

VIC ADJUDICATION APPLICATION FORM

Building and Construction Industry Security of Payment Act 2002 (Vic).

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 -

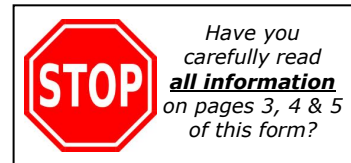
Project Name: <small>(name by which project is known)</small>		Contract Number: <small>(One construction contract only may be adjudicated under each application.)</small>		<small>(if applicable:)</small>	
Project Address:			Project Postcode:		
Description of project and contract WORKS: (eg install floor coverings in apartment development, airconditioning upgrade in commercial premises etc)					
Claimant's Business Type:		<input type="checkbox"/> Developer <input type="checkbox"/> Head contractor <input type="checkbox"/> Major subcontractor <input type="checkbox"/> Trade contractor <input type="checkbox"/> Supplier		<input type="checkbox"/> Consultant <input type="checkbox"/> Project manager <input type="checkbox"/> Manufacturer of building materials or components	
Respondent's Business Type:		<input type="checkbox"/> Developer <input type="checkbox"/> Head contractor <input type="checkbox"/> Major subcontractor <input type="checkbox"/> Trade contractor <input type="checkbox"/> Supplier		<input type="checkbox"/> Consultant <input type="checkbox"/> Project manager <input type="checkbox"/> Manufacturer of building materials or components	
Type of construction work /related goods & services		Reference date: <small>(Refer to http://www.adjudicate.com.au/vic/start/reference-date)</small>			
Payment Claim Date: <small>(date claim served on respondent)</small>		Payment Due Date:			
Payment Claim Amount:		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 18(2) received by the respondent?					

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 2002 (Vic). 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




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:** 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	
NSW	QLD	VIC	ACT	TAS	SA	
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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/vic_adj_application.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 the claimant's receipt of the Payment Schedule from the respondent	Tab No. _____
Section 18(2) Notice (if no Payment Schedule served) Refer to sections 1ci, 1cii & 1ciii and 2di & 2dii of attached checklist	
i. The Section 18(2) notice	Tab No. _____
ii. Written confirmation of date and method of the respondent's receipt of the Section 18(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 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 → VIC →
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 a day that is not: (a) a Saturday or Sunday or (b) a day that is wholly or partly observed as a public holiday throughout Victoria.

1. Under section 18 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 - 10 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 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 10 business days from the due date for payment to notify the respondent, by way of a notice under section 18(2) of the Act, of the claimant's intention to apply for adjudication
 - I. the notice under s.18(2) must be received by the respondent after the due date for payment in (c). Section 18(2) notices received on or prior to the due date for payment may be invalid.
 - ii. the respondent has 2 business days to provide a Payment Schedule;
and;
 - ii. the claimant has 5 business days after the expiry of that 2 business day period to apply for adjudication
 - II. adjudication applications must be submitted after the 2nd business day in (iii). Applications received on or prior to the 2nd business day may be invalid.
- Please refer to s.14 of the Act for clarification of the term "Payment Claim".
 - Please refer to s.15 of the Act for clarification of the term "Payment Schedule".
 - The notice under s.18(2) is available at:
www.adjudicate.com.au/pdf/vic_adj_section_18_2_notice.pdf
 - A copy of the Act is available at www.adjudicate.com.au/pdf/vic_act_20070330.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 contract the work or provided the goods or services for which payment is claimed,
 - 2.that amount claimed is due and unpaid and how it is calculated and
 - 3.the value of the work, 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.

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, 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 18(2) notice (see Guidenote 1.c above)
 - ii. written confirmation of the date and method of the respondent's receipt of the section 18(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.
 - 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 or facsimile addressed to the respondent's ordinary place of business.
 - 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.
4. The respondent may lodge a response to the adjudication application **ONLY** if the respondent served a payment schedule under the Act [see s.21(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.21(1) of the Act].

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

5. 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:

- 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)

6. 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. 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.

7. 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. S22(5)(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.

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).

A copy of the *Building and Construction Industry Security of Payment Act 2002 (Vic)* is available at:
http://www.adjudicate.com.au/pdf/vic_act_20070330.pdf

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

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