



ANNO VICESIMO QUINTO

ELIZABETHAE SECUNDAE REGINAE

No. 38 of 1976

**An Act to amend the Subcontractors' Charges Act 1974 in
certain particulars**

[ASSENTED TO 5TH MAY, 1976]

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 and citation. (1) This Act may be cited as the *Subcontractors' Charges Act Amendment Act 1976*.

(2) The *Subcontractors' Charges Act 1974* is in this Act referred to as the Principal Act.

(3) The Principal Act as amended by this Act may be cited as the *Subcontractors' Charges Act 1974–1976*.

2. Commencement. This Act shall commence on a date appointed by Proclamation.

3. Amendment of s. 3. Section 3 of the Principal Act is amended by—

(a) in subsection (1),

(i) omitting the definition "Court" and substituting the following definition:—

" "Court" means the Court in which a proceeding may be taken pursuant to this Act and includes a Judge of the Supreme Court, District Court Judge or, as the case requires, a Stipendiary Magistrate; "

(ii) in the definition "retention money" inserting after the word "retained" the words "during the progress or";

(iii) in the definition "work",

(A) inserting after the word "commenced" where it firstly occurs the words "upon the land where the contract or subcontract is being performed";

(B) in subparagraph (d), omitting provision (ii) and substituting the following provision:—

" (ii) work or labour done or commenced by a person—

(A) under a contract of service;

(B) in connexion with the testing of materials or the taking of measurements or quantities; "

(b) in subsection (2), omitting subparagraphs (b) and (c) and substituting the following subparagraph:—

" (b) references to completion of the work specified in a subcontract let by a contractor under a contract shall be deemed to mean completion of the work by a subcontractor who has given notice of a charge in respect of the contract, subcontract or any other subcontract under the contract."

4. Amendment of s. 4. Section 4 of the Principal Act is amended by—

(a) numbering the present section as subsection (1);

(b) inserting after subsection (1) as so numbered the following subsection:—

" (2) Notwithstanding *The Claims Against Government Act*, a proceeding under this Act against the Crown may be brought against the Permanent Head of the Department concerned in the name of the office he occupies as such Permanent Head.

Where it is proposed to institute a proceeding under this Act against a Permanent Head, he shall for the purposes of that proceeding be deemed to be the nominal defendant duly appointed under *The Claims Against Government Act* and the provisions of that Act shall apply in respect of that proceeding."

5. New s. 7A. The Principal Act is amended by inserting after section 7 the following section:—

" **7A. Schemes of arrangement binding on subcontractors.** Notwithstanding this Act—

(a) any compromise or arrangement approved under section 181 of the *Companies Act* 1961–1975;

- (b) any composition under Part X of the *Bankruptcy Act* 1966–1973 of the Commonwealth as amended or any Act in substitution therefor,

shall be binding on a subcontractor entitled to a charge on the money payable under a contract or subcontract to a person who has entered into the compromise or arrangement or, as the case may be, composition.”.

6. **New s. 9A.** The Principal Act is amended by inserting after section 9, the following section:—

“9A. **Contractor to furnish information as to employer.** (1) Upon demand made in writing by a subcontractor, the contractor or superior contractor shall forthwith furnish to the subcontractor the name of his employer and the addresses of the employer's place of residence and registered place of business, if any.

(2) A contractor or superior contractor who fails without reasonable cause proof of which shall lie upon him to furnish to a subcontractor the information specified in subsection (1) is liable to pay to that subcontractor such damages as he sustains in consequence of such failure.

Damages pursuant to this subsection shall be determined and fixed by the Court on the application of the subcontractor concerned.”.

7. **Amendment of s. 10.** Section 10 of the Principal Act is amended by—

(a) in subsection (1),

(i) in subparagraph (a), inserting after the word “claim” the words “certified as prescribed by a qualified person”;

(ii) omitting subparagraph (b) and substituting the following subparagraph:—

“(b) shall give notice of having made the claim to the contractor to whom the money is payable.”;

(b) in subsection (2), omitting the expression “30 days” and substituting the words “three months”;

(c) in subsection (3), omitting the words “one month” and substituting the words “three months”;

(d) omitting subsection (6) and substituting the following subsection:—

“(6) A claim—

(a) that is not certified in accordance with subsection (1); or

(b) that is supported by a certificate given by a person in contravention of subsection (2) of section 10A,

shall not be a valid claim for the purposes of this section and a notice of claim of charge based on such a claim shall be of no force or effect.”.

