



Queensland

*Building Industry Fairness (Security of Payment) Act 2017*

# **Building Industry Fairness (Security of Payment) Regulation 2018**

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Queensland

# Building Industry Fairness (Security of Payment) Regulation 2018

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# Building Industry Fairness (Security of Payment) Regulation 2018

## Part 1 Introduction

### 1 Short title

This regulation may be cited as the *Building Industry Fairness (Security of Payment) Regulation 2018*.

### 2 Commencement

This regulation commences on 1 March 2018.

### 3 Definitions

The dictionary in schedule 3 defines particular words used in this regulation.

## Part 2 Project bank accounts

### 4 Work included as building work—Act, s 8

- (1) This section prescribes particular work as building work for the Act, section 8, definition *building work*, paragraph (b).
- (2) The following work is building work—
  - (a) the erection, management and removal of scaffolding if the scaffolding is or was used for carrying out other building work;
  - (b) work that is a building certifying function within the meaning of the *Building Act 1975*, section 10;
  - (c) the assessment of the energy efficiency of a building under the Building Code of Australia or the Queensland Development Code.

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- (3) Also, work performed by any of the following professionals as part of their professional practice is building work but only to the extent the work relates to other building work—
- (a) an architect under the *Architects Act 2002*, schedule 2;
  - (b) a registered professional engineer under the *Professional Engineers Act 2002*, schedule 2;
  - (c) a surveyor under the *Surveyors Act 2003*, schedule 3.
- (4) In this section—

***Building Code of Australia*** see the *Building Act 1975*, section 12.

***Queensland Development Code*** see the *Building Act 1975*, section 13.

## 5 Work that is not building work—Act, s 8

- (1) For the Act, section 8, definition *building work*, paragraph (c), the following work is prescribed—
- (a) the construction, maintenance or repair of a busway, road or railway;
  - (b) the construction, maintenance or repair of a tunnel for a busway, road or railway;
  - (c) an authorised activity for a resource authority.
- (2) In this section—

***authorised activity*** see the *Mineral and Energy Resources (Common Provisions) Act 2014*, schedule 2.

***busway***—

- (a) means a route especially designed and constructed for, and dedicated to, the priority movement of buses for passenger transport; and
- (b) includes—
  - (i) places for the taking on and letting off of passengers of buses using the busway; and



- 
- (ii) a causeway or culvert in, on, or under a busway that is associated with the busway; and
  - (iii) another structure that supports a busway or has the purpose of ensuring the safe or efficient use of a busway.

*Examples for subparagraph (iii)—*

bridge, fence, gate, pedestrian overpass, pillar, sign

***driveway*** means—

- (a) a surface constructed—
  - (i) on a private property; and
  - (ii) for the purpose of driving or riding of motor vehicles to or from the property and a road; and
  - (iii) for which the right to use the surface is restricted to persons with an interest in the property and their invitees; or
- (b) a surface constructed—
  - (i) between the boundary of a private property and that part of a road used for the driving or riding of motor vehicles; and
  - (ii) for the purpose of driving or riding of motor vehicles to or from the property and the road.

***private property*** includes a separate or distinct parcel of land for which an interest is recorded in a register under the *Land Act 1994*.

***railway***—

- (a) means a guided system designed for the movement of rolling stock having the capability of transporting passengers, livestock or freight on a track with a gauge of 600mm or more; and
- (b) includes a railway station or platform.

***resource authority*** see the *Mineral and Energy Resources (Common Provisions) Act 2014*, section 10.

***road***—

- (a) means an area of land—
  - (i) whether surveyed or unsurveyed, dedicated, notified or declared to be a road for public use; or
  - (ii) whether surveyed or unsurveyed, taken under an Act, for the purpose of a road for public use; or
  - (iii) developed, or to be developed, for the public use of driving or riding of motor vehicles; and
- (b) includes—
  - (i) a street, esplanade, highway, pathway, thoroughfare, toll road, track or stock route; and
  - (ii) a causeway or culvert in, on, or under a road that is associated with the road; and
  - (iii) a structure in, on, or under a road that is associated with the road; and
- (c) does not include a driveway.

***rolling stock*** means a vehicle that operates on or uses a railway, including, for example, a carriage, locomotive, rail car, tram or trolley.

