



## ***CONSTRUCTION CONTRACTS ACT 2004***

### **CONSTRUCTION CONTRACTS REGISTRAR BULLETIN NO. 1**

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#### **SERVICE OF APPLICATION FOR ADJUDICATION**

The purpose of this bulletin is to provide guidance to registered adjudicators regarding when service of an application for adjudication may be considered to have been effected for the purposes of sections 26(1) and 27(1) of the *Construction Contracts Act 2004*.

Sections 75 and 76 of the *Interpretation Act 1984* respectively pertain to service of documents by post and service of documents generally.

Since section 26(1) of the *Construction Contracts Act* does not direct that an application is to be served in a particular manner it may, under section 76 of the *Interpretation Act*, be served on the persons to be served in any one of the following ways -

- (a) by delivering the document to them personally; or
- (b) by post in accordance with section 75(1); or
- (c) by leaving it for them at their usual or last known place of abode, or if any of them is a principal of a business, at his/her usual or last known place of business; or
- (d) in the case of a corporation or of an association of persons (whether incorporated or not), by delivering or leaving the document or posting it as a letter, addressed in each case to the corporation or association, at its principal place of business or principal office in the State.

Under section 75(1) of the *Interpretation Act*, service of a document by post shall be deemed to be effected by properly addressing and posting (by pre-paid post) the document as a letter to the last known address of the person to be served and, unless the contrary is proved, to have been effected at the time when the letter would have been delivered in the ordinary course of post.

This will apply regardless of whether the letter was posted by normal pre-paid post, registered post or by certified mail.

In practical terms, this means that if a person to whom an application under section 26(1) of the *Construction Contracts Act* has been posted does not, for example, collect the mail from his/her letter box or from the Post office, as the case may be, on the day when it would have been delivered in the ordinary course of post, service of the application will nevertheless be deemed to have been effected on that day unless the contrary is proved.

While the above may assist adjudicators to calculate the start of the 14 days mentioned in 27(1) of the *Construction Contracts Act* for service of a response to an application for adjudication, I would encourage an adjudicator to make contact with the respondent(s) as soon as the adjudicator consents to adjudicate an adjudication. This may be done as an administrative courtesy and would be seen to be fulfilling the adjudicator's

role of keeping all parties to the adjudication informed about matters relevant to the adjudication (see the “General Disclosure” section of the Practice Guidelines for Registered Adjudicators and Prescribed Appointors).

It should also be noted that there is a potential to avoid disputes regarding service of the application for adjudication by obtaining the consent of the parties to extend the time for making a determination pursuant to section 32(3)(a) of the *Construction Contracts Act*.

### **Changes to Forms 3 & 4**

Please note that the changes outlined below have been made to proforma Forms in the Department of Housing and Works’ Government Information Guide regarding the *Construction Contracts Act 2004*, which is available online at [http://www.dhw.wa.gov.au/330\\_350.asp](http://www.dhw.wa.gov.au/330_350.asp) These changes relate to service of documents.

#### ***Information Sheet 13, Form 3, “Application for Adjudication Form”***

The following wording has been added under the heading “Service of this Adjudication Application Form”:

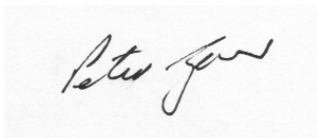
*“Immediately after the Claimant has served this application on the Respondent, they should advise the Adjudicator in writing about how and when the Respondent was served with the Application and the address at which it was served.”*

This is intended to assist the adjudicator to determine if and when service has been effected.

#### ***Information Sheet 14, Form 4, “Response to Application for Adjudication Form”***

Certain incorrect wording has been replaced under the heading “Service of this response to application for adjudication”. The new wording is underlined.

*“This response to application for adjudication must be served on the relevant parties prescribed in the regulations within 14 days after the date on which the application for adjudication was served by either:”*



Peter Gow  
CONSTRUCTION CONTRACTS REGISTRAR

*Construction Contracts Registrar’s Bulletins are primarily to inform registered adjudicators and prescribed appointors of recent developments or matters of interest in the adjudication sphere. The information contained in this Bulletin is intended for general guidance only and must not be relied upon in any particular set of circumstances. To ascertain your precise obligations, please refer to the applicable legislation.*

*Copies of the Construction Contracts Registrar’s Bulletin may be obtained from the Construction Contracts Registrar at 108 Adelaide Terrace, East Perth WA 6004 or online at [http://www.dhw.wa.gov.au/330\\_350.asp](http://www.dhw.wa.gov.au/330_350.asp)*