

SA ADJUDICATION APPLICATION FORM

Building and Construction Industry Security of Payment Act 2009 (SA)

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 -



Please tick to authorise receipt of correspondence via **email** to the address above

| | | | | | |
|------------------------------|-----------|---------------------|-----------|------------|-----------|
| 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: | | | |

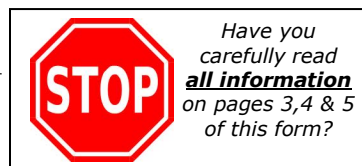
Contract Details -

| | | | | | |
|--|--|---|--|------------------|--|
| Project Location Suburb: | | Project Location Postcode: | | | |
| Project Location Address: | | | | | |
| Project Name: | | Contract number <small>(Only one construction contract may be adjudicated under each application.)</small> | | (If applicable:) | |
| Type of construction work/ related goods & services: <small>Eg: Concreting, plumbing, electrical engineering etc.</small> | | Reference date: <small>(Refer to http://www.adjudicate.com.au/SA/sa_reference_date.php)</small> | | | |
| Payment Claim Date: <small>(Date claim served on respondent)</small> | | Payment Due Date: | | | |
| Payment Claim Amount: <small>(inc GST)</small> | | Payment Schedule Date: <small>(Date schedule received by claimant-if any)</small> | | | |
| 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"/> Supplier <input type="checkbox"/> Head Contractor <input type="checkbox"/> Consultant <input type="checkbox"/> Subcontractor | | | <input type="checkbox"/> Principal <input type="checkbox"/> Supplier <input type="checkbox"/> Head Contractor <input type="checkbox"/> Consultant <input type="checkbox"/> Subcontractor | | |

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 2009 (SA). 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 (inc. GST)*. (*See page 5, item 8). **Please confirm whether a hard copy of the application will be provided:**
To which state office: _____ Yes No

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/sa_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 (required 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 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.

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 → SA →
Claimant: Common Pitfalls

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. 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; or any other day on which there is a Statewide shut-down of the operations of the building and construction industry.

1. Under section 17 of the Act, the time for lodging an adjudication application is:
 - a. Where the claimant received a Payment Schedule within 15 business days (or shorter period if provided for under the construction contract) and the claimant disputes any reasons for non payment - 15 business days from the day of receipt of the Payment Schedule;
 - b. Where the claimant received a Payment Schedule within 15 business days (or shorter period if provided for under the construction contract) 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 received on or prior to the due date for payment may be invalid.
 - c. Where the claimant DID NOT receive a Payment Schedule within 15 business days (or shorter period if provided for under the construction contract) 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
 - I. the notice under s.17(2) must be received by the respondent after the due date for payment in (c). Section 17(2) notices received on or prior to the due date for payment may be invalid.
 - ii. the respondent has 5 business days to provide a Payment Schedule; and
 - iii. the claimant has 15 business days after the expiry of that 5 business day period to apply for adjudication
 - I. adjudication applications must be submitted after the 5th business day in (iii). Applications received on or prior to the 5th business day may be invalid.
- Please refer to s.13 of the Act for clarification of the meaning of *Payment Claim*.
- Please refer to s.14 of the Act for clarification of the meaning of *Payment Schedule*.
(A copy of the Act is available at: http://www.adjudicate.com.au/pdf/sa_2009_Act.pdf)
- The notice under s.17(2) is available at: http://www.adjudicate.com.au/pdf/sa_optional_notice.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 (i) that the claimant carried out construction work or provided the related goods or services under the construction contract for which payment is claimed, (ii) that amount claimed is due and unpaid and how it is calculated and (iii) the value of the construction work and/or related goods or services for which payment is claimed. The submission should also respond to the reasons, if any, given by the respondent for not paying and should provide evidence or arguments to refute the respondent's grounds 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.

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

- 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, if any;
 - ii. written confirmation of the date and method of the claimant's receipt of the Payment Schedule from the respondent (eg; facsimile, post etc);
- 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 (eg; facsimile transmission report, postal details including postal address, etc);
- 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.)
- g. A list of all attachments.

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:

 - (a) by delivering it to the person personally; or
 - (b) by lodging it during normal office hours at the person's ordinary place of business; or
 - (c) by sending it by post or fax addressed to the person's ordinary place of business; or
 - (d) in such other manner as may be prescribed by the regulations for the purposes of s.34 of the Act; or
 - (e) in such other manner as may be provided under the construction contract concerned.
 - b. Please note that the adjudicator may request that the claimant provide written confirmation of the date and method of service of the adjudication application on the respondent.
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(3) 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 concerning submissions and attachments provided above, 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 different 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 conclusion 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.

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.

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

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 conclusion 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 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 initial submissions are complete.

A copy of the *Building and Construction Industry Security of Payment Act 2009 (SA)* is available at:

http://www.adjudicate.com.au/pdf/sa_2009_Act.pdf

A hard copy of this adjudication application may be lodged with any Adjudicate Today state office:

| Adjudicate Today Pty Ltd | | | | | |
|--------------------------|-----------------------|-----------------------|-----------------------|-----------------------|------------------------|
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| www.adjudicate.com.au | | | | | |
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