

NORTHERN TERRITORY OF AUSTRALIA

CONSTRUCTION CONTRACTS (SECURITY OF PAYMENTS) ACT 2004

As in force at 25 May 2024

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# NORTHERN TERRITORY OF AUSTRALIA

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As in force at 25 May 2024

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## CONSTRUCTION CONTRACTS (SECURITY OF PAYMENTS) ACT 2004

**An Act to secure payments under construction contracts and provide for the adjudication of disputes about payments under construction contracts, and for related purposes**

### **Part 1 Preliminary matters**

#### **Division 1 Introduction**

##### **1 Short title**

This Act may be cited as the *Construction Contracts (Security of Payments) Act 2004*.

##### **2 Commencement**

This Act comes into operation on the date, or respective dates, fixed by the Administrator by notice in the *Gazette*.

##### **3 Object and its achievement**

- (1) The object of this Act is to promote security of payments under construction contracts.
- (2) The object of this Act is to be achieved by:
  - (a) facilitating timely payments between the parties to construction contracts; and
  - (b) providing for the rapid resolution of payment disputes arising under construction contracts; and
  - (c) providing mechanisms for the rapid recovery of payments under construction contracts.

## Division 2 Interpretation

### 4 Definitions

In this Act:

**adjudication** means the adjudication of a payment dispute under Part 3.

**applicant**, for an adjudication, means the person who, under section 28, makes application for the adjudication.

**appointed adjudicator**, for a payment dispute, means the registered adjudicator who, having been appointed under Part 3 to adjudicate the dispute, has been served with the application for adjudication.

**civil works** includes:

- (a) a road, railway, tramway, aircraft runway, canal, waterway, harbour, port or marina; and
- (b) a line or cable for electricity or telecommunications; and
- (c) a pipeline for water, gas, oil, sewage or other material; and
- (d) a path, pavement, ramp, tunnel, slipway, dam, well, aqueduct, drain, levee, seawall or retaining wall; and
- (e) any works, apparatus, fittings, machinery or plant associated with any works mentioned in paragraph (a), (b), (c) or (d).

**contractor**, see section 5(1).

**construction contract**, see section 5.

**construction work**, see section 6.

**determination** means a determination made on an adjudication under Part 3 of the merits of a payment dispute.

**goods**, in relation to construction work, see section 7(1).

**high value construction contract**, see section 4A.

**obligations**, of a contractor under a construction contract, means the obligations mentioned in section 5(1) the contractor has under the contract.

**on-site services**, in relation to construction work, see section 7(3).

**party**, to an adjudication, means the applicant and any person on whom an application for the adjudication is served.

**payment claim**, see section 7A.

**payment dispute**, see section 8.

**prescribed appointer** means a person prescribed as such by the Regulations.

**principal**, for a construction contract, means the party to whom the contractor is bound under the contract.

**professional services**, in relation to construction work, see section 7(2).

**registered adjudicator** means an individual registered as such under section 52.

**Registrar** means the Construction Contracts Registrar appointed under section 49.

**Regulations** means the Regulations made under this Act.

**site in the Territory** means a site in the Territory, whether on land or off-shore.

**working day** means a day other than:

- (a) a Saturday or a Sunday; or
- (b) a day that is a public holiday in the place in which any relevant act is to be done or may be done (other than a public holiday that is part of a day); or
- (c) a day in the period beginning on 25 December in a year and ending on 7 January in the following year.

*Note for section 4*

*The Interpretation Act 1978 contains definitions and other provisions that may be relevant to this Act.*

#### **4A Meaning of high value construction contract**

A **high value construction contract** means a construction contract under which the amount payable for construction work is equal to or greater than the amount prescribed by regulation.

## **5 Construction contract**

- (1) A construction contract is a contract (whether or not in writing) under which a person (the **contractor**) has one or more of the following obligations:
- (a) to carry out construction work;
  - (b) to supply to the site where construction work is being carried out any goods that are related to construction work;
  - (c) to provide, on or off the site where construction work is being carried out, professional services that are related to the construction work;
  - (d) to provide, on the site where construction work is being carried out, on-site services that are related to the construction work.
- (1A) A contract remains a construction contract for this Act even if the contract has expired or has been terminated.
- (2) In Part 3, a construction contract includes:
- (a) a contract modified under section 13; and
  - (b) a contract in which a provision is implied under Part 2, Division 2.

## **6 Construction work**

- (1) Construction work is any of the following work on a site in the Territory:
- (a) reclaiming land, draining land or preventing the subsidence, movement or erosion of land;
  - (b) installing, altering, repairing, restoring, maintaining, extending, dismantling, demolishing or removing any works, apparatus, fittings, machinery or plant associated with any work mentioned in paragraph (a);
  - (c) constructing the whole or a part of any civil works, or a building or structure, that forms or will form (whether permanently or not and whether or not in the Territory), part of land or the seabed (whether above or below it);



- (d) fixing or installing on or in anything mentioned in paragraph (c) any fittings forming, or to form, (whether or not permanently) part of the thing, including:
    - (i) fittings for electricity, gas, water, fuel oil, air, sanitation, irrigation, telecommunications, air-conditioning, heating, ventilation, fire protection, cleaning, the security of the thing or the safety of people; and
    - (ii) lifts, escalators, insulation, furniture or furnishings;
  - (e) altering, repairing, restoring, maintaining, extending, dismantling, demolishing or removing anything mentioned in paragraph (c) or any fittings described in paragraph (d) that form part of the thing;
  - (f) any work that is preparatory to, necessary for, an integral part of or for the completion of any work mentioned in paragraph (a), (b), (c), (d) or (e), including:
    - (i) site or earthworks, excavating, earthmoving, tunnelling or boring; and
    - (ii) laying foundations; and
    - (iii) erecting, maintaining or dismantling temporary works, a temporary building or a temporary structure, including a crane or other lifting equipment and scaffolding; and
    - (iv) cleaning, painting, decorating or treating any surface; and
    - (v) site restoration or landscaping;
  - (g) any work that is prescribed by the Regulations to be construction work for this Act.
- (2) However, construction work does not include any of the following work on a site in the Territory:
- (a) drilling for the purposes of discovering or extracting oil or natural gas, whether or not on land;
  - (b) constructing a shaft, pit or quarry, or drilling, for the purposes of discovering or extracting any mineral bearing or other substance;
  - (d) work prescribed by the Regulations not to be construction work for this Act.

- (3) In addition, construction work does not include constructing the whole or part of any watercraft.

## **7 Goods and services related to construction work**

- (1) Goods are related to construction work if they are:
- (a) materials or components (whether or not pre-fabricated) that will form part of anything mentioned in section 6(1)(b) or (c) or of any fittings mentioned in section 6(1)(d); or
  - (b) any fittings mentioned in section 6(1)(d) (whether or not pre-fabricated); or
  - (c) plant or materials (whether supplied by sale, hire or otherwise) for use in connection with the carrying out of the construction work at the site of the construction work; or
  - (d) goods prescribed by the Regulations to be goods related to construction work for this Act.
- (2) Professional services are related to construction work if they are:
- (a) services that are provided by a profession and that relate directly to construction work or to assessing its feasibility (whether or not it proceeds), including surveying, planning, costing, testing, architectural, design, plan drafting, engineering, quantity surveying and project management services, but not including accounting, financial or legal services; or
  - (b) services that are provided by a profession that are prescribed by the Regulations to be professional services related to construction work for this Act.
- (3) On-site services are related to construction work if they are services (other than professional services):
- (a) that relate directly to construction work, including providing labour to carry out construction work; or
  - (b) prescribed by the Regulations to be on-site services related to construction work for this Act.
- (4) The Regulations may prescribe goods, professional services or on-site services that are not related to construction work for this Act.

