



# **Building and Construction Industry Payments Act 2004**

**Current as at 16 December 2015**

## Information about this reprint

This reprint shows the legislation current as at the date on the cover and is authorised by the Parliamentary Counsel.

A new reprint of the legislation will be prepared by the Office of the Queensland Parliamentary Counsel when any change to the legislation takes effect. This change may be because a provision of the original legislation, or an amendment to it, commences or because a particular provision of the legislation expires or is repealed.

When a new reprint is prepared, this reprint will become a historical reprint. Also, if it is necessary to replace this reprint before a new reprint is prepared, for example, to include amendments with a retrospective commencement, an appropriate note would be included on the cover of the replacement reprint and on the copy of this reprint at [www.legislation.qld.gov.au](http://www.legislation.qld.gov.au).

The endnotes to this reprint contain detailed information about the legislation and reprint. For example—

- The table of reprints endnote lists any previous reprints and, for this reprint, gives details of any discretionary editorial powers under the *Reprints Act 1992* used by the Office of the Queensland Parliamentary Counsel in preparing it.
- The list of legislation endnote gives historical information about the original legislation and the legislation which amended it. It also gives details of uncommenced amendments to this legislation. For information about possible amendments to the legislation by Bills introduced in Parliament, see the Queensland Legislation Current Annotations at [www.legislation.qld.gov.au/Leg\\_Info/information.htm](http://www.legislation.qld.gov.au/Leg_Info/information.htm).
- The list of annotations endnote gives historical information at section level.

All Queensland reprints are dated and authorised by the Parliamentary Counsel. The previous numbering system and distinctions between printed and electronic reprints are not continued.



Queensland

# Building and Construction Industry Payments Act 2004

## Contents

---

		Page
<b>Part 1</b>	<b>Preliminary</b>	
<b>Division 1</b>	<b>Introduction</b>	
1	Short title .....	7
2	Commencement .....	7
<b>Division 2</b>	<b>Application and operation of Act</b>	
3	Application of Act .....	7
4	Effect of giving notice of claim of charge under Subcontractors' Charges Act 1974 .....	9
5	Act does not limit claimant's other rights .....	11
6	Act binds all persons .....	11
<b>Division 3</b>	<b>Object of Act</b>	
7	Object of Act .....	11
8	How object is to be achieved .....	12
<b>Division 4</b>	<b>Interpretation</b>	
9	Definitions .....	12
10	Meaning of construction work .....	12
11	Meaning of related goods and services .....	14
<b>Part 2</b>	<b>Rights to progress payments</b>	
12	Rights to progress payments .....	15
13	Amount of progress payment .....	15
14	Valuation of construction work and related goods and services ..	15
15	Due date for payment .....	16
16	Effect of pay when paid provisions .....	17
<b>Part 3</b>	<b>Procedure for recovering progress payments</b>	
<b>Division 1</b>	<b>Payment claims and payment schedules</b>	
17	Payment claims .....	18

Contents

---

17A	Time requirements for payment claims . . . . .	19
18	Payment schedules . . . . .	20
18A	Time requirements for payment schedules . . . . .	20
19	Consequences of not paying claimant if no payment schedule . . . . .	21
20	Consequences of not paying claimant under payment schedule . . . . .	23
20A	Notice required before starting particular proceedings . . . . .	24
<b>Division 2</b>	<b>Adjudication of disputes</b>	
21	Adjudication application . . . . .	25
22	When person may be an adjudicator . . . . .	26
23	Appointment of adjudicator . . . . .	27
24	Adjudication responses . . . . .	27
24A	Time requirements for adjudication response . . . . .	28
24B	Reply to new reasons for withholding payment . . . . .	29
25	Adjudication procedures . . . . .	30
25A	Time requirements for adjudication proceedings . . . . .	31
25B	Extension of time requirements by adjudicator . . . . .	32
26	Adjudicator's decision . . . . .	32
27	Valuation of work etc. in later adjudication application . . . . .	33
28	Adjudicator may correct clerical mistakes etc. . . . .	34
29	Respondent required to pay adjudicated amount . . . . .	34
30	Consequences of not paying claimant adjudicated amount . . . . .	35
31	Filing of adjudication certificate as judgment debt . . . . .	36
32	Claimant may make new application in certain circumstances . . . . .	36
<b>Division 3</b>	<b>Claimant's right to suspend construction work</b>	
33	Claimant may suspend work . . . . .	37
<b>Division 4</b>	<b>General</b>	
35	Adjudicator's fees . . . . .	38
35A	Matters to be considered in deciding fees . . . . .	39
35B	Withdrawing from adjudication . . . . .	40
<b>Part 4</b>	<b>Administration</b>	
<b>Division 1</b>	<b>Establishing registry and related matters</b>	
36	Registry established . . . . .	40
37	Appointment of registrar and staff of registry . . . . .	41
38	Registrar's functions and powers . . . . .	41
39	Delegation by registrar . . . . .	42
41	Annual report on operation of Act and registry . . . . .	42

---

<b>Division 3</b>	<b>Registration of adjudicators</b>	
56	Application for registration . . . . .	43
57	What the application must state . . . . .	43
58	Consideration of application for registration . . . . .	43
59	Criteria for granting application for registration . . . . .	43
60	Suitability of person to be registered . . . . .	44
61	Inquiries into application for registration . . . . .	44
62	Decision on application for registration . . . . .	45
63	Failure to decide application for registration . . . . .	45
64	Term of registration . . . . .	46
65	Conditions of registration . . . . .	46
66	Registration required to perform functions of adjudicator . . . . .	47
67	Adjudicator must comply with registration conditions . . . . .	47
68	Form of certificate of registration . . . . .	47
<b>Division 4</b>	<b>Renewals of registrations of adjudicators</b>	
69	Definitions for div 4 . . . . .	47
70	Applications for renewal of registration . . . . .	48
71	Inquiries into application for renewal of registration . . . . .	48
72	Registration taken to be in force while application for renewal is considered . . . . .	49
<b>Division 5</b>	<b>Amendment of registrations of adjudicators</b>	
73	Definitions for div 5 . . . . .	49
74	Application for amendment of registration . . . . .	49
75	Inquiries into application for amendment . . . . .	50
<b>Division 6</b>	<b>Suspension or cancellation of registrations of adjudicators</b>	
76	Definitions for div 6 . . . . .	51
77	Grounds for suspension or cancellation . . . . .	51
78	Show cause notice . . . . .	51
79	Representations about show cause notices . . . . .	52
80	Ending show cause process without further action . . . . .	52
81	Suspension or cancellation . . . . .	52
82	Immediate suspension of registration . . . . .	53
83	Return of cancelled or suspended registration to registrar . . . . .	54
84	Effect of suspension or cancellation of registration of adjudicator . . . . .	55
<b>Division 7</b>	<b>Other provisions about registrations of adjudicators</b>	
86	Definitions for div 7 . . . . .	55

---

Contents

---

87	Surrender of registration . . . . .	56
88	Application for replacement of certificate of registration . . . . .	56
89	Decision about application for replacement of certificate of registration 56	
90	False or misleading statements . . . . .	57
91	False or misleading documents . . . . .	57
<b>Part 5</b>	<b>Review of decisions</b>	
<b>Division 1</b>	<b>Internal review of decisions</b>	
92	Review process starts with internal review . . . . .	57
93	Application for review to be made to the registrar . . . . .	58
94	Applying for review . . . . .	58
95	Review decision . . . . .	58
96	Stay of operation of decision . . . . .	59
<b>Division 2</b>	<b>External review of decisions</b>	
97	Who may apply to tribunal for an external review . . . . .	60
<b>Part 6</b>	<b>Miscellaneous</b>	
99	No contracting out . . . . .	60
100	Effect of pt 3 on civil proceedings . . . . .	60
101	Queensland Building and Construction Board's policy . . . . .	61
102	Adjudicator must give information to registrar . . . . .	62
103	Service of notices . . . . .	62
104	Proof of signature unnecessary . . . . .	62
105	Evidentiary aids . . . . .	62
106	Protection from liability . . . . .	63
107	Protection from liability for adjudicators . . . . .	63
108	Summary offences . . . . .	63
109	Allegations of false or misleading information or document . . . . .	64
110	Approved forms . . . . .	64
111	Regulation-making power . . . . .	64
<b>Part 7</b>	<b>Transitional provisions</b>	
<b>Division 1</b>	<b>Transitional provision for Act No. 6 of 2004</b>	
112	Transitional provision for adjudication qualification . . . . .	65
<b>Division 2</b>	<b>Transitional provisions for Building and Construction Industry Payments Amendment Act 2014</b>	
113	Definitions for div 2 . . . . .	66
114	Registration of authorised nominating authorities . . . . .	66

115	Adjudication applications made to authorised nominating authorities for referral to adjudicators . . . . .	67
116	Outstanding matters for existing payment claims to be dealt with under transitional version of the Act . . . . .	67
118	Previously expired payment claims not revived by new section 17A	70
<b>Schedule 2</b>	<b>Dictionary</b> . . . . .	<b>71</b>





---

# Building and Construction Industry Payments Act 2004

[as amended by all amendments that commenced on or before 16 December 2015]

**An Act to imply terms in construction contracts, to provide for adjudication of payment disputes under construction contracts, and for other purposes**

## **Part 1 Preliminary**

### **Division 1 Introduction**

#### **1 Short title**

This Act may be cited as the *Building and Construction Industry Payments Act 2004*.

#### **2 Commencement**

This Act commences on a day to be fixed by proclamation.

### **Division 2 Application and operation of Act**

#### **3 Application of Act**

- (1) Subject to this section, this Act applies to construction contracts entered into after the commencement of parts 2 and 3—

[s 3]

---

- (a) whether written or oral, or partly written and partly oral; and
  - (b) whether expressed to be governed by the law of Queensland or a jurisdiction other than Queensland.
- (2) This Act does not apply to—
- (a) a construction contract to the extent that it forms part of a loan agreement, a contract of guarantee or a contract of insurance under which a recognised financial institution undertakes—
    - (i) to lend an amount or to repay an amount lent; or
    - (ii) to guarantee payment of an amount owing or repayment of an amount lent; or
    - (iii) to provide an indemnity relating to construction work carried out, or related goods and services supplied, under the construction contract; or
  - (b) a construction contract for the carrying out of domestic building work if a resident owner is a party to the contract, to the extent the contract relates to a building or part of a building where the resident owner resides or intends to reside; or
  - (c) a construction contract under which it is agreed that the consideration payable for construction work carried out under the contract, or for related goods and services supplied under the contract, is to be calculated other than by reference to the value of the work carried out or the value of the goods and services supplied.
- (3) This Act does not apply to a construction contract to the extent it contains—
- (a) provisions under which a party undertakes to carry out construction work, or supply related goods and services in relation to construction work, as an employee of the party for whom the work is to be carried out or the related goods and services are to be supplied; or
  - (b) provisions under which a party undertakes to carry out construction work, or to supply related goods and

---

services in relation to construction work, as a condition of a loan agreement with a recognised financial institution; or

- (c) provisions under which a party undertakes—
  - (i) to lend an amount or to repay an amount lent; or
  - (ii) to guarantee payment of an amount owing or repayment of an amount lent; or
  - (iii) to provide an indemnity relating to construction work carried out, or related goods and services supplied, under the construction contract.

(4) This Act does not apply to a construction contract to the extent it deals with construction work carried out outside Queensland or related goods and services supplied for construction work carried out outside Queensland.

(5) In this section—

*resident owner*, in relation to a construction contract for carrying out domestic building work, means a resident owner under the *Queensland Building and Construction Commission Act 1991*, schedule 1B, section 1, but does not include a person—

- (a) who holds, or should hold, an owner-builder permit under the *Queensland Building and Construction Commission Act 1991* relating to the work; or
- (b) who is a building contractor within the meaning of the *Queensland Building and Construction Commission Act 1991*.

#### **4 Effect of giving notice of claim of charge under Subcontractors' Charges Act 1974**

- (1) This section applies if a person gives a notice of claim of charge under the *Subcontractors' Charges Act 1974* in relation to construction work or related goods and services the subject of a construction contract.

