



Building and Construction Industry Payments Act 2004

**Reprinted as in force on 1 October 2004
(Act not amended up to this date)**

Reprint No. 1

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Information about this reprint

This Act is reprinted as at 1 October 2004.

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

- use aspects of format and printing style consistent with current drafting practice (s 35)
- omit provisions that are no longer required (s 40)
- omit the enacting words (s 42A)
- make all necessary consequential amendments (s 7(1)(k)).

This page is specific to this reprint. See previous reprint for information about earlier changes made under the Reprints Act 1992. A table of reprints is included in the endnotes.

Also see endnotes for information about when provisions commenced.

Dates shown on reprints

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Building and Construction Industry Payments Act 2004

[reprinted as in force on 1 October 2004]

An Act to imply terms in construction contracts, to provide for adjudication of payment disputes under construction contracts, and for other purposes

Part 1 Preliminary

Division 1 Introduction

1 Short title

This Act may be cited as the *Building and Construction Industry Payments Act 2004*.

2 Commencement

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

Division 2 Application and operation of Act

3 Application of Act

- (1) Subject to this section, this Act applies to construction contracts entered into after the commencement of parts 2 and 3¹—

¹ Parts 2 (Rights to progress payments) and 3 (Procedure for recovering progress payments)

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- (a) whether written or oral, or partly written and partly oral; and
 - (b) whether expressed to be governed by the law of Queensland or a jurisdiction other than Queensland.
- (2) This Act does not apply to—
- (a) a construction contract to the extent that it forms part of a loan agreement, a contract of guarantee or a contract of insurance under which a recognised financial institution undertakes—
 - (i) to lend an amount or to repay an amount lent; or
 - (ii) to guarantee payment of an amount owing or repayment of an amount lent; or
 - (iii) to provide an indemnity relating to construction work carried out, or related goods and services supplied, under the construction contract; or
 - (b) a construction contract for the carrying out of domestic building work if a resident owner is a party to the contract, to the extent the contract relates to a building or part of a building where the resident owner resides or intends to reside; or
 - (c) a construction contract under which it is agreed that the consideration payable for construction work carried out under the contract, or for related goods and services supplied under the contract, is to be calculated other than by reference to the value of the work carried out or the value of the goods and services supplied.
- (3) This Act does not apply to a construction contract to the extent it contains—
- (a) provisions under which a party undertakes to carry out construction work, or supply related goods and services in relation to construction work, as an employee of the party for whom the work is to be carried out or the related goods and services are to be supplied; or
 - (b) provisions under which a party undertakes to carry out construction work, or to supply related goods and services in relation to construction work, as a condition

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- of a loan agreement with a recognised financial institution; or
- (c) provisions under which a party undertakes—
- (i) to lend an amount or to repay an amount lent; or
 - (ii) to guarantee payment of an amount owing or repayment of an amount lent; or
 - (iii) to provide an indemnity relating to construction work carried out, or related goods and services supplied, under the construction contract.
- (4) This Act does not apply to a construction contract to the extent it deals with construction work carried out outside Queensland or related goods and services supplied for construction work carried out outside Queensland.
- (5) In this section—
- resident owner***, in relation to a construction contract for carrying out domestic building work, means a resident owner under the *Domestic Building Contracts Act 2000*, schedule 2, but does not include a person—
- (a) who holds, or should hold, an owner-builder permit under the *Queensland Building Services Authority Act 1991* relating to the work; or
 - (b) who is a building contractor within the meaning of the *Queensland Building Services Authority Act 1991*.

4 Effect of giving notice of claim of charge under Subcontractors' Charges Act 1974

- (1) This section applies if a person gives a notice of claim of charge under the *Subcontractors' Charges Act 1974* in relation to construction work or related goods and services the subject of a construction contract.
- (2) Proceedings or other action may not be started or continued by the person under part 3² in relation to all or part of the construction work or related goods and services.