## **7A Meaning of *payment claim***

- (1) A ***payment claim*** means a claim made under a construction contract:
- (a) by the contractor to the principal for payment of an amount in relation to the performance by the contractor of its obligations under the contract; or
  - (b) by the principal to the contractor for payment of an amount in relation to the performance or non-performance by the contractor of its obligations under the contract; or
  - (c) for a construction contract mentioned in section 5(1A) that has expired or been terminated – by the contractor to the principal for payment of an amount in relation to an accrued right for the contract; or
  - (d) for a construction contract mentioned in section 5(1A) that has expired or been terminated – by the principal to the contractor for payment of an amount in relation to an accrued right for the contract.
- (2) A payment claim may include a matter:
- (a) that was included in a previous payment claim; and
  - (b) that has not been the subject of a determination under section 33(1)(b).

### *Examples for subsection (2)*

- 1 *An amount that was included in a previous payment claim but was not dealt with at that time.*
- 2 *An amount that was included in a previous claim, but that has been subsumed into a later claim (such as a rolling claim).*
- 3 *An amount that was included in a claim that was not dealt with substantively because of procedural non-compliance.*

## **8 Payment dispute**

A payment dispute arises if:

- (a) a payment claim has been made under a contract and either:
  - (i) the claim has been rejected or wholly or partly disputed; or
  - (ii) when the amount claimed is due to be paid, the amount has not been paid in full; or

- (b) when an amount retained by a party under the contract is due to be paid under the contract, the amount has not been paid; or
- (c) when any security held by a party under the contract is due to be returned under the contract, the security has not been returned.

### **Division 3 Operation of Act**

#### **9 Construction contracts to which this Act applies**

- (1) This Act applies to a construction contract entered into after the commencement of this section.
- (2) This Act applies to a construction contract:
  - (a) irrespective of whether it is written or oral or partly written and partly oral; and
  - (b) irrespective of where it is entered into; and
  - (c) irrespective of whether it is expressed to be governed by the law of a place other than the Territory.
- (3) This Act does not apply to a construction contract to the extent to which it contains provisions under which a party is bound to carry out construction work, or to supply goods or services that are related to construction work, as a prescribed employee of the party for whom the work is to be carried out or to whom the goods or services are to be supplied.
- (4) This Act, or a provision of this Act, does not apply to a construction contract, or a class of construction contracts, prescribed by the Regulations as a contract or class of contracts to which this Act, or that provision, does not apply.
- (5) In this section:

**prescribed employee** means an employee subject to an award or a certified agreement made under the *Fair Work Act 2009* (Cth).

#### **10 No contracting out**

- (1) Subject to section 10A, a provision in an agreement or arrangement (whether a construction contract or not and whether in writing or not) that purports to exclude, modify or restrict the operation of this Act has no effect.

- (2) A provision in an agreement or arrangement that has no effect because of subsection (1) does not prejudice or affect the operation of other provisions of the agreement or arrangement.
- (3) Any purported waiver (whether in a construction contract or not and whether or not in writing) of an entitlement under this Act has no effect.

#### **10A High value construction contract may contract out**

- (1) Despite section 10, the parties to a high value construction contract may agree to have payment disputes adjudicated other than under Part 3 if:
  - (a) the agreement is a term of the high value construction contract; and
  - (b) the contract contains a dispute resolution mechanism in accordance with the Regulations.
- (2) However, the agreement does not apply in relation to a contract entered into before the commencement unless:
  - (a) when the contract was entered into, it contained a dispute resolution mechanism that satisfies subsection (1)(b) as if the Regulations had commenced; and
  - (b) the parties expressly agree in writing after the commencement that the dispute resolution mechanism is to apply.
- (3) If a high value construction contract contains a dispute resolution mechanism mentioned in subsection (1)(b), Part 3 does not apply.
- (4) In this section:

**commencement** means the commencement of section 10 of the *Construction Contracts (Security of Payments) Legislation Amendment Act 2019*.

#### **11 Act binds Crown**

This Act binds the Crown in right of the Territory and, to the extent the legislative power of the Legislative Assembly permits, the Crown in all its other capacities.

**11A Interaction with *Community Justice Centre Act 2005***

The operation of this Act is subject to Part 4 of the *Community Justice Centre Act 2005*.

*Note for section 11A:*

*Part 4 of the Community Justice Centre Act 2005 provides for the Director of the Community Justice Centre to be treated as a prescribed appointer for this Act. That Part also creates exceptions to some of the rules in this Act.*

**Part 2 Prohibited and implied provisions of construction contracts**

**Division 1 Prohibited provisions**

**12 Pay if paid and pay when paid provisions**

A provision in a construction contract has no effect if it purports to make the liability of a party (**party A**) to pay an amount under the contract to another party contingent (whether directly or indirectly) on party A being paid an amount by another person (whether or not a party).

**13 Provisions requiring payment to be made after 30 working days**

A provision in a construction contract that purports to require a payment to be made more than 30 working days after the payment is claimed must be read as being amended to require the payment to be made within 30 working days after it is claimed.

**14 Prescribed provisions**

A provision in a construction contract has no effect if it is a provision that is prescribed by the Regulations to be a prohibited provision.

**15 Other provisions of contract not affected**

A provision in a construction contract that has no effect because of section 12 or 14 or that is modified under section 13 does not prejudice or affect the operation of other provisions of the contract.

## **Division 2      Implied provisions**

### **16      Variations of contractual obligations**

The provisions in Schedule 1, Division 1 are implied in a construction contract that does not have a written provision about variations of the contractor's obligations under the contract.

### **17      Contractor's entitlement to be paid**

The provisions in Schedule 1, Division 2 are implied in a construction contract that does not have a written provision about the amount, or a way of determining the amount, that the contractor is entitled to be paid for the obligations the contractor performs.

### **18      Contractor's entitlement to claim progress payments**

The provisions in Schedule 1, Division 3 are implied in a construction contract that does not have a written provision about whether or not the contractor is able to make a claim to the principal for a progress payment for the obligations under the contract the contractor has performed.

### **19      Making payment claims**

The provisions in Schedule 1, Division 4 are implied in a construction contract that does not have a written provision about how a party must make a claim to another party for payment.

### **20      Responding to payment claims and time for payment**

The provisions in Schedule 1, Division 5 about the following matters are implied in a construction contract that does not have a written provision about the matter:

- (a) when and how a party must respond to a payment claim made by another party;
- (b) by when a payment must be made.

### **21      Interest on overdue payments**

The provisions in Schedule 1, Division 6 are implied in a construction contract that does not have a written provision about interest to be paid on any payment that is not made at the time required by the contract.

## **22            Ownership of goods**

The provisions in Schedule 1, Division 7 are implied in a construction contract that does not have a written provision about when the ownership of goods passes from the contractor for goods that are:

- (a) related to construction work; and
- (b) supplied to the site of the construction work by the contractor under its obligations under the contract.

