PROTECTING YOUR PAYMENT RIGHTS

December 2018
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From 17 December 2018, the Building Industry Fairness (Security of Payment) Act 2017 (BIF Act) commences to help protect your payment rights.

The BIF Act applies to payment claims given on or after 17 December 2018. Any payment claim served before 17 December 2018 will follow the Building and Construction Industry Payments Act 2004 (BCIPA) for the recovery of your payments.

The BIF Act replaces the BCIPA and Subcontractor’s Charges Act 1975 from 17 December 2018.
Do you do construction work in Queensland?
Are you a supplier of related goods and services to the construction industry in Queensland?

You deserve to get paid for the work you do and there is new legislation in place to help you!

This booklet is designed to support you in understanding and applying the security of payment legislation under the Building Industry Fairness (Security of Payment) Act 2017 (BIF Act). The BIF Act makes the payment dispute process of adjudication, faster and easier for you to get paid and resolve payment disputes.

The QBCC recommends all work be done under a contract. If you do not have a written contract or if your contract is silent on certain matters the BIF Act sets out default time frames that you can follow and provides avenues to recover your disputed monies or outstanding payments.

The BIF Act is not just limited to QBCC licensees. If you are an architect, engineer, off site manufacturer, electrician, soil tester, scaffoldor, earthmover, telecommunications installer, a supplier of related goods and services to the construction industry or even if you are laying an aircraft runway the BIF Act may be able to help you.

The BIF Act defines ‘construction work’ and ‘related goods and services’.

**CONSTRUCTION WORK**

As the construction, alteration, repair, restoration, maintenance, extension, demolition or dismantling of buildings or structures, whether permanent or not, roadworks, powerlines, telecommunication apparatus, aircraft runways, docks and harbours, railways, inland waterways, pipelines, reservoirs, water mains, wells, sewers, industrial plant and installations for land drainage or coast protection.

**RELATED GOODS AND SERVICES**

Related goods are goods that are used for construction work. This includes plant, materials (hired or otherwise) and components that form part of any building or structure.

Services are services arising from or for use in construction work. This includes labour to carry out construction work, architectural, design, surveying or quantity, soil testing.
1. CONTRACTS

CONTRACTS

It is recommended that you use a written contract for any building work. However, it is not uncommon in the building and construction industry for agreements for work or services to be made verbally and with a handshake. This is usually where a dispute arises because ‘verbal contracts’ make it difficult for you to prove what was agreed to and your entitlement to be paid.

A written contract should

- Outline the agreement clearly from the start
- Help protect your rights to payment and reduce the risk of non-payment, disputes and conflict.

Details to include in your contract that may assist should a payment dispute arise

- Have the name, contact details including licence numbers of both/all parties
- List the site address and provide a description of the work that is to be carried out
- List a start date and when the work is to be completed by
- Specify how much is to be paid for the work
- Detail timing of the payments such as how often a reference date will occur (if not listed the BIF Act default will apply)
- Other payment terms such as retentions and length of defects liability period (if not listed the defects liability period will default to 12 months as per the BIF Act)

CONTRACTS BETWEEN CONTRACTORS AND SUBCONTRACTORS

If you spend a little time preparing and reading over a contract, you could save yourself thousands of dollars and heartache later on:

- Read the fine print carefully don’t be afraid to seek legal advice before signing
- Make sure that you confirm all variations in writing as soon as possible before work begins on them. Verbal agreements and variations made should be confirmed in writing as soon as possible.
- Avoid verbal contracts. Keep copies of emails, quotes and specifications, even notes about the discussions you have had.

We recommend that written contracts are used for the following building work:

- head contracts;
- subcontracts;
- sub-subcontracts;
- subcontracts for domestic building work; and
- all contracts for commercial building work between developers, builders and subcontractors.

This also applies to contracts for building work between a contractor and an owner builder permit holder. Different requirements apply to contracts that are made directly with homeowners for domestic building work.

If you don’t put a contract in writing, or you enter into a contract that doesn’t contain the requirements stated in the QBCC Act, you commit an offence. We may prosecute or take disciplinary action and you could accrue demerit points.
2. PAYMENT CLAIMS

Before issuing a payment claim it is important to understand when the due date for your progress payment becomes payable.

The due date for payment is either the day specified under your contract or 10 business days after a payment claim is made.

WHAT IS A PAYMENT CLAIM

A payment claim (the claim you make for a ‘progress payment’ for your work) is a written request for payment. You give payment claims to an individual or a company that owes you money for the construction work or the related goods and services you have delivered under a construction contract.

A payment claim must be in writing and:

• identify the work or goods and services to which the claim relates, and

• state the amount owed, and

• request payment of the amount owed.

Your usual tax invoice may be considered a payment claim if it meets these requirements.

You can still issue payment claims for work you have completed without a contract.

