



Queensland

Building and Construction Industry Payments Amendment Bill 2014

Includes amendments agreed during Consideration



Queensland

Building and Construction Industry Payments Amendment Bill 2014

Contents

		Page
1	Short title	6
2	Commencement	6
3	Act amended	6
4	Amendment of s 4 (Effect of giving notice of claim of charge under Subcontractors' Charges Act 1974)	6
5	Amendment of s 17 (Payment claims)	6
6	Insertion of new s 17A	7
	17A Time requirements for payment claims	7
7	Amendment of s 18 (Payment schedules)	8
8	Insertion of new s 18A	8
	18A Time requirements for payment schedules	8
9	Replacement of s 19 (Consequences of not paying claimant if no payment schedule)	9
	19 Consequences of not paying claimant if no payment schedule	9
10	Amendment of s 20 (Consequences of not paying claimant under payment schedule)	11
11	Insertion of new s 20A	11
	20A Notice required before starting particular proceedings	12
12	Amendment of s 21 (Adjudication application)	13
13	Amendment of s 23 (Appointment of adjudicator)	14
14	Replacement of s 24 (Adjudication responses)	14
	24 Adjudication responses	14
	24A Time requirements for adjudication response	15
	24B Reply to new reasons for withholding payment	16
15	Replacement of s 25 (Adjudication procedures)	17
	25 Adjudication procedures	17

Contents

	25A	Time requirements for adjudication proceedings	18
	25B	Extension of time requirements by adjudicator.	20
16		Amendment of s 30 (Consequences of not paying claimant adjudicated amount).	20
17		Amendment of s 32 (Claimant may make new application in certain circumstances)	21
18		Amendment of s 33 (Claimant may suspend work)	21
19		Omission of s 34 (Authorised nominating authority's fees).	21
20		Amendment of s 35 (Adjudicator's fees).	21
21		Insertion of new ss 35A and 35B	22
	35A	Matters to be considered in deciding fees	22
	35B	Withdrawing from adjudication	23
22		Amendment of s 38 (Registrar's functions and powers)	24
23		Amendment of s 39 (Delegation by registrar).	24
24		Omission of s 40 (Acting registrar)	24
25		Amendment of s 41 (Annual report on operation of Act and registry)	25
26		Omission of pt 4, div 2 (Registration of authorised nominating authorities)	25
27		Amendment of s 68 (Form of certificate of registration)	25
28		Amendment of pt 4, div 4, hdg (Renewals of registrations of authorised nominating authorities and adjudicators)	25
29		Amendment of s 69 (Definitions for div 4)	26
30		Amendment of pt 4, div 5, hdg (Amendment of registrations of authorised nominating authorities and adjudicators)	26
31		Amendment of s 73 (Definitions for div 5)	26
32		Amendment of pt 4, div 6, hdg (Suspension or cancellation of registrations of authorised nominating authorities and adjudicators)	26
33		Amendment of s 76 (Definitions for div 6)	27
34		Amendment of s 84 (Effect of suspension or cancellation of registration of authorised nominating authority or adjudicator)	27
34A		Omission of s 85 (Issue of adjudication certificate by registrar)	28
35		Amendment of pt 4, div 7, hdg (Other provisions about registrations of authorised nominating authorities and adjudicators)	28
36		Amendment of s 86 (Definitions for div 7)	28
37		Amendment of s 100 (Effect of pt 3 on civil proceedings)	28
38		Replacement of s 101 (Adjudicator must give copy of decision to authorised nominating authority)	29

	101	Queensland Building and Construction Board's policy	29
39		Replacement of s 102 (Authorised nominating authority must give information to registrar)	29
	102	Adjudicator must give information to registrar	29
40		Amendment of s 105 (Evidentiary aids)	30
41		Amendment of s 107 (Protection from liability for adjudicators and authorised nominating authorities)	30
41A		Amendment of s 111 (Regulation-making power)	30
42		Amendment of pt 7, hdg (Transitional)	30
43		Insertion of new pt 7, div 1, hdg	31
44		Insertion of new pt 7, div 2	31
	Division 2	Transitional provisions for Building and Construction Industry Payments Amendment Act 2014	
	113	Registration of authorised nominating authorities . . .	31
	114	Applications to authorised nominating authorities for referral to adjudicators	32
	115	Existing contracts not subject to new recovery of progress payment procedures	32
	116	Mandatory training about adjudication changes	33
45		Amendment of sch 2 (Dictionary)	34

