



ANNO VICESIMO TERTIO

ELIZABETHAE SECUNDAE REGINAE

No. 37 of 1974

**An Act to make better provision for securing the payment of
money payable to subcontractors and for other purposes**

[ASSENTED TO 2ND MAY, 1974]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows:—

1. Short title. This Act may be cited as the *Subcontractors' Charges Act 1974*.

2. Commencement. This Act shall commence on and from 1st July 1974.

3. Interpretation. (1) In this Act save where a contrary intention appears—

“charge” means a charge under this Act;

“contract price” includes the money payable for the performance of work under a contract or subcontract, express or implied, whether or not the price is fixed by express agreement;

“contractor” as regards an employer, means a person who contracts directly with the employer to perform work: as regards a subcontractor, means a person with whom the subcontractor contracts to perform work;

“ Court ” means a Magistrates Court within the meaning of *The Magistrates Courts Acts 1921 to 1964*;

“ employer ” means a person who contracts with another person for the performance of work by that other person, or at whose request or on whose credit or behalf, with his privity and consent, work is done: the term includes all persons claiming under him whose rights are acquired after the work is commenced, and in relation to a subcontractor includes the contractor or other subcontractor with and under whom he has contracted, but a mortgagee who advances money to an employer shall not be deemed to be an employer by reason thereof;

“ person ” includes an unincorporated association;

“ retention money ” means any part of the contract price retained after the completion of the work the subject of a contract or subcontract as security for rectification of defects in the work during the period of maintenance provided for by the contract or subcontract or to be payable after such rectification or on the expiration of such period of maintenance;

“ subcontractor ” means a person who contracts with a contractor or with another subcontractor for the performance of work;

“ work ” includes work or labour, whether skilled or unskilled, done or commenced by a person of any occupation in connexion with—

- (a) the construction, decoration, alteration or repair of a building or other structure upon land;
- (b) the development or working of a mine, quarry, sand-pit, drain, embankment or other excavation in or upon land;
- (c) the placement, fixation or erection of materials, plant or machinery used or intended to be used for a purpose specified in subparagraph (a) or (b);
- (d) the alteration or improvement of a chattel:

the term includes also the supply of materials used or brought on premises to be used by a subcontractor in connexion with other work the subject of his contract or subcontract but does not include—

 - (i) the mere delivery of goods sold by a vendor under a contract for the sale of goods, to at or upon land;
 - (ii) work or labour done or commenced by a person under a contract of service;
 - (iii) the supply under a contract of hire of materials, plant or machinery not intended to be incorporated in the work.

(2) In this Act save where a contrary intention appears—

- (a) references to the amount of money payable under a contract or subcontract shall be deemed to include all amounts that, under the contract or subcontract, are to be credited or allowed in complete or partial satisfaction of the contract price otherwise than upon payment in money, and references to the payment of any moneys in reduction of the contract price shall include amounts so credited or allowed;

- (b) references to completion of the work specified in a contract shall be deemed to include completion of the work—
 - (i) by the contractor;
 - (ii) by a person authorized by the contractor; or
 - (iii) by a subcontractor who has given notice of a charge in respect of the contract or of a subcontract under the contract;
- (c) references to completion of the work specified in a subcontract let by a contractor under a contract shall be deemed to include completion of the work—
 - (i) by the contractor;
 - (ii) by the subcontractor;
 - (iii) by a person authorized by the contractor or subcontractor; or
 - (iv) by a subcontractor who has given notice of a charge in respect of the contract, subcontract or any other subcontract under the contract.

(3) For the purposes of this Act the work specified in a contract or subcontract shall be deemed to be completed when, with such variations, omissions or deductions as have been duly authorized or agreed upon, it has been performed in accordance with the contract or subcontract, notwithstanding that the contractor or subcontractor—

- (a) may then or subsequently be employed in doing additional or extra work that is connected with or related to the work but is not specified in the contract or subcontract; or
- (b) may be liable to rectify defects in the work discovered since the performance thereof and during a period of maintenance provided for by the contract or subcontract.

4. Crown bound. This Act binds the Crown.

5. Charges in favour of subcontractors. (1) Where an employer contracts with a contractor for the performance of work upon or in respect of land or a building, or other structure or permanent improvement upon land or a chattel, every subcontractor of the contractor shall be entitled to a charge on the money payable to the contractor or a superior contractor under his contract or subcontract.

(2) The charge of a subcontractor shall secure payment in accordance with his subcontract of all money that is payable or is to become payable to him for work done by him under the subcontract.

(3) The total amount recoverable under the charges of subcontractors shall not exceed the amount payable to the contractor or subcontractor under his contract or subcontract, as the case may be.

