

Queensland



SUBCONTRACTORS' CHARGES ACT 1974

**Reprinted as in force on 13 July 1994
(includes amendments up to Act No. 111 of 1981)**

Reprint No. 1

**This reprint is prepared by
the Office of the Queensland Parliamentary Counsel
Warning—This reprint is not an authorised copy**

Information about this reprint

This Act is reprinted as at 13 July 1994. The reprint—

- shows the law as amended by all amendments that commenced on or before that day
- incorporates all necessary consequential amendments, whether of punctuation, numbering or another kind.

The reprint includes a reference to the law by which each amendment was made—see List of legislation and List of annotations in Endnotes.

Minor editorial changes allowed under the provisions of the Reprints Act 1992 mentioned in the following list have also been made to—

- update citations and references (Pt 4, Div 2)
- update references (Pt 4, Div 3)
- express gender specific provisions in a way consistent with current legislative drafting practice (s 24)
- correct spelling and use different spelling consistent with current legislative drafting practice (s 26(2))
- use standard punctuation consistent with current legislative drafting practice (s 27)
- use expressions consistent with current legislative drafting practice (s 29)
- use appropriate names for instruments and provision units (ss 31 and 32)
- use aspects of format and printing style consistent with current legislative drafting practice (s 35)
- omit provisions that are no longer required (s 39)
- omit the enacting words (s 42A)
- number and renumber provisions and references (s 43).

Also see Endnotes for—

- **details about when provisions commenced**
- **any provisions that have not commenced and are not incorporated in the reprint**
- **further information about editorial changes made in the reprint, including—**
 - **Table of changed citations and remade laws**
 - **Table of obsolete and redundant provisions**
 - **Table of renumbered provisions.**

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SUBCONTRACTORS' CHARGES ACT 1974

[as amended by all amendments that commenced on or before 13 July 1994²]

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

Short title

1. This Act may be cited as the *Subcontractors' Charges Act 1974*³⁻⁷.

Commencement

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

Interpretation

- 3.(1) In this Act—

“**charge**” means a charge under this Act;

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

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

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

“**employer**” means a person who contracts with another person for the performance of work by that other person, or at whose request or on whose credit or behalf, with the person's privity and consent, work is

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done, and includes all persons claiming under the person whose rights are acquired after the work is commenced, and in relation to a subcontractor includes the contractor or other subcontractor with and under whom the person has contracted, but a mortgagee who advances money to an employer shall not be deemed to be an employer by reason thereof;

“person” includes an unincorporated association;

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

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

“work” includes work or labour, whether skilled or unskilled, done or commenced upon the land where the contract or subcontract is being performed by a person of any occupation in connection with—

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

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

- (e) the mere delivery of goods sold by a vendor under a contract for the sale of goods, to at or upon land;
- (f) work or labour done or commenced by a person—
 - (i) under a contract of service;

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- (ii) in connection with the testing of materials or the taking of measurements or quantities;
 - (g) the supply under a contract of hire of materials, plant or machinery not intended to be incorporated in the work.
- (2) In this Act save where a contrary intention appears—
- (a) references to the amount of money payable under a contract or subcontract shall be deemed to include all amounts that, under the contract or subcontract, are to be credited or allowed in complete or partial satisfaction of the contract price otherwise than upon payment in money, and references to the payment of any moneys in reduction of the contract price shall include amounts so credited or allowed;
 - (b) references to completion of the work specified in a subcontract let by a contractor under a contract shall be deemed to mean completion of the work by a subcontractor who has given notice of a charge in respect of the contract, subcontract or any other subcontract under the contract.
- (3) For the purposes of this Act the work specified in a contract or subcontract shall be deemed to be completed when, with such variations, omissions or deductions as have been duly authorised or agreed upon, it has been performed in accordance with the contract or subcontract, notwithstanding that the contractor or subcontractor—
- (a) may then or subsequently be employed in doing additional or extra work that is connected with or related to the work but is not specified in the contract or subcontract; or
 - (b) may be liable to rectify defects in the work discovered since the performance thereof and during a period of maintenance provided for by the contract or subcontract.

Crown bound

4. This Act binds the Crown.

Charges in favour of subcontractors

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

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

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

Inclusion of certain money in amount payable to contractor or subcontractor

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

Assignments and the like void against subcontractors' charges

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

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

Schemes of arrangement binding on subcontractors

7A. Notwithstanding this Act—

- (a) any compromise or arrangement approved under section 315 of the Companies (Queensland) Code or under section 181 of the *Companies Act 1961*;
- (b) any composition under Part X of the *Bankruptcy Act 1966* (Cwlth);

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

Insufficiency of money to meet claims

8. Where the money that is or is to become payable under the contract is insufficient to meet the claims of 2 or more subcontractors any insufficiency shall be borne by them in proportion to the amounts of their claims.

