

Building and Construction Industry Security of Payment Regulations 2005

Table of Contents

Enacting Formula

1 Citation and commencement

2 Definitions

3 Agreements excluded from definition of "supply contract"

4 Contracts excluded from application of Act

5 Payment claims

6 Payment responses in relation to construction contracts

7 Adjudication applications

8 Adjudication responses

9 Adjudication determinations

10 Adjudication review applications

11 Eligibility criteria for adjudicators

12 Costs of adjudication proceedings

No. S 2

BUILDING AND CONSTRUCTION INDUSTRY SECURITY OF PAYMENT ACT 2004 (ACT 57 OF 2004)

BUILDING AND CONSTRUCTION INDUSTRY SECURITY OF PAYMENT REGULATIONS 2005

In exercise of the powers conferred by section 41 of the Building and Construction Industry Security of Payment Act 2004, the Minister for National Development hereby makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Building and Construction Industry Security of Payment Regulations 2005 and shall come into operation on 1st April 2005.

Definitions

2. In these Regulations, unless the context otherwise requires —

“main contract” means a contract between an owner and any other person (not being a party to a sub-contract made under that contract) for the carrying out of construction work at or on, or for the supply of goods or services in relation to, a construction site by that other person;

“service address”, in relation to a person, means an address for the service of documents;

“sub-contract”, in relation to a construction site, means a contract for the carrying out of construction work at or on, or for the supply of goods or services in relation to, the construction site, other than the main contract.

Agreements excluded from definition of “supply contract”

3. The definition of “supply contract” in section 2 of the Act does not include agreements which do not contain any provision specifying or identifying the construction site or the construction project in relation to which goods are to be supplied.

Contracts excluded from application of Act

4. Any contract which satisfies the following conditions shall be excluded from the application of the Act:

- (a) the contract is made, in writing, within a period not exceeding 6 months from 1st April 2005;
- (b) the contract is a sub-contract made under a main contract; and
- (c) the main contract is made before 1st April 2005.

Payment claims

5.—(1) Where a contract does not contain any provision specifying the time at which a payment claim shall be served or by which such time may be determined, then a payment claim made under the contract shall be served by the last day of each month following the month in which the contract is made.

(2) Every payment claim shall —

- (a) be in writing;
- (b) identify the contract to which the progress payment that is the subject of the payment claim relates; and
- (c) contain details of the claimed amount, including —
 - (i) a breakdown of the items constituting the claimed amount;
 - (ii) a description of these items;
 - (iii) the quantity or quantum of each item; and
 - (iv) the calculations which show how the claimed amount is derived.

Payment responses in relation to construction contracts

6.—(1) Every payment response provided in relation to a construction contract shall —

- (a) be in writing;
- (b) be addressed to the claimant;
- (c) state “nil” where the respondent does not propose to pay any part of the claimed amount and the reasons therefor; and
- (d) where the response amount is less than the claimed amount —
 - (i) contain the amount that the respondent proposes to pay for each item constituting the claimed amount, the reasons for the difference in any of the items and the calculations which show how the amount that the respondent proposes to pay is derived; and
 - (ii) contain any amount that is being withheld, the reason for doing so and the calculations which show how the amount being withheld is derived.

(2) A payment response provided in relation to a construction contract may be varied only by notice in writing which satisfies the following requirements:

- (a) the notice shall be addressed to the claimant;
- (b) the notice shall identify the payment response being varied and state whether the variation would supersede or supplement the payment response;
- (c) where the variation supersedes part of the payment response, the notice shall identify the part of the payment response that is superseded; and
- (d) the variation shall conform with paragraph (1)(c) and (d) as appropriate.

Adjudication applications

7.—(1) Every notice of intention to apply for adjudication shall contain the following particulars:

- (a) the names and service addresses of the claimant and the respondent;
- (b) the date of the notice;
- (c) the particulars of the relevant contract, comprising —
 - (i) the project title or reference, or a brief description of the project;
 - (ii) the contract number or a brief description of the contract; and
 - (iii) the date the contract was made;
- (d) the claimed amount;
- (e) the response amount (if any); and
- (f) a brief description of the payment claim dispute.

(2) Every adjudication application shall —

- (a) contain the names and service addresses of the claimant, the respondent, the principal (if known) and the owner concerned;
- (b) state whether the relevant contract is a construction contract or a supply contract;
- (c) contain the particulars of the relevant contract, comprising —
 - (i) the project title or reference, or a brief description of the project;
 - (ii) the contract number or a brief description of the contract; and