CONSTRUCTION CONTRACTS (SECURITY OF PAYMENTS) ACT, 2004

DETERMINATION

Adjudication Identification Number:	26-07-02
Adjudicator:	**DS ELLIS**
Address	Level 25, Allendale Square 77 St Georges Tce Perth Western Australia
Phone Number	(08) 9220 0511
Fax Number	(08) 9220 0572
Applicant's Name:	[Redacted]
ABN:	[Redacted]
Address	[Redacted]
Phone Number	[Redacted]
Respondents' Name:	[Redacted]
ABN:	[Redacted]
Address	[Redacted]
Phone Number	[Redacted]
Date of Adjudication Application:	7 August 2026

Pursuant to s 33 of the Act, I determine that the amount payable by the respondent to the applicant in respect of the adjudication application made on 7 August 2026 is:

1 $30,079.16, together with applicable GST; and

2 $549.46 by way of interest on that sum.

The parties should share the costs of the adjudication equally.

The determined amount is payable within 7 days.

The reasons for my determination are annexed as Schedule 1.

A list of information that, because of its confidential nature, is not suitable for publication by the Registrar is annexed as Schedule 2.

Date: 11 September 2026

DS Ellis
Registered Adjudicator no 07

Schedule 1: Reasons for Determination

Applicant v Respondent Overview

1 The application arises from a written contract made on 15 December 2023 (contract) pursuant to which the applicant agreed to build a 5-level building for the respondent. Two of those levels were basement car parking areas.

2 The applicant seeks a determination that the respondent is liable to pay it an additional $844,882.19 plus GST.[1] That sum is part of the amount claimed by the applicant in its payment claim No 28. The applicant did not, in this adjudication, pursue all the components which the respondent rejected by its 'payment advice notice' or PAN dated 8 May 2026.

3 I consider that the applicant is entitled to payment of a further $30,079.16, together with GST on that amount, plus interest of $549.46 in respect of the payment claim.

4 The bulk of the claim related to a claim for a latent condition. I consider that the groundwater level at site was higher than would have been anticipated at tender and was a latent condition. The applicant became aware of the latent condition in January 2024 before the design was completed and before work started. Notice should have been given then. The applicant is entitled to a deemed variation for changing the design, and probably, building a structure or providing equipment with greater dewatering capacity, but it did not make a claim on this basis. The claim made is for the cost of rectifying existing structures. I am unable to attribute a value to the deemed variation resulting from the latent condition.

5 The parties should bear the costs of the adjudicator equally. The primary issue, the latent condition claim, is not straightforward.

Procedural Background

6 The application was made electronically to Resolution Institute (RI) on 7 August 2026.

7 The application comprised:

8 formal application (including submissions);

9 a statutory declaration of [Redacted] made on 7 August 2026; and

10 application Bundle of 2879 pages (including legal authorities).

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[1] Unless expressly stated to the contrary, all figures are exclusive of GST.

3 I was appointed as the adjudicator by RI in respect of this matter by letter dated 11 August 2026.

4 The respondent confirmed that the application was served on it on 7 August 2026.

5 The response was provided electronically within the time allowed and comprised:

(a) formal response (including submissions); and

(b) 11 folders described as 'Tabs', named as follows:

(i) Tab 1. The dispute to be adjudicated;

(ii) Tab 2. Preliminary and agreed matters;

(iii) Tab 3. Preliminary disputed matters and clarifications;

(iv) Tab 4.1 Disputed Claims - Item 009 - Hardware;

(v) Tab 4.2. Disputed Claims – Item 014 Finishes;

(vi) Tab 4.3. Disputed Claims - VO86 – Price Increase Dispute; and

(vii) Tab 4.4 – Disputed Claims VO 87;

(viii) Tab 4.5;

(ix) Tab 4.6 Disputed Claims – VO102a – Lockers in Workshop;

(x) Tab 5 [Redacted] Declaration;

(xi) Tab 6 – Authorities.

Tab 5 was a statutory declaration of [Redacted] dated 28 August 2026. It had 9 exhibits.

Jurisdictional requirements

6 Based on the materials provided to me, I am satisfied that the contract was a construction contract within the scope of the Act. I am satisfied that the application was otherwise prepared and served in accordance with s 28 of the Act, the works were works to which the Act applies. The dispute identified in these proceedings has not been determined or dismissed. It has not been the subject of a proceedings. It is possible to make a determination within the time limited under the Act. The respondent accepted, correctly, that the other jurisdictional requirements identified in s 33(1)(a) were met.