It is important that your payment claim meets the requirements, even if you are using your usual tax invoice. Correctly issuing a payment claim under the BIF Act gives you access to the adjudication process if you ever need to address an overdue or disputed payment, including partial payment or failure to pay.

When you issue a payment claim, the person owing you the payment (the respondent) must give you a payment schedule or pay the claimed amount (in full) within the required response period (penalties may apply for not providing a payment schedule).

If you are still owed money from a previous payment claim, you may include that amount in your next payment claim if the payment is under the same contract.

WHAT TO INCLUDE IN YOUR PAYMENT CLAIM

A payment claim can include a claim for:

1. work carried up to the reference date and

2. outstanding payments from a previous payment claim

Note: If the contract requires other documents to be included with your claim such as stat dec, worksheets, it is important to include these to meet your contract requirements.

WHEN TO GIVE A PAYMENT CLAIM

You are entitled to give a payment claim for completed work or goods and services, starting from each reference date under the contract.

Only one payment claim can be given for each reference date.

REFERENCE DATES

The BIF Act sets out default reference dates which can be used if there is no written contract in place OR where the contracts is silent on a particular matter.

1. Progress payments or one-off payment claims must be given within six months of the date that the work was completed or good and services were supplied.

2. Final payment claims must be issued within the required timeframes. Whichever is the longer timeframe between the below two options, must apply.

   (a) within 28 days following the end of the last defects liability period

   (b) within six months of completing all construction work or supplying related goods and services under the contract.

3. The default reference date is the last day of each calendar month unless outlined in your contract.
You need to follow your contract for when you can make claim for payment.

If you have contract terms that specify on what days or dates you can make a payment claim, then you should follow these terms.

If you do not have a contract or your contract does not say when you can make a payment claim, section 67 of the BIF Act provides default reference dates. The default reference date is the last day of the month in which construction work was first carried out or goods and services supplied, and the last day of each following month.

**TERMINATION REFERENCE DATE**

If your contract is terminated and the contract includes a final reference date after termination, you must use this as your reference date.

The BIF Act stipulates that the final reference date is the date of termination if:

- your contract is terminated and it does not include a final reference date after termination, or
- your contract has a clause that stops you from making a final payment claim after termination.
3. PAYMENT SCHEDULES

WHAT IS A PAYMENT SCHEDULE?

When you are issued a payment claim you are required to either pay the claimed amount in full or issue a payment schedule within the time specified in your contract but no later than 15 business days after receiving a payment claim. A payment schedule is a written document that:

1. identifies a specific payment claim, and
2. states the amount you intend to pay, and
3. provides the reasons the amount is less, if the scheduled amount is less than the claimed amount.

INFORMATION FOR RESPONDENTS

If someone claims that you owe them money (the claimant) and you do not make payment or issue a payment schedule the claimant may take action against you. They may choose to pursue the debt via legal proceedings, subcontractors charges or adjudication, they may also take action to suspend work on site.

IMPORTANCE OF GIVING A PAYMENT SCHEDULE

You should never ignore a payment claim.

Failing to pay the amount in full by the due date or to give a payment schedule within the response period is an offence under the BIF Act. It is also grounds for taking disciplinary action under the QBCC Act if you hold a QBCC licence.

By not providing a payment schedule you forfeit your rights to dispute the amount claimed during the adjudication process. Under the BIF Act you cannot provide a response to an adjudicator if you do NOT provide a payment schedule. You also become liable to pay the amount in full and the other party may recover the money as a debt in court, apply for adjudication or start action to suspend work.

WHEN TO GIVE A PAYMENT SCHEDULE

There are three ways you can respond to a payment claim, you can:

1. Make payment in full by the due date

2. If you do not agree with the payment claim because:
   - you believe it is invalid;
   - you are making a partial payment; or
   - you are disputing the payment claim.
   You must respond with a payment schedule within 15 business days (from receiving the payment claim) or earlier if provided for in the contract.

   Failing to pay in full by the due date or give a payment schedule is an offence and QBCC may take disciplinary action. If the other party chooses to go to adjudication to dispute the payment, you will not have an opportunity during the adjudication process to provide a response.

3. You may choose to ignore the payment claim, however failing to respond is an offence and you may face disciplinary action. If the other party chooses to go to adjudication for the payment dispute you will not have an opportunity during the adjudication process to provide your response for non-payment. Failing to respond is an offence if you don’t make full payment of the claimed amount on or before the due date.
WHAT IS A PAYMENT DISPUTE - INFORMATION FOR CLAIMANTS

A payment dispute occurs when you give a payment claim but
• no payment schedule received in response or
• you do not receive payment by the due date or
• a payment schedule is received outlining an amount to be paid BUT payment is not made AND the due date for payment has passed or
• you receive a payment schedule with a lower dollar amount than shown in the payment claim.

