

## Payment withholding Request

Following is the form of the *payment withholding request* approved by the Director-General of the Department of Services, Technology and Administration under s 26A(2) of the *Building and Construction Industry Security of Payment Act 1999* (NSW).

## Payment Withholding Request

*Payment withholding request, pursuant to Division 2A Building and Construction Industry Security of Payment Act 1999*

<b>Claimant:</b> (Provide trading name, company name, and ABN/ACN, as applicable)	[Trading Name]  [Company Name]  [ABN / ACN]
<b>Respondent:</b> (Provide trading name, company name, and ABN/ACN, as applicable)	[Trading Name]  [Company Name]  [ABN / ACN]
<b>Principal Contractor:</b> (Trading name, company name, and ABN/ACN, as applicable)	[Trading Name]  [Company Name]  [ABN / ACN]
<b>Amount claimed to be owed:</b>	[\$]
<b>Details of the work relating to the claim:</b> (sufficient information should be supplied to enable the person in receipt of this payment withholding request to determine whether it is the principal contractor)	      
<b>Details of the contract between respondent and principal contractor:</b> (sufficient information should be supplied to enable the person in receipt of this payment withholding request to determine whether it is the principal contractor)	      

**Statutory declaration of the claimant must be attached:**

<b>Made by:</b>	
<b>Date:</b>	

## **Important notices:**

### **Notice to principal contractor:**

If you are served with this request:

- You must within 10 business days after receiving the request notify the claimant if you are not (or are no longer) a principal contractor for the claim. If you do not penalties of up to \$550 apply.
- If you are served with this request, you must retain the amount of the claim specified above out of money owed to the respondent, (or if you owe less than the amount of the claim specified above, that lesser amount).
- You must hold the amount until whichever of the following happens:
  - (a) the adjudication application for the payment claim is withdrawn,
  - (b) the respondent pays to the claimant the amount claimed to be due under the payment claim,
  - (c) the claimant serves a notice of claim on the principal contractor for the purposes of section 6 of the *Contractors Debts Act 1997* in respect of the payment claim,
  - (d) a period of 20 business days elapses after a copy of the adjudicator's determination of the adjudication application is served on the principal contractor.
- If you retain the money as required, you will be protected, to the extent permitted by law, against claims from a respondent for non-payment.
- If you do not retain the money you may be held liable for the amount of the claim from the claimant.
- If you are unsure about your obligations you should seek legal advice.

### **Notice to claimants:**

- A payment withholding request must include a statement in writing by the claimant in the form of a statutory declaration declaring that the claimant genuinely believes that the amount of money claimed is owed by the respondent to the claimant.

#### **Note: Penalties for Making False Statutory Declarations**

The *Oaths Act 1900* provides serious penalties for the making of false statutory declarations, including imprisonment.

- You must notify the principal contractor in writing within 5 business days if you withdraw your adjudication application. Penalties of up to \$1100 may apply.
- If an adjudicator makes an adjudication determination you must serve a copy of the determination on the principal contractor within 5 business days. Penalties of up to \$550 may apply.