DETERMINATION NO: 39.13.01

Adjudicator's Determination

pursuant to the

Construction Contracts (Security of Payments) Act

Applicant

and

Respondent

I, David Baldry, determine on 19 November 2013 in accordance with s 38(1) of the *Construction Contracts (Security of Payments) Act* that the amount to be paid by the respondent to the applicant is $143,601 inclusive of GST being the amount of $141,900 plus interest of $1,701 to today. Interest accrues on the sum of $143,601 at the rate of $34.02 per day from today. The amount of $143,601 is payable immediately. There is no information in this determination, which is unsuitable for publication by the Registrar under s 54 of the *Construction Contracts (Security of Payments) Act*.

Contact details:

Applicant: | **Applicant's Solicitor:**

Respondent: | **Respondent's Solicitor:**

Prescribed Appointer:
Northern Territory Law Society
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T: 08 8981 5104
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APPOINTMENT AS ADJUDICATOR

1. On 21 October 2013 the applicant applied for an adjudication under the *Construction Contracts (Security of Payments) Act 2004* (NT) (the Act), and on 24 October 2013 I was appointed adjudicator by The Northern Territory Law Society to determine this application. The Northern Territory Law Society is a prescribed appointed under regulation 5 of the *Construction Contracts (Security of Payments) Regulations*, as required by s 28(1)(c)(iii) of the Act. Neither party objected to my appointment.

DOCUMENTS RECEIVED BY ADJUDICATOR

2. I received and have considered:

   (a) the application dated 18 October 2013 supported by:

      (i) a statutory declaration made by on 10 October 2013 and documents annexed to such declaration; and

      (ii) copies of:

         (1) a payment claim dated 9 August 2013; and

         (2) a letter from the respondent to the applicant dated 20 August 2013,

      annexed to the application;

   (b) the response received on 7 November 2013 supported by a statutory declaration made by[name omitted] on 7 November 2013 and the documents annexed to such declaration; and

   (c) submissions by the applicant dated 12 November 2013 and the respondent dated 15 November 2013 in response to invitations by me to provide same as set out in these reasons.

3. On 24 October 2013 I asked the applicant's solicitor to advise when he served the application and supporting documents on the respondent. On 25 October the applicant's solicitor advised:

   "I effected service of the application for adjudication by ordinary post on the registered office of [the respondent] in accordance with the requirements of the Corporations Act. That registered office is at [address omitted]. My letter was posted on 21 October 2013 which was a Monday. In the ordinary course of the post I understand that letter would be received in Sydney no later than Thursday

24 October 2013 which I submit should be regarded as the date of service.

"As a matter of convenience and practicality I also posted a copy of the application for adjudication to [the respondent] at its local post office box address of [address omitted]. That was also posted on 21 October. Whilst it was likely to have been received at that post office box by[the respondent] on 22 October, unless [the respondent] acknowledges receipt of it earlier than 24 October, I think it appropriate that 24 October be regarded as the date of service."

4. The respondent did not assert otherwise and I therefore find that:

   (a) the application and supporting documents were served on the respondent on 24 October 2013;

   (b) under s. 29 the response was required to be served on the applicant and me by 7 November 2013; and

   (c) the response was served within the required period.

OUTLINE OF PAYMENT CLAIM AND ITS REJECTION BY RESPONDENT

5. The applicant's payment claim dated 9 August 2013 claimed $141,900 inclusive of GST for the hire of [plant] , without operators, by the applicant to the respondent which were intended to be used by the respondent at the [project] construction site at [project site] in the Northern Territory.

6. The applicant's case is that the hire period commenced on either 27 or 28 April 2013, as all pre-hire term commencement pre-conditions able to be fulfilled by the applicant had been fulfilled by then and the [plant] were then available for use by the respondent.

7. The respondent did not at any time make use of any of the [plant] and in May 2013 the applicant sent a number of emails to the respondent operative [name omitted] to attempt to progress the certification process of the [plant] and their use by the respondent and left call back messages for him which were not responded to.

8. In a statutory declaration by the applicant operative [name omitted], Mr [name omitted] told Mr [name omitted] that the respondent could not take [the plant] because they are too heavy for the bitumen road on the [project] site.

