



Queensland

Building Industry Fairness (Security of Payment) Act 2017

Building Industry Fairness (Security of Payment) Regulation 2018

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Building Industry Fairness (Security of Payment) Regulation 2018

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Building Industry Fairness (Security of Payment) Regulation 2018

Part 1 Introduction

1 Short title

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

2 Commencement

This regulation commences on 1 March 2018.

3 Definitions

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

Part 2 Trusts

Division 1 General

4 Work included as project trust work—Act, s 8A

- (1) For section 8A(2) of the Act, the following work is prescribed to be project trust work—
 - (a) the management and removal of scaffolding if the scaffolding is used for carrying out other project trust work;
 - (b) the construction, installation, alteration or repair of a swimming pool, whether associated with a building or not.
- (2) In this section—

swimming pool see the *Building Act 1975*, schedule 2.

5 Work that is not project trust work—Act, s 8A

- (1) For section 8A(3) of the Act, the following work is prescribed not to be project trust work—
- (a) the construction, maintenance or repair of a busway, road or railway;
 - (b) the construction, maintenance or repair of a tunnel for a busway, road or railway;
 - (c) an authorised activity for a resource authority.

- (2) In this section—

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

busway—

- (a) means a route especially designed and constructed for, and dedicated to, the priority movement of buses for passenger transport; and
- (b) includes—
 - (i) places for the taking on and letting off of passengers of buses using the busway; and
 - (ii) a causeway or culvert in, on, or under a busway that is associated with the busway; and
 - (iii) another structure that supports a busway or has the purpose of ensuring the safe or efficient use of a busway.

Example for subparagraph (iii)—

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

driveway means—

- (a) a surface constructed—
 - (i) on private property; and

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

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

railway—

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

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

road—

- (a) means an area of land—
 - (i) whether surveyed or unsurveyed, dedicated, notified or declared to be a road for public use; or
 - (ii) whether surveyed or unsurveyed, taken under an Act, for the purpose of a road for public use; or
 - (iii) developed, or to be developed, for the public use of driving or riding of motor vehicles; and
- (b) includes—

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- (i) a street, esplanade, highway, pathway, thoroughfare, toll road, track or stock route; and
 - (ii) a causeway or culvert in, on, or under a road that is associated with the road; and
 - (iii) a structure in, on, or under a road that is associated with the road; and
- (c) does not include a driveway.

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

Division 2 Project trusts

6 Meaning of *residence*

- (1) For section 7, each of the following structures is a ***residence*** if fixed to land and designed to be used for residential purposes—
- (a) a single detached dwelling;
 - (b) 1 or more attached dwellings that are separated by a common wall;
- Examples—*
- duplex, row house, terrace house, townhouse, villa unit
- (c) a building, of not more than 3 storeys, containing 2 or more separate residential units.
- (2) Part of a structure mentioned in subsection (1) is also a residence if the part is designed to be used for residential purposes.
- (3) A manufactured home fixed, or intended to be fixed, to land in a residential park is also a residence.
- (4) However, the following things are not a residence—
- (a) a boat, caravan, motor vehicle, tent, trailer or train;

- (b) a building designed as a temporary or movable building, other than a manufactured home mentioned in subsection (3).
- (5) For subsection (1)(c), the number of storeys of a building is calculated by excluding 1 storey of the building if more than 50% of the floor area of at least 1 storey of the building is designed to accommodate motor vehicles.

Example—

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

- (6) In this section—

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

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

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

storey—

- (a) means a space within a building which is situated between one floor level and the next floor level, or if there is no floor above, the ceiling or roof above; but
- (b) does not include a mezzanine or space that contains only—
- (i) a lift, shaft, stairway or meter room; or
 - (ii) a bathroom, shower room, laundry, water closet or other sanitary compartment; or
 - (iii) accommodation intended for not more than 3 vehicles; or
 - (iv) any combination of a thing mentioned in any of subparagraphs (i) to (iii).