- (2) Proceedings or other action may not be started or continued by the person under part 3 in relation to all or part of the construction work or related goods and services.
- (3) Without limiting subsection (2), subsection (4) applies if the person has served a payment claim relating to all or part of the construction work or related goods and services on a respondent before the notice of claim of charge is given.
- (4) For subsection (3)—
  - (a) the respondent is not required to pay an amount to the person under section 19(2) in relation to the claim; and
  - (b) amounts may not be recovered by the person under section 19(3)(a)(i) or 20(2)(a)(i) in relation to the claim; and
  - (c) if the person made an adjudication application in relation to the claim and the application has not been decided by an adjudicator before the notice of the claim of charge is given, the person is taken to have withdrawn the application; and
  - (d) if the person made an adjudication application in relation to the claim and the application has been decided by an adjudicator before the notice of the claim of charge was given—
    - (i) the respondent to the application is not required to pay the adjudicated amount under section 29; and
    - (ii) the registrar must not give the person an adjudication certificate under section 30 relating to the adjudication; and
    - (iii) any adjudication certificate provided in relation to the adjudication can not be enforced by the person under section 31 as a judgment of a court; and
  - (e) the person may not suspend, or continue to suspend, carrying out all or part of the construction work or the supply of the related goods and services under section 33.

- (5) This section does not affect the operation of section 35 and an adjudication application taken to have been withdrawn by the person under subsection (4)(c) is taken to have been withdrawn for the purpose of section 35(4).
- (6) This section does not stop the person serving under this Act a payment claim in relation to all or part of the construction work or related goods and services and taking other action under this Act in relation to that claim, if the notice of claim of charge in so far as it relates to the construction work or related goods and services, or part, is withdrawn.

## **5 Act does not limit claimant's other rights**

A claimant's entitlements and remedies under this Act do not limit—

- (a) another entitlement a claimant may have under a construction contract; or
- (b) any remedy a claimant may have for recovering the other entitlement.

## **6 Act binds all persons**

This Act binds all persons, including the State, and, as far as the legislative power of the Parliament permits, the Commonwealth and the other States.

## **Division 3 Object of Act**

### **7 Object of Act**

The object of this Act is to ensure that a person is entitled to receive, and is able to recover, progress payments if the person—

- (a) undertakes to carry out construction work under a construction contract; or

- (b) undertakes to supply related goods and services under a construction contract.

## **8 How object is to be achieved**

The object is to be achieved by—

- (a) granting an entitlement to progress payments whether or not the relevant contract makes provision for progress payments; and
- (b) establishing a procedure that involves—
  - (i) the making of a payment claim by the person claiming payment; and
  - (ii) the provision of a payment schedule by the person by whom the payment is payable; and
  - (iii) the referral of a disputed claim, or a claim that is not paid, to an adjudicator for decision; and
  - (iv) the payment of the progress payment decided by the adjudicator.

## **Division 4 Interpretation**

### **9 Definitions**

The dictionary in schedule 2 defines particular words used in this Act.

### **10 Meaning of *construction work***

- (1) ***Construction work*** means any of the following work—
  - (a) the construction, alteration, repair, restoration, maintenance, extension, demolition or dismantling of buildings or structures, whether permanent or not, forming, or to form, part of land;

- 
- (b) the construction, alteration, repair, restoration, maintenance, extension, demolition or dismantling of any works forming, or to form, part of land, including walls, roadworks, powerlines, telecommunication apparatus, aircraft runways, docks and harbours, railways, inland waterways, pipelines, reservoirs, water mains, wells, sewers, industrial plant and installations for land drainage or coast protection;
  - (c) the installation in any building, structure or works of fittings forming, or to form, part of land, including heating, lighting, airconditioning, ventilation, power supply, drainage, sanitation, water supply, fire protection, security and communications systems;
  - (d) the external or internal cleaning of buildings, structures and works, so far as it is carried out in the course of their construction, alteration, repair, restoration, maintenance or extension;
  - (e) any operation that forms an integral part of, or is preparatory to or is for completing, work of the kind referred to in paragraph (a), (b) or (c), including—
    - (i) site clearance, earthmoving, excavation, tunnelling and boring; and
    - (ii) the laying of foundations; and
    - (iii) the erection, maintenance or dismantling of scaffolding; and
    - (iv) the prefabrication of components to form part of any building, structure or works, whether carried out on-site or off-site; and
    - (v) site restoration, landscaping and the provision of roadways and other access works;
  - (f) the painting or decorating of the internal or external surfaces of any building, structure or works;
  - (g) carrying out the testing of soils and road making materials during the construction and maintenance of roads;

- (h) any other work of a kind prescribed under a regulation for this subsection.
- (2) To remove doubt, it is declared that **construction work** includes building work within the meaning of the *Queensland Building and Construction Commission Act 1991*.
- (3) Despite subsections (1) and (2), **construction work** does not include any of the following work—
  - (a) the drilling for, or extraction of, oil or natural gas;
  - (b) the extraction, whether by underground or surface working, of minerals, including tunnelling or boring, or constructing underground works, for that purpose.

## 11 Meaning of **related goods and services**

- (1) **Related goods and services**, in relation to construction work, means any of the following—
  - (a) goods of the following kind—
    - (i) materials and components to form part of any building, structure or work arising from construction work;
    - (ii) plant or materials (whether supplied by sale, hire or otherwise) for use in connection with the carrying out of construction work;
  - (b) services of the following kind—
    - (i) the provision of labour to carry out construction work;
    - (ii) architectural, design, surveying or quantity surveying services relating to construction work;
    - (iii) building, engineering, interior or exterior decoration or landscape advisory services relating to construction work;
    - (iv) soil testing services relating to construction work;
  - (c) goods and services, in relation to construction work, of a kind prescribed under a regulation for this subsection.



- 
- (2) In this Act, a reference to related goods and services includes a reference to related goods or services.

## **Part 2 Rights to progress payments**

### **12 Rights to progress payments**

From each reference date under a construction contract, a person is entitled to a progress payment if the person has undertaken to carry out construction work, or supply related goods and services, under the contract.

### **13 Amount of progress payment**

The amount of a progress payment to which a person is entitled in relation to a construction contract is—

- (a) the amount calculated under the contract; or
- (b) if the contract does not provide for the matter, the amount calculated on the basis of the value of construction work carried out or undertaken to be carried out, or related goods and services supplied or undertaken to be supplied, by the person, under the contract.

### **14 Valuation of construction work and related goods and services**

- (1) Construction work carried out or undertaken to be carried out under a construction contract is to be valued—
- (a) under the contract; or
  - (b) if the contract does not provide for the matter, having regard to—
    - (i) the contract price for the work; and

[s 15]

---

- (ii) any other rates or prices stated in the contract; and
  - (iii) any variation agreed to by the parties to the contract by which the contract price, or any other rate or price stated in the contract, is to be adjusted by a specific amount; and
  - (iv) if any of the work is defective, the estimated cost of rectifying the defect.
- (2) Related goods and services supplied or undertaken to be supplied under a construction contract are to be valued—
  - (a) under the terms of the contract; or
  - (b) if the contract does not provide for the matter, having regard to—
    - (i) the contract price for the goods and services; and
    - (ii) any other rates or prices stated in the contract; and
    - (iii) any variation agreed to by the parties to the contract by which the contract price, or any other rate or price stated in the contract, is to be adjusted by a specific amount; and
    - (iv) if any of the goods are defective, the estimated cost of rectifying the defect.
- (3) For subsection (2)(b), for materials and components that are to form part of any building, structure or work arising from construction work, the only materials and components to be included in the valuation are those that have become or, on payment, will become the property of the party or other person for whom construction work is being carried out.

## 15 Due date for payment

- (1) A progress payment under a construction contract becomes payable—
  - (a) if the contract contains a provision about the matter that is not void under section 16 or under the *Queensland Building and Construction Commission Act 1991*,

- 
- section 67U or 67W—on the day on which the payment becomes payable under the provision; or
- (b) if the contract does not contain a provision about the matter or contains a provision that is void under section 16 or under the *Queensland Building and Construction Commission Act 1991*, section 67U or 67W—10 business days after a payment claim for the progress payment is made under part 3.
- (2) Subject to subsection (3), interest for a construction contract is payable on the unpaid amount of a progress payment that has become payable at the greater of the following rates—
- (a) the rate prescribed under the *Civil Proceedings Act 2011*, section 59(3) for a money order debt;
- (b) the rate specified under the contract.
- (3) For a construction contract to which *Queensland Building and Construction Commission Act 1991*, section 67P applies because it is a building contract, interest is payable at the penalty rate under that section.

## 16 Effect of pay when paid provisions

- (1) A pay when paid provision of a construction contract has no effect in relation to any payment for construction work carried out or undertaken to be carried out, or related goods and services supplied or undertaken to be supplied, under the construction contract.
- (2) In this section—
- an amount owing***, in relation to a construction contract, means an amount owing for construction work carried out or undertaken to be carried out, or related goods and services supplied or undertaken to be supplied, under the construction contract.
- pay when paid provision***, of a construction contract, means a provision of the contract—

[s 17]

---

- (a) that makes the liability of one party (the *first party*) to pay an amount owing to another party (the *second party*) contingent on payment to the first party by a further party (the *third party*) of the whole or any part of that amount; or
- (b) that makes the due date for payment of an amount owing by the first party to the second party dependent on the date on which payment of the whole or any part of that amount is made to the first party by the third party; or
- (c) that otherwise makes the liability to pay an amount owing, or the due date for payment of an amount owing, contingent or dependent on the operation of another contract.

## Part 3 Procedure for recovering progress payments

### Division 1 Payment claims and payment schedules

#### 17 Payment claims

- (1) A person mentioned in section 12 who is or who claims to be entitled to a progress payment (the *claimant*) may serve a payment claim on the person who, under the construction contract concerned, is or may be liable to make the payment (the *respondent*).
- (2) A payment claim—
  - (a) must identify the construction work or related goods and services to which the progress payment relates; and
  - (b) must state the amount of the progress payment that the claimant claims to be payable (the *claimed amount*); and

- (c) must state that it is made under this Act.
- (3) The claimed amount may include any amount—
  - (a) that the respondent is liable to pay the claimant under section 33(3); or
  - (b) that is held under the construction contract by the respondent and that the claimant claims is due for release.
- (4) A claimant can not serve more than 1 payment claim for each reference date under the construction contract, but may include in any payment claim an amount that has been the subject of a previous payment claim.

#### **17A Time requirements for payment claims**

- (1) This section applies if a claimant serves a payment claim on a respondent.
- (2) Unless the payment claim relates to a final payment, the claim must be served within the later of—
  - (a) the period, if any, worked out under the relevant construction contract; or
  - (b) the period of 6 months after the construction work to which the claim relates was last carried out or the related goods and services to which the claim relates were last supplied.
- (3) If the payment claim relates to a final payment, the claim must be served within the later of the following—
  - (a) the period, if any, worked out under the relevant construction contract;
  - (b) 28 days after the end of the last defects liability period, if any, worked out under the relevant construction contract;
  - (c) 6 months after the later of—
    - (i) completion of all construction work to be carried out under the relevant construction contract; or

(ii) complete supply of related goods and services to be supplied under the relevant construction contract.

(4) In this section—

*defects liability period*, for a construction contract, means the period, if any, worked out under the contract as being the period—

- (a) starting on the day the construction work is practically or substantially completed, or the related goods and services are supplied, under the contract; and
- (b) ending on the last day any omission or defect in the construction work or related goods or services may be required or directed to be rectified under the contract.

*final payment* means a progress payment that is the final payment for construction work carried out, or for related goods and services supplied, under a construction contract.

## 18 Payment schedules

- (1) A respondent served with a payment claim may reply to the claim by serving a payment schedule on the claimant.
- (2) A payment schedule—
  - (a) must identify the payment claim to which it relates; and
  - (b) must state the amount of the payment, if any, that the respondent proposes to make (the *scheduled amount*).
- (3) If the scheduled amount is less than the claimed amount, the schedule must state why the scheduled amount is less and, if it is less because the respondent is withholding payment for any reason, the respondent's reasons for withholding payment.

## 18A Time requirements for payment schedules

- (1) This section applies if, in reply to a payment claim, the respondent serves a payment schedule on the claimant.

- 
- (2) The payment schedule, if it relates to a standard payment claim, must be served on the claimant within the earlier of—
    - (a) the time required, if any, by the relevant construction contract; or
    - (b) 10 business days after the payment claim is served.
  - (3) The payment schedule, if it relates to a complex payment claim, must be served on the claimant within the earlier of—
    - (a) the time required, if any, by the relevant construction contract; or
    - (b) whichever of the following applies—
      - (i) if the claim was served on the respondent 90 days or less after the reference date to which the claim relates—15 business days after the claim is served;
      - (ii) if the claim was served on the respondent more than 90 days after the reference date to which the claim relates—30 business days after the claim is served.