## **23            Duties as to unfixed goods on insolvency**

The provisions in Schedule 1, Division 8 are implied in a construction contract that does not have a written provision about what must happen to unfixed goods of a kind mentioned in section 22 if either of the following persons becomes insolvent:

- (a) the principal;
- (b) a person for whom, directly or indirectly, the principal is performing construction work or to whom, directly or indirectly, the principal is supplying goods or services that are related to construction work.

## **24            Retention money**

The provisions in Schedule 1, Division 9 are implied in a construction contract that does not have a written provision about the status of an amount retained by the principal for the performance by the contractor of its obligations under the contract.

## **25            Interpretation of implied provisions**

The *Interpretation Act 1978* and sections 4 to 8 of this Act apply to the interpretation of a provision that is implied in a construction contract under this Part despite any provision in a construction contract to the contrary.

# **Part 3            Adjudication of disputes**

## **Division 1        Object of adjudication**

### **26            Object**

The object of an adjudication of a payment dispute is to determine the dispute fairly and as rapidly, informally and inexpensively as possible.



## **Division 2 Starting adjudication**

### **27 Who can apply for adjudication**

If a payment dispute arises under a construction contract, any party to the contract may apply to have the dispute adjudicated under this Part unless:

- (a) the matter has already been the subject of a valid determination; or
- (b) the dispute is the subject of an order, judgment or other finding by an arbitrator or other person or a court or other body dealing with a matter arising under the contract.

### **28 Applying for adjudication**

- (1) To apply to have a payment dispute adjudicated, a party to the contract must, within 65 working days after the dispute arises or, if applicable, within the period provided for by section 39(2)(b):

- (a) prepare a written application for adjudication; and
- (b) serve it on each other party to the contract; and
- (c) serve it on:
  - (i) if the parties to the contract have appointed a registered adjudicator and that adjudicator consents – the adjudicator; or
  - (ii) if the parties to the contract have appointed a prescribed appointer – the appointer; or
  - (iii) otherwise – a prescribed appointer chosen by the party; and
- (d) provide any deposit or security for the costs of the adjudication that the adjudicator or prescribed appointer requires under section 46(7) or (8).

- (2) The application must:

- (a) be prepared in accordance with, and contain the information prescribed by, the Regulations; and
- (b) state the details of or have attached to it:
  - (i) the construction contract involved or relevant extracts of it; and

- (ii) any payment claim that has given rise to the payment dispute; and
  - (c) state or have attached to it all the information, documents and submissions on which the party making it relies in the adjudication.
- (3) The first day of the time period mentioned in subsection (1) is the day after the payment dispute arises, as set out in section 8.

### **28A Withdrawing an application for adjudication**

- (1) If a party has applied for adjudication of a dispute under section 28(1), the party may withdraw the application before an adjudicator has been appointed by giving written notice to:
  - (a) the prescribed appointer served with the application under section 28(1)(c)(ii) or (iii); and
  - (b) each other party to the contract.
- (2) If an adjudicator has been appointed, the party may withdraw the application by giving written notice to:
  - (a) the adjudicator; and
  - (b) each other party to the contract.
- (3) However, the adjudicator must refuse the withdrawal if:
  - (a) a party to the contract objects to the withdrawal; and
  - (b) in the opinion of the adjudicator, the party objecting to the withdrawal has a legitimate interest in obtaining a determination of the application.

### **29 Responding to application for adjudication**

- (1) Within 15 working days after the date on which a party to a construction contract is served with an application for adjudication, the party must prepare a written response to the application and serve it on:
  - (a) the applicant and on any other party that has been served with the application; and
  - (b) the appointed adjudicator or, if there is no appointed adjudicator, on the prescribed appointer on which the application was served under section 28(1)(c).

- (2) The response must:
- (a) be prepared in accordance with, and contain the information prescribed by, the Regulations; and
  - (b) state the details of, or have attached to it, any rejection or dispute of the payment claim that has given rise to the dispute; and
  - (c) state or have attached to it all the information, documents and submissions on which the party making it relies in the adjudication.
- (3) However, in the response, the party responding to the application for adjudication is not required to provide information or documents that have already been provided by the applicant in the application.

**30 Appointment of adjudicator in absence of agreed appointment**

- (1) If an application for adjudication is served on a prescribed appointer, the appointer must, within 5 working days after being served:
- (a) appoint a registered adjudicator to adjudicate the payment dispute concerned; and
  - (b) send the application and any response received by it to the adjudicator; and
  - (c) give written notice to the parties and Registrar accordingly.
- (1A) Within 2 working days of being served with an application for adjudication and before appointing a registered adjudicator in accordance with subsection (1)(a), the prescribed appointer may consult with the parties about the qualifications that are required for the person who will be appointed as adjudicator.

*Note for subsection (1A)*

*The period mentioned in subsection (1) applies regardless of whether the prescribed appointer consults with the parties under this subsection.*

- (2) If a prescribed appointer does not make an appointment under subsection (1), the Registrar may appoint a registered adjudicator to adjudicate the payment dispute concerned.

- (3) If the Registrar makes an appointment under subsection (2), the Registrar must:
  - (a) give written notice to the prescribed appointer accordingly and require the appointer to serve the application and any response received by it on the adjudicator appointed by the Registrar; and
  - (b) give written notice to the parties accordingly.
- (4) If satisfied that the appointed adjudicator is unable, for any reason, to perform an adjudication, the prescribed appointer or the Registrar (whichever appointed the adjudicator) may appoint a substitute adjudicator at any time before a determination is made.

**31 Disqualification of adjudicator on grounds of conflict of interest**

- (1) An appointed adjudicator is disqualified from adjudicating the dispute if the adjudicator has a material personal interest in:
  - (a) the payment dispute concerned; or
  - (b) the construction contract under which the dispute has arisen; or
  - (c) any party to the contract.
- (2) If an appointed adjudicator is disqualified, the adjudicator must give written notice to the parties and Registrar of the disqualification and the reasons for it.
- (3) A party to a payment dispute may apply to the Registrar for, and the Registrar may make, a declaration that the appointed adjudicator is disqualified under subsection (1) from adjudicating the dispute.
- (4) The application must be made before the person is notified of a decision or determination made under section 33(1).
- (5) If the Registrar makes the declaration sought, the Registrar must give written notice to the adjudicator and the parties of the declaration.
- (6) If a notice (a **disqualification notice**) is given by or to an appointed adjudicator under subsection (2) or (5), the adjudicator's appointment ends 5 working days after the date of the disqualification notice unless, before the end of that period, each party gives the adjudicator written authority to continue as the appointed adjudicator.

- (6A) If the appointment of an appointed adjudicator ends under subsection (6):
- (a) the applicant may make a further application for adjudication under section 28; and
  - (b) in calculating the period within which the application may be made, the period from the date on which the previous application was served under section 28(1)(c) to the date on which the appointment ends is not counted.
- (6B) However if, as calculated under subsection (6A)(b), the applicant does not have at least 10 working days to make the further application, the further application may be made within 10 working days after the date on which the appointment ends.
- (7) If the Registrar refuses to make the declaration sought, the Registrar must give written notice to the adjudicator and the parties of the refusal.

