

Construction Contracts Regulations 2003

(SR 2003/30)

Pursuant to section 82 of the Construction Contracts Act 2002, Her Excellency the Governor-General, acting on the advice and with the consent of the Executive Council, makes the following regulations.

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These regulations are administered in the Ministry of Economic Development.

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1 Title

These regulations are the Construction Contracts Regulations 2003.

2 Commencement

These regulations come into force on 1 April 2003.

3 Interpretation

(1) In these regulations, unless the context otherwise requires,—

Act means the Construction Contracts Act 2002

change in the applicant's circumstances means—

- (a) any change in the information that an applicant has provided under regulation 8;
- (b) any matter that a reasonable person would consider to have a bearing on whether the applicant ought to be, or ought to continue to be, authorised to nominate adjudicators

contact details, in relation to a person,—

- (a) means the person's business address and, if different, the person's postal address; and
- (b) if available, includes the person's—
 - (i) telephone number;
 - (ii) fax number;
 - (iii) email or website address

notify means send a written notice (by post, fax, email, or other similar means of communication).

- (2) A reference in these regulations to a numbered form is a reference to a form so numbered in Schedule 1.

Forms

4 Information that must accompany payment claim served on residential occupier

The information that, in accordance with section 20 of the Act, is required to accompany a payment claim that is served on a residential occupier must be in form 1.

5 Information that must be set out in notice of adjudication served on residential occupier

The information that, in accordance with section 62 of the Act, is required to be set out in a notice of adjudication that is served on a residential occupier must be in form 2.

6 Adjudicator's determination

An adjudicator's determination must be in form 3.

7 Application for review of adjudicator's determination in respect of owner who is not respondent

- (1) This regulation applies to any application made by an owner who is not a respondent under section 52 of the Act for a review of—
- (a) an adjudicator's determination that the owner is jointly and severally liable with the respondent to make a payment to the claimant; and
 - (b) an adjudicator's approval for the issue of a charging order in respect of the construction site.
- (2) An application to which this regulation applies—
- (a) must be in form 4; and

- (b) must be accompanied by a copy of the adjudicator's determination in question.

Application for authority to nominate adjudicators

8 Application for authority to nominate adjudicators

An application to the Minister under section 65 of the Act for an authority to nominate adjudicators must—

- (a) be made in a form that contains the information set out in Schedule 2; and
- (b) contain or be accompanied by—
 - (i) a statement signed by, or on behalf of, the applicant that verifies that the information provided under this regulation is true and correct; and
 - (ii) a statement of the applicant's agreement to notify the Minister of any change in the applicant's circumstances.

Service of notices

9 Additional modes of service

- (1) In addition to the modes of service specified in section 80 of the Act, any notice or any other document required to be served on, or given to, any person under the Act or these regulations is sufficiently served if—
 - (a) it is sent by fax; or
 - (b) it is sent by email or other means of electronic communication and the requirements of regulation 10 are met.
- (2) A notice or document sent by fax under subclause (1)(a) is, in the absence of proof to the contrary, served or given if the fax machine generated a record of the transmission of the notice or document to the fax machine of the recipient, and the date of the record is taken to be the date of receipt of that notice or document.
- (3) A notice or document sent by email or other means of electronic communication under subclause (1)(b) is, in the absence of proof to the contrary, regarded as having been served or given,—

- (a) in the case of an addressee who has designated an information system for the purpose of receiving emails or other electronic communications, at the time the email or communication enters that information system; or
 - (b) in any other case, at the time the email or communication comes to the attention of the addressee.
- (4) For the purposes of subclause (3), **information system** means a system for producing, sending, receiving, storing, displaying, or otherwise processing emails or other electronic communications.

10 Requirements for service by email or other means of electronic communication

- (1) A notice or document may be sent by email or other means of electronic communication under regulation 9(1)(b) only if—
- (a) the information in the notice or document is readily accessible so as to be usable for subsequent reference; and
 - (b) the person to whom the information is required to be served or given consents to the information being given in electronic form and by means of an electronic communication, if applicable.
- (2) For the purposes of subclause (1),—
- (a) a person may consent to use, provide, or accept information in an electronic form subject to conditions regarding the form of the information or the means by which the information is produced, sent, received, processed, stored, or displayed:
 - (b) consent may be inferred from a person's conduct.

