

South Australia

Fair Trading (Building and Construction Industry Dispute Resolution Code) Regulations 2017

under the *Fair Trading Act 1987*

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1—Short title

These regulations may be cited as the *Fair Trading (Building and Construction Industry Dispute Resolution Code) Regulations 2017*.

2—Commencement

These regulations come into operation on the day on which they are made.

3—Interpretation

In these regulations—

Act means the *Fair Trading Act 1987*;

civil penalty contravention has the same meaning as in Part 7 Division 3A of the Act;

code means the Building and Construction Industry Dispute Resolution Code 2017 set out in Schedule 1;

Commissioner means the Small Business Commissioner;

construction contract, *construction work* and *related goods and services* have the same respective meanings as in the *Building and Construction Industry Security of Payment Act 2009*.

4—Prescription of building and construction industry and building and construction industry participants

For the purposes of Part 3A of the Act—

- (a) the building and construction industry is taken to be an industry; and
- (b) the following are taken to be participants in the building and construction industry:
 - (i) a person carrying on—
 - (A) a business in the building and construction industry; or
 - (B) a business having a connection to the building and construction industry; or
 - (C) a business involving the supply of goods or services to persons involved in the building and construction industry if the supply occurs in connection with the carrying on of a business in the building and construction industry;
 - (ii) without limiting subparagraph (i), a person who has undertaken—
 - (A) to carry out construction work under a construction contract; or
 - (B) to supply related goods and services under a construction contract.

5—Prescription of code

- (1) The code is prescribed as an industry code for the purposes of Part 3A of the Act.
- (2) The Small Business Commissioner is responsible for the administration of the code and for the administration of Part 3A of the Act in relation to the code.

6—Contravention of code subject to civil penalty

- (1) A contravention of section 28E of the Act constituted of a contravention of the code is to be subject to a civil penalty under Part 7 Division 3A of the Act.
- (2) The expiation fee for an alleged civil penalty contravention involving an alleged contravention or attempted contravention of the code is—
 - (a) in the case of a body corporate—\$4 000; and
 - (b) in the case of a natural person—\$500.

7—Fee for mediation under code

- (1) If an authorised officer arranges for mediation of a dispute under the code with the agreement of the parties to the dispute, each of the parties must pay a fee of \$195 for each day, or part of a day, on which the mediation occurs.
- (2) A fee payable by a person under subregulation (1) is recoverable as a debt due to the Crown.
- (3) The Commissioner may waive a fee payable by a person under subregulation (1) if satisfied that it is appropriate to do so in a particular case.

Schedule 1—Building and Construction Industry Dispute Resolution Code

1—Short title

This code may be cited as the *Building and Construction Industry Dispute Resolution Code 2017*.

2—Interpretation

In this code—

alternative dispute resolution procedure does not include arbitration;

participant in the building and construction industry means a person taken to be a participant in the building and construction industry for the purposes of Part 3A of the Act.

Note—

See regulation 4(b).

3—Application of code

This code applies to—

- (a) a dispute between a participant in the building and construction industry and 1 or more other participants in the building and construction industry relating to a matter connected to a construction contract to which the participants are parties; or
- (b) a dispute between a participant in the building and construction industry and—
 - (i) 1 or more other participants in the building and construction industry; or
 - (ii) 1 or more persons to whom goods or services are or may be supplied by the participant,

in connection with the acquisition or supply, or the potential acquisition or supply, of goods or services relating to the carrying on of business in the building and construction industry.

4—Dispute resolution

- (1) If the Commissioner is satisfied, on written application by a party to a dispute to which this code applies—
 - (a) that the party has made a reasonable attempt to resolve the dispute; and
 - (b) that the subject matter of the dispute is not frivolous or vexatious,

an authorised officer may notify the parties to the dispute in writing that the officer is commencing an alternative dispute resolution procedure in relation to the dispute in accordance with this code.

- (2) If an alternative dispute resolution procedure is commenced under this code, a party to the dispute, or another person authorised in writing to attend or participate in the procedure on the party's behalf, must attend or otherwise participate in the procedure, as required by the authorised officer.
- (3) A person participating in an alternative dispute resolution procedure—
 - (a) must act reasonably, fairly, honestly and cooperatively; and
 - (b) must not mislead, harass, intimidate or oppress another party to the dispute.
- (4) A person participating in an alternative dispute resolution procedure must comply with any reasonable request made by the authorised officer in connection with the officer's attempt to assist the parties in the resolution of the dispute, including, without limitation, a request to do 1 or more of the following:
 - (a) exchange information relevant to the dispute with the other party;
 - (b) answer questions in respect of matters relevant to the dispute;
 - (c) attend meetings;
 - (d) participate in mediation or another form of alternative dispute resolution.
- (5) An authorised officer conducting an alternative dispute resolution procedure may request that a person participating in the procedure be a person who is authorised to resolve the dispute.
- (6) A request made by an authorised officer under subclause (4) or (5) must be complied with as soon as reasonably practicable, and, in any event, in the case of a written request, within 14 days of the date of the request or such longer period as is allowed by the authorised officer.
- (7) The authorised officer conducting an alternative dispute resolution procedure may, for the purposes of attempting to resolve the dispute—
 - (a) refer the dispute to mediation; or
 - (b) after consultation with the parties—appoint a person able to provide expert advice on matters relevant to the dispute to assist the officer.
- (8) The parties to a dispute are equally liable for the costs of expert advice provided under subclause (7)(b) unless they agree to a different apportionment of the costs.
- (9) An authorised officer may suspend (for a specified time or until further notice) or terminate a dispute resolution procedure if the dispute is the subject of—
 - (a) proceedings before a court or tribunal; or
 - (b) arbitration; or
 - (c) another alternative dispute resolution procedure.
- (10) An authorised officer may terminate an alternative dispute resolution procedure if the officer forms the view that—
 - (a) there is no reasonable prospect of resolving the dispute; or
 - (b) the subject matter of the dispute is frivolous or vexatious.

- (11) Following the completion of an alternative dispute resolution procedure, the authorised officer who conducted the procedure must provide the parties with a certificate stating—
- (a) the names of the parties; and
 - (b) the nature of the matters in dispute; and
 - (c) if the procedure has been terminated under subclause (9) or (10)—that the procedure has been terminated without resolution; and
 - (d) if the dispute has been resolved—the terms of the resolution.
- (12) Unless the authorised officer and the parties otherwise agree in writing, any communication made, or document prepared (including a certificate provided under subclause (11)), in connection with an alternative dispute resolution procedure under this code must be treated as confidential.
- (13) However, a certificate provided under subclause (11) may be produced before a court or tribunal.

Note—

As required by section 10AA(2) of the *Subordinate Legislation Act 1978*, the Minister has certified that, in the Minister's opinion, it is necessary or appropriate that these regulations come into operation as set out in these regulations.

Made by the Governor

with the advice and consent of the Executive Council
on 5 December 2017

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