9. By letter from the respondent to the applicant dated 20 August 2013 the respondent disputed the payment claim in its entirety on the following grounds:

(a) "To date [the respondent] have not issued any mobilization instruction to [the applicant] for the above mentioned [plant] and subsequently have never been utilised on site."

(b) "[The applicant] were advised b y[the respondent] that the [plant] would not be required on site."

JURISDICTION

10. By s 33(1)(a)(i) to (v) I must dismiss an adjudication 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 it is not possible to fairly make a determination:

        (A) because of the complexity of the matter; or

        (B) because the prescribed time or any extension of it is not sufficient for another reason .

11. I am satisfied in relation to the matters in pars (i) and (iii) above, namely that the contract (if consummated, see further on this below) was a construction contract as defined in the Act and that the dispute was not the subject of an order, judgment or other finding. The respondent did not assert otherwise.

12. Was the application prepared and served in accordance with s 28? The first requirement of s 28(1) is that a written application be prepared and served within 90 days after a payment dispute arises. The occurrence of a payment dispute as defined by s 8 of the Act is thus critical to the application. This is also the effect of s 27 giving the right to bring an application in these words:

    "If a payment dispute arises under a construction contract, any party to the contract may apply to have the dispute adjudicated under this Part unless:

(a) an application for adjudication has already been made by a party (whether or not a determination has been made) but subject to sections 31(6A) and 39(2); or

(b) the dispute is the subject of an order, judgment or other finding by an arbitrator or other person or a court or other body dealing with a matter arising under the contract."

13. By s 8, a payment dispute arises, relevantly, where a "payment claim" has not been paid in full by the due date for payment or the claim has been rejected or wholly or partly disputed.

14. A "payment claim" is defined in s. 4 to mean:

    a claim made under a construction contract:

    (a) 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

    (b) by the principal to the contractor for payment of an amount in relation to the performance or non-performance by the contractor of its obligations under the contract.

15. If there is a written provision about how a claim for payment is to be made, the claim must follow those written provisions to be a valid payment claim. If there is no such written provision, the requirements of Division 4 of the Schedule to the Act as to the manner of making payment claims are implied into the contract by s 19 which says:

    "The provisions in the Schedule, Division 4 are implied in a construction contract that does not have a written provision about how a party must make a claim to another party for payment."

16. The contract was partly oral and partly in writing and there was no written provision about how claims for payment were to be made. I therefore find that s 19 applied. The applicant asserted that was the case and the respondent did not assert otherwise.

17. Division 4 of the Schedule lists the form and content of a claim to be a valid payment claim under the Act where there is no written provision in the contract about how a claim is to be made. The relevant part says:

"5 Content of claim for payment

(1) A payment claim under this contract must:

(a) be in writing; and

(b) be addressed to the party to which the claim is made; and

(c) state the name of the claimant; and

(d) state the date of the claim; and

(e) state the amount claimed; and

(f) for a claim by the contractor – itemise and describe the obligations the contractor has performed and to which the claim relates in sufficient detail for the principal to assess the claim; and

(g) for a claim by the principal – describe the basis for the claim in sufficient detail for the contractor to assess the claim; and

(h) be signed by the claimant; and

(i) be given to the party to which the claim is made."

18. There is only one payment claim the subject of the adjudication application, which was dated 9 August 2013. I am satisfied that its form and contents satisfy the requirements of Division 4 of the Schedule. The respondent did not assert otherwise.

19. There was a written provision in the contract dealing with when payment of payment claims was to be made, i.e. in the respondent's purchase order dated 26 April 2013, which stated:

"Payment terms 30 days EOM."

20. Neither the applicant nor the respondent has asserted that that provision did not apply and I therefore find that it did.

21. The applicant stated that the payment claim was sent by email to [name omitted] on 14 August 2013 and on the same day posted to the postal address of the respondent. Copies of the email doing so or any covering letter from the applicant to the respondent posting the payment claim to the respondent were not provided with the application, but I do not find that that matters, because the respondent clearly received the payment claim by email because that is referred to in the preamble to the respondent's letter to the applicant dated 20 August 2013 in which it disputed the claim made in its entirety

on the grounds stated above.