7 Residential construction work—Act, s 15C

- (1) This section prescribes the type of work that is residential construction work for section 15C(3) of the Act, definition *residential construction work*.
- (2) All of the following work is residential construction work if carried out by a licensed contractor and the insurable value of the work is more than \$3,300—
 - (a) the construction of a residence or related roofed building;
 - (b) building work within the building envelope of a residence or related roofed building;
 - (c) building work, on a thing connected to a residence or related roofed building, that requires a building development approval under the *Building Act 1975* or a permit under the *Plumbing and Drainage Act 2018*;
 - (d) the construction, installation, alteration or repair of a swimming pool for a—
 - (i) residence or proposed residence; or
 - (ii) related roofed building or proposed related roofed building.
- (3) Also, the following work is residential construction work if carried out for work mentioned in subsection (2)—
 - (a) for work relating to a residence—work carried out on the site of the residence or proposed residence;
 - (b) for work relating to a related roofed building—work carried out on the site of the building or proposed building;
 - (c) other work necessary for the proper construction, installation, alteration or repair of a residence or related roofed building, including, for example—
 - (i) work performed by an architect under the *Architects Act 2002* in the architect’s professional practice; and

-
- (ii) work performed by a registered professional engineer under the *Professional Engineers Act 2002* in the engineer's professional practice; and
 - (iii) work performed by a surveyor under the *Surveyors Act 2003* in the surveyor's professional practice.
- (4) In this section—

building envelope, for a residence or related roofed building, means the outermost sides of the aggregation of the components of a building that have the primary function of separating the internal part of the residence or related roofed building from the external environment.

Example—

the slab and footings system, an external wall and a roof

building work see the *Queensland Building and Construction Commission Act 1991*, schedule 2.

licensed contractor means a person who holds a contractor's licence under the *Queensland Building and Construction Commission Act 1991*.

related roofed building—

- (a) means a building that—
 - (i) has a roof designed to be part of the building and is impervious to water or wind; and
 - (ii) is, or is proposed to be, on the site of a residence or proposed residence; and
 - (iii) is used, or proposed to be used, for a purpose related to the use of a residence or proposed residence; but
- (b) does not include—
 - (i) a residence; or
 - (ii) a building if the roof is a sail, umbrella or similar thing.

residence see section 6.

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swimming pool see the *Building Act 1975*, schedule 2.

8 Information for notice about opening, closing, transferring or changing the name of project trust account—Act, s 18B

For section 18B(2)(b) of the Act, the information stated in schedule 1AA, part 1 for the notice is prescribed.

9 Information for notice about change of financial institution—Act, s 18C

For section 18C(1)(c) of the Act, the trustee must inform the contracting party, the commissioner and subcontractor beneficiaries about a transfer of a project trust account to an alternative financial institution by giving them a written notice stating the information stated in schedule 1AA, part 2.

10 Information for notice of project trust—Act, s 23

For section 23(2)(c) of the Act, the information stated in schedule 1AA, part 3 is prescribed.

10A Information for notice about particular withdrawals from project trust account—Act, s 23A

For section 23A(2) of the Act, the information stated in schedule 1AA, part 4 for the notice is prescribed.

Division 3 Retention trust account

10B Information for notice about opening, closing, transferring or changing the name of retention trust account—Act, s 34B

For section 34B(2)(b) of the Act, the information stated in schedule 1AA, part 5 for the notice is prescribed.

10C Information for notice about change of financial institution—Act, s 34C

For section 34C(1)(c) of the Act, the trustee must inform a contracted party about the transfer of a retention trust account to an alternative financial institution by giving the contracted party a written notice stating the information stated in schedule 1AA, part 6 about the account.

10D Information for notice of retention trust—Act, s 40

For section 40(2)(c) of the Act, the information stated in schedule 1AA, part 7 is prescribed.

10E Information for notice about deposits to or withdrawals from retention trust account—Act, s 40A

For section 40A(2) of the Act, the information stated in schedule 1AA, part 8 for the notice is prescribed.