2014

A Bill

for

An Act to amend the *Building and Construction Industry Payments Act 2004* for particular purposes

The Parliament of Queensland enacts—

1 Short title

This Act may be cited as the *Building and Construction Industry Payments Amendment Act 2014*.

2 Commencement

This Act commences on a day to be fixed by proclamation.

3 Act amended

This Act amends the *Building and Construction Industry Payments Act 2004*.

4 Amendment of s 4 (Effect of giving notice of claim of charge under Subcontractors' Charges Act 1974)

(1) Section 4(4)(a), 'section 18(5)'—

omit, insert—

section 19(2)

(2) Section 4(4)(b), 'section 19(2)(a)(i)'—

omit, insert—

section 19(3)(a)(i)

(3) Section 4(4)(d)(ii), 'an authorised nominating authority'—

omit, insert—

the registrar

(4) Section 4(5), '34 or'—

omit.

5 Amendment of s 17 (Payment claims)

Section 17(4) to (6)—

omit, insert—

- (4) A claimant can not serve more than 1 payment claim for each reference date under the construction contract, but may include in any payment claim an amount that has been the subject of a previous payment claim.

6 Insertion of new s 17A

After section 17—

insert—

17A Time requirements for payment claims

- (1) This section applies if a claimant serves a payment claim on a respondent.
- (2) Unless the payment claim relates to a final payment, the claim must be served within the later of—
 - (a) the period, if any, worked out under the relevant construction contract; or
 - (b) the period of 6 months after the construction work to which the claim relates was last carried out or the related goods and services to which the claim relates were last supplied.
- (3) If the payment claim relates to a final payment, the claim must be served within the later of the following—
 - (a) the period, if any, worked out under the relevant construction contract;
 - (b) 28 days after the end of the last defects liability period, if any, worked out under the relevant construction contract;
 - (c) 6 months after the later of—

[s 7]

- (i) completion of all construction work to be carried out under the relevant construction contract; or
 - (ii) complete supply of related goods and services to be supplied under the relevant construction contract.
- (4) In this section—

defects liability period, for a construction contract, means the period, if any, worked out under the contract as being the period—

- (a) starting on the day the construction work is practically or substantially completed, or the related goods and services are supplied, under the contract; and
- (b) ending on the last day any omission or defect in the construction work or related goods or services may be required or directed to be rectified under the contract.

final payment means a progress payment that is the final payment for construction work carried out, or for related goods and services supplied, under a construction contract.

7 Amendment of s 18 (Payment schedules)

Section 18(4) and (5)—

omit.

8 Insertion of new s 18A

After section 18—

insert—

18A Time requirements for payment schedules

- (1) This section applies if, in reply to a payment claim, the respondent serves a payment schedule on the claimant.

- (2) The payment schedule, if it relates to a standard payment claim, must be served on the claimant within the earlier of—
 - (a) the time required, if any, by the relevant construction contract; or
 - (b) 10 business days after the payment claim is served.
- (3) The payment schedule, if it relates to a complex payment claim, must be served on the claimant within the earlier of—
 - (a) the time required, if any, by the relevant construction contract; or
 - (b) whichever of the following applies—
 - (i) if the claim was served on the respondent 90 days or less after the reference date to which the claim relates—15 business days after the claim is served;
 - (ii) if the claim was served on the respondent more than 90 days after the reference date to which the claim relates—30 business days after the claim is served.

9 Replacement of s 19 (Consequences of not paying claimant if no payment schedule)

Section 19—

omit, insert—

19 Consequences of not paying claimant if no payment schedule

- (1) This section applies if a respondent served with a payment claim does not serve a payment schedule on the claimant within the time that the respondent may serve the schedule on the claimant.

