

NORTHERN TERRITORY OF AUSTRALIA
CONSTRUCTION CONTRACTS (SECURITY OF PAYMENTS)
REGULATIONS

Regulations No. 20 of 2005

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NORTHERN TERRITORY OF AUSTRALIA

Regulations No. 20 of 2005*

Construction Contracts (Security of Payments) Regulations

I, EDWARD JOSEPH EGAN, the Administrator of the Northern Territory of Australia, acting with the advice of the Executive Council, make the following regulations under the *Construction Contracts (Security of Payments) Act*.

Dated 30 May 2005.

E. J. EGAN
Administrator

By His Honour's Command

CLARE MARTIN
Chief Minister
acting for and on behalf of the
Minister for Justice and Attorney-General

* Notified in the *Northern Territory Government Gazette* on 31 May 2005.

1. Citation

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

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, unless the contrary intention appears –

"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 the definition of "prescribed appointer" in section 4 of the Act, each of the following persons is prescribed:

- (a) The Royal Australian Institute of Architects;
- (b) Housing Industry Association Limited;
- (c) Contractor Accreditation Limited;
- (d) The Institution of Engineers, Australia;
- (e) Law Society Northern Territory;
- (f) The Institute of Arbitrators & Mediators of Australia;
- (g) Australian Institute of Quantity Surveyors;
- (h) Territory Construction Association Incorporated.

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

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;

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- (viii) quantity surveying;
 - (b) have an equivalent qualification from a university or other tertiary institution outside Australia;
 - (c) be eligible for membership of any of the following bodies:
 - (i) The Royal Australian Institute of Architects;
 - (ii) Australian Institute of Building;
 - (iii) Australian Institute of Building Surveyors;
 - (iv) The Institution of Engineers, Australia;
 - (v) Law Society Northern Territory;
 - (vi) The Institute of Arbitrators & Mediators of Australia;
 - (vii) Australian Institute of Project Management;
 - (viii) Australian Institute of Quantity Surveyors; or
 - (d) be registered under the *Building Act* 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;
 - (b) has applied to take the benefit of a law for the relief of bankrupt or insolvent debtors;
 - (c) has compounded with creditors or made an assignment of the person's remuneration for their benefit;

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- (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 under regulation 12(b).

(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. Documents to accompany application or nomination

An application or nomination under section 52(2) of the Act must be accompanied by –

- (a) a statement by the applicant or nominee disclosing any factors of which he or she is aware that may disqualify the applicant or nominee from registration under a law mentioned in regulation 11(6)(d); and
- (b) the authorisation of the applicant or nominee for the Registrar to obtain a criminal history check in relation to the applicant or nominee.

13. Fee for application or nomination

For section 52(3) of the Act, the fee for making of an application or nomination is \$100.