Division 4 Trust records

10F Trust records—Act, s 52

- (1) For section 52(2)(b) of the Act, the following records are prescribed for a project trust or retention trust—
 - (a) a copy of each contract for which the trust is required;
 - (b) all payment claims (including any supporting statements) made by, or given to, the trustee under section 75 of the Act in relation to a contract mentioned in paragraph (a);
 - (c) all payment schedules given by or to the trustee in relation to any of the contracts mentioned in paragraph (a), including all information used to support the payment schedule;
 - (d) documents relating to variations or amendments to any of the contracts mentioned in paragraph (a);

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- (e) all financial institution statements for the trust account;
 - (f) all bank reconciliations prepared under section 52A of the Act for the trust account, including all information used to complete the bank reconciliations;
 - (g) all trust account ledger trial balance statements for the trust account, including all information used to prepare the statements;
 - (h) the record of deposits and withdrawals for the trust account;
 - (i) records of changes to any of the following records for the trust account and the reasons for the changes, including correction of errors and inclusion of additional information—
 - (i) a trust account ledger;
 - (ii) a trust account ledger trial balance statement;
 - (iii) a record of deposits and withdrawals;
 - (iv) a bank reconciliation;
 - (j) notices about withdrawals from, or deposits to, the trust account given by the trustee under sections 23A or 40A of the Act;
 - (k) copies of account review reports for the trust completed under section 57A of the Act;
 - (l) records of the completion of retention trust training for the trust under section 41 of the Act;
 - (m) if any abbreviations or codes are used in a trust record—a document that explains the abbreviation or code in plain English.
- (2) For section 52(6)(a) of the Act, the following matters are prescribed for trust records—
- (a) all transactions affecting the trust account must—
 - (i) be recorded in the trust account ledger; and

- (ii) be listed in chronological order of the date the transaction occurred; and
 - (iii) be recorded in the trust account ledger within 5 business days after occurring;
- (b) a trust account ledger trial balance statement for the trust account must be prepared within 15 business days after the end of each month;
- (c) the following information must be recorded for each transaction recorded in the trust account ledger for the trust account—
 - (i) the date of the transaction;
 - (ii) the transaction number, or other unique identifier, for the transaction;
 - (iii) the amount of the transaction;
 - (iv) details of each beneficiary to whom the transaction relates and the amount to which each beneficiary is entitled for the transaction;
 - (v) the reason for the transaction;
 - (vi) the balance of the amount held in trust for each beneficiary after each transaction;
- (d) the record of deposits and withdrawals for the trust account must be a consolidated record that lists the transactions in chronological order of the date the transactions occurred;
- (e) the record of deposits and withdrawals for the trust account must include the following information for each deposit or withdrawal—
 - (i) the date of the deposit or withdrawal;
 - (ii) the transaction number, or other unique identifier, for the deposit or withdrawal;
 - (iii) either—
 - (A) the reason for the deposit or withdrawal, or

- (B) details of a payment claim for the deposit or withdrawal;
 - (iv) the amount of the deposit or withdrawal;
 - (v) for a deposit—the entity that made the deposit;
 - (vi) for a withdrawal—the beneficiary or other person for whom the withdrawal was made, including the following information for the account to which the amount of the withdrawal was deposited into—
 - (A) the account name;
 - (B) the identifying number of the financial institution (BSB) where the account is kept;
 - (C) the account number;
 - (vii) the balance of the trust account after the deposit or withdrawal is made.
- (3) For section 52(9) of the Act, the computer system used to store trust records—
 - (a) must not be capable of deleting all or any part of—
 - (i) a record of deposits and withdrawals for the trust account; or
 - (ii) the trust account ledger for the trust account; and
 - (b) must be capable of producing a report about—
 - (i) the details of the transactions for a particular trust account for particular periods; and
 - (ii) the details of the transactions for a particular beneficiary.
- (4) In this section—
 - record of deposits and withdrawals*, for a trust account, means a record of deposits and withdrawals made in accordance with section 52(7) of the Act.
 - trust account ledger trial balance statement*, for a trust account, means a record that—

- (a) states the month to which it relates and the date it was prepared; and
- (b) lists the name of each beneficiary for whom money is held in trust in the account at the end of the month; and
- (c) shows the total of the balances for each beneficiary at the end of that month.