## **6 Residence—Act, 16**

- (1) This section prescribes particular types of buildings and structures for the Act, section 16(4), definition *residence*.
- (2) Each of the following structures is a residence if fixed to land and designed to be used for residential purposes—
  - (a) a single detached dwelling;
  - (b) 1 or more attached dwellings that are separated by a common wall;

*Examples—*

duplex, row house, terrace house, townhouse, villa unit

- (c) a building, of not more than 3 storeys, containing 2 or more separate residential units.

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- (3) Part of a structure mentioned in subsection (2) is also a residence if the part is designed to be used for residential purposes.
  - (4) A manufactured home fixed, or intended to be fixed, to land in a residential park is also a residence.
  - (5) However, the following things are not a residence—
    - (a) a boat, caravan, motor vehicle, tent, trailer or train; or
    - (b) a building designed as a temporary or movable building, other than a manufactured home as mentioned in subsection (4).
  - (6) For subsection (2)(c), the number of storeys of a building is calculated by excluding 1 storey of the building if more than 50% of the floor area of at least 1 storey of the building is designed to accommodate motor vehicles.

*Example—*

If a building has 3 storeys containing residential units and another storey where more than 50% of the floor area of the storey is designed to accommodate motor vehicles, the number of storeys of the building is 3.

- (7) In this section—

***manufactured home*** see the *Manufactured Homes (Residential Parks) Act 2003*, section 10.

***residential park*** see the *Manufactured Homes (Residential Parks) Act 2003*, section 12.

***residential unit*** means a part of a building designed for separate occupation as a residence.

***storey*** means a space within a building which is situated between one floor level and the next floor level, or if there is no floor above, the ceiling or roof above, but is not a mezzanine or space that contains only—

- (a) a lift, shaft, stairway or meter room; or
- (b) a bathroom, shower room, laundry, water closet or other sanitary compartment; or

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- (c) accommodation intended for not more than 3 vehicles;  
or
- (d) any combination of a thing mentioned in paragraphs (a) to (c).

## **7 Dispute resolution process—Act, s 34B**

- (1) This section prescribes processes for the Act, section 34B, definition *dispute resolution process*.
- (2) The following processes are prescribed—
  - (a) a proceeding in a court or tribunal;
  - (b) an adjudication of a payment claim.
- (3) Also, arbitration as required by a subcontract is prescribed for that subcontract.

## **8 Prescribed information about subcontracts—Act, s 50**

For the Act, section 50(2), the following information is prescribed in relation to a project bank account—

- (a) the name of each subcontractor beneficiary for the project bank account;
- (b) the name of the account for each of the subcontractor beneficiaries;
- (c) the name of the financial institution for each of the subcontractor beneficiaries;
- (d) the identifying number of the financial institution;

*Note—*

The identifying number is commonly referred to as the bank state branch number (BSB).

- (e) the account number for each of the subcontractor beneficiaries.

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**9 Prescribed information for payment instruction—Acts 51**

- (1) For the Act, section 51(3), the copy of information contained in a payment instruction that is prescribed to be given to a principal is—
- (a) the name of each person to be paid an amount under the payment instruction; and
  - (b) details of each of the following amounts—
    - (i) the amount to be paid to a subcontractor beneficiary under the payment instruction;
    - (ii) the amount, if any, to be paid under the payment instruction to the retention account, to be held as a retention amount for a subcontract with a subcontractor beneficiary;
    - (iii) the amount, if any, to be paid under the payment instruction to the disputed funds account, as an amount subject to a payment dispute involving a subcontractor beneficiary; and
  - (c) the date an amount mentioned in paragraph (b) is to be paid under the payment instruction; and
  - (d) the name of the account into which an amount mentioned in paragraph (b)(i) is to be deposited under the payment instruction; and
  - (e) the name of the financial institution into which an amount mentioned in paragraph (b)(i) is to be deposited under the payment instruction; and
  - (f) the identifying number of the financial institution; and
- Note—*
- The identifying number is commonly referred to as the bank state branch number (BSB).
- (g) the account number into which an amount mentioned in paragraph (b)(i) is to be deposited under the payment instruction.

