

# **BUILDING AND CONSTRUCTION INDUSTRY PAYMENTS BILL 2003**

## **EXPLANATORY NOTES**

### **SHORT TITLE**

Building and Construction Industry Payments Bill 2003.

### **GENERAL OUTLINE**

#### **Objectives of the Legislation**

The objective of the legislation is to entitle certain persons who carry out construction work (or who supply related goods or services) to a timely payment for the work they carry out and the goods and services they supply.

This will be achieved through establishing a procedure for securing progress payments to which a person becomes entitled under this Bill.

#### **Reasons for the objectives and how they will be achieved**

Security of payment has been an issue in the building and construction industry over many decades. Recently the Royal Commission into the Building and Construction Industry (the Royal Commission) flagged security of payment as a significant industry matter requiring Federal legislation where specific State legislation appears to be deficient. It also found that traditional remedies under Commonwealth Corporations Law, common law and contract law were not sufficient to address the issue.

The building and construction industry is particularly vulnerable to security of payment issues because it typically operates under a hierarchical chain of contracts with inherent imbalances in bargaining power. The failure of any one party in the contractual chain to honour its obligations can cause a domino effect on other parties resulting in restricted cash flow, and in some cases, insolvency.

The Bill establishes a statutory based system of rapid adjudication for the interim resolution of payment on account disputes involving building and construction work contracts.

Rapid adjudication will be conducted by an independent adjudicator with relevant expertise. If the decision of the adjudicator is in whole, or in part, in favour of the applicant, the respondent is required to pay the specified amount directed by the adjudicator to the applicant. Decisions by the adjudicator are enforceable as a judgement debt.

Rapid adjudication does not extinguish a party's ordinary contractual rights to obtain a final resolution of a payment dispute by a court or tribunal of competent jurisdiction.

The adjudication process will cover all forms of construction contracts other than contracts for the carrying out of domestic building work where an ordinary "resident owner" is a party to the contract.

### **Administrative cost to Government of implementation**

Private providers will conduct the adjudication on a user pays basis. The Queensland Building Services Authority will provide registry services for the adjudication process and also be responsible for registering adjudicators and organisations (Authorised Nominating Authorities) that appoint adjudicators.

### **Consistency with Fundamental Legislative Principles**

This Bill is consistent with the fundamental legislative principles specified in the Legislative Standards Act 1992. While rapid adjudication allows for a dispute to be resolved about payments on account on an interim basis without recourse to normal court processes, it does not extinguish a party's ordinary contractual rights to obtain a final resolution of a payment dispute by a court or tribunal of competent jurisdiction.

## **CONSULTATION**

### **Community**

Extensive consultation was undertaken with industry stakeholders throughout Queensland. This consultation included a Statewide series of meetings with relevant stakeholders, the release of two discussion papers

and articles in the Queensland Building Services Authority quarterly journal.

## **Government**

Consultations in the preparation of the Bill were conducted with representatives from the Department of the Premier and Cabinet, Department of State Development, Queensland Treasury, Department of Justice and Attorney-General, Department of Public Works, Office of the Queensland Parliamentary Council, Department of Tourism, Racing and Fair Trading, Department of Industrial Relations, Department of Transport, Department of Main Roads, Department of Local Government and Planning, Department of Emergency Services, Department of Housing and Department of Employment and Training.

# **NOTES ON PROVISIONS**

## **PART 1—PRELIMINARY**

### *Division 1—Introduction*

*Clause 1 Short Title:* Sets out the short title as the *Building and Construction Industry Payments Act 2003*.

*Clause 2 Commencement:* Provides for the commencement of the proposed Bill on a date to be fixed by proclamation.

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

*Clause 3 Application of Act:* Provides for the application of the Bill to all construction contracts, whether written or oral, or partly written and

partly oral. Certain classes of contract are excluded from the Bill, as are certain classes of contractual provision.

**Clause 4 Effect of giving notice of claim of charge under Subcontractors' Charges Act 1974:** Provides that a person who 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, may not under Part 3 of the Bill, start or continue proceedings or another action in relation to all or part of the construction work or related goods and services.