10G Monthly bank reconciliation—Act, s 52A

- (1) For section 52A(2) of the Act, a bank reconciliation for each month must be completed as provided in subsections (2) to (5).
- (2) The purpose of the bank reconciliation for a trust account is to reconcile—
 - (a) the financial institution statement for the trust account with the record of deposits and withdrawals for the trust account; and
 - (b) the record of deposits and withdrawals for the trust account with the trust account ledger trial balance statement.
- (3) The bank reconciliation must include the following information—
 - (a) the balance of the trust account at the end of the month as shown on the financial institution statement for the account for the month;
 - (b) the amount of each outstanding transaction for the financial institution statement for the trust account for the month, including—
 - (i) deposits recorded for the account under section 52(7) of the Act that are not represented in the financial institution statement; and
 - (ii) withdrawals recorded for the account under section 52(7) of the Act that are not represented in the financial institution statement;

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- (c) the balance of the trust account at the start of the month, as shown in the record of deposits and withdrawals for the account;
 - (d) the balance of all deposits recorded in the record of deposits and withdrawals for the trust account for the month;
 - (e) the balance of all withdrawals recorded in the record of deposits and withdrawals for the trust account for the month;
 - (f) the balance of the trust account at the end of the month, as shown in the record of deposits and withdrawals for the account;
 - (g) the amount of each outstanding transaction for the record of deposits and withdrawals for the trust account for the month, including—
 - (i) deposits shown in the financial institution statement for the account but not recorded under section 52(7) of the Act as at the end of the month; and
 - (ii) withdrawals shown in the financial institution statement for the account but not recorded under section 52(7) of the Act as at the end of the month.
- (4) The trustee must reconcile the balance of the trust account at the end of the month, as shown in the record of deposits and withdrawals for the account, with the amount worked out by—
- (a) adding the balance mentioned in subsection (3)(a) with the amount mentioned in subsection (3)(b)(i) and (g)(ii); and
 - (b) deducting the amounts mentioned in subsection (3)(b)(ii) and (g)(i) from the amount worked out under paragraph (a).
- (5) The trustee must reconcile the balance of the trust account at the end of the month, as shown in the record of deposits and withdrawals for the account, with the total balance held on

behalf of beneficiaries as shown in the trust account ledger trial balance statement for the same month.

(6) In this section—

record of deposits and withdrawals, for a trust account, means a record of deposits and withdrawals made in accordance with section 52(7) of the Act.

trust account ledger trial balance statement, for a trust account, see section 10F(4).

Division 5 Oversight powers

10H Information for direction to trustee—Act, s 53B

For section 53B(3) of the Act, the following information is prescribed—

- (a) that the direction is given under section 53B of the Act;
- (b) the following details of the trust account to which the direction relates—
 - (i) the name of the account;
 - (ii) the name of the financial institution where the account is kept;
 - (iii) the identifying number of the financial institution (BSB) where the account is kept;
 - (iv) the account number for the account;
- (c) the period within which the direction must be complied with;
- (d) the reason for giving the direction.

Division 6 Financial institutions

10I Agreements between commission and financial institutions—Act, s 55

For section 55(3)(c) of the Act, the following information is prescribed—

- (a) arrangements for giving information to the commissioner about account details;
- (b) arrangements for giving information to the commissioner when a trust account has been opened, closed, transferred or had its name changed;
- (c) how information to which the agreement applies is to be given to the commissioner;
- (d) the frequency with which information to which the agreement applies must be given to the commissioner.

10J Information for direction to financial institution—Act, s 55C

For section 55C(2) of the Act, the following information is prescribed—

- (a) that the direction is given under section 55C of the Act;
- (b) the following details of the trust account to which the direction relates—
 - (i) the name of the account;
 - (ii) the identifying number of the financial institution (BSB) where the account is kept;
 - (iii) the account number for the account;
- (c) the period for which the direction applies.