2 Part 3 (Procedure for recovering progress payments)

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- (3) Without limiting subsection (2), subsection (4) applies if the person has served a payment claim relating to all or part of the construction work or related goods and services on a respondent before the notice of claim of charge is given.
- (4) For subsection (3)—
- (a) the respondent is not required to pay an amount to the person under section 18(5)³ in relation to the claim; and
 - (b) amounts may not be recovered by the person under section 19(2)(a)(i) or 20(2)(a)(i)⁴ in relation to the claim; and
 - (c) if the person made an adjudication application in relation to the claim and the application has not been decided by an adjudicator before the notice of the claim of charge is given, the person is taken to have withdrawn the application; and
 - (d) if the person made an adjudication application in relation to the claim and the application has been decided by an adjudicator before the notice of the claim of charge was given—
 - (i) the respondent to the application is not required to pay the adjudicated amount under section 29;⁵ and
 - (ii) an authorised nominating authority must not give the person an adjudication certificate under section 30⁶ relating to the adjudication; and
 - (iii) any adjudication certificate provided in relation to the adjudication can not be enforced by the person under section 31⁷ as a judgement of a court; and
 - (e) the person may not suspend, or continue to suspend, carrying out all or part of the construction work or the

3 Section 18 (Payment schedules)

4 Section 19 (Consequences of not paying claimant if no payment schedule) or 20 (Consequences of not paying claimant under payment schedule)

5 Section 29 (Respondent required to pay adjudicated amount)

6 Section 30 (Consequences of not paying claimant adjudicated amount)

7 Section 31 (Filing of adjudication certificate as judgment debt)

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supply of the related goods and services under section 33.⁸

- (5) This section does not affect the operation of section 34 or 35⁹ and an adjudication application taken to have been withdrawn by the person under subsection (4)(c) is taken to have been withdrawn for the purpose of section 35(4).
- (6) This section does not stop the person serving under this Act a payment claim in relation to all or part of the construction work or related goods and services and taking other action under this Act in relation to that claim, if the notice of claim of charge in so far as it relates to the construction work or related goods and services, or part, is withdrawn.

5 Act does not limit claimant's other rights

A claimant's entitlements and remedies under this Act do not limit—

- (a) another entitlement a claimant may have under a construction contract; or
- (b) any remedy a claimant may have for recovering the other entitlement.

6 Act binds all persons

This Act binds all persons, including the State, and, as far as the legislative power of the Parliament permits, the Commonwealth and the other States.

8 Section 33 (Claimant may suspend work)

9 Section 34 (Authorised nominating authority's fees) or 35 (Adjudicator's fees)

Division 3 Object of Act

7 Object of Act

The object of this Act is to ensure that a person is entitled to receive, and is able to recover, progress payments if the person—

- (a) undertakes to carry out construction work under a construction contract; or
- (b) undertakes to supply related goods and services under a construction contract.

8 How object is to be achieved

The object is to be achieved by—

- (a) granting an entitlement to progress payments whether or not the relevant contract makes provision for progress payments; and
- (b) establishing a procedure that involves—
 - (i) the making of a payment claim by the person claiming payment; and
 - (ii) the provision of a payment schedule by the person by whom the payment is payable; and
 - (iii) the referral of a disputed claim, or a claim that is not paid, to an adjudicator for decision; and
 - (iv) the payment of the progress payment decided by the adjudicator.

Division 4 Interpretation

9 Definitions

The dictionary in schedule 2 defines particular words used in this Act.

10 Meaning of *construction work*

- (1) ***Construction work*** means any of the following work—
- (a) the construction, alteration, repair, restoration, maintenance, extension, demolition or dismantling of buildings or structures, whether permanent or not, forming, or to form, part of land;
 - (b) the construction, alteration, repair, restoration, maintenance, extension, demolition or dismantling of any works forming, or to form, part of land, including walls, roadworks, power-lines, telecommunication apparatus, aircraft runways, docks and harbours, railways, inland waterways, pipelines, reservoirs, water mains, wells, sewers, industrial plant and installations for land drainage or coast protection;
 - (c) the installation in any building, structure or works of fittings forming, or to form, part of land, including heating, lighting, air-conditioning, ventilation, power supply, drainage, sanitation, water supply, fire protection, security and communications systems;
 - (d) the external or internal cleaning of buildings, structures and works, so far as it is carried out in the course of their construction, alteration, repair, restoration, maintenance or extension;
 - (e) any operation that forms an integral part of, or is preparatory to or is for completing, work of the kind referred to in paragraph (a), (b) or (c), including—
 - (i) site clearance, earth-moving, excavation, tunnelling and boring; and
 - (ii) the laying of foundations; and
 - (iii) the erection, maintenance or dismantling of scaffolding; and
 - (iv) the prefabrication of components to form part of any building, structure or works, whether carried out on-site or off-site; and
 - (v) site restoration, landscaping and the provision of roadways and other access works;

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- (f) the painting or decorating of the internal or external surfaces of any building, structure or works;
 - (g) carrying out the testing of soils and road making materials during the construction and maintenance of roads;
 - (h) any other work of a kind prescribed under a regulation for this subsection.
- (2) To remove doubt, it is declared that **construction work** includes building work within the meaning of the *Queensland Building Services Authority Act 1991*.
- (3) Despite subsections (1) and (2), **construction work** does not include any of the following work—
- (a) the drilling for, or extraction of, oil or natural gas;
 - (b) the extraction, whether by underground or surface working, of minerals, including tunnelling or boring, or constructing underground works, for that purpose.

