

**NOTICE UNDER SECTION 19(2) OF THE BUILDING  
AND CONSTRUCTION INDUSTRY (SECURITY OF  
PAYMENT) ACT 2009 (ACT)**

In response to this company's Payment Claim dated \_\_\_\_\_ for \$\_\_\_\_\_ your company failed to provide a Payment Schedule within the time allowed by the Building and Construction Industry (Security of Payment) Act 2009 (ACT).

As a consequence, your company became liable to pay the whole amount of the Payment Claim on the due date. Your company has failed to pay the whole or any part of the claimed amount by the due date, namely \_\_\_\_\_.

Our company has elected to apply for adjudication of the Payment Claim. Your company has five (5) business days in which to serve a Payment Schedule or pay the Payment Claim in full. If, within that time, your company fails to pay the whole amount of the Payment Claim, this company will proceed to adjudication. If your company fails to serve a Payment Schedule, your company will be barred from lodging an adjudication response [see section 22(3) of the Act].

## **NOTICE UNDER SECTION 19(2)**

### **Notes for guidance of the Claimant**

1. The notification for optional adjudication is made under section 19(2) of the Act. If the claimant elects to apply for option adjudication, the claimant must notify the respondent within 10 business days after the due date for payment that it will be proceeding to adjudication.
2. The notice under section 19(2) may be served in accordance with the contract or may be served as provided under the Act by delivering it:
  - a. In person to the respondent; or
  - b. By lodging it during normal business hours at the respondent's ordinary place of business; or
  - c. By sending it by post to the respondent's ordinary place of business; or
  - d. By sending it by facsimile to the respondent's ordinary place of business; or
  - e. In a manner prescribed under the construction contract.
3. The notice under section 19(2) is not served until it is received by the respondent in the correct manner as detailed above. It is important that evidence of service is kept, for example facsimile receipts or courier dockets. A fax received after 4:00 pm is deemed to be received on the next business day.
4. The intent of the notice is to give the respondent written notification that it has two business days in which to provide the claimant with a Payment Schedule. If after the section 19(2) notice, a Payment Schedule is still not received or the claimant disagrees with the scheduled amount, the claimant has five business days from the expiry of the section 19(2) notice to apply for adjudication.
5. The claimant must apply for adjudication of its Payment Claim within the time specified in the Act. Once this time has passed, the claimant loses any right to adjudication with respect to the Payment Claim. The timeframe for applying for adjudication cannot be extended. Effectively the Payment Claim expires. However any unpaid portion of the expired Payment Claim may be included in the Payment Claim for the next reference date, provided the time for making a new Payment Claim has not passed.

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