Division 7 Auditing and reporting

10K Review of trust account—Act, s 57

- (1) For section 57(2) of the Act, the review of the retention trust account must be carried out—
 - (a) annually; and
 - (b) if the account is closed.
- (2) For section 57(2) of the Act, the review of the retention trust account must be started—
 - (a) for a review carried out annually—within 20 business days after the review period ends; or
 - (b) for a review carried out if the account is closed—within 20 business days after the account is closed.
- (3) However, the commissioner may, with the agreement of the trustee, change the day the review must be started to a later day.
- (4) For section 57(3) of the Act, the review period for a review carried out annually is—
 - (a) for the first review of the retention trust account—12 months starting on the day the account was opened; or
 - (b) for a later review of the retention trust account—12 months starting on the day after the last review period ended.
- (5) However, if the day the review must be started is delayed under subsection (3), the period prescribed under subsection (4) is extended until the day the review is started.

Example—

If the start of a review is delayed by 3 months under subsection (3), the review period will be the 15 months before the review is started.

- (6) For section 57(3) of the Act, the review period for a review carried out because the retention trust account is closed is the period—
 - (a) starting on—

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- (i) if there was no previous review period for the account—the day the account was opened; or
 - (ii) otherwise—the day after the last review period ended; and
- (b) ending on the day the account was closed.

10L Account review report—Act, s 57A

For section 57A(3)(g) of the Act, the following information is prescribed—

- (a) details of any non-compliance with the requirements for the trust account under the Act identified by the auditor, including how and when the non-compliance was rectified;
- (b) an explanation of the review methodology used and why it was used.

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

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

For section 155(2) of the Act—

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

12 Approval of code of conduct—Act, s 181

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

Part 4 Adjudication applications

13 Conflicts of interest—Act, s 80

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

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- (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

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- (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;

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

Division 2 Grading

19 Application of division—Act, s 201

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

20 Eligibility to be grade 2 adjudicator

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

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

21 Grade of adjudicator on initial registration

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

22 Review of grade 1 adjudicators

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

23 Adjudicator may decline proposed grading

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

24 Grading

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

25 Change of grade by agreement

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

Division 3 Continuing professional development

Subdivision 1 Preliminary

26 Application of division—Act, ss 165 and 201

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

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

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- (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

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- (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.

Part 6 **Miscellaneous**

38 **Review of Act—Act, s 200A**

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

39 **Fees—Act, s 201**

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

Part 7 **Transitional provisions**

Division 1 **Transitional provisions for Building Industry Fairness (Security of Payment) and Other Legislation Amendment Regulation 2018**

40 **Definition for division**

In this division—

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.

[s 45]

45 Mandatory training for existing adjudicators—Act, s 165

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

46 Accumulation of CPD points for mandatory training under s 45

- (1) An adjudicator mentioned in section 44(1) who completes the mandatory training mentioned in section 45—
 - (a) accumulates 1 CPD point for the CPD year starting on 1 April 2019; and
 - (b) is taken to have accumulated the CPD point by completing a core CPD activity.
- (2) However, the adjudicator can not accumulate further CPD points for completing the mandatory training more than once.

Division 2 Transitional provision for Queensland Building and Construction Commission and Other Legislation Amendment Regulation 2019

47 Application fees for particular adjudication applications

- (1) This section applies if—
 - (a) a claimant made an adjudication application during the relevant period; and
 - (b) the claimant paid the fee for the application stated in previous schedule 2, item 1; and

-
- (c) the amending regulation increased the application fee for the application.
- (2) The claimant is taken to have paid the increased application fee for the adjudication application.
- (3) In this section—

amending regulation means the *Queensland Building and Construction Commission and Other Legislation Amendment Regulation 2019*.

previous schedule 2, item 1 means schedule 2, item 1 as in force from time to time before its amendment by the amending regulation.

relevant period means the period starting on 1 July 2019 and ending on the day the amending regulation is notified.