6. Inclusion of certain money in amount payable to contractor or subcontractor. For the purposes of the charge of a subcontractor the amount of money payable to the contractor or subcontractor by whom the first-mentioned subcontractor is employed or to a superior contractor, under his contract or subcontract, shall be deemed to include all money paid in reduction of the contract price to a person other than the subcontractor claiming the charge unless that money is paid in good faith and not for the purpose of defeating or impairing a claim to a charge existing or arising under this Act and is paid otherwise than in contravention of section 11.

7. Assignments and the like void against subcontractors' charges.

(1) An assignment, disposition or charge of any kind that is made or given by a contractor or subcontractor (otherwise than to his workers for wages due to them in respect of his contract or subcontract) of or upon money that is or is to become payable to him under his contract or subcontract shall have no force or effect as against the charge of a subcontractor.

(2) Subject to this Act, money that is or is to become payable to a contractor or subcontractor shall not be attached or passed or charged by operation of law so as to defeat or impair the charge of a subcontractor.

8. Insufficiency of money to meet claims. Where the money that is or is to become payable under the contract is insufficient to meet the claims of two or more subcontractors any insufficiency shall be borne by them in proportion to the amounts of their claims.

9. Transmission and assignment of charges. (1) Where the debt secured by a charge passes to another person upon the death or bankruptcy of the person entitled to the charge, or otherwise by operation of law, the right to the charge passes with that debt.

(2) A charge may be assigned together with the debt secured thereby.

10. Notice of claim of charge. (1) A subcontractor who intends to claim a charge on money payable under the contract to his contractor or to a superior contractor—

(a) shall give notice to the employer or superior contractor by whom the money is payable, specifying the amount and particulars of his claim and stating that he requires the employer or superior contractor, as the case may be, to take the necessary steps to see that it is paid or secured to the subcontractor; and

(b) shall give notice of having made the claim—

(i) to the contractor to whom the money is payable;

(ii) to every other person who to his knowledge would but for the claim be entitled to receive any money payable to that contractor; and

(iii) to a Court within the Magistrates Courts District within which or within 35 kilometres of the boundary of which work the subject of the charge is performed or where that work is performed in the City of Brisbane to a Court within that City.

The claim shall be in respect of—

(a) money payable to him at the date of the notice;

(b) money to become payable to him after the date of the notice for work done by him prior to that date.

(2) A notice of claim of charge may be given although the work is not completed or the time for payment of the money in respect of which the charge is claimed has not arrived, but where the work is completed shall be given within 30 days after such completion.

(3) A notice of claim of charge in respect of retention money only may be given at any time while work under the contract is being performed but shall be given within one month after the expiration of the period of maintenance provided for by the contract and no later.

(4) If notice is not given pursuant to this section, the charge shall not attach.

(5) A notice of claim of charge may be in the prescribed form, but the validity of the notice is not affected by any inaccuracy or want of form if the money sought to be charged and the amount of the claim can be ascertained with reasonable certainty from the notice.

(6) A notice required to be given under this section shall be duly given if—

- (a) it is served personally upon the person to whom it is directed;
- (b) it is left at the place of abode or business of the person to whom it is directed last known to the person who gives it;
- (c) it is sent by registered post to the place of abode or business of the person to whom it is directed last known to the person who gives it.

11. Consequences of notice of claim of charge. (1) Where a notice of claim of charge is given pursuant to section 10, the person to whom it is given shall retain, until the Court in which the claim is heard directs to whom and in what manner the same is to be paid, a sufficient part of the money that is or is to become payable by him under his contract to satisfy the claim.

(2) A person who fails to retain the amount that he is required to retain shall be personally liable to pay to the subcontractor the amount of his claim not exceeding the amount that he is required by this section to retain.

(3) Where notice of having made the claim is given pursuant to section 10, the contractor to whom the money is payable, within seven days after the notice is given—

- (a) shall give notice in the prescribed form that he accepts liability to pay the amount claimed; or
- (b) shall give notice in the prescribed form that he disputes the claim—
 - (i) to the employer or superior contractor by whom the money is payable;
 - (ii) to the subcontractor giving the notice of claim of charge; and
 - (iii) to a Court within the Magistrates Courts District within which or within 35 kilometres of the boundary of which work the subject of the charge is performed or where that work is performed in the City of Brisbane to a Court within that City.

(4) Where notice is given pursuant to subparagraph (a) of subsection (3), the employer or superior contractor by whom the money is payable may pay to the subcontractor the amount he is required to retain.

(5) An employer or superior contractor may, at any time after notice of claim of charge has been given to him, pay into Court the amount that he is required to retain under this section.

(6) A payment made pursuant to this section shall discharge the employer or superior contractor, as the case may be, of all further liability in respect of the amount paid and of the costs of any proceeding.

(7) Money paid into Court under this section shall not be paid out save under an order of the Court.

(8) A contractor to whom a notice of claim of charge is given who does not give notice in accordance with subsection (3) shall be deemed to have accepted liability to pay the amount claimed by the subcontractor.

