

Guide to Application for Adjudication

RIALTO ADJUDICATIONS PTY LTD

Rialto Adjudications Pty Ltd has been authorised to nominate adjudicators for the purposes of the Building and Construction Industry Security of Payment Act 2002 (Vic).

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Introduction:

This Guide is intended to assist you creating and serving an Application for Adjudication.

Important Notes:

1. The Application for Adjudication and accompanying Submissions and supporting documentation MAY be the only opportunity you have to put your case to the adjudicator. You should include all information that you wish the adjudicator to take into account when assessing your entitlement to the amount claimed in your Payment Claim.
2. You must send a complete copy of the Application for Adjudication, including all supporting documentation and attachments, to the Respondent.

Section 1 - Time for making an Application for Adjudication:

An Application for Adjudication may be made:

1. When the Respondent has provided a Payment Schedule within 10 business days of receiving a Payment Claim and the Scheduled Amount is less than the Claimed Amount, an Application for Adjudication may be made within 10 business days of receipt of the Payment Schedule, or;
2. When the Respondent has not provided a Payment Schedule within 10 business days of receiving the Payment Claim, and provided the Claimant has served a Section 18(2) Notice on the Respondent within 10 business days of the due date for payment, an Application for Adjudication may be made within 5 business days after expiry of the 2 business days for providing a Payment Schedule, or;
3. When the Respondent has provided a Payment Schedule within 10 business days of receiving a Payment Claim and fails to pay the whole or any part of the Scheduled Amount by the due date for payment, an Application for Adjudication may be made within 10 business days after the due date for payment.

Section 2 - Application for Adjudication Form:

Please ensure that all sections of the Form are completed. Pay particular attention to accurate contact details for both yourself and the Respondent.

Section 3 – Supporting Documentation:

The adjudicators' role is to assess your entitlement to be paid the amount claimed in your Payment Claim. You should include sufficient evidence to demonstrate to the adjudicator that the works have been performed, or goods/services supplied, and the value of those works/goods/services, as detailed in the Payment Claim.

It may not be sufficient to simply provide a Payment Claim, without supporting documentation. As a minimum, there should be an affirmative statement, to the adjudicator, stating that the works have been performed as described in the Payment Claim.

Submissions document:

Overview – The adjudicator will make their Determination on the basis of the written material provided by the parties. Your “Submissions” document is your opportunity to tell your story to the adjudicator, in your own words and, to make your case to the adjudicator. Your Submissions should include detailed responses to any reasons for withholding payment that were contained in a Payment Schedule. Submissions could include, for example:

- If the Contract is verbal, details of how and when the Contract was formed, and the terms agreed.
- History of the project, relevant to the dispute.
- Response(s) to reasons for withholding payment that were contained in a Payment Schedule.
- Reference to attached supporting documentation.
- Reference to any case law you wish the adjudicator to consider.
- Proof that the work was completed or goods/services provided.
- Proof that the works, or goods/services were not defective.

Note:

If, in your Submissions, you are referring to supporting documents included in your Application for Adjudication, it is helpful to the adjudicator if you give each attachment page a number (just hand write a number on the top or bottom right of each page) and use that page number in your Submissions.

Section 4 - Assembling the Application for Adjudication:

To assist the adjudicator navigating the Application for Adjudication, as far as is possible, the documents should be compiled in the following order:

1. Index
2. Application for Adjudication Form
3. Submissions of the Claimant
4. The Payment Claim (including any supporting documents submitted in support of the Payment Claim)
5. The Payment Schedule (including any supporting documents served with the Payment Schedule)
6. Section 18(2) Notice (if applicable)
7. The Contract (if not a written Contract, include in your Submissions document details of how and when the verbal Contract was formed and the terms agreed)
8. Further supporting documents which may include, for example;
 - a. Correspondence
 - b. Invoices
 - c. Meeting Minutes
 - d. Diary Notes
 - e. Photographs
 - f. Other documents/information
9. Details of how and when a complete copy of the Application for Adjudication was served on the Respondent

Section 5 – Serving the Application for Adjudication

An Application for Adjudication can be lodged with Rialto Adjudications Pty Ltd in person, by post, facsimile, courier or email.

Service of the Application for Adjudication on the Respondent should be in the manner specified in the Contract, or if no manner specified, by the manner that you would usually send the Payment Claim.

Please note, the Act makes specific provisions for the Service of Notices, as follows:

50 Service of notices

(1) Any notice or document that by or under this Act is authorised or required to be given to or served on a person may be given to or served on the person—

(a) by delivering it to the person personally; or

(b) by lodging it during normal office hours at the person's ordinary place of business; or

(c) by sending it by post or facsimile addressed to the person's ordinary place of business; or

(d) in such manner as may be prescribed for the purposes of this section; or

(e) in any other manner specified in the relevant construction contract.

(2) The giving of, or service of, a notice or document that is sent to a person's ordinary place of business, as referred to in subsection (1)(c), is taken to have been effected—

(a) in the case of posting—2 business days after the day on which the notice or document was posted;

(b) in the case of a facsimile—at the time the facsimile is received.

(3) If a facsimile is received after 4.00 p.m. on any day, it must be taken to have been received on the next business day.