Division 3 **Transitional provision for Building Industry Fairness (Security of Payment) and Other Legislation Amendment Regulation 2020**

48 Transitioning to new scheme—Act, s 211C

- (1) For section 211C(5) of the Act, this section prescribes the information to be included in a notice given to a beneficiary affected by the trustee transitioning to the new scheme.
- (2) The information to be included in the notice is an electronic or hard copy of the trust account framework guide.
- (3) However, subsection (2) does not apply if the trustee has previously given the information to the beneficiary.
- (4) In this section—

new scheme see section 211C(9) of the Act.

trust account framework guide means the document, made by the commission, that explains the requirements of chapter 2 of the Act.

Schedule 1AA Information to be included in particular notices

sections 8 to 10E

Part 1 Notice about opening, closing, transferring or changing the name of project trust account—Act, s 18B

Division 1 Notices given to contracting party

1 Notice to contracting party about opening project trust account

The following information must be included in the notice—

- (a) the name of the trustee;
- (b) the name of the account;
- (c) the name of the financial institution where the account is kept;
- (d) the identifying number of the financial institution (BSB) where the account is kept;
- (e) the account number at the financial institution.

2 Notice to contracting party about changing name of project trust account

The following information must be included in the notice—

- (a) the name of the trustee;
- (b) the name of the account before the change;
- (c) the name of the account after the change;

- (d) the name of the financial institution where the account is kept;
- (e) the identifying number of the financial institution (BSB) where the account is kept;
- (f) the account number at the financial institution;
- (g) the date the name of the account was changed.

3 Notice to contracting party about closing project trust account

The following information must be included in the notice—

- (a) the name of the trustee;
- (b) the name of the account;
- (c) the name of the financial institution where the account was kept;
- (d) the identifying number of the financial institution (BSB) where the account was kept;
- (e) the account number at the financial institution;
- (f) the date the account was closed.

4 Notice to contracting party about transferring project trust account

The following information must be included in the notice—

- (a) the name of the trustee;
- (b) the name of the account before the transfer;
- (c) the name of the account after the transfer;
- (d) the name of the financial institution where the account was kept before the transfer;
- (e) the name of the financial institution where the account will be kept after the transfer;
- (f) the identifying number of each financial institution (BSB) mentioned in paragraphs (d) and (e);

- (g) the account number at each financial institution mentioned in paragraphs (d) and (e);
- (h) the date the account was transferred;
- (i) the date from which the new account is intended to be used.

Division 2 Notices given to commissioner

5 Notice to commissioner about opening project trust account

The following information must be included in the notice—

- (a) the name of the trustee;
- (b) the name of the account;
- (c) the name of the financial institution where the account is kept;
- (d) the identifying number of the financial institution (BSB) where the account is kept;
- (e) the account number at the financial institution;
- (f) the value of the project trust contract;
- (g) the date the first subcontract for the project trust contract was entered into;
- (h) the name of the contracting party as it appears on the project trust contract;
- (i) the site address for the contracted work;
- (j) a brief description of the contracted work;
- (k) the date of practical completion as provided for under the project trust contract;
- (l) the date the account was opened.

6 Notice to commissioner about changing name of project trust account

The following information must be included in the notice—

- (a) the name of the trustee;
- (b) the name of the account before the change;
- (c) the name of the account after the change;
- (d) the name of the financial institution where the account is kept;
- (e) the identifying number of the financial institution (BSB) where the account is kept;
- (f) the account number at the financial institution;
- (g) the date the name of the account was changed.

7 Notice to commissioner about closing project trust account

The following information must be included in the notice—

- (a) the name of the trustee;
- (b) the name of the account;
- (c) the name of the financial institution where the account was kept;
- (d) the identifying number of the financial institution (BSB) where the account was kept;
- (e) the account number at the financial institution;
- (f) the date the account was closed.

