



Subcontractors' Charges Act 1974

Current as at 1 December 2013

Reprint note

This is the last reprint before repeal. Repealed on 17 December 2018 by 2017 Act No. 43 s 202(2).

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Queensland

Subcontractors' Charges Act 1974

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Subcontractors' Charges Act 1974

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

1 Short title

This Act may be cited as the *Subcontractors' Charges Act 1974*.

3 Definitions

In this Act—

approved form see section 25.

charge means a charge under this Act.

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

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

court means the court in which a proceeding may be taken pursuant to this Act and includes a judge of the Supreme Court, District Court judge or, as the case requires, a magistrate.

employer means a person who contracts with another person for the performance of work by that other person, or at whose request or on whose credit or behalf, with the person's privity and consent, work is done, and includes all persons claiming under the person whose rights are acquired after the work is commenced, and in relation to a subcontractor includes the

contractor or other subcontractor with and under whom the person has contracted, but a mortgagee who advances money to an employer is not deemed to be an employer by reason thereof.

land includes land under water.

person includes an unincorporated association.

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

security, for a contract or subcontract, means something—

- (a) given to, or for the direct or indirect benefit of, the party to the contract or subcontract for whom the work the subject of the contract or subcontract is to be performed, by or for the party to the contract or subcontract who is to perform the work the subject of the contract or subcontract; and
- (b) intended to secure, wholly or partly, the performance of the contract or subcontract; and
- (c) in the form of either, or a combination of both, of the following—
 - (i) an amount of money, other than an amount held as retention money;
 - (ii) 1 or more valuable instruments, whether or not exchanged for, or held instead of, retention money.

structure, for a structure on land under water, includes a structure made up of component parts that include—

- (a) component parts fixed to the land; and
- (b) component parts that rise and fall with the rise and fall of the water, and that are otherwise confined in their location by component parts fixed to the land.

Example of a structure included under this definition—

A marina made up of fixed pylons, and pontoons that rise and fall with the water level that are otherwise confined in their location by the pylons.

subcontractor means a person who contracts with a contractor or with another subcontractor for the performance of work.

valuable instrument means any of the following—

- (a) banker's undertaking;
- (b) bond;
- (c) inscribed stock;
- (d) guarantee policy;
- (e) interest bearing deposit;
- (f) another instrument, to the extent it is convertible into an amount of money.

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

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

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

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

- (i) under a contract of service; or
- (ii) in connection with the testing of materials or the taking of measurements or quantities; or
- (g) the supply under a contract of hire of materials, plant or machinery not intended to be incorporated in the work.

3AA Work to include particular manufacture or fabrication and supply of labour

- (1) This section—
 - (a) is intended to establish a limited extension of what is work for this Act under section 3, definition *work*; and
 - (b) is not intended to have the effect of causing anything that is work under the definition to stop being work.
- (2) Under the definition, work includes work or labour, whether skilled or unskilled, done or commenced upon the land where the contract or subcontract is being performed by a person of any occupation in connection with a matter listed in paragraphs (a) to (d) of the definition.
- (3) In this Act, *work* also includes the following—
 - (a) the manufacture or fabrication, wherever it happens, of project specific components for the contract or subcontract;
 - (b) the supply of labour for the contract or subcontract.
- (4) In this section—

manufacture or fabrication, of project specific components for a contract or subcontract, does not include—

 - (a) the manufacture or fabrication of project specific components for the contract or subcontract if—
 - (i) the components have not been fixed in place for the purposes of the contract or subcontract; and
 - (ii) the components could, without substantial change, reasonably be used other than for the purposes of the contract or subcontract; or

- (b) the manufacture or fabrication of project specific components for the contract or subcontract if the manufacture or fabrication consists merely of cutting something to size or mixing things together.

Example of mixing things together—

Mixing things together to make concrete or asphalt.

project specific components, for a contract or subcontract, means components meeting the particular requirements of the contract or subcontract, other than components that are standard or ordinary product lines of a commercially available specification.

supply of labour does not include the supply of a person to perform an activity that is only administrative in nature.

3A References to amount payable under contract and to completion of work specified in subcontract

In this Act save where a contrary intention appears—

- (a) references to the amount of money payable under a contract or subcontract are deemed to include all amounts that, under the contract or subcontract, are to be credited or allowed in complete or partial satisfaction of the contract price otherwise than upon payment in money, and references to the payment of any moneys in reduction of the contract price include amounts so credited or allowed; and
- (b) references to completion of the work specified in a subcontract let by a contractor under a contract are deemed to mean completion of the work by a subcontractor who has given notice of a charge in respect of the contract, subcontract or any other subcontract under the contract.