[s 9]

- (2) The respondent becomes liable to pay the claimed amount to the claimant on the due date for the progress payment to which the payment claim relates.
- (3) If the respondent fails to pay the whole or any part of the claimed amount on or before the due date for the progress payment to which the payment claim relates, the claimant—
 - (a) may—
 - (i) recover the unpaid portion of the claimed amount from the respondent, as a debt owing to the claimant, in any court of competent jurisdiction; or
 - (ii) make an adjudication application under section 21(1)(b) in relation to the payment claim; and
 - (b) may serve notice on the respondent of the claimant's intention to suspend, under section 33, carrying out construction work or supplying related goods and services under the construction contract.
- (4) A notice under subsection (3)(b) must state that it is made under this Act.
- (5) The claimant can not start proceedings under subsection (3)(a)(i) to recover the unpaid portion of the claimed amount from the respondent as a debt unless—
 - (a) the claimant gives the respondent a notice under section 20A(2); and
 - (b) the 5 business days for the respondent to serve the payment schedule, as stated in the notice, has ended.
- (6) If the claimant starts proceedings under subsection (3)(a)(i) to recover the unpaid portion of the claimed amount from the respondent as a debt—

- (a) judgement in favour of the claimant is not to be given by a court unless the court is satisfied the respondent—
 - (i) did not serve a payment schedule on the claimant within the time that the respondent may serve the schedule on the claimant; and
 - (ii) failed to pay the whole or any part of the claimed amount on or before the due date for the progress payment to which the payment claim relates; and
- (b) the respondent is not, in those proceedings, entitled—
 - (i) to bring any counterclaim against the claimant; or
 - (ii) to raise any defence in relation to matters arising under the construction contract.

10 Amendment of s 20 (Consequences of not paying claimant under payment schedule)

Section 20(1)(b)—

omit, insert—

- (b) the respondent serves a payment schedule on the claimant within the time that the respondent may serve the schedule on the claimant; and

11 Insertion of new s 20A

Part 3, division 1—

insert—

20A Notice required before starting particular proceedings

- (1) This section applies if a claimant serves a payment claim on a respondent and—
 - (a) the respondent—
 - (i) fails to serve a payment schedule on the claimant under this part; and
 - (ii) fails to pay the whole or any part of the claimed amount on or before the due date for the progress payment to which the payment claim relates; and
 - (b) the claimant intends to—
 - (i) start proceedings to recover an unpaid portion of the claimed amount as a debt owing to the claimant; or
 - (ii) apply for adjudication of the payment claim.
- (2) Before taking the intended action mentioned in subsection (1)(b), the claimant must first give the respondent notice of the claimant's intention to take the action.
- (3) The notice must—
 - (a) be given to the respondent within 20 business days immediately following the due date for payment; and
 - (b) state that the respondent may serve a payment schedule on the claimant within 5 business days after receiving the notice; and
 - (c) state it is made under this Act.
- (4) However, this section does not apply if the claimant previously gave the respondent a notice under this section for the unpaid portion of the claimed amount.

- (5) The giving of a notice under subsection (2) does not—
- (a) require the claimant to complete the action stated in the notice; or
 - (b) prevent the claimant from taking different action to that stated in the notice.

12 Amendment of s 21 (Adjudication application)

- (1) Section 21(1)(a) and (b), ‘division 1’—
omit, insert—
 this part
- (2) Section 21(2)(a) and (b)—
omit, insert—
- (a) the claimant gives the respondent a notice under section 20A(2); and
 - (b) the 5 business days for the respondent to serve the payment schedule, as stated in the notice, has ended.
- (3) Section 21(3)(a) and (b)—
omit, insert—
- (a) must be in the approved form; and
 - (b) must be made to the registrar; and
- (4) Section 21(3)(c)(iii), ‘5 day period’—
omit, insert—
 5 business days
- (5) Section 21(3)(e)—
omit, insert—
- (e) must be accompanied by the fee prescribed by regulation for the application; and
- (6) Section 21(6), ‘authorised nominating authority to which an adjudication application is made’—