However, a person may serve a payment claim under Part 3 of the Bill in relation to the construction work or related goods and services the subject of a construction contract, if the notice of claim of charge under the *Subcontractors' Charges Act 1974* is withdrawn.

**Clause 5 Act does not limit claimant's other rights:** Provides that a claimant's entitlements and remedies under this Bill do not limit entitlements and remedies under a construction contract.

**Clause 6 Act binds all persons:** Provides that the Bill is to bind all persons including the State and so far as the legislative power of the Parliament permits, the Commonwealth and the other States.

### ***Division 3—Object of Act***

**Clause 7 Object of Act:** Sets out the objects of the Bill.

**Clause 8 How object is to be achieved:** Sets out how the objects of the Bill are to be achieved. These include granting a statutory entitlement to progress payments and establishing relevant procedures.

### ***Division 4—Interpretation***

**Clause 9 Definitions:** Provides that schedule 2 of the Bill defines particular words that are used in the Bill.

**Clause 10 Meaning of "construction work":** Defines the expression *construction work* for the purposes of the Bill. The definition of construction work also includes building work within the meaning of the *Queensland Building Services Authority Act 1991*.

*Clause 11 Meaning of "related goods and services":* Defines the expression *related goods and services* for the purposes of the Bill.

## **PART 2—RIGHTS TO PROGRESS PAYMENTS**

*Clause 12 Rights to progress payments:* Provides that from each reference date, a person who has undertaken to carry out construction work, or to supply related goods and services, becomes entitled to a progress payment.

*Clause 13 Amount of progress payment:* Provides for the amount of a progress payment to be ascertained in accordance with the terms of the construction contract or, if the contract contains no such terms, according to the value of construction carried out, or related goods and services supplied, under the contract.

*Clause 14 Valuation of construction work and related goods and services:* Provides for the manner in which the value of construction work carried out, or related goods and services supplied, under a construction contract is to be valued.

*Clause 15 Due date for payment:* Provides that a progress payment becomes due and payable in accordance with the terms of the construction contract or, if the contract contains no such terms, or it contains a void payment provision, at the end of 10 business days after a progress claim is made in relation to that payment under Part 3 of the Bill.

*Clause 16 Effect of "pay when paid" provisions:* Provides that a "pay when paid" provision of a contract has no effect in relation to construction work carried out, or related goods and services supplied, under a construction contract. A "pay when paid" provision is a provision that makes one person's payment dependent on another person's payment or dependent on the operation of another contract.

## **PART 3—PROCEDURE FOR RECOVERING PROGRESS PAYMENTS**

### ***Division 1—Payment claims and payment schedules***

**Clause 17 Payment claims:** Enables a person who is entitled to a progress payment under Part 2 (the claimant) to serve a payment claim on the person who is liable to make the payment. The claim will set out the amount to which the claimant claims entitlement.

**Clause 18 Payment schedules:** Enables a person on whom a payment claim is made (the respondent) to reply to the claim by providing a payment schedule to the claimant. The schedule must set out how much the respondent proposes to pay the claimant and if the amount is less than the claimed amount, any reason for withholding payment.

**Clause 19 Consequences of not paying claimant if no payment schedule:** Provides that a claimant will be able to recover the unpaid portion of the claimed amount as a debt, or make an adjudication application. A claimant may suspend carrying out construction work, or supplying related goods and services, if the respondent fails to provide a payment schedule within the time allowed. If a claimant commences proceedings to recover the unpaid portion of the claimed amount from the respondent as a debt, the respondent is not in those proceedings entitled to bring any counterclaim against the claimant or raise any defence in relation to matters raised under the contract.

**Clause 20 Consequences of not paying claimant under payment schedule:** Provides that a claimant will be able to recover the unpaid portion set out in the respondent's payment schedule or make an adjudication application. A claimant may suspend carrying out construction work, or supplying related goods and services, where the respondent provides a payment schedule within the time allowed for but fails to pay that amount by the due date.

