



Queensland

Building Industry Fairness (Security of Payment) and Other Legislation Amendment Regulation 2018

Subordinate Legislation 2018 No. 177

made under the

Building Industry Fairness (Security of Payment) Act 2017
Queensland Building and Construction Commission Act 1991
State Penalties Enforcement Act 1999

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Building Industry Fairness (Security of Payment) and Other Legislation Amendment
Regulation 2018

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Part 1 Preliminary

1 Short title

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

2 Commencement

- (1) Part 2, division 3 commences on 1 April 2019.
- (2) The remaining provisions commence on 17 December 2018.

Part 2 Amendment of Building Industry Fairness (Security of Payment) Regulation 2018

Division 1 Preliminary

3 Regulation amended

This part amends the *Building Industry Fairness (Security of Payment) Regulation 2018*.

Division 2 Amendments commencing on 17 December 2018

4 Insertion of new s 2A

After section 2—

insert—

2A Definitions

The dictionary in schedule 3 defines particular

words used in this regulation.

5 Renumbering of ss 2A–5

Sections 2A to 5—

renumber as sections 3 to 6.

6 Omission of ss 6–8

Sections 6 to 8—

omit.

7 Insertion of new s 7

After section 6, as renumbered—

insert—

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 Renumbering of ss 9–11

Sections 9 to 11—

renumber as sections 8 to 10.

9 Relocation and renumbering of s 12 (Review of Act—Act, s 200A)

Section 12—

relocate to part 6, as inserted by this regulation, and *renumber* as section 38.

10 Insertion of new pts 3–5

After section 10, as renumbered—

insert—

Part 3 Registrar’s policy and code of conduct for adjudicators

11 Approval of registrar’s policy—Act, s 155

For section 155(2) of the Act, 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.

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 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—

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.

11 Insertion of new pt 6, hdg

After section 25, as inserted by this regulation—

insert—

Part 6

Miscellaneous

12 Insertion of new s 39

After section 38, as relocated and renumbered—
insert—

39 Fees—Act, s 201

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

13 Insertion of new pt 7

After section 39, as inserted by this regulation—
insert—

**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 ‘Transitional training for registered adjudicators’, approved by the commission and published on the commission’s website.

14 Insertion of new schs 1–3

After section 45, as inserted by this regulation—
insert—

**Schedule 1 Adjudication
qualification**

section 18(b) and (d)

**Part 1 Body that may issue
qualification**

Contract Administration Group Pty Limited
ACN 052 986 544

**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

		\$
1	Adjudication application fee (Act, s 79(2)(d))—	
	(a) for a payment claim for a progress payment of not more than \$10,000	57.35
	(b) for a payment claim for a progress payment of more than \$10,000 but not more than \$50,000	172.10
	(c) for a payment claim for a progress payment of more than \$50,000 but not more than \$100,000	286.85
	(d) for a payment claim for a progress payment of more than \$100,000 but not more than \$250,000	401.65

	\$
(e) for a payment claim for a progress payment of more than \$250,000 but not more than \$500,000	516.35
(f) for a payment claim for a progress payment of more than \$500,000 but not more than \$750,000	631.10
(g) for a payment claim for a progress payment of more than \$750,000 but not more than \$1,065,600	745.85
(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 5,737.60
2 Registration, or renewal of registration, as an adjudicator (Act, ss 159(2)(a)(iii) and 167(2)(c))	796.80

Schedule 3 Dictionary

section 3

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.

Division 3 Amendments commencing on 1 April 2019

15 Amendment of pt 3, hdg (Registrar’s policy and code of conduct for adjudicators)

Part 3, heading, as inserted by this regulation, ‘policy’—
omit, insert—
policies

16 Replacement of s 11 (Approval of registrar’s policy—Act, s 155)

Section 11, as inserted by this regulation—
omit, insert—

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.

17 Insertion of new pt 5, div 3

Part 5, as inserted by this regulation—
insert—

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.

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*) 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
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.

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
 - (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.

18 Insertion of new s 46

After section 45, as inserted by this regulation—

insert—

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.

19 Amendment of sch 3 (Dictionary)

Schedule 3—

insert—

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.

Part 3 **Amendment of Queensland Building and Construction Commission Regulation 2018**

20 **Regulation amended**

This part amends the *Queensland Building and Construction Commission Regulation 2018*.

21 **Amendment of s 24 (Demerit points—Act, s 67AW)**

Section 24—

insert—

- (2) However, each conviction of a person for a demerit offence against section 73 of the Act is allocated a total of 10 demerit points, inclusive of the number of demerit points stated opposite the offence in schedule 5, column 2, if the commission is satisfied the building work to which the offence relates—
 - (a) is work relating to the structural performance, safety or integrity of a building; or
 - (b) causes a hazard to public health, public safety or the environment generally; or

(c) causes a person to suffer significant financial loss.

22 Amendment of sch 5 (Demerit offences)

Schedule 5, entry for section 73—

omit, insert—

s 73 first conviction	4
s 73 second conviction	8
s 73 each subsequent conviction	10

23 Amendment of sch 8 (Dictionary)

Schedule 8—

insert—

conviction, of a person for a demerit offence, see section 67AQ of the Act.

Part 4 Amendment of State Penalties Enforcement Regulation 2014

24 Regulation amended

This part amends the *State Penalties Enforcement Regulation 2014*.

25 Amendment of sch 1 (Infringement notice offences and fines for nominated laws)

Schedule 1, entry for *Building Industry Fairness (Security of Payment) Act 2017*—

insert—

s 76(1)	5	10
s 90	10	20

ENDNOTES

- 1 Made by the Governor in Council on 8 November 2018.
- 2 Notified on the Queensland legislation website on 9 November 2018.
- 3 The administering agency is the Department of Housing and Public Works.

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