WHAT IS A PAYMENT DISPUTE - INFORMATION FOR RESPONDENTS

A payment dispute occurs against you when you receive a payment claim but
• you do not give a payment schedule in response or
• you do not make payment by the due date or
• you give a payment schedule outlining an amount to be paid BUT do not make payment AND the due date for payment has passed or
• you give a payment schedule with a lower dollar amount than shown in the payment claim.

OPTIONS FOR RESOLVING A PAYMENT DISPUTE

The options for pursuing unpaid amounts include:
• QBCC monies owed complaint
• QCAT
• The Courts
• Subcontractors’ Charges
• Adjudication

The QBCC website has a list of advantages and disadvantages for each option to help you decide the best course of action for you. You should seek legal advice prior to commencing any actions through the above.
4. SUBCONTRACTORS’ CHARGES

Subcontractors’ charges provide a way for subcontractors to secure payment of amounts owed to them under a contract by someone who is higher in the contractual chain. It also potentially catches security held under such a contract.

You can’t use both subcontractors’ charges and adjudication, you need to pick one or the other. To claim a subcontractors’ charge over the money payable, you must issue a notice of claim form to start the process. It is advised that you seek legal advice prior to doing this.

A subcontractors’ charge will only attach if there is still money owing from the higher contractor to the contractor that owes you money.

WHO CAN USE SUBCONTRACTORS’ CHARGES

Any subcontractor who has been engaged to carry out work by a contractor. Work, under the Act, covers almost all types of construction work including:

- Unskilled labour;
- The placement, fixation or erection of materials, plant or equipment onsite; and
- Manufacture or fabrication of project specific components (including if that manufacture or fabrication occurs offsite).

However, it does not include work which is:

- Delivering materials, plant or equipment to a site;
- Supplying materials, plant or equipment under a hire agreement;
- If the work is done by an employee under a service contract (as opposed to a contractor); or
- Testing of materials or the taking of measurements or quantities.

USING A SUBCONTRACTORS’ CHARGE TO HELP SECURE MONEY OWED TO YOU

The following steps give you an indication of the process involved in securing money owed to you by way of a subcontractors’ charge. It is provided for general information only and is not a substitute for legal advice. It is necessary to strictly comply with the requirements of the BIF Act for it to be effective and it is therefore recommended that you seek the assistance of a suitably experienced lawyer before proceeding.

For ease of use the following guide will refer to the employer/principal/superior contractor as employer.

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**DIAGRAM 1: CHARGES COMPARISON**

**TRADITIONAL CHARGE**

**‘LEAP FROG’ CHARGE**
DETERMINING IF THE SUBCONTRACTORS’ CHARGE APPLIES TO YOUR SITUATION.

Make sure:

• you are a contractor for a contract who is required to carry out work under the contract;
• your contract is for ‘work’ as defined under section 105 of the BIF Act such as labour carried out in connection with construction, demolition, alteration, repair of a building, plant or machinery used for these types of work
• your claim for payment is in accordance with your subcontract;
• your claim is for payment for work done under your subcontract; and
• that you will be able to prove your entitlement to your claim.

Note: If the employer has already made payment to the contractor who owes you the money then subcontractors’ charges cannot be used, as this process is to freeze the money for you higher up the contractual chain.

GIVE NOTICE OF YOUR CLAIM OF CHARGE

If subcontractors’ charges applies to your situation then you can give a charge to secure money payable to you by the contractor. This is done by giving a notice to the employer to redirect money otherwise payable to the contractor to you. This charge can then be enforced in court. The notice can be given at any stage during a subcontract but no later than:

• For money owed under a contract or subcontract – within 3 months after completion of the works; and
• For retention monies – within 3 months of the expiration of the maintenance period.
• You can claim a charge on money payable to the contractor who owes you the money, or you can “leap frog” up the contractual chain and claim a charge on money payable to the employer.
• You can make a written request for certain information from the contractor, or if necessary the employer to enable you to complete your forms correctly. It is an offence for the contractor to NOT provide the information within 10 business days after the request is made, unless the contractor has a reasonable excuse. You can give a Notice of Claim form, even though the work is not completed or the time for payment hasn’t arrived.

WHAT ARE THE RISKS?