8 Notice to commissioner about transferring project trust account

The following information must be included in the notice—

- (a) the name of the trustee;
- (b) the name of the account before the transfer;
- (c) the name of the account after the transfer;

- (d) the name of the financial institution where the account was kept before the transfer;
- (e) the name of the financial institution where the account will be kept after the transfer;
- (f) the identifying number of each financial institution (BSB) mentioned in paragraphs (d) and (e);
- (g) the account number at each financial institution mentioned in paragraphs (d) and (e);
- (h) the date the account was transferred;
- (i) the date from which the new account is intended to be used.

Part 2 **Notice about change of financial institution—Act, s 18C**

1 **Information for notice about change of financial institution**

The following information must be included in the notice—

- (a) the name of the trustee;
- (b) the name of the account before the transfer;
- (c) the name of the account after the transfer;
- (d) the name of the financial institution where the account was kept before the transfer;
- (e) the name of the financial institution where the account will be kept after the transfer;
- (f) the identifying number of each financial institution (BSB) mentioned in paragraphs (d) and (e);
- (g) the account number at each financial institution mentioned in paragraphs (d) and (e);
- (h) the date the account was transferred;

- (i) the date from which the new account is intended to be used.

Part 3 Notice of project trust—Act, s 23

1 Notice of project trust

The following information must be included in the notice—

- (a) the name of the project trust account;
- (b) the name of the financial institution where the project trust account is kept;
- (c) the identifying number of the financial institution (BSB) where the project trust account is kept;
- (d) the project trust account number at the financial institution;
- (e) information identifying the contract to which the project trust relates.

Part 4 Notice about particular withdrawals from project trust account—Act, s 23A

1 Notice about withdrawal to make a payment to a subcontractor beneficiary

The following information must be included in the notice—

- (a) the amount that was or is to be paid to the beneficiary;
- (b) identification of the payment claim for the payment, if any;
- (c) the name of the account (the *payment account*) the payment was or is to be paid to;

- (d) the identifying number of the financial institution (BSB) where the payment account is kept;
- (e) the account number, at the financial institution, for the payment account;
- (f) the date the payment was or is to be paid.

2 Notice about withdrawal to deposit an amount in a retention trust account for the benefit of a subcontractor beneficiary

The following information must be included in the notice—

- (a) the amount to be deposited in the account;
- (b) identification of the payment claim for the deposit, if any;
- (c) the name of the account (the *deposit account*) into which the deposit is to be made;
- (d) the name of the financial institution where the deposit account is kept;
- (e) the identifying number of the financial institution (BSB) where the deposit account is kept;
- (f) the account number, at the financial institution, for the deposit account;
- (g) the date the amount was or is to be deposited into the deposit account;
- (h) the total retention amounts held in the account, when the notice is given, for the beneficiary under the contract to which the withdrawal relates.

Part 5

Notice about opening, closing, transferring or changing the name of retention trust account—Act, s 34B

1 Notice about opening retention trust account

The following information must be included in the notice—

- (a) the name of the trustee;
- (b) the name of the account;
- (c) the name of the financial institution where the account is kept;
- (d) the identifying number of the financial institution (BSB) where the account is kept;
- (e) the account number at the financial institution;
- (f) the date the account was opened.

2 Notice about changing name of retention trust account

The following information must be included in the notice—

- (a) the name of the trustee;
- (b) the name of the account before the change;
- (c) the name of the account after the change;
- (d) the name of the financial institution where the account is kept;
- (e) the identifying number of the financial institution (BSB) where the account is kept;
- (f) the account number at the financial institution;
- (g) the date the name of the account was changed.

3 Notice about closing retention trust account

The following information must be included in the notice—

- (a) the name of the trustee;
- (b) the name of the account;
- (c) the name of the financial institution where the account was kept;
- (d) the identifying number of the financial institution (BSB) where the account was kept;
- (e) the account number at the financial institution;
- (f) the date the account was closed.