11 **Meaning of *related goods and services***

- (1) **Related goods and services**, in relation to construction work, means any of the following—
- (a) goods of the following kind—
 - (i) materials and components to form part of any building, structure or work arising from construction work;
 - (ii) plant or materials (whether supplied by sale, hire or otherwise) for use in connection with the carrying out of construction work;
 - (b) services of the following kind—
 - (i) the provision of labour to carry out construction work;
 - (ii) architectural, design, surveying or quantity surveying services relating to construction work;

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- (iii) building, engineering, interior or exterior decoration or landscape advisory services relating to construction work;
 - (iv) soil testing services relating to construction work;
 - (c) goods and services, in relation to construction work, of a kind prescribed under a regulation for this subsection.
- (2) In this Act, a reference to related goods and services includes a reference to related goods or services.

Part 2 Rights to progress payments

12 Rights to progress payments

From each reference date under a construction contract, a person is entitled to a progress payment if the person has undertaken to carry out construction work, or supply related goods and services, under the contract.

13 Amount of progress payment

The amount of a progress payment to which a person is entitled in relation to a construction contract is—

- (a) the amount calculated under the contract; or
- (b) if the contract does not provide for the matter, the amount calculated on the basis of the value of construction work carried out or undertaken to be carried out, or related goods and services supplied or undertaken to be supplied, by the person, under the contract.

14 Valuation of construction work and related goods and services

- (1) Construction work carried out or undertaken to be carried out under a construction contract is to be valued—

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- (a) under the contract; or
 - (b) if the contract does not provide for the matter, having regard to—
 - (i) the contract price for the work; and
 - (ii) any other rates or prices stated in the contract; and
 - (iii) any variation agreed to by the parties to the contract by which the contract price, or any other rate or price stated in the contract, is to be adjusted by a specific amount; and
 - (iv) if any of the work is defective, the estimated cost of rectifying the defect.
- (2) Related goods and services supplied or undertaken to be supplied under a construction contract are to be valued—
- (a) under the terms of the contract; or
 - (b) if the contract does not provide for the matter, having regard to—
 - (i) the contract price for the goods and services; and
 - (ii) any other rates or prices stated in the contract; and
 - (iii) any variation agreed to by the parties to the contract by which the contract price, or any other rate or price stated in the contract, is to be adjusted by a specific amount; and
 - (iv) if any of the goods are defective, the estimated cost of rectifying the defect.
- (3) For subsection (2)(b), for materials and components that are to form part of any building, structure or work arising from construction work, the only materials and components to be included in the valuation are those that have become or, on payment, will become the property of the party or other person for whom construction work is being carried out.

15 Due date for payment

- (1) A progress payment under a construction contract becomes payable—

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- (a) if the contract contains a provision about the matter that is not void under section 16 or under the *Queensland Building Services Authority Act 1991*, section 67U or 67W¹⁰—on the day on which the payment becomes payable under the provision; or
 - (b) if the contract does not contain a provision about the matter or contains a provision that is void under section 16 or under the *Queensland Building Services Authority Act 1991*, section 67U or 67W—10 business days after a payment claim for the progress payment is made under part 3.¹¹
- (2) Subject to subsection (3), interest for a construction contract is payable on the unpaid amount of a progress payment that has become payable at the greater of the following rates—
- (a) the rate prescribed under the *Supreme Court Act 1995*, section 48(1) for debts under a judgment or order;
 - (b) the rate specified under the contract.
- (3) For a construction contract to which *Queensland Building Services Authority Act 1991*, section 67P¹² applies because it is a building contract, interest is payable at the penalty rate under that section.