3B When work specified in contract or subcontract completed

For the purposes of this Act the work specified in a contract or subcontract is deemed to be completed when, with such

variations, omissions or deductions as have been duly authorised or agreed upon, it has been performed in accordance with the contract or subcontract, notwithstanding that the contractor or subcontractor—

- (a) may then or subsequently be employed in doing additional or extra work that is connected with or related to the work but is not specified in the contract or subcontract; or
- (b) may be liable to rectify defects in the work discovered since the performance thereof and during a period of maintenance provided for by the contract or subcontract.

4 Crown bound

This Act binds the Crown.

5 Charges in favour of subcontractors

- (1) If an employer contracts with a contractor for the performance of work upon or in respect of land or a building, or other structure or permanent improvement upon land or a chattel, every subcontractor of the contractor is entitled to—
 - (a) a charge on the money payable to the contractor or a superior contractor under the contractor's, or superior contractor's, contract or subcontract; and
 - (b) subject to subsection (4), a charge on any security for the contractor's, or superior contractor's, contract or subcontract.
- (2) The charge of a subcontractor secures payment in accordance with the subcontract of all money that is payable or is to become payable to the subcontractor for work done by the subcontractor under the subcontract.
- (3) The total amount recoverable under the charges of subcontractors does not exceed the amount payable to the contractor or subcontractor under the contract or subcontract, as the case may be.

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- (4) The charge on a security to which a subcontractor is entitled under subsection (1)(b) secures a payment mentioned in subsection (2)—
- (a) only if the payment can not be satisfied by the charge mentioned in subsection (1)(a); and
 - (b) to the extent of the security's maximum possible value for securing performance of the contractor's, or superior contractor's, contract or subcontract, other than to the extent that the security is required to be used for securing, wholly or partly, the performance of the contract or subcontract.
- (5) To remove any doubt, it is declared that, for a subcontractor's claim of charge relating to retention money only—
- (a) the charge to which the subcontractor is entitled under subsection (1)(a) is not limited to merely a charge on retention money; and
 - (b) the charge to which the subcontractor is entitled under subsection (1)(b) is not limited to merely a charge on any security that has been exchanged for, or is held instead of, retention money.
- (6) Money that is or is to become payable to a subcontractor for work done by the subcontractor under a subcontract, and the payment of which is secured under subsection (2)—
- (a) includes money the payment of which is governed by a provision of the subcontract still to be complied with, including for example the following—
 - (i) a provision establishing a procedure for the certification of the amount, quality or value of work that has been performed;
 - (ii) a provision establishing a procedure for the resolution of a dispute about the amount, quality or value of work that has been performed; and
 - (b) does not include the following—
 - (i) damages for breach of contract or in tort;

- (ii) an amount payable on the basis of an extra-contractual remedy, including, for example, as reasonable compensation for work done;
- (iii) damages or other relief under another Act or an Act of another State or the Commonwealth, including damages or other relief under the *Competition and Consumer Act 2010* (Cwlth).

6 Inclusion of certain money in amount payable to contractor or subcontractor

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

7 Assignments and the like void against subcontractors' charges

- (1) An assignment, disposition or charge of any kind that is made or given by a contractor or subcontractor (otherwise than to his or her workers for wages due to them in respect of the contract or subcontract) of or upon money that is or is to become payable to the contractor or subcontractor under the contract or subcontract has no force or effect as against the charge of a subcontractor.
- (2) Subject to this Act, money that is or is to become payable to a contractor or subcontractor can not be attached or passed or charged by operation of law so as to defeat or impair the charge of a subcontractor.

8 Insufficiency of money to meet claims

- (1) If the money that is or is to become payable under the contract is insufficient to meet the claims of 2 or more subcontractors any insufficiency must be borne by them in proportion to the amounts of their claims.
- (2) For subsection (1), money that is or is to become payable under the contract includes money that is or is to become payable on the basis of a charge on a security for the contract, including money payable under section 11B or under an order of the court under section 11C.