<table>
<thead>
<tr>
<th>SITUATION/SCENARIO</th>
<th>EXPLANATION</th>
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<tbody>
<tr>
<td>There is no money to be secured and no security</td>
<td>Only money that is payable to the contractor or security held under the relevant contract can be secured. Where there is no money payable and no available security, a subcontractor won’t have secured payment of the amounts owed to them, even though they have properly completed all steps required under chapter 4 of the BIF Act</td>
</tr>
<tr>
<td>There is not enough money secured to satisfy the charges of all subcontractors</td>
<td>If this is the case, the secured money will be shared between the subcontractors in proportion to their claims.</td>
</tr>
<tr>
<td>Caught on a technicality</td>
<td>Subcontractors’ charges is very technical and minor errors can result in a Notice of Claim being invalid. Assistance from a suitably experienced lawyer is recommended.</td>
</tr>
<tr>
<td>Strict time limits</td>
<td>The time limits in the subcontractors’ charges are strict, so do not delay in taking the necessary steps if you decide to claim a charge under the subcontractors’ charges, otherwise it may be too late.</td>
</tr>
<tr>
<td>SCA versus other options to secure payment</td>
<td>Giving a notice of claim under the subcontractors’ charges is an alternative to using adjudication to pursue your disputed payment. You should decide which approach is better suited to your circumstances and assistance from a suitably experienced lawyer may be of value in helping you to make that decision.</td>
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</tbody>
</table>
You MUST give it within the timeframes required by chapter 4 of the BIF Act

- within three months of completion, or
- if the claim of charge is for retention money only, within three months after the expiry of the defects liability period under the contract.
- Make sure you properly give your Notice of Claim form to the employer and to the contractor who owes you the money (or in the case of a ‘leap frog’ charge higher up the contractual chain, to the contractor to whom the money is payable).

RETAINING MONEY AND THE CONTRACTOR’S RESPONSE

Once you have properly given your Notice of Claim form, the employer is required to retain money that is, or that becomes, payable by them to the contractor to satisfy the claim. When the employer has received the notice, the contractor must give a Contractor’s Notice to the employer within 14 days, either accepting liability to pay, disputing the claim or accepting liability to pay another amount and otherwise dispute the claim.

When the contractor provides notice accepting liability, the employer will pay the amount to the subcontractor. If the contractor does not accept liability, a subcontractor must commence court proceedings within 1 month to enforce the charge.

It is possible at this time that, if the contractor accepts liability for your claim, the employer may be able to make payment of money that is otherwise payable to the contractor directly to you. However, this will only occur in circumstances where there is still sufficient money retained out of money otherwise payable to the contractor to satisfy all claims of charge from all subcontractors.

COMMENCING PROCEEDINGS TO ENFORCE THE NOTICE OF CLAIM

- You must commence court proceedings to enforce your charge within the timeframes required by the chapter 4 of the BIF Act - within one month of the Notice of Claim of Charge, unless it is a claim of charge in respect of your retention money, in which case within four months after the retention money becomes payable.
- A subcontractor (including one who misses the timeframe for commencing court proceedings to enforce their charge) might be able to ‘piggyback’ on proceedings commenced by another subcontractor.
5. ADJUDICATION

WHAT IS ADJUDICATION?

- Adjudication is a dispute resolution process intended to help resolve disagreements about a payment claim for a progress payment. It is a quick, cost-effective alternative to court.
- When parties are in dispute about an amount owed for construction work or provision of goods and services in relation to construction work the claimant can lodge an **adjudication application** to the Registrar. Once lodged, the Registrar will assign your application to an independent, appropriately qualified party (an adjudicator) to make a decision about the disputed payment claim. The adjudicators decision is enforceable in court.

WHO CAN USE ADJUDICATION?

Anyone who has carried out construction work or supplied related goods and services under a **construction contract** in Queensland can use the adjudication process to try to resolve a payment dispute.

WHEN THE ADJUDICATION PROCESS CANNOT BE USED

Under a construction contract, the adjudication process cannot be used in the following instances:

- When the contract forms part of a loan agreement, contract of guarantee or a contract of insurance
- When the contract is for domestic building work and the contract is with the resident owner of that property
- When the work payable under the contract is not calculated by reference to the value of work completed
- When you are an employee and the construction work is for your own purposes
- When the work or goods and services is supplied for a job outside of Queensland
- When you have already given a subcontractors’ charges Notice of Claim for the same work or related goods and services under the contract.

HOW AND WHEN TO APPLY FOR ADJUDICATION

You may apply for adjudication for a payment claim for construction work completed or goods and services supplied under the contract if:

- **Pathway 1** - you received a payment schedule but you do not agree with it.
- **Pathway 2** - you received a payment schedule but do not receive the full amount stated in the payment schedule and the payment due date has passed
- **Pathway 3** - you do not receive a payment schedule or full payment by the due date

These pathways are outlined in the flowchart on page 13.

APPLICATION REQUIREMENTS

An adjudication application:

- must be lodged using the approved Adjudication Application Form; and
- must be lodged within specific timeframes; and
- must identify the payment claim and the payment schedule (if received) to which it relates; and
- must be accompanied by the prescribed application fee; and should include relevant submissions.

A copy of the adjudication application, submissions and related documents must be given by the claimant to the respondent. This should be done as soon as possible after the application is lodged with the Registrar.

TIMEFRAMES FOR LODGING

There are specific timeframes that must be met for lodging an adjudication application. These timeframes differ dependent on which pathway has been followed.