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- (2) For the Act, section 51(3), the copy of information contained in a payment instruction that is prescribed to be given to a subcontractor beneficiary is—
- (a) details of each of the following amounts—
    - (i) the amount to be paid to the subcontractor beneficiary under the payment instruction;
    - (ii) the amount, if any, to be paid under the payment instruction to the retention account to be held as a retention amount for a subcontract with the subcontractor beneficiary;
    - (iii) the amount, if any, to be paid under the payment instruction to the disputed funds account as an amount subject to a payment dispute involving the subcontractor beneficiary; and
  - (b) the date an amount mentioned in paragraph (a) is to be paid under the payment instruction; and
  - (c) the name of the account into which an amount mentioned in paragraph (a)(i) is to be deposited under the payment instruction; and
  - (d) the name of the financial institution into which an amount mentioned in paragraph (a)(i) is to be deposited under the payment instruction; and
  - (e) the identifying number of the financial institution; and

*Note—*

The identifying number is commonly referred to as the bank state branch number (BSB).

- (f) the account number into which an amount mentioned in paragraph (a)(i) is to be deposited under the payment instruction.

## **10 Circumstances enabling principal to step in as trustee— Act, s 54**

A building contract being terminated for any reason is a circumstance prescribed for the Act, section 54(1)(d).

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## **Part 3 Registrar's policies and code of conduct for adjudicators**

### **11 Approval of registrar's policies—Act, s 155**

For section 155(2) of the Act—

- (a) version 1 of the document called 'Adjudicator referral policy' and published on the commission's website is approved as a policy about administering chapter 3 of the Act; and
- (b) version 1 of the document called 'Continuing professional development for adjudicators policy' and published on the commission's website is approved as a policy about administering chapter 5 of the Act.

### **12 Approval of code of conduct—Act, s 181**

For section 181(2) of the Act, version 1 of the document called 'Code of conduct for adjudicators' and published on the commission's website is approved.

## **Part 4 Adjudication applications**

### **13 Conflicts of interest—Act, s 80**

- (1) For section 80(b) of the Act, an adjudicator has a conflict of interest if—
  - (a) the adjudicator or a family member of the adjudicator—
    - (i) is, or is contracted to be, employed or otherwise engaged by the claimant or respondent for the adjudication application; or
    - (ii) is an owner of a building, structure or land in relation to which construction work or the supply of related goods and services to which the

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- adjudication application relates is being carried out; or
- (iii) is carrying out construction work or the supply of related goods and services in relation to a building, structure or land to which the adjudication application relates; or
  - (iv) has a direct or indirect pecuniary or other interest in a matter to be considered during the adjudication that could conflict with the proper performance of the adjudicator in adjudicating the adjudication application; or
- (b) the claimant or respondent for the adjudication application is a family member of the adjudicator.
- (2) For subsection (1), a person is a *family member* of the adjudicator if the person is—
- (a) the adjudicator’s spouse; or
  - (b) a grandparent, parent, uncle, aunt, brother, sister, cousin, child, nephew, niece or grandchild of—
    - (i) the adjudicator; or
    - (ii) the adjudicator’s spouse; or
  - (c) a spouse of a person mentioned in paragraph (b).
- (3) In this section—
- freehold land* see the *Land Act 1994*, schedule 6.
- owner*—
- (a) of a building or structure, means the owner of the building or structure under the *Building Act 1975*; or
  - (b) of land, means the following—
    - (i) if the land is freehold land—the registered owner of the land;
    - (ii) if the land is the subject of a lease registered under the *Land Title Act 1994*—the lessee of the land;



- (iii) if the land is the subject of a lease registered under the *Land Act 1994*—the lessee of the land;
- (iv) if the land is a reserve—the trustee of the reserve;
- (v) if a person has occupation rights in relation to the land under a licence or permit—the licensee or permittee.

*reserve* see the *Land Act 1994*, schedule 6.

#### **14 Maximum fees and expenses for particular adjudication applications—Act, s 95**

- (1) This section prescribes, for section 95(2) of the Act, the maximum amount for fees and expenses an adjudicator is entitled to be paid for adjudicating an adjudication application relating to a payment claim for a progress payment of not more than \$25,000.
- (2) The maximum amount is—
  - (a) if the progress payment is not more than \$5,000—\$620; or
  - (b) if the progress payment is more than \$5,000 but not more than \$15,000—\$930; or
  - (c) if the progress payment is more than \$15,000 but not more than \$20,000—\$1,860; or
  - (d) if the progress payment is more than \$20,000 but not more than \$25,000—\$2,070.
- (3) To remove any doubt, it is declared that a maximum amount mentioned in subsection (2) includes both fees and expenses.

