

ADJUDICATOR'S DETERMINATION

Matter No. XXX
[Adjudicator's Ref No. 46-19-01]

IN THE MATTER of an
Adjudication pursuant to the
Construction Contracts (Security of Payments) Act 2004 NT **(the Act)**

BETWEEN:

XXX **(Applicant)**
ABN XXX
XXX
XXX
WA XXX
By Email to: XXX

XXX **(Respondent)**
ABN XXX
XXX
XXX
QLD XXX
By Email to: XXX

Adjudicator

Barry C Green BSc(Hons) FRICS MAIQS CQS MCIArb PRIAdj
Registered Adjudicator No.46
13 Cassowary Chase
Wandi
WA 6167

Issued 24 February 2019

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1.0 ADJUDICATOR'S DETERMINATION

I, Barry C Green, the duly appointed adjudicator, determine the Application for Adjudication and conclude that the:

- (i) The Respondent shall pay the Applicant the sum of **\$47,280.82 inclusive of interest and GST**.
- (ii) Each party must bear its own costs and the cost of the adjudication (refer to Costs of Adjudication) shall be shared between the parties equally. In respect of security paid to date by the Applicant, I hereby calculate the following amounts due to the Applicant:
 - a. The Applicant paid a sum of \$XXX in respect of security [inclusive of GST] to the adjudicator. The Applicant also paid the final balance of my fees on 22 February 2019.
 - b. Pursuant to s.46(9) of the Act, I determine that the Respondent shall pay to the Applicant half of the sum already paid by the Applicant. That is **\$XXX** [inclusive of GST].
 - c. If payment of the adjudicated amount is not made within 7 days, then the Respondent is liable to pay interest to the Applicant on this amount from and including 24 February 2019 at a post-judgment rate of 7.5% (6% plus 1.5% RBA Cash Rate) in accordance with rule 39.06 of the Federal Court Rules. Interest shall not become due unless and until the Applicant has invoiced the Respondent correctly for the amounts determined.

Signed.....

Date **24 February 2019**

2.0 REASONS

2.1 Background

1. The Applicant, XXX and Respondent, XXX, entered into a construction contract in or around XXX for the supply of labour and supervision for the installation of XXX for the XXX Project for XXX in XXX, Northern Territory.
2. The Applicant issued a payment claim to the Respondent on 20 October 2018 in the amount of \$80,935.00 (excluding GST).
3. The Respondent issued a progress certificate in respect of the payment claim on 2 November 2018, in an amount of \$24,810.00 (excluding GST).
4. Section 8 of the Act relevantly provides that a payment dispute would arise if a payment claim had been made under a contract and either the claim had been rejected, not paid in full or security had not been returned.
5. The Respondent partly disputed the payment claim and did not pay the amount claimed in full.
6. At this point, a payment dispute arose between the parties.

2.2 Appointment of Adjudicator

7. The application was served on the Resolution Institute (formerly the Institute of Arbitrators and Mediators Australia) (**'Prescribed Appointor'**) on 31 January 2019.
8. The Prescribed Appointor appointed me to adjudicate the payment dispute and, under cover of a letter dated 6 February 2019, sent me an electronic copy of the application. A hard copy of the full application together with attached documents was issued to me by the Applicant at my office address.
9. As registered adjudicator No.46, I accepted the appointment and notified the parties by letter dated 9 February 2019.
10. There was no disagreement to my appointment nor was there any disagreement with regard to the following:
 - the Application was served on Prescribed Appointor on 31 January 2019;
 - the Application was also served on the Respondent on 31 January 2019; and
 - the Prescribed Appointor appointed the adjudicator to this matter on 6 February 2019.

2.3 Documents forming Basis of the Adjudication

11. The parties served the following documents on each other and on me for the purpose of having the payment dispute determined –

(a) The Applicant’s written Application for Adjudication (**Application**) dated 31 January 2019 comprising the following documentation:

Lever Arch File 1

- Application for Adjudication;

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(b) Response to Application for Adjudication received electronically from the Respondent (by way of four separate emails) comprising:

- Response to Application for Adjudication (**Response**);

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12. In making this decision, I have given due regard to the parties submissions and –

(a) The provisions of the Act (including Prohibited and Implied provisions) and Regulations.

(b) The provisions of the Contract under which the adjudication application has arisen.