[s 13]

omit, insert—
registrar

13 Amendment of s 23 (Appointment of adjudicator)

Section 23(1), ‘an authorised nominating authority’—

omit, insert—

the registrar

14 Replacement of s 24 (Adjudication responses)

Section 24—

omit, insert—

24 Adjudication responses

- (1) This section applies if—
 - (a) an adjudicator accepts a claimant’s adjudication application under section 23; and
 - (b) the respondent served a payment schedule on the claimant within the time that the respondent may serve the schedule on the claimant.
- (2) The respondent may give the adjudicator a response to the adjudication application (the *adjudication response*).
- (3) The adjudication response—
 - (a) must be in writing; and
 - (b) must identify the adjudication application to which it relates; and
 - (c) may contain the submissions relevant to the response the respondent chooses to include.
- (4) If the adjudication application is about a standard payment claim, the adjudication response can not include any reasons for withholding payment

unless those reasons were included in the payment schedule when served on the claimant.

- (5) If the adjudication application is about a complex payment claim, the adjudication response may include any reasons for withholding payment whether or not those reasons were included in the payment schedule when served on the claimant.

24A Time requirements for adjudication response

- (1) Subsection (2) applies for an adjudication response to an adjudication application about a standard payment claim.
- (2) The respondent must give the adjudicator the adjudication response within the later of the following to end—
 - (a) 10 business days after receiving a copy of the adjudication application;
 - (b) 7 business days after receiving notice of the adjudicator's acceptance of the adjudication application.
- (3) Subsections (4) to (7) apply for an adjudication response to an adjudication application about a complex payment claim.
- (4) The respondent must give the adjudicator the adjudication response within the later of the following to end—
 - (a) 15 business days after receiving a copy of the adjudication application;
 - (b) 12 business days after receiving notice of the adjudicator's acceptance of the adjudication application.
- (5) However, the respondent may apply to the adjudicator for an extension of time, of up to 15 additional business days, to give the adjudication response.

[s 14]

- (6) The application must—
 - (a) be made within the later of the following to end—
 - (i) 5 business days after receiving a copy of the adjudication application;
 - (ii) 2 business days after receiving notice of the adjudicator’s acceptance of the adjudication application; and
 - (b) be in writing; and
 - (c) include the reasons for requiring the extension of time.
- (7) If the application is granted, the respondent may give the adjudicator the adjudication response no later than the end of the extension of time granted by the adjudicator.
- (8) A copy of an adjudication response must be served on the claimant no more than 2 business days after it is given to the adjudicator.

24B Reply to new reasons for withholding payment

- (1) This section applies if, under section 24(5), the respondent includes in an adjudication response reasons for withholding payment that were not included in the payment schedule when served on the claimant (the *new reasons*).
- (2) The claimant may give the adjudicator a reply to the new reasons (the *claimant’s reply*) within 15 business days after receiving a copy of the adjudication response.
- (3) However, the claimant may apply to the adjudicator for an extension of time, of up to 15 additional business days, to give the claimant’s reply if, because of the complexity or volume of the new reasons, an extension of time is required to adequately prepare the claimant’s reply.

-
- (4) The application must—
 - (a) be made within 5 business days after receiving a copy of the adjudication response; and
 - (b) be in writing; and
 - (c) include the reasons for requiring the extension of time.
 - (5) If the application is granted, the claimant may give the adjudicator the claimant's reply no later than the end of the extension of time granted by the adjudicator.
 - (6) A copy of the claimant's reply must be served on the respondent no more than 2 business days after it is given to the adjudicator.
 - (7) If the claimant proposes to give the adjudicator a claimant's reply, the claimant must give the adjudicator notice of the proposal within 5 business days after receiving a copy of the adjudication response unless the claimant gives the reply within the 5 business days.

15 Replacement of s 25 (Adjudication procedures)

Section 25—

omit, insert—

25 Adjudication procedures

- (1) Subject to the time requirements under section 25A, an adjudicator must decide the following as quickly as possible—
 - (a) an adjudication application;
 - (b) applications for extensions of time under this part.
- (2) An adjudicator must not consider an adjudication response or a claimant's reply unless it was given to the adjudicator within the time that the

[s 15]

respondent or claimant may give it to the adjudicator.