- **Pathway 1**— within 30 business days of receiving the payment schedule.
- **Pathway 2**— 20 business days after the due date for payment.
- **Pathway 3** - 30 business days after the due date for payment or the last day for responding with a payment schedule (whichever is later).

An application must be lodged with the Registrar no later than 5pm on a business day.

An application lodged after 5pm Queensland time will be taken to be lodged on the next business day in accordance with the **Building Industry Fairness (Security of Payment) Regulation 2018**.

APPLICATION FEES

Please refer to the QBCC Website for the table of fees.
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**NOTE**: PROCESS WILL END AT ANY POINT IF WHOLE CLAIMED AMOUNT IS PAID. Claimant may withdraw application at any stage in the process.

**REFERENCE DATE**: Date claimant (you) can invoice for payment under the contract; or on/from the last day of the month when work was last done.

**BUSINESS DAYS DO NOT INCLUDE** • Date notice was served • National and regional public holidays • Weekends • 22 December to 10 January

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**GIVE PAYMENT CLAIM**
This would be your usual invoice given on a reference date

**RECEIVE PAYMENT SCHEDULE**
Within 15 business days* or the time set out in your contract

**PAYMENT DISPUTE OCCURS**

**PATHWAY 1**
Payment schedule issued, you don’t agree

**PATHWAY 2**
Payment schedule agreed to, but not paid

**PATHWAY 3**
No payment schedule received within 15 business days* and no payment

You can choose to suspend work. You must provide 2 business days* notice.

**LODGE ADJUDICATION APPLICATION**

**PATHWAY 1**
Within 30 business days* from receiving the payment schedule.

**PATHWAY 2**
20 business days* after the due date for payment.

**PATHWAY 3**
30 business days* after the due date for payment or 30 business days* after the end of the response period (whichever is later).

**ADJUDICATOR APPOINTED**
Within 4 business days* of application being lodged

**ADJUDICATION RESPONSE**

**STANDARD CLAIM**
(up to $750,000 excl. GST) within 7-10 business days* of application being lodged.

**COMPLEX CLAIM**
(over $750,000 excl. GST) within 12-15 business days* of application being lodged.

**NO PAYMENT SCHEDULE**
RESPONDENT CANNOT PROVIDE A RESPONSE

**ADJUDICATOR’S DECISION**
Within 10 business days* after either the response was received or could have been received.

**PAYMENT OF ADJUDICATED AMOUNT**
By the due date in the decision.

**END OF PROCESS IF DECISION NOT IN FAVOUR (NO ADJUDICATED AMOUNT)**

**NO PAYMENT RECEIVED**
Receive a copy of the adjudication certificate from Registrar. Register the decision as a judgment debt in court.

**END OF PROCESS**
6. ADJUDICATION APPLICATION GUIDE

Adjudicators find that a number of applications are outside of their jurisdiction; this means the adjudicator cannot make a decision on that application. It is crucial that you are careful in completing your application and submission.

There are three separate parts to an adjudication application.

<table>
<thead>
<tr>
<th>1. YOUR ADJUDICATION APPLICATION</th>
<th>Complete your adjudication application form taking care to complete each section in detail. When completing the application form</th>
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<td>• Use BLACK pen only and Print clearly in BLOCK LETTERS</td>
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<td>• DO NOT use correction fluid — any amendments should be crossed out and initialled</td>
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<td></td>
<td>• All items marked with an * asterisk must be completed before submitting.</td>
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<td></td>
<td>• Take particular care to correctly identify the business details of the respondent and the contract in dispute.</td>
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<td>• Please complete all details of the application where applicable</td>
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<tr>
<th>2. SUPPORTING DOCUMENTATION</th>
<th>Your supporting documentation may only include</th>
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<tbody>
<tr>
<td></td>
<td>• The payment claim to which the application relates;</td>
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<tr>
<td></td>
<td>• The contract to which the payment claim relates;</td>
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<tr>
<td></td>
<td>• A payment schedule given in response to the payment claim;</td>
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<tr>
<td></td>
<td>• If a party to the application gave the other party a document in support of the payment claim or the payment schedule was given to the other party</td>
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<td></td>
<td>• Contract related documents eg written agreement to variations, extension of time, program of work</td>
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<td>• An expert report about a matter to which the payment claim relates;</td>
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<td>• A statutory declaration about a matter which the payment claim relates.</td>
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<tr>
<th>3. YOUR SUPPORTING SUBMISSION</th>
<th>For claims $25,000 and under your submission;</th>
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<td>• must be no more than 10 pages and</td>
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<td>• if typed must be size 10 font or bigger with a margin of 2.54cm</td>
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<td>There is no restriction for claims over $25,000.</td>
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Although it is not required, it is important to include with your adjudication application your submission to prove your entitlement to claim.

