

NSW ADJUDICATION APPLICATION FORM

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

The Claimant 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.

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 –

Contract date: (date of oral/written agreement to undertake construction work/supply goods and services)			Project Location Postcode:	
Project Location Address:				
Project Name:			Contract number: (One Construction Contract only to be adjudicated under each application.)	(If applicable)
Claimant's Business Activity:	Principal Head Contractor Subcontractor	Supplier Consultant	Respondent's Business Activity:	Principal Head Contractor Subcontractor Supplier Consultant
Type of construction work / related goods and services:	Eg: Concreting, plumbing, electrical engineering etc.		Date to which construction work or related goods and services calculated:	
Payment Claim Date: (Date claim served on Respondent)			Payment Due Date:	
Payment Claim Amount: (incl. GST)			Payment Schedule Date: (Date schedule received by Claimant)	(If provided)
Payment Schedule Amount: (incl. GST)	(If provided)		Application Fee:	\$NIL
If a Payment Schedule was not received, what date was the notice under section 17(2) of the Act received by the Respondent?				

The Claimant acknowledges and agrees to provide one (1) hard copy of the Adjudication Application (including all attachments) at the time of lodgment with Adjudicate Today. Should the Claimant not provide the required copy, Adjudicate Today will copy the Adjudication Application (including all attachments) as necessary at commercial printing rates and will charge the Claimant those commercial rates.*

Please confirm whether a hard copy of the application will be provided:

To which state office:

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 of Claimant
or Claimant representative

Signature of Claimant
or Claimant representative

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Section 17(2) evidence of service Confirmation of the date and method by which the Claimant served the Section 19(2) Notice on the Respondent.	
Payment Schedule (if served) See 4 in Guidance Notes below.	
Payment Schedule evidence of service Confirmation of the date and method by which the Claimant received the Payment Schedule from the Respondent.	
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Use of this index template is not mandatory, but may assist both the compilation and processing of an Adjudication Application.

Adjudication Application Guidance Notes

(Guidance Notes do not form part of the Adjudication Application)

This information is necessarily brief. Further details regarding preparation of the Adjudication Application may be reviewed at www.adjudicate.com.au/2019-nsw-amendment/served/Claimant-disputes-payment-schedule-prepares-adjudication-application.

The Claimant should not rely upon this information, but should study the Act and if necessary, consider seeking expert advice. A copy of the Act is available at www.adjudicate.com.au/nsw/legislation-security-of-payment-act-1999.

1. Written Submissions

This is an opportunity for the Claimant to demonstrate an entitlement to payment. A written submission by the Claimant may include the following information:

- (a) whether there is in existence a Construction Contract between the parties and whether the Payment Claim is made pursuant to that contract;
- (b) whether the Payment Claim reasonably purports on its face to comply with the requirements of section 13(2) of the Act. The Payment Claim:
 - i. must identify the construction work (or related goods and services) to which the progress payment relates, and
 - ii. must indicate the amount of the progress payment that the Claimant claims to be due (show calculations where necessary), and
 - iii. must state that it is made under the Act;
- (c) whether there is evidence that the Payment Claim has been served on the Respondent;
- (d) what the contract provides, if anything, about the particular claim made in the Payment Claim and the time for payment;
- (e) whether the Claimant says that it has done the work for which the payment has been claimed but has not received payment.

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.

Unless invited by the Adjudicator (see s.21(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.

2. Payment Claim

A full copy of the Payment Claim must be provided within the Adjudication Application.

Refer to section 13 of the Act for clarification of the meaning of the term "Payment Claim".

Further details may be reviewed at: www.adjudicate.com.au/nsw/start/Claimant-preparing-the-payment-claim.

Payment Claim evidence of service

Written evidence of the date and method by which the Claimant served the Payment Claim on the Respondent. For example, copy of email message, postal details including postal address, etc.

3. Section 17(2) Notice (if applicable)

If a section 17(2) Notice (Notice) was served on the Respondent, a full copy of the Notice must be provided within the Adjudication Application.

Further details may be reviewed at: www.adjudicate.com.au/nsw/not-served/Claimant-prepares-and-serves-s17-2-notice.

Section 17(2) Notice evidence of service

Written evidence of the date and method by which the Claimant served the section 17(2) Notice on the Respondent. For example, copy of email message, postal details including postal address, etc.

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4. **Payment Schedule (if served)**

Refer to section 14 of the Act for clarification of the meaning of the term "Payment Schedule".

Full details regarding Payment Schedules may be reviewed at:
www.adjudicate.com.au/nsw/not-served/Respondent-prepare-and-serve-payment-schedule.

Payment Schedule evidence of service

Written evidence of the date and method by which the Claimant received the Payment Schedule from the Respondent. For example, copy of email message, postal details including postal address, etc.

5. **Construction Contract**

Attach a copy of the Construction Contract. If the Construction Contract or agreement is wholly or partly oral, set out the precise terms of the oral agreement, when it was made, the named person who entered the contract on behalf of the Respondent and what was said to form the oral agreement. Attach a copy of any emails, correspondence or paid invoices supporting the oral agreement.

6. **Supporting Documents**

If possible, obtain witness statements or other technical reports, test results, photographs, invoices (from suppliers, quality assurance statements, if applicable, evidence of payment(s) to subcontractors) or other documentation which supports the claim, add these as numbered attachments. This is particularly important for larger claims. These attachments should show that the work was properly done and completed in line with the Construction Contract and/or that related goods and services were provided as per the progress claim. Statutory declarations are not necessary, because an Adjudicator cannot test the contents of a statutory declaration, they are given no greater weight than unsworn witness statements.

7. **Other important information**

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 result in an Adjudicator not having jurisdiction to determine the value of the Payment Claim. The Act's Definition states that **Business Day** does not include 27, 28, 29, 30 or 31 December.

Common Pitfalls

Through the experience of managing thousands of Adjudication Applications, Adjudicate Today has been made aware of many common mistakes. For a list of issues that Claimants must get right, please visit our website at www.adjudicate.com.au/nsw/start/common-Claimant-pitfalls.

Documents submitted in hard copy

The Act does not provide a requirement for Adjudicators to make documents submitted available for return to Claimants at the close of an adjudication. As it is ultimately at the Adjudicator's discretion whether documents lodged are made available for return to the Claimant, Claimants 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 necessary.

If a Claimant 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.

****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 lodged with Adjudicate Today within one (1) Business Day. 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 the hourly rate of \$55.00 (incl. 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.

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