## **19 Consequences of not paying claimant if no payment schedule**

- (1) This section applies if a respondent served with a payment claim does not serve a payment schedule on the claimant within the time that the respondent may serve the schedule on the claimant.
- (2) The respondent becomes liable to pay the claimed amount to the claimant on the due date for the progress payment to which the payment claim relates.
- (3) If the respondent fails to pay the whole or any part of the claimed amount on or before the due date for the progress payment to which the payment claim relates, the claimant—
  - (a) may—
    - (i) recover the unpaid portion of the claimed amount from the respondent, as a debt owing to the claimant, in any court of competent jurisdiction; or

- (ii) make an adjudication application under section 21(1)(b) in relation to the payment claim; and
  - (b) may serve notice on the respondent of the claimant's intention to suspend, under section 33, carrying out construction work or supplying related goods and services under the construction contract.
- (4) A notice under subsection (3)(b) must state that it is made under this Act.
- (5) The claimant can not start proceedings under subsection (3)(a)(i) to recover the unpaid portion of the claimed amount from the respondent as a debt unless—
  - (a) the claimant gives the respondent a notice under section 20A(2); and
  - (b) the 5 business days for the respondent to serve the payment schedule, as stated in the notice, has ended.
- (6) If the claimant starts proceedings under subsection (3)(a)(i) to recover the unpaid portion of the claimed amount from the respondent as a debt—
  - (a) judgment in favour of the claimant is not to be given by a court unless the court is satisfied the respondent—
    - (i) did not serve a payment schedule on the claimant within the time that the respondent may serve the schedule on the claimant; and
    - (ii) failed to pay the whole or any part of the claimed amount on or before the due date for the progress payment to which the payment claim relates; and
  - (b) the respondent is not, in those proceedings, entitled—
    - (i) to bring any counterclaim against the claimant; or
    - (ii) to raise any defence in relation to matters arising under the construction contract.



---

**20 Consequences of not paying claimant under payment schedule**

- (1) This section applies if—
  - (a) a claimant serves a payment claim on a respondent; and
  - (b) the respondent serves a payment schedule on the claimant within the time that the respondent may serve the schedule on the claimant; and
  - (c) the payment schedule states a scheduled amount that the respondent proposes to pay to the claimant; and
  - (d) the respondent fails to pay the whole or any part of the scheduled amount to the claimant on or before the due date for the progress payment to which the payment claim relates.
- (2) The claimant—
  - (a) may—
    - (i) recover the unpaid portion of the scheduled amount from the respondent, as a debt owing to the claimant, in any court of competent jurisdiction; or
    - (ii) make an adjudication application under section 21(1)(a)(ii) in relation to the payment claim; and
  - (b) may serve notice on the respondent of the claimant's intention to suspend, under section 33, carrying out construction work or supplying related goods and services under the construction contract.
- (3) A notice under subsection (2)(b) must state that it is made under this Act.
- (4) If the claimant starts proceedings under subsection (2)(a)(i) to recover the unpaid portion of the scheduled amount from the respondent as a debt—
  - (a) judgment in favour of the claimant is not to be given by a court unless the court is satisfied of the existence of the circumstances referred to in subsection (1); and
  - (b) the respondent is not, in those proceedings, entitled—

- (i) to bring any counterclaim against the claimant; or
- (ii) to raise any defence in relation to matters arising under the construction contract.

## **20A Notice required before starting particular proceedings**

- (1) This section applies if a claimant serves a payment claim on a respondent and—
  - (a) the respondent—
    - (i) fails to serve a payment schedule on the claimant under this part; and
    - (ii) fails to pay the whole or any part of the claimed amount on or before the due date for the progress payment to which the payment claim relates; and
  - (b) the claimant intends to—
    - (i) start proceedings to recover an unpaid portion of the claimed amount as a debt owing to the claimant; or
    - (ii) apply for adjudication of the payment claim.
- (2) Before taking the intended action mentioned in subsection (1)(b), the claimant must first give the respondent notice of the claimant's intention to take the action.
- (3) The notice must—
  - (a) be given to the respondent within 20 business days immediately following the due date for payment; and
  - (b) state that the respondent may serve a payment schedule on the claimant within 5 business days after receiving the notice; and
  - (c) state it is made under this Act.
- (4) However, this section does not apply if the claimant previously gave the respondent a notice under this section for the unpaid portion of the claimed amount.
- (5) The giving of a notice under subsection (2) does not—

- 
- (a) require the claimant to complete the action stated in the notice; or
  - (b) prevent the claimant from taking different action to that stated in the notice.

## **Division 2                    Adjudication of disputes**

### **21            Adjudication application**

- (1) A claimant may apply for adjudication of a payment claim (an *adjudication application*) if—
  - (a) the respondent serves a payment schedule under this part but—
    - (i) the scheduled amount stated in the payment schedule is less than the claimed amount stated in the payment claim; or
    - (ii) the respondent fails to pay the whole or any part of the scheduled amount to the claimant by the due date for payment of the amount; or
  - (b) the respondent fails to serve a payment schedule on the claimant under this part and fails to pay the whole or any part of the claimed amount by the due date for payment of the amount.
- (2) An adjudication application to which subsection (1)(b) applies can not be made unless—
  - (a) the claimant gives the respondent a notice under section 20A(2); and
  - (b) the 5 business days for the respondent to serve the payment schedule, as stated in the notice, has ended.
- (3) An adjudication application—
  - (a) must be in the approved form; and
  - (b) must be made to the registrar; and
  - (c) must be made within the following times—

- (i) for an application under subsection (1)(a)(i)—within 10 business days after the claimant receives the payment schedule;
  - (ii) for an application under subsection (1)(a)(ii)—within 20 business days after the due date for payment;
  - (iii) for an application under subsection (1)(b)—within 10 business days after the end of the 5 business days referred to in subsection (2)(b); and
- (d) must identify the payment claim and the payment schedule, if any, to which it relates; and
  - (e) must be accompanied by the fee prescribed by regulation for the application; and
  - (f) may contain the submissions relevant to the application the claimant chooses to include.
- (4) The amount of an application fee must not exceed the amount, if any, prescribed under a regulation.
  - (5) A copy of an adjudication application must be served on the respondent.
  - (6) The registrar must refer the application, as soon as practicable, to a person eligible to be an adjudicator under section 22.

## **22 When person may be an adjudicator**

- (1) A person may be an adjudicator in relation to a construction contract if registered as an adjudicator under this Act.
- (2) A person is not eligible to be an adjudicator in relation to a particular construction contract—
  - (a) if the person is a party to the contract; or
  - (b) in circumstances prescribed under a regulation for this section.

- 
- (3) A regulation may be made under subsection (2)(b) only to prescribe circumstances in which the appointment of an adjudicator might create a conflict of interest.

## **23 Appointment of adjudicator**

- (1) If the registrar refers an adjudication application to an adjudicator, the adjudicator may accept the adjudication application by serving notice of the acceptance on the claimant and the respondent.
- (2) On accepting an adjudication application, the adjudicator is taken to have been appointed to decide the application.

## **24 Adjudication responses**

- (1) This section applies if—
  - (a) an adjudicator accepts a claimant’s adjudication application under section 23; and
  - (b) the respondent served a payment schedule on the claimant within the time that the respondent may serve the schedule on the claimant.
- (2) The respondent may give the adjudicator a response to the adjudication application (the *adjudication response*).
- (3) The adjudication response—
  - (a) must be in writing; and
  - (b) must identify the adjudication application to which it relates; and
  - (c) may contain the submissions relevant to the response the respondent chooses to include.
- (4) If the adjudication application is about a standard payment claim, the adjudication response can not include any reasons for withholding payment unless those reasons were included in the payment schedule when served on the claimant.
- (5) If the adjudication application is about a complex payment claim, the adjudication response may include any reasons for

withholding payment whether or not those reasons were included in the payment schedule when served on the claimant.

## **24A Time requirements for adjudication response**

- (1) Subsection (2) applies for an adjudication response to an adjudication application about a standard payment claim.
- (2) The respondent must give the adjudicator the adjudication response within the later of the following to end—
  - (a) 10 business days after receiving a copy of the adjudication application;
  - (b) 7 business days after receiving notice of the adjudicator's acceptance of the adjudication application.
- (3) Subsections (4) to (7) apply for an adjudication response to an adjudication application about a complex payment claim.
- (4) The respondent must give the adjudicator the adjudication response within the later of the following to end—
  - (a) 15 business days after receiving a copy of the adjudication application;
  - (b) 12 business days after receiving notice of the adjudicator's acceptance of the adjudication application.
- (5) However, the respondent may apply to the adjudicator for an extension of time, of up to 15 additional business days, to give the adjudication response.
- (6) The application must—
  - (a) be made within the later of the following to end—
    - (i) 5 business days after receiving a copy of the adjudication application;
    - (ii) 2 business days after receiving notice of the adjudicator's acceptance of the adjudication application; and
  - (b) be in writing; and

- (c) include the reasons for requiring the extension of time.
- (7) If the application is granted, the respondent may give the adjudicator the adjudication response no later than the end of the extension of time granted by the adjudicator.
- (8) A copy of an adjudication response must be served on the claimant no more than 2 business days after it is given to the adjudicator.

## **24B Reply to new reasons for withholding payment**

- (1) This section applies if, under section 24(5), the respondent includes in an adjudication response reasons for withholding payment that were not included in the payment schedule when served on the claimant (the *new reasons*).
- (2) The claimant may give the adjudicator a reply to the new reasons (the *claimant's reply*) within 15 business days after receiving a copy of the adjudication response.
- (3) However, the claimant may apply to the adjudicator for an extension of time, of up to 15 additional business days, to give the claimant's reply if, because of the complexity or volume of the new reasons, an extension of time is required to adequately prepare the claimant's reply.
- (4) The application must—
  - (a) be made within 5 business days after receiving a copy of the adjudication response; and
  - (b) be in writing; and
  - (c) include the reasons for requiring the extension of time.
- (5) If the application is granted, the claimant may give the adjudicator the claimant's reply no later than the end of the extension of time granted by the adjudicator.
- (6) A copy of the claimant's reply must be served on the respondent no more than 2 business days after it is given to the adjudicator.

- (7) If the claimant proposes to give the adjudicator a claimant's reply, the claimant must give the adjudicator notice of the proposal within 5 business days after receiving a copy of the adjudication response unless the claimant gives the reply within the 5 business days.

## **25 Adjudication procedures**

- (1) Subject to the time requirements under section 25A, an adjudicator must decide the following as quickly as possible—
- (a) an adjudication application;
  - (b) applications for extensions of time under this part.
- (2) An adjudicator must not consider an adjudication response or a claimant's reply unless it was given to the adjudicator within the time that the respondent or claimant may give it to the adjudicator.
- (3) For a proceeding conducted to decide an adjudication application, an adjudicator—
- (a) must decide whether he or she has jurisdiction to adjudicate the application; and
  - (b) may ask for further written submissions from either party and must give the other party an opportunity to comment on the submissions; and
  - (c) may set deadlines for further submissions and comments by the parties; and
  - (d) may call a conference of the parties; and
  - (e) may carry out an inspection of any matter to which the claim relates.
- (4) If a conference is called, it must be conducted informally and the parties are not entitled to any legal representation.
- (5) The adjudicator's power to decide an adjudication application is not affected by the failure of either or both of the parties to



---

make a submission or comment within time or to comply with the adjudicator's call for a conference of the parties.

## **25A Time requirements for adjudication proceedings**

- (1) An adjudicator must decide an adjudication application on or before the deadline for deciding the application but not before the end of the minimum consideration period for deciding the application.
- (2) However, the claimant and respondent may, before or after the deadline, agree in writing that the adjudicator has additional time to decide the application.
- (3) The *minimum consideration period* for deciding an adjudication application is—
  - (a) the period within which the respondent may give an adjudication response to the adjudicator under section 24A; but
  - (b) if the claimant may give a claimant's reply under section 24B—the period mentioned in paragraph (a) plus the period within which the claimant may give the reply.

*Note—*

Only a complex payment claim may involve a claimant's reply. See section 24B.