7 There is no basis to dismiss the application under s 33(1)(a).

8 I proceed to determine the matter in accordance with s 33(1)(b) of the Act.

The contract, the payment claim and the disputed items

9 The contract between the parties was made on 15 December 2023 by way of a Formal Instrument of Agreement.[2] Among other things, it incorporated the AS4902-2000 General Conditions for design and construct.[3]

10 The contract was made in tandem with a deed of novation of a contract that had been entered into between the respondent and an architect. The architect had been engaged to develop the design to 50% completion and to 70% completion. The deed of novation extended the work of the architect to completing the design, but completing the design was done for the applicant enabling the applicant to carry out its design obligations under the contract.[4]

11 The applicant commenced work and made a number of payment claims. It appears that the work is largely complete. The payment claim the subject of this application, no. 28, was made on 30 April 2026. It was reproduced in the application, occupying more than 2,000 pages of the applicant's bundle.

12 The payment claim was a progress claim, in the sense that it identified all the work the applicant contended had been done, identified all the payments that had been made by the respondent, and sought payment of the difference. The claim sought payment of $1,047,059.65 in total.

13 There were a number of components of the payment claim which the respondent rejected, did not allow or only partly allowed. Without conceding that the respondent's assessment was correct, the applicant pursued only the following items.

WUC

Item	Description	Amount Claimed in payment claim	Amount allowed	Amount in dispute in adjudication
009	Hardware	$24,891.35	$0.00	$24,891.35
014	Finishes	$20,205.2715	$0.00	$12,123.16
Totals		$45,096.6215	$0.00	$37,014.51

[2] AB18.

[3] AB21.

[4] AB5.

Variations

Item	Description	Amount claimed in payment claim	Amount allowed	Amount in dispute in adjudication
VO86	Price Increase Dispute	$5,222.00	$0.00	$5,222.00
VO87	Latent Condition Basement Pump	$786,914.68	$0.00	$786,914.68
VO95	Changes to Workstation Layout GF Option 1	$1,812.00	$0.00	$1,812.00
V102a	Lockers In Workshop (Return)	$-13,919.0014	-$13,919.00	$13,919.00
Total		$ $807,867.68	-$13,919.00	807,867.68

14 The total amount sought in the adjudication was $844,882.19.

15 I will deal with these items in turn.

WUC Item 009 – Hardware – Signage: $24,891.35

16 This item relates to work associated with the supply and installation of signage, part of which was 'privacy signage'.

17 It appears that the applicant arranged for privacy signage to be made and installed.[5] However, when the subcontractor went to install the signage, the respondent had already installed some of its own.[6] The applicant's contractor did not go ahead with

[5] AB at 2329.

[6] AB2329.

the installation. There was a dispute about whether the designs were appropriate, but I have not been provided with sufficient information to decide whether that is correct.

18 In the circumstances, the applicant is entitled to the costs of making the signage, but is not entitled to charge for installing it, because it has not done so.

19 The respondent also contended that there was other signage installation that the applicant had not done. It was of logos and other door signs. [Redacted] identified the 'missing' signage in exhibit JP5 of the declaration. She contended that this warranted a $15,100 deduction leaving balance payable of $9,791.35. On top of that, she contended that a payment of $3,136.37 had been made for this item in respect of Payment Claim 31, leaving a balance payable of $6,654.58.

20 I am not satisfied that additional logo and door sign installations remained undone. There appears a fairly extensive pro-core correspondent in relation to matters. This aspect of the non-installation is not mentioned.

21 The applicant identified the manufacturing costs as $17,860. It is entitled to this amount. The deduction is more than the credit identified by [Redacted].

22 I am not satisfied that the allowance of $3,136.37 in payment claim 31 was respect of that had been claimed in payment claim 30 or was for subsequent work.

