



Topic 3

Responding to a payment claim

How should you respond to a payment claim?

If you have been given a payment claim made under the Act, you need to participate in the response process otherwise serious consequences may follow.

You must either:

 Pay the amount claimed in full by the due date	or	 If you do not agree with the claimed amount in whole or in part, give the claimant a payment schedule within 15 business days of receiving the payment claim, or any earlier time provided for in the contract
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The payment schedule is your opportunity to formally respond to the payment claim and outline your reasons for withholding payment. Even if you consider that the payment claim itself was not valid, for example was not made in accordance with the requirements of the Act or given to you correctly, you should still respond with a payment schedule.

A payment schedule can be like a payment certificate under the contract. It does not need to be a complex document or labelled as a 'payment schedule', but should be clear enough so the claimant understands all of your reasons for withholding payment.



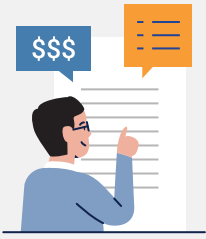
If the claimant is satisfied with your reasons, for example the works are defective and need to be fixed, or the amount claimed is not due under the contract, they can accept these reasons and settle on the issue.

Alternatively, if the claimant disputes the reasons provided in your payment schedule, they can apply for adjudication.

How do you prepare a payment schedule?

**Up to 15
business days**

There are strict time limits for giving a payment schedule. A respondent has up to 15 business days after being given the payment claim to prepare and give a payment schedule, or any shorter period agreed in the contract. If the construction contract attempts to extend the period beyond 15 business days it is unenforceable.



A payment schedule must:

- identify the payment claim to which it relates;
- indicate the amount of payment (if any) that you propose to make; and
- indicate any reasons for withholding payment.

The reasons for withholding payment will depend on your individual circumstances. They might include that:

- aspects of the works or supply were defective or incomplete (including the reasons);
- the amount claimed was not due and owing under the contract;
- there is a right to set-off against the amount claimed under the contract; and
- there is no entitlement to the claimed variation.



If the dispute goes to adjudication under the Act, the adjudicator will be required to calculate the value of the works which are included in the payment claim to which the adjudication application relates. A payment schedule should provide sufficient information for valuation of the construction work or related goods and services by an adjudicator.



Once a payment schedule is provided, you cannot attempt to raise new or additional reasons for withholding payment later if the claimant decides to apply for adjudication. It is therefore very important to outline all your reasons for withholding payment of the full amount in your payment schedule.

What happens if you ignore a payment claim and do not make payment?

If you do not give a payment schedule in response to a payment claim within the time required and make payment, there are serious consequences and you could become liable to pay the full amount claimed by the due date for payment.

This means that the claimant is able to recover the whole amount of their claim from you, and you will be precluded from substantiating any reasons for withholding payment should the matter proceed to court.

If the claimant decides to apply for adjudication, you will also be barred from providing a response (subject to the 'second chance' opportunity addressed in Topic 4).



Alternatively, if you give a payment schedule within the time required and propose to pay less than the claimed amount, but do not pay by the due date, the claimant can:

- recover the claimed amount through the courts; or
- apply for adjudication.

In either situation, the claimant can also suspend any on-going construction works or supply of goods and services by giving you a written notice of intention to suspend works at least two business days before the suspension is to take effect.






If you receive a payment claim, but do not agree with it and wish to avoid liability for full payment, it's important you give a payment schedule within the time required. If you are unsure, you should obtain professional independent advice.



A recommended form for preparing a payment schedule is available for download from the Building and Energy website. This form can be used to help prepare your response to a payment claim.



Tips for responding to a payment claim

-  A payment schedule must be given within 15 business days of receiving a payment claim, or lesser period in the contract, and this timeframe cannot be extended in any circumstances.
-  Even if you intend to pay the full amount of a payment claim you should respond to the claim with a payment schedule to this effect.
-  A payment schedule should include all of your reasons for withholding the full amount of the payment claim. Should the dispute go to adjudication at a future date, you cannot include in your adjudication response any reasons for withholding payment that were not included in your payment schedule.
-  Ensure that you keep a record of the manner (for example post, personal service, etc.) that you used for giving the payment schedule together with the relevant times and dates. If the payment schedule was not in fact received, you must be able to evidence the date it was given.
-  The Building Commissioner has published a recommended template to assist with preparing a payment schedule.

Important terminology

Adjudicator	is an individual registered under the Act as an adjudicator.
Business day	is any day other than a Saturday, Sunday or public holiday or day between 22 December and 10 January inclusive.
Claimant	is the person who is or who claims to be entitled to a progress payment and who makes a payment claim.
Give	means to give a document under the Act (for example a payment claim, payment schedule, application or response) either in accordance with the method stipulated in the construction contract, or, if the contract is silent (or there is no contract), the document can be given by either:

- delivering it personally to the person who is to receive the document (for example the claimant, respondent, adjudicator, etc.);
- leaving the document at the person's ordinary place of business;
- sending the document by post to the person's ordinary place of business;
- emailing the document to an address specified by the person; or
- if an authorised nominating authority allows for the use of an electronic lock-box, submitting documents via that facility.

The adjudicator or authorised nominating authority will often stipulate how documents are to be given to them. Documents should be given in this manner.

Payment claim

is a claim given under the Act.

Respondent

is the person who has been given the payment claim.

Disclaimer – The information contained in this fact sheet is provided as general information and a guide only. It should not be relied upon as legal advice or as an accurate statement of the relevant legislation provisions. If you are uncertain as to your legal obligations, you should obtain independent legal advice.

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