, a Sunday, a public holiday, a special holiday, a bank holiday in the place where the act is to be done, and does not include 27 to 31 December inclusive.</p>	<p>“business day” means a day that is not a Saturday, a Sunday, or a day that is wholly or partly a public holiday throughout Victoria.</p>	<p>None</p> <p>If the period ends on a Saturday, Sunday or public holiday, the period ends on the next day that is not one of these.</p>	<p>"business day" means any day other than a Saturday or Sunday or a statutory holiday as defined in the <i>Statutory Holidays Act 2000</i>.</p>	<p>“business day” means a day that is not a Saturday, Sunday, public holiday or bank holiday in the ACT (<i>Dictionary, Legislation Act 2001</i>) and not 27 – 31 December (<i>Dictionary, Building and Construction Industry (Security of Payment) Act 2009</i>)</p>	<p>“business day” means any day other than a Saturday, Sunday, public holiday, 27-31 December or any other day on which there is a State wide shut-down of the operations of the building and construction industry</p>

	New South Wales	Northern Territory	Queensland	Victoria	West Australia	Tasmania	Australian Capital Territory	South Australia
Time by which progress payments are due to be paid in absence of dispute	As per contract or 10 business days after payment claim under Act.	If contract specifies > 50 days after claim, then 28 days. If contract does not specify then 28 days.	If a commercial building contract other than a construction management trade contract or a subcontract specifies > 15 days, the clause is void. If a construction management trade contract or subcontract specifies >25 days the clause is void. If contract contains no provision or clause is void, 10 business days	As per contract or 10 business days after payment claim under Act.	If contract specifies > 50 days after claim, then 50 days. If contract does not specify then 28 days.	As per contract or 20 business days (if residential and owner is the respondent) or 10 business days (in any other case).	As per contract or 10 business days after payment claim under Act.	As per contract or 15 business days after a payment claim under Act.
Period following receipt of payment claim by which response disputing payment claim (“Payment Schedule”) is to be provided	Earlier of date specified in contract or 10 business days.	In absence of contractual provision, 14 days – must pay any undisputed portion of claim at same time.	Earlier of date specified in contract or 10 business days.	Earlier of date specified in contract or 10 business days.	The date specified in the contract, or if no date specified, 14 days. (But limited to maximum 28 days).	Earlier of date specified in contract or 20 business days (if residential and owner is the respondent) or 10 business days (in any other case).	Earlier of date specified in contract or 10 business days.	Earlier of date specified in contract or 15 business days.

	New South Wales	Northern Territory	Queensland	Victoria	West Australia	Tasmania	Australian Capital Territory	South Australia
Consequence of failure to provide Payment Schedule within period specified	Liable to pay amount claimed on the due date for that progress payment.	None specified – gives rise to dispute allowing application for adjudication.	Liable to pay amount claimed on the due date for that progress payment.	Liable to pay amount claimed on the due date for that progress payment.	Must pay whole claim within 28 days.	Liable to pay amount claimed on the due date for that progress payment.	Liable to pay amount claimed on the due date for that progress payment.	Liable to pay amount claimed on the due date for that progress payment.
Consequence of failure to make payment following failure to provide Payment Schedule	Claimant may recover unpaid portion as a debt due in any court and may give notice of intention to suspend works.	None specified – claimant may apply for summary judgement in court	Claimant may recover unpaid portion as a debt due in any court and may give notice of intention to suspend works.	Claimant may recover unpaid portion as a debt due in any court and may give notice of intention to suspend works	None specified – claimant may apply for summary judgement in court.	Claimant may recover unpaid portion as a debt due in any court and may give notice of intention to suspend works.	Claimant may recover unpaid portion as a debt due in any court and may give notice of intention to suspend works.	Claimant may recover unpaid portion as a debt due in any court and may give notice of intention to suspend works.

