

THE CONTRACTUAL ADJUDICATION GROUP SCHEME Version 1.0

Introductory Note:

This scheme provides a means for an interim but binding assessment of disputes about payment in the construction industry at a fraction of the cost of litigation or arbitration and in just three weeks.

1. The following scheme may be incorporated into any contract by reference to The Contractual Adjudication Group Scheme, or the CAG Scheme.

PURPOSE

2. (a) The purpose of this scheme is to provide a means whereby parties to a Contract may obtain a speedy and enforceable ascertainment of their contractual rights without prejudice to pursue their rights by other means (the "Scheme"). If either party has a statutory entitlement to adjudication in respect of such rights, this adjudication shall not derogate from statutory entitlement.

(b) The parties do not intend this process to be finally determinative of their rights, and as such the Scheme is not an arbitration. Rather, it is intended as a type of expert determination of the right to payment of cash and other rights on account, in order to provide a speedy and effective means of ensuring that contractual obligations are met on at least an interim basis and without resort to full legal process on a "pay now argue later" basis.

DEFINITIONS

3. In this Scheme:-

The "Adjudicator Nominating Body" or "ANA" means

- If the parties have agreed on a designated ANA in the Contract, that ANA,
- Otherwise, any ANA that is an Adjudicator Nominating Authority or Adjudicator Nominating Body pursuant to any legislation in Australia, or any state chapter of IAMA.

"Claimant" means a party who serves an Adjudication Notice

"Commencement Day" means the day on which the Adjudicator is empowered under Clause 5.

"Contract" means the agreement(s) identified in the Adjudication Notice and which creates or modifies the Claimant's rights;

"Day" means a day other than a Saturday, Sunday or public holiday in the place of the applicable law.

"Party" means any party to the Contract

"Respondent" means a party on whom an Adjudication Notice has been served.

THE ADJUDICATION NOTICE

4. (a) These Rules shall apply upon any Party giving written notice to any other Party requiring adjudication (the "Adjudication Notice") identifying in general terms the contractual rights in respect of which adjudication is required.

(b) An Adjudication Notice may be given at any time, notwithstanding that arbitration or litigation has been commenced in respect of such rights, provided that a material part of the rights asserted in the Adjudication Notice shall have accrued or become enforceable within 2 months immediately prior to the date of the Adjudication Notice.

(c) More than one such Adjudication Notice requiring adjudication may be given in respect of disputes arising out of the same contract, provided that a single specific dispute may be the subject of only one Adjudication Notice.

(d) The rights in (a) above are limited to those arising under the terms of the Contract and do not include rights to damages.

APPOINTMENT

5. (a) If

(i) before the expiry of 3 days from the service on the Respondent of an Adjudication Notice the parties have agreed upon the identity of a natural person as Adjudicator, and

(ii) before the expiry of a further period of 3 days the Adjudicator confirms his readiness and willingness to embark upon the Adjudication without any outstanding stipulations

then that person shall be empowered as the Adjudicator.

(b) If within the time periods specified in subparagraph (a) above, the Parties do not agree on the identity of an Adjudicator, or the Adjudicator has not indicated his readiness and willingness to undertake the adjudication, then any Party may apply to the ANA to nominate an Adjudicator. Any person so nominated, and who has confirmed his readiness and willingness to act without any outstanding stipulations within 3 days of the nomination shall be empowered as the Adjudicator. If such nominee is not so empowered, the nomination shall lapse, and the parties shall be free to seek another nomination from the ANA.

(c) Where an adjudicator has already been appointed in relation to another dispute arising out of the Contract, the same or a different person may be agreed or nominated as the Adjudicator.

SCOPE OF THE ADJUDICATION

6. (a) The scope of the Adjudication shall be the matters identified in the Adjudication Notice, together with

(i) any further matters which all Parties agree should be within the scope of the Adjudication, and

(ii) any further matters which the Adjudicator determines must be included in order that the Adjudication may be effective and/or meaningful.

(b) In so far as the Respondent raises by way of defence, including a set-off, a matter which if sustained would reduce or extinguish the right claimed by the Claimant, the Adjudicator shall consider such matter in arriving at his decision.

(c) The Adjudicator may decide upon his own substantive jurisdiction, and as to whether any matter falls within the scope of the Adjudication. If he decides that any matter falls outside his jurisdiction, he may make his decision in respect of those matters (if any) within his jurisdiction.

THE ROLE AND POWERS OF THE ADJUDICATOR

7 (a). The Adjudicator shall have the like power to open up and review any certificate or other thing issued or made pursuant to the Contract as would an arbitrator appointed pursuant to the Contract and/or a court.

(b) If the Contract is subject to any Security of Payment legislation, the Adjudicator shall take account of the content of the Respondent's written submissions as though such content had been contained in a payment schedule and/or adjudication submission within the time stipulated by such legislation.

(c) The Adjudicator shall act fairly and impartially, but shall not be obliged or empowered to act as though he were an arbitrator.

