

TASMANIAN ADJUDICATION APPLICATION FORM

Building and Construction Industry Security of Payment Act 2009 (Tas)

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.

Note: Under section 44(1) of the Act, "This Act does not apply to or in relation to a contract entered into before the commencement of this section." Therefore only contracts which were formed on or after 17 December 2009 are able to be adjudicated under this Act (see section 2 of the Act).

Claimant's Details – (the Claimant must ensure all details are correct and complete)

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

Respondent's Details -

"✓" Please tick to authorise receipt of correspondence via **email** to the address above

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

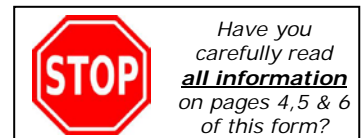
Contract Details -

Contract start date: Must be on or after 17/12/09 (see above)		Project Location Postcode:	
Project Location Address:			
Project Name:		Contract Number: (One construction contract only may be adjudicated under each application.)	(If applicable:)
Claimant's Business Type:		Respondent's Business Type:	
<input type="checkbox"/> Consultant <input type="checkbox"/> Subcontractor <input type="checkbox"/> Contractor <input type="checkbox"/> Supplier		<input type="checkbox"/> Client <input type="checkbox"/> Head contractor <input type="checkbox"/> Consultant <input type="checkbox"/> Subcontractor <input type="checkbox"/> Contractor <input type="checkbox"/> Supplier	
Type of construction work /related goods & services:		Reference date: (Definition provided at: http://www.adjudicate.com.au/Tas/tas_reference_date.php)	
Payment Claim Date: (Date claim served on respondent)		Payment Due Date:	
Payment Claim Amount: (inc GST)		Payment Schedule Date: (Date schedule received by claimant – if any)	
Amount respondent agreed to pay as per Payment Schedule (if provided):		Application Fee:	\$ NIL
If no Payment Schedule was provided – what date was the notice under section 21(4) given to the respondent?			

A copy of the adjudication application and all attachments or other things accompanying it should be served on Adjudicate Today and the respondent at the same time. If it is not served on the respondent on the same day, the claimant will immediately provide written notification to Adjudicate Today confirming the date of service on 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 2009 (Tas)*. The use of this form is not mandatory to make an adjudication application.

_____/_____/_____
 Date Print name

 Claimant signature



You acknowledge and agree to provide to Adjudicate Today one (1) hard copy of any electronic files uploaded to Adjudicate Today within two (2) business days. If a hard copy is not provided and Adjudicate Today determines in its absolute discretion to print the files, we will take reasonable care to ensure accurate printing of electronic files. The cost of the printing will be charged to you at commercial printing rates plus staff time at \$55 per hour (inc. GST)*. (*See page 5, item 10). **Please confirm whether a hard copy of the application will be provided:** Yes No
 To which 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	SA				
Suite 2 Mona Vale Business 90 Mona Vale Road Mona Vale NSW 2103	Level 18 324 Queen Street Brisbane City Qld 4000	Level 27 101 Collins Street Melbourne Vic 3000	Level 1 The Realm 18 National Circuit Barton ACT 2600	Level 6 Reserve Bank Building 111 Macquarie Street Hobart Tas 7000	Level 30 Westpac House 91 King William Street Adelaide SA 5000				
nsw@adjudicate.com.au	qld@adjudicate.com.au	vic@adjudicate.com.au	act@adjudicate.com.au	tas@adjudicate.com.au	sa@adjudicate.com.au				

The Tasmanian Department of Justice 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 classification, please tick 'unsure'. Answering 'unsure' will not impact on 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 other third party.