22. As the contract did not have any provisions concerning how or when a payment claim should be disputed I find that the provisions of Division 5 of the Schedule to the Act are implied into the contract. Relevantly, Division 5 of the Schedule to the Act provides that:

    (a) if a party to whom a payment claim is addressed wants to dispute the whole or part of a payment claim that party must within 14 days after receiving the payment claim give the claimant a notice of dispute; and

    (b) such notice of dispute must:-

        (i) be in writing; and

        (ii) be addressed to the claimant; and

        (iii) state the name of the party giving the notice; and

        (iv) state the date of the notice; and

        (v) identify the claim to which the notice relates; and

        (vi) relevantly, identify each item of the claim that is disputed and state, for each of the items, the reasons for disputing it; and

        (vii) be signed by the party giving the notice.

23. I find that the letter from the respondent to the applicant dated 20 August 2013 can be categorised as a notice of dispute, its contents complied with the requirements of Division 5 of the Schedule to the Act and was given to the applicant within the required 14 day period.

24. I also find that the contract required that the payment claim was due to be paid on 30 September 2013 and, therefore, the application for adjudication, having been prepared and served on 24 October 2013 was served within 90 days after such due date for payment in accordance with s 28.

25. I agree with the applicant that the payment dispute arose on 20 August 2013, that being the date the respondent delivered it to the applicant and therein stated it disputed it was liable to pay the payment claim in its entirety, but that does not alter the date upon which the payment claim was due to be paid.

26. I therefore find that I have jurisdiction to decide the payment claim on its merits.

ORAL AND WRITTEN CONSTRUCTION CONTRACT TERMS

27. The applicant conducts the business of wet and dry hire of [plant]. Dry hire means the hire of plant and equipment without supplying operators employed by the applicant and wet hire means the hire of plant and equipment with operators employed by the applicant.

28. The applicant says the oral and written parts of the construction contract were sequenced as follows:

(a)	Early March 2013	telephone call from the applicant's [name omitted] to the respondent's [name omitted] during which [he] advised the respondent needed to hire dump trucks for use in relation to a contract won by the respondent as part of the [project] development and asked that [name omitted] advise what plant and equipment the applicant had available and at what rates.
(b)	15/03/2013	Email from [name omitted] to [name omitted] providing the applicant's wet and dry rates of hire for [plant] (at $105 per hour excl GST) and various kinds of [other plant], which email the applicant asserts amounted to an invitation to treat.
(c)	From 15/03/2013 to 18/04/2013	a few telephone conversations between [name omitted] and [name omitted] during which [name omitted] advised the respondent needed to hire the [plant] for a minimum of 6 weeks and was willing to temporarily employ 3 of the applicant's [plant] operators and [name omitted] as a back-up operator, on a temporary basis (who would need to be inducted by [the respondent]) so the applicant could thereby not have to deal with compliance with [the principal's] Greenfield agreement (which amongst other requirements required various

		tradespersons to be employed at set rates).
(d)	18/04/2013	email from [name omitted] to some other officers of [the respondent] (copied to [name omitted]) which was allegedly the first step of the respondent's induction of the applicant's 3 employees and [name omitted], a copy of which was not provided with the adjudication application.
(e)	Prior to 23/03/2013	[name omitted] asked [name omitted] if he knew a Registered Training Organisation (RTO) which could ticket the drivers of the [operators of the plant] to be hired to the respondent which would be acceptable to [the principal's] agent [name omitted]. [Name omitted] advised [name omitted] that [name omitted] who was part of an RTO could do so. [Name omitted] then advised [name omitted] to arrange for [name omitted] to ticket all of the applicant's employees as well as 3 further drivers of the respondent.
(f)	23/03/2013	3 of the applicant's drivers and [name omitted], 3 of the respondent's drivers and [name omitted] met at the applicant's yard so that [name omitted] could ticket them and he did so.
(g)	Unstated date	[name omitted] said the respondent would organise for the applicant's 3 employees and [name omitted] to be medically examined as the last stage of the [plant] operator induction process.
(h)	26/04/2013	[name omitted] sends email to [name omitted] attaching order addressed to the applicant for the hire of 2 [items of plant] at $105 per hour and 2 x [other items of plant] at $110 per hour (there being no reference to whether such rates were intended to be GST inclusive or exclusive)

upon which it was also stated – "Hire to commence as personnel are enabled and inducted." and ""minimum 200 hrs month each." The applicant contended that that order amounted to an offer by the respondent to the applicant to enter into the contract.

