

Request for an Adjudication Certificate

Section 24 of the Building and Construction Industry Security of Payment Act 1999 (NSW) states that an Adjudication Certificate can be issued "if the respondent fails to pay the whole or any part of the Adjudicated Amount to the claimant under section 23."

Fees: The fee to issue an Adjudication Certificate is dependent on the Adjudicated Amount, as follows:

Adjudicated amount	Up to \$15 000	\$15 001 to \$40 000	\$40 001 to \$750 000	over \$750 000
Fee (inc GST)	\$110	\$330	\$550	\$825

The fee **must** accompany this request and is recoverable from the Respondent in the same proportion as the Adjudicator determined is payable by the Respondent.

The Claimant requests Adjudicate Today to provide an Adjudication Certificate under Section 24 of the Building and Construction Industry Security of Payment Act 1999 (NSW). Adjudicate Today is the Authorised Nominating Authority to whom the Adjudication Application was made.

Section 1

Adjudication Application Number: _____

Claimant Name: _____

Claimant Address: _____

Claimant ACN: _____ ABN: _____

Respondent Name: _____

Respondent Address: _____

Respondent ACN: _____ ABN: _____

Adjudicator: _____

Date of Adjudication Determination: _____/_____/_____

Date the progress payment became payable as determined by the Adjudicator: _____/_____/_____

Adjudicate Today serves a copy of the Determination on both Parties. The Claimant may also opt to serve a copy of the Determination on the Respondent. If you served a copy, what is the date of receipt of the Determination by the Respondent? (Note: If served by ordinary post, please allow 4 business days as per s.76 of the Interpretation Act 1987 (NSW)) _____/_____/_____

Note: A request for an Adjudication Certificate **cannot** be validly made until after either 5 full business days have elapsed from the date the Determination was served on the Respondent or if the Adjudicator determines a later date, that later date.

Adjudicated amount determined by the Adjudicator: \$ _____

Amount of the Adjudicated Amount which is still unpaid: \$ _____

Section 2 (Optional)

The Claimant MAY request Adjudicate Today to specify in the Adjudication Certificate the amount of interest payable (if any) arising from the determination of the Adjudicator. In order to make this request, the Claimant must provide the following particulars.

In respect of the Adjudicated Amount, the Claimant has received these amounts on these dates:

(If no payment has been received – insert "NIL") \$ _____ on _____/_____/_____

\$ _____ on _____/_____/_____

The rate of interest determined by the Adjudicator is: (refer to Pages 3 and 4 of this form) _____%

The amount of interest due at the date of this application is: \$ _____

The amount of interest due daily is: \$ _____

[Please attach a schedule demonstrating how you calculated the interest amount. An example calculation appears on page 4.]

Section 3 (Optional)

The Claimant is entitled to recover the Respondent's share of any adjudication fee paid by the Claimant but not reimbursed by the Respondent ("the unpaid share"). In order to recover the unpaid share, please provide the following particulars.

Fees and expenses payable

To the Adjudicator: (adjudication fee) \$ _____
To Adjudicate Today: (fee payable to issue the Adjudication Certificate) \$ _____
Total fees and expenses payable: \$ _____
Proportion which the Adjudicator determined must be paid by the Respondent: _____%

Fees and expenses that the Claimant has paid

To the Adjudicator: (adjudication fee) \$ _____
To Adjudicate Today: (fee payable to issue the Adjudication Certificate) \$ _____
Total fees and expenses that the Claimant has paid: \$ _____

Fees and expenses that the Claimant has paid on behalf of the Respondent

(Refer to *Proportion which the Adjudicator determined must be paid by the Respondent* above.)

To the Adjudicator: (adjudication fee) \$ _____
To Adjudicate Today: (fee payable to issue the Adjudication Certificate) \$ _____
Total fees and expenses that the Claimant has paid on behalf of the Respondent: \$ _____
Amount, if any, reimbursed by the Respondent: \$ _____
The unpaid share to be certified: \$ _____

Payment

Was the Adjudication Application both (A) lodged on or prior to 30 June 2010 **AND** (B) processed as a \$1,100 Fixed Fee application? **Yes** **No** . If **Yes**, then further payment is not required for the adjudication certificate.

If **No**, then payment is required for the adjudication certificate in accordance with the fee schedule on page 1 of this form. If payment is required please complete the section below. Please note that payment **must clear in the Adjudicate Today bank account** before the certificate can be issued.

Please select:

A cheque for \$ _____ will be posted to Adjudicate Today at the address shown below.

The funds will be transferred via electronic transfer into the following account:

BSB : 082 294 **Account number**: 571 500 017 **Account name**: Adjudicate Today Pty Limited
The transfer receipt will be either faxed to 1300 760 220 or emailed to nsw@adjudicate.com.au

Please bill \$ _____ to the following credit card. Please select: MasterCard VISA

Cardholder Name (as it appears on the card): _____

Card Number: _____

Expiry date: _____ Signature: _____

The address that the Adjudication Certificate should be express posted to

Should the Adjudication Certificate be sent to the address shown on page 1 of the application? **Yes** **No**

If **No**: Please provide the address that the Adjudication Certificate should be sent to:

Company name: _____ Contact name: _____

Phone: _____ Address: _____

Suburb: _____ State: _____ Postcode: _____

Declaration

Please select: I am **the Claimant** **an authorised representative of the Claimant**

I am authorised to make this application on behalf of the Claimant. I certify that the particulars provided in this application and attachments are true and correct and that copies attached are true copies of the original documents.

