NORTHERN TERRITORY OF AUSTRALIA

CONSTRUCTION CONTRACTS (SECURITY OF PAYMENTS) ACT 2004

As in force at 13 November 2014

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NORTHERN TERRITORY OF AUSTRALIA

As in force at 13 November 2014

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).

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 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.

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 Saturday or Sunday or a public holiday as defined in the *Public Holidays Act 1981*.

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.

(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;

(c) constructing, installing, altering, repairing, restoring, maintaining, extending, dismantling, demolishing or removing wholly artistic works including sculptures, installations and murals;

(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.

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) 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.

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 50 days

A provision in a construction contract that purports to require a payment to be made more than 50 days after the payment is claimed must be read as being amended to require the payment to be made within 28 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 the Schedule, 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 the Schedule, 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 the Schedule, 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 the Schedule, 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 the Schedule, 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 the Schedule, 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 the Schedule, 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 the Schedule, 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 the Schedule, 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) an application for adjudication has already been made by a party (whether or not a determination has been made) but subject to sections 31(6A) and 39(2); 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 90 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) Subsection (1) applies to a dispute even if it arises within the 90 day period immediately preceding the commencement of this subsection.

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 10 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.

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.

(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.

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 14 days to make the further application, the further application may be made within 14 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.

(8) The notice under subsection (5) or (7) must state:

(a) the reasons for the decision; and

(b) a person given the notice may apply for a review of the decision to the Local Court within 28 days after receipt of the notice.

32 Review of disqualification decision

A person who is aggrieved by a decision of the Registrar under section 31 to make or refuse to make a declaration that an appointed adjudicator is disqualified from adjudicating a dispute may apply to the Local Court for a review of the decision.

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

(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.

(2) If the application is not dismissed or determined under subsection (1) within the prescribed time, or any extension of it under section 34(3)(a), the application is taken to be dismissed when the time ends.

(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:

(a) with the Registrar's consent, extend the time for making a determination under section 33(1); or

(b) with the consent of the parties, adjudicate simultaneously 2 or more payment disputes between the parties; or

(c) with the consent of all the parties concerned, adjudicate the payment dispute simultaneously with another payment dispute.

(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 28 days after the previous application is taken to be dismissed.

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 judgment

(1) A determination may be enforced as a judgment for a debt in a court of competent jurisdiction.

(2) For subsection (1), a determination signed by an adjudicator and certified by the Registrar as having been made by a registered adjudicator under this Part is taken to have been made under this Part.

(3) Subsection (1) 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 under section 48.

(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.

48 Review of adjudicator's decision to dismiss application

(1) A person who is aggrieved by a decision made under section 33(1)(a) may apply to the Local Court for a review of the decision.

(2) If, on the review, the decision is set aside and referred back to the adjudicator, 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 agreed on by the parties.

(3) Except as provided by subsection (1), a decision or determination of an adjudicator on an adjudication cannot be appealed or reviewed.

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 Regulations may prescribe a fee to be paid for making the application or nomination.

(4) The Registrar must not register a person as a registered adjudicator unless satisfied the person is eligible to be registered.

(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.

(7) If the Registrar refuses to register a person as a registered adjudicator or cancels a person's registration as a registered adjudicator, the Registrar must give the person written notice stating the following:

(a) the decision;

(b) the reasons for the decision;

(c) the person may apply for a review of the decision to the Local Court within 28 days after receipt of the notice.

53 Review of registration decision

A person who is aggrieved by a decision of the Registrar under section 52 to refuse to register the person as a registered adjudicator or to cancel the person's registration as a registered adjudicator may apply to the Local Court for a review of the decision.

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.

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 Reviews of decisions

58 Application of Part

This Part applies to a person who:

(a) under section 32 or 53, is entitled to apply to the Local Court for the review of a decision of the Registrar; or

(b) under section 48(1), is entitled to apply to the Local Court for the review of an appointed adjudicator's decision under section 33(1)(a).

59 Application for review

The application must:

(a) be made within 28 days after the person receives notice of the decision; and

(b) state fully the grounds on which it is made.

60 Review by Local Court

(1) On receipt of the application, the Local Court must review the merits of the decision.

(2) The review must be by way of hearing de novo.

61 Operation and implementation of decision

(1) The application does not affect the operation or implementation of the decision.

(2) However, the Local Court may make an order staying or otherwise affecting the operation or implementation of so much of the decision as the Court considers appropriate to effectively hear and decide the application.

(3) The order:

(a) is subject to any conditions stated in it; and

(b) has effect:

(i) for the period stated in it; or

(ii) if no period is stated in it – until the Court has decided the application.

62 Decision on review

(1) On reviewing the decision, the Local Court must make an order:

(a) confirming the decision; or

(b) setting the decision aside and substituting its own decision; or

(c) for a decision under section 33(1)(a) – setting the decision aside.

(2) If the Court makes an order under subsection (1)(b), the substituted decision is, for this Act (other than section 48(1) and this Part), taken to be the decision of the Registrar or appointed adjudicator.

(3) If the Court makes an order under subsection (1)(c), the Court must refer the matter back to the adjudicator with the directions the Court considers appropriate for making a determination under section 33(1)(b).

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

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).

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.

Schedule 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

(h) be signed by the claimant; 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 14 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 28 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.

ENDNOTES

1 KEY

Key to abbreviations

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

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 (*Gaz* G27, 5 July 2006, p 2); rem:1 July 2005 (*Gaz* G21, 25 May 2005, p 3)

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

Assent date	13 December 2005
Commenced	22 February 2006 (*Gaz* 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 (*Gaz* 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 (*Gaz* S2, 8 January 2008)

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

Assent date	26 May 2009
Commenced	24 June 2009 (*Gaz* G25, 24 June 2009, p 2)

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

Assent date	31 August 2011
Commenced	21 September 2011 (*Gaz* G38, 21 September 2011, p 5)

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

Assent date	13 November 2014
Commenced	13 November 2014

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
ss 3 – 4	amd No. 30, 2011, s 3
ss 6 – 7	amd No. 30, 2011, s 3
s 8	amd No. 30, 2011, s 3; No. 38, 2014, s 2
s 9	amd No. 30, 2011, s 3
s 11A	ins No. 40, 2005, s 43
s 25	amd No. 30, 2011, s 3
s 27	amd No. 12, 2009, s 4
s 28	amd No. 32, 2007, s 4; No. 30, 2011, s 3
s 28A	ins No. 32, 2007, s 5
ss 29 – 30	amd No. 30, 2011, s 3
s 31	amd No. 12, 2009, s 5; No. 30, 2011, s 3
s 34	amd No. 30, 2011, s 3
s 36	amd No. 32, 2007, s 6
s 38	amd No. 30, 2011, s 3
s 39	amd No. 32, 2007, s 7
s 44	amd No. 30, 2011, s 3
s 45	amd No. 13, 2006, s 12
s 46	amd No. 32, 2007, s 8; No. 30, 2011, s 3
ss 49 – 50	amd No. 30, 2011, s 3
s 52	amd No. 30, 2011, s 3
s 53A	ins No. 40, 2005, s 44
s 56	amd No. 30, 2011, s 3
s 62	amd No. 30, 2011, s 3
pt 7 hdg	sub No. 13, 2006, s 13
s 67	ins No. 13, 2006, s 14
sch	amd No. 32, 2007, s 9; No. 30, 2011, s 3