

Respondent's Adjudication Response

Adjudicator: _____

Authorised Nominating Authority (ANA):

Adjudicate Today Pty Ltd
Level 1, The Realm, 18 National Circuit
Barton, Australian Capital Territory 2600
Ph: 1300 760 297; Fax: 1300 760 220

Adjudication Application Number: _____

Description of Project: _____

Date of Claimant's service of Payment Claim on Respondent: _____

Claimed amount: \$ _____

Date of Respondent's service of Payment Schedule on Claimant: _____

Scheduled amount: \$ _____

Name of Claimant _____

Claimant ABN: _____

Claimant ACN: _____

Claimant address: _____

Name of Respondent _____

Respondent ABN: _____

Respondent ACN: _____

Respondent address: _____

Date of Adjudicator's service of Adjudication Application on Respondent: _____

Date on which the Respondent received notification of the Adjudicator's acceptance of the Adjudication Application: _____

The scheduled amount is less than the claimed amount for the reasons set out in the Respondent's Payment Schedule. In support of those reasons, the Respondent provides further information set out in the attachments below and makes the following submissions:

Submissions:


Note: Provide submissions to support the reasons set out in the Payment Schedule. If lengthy, list and attach submissions as a referenced document.

List of attachments:

Note: List and attach all the referenced documents

Signed (Respondent): _____ Date: _____

Adjudication Response Index

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

DOCUMENT

TAB No. 

Written submissions

Refer to sections **4a)i** and **4a)ii** of attached checklist

Tab No. _____

Payment Schedule

Refer to sections **4b)i** & **4b)ii** of attached checklist

i. The Payment Schedule

Tab No. _____

ii. Written confirmation of the date and method by which the Claimant received the Payment Schedule from the Respondent

Tab No. _____

Payment Claim

Refer to sections **4c)i** & **4c)ii** of attached checklist

i. The Payment Claim

Tab No. _____

ii. Written confirmation of the date and method by which the Claimant served the Payment Claim on the Respondent

Tab No. _____

Section 19(2) Notice (if applicable)

Refer to sections **4d)i** and **4d)ii** of attached checklist

i. The Section 19(2) notice

Tab No. _____

ii. Written confirmation of the date and method by which the Respondent received the Section 19(2) notice from the Claimant

Tab No. _____

Any supporting documents

Refer to sections **4e)** and **4f)** of attached checklist

i. The Construction Contract / details of oral agreement made

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 Response. The Respondent may prefer to refer to page numbers instead of inserting tabs.

The following notes are provided in conjunction with
www.adjudicate.com.au → ACT →
Respondent: Common Pitfalls

RESPONDENT'S ADJUDICATION RESPONSE

Notes for guidance of the Respondent

1. The Respondent can only lodge a submission with the Adjudicator (the Adjudication Response) if the Respondent has provided a Payment Schedule to the Claimant within:
 - a. 10 business days allowed by the Act (or such shorter period as may be provided by the relevant construction contract) after being served with the Payment Claim; or
 - b. 5 business days allowed by the Act after receiving a notice from the Claimant of the intention to apply for Adjudication as a result of the Claimant not being paid by the due date for payment and not being provided with an initial Payment Schedule.
 - Please refer to s.16 of the Act for explanation of the term *Payment Schedule*.
2. The Adjudicator cannot consider a submission made by the Respondent after the later of:
 - a. 7 business days after the Respondent received a copy of the Adjudication Application; or
 - b. 5 business days after the Respondent received notice of the Adjudicator's acceptance of the application.
3. The Respondent's Adjudication Response:
 - a. Must be in writing; and
 - b. Must be addressed to the Adjudicator and be received by the Adjudicator within time; and
 - c. Must identify the Adjudication Application to which it relates; and
 - d. Must not include any reasons for withholding payment unless those reasons have been included in the Payment Schedule; and
 - e. Must be served on the Claimant not later than 2 days after the response is given to the Adjudicator.
4. The Respondent's Adjudication Response may contain:

Written submissions

- a) i. A written submission by the Respondent relevant to the response, providing full details of reasons given in the Payment Schedule for withholding payment of any amount;
Important:
- ii. Submissions are essentially arguments in support of the Respondent's position. The Adjudicator cannot be expected to assume that something said by the Respondent 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 Respondent should state what each supporting document is and how the Respondent contends that the supporting document supports the Respondent's position. The written submissions may include legal arguments, arguments on the interpretation of the construction contract or other arguments. If the Respondent wants to contend that something in a supporting document is true, the Respondent should say so in the written submissions. If the Respondent fails to do so the Adjudicator might draw the inference that the Respondent is not prepared to argue the statement is true.

Payment Schedule

- b) i. The Payment Schedule;
- ii. Written confirmation of the date and method by which the Claimant received the Payment Schedule from the Respondent (eg: facsimile transmission report, postal details etc);

Payment Claim

- c) i. The Payment Claim;
- ii. Written confirmation of the date and method by which the Respondent received the Payment Claim from the Claimant (eg: facsimile, postal details etc);

Section 19(2) notice

- d) i. The Section 19(2) notice (required to be served by the Claimant on the Respondent if no Payment Schedule was served within the initial 10 business days of receipt of the Payment Claim);
- ii. Written confirmation of the date and method by which the Respondent received the Section 19(2) notice from the Claimant (eg: facsimile, postal details etc);

Supporting documents

- e) A copy of the construction contract or details of an oral agreement made between the parties;
- f) Supporting documents necessary to evidence or support the reasons in (a)i above may be attached. These may include, for example, expert reports and photographs evidencing defective work, statements from witnesses, letters and minutes from meetings;

General

This information is necessarily brief. 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 Respondent has no right to make further submissions after lodging its 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

Is the Adjudication Response being lodged electronically?

If the Adjudication Response is submitted electronically (Lockbox, CD, fax, email etc) AND is over 50 pages, the respondent should also provide a printed copy. If a printed copy is not received within 2 business days of the date of lodgement of the electronic copy, all printing costs will be charged to the respondent at commercial printing rates plus all staff time incidental to the printing at fifty-five (\$55) dollars per hour (including GST).

If the Adjudication Response is over 50 pages and a hard copy is not provided, Adjudicate Today 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 hard copy of the Adjudication Response may be lodged at any of the state offices listed below.

Please confirm whether a hard copy will be provided: Yes No

If Yes, please indicate which state office the hard copy will be lodged with _____

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90 Mona Vale Road	Brisbane City	Melbourne VIC 3006	18 National Circuit	111 Macquarie Street	91 King William Street
Mona Vale NSW 2103	QLD 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

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nsw@adjudicate.com.au	qld@adjudicate.com.au	vic@adjudicate.com.au	act@adjudicate.com.au	tas@adjudicate.com.au	sa@adjudicate.com.au	