16 Effect of pay when paid provisions

- (1) A pay when paid provision of a construction contract has no effect in relation to any payment for construction work carried out or undertaken to be carried out, or related goods and services supplied or undertaken to be supplied, under the construction contract.
- (2) In this section—

10 *Queensland Building Services Authority Act 1991*, section 67U (Void payment provision in construction management trade contract or subcontract) or 67W (Void payment provision in commercial building contract)

11 Part 3 (Procedure for recovering progress payments)

12 *Queensland Building Services Authority Act 1991*, section 67P (Late progress payments)

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an amount owing, in relation to a construction contract, means an amount owing for construction work carried out or undertaken to be carried out, or related goods and services supplied or undertaken to be supplied, under the construction contract.

pay when paid provision, of a construction contract, means a provision of the contract—

- (a) that makes the liability of one party (the ***first party***) to pay an amount owing to another party (the ***second party***) contingent on payment to the first party by a further party (the ***third party***) of the whole or any part of that amount; or
- (b) that makes the due date for payment of an amount owing by the first party to the second party dependent on the date on which payment of the whole or any part of that amount is made to the first party by the third party; or
- (c) that otherwise makes the liability to pay an amount owing, or the due date for payment of an amount owing, contingent or dependent on the operation of another contract.

Part 3 Procedure for recovering progress payments

Division 1 Payment claims and payment schedules

17 Payment claims

- (1) A person mentioned in section 12¹³ who is or who claims to be entitled to a progress payment (the ***claimant***) may serve a payment claim on the person who, under the construction

13 Section 12 (Rights to progress payments)

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contract concerned, is or may be liable to make the payment (the *respondent*).

- (2) A payment claim—
 - (a) must identify the construction work or related goods and services to which the progress payment relates; and
 - (b) must state the amount of the progress payment that the claimant claims to be payable (the *claimed amount*); and
 - (c) must state that it is made under this Act.
- (3) The claimed amount may include any amount—
 - (a) that the respondent is liable to pay the claimant under section 33(3);¹⁴ or
 - (b) that is held under the construction contract by the respondent and that the claimant claims is due for release.
- (4) A payment claim may be served only within the later of—
 - (a) the period worked out under the construction contract; or
 - (b) the period of 12 months after the construction work to which the claim relates was last carried out or the related goods and services to which the claim relates were last supplied.
- (5) A claimant can not serve more than 1 payment claim in relation to each reference date under the construction contract.
- (6) However, subsection (5) does not prevent the claimant from including in a payment claim an amount that has been the subject of a previous claim.

18 Payment schedules

- (1) A respondent served with a payment claim may reply to the claim by serving a payment schedule on the claimant.
- (2) A payment schedule—

¹⁴ Section 33 (Claimant may suspend work)

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- (a) must identify the payment claim to which it relates; and
 - (b) must state the amount of the payment, if any, that the respondent proposes to make (the *scheduled amount*).
- (3) If the scheduled amount is less than the claimed amount, the schedule must state why the scheduled amount is less and, if it is less because the respondent is withholding payment for any reason, the respondent's reasons for withholding payment.
- (4) Subsection (5) applies if—
- (a) a claimant serves a payment claim on a respondent; and
 - (b) the respondent does not serve a payment schedule on the claimant within the earlier of—
 - (i) the time required by the relevant construction contract; or
 - (ii) 10 business days after the payment claim is served.
- (5) The respondent becomes liable to pay the claimed amount to the claimant on the due date for the progress payment to which the payment claim relates.

19 Consequences of not paying claimant if no payment schedule

- (1) This section applies if the respondent—
- (a) becomes liable to pay the claimed amount to the claimant under section 18 because the respondent failed to serve a payment schedule on the claimant within the time allowed by the section; and
 - (b) fails to pay the whole or any part of the claimed amount on or before the due date for the progress payment to which the payment claim relates.
- (2) The claimant—
- (a) may—
 - (i) recover the unpaid portion of the claimed amount from the respondent, as a debt owing to the claimant, in any court of competent jurisdiction; or

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- (ii) make an adjudication application under section 21(1)(b) in relation to the payment claim; and
 - (b) may serve notice on the respondent of the claimant's intention to suspend, under section 33, carrying out construction work or supplying related goods and services under the construction contract.
- (3) A notice under subsection (2)(b) must state that it is made under this Act.
- (4) If the claimant starts proceedings under subsection (2)(a)(i) to recover the unpaid portion of the claimed amount from the respondent as a debt—
- (a) judgment in favour of the claimant is not to be given by a court unless the court is satisfied of the existence of the circumstances referred to in subsection (1); and
 - (b) the respondent is not, in those proceedings, entitled—
 - (i) to bring any counterclaim against the claimant; or
 - (ii) to raise any defence in relation to matters arising under the construction contract.

