





# Adjudication Application Index

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

DOCUMENT	TAB No. 
<b>The Adjudication Application Form</b> Available at: <a href="http://www.adjudicate.com.au/pdf/act_adj_application_interform.pdf">http://www.adjudicate.com.au/pdf/act_adj_application_interform.pdf</a>	Tab No. _____
<b>Written submissions</b> Refer to sections <b>2ai</b> & <b>2aii</b> of attached checklist	Tab No. _____
<b>Payment Claim</b> Refer to section <b>2bi</b> & <b>2bii</b> 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. _____
<b>Payment Schedule (if served)</b> Refer to section <b>2ci</b> & <b>2cii</b> 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. _____
<b>Section 19(2) Notice (if no Payment Schedule served)</b> Refer to sections <b>1ci</b> , <b>1cii</b> & <b>1ciii</b> and <b>2di</b> and <b>2dii</b> of attached checklist	
i. The Section 19(2) notice	Tab No. _____
ii. Written confirmation of date and method of the respondent's receipt of the Section 19(2) notice	Tab No. _____
<b>Any supporting documents</b> Refer to sections <b>2e</b> & <b>2f</b> 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 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](http://www.adjudicate.com.au) → ACT →  
**Claimant: Common Pitfalls**

**Note: Under sections 2 and 9(6) of the Act, "This Act commences on 1 July 2010." Therefore only contracts which were formed on or after 1 July 2010 are able to be adjudicated under this Act.**  
(For debts which relate to contracts formed before 1 July 2010, 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. The Act's Dictionary states that **business day** does not include 27, 28, 29, 30 or 31 December.

- 1) Under section 19 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 lodged 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 19(2) of the Act, of the claimant's intention to apply for adjudication, (1) the notice under section 19(2) must be received by the respondent after the due date for payment in (c). Section 19(2) notices received on or prior to the due date for payment may be invalid; and
    - ii) the respondent has 5 business days to provide a Payment Schedule; and
    - iii) the claimant has 10 business days after receipt of the Payment Schedule to make the application. If the respondent does NOT provide a payment schedule, the application must be made within 10 business days of the expiry of the 5 business days period provided to the respondent.
  - Please refer to section 15 of the Act for clarification of the meaning of the term "Payment Claim".
  - Please refer to section 16 of the Act for clarification of the meaning of the term "Payment Schedule".
  - A copy of the Act is available at [http://www.adjudicate.com.au/pdf/act\\_2009\\_Act.pdf](http://www.adjudicate.com.au/pdf/act_2009_Act.pdf)
  - The notice under section 19(2) is available at [http://www.adjudicate.com.au/pdf/act\\_adj\\_section\\_19\(2\)\\_notice\\_interform.pdf](http://www.adjudicate.com.au/pdf/act_adj_section_19(2)_notice_interform.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 construction contract work or related goods and services for which payment is claimed,
    - (2) that the amount claimed is due and unpaid and how it is calculated and
    - (3) the value of the work or related goods and services for which payment is claimed.The submission should also respond to the reasons, if any, given by the respondent for withholding payment and should provide evidence or arguments to refute the respondent's reasons for withholding payment;

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

**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 claimant served the Payment Claim on the respondent (eg: facsimile transmission report, postal details including postal address, etc);
- c) I) The Payment Schedule;  
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 19(2) notice (see Guidenote 1 c above);  
ii) The confirmation of the date and method of the respondent's receipt of the section 19(2) notice from the claimant (eg: facsimile transmission report, postal details including postal address, etc);
- d) 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;
- e) Any other supporting documents (eg: certificates, test results, delivery dockets, invoices, photographs, expert reports, written statements etc);
- f) A list of all attachments.

### **Other important information**

- 3) The claimant is requested to provide two certified copies of the adjudication application (including all attachments) at the time of lodgment with Adjudicate Today. Should the claimant provide only one copy, Adjudicate Today will have the adjudication application (including all attachments) copied at commercial rates and will charge the claimant those commercial rates.
- 4) The respondent may lodge a response to the adjudication application ONLY if the respondent served a payment schedule under the Act [see s.22(3) of the Act]. The response must be served on the adjudicator on or before the later of:
  - a) 7 business days after receiving a copy of the adjudication application; or
  - b) 5 business days after receiving notice of the adjudicator's acceptance of the adjudication application.

The notes under section 3 concerning submissions and attachments apply equally to the adjudication response.

### **6) 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)
- effect a separate electronic transmission for each application (where electronic copies are being lodged)

### **7) 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.

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

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.

**8) 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).

**9) General**

This information is necessarily 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.23(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 2009* (ACT) is available at:  
[http://www.adjudicate.com.au/pdf/act\\_2009\\_Act.pdf](http://www.adjudicate.com.au/pdf/act_2009_Act.pdf)

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

Adjudicate Today Pty Ltd    Phone: 1300 760 297    Fax: 1300 760 220    ABN 39 109 605 021    www.adjudicate.com.au						
NSW	QLD	VIC	ACT	TAS	SA	
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	
nsw@adjudicate.com.au	qld@adjudicate.com.au	vic@adjudicate.com.au	act@adjudicate.com.au	tas@adjudicate.com.au	sa@adjudicate.com.au	