Respondent classification: "✓"

- Head contractor
- Building practitioner (includes a builder or construction manager)
- Contractor
- Building owner - of a commercial building
- Owner builder (eg owns the land but is the responsible builder)
- Residential building owner (but is not an owner builder). (Under the 2009 Tasmanian Act, *Residential building* is defined as Class 1, or a Class 10 building. The Building Classification refers to the system used in the Building Code of Australia.)
- Client, principal or developer
- Other (please specify _____)
- Unsure

Works/ materials/ services classification: "✓"

- Building/ construction work on buildings/ structures
- Plumbing/ hydraulic/ wastewater management work
- Electrical
- Civil construction (eg subdivisions, earthmoving, roads, dams, supply of reticulated services and utilities)
- Landscaping
- Supply of goods, construction materials, plant or equipment
- Design
- Building surveying (including inspections for a building permit)
- Other services (eg consultancy, professional advice, project management)
- Work on a *residential building (eg home renovation, erection of shed)
- Other work type (please specify _____)

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/tas_adj_application_interform.pdf

Tab No. _____

Written submissions

Refer to section 2ai & 2aii of attached checklist

Tab No. _____

Payment Claim

Refer to section 2bi & 2bii 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 2ci & 2cii of attached checklist

i. The Payment Schedule

Tab No. _____

ii. Written confirmation of the date and method by which the Claimant was provided with the Payment Schedule by the Respondent

Tab No. _____

Section 21(4) Notice (if no Payment Schedule served)

Refer to sections 1ci, 1cii & 1ciii and 2di & 2dii of attached checklist

i. The Section 21(4) notice

Tab No. _____

ii. Written confirmation of the date and method by which the Respondent was given the Section 21(4) notice by the Claimant

Tab No. _____

Any supporting documents

Refer to sections 2e and 2f 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 following notes are provided in conjunction with
www.adjudicate.com.au → TAS →
Claimant: Common Pitfalls

Note that under section 44(1) of the Act, "This Act does not apply to or in relation to a contract entered into before the commencement of this section." Therefore only contracts which were formed on or after 17 December 2009 are able to be adjudicated under this Act.

(For debts which relate to contracts formed before 17 December 2009, claimants may wish to consider seeking legal advice on the most suitable method of recovering payment.)

Following the timeframes provided by the Act

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 Saturday or Sunday or the 27th, 28th, 29th, 30th or 31st of December or a statutory holiday as defined in the Statutory Holidays Act 2000.*

1. Under section 21 of the Act, the time for lodging an adjudication application is:
 - a. Where the respondent provided a Payment Schedule under section 18 but the scheduled amount specified in the schedule is less than the claimed amount specified in the payment claim AND the claimant dispute the payment schedule – 10 business days from the day of receipt of the Payment Schedule;
 - b. Where the respondent provided a Payment Schedule under section 18 but the respondent did not pay to the claimant all of the scheduled amount by the due date for payment of the amount – 20 business days after the due date for payment;
 - Applications must be lodged 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 WAS NOT provided with a Payment Schedule under section 18 and the respondent did not pay all of the claimed amount by the due date for payment of the amount, the claimant must give the respondent a second opportunity to provide a Payment Schedule (notice under section 21(4) of the Act) before the claimant can make an adjudication application. The notice under section 21(4) of the Act must be given to the respondent within 20 business days after the due date for payment, before the claimant can make an adjudication application.

The due date for payment is either the time stipulated in the building or construction contract OR the Applicable Day.

 - a. The Applicable Day is 20 business days after the payment claim is served on the respondent, **if** –
 - i. The claim relates to a residential structure to be built on land; **and**
 - ii. The respondent is the owner of the land; **and**
 - iii. The respondent is not a building practitioner;
(for definitions of criteria i. ii. & iii. above, refer to page 2 of this form), **and**
 - iv. There is no due date for payment stipulated in the building or construction contract.

If the respondent does not meet all 3 criteria in 1.c. above and a due date for payment is not stipulated in the building or construction contract, the Applicable Day is 10 business days after the payment claim is served on the respondent.

 - The notice under section 21(4) must be given to the respondent after the due date for payment in (c). Section 21(4) notices received on or prior to the due date for payment may be invalid.

The notice under section 21(4) provides the respondent with 5 business days to provide the claimant with a Payment Schedule.

If the claimant disputes the Payment Schedule or is not provided with a Payment Schedule, the claimant has 10 business days after the end of the 5 business days given by the section 21(4) notice to apply for adjudication.

