If you have been served with an application for adjudication, you are a party to a payment dispute under the *Construction Contracts Act 2004* (the Act). As the Respondent you **must** reply in writing to the claim within 10 business days from the date of receiving the Application, otherwise the adjudication process will still continue and the Adjudicator will make a determination of the dispute without receiving your side of the story.

This template response to an application for adjudication has been prepared to assist you with preparing and serving a proper response. It is produced as **a guide only and is not a statutory document**. This template comprises two parts:

* **Part A:** contains the information that **must** **be included** in your response. Your response must contain certain prescribed information (**marked with an asterisk\***)
* **Part B:** contains information that may support your response and assist the Appointed Adjudicator to perform their task in determining the payment dispute. The Act requires that your response sets out the information and submissions upon which you rely.You may use Part B to help set out your submissions

If you require assistance completing your response, 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’s website at [www.dmirs.wa.gov.au](file:///C%3A%5CUsers%5Cdkearney%5CAppData%5CLocal%5CMicrosoft%5CWindows%5CTemporary%20Internet%20Files%5CContent.Outlook%5CYHCZQWZW%5Cwww.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 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 known) |       |

##### 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  |      *(e.g. lawyer)* |

##### Appointed Adjudicator

#### *Enter the details of the adjudicator appointed to determine the payment dispute.*

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

##### Or

##### 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.*

*It is a specific requirement under the Act that your response sets out the details of or has attached to it any rejection or dispute of the payment claim that has given rise to the dispute.*

##### Contract, claim, dispute details

|  |  |
| --- | --- |
| \*Notice of dispute/rejection issued | [ ]  Yes [ ]  No |

|  |  |
| --- | --- |
|  | I have **attached** a copy of the construction contract/extract  [ ]  Yes [ ]  No (not applicable) |
|  | The attachment is marked number       |

**SECTION 3 – SERVICE DETAILS**

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

* a copy of any response or notice of dispute issued by you in relation to the payment claim(s).
* a copy of any supporting submissions which outline further information that you would like the adjudicator to take into consideration in assessing your Response. **You can choose to use Part B of this form to help prepare supporting submissions.**

All supporting documentation should be attached to this template form and appropriately marked/numbered.

You must serve this Response to an Application for adjudication, together with any supporting documentation, on the Appointed Adjudicator and the Applicant.

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

Be aware that if the response to an application for adjudication is served more than 10 business days after the date specified for service, the adjudicator is not obliged to consider its contents and may continue to adjudicate the payment dispute.

**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 for adjudication*This is the date you received the Application for Adjudication* |  |
| Date of service of response on Appointed Adjudicator/Applicant *This is the date upon which you serve the Reponses on the Appointed Adjudicator/Applicant in accordance with the rules for service outlined above.* |  |

*Once the Response is served on the Applicant, forward any receipt or proof of Service to the Appointed Adjudicator (if known), or Prescribed Appointor. For example:*

* *if the Response is personally served, a record should be made of the date, time, place and persons upon whom the Response was serve; or*
* *if postal service is used to serve the Response, a record should be made concerning addressing, prepaying and posting the letter.*

## Part B – Supporting information and submissions

*The Act requires that the Response sets out or has attached to it all the information, documentation and submissions on which you rely on in making your Response. You may use this part of the form to assist in preparing supporting submissions.*

**SECTION 1 – BACKGROUND** *To assist the adjudicator in becoming informed of the background to the payment dispute so that they can make their determination, detail the facts that gave rise to the payment dispute (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 in section 32(2)(a) of the Act are not met. In other words, if certain requirements do not exist, the adjudicator will not have the power to determine the payment dispute and so will be required under the Act to dismiss the Application for adjudication.*

*You can use this section of the form to present arguments why you consider the Adjudicator does not have jthe power to determine the payment dispute*

*Only complete the fields relevant to your submissions.* ***Delete fields that are not relevant to your submissions****.*