### ***Division 2—Adjudication of disputes***

**Clause 21 Adjudication application:** Enables a claimant to apply for adjudication of the amount of a progress payment payable in the event that:

- (i) the amount set out in the respondent's payment schedule is less than the amount set out in the claimant's payment claim;
- (ii) the respondent fails to pay the whole or any part of the scheduled amount; or
- (iii) the respondent fails to provide a payment schedule and fails to pay the whole or any part of the claimed amount.

The application will have to be made within:

- (i) 10 business days after the claimant receives a payment schedule where the scheduled amount indicated is less than the claimed amount;
- (ii) 20 business days after the due date for payment where the respondent fails to pay the whole or any part of the scheduled amount by the due date for payment; or
- (iii) where the respondent fails to provide a payment schedule and fails to pay the whole or any part of the claimed amount, the claimant must notify the respondent within 20 business days immediately following the due date for payment of their intention to apply for adjudication of the payment claim. The respondent is then given another opportunity to provide a payment schedule to the claimant within 5 business days after receiving the claimant's notice. The claimant may make an application within 10 business days after the end of the 5 day period during which the respondent had another opportunity to provide a payment schedule.

An adjudication application is made to an authority registered to nominate adjudicators for the purposes of the Bill.

**Clause 22 When person may be an adjudicator:** Requires an adjudicator to be registered as an adjudicator under this Bill, and prohibits a person from being an adjudicator in relation to a particular construction contract if the person is a party to the contract or in such circumstances as are prescribed by regulation.

**Clause 23 Appointment of adjudicator:** Provides that the appointment of an adjudicator is effected by the adjudicator causing notice of their acceptance of the adjudication application to be served on the claimant and the respondent.

**Clause 24 Adjudication responses:** Enables the respondent to lodge with an adjudicator a response to the claimant's adjudication application

only if the respondent has provided a payment schedule to the claimant within the time specified.

The adjudication response must be in writing, identify the adjudication application to which it relates and may contain the submissions relevant to the response that the respondent chooses to include.

**Clause 25 Adjudication procedures:** Sets out the manner in which, and the time within which, an adjudicator is to determine an adjudication application. The clause also provides for how a proceeding for an adjudication application may be conducted.

**Clause 26 Adjudicator's decision:** Provides that the adjudicator is to determine an adjudication application by determining the amount of the progress payment to be paid, the date on or before which it must be paid and the rate of interest payable on any such amount.

In determining an adjudication application, the adjudicator is only to consider the provisions of this Bill and to the extent they are relevant, provisions of the *Queensland Building Services Authority Act 1991*, Part 4A, the construction contract, the payment claim together with all submissions duly made, the payment schedule together with all submissions duly made and the results of any inspection carried out.

The adjudicator's decision must be in writing and include the reasons for the decision unless the claimant and the respondent have both requested the adjudicator not to include the reasons in the decision.

**Clause 27 Valuation of work etc. in later adjudication application:** Applies in the situation where an adjudicator has previously decided the value of any construction work under a construction contract or the value of any related goods and services supplied under a construction contract.

Subject to one exception, the clause provides that the adjudicator, or another adjudicator, must in any later adjudication application that involves the working out of the value of the same work or the same goods and services, give the work or the goods and services the same value as that previously decided. The exception is where the respondent satisfies the adjudicator concerned that the value of the work or of the goods and services has changed since the previous decision.

**Clause 28 Adjudicator may correct clerical mistakes etc.:** Allows an adjudicator to correct a decision if there is a clerical mistake, an error arising from an accidental slip or omission, a material miscalculation of figures, a material mistake in the description a person, thing or matter mentioned in the decision, or a defect of form.



The clause further provides that the adjudicator may correct a decision on the adjudicator's own initiative or on the application of the claimant or the respondent.

**Clause 29 Respondent required to pay adjudicated amount:** Provides that a respondent must pay to the claimant the amount, by the relevant date, determined by the adjudicator.

**Clause 30 Consequences of not paying claimant adjudicated amount:** Provides that if a respondent fails to pay the whole or any part of an adjudicated amount, the claimant may request an adjudication certificate from the authorised nominating authority and may serve a notice on the respondent of the claimant's intention to suspend carrying out construction work or supplying related goods and services. The clause also specifies the content requirements for an adjudication certificate and matters that may be included in the certificate at the request of the claimant.

