

NSW ADJUDICATION APPLICATION FORM

Building and Construction Industry Security of Payment Act 1999 (NSW).

The claimant hereby applies for adjudication under the Act of the referenced payment claim. The documents attached to or submitted with this application form part of this application. Page 1 is the application form. Pages 2 to 5 are not part of the application form.

The Claimant must ensure all details are correct and complete.

Claimant's Details –

Name of Claimant:					
Trading Name: (if different)					
ABN:		Claimant Contact:			
ACN:			Title	First name	Last name
Business Address:					
Suburb:		State:		Postcode:	
Telephone:	Area Code	Fax:	Area Code		
Mobile:		Email:			

Respondent's Details -

Name of Respondent:					
Trading Name: (if different)					
ABN:		Respondent Contact:			
ACN:			Title	First name	Last name
Business Address:					
Suburb:		State:		Postcode:	
Telephone:	Area Code	Fax:	Area Code		
Mobile:		Email:			

Contract Details -

Project Location Suburb:		Project Location Postcode:	
Project Location Address:			
Project Name:		Contract number <small>(Only one construction contract may be adjudicated under each application.)</small>	<small>(If applicable:)</small>
Type of construction work/ related goods & services:	<small>Eg: Concreting, plumbing, electrical engineering etc.</small>	Reference date: <small>(Refer to www.adjudicate.com.au/NSW/nsw_reference_date.php)</small>	
Payment Claim Date: <small>(Date claim served on respondent)</small>		Payment Due Date:	
Payment Claim Amount: <small>(inc GST)</small>		Payment Schedule Date: <small>(Date schedule received by claimant-if any)</small>	
Amount respondent agreed to pay as per Payment Schedule (if provided):		Application Fee:	\$ NIL
If no Payment Schedule was received – what date was the notice under section 17(2) received by the respondent?			
Claimant Business Activity: <input type="checkbox"/> Trade contractor / subcontractor <input type="checkbox"/> General / Head / Main Contractor <input type="checkbox"/> Project Manager <input type="checkbox"/> Consultant <input type="checkbox"/> Designer (architect, engineer, interior designer)		Respondent Business Activity: <input type="checkbox"/> Trade contractor / subcontractor <input type="checkbox"/> General / Head / Main Contractor <input type="checkbox"/> Project Manager <input type="checkbox"/> Consultant <input type="checkbox"/> Designer (architect, engineer, interior designer)	
<input type="checkbox"/> Surveyor (quantity, land, building etc) <input type="checkbox"/> Supplier of materials, equipment etc <input type="checkbox"/> Developer / client <input type="checkbox"/> Manufacturer of building materials or components <input type="checkbox"/> Other_____		<input type="checkbox"/> Surveyor (quantity, land, building etc) <input type="checkbox"/> Supplier of materials, equipment, hire etc <input type="checkbox"/> Developer / client <input type="checkbox"/> Manufacturer of building materials or components <input type="checkbox"/> Other_____	

The claimant will serve a copy of this adjudication application (including all attachments) on the respondent on the same day as it is lodged with the Adjudicate Today. If it is not served on the same day, the claimant will immediately notify Adjudicate Today in writing of the date of service upon the respondent. This application form is provided to assist a claimant to make an adjudication application under the Building and Construction Industry Security of Payment Act 1999 (NSW). The use of this form is not mandatory to make an adjudication application.

Claimant signature _____

Type or print name _____

Date _____/_____/_____

If the application is being submitted via fax or email AND is over 50 pages, the claimant is also requested to provide a hard copy of the application. If the application is over 50 pages and a hard copy is not provided, the cost of printing will be charged to the claimant at commercial printing rates.

Please confirm whether a hard copy of the application will be provided: Yes No

To which state office: _____

Adjudicate Today Pty Ltd NSW	Ph: 1300 760 297 OLD	Fax: 1300 760 220 VIC	ABN 39 109 605 021 ACT	www.adjudicate.com.au TAS
Suite 2 Mona Vale Business 90 Mona Vale Road Mona Vale NSW 2103 nsw@adjudicate.com.au	Level 18 333 Ann Street Brisbane Qld 4000 qld@adjudicate.com.au	Level 23 HWT Tower 40 City Road Southgate Vic 3006 vic@adjudicate.com.au	Level 1 The Realm 18 National Circuit Barton ACT 2600 act@adjudicate.com.au	Level 6 Reserve Bank Building 111 Macquarie Street Hobart Tas 7000 tas@adjudicate.com.au

IMPORTANT NOTES:

- The claimant **should refer to the NSW Adjudication Application Checklist** on pages 4 and 5 when preparing the adjudication application.
- The claimant should serve a copy of this adjudication application (**including all attachments**) on the respondent **on the same day** as it is lodged with Adjudicate Today.
- If it is not served on the same day, the claimant should **immediately notify Adjudicate Today in writing** of the date of service of the adjudication application upon the respondent.