20 Consequences of not paying claimant under payment schedule

- (1) This section applies if—
- (a) a claimant serves a payment claim on a respondent; and
 - (b) the respondent serves a payment schedule on the claimant within the earlier of—
 - (i) the time required by the relevant construction contract; or
 - (ii) 10 business days after the payment claim is served; and
 - (c) the payment schedule states a scheduled amount that the respondent proposes to pay to the claimant; and
 - (d) the respondent fails to pay the whole or any part of the scheduled amount to the claimant on or before the due

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date for the progress payment to which the payment claim relates.

- (2) The claimant—
 - (a) may—
 - (i) recover the unpaid portion of the scheduled amount from the respondent, as a debt owing to the claimant, in any court of competent jurisdiction; or
 - (ii) make an adjudication application under section 21(1)(a)(ii) in relation to the payment claim; and
 - (b) may serve notice on the respondent of the claimant's intention to suspend, under section 33, carrying out construction work or supplying related goods and services under the construction contract.
- (3) A notice under subsection (2)(b) must state that it is made under this Act.
- (4) If the claimant starts proceedings under subsection (2)(a)(i) to recover the unpaid portion of the scheduled amount from the respondent as a debt—
 - (a) judgment in favour of the claimant is not to be given by a court unless the court is satisfied of the existence of the circumstances referred to in subsection (1); and
 - (b) the respondent is not, in those proceedings, entitled—
 - (i) to bring any counterclaim against the claimant; or
 - (ii) to raise any defence in relation to matters arising under the construction contract.

Division 2 Adjudication of disputes

21 Adjudication application

- (1) A claimant may apply for adjudication of a payment claim (an *adjudication application*) if—

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- (a) the respondent serves a payment schedule under division 1 but—
 - (i) the scheduled amount stated in the payment schedule is less than the claimed amount stated in the payment claim; or
 - (ii) the respondent fails to pay the whole or any part of the scheduled amount to the claimant by the due date for payment of the amount; or
 - (b) the respondent fails to serve a payment schedule on the claimant under division 1 and fails to pay the whole or any part of the claimed amount by the due date for payment of the amount.
- (2) An adjudication application to which subsection (1)(b) applies can not be made unless—
- (a) the claimant gives the respondent notice, within 20 business days immediately following the due date for payment, of the claimant's intention to apply for adjudication of the payment claim; and
 - (b) the notice states that the respondent may serve a payment schedule on the claimant within 5 business days after receiving the claimant's notice.
- (3) An adjudication application—
- (a) must be in writing; and
 - (b) must be made to an authorised nominating authority chosen by the claimant; and
 - (c) must be made within the following times—
 - (i) for an application under subsection (1)(a)(i)—within 10 business days after the claimant receives the payment schedule;
 - (ii) for an application under subsection (1)(a)(ii)—within 20 business days after the due date for payment;
 - (iii) for an application under subsection (1)(b)—within 10 business days after the end of the 5 day period referred to in subsection (2)(b); and

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- (d) must identify the payment claim and the payment schedule, if any, to which it relates; and
 - (e) must be accompanied by the application fee, if any, decided by the authorised nominating authority; and
 - (f) may contain the submissions relevant to the application the claimant chooses to include.
- (4) The amount of an application fee must not exceed the amount, if any, prescribed under a regulation.
 - (5) A copy of an adjudication application must be served on the respondent.
 - (6) The authorised nominating authority to which an adjudication application is made must refer the application, as soon as practicable, to a person eligible to be an adjudicator under section 22.

22 When person may be an adjudicator

- (1) A person may be an adjudicator in relation to a construction contract if registered as an adjudicator under this Act.
- (2) A person is not eligible to be an adjudicator in relation to a particular construction contract—
 - (a) if the person is a party to the contract; or
 - (b) in circumstances prescribed under a regulation for this section.
- (3) A regulation may be made under subsection (2)(b) only to prescribe circumstances in which the appointment of an adjudicator might create a conflict of interest.

23 Appointment of adjudicator

- (1) If an authorised nominating authority refers an adjudication application to an adjudicator, the adjudicator may accept the adjudication application by serving notice of the acceptance on the claimant and the respondent.
- (2) On accepting an adjudication application, the adjudicator is taken to have been appointed to decide the application.

