

Request for an Adjudication Certificate

Section 28Q of the Building and Construction Industry Security of Payment Act 2002 (Vic) ('the Act') refers to the issuance of an Adjudication Certificate if the Respondent fails to pay the whole or any part of the adjudicated amount.

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.

Adjudicate Today is requested to provide an adjudication certificate under Section 28Q of the Building and Construction Industry Security of Payment Act 2002 (Vic). 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: _____ or ABN: _____

Respondent Name: _____

Respondent Address: _____

Respondent ACN: _____ or 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 2 business days as per s.50(2)(a) of the Building and Construction Industry Security of Payment Act 2002 (Vic). _____/_____/_____

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 given to the Respondent or if the Adjudicator determines a later date, that later date.

Adjudicated amount determined by Adjudicator: \$ _____

Amount of the adjudicated amount which is still unpaid: \$ _____

Section 2 (Optional) Please tick I do not wish to include interest OR I wish to include interest and the section below has been completed

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.

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: _____%

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 3.]

| Adjudicate Today Pty Ltd NSW | Ph: 1300 760 297 QLD | Fax: 1300 760 220 VIC | ABN 39 109 605 021 ACT | www.adjudicate.com.au TAS |
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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 (adjudicator fee): \$ _____
(nb: Please note that the fee payable to issue the Adjudication Certificate cannot be included in the Certified Amount.)

Proportion which the Adjudicator determined must be paid by the Respondent: _____%

Fees and expenses that the Claimant has paid

To the adjudicator (adjudicator fee): \$ _____

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

(Refers to Proportion which the Adjudicator determined must be paid above.)

To the adjudicator (adjudicator fee): \$ _____

Payment

Was the Adjudication Application both (A) lodged on or prior to 1 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's head office at – Suite 2, MVB, 90 Mona Vale Road, Mona Vale NSW 2103
- 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 vic@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 should 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: _____

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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 30 March 2007 ie; a payment claim subject to a contract formed before 30 March 2007.
- 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 Don't calculate interest on adjudication fees.

Rate of interest under section 2 of the Penalty Interest Rates Act 1983

- **Calculating interest on amounts owing from 1 February 2010 to 6 October 2013:**
Adjudicate Today understands that for amounts owing **from 1 February 2010 to 6 October 2013 inclusive**, the rate prescribed under section 2 of the Penalty Interest Rates Act 1983 is **10.5%**.
- **Calculating interest on amounts owing from 7 October 2013 to 2 February 2014:**
Adjudicate Today understands that for amounts owing **from 7 October 2013 to 2 February 2014 inclusive**, the rate prescribed under section 2 of the Penalty Interest Rates Act 1983 is **10%**.
- **Calculating interest on amounts owing from 3 February 2014 to 10 August 2014**
Adjudicate Today understands that for amounts owing from **3 February 2014 to 10 August 2014**, the rate prescribed under section 2 of the Penalty Interest Rates Act 1983 is **11.5%**.
- **Calculating interest on amounts owing from 11 August 2014 to 31 May 2015**
Adjudicate Today understands that for amounts owing **from 11 August 2014 to 31 May 2015**, the rate prescribed under section 2 of the Penalty Interest Rates Act 1983 is **10.5%**.
- **Calculating interest on amounts owing from 1 June 2015 to 31 January 2017**
Adjudicate Today understands that for amounts owing **from 1 June 2015 to 31 January 2017**, the rate prescribed under section 2 of the Penalty Interest Rates Act 1983 is **9.5%**.
- **Calculating interest on amounts owing on and from 1 February 2017**
Adjudicate Today understands that for amounts owing **on and from 31 January 2017**, the rate prescribed under section 2 of the Penalty Interest Rates Act 1983 is **10%**.

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The above information regarding Rate of interest under section 2 of the Penalty Interest Rates Act 1983, is summarised in the table below.

| Relevant period | Interest Rate in accordance with section 2 of the Penalty Interest Rates Act 1983 |
|-----------------------------------|---|
| 1 February 2010 to 6 October 2013 | 10.5% |
| 7 October 2013 to 2 February 2014 | 10% |
| 3 February 2014 to 10 August 2014 | 11.5% |
| 11 August 2014 to 31 May 2015 | 10.5% |
| 1 June 2015 to 31 January 2017 | 9.5% |
| On and from 1 February 2017 | 10% |

Nb: Please note that the claimant must make its own enquiries to satisfy itself of the relevant rate.

As a courtesy, we provide:

- the website address for the Magistrates Court of Victoria
<http://www.magistratescourt.vic.gov.au/jurisdictions/civil/procedural-information/penalty-interest-rates>

The penalty interest rate prior to 1 February 2010 may be obtained from this website.

6 The formula which may be used to calculate simple interest payable is as follows:

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

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.

| EXAMPLE ONLY | Calculation | Interest due |
|--|--|---------------------|
| If A = \$110,000 including any gst Days = 31 And Rate = 10% | then I = \$110,000 x $\frac{31}{365}$ x 10% | I = \$934.25 |

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

Section 3

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

Declaration

- The Claimant must complete the declaration at the foot of the Adjudication Certificate Application Form. If the Claimant is a company then an officer duly authorised by the company should complete the Application Form.
- The request for an adjudication certificate can be made by post, fax, email or hand delivery.

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