The NSW Department of Commerce requests claimants to complete the following statistical information to the best of their ability. If you are unsure of the correct answer in relation to the respondent information, please tick 'unsure'. Answering 'unsure' will not impact the validity of the adjudication application in any way. This page 2 should be lodged with Adjudicate Today when the adjudication application is lodged but it is not part of the application. This page 2 will not be provided to the Respondent or to the Adjudicator. This information will not be divulged to any third party.

Claimant's business structure –

<input type="checkbox"/> Pty Ltd Company <input type="checkbox"/> Ltd Company <input type="checkbox"/> Partnership	<input type="checkbox"/> Sole Trader <input type="checkbox"/> Trust <input type="checkbox"/> Incorporated Association	<input type="checkbox"/> Other: _____
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Claimant's annual turnover -

<input type="checkbox"/> less than \$100,000 <input type="checkbox"/> \$100,000 to \$500,000 <input type="checkbox"/> \$500,000 to \$1 million <input type="checkbox"/> \$1 million to \$5 million <input type="checkbox"/> \$5 million to \$10 million <input type="checkbox"/> \$10 million to \$50 million <input type="checkbox"/> more than \$50 million

Claimant's number of employees -

<input type="checkbox"/> less than 5 <input type="checkbox"/> 5 to 10 <input type="checkbox"/> 11 to 20	<input type="checkbox"/> 21-50 <input type="checkbox"/> more than 50
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Claimant's years in business -

<input type="checkbox"/> less than 5 years <input type="checkbox"/> 5 to 10 years <input type="checkbox"/> more than 10 years

Respondent's business structure -

<input type="checkbox"/> Pty Ltd Company <input type="checkbox"/> Ltd Company <input type="checkbox"/> Partnership	<input type="checkbox"/> Sole Trader <input type="checkbox"/> Trust <input type="checkbox"/> Incorporated Association	<input type="checkbox"/> Other: _____ <input type="checkbox"/> unsure
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Respondent's annual turnover -

<input type="checkbox"/> less than \$100,000 <input type="checkbox"/> \$100,000 to \$500,000 <input type="checkbox"/> \$500,000 to \$1 million <input type="checkbox"/> \$1 million to \$5 million <input type="checkbox"/> \$5 million to \$10 million <input type="checkbox"/> \$10 million to \$50 million <input type="checkbox"/> more than \$50 million <input type="checkbox"/> unsure


Respondent's number of employees -


<input type="checkbox"/> less than 5 <input type="checkbox"/> 5 to 10 <input type="checkbox"/> 11 to 20	<input type="checkbox"/> 21-50 <input type="checkbox"/> more than 50 <input type="checkbox"/> unsure
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Respondent's years in business -

<input type="checkbox"/> less than 5 years <input type="checkbox"/> 5 to 10 years <input type="checkbox"/> more than 10 years <input type="checkbox"/> unsure

Adjudication Application Index

The Adjudication Application is arranged as follows, with key documents found behind the indicated tabs .

DOCUMENT	TAB No. 
The Adjudication Application form Available at: http://www.adjudicate.com.au/pdf/nsw_adj_application_interform.pdf	Tab No. _____
Payment Claim Refer to section 3ai & 3aii of attached checklist	
i. The Payment Claim	Tab No. _____
ii. Written confirmation of date and method by which the claimant served the Payment Claim on the respondent	Tab No. _____
Payment Schedule (if served) Refer to section 3bi & 3bii of attached checklist	
i. The Payment Schedule	Tab No. _____
ii. Written confirmation of date and method of claimant's receipt of the Payment Schedule from the respondent	Tab No. _____
Section 17(2) Notice (if no Payment Schedule served) Refer to sections 1ci, 1cii & 1ciii and 3ci & 3cii of attached checklist	
i. The Section 17(2) notice	Tab No. _____
ii. Written confirmation of date and method of the respondent's receipt of the the Section 17(2) notice	Tab No. _____
Written submissions Refer to section 3di & 3dii of attached checklist	Tab No. _____
Any supporting documents Refer to sections 3e and 3f of attached checklist	
i. The Construction Contract / record of oral agreement	Tab No. _____
ii. Other supporting documents (may be over various tabs)	Tab No. _____