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24 Adjudication responses

- (1) Subject to subsection (3), the respondent may give the adjudicator a response to the claimant's adjudication application (the *adjudication response*) at any time within the later of the following to end—
 - (a) 5 business days after receiving a copy of the application;
 - (b) 2 business days after receiving notice of an adjudicator's acceptance of the application.
- (2) The adjudication response—
 - (a) must be in writing; and
 - (b) must identify the adjudication application to which it relates; and
 - (c) may contain the submissions relevant to the response the respondent chooses to include.
- (3) The respondent may give the adjudication response to the adjudicator only if the respondent has served a payment schedule on the claimant within the time specified in section 18(4)(b) or 21(2)(b).¹⁵
- (4) The respondent can not include in the adjudication response any reasons for withholding payment unless those reasons have already been included in the payment schedule served on the claimant.
- (5) A copy of the adjudication response must be served on the claimant.

25 Adjudication procedures

- (1) An adjudicator must not decide an adjudication application until after the end of the period within which the respondent may give an adjudication response to the adjudicator.
- (2) An adjudicator must not consider an adjudication response unless it was made before the end of the period within which the respondent may give a response to the adjudicator.

¹⁵ Section 18 (Payment schedules) or 21 (Adjudication application)

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- (3) Subject to subsections (1) and (2), an adjudicator must decide an adjudication application as quickly as possible and, in any case—
 - (a) within 10 business days after the earlier of—
 - (i) the date on which the adjudicator receives the adjudication response; or
 - (ii) the date on which the adjudicator should have received the adjudication response; or
 - (b) within the further time the claimant and the respondent may agree, whether before or after the end of the 10 business days.
- (4) For a proceeding conducted to decide an adjudication application, an adjudicator—
 - (a) may ask for further written submissions from either party and must give the other party an opportunity to comment on the submissions; and
 - (b) may set deadlines for further submissions and comments by the parties; and
 - (c) may call a conference of the parties; and
 - (d) may carry out an inspection of any matter to which the claim relates.
- (5) If a conference is called, it must be conducted informally and the parties are not entitled to any legal representation.
- (6) The adjudicator's power to decide an adjudication application is not affected by the failure of either or both of the parties to make a submission or comment within time or to comply with the adjudicator's call for a conference of the parties.

26 Adjudicator's decision

- (1) An adjudicator is to decide—
 - (a) the amount of the progress payment, if any, to be paid by the respondent to the claimant (the *adjudicated amount*); and

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- (b) the date on which any amount became or becomes payable; and
 - (c) the rate of interest payable on any amount.
- (2) In deciding an adjudication application, the adjudicator is to consider the following matters only—
- (a) the provisions of this Act and, to the extent they are relevant, the provisions of the *Queensland Building Services Authority Act 1991*, part 4A;¹⁶
 - (b) the provisions of the construction contract from which the application arose;
 - (c) the payment claim to which the application relates, together with all submissions, including relevant documentation, that have been properly made by the claimant in support of the claim;
 - (d) the payment schedule, if any, to which the application relates, together with all submissions, including relevant documentation, that have been properly made by the respondent in support of the schedule;
 - (e) the results of any inspection carried out by the adjudicator of any matter to which the claim relates.
- (3) The adjudicator's decision must—
- (a) be in writing; and
 - (b) include the reasons for the decision, unless the claimant and the respondent have both asked the adjudicator not to include the reasons in the decision.

27 Valuation of work etc. in later adjudication application

- (1) Subsection (2) applies if, in deciding an adjudication application, an adjudicator has, under section 14,¹⁷ decided—
- (a) the value of any construction work carried out under a construction contract; or

¹⁶ *Queensland Building Services Authority Act 1991*, part 4A (Building contracts other than domestic building contracts)

¹⁷ Section 14 (Valuation of construction work and related goods and services)

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- (b) the value of any related goods and services supplied under a construction contract.
- (2) The adjudicator or another adjudicator must, in any later adjudication application that involves the working out of the value of that work or of those goods and services, give the work, or the goods and services, the same value as that previously decided unless the claimant or respondent satisfies the adjudicator concerned that the value of the work, or the goods and services, has changed since the previous decision.

28 Adjudicator may correct clerical mistakes etc.

- (1) Subsection (2) applies if the adjudicator's decision contains—
 - (a) a clerical mistake; or
 - (b) an error arising from an accidental slip or omission; or
 - (c) a material miscalculation of figures or a material mistake in the description of a person, thing or matter mentioned in the decision; or
 - (d) a defect of form.
- (2) The adjudicator may, on the adjudicator's own initiative or on the application of the claimant or the respondent, correct the decision.