2.4 Jurisdiction in this Matter

13. Section 33(1)(a) of the Act states that an adjudicator must dismiss the application without making a determination of its merits if —

- (i) *the contract concerned is not a construction contract; or*
- (ii) *the application has not been prepared and served in accordance with section 28; or*
- (iii) *an arbitrator or other person or a court or other body dealing with a matter arising under a construction contract makes an order, judgment or other finding about the dispute that is the subject of the application; or*

(iv) *satisfied that it is not possible to fairly make a determination because of the complexity of the matter or the prescribed time or any extension of it is not sufficient for any other reason;*

14. I consider whether I have jurisdiction in this matter in paras 15-47 below.

2.5 Construction Contract for the Purposes of the Act

15. The Contract under which the payment dispute has arisen is described as being an agreement (**Contract**) for the construction, installation and alteration of XXX and provision of on-site services related to construction work.

16. S.6(1) defines *Construction Work* as being, inter alia, construction of the whole or a part of any...building or structure, that forms or will form part of land.

17. S.7(3) of the Act prescribes that on-site services are related to construction work if they are services that relate directly to construction works, including providing labour to carry out construction work.

18. I note that the Respondent does not dispute that the Contract is a 'construction contract' for the purposes of the Act.

19. In consideration of the above, I find the Contract under which the payment dispute has arisen is a construction contract for the purposes of the Act.

2.6 Application for Adjudication

20. The Applicant served the Application for Adjudication on each party to the Contract, and the adjudicator.

21. Following request to the parties for security in respect of my fees and expenses, an amount was provided by the Applicant in the sum of \$7,000.00.

22. S. 28(1) of the Act requires that an application for adjudication must be lodged and served within 90 days, after the dispute arises.

23. On 20 October 2018, the Applicant issued a Progress Claim 13 to the Respondent in the sum of \$80,395.00 [excluding GST] (**Payment Claim**).

Is the payment claim a Payment Claim for the purposes of the Act ?

24. S. 4 of the Act defines the term 'payment claim' as follows:

payment claim means a claim made under a construction contract —

(a) (i) **by the contractor to the principal** for payment of an amount in relation to the performance by the contractor of its obligations under the contract; or

(ii) ...

(Emphasis added)

25. Progress Claim 13 is a claim made under the Contract for the payment of an amount in relation to the performance of construction work by the Applicant.

26. I therefore find that the payment claim issued by the Applicant to the Respondent on 20 October 2018 is a Payment Claim for the purposes of the Act.

When did the Payment Dispute arise for the purposes of the Act ?

27. S. 8 of the Act provides that a payment dispute arises if a Payment Claim is rejected or wholly or partly disputed.

28. Further, S. 8 prescribes that a payment dispute is also triggered if by the time when the amount claimed in a payment claim is due to be paid under the Contract, the amount has not been paid in full.

29. On 20 October 2018, the Applicant issued a Payment Claim to the Respondent. The date for making the Payment Claim under the Contract is to be monthly, on the 20th day of the month (refer Item 14 of Annexure Part A - Item Schedule to the Contract).

30. The Respondent issued a payment certificate to the Applicant on 2 November, certifying the payment claim in part, and it was at this point, a Payment Dispute arose for the purposes of the Act.

31. The Payment Claim was issued on 20 October 2018 and a Payment Dispute arose on 2 November 2018 (**Payment Dispute**).

32. In accordance with s. 28(1) of the Act, to apply to have a Payment Dispute adjudicated, an application for adjudication was required to be served on all parties to the matter within 90 days after the dispute arose.

33. The application for adjudication was served on the parties and the Prescribed Appointor on 31 January 2019.

34. I therefore find that the application has been prepared and served in accordance with section 28 of the Act.

2.7 Conflict of Interest

35. In my letter to the parties dated 9 February 2019, I confirmed that I was not aware of any material interest in the Contract or the dispute that might give rise to a conflict of interest pursuant to s.31 of the Act.

36. Following receipt of the Response, I confirm that I am satisfied that there is no conflict of interest in this matter.

2.8 Complexity of the Matter

37. In consideration of the documentation received, I am satisfied that I am able to fairly make a determination in the matter, and that the matter is not of a sufficiently complex nature requiring me to dismiss the application.

2.9 Letter to the Parties

38. Also, in my letter dated 9 February 2019, I requested that the parties inform me immediately as to whether there had been any order, judgment or other finding by an arbitrator or other person or court or other body about the dispute that is the subject of the application.

