



Queensland

State Development and Public Works Organisation Amendment Regulation (No. 1) 2012

Subordinate Legislation 2012 No. 79

made under the

State Development and Public Works Organisation Act 1971

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[s 1]

1 Short title

This regulation may be cited as the *State Development and Public Works Organisation Amendment Regulation (No. 1) 2012*.

2 Regulation amended

This regulation amends the *State Development and Public Works Organisation Regulation 2010*.

3 Amendment of s 18 (Definitions for pt 9)

Section 18—

insert—

‘*Griffith University* means Griffith University established under the *Griffith University Act 1998*, section 4.’.

4 Insertion of new s 19A

Part 9—

insert—

‘19A Approval of terms of agreement to transfer works—Act, s 134(2)

‘The terms of the agreement negotiated between the Coordinator-General and Griffith University, as set out in schedule 2, are approved under section 134(2) of the Act.’.

5 Insertion of new sch 2

After schedule 1A—

insert—

**‘Schedule 2 Terms of agreement negotiated
between Coordinator-General
and Griffith University**

section 19A

The Coordinator-General

Griffith University

**Transfer of Science
and Engineering
Building (G39)**

[s 5]

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Date 16 May 2012

Parties

The Coordinator-General ABN 25 166 523 889 of Level 5, 100 George Street, Brisbane, Queensland (**CG**)

Griffith University ABN 78 106 094 461 of Nathan Campus, Nathan, Queensland (**Griffith**)

Background

- A Pursuant to the Regulation, the CG was directed to undertake the Project Works for the Griffith University Facilities Project.
 - B The Contract Administration Deed sets out the basis on which the CG carried out the Project Works.
 - C The Project Works have been completed and in accordance with section 134 of the Act the CG has, subject to Governor in Council approval by regulation pursuant to section 134(2) of the Act, agreed to transfer ownership of the Works to Griffith on the terms and conditions set out in this document.
-

Agreed terms

1 Interpretation

1.1 Definitions

In this document:

Act means *State Development and Public Works Organisation Act 1971* (Qld).

Building Contract means the contract between the CG and Hindmarsh Constructions Queensland Pty Ltd ABN 76 100 120 027 dated 23 December 2008.

Business Day means a day which is not a Saturday, Sunday or bank or public holiday in Brisbane.

Claim means any claim, loss, action, liability, damage, cost, charge, expense, outgoing, payment, diminution in value or deficiency of any kind or character which the CG pays, suffers or incurs or is liable for including:

- (a) liabilities on account of Tax;

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- (b) interest and other amounts payable to third parties; and
- (c) legal and other expenses incurred in connection with investigating or defending any claim or action, whether or not resulting in any liability and/or amounts paid in settlement of any claim or action.

Contract Administration Deed means the deed between the CG and Griffith dated 23 December 2008.

CG means the corporation sole constituted under section 8 of the Act.

Effective Date means the date of commencement of the regulation referred to in **clause 2.2**.

Griffith means the body corporate established under the *Griffith University Act 1998* (Qld).

Project Works has the meaning given in Part 41 of the *State Development and Public Works Organisation Regulation 2010* and relates to the works required to deliver the Griffith University Facilities Project.

Regulation means *State Development and Public Works Organisation Amendment Regulation (No. 7) 2008* in respect of the works under the Building Contract inserting Part 41 of the *State Development and Public Works Organisation Regulation 2010*.

State means the State of Queensland.

Tax includes:

- (a) all taxes levied, imposed or assessed under the Tax Act or any other statute, ordinance or law in Australia or elsewhere; and
- (b) taxes in the nature of sales tax, consumption tax, value added tax, payroll tax, group tax, PAYE, PAYG, undistributed profits, fringe benefits tax, recoupment tax, withholding tax, land tax, water rates, municipal rates, stamp duties, gift duties or other State, territorial, Commonwealth or municipal charges or impositions levied, imposed or collected by any governmental body,

together with any additional tax, interest, penalty, charge, fee or other amount of any kind assessed, charged or imposed in relation to the late or short payment of the same or the failure to file any return.

Tax Act means the *Income Tax Assessment Act 1936* (Cth) and the *Income Tax Assessment Act 1997* (Cth).

Works has the meaning given in the Building Contract.

