

Authorised Version

Building and Construction Industry Security of Payment Regulations 2023

S.R. No. 34/2023

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Authorised Version

STATUTORY RULES 2023

S.R. No. 34/2023

Building and Construction Industry Security of Payment Act 2002

Building and Construction Industry Security of Payment Regulations 2023

The Governor in Council makes the following Regulations:

Dated: 23 May 2023

Responsible Minister:

SONYA KILKENNY
Minister for Planning

SAMUAL WALLACE
Clerk of the Executive Council

1 Objective

The objective of these Regulations is to prescribe forms for the purposes of the **Building and Construction Industry Security of Payment Act 2002**.

2 Authorising provision

These Regulations are made under section 52 of the **Building and Construction Industry Security of Payment Act 2002**.

3 Commencement

These Regulations come into operation on 27 May 2023.

4 Revocation

The Building and Construction Industry Security of Payment Regulations 2013¹ are **revoked**.

Authorised by the Chief Parliamentary Counsel

5 Definition

In these Regulations, *the Act* means the **Building and Construction Industry Security of Payment Act 2002**.

6 Notice of intention to exercise lien

For the purposes of section 12A of the Act, the prescribed form of a notice of intention to exercise a lien is Form 1 in Schedule 1.

7 Notice of claim

For the purposes of section 32(2) of the Act, the prescribed form of a notice of claim is Form 2 in Schedule 1.

8 Debt certificate

For the purposes of section 33(2) of the Act, the prescribed form of a debt certificate is Form 3 in Schedule 1.

9 Discharge notice

For the purposes of section 40(2) of the Act, the prescribed form of a discharge notice is Form 4 in Schedule 1.

10 Notice of names of persons from whom claimant may recover

For the purposes of section 41(1) of the Act, the prescribed form of a notice is Form 5 in Schedule 1.

Schedule 1—Forms

FORM 1

Regulation 6

Building and Construction Industry Security of Payment Regulations 2023

NOTICE OF INTENTION TO EXERCISE LIEN

Section 12A(1) of the **Building and Construction Industry Security of Payment Act 2002**

To: *[name and address of ordinary place of business of respondent]*

Under section 12(1) of the **Building and Construction Industry Security of Payment Act 2002 (the Act)**, a progress payment became due and payable to me by you under the construction contract between you and me dated *[insert date and other information identifying the construction contract]*.

The progress payment became due and payable on *[insert date]* *in accordance with the terms of the construction contract/*because 10 business days have passed since *[insert date of service]* being the date on which I served a payment claim on you.

The progress payment is in respect of the following *construction work carried out/*related goods and services supplied by me under the construction contract:

[insert details of construction work, including the time and place the work was carried out, OR details of related goods and services supplied, including the time and place they were supplied, OR details of both]

I supplied the following *unfixed plant/*materials in connection with carrying out the construction work under the construction contract:

[clearly identify the unfixed plant or materials to which this notice refers]

At the date of this notice, I have not received the progress payment. Accordingly, I intend to exercise a lien in respect of the unpaid amount of the progress payment over the *unfixed plant/*materials listed above.

The lien will be extinguished when I receive the progress payment.

Dated:

Signature of claimant:

[Print name and address of ordinary place of business of claimant]

*delete whichever is not applicable

FORM 2

Regulation 7

Building and Construction Industry Security of Payment Regulations 2023

NOTICE OF CLAIM

Section 32(2) of the **Building and Construction Industry Security of Payment Act 2002**

To: [*name and address of ordinary place of business of principal*]

An *adjudicator/*review adjudicator has determined that an adjudicated amount is payable by [*insert name and address of ordinary place of business of respondent*] (**the respondent**) to me, in respect of a construction contract dated [*insert relevant date of contract*] between the respondent and me. The adjudicated amount is in respect of:

[insert details of construction work, including the time and place the work was carried out, OR details of related goods and services supplied, including the time and place they were supplied, OR details of both]

A debt certificate has been issued under section 33 of the **Building and Construction Industry Security of Payment Act 2002 (the Act)** by the [*insert name of Court*] dated [*insert date certificate was issued*]. A copy of the debt certificate is attached.

Unless, on your application, a court grants a stay of payments under section 37 of the Act, section 35 of the Act provides that, after this notice of claim is served on you, you are required to pay me the amount you owe to the respondent under a related contract with the respondent. The amount you are required to pay me is set out in the attached debt certificate.

You are required to pay this amount by making payments to me as they become payable under the related contract with the respondent (see section 35 of the Act).

If you fail to make any payment in accordance with section 35 of the Act, I am entitled under section 38 of the Act to sue you and recover the debt.

Dated:

Signature of claimant:

[*Print name and address of ordinary place of business of claimant*]

*delete whichever is not applicable

(See attached debt certificate)

FORM 3

Regulation 8

Building and Construction Industry Security of Payment Regulations 2023

DEBT CERTIFICATE

Section 33(2) of the **Building and Construction Industry Security of Payment Act 2002**

IN THE [*name of Court*] of VICTORIA

AT [*insert place*]

In proceedings between:

[*name of claimant*] ("Claimant")

of [*address of ordinary place of business of claimant*]

and

[*name of respondent*] ("Respondent")

of [*address of ordinary place of business of respondent*]

ORDER

On the application of the Claimant under section 33 of the **Building and Construction Industry Security of Payment Act 2002**, judgment having been *given/*entered in these proceedings on [*insert date of judgment*] for the recovery of [*insert adjudicated amount*], being an adjudicated amount, IT IS CERTIFIED that the amount of [*insert judgment amount*] is a debt owed by the Respondent to the Claimant.

Date of issue: [*insert relevant date*]

[*Signature of relevant court officer*]

[*Court seal*]

*delete whichever is not applicable

FORM 4

Regulation 9

Building and Construction Industry Security of Payment Regulations 2023

DISCHARGE NOTICE

Section 40(2) of the **Building and Construction Industry Security of Payment Act 2002**

To: [*name and address of ordinary place of business of
*principal/*respondent*]

For the purposes of section 40(2) of the **Building and Construction Industry Security of Payment Act 2002 (the Act)**, I acknowledge your payment of \$ _____ to me as **partial/*full* discharge of the amount owed to me specified in the debt certificate issued by the [*insert name of Court*] under section 33 of the Act on [*insert date debt certificate issued*]. A copy of the debt certificate is attached.

Dated:

Signature of claimant:

[*Print name and address of ordinary place of business of claimant*]

**delete whichever is not applicable*

(See attached debt certificate)

FORM 5

Regulation 10

Building and Construction Industry Security of Payment Regulations 2023

**NOTICE OF PERSON FROM WHOM CLAIMANT MAY
RECOVER**

Section 41(1) of the **Building and Construction Industry Security of
Payment Act 2002**

To: [*name and address of ordinary place of business of claimant*]

For the purposes of section 41(1) of the **Building and Construction
Industry Security of Payment Act 2002 (*the Act*)**, in response to your
demand of [*insert date of demand*] for this notice, I notify you that, under a
contract with the following *person/*persons:

[*insert name(s) of person(s)*]

I have *carried out the following construction work/*supplied the following
related goods and services:

[*insert details of construction work, including the time and place the work
was carried out, OR details of the goods and services, including the time
and place they were supplied, OR details of both*]

I provide this notice in the knowledge that, if I give it knowing that it is false
or misleading in a material particular, I am guilty of an offence and liable to a
penalty under section 41(2) of the Act.

Dated:

Signature of respondent:

[*Print name and address of ordinary place of business of respondent*]

*delete whichever is not applicable

Endnotes

¹ Reg. 4: S.R. No. 56/2013.