- (4) The *deadline*, for deciding an adjudication application relating to a standard payment claim, is the day that is 10 business days after—
  - (a) if the adjudicator was given an adjudication response in compliance with section 24A—the day on which the adjudicator receives the response; or
  - (b) otherwise—the last day on which the respondent could have given the adjudicator the response.
- (5) The *deadline*, for deciding an adjudication application relating to a complex payment claim, is the day that is 15 business days after—

[s 25B]

---

- (a) if the adjudicator was given an adjudication response in compliance with section 24A—the day on which the adjudicator receives the response; or
  - (b) otherwise—the last day on which the respondent could have given the adjudicator the response.
- (6) However, if the claimant may give the adjudicator a claimant’s reply under section 24B, the *deadline* for deciding the adjudication application is the day that is 15 business days after—
- (a) if the adjudicator was given a claimant’s reply in compliance with section 24B—the day on which the adjudicator receives the reply; or
  - (b) otherwise—the last day on which the claimant could have given the adjudicator the reply.

## **25B Extension of time requirements by adjudicator**

- (1) This section applies if—
  - (a) an adjudication application relates to a complex payment claim; and
  - (b) in the opinion of the adjudicator, the claimant and respondent fail to reach agreement under section 25A(2).
- (2) The adjudicator may, despite section 25A(5) or (6), decide the application within 5 business days after the time the adjudicator would otherwise have to decide the application under section 25A(5) or (6).

## **26 Adjudicator’s decision**

- (1) An adjudicator is to decide—
  - (a) the amount of the progress payment, if any, to be paid by the respondent to the claimant (the *adjudicated amount*); and

- 
- (b) the date on which any amount became or becomes payable; and
  - (c) the rate of interest payable on any amount.
- (2) In deciding an adjudication application, the adjudicator is to consider the following matters only—
- (a) the provisions of this Act and, to the extent they are relevant, the provisions of the *Queensland Building and Construction Commission Act 1991*, part 4A;
  - (b) the provisions of the construction contract from which the application arose;
  - (c) the payment claim to which the application relates, together with all submissions, including relevant documentation, that have been properly made by the claimant in support of the claim;
  - (d) the payment schedule, if any, to which the application relates, together with all submissions, including relevant documentation, that have been properly made by the respondent in support of the schedule;
  - (e) the results of any inspection carried out by the adjudicator of any matter to which the claim relates.
- (3) The adjudicator's decision must—
- (a) be in writing; and
  - (b) include the reasons for the decision, unless the claimant and the respondent have both asked the adjudicator not to include the reasons in the decision.

## **27 Valuation of work etc. in later adjudication application**

- (1) Subsection (2) applies if, in deciding an adjudication application, an adjudicator has, under section 14, decided—
- (a) the value of any construction work carried out under a construction contract; or
  - (b) the value of any related goods and services supplied under a construction contract.

- (2) The adjudicator or another adjudicator must, in any later adjudication application that involves the working out of the value of that work or of those goods and services, give the work, or the goods and services, the same value as that previously decided unless the claimant or respondent satisfies the adjudicator concerned that the value of the work, or the goods and services, has changed since the previous decision.

## **28 Adjudicator may correct clerical mistakes etc.**

- (1) Subsection (2) applies if the adjudicator's decision contains—
  - (a) a clerical mistake; or
  - (b) an error arising from an accidental slip or omission; or
  - (c) a material miscalculation of figures or a material mistake in the description of a person, thing or matter mentioned in the decision; or
  - (d) a defect of form.
- (2) The adjudicator may, on the adjudicator's own initiative or on the application of the claimant or the respondent, correct the decision.

## **29 Respondent required to pay adjudicated amount**

- (1) If an adjudicator decides that the respondent is required to pay an adjudicated amount, the respondent must pay the amount to the claimant on or before the relevant date.
- (2) In this section—

*relevant date* means—

  - (a) the date that is 5 business days after the date on which the adjudicator's decision is served on the respondent; or
  - (b) if the adjudicator decides a later date under section 26(1)(b)—the later date.

---

**30 Consequences of not paying claimant adjudicated amount**

- (1) If the respondent fails to pay the whole or any part of the adjudicated amount to the claimant under section 29, the claimant—
  - (a) may ask the registrar to provide an adjudication certificate under this section; and
  - (b) may serve notice on the respondent of the claimant's intention to suspend, under section 33, carrying out construction work or supplying related goods and services under the construction contract.
- (2) A notice under subsection (1)(b) must state that it is made under this Act.
- (3) An adjudication certificate must state that it is made under this Act and state the following matters—
  - (a) the name of the claimant;
  - (b) the name of the respondent who is liable to pay the adjudicated amount;
  - (c) the adjudicated amount;
  - (d) the date on which payment of the adjudicated amount was required to be paid to the claimant.
- (4) If an amount of interest payable on the adjudicated amount is not paid by the respondent, the claimant may ask the registrar to state the amount of interest payable in the adjudication certificate.
- (5) If an amount of interest is specified in the adjudication certificate, the amount is to be added to, and becomes part of, the adjudicated amount.
- (6) If the claimant has paid the respondent's share of the adjudication fees for the adjudication but has not been reimbursed by the respondent for that amount (the *unpaid share*), the claimant may ask the registrar to state the unpaid share in the adjudication certificate.

- (7) If the unpaid share is stated in the adjudication certificate, it is to be added to, and becomes part of, the adjudicated amount.

### **31 Filing of adjudication certificate as judgment debt**

- (1) An adjudication certificate may be filed as a judgment for a debt, and may be enforced, in a court of competent jurisdiction.
- (2) An adjudication certificate can not be filed under this section unless it is accompanied by an affidavit by the claimant stating that the whole or a part of the adjudicated amount has not been paid at the time the certificate is filed.
- (3) If the affidavit states that part of the adjudicated amount has been paid, the judgment is for the unpaid part of the amount only.
- (4) If the respondent commences proceedings to have the judgment set aside, the respondent—
- (a) is not, in those proceedings, entitled—
    - (i) to bring any counterclaim against the claimant; or
    - (ii) to raise any defence in relation to matters arising under the construction contract; or
    - (iii) to challenge the adjudicator’s decision; and
  - (b) is required to pay into the court as security the unpaid portion of the adjudicated amount pending the final decision in those proceedings.

### **32 Claimant may make new application in certain circumstances**

- (1) This section applies if—
- (a) a claimant does not receive an adjudicator’s notice of acceptance of an adjudication application within 4 business days after the application is made; or

- 
- (b) an adjudicator who accepts an adjudication application does not decide the application within the time allowed by section 25A or 25B.
  - (2) In either of those circumstances, the claimant—
    - (a) may withdraw the application, by notice served on the adjudicator or registrar; and
    - (b) may make a new adjudication application under section 21.
  - (3) Despite section 21(3)(c), a new adjudication application may be made at any time within 5 business days after the claimant becomes entitled to withdraw the previous adjudication application under subsection (2).
  - (4) This division applies to a new application mentioned in this section in the same way as it applies to an application under section 21.

## **Division 3                      Claimant's right to suspend construction work**

### **33            Claimant may suspend work**

- (1) A claimant may suspend carrying out of construction work or the supply of related goods and services under a construction contract if at least 2 business days have passed since the claimant has given notice of intention to do so to the respondent under section 19, 20 or 30.
- (2) The right conferred by subsection (1) exists until the end of the period of 3 business days immediately following the date on which the claimant receives payment from the respondent of the amount mentioned in section 19(2), 20(1) or 29(1).
- (3) If the claimant, in exercising the right to suspend carrying out of construction work or the supply of related goods and services under a construction contract, incurs any loss or expenses as a result of the removal by the respondent from the

contract of any part of the work or supply, the respondent is liable to pay the claimant the amount of the loss or expenses.

- (4) A claimant who suspends carrying out construction work or the supply of related goods and services under a construction contract under the right conferred by subsection (1) is not liable for any loss or damage suffered by the respondent, or by any person claiming through the respondent, because of the claimant not carrying out that work or not supplying those goods and services, during the period of suspension.

## **Division 4                      General**

### **35            Adjudicator's fees**

- (1) An adjudicator is entitled to be paid for adjudicating an adjudication application—
- (a) the amount, by way of fees and expenses, agreed between the adjudicator and the parties to the adjudication; or
  - (b) if no amount is agreed, the amount, for fees and expenses, that is reasonable having regard to the work done and expenses incurred by the adjudicator.
- (2) The claimant and respondent are jointly and severally liable to pay the adjudicator's fees and expenses.
- (3) The claimant and respondent are each liable to contribute to the payment of the adjudicator's fees and expenses in equal proportions or in the proportions the adjudicator decides.
- (4) An adjudicator is not entitled to be paid any fees or expenses for the adjudication of an adjudication application if the adjudicator fails to make a decision on the application.
- (5) However, subsection (4) does not apply if—
- (a) the adjudication application is withdrawn; or
  - (b) the adjudicator decided he or she did not have jurisdiction to adjudicate the application.



- 
- (6) Also, if a court finds that the adjudicator's decision is void and unenforceable, the adjudicator is still entitled to be paid any fees or expenses for the adjudication of the application if the adjudicator acted in good faith in adjudicating the application.
  - (7) For subsection (4), an adjudicator does not fail to make a decision merely because the adjudicator refuses to communicate the adjudicator's decision on an adjudication application until the adjudicator's fees and expenses are paid.
  - (8) In this section—  
*adjudicating*, an adjudication application, includes accepting, considering and deciding the application.

### **35A Matters to be considered in deciding fees**

- (1) This section applies if an adjudicator is making a decision about the proportion of the adjudicator's fees and expenses to be paid by the claimant and respondent under section 35(3).
- (2) In making the decision, the adjudicator may consider the following matters—
  - (a) the relative success of the claimant or respondent in the adjudication;
  - (b) whether the claimant or respondent commenced or participated in the adjudication for an improper purpose;
  - (c) whether the claimant or respondent commenced or participated in the adjudication without reasonable prospects of success;
  - (d) whether the claimant or respondent has acted unreasonably leading up to the adjudication;
  - (e) whether the claimant or respondent has acted unreasonably in the conduct of the adjudication;
  - (f) the reasons given by the respondent for not making the progress payment the subject of the adjudication application;

[s 35B]

---

- (g) whether the respondent included additional reasons for withholding payment in the adjudication response that were not included in the payment schedule served on the claimant;
- (h) whether an adjudication application is withdrawn;
- (i) the services provided by the adjudicator in adjudicating the adjudication application, including the amount of time taken to consider discrete aspects of the amount claimed;
- (j) another matter the adjudicator considers relevant in making the decision.

### **35B Withdrawing from adjudication**

An adjudication application is taken to have been withdrawn if—

- (a) a claimant has served a notice of discontinuation on the adjudicator and respondent; or
- (b) a respondent has paid the claimed amount the subject of the adjudication application to the claimant.

*Note—*

Despite the withdrawal of an adjudication application an adjudicator is still entitled to be paid fees for considering the application—see section 35.

## **Part 4 Administration**

### **Division 1 Establishing registry and related matters**

#### **36 Registry established**

- (1) The Adjudication Registry (the *registry*) is established.

- 
- (2) The registry consists of the Adjudication Registrar (the *registrar*) and the staff of the registry.

### **37 Appointment of registrar and staff of registry**

- (1) A person is eligible for appointment as the registrar only if the person has particular knowledge and experience of—
- (a) public administration; and
  - (b) something else of substantial relevance to the functions of the registrar.
- (2) The registrar and other staff of the registry are to be appointed by the commission under this Act.

### **38 Registrar's functions and powers**

- (1) Subject to the direction of the commissioner, the registrar is responsible for managing the registry and the administrative affairs of the registry.
- (2) The registrar has the following functions—
- (a) to refer adjudication applications to adjudicators;
  - (b) to keep a register, containing details of adjudicators, which may be kept in any form allowing it to be inspected as mentioned in paragraph (c);
  - (c) to ensure the register is available for inspection by an entity—
    - (i) without charge; or
    - (ii) if a regulation prescribes a fee for the inspection, on payment of the fee prescribed;
  - (d) to supply a certificate as to the correctness of a matter in the register to an entity paying any fee that may be prescribed under a regulation for the certificate;
  - (e) to keep records of decisions by adjudicators and to publish the decisions in a way approved by the commissioner;

[s 39]

---

- (f) to keep account of fees paid or payable to the registrar;
  - (g) to collect statistical data and other information relevant to the administration of the registry for the commissioner's report to the Minister under section 41;
  - (h) any other functions given under this Act.
- (3) The registrar has the powers reasonably necessary to perform the registrar's functions.

### **39 Delegation by registrar**

The registrar may delegate the registrar's powers under this Act or another Act to an appropriately qualified member of the staff of the registry.