1.2 Construction

Unless expressed to the contrary, in this document:

- (a) words in the singular include the plural and vice versa;
- (b) any gender includes the other genders;
- (c) if a word or phrase is defined its other grammatical forms have corresponding meanings;

- (d) "includes" means includes without limitation;
- (e) no rule of construction will apply to a clause to the disadvantage of a party merely because that party put forward the clause or would otherwise benefit from it;
- (f) a reference to:
 - (i) a person includes a partnership, joint venture, unincorporated association, corporation and a government or statutory body or authority;
 - (ii) a person includes the person's legal personal representatives, successors, assigns and persons substituted by novation;
 - (iii) any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified or replaced;
 - (iv) an obligation includes a warranty or representation and a reference to a failure to comply with an obligation includes a breach of warranty or representation;
 - (v) a right includes a benefit, remedy, discretion or power;
 - (vi) time is to local time in Brisbane;
 - (vii) "\$" or "dollars" is a reference to Australian currency;
 - (viii) this or any other document includes the document as novated, varied or replaced and despite any change in the identity of the parties;
 - (ix) writing includes any mode of representing or reproducing words in tangible and permanently visible form, and includes fax transmissions;
 - (x) this document includes all schedules and annexures to it; and
 - (xi) a clause, schedule or annexure is a reference to a clause, schedule or annexure, as the case may be, of this document;
- (g) if the date on or by which any act must be done under this document is not a Business Day, the act must be done on or by the next Business Day; and
- (h) where time is to be calculated by reference to a day or event, that day or the day of that event is excluded.

1.3 Headings

Headings do not affect the interpretation of this document.

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2 Ownership and transfer of the Works

2.1 Transfer

In consideration of the payments made by Griffith under the Building Contract in accordance with the Contract Administration Deed, the CG transfers title to and ownership of the Works to Griffith on and from the Effective Date.

2.2 Governor in Council approval

The transfer in **clause 2.1** is subject to approval of the terms of this document by the Governor in Council by regulation pursuant to section 134(2) of the Act.

2.3 Acceptance of Works

Griffith accepts title to and ownership of the Works on and from the Effective Date on an "as is/where is" basis with all their faults and defects (if any) latent and patent.

2.4 Indemnity

Griffith shall indemnify and keep indemnified the CG, its employees, consultants and agents against all Claims arising directly or indirectly under or in connection with the Works and this document, except and to the extent that a Claim is caused or contributed to by the acts or omissions of the CG or employees or consultants of the State but the exception does not apply to employees or consultants acting in accordance with directions given by Griffith.

3 Notices

3.1 General

A notice, demand, certification, process or other communication relating to this document must be in writing in English and may be given by an agent of the sender.

3.2 How to give a communication

In addition to any other lawful means, a communication may be given by being:

- (a) personally delivered;
- (b) left at the party's current address for notices;
- (c) sent to the party's current address for notices by pre-paid ordinary mail or, if the address is outside Australia, by pre-paid airmail; or
- (d) sent by fax to the party's current fax number for notices.

3.3 Particulars for delivery of notices

- (a) The particulars for delivery of notices are initially:

CG

Address: The Coordinator-General
Department of Infrastructure and Planning
Level 5, 100 George Street, Brisbane, Qld 4000

Fax: (07) 3224 4683
Attention: Project Director
Gold Coast University Hospital Project
Government Development Projects

Griffith

Address: Facilities Management Building (N23)
Griffith University
170 Kessels Road
Nathan, QLD 4111

Fax: (07) 3735 7746
Attention: Mr Geoffrey Smith

- (b) Each party may change its particulars for delivery of notices by notice to each other party.

3.4 Communications by post

Subject to **clause 3.6**, a communication is given if posted:

- (a) within Australia to an Australian address, three Business Days after posting; or
(b) in any other case, ten Business Days after posting.

3.5 Communications by fax

Subject to **clause 3.6**, a communication is given if sent by fax, when the sender's fax machine produces a report that the fax was sent in full to the addressee. That report is conclusive evidence that the addressee received the fax in full at the time indicated on that report.

3.6 After hours communications

If a communication is given:

- (a) after 5.00 pm in the place of receipt; or
(b) on a day which is a Saturday, Sunday or bank or public holiday in the place of receipt,

it is taken as having been given at 9.00 am on the next day which is not a Saturday, Sunday or bank or public holiday in that place.

3.7 Process service

Any process or other document relating to litigation, administrative or arbitral proceedings relating to this document may be served by any method contemplated by this **clause 3** or in accordance with any applicable law.

