NORTHERN TERRITORY OF AUSTRALIA

CONSTRUCTION CONTRACTS (SECURITY OF PAYMENTS) REGULATIONS 2005

As in force at 17 June 2020

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Regulations under the *Construction Contracts (Security of Payments) Act 2004*

1 Citation

These Regulations may be cited as the *Construction Contracts (Security of Payments) Regulations 2005*.

2 Commencement

These Regulations come into operation on the commencement of section 64 of the *Construction Contracts (Security of Payments) Act 2004*.

3 Definitions

In these Regulations:

ABN has the same meaning as in the *A New Tax System (Australian Business Number) Act 1999* (Cth).

ACN has the same meaning as in the Corporations Act 2001.

contact details has the meaning in regulation 4.

4 Contact details

A person who is required to give the contact details of a person must give the following details, but only to the extent those details are known to the person:

(a) the address and telephone and facsimile numbers of the person;

(b) the ABN number of the person or the person's business or, if the person does not have an ABN, the ACN of the person.

5 Prescribed appointers

For section 4 of the Act, definition ***prescribed appointer***, each of the following persons is prescribed:

(a) The Royal Australian Institute of Architects Limited ACN 000 023 012;

(b) Housing Industry Association Limited ACN 004 631 752;

(c) Contractor Accreditation Limited ACN 068 082 744;

(d) RICS Australasia Pty Ltd ACN 089 873 067 trading as RICS Dispute Resolution Service;

(e) Law Society Northern Territory;

(f) The Institute of Arbitrators & Mediators Australia ACN 008 520 045;

(g) Resolution Institute ACN 008 651 232;

(h) The Australian Institute of Quantity Surveyors ACN 008 485 809;

(i) Master Builders Northern Territory Limited ACN 627 299 414.

5A High value construction contract amount

For section 4A of the Act, definition ***high value construction contract***, the amount prescribed is 500 000 000 monetary units.

5B High value construction contract dispute resolution mechanism

For section 10A(1)(b) of the Act, a dispute resolution mechanism must:

(a) provide a process for the parties to the high value construction contract to undertake a dispute resolution; and

(b) require that the parties undertake the dispute resolution:

(i) in good faith; and

(ii) in a timely manner; and

(c) require that, in the event that the payment dispute is not resolved within 45 working days, payments between the parties (and to third parties) under the contract continue pending resolution of the payment dispute by a court or arbitration process; and

(d) state that the dispute resolution mechanism continues to apply even if the contract has expired or has been terminated; and

(e) be set out in a clear and unambiguous manner.

6 Information in application for adjudication

For section 28(2)(a) of the Act, an application for adjudication must, in addition to the other information required by section 28(2) of the Act, contain:

(a) the name and contact details of the appointed adjudicator or prescribed appointer; and

(b) the applicant's name and contact details; and

(c) the name and contact details of each other party to the contract.

7 Information in response to application

For section 29(2)(a) of the Act, a response to an application for adjudication must, in addition to the other information required by section 29(2) of the Act, contain:

(a) the name and contact details of the appointed adjudicator or prescribed appointer; and

(b) the applicant's name and contact details; and

(c) the respondent's name and contact details.

8 Information in adjudicator's decision

For section 38(1)(b) of the Act, an appointed adjudicator's decision must, in addition to the other information required by section 38(1) of the Act, contain:

(a) the name of the adjudicator; and

(b) the applicant's name and contact details; and

(c) the respondent's name and contact details; and

(d) the date and any identification number of the adjudicator's determination.

9 Interest rates

For sections 35(1)(b) and 41(2) of the Act and clause 7 of the Schedule to the Act, the interest rate is the rate fixed from time to time for section 85 of the *Supreme Court Act 1979*.

