



Topic 5

Responding to an adjudication application

How to prepare an adjudication response:

If you are involved in a dispute about a payment claim and the other party applies for adjudication, you (as the respondent) may be entitled to provide an adjudication response.

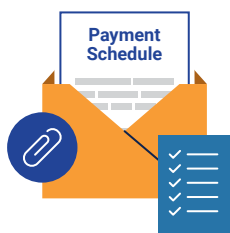
The adjudication response is part of the adjudication process under the Act, and gives a respondent the opportunity to outline their side of the story.

Whether you can give an adjudication response will depend upon whether or not you have given a payment schedule to the claimant.

Pathway 1	Pathway 2	Pathway 3
<p>You provided a payment schedule within 15 business days after receipt of the payment claim made under the Act, or any shorter time specified in the construction contract.</p>	<p>You didn't give a payment schedule in response to the payment claim, but did subsequently give a payment schedule within five business days of being notified by the claimant of their intention to apply for adjudication.</p>	<p>You didn't give a payment schedule at all.</p>
<p>You are entitled to give an adjudication response to the adjudicator and the claimant.</p> <p>The adjudication response must be given within 10 business days of receiving the adjudication application.</p>		<p>You cannot give an adjudication response and will not be entitled to make any submissions or give documents to the adjudicator.</p>

The content of an adjudication response

Where an adjudication response may be given, it must be in writing, identify the adjudication application to which it relates, and be given to the adjudicator. You must give a copy of the adjudication response to the claimant within one business day after the response is given to the adjudicator.



Wherever possible, it is good practice to give the response in a manner than can be tracked, or where a record of receipt can be obtained (for example express post or registered mail).

An adjudication response may contain submissions relevant to the response. You may also elaborate on any reasons given in the payment schedule for not paying the payment claim (for example due to the works being defective, or the amount claimed is not due and owing).

However, the response cannot raise any new reasons for refusing to make payment that are not already in the payment schedule. The adjudicator cannot take these into consideration when making a determination.



A clear and concise adjudication response will assist the adjudicator in making a determination.

Remember to include all necessary supporting documentation when preparing your response.

If you are unsure how to prepare a response, seek expert advice from a professional advisor, such as a lawyer or construction contracts specialist.

If your adjudication response is not given within the time required, the adjudicator cannot take it into consideration and may proceed with delivering a determination within 10 business days after the response was due.

An adjudicator may request an extension for making a determination to a maximum of 20 business days extra, but both parties must agree to it.

If you receive an adjudication application, you should take immediate action to prepare a response. A well prepared response will assist the adjudicator to fully assess your position. If you are unsure how to prepare a response, seek expert advice from a professional.

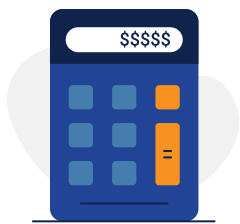


A recommended form for a response is available for download from the Building and Energy website and can be used to help you prepare your response.



The costs involved in the adjudication process






The claimant and the respondent are both responsible for paying the adjudicator's professional fees, unless the adjudicator decides otherwise as part of their determination.



There are maximum adjudication fees and expenses that may be charged by an adjudicator where the payment claim is \$50,000 (including GST) or less. These can be found on the Building and Energy website.

Both you and the claimant are responsible for paying your own costs, such as legal costs, incurred in preparing an adjudication application or adjudication response and these cannot be recovered.

Tips for responding to an adjudication application

-  An adjudication response (where allowed) must be given within 10 business days of receiving a copy of the adjudication application. An adjudicator cannot extend this timeframe, or consider an adjudication response received out of time.
-  Ensure that you keep a record of the manner in which you have given a response (for example post, personal service, etc.), together with the relevant times and dates. If the response was not in fact received, you must be able to prove the date it was given.
-  An adjudication response should have copies of all documents referred to in the response attached because the adjudicator may not consider them if you did not include them with your response.
-  An adjudication response cannot include reasons for withholding payment, if they were not in the payment schedule.
-  The Building Commissioner has published a recommended template to assist with preparing an adjudication response.

Important terminology

Adjudicator

is an individual registered under the Act as an adjudicator.

Authorised nominating authority (ANA)

is the body or individual authorised under the Act to receive applications and responses and, if applicable, undertake other administrative tasks.

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	<p>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:</p> <ul style="list-style-type: none"> • 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. <p>The adjudicator or authorised nominating authority will often stipulate how documents are to be given to them and should be given in this manner.</p>
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.

<p>Building and Energy Department of Mines, Industry Regulation and Safety 1300 489 099</p> <p>8.30am – 4.30pm Level 1 Mason Bird Building 303 Sevenoaks Street (entrance Grose Avenue) Cannington Western Australia 6107 M: Locked Bag 100, East Perth WA 6892 W: www.dmirs.wa.gov.au/building-and-energy E: be.info@dmirs.wa.gov.au</p>	<p>Regional Offices</p> <table border="0"> <tr> <td>Great Southern</td> <td>(08) 9842 8366</td> <td>Mid-West</td> <td>(08) 9920 9800</td> </tr> <tr> <td>Kimberley</td> <td>(08) 9191 8400</td> <td>North-West</td> <td>(08) 9185 0900</td> </tr> <tr> <td>Goldfields /Esperance</td> <td>(08) 9021 9494</td> <td>South-West</td> <td>(08) 9722 2888</td> </tr> </table> <hr/> <p>National Relay Service: 13 36 77 Translating and Interpreting Service (TIS): 13 14 50</p> <p>This publication is available in other formats on request to assist people with special needs.</p>	Great Southern	(08) 9842 8366	Mid-West	(08) 9920 9800	Kimberley	(08) 9191 8400	North-West	(08) 9185 0900	Goldfields /Esperance	(08) 9021 9494	South-West	(08) 9722 2888
Great Southern	(08) 9842 8366	Mid-West	(08) 9920 9800										
Kimberley	(08) 9191 8400	North-West	(08) 9185 0900										
Goldfields /Esperance	(08) 9021 9494	South-West	(08) 9722 2888										