**Clause 31 Filing of adjudication certificate as judgment debt:** Enables an adjudication certificate to be filed as a judgment debt that may be enforced in a court of competent jurisdiction. If the respondent commences proceedings to have the judgment debt set aside, the respondent is not entitled to bring any counter-claim against the claimant, raise any defence or challenge the adjudicator's determination and is required to pay to the court as security the unpaid portion of the adjudicated amount.

**Clause 32 Claimant may make new application in certain circumstances:** Enables a claimant to make a new adjudication application in the event that a previous application is not accepted by an adjudicator within 4 business days after it is made or if an adjudicator fails to determine the application within the time allowed.

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

**Clause 33 Claimant may suspend work:** Entitles a claimant to suspend carrying out of construction work, or the supply of related goods and services, if at least two business days have passed since notice of intention to do so has been given by the claimant. A claimant who suspends carrying out of construction work, or the supply of related goods and services, under this clause will be immune from civil liability as a consequence of doing so.

### ***Division 4—General***

**Clause 34 Authorised nominating authority's fees:** Provides that authorised nominating authorities may charge a fee for any service provided by the authority in connection with an adjudication application, not exceeding the amount, if prescribed, by regulation.

**Clause 35 Adjudicator's fees:** Provides for the fees payable to an adjudicator in relation to their adjudication of an adjudication application under Division 2 of Part 3. An adjudicator will not be entitled to any fees if they fail to determine such an application within the time allowed, except in circumstances in which an adjudicator refuses to communicate their decision until their fees and expenses are paid.

## **PART 4—ADMINISTRATION**

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

**Clause 36 Registry established:** Establishes the adjudication registry consisting of the registrar and staff of the registry.

**Clause 37 Appointment of registrar and staff of registry:** Provides the requirements for eligibility for appointment as registrar and staff of the registry.

**Clause 38 Registrar's functions and powers:** Provides that the registrar has powers necessary to perform the functions of the registrar, which include:

- (a) keeping a register containing details of registered adjudicators;
- (b) making the register available for inspection by an entity without charge or as prescribed by regulation;
- (c) supplying a certificate as to correctness of a matter in the register for a fee if so prescribed by regulation;
- (d) keeping records of and publishing adjudicator's determinations in a way approved by the general manager;

- (e) keeping account of fees paid or payable to the registrar;
- (f) collecting statistical data and other relevant information; and
- (g) any other functions given under this Bill.

**Clause 39 Delegation by registrar:** Provides that the registrar may delegate powers to an appropriately qualified member of the staff of the registry.

**Clause 40 Acting registrar:** Provides that an acting registrar may be appointed where the registrar is not available to carry out their duties or if there is a vacancy in the office.

**Clause 41 Annual report on operation of Act and registry:** Provides for a report to be prepared by the general manager as soon as practicable after the end of each financial year but no later than 30 September, and given to the Minister.

The report must contain:

- (a) a review of the operation of the registry and this Bill 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.

The Minister is to table a copy of the report in the Legislative Assembly within 14 sitting days after receiving the report.

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

**Clause 42 Application for registration:** Provides that a person may apply to the registrar for registration as an authorised nominating authority and that the application must be in the approved form, signed by or for the applicant and accompanied by the prescribed fee for the application.

**Clause 43 What the application must state:** Provides the requirements for what an application for registration must contain.

**Clause 44 Consideration of application for registration:** Provides that the registrar must consider and either grant or refuse an application.

**Clause 45 Criteria for granting application for registration:** Provides that the registrar may grant the application for registration only if the

registrar is satisfied the applicant is a suitable person to be registered as an authorised nominating authority.

**Clause 46 Suitability of person to be registered:** Sets out the matters that the registrar may have regard to in deciding if a person is suitable to be registered.

**Clause 47 Inquiries into application for registration:** Provides that the registrar may make inquiries and require by way of a notice, further information or documentation from the applicant when deciding the suitability of an applicant to be registered.