9 Transmission and assignment of charges

- (1) If the debt secured by a charge passes to another person upon the death or bankruptcy of the person entitled to the charge, or otherwise by operation of law, the right to the charge passes with that debt.
- (2) A charge may be assigned together with the debt secured thereby.

9A Supply of contract and security information to subcontractor

- (1) Upon demand made in writing by a subcontractor, the contractor or superior contractor must without delay give the subcontractor—
 - (a) the name of the contractor's or superior contractor's employer; and
 - (b) the address of—
 - (i) the employer's place of business; or
 - (ii) if the employer does not have a place of business— the employer's place of residence; and
 - (c) the identifying information about the contract between the employer and the contractor or superior contractor that the subcontractor needs for giving a notice of claim of charge in the approved form under section 10; and

- (d) advice as to whether there are any securities in existence for the contract between the employer and the contractor or superior contractor; and
 - (e) if known to the contractor or superior contractor, the name and address of the holder of each security mentioned in paragraph (d).
- (1A) Subsection (1B) applies if—
- (a) a subcontractor makes a demand in writing under subsection (1); and
 - (b) in response to the demand, a contractor or superior contractor tells the subcontractor of the existence of a security, but does not give the name and address of the holder of the security.
- (1B) On demand made in writing by the subcontractor, the contractor's or superior contractor's employer must without delay give the subcontractor the name and address of the holder of the security.
- (2) A contractor, superior contractor or employer who fails without reasonable cause proof of which lies upon the contractor, superior contractor or employer to furnish to a subcontractor the information specified in subsection (1) or (1B) is liable to pay to that subcontractor such damages as the subcontractor sustains in consequence of such failure.
 - (3) Damages pursuant to subsection (2) must be determined and fixed by the court on the application of the subcontractor concerned.

10 Notice of claim of charge

- (1) A subcontractor who intends to claim a charge on money payable under the contract to the subcontractor's contractor or to a superior contractor—
 - (a) must give notice to the employer or superior contractor by whom the money is payable, specifying the amount and particulars of the claim certified as prescribed by a qualified person and stating that the subcontractor requires the employer or superior contractor, as the case

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- may be, to take the necessary steps to see that it is paid or secured to the subcontractor; and
- (aa) if a person other than the employer or superior contractor holds a security for the contract—must give notice in the approved form of having made the claim to the person holding the security; and
 - (b) must give notice of having made the claim to the contractor to whom the money is payable.
- (1A) The claim is in respect of—
- (a) money payable to the subcontractor at the date of the notice; and
 - (b) money to become payable to the subcontractor after the date of the notice for work done by the subcontractor prior to that date.
- (1B) A notice of claim of charge must be supported by a statutory declaration of the subcontractor, or, if the subcontractor is a corporation, of an officer of the corporation, about the correctness of the claim, including the correctness of the amount of the claim.
- (1C) The statutory declaration must be in the approved form.
- (1D) To remove any doubt, it is declared that when a charge on money payable under a contract is claimed, the claim includes a charge on retention money.
- (2) A notice of claim of charge may be given although the work is not completed or the time for payment of the money in respect of which the charge is claimed has not arrived, but if the work is completed must be given within 3 months after such completion.
 - (3) A notice of claim of charge in respect of retention money only may be given at any time while work under the contract mentioned in subsection (1) is being performed but must be given within 3 months after the expiration of the period of maintenance provided for by the contract and no later.
 - (4) If notice is not given pursuant to this section, the charge does not attach.

- (4A) However, if the reason for a failure to give notice under this section is merely a failure to give a notice under subsection (1)(aa) to the holder of a security, the charge does not attach to the security, but otherwise attaches.
- (5) A notice of claim of charge may be in the approved form, but the validity of the notice is not affected by any inaccuracy or want of form if the money sought to be charged and the amount of the claim can be ascertained with reasonable certainty from the notice.
- (6) A claim—
- (a) that is not certified as required under subsection (1)(a), and supported by a statutory declaration under subsection (1B); or
 - (b) that is supported by a certificate given by a person in contravention of section 10A(2);
- is not a valid claim for the purposes of this section and a notice of claim of charge based on such a claim is of no force or effect.
- (7) To remove any doubt, it is declared that a subcontractor may make 2 or more claims in relation to money payable or to become payable to the subcontractor for work done by the subcontractor under a subcontract.
- (8) However—
- (a) each claim must be about a separate and distinguishable item of the work done by the subcontractor under the subcontract; and
 - (b) there must not be more than 1 claim about any 1 item.
- (9) In this section—
- officer***, of a corporation, means—
- (a) if the corporation is a corporation under the *Corporations Act 2001* (Cwlth)—a person who, under that Act, is an officer of the corporation; or
 - (b) otherwise—a person, by whatever name called, who is concerned, or takes part, in the management of the corporation.

