

# Building and Construction Industry Security of Payment Regulations 2013

S.R. No. 56/2013

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STATUTORY RULES 2013

S.R. No. 56/2013

*Building and Construction Industry Security of Payment Act  
2002*

**Building and Construction Industry Security of  
Payment Regulations 2013**

The Governor in Council makes the following Regulations:

Dated: 28 May 2013

Responsible Minister:

MATTHEW GUY  
Minister for Planning

YVETTE CARISBROOKE  
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 3 June 2013.

#### **4 Revocation**

The following regulations are **revoked**—

- (a) the Building and Construction Industry Security of Payment Regulations 2003<sup>i</sup>;
- (b) the Building and Construction Industry Security of Payment (Amendment) Regulations 2007<sup>ii</sup>.

#### **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 the Schedule.

#### **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 the Schedule.

#### **8 Debt certificate**

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

#### **9 Discharge notice**

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

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**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 the Schedule.

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## SCHEDULE

### FORMS

#### FORM 1

Regulation 6

Building and Construction Industry Security of Payment Regulations 2013

#### 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 *[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.

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Sch.

Signature of claimant:

Print name and address of ordinary place of business of claimant:

Date:

\*delete whichever is not applicable

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**FORM 2**

Regulation 7

Building and Construction Industry Security of Payment Regulations 2013

**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)

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**FORM 3**

Regulation 8

Building and Construction Industry Security of Payment Regulations 2013

**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*]

and

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

of [*address of ordinary place of business*]

**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 2013

**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)

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**FORM 5**

Regulation 10

Building and Construction Industry Security of Payment Regulations 2013

**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

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**ENDNOTES**

- <sup>i</sup> Reg. 4(a): S.R. No. 50/2003 as amended by S.R. No. 19/2007.
- <sup>ii</sup> Reg. 4(b): S.R. No. 19/2007.