**Clause 48 Decision on application for registration:** Provides the process for the granting of, granting of with conditions, or refusal of, an application. Where an application is refused or there are conditions imposed on a registration, the registrar will provide to the applicant an information notice for the decision.

**Clause 49 Failure to decide application for registration:** Provides that if the registrar fails to make a decision regarding an application within 28 days after receipt of an application or a request for additional information, the application is taken to be refused. The registrar is to issue an information notice to the applicant where an application is refused.

**Clause 50 Term of registration:** Provides for the term of registration being 3 years from the date of issue or renewal, or a term determined by the Registrar, or an earlier day stated in the registration.

**Clause 51 Conditions of registration:** Provides for the conditions of registration.

**Clause 52 Registration required to perform functions of authorised nominating authority:** Provides that a person must not accept an adjudication application unless the person is registered as an authorised nominating authority. The maximum penalty is 500 units.

**Clause 53 Authorised nominating authority must ensure adjudicators are registered:** Provides that an authorised nominating authority must not refer an adjudication application to a person unless the person is registered as an adjudicator. The maximum penalty is 500 units.

**Clause 54 Authorised nominating authority must comply with registration conditions:** Provides that if an authorised nominating authority contravenes a registration condition, the maximum penalty is 200 units and the penalty can be imposed whether or not the registration is suspended or cancelled.

*Clause 55 Form of certificate of registration:* Provides that a certificate of registration must include specified particulars.

### ***Division 3—Registration of adjudicators***

*Clause 56 Application for registration:* Provides that a person may apply to the registrar for registration as an adjudicator and that the application must be in the approved form signed by or for the applicant and be accompanied by the fee for the application.

*Clause 57 What the application must state:* Provides what an adjudication application must contain.

*Clause 58 Consideration of application for registration:* Provides that the registrar must consider and either grant or refuse an application.

*Clause 59 Criteria for granting application for registration:* Provides that the registrar may grant the application for registration only if the registrar is satisfied the applicant is a suitable person to be registered as an adjudicator.

*Clause 60 Suitability of person to be registered:* Provides that a person is not a suitable person to be registered as an adjudicator unless the person holds an adjudication qualification or another qualification that the registrar considers equivalent. The clause also specifies the matters that the registrar may have regard to in deciding if a person is suitable to be registered.

*Clause 61 Inquiries into application for registration:* Provides that the registrar may make inquiries and require by way of notice further information or documentation when deciding the suitability of an applicant to be registered. The clause also provides that the notice must be given to the applicant within 28 days after the registrar receives the application. If the applicant fails to provide further information or a document in accordance with the notice within the stated time, the application is taken to have withdrawn the application.

*Clause 62 Decision on application for registration:* Provides the process for granting of, granting of with conditions, or refusal of, an application. Where an application is refused or there are conditions imposed on a registration, the registrar will provide to the applicant an information notice for the decision.

**Clause 63 Failure to decide application for registration:** Provides that if the registrar fails to make a decision regarding an application within 28 days after receipt of an application or a request for additional information, the application is taken to be refused.

**Clause 64 Term of registration:** Provides for the term of registration being 3 years from the date of issue or renewal, or a term determined by the Registrar, or an earlier day stated in the registration.

**Clause 65 Conditions of registration:** Provides for the conditions of registration.

**Clause 66 Registration required to perform functions of adjudicator:** Provides that a person must not accept or decide an adjudication application unless the person is registered as an adjudicator. The maximum penalty is 500 units.

**Clause 67 Adjudicator must comply with registration conditions:** Provides that if a person contravenes a registration condition, the maximum penalty is 200 units and the penalty can be imposed whether or not the registration is suspended or cancelled.

**Clause 68 Form of certificate of registration:** Provides that a certificate of registration must include specified particulars.

***Division 4—Renewals of registrations of authorised nominating  
authorities and adjudicators***

**Clause 69 Definitions for div 4:** Defines certain words and expressions that are used in the proposed Bill.

**Clause 70 Applications for renewal of registration:** Provides the requirements for renewal of registration and what an application for renewal of registration must contain.