4 Notice about transferring retention trust account

The following information must be included in the notice—

- (a) the name of the trustee;
- (b) the name of the account before the transfer;
- (c) the name of the account after the transfer;
- (d) the name of the financial institution where the account was kept before the transfer;
- (e) the name of the financial institution where the account will be kept after the transfer;
- (f) the identifying number of each financial institution (BSB) mentioned in paragraphs (d) and (e);
- (g) the account number at each financial institution mentioned in paragraphs (d) and (e);
- (h) the date the account was transferred;
- (i) the date from which the new account is intended to be used.

Part 6 Notice about change of financial institution—Act, s 34C

1 Information for notice about change of financial institution

The following information must be included in the notice—

- (a) the name of the trustee;
- (b) the name of the account before the transfer;
- (c) the name of the account after the transfer;
- (d) the name of the financial institution where the account was kept before the transfer;
- (e) the name of the financial institution where the account will be kept after the transfer;
- (f) the identifying number of each financial institution (BSB) mentioned in paragraphs (d) or (e);
- (g) the account number at each financial institution mentioned in paragraphs (d) or (e);
- (h) the date the account was transferred;
- (i) the date from which the new account is intended to be used.

Part 7 Notice of retention trust—Act, s 40

1 Information about notice of retention trust

The following information must be included in the notice—

- (a) the name of the retention trust account;
- (b) the name of the financial institution where the retention trust account is kept;
- (c) the identifying number of the financial institution (BSB) where the retention trust account is kept;

- (d) the retention trust account number at the financial institution;
- (e) information identifying the contract to which the retention trust relates.

Part 8 Notice about deposits into or withdrawals from retention trust account—Act, s 40A

1 Notice about deposit of retention amount into retention trust account

The following information must be included in the notice—

- (a) the amount to be deposited in the account;
- (b) identification of the payment claim for the deposit, if any;
- (c) the name of the account;
- (d) the name of the financial institution where the account is kept;
- (e) the identifying number of the financial institution (BSB) where the account is kept;
- (f) the account number at the financial institution for the deposit account;
- (g) the total retention amounts held in the account, when the notice is given, for the contracted party under the contract to which the deposit relates;
- (h) the date the amount is deposited in the account.

2 Notice about withdrawal of retention amount from retention trust account to pay contracted party

The following information must be included in the notice—

- (a) the amount to be paid;

- (b) identification of the payment claim to which the withdrawal relates, if any;
- (c) the name of the account (the *payment account*) the amount is to be paid to;
- (d) the identifying number of the financial institution (BSB) where the payment account is kept;
- (e) the account number, at the financial institution, for the payment account;
- (f) the total retention amounts held in the retention trust account, after the withdrawal, for the contracted party under the contract to which the withdrawal relates;
- (g) the date the amount is to be paid.

3 Notice about withdrawal of retention amount from retention trust account to pay someone other than contracted party

The following information must be included in the notice—

- (a) the amount to be paid;
- (b) the reason for the payment;

Example—

payment made to correct defects in the contracted work

- (c) the total retention amounts held in the account, after the withdrawal, for the contracted party under the contract to which the withdrawal relates;
- (d) the date the amount is to be paid.

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 no more than \$10,180	59.70
(b) for a payment claim for a progress payment of more than \$10,180 but no more than \$50,900	179.10
(c) for a payment claim for a progress payment of more than \$50,900 but no more than \$101,800	298.55
(d) for a payment claim for a progress payment of more than \$101,800 but no more than \$254,500	418.10
(e) for a payment claim for a progress payment of more than \$254,500 but no more than \$509,000	537.45
(f) for a payment claim for a progress payment of more than \$509,000 but no more than \$763,500	656.90
(g) for a payment claim for a progress payment of more than \$763,500 but no more than \$1,109,188.35	776.35
(h) for a payment claim for a progress payment of more than \$1,109,188.35	0.07126% of the progress payment amount, up to a maximum of 5,972.30
2 Application for registration, or renewal of registration, as an adjudicator (Act, ss 159(2)(a)(iii) and 167(2)(c))	829.35

Schedule 3 Dictionary

section 3

core CPD activity see section 28(2).

CPD activity see section 28(1).

CPD points see section 27(2).

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

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

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

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