#### **15 Time for lodgement—Act, s 201**

- (1) For section 201(2)(f)(i) of the Act, an adjudication application must be lodged with the registrar no later than 5p.m. on a business day.
- (2) An application lodged after 5p.m. is taken to be lodged on the next business day.

**16 Procedures for processing adjudication applications—  
Act, s 201**

- (1) This section prescribes, for section 201(2)(f)(ii) of the Act, the procedure for the processing of adjudication applications by the registrar.
- (2) The registrar must refer an adjudication application to a grade 2 adjudicator for decision if—
  - (a) the payment claim to be adjudicated is for a progress payment of more than \$150,000; or
  - (b) the registrar considers the complexity of the application requires that it be decided by a grade 2 adjudicator.
- (3) The registrar must refer an adjudication application relating to a payment claim for a progress payment of more than \$25,000 but not more than \$150,000 to—
  - (a) a grade 2 adjudicator; or
  - (b) a grade 1 adjudicator who has decided at least 3 adjudication applications relating to payment claims for progress payments of not more than \$25,000.
- (4) The registrar must refer an adjudication application relating to a payment claim for a progress payment of not more than \$25,000 to a grade 1 adjudicator or a grade 2 adjudicator.

**17 Limitations on submissions and accompanying  
documents for particular adjudication applications—Act,  
s 201**

- (1) This section prescribes, for section 201(2)(g) of the Act, limitations on submissions and accompanying documents for—
  - (a) adjudication applications relating to payment claims for progress payments of not more than \$25,000; and
  - (b) adjudication responses to adjudication applications mentioned in paragraph (a).
- (2) The submissions—

- (a) must not exceed 10 pages in total; and
- (b) if typed—
  - (i) must be set out in a document the margins of which are at least 2.54cm; and
  - (ii) must be written in a font size of at least 10 point; and
- (c) may only be accompanied by the following documents or copies of the documents—
  - (i) the payment claim to which the adjudication application relates;
  - (ii) the construction contract to which the payment claim relates;
  - (iii) a payment schedule given in response to the payment claim;
  - (iv) if a party to the application gave the other party a document in support of the payment claim or the payment schedule at the time the claim or schedule was given to the other party—the supporting document;
  - (v) if a party to the application gave the other party a document relating to the construction contract—the related document;

*Examples—*

- correspondence agreeing to a variation of a construction contract or an extension of time
  - a program of work
- (vi) an expert report about a matter to which the payment claim relates;
  - (vii) a statutory declaration about a matter to which the payment claim relates.
- (3) In this section—

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*expert report* means a report made by a person dealing entirely or mainly with the issues the person is qualified to give expert evidence about.

## **Part 5 Adjudicators**

### **Division 1 Adjudication qualification**

#### **18 Adjudication qualification—Act, s 201**

The following matters are prescribed, for section 201(2)(b) of the Act, for an adjudication qualification—

- (a) the name of the qualification is Certificate in Adjudication;
- (b) a body mentioned in schedule 1, part 1 may issue the qualification;
- (c) the adjudication competency to be achieved is completion of the course called ‘Building Industry Fairness (Security of Payment) Adjudication’;
- (d) the elements that must be successfully completed are the elements mentioned in schedule 1, part 2.

### **Division 2 Grading**

#### **19 Application of division—Act, s 201**

This division prescribes the grading of adjudicators for section 201(2)(c) of the Act.

#### **20 Eligibility to be grade 2 adjudicator**

A person is eligible to be a grade 2 adjudicator if—

- (a) both of the following apply—

- (i) the person has, as an adjudicator, decided at least 10 adjudication applications;
  - (ii) at least 5 of the applications related to a payment claim for a progress payment of more than \$25,000; or
- (b) the registrar considers the person's experience is equivalent to meeting the requirements of paragraph (a).

