

Adjudication Application Guide

Introduction:

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

Important Notes:

1. The Adjudication Application, accompanying Submissions and supporting documentation are likely to 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 or Performance Security Claim.
2. You must serve a complete copy of the Adjudication Application, including all supporting documentation and attachments, on the Respondent within 3 business days after serving on Rialto Adjudications.

Section 1 - Time for making an Adjudication Application:

An Adjudication Application may be made:

1. If you have received a valid payment schedule or performance security schedule (in accordance with the contract and/or the Act), and you do not agree with the amount that the respondent intends to pay or release, an Adjudication Application must be lodged with the ANA within 10 business days after you receive the payment schedule or performance security schedule or;
2. If a respondent fails to serve a payment schedule or performance security schedule within 10 business days after a payment claim or performance security schedule is taken to be served (or of the contract provides a shorter period, within that period), and fails to pay or release the whole or any part of the claimed amount by the due date, the claimant must serve a Section 18(2) Notice or Section 18A(2) Notice on the respondent within 10 business days after the due date for payment or release. An Adjudication Application must be lodged with the ANA within 5 business days after expiry of the 5 business days for providing a payment schedule or performance security schedule as provided in the Notice, or;
3. If you have received a valid payment schedule or performance security schedule (in accordance with the contract and/or the Act), and do not dispute the scheduled amount, but the respondent fails to pay or release the whole or any part of the scheduled amount by the due date, an Adjudication Application must be lodged with the ANA within 10 business days after the due date for payment or release.

Section 2 – Adjudication Application Form:

Please ensure that all sections of the Application Form are completed. It is critical that you provide accurate and complete details for the Claimant and Respondent, including the full legal name and ABN/ACN.

Please 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 the amount claimed in your payment claim or performance security 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, and/or your entitlement to the return of performance security has arisen, as detailed in the payment claim or performance security 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 or release that were contained in a payment schedule or performance security schedule. Submissions could include, for example:

- If the contract or other arrangement is verbal, details of how and when the agreement was formed, and any terms agreed.
- History of the project, relevant to the dispute.
- Response(s) to reasons for withholding payment or release that were contained in a payment schedule or performance security 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.
- Proof that an entitlement to release of a performance security has arisen.

Note:

If, in your Submissions, you are referring to supporting documents included in your Adjudication Application, 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 Adjudication Application:

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

1. Index
2. Adjudication Application Form
3. Submissions of the Claimant
4. The payment claim or performance security claim (including any supporting documents served with the claim)
5. The payment schedule or performance security schedule (including any supporting documents served with the schedule)
6. Section 18(2) or 18A(2) Notice (if applicable)
7. The Contract (If the contract or other arrangement is verbal, details of how and when the agreement was formed, and any 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 Adjudication Application can be lodged with Rialto Adjudications Pty Ltd in person, by post, facsimile, courier, RAPL-LockBox or email.

Please note: Rialto Adjudications does not require a hard copy of documents filed electronically, unless specifically requested by the adjudicator. If the adjudicator requests a hard copy of the electronic documents, the hard copy must be provided within 2 business days of the request.

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.

You must serve a complete copy of the Adjudication Application on the respondent within 3 business days of service on the ANA.

Note of caution: Rialto Adjudications strongly recommend that unless expressly specified in the Contract, file sharing applications like Dropbox and Google Drive, are not used to serve the Adjudication Application on either Rialto Adjudications or the Respondent.

Please note, the SOP Act makes specific provisions for service of documents, as follows:

50 Service of documents

- (1) A document that by or under this Act is authorised or required to be served on, given to or lodged with a person may be served on, given to or lodged with the person—
 - (a) in the manner (if any) required by the construction contract if it is reasonably practicable to do so; or
 - (b) in any other case—
 - (i) by personally delivering the document to the person; or
 - (ii) by leaving the document for the person at the person's ordinary place of business; or
 - (iii) by sending the document by post addressed to the person to the person's ordinary place of business; or
 - (iv) in any other manner instructed by the person as being an acceptable manner for the service, giving or lodging of the document; or
 - (v) in the prescribed manner.
- (2) The time at which a document is taken to have been served on, given to or lodged with a person under subsection (1) is taken to be—
 - (a) in the case of delivery in person—
 - (i) at the time at which the document is delivered to the person; or
 - (ii) if the person refuses to accept the document, when the document is put down in the person's presence and the person is informed of the nature of the document; or
 - (b) in the case of a document left for the person at the person's ordinary place of business, when the document is left at the place of business with a person who appears to be employed by the business; or
 - (c) in the case of a document that is posted—
 - (i) 7 business days after the day on which the document is posted; or
 - (ii) if the document is delivered to the person on an earlier day, on that day; or

- (d) in the case of a prescribed manner for the serving, giving or lodgement of a document, at the prescribed time.

Note

A document that is sent to a person by email or any other form of electronic communication is taken to be served on a person at the time the email or other form of electronic communication is received by the person. See section 13A of the *Electronic Transactions (Victoria) Act 2000*.

- (3) A document served on, given to or lodged with an agent of a person in accordance with this section is taken to have been served on, given to, or lodged with the person.