### **41 Annual report on operation of Act and registry**

- (1) As soon as practicable after each financial year, but not later than 30 September, the commissioner must give the Minister a report containing—
- (a) a review of the operation of this Act and the registry during the preceding financial year; and
  - (b) proposals for improving the operation of, and forecasts of the workload of, the registry in the present financial year.
- (2) The report may be included in the commission's annual report.
- (3) Unless the report is included in the commission's annual report, the Minister must table a copy of the report in the Legislative Assembly within 14 sitting days after receiving the report.
- (4) In this section—

*annual report* means an annual report prepared under the *Financial Accountability Act 2009*, section 63.

---

## **Division 3                      Registration of adjudicators**

### **56            Application for registration**

- (1) An individual may apply to the registrar for registration as an adjudicator.
- (2) The application must—
  - (a) be in the approved form; and
  - (b) be signed by or for the applicant; and
  - (c) be accompanied by the fee prescribed under a regulation for the application.

### **57            What the application must state**

The application must state the following—

- (a) the name and address of the applicant;
- (b) an address in Queensland for service of documents;
- (c) the experience and qualifications of the applicant, relevant to deciding adjudication applications;
- (d) other details, required in the approved form for the application, to enable the registrar to decide whether the applicant is a suitable person to be registered as an adjudicator.

### **58            Consideration of application for registration**

The registrar must consider the application and either grant, or refuse to grant, the application.

### **59            Criteria for granting application for registration**

The registrar may grant the application only if the registrar is satisfied the applicant is a suitable person to be registered as an adjudicator.

## **60 Suitability of person to be registered**

- (1) A person is not a suitable person to be registered as an adjudicator unless the person holds—
  - (a) an adjudication qualification; or
  - (b) another qualification that the registrar considers to be equivalent to an adjudication qualification.
- (2) In deciding whether an applicant is a suitable person to be registered, the registrar may have regard to the following matters—
  - (a) whether the person has a conviction for a relevant offence, other than a spent conviction;
  - (b) whether the person—
    - (i) held a registration under this division, or a licence or registration under a corresponding law, that was suspended or cancelled; or
    - (ii) has been refused registration under this division or a licence or registration under a corresponding law;
  - (c) the experience and qualifications of the person;
  - (d) the matters stated in the application for registration under section 57;
  - (e) anything else relevant to the person's ability to carry out the person's functions as an adjudicator.

## **61 Inquiries into application for registration**

- (1) Before deciding the application, the registrar—
  - (a) may make inquiries to decide the suitability of the applicant to be registered; and
  - (b) may, by notice given to the applicant, require the applicant to give the registrar within the reasonable time of at least 28 days stated in the notice, further information or a document the registrar reasonably requires to decide the application.

- (2) The applicant is taken to have withdrawn the application if, within the stated time, the applicant does not comply with a requirement under subsection (1)(b).
- (3) A notice under subsection (1)(b) must be given to the applicant within 28 days after the registrar receives the application.
- (4) The information or document under subsection (1)(b) must, if the notice requires, be verified by a statutory declaration.

## **62 Decision on application for registration**

- (1) If the registrar decides to grant the application, the registrar must issue a certificate of registration to the applicant.
- (2) If the registrar decides to impose conditions on the registration, the registrar must immediately give the applicant an information notice for the decision.
- (3) If the registrar decides to refuse to grant the application, the registrar must immediately give the applicant an information notice for the decision.

## **63 Failure to decide application for registration**

- (1) Subject to subsections (2) and (3), if the registrar fails to decide the application within 28 days after its receipt, the failure is taken to be a decision by the registrar to refuse to grant the application.
- (2) Subsection (3) applies if—
  - (a) a person has made an application for registration; and
  - (b) the registrar has under section 61(1)(b), required the applicant to give the registrar further information or a document.
- (3) The registrar is taken to have refused to grant the application if the registrar does not decide the application within 28 days after the registrar receives the further information or document.

- (4) If the application is refused under this section, the applicant is entitled to be given an information notice for the decision by the registrar.

## **64 Term of registration**

- (1) A registration becomes effective on the day the certificate of registration is issued or on the day of the registration's renewal and ends either—
  - (a) 3 years after that day; or
  - (b) on the earlier day stated in the certificate of registration.
- (2) The earlier day may be decided by the registrar.

## **65 Conditions of registration**

- (1) A registration is subject to the following conditions—
  - (a) the adjudicator must comply with this Act;
  - (b) other reasonable conditions the registrar considers appropriate to give effect to this Act and that are stated in the certificate of registration or in an information notice given under subsection (3).
- (2) Conditions may be imposed under subsection (1)(b)—
  - (a) when registration first happens or is renewed or amended; or
  - (b) at another time if the registrar considers this is necessary to ensure that an adjudicator effectively performs the adjudicator's functions under this Act.
- (3) If the registrar decides to impose conditions on the registration under subsection (2)(b)—
  - (a) the registrar must immediately give the adjudicator an information notice for the decision; and
  - (b) the conditions take effect when the information notice is received by the adjudicator or the later day stated in the notice.



---

**66 Registration required to perform functions of adjudicator**

A person must not accept or decide an adjudication application unless the person is an adjudicator.

Maximum penalty—500 penalty units.

**67 Adjudicator must comply with registration conditions**

- (1) An adjudicator must not contravene a condition of the registration.

Maximum penalty—200 penalty units.

- (2) The penalty under subsection (1) may be imposed whether or not the registration is suspended or cancelled because of the contravention.

**68 Form of certificate of registration**

A certificate of registration must state the following particulars—

- (a) the adjudicator's name;
- (b) the day the registration becomes effective;
- (c) the day the registration expires;
- (d) the registration number;
- (e) the registration conditions.

**Division 4 Renewals of registrations of adjudicators**

**69 Definitions for div 4**

In this division—

*registrant* means an adjudicator applying for a renewal of registration as an adjudicator.

*registration* means renewal of registration as an adjudicator.

## **70 Applications for renewal of registration**

- (1) A registrant may apply to the registrar for the renewal of the registration.
- (2) The application must be made at least 1 month before the registration ends and must—
  - (a) be in the approved form; and
  - (b) be signed by or for the applicant; and
  - (c) be accompanied by the fee prescribed under a regulation for the application.
- (3) The registrar must consider the application and renew, or refuse to renew, the registration.
- (4) In deciding whether to grant the application, the registrar may have regard to the matters to which the registrar may have regard in deciding whether an applicant for registration is a suitable person to be registered.
- (5) If the registrar decides to refuse to renew the registration, the registrar must immediately give the registrant an information notice for the decision.
- (6) If the registrar decides to impose conditions on the registration, the registrar must immediately give the registrant an information notice for the decision.
- (7) A registration may be renewed by—
  - (a) endorsing the existing certificate of registration; or
  - (b) cancelling the existing certificate and issuing another certificate.

## **71 Inquiries into application for renewal of registration**

- (1) Before deciding the application, the registrar may, by notice given to the registrant, require the registrant to give the registrar, within a reasonable period of at least 28 days stated in the notice, further information or a document the registrar reasonably requires to decide the application.

- 
- (2) The registrant is taken to have withdrawn the application if, within the stated period, the registrant does not comply with the requirement.

**72 Registration taken to be in force while application for renewal is considered**

- (1) If an application is made under section 70, the registrant's registration is taken to continue in force from the day that it would, apart from this section, have ended until the application is decided under section 70 or taken to have been withdrawn under section 71(2).
- (2) However, if the application is refused, the registration continues in force until the information notice for the decision is given to the registrant.
- (3) Subsection (1) does not apply if the registration is earlier suspended or cancelled.

**Division 5 Amendment of registrations of adjudicators**

**73 Definitions for div 5**

In this division—

*registrant* means an adjudicator applying for amendment of a registration as an adjudicator.

*registration* means an amendment of a registration as an adjudicator.

**74 Application for amendment of registration**

- (1) A registrant may apply to the registrar for an amendment of the registration including any conditions imposed by the registrar.
- (2) The application must—

- (a) be in the approved form; and
  - (b) be signed by or for the applicant; and
  - (c) be accompanied by the fee prescribed under a regulation for the application.
- (3) The registrar must consider the application and amend, or refuse to amend, the registration.
- (4) If the registrar decides to refuse to amend the registration, the registrar must immediately give the registrant an information notice for the decision.
- (5) If the registrar decides to impose a condition on the amended registration, the registrar must immediately give the registrant an information notice for the decision.
- (6) A registration may be amended by—
- (a) endorsing the existing registration with details of the amendment; or
  - (b) cancelling the existing registration and issuing another registration containing the amendment.

## **75 Inquiries into application for amendment**

- (1) Before deciding the application, the registrar may, by notice given to the registrant, require the registrant to give the registrar, within a reasonable period of at least 28 days stated in the notice, further information or a document the registrar reasonably requires to decide the application.
- (2) The registrant is taken to have withdrawn the application if, within the stated period, the registrant does not comply with the requirement.

---

## **Division 6                      Suspension or cancellation of registrations of adjudicators**

### **76        Definitions for div 6**

In this division—

*registrant* means a person registered as an adjudicator.

*registration* means registration as an adjudicator.

### **77        Grounds for suspension or cancellation**

(1) Each of the following is a ground for suspending or cancelling a registration—

- (a) the registrant is not, or is no longer, a suitable person to hold the registration;
- (b) the registrant has contravened a condition of the registration;
- (c) the registration was issued because of a materially false or misleading representation or declaration.

(2) For forming a belief that the ground mentioned in subsection (1)(a) exists, the registrar may have regard to the matters to which the registrar may have regard in deciding whether a proposed registrant is a suitable person to hold the registration.

*Note—*

See section 60.

### **78        Show cause notice**

- (1) This section applies if the registrar believes a ground exists to suspend or cancel a registration.
- (2) The registrar must give the registrant a notice under this section (a *show cause notice*).
- (3) The show cause notice must state—

- (a) the action (the *proposed action*) the registrar proposes taking under this division; and
  - (b) the grounds for the proposed action; and
  - (c) an outline of the facts and circumstances forming the basis for the grounds; and
  - (d) if the proposed action is suspension of the registration—the proposed suspension period; and
  - (e) an invitation to the registrant to show within a stated period (the *show cause period*) why the proposed action should not be taken.
- (4) The show cause period must be a period ending at least 21 days after the show cause notice is given to the registrant.

## **79 Representations about show cause notices**

- (1) The registrant may make written representations about the show cause notice to the registrar in the show cause period.
- (2) The registrar must consider all representations (the *accepted representations*) made under subsection (1).

## **80 Ending show cause process without further action**

- (1) This section applies if, after considering the accepted representations for the show cause notice, the registrar no longer believes a ground exists to suspend or cancel the registration.
- (2) The registrar must not take any further action about the show cause notice.
- (3) The registrar must give the registrant a notice that no further action is to be taken about the show cause notice.

## **81 Suspension or cancellation**

- (1) This section applies if—

- 
- (a) there are accepted representations for the show cause notice and, after considering them, the registrar still believes a ground exists to suspend or cancel the registration; or
  - (b) there are no accepted representations.
- (2) If the registrar believes suspension or cancellation of the registration is warranted, the registrar may—
- (a) if the proposed action stated in the show cause notice was to suspend the registration for a stated period—suspend the registration for not longer than the stated period; or
  - (b) if the proposed action stated in the show cause notice was to cancel the registration—either cancel the registration or suspend it for a period.
- (3) The registrar must immediately give an information notice for the decision to the registrant.
- (4) The decision takes effect on the later of the following days—
- (a) the day the information notice is given to the registrant;
  - (b) the day stated in the information notice for that purpose.

## **82 Immediate suspension of registration**

- (1) The registrar may suspend a registration immediately if the registrar believes—
- (a) a ground exists to suspend or cancel the registration; and
  - (b) it is necessary to suspend the registration immediately because there is an immediate and serious harm to the effectiveness of the adjudication of payment claims under this Act.
- (2) The suspension—
- (a) must be effected by an information notice for the decision given by the registrar to the registrant to suspend the registrant's registration together with a show cause notice; and

- (b) operates immediately the notices are given; and
- (c) continues to operate until the earliest of the following happens—
  - (i) the registrar cancels the remaining period of the suspension;
  - (ii) the show cause notice is finally dealt with;
  - (iii) 28 days have passed since the notices were given to the registrant.
- (3) Subsection (4) applies if—
  - (a) a suspension under this section stops because—
    - (i) the registrar cancels the remaining period of the suspension; or
    - (ii) the show cause notice is finally dealt with by a decision being made not to cancel or suspend the registration; or
    - (iii) 28 days have passed since the notices mentioned in subsection (2)(a) were given to the registrant; and
  - (b) the registrant has returned the certificate of registration to the registrar under section 83.
- (4) The registrar must, as soon as practicable, give the certificate of registration to the registrant.

