

Schedule 35 – Statutory Declaration

(clause 28.14(a)(i))

Statutory Declaration	Oaths Act (NSW) Ninth Schedule
<p>I,</p> <p>of</p> <p>do solemnly and sincerely declare that:</p> <p>1. I am the representative of:</p> <p>.....</p> <p>(“the Contractor”)</p> <p>in the Office Bearer capacity of:</p> <p>.....</p> <p>2. The Contractor has a contract with the [.....].</p> <p>.....</p> <p>(“the Contract”)</p> <p>3. I personally know the facts which I have set out in this declaration.</p> <p>4. All employees who have at any time been engaged by the Contractor for work done under the Contract:</p> <p>(a) have been paid all remuneration and benefits to the date of this declaration payable to them by the Contractor in respect of their employment on work under the Contract, and</p> <p>(b) have otherwise had accrued to their account all benefits to which they are entitled from the Contractor as at the date of this declaration in respect of their employment on work under the Contract pursuant to any award, enterprise agreement, act or regulation,</p> <p>with the exception of the employees and respective amounts unpaid or not accrued for each employee listed below:</p> <p>Employee:</p> <p>Amount unpaid or not accrued</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>5. Attached to and forming part of this declaration, as Annexure A, is a supporting statement for the purposes of section 13(7) of the Building and Construction Industry Security of Payment Act 1999 (NSW).</p> <p>5A. Where the Contractor holds any retention money from a Subcontractor, the Contractor has complied with all requirements under the Building and Construction Industry Security of Payment Amendment (Retention Money Trust Account) Regulation 2015 (NSW), with the exception of the items listed below:</p> <p>.....</p> <p>.....</p>	<p>Insert full name of Declarant</p> <p>insert address</p> <p>insert name of Contractor and ACN if applicable</p> <p>insert position title of Declarant</p> <p>insert name of Contract</p> <p>insert names and addresses of the unpaid employees, the amounts unpaid, and whether in respect of wages, allowances, holiday pay, long service leave payments and superannuation entitlement etc.</p> <p>insert details of any non-compliances</p>

6. In all cases where a subcontractor or supplier to the Contractor has provided services and/or materials in respect of the Contract and has submitted a claim to the Contractor for these services or materials which as at the date of this statutory declaration would have been due and payable but which the Contractor disputes, the reasons for such dispute have been notified in writing to the subcontractor or supplier by the Contractor prior to the date of this statutory declaration. Where such dispute relates to part only of the subcontractor or supplier's claim, that part of the claim not in dispute has been paid by the Contractor to the subcontractor or supplier as at the date of this statutory declaration except for the amounts listed in 5 above.

7. The provisions of the Contract relating to the payment of employees, subcontractors and suppliers of the Contractor have been complied with by the Contractor.

8. The Contractor has been informed by each subcontractor to the Contractor (except for subcontracts not exceeding \$25,000 at their commencement) by statutory declaration in equivalent terms to this declaration (made no earlier than the date 14 days before the date of this declaration):

(a) that their subcontracts with their subcontractors and suppliers comply with the requirements of the Contract relating to payment of employees and subcontractors, and

(b) that all their employees and subcontractors, as at the date of the making of such a declaration

(i) have been paid all remuneration and benefits due and payable to them by; or

(ii) had accrued to their account all benefits to which they are entitled from;

the subcontractor of the Contractor or from any other subcontractor (except for subcontracts not exceeding \$25,000 at their commencement) in respect of any work under the Contract, and

(c) of details of any amounts due and payable or benefits due to be received or accrued described in 8(b) above which have not been paid, received or accrued,

except for the following subcontractors to the Contractor who have failed to provide such a declaration:

Subcontractor:

Due amount unpaid:

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

insert names and addresses of the Contractor's subcontractors who have not submitted a declaration, and unpaid amounts due or otherwise due to each of them by the Contractor in respect of this claim

9. Where a subcontractor to the Contractor has provided a declaration as in 8 above, and it includes unpaid amounts or benefits either not received or not accrued, details of the subcontractor, details of the affected employees, suppliers and subcontractors of the subcontractor, and the respective amounts or benefits either unpaid or not accrued are as follows:

Employee:

Amount unpaid
or not accrued:

insert names of the subcontractors, the name and addresses of the unpaid employees, subcontractors and suppliers and amounts listed as unpaid or not accrued to them.

10. In relation to the statutory declaration provided by each subcontractor to the Contractor, I am not aware of anything to the contrary of what is contained therein, and on the basis of the contents of those statutory declarations, I believe that information to be true.