Schedule 1

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Forms

Form 1

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Form 1—*continued*Information that must accompany payment
claim served on residential occupier**Important notice**

You have been served with a payment claim under section 20 of the Construction Contracts Act 2002 (the **Act**). Under the Act, the person who has served the payment claim is called the **payee**.

If you do not respond to the payment claim promptly, you may lose your right to object to the payment claim.

You may choose to respond to the payment claim in either of the following 2 ways:

- you may pay the payee the amount claimed in the payment claim in full on or before the due date:

or

- if you object to the payment claim, you may provide a written payment schedule to the payee, which must identify the payment claim to which it relates and indicate what you are prepared to pay (which can be nothing). The amount you so indicate is called the **scheduled amount**. If the scheduled amount is less than the claimed amount, the payment schedule must indicate—
 - (a) how you calculated the scheduled amount; and
 - (b) your reason or reasons for the difference between the scheduled amount and the claimed amount; and
 - (c) in a case where the difference is because you are withholding payment on any basis, your reason or reasons for withholding payment.

You must provide the payment schedule to the payee within the time required by the construction contract or, if the construction contract does not set out a time for responding to the payment claim, then within 20 working days after the payment claim is served on you. If you provide a payment schedule in this way, then you must pay the scheduled amount in full on or before the due date for the progress payment to which the payment claim relates.

Consequences of not responding to payment claim

Form 1—*continued*

If you do not respond to the payment claim by paying the claimed amount in full or providing a payment schedule that sets out the amount you are prepared to pay, then you will become liable to pay the claimed amount and the payee may recover from you, as a debt due, in the appropriate court, the unpaid portion of the claimed amount and the actual and reasonable costs of recovery awarded against you by the court.

Consequences of indicating that you will pay nothing or less than claimed amount

If you do respond to the payment claim by providing a payment schedule but indicate in the schedule that you are prepared to pay nothing or an amount less than the claimed amount, the payee may take issue with you doing so. The payee may bring court proceedings against you and refer the matter as a dispute for adjudication under the Act.

Consequences of not paying scheduled amount in manner indicated by payment schedule

If you do respond to the payment claim by providing a payment schedule but do not pay the scheduled amount on or before the due date for the progress payment to which the payment claim relates, the payee may recover from you, as a debt due, in the appropriate court, the unpaid portion of the scheduled amount and the actual and reasonable costs of recovery awarded against you by the court.

Advice to residential occupier

Important: If you do not understand this information or if you want advice about how best to respond to the payment claim, you should consider getting legal advice immediately.

The **due date** for a progress payment is the date agreed for payment of the progress payment between you and the payee as parties to the construction contract. The due date should be set out in the payment claim.

Working day does not include Saturdays, Sundays, any day during 24 December to 5 January inclusive, national holidays, or the anniversary of the relevant province. If the last day for making a payment or providing a payment schedule falls on a day that is not a working day, you may do so on the next working day after that day.

Form 2

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Information that must be set out in notice of
adjudication served on residential occupier**Important notice**

You have been served with a notice of adjudication under the Construction Contracts Act 2002 (the **Act**). You have certain rights and obligations under the Act in relation to the notice of adjudication. This notice of adjudication means that the person who served the notice (the **claimant**) intends to refer a matter in dispute in relation to a construction contract between you and that person for adjudication under the Act. As the respondent, you have certain rights and strictly limited times in which to respond.

This notice briefly explains the adjudication process under the Act and provides a statement of your rights and obligations in the adjudication. It summarises the effect of the Act, but is not a substitute for the Act. If you want more detailed information about exactly what the Act states, you should consult the Act or a lawyer.

Important: If you do not understand this information or if you want further advice about how to respond to the notice of adjudication, or if you do not think you are a party to a construction contract, you should consider getting legal advice on the matter immediately.

Adjudication process

The adjudication process may be used for any dispute arising under a construction contract, including residential construction contracts. If your dispute does not arise under a construction contract, the adjudicator does not have jurisdiction to hear it. If you think that your dispute does not arise under a construction contract, you should tell the adjudicator and the other parties at once and consider consulting a lawyer immediately.