(i) 27 or 28/04/2013 [Name omitted] telephoned [name omitted] and confirmed that his 3 drivers were ready to go and reminded him that they were all ticketed. The applicant alleges that those statements constituted the applicant's acceptance of the respondent's offer. [Name omitted] said he had to organise the VOC (Verification of Competency) which is carried out by [name omitted] mechanical Engineers to ensure the machines were up to standard and the medical examinations and that he would do so as soon as possible.

29. The respondent has submitted that:

(a) The conversation between [name omitted] and [name omitted] during the site meeting on 23 April 2013 amongst other things included the following statements –

xxx: *There are a few steps to work through here, with everything to be approved by the head contractor [name omitted] before anything goes on site.*

First up a risk assessment for each plant will need to be submitted to [head contractor] for approval entailing a [head contractor] mechanical checklist completed by a licensed mechanic, a copy of the plant's service history and a copy of the plant's operating and maintenance manuals.

If the documentation is approved by [the head contractor], then [the head contractor] will inspect the vehicles off site [sic at] *a pre-determined meeting place.*

If the plant is approved, [the head contractor] will issue equipment labels and stickers. These will have to be displayed on the plant at all times.

Then and only then, can [the plant] be permitted on the project site. That is when the hire period commences.

Breen: *How long do you think it will be?*

Alley: *If the references are contactable and the paper work in order, it will make the process faster. [The head contractor] will be managing the inspection process. There are many hoops to jump through.*

Breen: *I understand. We're content to work with [the respondent] to get the necessary approvals from [the head contractor].*

Alley: *The commencement of the hire period will only begin when we have achieved 100% compliance with these requirements. [The head contractor] is running a tight ship on this project.*

(b) The conversation asserted to have occurred between [name omitted] and [name omitted] on 27 or 28 April 2013 in paragraph 14 of xxx statutory did not constitute an acceptance of the respondent's offer contained in its order dated 26 April 2013.

(c) In an email from [name omitted] to [name omitted] sent on 29 April 2013, the respondent stated:-

"Further to our meeting on 23 April 2013 and the purchase order dated 26 April 2013 I wish to clarify that the hire period of the plant will commence as soon as both the personnel and plant are approved and enabled by [the head contractor]for the site [emphasis added].*"*

(d) As the arrangement stated in such email was never contested by xxx, the contract clarified that the respondent's offer was made on the conditional basis that the plant had to be approved in all respects by [the head contractor] before the hire would commence and that did not happen.

(e) In the alternative, to the extent that an agreement can be construed to have been entered into from the documents and verbal exchanges between the parties, its terms should not be limited the truncated terms of such purchase order and that the terms of the purchase order, such as they were, must be read in concert with the correspondence of 29 April 2013.

30. As the email dated 29 April 2013 had not been referred to in the adjudication Application or a copy of same provided with the Application or the statutory declaration of [name omitted], on 11 November 2013 I sent an email to the applicant's and the respondent's solicitors which stated:-

"I refer to the submissions in numbered paragraphs 10 to 13 of the Response, to the following effect:-

1. That nowhere in the statutory declaration of [name omitted] (and, in particular, paragraph 14 thereof) is there any evidence that the applicant formally or informally accepted the terms of the respondent's purchase order dated 26 April 2013 on 27 or 28 April 2013.

2. An email sent by [name omitted] to [name omitted]at 2:30pm on 29 April 2013 "confirmed with the applicant – in writing that the "hire period" would commence "as soon as both the personnel and plant are approved and enabled by [the head contractor] for site"".

Pursuant to s. 34(2) of the Construction Contracts (Security of Payments) Act, NT I request that -

(a) in the first instance, the applicant, by 12 noon on Tuesday 12 November 2013, provide me with written submissions concerning the following questions:-

(i) What action needs to be taken by a contract offeree to formally or informally accept a contractual offer made by written order?

(ii) Did [name omitted] receive the email sent by [name omitted] to [name omitted] at 2:30pm on 29 April 2013 on 29 April 2013?