23 I allow $17,860 for this item

WUC Item 014 – Finishes: $20,205.27

24 This item relates to concreting work connected with the landscaping work outside the building.

25 The applicant pursues only part of the claim made in the payment clam for this item. It seeks only $12,123,16.

26 It appears that the applicant had originally been required to install 'crazy path' on the paths around the building, but an issue arose about safety of the 'crazy path' which, as I understand it, does not have a 'smooth consistent flat surface'. It was not disputed that specification for the path was changed to 'plain' concrete in certain areas. The claim was for the performance of concreting works in relation to the concrete path. The applicant supported this item with two invoices.[7] The invoices do not refer to

[7] AB2555 to AB2559.

'crazy paving' but to 'concreting'. The relevant invoices were dated in December and January 2026 and appear to be for concreting work.

27 The primary position of the respondent is that the works the subject of the claim had not been done.[8] A closer examination reveals that the respondent accepts that the concreting work the subject of the invoices provided by the applicant *had* been done,[9] but that the whole of the 'finishes' work, had not been completed. [Redacted] pointed to further 'stonework' which was completed after the payment claim was made. The respondent said it had paid the applicant for the stonework after this payment claim. [Redacted] provided calculations of the differences between the costs of performing concreting and the costs of 'crazy paving' or 'stonework' as the case may be.

28 This is consistent with the position taken in the adjudication, which conceded part of the claim made in the payment claim.

29 I allow this claim at $12,123.16.

VO86 – Price Increase Dispute: $5,222.00

30 This is a claim is based on GC36.4A to GC36.4C. These clauses permit the price of the certain materials used in the works where the increase exceeds 5% (and the total increases do not exceed $300,000). The materials to which this provision applies are: 'aluminium, insulation, plasterboard, steel and copper'. This list is 'to the exclusion of all other things'.

31 It appears that the applicant had already made a claim for increases in the price of certain items, which had been allowed in part. The claim was rejected in relation to 'sundries'. I understand 'sundries' to be items included in invoices sent by suppliers which were associated with the supply of 'aluminium, insulation, plasterboard, steel and copper' but that were not themselves 'aluminium, insulation, plasterboard, steel and copper'. For example, a supplier of plasterboard might also supply and invoice for tape used to join pieces of plasterboard.

32 The deduction does not apply to the whole of the amount invoiced by a supplier, it applies only to the extent that the supplier actually supplies 'aluminium, insulation, plasterboard, steel and copper'. The clauses do not apply to 'sundries'.

33 This claim must be disallowed.

[8] [Redacted] at [21].

[9] [Redacted] at [29].

VO87: Latent Condition Basement Pump – Amount claimed: $786,914.68

Introduction

34 This item is the bulk of the claim advanced in this adjudication.

35 The issue of a latent condition arose in or about 3 September 2025. There had been water ingress into the basement of the building in or about January 2025. The applicant had been dewatering the basement since then using temporary equipment. In September 2025, the applicant was installing the 'permanent' pump system and realised that the temporary dewatering pumps had a greater capacity than the 'permanent' pumps forming part of the design. The applicant sent a notice to the respondent on 3 September 2025[10] headed 'Notice of Latent Condition – Basement Pump' (Notice). The applicant subsequently designed and installed an alternative dewatering system. As I understand it, that alternative dewatering system includes both upgraded pumps and modifications to the existing drains etc in the basement of the building. The applicant claims for the costs of making those changes.

36 The following questions arise:

(a) what was the condition associated with the claim?

(b) was the condition a 'latent condition' within the meaning of GC25.1?

(c) when did the applicant become aware of the latent condition?

(d) did the applicant give prompt notice of the latent condition?

(e) if the applicant did give not prompt notice, what consequences follow?

What was the condition?

37 GC 25.1 defines 'latent conditions' as follows:

> Latent Conditions are physical conditions on the Site and its near surrounds, including artificial things but excluding weather conditions, which differ materially from the physical conditions which should reasonably have been anticipated by a competent Contractor at the time of the Contractor's tender if the Contractor had inspected:
>
> (a) all written information made available by the Principal to the Contractor for the purpose of tendering;
>
> (b) all information influencing the risk allocation in the Contractor's tender
>
> (c) and reasonably obtainable by the making of reasonable enquiries; and

[10] Applicant's bundle of documents at p469 (AB469).

(d) the Site and its near surrounds.'

38 The Notice was prompted by the realisation that the design for the dewatering of the basement was inadequate. The inadequacy of the designed dewatering system is not the 'physical condition', although that may be one of the consequences of the physical conditions of the site.