Transmission and assignment of charges

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

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

Contractor to furnish information as to employer

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

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

(3) Damages pursuant to subsection (2) shall be determined and fixed by

the court on the application of the subcontractor concerned.

No tice of claim of charge

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

- (a) shall give notice to the employer or superior contractor by whom the money is payable, specifying the amount and particulars of the claim certified as prescribed by a qualified person and stating that the subcontractor requires the employer or superior contractor, as the case may be, to take the necessary steps to see that it is paid or secured to the subcontractor; and
- (b) shall give notice of having made the claim to the contractor to whom the money is payable.

(1A) The claim shall be in respect of—

- (a) money payable to the subcontractor at the date of the notice;
- (b) money to become payable to the subcontractor after the date of the notice for work done by the subcontractor prior to that date.

(2) A notice of claim of charge may be given although the work is not completed or the time for payment of the money in respect of which the charge is claimed has not arrived, but where the work is completed shall be given within 3 months after such completion.

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

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

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

(6) A claim—

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- (a) that is not certified in accordance with subsection (1); or
- (b) that is supported by a certificate given by a person in contravention of section 10A(2);

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

Qualified persons

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

- (a) an architect registered in accordance with the *Architects Act 1985*;
- (b) a professional engineer registered in accordance with the *Professional Engineers Act 1988*;
- (c) the holder of a current certificate of competency as an engineer issued under the Local Authority Engineers and Overseers of Works Regulations made pursuant to the *Local Government Act 1936*;
- (d) a builder registered under the *Builders' Registration Act 1971* or any other Act relating to the registration of builders;
- (e) a quantity surveyor who is a member of the Australian Institute of Quantity Surveyors;
- (f) a person having expert knowledge of the work to which the claim relates who is accepted in a particular case as a qualified person by the contractor and subcontractor.

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

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

Consequences of notice of claim of charge

11.(1) Where a notice of claim of charge is given pursuant to section 10, the

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person to whom it is given shall retain, until the court in which the claim is heard directs to whom and in what manner the same is to be paid, a sufficient part of the money that is or is to become payable by the person under the contract to satisfy the claim.

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

(3) Where notice of having made the claim is given pursuant to section 10, the contractor to whom the money is payable, within 14 days after the notice is given—

- (a) shall give notice in the prescribed form that the contractor accepts liability to pay the amount claimed; or
- (b) shall give notice in the prescribed form that the contractor disputes the claim—

in either case;

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

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

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

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

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

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

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

Enforcement of charge

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

(2) Claims and all other matters arising under this Act between a person claiming a charge and any other person alleged to be liable to pay an amount claimed or otherwise interested in money that may be affected by a charge or claim of charge and between persons or classes of person claiming a charge may be heard, determined and enforced by proceedings pursuant to this Act in a court of competent civil jurisdiction.

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

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

(3A) Every action brought by a subcontractor to enforce a charge shall be deemed to be brought on behalf also of every other subcontractor who has given notice of claim of charge pursuant to section 10 and who in accordance with rules of the court and this Act becomes a party to the action.

(3B) Subject to any rules of the court, every such subcontractor may become a party at any time before the date appointed for the hearing or any adjournment thereof (whether or not the subcontractor has given a notice of claim of charge) by filing in the court and serving on all other parties in the same manner as if the subcontractor were commencing the action a statement of claim endorsed with a request that the subcontractor be joined as a party in the proceedings.

Consolidation of actions

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

Application of practice of the court

14. Unless otherwise expressly provided in this Act, the practice of the court in its civil jurisdiction shall apply in proceedings under this Act.

Proceedings in respect of charges

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

- (a) in the case of a claim of charge in respect of retention money only—shall be commenced within 4 months after such retention money or the balance thereof is payable and no later;
- (b) in all other cases—shall be commenced within 2 months after notice of claim of charge has been given pursuant to section 10 and no later;
- (c) shall be brought by way of action.

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

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

Service of documents

16.(1) An originating process or application pursuant to this Act may be served by delivering a copy thereof to each of the persons to whom it is directed or the person's authorised agent, or in a case where a person to whom that process or application is directed or the person's authorised agent cannot after reasonable enquiry be found, by affixing it in or on some

conspicuous place on the land we the work out of which the claim or dispute arises was done.