### **Division 3 Adjudication process**

#### **33 Adjudicator's functions**

- (1) An appointed adjudicator must, within the prescribed time or any extension of it under section 34(3)(a):
- (a) dismiss the application without making a determination of its merits if:
    - (i) the contract concerned is not a construction contract; or
    - (ii) the application has not been prepared and served in accordance with section 28; or
    - (iia) the dispute that is the subject of the application is also the subject of another application that has not been dismissed or determined; or
    - (iii) an arbitrator or other person or a court or other body dealing with a matter arising under a construction contract makes an order, judgment or other finding about the dispute that is the subject of the application; or
    - (iv) satisfied it is not possible to fairly make a determination:
      - (A) because of the complexity of the matter; or
      - (B) because the prescribed time or any extension of it is not sufficient for another reason; or

- (b) otherwise – determine on the balance of probabilities whether any party to the payment dispute is liable to make a payment or to return any security and, if so, determine:
  - (i) the amount to be paid, or security to be returned, and any interest payable on it under section 35; and
  - (ii) the date on or before which the amount must be paid or the security must be returned.
- (1A) Despite subsection (1)(a), the appointed adjudicator may proceed to determine an application that contains technical deficiencies if those deficiencies do not affect the merits of the application, and the Act has been substantially complied with.
- (1B) If the construction contract provides for liquidated damages, an amount determined under subsection (1)(b) to be payable may include an amount assessed as liquidated damages.
- (2) If the application is not dismissed or determined under subsection (1) within the prescribed time, or any extension of it under subsection (2B) or section 34(3)(a), the application is taken to be dismissed when the time ends.
- (2A) Despite subsection (2), an application is not taken to be dismissed when the time ends if proceedings have been commenced in the Supreme Court in relation to the matter the subject of the application.
- (2B) The appointed adjudicator may, without the consent of the parties, extend the prescribed time by an additional 5 working days if the adjudicator is satisfied an extension of time is necessary to ensure procedural fairness in the making of a determination.

*Note for subsection (2B)*

*This subsection does not affect the ability of an appointed adjudicator to extend time under section 34(3)(a).*

- (3) In this section:

**prescribed time** means:

- (a) if the appointed adjudicator is served with a response under section 29(1) – 10 working days after the date of the service of the response; or
- (b) otherwise – 10 working days after the last date on which a response is required to be served under section 29(1).

### **34 Adjudication procedure**

- (1) For making a determination, an appointed adjudicator:
  - (a) must act informally and if possible make the determination on the basis of:
    - (i) the application and its attachments; and
    - (ii) if a response has been prepared and served in accordance with section 29, the response and its attachments; and
  - (b) is not bound by the rules of evidence and may inform himself or herself in any way the adjudicator considers appropriate.
- (2) In order to obtain sufficient information to make a determination, an appointed adjudicator may:
  - (a) request a party to make a, or a further, written submission or to provide information or documents, and may set a deadline for doing so; or
  - (b) request the parties to attend a conference with the adjudicator; or
  - (c) unless all the parties object:
    - (i) inspect any work or thing to which the payment dispute relates, provided the occupier of any place concerned consents to the entry and inspection; or
    - (ii) arrange for anything to which the payment dispute relates to be tested, provided the owner of the thing consents to the testing; or
    - (iii) engage an expert to investigate and report on any matter relevant to the payment dispute.
- (3) An appointed adjudicator may do any of the following:
  - (a) with the Registrar's consent, extend the time for making a determination under section 33(1);
  - (b) if it will not adversely affect the ability of the adjudicator to adjudicate the payment disputes – adjudicate simultaneously 2 or more payment disputes between the same parties;

- (c) if it will not adversely affect the ability of the adjudicator to adjudicate the payment disputes – adjudicate the payment dispute simultaneously with another payment dispute between different parties.
- (4) If an appointed adjudicator adjudicates simultaneously 2 or more payment disputes, the adjudicator may, in adjudicating one, take into account information or documents the adjudicator receives in relation to the other and vice versa.
- (5) An adjudicator's power to make a determination is not affected by the failure of either or both of the parties to make a submission or provide information or documents within time or to comply with the adjudicator's request to attend a conference with the adjudicator.
- (6) To the extent that the practice and procedure in relation to adjudications is not regulated by this Part or the Regulations, an appointed adjudicator may determine the adjudicator's own procedure.

### **35 Interest until determination**

- (1) If an appointed adjudicator determines that a party to a payment dispute is liable to make a payment, the adjudicator may also determine that interest must be paid on:
  - (a) if the payment is overdue under the construction contract – the payment in accordance with the contract; or
  - (b) otherwise – the whole or a part of the payment from the date the payment dispute arose at a rate not greater than the rate prescribed by the Regulations until and including the date of the determination.
- (2) Subsection (1) does not authorise the awarding of interest on interest.

### **36 Costs of parties to payment disputes**

- (1) The parties to a payment dispute bear their own costs in relation to an adjudication of the dispute (including the costs the parties are liable to pay under section 46).
- (2) However, if an appointed adjudicator is satisfied a party to a payment dispute incurred costs of the adjudication because of frivolous or vexatious conduct on the part of, or unfounded submissions by, another party, the adjudicator may decide that the other party must pay some or all of those costs.



- (3) If an appointed adjudicator makes a decision under subsection (2), the adjudicator must:
  - (a) decide the amount of the costs and the date on which the amount is payable; and
  - (b) give written notice of the decisions and the reasons for them to the parties.
- (4) Divisions 4 and 5 apply (with the necessary changes) to a decision made under subsection (2) as if it were a determination of an appointed adjudicator.

**37 Evidentiary value of certificates of completion and amounts payable**

- (1) This section applies if:
  - (a) the construction contract to which a payment dispute relates provides for a person to certify:
    - (i) obligations under the contract have been performed; or
    - (ii) the amount of a payment that must be made by a party; and
  - (b) the certificate is provided by a party to an adjudication in the course of adjudication.
- (2) For the adjudication:
  - (a) if the certificate relates to the final amount payable under the contract and has the effect of finalising the contract – the certificate is taken to be conclusive evidence of its contents; or
  - (b) otherwise – the certificate has the evidentiary weight the appointed adjudicator considers appropriate.

**38 Content of determination**

- (1) An appointed adjudicator's decision made under section 33(1)(b) must:
  - (a) be in writing; and
  - (b) be prepared in accordance with, and contain the information prescribed by, the Regulations; and

- (c) state:
    - (i) the amount to be paid and the date on or before which it must be paid; or
    - (ii) the security to be returned and the date on or before which it must be returned; and
  - (d) give reasons for the determination; and
  - (e) identify any information in it that, because of its confidential nature, is not suitable for publication by the Registrar under section 54.
- (2) The adjudicator must give a copy of the decision to the parties to the adjudication and the Registrar.

### **39 Dismissed applications**

- (1) If, under section 33(1)(a), an appointed adjudicator dismisses an application for adjudication, the adjudicator must give written notice of the decision and the reasons for it to the parties and to the Registrar.
- (2) If, under section 33(2), an application for an adjudication of a payment dispute is taken to be dismissed:
  - (a) this Part does not prevent a further application being made under this Part for an adjudication of the dispute; and
  - (b) any further application must be made within 20 working days after the previous application is taken to be dismissed.
- (3) Further, if, under section 33(2), an application for an adjudication of a payment dispute is taken to be dismissed, the adjudicator must give written notice of the deemed dismissal and reasons for it to the Registrar.

*Note for section 39*

*Section 42 of the Northern Territory Civil and Administrative Tribunal Act 2014 does not apply to a deemed dismissal under section 33(2).*

## **Division 4 Effect of determinations**

### **40 Determinations have effect despite other proceedings**

An appointed adjudicator's determination is binding on the parties to the construction contract under which the payment dispute concerned arose even if other proceedings relating to the payment dispute have been started before an arbitrator or other person or a

court or other body.

