

# s97B(2) – PAYMENT WITHHOLDING REQUEST

## INFORMATION ABOUT THIS FORM

Section 97B of the *Building Industry Fairness (Security of Payment) Act 2017* provides that a claimant may use a payment withholding request to secure payment of an unpaid adjudicated amount.

This is only available when an adjudicator decides that a respondent is required to pay an adjudicated amount to a claimant and the respondent has not paid the adjudicated amount in full by the due date.

Note: Section 90 of the BIF Act requires payment of an adjudication amount within 5 business days after the respondent is given the adjudication decision or another date stated in the decision.

## COMPLETING AND GIVING A PAYMENT WITHHOLDING REQUEST

The claimant must complete and give this form to a higher party in order to make a new payment withholding request.

The claimant must give a copy of this form to the respondent at the same time that it is given to the higher party. Failure to give a copy to the respondent is an offence and may incur a penalty and make the payment withholding request void.

A claimant may request information from the respondent about the higher party for the relevant construction contract before they make a payment withholding request.

Further information is available at [www.qbcc.qld.gov.au/new-laws/changes-payment-laws](http://www.qbcc.qld.gov.au/new-laws/changes-payment-laws)

## WHO IS THE 'HIGHER PARTY'?

- If the claimant is a subcontractor— the person responsible for paying the respondent for the construction work (or supply of related goods and services) to which the adjudicated amount relates.
- If the claimant is a head contractor—the person who finances the construction work (or supply of related goods and services) to which the adjudicated amount relates. However, a payment withholding request cannot be given to the higher party that is a resident owner.

## WHAT MUST THE HIGHER PARTY DO AFTER RECEIVING THIS NOTICE?

This request requires the higher party to retain a sufficient amount to cover payment of the unpaid adjudication amount (as stated in item 5(C) of this form) out of an amount payable by the higher party to the respondent

If the unpaid adjudication amount is less than the amount owed by the higher party to the respondent, the higher party may pay the respondent the difference. If an amount equal to, or less than the unpaid adjudication amount is owed to the respondent, the higher party must withhold from the respondent the full amount owed.

## FOR EXAMPLE:

If the unpaid adjudication amount is \$55,000 but the amount payable to the respondent is only \$40,000, the higher party's obligation is to retain \$40,000.

If the unpaid adjudication amount is \$55,000 and the amount payable to the respondent is \$120,000, the higher party's obligation is to retain \$55,000. The higher party can pay the respondent the difference, being \$65,000.

The requirement to withhold the unpaid adjudication amount remains until the claimant is paid the adjudication amount. The higher party must be informed of payment by the claimant.

Amounts owed to the respondent for other projects that are not related to the adjudication amount may be paid as normal and are not subject to this payment withholding request.

Note: A person who is NOT the higher party for the unpaid adjudication amount must give the claimant a notice that they are not the higher party, within 5 business days of receiving the payment withholding request. A penalty applies for non-compliance with this requirement.

**WARNING: It is an offence for the higher party to fail to withhold an amount as required by a payment withholding request. The higher party will also become jointly and severally liable with the respondent for paying the adjudication amount to the claimant if they fail to respond as required.**



### 3. THE RESPONDENT FOR THIS REQUEST

Full name / Company name

ABN  ACN

QBCC lic no. (if applicable)

Business street address

State  Postcode

Business phone  Mobile

Email

### 4. THE RELATED CONTRACT FOR THIS REQUEST

Description of the project

Site address

State  Postcode

### 5. UNPAID ADJUDICATION AMOUNT DETAILS AND WITHHOLDING REQUEST

Adjudication application number

\*Adjudication decision date  /  /

#### DETAILS OF ADJUDICATION AMOUNT

Adjudicated amount as stated in decision	Amount paid by respondent, IF ANY	Unpaid adjudicated amount
(A) \$	(B) \$	(C) \$