The submission will assist the adjudicator to understand the detail of the project and the reasons why you have arrived at your position and they will consider this when making their decision. If there are no submissions, it may be hard for them to make a decision in your favour.

Make sure that your submission states facts rather than thoughts and feelings about the situation. You may find it helpful to step back from the situation and write the submission as if it was about someone else.
When drafting your adjudication application submission you may want to include information such as:

- **A summary background of the project** including the site details, site address, type of construction (e.g. bridge repair, shop renovation, building demolition), description of the work you are doing (e.g. supplying plaster sheeting for walls, scaffolding erection, architectural plans).

- **Information about the contract.** For example if the other party refuses to put details in writing, who supplied the contract, was legal advice sort on the contract prior to signing etc.

- **Outline any events** leading up to the Payment Claim in relation to the application such as verbal disagreements, lack of communication etc.

- **Explain how you have arrived at the valuation** of the works, goods or services and provide evidence to support your valuation such as contract and variation agreements, previous payments, pictures, emails, receipts for materials, reports etc.

- **Evidence why there is an entitlement to payment,** for example the contract terms, the work done, goods and services supplied etc. If you disagree with the reasons outlined in the payment schedule, outline the reason why you disagree.

- **Explain what documents you have supplied** along with your application, for claims of not more than $25,000 your submission may only be accompanied by these documents:
  - payment claim the application relates to,
  - construction contract
  - other supporting documents that relate to the contract such as variations or a program of work, payment schedule,
  - other supporting documents given at the time of the payment claim or payment schedule between the parties.
  - if you disagree with a statement made by the other side, identify the statement and explain clearly why you disagree.

If you are uncertain about your skills in preparing the submission seek expert advice from a lawyer or other trained person experienced in the field of payment disputes under the legislation

Take care to lodge your application within the timeframes. These timeframes differ dependent on which pathway has been followed. Please refer to the flowchart for the full overview.

<table>
<thead>
<tr>
<th>PATHWAY 1</th>
<th>Where a payment schedule was issued but you do not agree</th>
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<tr>
<td>Within 30 business days of receiving the payment schedule.</td>
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<tr>
<th>PATHWAY 2</th>
<th>Payment schedule agreed to, but not paid</th>
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<tr>
<td>20 business days after the due date for payment claim</td>
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<tr>
<th>PATHWAY 3</th>
<th>No payment schedule received within 15 days and no payment</th>
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<tr>
<td>30 business days after the due date for payment or the last day for responding with a payment schedule (whichever is later).</td>
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**HOW TO LODGE YOUR APPLICATION**

When you are ready to apply for adjudication, you can lodge your application using the [online Adjudication Application Form](#) and upload your submissions and supporting documents.

Alternatively, you can download a PDF version of the [Adjudication Application Form](#) and either lodge it in person at a QBCC office or send it to the Adjudication Registry via post or fax.

If lodging in person at a Regional Service Centre, please allow enough time for the application to be received by the Registrar. All applications should be lodged at a Regional Service Centre no later than 4:30 PM to be received by the Registrar on the same business day.

All applications lodged via post should also allow enough time. Please refer to the Australia Post Delivery Times for estimated time-frames. You should allow the maximum time-frame to avoid any invalid applications.

The form should be accompanied by your prescribed application fee and your supporting documentation. You should use only one of the below options to lodge your application.

**To lodge via post:** Adjudication Registry  
GPO Box 5099, Brisbane QLD 4001

**To lodge via fax:** (07) 3247 5762

**To lodge online:** [Adjudication application form](#)

**To lodge in person:** QBCC Office locations
INFORMATION FOR BOTH CLAIMANTS AND RESPONDENTS - ADJUDICATOR APPOINTMENT

Once received, the Registrar will refer your application to a registered adjudicator who will decide your application based on the submissions and documents received.

The Registrar is required to refer an application to an adjudicator within 4 business days of receiving the application in accordance with the Adjudicator Referral Policy.

The adjudicator will provide a ‘written notice of acceptance’ to you and the respondent. For claims over $25,000, the notice of acceptance will state the fee the adjudicator intends to charge and is to be agreed on by the parties.

FOR RESPONDENTS - ADJUDICATION RESPONSE

If you have adhered to the appropriate timeframe and provided a payment schedule in response to a payment claim, you may give the adjudicator a response to the adjudication application.

Your response:
• must be in writing
• must identify the adjudication application to which it relates
• may include relevant submissions
• must not include any new reasons for withholding payment (i.e. reasons that were not included in the original payment schedule).

For claims $25,000 and under your submission:
• must be no more than 10 pages and
• if typed must be size 10 font or bigger with a margin of 2.54cm

There is no restriction for claims over $25,000.

If you failed to give the claimant a payment schedule as required, you are not permitted to submit an adjudication response, if you do, it will not be considered as part of the application.