29 Respondent required to pay adjudicated amount

- (1) If an adjudicator decides that the respondent is required to pay an adjudicated amount, the respondent must pay the amount to the claimant on or before the relevant date.
- (2) In this section—

relevant date means—

 - (a) the date that is 5 business days after the date on which the adjudicator's decision is served on the respondent; or
 - (b) if the adjudicator decides a later date under section 26(1)(b)—the later date.

30 Consequences of not paying claimant adjudicated amount

- (1) If the respondent fails to pay the whole or any part of the adjudicated amount to the claimant under section 29, the claimant—
 - (a) may ask the authorised nominating authority to whom the adjudication application was made to provide an adjudication certificate under this section; and
 - (b) may serve notice on the respondent of the claimant's intention to suspend, under section 33, carrying out construction work or supplying related goods and services under the construction contract.
- (2) A notice under subsection (1)(b) must state that it is made under this Act.
- (3) An adjudication certificate must state that it is made under this Act and state the following matters—
 - (a) the name of the claimant;
 - (b) the name of the respondent who is liable to pay the adjudicated amount;
 - (c) the adjudicated amount;
 - (d) the date on which payment of the adjudicated amount was required to be paid to the claimant.
- (4) If an amount of interest payable on the adjudicated amount is not paid by the respondent, the claimant may request the authorised nominating authority to state the amount of interest payable in the adjudication certificate.
- (5) If an amount of interest is specified in the adjudication certificate, the amount is to be added to, and becomes part of, the adjudicated amount.
- (6) If the claimant has paid the respondent's share of the adjudication fees for the adjudication but has not been reimbursed by the respondent for that amount (the *unpaid share*), the claimant may ask the authorised nominating authority to state the unpaid share in the adjudication certificate.

- (7) If the unpaid share is stated in the adjudication certificate, it is to be added to, and becomes part of, the adjudicated amount.

31 Filing of adjudication certificate as judgment debt

- (1) An adjudication certificate may be filed as a judgment for a debt, and may be enforced, in a court of competent jurisdiction.
- (2) An adjudication certificate can not be filed under this section unless it is accompanied by an affidavit by the claimant stating that the whole or a part of the adjudicated amount has not been paid at the time the certificate is filed.
- (3) If the affidavit states that part of the adjudicated amount has been paid, the judgment is for the unpaid part of the amount only.
- (4) If the respondent commences proceedings to have the judgment set aside, the respondent—
- (a) is not, in those proceedings, entitled—
 - (i) to bring any counterclaim against the claimant; or
 - (ii) to raise any defence in relation to matters arising under the construction contract; or
 - (iii) to challenge the adjudicator's decision; and
 - (b) is required to pay into the court as security the unpaid portion of the adjudicated amount pending the final decision in those proceedings.

32 Claimant may make new application in certain circumstances

- (1) This section applies if—
- (a) a claimant does not receive an adjudicator's notice of acceptance of an adjudication application within 4 business days after the application is made; or

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- (b) an adjudicator who accepts an adjudication application does not decide the application within the time allowed by section 25(3).¹⁸
- (2) In either of those circumstances, the claimant—
 - (a) may withdraw the application, by notice served on the adjudicator or authorised nominating authority to whom the application was made; and
 - (b) may make a new adjudication application under section 21.¹⁹
- (3) Despite section 21(3)(c), a new adjudication application may be made at any time within 5 business days after the claimant becomes entitled to withdraw the previous adjudication application under subsection (2).
- (4) This division applies to a new application mentioned in this section in the same way as it applies to an application under section 21.

Division 3 Claimant's right to suspend construction work

33 Claimant may suspend work

- (1) A claimant may suspend carrying out of construction work or the supply of related goods and services under a construction contract if at least 2 business days have passed since the claimant has given notice of intention to do so to the respondent under section 19, 20 or 30.²⁰
- (2) The right conferred by subsection (1) exists until the end of the period of 3 business days immediately following the date

18 Section 25 (Adjudication procedures)

19 Section 21 (Adjudication application)

20 Section 19 (Consequences of not paying claimant if no payment schedule), 20 (Consequences of not paying claimant under payment schedule) or 30 (Consequences of not paying claimant adjudicated amount)

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on which the claimant receives payment from the respondent of the amount mentioned in section 19(1), 20(1) or 29(1).²¹

- (3) If the claimant, in exercising the right to suspend carrying out of construction work or the supply of related goods and services under a construction contract, incurs any loss or expenses as a result of the removal by the respondent from the contract of any part of the work or supply, the respondent is liable to pay the claimant the amount of the loss or expenses.
- (4) A claimant who suspends carrying out construction work or the supply of related goods and services under a construction contract under the right conferred by subsection (1) is not liable for any loss or damage suffered by the respondent, or by any person claiming through the respondent, because of the claimant not carrying out that work or not supplying those goods and services, during the period of suspension.