## **21 Grade of adjudicator on initial registration**

- (1) On the day an adjudicator's registration first becomes effective, the adjudicator is a grade 1 adjudicator.
- (2) However, if the adjudicator is eligible to be a grade 2 adjudicator under section 20, the registrar must give the adjudicator written notice stating the registrar proposes to grade the adjudicator as a grade 2 adjudicator.

## **22 Review of grade 1 adjudicators**

- (1) The registrar must review the grade of each grade 1 adjudicator at least once every 12 months.
- (2) The registrar must, after conducting the review, give the adjudicator written notice stating—
  - (a) if the adjudicator is eligible to be a grade 2 adjudicator under section 20—the registrar proposes to grade the adjudicator as a grade 2 adjudicator; or
  - (b) otherwise—the adjudicator continues to be a grade 1 adjudicator.

## **23 Adjudicator may decline proposed grading**

An adjudicator may, within 14 days after being given a written notice under section 21(2) or 22(2)(a), decline the proposed grading by written notice to the registrar.

## **24 Grading**

- (1) The registrar must grade a grade 1 adjudicator as a grade 2 adjudicator if—
  - (a) the registrar has given the adjudicator a written notice under section 21(2) or 22(2)(a); and
  - (b) the adjudicator does not decline the proposed grading mentioned in the notice under section 23.
- (2) The registrar must confirm the grading of a grade 1 adjudicator remains unchanged if—
  - (a) the registrar gives the adjudicator a written notice under section 22(2)(b); or
  - (b) the adjudicator declines a proposed grading under section 23.
- (3) The registrar must give the adjudicator written notice of the grading or confirmation.

## **25 Change of grade by agreement**

The registrar may, with a grade 2 adjudicator's agreement, grade the adjudicator as a grade 1 adjudicator at any time.

## **Division 3 Continuing professional development**

### **Subdivision 1 Preliminary**

## **26 Application of division—Act, ss 165 and 201**

This division prescribes, for sections 165(1)(b) and 201(2)(d) of the Act, continuing professional development for adjudicators.

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## Subdivision 2 CPD requirements

### 27 Requirement to accumulate CPD points

- (1) An adjudicator must accumulate 10 CPD points in each CPD year.
- (2) *CPD points* are points an adjudicator accumulates by completing CPD activities.
- (3) Of the 10 CPD points required to be accumulated for a CPD year, at least 3 of the CPD points must be accumulated by completing core CPD activities.
- (4) This section is subject to section 30 and subdivision 3.

### 28 CPD activities and CPD points

- (1) Each of the following is a *CPD activity*—
  - (a) an activity identified as a CPD activity in the CPD policy;
  - (b) another activity the registrar considers to be equivalent to an activity mentioned in paragraph (a).
- (2) A *core CPD activity* is a CPD activity that is identified as a core CPD activity in the CPD policy.
- (3) The CPD policy must state the number of CPD points accumulated for completing each CPD activity mentioned in subsection (1)(a).
- (4) The completion of an activity mentioned in subsection (1)(b) accumulates the same number of CPD points as are accumulated for the CPD activity mentioned in subsection (1)(a) to which the activity is considered equivalent.

### 29 CPD points accumulated in last quarter of CPD year

- (1) This section applies if, in the last quarter of a CPD year, an adjudicator accumulates a CPD point (an *excess CPD point*)

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that brings the total number of CPD points accumulated by the adjudicator for the year to more than 10.

(2) The excess CPD point is taken to be accumulated for completing a CPD activity of the same type in the following CPD year.

(3) In this section—

*last quarter*, of a CPD year, means the 3-month period starting on 1 January in that year.

### 30 Registration of adjudicator during CPD year

(1) This section applies to an adjudicator whose registration becomes effective in a month mentioned in column 1 of the table below.

(2) The adjudicator must, for the remainder of the CPD year in which the month occurs—

(a) accumulate a total number of CPD points equal to the number mentioned opposite the month in column 2; and

(b) of the total number of CPD points, accumulate at least the number of CPD points mentioned opposite the month in column 3 by completing core CPD activities.