Use of this index template is not mandatory, but may assist in both the compilation and processing of an adjudication application. The claimant may prefer to refer to page numbers instead of inserting tabs.

Notes for the guidance of the claimant and the respondent.
All documents **MUST** be attached to the application form.

The times provided in the Act for service of documents are strict. If the times are not observed exactly, the adjudication application may be invalid or the Adjudicator may be unable to consider an adjudication response. Times are in business days. Section 4 of the Act states that **business day** means any day other than: (a) a Saturday, Sunday or public holiday, or (b) 27, 28, 29, 30 or 31 December.

1. Under section 17 of the Act, the time for lodging an adjudication application is:
 - a. Where the claimant received a Payment Schedule within 10 business days and the claimant disputes any reasons for non payment - 10 business days from the day of receipt of the Payment Schedule;
 - b. Where the claimant received a Payment Schedule within 10 business days showing that an amount will be paid and the claimant did not seek adjudication and the amount was not paid on the due date for payment - 20 business days from the due date for payment;
 - i. applications must be submitted after the due date for payment in (b). Applications received on or prior to the due date for payment may be invalid.
 - c. Where the claimant DID NOT receive a Payment Schedule within 10 business days and the whole or any part of the Payment Claim was not paid on the due date for payment, the claimant must give the respondent a second opportunity to provide a Payment Schedule before the claimant can make an adjudication application, as follows:
 - i. the claimant has 20 business days from the due date for payment to notify the respondent, by way of a notice under section 17(2) of the Act, of the claimant's intention to apply for adjudication
 - I. the notice under s.17(2) must be received by the respondent after the due date for payment in (c). Section 17(2) notices received on or prior to the due date for payment may be invalid.
 - ii. the respondent has 5 business days to provide a Payment Schedule;
and;
 - iii. the claimant has 10 business days after the expiry of that 5 business day period to apply for adjudication
 - I. adjudication applications must be submitted after the 5th business day in (iii). Applications received on or prior to the 5th business day may be invalid.
 - Please refer to s.13 of the Act for clarification of the meaning of *Payment Claim*.
 - Please refer to s.14 of the Act for clarification of the meaning of *Payment Schedule*.
(A copy of the Act is available at: http://www.adjudicate.com.au/pdf/nsw_SOP_Act.pdf)
 - The notice under s.17(2) is available at: http://www.adjudicate.com.au/pdf/nsw_optional_notice.pdf
2. The claimant must include with the adjudication application, the application fee, if any, payable to Adjudicate Today. Currently our application fee is \$0.00.
3. The claimant may attach to the adjudication application copies of:
 - a.
 - i. the Payment Claim;
 - ii. written confirmation of the date and method by which the claimant served the Payment Claim on the respondent (eg; facsimile transmission report, postal details including postal address, etc);
 - b.
 - i. the Payment Schedule, if any;
 - ii. written confirmation of the date and method of the claimant's receipt of the Payment Schedule from the respondent (eg; facsimile, post etc);
 - c.
 - i. if required to be served, the section 17(2) notice (see Guidenote 1.c above)
 - ii. written confirmation of the date and method of the respondent's receipt of the section 17(2) notice from the claimant (eg; facsimile transmission report, postal details including postal address, etc);
 - d.
 - i. A written submission by the claimant evidencing (i) that the claimant carried out under the contract the work or provided the goods or services for which payment is claimed, (ii) that amount claimed is due and unpaid and how it is calculated and (iii) the value of the work, goods or services for which payment is claimed. The submission should also respond to the reasons, if any, given by the respondent for not paying and should provide evidence or arguments to refute the respondent's grounds for withholding payment.
Important:
 - ii. In the written submissions, the claimant should state what each attachment is and how the claimant contends that the attachment supports the claimant's case. Attachments do not speak for themselves. The mere fact that the claimant has said something in correspondence does not mean that it is true. If the claimant wants to contend that something in an attachment is true, the claimant should say so in the submissions.
 - e. The construction contract (which may be a formal contract document, an exchange of letters, a quotation and acceptance or a record of an oral agreement) under which the payment claim is made;
 - f. Any other supporting documents (eg; certificates, test results, delivery dockets, invoices, photographs, expert reports, written statements, etc.)
 - g. A list of all attachments.

continued next page →

Notes for the guidance of the claimant and the respondent.
 All documents **MUST** be attached to the application form.