- (3) For a proceeding conducted to decide an adjudication application, an adjudicator—
 - (a) must decide whether he or she has jurisdiction to adjudicate the application; and
 - (b) may ask for further written submissions from either party and must give the other party an opportunity to comment on the submissions; and
 - (c) may set deadlines for further submissions and comments by the parties; and
 - (d) may call a conference of the parties; and
 - (e) may carry out an inspection of any matter to which the claim relates.
- (4) If a conference is called, it must be conducted informally and the parties are not entitled to any legal representation.
- (5) The adjudicator's power to decide an adjudication application is not affected by the failure of either or both of the parties to make a submission or comment within time or to comply with the adjudicator's call for a conference of the parties.

25A Time requirements for adjudication proceedings

- (1) An adjudicator must decide an adjudication application on or before the deadline for deciding the application but not before the end of the minimum consideration period for deciding the application.
- (2) However, the claimant and respondent may, before or after the deadline, agree in writing that

the adjudicator has additional time to decide the application.

- (3) The *minimum consideration period* for deciding an adjudication application is—
- (a) the period within which the respondent may give an adjudication response to the adjudicator under section 24A; but
 - (b) if the claimant may give a claimant's reply under section 24B—the period mentioned in paragraph (a) plus the period within which the claimant may give the reply.

Note—

Only a complex payment claim may involve a claimant's reply. See section 24B.

- (4) The *deadline*, for deciding an adjudication application relating to a standard payment claim, is the day that is 10 business days after—
- (a) if the adjudicator was given an adjudication response in compliance with section 24A—the day on which the adjudicator receives the response; or
 - (b) otherwise—the last day on which the respondent could have given the adjudicator the response.
- (5) The *deadline*, for deciding an adjudication application relating to a complex payment claim, is the day that is 15 business days after—
- (a) if the adjudicator was given an adjudication response in compliance with section 24A—the day on which the adjudicator receives the response; or
 - (b) otherwise—the last day on which the respondent could have given the adjudicator the response.
- (6) However, if the claimant may give the adjudicator a claimant's reply under section 24B,

[s 16]

the *deadline* for deciding the adjudication application is the day that is 15 business days after—

- (a) if the adjudicator was given a claimant's reply in compliance with section 24B—the day on which the adjudicator receives the reply; or
- (b) otherwise—the last day on which the claimant could have given the adjudicator the reply.

25B Extension of time requirements by adjudicator

- (1) This section applies if—
 - (a) an adjudication application relates to a complex payment claim; and
 - (b) in the opinion of the adjudicator, the claimant and respondent fail to reach agreement under section 25A(2).
- (2) The adjudicator may, despite section 25A(5) or (6), decide the application within 5 business days after the time the adjudicator would otherwise have to decide the application under section 25A(5) or (6).

16 Amendment of s 30 (Consequences of not paying claimant adjudicated amount)

- (1) Section 30(1)(a), 'authorised nominating authority to whom the adjudication application was made'—

omit, insert—

registrar

- (2) Section 30(4), 'request the authorised nominating authority'—

omit, insert—

ask the registrar

- (3) Section 30(6), ‘authorised nominating authority’—
omit, insert—
registrar

17 Amendment of s 32 (Claimant may make new application in certain circumstances)

- (1) Section 32(1)(b), ‘section 25(3)’—
omit, insert—
section 25A or 25B
- (2) Section 32(2)(a), ‘authorised nominating authority to whom the application was made’—
omit, insert—
registrar

18 Amendment of s 33 (Claimant may suspend work)

- Section 33(2), ‘section 19(1)’—
omit, insert—
section 19(2)

19 Omission of s 34 (Authorised nominating authority’s fees)

- Section 34—
omit.