TIMEFRAMES FOR THE ADJUDICATION RESPONSE

For standard claims (up to $750,000), the response must be submitted:
• within 10 business days of receiving a copy of the adjudication application, or
• within 7 business days of receiving notice that the adjudicator accepts the application.

For complex claims (more than $750,000), the response must be submitted:
• within 15 business days of receiving a copy of the adjudication application, or
• within 12 business days of receiving notice that the adjudicator accepts the application.

For complex claims only, respondents may also apply to the adjudicator for a time extension of up to 15 business days if they need more time to respond.

Important: the respondent must give the claimant a copy of the adjudication response within 2 business days of submitting it to the adjudicator.

ADJUDICATION DECISION

When the adjudicator receives an application, the next step is for the adjudicator to decide whether they have jurisdiction to make a decision about the application and whether the application is frivolous or vexatious. They may request further information about a particular issue relating to the adjudication. It is important to comply with any requests for further submissions, within the time that the adjudicator specifies. If you do not meet the requests, the adjudicator may not consider your further submissions.

In making their decision, an adjudicator must decide:
• the amount owed by the respondent, if any (also known as the ‘adjudicated amount’)
• the date the amount, if any, is payable
• the rate of interest payable for the amount, if any.

The adjudicator is required to make a decision within specified timeframes as set out below.

An adjudicator’s decision must be given in writing. It must include the reasons for their decision, unless both parties have requested that the reasons are omitted.
INFORMATION FOR CLAIMANTS
If an adjudicator decides that a respondent is required to pay an adjudicated amount, the respondent must pay the amount to you within five business days of receiving a copy of the adjudicator’s decision or by the later date that the adjudicator has decided. Failure to pay an adjudicated amount on or before the due date is an offence. It may result in prosecution or disciplinary action.

If the respondent is a QBCC licensee you should lodge a monies owned complaint form for the QBCC to investigate, as it is an offence for licensees to not pay debts as and when they are due and risk suspension or cancellation of their licence.

INFORMATION FOR RESPONDENTS
If the adjudicator decides that you are required to pay an adjudicated amount, you MUST pay the amount to the claimant within 5 business days, unless the adjudicators decides a later date for payment.

The registrar will provide the claimant with an Adjudication Certificate of the decision and if you fail to pay all or any part of the adjudicated amount, the claimant may give written notice of their intention to suspend work and lodge the Adjudication Certificate as a judgment debt within the relevant court.

TIMEFRAMES FOR MAKING A DECISION
The timeframes for an adjudicator to make a decision are shown below.

- For standard claims (up to $750,000), the decision must be made within 10 business days of the response date.
- For complex claims (greater than $750,000), the decision must be made within 15 business days of the response date.

The response date is the day the adjudicator received the adjudication response from the respondent or the last day that the adjudication response could have been given. An adjudicator may request an extension of time to decide the application.

ADJUDICATOR FEES
The adjudicator will notify the parties the decision has been made and request payment of their fees and expenses. Once paid the adjudicator will release the decision to the parties. Both the claimant and respondent have equal responsibility for paying the adjudicator fees.

The adjudicator can decide how to divide the fee between the claimant and the respondent. To decide how much of the fee each party must pay, the adjudicator will consider:

- if the claimant or respondent applied or participated in the adjudication for improper (as per BIF Act) reason
- the adjudicator must consider the conduct of both parties in the lead up to and during the adjudication process, when deciding how to divide the fee between the claimant and respondent. Conduct could include whether the claimant or respondent has acted unreasonably or whether the respondent attempted to provide new reasons for withholding payment during adjudication.
- if the respondent included further non-payment reasoning that was not included in the payment schedule
- if the application was withdrawn
- what services the adjudicator provided in the adjudication process.

The maximum fees that the adjudicator can charge for deciding the application depend on the claimed amount and other factors such as the amount and complexity of the submissions.

FEES FOR CLAIMS UP TO $25,000 — MAXIMUM FEES AND EXPENSES (INCLUDING GST)
A full table of fees is listed on the QBCC website.

PAYMENT OF THE ADJUDICATED AMOUNT
If an adjudicator decides that a respondent is required to pay an adjudicated amount, they must pay the amount to the claimant including their share of the fees within five business days of receiving a copy of the adjudicator’s decision or by the later date that the adjudicator has decided. Failure to pay an adjudicated amount on or before the due date is an offence. It may result in prosecution or disciplinary action.

ADJUDICATION CERTIFICATE
The Registrar will provide the claimant with an adjudication certificate within 5 business days of the registry receiving the adjudicators decision.

If the respondent has failed to pay the adjudicated amount, you can apply to the courts to have the decision recognised as a judgment debt, the debt is not enforceable in the courts until the expiry of day 5 after the decision was given to the respondent or the due date if later than the 5 business days. You will need to lodge the adjudication certificate with the appropriate court to start this process. The adjudication certificate must be filed in the courts. You must include an affidavit that states whole or part of the adjudicated amount has not been paid at the time of filing the certificate. The QBCC has a template affidavit that you can use as a guide.