39. Both the Applicant and Respondent have confirmed that there had not been any order, judgment or other finding about the dispute that is the subject of the application.

2.10 Response to Application for Adjudication

40. Pursuant to Section 29 of the Act, the Respondent was required to prepare a written response and serve it on all parties to this matter within 10 working days of receiving the Application for Adjudication.

41. The required date for submission of a Response in this matter was 14 February 2019.

42. The Response was served on the Applicant and myself on 14 February 2019.

43. I find that the Response has been served in time and in accordance with the requirements of section 29 of the Act.

2.11 Payment Dispute

44. The Applicant seeks adjudication of a payment dispute arising by reason of the Respondent's failure to pay a claim for payment (**Payment Claim**).
45. On 20 October 2018, the Applicant issued the Payment Claim to the Respondent.
46. On 2 November 2018, the Respondent issued a payment certificate which had the effect of rejecting, in part, the Payment Claim.
47. I am therefore satisfied that a Payment Dispute has arisen under the Contract, pursuant to s.8 of the Act, and that, I have jurisdiction to determine this matter on the balance of probabilities.

2.13 The Application & Response

48. The Payment Claim, which is the subject of this matter, can be reconciled as follows:

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49. I shall consider the merits of the Application in respect of the site instructions which form the basis of the Payment Claim.

3.0 MERITS

3.1 Site Instruction 029 - Additional Mobilisation and Demobilisation

50. Site instruction 029 (**SI-029**) dated 1 March 2018 (and signed by the parties on 3 March 2018) had the effect of entitling the Applicant to claim costs associated with additional flights and mobilisation and demobilization of labour arising from the performance of work not contemplated by the original scope of work.

51. The Payment Claim issued on 20 October 2018 included an amount of \$49,794.00 (now amended to \$43,248.90 in this matter) in respect of works performed under SI-029.

52. The amount of \$43,248.90 can be summarized as follows:

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3.1.1 Valuation of Labour – Daywork Sheets and Hourly Rate

53. The Payment Certificate (refer attachment 6 of the Application) issued by the Respondent on 2 November 2018 certified \$3,710.00 in respect of SI-029 contending:

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54. The basis of this valuation does not appear to have been provided by the Respondent in its Response however, I note that the Respondent's position is such that the valuation for SI-029 should be assessed as \$13,395.00 (refer Adjudication Response submission and item 53 of the XXX Statutory Declaration).

55. I also note that the Respondent has moved from its previous position in respect of the hourly rate to be applied and now accepts that the Applicant is entitled to payment at a rate of \$95 per hour for the hours that the Applicant can substantiate via provision of daywork sheets (refer item 11 of the Adjudication Response submission).

56. Daywork sheets ref 810, 826, 739 and 737 were issued by the Applicant to the Respondent as part of its Payment Claim (refer attachment 6 of the Application containing email from XXX to XXX) and I accept this as substantiation of hours worked.

57. The number of hours claimed on those daywork sheets totaled 141 hours which, applying a rate of \$95 per hour, equates to a total for labour of \$13,395.00 (ex GST).

58. The amount of \$13,395.00 is accepted by the Respondent (refer item 58 of the Adjudication Response submission) and on that basis, I find that the value of \$13,395.00 (ex GST) is the amount to which the Applicant is entitled to be paid in respect of hours worked.

3.1.2 Valuation of Car Hire, Accommodation

59. In its Payment Claim, the Applicant claims an amount of \$17,520.15 in respect of the costs associated with car hire and accommodation.

60. The Respondent submits that no substantiation was provided by the Applicant when making its Payment Claim, and on that basis, certified a value of \$Nil.

61. The Respondent also submits, at [86] of the Adjudication Response submission and in the Statutory Declaration of XXX, that the Applicant is not entitled to claim for accommodation as:

- a. there was no agreement between the Applicant and the Respondent that the Respondent would pay the Applicant for accommodation;
- b. the Applicant has provided no basis upon which it is entitled to accommodation costs;
- c. if the Applicant's personnel needed accommodation, the Respondent provided the Applicant accommodation at the Respondent's stay over camp located at 55 Backen Road, Darwin, entirely free of charge and therefore, there was no reason for the Applicant to seek alternative accommodation arrangements; and
- d. accordingly invoice 77717799 (\$277.24 ex GST) which is the only invoice in relation to accommodation must be assessed at \$Nil.

