Once you become aware that you are owed moneys under the payment terms of your written or oral construction contract you may consider making an application under the *Construction Contracts (Former Provisions) Act 2004* (the Act) to have your payment claim decided by adjudication.

This template application for adjudication has been prepared to assist parties preparing and serving an application for adjudication under the Act. It is produced as **a guide only and is not a statutory document**. This template application comprises two parts:

* Part A contains the information that **must** **be included** in your application to be valid. Your application must contain certain prescribed information (**marked with an asterisk** **\***).
* Part B contains information that will support your application and assist the adjudicator to perform their task. You may choose to use Part B to help prepare your supporting submissions.

If you require assistance completing your application, it is recommended that you seek independent advice (for example from a legal practitioner, contract claims specialist or adjudicator). Further information about the Act can be found on the Department of Mines, Industry Regulation and Safety (the Department’s) website at [www.dmirs.wa.gov.au](file:///C:\Users\dkearney\AppData\Local\Microsoft\Windows\Temporary%20Internet%20Files\Content.Outlook\Y7TMWHLG\www.dmirs.wa.gov.au).

**Important terms and definitions**

Before completing this form, please familiarise yourself with the following terms and definitions.

|  |  |
| --- | --- |
| Act | *Construction Contracts (Former Provisions) Act 2004* |
| Applicant | The Applicant is the person or organisation applying for adjudication of a payment dispute.  Any party to a construction contract may apply for adjudication. |
| Appointed Adjudicator | An Adjudicator is a qualified and experienced person registered by the Building Commissioner to conduct adjudications under the Act. The Adjudicator will be appointed by a Prescribed Appointor (listed below) unless both the applicant and Respondent have already agreed on an adjudicator to conduct the adjudication. You can find a list of registered Adjudicators on the Department’s [website](https://www.commerce.wa.gov.au/building-commission/find-adjudicator). |
| Construction contract | A complete definition can be found in the Act. In summary, a construction contract will include any contract for the carrying out of most activities relating to the construction of buildings and structures, as well as certain associated activities such as:   * preparatory and completion works (such as earthmoving, landscaping and painting); * the installation of fixtures and fittings and building systems (such as air conditioning and heating); * supplying materials to site for use in construction; and * professional services agreements, including design or quantity surveying services.   If you are unsure whether your contract is a construction contract for the purposes of the Act, you may need to seek expert advice. |
| Payment dispute | A complete definition can be found in the Act. In summary, a payment dispute will arise where:   * a payment claim is rejected; * a payment claim is disputed; * a payment comes due but is not paid; or * retention or security is due to be returned but is not returned.   The date on which the payment dispute crystallises is important; applications for adjudication must be made within 90 business days of that date. |
| Prescribed Appointor | An Appointor is an organisation that maintains a list of registered Adjudicators. Your selected Appointor will consider the details of the adjudication application and nominate an Adjudicator who has the skills and experience, and who is available to immediately conduct your adjudication. Unless both the Applicant and Respondent have agreed on a Prescribed Appointor, the Applicant is free to choose the Prescribed Appointors to serve the application on. You can find the names and details of Prescribed Appointors on the Department’s [website](https://www.commerce.wa.gov.au/building-commission/find-appointor). |
| Respondent | The Respondent is the person or organisation who is a party to the construction contract, but who has not applied for adjudication, and is the person or organisation against whom a payment dispute has arisen under the construction contract. |

## Part A – Required information

#### *Ensure all details required in this Part are complete and accurate. \*These details are required under section 26 of the Act.*

**SECTION 1 – PARTIES’ DETAILS**

##### Applicant

|  |  |  |
| --- | --- | --- |
| \*Name *(Include any trading name)* |  | |
| \*ABN and ACN | ABN:       ACN: | |
| \*Address/PO Box |  | |
| \*Telephone/fax | Area (     ) | Fax: |
| \*Email |  | |
| Name of the representative of the Applicant (if applicable) | *(e.g. lawyer)* | |
| Roles and responsibilities of the Applicant under the construction contract | *(e.g. head contractor, subcontractor, consultant, owner, developer)* | |

