



User guide

Giving a payment schedule

The Building Commissioner has published a template for a person (the respondent) wishing to respond after having been given a payment claim made under the *Building and Construction Industry (Security of Payment) Act 2021* (the Act).

This document provides guidance on using the template if you are the respondent.

The template is recommended, but not mandatory. A respondent may prepare and use their own template for giving a payment schedule under the Act, or alter the template provided.

The Department of Mines, Industry Regulation and Safety – Building and Energy Division (Building and Energy) cannot assist with filling out the template or completing it on your behalf.

If you are unsure how to prepare a payment schedule under the Act, refer to the information available on Building and Energy's website, or seek professional advice.

Overview

When a claimant has given a payment claim to the respondent, the respondent can either pay the amount claimed in full by the due date, or if the respondent does not agree with the claimed amount in whole or in part, give the claimant a payment schedule.

A payment schedule must be given within 15 business days after the payment claim had been made, or any shorter period agreed in the contract.

A business day is defined in the Act to mean a day other than –

- (a) a Saturday, Sunday or public holiday; or
- (b) any other day that falls between 22 December in any year and 10 January in the following year (inclusive).

For the purpose of counting business days, the day a document is given is business day 0.

The payment schedule is the opportunity for the respondent to formally respond to the payment claim and to set out its reasons as to why payment is being withheld.

Significant consequences may occur if a respondent does not give a payment schedule in response to a payment claim within the prescribed time and does not pay the claimed amount by the due date for payment.

The respondent could become liable to pay the full amount claimed by the due date for payment. The claimant is then able to recover the whole amount of its claim, and the respondent will be precluded from giving any reasons for withholding payment should the matter proceed to court or adjudication.

Equally, if the respondent does not pay the scheduled amount by the due date. The claimant can recover the scheduled amount owed through the courts or adjudication.

The three key elements for a valid payment schedule

A payment schedule must:

- identify the payment claim to which it relates;
- indicate the amount of payment (if any) that the respondent proposes to make; and
- indicate any reasons for withholding or not making payment.

New or additional reasons for withholding payment not allowed if not in payment schedule

If you intend to withhold or make no payment you should give careful thought as to why you have arrived at this view. For example, you may believe that:

- the claimed works are incomplete or defective;
- the amount claimed for various items is excessive;
- the claimed variations are not variations but work that falls within the claimant's original scope;
- the claimed value of a number of variations are excessive; or
- there is a right to deduct or set-off liquidated damages against the amount claimed, or an amount representing the estimated costs for rectification of defective workmanship.

Whatever your reason, you should set this out in the space provided in the template.

The Act does not permit you to raise new or additional reasons for withholding payment if the claimant decides to apply for adjudication and the adjudicator is not permitted to take into consideration any new or additional reasons when making a determination.

Payment schedule to properly identify name of claimant and respondent

Make sure that the payment schedule sets out the correct legal entity of the claimant and cross-check that the name corresponds to the name in the contract.

If the claimant's name is XYZ Pty Ltd trading as ABC Subcontracting, you will need to set out the claimant's full name (i.e. "XYZ Pty Ltd trading as ABC Subcontracting"), and not any abbreviated name such 'ABC Subcontracting'.

Also make sure that you correctly insert your own name and that that name corresponds to the name set out in the contract.

State the contract number and name of project

Set out in the space provided within the template the name of the project and, if the contract has a particular number, then the details as set out in the contract. This will link the payment schedule to the relevant contract and project subject of the payment claim.

Set out the scheduled amount, reasons and attachments.

The template provides space for you to set out how much of the claimed amount you intend to pay (the schedule amount) or if you intend to make no payment.

The template also provides space for you to list in an itemised manner the reasons for withholding payment and any elaboration on these reasons that you consider will better explain your reasons for withholding payment.

If you have additional itemised reasons for withholding payment that do not fit within the space provided in the template, simply write in the last available row 'see attached list of further reasons' and attach to the payment schedule these itemised reasons.

You can also specify and include any attachments that support the itemised list of reasons for withholding payment provided.

Examples of such attachments could include:

- copies of previous correspondence relating to any claimed items;
- photographs showing the claimant's works to be incomplete and/or defective; and
- extracts of drawings and sections of the technical specifications showing that the claimed items of work fell within the claimant's original scope.

The inclusion of such material may assist the claimant to further understand why the scheduled amount is less than the claimed amount and as to whether the claimant wishes to refer its payment claim to adjudication.

If you do specify relevant attachments in the template, remember to give them to the claimant.

Respondent's signature and date

Whilst the payment schedule is not required to be signed, doing so confirms the formal nature of the document. It is however important that you date the payment schedule.

Giving the payment schedule to the claimant

Finally, the Act requires that a payment schedule be given to the claimant.

If the contract stipulates a way of giving documents, such as to a particular person or email address, the payment schedule must be given to the claimant in that way.

If the contract does not stipulate a way of giving documents, the payment schedule can be given in a number of ways, including:

- delivering it to the claimant personally;
- leaving it at the claimant's ordinary place of business;
- sending it by post to the claimant's ordinary place of business; or
- emailing it to an address specified for giving documents under the contract.

If the claimant is a corporation, the payment schedule may also be served in accordance with the requirements of the *Corporations Act 2001 (Cth)*.

A payment schedule is not given until it is received by the claimant. It is therefore important that you keep a record of the time, date and manner in which the payment schedule is given to the claimant.

When items are sent by ordinary post they can be taken to be received anywhere between 3-7 business days after posting depending on the sending and receiving location .

One sure way of ensuring that the payment schedule has been received is to do this in person by courier with instruction to obtain a signed receipt or other evidence.

Building and Energy | Department of Mines, Industry Regulation and Safety
1300 489 099

8.30am – 4.30pm

Level 1 Mason Bird Building

303 Sevenoaks Street (entrance Grose Avenue)

Cannington Western Australia 6107

M: **Locked Bag 100, East Perth WA 6892**

W: www.dmirs.wa.gov.au/building-and-energy

E: be.info@dmirs.wa.gov.au

Regional Offices

Goldfields/Esperance (08) 9021 9494

Great Southern (08) 9842 8366

Kimberley (08) 9191 8400

Mid-West (08) 9920 9800

North-West (08) 9185 0900

South-West (08) 9722 2888

National Relay Service: 13 36 77

Translating and Interpreting Service (TIS): 13 14 50

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