**Clause 71 Inquiries into application for renewal of registration:** Provides that the registrar may require further information or documentation to decide a renewal application.

**Clause 72 Registration taken to be in force while application for renewal is considered:** Provides that registration is taken to continue in force from the day it would have ended until the application for renewal is decided, or if the application is refused, until the information notice for the decision is given to the registrant.

***Division 5—Amendment of registrations of authorised nominating authorities and adjudicators***

**Clause 73 Definitions for div 5:** Defines certain words and expressions that are used in the proposed Bill.

**Clause 74 Application for amendment of registration:** Provides that a registrant may apply to the registrar for an amendment of the registration including any condition imposed by the registrar, and the requirements for an application for amendment of registration.

**Clause 75 Inquiries into application for amendment:** Provides that the registrar may require further information or documentation to decide the application.

***Division 6—Suspension or cancellation of registrations of authorised nominating authorities and adjudicators***

**Clause 76 Definitions for div 6:** Defines certain words and expressions that are used in the proposed Bill.

**Clause 77 Grounds for suspension or cancellation:** Provides the circumstances for suspension or cancellation of a registration.

**Clause 78 Show cause notice:** Provides that the registrar must issue a show cause notice to the registrant if the registrar believes a ground exists to suspend or cancel a registration and the requirements to be contained in a show cause notice.

The notice must provide the registrant at least 21 days to show why the proposed action should not take place.

**Clause 79 Representations about show cause notices:** Provides that a registrant may make written representations about the show cause notice and the registrar must consider all representations.

**Clause 80 Ending show cause process without further action:** Provides that the registrar must not take any further action about the show cause notice if, after considering the registrant's representations, the registrar no longer believes a ground exists to suspend or cancel the registration, and must give the registrant a notice that no further action is to be taken about the show cause notice.

**Clause 81 Suspension or cancellation:** Provides the circumstances in which the registrar may suspend or cancel a registration.

**Clause 82 Immediate suspension of registration:** Provides the circumstances in which the registrar may immediately suspend or cancel a registration.

**Clause 83 Return of cancelled or suspended registration to registrar:** Provides that where the registrar has cancelled or suspended a registration, the registrant must return the registration to the registrar within 7 days after receiving the information notice. The maximum penalty is 20 units.

**Clause 84 Effect of suspension or cancellation of authorised nominating authority or adjudicator:** Provides that if the registration of an authorised nominating authority or an adjudicator is suspended or cancelled or otherwise ends, and an adjudication application has been made to the authorised nominating authority or referred to the adjudicator and the adjudicator has not made a decision, the adjudication application is taken to have been withdrawn and the claimant may make a new adjudication application.

Neither the authorised nominating authority nor the adjudicator will be entitled to any fees or expenses in relation to the claim.

**Clause 85 Issue of adjudication certificate by registrar:** Provides that the registrar may provide an adjudication certificate where:

- (a) an adjudication application has been made to an authorised nominating authority;
- (b) the adjudication application has been referred to an adjudicator;
- (c) the registration of the authorised nominating authority is suspended or cancelled after the claim has been referred to the adjudicator; and
- (d) the adjudicator has made a decision in relation to the adjudication application.

The authorised nominating authority and the adjudicator must provide the registrar with information and documents to enable the registrar to provide the adjudication certificate.



***Division 7—Other provisions about registrations of authorised nominating authorities and adjudicators***

**Clause 86 Definitions for div 7:** Defines certain words and expressions that are used in the proposed Bill.

**Clause 87 Surrender of registration:** Provides that a registrant may surrender registration by notice to the registrar.

**Clause 88 Application for replacement of certificate of registration:** Enables a registrant to apply for replacement of a certificate of registration, if the registration has been damaged, lost or stolen.

**Clause 89 Decision about application for replacement of certificate of registration:** Provides that the registrar must consider the application for replacement of a certificate of registration and either grant or refuse the application.

**Clause 90 False or misleading statements:** Provides that a person must not state anything the person knows is false or misleading in a material particular in an application made under this part. The maximum penalty is 50 units.