62. In respect of car hire charges, the Respondent, at [87] of the Adjudication Response submission, rejects the rate at which the Applicant claims vehicle costs being the amount of the invoice plus a 15% margin. The basis for this rejection is such that:

- a. at no time did the Respondent agree to pay the Applicant for vehicle hire a rate margin of 15%;
- b. the email the Applicant relies on in support of an alleged agreement reached between the Applicant and Respondent that

the Applicant is entitled to a margin of 15%, does not at all suggest any agreement to a margin of 15%.

63. The Respondent contends that the lump sum allowances provided in the Contract was \$72,058.00 for mobilization and demobilization and \$140,400.00 for travel, and that, despite requests from the Respondent, the Applicant has not provided sufficient evidence to demonstrate that its cost have surpassed the lump sum allowances in the Contract.
64. The lump sum allowances in the Contract for mobilization and demobilization and travel were in contemplation of performing the original scope of work which has subsequently increased by the issue of SI-029.
65. On that basis, it would therefore be reasonable to expect that the Applicant is entitled to recover costs extra over to the lump sum allowances on the basis that the scope of work which is the subject of SI-029 as they could not have reasonably been included in the lump sum allowances contained in the Contract.
66. Further, as the original allowances for mobilization and demobilization and travel are lump sum, the Applicant bears the risk of this amount being sufficient to perform the original scope of work.
67. It is not open for the Respondent to request the Applicant to provide evidence of actual cost having surpassed the lump sum contract allowance as a threshold requirement for determining whether the Applicant is entitled to recover costs directly attributable to the works performed under SI-029.
68. The fact in issue here is that SI-029 envisaged that the Applicant would be entitled to claim costs for additional mobilization and demobilization and hence, impliedly, this would include the cost of travel, accommodation and all other costs necessary to mobilise and demobilise the Applicant's personnel.
69. On this basis, I consider that the Applicant is entitled to recover costs demonstrably incurred in the performance of works associated with SI-029.
70. I refer to item 37 of the XXX Statutory Declaration and the table of amounts claimed in respect of car hire and accommodation totaling \$17,520.20, summarized below for ease of reference:

INFORMATION REQUESTED

71. At [127] of the XXX Statutory Declaration, I note that the Respondent has sought to undertake a reconciliation of the invoices received from the Applicant in respect of car hire and accommodation costs.

72. I confirm that I have also undertaken a reconciliation of the Corporate Traveller tax invoices appended to Site Instruction 029 (contained within attachment of 7 of the Application and also, referred to in item 37 of the XXX Statutory Declaration) and note that the only invoices provided as evidence of the cost incurred are as follows:

Description	Qty	Unit	Rate	Total
Car Hire & Accommodation				
Corporate Traveller Invoice ending:				
3813	1.00	sum	685.11	685.11
2785	1.00	sum	443.85	443.85
1326	1.00	sum	428.85	428.85
6468	1.00	sum	25.00	25.00
5974	1.00	sum	3,126.17	3,126.17
6175	1.00	sum	5,618.61	5,618.61
1779 (Accom)	1.00	sum	277.24	277.24
Add for margin @ 15%				1,590.72
Total				12,195.55

73. Relevantly, the Respondent submits, at [129] of the XXX Statutory Declaration that:

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74. The Applicant has provided copies of the invoices identified in item 72 above, and on the basis of evidence provided in its Application, I find that the Applicant is entitled to recover costs it has demonstrably incurred in the sum of \$12,195.55 (ex GST).

75. This sum includes a margin of 15% which I consider to be an acceptable amount to apply in respect of the Applicant's margin and overhead costs.

3.1.3 Valuation of Flights

76. In its Payment Claim, the Applicant claims an amount of \$12,333.75 (ex GST) in respect of flight costs.

77. The quantum calculation which forms the basis of the Applicant's claim for flight costs is based on thirteen (13) flights at an agreed rate of \$948.75 one way, equating to \$1,897.50 for a return flight including the Applicant's margin of 15%.

78. The Respondent rejects the amount quoted by the Applicant, and at [106] of the XXX Statutory Declaration, confirms that the Respondent's alternative position is that the Applicant is only entitled to be reimbursed the actual cost it has incurred, on the face of the invoices provided in substantiation.

79. For reasons identified above, I consider that the Applicant is entitled to recover flights costs associated with mobilization and demobilization of personnel required for the performance of works under SI 029.

80. Similarly, I agree with the Respondent, in that, the Applicant should recover the actual cost it has incurred for flights.