10A Qualified persons

- (1) A person is a qualified person for the purpose of certifying a claim under section 10 if the person is—
 - (a) an architect registered in accordance with the *Architects Act 2002*; or
 - (b) a registered professional engineer under the *Professional Engineers Act 2002*; or
 - (c) a person licensed under the *Queensland Building and Construction Commission Act 1991* to carry out or supervise work of the type to which the claim relates; or
 - (d) a quantity surveyor who is a member of the Australian Institute of Quantity Surveyors; or
 - (e) a person having expert knowledge of the work to which the claim relates who is accepted in a particular case as a qualified person by the contractor and subcontractor.
- (2) A person must not give a certificate with respect to a claim that relates to any work in respect of which the person has directly or indirectly a specific interest.
- (3) A person who gives a certificate with respect to a claim does not incur liability by reason only of the giving of that certificate unless in relation thereto the person is guilty of fraud, wilful misconduct or wilful neglect.

11 Consequences of notice of claim of charge

- (1) If a notice of claim of charge is given pursuant to section 10, the person to whom it is given must retain, until the court in which the claim is heard directs to whom and in what manner the same is to be paid, a sufficient part of the money that is or is to become payable by the person under the contract to satisfy the claim.
- (2) A person who fails to retain the amount that the person is required to retain is personally liable to pay to the subcontractor the amount of the claim not exceeding the amount that the person is required by this section to retain.

- (3) Within 14 days after the notice of the claim of charge mentioned in subsection (1) is given under section 10(1)(b) to the contractor to whom the money is payable, the contractor must give to the employer or superior subcontractor by whom the money is payable, and to the subcontractor giving notice of the claim of charge, a notice (*contractor's notice*) in the approved form that the contractor—
 - (a) accepts liability to pay the amount claimed; or
 - (b) disputes the claim; or
 - (c) accepts liability to pay the amount (the *stated amount*) stated in the contractor's notice, but otherwise disputes the claim.
- (4) If the contractor's notice is given under subsection (3)(a), the employer or superior contractor by whom the money is payable must pay to the subcontractor the amount the employer or superior contractor is required to retain.
- (4A) If the contractor's notice is given under subsection (3)(c), the employer or superior contractor by whom money is payable must pay to the subcontractor the amount the employer or superior contractor is required to retain, up to the stated amount.
- (4B) However, the employer or superior contractor is required to comply with subsection (4) or (4A) only if, after payment is made under the subsection, the retained amount will be equal to or more than the unsatisfied amount.
- (5) An employer or superior contractor may, at any time after notice of claim of charge has been given to the employer or superior contractor, pay into court the amount that the employer or superior contractor is required to retain under this section.
- (6) A payment made pursuant to this section discharges the employer or superior contractor, as the case may be, of all further liability in respect of the amount paid and of the costs of any proceeding in relation to the amount paid.
- (7) Money paid into court under this section may be paid out only under an order of the court.

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- (8) A subcontractor may at any time withdraw, wholly or partly, a notice of claim of charge given pursuant to section 10 by giving a notice in the approved form—
- (a) to the employer or superior contractor by whom the money is payable; and
 - (aa) to the holder of any security to whom notice was given under section 10(1)(aa); and
 - (b) to the contractor to whom the money is payable.

- (9) In this section—

retained amount means the total of—

- (a) all amounts still retained by the employer or superior contractor under subsection (1); and
- (b) all amounts paid into court by the employer or superior contractor under subsection (5).

unsatisfied amount means the total of all amounts of claims of charge for which a notice of claim of charge has been given, other than amounts that have been—

- (a) satisfied by payment under subsection (4) or (4A); or
- (b) the subject of a withdrawal of notice of claim of charge under subsection (8).