The adjudication is intended to give a quick determination of the dispute by an adjudicator. If an adjudicator determines that you are, or any other party is, liable to pay money under the contract, that determination is binding and enforceable until the dispute has been finally determined through court or arbitration proceedings. Any other determination by the adjudicator about the rights and obligations of the

Form 2—*continued*

parties is not enforceable as such, but the parties may bring proceedings in court to enforce their contractual rights.

You or the other parties to a construction contract can still submit your dispute to the courts, arbitration, mediation, or any other dispute resolution procedures, as well as to adjudication. When a court has made a judgment, that judgment will either stop an adjudication that is underway or override the effect of an adjudicator's determination. Until then, those proceedings do not stop the adjudicator making a determination or the claimant enforcing any monetary determination against you.

Unless extended by written agreement between the parties, an adjudicator's role is limited to determining the following:

- if the claimant is claiming money, whether or not any of the parties to the adjudication are liable to make a payment under the contract; and
- any questions in dispute about the parties' rights and obligations under the contract; and
- any other matters that are ancillary or consequential to the determination.

An adjudicator has 20 working days to determine a dispute after the end of the period during which the parties may serve a written response to the adjudication claim. However, the period during which the adjudicator must determine the dispute may be extended to 30 working days if the adjudicator considers that further time is reasonably required, or any further time period that the parties may agree upon. For the purposes of this form, **working day** does not include Saturdays, Sundays, any day during 24 December to 5 January inclusive, national holidays, or the anniversary of the relevant province.

If an adjudicator gives you notice that an amount is payable by you, you must pay it within 2 working days or within any longer time specified by the adjudicator. If you do not, the claimant may recover that amount as a debt from you through the courts.

It is important that you read the following statement of your rights and obligations and act promptly, and within the stated times, to exercise your rights.

Your rights and obligations in adjudication

Form 2—*continued**Choice of adjudicator*

The claimant may contact you to discuss the choice of adjudicator for the dispute and you may agree between yourselves as to who that person should be. If the person you have agreed on has already indicated that he or she is unwilling or unable to act, you and the claimant may agree on another choice of adjudicator. If you and the claimant do not agree upon an adjudicator, you may together agree on a nominating body to select an adjudicator. That nominating body may be any person, company, or other body (whether incorporated or not) who nominates adjudicators. If you have not agreed on a nominating body and no agreed adjudicator is willing and able to act within 5 working days of you receiving the notice of adjudication, then the claimant may request any nominating authority that has been authorised by the Minister of Commerce under the Act (an **authorised nominating authority**) to nominate an adjudicator.

Any agreement about the choice of an adjudicator or a nominating body or an authorised nominating authority that was made before the dispute arose is not binding on you or the other parties to the adjudication.

The adjudicator may **not** be someone who is a party to the construction contract. If the person asked to act as an adjudicator has a conflict of interest (whether financial or otherwise), he or she must disclose it to you and that person may not act as an adjudicator unless all of the parties to the adjudication, including you, agree.

If a person agrees to act as an adjudicator, he or she must serve a notice of acceptance on you. The notice must confirm that the person has no undisclosed conflict of interest, or else it will have no effect.

Adjudication claim and your response

Once an adjudicator has been appointed, the claimant must, within 5 working days of receiving the adjudicator's notice of acceptance, serve an adjudication claim on you. This claim must specify the nature or the grounds of the dispute and, to the extent that it remains relevant, be accompanied by a copy of the notice of adjudication. It may be accompanied by any other documents.

You may serve a written response to the adjudication claim on the adjudicator. You have 5 working days after you receive the adjudication claim to do this, or any further time that you and the other parties to

Form 2—*continued*

the adjudication agree or the adjudicator allows. If you do not serve a written response within that time, the adjudicator may draw any inferences from that failure that he or she thinks fit and may determine the dispute on the basis of the information that is available to him or her. Your response may be accompanied by any other documents that you consider useful. You must serve a copy of the response and any accompanying documents on the claimant and any other party to the adjudication either before or immediately after they are served on the adjudicator. If you want to argue the adjudication claim, it is essential that you respond promptly, setting out your side of the case. You may serve your response by delivering it to the adjudicator and claimant, or by leaving it at their usual or last known place of residence or business in New Zealand, or by posting it in a letter addressed to them there. You may also serve your response by fax, email, or other means of electronic communication.