81. On that basis, I have undertaken a reconciliation based on the Corporate Traveller invoices provided at attachment 7 of the Application and referred to at [40] of the XXX Statutory Declaration. The following table provides a list of those tax invoices:

Description	Qty	Unit	Rate	Total
Flights:				
Corporate Traveller Invoice ending:				
4759	1.00	sum	2,099.60	2,099.60
4772	1.00	sum	362.57	362.57
1358	1.00	sum	858.26	858.26
2836	1.00	sum	687.54	687.54
3031	1.00	sum	832.00	832.00
5957	1.00	sum	456.44	456.44
9307	1.00	sum	131.35	131.35
6008	1.00	sum	2,727.56	2,727.56
9968	1.00	sum	141.80	141.80
9444 (Credit)	1.00	sum	- 276.83	- 276.83
6290	1.00	sum	296.82	296.82
6463	1.00	sum	276.82	276.82
5042	1.00	sum	715.44	715.44
Add for margin @ 15%				1,396.41
Total				10,705.78

82. The Applicant has provided the copies of invoices identified in item 81 above, and on the basis of evidence provided in its Application, I find that the Applicant is entitled to recover costs it has demonstrably incurred in the sum of \$10,705.78 (exc GST).

83. This sum includes a margin of 15% which I consider to be an acceptable amount to apply in respect of the Applicant's margin and overhead costs.

84. For reasons set out above, I find that the Applicant has provided sufficient evidence of costs incurred and is therefore, entitled to be paid a total of \$36,296.33 in respect of works performed under SI-029.

3.2 Site Instruction 039 – Supervision and Direction of Works on Site

85. The Applicant submits, at [45] of the XXX Statutory Declaration, that it has claimed an amount of \$7,800.00 (exc GST) based upon a dayworks rate of

\$97.50 per hour for a supervisor (as opposed to a tradesperson) and that, the Respondent has assessed this claim in the sum of \$6,400.00 (ex GST) for SI-039.

86. A copy of SI-039 is included as Attachment 15 to the application for adjudication which includes a copy of daywork sheets 819, 820, 822, 825, 808, 812, 815 and 816 for the Applicant's supervisor, Brian Miles.
87. The cumulative number of hours claimed is 80 hours which, multiplied by the hourly rate of \$97.50 (ex GST) equates to \$7,800.00 (ex GST).
88. The Respondent, at [138] of the XXX Statutory Declaration, does not dispute the Applicant's entitlement to claim this variation, and that, only the valuation of the valuation is disputed.
89. Further, at [141] of the XXX Statutory Declaration, the Respondent considers that the correct rate to be applied is \$95 per hour and not the \$97.50 per hour claimed by the Applicant.
90. This position is different to the one taken by the Respondent when issuing its Payment Certificate on 2 November 2018 wherein, it applied the rate of \$70 per hour.
91. The issue in the rate to be applied therefore is whether the Applicant is entitled to be paid either \$95.00 per hour or \$97.50 per hour for a supervisor.
92. The rate of \$95.00 per hour appears to be commonly accepted by the parties and I note that the Respondent, at [99(b)] of the Adjudication Response submission, submits that the Applicant claimed a rate of \$95.00 per hour for SI-039 in a previous adjudication matter between the parties.
93. The Applicant, at [47] of the XXX Statutory Declaration submits that the rate of \$97.50 per hour has been notified to the Respondent in the Change Request Notice contained within Attachment 12.
94. The Applicant also submits that the rate was previously paid by the Respondent against SI-039 in a previous progress claim (progress claim 8).
95. I refer to email correspondence from the Respondent's XXX to the Applicant's XXX, XXX and XXX where Mr XXX advises that:

'...you do SI works on hourly rate, either \$95, 97.50 or \$115 depending on the trade.'
96. Mr XXX's email is clear that, a rate of \$97.50 per hour would be applicable; the question is to which trade it should be applied.