12. Enforcement of charge. (1) Where the person to whom notice of claim of charge has been given does not pay or make satisfactory arrangements for paying to the claimant the amount claimed, the subcontractor may recover the amount of the charge from the person by whom the money subject to the charge is payable.

(2) Claims and all other matters arising under this Act between a person claiming a charge and any other person alleged to be liable to pay an amount claimed or otherwise interested in money that may be affected by a charge or claim of charge and between persons or classes of persons claiming a charge may be heard, determined and enforced by proceedings in the Court and, save as is otherwise expressly provided in this Act, the jurisdiction with which the Court is invested for the purposes of this Act is invested within the limits (other than limits as to amount) of its jurisdiction.

(3) (a) An action to enforce a charge under this Act may be brought by or on behalf of any number of subcontractors claiming charges.

(b) Every action brought by a subcontractor to enforce a charge shall be deemed to be brought on behalf also of every other subcontractor claiming a charge who in accordance with rules of the Court and this Act becomes a party to the action. Subject to any rules of the Court, every such subcontractor may become a party at any time before the date appointed for the hearing or any adjournment thereof (whether or not he has given a notice of claim of charge) by filing in the Court and serving on all other parties in the same manner as if he were commencing the action a statement of claim endorsed with a request that he be joined as a party in the proceeding.

13. Consolidation of actions. Where separate actions are brought under this Act against the same person or against several persons in respect of the whole or any part of the work specified in the same contract between the employer and the contractor, the Court may order those actions to be consolidated on such terms as it thinks just.

14. Application of practice of the Court. Unless otherwise expressly provided in this Act, the practice of the Court shall apply in proceedings under this Act.

15. Proceedings in respect of charges. (1) A proceeding in respect of a charge under this Act—

- (a) in the case of a claim of charge in respect of retention money only, shall be commenced within two months after such retention money or the balance thereof is payable and no later;

(b) in all other cases, shall be commenced within 21 days after notice of claim of charge has been given pursuant to section 10 and no later;

(c) shall be brought by way of action.

(2) For the purposes of a proceeding under this section, it shall be sufficient if the subcontractor proves that the charge in respect of which the proceeding is brought attached to money payable on any date prior to the date of hearing.

(3) Every charge shall be deemed to be extinguished unless the subcontractor duly commences a proceeding under this section to enforce it.

16. Service of documents. An originating process or application pursuant to this Act may be served by delivering a copy thereof to each of the persons to whom it is directed or his authorized agent, or in a case where a person to whom that process or application is directed or his authorized agent cannot after reasonable enquiry be found, by affixing it in or on some conspicuous place on the land where the work out of which the claim or dispute arises was done.

A process or application shall be served at least 7 days before the date appointed for the hearing.

17. Power to proceed in absence of person against whom proceedings brought. The Court may proceed to hear and determine an action or a dispute in the absence of any person to whom an originating process or application is directed upon proof on oath of the service thereof in accordance with section 16.

18. Costs. Costs of proceedings under this Act as between party and party shall be in the discretion of the Court.

19. Appeal. An appeal lies from a decision of the Court given in any proceeding under this Act as if it were a decision given in a proceeding brought otherwise than under this Act.

20. Effect of payment made under order of the Court. A payment of money by a person to another person in compliance with an order of the Court made under this Act shall be to the extent of the amount paid, a sufficient discharge to the person making the payment of his liability to pay the money so paid under that order to the person who, but for that order, would have been entitled to receive from him payment of that money.

21. Application to Court by person prejudicially affected. (1) A person who alleges that he is prejudicially affected by a claim of charge under this Act may at any time make application to the Court for an order—

(a) that the claim be cancelled; or

(b) that the effect of the claim be modified.

(2) The Court shall hear and determine summarily an application made pursuant to this section and may make such order as it thinks fit.

22. Vexatious notice of claim. (1) A person who vexatiously or without reasonable grounds gives a notice of claim of charge is liable to pay to a person prejudicially affected thereby such damages as he sustains in consequence thereof.

(2) Damages pursuant to subsection (1) shall be determined and fixed by the Court on an application by the person prejudicially affected.

23. Savings. Save as is otherwise expressly provided, nothing in this Act shall be construed to affect the right of a person to whom a debt is due and owing for work done to maintain a personal action to recover the debt against the person liable for it, and a judgment obtained by the plaintiff in any action brought shall not affect a charge or other right to which he is entitled under this Act.

24. Contracting out. A contract or agreement by an employer or a contractor or subcontractor that, if it were valid, would have the effect of disentitling him to the benefits conferred by this Act shall to that extent be void.

25. Regulations. The Governor in Council may make regulations not inconsistent with this Act for or in respect of all matters required or permitted by this Act to be prescribed and all matters that are necessary or convenient for the proper administration of this Act or to achieve the objects and purposes of this Act.