#### **41 Payment of amount determined and interest**

- (1) A party that is liable to pay an amount under a determination must do so on or before the date stated in the determination.
- (2) Unless the determination provides otherwise, interest at the rate prescribed by the Regulations must be paid on the part of the amount that is unpaid after the date stated in the determination.
- (3) The interest forms part of the determination.
- (4) If, under section 45(1), a judgment is entered in the terms of a determination, interest under subsection (2) ceases to accrue.

#### **42 Progress payment under determination to be on account**

- (1) This section applies if:
  - (a) an appointed adjudicator:
    - (i) determines a payment dispute concerning a claim by a contractor for payment for part performance of its obligations under the contract but not for a final payment by the principal; and
    - (ii) determines that the principal must pay the contractor an amount for the claim; and
  - (b) the principal, in accordance with the determination, pays the amount.
- (2) Payment of the amount is taken to be an advance towards the total amount payable under the contract by the principal to the contractor.

#### **43 Determination final**

- (1) If on the adjudication of a payment dispute the appointed adjudicator makes a determination:
  - (a) the adjudicator cannot subsequently amend or cancel the determination except with the consent of the parties; and
  - (b) a party to the dispute cannot later apply for an adjudication of the dispute.

- (2) Despite subsection (1)(a), the adjudicator may, on the application of a party or, after notifying the parties, on the adjudicator's own initiative, correct any of the following in the determination:
- (a) an accidental slip or omission;
  - (b) a material arithmetic error;
  - (c) a material mistake in the description of any person, thing or matter.

## **Division 5 Enforcing determinations**

### **44 Contractor may suspend obligations for principal's non-compliance**

- (1) If a determination requires the principal to pay the contractor an amount and the principal does not pay in accordance with the determination, the contractor may give the principal written notice of the contractor's intention to suspend the performance of its obligations under the contract.
- (2) The notice must:
- (a) be prepared in accordance with, and contain the information prescribed by, the Regulations; and
  - (b) state the date on which the contractor intends to suspend the performance of its obligations; and
  - (c) be given to the principal at least 3 working days before that date.
- (3) If on the date stated in the notice the principal has not paid the contractor the amount in accordance with the determination, the contractor may suspend the performance of its obligations until no longer than 3 working days after the date on which the amount is paid.
- (4) Subsection (3) does not prevent the contractor from at any time resuming the performance of its obligations.
- (5) A contractor that suspends the performance of its obligations in accordance with this section:
- (a) is not liable for any loss or damage suffered by the principal or by any person claiming through the principal; and
  - (b) retains its rights under the contract, including any right to terminate the contract.

**45 Determination may be enforced as order of court**

- (1) A party entitled to be paid an amount under a determination may enforce the determination by filing in a court of competent jurisdiction:
  - (a) a copy of the determination that the Registrar has certified to be a true copy; and
  - (b) an affidavit as to the amount not paid under the determination.
- (2) On filing a copy of the determination under subsection (1), the determination is taken to be an order of the court, and may be enforced accordingly.
- (3) This section applies regardless of whether the determination is made before or after the commencement of this subsection.

**Division 6 General**

**46 Costs of adjudications**

- (1) This section applies if:
  - (a) an adjudicator is appointed to adjudicate a payment dispute; and
  - (b) one of the following applies:
    - (i) the party who applied for the adjudication withdraws the application under section 28A;
    - (ii) the adjudicator dismisses the application for adjudication under section 33(1)(a);
    - (iii) the adjudicator makes a determination of the dispute under section 33(1)(b).
- (1A) The adjudicator is entitled:
  - (a) to be paid for the adjudicator's work:
    - (i) at a rate agreed between the adjudicator and the parties that is not more than the maximum rate prescribed by the Regulations; or
    - (ii) if a rate is not agreed – at the rate published under section 55 for the adjudicator; and

- (b) to be reimbursed any expenses reasonably incurred in connection with the work.
- (2) An appointed adjudicator who is disqualified under section 31 has the entitlements in subsection (1A) for any adjudication work done before the disqualification is notified to the parties.
- (3) Despite subsection (1A), an appointed adjudicator may refuse to give notice of the adjudicator's decision or determination under section 33(1) or 36(2) or subsection (9) until the adjudicator has been paid and reimbursed in accordance with subsection (1A).
- (4) The parties involved in a payment dispute are jointly and severally liable to pay the costs of an adjudication of the dispute.
- (5) As between themselves, the parties involved in a dispute are liable to pay the costs of an adjudication of the dispute in equal shares.
- (6) Subsections (4) and (5) do not prevent a decision being made under section 36(2).
- (7) An appointed adjudicator may at any time require one or more parties to provide a reasonable deposit, or reasonable security, for the costs or anticipated costs of the adjudication.
- (8) A prescribed appointer, before appointing an adjudicator, may require the applicant for adjudication to provide a deposit, or reasonable security, for the costs or anticipated costs of the adjudication.
- (9) If a party involved in a dispute has paid more than the party's share of the costs of an adjudication of the dispute, having regard to subsection (5), the appointed adjudicator may decide that another party must pay to the first party the amount of the costs that would result in all the parties paying an equal amount of the costs.
- (10) If an appointed adjudicator makes a decision under subsection (9):
  - (a) the adjudicator must include in the decision the date on which the amount is payable; and
  - (b) Divisions 4 and 5 apply (with the necessary changes) to the decision as if it were a determination of an appointed adjudicator.
- (11) An appointed adjudicator may recover the costs of an adjudication from a person liable to pay the costs in a court of competent jurisdiction as if the costs were a debt due to the adjudicator.

(12) In this section:

**costs of an adjudication** means:

- (a) the entitlements of the appointed adjudicator under subsection (1A); and
- (b) the costs of any testing done, or of any expert engaged, under section 34(2)(c)(ii) or (iii).

#### **47 Effect of this Part on civil proceedings**

- (1) This Part does not prevent a party to a construction contract from starting proceedings before an arbitrator or other person or a court or other body in relation to a dispute or other matter arising under the contract.
- (2) If other proceedings are started in relation to a payment dispute that is being adjudicated under this Part, the adjudication must proceed despite the proceedings unless all of the parties, in writing, require the appointed adjudicator to discontinue the adjudication.
- (3) Evidence of anything said or done in an adjudication is not admissible before an arbitrator or other person or a court or other body, except for an application made under section 31(3) or a review of a decision made under section 33(1)(a).
- (4) An arbitrator or other person or a court or other body dealing with a matter arising under a construction contract:
  - (a) must, in making any award, judgment or order, allow for any amount that has been or must be paid to a party under a determination of a payment dispute arising under the contract; and
  - (b) may make an order for the restitution of the amount paid and any other appropriate order relating to the determination.

## **Part 4 Administration**

### **Division 1 Construction Contracts Registrar**

#### **49 Registrar**

- (1) There is to be a Construction Contracts Registrar.
- (2) The Minister must, by *Gazette* notice, appoint a person to be the Registrar.