### **83 Return of cancelled or suspended registration to registrar**

- (1) This section applies if the registrar has cancelled or suspended a registration and given an information notice for the decision to the registrant.
- (2) The registrant must return the certificate of registration to the registrar within 7 days after receiving the information notice, unless the registrant has a reasonable excuse.

Maximum penalty for subsection (2)—20 penalty units.



---

**84 Effect of suspension or cancellation of registration of adjudicator**

- (1) This section applies if—
  - (a) the registration of an adjudicator is suspended or cancelled or otherwise ends; and
  - (b) an adjudication application has been made to the registrar, or referred to the adjudicator, for an adjudication of a payment claim; and
  - (c) an adjudicator has not made a decision under section 26 in relation to the adjudication application.
- (2) The adjudication application is taken to have been withdrawn by the claimant under section 32(2)(a) and the claimant may make a new adjudication application under section 21.
- (3) Despite section 21(3)(c), a new adjudication application may be made at any time within 5 business days after the claimant becomes aware the registration has ended.
- (4) Part 3, division 2, applies to a new application mentioned in this section in the same way as it applies to an application under section 21.
- (5) The adjudicator is not entitled to any fees or expenses in relation to the adjudication application taken to have been withdrawn under this section.

**Division 7 Other provisions about registrations of adjudicators**

**86 Definitions for div 7**

In this division—

*registrant* means a person registered as an adjudicator.

*registration* means registration as an adjudicator.

### **87 Surrender of registration**

- (1) A registrant may surrender the registrant's registration by notice given to the registrar.
- (2) The registrant's certificate of registration must accompany the notice.
- (3) The surrender takes effect on the later of the following—
  - (a) the day the notice is given;
  - (b) the day specified in the notice.

### **88 Application for replacement of certificate of registration**

- (1) A registrant may apply for replacement of the registrant's certificate of registration if the certificate has been damaged, destroyed, lost or stolen.
- (2) The application must—
  - (a) be made to the registrar; and
  - (b) include information about the circumstances in which the certificate was damaged, destroyed, lost or stolen; and
  - (c) be accompanied by the fee prescribed under a regulation for the application.

### **89 Decision about application for replacement of certificate of registration**

- (1) The registrar must consider the application and either grant, or refuse to grant, the application.
- (2) The registrar must grant the application if the registrar is satisfied the certificate of registration has been destroyed, lost or stolen, or damaged in a way to require its replacement.
- (3) If the registrar decides to grant the application, the registrar must, as soon as practicable, issue another certificate of registration to the applicant to replace the damaged, destroyed, lost or stolen certificate.

- 
- (4) If the registrar decides to refuse to grant the application, the registrar must immediately give the applicant an information notice for the decision.

## **90 False or misleading statements**

A person must not, for an application made under this part, state anything to the registrar the person knows is false or misleading in a material particular.

Maximum penalty—50 penalty units.

## **91 False or misleading documents**

- (1) A person must not, for an application made under this part, give a document to the registrar containing information the person knows is false or misleading in a material particular.

Maximum penalty—50 penalty units.

- (2) Subsection (1) does not apply to a person if the person, when giving the document—
- (a) tells the registrar, to the best of the person's ability, how it is false or misleading; and
  - (b) if the person has, or can reasonably obtain, the correct information—gives the correct information to the registrar.

# **Part 5 Review of decisions**

## **Division 1 Internal review of decisions**

### **92 Review process starts with internal review**

- (1) Subject to this division, a person who is given, or is entitled to be given, an information notice for a decision under part 4 (the

[s 93]

---

*original decision*) may apply for a review of the decision under this part.

- (2) The review must be, in the first instance, by way of an application for internal review under section 93.

### **93 Application for review to be made to the registrar**

The person may apply to the registrar for a review of the original decision.

### **94 Applying for review**

- (1) The application must be made within 28 days after—
  - (a) if the person is given an information notice for the decision—the day the person is given the information notice; or
  - (b) if paragraph (a) does not apply—the day the person otherwise becomes aware of the decision.
- (2) The registrar may, at any time, extend the time for applying for the review.
- (3) The application must be in writing and state fully the grounds of the application.

### **95 Review decision**

- (1) After reviewing the original decision, the registrar must make a further decision (the *review decision*) to—
  - (a) confirm the original decision; or
  - (b) amend the original decision; or
  - (c) substitute another decision for the original decision.
- (2) The registrar must immediately give the applicant notice of the review decision (the *review notice*).

- (3) If the review decision is not the decision sought by the applicant, the review notice must comply with the QCAT Act, section 157(2).
- (4) If the registrar does not give the notice within 28 days after the application is made, the registrar is taken to have made a review decision confirming the original decision on the 28th day after the application is made.
- (5) If the review decision confirms the original decision, for the purpose of an application to the tribunal for a review, the original decision is taken to be the review decision.
- (6) If the review decision amends the original decision, for the purpose of an application to the tribunal for a review, the original decision as amended is taken to be the review decision.

## **96 Stay of operation of decision**

- (1) If an application is made for a review of an original decision, the applicant may immediately apply, as provided under the QCAT Act, for a stay of the decision to the tribunal.
- (2) The tribunal may stay the decision to secure the effectiveness of the review and any later review by the tribunal.
- (3) The stay—
  - (a) may be given on conditions the tribunal considers appropriate; and
  - (b) operates for the period fixed by the tribunal; and
  - (c) may be revoked or amended by the tribunal.
- (4) The period of the stay must not extend past the time when the registrar makes a review decision about the original decision and any later period the tribunal allows the applicant to enable the applicant to apply to the tribunal for a review of the review decision.
- (5) The application affects the decision, or carrying out of the decision, only if the decision is stayed.

## **Division 2 External review of decisions**

### **97 Who may apply to tribunal for an external review**

A person who has applied for the review of an original decision under division 1 and is dissatisfied with the review decision may apply, as provided under the QCAT Act, to the tribunal for a review of the review decision.

## **Part 6 Miscellaneous**

### **99 No contracting out**

- (1) The provisions of this Act have effect despite any provision to the contrary in any contract, agreement or arrangement.
- (2) A provision of any contract, agreement or arrangement (whether in writing or not) is void to the extent to which it—
  - (a) is contrary to this Act; or
  - (b) purports to annul, exclude, modify, restrict or otherwise change the effect of a provision of this Act, or would otherwise have the effect of excluding, modifying, restricting or otherwise changing the effect of a provision of this Act; or
  - (c) may reasonably be construed as an attempt to deter a person from taking action under this Act.

### **100 Effect of pt 3 on civil proceedings**

- (1) Subject to section 99, nothing in part 3 affects any right that a party to a construction contract—
  - (a) may have under the contract; or
  - (b) may have under part 2 in relation to the contract; or

- (c) may have apart from this Act in relation to anything done or omitted to be done under the contract.
- (2) Nothing done under or for part 3 affects any civil proceedings arising under a construction contract, whether under part 3 or otherwise, except as provided by subsection (3).
- (3) In any proceedings before a court or tribunal in relation to any matter arising under a construction contract, the court or tribunal—
  - (a) must allow for any amount paid to a party to the contract under or for part 3 in any order or award it makes in those proceedings; and
  - (b) may make the orders it considers appropriate for the restitution of any amount so paid, and any other orders it considers appropriate, having regard to its decision in the proceedings.
- (4) If, in any proceedings before a court in relation to any matter arising under a construction contract, the court finds that only a part of an adjudicator's decision under part 3 is affected by jurisdictional error, the court may—
  - (a) identify the part affected by the error; and
  - (b) allow the part of the decision not affected by the error to remain binding on the parties to the proceeding.

### **101 Queensland Building and Construction Board's policy**

- (1) The Queensland Building and Construction Board may make a policy governing the administration of this Act.
- (2) The policy does not take effect until approved by regulation.
- (3) Section 19(4) of the *Queensland Building and Construction Commission Act 1991* applies for a policy made under this section as if the policy were made under section 19 of that Act.
- (4) In this section—

*Queensland Building and Construction Board* means the Queensland Building and Construction Board established under the *Queensland Building and Construction Commission Act 1991*, section 10.

### **102 Adjudicator must give information to registrar**

An adjudicator must, at the times specified by the registrar, give the registrar—

- (a) a copy of the adjudicator's decisions; and
- (b) the other information required in the approved form.

### **103 Service of notices**

- (1) A notice or other document that under this Act is authorised or required to be served on a person may be served on the person in the way, if any, provided under the construction contract concerned.
- (2) Subsection (1) is in addition to, and does not limit or exclude, the *Acts Interpretation Act 1954*, section 39 or the provisions of any other law about the service of notices.

### **104 Proof of signature unnecessary**

A signature purporting to be the signature of the registrar is evidence of the signature it purports to be.

### **105 Evidentiary aids**

- (1) A certificate signed by the registrar certifying anything about the contents of the register is evidence of the thing stated.
- (2) A certificate signed by the registrar stating any of the following is evidence of the matters stated—
  - (a) that an individual was or was not at a time or during a period, or is or is not, an adjudicator;



- (b) that a stated document is a record or document, a copy of a record or document, or an extract from a record or document, kept under this Act.

## **106 Protection from liability**

- (1) An official does not incur civil liability for an act done, or omission made, honestly and without negligence under this Act.
- (2) If subsection (1) prevents a civil liability attaching to an official, the liability attaches instead to the State.
- (3) In this section—  
*official* means—
  - (a) the commissioner; or
  - (b) the registrar; or
  - (c) a member of the staff of the registry.

## **107 Protection from liability for adjudicators**

An adjudicator is not personally liable for anything done or omitted to be done in good faith—

- (a) in performing the adjudicator's functions under this Act; or
- (b) in the reasonable belief that the thing was done or omitted to be done in the performance of the adjudicator's functions under this Act.

## **108 Summary offences**

- (1) A proceeding for an offence against this Act is to be taken in a summary way under the *Justices Act 1886*.
- (2) The proceedings must start—
  - (a) within 1 year after the commission of the offence; or

- (b) within 6 months after the offence comes to the complainant's knowledge, but within 2 years after the commission of the offence.

### **109 Allegations of false or misleading information or document**

In any proceeding for an offence against this Act defined as involving false or misleading information, or a false or misleading document, it is enough for a charge to state that the information or document was, without specifying which, 'false or misleading'.

### **110 Approved forms**

The commissioner may approve forms for use under this Act.

### **111 Regulation-making power**

- (1) The Governor in Council may make regulations under this Act.
- (2) A regulation may—
  - (a) provide for fees; and
  - (b) for an adjudication qualification, prescribe the following—
    - (i) the name of the qualification;
    - (ii) the bodies that may issue the qualification;
    - (iii) the name of the adjudication competency to be achieved to gain the qualification;
    - (iv) the elements that must be successfully completed to achieve the competency; and
  - (c) prescribe procedures for—
    - (i) the lodgement of adjudication applications with the registrar, including the last time during a day that applications may be lodged; and

- (ii) the processing of adjudication applications by the registrar.

## **Part 7                      Transitional provisions**

### **Division 1                      Transitional provision for Act No. 6 of 2004**

#### **112      Transitional provision for adjudication qualification**

- (1) This section applies if, at the commencement, the matters mentioned in section 111(2)(b) have not been prescribed for an adjudication qualification.
- (2) Section 60(1) does not apply to a person applying for registration as an adjudicator if the application is received after the commencement and before the prescription of the matters mentioned in subsection (1).
- (3) If the application is granted, it is a condition of the registration that the adjudicator must obtain an adjudication qualification within 3 months of the prescription of the matters mentioned in subsection (1).
- (4) In this section—

***commencement*** means the commencement of section 60.

*Editor's note—*

Section 60 commenced 1 July 2004 (see 2004 SL No. 91).

## **Division 2**                      **Transitional provisions for Building and Construction Industry Payments Amendment Act 2014**

### **113**    **Definitions for div 2**

In this division—

*amendment Act* means the *Building and Construction Industry Payments Amendment Act 2014*.

*former*, in relation to a provision, means the provision as in force immediately before the amendment of the provision under the amendment Act.

*unamended Act* means this Act as in force immediately before the commencement.