	New South Wales	Northern Territory	Queensland	Victoria	West Australia	Tasmania	Australian Capital Territory	South Australia
Requirements for Payment Schedule	<p>Must identify the payment claim to which it relates. Must state the amount of the payment (if any) that the respondent proposes to make. If less than claimed amount must state reasons.</p>	<p>Unless contract provides otherwise, must be: In writing Addressed to claimant. State name of party giving notice. State date of notice. Identify claim to which notice relates. State reasons (e.g.) identifying disputed items and reasons for each item, or state contractual basis for disputing claim. Signed by party giving notice.</p>	<p>Must identify the payment claim to which it relates. Must state the amount of the payment (if any) that the respondent proposes to make. If less than claimed amount must state reasons. If withholding payment for a reason, must state reason.</p>	<p>Must identify the payment claim to which it relates. Must state the amount of the payment (if any) that the respondent proposes to make. Must identify "excluded amounts" (e.g. non claimable variations, quantum merit claims, and delay claims, latent conditions claims). If less than claimed amount must state reasons</p>	<p>Unless contract provides otherwise, must be: In writing Addressed to claimant. State name of party giving notice. State date of notice. Identify claim to which notice relates. State reasons (e.g.) identifying disputed items and reasons for each item, or state contractual basis for disputing claim. Signed by party giving notice.</p>	<p>Must identify the payment claim to which it relates. Must state the amount of the payment (if any) that the respondent proposes to make. If less than claimed amount must state reasons. If withholding payment for a reason, must state reason.</p>	<p>Must identify the payment claim to which it relates. Must state the amount of the payment (if any) that the respondent proposes to make. If less than claimed amount must state reasons. If withholding payment for a reason, must state reason.</p>	<p>Must identify the payment claim to which it relates. Must state the amount of the payment (if any) that the respondent proposes to make. If less than claimed amount must state reasons.</p>

	New South Wales	Northern Territory	Queensland	Victoria	West Australia	Tasmania	Australian Capital Territory	South Australia
Initial steps before claimant makes adjudication application	If no Payment Schedule provided and whole or part payment not made, claimant must notify respondent within 20 business days following due date for payment and give opportunity to provide Payment Schedule within 5 business days after receipt of notice.	Any party to a payment dispute under a construction contract can apply.	If no Payment Schedule provided and whole or part payment not made, claimant must notify respondent within 20 business days following due date for payment and give opportunity to provide Payment Schedule within 5 business days after receipt of notice.	If no payment schedule provided and if whole or part payment not made, claimant must notify respondent within 10 business days following due date for payment and give opportunity to provide Payment Schedule within 2 business days after receipt of notice.	Any party to a dispute under a construction contract may apply within 28 days after the dispute arises.	If no Payment Schedule provided and whole or part payment not made, claimant must notify respondent within 20 business days following due date for payment and give opportunity to provide Payment Schedule within 5 business days after receipt of notice.	If no Payment Schedule provided and whole or part payment not made, claimant must notify respondent within 20 business days following due date for payment and give opportunity to provide Payment Schedule within 5 business days after receipt of notice.	If no Payment Schedule provided and whole or part payment not made, claimant must notify respondent within 20 business days following due date for payment and give opportunity to provide Payment Schedule within 5 business days after receipt of notice.