4 General

4.1 Duty

- (a) Griffith as between the parties is liable for and must pay all duty (including any fine or penalty except where it arises from default by the other party) on or relating to this document, any document executed under it or any dutiable transaction evidenced or effected by it.
- (b) If a party other than Griffith pays any duty (including any fine or penalty) on or relating to this document, any document executed under it or any dutiable transaction evidenced or effected by it, Griffith must pay that amount to the paying party on demand.

4.2 GST

- (a) In this **clause 4.2**:
 - (i) words and expressions which are not defined in this document but which have a defined meaning in GST Law have the same meaning as in the GST Law;
 - (ii) **GST Law** has the same meaning given to that expression in the *A New Tax System (Goods and Services Tax) Act 1999*; and
 - (iii) references to GST payable and input tax credit entitlement include GST payable by, and the input tax credit entitlement of, the representative member for a GST group of which the entity is a member.
- (b) Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this document are exclusive of GST.
- (c) If GST is payable on any supply made by a party (or any entity through which that party acts) (**Supplier**) under or in connection with this document, the recipient will pay to the Supplier an amount equal to the GST payable on the supply.
- (d) The recipient will pay the amount referred to in **clause 4.2(c)** in addition to and at the same time that the consideration for the supply is to be provided under this document.
- (e) The Supplier must deliver a tax invoice or an adjustment note to the recipient before the Supplier is entitled to payment of an amount under **clause 4.2(c)**. The recipient can withhold payment of the amount until the Supplier provides a tax invoice or an adjustment note, as appropriate.
- (f) If an adjustment event arises in respect of a taxable supply made by a Supplier under this document, the amount payable by the recipient under **clause 4.2(c)** will be recalculated to reflect the adjustment event and a payment will be made by the recipient to the Supplier or by the Supplier to the recipient as the case requires.

- (g) Where a party is required under this document to pay or reimburse an expense or outgoing of another party, the amount to be paid or reimbursed by the first party will be the sum of:
 - (i) the amount of the expense or outgoing less any input tax credits in respect of the expense or outgoing to which the other party is entitled; and
 - (ii) if the payment or reimbursement is subject to GST, an amount equal to that GST.

4.3 No Merger

Clause 4.2 does not merge in the completion or termination of this document or on the transfer of the Building under this document.

4.4 Legal costs

Except as expressly stated otherwise in this document, each party must pay its own legal and other costs and expenses of negotiating, preparing, executing and performing its obligations under this document.

4.5 Rights cumulative

Except as expressly stated otherwise in this document, the rights of a party under this document are cumulative and are in addition to any other rights of that party.

4.6 Further steps

Each party must promptly do whatever any other party reasonably requires of it to give effect to this document and to perform its obligations under it.

4.7 Governing law and jurisdiction

- (a) This document is governed by and is to be construed in accordance with the laws applicable in Queensland.
- (b) Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in Queensland and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.

4.8 Counterparts

This document may consist of a number of counterparts and, if so, the counterparts taken together constitute one document.

4.9 Entire understanding

- (a) This document contains the entire understanding between the parties as to the subject matter of this document.
- (b) All previous negotiations, understandings, representations, warranties, memoranda or commitments concerning the subject matter of this document are merged in and superseded by this document and are of no effect. No party is liable to any other party in respect of those matters.

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- (c) No oral explanation or information provided by any party to another:
 - (i) affects the meaning or interpretation of this document; or
 - (ii) constitutes any collateral agreement, warranty or understanding between any of the parties.

4.10 Relationship of parties

This document is not intended to create a partnership, joint venture or agency relationship between the parties.

Executed as a deed.

Signed sealed and delivered for and)
 by on behalf of The Coordinator-General)
 ABN ABN-25 466 523 889 on this)
 24 830 236 406)
 16th day of July 2012)
 by: BARRY EDWARD BROE)



in the presence of:

S. Speak
 Signature of Witness

SIOBHAN REBECCA SPEAK
 Name of Witness in full (print)

Signed sealed and delivered for and)
 on behalf of Griffith University)
 ABN 78 106 094 461 on this)
 18th day of July 2011)
 by: COLIN Mc ANDREW

Colin McAndrew
 Signature

in the presence of:

Michelle Jackson
 Signature of Witness

MICHAEL ANTHON COLLIER-JACKSON
 Name of Witness in full (print)

ENDNOTES

- 1 Made by the Governor in Council on 28 June 2012.
- 2 Notified in the gazette on 29 June 2012.
- 3 Laid before the Legislative Assembly on . . .
- 4 The administering agency is the Department of State Development, Infrastructure and Planning.

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