



## ***Construction Contracts (Former Provisions) Act 2004 (WA)***

# Topic 4: Responding to an application for adjudication

### **Preparing a response to adjudication**

If you are involved in a payment dispute and the other party applies for rapid adjudication, you (as the respondent) will be required to prepare a formal response to the application. The response is part of the adjudication process under the *Construction Contracts (Former Provisions) Act 2004* (the CCA) and gives respondents an opportunity to outline their side of the story.

There are strict time limits for the submission of responses. As the adjudication process is intended to deal with payment disputes as quickly and inexpensively as possible, the respondent has only 10 business days after being served with the application to prepare and serve a response. A business day means any day other than a Saturday, Sunday, public holiday or day between 25 December and 7 January inclusive.

The response must be in writing, and served on the applicant and the adjudicator by:

- posting the application, including by regular or registered mail;
- delivering the application personally;
- leaving the application for the other party at their usual or last known place or business, or their usual or last known home; or
- in the case of a corporation or association (including a prescribed appointor), by leaving the application at, or by posting it to, their principal place of business or principal office in WA.

Wherever possible, it is good practice to serve the application in a manner that can be tracked, or where a record of receipt can be obtained (e.g. express post or registered mail).

There are specific rules that apply to the content of the response. The response must:

- contain the names and contact details of the adjudicator, applicant and respondent;
- outline whether the respondent rejects or disputes the payment claim, as well as any statements or claims in the application that the respondent believes are wrong or not accurately described; and
- set out or have attached all supporting information, documentation and submissions on which the respondent relies upon.

The response may also set out:

- why the adjudicator does not have power to determine the dispute, for example because the contract does not meet the definition of a construction contract under the CCA, or the application was not served within the 90 business day time limit required; or
- the reasons why the applicant is not entitled to payment. This may be due to the works being defective, the amount claimed was not due and owing under the contract or the respondent had a right under the contract to set-off against the amount claimed.

If a response is not made in time, the adjudicator cannot take it into consideration and may proceed with delivering a decision within 10 business days after the response was due. An adjudicator may request an extension for making a determination but both parties must agree to it.

It is strongly recommended that if you receive an application for adjudication that you take action early to prepare a response. If you are unsure, you may consider obtaining expert advice from a professional advisor, such as a lawyer or construction contracts specialist. Registered adjudicators can also advise you on payment disputes they are not involved in. You can contact them directly or through a prescribed appointor listed on the [Building and Energy website](#).

Building and Energy's [Form 4 – Response to an application for adjudication](#) may also assist you in preparing a response.

A well drafted response will assist the adjudicator to fully assess your position and may help the applicant to understand why payment has not been made. This could lead to a negotiated settlement with the applicant.

### Costs involved in the adjudication process

The applicant and the respondent have equal responsibility for paying the adjudicator's professional fees unless the adjudicator decides otherwise as part of their determination.

If a resolution is reached through negotiation, the parties may request the adjudicator to make a determination that gives effect to the negotiated settlement. In this case both parties will still be responsible for any costs the adjudicator has incurred in the process or through making a determination.

In order to obtain sufficient information to make a determination sometimes the adjudicator will engage an expert to investigate matters relevant to the payment dispute. This may occur unless all the parties object. The applicant and respondent will have equal responsibility for paying for the expert's services, so if you have any concerns with the proposed use of an expert or tester then you should communicate your reasons to the other party and adjudicator as early as possible.

**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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