20 Amendment of s 35 (Adjudicator’s fees)

- (1) Section 35(4), from ‘(other’ to ‘25(3)’—
omit.
- (2) Section 35(5)—
omit, insert—
- (5) However, subsection (4) does not apply if—

[s 21]

- (a) the adjudication application is withdrawn; or
 - (b) the adjudicator decided he or she did not have jurisdiction to adjudicate the application.
- (6) Also, if a court finds that the adjudicator's decision is void and unenforceable, the adjudicator is still entitled to be paid any fees or expenses for the adjudication of the application if the adjudicator acted in good faith in adjudicating the application.
- (7) For subsection (4), an adjudicator does not fail to make a decision merely because the adjudicator refuses to communicate the adjudicator's decision on an adjudication application until the adjudicator's fees and expenses are paid.
- (8) In this section—
- adjudicating*, an adjudication application, includes accepting, considering and deciding the application.

21 Insertion of new ss 35A and 35B

Part 3, division 4—

insert—

35A Matters to be considered in deciding fees

- (1) This section applies if an adjudicator is making a decision about the proportion of the adjudicator's fees and expenses to be paid by the claimant and respondent under section 35(3).
- (2) In making the decision, the adjudicator may consider the following matters—
 - (a) the relative success of the claimant or respondent in the adjudication;

- (b) whether the claimant or respondent commenced or participated in the adjudication for an improper purpose;
- (c) whether the claimant or respondent commenced or participated in the adjudication without reasonable prospects of success;
- (d) whether the claimant or respondent has acted unreasonably leading up to the adjudication;
- (e) whether the claimant or respondent has acted unreasonably in the conduct of the adjudication;
- (f) the reasons given by the respondent for not making the progress payment the subject of the adjudication application;
- (g) whether the respondent included additional reasons for withholding payment in the adjudication response that were not included in the payment schedule served on the claimant;
- (h) whether an adjudication application is withdrawn;
- (i) the services provided by the adjudicator in adjudicating the adjudication application, including the amount of time taken to consider discrete aspects of the amount claimed;
- (j) another matter the adjudicator considers relevant in making the decision.

35B Withdrawing from adjudication

An adjudication application is taken to have been withdrawn if—

[s 22]

- (a) a claimant has served a notice of discontinuation on the adjudicator and respondent; or
- (b) a respondent has paid the claimed amount the subject of the adjudication application to the claimant.

Note—

Despite the withdrawal of an adjudication application an adjudicator is still entitled to be paid fees for considering the application—see section 35.

22 Amendment of s 38 (Registrar’s functions and powers)

- (1) Section 38(2), before paragraph (a)—

insert—

(aa) to refer adjudication applications to adjudicators;

- (2) Section 38(2)(a), ‘authorised nominating authorities and’—

omit.

- (3) Section 38(2)(a), ‘paragraph (b)’—

omit, insert—

paragraph (c)

- (4) Section 38(2)(aa) to (g)—

renumber as section 38(2)(a) to (h).

23 Amendment of s 39 (Delegation by registrar)

Section 39(2)—

omit.

24 Omission of s 40 (Acting registrar)

Section 40—

omit.

25 Amendment of s 41 (Annual report on operation of Act and registry)

Section 41(2)—

omit, insert—

- (2) The report may be included in the commission's annual report.
- (3) Unless the report is included in the commission's annual report, the Minister must table a copy of the report in the Legislative Assembly within 14 sitting days after receiving the report.
- (4) In this section—

annual report means an annual report prepared under the *Financial Accountability Act 2009*, section 63.

26 Omission of pt 4, div 2 (Registration of authorised nominating authorities)

Part 4, division 2—

omit.

27 Amendment of s 68 (Form of certificate of registration)

Section 68(a), 'registrant's'—

omit, insert—

adjudicator's

28 Amendment of pt 4, div 4, hdg (Renewals of registrations of authorised nominating authorities and adjudicators)

Part 4, division 4, heading 'authorised nominating authorities and'—

omit.

29 Amendment of s 69 (Definitions for div 4)

(1) Section 69, definition *registrant*—

omit, insert—

registrant means an adjudicator applying for a renewal of registration as an adjudicator.

(2) Section 69, definition *registration*—

omit, insert—

registration means renewal of registration as an adjudicator.