For the reason’s set out below, the Adjudicator does not have the jurisdiction under section 32(2)(b) of the Act to determine the merits of the payment dispute the subject of the application for adjudication. The application for adjudication must be dismissed without determining the merits:

|  |
| --- |
|       |

Not a construction contract*(If you believe that the contract under which the payment dispute has arisen is not a construction contract, then set out why the contract does not meet the definition of ‘construction contract’ and ‘construction work’ in section 3 of the Act.)*

The contract between the Applicant and Respondent is a not a *construction contract* for the purposes of section 3 of the Act for the following reasons:

|  |
| --- |
|       |

Not a valid payment claim made under a construction contract *(If you believe that the payment claim is not a valid payment claim made under a construction contract, then set out why the progress claim or payment was not validly made under the contract)*

The payment claim is not a valid payment claim made under a construction contract for the following reasons:

|  |
| --- |
|       |

##### No payment dispute arose under a construction contract *(If you believe that the dispute the subject of the Application for adjudication is not a payment dispute that has arisen under a construction contract, then set out why the dispute is not a payment dispute)*

There is no payment dispute under a construction contract for the following reasons:

|  |
| --- |
|       |

##### Application not prepared and served in accordance with section 26(1) and (2)(b) and (c) *(If you believe that the Application for adjudication does not contain the information required by the Act or was not served within 90 business days of the payment dispute, then set out the reasons to support this argument)*

The application was not prepared or served (or both) in accordance with section 26(1) and (2)(b) and (c) of the Act for the following reasons:

|  |
| --- |
|       |

##### Payment dispute is not too complex to fairly determine *(If you believe that the Application for adjudication raises a payment dispute that is too complex to be fairly dealt with through the rapid adjudication process under the Act, then set out why the payment dispute is too complex to fairly determine).*

The payment dispute is too complex to fairly be determined by an adjudicator under the Act for the following reasons:

|  |
| --- |
|       |

|  |  |
| --- | --- |
|  | 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**

*Use this section to set out why if the Adjudicator does not dismiss the Application for the reasons set out in Section 2 of the form, the Adjudicator should find that the Applicant is not entitled to be paid the amount claimed under the contract.*

*The Adjudicator’s role is to determine on the balance of probabilities whether any party to the payment dispute is liable to make payment, or to return any security. In other words, the adjudicator will be asking themselves:*

* *In the case of a disputed payment claim - “is it more likely than not that the party claiming payment is entitled to receive payment?”; or*
* *In the case of a disputed return of any security – “is it more likely than not that the party seeking the return of security is entitled to the return of that security?”*

##### No entitlement to the amount claimed *(In this section set out reasons rebutting the Applicant’s submissions as to why payment is owed under the construction contract (e.g. workmanship/defects, practical completion not reached etc.)*

The Applicant is not entitled to be paid the payment claim(s) the subject of the Application for adjudication for the following reasons:

|  |
| --- |
|       |

##### Not entitled to quantum claimed/right to set-off *(In this section set out reasons rebutting the Applicant’s submissions as to why a particular quantum of money is claimed. For example, you may believe that you are entitled to exercise a right of set-off under your construction contract against the amount claimed.)*

The Applicant is not entitled to be paid the quantum/amount claimed in the payment claim(s) the subject of the Application for adjudication for the following reasons:

|  |
| --- |
|       |

|  |  |
| --- | --- |
|  | 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**

*The general rule when it comes to the costs of the adjudication is that the parties are jointly liable. This means the Applicant and the Respondent are both responsible in 50/50 shares for paying the adjudicator’s professional fees of carrying out the adjudication.*

*However, this general rule can be challenged under section 34(2) of the Act in the event that the adjudicator is satisfied that a party to the payment dispute incurred costs of the adjudication because of:*

* *frivolous or vexatious conduct; or*
* *by making unfounded submissions.*

*In those circumstances, the Adjudicator can decide that one party must pay a greater share of, or all, of the adjudicator’s fees.*

*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 Applicant.*

I believe that the Applicant has engaged in frivolous or vexatious conduct, or made unfounded submissions, for the following reasons:

|  |
| --- |
|       |

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

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