Adjudication proceedings

Adjudicators must act independently, impartially, and in a timely manner. They must avoid incurring unnecessary expense and comply with the principles of natural justice. If they become aware of any conflict of interest, they must disclose it to the parties to the adjudication and resign unless those parties agree otherwise. Within these requirements, an adjudicator may conduct the adjudication in any manner he or she thinks fit. An adjudicator may—

- request further written submissions from the parties to the adjudication, but must give the relevant parties an opportunity to comment on those submissions:
- request the parties to provide copies of any documents that he or she may reasonably require:
- set deadlines for further submissions and comments by the parties:
- appoint an expert adviser to report on specific issues (as long as the parties are notified before the appointment is made):
- call a conference of the parties:
- carry out an inspection of any construction work or any other thing to which the dispute relates:

Form 2—*continued*

- request the parties to do any other thing during the course of an adjudication that he or she considers may reasonably be required to enable the effective and complete determination of the questions that have arisen in the adjudication:
- issue any other reasonable directions that relate to the conduct of the adjudication.

Confidentiality

Any information disclosed in the course of the adjudication for the purposes of the adjudication, and any statement, admission, or document created or made for the purposes of an adjudication, is confidential, to the extent it is not already publicly known. Neither the adjudicator nor any party to the dispute may disclose the information except—

- with the consent of the relevant party; or
- to the extent that disclosure is necessary for the purposes of, or in connection with, the adjudication or the enforcement of the adjudicator's determination; or
- in statistical or summary form arranged in a manner that prevents any information disclosed from being identified by any person as relating to any particular person; or
- if the information is to be used for statistical or research purposes and will not be published in a form that could reasonably be expected to identify any particular person.

Representation

You and the other parties may be represented by legal or other representatives, subject to the adjudicator's power to limit the number of representatives present at a conference to allow for the efficient conduct of proceedings.

Consolidation of adjudication proceedings

If 2 or more adjudication proceedings are pending, the adjudicator may, with your written consent and the consent of all the other parties to those proceedings, determine all those adjudication proceedings at the same time.

Liability of adjudicators and expert advisers

Form 2—*continued*

Neither adjudicators nor any expert advisers they appoint are under any liability to you for anything done or omitted in that capacity unless it was done or omitted in bad faith.

Adjudicator's determination

The determination of the questions in dispute must be in the written form prescribed by the Construction Contracts Regulations 2003 and must contain the reasons for the determination. The adjudicator must give a copy of the determination to you as soon as practicable after making it. If the adjudicator determines that a party is liable to pay money, the adjudicator must also determine the amount payable, when it is payable, and whether any conditions must be met before it is payable.

Costs of adjudication proceedings

An adjudicator may determine that costs and expenses must be met by any of the parties to the adjudication if the adjudicator considers that the party has caused those costs and expenses to be incurred unnecessarily by bad faith or by allegations or objections by that party that are without substantial merit. Otherwise, the parties to the adjudication must meet their own costs and expenses.

Any agreement made before the dispute arose about how the costs and expenses in adjudication proceedings are to be apportioned is not binding.

An adjudicator's fees must be borne equally by the parties to the adjudication, unless the adjudicator determines that the claimant's adjudication claim or your response was without substantial merit or that one of you acted in a contemptuous or improper manner during the adjudication. Those fees are payable only if the adjudicator determines the dispute within the time allowed. An adjudicator may require payment before communicating his or her determination on a dispute to you.

If an adjudication claim is withdrawn or terminated, or the dispute between the parties is resolved, an adjudicator is entitled to be paid the fees and expenses incurred in the adjudication to that date.

Form 3

Form 3—*continued*

Adjudicator’s determination

Name of adjudicator:
Date of determination:

Claimant

Name:
Address:
Telephone: (home) (business)
Email address:

Respondent

Name:
Address:
Telephone: (home) (business)
Email address:

Other party

Name:
Address:
Telephone: (home) (business)
Email address:

Details of dispute

Date of claim:
Nature of dispute:
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.....