39 The application refers to the 'sheer difference in the volume of ground water on site. volume of water encountered on site such that, for the purposes of the Construction Contract' and asserts it is 'a physical condition'. In my opinion, the relevant 'physical condition' is the groundwater level. It was the groundwater level that led to the influx of water in January 2025[11] and the volume of water that needed to be removed from the basement.[12]

40 In the report dated 10 July 2026 from [Redacted], [Redacted] states that the groundwater level was 32.8 below the surface, which is 1.7m above the bottom of the retaining walls of the building.

Was the condition a 'latent condition'?

41 Whether a condition is a 'latent' condition (and not just a 'condition') depends on whether there is a material difference between the condition and what should reasonably have been expected by the tenderer at the time of tender having regard to the matters identified in paragraphs (a), (b) and (c) of GC25.1, and what actually exists. The applicant's tender was dated 24 July 2023.

42 The applicant proceeded on the basis that the only document within GC 25.1(a) was a report from [Redacted] of 9 March 2023 ('[Redacted] 2023 Report'). This report points to groundwater levels at 8m below the surface. The respondent did not point to any other documents. I accept the applicant's position on this point.

43 The investigations referred to in the [Redacted] March 2023 Report encountered water at 8 and 7.2mm below the surface.[13] The [Redacted] March 2023 Report also refers prior investigations showing water at 8.0 and 8.3 m below the surface.[14]

[11] Application at [92].

[12] See the Report of [Redacted] produced a report dated 13 October 2025 ([Redacted] Oct 2025) at AB 510 and 522.

[13] AB2095.

[14] AB2094.

44 The respondent did not rely on any feature of the Site and its near surrounds which ought to have been taken into account by a competent contractor for the purposes of clause 25.1(c).

45 There was greater dispute about the information that could have been obtained by the making of reasonable inquiries within GC25.1(b).

46 In the [Redacted] July 2026 Report, [Redacted] contended that the applicant should have conducted a 'review of historical groundwater depths in the general vicinity of the site'. [Redacted] July 2026 relied on this publicly available information to conclude that the applicant ought to have been aware that the ground water level was or could reach about 5m below the surface. It appears that this information is available from a webpage maintained by the government of the Northern Territory. [Redacted] conducted a review which included publicly available information in 2026. June 2026 was, of course, after the problem had arisen; one might expect a thorough investigation of the matter after problems had arisen.

47 [Redacted] did not investigate publicly available information in 2023. It was engaged by the respondent, which owned the land. I am not persuaded that a diligent contractor would have made more thorough investigations than the owner of the land on which a building was to be built. Obviously, not every tender submitted is successful. This must impact of the diligence expected of the tenderers. There is nothing to suggest that [Redacted] was not a reputable and competent hydrogeologist.

48 I consider that a reasonably competent contractor would not have delved into the publicly available records when owner's expert did not do so.

49 On 3 October 2025, [Redacted], by its 'Business Development (Acting) provided a report (ADG October 2025). It stated:

> At the 60% Design Milestone, [Redacted] were instructed to document an additional basement slab at RL31.2 (approximately 5m below natural ground level). Based on the information relied on for the preparation of the design documentation, there was no indication that ground water would be a concern for the design of basement subsoil drainage.

The 60% Design Milestone occurred pre-tender (and before the design contract between the respondent and the architect had been novated to the respondent). The information referred to in the passage was the [Redacted] March 2023 Report,[15] a report for [Redacted] of November 2021 and a Preliminary Site Investigation of November 2021 prepared by [Redacted]. No additional work was done on site between the 60% design milestone and the tender. The [Redacted] report noted that the testing which showed water levels at 8m below the surface (and which was referred to in the [Redacted] March 2023 Report) was from testing in January 2023, 'towards the end of the wet season'.[16]

50 I consider that a reasonably competent tenderer would conclude that the ground water level was at 8m below the surface.

51 As [Redacted] relied on publicly available information to conclude in the [Redacted] July 2026 Report that the groundwater level might reach 5m below the surface, and as I do not consider that a prudent tenderer would research the public records, I do not accept his conclusion that the information available to a tenderer suggested a groundwater level of 5m below the surface.

52 The parties appear to have proceeded on the basis that the groundwater levels in 2024 reached about 3.6 m below the surface.

53 Groundwater levels at 3.6m below the surface were materially different to the groundwater levels that could have been anticipated at the time of tender.