CONDUCT OF THE ADJUDICATION

8 (a) Unless otherwise directed by the Adjudicator, the procedure and timetable for the Adjudication will be as follows:

(i) the Claimant shall serve its written submissions within 3 days from the Commencement Day;

- (ii) the Respondent shall serve its written submissions within 8 days from the Commencement Day;
 - (iii) all written submissions must be served on the Adjudicator and the other Party.
- (b) Without prejudice to the generality of (a), the Adjudicator may if he thinks fit:-
- (i) Require the delivery of further submissions,
 - (ii) Require any party to produce a bundle of documents
 - (iii) Require the delivery to him and/or the other parties of copies of any documents other than documents that would be privileged from production to a court,
 - (iv) Limit the length of any written or oral submission,
 - (v) Require the attendance before him for questioning of any Party or employee or agent of any Party,
 - (vi) Make site visits,
 - (vii) Make use of his own specialist knowledge,
 - (viii) Obtain advice from specialist consultants, provided that at least one of the Parties so requests or consents,
 - (ix) Make directions for the conduct of the Adjudication orally or in writing,
 - (x) Review and revise any of his own previous directions,
 - (xi) Conduct the Adjudication inquisitorially, and take the initiative in ascertaining the facts and the law,
 - (xii) Reach his decision with or without holding an oral hearing.

(c) The Adjudicator shall exercise such powers with a view of fairness and impartiality, giving each Party a reasonable opportunity, in light of the timetable, of putting its case and dealing with that of its opponents and/or any Rule 6(a)(ii) matter.

(d) The Adjudicator may not

(i) require any advance payment of or security for his fees;

(ii) refuse any Party the right at any hearing or meeting to be represented by any representative of that Party's choosing who is present;

(iii) act or continue to act in the face of a conflict of interest.

(e) The Adjudicator shall provide his decision to the Parties within 15 days from the Commencement Day or such longer period as may be agreed by the Parties.

DECISIONS

9 (a) In respect of money claims, the Adjudicator's decision shall dictate what sums (if any) are to be paid by whom to whom and at what time.

(b) In respect of other claims, the Adjudicator's decision shall be declaratory.

(c) The decision of the Adjudicator shall reflect the Adjudicator's interim view of the legal entitlements of the Parties.

(d) In his decision, the Adjudicator shall have the discretion to what party should bear which part of his fees and expenses.

(e) The Adjudicator may in any decision direct the payment of interest on a compound or simple basis as may be commercially reasonable.

(f) All decisions of the Adjudicator shall be in writing. The Adjudicator shall provide written reasons for his decision unless all of the Parties otherwise agree.

(g) The Adjudicator may, on his own initiative or on the application of a Party, correct his decision so as to remove any clerical mistake or error arising from an accidental slip or omission.

ADJUDICATOR'S FEES AND EXPENSES

10 (a) The amount of the Adjudicator's fees shall, subject to contrary agreement, be such amount as is reasonable in all the circumstances calculated on an hourly rate basis.

(b) If the Adjudicator shall deliver his decision later than required by this scheme, he shall not be entitled to payment of his fees.

(c) If a Party shall request Adjudication, and it is subsequently established that he is not entitled to do so, that Party shall be solely responsible for the Adjudicator's fees and expenses.

(d) Save as aforesaid, the Parties shall be jointly responsible for the Adjudicator's fees and expenses including those of any specialist consultant appointed by the Adjudicator.

(e) If no contrary direction is made by the adjudicator, the Parties shall bear such fees and expenses in equal shares. If any Party has paid more than his share, that Party shall be entitled to recover the excess from other Parties accordingly.

PARTIES' COSTS

11 The Adjudicator shall have no jurisdiction to order one party to pay the other any sum in respect of its legal or other costs of the adjudication.

ENFORCEMENT

12. Every decision of the Adjudicator shall be implemented without delay. The Parties shall be entitled to such reliefs and remedies as are set out in the decision, and shall be entitled to summary judgment

therefor, regardless of whether such decision is or is to be the subject of any challenge or review. No party shall be entitled to raise any right of set-off, counterclaim or abatement in connection with any enforcement proceedings.

IMMUNITY, CONFIDENTIALITY AND NON-COMPELLABILITY

13. (a) Neither the ANA nor the Adjudicator nor any employee or agent of any of them shall be liable for anything done or not done in the discharge or purported discharge of his functions as Adjudicator, whether negligently or otherwise, unless the act or omission is in bad faith.

(b) Unless otherwise agreed, the Adjudication and all matters arising in the course thereof are and will be kept confidential by the Parties and the Adjudicator except insofar as necessary to implement or enforce any decision of the Adjudicator or as may be required for the purpose of any subsequent proceedings.

(c) In the event that any Party seeks to challenge or review any decision or proceeding of the Adjudicator in any litigation or arbitration, neither the ANA nor the Adjudicator shall not be joined as a party to, nor shall be subpoenaed or otherwise required to give evidence or provide his notes in such litigation or arbitration. If, in breach of this obligation the ANA and/or Adjudicator is so joined, the joining party shall pay the ANA's and/or adjudicator's costs on an indemnity basis, regardless of whether such order is made in such litigation or arbitration. However, notice of any such challenge or review proceedings shall be given to the Adjudicator, and if the Adjudicator chooses to make a written statement concerning the adjudication, such statement shall be put before the court or arbitrator.

APPLICABLE LAW

14. This scheme shall, unless otherwise agreed, be governed by the law of the Contract.