4. A complete copy of the adjudication application and all attachments and other things accompanying it must be served on the respondent at the same time as it is served upon Adjudicate Today or as soon as possible thereafter.
5.
 - a. The adjudication application may be served on the respondent in accordance with the contract or it may be served in accordance with the Act:
 - i. by delivering it to the respondent personally; or
 - ii. by lodging it during normal business hours at the respondent's ordinary place of business; or
 - iii. by sending it by post or facsimile addressed to the respondent's ordinary place of business.
 - b. Please note that the adjudicator may request that the claimant provide written confirmation of the date and method of service of the adjudication application on the respondent.
6. The respondent may lodge a response to the adjudication application **ONLY** if the respondent served a payment schedule under the Act [see s.20(2A) of the Act.] The response must be served on the adjudicator on or before the later of:
 - a. 5 business days after the respondent receives a copy of the adjudication application; or
 - b. 2 business days after the respondent receives notice of the adjudicator's acceptance of the adjudication application [see s.20(1) of the Act].

The notes concerning submissions and attachments apply equally to the adjudication response.

7. Payment claims involving multiple contracts

Note that only **one construction contract** (written or verbal) may be adjudicated under each adjudication application. If lodging two or more adjudication applications at the same time with Adjudicate Today, the claimant should:

- prepare and compile the adjudication applications for acceptance by possibly separate adjudicators
- bind the hard copies of each adjudication application separately (where hard copies are being lodged)
- effect a separate electronic transmission for each application (where electronic copies are being lodged)

8. Please retain a copy of any documents submitted in hard copy

The Act does not provide a requirement for adjudicators to make documents submitted available for return to the parties at the close of an adjudication. If the adjudicator has for example entered markings onto documents submitted, the adjudicator may decide to withhold the documents from return to the parties so as not to allow sight of working comments.

As it is ultimately at the adjudicator's discretion whether documents lodged are made available for return to the parties, parties are advised not to rely upon the adjudication documents being made available for return.

In any instance, any party lodging adjudication documents is generally advised to both:

1. as a matter of caution retain a copy of any documents lodged with Adjudicate Today AND
2. consider submitting copies of documents to the adjudicator rather than originals unless absolutely necessary.

If a party does hope to have documents returned it is encouraged to include a note to the adjudicator expressing interest in having the documents returned at the close of the adjudication.

General

This information is necessarily very brief. The claimant and the respondent should not rely upon it but should study the Act and perhaps obtain expert advice. Unless invited by the Adjudicator [see. S21(4)(a) of the Act], the claimant and the respondent have no right to make further submissions after lodging their respective adjudication application and adjudication response. Consequently it is most important that the initial submissions are complete.

A copy of the *Building and Construction Industry Security of Payment Act 1999 (NSW)* is available at:

http://www.adjudicate.com.au/pdf/nsw_SOP_Act.pdf

This adjudication application may be lodged with any Adjudicate Today state office:

Adjudicate Today Pty Ltd	Ph: 1300 760 297	Fax: 1300 760 220	ABN 39 109 605 021	www.adjudicate.com.au
NSW	QLD	VIC	ACT	TAS
Suite 2 Mona Vale Business 90 Mona Vale Road Mona Vale NSW 2103 nsw@adjudicate.com.au	Level 18 333 Ann Street Brisbane Qld 4000 qld@adjudicate.com.au	Level 23 HWT Tower 40 City Road Southgate Vic 3006 vic@adjudicate.com.au	Level 1 The Realm 18 National Circuit Barton ACT 2600 act@adjudicate.com.au	Level 6 Reserve Bank Building 111 Macquarie Street Hobart Tas 7000 tas@adjudicate.com.au