54 The high groundwater levels were latent condition for the purposes of GC25.1.

When did the applicant give become aware of the latent condition?

55 This question is important because a builder is required to give notice promptly after becoming aware of the latent condition.

56 The applicant contends that the Notice was effective notice for the purpose of GC25.2 because it was given at about the time that the applicant came to appreciate that there was a problem with the design of the basements and the pumping system in light of the water inflows.

57 However, the applicant became aware of the latent condition (ie the 3.6m water table level) earlier than 2025.

[15] ABp508.

[16] AB509. It appears that only the [Redacted] March 2023 Report was provided to the applicant for the purposes of the tender, not the other documents referred to by ADG.

58 On 31 January 2024, [Redacted] prepared a report for the applicant ([Redacted] Jan 2024 Report). This document was provided after the contract between the parties was made. It was not one of the documents available to the applicant at the time of tender.

59 Whether, and when, a party becomes aware of a latent condition is to be determined having regard to the circumstances at the time relevant information was obtained. It is not appropriate to apply '20-20 hindsight'. In *BMD Major Projects Pty Ltd v Victorian Urban Development Authority*[17] the Court held that BMD did not become aware of a latent condition when the existence the latent condition was a matter of inference from various indications in documents to which *BMD* had access. The inference was not an obvious one in that case. *BMD* does not suggest that there must be an awareness of the *significance* of the latent condition as well as its existence. Once a builder becomes aware of conditions, the significance of the condition is a matter for its professional expertise.

60 The purpose of the [Redacted] Jan 2024 Report was to assess groundwater conditions across the site. It appears that there was further drilling onsite in January 2024. The [Redacted] Jan 2024 Report concluded:

> No groundwater was encountered in the test pits during the field work, however groundwater was encountered in the latest round of drilling during the middle of the wet season between 3.6 m and 3.7 m.

61 The [Redacted] Jan 2024 report was provided in the context that the design of the building had changed since the [Redacted] Jan 2023 Report. In 2023, the design had only a single basement level. The [Redacted] Jan 2024 Report relates to a design for the building which had a double basement extending 6m below the current ground surface.[18] It does not appear that further hydrogeological information had been obtained between January 2023 and January 2024. The design of the building had changed in this period.

62 I have concluded that the anticipated groundwater levels in at the time of tender were about 8m below the surface. The effect of the [Redacted] Jan 2024 report was to move the evidenced groundwater level from about 8m below the surface (as evidenced by the [Redacted] March 2023 Report) to about 3.6m below the surface. This is a big jump.

[17] *BMD Major Projects Pty Ltd v Victorian Urban Development Authority* [2009] VSCA 221 at [36].
[18] AB2031.

63 The contract was a design and construct contract. Although pre-tender design was not carried out by the applicant, when the applicant entered into the contract, it became responsible for design of the building. As far as the respondent is concerned, the design was finalised by the applicant. It had not been finalised at the time of the [Redacted] Jan 2024 Report.[19] The hydrogeological conditions on site were a matter that was relevant to the applicant's design.

64 The [Redacted] Jan 2024 Report was commissioned by the applicant for the purposes of the contract.

65 The [Redacted] Jan 2024 Report specifically adverted to alterations in design considerations associated with groundwater.[20]

66 The relevance of the information in the [Redacted] Jan 2024 Report is confirmed by report of [Redacted] of 13 October 2025.[21] It refers to the results identified in the [Redacted] Jan 2024 Reports[22] and states:[23]

> In January 2024 (wet season), standing water was measured around 3.6–3.7m BGL (≈ 32.6m AHD), while in October 2021 (the late dry) only deeper seepage was noted at ~8.0–8.3m BGL (≈ 28–28.3m AHD). Shallow excavations are expected to and have been recorded on site to interact with groundwater during the wet season. This has relevance to both groundwater inflow control (reviewed within this report) and potential uplift of slabs near ~32.6m AHD (out of scope for this document).

67 I consider that the applicant became aware of the latent condition, namely, the 3.6m groundwater level, in or about January 2024 when it got the [Redacted] Jan 2024 Report.

68 The applicant contended in the Notice that it had no reason to question the design work that had been earlier done by the architects. However, the applicant was aware that the earlier design work done by the architects was based on information about groundwater levels that was very different to those revealed by the [Redacted] Jan 2024 Report.