### **114**    **Registration of authorised nominating authorities**

- (1) The registration of an authorised nominating authority ends.
- (2) The registrar must refund the amount of the authorised nominating authority's registration fee that, on the ending of an authorised nominating authority's registration, is proportional to the unexpired period of the registration in whole months.
- (3) An application for registration or application for renewal of registration made, but not decided, before the commencement is taken to be withdrawn.
- (4) The registrar must refund to the authorised nominating authority the amount of the application fee for registration or for renewing his or her registration.
- (5) In this section—

*application for registration* means an application for registration as an authorised nominating authority under repealed section 42.

---

*application for renewal of registration* means an application for renewal of a registration as an authorised nominating authority under former section 70.

**115 Adjudication applications made to authorised nominating authorities for referral to adjudicators**

- (1) This section applies to an adjudication application made to an authorised nominating authority, but not yet referred to an adjudicator, under former section 21 before the commencement.
- (2) The authorised nominating authority must refer the application, as soon as practicable, to a person eligible to be an adjudicator under section 22.

*Note—*

Section 116 would apply in relation to the payment claim to which the adjudication application relates, including in relation to the adjudication of the payment claim.

- (3) Former section 107(2) continues for the purpose of referring the adjudication application under subsection (2) despite the repeal of that section under the amendment Act.
- (4) An adjudication application referred to an adjudicator under subsection (2) is taken to have been referred by the registrar.

**116 Outstanding matters for existing payment claims to be dealt with under transitional version of the Act**

- (1) This section applies if a payment claim was served on a respondent before the commencement.
- (2) From the commencement, the transitional version of the Act applies to any outstanding matters under this Act relating to the payment claim, including, for example, the following—
  - (a) replying to the payment claim by serving a payment schedule on the claimant;
  - (b) the consequences of not paying any or all of the claimed amount for the progress payment to which the payment claim relates;

- (c) making an adjudication application for adjudication of the payment claim;
  - (d) the adjudication of the payment claim, including—
    - (i) the giving of an adjudication response;
    - (ii) the adjudication procedures;
    - (iii) the adjudicator's decision;
    - (iv) correcting a clerical mistake in an adjudicator's decision;
    - (v) the consequences of not paying the claimant the adjudicated amount;
    - (vi) the filing of an adjudication certificate as a judgment debt;
    - (vii) an adjudicator's entitlement to be paid for adjudicating the payment claim;
  - (e) the claimant suspending work under the construction contract relevant to the payment claim.
- (3) However, a matter mentioned in subsection (2)(c) may be subject to section 115 and subsection (2) does not release an authorised nominating authority of its obligation under that section.
- (4) To remove any doubt, it is declared that this section does not apply if—
- (a) a payment claim was served on a respondent before the commencement and there are, at the commencement, no outstanding matters under this Act relating to the payment claim; or
  - (b) a payment claim is served on a respondent after the commencement and includes an amount that has been the subject of a payment claim that was served on a respondent before the commencement.
- (5) In this section—

---

***transitional version of the Act*** means the unamended Act as amended by the following amendments of the amendment Act—

- (a) the amendment of the following sections to the extent a reference to the authorised nominating authority in the sections is replaced with a reference to the registrar—
  - (i) section 4(4)(d)(ii);
  - (ii) section 21(6);
  - (iii) section 23(1);
  - (iv) section 30(1)(a), (4) and (6);
  - (v) section 32(2)(a);

*Example of the effect of paragraph (a)—*

Claimants may ask the registrar for an adjudication certificate.

- (b) the amendment of section 21(3)(a), (b) and (e);

*Examples of the effect of paragraph (b)—*

- 1 Adjudication applications are to be made to the registrar in the approved form.
- 2 Adjudication applications are to be accompanied by the fee prescribed by regulation for the application.

- (c) the insertion of new section 35B;
- (d) the amendment of section 84;
- (e) the amendment of section 100;
- (f) the replacement of section 101;
- (g) the amendment of section 111(2);
- (h) the amendment of the definition *business day*, as defined in schedule 2.

***outstanding matter***, under this Act, includes a matter under this Act that has yet to be started or is incomplete.

**118 Previously expired payment claims not revived by new section 17A**

To remove any doubt, it is declared that a claimant can not rely on section 17A(3)(b) to serve a payment claim if, before the commencement, the claimant failed to serve the claim on a respondent within the time required under former section 17(4).



---

## Schedule 2 Dictionary

### section 9

*accepted representations* see section 79(2).

*adjudicated amount* see section 26(1).

*adjudication application* see section 21(1).

*adjudication certificate* means a certificate provided by the registrar under this Act.

*adjudication fees* means fees or expenses charged by an adjudicator under this Act.

*adjudication qualification* means a certificate issued by a body prescribed under a regulation to an individual stating that the individual has achieved an adjudication competency standard prescribed under a regulation.

*adjudication response* see section 24(2).

*adjudicator*—

- (a) in relation to an adjudication application—means an adjudicator appointed under this Act to decide the application; and
- (b) otherwise—means an individual registered under part 4, division 3 as an adjudicator.

*approved form* means a form approved by the commissioner under section 110.

*business day* does not include—

- (a) a Saturday or Sunday; or
- (b) a public holiday, special holiday or bank holiday in the place in which any relevant act is to be or may be done; or
- (c) any day occurring within any of the following periods—

- (i) 22 to 24 December;
- (ii) 27 to 31 December;
- (iii) 2 to 10 January.

***carry out construction work*** means—

- (a) carry out construction work personally; or
- (b) directly or indirectly, cause construction work to be carried out; or
- (c) provide advisory, administrative, management or supervisory services for carrying out construction work.

***claimant*** see section 17(1).

***claimant's reply***, for an adjudication application, see section 24B(2).

***claimed amount*** see section 17(2).

***commission*** means the Queensland Building and Construction Commission established under the *Queensland Building and Construction Commission Act 1991*, section 5.

***commissioner*** means the commissioner appointed under the *Queensland Building and Construction Commission Act 1991*, section 20D.

***complex payment claim*** means a payment claim for an amount more than \$750,000 (exclusive of GST) or, if a greater amount is prescribed by regulation, the amount prescribed.

***construction contract*** means a contract, agreement or other arrangement under which one party undertakes to carry out construction work for, or to supply related goods and services to, another party.

***construction work*** see section 10.

***conviction*** means a finding of guilt, or the acceptance of a plea of guilty, by a court, whether or not a conviction is recorded.

***corresponding law*** means a law applying, or that applied, in another State, the Commonwealth or a foreign country that

provides, or provided, for the same matter as this Act or a provision of this Act.

**domestic building work** see the *Queensland Building and Construction Commission Act 1991*, schedule 1B, section 4.

**due date**, in relation to a progress payment, means the due date for the progress payment, as referred to in section 15.

**function** includes a power.

**home** see the *Queensland Building and Construction Commission Act 1991*, schedule 1B, section 9.

**information notice**, for a decision of the registrar under part 5, is a notice stating—

- (a) the decision; and
- (b) the reasons for the decision; and
- (c) that the person to whom the notice is given may have the decision reviewed within 28 days; and
- (d) how the person may have the decision reviewed; and
- (e) if the decision is that a licence be cancelled or suspended—a direction to the person to return the licence to the registrar within 7 days after receiving the notice.

**notice** means written notice.

**original decision** see section 92(1).

**payment claim** means a claim referred to in section 17.

**payment schedule** means a schedule referred to in section 18.

**perform a function** includes exercise a power.

**progress payment** means a payment to which a person is entitled under section 12, and includes, without affecting any entitlement under the section—

- (a) the final payment for construction work carried out, or for related goods and services supplied, under a construction contract; or

- (b) a single or one-off payment for carrying out construction work, or for supplying related goods and services, under a construction contract; or
- (c) a payment that is based on an event or date, known in the building and construction industry as a ‘milestone payment’.

**proposed action** see section 78(3)(a).

**recognised financial institution** means a bank, or other financial institution prescribed under a regulation.

**reference date**, under a construction contract, means—

- (a) a date stated in, or worked out under, the contract as the date on which a claim for a progress payment may be made for construction work carried out or undertaken to be carried out, or related goods and services supplied or undertaken to be supplied, under the contract; or
- (b) if the contract does not provide for the matter—
  - (i) the last day of the named month in which the construction work was first carried out, or the related goods and services were first supplied, under the contract; and
  - (ii) the last day of each later named month.

**registrant**—

- (a) for part 4, division 4, see section 69; or
- (b) for part 4, division 5, see section 73; or
- (c) for part 4, division 6, see section 76; or
- (d) for part 4, division 7, see section 86.

**registrar** see section 36(2).

**registration**—

- (a) for part 4, division 4, see section 69; or
- (b) for part 4, division 5, see section 73; or
- (c) for part 4, division 6, see section 76; or
- (d) for part 4, division 7, see section 86.

**registry** see section 36(1).

**related goods and services** see section 11.

**relevant offence** means—

- (a) an indictable offence, other than an indictable offence that is taken to be a simple offence under the *Criminal Code*, section 659; or
- (b) an offence against this Act; or
- (c) an offence against a corresponding law; or
- (d) an offence against the *Queensland Building and Construction Commission Act 1991* or a law of another State or the Commonwealth that provides for the same matter as that Act or a provision of that Act; or
- (e) an offence against the repealed *Domestic Building Contracts Act 2000* or a law of another State or the Commonwealth that provides for the same matter as that Act or a provision of that Act; or
- (f) an offence, relating to the provision of services as an adjudicator, against a law applying, or that applied, in the State, the Commonwealth, another State or a foreign country.

**respondent** see section 17(1).

**review decision** see section 95(1).

**review notice** see section 95(2).

**scheduled amount** see section 18(2)(b).

**show cause notice** see section 78(2).

**show cause period** see section 78(3)(e).

**spent conviction** means a conviction—

- (a) for which the rehabilitation period under the *Criminal Law (Rehabilitation of Offenders) Act 1986* has expired under that Act; and
- (b) that is not revived as prescribed by section 11 of that Act.

***standard payment claim*** means a payment claim that is not a complex payment claim.

***tribunal*** means QCAT.

## 1 Index to endnotes

- 2 Key
- 3 Table of reprints
- 4 List of legislation
- 5 List of annotations

## 2 Key

### Key to abbreviations in list of legislation and annotations

Key	Explanation	Key	Explanation
<b>AIA</b>	= Acts Interpretation Act 1954	<b>(prev)</b>	= previously
<b>amd</b>	= amended	<b>proc</b>	= proclamation
<b>amdt</b>	= amendment	<b>prov</b>	= provision
<b>ch</b>	= chapter	<b>pt</b>	= part
<b>def</b>	= definition	<b>pubd</b>	= published
<b>div</b>	= division	<b>R[X]</b>	= Reprint No. [X]
<b>exp</b>	= expires/expired	<b>RA</b>	= Reprints Act 1992
<b>gaz</b>	= gazette	<b>reloc</b>	= relocated
<b>hdg</b>	= heading	<b>renum</b>	= renumbered
<b>ins</b>	= inserted	<b>rep</b>	= repealed
<b>lap</b>	= lapsed	<b>(retro)</b>	= retrospectively
<b>notfd</b>	= notified	<b>rv</b>	= revised version
<b>num</b>	= numbered	<b>s</b>	= section
<b>o in c</b>	= order in council	<b>sch</b>	= schedule
<b>om</b>	= omitted	<b>sdiv</b>	= subdivision
<b>orig</b>	= original	<b>SIA</b>	= Statutory Instruments Act 1992
<b>p</b>	= page	<b>SIR</b>	= Statutory Instruments Regulation 2012
<b>para</b>	= paragraph	<b>SL</b>	= subordinate legislation
<b>prec</b>	= preceding	<b>sub</b>	= substituted
<b>pres</b>	= present	<b>unnu</b>	= unnumbered
<b>prev</b>	= previous	<b>m</b>	

### 3 Table of reprints

A new reprint of the legislation is prepared by the Office of the Queensland Parliamentary Counsel each time a change to the legislation takes effect.

The notes column for this reprint gives details of any discretionary editorial powers under the

#### Reprints Act 1992

used by the Office of the Queensland Parliamentary Counsel in preparing it. Section 5(c) and (d) of the Act are not mentioned as they contain mandatory requirements that all amendments be included and all necessary consequential amendments be incorporated, whether of punctuation, numbering or another kind. Further details of the use of any discretionary editorial power noted in the table can be obtained by contacting the Office of the Queensland Parliamentary Counsel by telephone on 3003 9601 or email [legislation.queries@oqpc.qld.gov.au](mailto:legislation.queries@oqpc.qld.gov.au).