##### Respondent

|  |  |  |
| --- | --- | --- |
| \*Name *(Include any trading name)* |  | |
| \*ABN and/or ACN | ABN:       ACN: | |
| \*Address/PO Box |  | |
| \*Telephone/fax | Area (     ) | Fax: |
| \*Email |  | |
| Name of the representative of the Respondent (if applicable) | *(e.g. lawyer)* | |
| Roles and responsibilities of the Respondent under the construction contract | *(e.g. head contractor, subcontractor, consultant, owner, developer)* | |

##### Appointed Adjudicator (if applicable)

#### *The Act applies equally to parties that have by prior agreement self-appointed a Prescribed Appointor or a registered Adjudicator*

|  |  |  |
| --- | --- | --- |
| \*Name |  | |
| \*ABN and/or ACN | ABN:       ACN: | |
| \*Address/PO Box |  | |
| \*Telephone/fax | Area (     ) | Fax: |
| \*Email |  | |

##### Prescribed appointor

|  |  |  |
| --- | --- | --- |
| \*Name |  | |
| \*ABN and/or ACN | ABN:       ACN: | |
| \*Address/PO Box |  | |
| \*Telephone/fax | Area (     ) | Fax: |
| \*Email |  | |

**SECTION 2 – SUPPORTING INFORMATION AND DOCUMENTATION**

*Please ensure all details required in this Part are complete and accurate. Copies of the construction contract and payment claim are required under section 26 of the Act*

##### Construction contract

|  |  |
| --- | --- |
| Contract description | *(e.g. a contract for the carrying out or supply of certain goods or services as the case may be)* |
| Contract relationship  (select most appropriate) | Head contractor/subcontractor  Head contractor/principal (or client) |
| Date the construction contract was entered into between the Applicant and the Respondent |  |

|  |  |
| --- | --- |
|  | \*I have **attached** a copy of the construction contract/extract  Yes  No |
|  | The attachment is marked number |

##### Payment claim

|  |  |
| --- | --- |
| Payment claim or invoice number |  |
| Date payment claim made |  |
| Amount claimed | $      (plus GST) |

|  |  |
| --- | --- |
|  | \*I have **attached** a copy of the payment claim/extract  Yes  No |
|  | The attachment is marked number |

##### Payment dispute

|  |  |
| --- | --- |
| Date of payment dispute |  |
| Amount not paid, whether in whole or in part, at the point in time of commencing this application for adjudication | $      (plus GST) |
| Notice of dispute issued | Yes  No |

|  |  |
| --- | --- |
|  | I have **attached** a copy of the notice of dispute  Yes  No (not applicable) |
|  | The attachment is marked number |

**SECTION 3 – SERVICE DETAILS**

Your application for adjudication consists of this form and any supporting documentation, including:

* a copy of the construction contract or extract;
* a copy of the relevant payment claim(s);
* a copy of any response or notice of dispute issued to you by the Respondent in relation to the payment claim(s); and
* a copy of any supporting submissions which outline further information that you would like the adjudicator to take into consideration in assessing your claim for payment in the application for adjudication. **You may choose to use Part B of this form to help prepare supporting submissions.**

All supporting documentation should be attached to this template form of the application for adjudication and appropriately marked/numbered.

You must serve this application for adjudication, together with any supporting documentation, on the Prescribed Appointor and the Respondent.

Alternatively, if your construction contract names an agreed Adjudicator or Prescribed Appointor, you must serve this Application for adjudication, together with any supporting documentation, on the agreed Adjudicator or Prescribed Appointor and the Respondent.

Be aware that if the application for adjudication is served more than 90 business days after the payment dispute arose, it will be invalid and the appointed adjudicator would be required to dismiss it without considering the merits of it.