11. Attached to and forming part of this declaration is a "Subcontractor's Statement" given by the Contractor in its capacity as 'subcontractor' (as that term is defined in the Workers Compensation Act 1987 (NSW), Payroll Tax Act 2007 (NSW) and Industrial Relations Act 1996 (NSW)) which is a written statement:

- (a) under section 175B of the Workers Compensation Act 1987 (NSW) in the form and providing the detail required by that legislation;
- (b) under clause 18 of Schedule 2 Part 5 of the Payroll Tax Act 2007 (NSW) in the form and providing the detail required by that legislation; and
- (c) under section 127 of the Industrial Relations Act 1996 (NSW) in the form and providing the detail required by that legislation.

12. I personally know the truth of the matters which are contained in this declaration and the attached Subcontractor's Statement.

13. All statutory declarations and Subcontractor's Statements received by the Contractor from subcontractors were:

- (a) given to the Contractor in its capacity as 'principal contractor' as defined in the Workers Compensation Act 1987 (NSW), the Payroll Tax Act 2007 (NSW) and the Industrial Relations Act 1996 (NSW) (together, **Acts**); and
- (b) given by the subcontractors in their capacity as 'subcontractors' as defined in the Acts.

14. I am not aware of anything which would contradict the statements made in the statutory declarations or written statements provided to the Contractor by its subcontractors, as referred to in this declaration.

I make this solemn declaration conscientiously believing the same to be true and by virtue of the Oaths Act 1900 (NSW). I am aware that I may be subject to punishment by law if I wilfully make a false statement in this declaration.

Declared aton
(place) (day) (month) (year)

.....
(Signature of Declarant)

Before me:

.....
(Signature of person before whom the declaration is made)

.....
(Name of the person before whom the declaration is made)

.....
(Title* of the person before whom the declaration is made)

* The declaration must be made before one of the following persons.

- where the declaration is sworn within the State of New South Wales:

- (i) a justice of the peace of the State of New South Wales;
- (ii) a solicitor of the Supreme Court of New South Wales with a current practising certificate; or
- (iii) a notary public

- where the declaration is sworn in a place outside the State of New South Wales:

- (i) a notary public; or
- (ii) any person having authority to administer an oath in that place.

And as a witness I certify the following matters concerning the person who made this declaration (**declarant**):

[*strike out the text that does not apply]

1. *I saw the face of the declarant. OR

*I did not see the face of the declarant because the declarant was wearing a face covering, but I am satisfied that the declarant had a special justification for not removing the covering.

2. *I have known the declarant for at least 12 months.

OR

*I confirmed the declarant's identity using the following identification document:

.....
Identification document relied on (may be original or certified copy)

.....
Signature of person before whom the declaration is made

.....
(Name of the person before whom the declaration is made)

.....
(Title* of the person before whom the declaration is made)

Annexure A

Supporting statement by head contractor regarding payment to subcontractors

This statement must accompany any payment claim served on a principal to a construction contract by a head contractor.

For the purposes of this statement, the terms "principal", "head contractor", "subcontractor", and "construction contract" have the meanings given in section 4 of the *Building and Construction Industry Security of Payment Act 1999* (NSW).

Head contractor: [business name of head contractor] ABN: [ABN]

*1. has entered into a contract with: [business name of subcontractor]

ABN: [ABN]

Contract number/identifier: [contract number/identifier] OR

*2. has entered into a contract with the subcontractors listed in the attachment to this statement.

* [Delete whichever of the above does not apply]

This statement applies for work between [start date] and [end date] inclusive (the construction work concerned), subject of the payment claim dated [date].

I, [full name], being the head contractor, a director of the head contractor or a person authorised by the head contractor on whose behalf this declaration is made, hereby declare that I am in a position to know the truth of the matters that are contained in this supporting statement and declare that, to the best of my knowledge and belief, all amounts due and payable to subcontractors have been paid (not including any amount identified in the attachment as an amount in dispute).

Signature:

Date:

Full name:

Position/Title:

Penalties

The *Building and Construction Security of Payment Act 1999* provides that:

Section 13(7) A head contractor must not serve a payment claim on the principal unless the claim is accompanied by a supporting statement that indicates that it relates to that payment claim.

Maximum penalty: \$22,000 (200 penalty units).

And:

Section 13(8) A head contractor must not serve a payment claim on the principal accompanied by a supporting statement knowing that the statement is false or misleading in a material particular in the particular circumstances.

Maximum penalty: \$22,000 (200 penalty units) or 3 months imprisonment or both.

Attachment

Schedule of subcontractors paid all amounts due and payable

Subcontractor	ABN	Contract number / identifier	Date of works (period)	Date of payment claim (head contractor claim)

Schedule of subcontractors for which an amount is in dispute and has not been paid.

Subcontractor	ABN	Contract number / identifier	Date of works (period)	Date of payment claim (head contractor claim)