Form 3—*continued*

Relief sought:

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.....

Determination

Content of determination:

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.....

Important: If the determination includes a requirement that you must make a payment, it is important that you read the statement on consequences set out at the end of this determination.

Reasons for determination

[This section must be filled in unless the parties to the adjudication have indicated by written agreement that the requirement to give reasons may be dispensed with.]

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.....
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.....

Charging order

(a) Was a charging order sought over land owned by the respondent?

Yes/No

or

(b) Was a charging order sought over land owned by a person other than the respondent? Yes/No

Form 3—continued

Details of charging order:

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.....
.....
.....
.....

An adjudicator may, on his or her own initiative, correct in the determination any errors in computation or any clerical or typographical errors, or any errors of a similar nature, within 2 working days of the parties being given their copies of the determination. You should read the determination thoroughly as soon as you get it. If you think there are any such errors, you should tell the adjudicator at once, so they can be corrected with the time allowed.

Important

Statement of consequences for defendant if the defendant takes no steps in relation to an application by a plaintiff to enforce the adjudicator’s determination by entry as a judgment

If the adjudicator’s determination states that you, as a party to the adjudication, are liable to make a payment and you fail, before the close of the relevant date, to pay the amount determined by the adjudicator, the plaintiff may do all or any of the following:

- (a) recover from you, as a debt due, in any court,—
 - (i) the unpaid portion of the amount; and
 - (ii) the actual and reasonable costs of recovery awarded against you by that court;
- (b) if the plaintiff carries out construction work under a construction contract, serve notice on you of the plaintiff’s intention to suspend carrying out construction work under the contract;
- (c) apply for the adjudicator’s determination to be enforced by entry as a judgment in accordance with subpart 2 of Part 4 of the Construction Contracts Act 2002 (the “fast-track” provisions in the Act).

Defendant means a party—

- (a) against whom an adjudication determination is made; and
- (b) who is liable, or will be liable if certain conditions are met, to pay an amount of money under the determination; and
- (c) against whom enforcement of the determination is sought.

Form 3—*continued*

Plaintiff means a party—

- (a) in whose favour an adjudication determination is made; and
- (b) to whom an amount of money is payable, or will be payable if certain conditions are met, under the determination; and
- (c) who seeks enforcement of the determination.

Relevant date means—

- (a) the date that occurs 2 working days after the date on which a copy of the relevant determination is given to the parties to the adjudication; or
- (b) if the adjudicator determines a later date, that later date.

Form 4

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Application for review of adjudicator’s
determination in respect of owner who is not
respondent

In the District Court
at [place]

No /

Under the Construction Contracts Act
2002

In the matter of a review of an adjudicator’s
determination that the owner of a
construction site is jointly and
severally liable with the respondent
to make a payment to the claimant,
and an adjudicator’s approval for
the issue of a charging order in
respect of the construction site.

By [full name] of [address] Applicant
for review

**Application for review of adjudicator’s determination in
respect of owner who is not respondent**

Section 52, Construction Contracts Act 2002

Take notice that the applicant seeks a review of an adjudicator’s determination
made under section 50 of the Construction Contracts Act 2002.

Part 1—Details of adjudicator’s determination

The adjudication proceedings were held at [location] on [date] by [name of
adjudicator].

The determination under section 50 of the Construction Contracts Act 2002 was
made by the adjudicator on [date].

The parties to the adjudication were:

Name of applicant:

Address of applicant:

Name of respondent:

Form 4—*continued*

Address of respondent:

The applicant seeks a review of the following aspects of the determination:

.....
.....
.....
.....
.....

Part 2—Grounds for application for review

This application for review is made on the following grounds (state fully but concisely the grounds on which the application is made):

.....
.....
.....
.....
.....

Part 3—Relief sought

The applicant seeks an order that the adjudicator's determination be quashed and substituted with a determination as follows:

.....
.....
.....
.....
.....

This application is accompanied by a copy of the adjudicator's determination, as required by regulation 7(2)(b) of the Construction Contracts Regulations 2003.