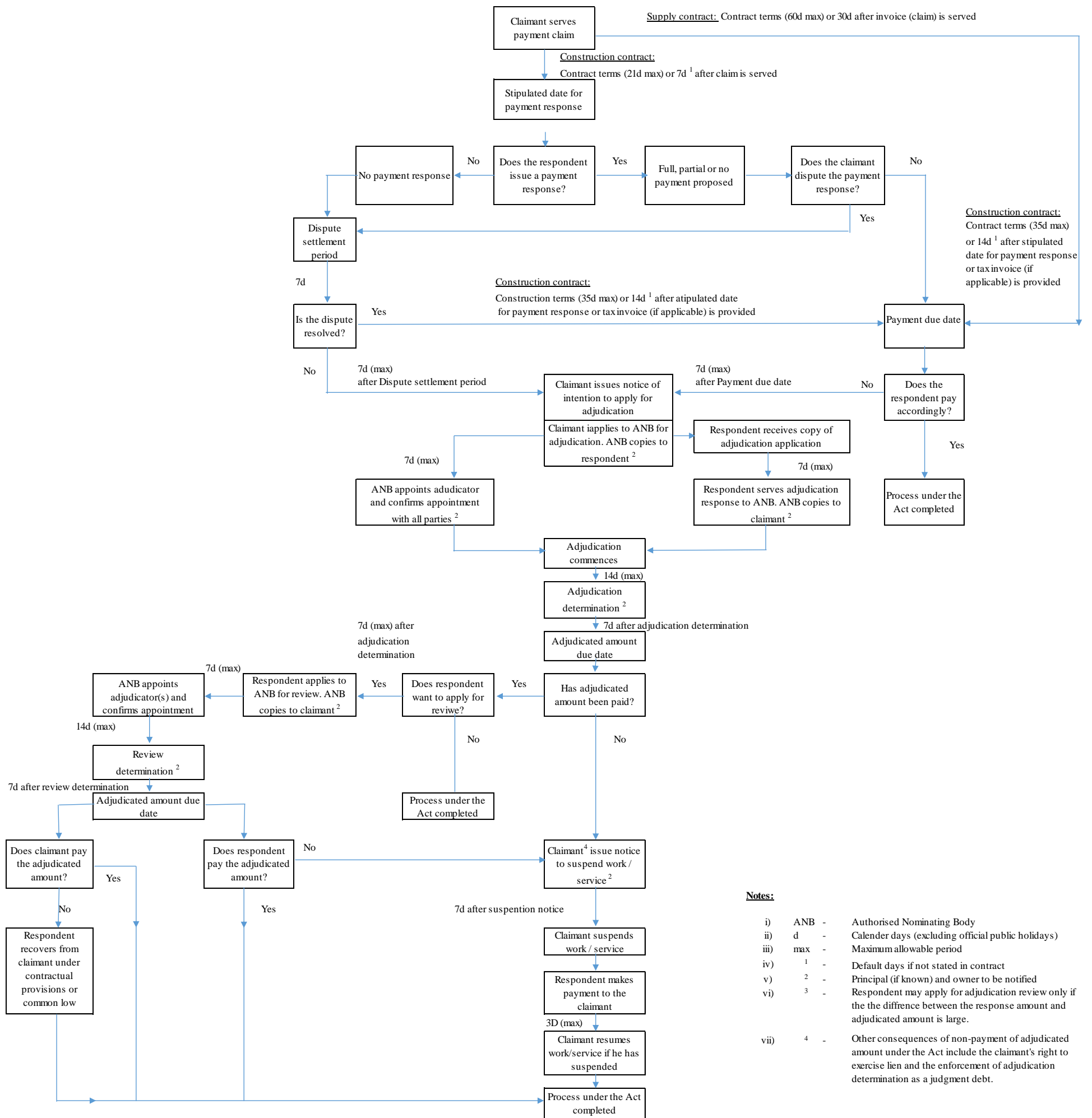
	New South Wales	Northern Territory	Queensland	Victoria	West Australia	Tasmania	Australian Capital Territory	South Australia
Timing to deliver the adjudication application	<p>Within 10 business days after receipt of Payment Schedule if amount indicated in Payment Schedule is less than amount claimed.</p> <p>Within 20 business days if the respondent fails to pay all or part of the amount stated on the Payment Schedule.</p> <p>Within 10 business days after the end of the further 5 day period allowed after the notice is sent by the claimant following a failure to provide a Payment.</p>	<p>Within 90 days after the dispute arises (or 28 days after an earlier application for adjudication has been dismissed)</p>	<p>Within 10 business days after receipt of Payment Schedule if amount indicated in schedule is less than amount claimed. Within 20 business days if the respondent fails to pay all or part of the amount stated on the schedule. Within 10 business days after the end of the further 5 day period allowed after the notice is sent by the claimant following a failure to provide a Payment Schedule.</p>	<p>If Payment Schedule provided, within 10 business days of receipt of Payment Schedule or failure to provide money in part of whole.</p> <p>If no Payment Schedule originally provided, within 5 business days of the 2 day second chance period.</p>	<p>Within 28 days after the dispute arises (or an earlier application for adjudication has been dismissed).</p>	<p>Within 10 business days after receipt of Payment Schedule if amount indicated in Payment Schedule is less than amount claimed.</p> <p>Within 20 business days if the respondent fails to pay all or part of the amount stated on the Payment Schedule.</p> <p>Within 10 business days after the end of the further 5 day period allowed after the notice is sent by the claimant following a failure to provide a Payment Schedule.</p>	<p>Within 10 business days after receipt of Payment Schedule if amount indicated in Payment Schedule is less than amount claimed.</p> <p>Within 20 business days if the respondent fails to pay all or part of the amount stated on the Payment Schedule.</p> <p>Within 10 business days after the end of the further 5 day period allowed after the notice is sent by the claimant following a failure to provide a Payment Schedule, or the day the claimant receives the Payment Schedule, whichever is earlier.</p>	<p>Within 15 business days after receipt of Payment Schedule if amount indicated in schedule is less than amount claimed. Within 20 business days if the respondent fails to pay all or part of the amount stated on the schedule. Within 15 business days after the end of the further 5 day period allowed after the notice is sent by the claimant following a failure to provide a Payment Schedule.</p>

