



Resolving payment disputes in construction contracts

Using adjudication to resolve payment disputes

Every day, individuals and organisations enter into contracts for building and construction work. Sometimes disputes arise over payment.

The *Construction Contracts Act 2004* (the Act) provides for a rapid adjudication to resolve these disputes, whether they are written or oral contracts.

Adjudication is when an adjudicator – a registered, trained professional experienced in construction contract administration and dispute resolution – is appointed to review the issue and expedite payment.

Adjudication claims must be lodged within 90 business days of a payment dispute arising (details over page). The Act also ensures payment terms and conditions in contracts are fair to all parties.

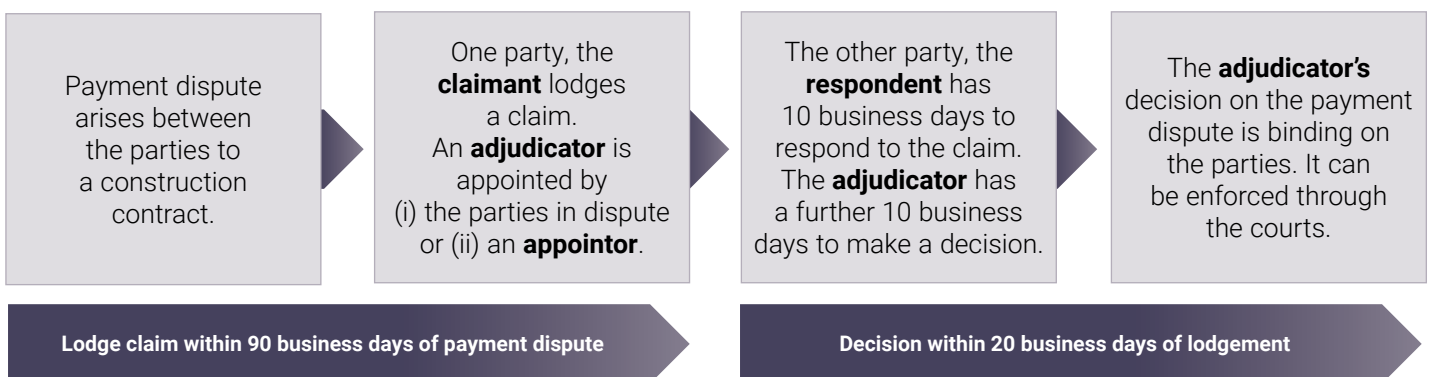
What the Act covers

- Most building work
- Civil engineering
- Demolition work
- Electrical work
- Plumbing and gas work
- Painting and decorating work
- Supply of building materials
- Hire of plant or equipment
- Earthworks and landscaping
- Maintenance
- Professional services (e.g. architectural design, surveying)

The Act **does not** cover salary or wage disputes (see 'Frequently asked questions' over the page).

A **business day** includes any day other than Saturday, Sunday, public holiday, or any day between 25 December and 7 January.

How it works



Who is who?

Claimant – the party that claims payment under the terms of the construction contract.

Respondent – the party that benefited from the claimant's construction work, service or materials.

Appointor – a person or an organisation that is allowed to appoint adjudicators.

Adjudicator – registered, trained professionals who are authorised to review and determine construction contract payment disputes.

Need assistance?

The Building and Energy's website and staff can help you locate authorised appointors and adjudicators and assist with general enquiries.

Visit www.dmirs.wa.gov.au/building-and-energy or phone 1300 489 099.

Making a claim for payment

A claim for payment for work or the supply of goods and/or services must be made in accordance with the written contract. In the case of an oral contract the payment claim must:

- be in writing;
- be addressed to the other party to which the claim is made;
- state your name, the date of the claim and amount claimed;
- (if you are the contractor) itemise and describe the obligations performed and to which the claim relates in sufficient detail for the principal to assess the claim;
- (if you are the principal) describe the basis of the claim in sufficient detail for the contractor to assess the claim; and
- be signed by the claimant and given to the party to which the claim is made.

Where a payment claim is disputed or not paid on time or not paid in full, a payment dispute has usually arisen

Within 90 business days the claimant may:

- prepare a written application for adjudication;
- provide it on each party to the contract;
- provide it to a registered adjudicator, who has been appointed by the parties to the dispute; or
- serve it to a prescribed appointor, whether chosen by one or all of the parties in dispute; and
- provide any deposit or security for the costs of the adjudication.

Frequently asked questions

Where can I find a copy of the *Construction Contracts Act 2004*?

The Building and Energy's website provides a link to the Act, which is available on the Parliamentary Counsel's Office website www.legislation.wa.gov.au.

When does a payment dispute arise, and when do the 90 business days start?

A dispute arises when the amount claimed; or the amount retained; or the security held by a party to a contract becomes due and has not been paid in full or is paid in part.

Is there a cost involved with adjudication?

Yes. The adjudicator charges a fee that is usually split between the parties.

Do I need a lawyer?

No. Adjudication is based on the paperwork submitted by parties to the adjudicator, however either party may use a lawyer to help prepare the material.

Is there an alternative to the adjudication process?

Yes. All legal and contractual rights are preserved and can be used.

Can employees resolve salary or wage payment disputes through this process?

No. The *Construction Contracts Act 2004* specifically excludes those disputes.

Who do I contact about a salary or wage dispute?

You need to contact the Fair Work Ombudsman on 13 13 94

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.

Building and Energy | Department of Mines, Industry Regulation and Safety

1300 489 099

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

Regional Offices

Goldfields/Esperance	(08) 9021 9494
Great Southern	(08) 9842 8366
Kimberley	(08) 9191 8400
Mid-West	(08) 9920 9800
North-West	(08) 9185 0900
South-West	(08) 9722 2888

National Relay Service: 13 36 77

Translating and Interpreting Service (TIS): 13 14 50

This publication is available in other formats on request to assist people with special needs.