From 29 January 2013, all Queensland reprints are dated and authorised by the Parliamentary Counsel. The previous numbering system and distinctions between printed and electronic reprints is not continued with the relevant details for historical reprints included in this table.

Reprint No.	Amendments included	Effective	Notes
0A	none	1 July 2004	
1 rv	none	1 October 2004	Revision notice issued for R1
1A	2005 Act No. 33	18 August 2005	
1B	—	30 September 2005	certain provs commenced R1B withdrawn, see R2
2	—	30 September 2005	
2A	2009 Act No. 24	1 December 2009	
2B	2011 Act No. 45	1 September 2012	

Current as at	Amendments included	Notes
23 September 2013	2013 Act No. 39	
1 December 2013	2013 Act No. 38	RA s 44
15 December 2014	2014 Act No. 50 (amd RA s 44A) 2014 Act No. 65)	



<b>Current as at</b>	<b>Amendments included</b>	<b>Notes</b>
16 June 2015		provs exp 15 June 2015 RA s 26(1)
1 July 2015	2014 Act No. 57	RA ss 35, 44
16 December 2015		prov exp 15 December 2015

## 4 List of legislation

### **Building and Construction Industry Payments Act 2004 No. 6**

date of assent 20 May 2004

ss 1–2 commenced on date of assent

ss 9, 36–98, 104–106, 108–113, sch 2 commenced 1 July 2004 (2004 SL No. 91)

sch 1 amdts 1, 3 (to the extent it om def *building contract*), 4 (to the extent it ins def *building contract*), 5 of the Queensland Building Services Authority Act 1991 commenced 30 September 2005 (2005 SL No. 238)

remaining provisions commenced 1 October 2004 (2004 SL No. 186)

amending legislation—

### **Housing and Other Acts Amendment Act 2005 No. 33 s 1, pt 3**

date of assent 18 August 2005

sch 1 amdt 5 of the Queensland Building Services Authority Act 1991 commenced on date of assent

remaining provisions commenced on date of assent

### **Queensland Civil and Administrative Tribunal (Jurisdiction Provisions) Amendment Act 2009 No. 24 ss 1–2, ch 12 pt 2**

date of assent 26 June 2009

ss 1–2 commenced on date of assent

remaining provisions commenced 1 December 2009 (2009 SL No. 252)

### **Civil Proceedings Act 2011 No. 45 ss 1–2, 217 sch 1A**

date of assent 6 December 2011

ss 1–2 commenced on date of assent

remaining provisions commenced 1 September 2012 (2012 SL No. 146)

### **Queensland Building Services Authority Amendment Act 2013 No. 38 ss 1–2, 14 sch 1**

date of assent 29 August 2013

ss 1–2 commenced on date of assent

remaining provisions commenced 1 December 2013 (2013 SL No. 240)

### **Treasury and Trade and Other Legislation Amendment Act 2013 No. 39 ss 1, 111 sch 4**

date of assent 23 September 2013

commenced on date of assent

**Building and Construction Industry Payments Amendment Act 2014 No. 50 (this Act is amended, see amending legislation below)**

date of assent 26 September 2014

ss 1–2 commenced on date of assent

remaining provisions commenced 15 December 2014 (2014 SL No. 310)

amending legislation—

**Health and Other Legislation Amendment Act 2014 No. 65 ss 1–2(1), pt 2A (amends 2014 No. 50 above)**

date of assent 5 December 2014

ss 1–2 commenced on date of assent

remaining provisions commenced on date of assent (see s 2(1))

**Queensland Building and Construction Commission and Other Legislation Amendment Act 2014 No. 57 ss 1–2, 80 sch 1**

date of assent 27 October 2014

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 2015 (2015 SL No. 28)

## **5 List of annotations**

### **Application of Act**

s 3 amd 2013 No. 38 s 14 sch 1; 2014 No. 57 s 80 sch 1

### **Effect of giving notice of claim of charge under Subcontractors' Charges Act 1974**

s 4 amd 2014 No. 50 s 4

### **Meaning of construction work**

s 10 amd 2013 No. 38 s 14 sch 1

### **Due date for payment**

s 15 amd 2011 No. 45 s 217 sch 1A; 2013 No. 38 s 14 sch 1

### **Payment claims**

s 17 amd 2014 No. 50 s 5

### **Time requirements for payment claims**

s 17A ins 2014 No. 50 s 6

### **Payment schedules**

s 18 amd 2014 No. 50 s 7

### **Time requirements for payment schedules**

s 18A ins 2014 No. 50 s 8

### **Consequences of not paying claimant if no payment schedule**

s 19 sub 2014 No. 50 s 9

### **Consequences of not paying claimant under payment schedule**

s 20 amd 2014 No. 50 s 10

### **Notice required before starting particular proceedings**

s 20A ins 2014 No. 50 s 11

**Adjudication application**

s 21 amd 2014 No. 50 s 12

**Appointment of adjudicator**

s 23 amd 2014 No. 50 s 13

**Adjudication responses**

s 24 sub 2014 No. 50 s 14

**Time requirements for adjudication response**

s 24A ins 2014 No. 50 s 14

**Reply to new reasons for withholding payment**

s 24B ins 2014 No. 50 s 14

**Adjudication procedures**

s 25 sub 2014 No. 50 s 15

**Time requirements for adjudication proceedings**

s 25A ins 2014 No. 50 s 15

**Extension of time requirements by adjudicator**

s 25B ins 2014 No. 50 s 15

**Adjudicator's decision**

s 26 amd 2013 No. 38 s 14 sch 1

**Consequences of not paying claimant adjudicated amount**

s 30 amd 2014 No. 50 s 16

**Claimant may make new application in certain circumstances**

s 32 amd 2014 No. 50 s 17

**Claimant may suspend work**

s 33 amd 2014 No. 50 s 18

**Authorised nominating authority's fees**

s 34 om 2014 No. 50 s 19

**Adjudicator's fees**

s 35 amd 2014 No. 50 s 20

**Matters to be considered in deciding fees**

s 35A ins 2014 No. 50 s 21

**Withdrawing from adjudication**

s 35B ins 2014 No. 50 s 21

**PART 4—ADMINISTRATION**

**Appointment of registrar and staff of registry**

s 37 amd 2013 No. 38 s 14 sch 1

**Registrar's functions and powers**

s 38 amd 2013 No. 38 s 14 sch 1; 2014 No. 50 s 22

**Delegation by registrar**

s 39 amd 2014 No. 50 s 23

**Acting registrar**

s 40 amd 2013 No. 38 s 14 sch 1  
om 2014 No. 50 s 24

**Annual report on operation of Act and registry**

s 41 amd 2013 No. 38 s 14 sch 1; 2014 No. 50 s 25

**Division 2—Registration of authorised nominating authorities**

div 2 (ss 42–55) om 2014 No. 50 s 26

**Form of certificate of registration**

s 68 amd 2014 No. 50 s 27

**Division 4—Renewals of registrations of adjudicators**

div hdg amd 2014 No. 50 s 28

**Definitions for div 4**

s 69 def *registrant* sub 2014 No. 50 s 29(1)  
def *registration* sub 2014 No. 50 s 29(2)

**Division 5—Amendment of registrations of adjudicators**

div hdg amd 2014 No. 50 s 30

**Definitions for div 5**

s 73 def *registrant* sub 2014 No. 50 s 31(1)  
def *registration* sub 2014 No. 50 s 31(2)

**Division 6—Suspension or cancellation of registrations of adjudicators**

div hdg amd 2014 No. 50 s 32

**Definitions for div 6**

s 76 def *registrant* sub 2014 No. 50 s 33(1)  
def *registration* sub 2014 No. 50 s 33(2)

**Effect of suspension or cancellation of registration of adjudicator**

s 84 amd 2014 No. 50 s 34

**Issue of adjudication certificate by registrar**

s 85 om 2014 No. 50 s 34A

**Division 7—Other provisions about registrations of adjudicators**

div hdg amd 2014 No. 50 s 35

**Definitions for div 7**

s 86 def *registrant* sub 2014 No. 50 s 36(1)  
def *registration* sub 2014 No. 50 s 36(2)

**PART 5—REVIEW OF DECISIONS**

**Division 1—Internal review of decisions**

**Review decision**

s 95 amd 2009 No. 24 s 1648

**Stay of operation of decision**

s 96 amd 2009 No. 24 s 1649

**Division 2—External review of decisions**

div hdg sub 2009 No. 24 s 1650

**Who may apply to tribunal for an external review**

s 97 amd 2009 No. 24 s 1651

**Stay of operation of decision**

s 98 om 2009 No. 24 s 1652

**Effect of pt 3 on civil proceedings**

s 100 amd 2014 No. 50 s 37

**Queensland Building and Construction Board's policy**

s 101 sub 2014 No. 50 s 38

**Adjudicator must give information to registrar**

s 102 sub 2014 No. 50 s 39

**Evidentiary aids**

s 105 amd 2014 No. 50 s 40

**Protection from liability for adjudicators**

s 106 amd 2013 No. 38 s 14 sch 1

**Protection from liability for adjudicators**

s 107 amd 2014 No. 50 s 41

**Approved forms**

s 110 amd 2013 No. 38 s 14 sch 1

**Regulation-making power**

s 111 amd 2014 No. 50 s 41A

**PART 7—TRANSITIONAL PROVISIONS**

pt hdg amd 2014 No. 50 s 42

**Division 1—Transitional provision for Act No. 6 of 2004**

div hdg ins 2014 No. 50 s 43

**Division 2—Transitional provisions for Building and Construction Industry Payments Amendment Act 2014**

div hdg ins 2014 No. 50 s 44 (amd 2014 No. 65 s 15B)

**Definitions for div 2**

s 113 ins 2014 No. 50 s 44 (amd 2014 No. 65 s 15B)

**Registration of authorised nominating authorities**

s 114 ins 2014 No. 50 s 44 (amd 2014 No. 65 s 15B)

**Adjudication applications made to authorised nominating authorities for referral to adjudicators**

s 115 ins 2014 No. 50 s 44 (amd 2014 No. 65 s 15B)

**Outstanding matters for existing payment claims to be dealt with under transitional version of the Act**

s 116 ins 2014 No. 50 s 44 (amd 2014 No. 65 s 15B)

**New payment claims for existing contracts transitioned to new time requirements**

s 117 ins 2014 No. 50 s 44 (amd 2014 No. 65 s 15B)

exp 15 June 2015 (see s 117(3))

**Previously expired payment claims not revived by new section 17A**

s 118 ins 2014 No. 50 s 44 (amd 2014 No. 65 s 15B)

**Transitional regulation-making power**

s 119 ins 2014 No. 50 s 44 (amd 2014 No. 65 s 15B)

exp 15 December 2015 (see s 119(3))

**Mandatory training about adjudication changes**

s 120 ins 2014 No. 50 s 44 (amd 2014 No. 65 s 15B)

exp 15 June 2015 (see s 120(2))

**SCHEDULE 1—AMENDMENTS OF ACTS**

amd 2005 No. 33 s 13

**SCHEDULE 2—DICTIONARY**

def *adjudication certificate* sub 2014 No. 50 s 45(1)–(2)

def *adjudication fees* sub 2014 No. 50 s 45(1)–(2)

def *adjudication response* amd 2014 No. 50 s 45(3)

def *approved form* amd 2013 No. 38 s 14 sch 1

def *authorised nominating authority* om 2014 No. 50 s 45(1)

def *authority* om 2013 No. 38 s 14 sch 1

def *business day* amd 2013 No. 39 s 111 sch 4

sub 2014 No. 50 s 45(1)–(2)

def *claimant's reply* ins 2014 No. 50 s 45(2)

def *commission* ins 2013 No. 38 s 14 sch 1

def *commissioner* ins 2013 No. 38 s 14 sch 1

def *complex payment claim* ins 2014 No. 50 s 45(2)

def *domestic building work* sub 2014 No. 57 s 80 sch 1

def *general manager* om 2013 No. 38 s 14 sch 1

def *home* ins 2014 No. 57 s 80 sch 1

def *relevant offence* amd 2013 No. 38 s 14 sch 1; 2014 No. 50 s 45(4); 2014 No. 57 s 80 sch 1

def *standard payment claim* ins 2014 No. 50 s 45(2)

def *tribunal* sub 2009 No. 24 s 1653

© State of Queensland 2015

Authorised by the Parliamentary Counsel