11A Use of security for benefit of subcontractor if no contractor acceptance of liability for all claims

- (1) If at any time the unsatisfied amount for a contract is more than the retained amount for the contract, the holder of a section 11A security for the contract must—
- (a) retain the security until a court in which a subcontractor's claim is heard makes an order under section 11C about enforcing the charge over the security; or
 - (b) instead of retaining the security—
 - (i) if the security is held as an amount of money—pay the amount, up to the difference amount for the contract, into court; or

- (ii) if the security is not held as an amount of money but may be converted into an amount of money—convert the security, wholly or partly, into an amount of money and pay the amount, up to the difference amount for the contract, into court.
- (2) If the holder of the section 11A security does not comply with subsection (1), the holder is personally liable to pay to a subcontractor the amount of the subcontractor's claim to the extent that the security would have been capable under this Act, if the holder had complied with the subsection, of satisfying the claim.
- (3) A payment of an amount under subsection (1)(b) discharges the holder of the security of all further liability for the amount paid and of the costs of any proceeding in relation to the amount paid.
- (4) Subsections (1) and (2) do not stop the holder of the security from exercising an entitlement to use the security for securing the performance of the contract, including by keeping control of the security until, had this section not commenced, the security would be required to be surrendered, wholly or partly.
- (5) A provision of the contract, or of another arrangement, about the section 11A security, including a provision of the security itself, and including a provision providing for the surrender, wholly or partly, of the security, is of no effect to the extent it purports—
 - (a) to stop the holder of the security from complying with subsection (1); or
 - (b) to operate to the detriment of a person if the holder complies with subsection (1).
- (6) An amount paid into court under subsection (1)(b) may be paid out only under an order of the court.
- (7) In this section—

difference amount, for a contract, means the amount by which the unsatisfied amount for the contract is more than the retained amount for the contract.

retained amount, for a contract, means the total of—

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- (a) all amounts a person is retaining under section 11(1) for the contract; and
 - (b) all amounts a person has paid into court under section 11(5) for the contract; and
 - (c) all amounts the holder of the section 11A security for the contract has paid into court under subsection (1)(b) in relation to the security.

section 11A security, for a contract, means a security for the contract in relation to which all the following circumstances apply—

- (a) the security is held by an employer, superior contractor or other person;
- (b) under section 11(1), a person has become subject to a requirement to retain money that is or is to become payable by the person under the contract, to satisfy a subcontractor's claim or claims or the claims of 2 or more subcontractors;
- (c) there have not been acceptances of liability under section 11(3) for the total of all amounts of claims of charge for the contract for which a notice of claim of charge has been given and not withdrawn.

unsatisfied amount, for a contract, means the total of all amounts of claims of charge for the contract for which a notice of claim of charge has been given, other than amounts that have been—

- (a) satisfied by payment under section 11(4) or (4A); or
- (b) the subject of a withdrawal of notice of claim of charge under section 11(8).

11B Use of security for benefit of subcontractor if contractor acceptance of liability for all claims

- (1) If at any time the unsatisfied amount for a contract is more than the retained amount for the contract, the holder of a section 11B security for the contract must—

- (a) retain the security until a court in which a subcontractor's claim is heard makes an order under section 11C about enforcing the charge over the security; or
 - (b) instead of retaining the security—
 - (i) if the security is held as an amount of money—pay the amount, up to the difference amount for the contract, to the subcontractor or subcontractors to whom the acceptance of liability relates; or
 - (ii) if the security is not held as an amount of money but may be converted into an amount of money—convert the security, wholly or partly, into an amount of money and pay the amount, up to the difference amount for the contract, to the subcontractor or subcontractors to whom the acceptance of liability relates.
- (2) If the holder of the section 11B security does not comply with subsection (1), the holder is personally liable to pay to a subcontractor the amount of the subcontractor's claim to the extent that the security would have been capable under this Act, if the holder had complied with the subsection, of satisfying the claim.
- (3) A payment of an amount under subsection (1)(b) discharges the holder of the security of all further liability for the amount paid and of the costs of any proceeding in relation to the amount paid.
- (4) Subsections (1) and (2) do not stop the holder of the security from exercising an entitlement to use the security for securing the performance of the contract, including by keeping control of the security until, had this section not commenced, the security would be required to be surrendered, wholly or partly.
- (5) A provision of the contract, or of another arrangement, about the section 11B security, including a provision of the security itself, and including a provision providing for the surrender, wholly or partly, of the security, is of no effect to the extent it purports—

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- (a) to stop the holder of the security from complying with subsection (1); or
 - (b) to operate to the detriment of a person if the holder complies with subsection (1).
- (6) In this section—

difference amount, for a contract, means the amount by which the unsatisfied amount for the contract is more than the retained amount for the contract.