[19] It appears that structural drawings were issue on 10 May 2024 (see [Redacted]Report – at 4.4.1c, p6 (pagination as per the PDF reader).

[20] At AB2040.

[21] AB510.

[22] AB513.

[23] AB515.

Did the applicant give prompt notice?

69 GC25.2 provides that the contract 'shall promptly … give notice' upon becoming aware of the latent condition. The obligation to give notice under GC25.2 is a contractual obligation. If a contractor fails to give notice promptly after it has become aware of a latent condition, it breaches the contract and may be liable to the principal in damages for that breach.

70 The applicant should have given notice under clause 25.2 'promptly' after receiving the [Redacted] Jan 2024 Report. It did not give notice of the latent condition until 3 September 2025, 18 months later. I agree with paragraph [81] of the respondent's submissions.

71 The applicant's analysis of this issue suggests that the obligation to give notice arose when it became apparent that the design for dewatering the basement was not up to the task of dewatering. As discussed above, the adequacy of the dewatering design is not the latent condition.

What is the impact of late notification?

72 GC 25.2 requires the respondent to give notification of a latent condition. It does not make giving 'prompt' notification a *condition* for an entitlement to a deemed variation under GC25.3. However, it remains a contractual obligation. Breach of that obligation is breach of the contract, for which the applicant may be liable in damages. The contract does not exclude the ordinary contractual consequence of a failure to give notice.

73 The variation under GC25.3 is for the reasonable costs of remedying the latent condition.

74 [Redacted] described that work in the following terms:

> [Redacted] may be entitled to a claim for items such as larger pits and pumps required … compared with the groundwater level reasonably assumed … at …novation [of the design contract].[24] This is an appropriate description.[25]

75 However, the GC 25.3 variation does not cover the costs caused by inappropriate remedial steps or, more relevantly, costs which are consequence of late notification.

[24] [Redacted] report dated 28 August 2026 Resp Bundle at [6.7].

[25] Except in relation to the 5.0m groundwater level.

The deemed variation is not for the cost of remedying the impact of a failure to give notice promptly under GC25.2.

76 I had difficulty working out from the application what work the applicant did. There are many pages of invoices, but there is no general description of the work that was done to address the water ingress and to which those invoices relate. It appears, however, that the basement and the dewatering equipment was constructed and installed to its original design in August and September 2024. The works the subject of this claim were done later.[26] Consequently, the work that was claimed as part of this item involved demolition of existing structures and rework. The applicant is not entitled to the cost of these activities.

77 I am not able to determine the amount which would be properly attributable to the latent condition and the amount that is properly attributable to the delay in giving notice under GC25.2. The applicant is obliged to establish the amount of its entitlement on the balance of probability (with due allowance to the demands of the adjudication system). It has not done so: I am not able to put a figure on the costs that would have been incurred had the higher-than-expected groundwater level been addressed as part of the design process, rather than by way modifying an existing structure.

Other matters

78 The applicant also argued that the respondent acquiesced in the applicant undertaking the remedial work and was thereby precluded from arguing its liability for the costs of rectifying the building.

79 I do not consider that the respondent is estopped by its conduct from disputing the amount for this variation.

80 I note first, that the respondent did not formally concede that there was a latent condition. The [Redacted] response from the respondent on 26 September 2025 reserved the respondent's position on the point.[27] The direction dated 2 March 2026[28] (Direction) did not concede that the there was a latent condition. The respondent's PAN contended that there was no latent condition.

[26] Response at [83].

[27] AB503.

[28] AB528.

81 Secondly, whether the problem confronting the parties was categorised as one arising from a latent condition or one arising from other causes, the parties agreed that there was a 'defect': the water extraction system was inadequate.[29] The parties were also agreed that it needed to be fixed. I do not regard participating in a process to fix the problem as preventing the respondent saying that it was not responsible for the problem or that it was responsible only for that part of the remedial work.[30]

82 The applicant also contended that a direction or purported direction given by the respondent on 2 March 2026 (Direction) was ineffective because it did not specify a defect. I do not accept this argument. The Notice stated that the water extraction was inadequate. There had been extensive exchanges about the issue. In the context, formal specification of a 'defect' was not necessary.