Column 1	Column 2	Column 3
Month	Total CPD points	CPD points for core CPD activities
May	9	3
June	8	3
July	7	3
August	6	3
September	5	2
October	4	2
November	3	2



Column 1	Column 2	Column 3
Month	Total CPD points	CPD points for core CPD activities
December	2	2
January	1	1

### **Subdivision 3 Exemptions and extensions relating to CPD points**

#### **31 Grounds for application**

An adjudicator may apply to the registrar for an extension of time to comply with, or an exemption from compliance with, section 27(1) or (3) or section 30 on the ground that compliance is impracticable.

*Examples of impracticability—*

- the applicant has been unable to decide adjudication applications for a period because of extended parental leave, illness or employment obligations
- places offered for completing CPD activities in the relevant area are unavailable or fully booked

#### **32 Making application**

The application must—

- (a) be in writing; and
- (b) state whether the application is for—
  - (i) an extension of time; or
  - (ii) an exemption; and
- (c) be accompanied by sufficient information to establish the ground on which the application is made.

### **33 Requirement for further information**

- (1) The registrar may, by written notice, require the applicant to give the registrar further information to establish the ground on which the application is made.
- (2) The notice—
  - (a) must state—
    - (i) the information required; and
    - (ii) the day, at least 14 days after the notice is given, by which the information must be given; and
  - (b) may state the way the information must be given.
- (3) If the notice does not state the way the information must be given, the applicant must give the information in writing.
- (4) If the adjudicator does not give the registrar the further information by the end of the day stated in the notice, the application is taken to be withdrawn.

### **34 Decision on application**

- (1) The registrar must consider the application and decide to—
  - (a) for an application for an extension of time—grant, or refuse to grant, the extension; or
  - (b) for an application for an exemption—grant, or refuse to grant, the exemption.
- (2) In deciding the application, the registrar—
  - (a) must consider any information given to the registrar under section 32(c) or 33; and
  - (b) may consider anything else the registrar considers relevant.
- (3) The registrar may grant an extension of time or an exemption only to the extent necessary on the basis of the ground on which the application was made.

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**35 Registrar may grant exemption on condition**

- (1) This section applies if the registrar grants an exemption because the applicant has been unable to decide adjudication applications for a period.
- (2) The registrar may grant the exemption on the condition the adjudicator complete a stated number and type of CPD activities within a stated period after the adjudicator resumes deciding adjudication applications.

**36 Notice of decision**

After deciding the application, the registrar must give the applicant written notice of—

- (a) the decision; and
- (b) for a decision to grant an exemption under section 35(2)—the condition on which the exemption is granted.

**Subdivision 4 Records**

**37 Record of CPD activities**

- (1) An adjudicator must keep a record of each CPD activity completed by the adjudicator in a CPD year.
- (2) The record must be in the approved form.
- (3) The adjudicator must give the registrar a written copy of the record within 14 days after the CPD year ends.
- (4) The registrar may, by written notice, require the adjudicator to give the registrar further information about the CPD activities.
- (5) A notice given under subsection (4)—
  - (a) must state—
    - (i) the information required; and

[s 38]

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- (ii) the time, not earlier than 14 days after the notice is given, by which the information must be given; and
  - (iii) that, if the adjudicator does not comply with the notice, the adjudicator is taken to have failed to comply with the requirement to accumulate CPD points; and
- (b) may state the way the information must be given.
- (6) If the notice does not state the way the information must be given, the adjudicator must give the information in writing.
- (7) If the adjudicator does not comply with the notice—
  - (a) the adjudicator is taken to have failed to comply with the requirement to accumulate CPD points under section 27; and
  - (b) the registrar must give the adjudicator written notice of the failure.

## Part 6 Miscellaneous

### 38 Review of Act—Act, s 200A

The *Building and Construction Legislation (Non-conforming Building Products—Chain of Responsibility and Other Matters) Amendment Act 2017* is prescribed for the Act, section 200A(6), definition *2017 suite of building and construction reforms*, paragraph (c).

### 39 Fees—Act, s 201

For section 201(2)(h) of the Act, the fees payable under the Act are stated in schedule 2.

## **Part 7**

# **Transitional provisions for Building Industry Fairness (Security of Payment) and Other Legislation Amendment Regulation 2018**

### **40 Definition for part**

In this part—

*previous*, in relation to a section, means as in force immediately before the commencement.