**Clause 91 False or misleading documents:** Provides that a person must not give a document containing information the person knows is false or misleading in a material particular in an application made under this part. The maximum penalty is 50 units.

## **PART 5—REVIEW OF DECISIONS**

***Division 1—Internal review of decisions***

**Clause 92 Review process starts with internal review:** Provides that a person who is given or is entitled to an information notice under the Bill, may apply for a review of the decision under this part. The review must be, in the first instance, by way of application for an internal review.

**Clause 93 Application for review to be made to the registrar:** Provides that a person may apply to the registrar for a review of the original decision.

**Clause 94 Applying for review:** Provides that an application for review must be made within 28 days after:

- (a) the person is given an information notice of the decision; or
- (b) if no information notice is given, the day the person otherwise became aware of the decision.

The application must be in writing and state fully the grounds of the application. The registrar may extend the time for applying for the review.

**Clause 95 Review decision:** Provides that the registrar may review their original decision and either confirm, amend or substitute the original decision and give the applicant a notice of the review decision stating:

- (a) the reasons for the review decision;
- (b) that the applicant can appeal the review decision;
- (c) how the applicant can appeal the review decision; and
- (d) that the applicant may apply to the tribunal for a stay of the review decision.

If the registrar does not give the notice within 28 days after the application is made, the registrar is taken to have made a decision confirming the original decision on the 28th day after the application is made.

**Clause 96 Stay of operation of decision:** Provides that if an application for a review of an original decision is made, the applicant may immediately apply for a stay of the decision to the tribunal.

## ***Division 2—Review by tribunal***

**Clause 97 Who may apply to tribunal for a review:** Provides that a person who has applied for a review of an original decision and is dissatisfied with the review decision may appeal to the tribunal for a review of the review decision.

*Clause 98 Stay of operation of decision:* Provides that the tribunal may grant a stay of the operation of the review decision to secure the effectiveness of the appeal.

## **PART 6—MISCELLANEOUS**

*Clause 99 No contracting out:* A provision of any contract, agreement or arrangement is void to the extent that it purports to exclude, modify or restrict the operation of the Bill.

*Clause 100 Effect of pt 3 on civil proceedings:* Provides that nothing done under the Bill will affect any civil proceedings arising under a construction contract, except that a court will be required to allow for any amount paid to a party under Part 3 in any orders it considers necessary to provide for the restitution of money paid as a consequence of its decision in the proceedings.

This Part does not affect any right that a party to a construction contract may have under the contract, Part 2 of this Bill, or may have outside of this Bill in respect of anything done or omitted to be done under the contract. This does not affect the operation of clause 99 **No contracting out**.

*Clause 101 Adjudicator must give copy of decision to authorised nominating authority:* Provides that an adjudicator must provide a copy of the adjudicator's decision and other information in the approved form, to the authorised nominating authority.

*Clause 102 Authorised nominating authority must give information to registrar:* Provides that the authorised nominating authority must give the registrar a copy of the adjudicator's decision in the approved form.

*Clause 103 Service of notices:* Provides the procedure for the service of notices under this Bill.

*Clause 104 Proof of signature unnecessary:* For evidentiary purposes, a signature purporting to be the signature of the registrar is evidence of the registrar's signature.

*Clause 105 Evidentiary aids:* A certificate signed by the registrar:

- (a) certifying the contents of the register;

- (b) stating that a person was or was not at a time or during a period an authorised nominating authority or a registered adjudicator; or
  - (c) stating that a document is a record or document, copy or extract.
- is evidence of the thing or matter stated.

*Clause 106 Protection from liability:* Provides that no action will lie against an official for anything done or omitted to be done honestly and without negligence in the exercise of their function under this Bill. **Official** means the general manager, the registrar or a member of the staff of the registry.

*Clause 107 Protection from liability for adjudicators and authorised nominating authorities:* Provides that no action will lie against an adjudicator or authorised nominating authority for anything done or omitted to be done in good faith in performing their function under this Bill.