	New South Wales	Northern Territory	Queensland	Victoria	West Australia	Tasmania	Australian Capital Territory	South Australia
Forwarding the adjudication application	Application must be made to an “Authorised Nominating Authority” (“ANA”) chosen by the applicant and a copy served on the respondent. An ANA may be authorised by the Minister on application.	Application must be in writing and served on each other party to the contract and sent to: <ul style="list-style-type: none"> • If the parties have agreed on a registered adjudicator, the adjudicator; • If the parties have agreed on a prescribed appointer, the appointer; • Otherwise, a prescribed appointer chosen by the party. Prescribed appointers are listed in the Regulations (clause 5)	Application must be made to an ANA and a copy served on the respondent An ANA may be appointed by the registrar on application	Application must be served on each other party to the contract and sent to: <ul style="list-style-type: none"> • The ANA adjudicator chosen by the claimant unless the parties have agreed in their contract on a shortlist of three or more adjudicators in which case the claimant may choose one of them. An ANA may be authorised by the Building Commission, in accordance with Ministerial guidelines under the Act, on application.	Application must be served on each other party to the contract and sent to: <ul style="list-style-type: none"> • If the parties have agreed on a registered adjudicator, the adjudicator; • If the parties have agreed on a prescribed appointers, the appointers; • Otherwise, a prescribed appointers chosen by the party. Prescribed appointers are listed in the Regulations.	Application must be made to an ANA chosen by the applicant and a copy served on the respondent. An ANA may be authorised by the Security of Payments Official on application.	Application must be made to an ANA chosen by the applicant. An ANA may be authorised by the Minister on application.	Application must be made to an ANA chosen by the applicant and a copy served on the respondent. An ANA may be authorised by the Minister on application.

	New South Wales	Northern Territory	Queensland	Victoria	West Australia	Tasmania	Australian Capital Territory	South Australia
Responding to adjudication application	Response permitted only if complied with timeline (including any extension) when responding to the payment claim by serving a Payment Schedule. If so, within the later of 5 business days after receiving a copy of the adjudication application; or 2 business days after receiving notice of an adjudicator’s acceptance of the application.	Must respond within 10 “working days”	Response permitted only if complied with timeline (including any extension) when responding to the payment claim by serving a Payment Schedule. If so, within the later of 5 business days after receiving a copy of the adjudication application; or 2 business days after receiving notice of an adjudicator’s acceptance of the application.	Response permitted only if complied with timeline (including any extension) when responding to the payment claim by serving a Payment Schedule. If so, within the later of 5 business days after receiving a copy of the adjudication application; or 2 business days after receiving notice of an adjudicator’s acceptance of the application.	Must respond within 14 days after application is served.	Response permitted only if complied with timeline (including any extension) when responding to the payment claim by serving a Payment Schedule. If so, within the later of 10 business days after receiving a copy of the adjudication application; or 5 business days after receiving notice of an adjudicator’s acceptance of the application.	Response permitted only if complied with timeline (including any extension) when responding to the payment claim by serving a Payment Schedule. If so, within the later of 7 business days after receiving a copy of the adjudication application; or 5 business days after receiving notice of an adjudicator’s acceptance of the application.	Response permitted only if complied with timeline (including any extension) when responding to the payment claim by serving a Payment Schedule. If so, within the later of 5 business days after receiving a copy of the adjudication application; or 2 business days after receiving notice of an adjudicator’s acceptance of the application.
Limitation on content of response to adjudication application	Cannot include reasons for withholding payment that were not included in the Payment Schedule.	None specified.	Cannot include reasons for withholding payment that were not included in the Payment Schedule.	None specified.	None specified.	Cannot include reasons for withholding payment that were not included in the Payment Schedule.	Cannot include reasons for withholding payment that were not included in the Payment Schedule.	Cannot include reasons for withholding payment that were not included in the Payment Schedule.