8. **New s. 10A.** The Principal Act is amended by inserting after section 10 the following section:—

“10A. **Qualified persons.** (1) A person is a qualified person for the purpose of certifying a claim under section 10 if he is—

(a) an architect registered in accordance with the *Architects Act* 1962–1971;

- (b) a professional engineer registered in accordance with the *Professional Engineers Act* 1929–1973;
- (c) the holder of a current certificate of competency as an engineer issued under the Local Authority Engineers and Overseers of Works Regulations made pursuant to the *Local Government Act* 1936–1975;
- (d) a builder registered under the *Builders' Registration Act* 1971–1973 or any other Act relating to the registration of builders;
- (e) a quantity surveyor who is a member of the Australian Institute of Quantity Surveyors;
- (f) a person having expert knowledge of the work to which the claim relates who is accepted in a particular case as a qualified person by the contractor and subcontractor.

(2) A person shall not give a certificate with respect to a claim that relates to any work in respect of which he has directly or indirectly a specific interest.

(3) A person who gives a certificate with respect to a claim shall not incur liability by reason only of the giving of that certificate unless in relation thereto he is guilty of fraud, wilful misconduct or wilful neglect.”.

9. Amendment of s. 11. Section 11 of the Principal Act is amended by—

(a) omitting subsection (3) and substituting the following subsection:—

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

in either case,

- (i) to the employer or superior contractor by whom the money is payable; and
- (ii) to the subcontractor giving notice of claim of charge.”;

(b) in subsection (4), omitting the word “may” and substituting the word “shall”;

(c) omitting subsection (8) and substituting the following subsection:—

“(8) A subcontractor may at any time withdraw a notice of claim of charge given pursuant to section 10 by giving a notice in the prescribed form—

- (a) to the employer or superior contractor by whom the money is payable; and
- (b) to the contractor to whom the money is payable.”.

10. Amendment of s. 12. Section 12 of the Principal Act is amended by—

(a) in subsection (2), omitting all words from and including the words “in the Court” to the end of the subsection and substituting the words “pursuant to this Act in a Court of competent civil jurisdiction.”;

(b) inserting after subsection (2) the following subsection:—

“(2A) Notwithstanding subsection (2), the Supreme Court shall have jurisdiction in all matters arising under this Act.”;

(c) in subsection (3), in paragraph (b), omitting the words “claiming a charge” and substituting the words “who has given notice of claim of charge pursuant to section 10 and”.

11. Amendment of s. 14. Section 14 of the Principal Act is amended by inserting after the word “Court” the words “in its civil jurisdiction”.

12. Amendment of s. 15. Section 15 of the Principal Act is amended by—

(a) in subsection (1),

(i) in subparagraph (a), omitting the word “two” and substituting the word “four”;

(ii) in subparagraph (b), omitting the expression “21 days” and substituting the words “two months”.

13. New s. 16A. The Principal Act is amended by inserting after section 16 the following section:—

“**16A. Service of notice or other writings.** A notice or other writing required or authorized to be given pursuant to this Act 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 residence or registered place of 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 residence or registered place of business of the person to whom it is directed last known to the person who gives it.”.

14. Savings. (1) Subject to subsections (2) and (3), this Act does not affect any proceedings pursuant to the Principal Act pending in the Magistrates Court at the commencement of this Act and those proceedings may be continued and completed as if this Act had not commenced.

(2) A party to any proceedings pursuant to the Principal Act pending in the Magistrates Court at the commencement of this Act that might have been brought in the Supreme Court or a District Court if this Act had been in force at the time those proceedings were brought—

(a) may, in the case of any such proceedings, apply to a Judge of the Supreme Court for an order removing the proceedings into the Supreme Court;

(b) may, in the case of proceedings in which the District Court would have had jurisdiction if this Act had been in force at the time the proceedings were brought, apply to a Judge of District Courts for an order removing the proceedings into a District Court.

(3) If it appears to the Judge to whom an application is made pursuant to subsection (2) that the proceedings are such as ought to be heard and determined in the Supreme Court or, as the case may be, a District Court the Judge may make an order accordingly.

- (4) Upon the making of an order pursuant to subsection (3)—
- (a) the Magistrates Court in which the proceedings in respect of which the order was made are pending shall not have jurisdiction to hear and determine those proceedings;
 - (b) the proceedings in respect of which the order was made shall thereupon be removed into the Supreme Court or, as the case may be, District Court according to the order;
 - (c) the Supreme Court or, as the case may be, District Court shall have jurisdiction to hear and determine the proceedings in respect of which the order was made in accordance with the rules of that Court as if those proceedings had been duly brought in that Court in the first instance.