*Clause 108 Summary offences:* Provides that proceedings for an offence against this Bill are to be taken in a summary way under the *Justices Act 1886*, and provides the timeframes within which any proceeding is to be commenced.

*Clause 109 Allegations of false or misleading information or document:* Provides that in the wording for a charge in regard to an offence under the Bill concerning false or misleading information or a false or misleading document, it is sufficient to state that the information or document was "false or misleading", without specifying which of these applies.

*Clause 110 Approved Forms:* Provides that the general manager may approve forms for use under this Bill.

*Clause 111 Regulation-making power:* Enables the Governor in Council to make regulations for the purposes of the Bill.

## **PART 7—TRANSITIONAL**

*Clause 112 Transitional provision for adjudication qualification:* If, at the commencement of this Bill qualifications for adjudication have not been prescribed by regulation, this clause enables the registrar to register a

person as an adjudicator on the condition that the adjudicator obtain an adjudication qualification within three months of the prescription of adjudication qualifications.

## **PART 8—AMENDMENT OF ACTS**

*Clause 113 Amendments-sch 1:* Provides for a series of consequential amendments to other Acts in Schedule 1.

## **SCHEDULE 1**

### **AMENDMENTS OF ACT**

#### **COMMERCIAL AND CONSUMER TRIBUNAL ACT 2003**

*Clause 1 Schedule 2, definition "empowering Act":* Establishes the *Building and Construction Industry Payments Act 2003* as an empowering Act under the *Commercial and Consumer Tribunal Act 2003*.

#### **QUEENSLAND BUILDING SERVICES AUTHORITY ACT 1991**

*Clause 1 Section 67AQ:* Defines the expression building contract for the purposes of the Act as defined in section 67AAA of the *Queensland Building Services Authority Act 1991*.

**Clause 2 Section 67AR, '67H,-:** Omits the demerit offence for agreed contract variations under the Act.

**Clause 3 Section 67A, definitions "building contract", "progress payment" and "written form":** Omits the definitions of building contract, progress payment and written form.

**Clause 4 Section 67A:** Defines the expression *building contract* as defined in section 67AAA of the *Queensland Building Services Authority Act 1991*, and the expressions *payment claim* and *progress payment* as defined in Schedule 2 of the *Building and Construction Industry Payments Act 2003*.

**Clause 5 After section 67A-:** Defines the expressions *building contract* and *construction work*.

**Clause 6 Section 67G, "written form":** Clarifies the operation of provisions relating to building contracts to be in writing, consistent with the provisions of the *Acts Interpretation Act 1954*.

**Clause 7 Section 67H:** Omits requirements relating to agreed contract variations under the Act.

**Clause 8 Section 67I(5):** Clarifies the operation of provisions relating to directions given under building contracts.

**Clause 9 Section 67J:** Limits the scope of set-offs available to contracting parties. Set-offs may be claimed from the contracted party only if a notice (28 days) is provided to the contracted party.

**Clause 10 Section 67K, "written form":** Clarifies the operation of provisions relating to agreed contract variations, consistent with the provisions of the *Acts Interpretation Act 1954*.

**Clause 11 Section 67Q:** Removes the reference to pay if paid or pay when paid clauses. This limitation is now included in clause 16 of the principal Bill.

**Clause 12 Section 67U:** Specifies that provisions in a construction management trade contract or subcontract that provide that payment of a progress payment later than 25 business days after a payment claim is submitted, are void.

**Clause 13 Section 67W:** Specifies that provisions in a commercial building contract that provides that payment of a progress payment later than 15 business days after a payment claim is submitted, are void.

**Clause 14 Schedule 1, after part 5-:** Ensures that amendments made to sections 67H, 67I, 67J, 67Q, 67U and 67W of the *Queensland Building Services Authority Act 1991* pursuant to schedule 1 of the Bill do not apply retrospectively.

**Clause 15 Schedule 2, definition "written form"-:** Omits the definition of written form.

**Clause 16 Schedule 2:** Provides for the provision of the definition of payment claim.

## **SCHEDULE 2**

### **DICTIONARY**

Inserts various definitions for terms used in the Bill.