

NSW ADJUDICATION APPLICATION FORM

Building and Construction Industry Security of Payment Act 1999 (NSW).

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.

The Claimant must ensure all details are correct and complete.

Claimant's Details -

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

Respondent's Details -

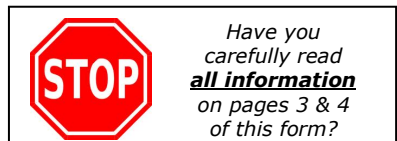
Name of Respondent:					
Trading Name: (if different)					
ABN:		Respondent Contact:			
ACN:			Title	First name	Last name
Business Address:					
Suburb:		State:		Postcode:	
Telephone:	Area Code		Fax:	Area Code	
Mobile:			Email:		

Contract Details -

Project Location Suburb:		Project Location Postcode:	
Project Location Address:			
Project Name:		Contract number (Only one construction contract may be adjudicated under each application.)	(If applicable:)
Type of construction work/ related goods & services:	Eg: Concreting, plumbing, electrical engineering etc.	Reference date: (Refer to http://www.adjudicate.com.au/nsw/start/claimant-preparing-the-payment-claim)	
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 received - what date was the notice under section 17(2) received by the respondent?			
Claimant Business Activity: (Please select)		Respondent Business Activity: (Please select)	
<input type="checkbox"/> Principal <input type="checkbox"/> Head Contractor <input type="checkbox"/> Subcontractor		<input type="checkbox"/> Principal <input type="checkbox"/> Head Contractor <input type="checkbox"/> Subcontractor	
<input type="checkbox"/> Supplier <input type="checkbox"/> Consultant		<input type="checkbox"/> Supplier <input type="checkbox"/> Consultant	

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 1999 (NSW). 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 (incl. GST)*. (*See page 2). **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	
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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/nsw_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 date and method of claimant's receipt of the Payment Schedule from the respondent	Tab No. _____
Section 17(2) Notice (if no Payment Schedule served) Refer to sections 1ci, 1cii & 1ciii and 2di & 2dii of attached checklist	
i. The Section 17(2) notice	Tab No. _____
ii. Written confirmation of date and method of the respondent's receipt of the Section 17(2) notice	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.

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

Following the timeframes provided by the Act

If the times provided in the Act for service of documents 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) a Saturday, Sunday or public holiday or (b) 27, 28, 29, 30 or 31 December.

- For clarification of the definition of "**Due Date for Payment**", please refer to s.11 of the Act and also <http://www.adjudicate.com.au/nsw/start/due-date>
- For clarification of the definition of "**Payment Claim**", please refer to s.13 of the Act
- For clarification of the definition of "**Payment Schedule**", please refer to s.14 of the Act
- A copy of the Act is available at: http://www.adjudicate.com.au/pdf/nsw_SOP_Act.pdf
- The notice under s.17(2) is available at: http://www.adjudicate.com.au/pdf/nsw_optional_notice.pdf

1. Under section 17 of the Act, the time for lodging an adjudication application is:
 - a. Where the Claimant received a Payment Schedule within 10 business days of service of the Payment Claim 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 of service of the Payment Claim 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. Applications must be submitted after the due date for payment. Applications received 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 of service of the Payment Claim 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 17(2) of the Act, of the Claimant's intention to apply for adjudication. The notice under section 17(2) must be received by the Respondent after the due date for payment. Section 17(2) notices received on or prior to the due date for payment may be invalid;
 - ii. the Respondent has 5 business days from receipt of the notice under section 17(2) to provide a Payment Schedule; and
 - iii. the Claimant has 10 business days after the expiry of those 5 business days, to apply for adjudication. Adjudication applications must be submitted after the 5th business day. Applications received on or prior to the 5th business day may be invalid.

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 (i) that the Claimant carried out under the contract the work or provided the goods or services for which payment is claimed, (ii) that amount claimed is due and unpaid and how it is calculated and (iii) the value of the work, goods or services for which is claimed. The submission should also respond to the reasons, if any, given by the for not paying and should provide evidence or arguments to refute the Respondent's for withholding payment.
 - ii. **IMPORTANT:** 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 (e.g. postal details including postal address, etc – see point 4 below);
- c. i. the Payment Schedule, if any;
- ii. written confirmation of the date and method of the Claimant's receipt of the Payment Schedule from the Respondent (e.g. postal details including postal address, etc – see point 4 below);
- d. i. if required to be served, the section 17(2) notice (see Guidenote 1.c above)
- ii. written confirmation of the date and method of the Respondent's receipt of the section 17(2) notice from the Claimant (e.g. postal details including postal address, etc – see point 4 below);
- 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 – see point 4 below);
- g. The Adjudication Application Index (see page 3) or alternatively, a list of all attachments.

Continued →

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

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 contract or it may be served in accordance with the Act:
 - i. by delivering it to the Respondent personally; or
 - ii. by lodging it during normal business hours at the Respondent's ordinary place of business; or
 - iii. by sending it by post addressed to the Respondent's ordinary place of business; or
 - iv. by email to an email address which is specified by the person for the services of notices of that kind.
 - b. Please note that service via facsimile is only valid if provided by the contract. The Adjudicator may request the Claimant provide written confirmation of the date and method of service of the adjudication application on the Respondent.
 - c. Adjudicate Today accepts service of adjudication applications and all documents via facsimile in addition to the methods described above (4.a.i.-iv.).
5. The Respondent may lodge a response to the adjudication application ONLY if the Respondent served a Payment Schedule under the Act [see s.20(2A) of the Act.] The response must be served on the Adjudicator on or before the later of:
 - a. 5 business days after the Respondent receives a copy of the adjudication application; or
 - b. 2 business days after the Respondent receives notice of the Adjudicator's acceptance of the adjudication application [see s.20(1) of the Act].

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

6. Payment claims involving multiple contracts

Note that only **one construction contract** (written or verbal) may be adjudicated under each adjudication application.

If lodging two or more adjudication applications at the same time with Adjudicate Today, the Claimant should:

- a. prepare and compile the adjudication applications for acceptance by possibly separate adjudicators;
- b. effect a separate electronic transmission for each application (where electronic copies are being lodged);
- c. bind the hard copies of each adjudication application separately (where hard 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 return documents to the parties at the close of an adjudication. If the Adjudicator has entered markings onto documents submitted, the Adjudicator may withhold the documents so as not to allow sight of working comments.

Parties lodging adjudication documents are generally advised to both:

- a. retain a copy of any documents lodged with Adjudicate Today; and
- b. unless absolutely necessary, submit copies of documents rather than originals to the Adjudicator.

If a party wants documents returned, please inform the Adjudicator at the time of submitting the documents.

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. s21(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 submissions are complete.

A copy of the *Building and Construction Industry Security of Payment Act 1999 (NSW)* is available at:

http://www.adjudicate.com.au/pdf/nsw_SOP_Act.pdf

This adjudication application may be lodged with any Adjudicate Today state office, by hard copy, by facsimile, by email or by electronic file upload via the Adjudicate Today Lockbox at the following link:

<http://www.adjudicate.com.au/company/upload-your-files-to-adjudicate-today>

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