10 Information for notice of intention to suspend performance of obligations

For section 44(2)(a) of the Act, a contractor's notice of intention to suspend the performance of its obligations must, in addition to the other information required by section 44(2) of the Act, contain:

(a) the name of the appointed adjudicator;

(b) the principal's name and contact details;

(c) the contractor's name and contact details;

(d) the date and any identification number of the adjudicator's determination;

(e) the amount to be paid to the contractor under the determination; and

(f) the date by which the principal must pay that amount under the determination.

11 Eligibility for registration

(1) For section 52(1) of the Act, a natural person is eligible to be a registered adjudicator if the person has the qualifications and experience stated in subregulations (3) to (5).

(2) However, the person must not be registered if the person is a disqualified person under subregulations (6) to (8).

(3) The person must:

(a) hold a degree from a university or other tertiary institution in Australia in any of the following courses:

(i) architecture;

(ii) building;

(iii) building surveying;

(iv) construction;

(v) engineering;

(vi) law;

(vii) project management;

(viii) quantity surveying; or

(b) have an equivalent qualification from a university or other tertiary institution outside Australia; or

(c) be eligible for membership of any of the following bodies:

(i) The Royal Australian Institute of Architects Limited ACN 000 023 012;

(ii) Australian Institute of Building Surveyors ACN 004 540 836;

(iii) The Institution of Engineers Australia;

(iv) Law Society Northern Territory;

(v) The Institute of Arbitrators & Mediators Australia ACN 008 520 045;

(vi) Resolution Institute ACN 008 651 232;

(vii) Australian Institute of Project Management ACN 001 443 303;

(viii) The Australian Institute of Quantity Surveyors ACN 008 485 809; or

(d) be registered under the *Building Act 1993* in the category of building contractor.

(4) For subregulation (3)(b), 2 qualifications are equivalent if the courses of study to attain them cover approximately the same matters.

(5) The person must:

(a) have at least 5 years experience in:

(i) administering construction contracts; or

(ii) dispute resolution relating to construction contracts; and

(b) have successfully completed a training course that, in the opinion of the Registrar, qualifies the person to be an adjudicator under the Act.

(6) The person is a disqualified person if the person:

(a) is an undischarged bankrupt; or

(b) has applied to take the benefit of a law for the relief of bankrupt or insolvent debtors; or

(c) has compounded with creditors or made an assignment of the person's remuneration for their benefit; or

(d) is disqualified from registration under a law of a State or Territory in a profession mentioned in subregulation (3)(a); or

(e) is unsuitable to conduct adjudications under Part 3 of the Act.

(7) For subregulation (6)(e), in deciding whether the person is unsuitable to conduct adjudications, the Registrar must have regard to the criminal history check obtained in relation to the person as mentioned in regulation 12(2).

(8) Subregulation (7) does not limit the matters to which the Registrar may have regard in deciding whether a person is unsuitable to conduct adjudications.

12 Information to be included in application or nomination for registration

(1) For section 52(4C)(a) of the Act, anapplication or nomination under section 52(2) of the Act must:

(a) state whether the applicant or nominee knows of any reasons that might disqualify the applicant or nominee from registration as mentioned in regulation 11(6)(d); and

(b) if any such reasons are known – state those reasons.

(2) In addition, the application or nomination must be accompanied by an authorisation by the applicant or nominee for the Registrar to obtain a criminal history check of the applicant or nominee.

12A Information to be included in application or nomination for renewal of registration

(1) For section 52(4C)(a) of the Act, an application or nomination under section 52(4) of the Act must state whether the applicant or nominee knows of any material changes to the registered adjudicator's eligibility to be registered since being registered under section 52(2) of the Act.

(2) In addition, the application or nomination must be accompanied by an authorisation by the applicant or nominee for the Registrar to obtain a criminal history check of the applicant or nominee.

13 Fee for application or nomination

For section 52(4C)(b) of the Act, the fee for making of an application or nomination is 115 revenue units.