 - Adjudication applications must be submitted after the aforementioned 5th business days. Applications lodged prior to the 5th business day may be invalid.
- The notice under 21(4) is available at http://www.adjudicate.com.au/pdf/tas_optional_notice.pdf
- Please refer to s.17 of the Act for clarification of the term "Payment Claim".
- Please refer to s.18 of the Act for clarification of the term "Payment Schedule".
(A copy of the Act is available at http://www.adjudicate.com.au/pdf/tas_2009_act.pdf)

Demonstrating an entitlement to the debt

2. The claimant may attach to the adjudication application copies of:
- a. i. A written submission by the claimant evidencing
 - 1. that the claimant carried out under the contract the work or provided the goods or services for which payment is claimed,
 - 2. that amount claimed is due and unpaid and how it is calculated and 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. Submissions are essentially arguments in support of the Claimant's case. The Adjudicator cannot be expected to assume that something said by the Claimant in a letter or minutes of a meeting or other supporting document, is true. As supporting documents usually don't speak for themselves, in the written submissions, the Claimant should state what each supporting document is (see b-f below) and how the Claimant contends that the supporting document supports the Claimant's case. The written submissions may include legal arguments, arguments on the interpretation of the contract or other arguments. If the Claimant wants to contend that something in a supporting document is true, the Claimant should say so in the written submissions. If the Claimant fails to do so the Adjudicator might draw the inference that the Claimant is not prepared to argue that the statement is true.
- b. i. the Payment Claim;
 - ii. written confirmation of the date and method by which the respondent was served with the Payment Claim by the claimant (eg; facsimile transmission report, postal details including postal address, etc);
 - c. i. the Payment Schedule, if any;
 - ii. written confirmation of the date and method by which the claimant was provided with the Payment Schedule by the respondent (eg; facsimile, post etc);
 - d. i. if required to be served, the section 21(4) notice (see Guidenote 1.c above)
 - ii. written confirmation of the date and method by which the section 21(4) notice was given to the claimant by the respondent (eg; facsimile transmission report, postal details including postal address, etc)
 - 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.

Other important information

3. 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.
4. a. The adjudication application may be served on the respondent in accordance with the Act:
- i. given to the respondent; or
 - ii. left at, or sent by post to, the respondent's postal or residential address or place or address of business or employment last known to the server of the notice or other document; or
 - iii. faxed to the respondent's fax number; or
 - iv. emailed to the respondent's email address, if the respondent has agreed to service by email; or
 - v. delivered to the respondent by another electronic method, if the respondent has agreed to service by the method.
- 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.23(1) of the Act.] The response must be served on the adjudicator by the later of:
- a. 10 business days after the respondent receives a copy of the adjudication application; or
 - b. 5 business days after the respondent receives notice of the adjudicator's acceptance of the adjudication application [see s.23(2) of the Act].

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

7. Payment claims involving multiple contracts

Note that only **one construction contract** (written or oral) 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); and
- 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.

9. 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. s.24(2)(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.

10. Disclaimer re printing of hard copy of adjudication application

You acknowledge and agree to provide to Adjudicate Today one (1) hard copy of any electronic files uploaded to Adjudicate Today within two (2) business days. If a hard copy is not provided and Adjudicate Today determines in its absolute discretion to print the files, we will take reasonable care to ensure accurate printing of electronic files. However, we make no warranty or representation, express or implied that the printing will be accurate or complete. Therefore Adjudicate Today shall not be liable in any manner whatsoever for direct, indirect, incidental, consequential or punitive damage resulting from errors in the printing of the electronic files. Adjudicate Today shall not be liable in any way for possible errors or omissions in the contents of the printing. The cost of the printing will be charged to you at commercial printing rates plus staff time at fifty-five (\$55) dollars per hour (including GST) for all time necessary and incidental to the printing. The hard copy of this adjudication application may be lodged with any Adjudicate Today state office (see below).

A copy of the *Building and Construction Industry Security of Payment Act 2009 (Tas)* is available at:
http://www.adjudicate.com.au/pdf/tas_2009_act.pdf

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Suite 2	Level 18	Level 27	Level 1	Level 6	Level 30	
Mona Vale Business	324 Queen Street	101 Collins Street	The Realm	Reserve Bank Building	Westpac House	
90 Mona Vale Road	Brisbane City QLD	Melbourne VIC 3000	18 National Circuit	111 Macquarie Street	91 King William Street	
Mona Vale NSW 2103	4000		Barton ACT 2600	Hobart TAS 7000	Adelaide SA 5000	
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