retained amount, for a contract, means the total of—

- (a) all amounts a person is retaining under section 11(1) for the contract; and
- (b) all amounts a person has paid into court under section 11(5) for the contract; and
- (c) all amounts the holder of the section 11B security for the contract has paid to the subcontractor or subcontractors under subsection (1)(b) in relation to the security.

section 11B security, for a contract, means a security for the contract in relation to which all the following circumstances apply—

- (a) the security is held by an employer, superior contractor or other person;
- (b) under section 11(1), a person has become subject to a requirement to retain money that is or is to become payable by the person under the contract, to satisfy a subcontractor's claim or claims or the claims of 2 or more subcontractors;
- (c) there have been acceptances of liability under section 11(3) for the total of all amounts of claims of charge for the contract for which a notice of claim of charge has been given and not withdrawn.

unsatisfied amount, for a contract, means the total of all amounts of claims of charge for the contract for which a notice of claim of charge has been given, other than amounts that have been—

- (a) satisfied by payment under section 11(4) or (4A); or
- (b) the subject of a withdrawal of notice of claim of charge under section 11(8).

11C Authority of court for security

- (1) This section applies if the holder of a security for a contract is retaining the security under section 11A(1)(a) or 11B(1)(a) or has paid an amount for the security into court under section 11A(1)(b).
- (2) The court may make the order it considers appropriate for enforcing the charge over the security to which a subcontractor is entitled under section 5, including an order for realising the security.
- (3) The court may make an order for realising the security only if the holder of the security is no longer entitled, under any contract or other arrangement about the security, including under the security itself, to use the security—
 - (a) for securing the performance of the contract mentioned in subsection (1); or
 - (b) in some other way provided for in the contract mentioned in subsection (1).
- (4) Without limiting the orders the court may make under subsection (2), the court may order the holder of the security to produce the security to the court.
- (5) A precondition or expiry provision for the security is of no effect to the extent that the provision could operate to stop the realisation of a security under subsection (2).
- (6) In this section—

expiry provision, for a security, means a provision of a contract or another arrangement about the security, including a provision of the security itself, under which the security stops, wholly or partly, having effect.

precondition provision, for a security, means a provision of a contract or another arrangement about the security, including a provision of the security itself, stating the circumstances that

are to apply before the holder of the security may exercise an entitlement to use the security for securing the performance of a contract.

11D Certain subcontractor securities of no effect

To the extent that something is given by or for a subcontractor for securing, wholly or partly, the performance by a contractor or a superior contractor of the contractor's, or superior contractor's, contract or subcontract, it is of no effect.

11E Duty of employer or superior contractor to advise security holder about s 11A or 11B circumstances

- (1) This section applies if a subcontractor who intends to claim a charge on money payable under a contract—
 - (a) gives an employer or superior contractor a notice under section 10(1)(a); and
 - (b) gives the holder of a security for the contract a notice under section 10(1)(aa).
- (2) The security holder may ask the employer or superior contractor for information the holder reasonably requires in order to comply with section 11A or 11B.
- (3) The employer or superior contractor must comply with a request under subsection (2) to the greatest practicable extent.
- (4) Subsection (5) applies if—
 - (a) the employer or superior contractor does not comply with subsection (3); and
 - (b) because of the employer's or superior contractor's failure to comply with section (3), the security holder does not comply with section 11A(1) or 11B(1).
- (5) The employer or superior contractor, instead of the security holder, is personally liable to pay the subcontractor the amount the subcontractor is liable to be paid under section 11A(2) or 11B(2).