Applicant's signature:

Dated [*date*].

Form 4—*continued*

This application for review is filed by the above-named applicant whose address for service is [address] and whose telephone number is [telephone number] and whose facsimile number for service is [facsimile number] and whose document exchange number for service is [number] and whose email address for service is [email address].

or

This application for review is filed by [name], solicitor for the above-named applicant of the firm of [name of firm]. The address for service of the above-named applicant is [address]. Documents for service on the above-named applicant may be left at that address for service or may be—

- (a) posted to the solicitor at [Post Office box address]; or
- (b) left for the solicitor at a document exchange for direction to [document exchange box number]; or
- (c) transmitted to the solicitor by facsimile to [facsimile number]; or
- (d) transmitted to the solicitor by email to [email address].

Although a full postal address must always be supplied, the supply of a telephone number and any 1 or more of the following, namely a fax number, a document exchange number, or an email address is optional.

Schedule 2

Information that must be contained in application for authority to nominate adjudicators

An application form for an authority to nominate adjudicators must contain the following information:

- (a) the applicant's full name; and
- (b) the applicant's contact details for matters relating to the application and for ongoing matters relating to the authority to nominate adjudicators (if granted); and
- (c) if the applicant is an incorporated person, a copy of—
 - (i) the certificate of incorporation or other documentary evidence of the incorporation of the applicant; and
 - (ii) the memorandum or articles of association or constitution, as the case may be, or other documents or instruments constituting or defining the constitution of the applicant; and

- (iii) the certificate of registration of the business name of the applicant; and
- (d) evidence of the relevant qualifications and experience of the applicant and, in the case of an applicant who is an incorporated person, of the directors and officers of the applicant; and
- (e) details of any minimum standards or criteria that the applicant has in place (or plans to have in place) for selecting individuals to be nominated as adjudicators; and
- (f) details of any procedures that the applicant has in place (or plans to have in place) that will—
 - (i) ensure the applicant selects individuals for nomination in a manner that is free of any bias or conflict of interest; and
 - (ii) ensure the applicant nominates individuals who have the appropriate knowledge, skills, and expertise for the particular case; and
 - (iii) ensure the applicant nominates individuals in a timely manner; and
 - (iv) ensure the applicant nominates individuals who are available to act and who are free of conflict of interest in the particular case; and
 - (v) ensure members of the public know how to contact the applicant; and
- (g) a description in summary form of the individuals (in so far as they are known at the relevant time) whom the applicant proposes to nominate as adjudicators, including (without limitation)—
 - (i) the relevant knowledge, skills, and expertise of those individuals; and
 - (ii) how many of those individuals there are; and
- (h) details of any systems that the applicant has in place (or plans to have in place) that will—
 - (i) ensure the individuals whom the applicant proposes to nominate as adjudicators undertake appropriate continuing education and professional development programmes that are relevant to their role as an adjudicator; and

- (ii) ensure those individuals continue to comply with any minimum standards and other quality control requirements that the applicant has in place; and
- (iii) ensure that any of those individuals who fail to perform the functions and duties or to exercise the powers of an adjudicator in an efficient and proper manner are disqualified from being nominated as an adjudicator by the applicant; and
- (i) details of the fee (if any) that the applicant proposes to charge for the nomination of adjudicators; and
- (j) any other information that the applicant wishes to be considered.

Marie Shroff,
Clerk of the Executive Council.

Explanatory note

This note is not part of the regulations, but is intended to indicate their general effect.

These regulations, which come into force on 1 April 2003, prescribe various forms for the purposes of the Construction Contracts Act 2002 (the **Act**). The forms prescribed relate to—

- the information that must accompany a payment claim served on a residential occupier:
- the information that must be set out in a notice of adjudication served on a residential occupier:
- an adjudicator’s determination:
- an application for review of an adjudicator’s determination in respect of an owner who is not a respondent.

The regulations also prescribe—

- the information that is required to be provided by persons who apply, under section 65 of the Act, for an authority to nominate adjudicators; and
- additional modes of service of notices or other documents that are required to be served on, or given to, any person under the Act or these regulations.

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