For decisions made prior to 17 December 2018 you will need to apply for an adjudication certificate by completing the Adjudication Certificate form and pay the fee.
8. ADJUDICATION — BCIPA

If you gave or had a payment claim given to you before the commencement of the Building Industry Fairness (Security of Payments) Act 2017 (BIF Act) on 17 December 2018, you will continue the adjudication process set out under the Building and Construction Industry Payments Act 2004 (BCIPA), until your matter is finalised. You can contact the QBCC on 13 93 33 if you need further assistance.

ADJUDICATION APPLICATION FORM

If you serve a payment claim before 17 December 2018 and have followed the BCIPA process, you will need to complete a BCIPA Adjudication Application Form.

Online
PDF

APPLICATION FEES

A full table of fees is listed on the QBCC website.

APPLICATION FOR AN ADJUDICATION CERTIFICATE FOR DECISIONS MADE UNDER THE BCIPA

Under the BCIPA adjudication process, you will need to request an adjudication certificate. You can request the certificate by completing a form called the Application for Adjudication Certificate form. When completed, you can return the form and the required fee by mail, fax, or hand-delivery at any QBCC office.

CLAIMED AMOUNT EXCLUDING GST | CERTIFICATE FEE
--- | ---
$25,000 or less | $55.40
$25,000 or more | $110.85

To lodge via post: Adjudication Registry
GPO Box 5099, Brisbane QLD 4001

To lodge via fax: (07) 3247 5762

To lodge online: BIF Act Complaints against an adjudicator form

COMPLAINTS

The Registrar does not have the power to review or overturn an adjudicator’s decision; this step must be taken in a court. If you wish to have a decision reviewed, it is recommended that you seek legal advice.

To complain about the conduct of an adjudicator please complete an Complaint against an adjudicator form and either lodge it in person at a QBCC office, or send it to the Adjudication Registry. The adjudicator Code of Conduct is found on the QBCC website.

If you would like to comment about the standard of service provided to you by our staff or have a suggestion on ways in which we can improve our service delivery to you, see our feedback page.

To lodge via post: Adjudication Registry
GPO Box 5099, Brisbane QLD 4001

To lodge via fax: (07) 3247 5762

To lodge online: Adjudication application form online
To lodge in person: QBCC Office locations
9. KEY TERMS

- **Due date for payment** - If a contract specifies the payment terms then the due date for payment will always be the payment terms under the contract. If the contract does not state when the due date for payment is, the Acts states that the time for payment will be 10 business days from the date the payment claim was served.

- **Payment claim** - Only one payment claim can be served per reference date. The claim must be a written document that:
  - Identifies the construction work or related goods and services to which the progress claim relates
  - States the amount of the progress payment that is payable by the respondent
  - May include an amount that was included in a previous payment claim.

- **Reference date** - The reference date is the date a claim for a progress payment may be made
  - Reference date is in the contract; or
  - If the contract is silent, the last day of the named month and last day of each subsequent month.
  - However, if a construction contract is terminated and the contract does not provide for a reference date, the reference date is the date the contract is terminated.

- **Response period** - for responding to a payment claim, is the earlier of the period stated in the contract for responding to a payment claim or paying in full by the due date or 15 business days after the day the payment claim is given to the respondent.
  - If a payment schedule is not given by the end of the response period, 100 penalty units may apply and QBCC may take disciplinary action.

- **Business days** - A business day is from 12.00am – 11.59pm.

- **Business days exclude:**
  - Weekends
  - Public holiday or special holiday in the place where the notice is to be given
  - Date notice was served
  - 22nd December - 10 January.

When counting business days the date that they serve a notice on a party is always day 0! Start counting the day after.

- **Claimant** – a person or company who is (or claims to be) owed money under a construction contract

- **Respondent** – a person or company who is (or may be) liable to make payment under a construction contract.

- **Construction work** - Section 65 of the BIF Act defines construction work as the construction, alteration, repair, restoration, maintenance, extension, demolition or dismantling of buildings or structures, whether permanent or not, roadworks, powerlines, telecommunication apparatus, aircraft runways, docks and harbours, railways, inland waterways, pipelines, reservoirs, water mains, wells, sewers, industrial plant and installations for land drainage or coast protection

- **Related goods and services** - Section 66 of the BIF Act defines
  - Related goods as goods arising from or for use in construction work – plant, materials (hired or otherwise) and components to form part of any building or structure.
  - Services as services arising from or for use in construction work - labour to carry out construction work, architectural, design, surveying or quantity, soil testing.
Need more information?
Visit qbcc.qld.gov.au or call us on 139 333.