30 Amendment of pt 4, div 5, hdg (Amendment of registrations of authorised nominating authorities and adjudicators)

Part 4, division 5, heading ‘authorised nominating authorities and’—

omit.

31 Amendment of s 73 (Definitions for div 5)

(1) Section 73, definition *registrant*—

omit, insert—

registrant means an adjudicator applying for amendment of a registration as an adjudicator.

(2) Section 73, definition *registration*—

omit, insert—

registration means an amendment of a registration as an adjudicator.

32 Amendment of pt 4, div 6, hdg (Suspension or cancellation of registrations of authorised nominating authorities and adjudicators)

Part 4, division 6, heading ‘authorised nominating authorities and’—

omit.

33 Amendment of s 76 (Definitions for div 6)

- (1) Section 76, definition *registrant*—

omit, insert—

registrant means a person registered as an adjudicator.

- (2) Section 76, definition *registration*—

omit, insert—

registration means registration as an adjudicator.

34 Amendment of s 84 (Effect of suspension or cancellation of registration of authorised nominating authority or adjudicator)

- (1) Section 84, heading, ‘authorised nominating authority or’—

omit.

- (2) Section 84(1)(a), ‘an authorised nominating authority or’—

omit.

- (3) Section 84(1)(b), ‘made to the authorised nominating authority’—

omit, insert—

made to the registrar

- (4) Section 84(5)—

omit, insert—

- (5) The adjudicator is not entitled to any fees or expenses in relation to the adjudication application taken to have been withdrawn under this section.

[s 34A]

34A Omission of s 85 (Issue of adjudication certificate by registrar)

Section 85—

omit.

35 Amendment of pt 4, div 7, hdg (Other provisions about registrations of authorised nominating authorities and adjudicators)

Part 4, division 7, heading ‘authorised nominating authorities and’—

omit.

36 Amendment of s 86 (Definitions for div 7)

(1) Section 86, definition *registrant*—

omit, insert—

registrant means a person registered as an adjudicator.

(2) Section 86, definition *registration*—

omit, insert—

registration means registration as an adjudicator.

37 Amendment of s 100 (Effect of pt 3 on civil proceedings)

Section 100—

insert—

(4) If, in any proceedings before a court in relation to any matter arising under a construction contract, the court finds that only a part of an adjudicator’s decision under part 3 is affected by jurisdictional error, the court may—

(a) identify the part affected by the error; and

- (b) allow the part of the decision not affected by the error to remain binding on the parties to the proceeding.

38 Replacement of s 101 (Adjudicator must give copy of decision to authorised nominating authority)

Section 101—

omit, insert—

101 Queensland Building and Construction Board's policy

- (1) The Queensland Building and Construction Board may make a policy governing the administration of this Act.
- (2) The policy does not take effect until approved by regulation.
- (3) Section 19(4) of the *Queensland Building and Construction Commission Act 1991* applies for a policy made under this section as if the policy were made under section 19 of that Act.
- (4) In this section—

Queensland Building and Construction Board means the Queensland Building and Construction Board established under the *Queensland Building and Construction Commission Act 1991*, section 10.

39 Replacement of s 102 (Authorised nominating authority must give information to registrar)

Section 102—

omit, insert—

102 Adjudicator must give information to registrar

An adjudicator must, at the times specified by the registrar, give the registrar—

- (a) a copy of the adjudicator's decisions; and

[s 40]

- (b) the other information required in the approved form.

40 Amendment of s 105 (Evidentiary aids)

- (1) Section 105(2)(a)—

omit.

- (2) Section 105(2)(b) and (c)—

renumber as section 105(2)(a) and (b).

41 Amendment of s 107 (Protection from liability for adjudicators and authorised nominating authorities)

- (1) Section 107, heading, ‘and authorised nominating authorities’—

omit.

- (2) Section 107(2)—

omit.

41A Amendment of s 111 (Regulation-making power)

Section 111(2)—

insert—

- (c) prescribe procedures for—

- (i) the lodgement of adjudication applications with the registrar, including the last time during a day that applications may be lodged; and

- (ii) the processing of adjudication applications by the registrar.