**50 Provisions relating to appointment of non-public sector employee**

- (1) This section applies if the person appointed to be the Registrar is not a public sector employee.
- (2) The Registrar holds office for the period (not exceeding 5 years) stated in the appointment and is eligible for re-appointment.
- (3) The Registrar holds office on the conditions (including conditions about remuneration, expenses and allowances) determined by the Minister.
- (4) The Minister must terminate the appointment of a person as Registrar if the person:
  - (a) is found guilty of an indictable offence, whether in the Territory or elsewhere; or
  - (b) becomes bankrupt, applies to take the benefit of a law for the relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of remuneration for their benefit; or
  - (c) engages in paid employment outside the duties of the office without the Minister's prior written approval.
- (5) The Minister may terminate the appointment of a person as Registrar:
  - (a) on the ground of misbehaviour; or
  - (b) on the ground of inability to satisfactorily perform the duties of the office, whether because of physical or mental incapacity or for any other reason; or
  - (c) if the person is guilty of misconduct of a kind that would, if the person were a public sector employee, warrant dismissal under that Act; or
  - (d) if the person is absent, without leave and without reasonable excuse, for 14 consecutive days or 28 days in any 12 months.
- (6) A termination under subsection (4) or (5) must be given in writing to the person.
- (7) The Minister may grant leave of absence to the Registrar on the terms the Minister considers appropriate.



- (8) The Registrar may resign from office by written notice given to the Minister.

## **51 Functions**

The Registrar has the functions conferred by this Act.

## **Division 2 Adjudicators and prescribed appointers**

### **52 Registering adjudicators**

- (1) An individual is eligible to be a registered adjudicator if the person has the qualifications and experience prescribed by the Regulations.
- (2) The Registrar may register a person as a registered adjudicator:
- (a) on the application of the person; or
  - (b) on the nomination of a prescribed appointer.
- (3) The Registrar may refuse to register a person as a registered adjudicator if the person is not eligible to be registered.
- (4) The Registrar may renew the registration of a person who is a registered adjudicator within the period determined by the Registrar before the registration expires:
- (a) on the application of the person; or
  - (b) on the nomination of a prescribed appointer.
- (4A) The Registrar may refuse to renew a person's registration as a registered adjudicator if the person is no longer eligible to be registered.
- (4B) A registration or renewal of a registration under this section, unless sooner cancelled, remains in force for a period of 5 years.
- (4C) The Regulations may prescribe the following:
- (a) any information to be included in an application or nomination under this section;
  - (b) a fee to be paid for making an application or nomination under this section.

- (5) The Registrar may cancel a person's registration as a registered adjudicator if satisfied the person:
  - (a) has ceased to be eligible to be registered; or
  - (b) has misconducted, or is incompetent or unsuitable to conduct, adjudications under Part 3.
- (6) The Registrar must keep a register of registered adjudicators and make it available for public inspection at no charge.

### **53A Adjudicators to give Registrar information**

A registered adjudicator must, in accordance with the Regulations, give the Registrar information prescribed by the Regulations.

### **54 Publication of adjudicators' decisions**

- (1) The Registrar must make available for public inspection at no charge the result or a report of the decisions of registered adjudicators.
- (2) The Registrar must ensure there is not included in the result or report made available under subsection (1):
  - (a) the identities of the parties to the adjudication; or
  - (b) any information in the determination identified under section 38(1)(e) as being not suitable for publication because of its confidential nature.
- (3) The Registrar may provide relevant information regarding the result or a report of the decision of a registered adjudicator to a related regulatory body.

*Example for subsection (3)*

*The following are examples of related regulatory bodies:*

- (a) *the Australian Building and Construction Commissioner established under the Building and Construction Industry (Improving Productivity) Act 2016 (Cth);*
- (b) *the Director of Building Control appointed under section 7 of the Building Act 1993.*

### **55 Adjudicators' and prescribed appointers' rates to be published**

- (1) A registered adjudicator or prescribed appointer must ensure the rate at which the adjudicator or appointer charges for work under this Act is published in a way approved by the Registrar.

- (2) Subsection (1) does not prevent any of the parties from agreeing on the rate to be charged by a registered adjudicator or prescribed appointer for work under this Act.
- (3) The published or agreed rate must not be more than the maximum rate prescribed by the Regulations.

### **Division 3      Miscellaneous provisions**

#### **56      Protection from liability**

- (1) This section applies to a person who is or has been:
  - (a) an appointed adjudicator; or
  - (b) a prescribed appointer; or
  - (c) the Registrar.
- (2) The person is not civilly or criminally liable for an act done or omitted to be done by the person in good faith in the exercise or purported exercise of a power, or the performance or purported performance of a function, under this Act.
- (3) Subsection (2) does not affect any liability the Territory would, apart from that subsection, have for the act or omission.

#### **57      Evidentiary provisions**

- (1) A document purporting to be signed by the Registrar is taken to have been signed by the person who was at the time duly appointed as the Registrar in the absence of evidence to the contrary.
- (2) A certificate by the Registrar stating a person was or was not at a time or in a period, or is or is not, a registered adjudicator is proof of the content of the certificate in the absence of evidence to the contrary.

## **Part 5      Review by NTCAT**

### **58      Review by NTCAT**

- (1) NTCAT has jurisdiction to review a decision (a **reviewable decision**) specified in Schedule 2.
- (2) An **affected person**, for a reviewable decision, is a person specified in Schedule 2 for the decision.

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- (3) An affected person for a reviewable decision may apply to NTCAT for review of the decision.
  - (4) Subsection 5 applies if, on the review of a decision made under section 33(1)(a), the decision is set aside and referred back to the appointed adjudicator under section 50(1)(c) of the *Northern Territory Civil and Administrative Tribunal Act 2014* for reconsideration.
  - (5) The adjudicator must make a determination under section 33(1)(b) within 10 working days after the date on which the decision is set aside or any extension of that time as permitted under this Act.

*Note for section 58*

*The Northern Territory Civil and Administrative Tribunal Act 2014 sets out the procedure for applying to NTCAT for review and other relevant matters in relation to reviews.*

## **Part 6                      Miscellaneous provisions**

### **63                      Annual report**

- (1) The Chief Executive Officer of the Agency administering this Act must include in the Agency's annual report for each financial year a report about the operation and effectiveness of this Act for the year.
- (2) In this section:

***annual report*** means the annual report mentioned in section 28 of the *Public Sector Employment and Management Act 1993*.

### **64                      Regulations**

- (1) The Administrator may make regulations, not inconsistent with this Act, prescribing matters:
  - (a) required or permitted to be prescribed; or
  - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) The Regulations may provide for any of the following:
  - (a) fees payable, and the refund (wholly or partly) of fees paid, under this Act;
  - (b) the practice and procedure in adjudications.

- (3) The Regulations may:
- (a) make different provision in relation to:
    - (i) different persons or matters; or
    - (ii) different classes of persons or matters; or
  - (b) apply differently by reference to stated exceptions or factors.

**65 Review of Act**

The Minister must, as soon as practicable, conduct a review of the first 5 years of operation of this Act.

**Part 7 Repeals and transitional matters**

**Division 1 Repeals**

**66 Repeal of Workmen's liens legislation**

The following Acts are repealed:

- (a) Act No. 575 of 1893 (SA) as it applies in the Territory;
- (b) the *Workmen's Liens Amendment Act 2002* (Act No. 17, 2002).