(iii) If so, why didn't the applicant annex a copy of such email to the statutory declaration of [name omitted] provided with the Application and make submissions about its legal effect in the adjudication application?

(iv) What was the legal effect of the email sent by [name omitted] to [name omitted] at 2:30pm on 29 April 2013?

(b) in the second instance, the respondent, by 12 noon on Thursday 14 November 2013, provide me with written submissions in reply to the applicant's submissions concerning such questions.

Please note that the requested submissions should not contain any factual information (other than the factual information directly requested in the above submission questions) which has not already been included in the application and response submissions and supporting statutory declarations."

31. I agreed to extend the time by which the respondent was to provide its further submissions to 12 noon on Friday 15 November 2013.

32. Both the applicant's and the respondent's solicitors provided their further submissions within the required timeframes.

33. In essence, the applicant answered the questions, as follows:

Qu 1 <u>What action needs to taken by a contract offeree to formally or informally accept a contractual offer made by written order?</u>

Ans: The acceptance of the contract did not need to be done formally. Lay people do not use legal language such as "I accept the offer in your purchase order." They use direct language such as "My boys are ready to go.

Qu 2 <u>Did [name omitted] receive the email sent by [name omitted] to [name omitted] at 2:30pm on 29 April 2013 on 29 April 2013?</u>

Ans: Mr [name omitted] did not receive the email dated 29 April 2013 as he was having trouble receiving emails at the time and the first time he saw it was when the Response was received.

Qu 3 <u>If so, why didn't the applicant annex a copy of such email to the statutory declaration of [name omitted] provided with the Application and make submissions about its legal effect in the adjudication application?</u>

Ans: Mr [name omitted] was unaware of the email when he made his statutory declaration.

<u>Qu 4 What was the legal effect of the email sent by [name omitted] to [name omitted] at 2:30pm on 29 April 2013?</u>

Ans: The email had no legal effect and would not have had any effect even if it had been received because the offer made in the order was accepted beforehand on 23 April.

34. The respondent made the following submissions:

Qu 1 While the response to an offer does not need to be formally made, to be effective it needs to be stated clearly so as to squarely be an acceptance of the offer put. The statement by Mr [name omitted] "My boys are ready to go." did not adequately amount to an acceptance of the offer made in the order because –

(a) there was no reference to the purchase order;

(b) there was no reference to any agreement;

(c) such statement by Mr [name omitted] indicates a likelihood of the correctness of Mr [name omitted]'s version of what he said was stated by him about the plant certification during the site meeting on 23 April 2013; and

(d) there is a lack of any certainty of what Mr [name omitted] was actually conveying to Mr [name omitted] when he made that statement.

Qu 2 The respondent cannot know in the limited confines of an adjudication whether Mr [name omitted] received the email dated 29 April 2013 and in the absence of sworn evidence it should be assumed that he did receive it.

Qu 3 No comment.

Qu 4 The legal effect of the email is relevant because it demonstrates that:-

(a) a meeting took place on 23 April 2013;

(b) that a purchase order existed dated 26 April 2013; and

(c) that the hire period was conditional upon certain approvals being given by [the head contractor] which were never forthcoming.

35. I find that the applicant's submissions concerning these questions should be preferred over the Respondent's submissions because:-

(a) I agree that an acceptance of an offer made by order can be accepted orally and need not be formally given and that the statement "My boys are ready to go. " was more likely than not been intended to convey an acceptance of the offer.

(b) I accept that Mr [name omitted] did not receive the email sent on 29 April 2013 for the reason given and that the first occasion it was seen by the applicant was when it read the Response. I do not agree that simply due to that matter not having been stated under oath that I should find that it is more likely than not that such email was received by the applicant on or about 29 April 2013. An adjudication is an inappropriate arena for all facts to have to be tested under oath.

(c) The critical finding I am therefore left to determine is whether Mr [name omitted]'s version of what was supposed to have been stated about plant approval by [name omitted] at the site meeting on 23 April 2013 is correct or whether Mr [name omitted]'s version of what was supposed to have been discussed at that site meeting was correct and a essentially complete regarding the essence of what was discussed at the meeting. If I were to find that Mr [name omitted]'s version was correct I consider that I should also find that the respondent's offer made in its order dated 26 April 2013 was conditional on the plant being approved by [name omitted], even though the order did not say so. If not and I instead find that Mr [name omitted]'s version of what occurred at that site meeting is more likely to have been correct, I consider that I should find that the email dated 29 April 2013 has no legal effect because the offer made in the order dated 26 April was accepted on either 27 or 28 April 2013.