	New South Wales	Northern Territory	Queensland	Victoria	West Australia	Tasmania	Australian Capital Territory	South Australia
Appointment of adjudicator	<p>The ANA must refer adjudication application to an adjudicator “as soon as practicable”.</p> <p>On accepting the application by serving notice of acceptance on claimant and respondent, the adjudicator is appointed.</p>	<p>If adjudicator is not appointed by agreement between parties, the prescribed appointer must appoint adjudicator within 5 working days after being served or otherwise Registrar may appoint adjudicator.</p>	<p>The ANA must refer adjudication application to an adjudicator “as soon as practicable”.</p> <p>On accepting the application by serving notice of acceptance on claimant and respondent, the adjudicator is appointed.</p>	<p>If the adjudicator is not appointed by agreement between the parties, the ANA must refer the application to the adjudicator “as soon as practicable”.</p> <p>On accepting the application by serving notice of acceptance on claimant and respondent, the adjudicator is appointed.</p> <p>One of the Gazetted criteria for obtaining authorisation as a nominating authority is the ability of the applicant to promptly deal with applications. A failure to do so may lead to a withdrawal of the authorisation.</p> <p>There are no fixed timelines for appointment of the adjudicator by the ANA.</p>	<p>If adjudicator is not appointed by agreement between parties, the prescribed appointers must appoint adjudicator within 5 working days after being served or otherwise Registrar may appoint adjudicator.</p>	<p>The ANA must refer adjudication application to an adjudicator “as soon as practicable”.</p> <p>The adjudicator accepts the application by serving notice of acceptance on claimant and respondent.</p>	<p>The ANA must refer adjudication application to an adjudicator “as soon as practicable”.</p> <p>On accepting the application by serving notice of acceptance on claimant and respondent, the adjudicator is appointed.</p>	<p>The ANA must refer adjudication application to an adjudicator “as soon as practicable”.</p> <p>On accepting the application by serving notice of acceptance on claimant and respondent, the adjudicator is appointed.</p>

Appendix 2 – SOP Flow Chart



Appendix 3 – Interview Questions

Level 1 Questions (to be asked)

- There is a time gap in between your interim valuation/bill/claim/payment request and receipt of payment. How do you finance this?
- Do you include a premium to cover this in your price?
- Do you usually use a fixed rate for this? If not, how do you decide the rate
- For how long (how many days/months) you cover this in prices?
- How do you decide your cost of finance?
- During last year, how long was the longest delay in payment you can recall?
- What was your cost of finance?
- How did you manage it?
- How did you pay your subcontractors and material suppliers?
- Can't you get them to agree to get paid when you are paid?
- Recall the project with faster payment and tell me these, it not necessary to mention the name.
- What was the average payment time?
- Did you anticipate this at the time of bidding/negotiation?
- Had you known about this at time of bidding/negotiation, would you have done any adjustment to price?
- Do you know about “security of payment act”? (Depending on his/her answer, explain further)
- Do you think it is useful for Sri Lankan context?
- Do you think it will really work?
- Do you see any negative effects of bringing such an act?
- What challenges do you see in implementing this?

Level 2 Questions (not to be asked direct, but answers are sought through Level 1 Questions)

- What are the potential positive/negative cost impact due to each scenario?
- Do you really use “paid when/if paid” conditions? Or do others use it?
- As per your knowledge, is there a real request emerged from the industry to bring a security payment act?
- Are you ready to bare the additional cost incurred for adjudication process under this act?
- In case of where the Consultant, on behalf of client, failed to provide payments schedules within time limit given in the Act and as such client has to bare the additional cost for adjudication, interest etc. Do you propose a recovery method for such cost from the Consultant? Please elaborate.
- Since the Client may suddenly be liable for a payment of large amount as consequence of an Adjudication, the financing party for him won’t be able to predict the probable progress payments during the contract period. How does it affect to the client?
- There are considerably challenging time limits (As per the acts in other States) given for each payment claim to provide a response. Does it incur additional cost to the client for paying his professionals for overtimes in meeting the time targets?
- Does it affect the mutual understanding, reputation and relationship between the parties by applying for adjudication process and enforcing it at courts?