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

Service of notice or other writings

16A. A notice or other writing required or authorised to be given pursuant to this Act shall be duly given if—

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

Power to proceed in absence of person against whom proceedings brought

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

Costs

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

Appeal

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

Effect of payment made under order of the court

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

Application to court by person prejudicially affected

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

- (a) that the claim be cancelled; or
- (b) that the effect of the claim be modified.

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

Vexatious notice of claim

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

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

Savings

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

Contracting out

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

Regulations

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

ENDNOTES**1 Index to Endnotes**

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2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 13 July 1994. Future amendments of the Subcontractors' Charges Act 1974 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

3 List of legislation**Subcontractors' Charges Act 1974 No. 37**

date of assent 2 May 1974

commenced 1 July 1974 (see s 2)

as amended by—

Subcontractors' Charges Act Amendment Act 1976 No. 38

date of assent 5 May 1976

commenced 1 October 1976 (proc pubd Gaz 25 September 1976 p 359)

Crown Proceedings Act 1980 No. 2 s 4(2) Sch

date of assent 31 March 1980

commenced 1 July 1980 (proc pubd Gaz 28 June 1980 p 1634)

Companies (Consequential Amendments) Act 1981 No. 111 s 23 Sch

date of assent 16 December 1981

commenced 1 July 1982 (see s 2.4 and proc pubd Gaz 29 June 1982 p 2102)

4 List of annotations

Key to abbreviations in list of annotations

amd	=	amended
Ch	=	Chapter
cl	=	clause
def	=	definition
Div	=	Division
hdg	=	heading
ins	=	inserted
om	=	omitted
prec	=	preceding
pres	=	present
prev	=	previous
(prev)	=	previously
prov	=	provision
Pt	=	Part
RA	=	Reprints Act 1992
renum	=	renumbered
Sdiv	=	Subdivision
sub	=	substituted

Provisions not included in reprint, or amended by amendments not included in reprint, are underlined

Interpretation

- s 3 amd 1976 No. 38 s 3(b)
 def **“court”** sub 1976 No. 38 s 3(a)(i)
 def **“retention money”** amd 1976 No. 38 s 3(a)(ii)
 def **“work”** amd 1976 No. 38 s 3(a)(iii)

Crown bound

- s 4 amd 1976 No. 38 s 4; 1980 No. 2 s 4(2)(a) Sch

Schemes of arrangement binding on subcontractors

- s 7A ins 1976 No. 38 s 5
 amd 1981 No. 111 s 23 Sch

Contractor to furnish information as to employer

- s 9A ins 1976 No. 38 s 6

Notice of claim of charge

- s 10 amd 1976 No. 38 s 7

Qualified persons

- s 10A ins 1976 No. 38 s 8

Consequences of notice of claim of charge

- s 11 amd 1976 No. 38 s 9

Enforcement of charge

- s 12 amd 1976 No. 38 s 10

Application of practice of the court

- s 14 amd 1976 No. 38 s 11

Proceedings in respect of charges
s 15 amd 1976 No. 38 s 12

Service of notice or other writings
s 16A ins 1976 No. 38 s 13

5 Table of changed citations and remade laws

TABLE OF CHANGED CITATIONS AND REMADE LAWS
under the Reprints Act 1992 ss 21A and 22

Old	New	Reference provision
Architects Act 1962	Architects Act 1985	—
Professional Engineers Act 1929	Professional Engineers Act 1988	—

6 Table of obsolete and redundant provisions

TABLE OF OBSOLETE AND REDUNDANT PROVISIONS
under the Reprints Act 1992 s 39

Omitted provision	Provision making omitted provision obsolete/redundant
definitions to be read in context	Acts Interpretation Act 1954 s 32A
references included in citation of law	Acts Interpretation Act 1954 s 14H

7 Table of renumbered provisions

TABLE OF RENUMBERED PROVISIONS
under section 43 of the Reprints Act 1992

Original	Renumbered as
3(1), def “work”, (d)(i)	3(1), def “work”, (e)
3(1), def “work”, (d)(ii)	3(1), def “work”, (f)
3(1), def “work”, (d)(ii)(A)	3(1), def “work”, (f)(i)
3(1), def “work”, (d)(ii)(B)	3(1), def “work”, (f)(ii)
3(1), def “work”, (d)(iii)	3(1), def “work”, (g)

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4(1)	4
9A(2), 2nd sentence	9A(3)
10(1), 2nd sentence	10(1A)
11(3)(i)	11(3)(c)
11(3)(ii)	11(3)(d)
12(3)(a)	12(3)
12(3)(b)	12(3A)
12(3)(b), 2nd sentence	12(3B)
16, 1st sentence	16(1)
16, 2nd sentence	16(2)