14 Information to be given by registered adjudicator

(1) For section 53A of the Act, the following information is required for each application:

(a) the adjudicator's name;

(b) if the adjudicator has a registration number given by the Registrar – that number;

(c) the name and contact details of:

(i) the applicant for the adjudication; and

(ii) each other party named in the application;

(d) the nature of the work done or to be done to which the application for adjudication relates;

(e) the location of the construction the subject of the contract;

(f) the amount of the payment claim the subject of the application;

(g) the date on which the adjudicator was appointed to adjudicate the payment dispute;

(h) if the adjudicator dismissed the application under section 33(1)(a) of the Act without making a determination – the date of dismissal;

(i) if the adjudicator made a determination under section 33(1)(b) of the Act:

(i) the amount to be paid or security to be returned; and

(ia) how the amount in subparagraph (i) was calculated; and

(ii) the amount of interest payable; and

(iii) how the amount of interest was calculated;

(j) if the application is taken to be dismissed under section 33(2) of the Act – the date of dismissal;

(k) the following amounts (***costs of the adjudication***):

(i) the amount the adjudicator is entitled to be paid under section 46(1A) of the Act;

(ii) the costs of testing under section 34(2)(c)(ii) of the Act;

(iii) the costs of engaging an expert under section 34(2)(c)(iii) of the Act;

(l) the amount each party must pay for the costs of the adjudication.

(2) However, if the adjudicator is disqualified under section 31(1) of the Act, the adjudicator must give the Registrar the following information:

(a) the details specified in subregulation (1)(a) to (g);

(b) the date of the disqualification;

(c) the amount the adjudicator is entitled to be paid under section 46(1A) of the Act.

Note for subregulation (2)(c)

Under section 46(2) of the Act, an adjudicator who is disqualified has the entitlements mentioned in section 46(1A) of the Act for any adjudication work done before the disqualification is notified to the parties.

(3) The information specified in subregulation (1) must be given to the Registrar:

(a) if the adjudicator has dismissed the application under section 33(1)(a) of the Act – no later than 10 working days after the application is dismissed; or

(b) if the adjudicator has made a determination under section 33(1)(b) of the Act – at the same time as the adjudicator gives a copy of the determination to the Registrar; or

(c) if the application is taken to be dismissed under section 33(2) of the Act – no later than 10 working days after the application is taken to be dismissed.

(4) The information specified in subregulation (2):

(a) must be given to the Registrar no later than 10 working days after the disqualification; and

(b) is in addition to the information required to be given to the Registrar under section 31(2) of the Act.

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) Regulations* (SL No. 20, 2005)**

Notified	31 May 2005
Commenced	1 July 2005 (r 2, s 2 *Construction Contracts (Security of Payments) Act 2004* (Act No. 66, 2004) and *Gaz* G21, 25 May 2005, p 3)

***Construction Contracts (Security of Payments) Amendment Regulations 2010* (SL No. 26, 2010)**

Notified	29 November 2010
Commenced	29 November 2010

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

Assent date	3 September 2019
Commenced	3 February 2020 (*Gaz* G51, 18 December 2019, p 2)

***Construction Contracts (Security of Payments) Amendment Regulations 2020* (SL No. 12, 2020)**

Notified	17 June 2020
Commenced	17 June 2020

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: rr 1, 9 and 11.

4 LIST OF AMENDMENTS

r 3 amd No. 26, 2010, r 6

r 5	amd No. 26, 2010, r 3
	sub No. 12, 2020, r 4
rr 5A – 5B	ins Act No. 27, 2019, s 37
rr 6 – 8	amd No. 26, 2010, r 6
r 11	amd No. 26, 2010, r 6; No. 12, 2020, r 5
r 12	sub No. 26, 2010, r 4
	amd Act No. 27, 2019, s 38
r 12A	ins Act No. 27, 2019, s 39
r 13	amd No. 26, 2010, r 6; Act No. 27, 2019, s 40
r 14	ins No. 26, 2010, r 5
	amd Act No. 27, 2019, s 41