97. On the basis, that a rate of \$95 per hour is accepted by the Respondent in respect of labour rates, it would not be unreasonable to suggest that a supervisor would attract a higher rate.
98. Further, I do not consider that a rate of \$97.50 for a supervisor based in the XXX region of the Northern Territory to be excessively high.
99. As an indicator, a rate of tradesman rate in Perth, Western Australia ranges from \$83.00 per hour to \$88.00 per hour and this is confirmed by the Wage Rates published by Rawlinsons¹, which advises an indices adjustment (increase) of 16% is applied to this rate range to reflect an hourly cost for a tradesman based in regional NT.
100. This would indicate that a rate range of \$96.26 per hour to \$102.08 per hour for a tradesman based in Delamere, NT is an acceptable range.
101. In consideration of the above, I find that the rate of \$97.50 is a reasonable rate to adopt for a supervisor undertaking remote site work in the Territory and determine that this rate is applied to the hours claimed by the Applicant (which are not in dispute).
102. For reasons set out above, I find that the Applicant is entitled to be paid a total of \$7,800.00 (ex GST) in respect of works performed under SI-039.

3.3 Site Instruction 043 – Factory Defects Rectification

103. The Applicant submits, at [48] of the XXX Statutory Declaration, that it has claimed an amount of \$20,900.00 (exc GST) based upon a dayworks rate of \$95.00 per hour and that, the Respondent has assessed this claim in the sum of \$13,300 (ex GST) for SI-043 by applying a rate of \$70.00 per hour.
104. SI-043 relates to the supply of labour to rectify defects caused by poor workmanship in the Respondent's manufacturing yard.
105. The Applicant includes the dayworks sheets relating to SI-043 in Attachment 16 of the Application. The total number of hours claimed is 220 hours.
106. Despite its previous valuation of labour, the Respondent now, at [146] of the XXX Statutory Declaration, accepts the amount claimed by the Applicant.
107. I therefore find that the Applicant is entitled to be paid a total of \$20,900 (ex GST) in respect of works performed under SI-043.

¹ Rawlinsons Australian Construction Handbook, Edition 37, p.717

3.4 Site Instruction 057 – Remove and Rebuild Shower Floors

108. The Applicant submits, at [51] of the XXX Statutory Declaration, that it has claimed an amount of \$1,900 (exc GST) for works performed under SI-057.

109. Despite its previous valuation of labour, the Respondent now, at [148] of the XXX Statutory Declaration, accepts the amount claimed by the Applicant.

110. I therefore find that the Applicant is entitled to be paid a total of \$1,900 (ex GST) in respect of the works performed under SI-057.

4.0 QUANTUM

111. In summary of the foregoing, I have enclosed the quantum associated with the determined amount to the end of this determination.
112. The determined amount is due to be paid to the Applicant by the Respondent within 7 days of the date of this determination.
113. A full breakdown of amounts due to the Applicant can be in the section marked '5.0 CONCLUSION' below.

4.1 Interest

114. The Applicant is entitled to be awarded interest on the whole or **part of the payment from the date the payment dispute arose at a rate not greater than the rates prescribed by the Regulations until and including the date of the determination.**
115. The rate of interest prescribed by regulation 9 of the Regulations is:

“...the interest rate is the rate fixed from time to time for section 85 of the Supreme Court Act”

116. The Supreme Court Act refers to the Rules. The Supreme Court Rules follow Rule 39.06 of the Federal Court Rules and provide that the interest rate is to be the rate that is 6% above the cash rate set just before the 6 month period being considered. The Reserve Bank cash rate is currently 1.5%, therefore the interest rate applicable to this contract is 7.5% per annum.
117. Interest is not calculated on the GST component of the amount the Respondent is to pay the Applicant and GST is not payable on an interest amount awarded in a determination under Goods and Services Tax Determination 2003/01.
118. The following calculation is based on the date each payment dispute (2 November 2018) arose to the date of the determination, which is today (24 February 2019). The total number of days when applied to the amounts determined in each matter to be paid is calculated as follows:

Amount Determined	42,086.33
Date of Dispute	02/11/2018
Date of Determination	24/02/2019
Number of Days	114
Daily Cost of Interest	8.65
Total Interest Due	985.86

4.2 Costs of Adjudication

119. In accordance with Section 46 of the Act, I am required to consider the costs of adjudication.

120. The cost of the adjudication is as follows:

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121. I find that there has been no frivolous or vexatious conduct or any unfounded submissions to warrant any costs order against the parties.

122. Pursuant to s.46(9) of the Act, I determine that the Respondent shall pay the Applicant half of the sum already paid by the Applicant. That is **XXX** [inclusive of GST].

5.0 CONCLUSION

For the foregoing reasons, I make the following conclusion:

INFORMATION REDACTED

*Barry C Green BSc(Hons) FRICS MAIQS CQS MCIArb PRIAdj
Registered Adjudicator No. 46*

24 February 2019