(d) Without the benefit of more fully testing what occurred at that site meeting by Messrs [name omitted]'s and [name omitted]'s evidence being tested by cross examination and other persons present at the site meeting being called upon to give evidence concerning what occurred, I am unable to form a definite opinion.

(e) However, the aspect of the current evidence which leads me to find that it was more likely than not that Mr [name omitted]'s evidence is likely to be correct is that the email dated 29 April 2013 appears to me to have been an ex post facto attempt to correct a badly stated offer in the order dated 26 April 2013, knowing full well that in the general world of commerce contractual obligations are often strictly construed by reference to written statements as to term conditions in orders.

36. I therefore find that:-

(a) The offer made in the order dated 26 April 2013 was accepted by the applicant on 27 or 28 April 2013.

(b) By 27 or 28 April 2013 the applicant had fulfilled as much of the pre-condition in the offer it was required to fulfill for the hiring of the plant to commence, i.e. requiring personnel to be enabled and inducted, as they had been ticketed and had indicated that they would be available to be medically examined when that was arranged by the respondent to be done.

(c) As it was the respondent's obligation to arrange for such personnel to be medically examined it cannot rely on that not having occurred for all of such personnel.

(d) Therefore, the hiring period commenced on 27 or 28 April 2013.

(e) The agreement included the acceptance of the term stated in the order "minimum 200hrs month each" which effectively required the all of the equipment to be hired for a minimum of 200 hrs in any month of hire.

THE PAYMENT CLAIM

37. The payment claim was dated 9 August 2013 and claimed a total of $141,900 made up as follows:-

(a)	2 x xxx @ $105 per hour for 300 hours =	$63,000;
(b)	2 x yyy @ $110 per hour for 300 hours =	$66,000
		$129,000
(c)	GST thereon	$12,900
		$141,900

38. I find that the amount claimed therein has been correctly calculated in accordance with agreed rates in the contract. I also note that it is less than what could have been claimed as I consider the applicant could have claimed 400 hours for each item of plant due to the minimum 200 hours per unit per month term.

39. In those circumstances, I find that the amount claimed therein being $141,900 is owing by the respondent to the applicant. As previously stated that amount was due to be paid by no later than 30 September 2013.

INTEREST

40. Section 35 of the Act empowers me to award interest on the amount owing if the payment is overdue. As the contract did not provide for the payment of such interest such interest can be awarded in accordance with the provisions of Regulation 9 of the Construction Contracts (Security of Payments) Regulations.

41. Ultimately the rate to use for such interest is the rate fixed from time to time in accordance with s 52(2)(a) of the Federal Court of Australia Act and r 39.06 of the Federal Court Rules, being the last published cash rate or rates published by the Reserve Bank of Australia prior to the relevant 6 month period or periods commencing on 1 January and 1 July plus 6 %.

42. The cash rate published on 5 June 2013 was 2.75%. Therefore the appropriate rate of interest to apply is 8.75%.

43. I therefore find that the applicant is entitled to interest at 8.75 % per annum on $141,900 from 30 September 2013.

COSTS

44. I do not consider that it would be appropriate for me to make any order for the payment of costs under s. 36 or of the Act, because I see no grounds (such as either party to the adjudication having acted in a frivolous or vexatious manner or having made unfounded submissions) for altering the standard position in s 36(1) that the parties to a payment dispute bear their own costs in relation to an adjudication (including the costs the parties are liable to pay under s 46 – i.e. the adjudicator's fees).

DETERMINATION

45. In accordance with s 38(1) of the Act, I determine that the amount to be paid by the respondent to the applicant is $143,601, being $141,900 plus interest of $1,701 (50 days from 1 October 2013 to 19 November 2013 at the rate of $34.02 per day). Interest accrues from today at the same rate.

46. The amount of $143,601 is payable immediately.

47. I draw the parties' attention to the slip rule in s 43(2) if I have made some correctible error.

Dated: 19 November 2013

____

David Baldry
Registered Adjudicator