**Division 2 Transitional matters for Justice Legislation Amendment Act 2006**

**67 Transitional provision**

- (1) This section applies to a contract made before the repeal of the repealed Act.
- (2) The repealed Act continues to apply to the contract as if it had not been repealed.
- (3) This section does not limit section 12 of the *Interpretation Act 1978*.
- (4) In this section:

**repealed Act** means the *Workmen's Liens Act 1893* as in force immediately before the commencement of section 66.

**Division 3 Transitional matters for Construction Contracts  
(Security of Payments) Legislation Amendment  
Act 2019**

**68 Existing payment claims**

- (1) A payment claim that, on the commencement, had not been decided continues to be dealt with under this Act as it was in force immediately before the commencement.
- (2) In this section:

**commencement** means the commencement of section 8 of the *Construction Contracts (Security of Payments) Legislation Amendment Act 2019*.

**69 Registration of adjudicators**

- (1) A person who, immediately before the commencement, is registered as an adjudicator continues to be registered as an adjudicator for 5 years after the commencement.
- (2) Before the expiry of the period mentioned in subsection (1), the Registrar may renew the registration of a person who is a registered adjudicator in accordance with section 52(4).
- (3) In this section:

**commencement** means the commencement of section 23 of the *Construction Contracts (Security of Payments) Legislation Amendment Act 2019*.

## **Schedule 1 Implied provisions**

sections 16 to 24

### **Division 1 Variations**

#### **1 Variations must be agreed**

The contractor is not bound to perform any variation of its obligations unless the contractor and the principal have agreed on:

- (a) the nature and extent of the variation of the obligations; and
- (b) the amount, or a way of calculating the amount, that the principal must pay the contractor in relation to the variation of the obligations.

### **Division 2 Contractor's entitlement to be paid**

#### **2 Contractor entitled to be paid**

- (1) The contractor is entitled to be paid a reasonable amount for performing its obligations.
- (2) Subclause (1) applies whether or not the contractor performs all of its obligations.

### **Division 3 Claims for progress payments**

#### **3 Entitlement to make claim**

The contractor is entitled to make one or more claims for a progress payment in relation to the contractor's obligations it has performed and for which it has not been paid by the principal.

#### **4 When claim can be made**

- (1) A claim by the contractor for a progress payment can be made at any time after the contractor has performed any of its obligations.
- (2) The making of a claim for a progress payment does not prevent the contractor from making another claim for an amount payable to the contractor under or in connection with this contract.

## **Division 4 Making claims for payment**

### **5 Content of claim for payment**

- (1) A payment claim under this contract must:
  - (a) be in writing; and
  - (b) be addressed to the party to which the claim is made; and
  - (c) state the name of the claimant; and
  - (d) state the date of the claim; and
  - (e) state the amount claimed; and
  - (f) for a claim by the contractor – itemise and describe the obligations the contractor has performed and to which the claim relates in sufficient detail for the principal to assess the claim; and
  - (g) for a claim by the principal – describe the basis for the claim in sufficient detail for the contractor to assess the claim; and
  - (i) be given to the party to which the claim is made.
- (2) For a claim by the contractor, the amount claimed must be calculated in accordance with this contract or, if this contract does not provide a way of calculating the amount, the amount claimed must be:
  - (a) if this contract states that the principal must pay the contractor one amount (the **contract sum**) for the performance by the contractor of all of its obligations under this contract (the **total obligations**) – the proportion of the contract sum that is equal to the proportion that the obligations performed and detailed in the claim are of the total obligations; or
  - (b) if this contract states that the principal must pay the contractor in accordance with rates stated in this contract – the value of the obligations performed and detailed in the claim calculated by reference to the rates; or
  - (c) otherwise – a reasonable amount for the obligations performed and detailed in the claim.
- (3) Subclause (2) does not prevent the amount claimed in a progress claim from being an aggregate of amounts calculated under one or more of subclause (2)(a), (b) and (c).



**Division 5 Responding to payment claims**

**6 Responding to payment claim by notice of dispute or payment**

- (1) This clause applies if:
  - (a) a party receives a payment claim under this contract; and
  - (b) the party:
    - (i) believes the claim should be rejected because the claim has not been made in accordance with this contract; or
    - (ii) disputes the whole or part of the claim.
- (2) The party must:
  - (a) within 10 working days after receiving the payment claim:
    - (i) give the claimant a notice of dispute; and
    - (ii) if the party disputes part of the claim – pay the amount of the claim that is not disputed; or
  - (b) within 20 working days after receiving the payment claim, pay the whole of the amount of the claim.
- (3) The notice of dispute must:
  - (a) be in writing; and
  - (b) be addressed to the claimant; and
  - (c) state the name of the party giving the notice; and
  - (d) state the date of the notice; and
  - (e) identify the claim to which the notice relates; and
  - (f) if the claim is being rejected under subclause (1)(b)(i) – state the reasons for believing the claim has not been made in accordance with this contract; and
  - (g) if the claim is being disputed under subclause (1)(b)(ii) – identify each item of the claim that is disputed and state, for each of the items, the reasons for disputing it; and
  - (h) be signed by the party giving the notice.

- (4) If under this contract the principal is entitled to retain part of an amount payable by the principal to the contractor:
  - (a) subclause (2)(b) does not affect the entitlement; and
  - (b) the principal must advise the contractor in writing (either in a notice of dispute or separately) of an amount retained under the entitlement.

## **Division 6 Interest on overdue payments**

### **7 Interest payable on overdue payments**

- (1) Interest is payable on the part of an amount that is payable under this contract by a party to another party on or before a certain date but which is unpaid after that date.
- (2) The interest must be paid for the period beginning on the day after the date on which the amount is due and ending on and including the date on which the amount payable is paid.
- (3) The rate of interest at any time is equal to that prescribed by the Regulations for that time.

## **Division 7 Ownership of goods**

### **8 When ownership of goods supplied by contractor passes**

- (1) Subclause (2) applies to goods that are:
  - (a) related to construction work; and
  - (b) supplied to the site of the construction work by the contractor under its obligations under this contract.
- (2) The ownership of the goods passes from the contractor when whichever of the following happens first:
  - (a) the contractor is paid for the goods;
  - (b) the goods become fixtures.

**Division 8 Duties about unfixed goods on insolvency**

**9 Duties of principal and other persons about unfixed goods on insolvency**

- (1) This clause applies if:
- (a) goods that are related to construction work have been supplied to the site of the construction work by the contractor under its obligations under this contract; and
  - (b) the contractor has not been paid for the goods; and
  - (c) the goods have not become fixtures; and
  - (d) ownership of the goods has not passed from the contractor; and
  - (e) the goods are in the possession of or under the control of:
    - (i) the principal; or
    - (ii) a person for whom, directly or indirectly, the principal is performing construction work or to whom, directly or indirectly, the principal is supplying goods or services that are related to construction work; and
  - (f) the principal or that person becomes an insolvent.
- (2) The principal and the person must not, during the insolvency, allow the goods to become fixtures or to fall into the possession of or under the control of another person (other than the contractor) except with the prior written consent of the contractor.
- (3) In addition, the principal and the person must allow the contractor a reasonable opportunity to repossess the goods.

- (4) In this clause:

***insolvent*** means:

- (a) for an individual – an insolvent under administration as defined in section 9 of the Corporations Act 2001; or
- (b) for a body corporate – an externally-administered body corporate as defined in section 9 of the Corporations Act 2001.

**Division 9                      Retention money**

**10                      Retention money to be held on trust**

If the principal retains from an amount payable by the principal to the contractor for the performance by the contractor of its obligations part of that amount (the ***retention money***), the principal holds the retention money on trust for the contractor until whichever of the following happens first:

- (a) the retention money is paid to the contractor;
- (b) the contractor agrees in writing to give up any claim to the retention money;
- (c) the retention money ceases to be payable to the contractor under this contract;
- (d) an adjudicator, arbitrator or other person or a court or other body decides the retention money ceases to be payable to the contractor.

