

Payment Claim

Notes for guidance of the Claimant

IMPORTANT NOTE TO CLAIMANTS

As of 21 April 2014, where a Payment Claim is both:

(a) served on a “principal” to a “construction contract” by a “head contractor”

AND

(b) in relation to a construction contract (whether written or oral) that was formed after 21 April 2014

an additional *Schedule 1 Form and Attachment* are required to be appended to the Payment Claim when serving the Payment Claim on the respondent.

To access the *Schedule 1 Form and Attachment* please visit:

<http://www.adjudicate.com.au/nsw/start/supporting-statement>

- The *Schedule 1 Form and Attachment* only need to be appended to your Payment Claim if both (a) and (b) above apply to your Payment Claim.
- Please refer to <http://www.adjudicate.com.au/nsw/start/definitions> for meanings of the terms “principal”, “head contractor” and “construction contract”.
- Pages 2 and 3 of this document contain general notes on preparing a Payment Claim. Please review these notes when preparing a Payment Claim.

General notes:

1. The work or related goods or services in respect of which the Payment Claim is made must be detailed in the attachments. The attachments may include information supporting the claimed amount. Examples of such information are:
 - (a) Statements detailing the extent of the work completed;
 - (b) Completion certificates;
 - (c) Delivery dockets;
 - (d) Photographs;
 - (e) Other Contract documentation requirements where applicable.

NB: A mere *account statement* containing line items referring to individual payment claims (invoices) previously issued, does generally not provide sufficient detail to qualify as a Payment Claim.

2. If the construction work or related goods and services relate to either:
 - (a) a project that relates to the construction of a residence/residences
or
 - (b) a construction contract (whether written or oral) that was formed prior to 21 April 2014

then the Payment Claim must contain a statement along the lines of '*This is a Payment Claim made under the Building and Construction Industry Security of Payment Act 1999 (NSW).*'

3. Please note that as per section 31 of the Building and Construction Industry Security of Payment Act 1999 (NSW):

31 Service of notices

(1) Any notice that by or under this Act is authorised or required to be served on a person may be served on the person:

- (a) by delivering it to the person personally, or*
- (b) by lodging it during normal office hours at the person's ordinary place of business, or*
- (c) by sending it by post or facsimile addressed to the person's ordinary place of business, or*
- (d) in such other manner as may be prescribed by the regulations for the purposes of this section, or*
- (e) in such other manner as may be provided under the construction contract concerned.*

(2) Service of a notice that is sent to a person's ordinary place of business, as referred to in subsection (1) (c), is taken to have been effected when the notice is received at that place.

(3) The provisions of this section are in addition to, and do not limit or exclude, the provisions of any other law with respect to the service of notices.

4. The Payment Claim is not served until it is served on 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.
5. If the respondent wishes to dispute liability to pay in whole or part of the amount claimed, the respondent should serve upon the claimant a Payment Schedule within 10 business days after being served with a Payment Claim or a shorter period if prescribed under the construction contract.
6. If the respondent fails to serve a Payment Schedule within 10 business days after being served with a Payment Claim or a shorter time if prescribed under the contract, the respondent should pay the full amount of the Payment Claim. Payment is to be made on or before the due date for payment. Refer <http://www.adjudicate.com.au/nsw/start/due-date>.
7. If the respondent does not pay the full amount by the due date, the claimant has a right to apply for adjudication under the Act. This commences by issuing a second opportunity notice. Refer http://www.adjudicate.com.au/pdf/nsw_optional_notice.pdf
8. Amounts paid in respect of a Payment Claim are taken to have been paid on account. It should be noted that payment does not constitute an admission by the respondent that work has been done or goods or services provided to the claimed value. An amount paid may have to be repaid if the claimant was not entitled to payment under the terms of the relevant construction contract.

Payment Claim

TO (RESPONDENT'S NAME): _____

ABN (where applicable): _____

ACN (where applicable): _____

Address (ordinary place of business): _____

Phone number: _____ Fax number: _____

FROM (CLAIMANT'S NAME): _____

ABN (where applicable): _____

ACN (where applicable): _____

Address (ordinary place of business): _____

Phone number: _____ Fax number: _____

CONTRACT DETAILS:

Project: _____

Contract Number (where applicable): _____

Reference date (date when claimant can claim and to which claim is calculated:)

_____ (Please see www.adjudicate.com.au/nsw/start/claimant-preparing-the-payment-claim for definition of reference date)

Total amount of this Payment Claim: \$ _____

The construction work or related goods and services in respect of which this Payment Claim is made and the method of calculation of the total amount of the claim are set out in the Attachment(s) to this Payment Claim.

Signed (Claimant): _____ Date: _____

ATTACHMENTS:

Details of Claim (attach other relevant documentation as required): _____

This is a Payment Claim made under the Building and Construction Industry Security of Payment Act 1999 (NSW).