Signature: _____ Date: ____/____/____

Print name: _____ Ph: _____ Title: _____

Notes for the Guidance of Persons making a Request for an Adjudication Certificate

Section 1

- 1 The request must be lodged with the Authorised Nominating Authority which nominated the Adjudicator.
- 2 The request cannot be made if the Payment Claim, the subject of the adjudication, was served on the Respondent before 3rd March, 2003.
- 3 The request cannot be made before the expiration of both 5 business days after the Adjudicator's Determination was served on the Respondent and the date (determined by the Adjudicator) as the date on which the progress payment became payable.
- 4 The request cannot be made unless the whole or part of the Adjudicated Amount remains unpaid at the date of the request.
- 5 The request must be accompanied by the fee charged by the Authorised Nominating Authority for issue of the Adjudication Certificate.
- 6 Completion of Sections 2 and 3 of the Application Form is optional.

Section 2

- 1 Interest **will not** be included in the Adjudication Certificate unless the Claimant completes Section 2.
- 2 Interest must be calculated at the rate determined by the Adjudicator in the Adjudication Determination. Interest is simple interest unless the Adjudicator has determined otherwise.
- 3 In calculating interest, the date upon which the progress payment became payable (as determined by the Adjudicator) should not be included but the date of this application should be included.
- 4 Interest should be calculated only on unpaid amounts. If an amount has been paid, interest is not payable from the date upon which payment was received.
- 5 The interest rate determined by the Adjudicator does not apply to adjudication fees.
- 6 The formula which may be used to calculate simple interest payable is as follows:

$$I = A \times \frac{\text{Days} \times \text{Rate of interest}}{365}$$

Where:

I = Interest due

A = Adjudicated Amount as shown on the Adjudication Determination

Days = Number of full days which have elapsed since the Due Date for Payment.

The Due Date for Payment is shown on the Adjudication Determination.

Rate of interest = Rate of interest as shown on the Adjudication Determination

RATE PRESCRIBED UNDER S.101 OF THE CIVIL PROCEDURE ACT

- Note that if the Due Date for Payment as determined by the Adjudicator is after **5 March 2009** but before **1 July 2010**, the Claimant will need to complete two individual calculations in order to determine the total interest payable.

Please see below for more information.

Calculating interest on amounts owing on or before 30 June 2010:

The website for the Australasian Legal Information Institute confirms that for amounts payable on or after **6 March 2009** the rate was **9% per annum**. As a courtesy, we provide the website for the Australasian Legal Information Institute: www.austlii.edu.au/au/legis/nsw/consol_reg/ucpr2005305/sch5.html.

Calculating interest on amounts owing on or after 1 July 2010:

Adjudicate Today understands that on **1 July 2010**, a change was effected on how the interest rate prescribed under s.101 of the Civil Procedure Act 2005 is calculated.

On 1 July 2010, the website of the NSW Bar Association confirmed that:

The prescribed rate at which interest is payable under section 101 of the Civil Procedure Act 2005 is:

- (a) in respect of the period from 1 January to 30 June in any year—the rate that is 6% above the cash rate last published by the Reserve Bank of Australia before that period commenced, and*
- (b) in respect of the period from 1 July to 31 December in any year—the rate that is 6% above the cash rate last published by the Reserve Bank of Australia before that period commenced.*

As a courtesy, we provide the website address for the NSW Bar Association:

http://archive.nswbar.asn.au/database/in_brief/inbrief.article.php?i=2685

On 1 July 2010, the website for the Reserve Bank of Australia confirmed that the cash rate last published by the Reserve Bank before 1 July 2010 was 4.5%. As a courtesy, we provide the website address for the Reserve Bank of Australia: www.rba.gov.au.

On the basis of the above information, Adjudicate Today understands that for amounts owing since **1 July 2010**, the rate prescribed under s.101 of the Civil Procedure Act is **10.5%**.

SUPREME COURT RATE:

Refers to the **rate prescribed under s.101 of the Civil Procedure Act** (please see above).

- In all cases, the Claimant **MUST** make its own enquiries to satisfy itself of the relevant rate of interest.

EXAMPLE ONLY	Calculation	Interest due
If A = \$100,000 Days = 31 Rate = 10.5%	then I = \$100,000 x $\frac{31}{365}$ x 10.5%	I = \$891.78

* Be sure to refer to points 1-6 of Section 2 when calculating interest.

Section 3

- 1 If the Claimant has paid the Respondent's share (or part of the Respondent's share) of the fees of the Authorised Nominating Authority or the Adjudicator, the Claimant should complete Section 3 and provide the Authorised Nominating Authority with proof of payment.
- 2 Proof of payment may be by receipts, a statement by the Claimant's accountant, a statutory declaration or a statement by a person who is able to certify as to payment and non reimbursement.

Declaration

- 1 The Claimant must complete the declaration at the foot of the Application Form.
If the Claimant is a company then an officer duly authorised by the company should complete the Application Form.
- 2 This Application can be made by post, fax or electronically.