42 Amendment of pt 7, hdg (Transitional)

Part 7, heading, ‘Transitional’—

omit, insert—

Transitional provisions

43 Insertion of new pt 7, div 1, hdg

After part 7, heading—

insert—

**Division 1 Transitional provision for
Act No. 6 of 2004**

44 Insertion of new pt 7, div 2

After section 112—

insert—

**Division 2 Transitional provisions for
Building and Construction
Industry Payments
Amendment Act 2014**

**113 Registration of authorised nominating
authorities**

- (1) The registration of an authorised nominating authority ends.
- (2) The registrar must refund the amount of the authorised nominating authority's registration fee that, on the ending of an authorised nominating authority's registration, is proportional to the unexpired period of the registration in whole months.
- (3) An application for registration or application for renewal of registration made, but not decided, before the commencement is taken to be withdrawn.
- (4) The registrar must refund to the authorised nominating authority the amount of the application fee for registration or for renewing his or her registration.

- (5) In this section—

application for registration means an application for registration as an authorised nominating authority under repealed section 42.

application for renewal of registration means an application for renewal of a registration as an authorised nominating authority under section 70.

114 Applications to authorised nominating authorities for referral to adjudicators

- (1) This section applies to an adjudication application made, but not yet referred to an adjudicator, under section 21 before the commencement.
- (2) The adjudication application must be dealt with under the unamended Act, section 21 as if this Act had not been amended by the *Building and Construction Industry Payments Amendment Act 2014*.
- (3) In this section—
- unamended Act* means this Act as in force immediately before the commencement of this section.

115 Existing contracts not subject to new recovery of progress payment procedures

- (1) This section applies to a construction contract entered into before the commencement.
- (2) The existing recovery of progress payment provisions continue to apply for the recovery of progress payments relating to the construction contract as if the provisions had not been amended by the amending Act.

- (3) However, the changes made under the amending Act and relating to the functions of the authorised nominating authorities being transferred to the registrar do apply to the construction contract.

Examples—

- 1 Adjudication applications are to be made to the registrar in the approved form and be accompanied by the fee prescribed by regulation.
- 2 The registrar refers adjudication applications to adjudicators.
- 3 Claimants may ask the registrar for an adjudication certificate.

- (4) In this section—

amending Act means the *Building and Construction Industry Payments Amendment Act 2014*.

existing recovery of progress payment provisions means the unamended Act, part 3, divisions 1 and 2.

unamended Act means this Act as in force immediately before the commencement of this section.

116 Mandatory training about adjudication changes

- (1) The registrar may impose a condition on the registration of an adjudicator that requires the adjudicator—
- (a) to complete the mandatory transition training prescribed by regulation; and
 - (b) to pay the cost of the training prescribed by regulation.
- (2) This section expires 6 months after the commencement.

[s 45]

45 Amendment of sch 2 (Dictionary)

- (1) Schedule 2, *adjudication certificate*, *adjudication fees*, *authorised nominating authority* and *business day*—
omit.
- (2) Schedule 2—
insert—

adjudication certificate means a certificate provided by the registrar under this Act.

adjudication fees means fees or expenses charged by an adjudicator under this Act.

business day does not include—

- (a) a Saturday or Sunday; or
- (b) a public holiday, special holiday or bank holiday in the place in which any relevant act is to be or may be done; or
- (c) any day occurring within any of the following periods—
- (i) 22 to 24 December;
- (ii) 27 to 31 December;
- (iii) 2 to 10 January.

claimant's reply, for an adjudication application, see section 24B(2).

complex payment claim means a payment claim for an amount more than \$750,000 (exclusive of GST) or, if a greater amount is prescribed by regulation, the amount prescribed.

standard payment claim means a payment claim that is not a complex payment claim.

- (3) Schedule 2, definition *adjudication response*, '24(1)'—
omit, insert—
24(2)

- (4) Schedule 2, definition *relevant offence*, paragraph (f), ‘authorised nominating authority or an’—

omit.

© State of Queensland 2014
Authorised by the Parliamentary Counsel