12 Enforcement of charge

- (1) If the person to whom notice of claim of charge has been given does not pay or make satisfactory arrangements for paying to the claimant the amount claimed, the subcontractor may recover the amount of the charge from the person by whom the money subject to the charge is payable.
- (1A) To remove any doubt, it is declared that a person who is an employer or superior contractor makes satisfactory arrangements under subsection (1) if the person pays into court under section 11(5) the amount the person is required to retain under section 11.
- (2) Claims and all other matters arising under this Act between a person claiming a charge and any other person alleged to be liable to pay an amount claimed or otherwise interested in money that may be affected by a charge or claim of charge and between persons or classes of persons claiming a charge may be heard, determined and enforced by proceedings pursuant to this Act in a court of competent civil jurisdiction.
- (2A) Notwithstanding subsection (2), the Supreme Court has jurisdiction in all matters arising under this Act.
- (3) An action to enforce a charge under this Act may be brought by or on behalf of any number of subcontractors claiming charges.
- (3A) Every action brought by a subcontractor to enforce a charge is deemed to be brought on behalf also of every other subcontractor who has given notice of claim of charge pursuant to section 10, whose charge has not been extinguished under section 15, and who in accordance with rules of the court and this Act becomes a party to the action.
- (3B) Subject to any rules of the court, every such subcontractor may become a party at any time before the date appointed for the hearing or any adjournment thereof by filing in the court and serving on all other parties in the same manner as if the subcontractor were commencing the action a statement of claim endorsed with a request that the subcontractor be joined as a party in the proceedings.

13 Consolidation of actions

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

14 Application of practice of the court

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

15 Proceedings in respect of charges

- (1) A proceeding in respect of a charge under this Act—
 - (a) in the case of a claim of charge in respect of retention money only—must be commenced within 4 months after such retention money or the balance thereof is payable and no later; and
 - (b) in all other cases—must be commenced within 1 month after notice of claim of charge has been given pursuant to section 10 and no later; and
 - (c) must be brought by way of action.
- (2) For the purposes of a proceeding under this section, it is sufficient if the subcontractor proves that the charge in respect of which the proceeding is brought attached to money payable or a security in existence on any date prior to the date of hearing.
- (3) Every charge is deemed to be extinguished unless the subcontractor duly commences a proceeding under this section to enforce it.

17 Power to proceed in absence of person against whom proceedings brought

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

18 Costs

Costs of proceedings under this Act as between party and party are in the discretion of the court.

19 Appeal

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

20 Effect of payment made under order of the court

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

21 Application to court by person prejudicially affected

- (1) A person who alleges that the person is prejudicially affected by a claim of charge under this Act may at any time make application to the court for an order—
 - (a) that the claim be cancelled; or
 - (b) that the effect of the claim be modified.
- (2) The court must hear and determine summarily an application made pursuant to this section and may make such order as it thinks fit.

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- (3) Without limiting the circumstances in which a person may be prejudicially affected for subsection (1), a person (the *affected person*) is taken to be prejudicially affected by the claim of charge of a subcontractor (the *claiming subcontractor*) if—
- (a) because of the claim of charge—
 - (i) the payment of any amount to which the affected person is entitled is delayed or otherwise affected; or
 - (ii) the release of a security for a contract or subcontract given by or for the affected person is delayed or otherwise affected; and
 - (b) the affected person is a superior contractor in relation to the claiming subcontractor; and
 - (c) the affected person has already paid, to a person who is a contractor or superior contractor in relation to the claiming subcontractor, an amount for work the subject of the claim of charge.

22 Vexatious notice of claim

- (1) A person who vexatiously or without reasonable grounds gives a notice of claim of charge is liable to pay to a person prejudicially affected thereby such damages as the person sustains in consequence thereof.
- (1A) Without limiting subsection (1), a person gives a notice of a claim of charge without reasonable grounds if the person knows, or ought reasonably to know, that the amount of the claim exceeds, to an unreasonable extent in the circumstances of the claim, the amount actually payable to the person.
- (2) Damages pursuant to subsection (1) must be determined and fixed by the court on an application by the person prejudicially affected.

23 Savings

Save as is otherwise expressly provided, nothing in this Act is to be construed to affect the right of a person to whom a debt

is due and owing for work done to maintain a personal action to recover the debt against the person liable for it, and a judgment obtained by the plaintiff in any action brought does not affect a charge or other right to which the plaintiff is entitled under this Act.

24 Contracting out

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

25 Approval of forms

The chief executive may approve forms for use under this Act.

26 Regulation-making power

The Governor in Council may make regulations under this Act.

27 Transitional provision for Subcontractors' Charges Amendment Act 2002

- (1) A provision of this Act about a security for a contract or subcontract does not apply to the security if the contract or subcontract was entered into before the commencement of this section.
- (2) For subsection (1), to the extent that a contract or subcontract is amended on or after the commencement of this section, the contract or subcontract is taken not to have been entered into before the commencement of this section.
- (3) The period of 1 month mentioned in section 15(1)(b) must be taken to be 2 months if the notice of claim of charge was given before the commencement of this section.