### **41 Existing prescribed payments for deposits to project bank accounts for Act, s 28**

- (1) This section applies if, immediately before the commencement, a payment—
  - (a) was to be made because of an adjudication of a payment claim mentioned in previous section 6(1); and
  - (b) had not been made.
- (2) The payment is prescribed as a payment for section 28(e) of the Act.

### **42 Existing prescribed payments for withdrawals from project bank accounts for Act, s 31**

- (1) This section applies if, immediately before the commencement, a payment—
  - (a) was to be made because of an adjudication of a payment claim mentioned in previous section 7(1); and
  - (b) had not been made.
- (2) The payment is prescribed as a payment for section 31(1)(e) of the Act.

**43 Existing prescribed dispute resolution process for Act, s 34B**

- (1) This section applies if, immediately before the commencement, an application for adjudication of a payment claim under the *Building and Construction Industry Payments Act 2004* had been made but not decided.
- (2) The adjudication is prescribed as a dispute resolution process for the Act, section 34B, definition *dispute resolution process*.

**44 Grading of existing adjudicators**

- (1) This section applies to a person whose registration as an adjudicator is continued under section 204 of the Act.
- (2) The person is taken to be—
  - (a) if section 20(a) or (b) applies in relation to the adjudicator—a grade 2 adjudicator; or
  - (b) otherwise—a grade 1 adjudicator.

**45 Mandatory training for existing adjudicators—Act, s 165**

- (1) This section prescribes, for section 165(1)(c) of the Act, the prescribed mandatory training for an adjudicator mentioned in section 44(1).
- (2) The mandatory training is completion, by 1 April 2019, of the training course called ‘Transitionary training for registered adjudicators’, approved by the commission and published on the commission’s website.

**46 Accumulation of CPD points for mandatory training under s 45**

- (1) An adjudicator mentioned in section 44(1) who completes the mandatory training mentioned in section 45—
  - (a) accumulates 1 CPD point for the CPD year starting on 1 April 2019; and

- (b) is taken to have accumulated the CPD point by completing a core CPD activity.
- (2) However, the adjudicator can not accumulate further CPD points for completing the mandatory training more than once.

## **Schedule 1      Adjudication qualification**

section 18(b) and (d)

### **Part 1                      Body that may issue qualification**

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544

### **Part 2                      Elements to be completed to achieve competency**

- 1    Role and functions of an adjudicator
- 2    Role and functions of the adjudication registry
- 3    Analysis of the *Building Industry Fairness (Security of Payment) Act 2017*
- 4    Practical aspects of adjudication
- 5    Ethics, natural justice and good faith
- 6    Decision making and decision writing
- 7    Legal concepts for adjudicators
- 8    Technical concepts for adjudicators
- 9    Assessment—Examination
- 10  Assessment 2—Assignment: Mock adjudication decision



## Schedule 2 Fees

### section 39

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1 Adjudication application fee (Act, s 79(2)(d))—	
(a) for a payment claim for a progress payment of no more than \$10,000	58.65
(b) for a payment claim for a progress payment of more than \$10,000 but no more than \$50,000	175.95
(c) for a payment claim for a progress payment of more than \$50,000 but no more than \$100,000	293.30
(d) for a payment claim for a progress payment of more than \$100,000 but no more than \$250,000	410.70
(e) for a payment claim for a progress payment of more than \$250,000 but no more than \$500,000	527.95
(f) for a payment claim for a progress payment of more than \$500,000 but no more than \$750,000	645.30
(g) for a payment claim for a progress payment of more than \$750,000 but no more than \$1,065,600	762.65
(h) for a payment claim for a progress payment of more than \$1,065,600	0.7% of the progress payment amount, up to a maximum of 5,866.70
2 Application for registration, or renewal of registration, as an adjudicator (Act, ss 159(2)(a)(iii) and 167(2)(c))	814.70

## Schedule 3 Dictionary

### section 3

*core CPD activity* see section 28(2).

*CPD activity* see section 28(1).

*CPD points* see section 27(2).

*CPD policy* means the policy mentioned in section 11(b).

*CPD year* means a period of 12 months starting on 1 April.

*grade 1 adjudicator* means an adjudicator other than a grade 2 adjudicator.

*grade 2 adjudicator* means an adjudicator who is graded as a grade 2 adjudicator under part 5, division 2.