83 In any event, even if the Direction was defective, that does not entitle the applicant to its claim. The onus remains on the applicant to establish that it is entitled to a variation under GC 25.3, and the amount of its entitlement.

84 It appears form the materials provided that some dispute between the parties about the appropriateness of the work undertaken by the applicant and, in particular, whether work was appropriately certified by reference to the appropriate Australian standards. Those issues do not affect the outcome of this adjudication, although they may assume greater significance if the dispute goes further.

Conclusion

85 I cannot allow any amount in respect of this item.

VO95 – Changes to Workstation Layout: $1,812.00

86 This appears to be a claim for the last part of a variation which includes 'various electrical and associated works', relating to workstations.[31]

As I understand it the difference between the parties is as to the means by which the variation was carried out. The respondent accepted that the variation had been completed, in the sense that the workstations were changed. The respondent however, contended that changing the workstations did not involve installation access panels. This contention is persuasively supported by the [Redacted] exchange between [Redacted] and [Redacted], 20 January 2026 and 2 February 2026.[32] The amount payable for the variation should be reduced so as to exclude installation of access panels.

[29] The respondent appears to have considered that the problems went further.

[30] It may be that the respondent is estopped from arguing that the particular work carried out by the applicant was inappropriate, but that issue does not arise here.

[31] Application at [158].

87 However, the respondent conceded that there had been an error in calculation of the deduction. It says there was a 'rounding error' and the deduction should have been only $1,716.00, meaning that the applicant is entitled to $96.

88 I allow this item at $96.00.

VO102a: Lockers in Workshop (Return): $13,919.00

89 The applicant seeks $13,919.00 in respect of the supply of lockers.

90 An unusual feature of this item is that the applicant did not seek payment for this item in the payment claim. In the payment claim, entry for VO102a was '-$13,919.00' ie it operated to reduce the amount of the applicant's overall claim. The respondent's assessment of this item reflected the applicant's claim. This sum was deducted from the amount that the respondent accepted was otherwise payable to the applicant. [Redacted], in his declaration, states that the negative amount was intended to be a positive amount.[33] He does not elaborate on how this error occurred. It was not an error that would have been obvious to the respondent, because it asserted that the applicant had conceded this item.

91 The respondent argued that I could not consider this item because it had not been claimed by the applicant. I agree that I may not consider this item. I consider that this item does not form part of the payment dispute between the parties. Section 8 of the Act identifies when a payment dispute arises. Beech J said of the equivalent provision in the *Construction Contracts Act 2004 (WA)*, that the provision also identifies the payment dispute.[34] When the respondent gave its PAN, there was no difference between the parties in respect of this item. Both parties took the view that there ought to be a deduction of $13,919.00 in respect of VO102a. There was no dispute in respect of this item.

92 The payment dispute the subject of this application does not extend to this item. I am not able to make a determination in respect of it.

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[32] Resp Tab 4.5.

[33] [Redacted] Declaration at [132].

[34] At [75].

Outcome

93 My conclusions in respect of the various claims pursued by the applicant are as follows.

Item	Description	Amount Claimed[35]	Amount Allowed
009	Hardware	$24,891.35	$17,860
014	Finishes	$20,205.2715	$12,123.16
Total			$29,983.16

Item	Description	Amount claimed	Amount allowed
VO86	Price Increase Dispute	$5,222.00	$0.00
VO87	Latent Condition Basement Pump	$786,914.68	$0.00
VO95	Changes to Workstation Layout GF Option 1	$1,812.00	$96.00
V102a	Lockers In Workshop (Return)	$13,919.0014	0
Totals		$807,867.68	$96.00

Interest

94 The applicant claimed interest at the reserve Bank of Australia rate, plus 2% in accordance GC37.5 and Item 35 of Annexure A. It was not disputed that this came to 6.35% per annum, or that interest ran from 29 May 2026, the date when the payment claim became payable. Interest comes to $549.46.

[35] Exclusive of GST

95 The usual rule is that each party bears its own costs. The issue in relation to the latent condition was the main item and was not straightforward. The application was selective in the items it pursued. The claim was not frivolous or vexatious.

96 Each party should bear its own costs.

Date: 11 September 2026

DS Ellis
Adjudicator

Schedule 2: Confidential Information

The following information is confidential:

1 The names of the parties and their representatives; and

2 The location of the works.