**NOTE:** The *Interpretation Act 1984 (WA)* applies to the service of documents under the Act.   
Sections 75 and 76 set out the ways in which effective service can be achieved. In summary, you can serve the application by:

* posting the document, including by regular mail or certified mail;
* delivering the document personally;
* leaving it for a person at their usual or last known place of business, or their usual or last known home; or
* in the case of a corporation or association, by delivering or leaving the document at, or posting the document to, their principal place of business or principal office in WA.

Wherever possible, it is good practice to serve important documents in ways that can be tracked, or where you receive a proof of receipt (for example express post or certified mail).

|  |  |
| --- | --- |
| Date of service of application on Prescribed Appointor/Respondent |  |

*Once the Application is served on the Respondent, forward any receipt or proof of Service to the Appointed Adjudicator (if known), or Prescribed Appointor.*

## Part B – Supporting Submissions

*You can use this Part of the Form to help set out your supporting submissions. Please complete all the sections relevant to your submissions and attach this Part your Application.*

**SECTION 1 – BACKGROUND** *Detail the facts that gave rise to this Application (e.g. when was the contract entered into, when way the payment claim made etc.)*

|  |
| --- |
|  |

**SECTION 2 – ADJUDICATOR’S JURISDICTION TO DETERMINE THE PAYMENT DISPUTE** *It is important to be aware that the Adjudicator is required to dismiss the Application if certain requirements section 32(2)(a) of the Act are not met. To assist the Adjudicator satisfying himself/herself they have the power to determine the payment dispute, you can use this section to address each of the requirements the Adjudicator must consider.*

For the reason’s set out below, the Adjudicator has the jurisdiction under section 32(2)(b) of the Act to determine the merits of the payment dispute the subject of this Application.

|  |
| --- |
|  |

Construction contract*(Set out how the contract meets the definition of ‘construction contract’ and ‘construction work’ in section 3 of the Act. In other words, explain the type of construction work carried out)*

The contract between the Applicant and Respondent is a *construction contract* for the purposes of section 3 of the Act for the following reasons:

|  |
| --- |
|  |

Valid payment claim made under a construction contract *(Set out why the progress claim or payment was validly made under the contract)*

|  |
| --- |
|  |

##### Payment dispute arose under a construction contract

|  |
| --- |
|  |

##### Application prepared and served in accordance with section 26(1), (2)(b) and (c)

|  |
| --- |
|  |

##### No prior decision on payment dispute by court, arbitrator or other body

|  |
| --- |
|  |

##### Payment dispute is not too complex to fairly determine

|  |
| --- |
|  |

|  |  |
| --- | --- |
|  | I have **attached** documents in support of the submissions made above  Yes  No (not applicable) |
|  | The attachment(s) is marked number(s) |

**SECTION 3 – MERITS OF THE PAYMENT CLAIM/ENTITLEMENT TO PAYMENT**

*In this section set out why you are entitled to payment under the construction contract.*

##### Entitlement

|  |
| --- |
|  |

##### Amount to be paid *(This should include any interest owed under the contract for late payment)*

|  |
| --- |
|  |

Rebuttal submissions (if applicable) *In this section set out reasons addressing the Respondent’s likely submissions as to why payment is not owed under the construction contract (e.g. workmanship/defects, practical completion not reached etc.)*

|  |
| --- |
|  |

|  |  |
| --- | --- |
|  | I have **attached** documents in support of the submissions made above  Yes  No (not applicable) |
|  | The attachment(s) is marked number(s) |

**SECTION 4 – COSTS OF THE ADJUDICATION**

*If applicable, set out why the Adjudicator should exercise their discretion under section 34(2) of the Act to apportion a greater share of the costs of the adjudication on the Respondent (e.g. the Respondent has acted frivolously or vexatiously in withholding payment)*

|  |
| --- |
|  |

**Application dated** **/****/**

|  |
| --- |
|  |
| Applicant/authorised representative |