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**Schedule 2 Reviewable decisions and affected persons**

section 58

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<b>Reviewable decision</b>	<b>Affected person</b>
A decision of the Registrar under section 31(3) to make a declaration to disqualify an appointed adjudicator	The appointed adjudicator or a party to the payment dispute
A decision of an appointed adjudicator under section 33(1)(a) to dismiss an application	The applicant
A decision of the Registrar under section 52(3) to refuse to register a person	The applicant or the nominator
A decision of the Registrar under section 52(4A) to refuse to renew a registration	The applicant or the nominator
A decision of the Registrar under section 52(5) to cancel a person's registration	The registered adjudicator

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**ENDNOTES**
**1 KEY**

Key to abbreviations

<b>amd = amended</b>	<b>od = order</b>
<b>app = appendix</b>	<b>om = omitted</b>
<b>bl = by-law</b>	<b>pt = Part</b>
<b>ch = Chapter</b>	<b>r = regulation/rule</b>
<b>cl = clause</b>	<b>rem = remainder</b>
<b>div = Division</b>	<b>renum = renumbered</b>
<b>exp = expires/expired</b>	<b>rep = repealed</b>
<b>f = forms</b>	<b>s = section</b>
<b>Gaz = Gazette</b>	<b>sch = Schedule</b>
<b>hdg = heading</b>	<b>sdiv = Subdivision</b>
<b>ins = inserted</b>	<b>SL = Subordinate Legislation</b>
<b>lt = long title</b>	<b>sub = substituted</b>
<b>nc = not commenced</b>	

**2 LIST OF LEGISLATION*****Construction Contracts (Security of Payments) Act 2004 (Act No. 66, 2004)***

Assent date	21 December 2004
Commenced	s 66: 1 August 2006 ( <i>Gaz</i> G27, 5 July 2006, p 2); rem:1 July 2005 ( <i>Gaz</i> G21, 25 May 2005, p 3)

***Community Justice Centre Act 2005 (Act No. 40, 2005)***

Assent date	13 December 2005
Commenced	22 February 2006 ( <i>Gaz</i> G8, 22 February 2006, p 5)

***Justice Legislation Amendment Act 2006 (Act No. 13, 2006)***

Assent date	18 May 2006
Commenced	ss 13 and 14: 1 August 2006; rem: 18 May 2006 ( <i>Gaz</i> G27, 5 July 2006, p 2)

***Justice Legislation Amendment Act (No. 2) 2007 (Act No. 32, 2007)***

Assent date	12 December 2007
Commenced	8 January 2008 ( <i>Gaz</i> S2, 8 January 2008)

***Justice and Other Legislation Amendment Act 2009 (Act No. 12, 2009)***

Assent date	26 May 2009
Commenced	24 June 2009 ( <i>Gaz</i> G25, 24 June 2009, p 2)

***Statute Law Revision Act 2011 (Act No. 30, 2011)***

Assent date	31 August 2011
Commenced	21 September 2011 ( <i>Gaz</i> G38, 21 September 2011, p 5)

***Statute Law Revision Act 2014 (Act No. 38, 2014)***

Assent date	13 November 2014
Commenced	13 November 2014

**Construction Contracts (Security of Payments) Legislation Amendment Act 2019 (Act No. 27, 2019)**

Assent date	3 September 2019
Commenced	3 February 2020 ( <i>Gaz G51</i> , 18 December 2019, p 2)

**Justice and Other Legislation Further Amendment Act 2024 (Act No. 9, 2024)**

Assent date	24 May 2024
Commenced	pts 4 and 8: nc; pts 9 and 10: 1 July 2024 (s 2(3)); rem: 25 May 2024 (s 2(1))

**3 GENERAL AMENDMENTS**

General amendments of a formal nature (which are not referred to in the table of amendments to this reprint) are made by the *Interpretation Legislation Amendment Act 2018* (Act No. 22 of 2018) to: ss 1, 4, 11A, 25, 63 and 67.

**4 LIST OF AMENDMENTS**

pt 1 hdg	amd No. 30, 2011, s 3
s 3	amd No. 30, 2011, s 3
s 4	amd No. 30, 2011, s 3; No. 27, 2019, s 4; No. 9, 2024, s 8
s 4A	ins No. 27, 2019, s 5
s 5	amd No. 27, 2019, s 6
s 6	amd No. 30, 2011, s 3; No. 27, 2019, s 7
s 7	amd No. 30, 2011, s 3
s 7A	ins No. 27, 2019, s 8
s 8	amd No. 30, 2011, s 3; No. 38, 2014, s 2
s 9	amd No. 30, 2011, s 3
s 10	amd No. 27, 2019, s 9
s 10A	ins No. 27, 2019, s 10
s 11A	ins No. 40, 2005, s 43
s 13	amd No. 27, 2019, s 32
ss 16 – 24	amd No. 27, 2019, s 32
s 25	amd No. 30, 2011, s 3
s 27	amd No. 12, 2009, s 4; No. 27, 2019, s 11
s 28	amd No. 32, 2007, s 4; No. 30, 2011, s 3; No. 27, 2019, s 12
s 28A	ins No. 32, 2007, s 5
s 29	amd No. 30, 2011, s 3; No. 27, 2019, s 13
s 30	amd No. 30, 2011, s 3; No. 27, 2019, s 14
s 31	amd No. 12, 2009, s 5; No. 30, 2011, s 3; No. 27, 2019, ss 15 and 32
s 32	rep No. 27, 2019, s 16
s 33	amd No. 27, 2019, s 17
s 34	amd No. 30, 2011, s 3; No. 27, 2019, s 18
s 36	amd No. 32, 2007, s 6
s 38	amd No. 30, 2011, s 3
s 39	amd No. 32, 2007, s 7; No. 27, 2019, s 19
s 44	amd No. 30, 2011, s 3
s 45	amd No. 13, 2006, s 12 sub No. 27, 2019, s 20
s 46	amd No. 32, 2007, s 8; No. 30, 2011, s 3
s 47	amd No. 27, 2019, s 21
s 48	rep No. 27, 2019, s 22
ss 49 – 50	amd No. 30, 2011, s 3
s 52	amd No. 30, 2011, s 3; No. 27, 2019, s 23
s 53	rep No. 27, 2019, s 24

## ENDNOTES

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s 53A	ins No. 40, 2005, s 44
s 54	amd No. 27, 2019, s 25
s 56	amd No. 30, 2011, s 3
pt 5 hdg	sub No. 27, 2019, s 26
s 58	sub No. 27, 2019, s 26
s 59 – 62	rep No. 27, 2019, s 26
s 62	amd No. 30, 2011, s 3
pt 7 hdg	sub No. 13, 2006, s 13
pt 7	
div 1 hdg	ins No. 27, 2019, s 27
pt 7	
div 2 hdg	ins No. 27, 2019, s 28
s 67	ins No. 13, 2006, s 14
pt 7	
div 3 hdg	ins No. 27, 2019, s 29
ss 68 – 69	ins No. 27, 2019, s 29
sch 1	amd No. 32, 2007, s 9; No. 30, 2011, s 3; No. 27, 2019, s 30
sch 2	ins No. 27, 2019, s 31