Division 4 General

34 Authorised nominating authority's fees

- (1) An authorised nominating authority may charge a fee for any service provided by the authority relating to an adjudication application made to the authority.
- (2) If an amount is prescribed under a regulation for a service provided by an authorised nominating authority, the amount charged for the service must not be more than the amount prescribed.
- (3) The claimant and respondent are—
 - (a) jointly and severally liable to pay any fee; and
 - (b) each liable to contribute to the payment of any fee in equal proportions or in the proportions the adjudicator to whom the adjudication application is referred may decide.

²¹ Section 29 (Respondent required to pay adjudicated amount)

35 Adjudicator's fees

- (1) An adjudicator is entitled to be paid for adjudicating an adjudication application—
 - (a) the amount, by way of fees and expenses, agreed between the adjudicator and the parties to the adjudication; or
 - (b) if no amount is agreed, the amount, for fees and expenses, that is reasonable having regard to the work done and expenses incurred by the adjudicator.
- (2) The claimant and respondent are jointly and severally liable to pay the adjudicator's fees and expenses.
- (3) The claimant and respondent are each liable to contribute to the payment of the adjudicator's fees and expenses in equal proportions or in the proportions the adjudicator decides.
- (4) An adjudicator is not entitled to be paid any fees or expenses for the adjudication of an adjudication application if the adjudicator fails to make a decision on the application (other than because the application is withdrawn or the dispute between the claimant and respondent is resolved) within the time allowed by section 25(3).
- (5) Subsection (4) does not apply only because an adjudicator refuses to communicate the adjudicator's decision on an adjudication application until the adjudicator's fees and expenses are paid.

Part 4 Administration

Division 1 Establishing registry and related matters

36 Registry established

- (1) The Adjudication Registry (the *registry*) is established.

- (2) The registry consists of the Adjudication Registrar (the *registrar*) and the staff of the registry.

37 Appointment of registrar and staff of registry

- (1) A person is eligible for appointment as the registrar only if the person has particular knowledge and experience of—
- (a) public administration; and
 - (b) something else of substantial relevance to the functions of the registrar.
- (2) The registrar and other staff of the registry are to be appointed by the authority under this Act.

38 Registrar's functions and powers

- (1) Subject to the direction of the general manager, the registrar is responsible for managing the registry and the administrative affairs of the registry.
- (2) The registrar has the following functions—
- (a) to keep a register, containing details of authorised nominating authorities and adjudicators, which may be kept in any form allowing it to be inspected as mentioned in paragraph (b);
 - (b) to ensure the register is available for inspection by an entity—
 - (i) without charge; or
 - (ii) if a regulation prescribes a fee for the inspection, on payment of the fee prescribed;
 - (c) to supply a certificate as to the correctness of a matter in the register to an entity paying any fee that may be prescribed under a regulation for the certificate;
 - (d) to keep records of decisions by adjudicators and to publish the decisions in a way approved by the general manager;
 - (e) to keep account of fees paid or payable to the registrar;

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- (f) to collect statistical data and other information relevant to the administration of the registry for the general manager's report to the Minister under section 41;
 - (g) any other functions given under this Act.
- (3) The registrar has the powers reasonably necessary to perform the registrar's functions.

39 Delegation by registrar

- (1) The registrar may delegate the registrar's powers under this Act or another Act to an appropriately qualified member of the staff of the registry.
- (2) In this section—
- appropriately qualified*** includes having the qualifications, experience or standing appropriate to exercise the power.

Example of standing—

a person's seniority level as a member of the staff of the registry

40 Acting registrar

- (1) The authority may appoint an appropriately qualified person to act as registrar.
- (2) The appointee is to act as registrar if—
- (a) the registrar is not available to carry out the registrar's duties; or
 - (b) there is a vacancy in the office of registrar.
- (3) In this section—

appropriately qualified includes having particular knowledge and experience of—

- (a) public administration; and
- (b) something else of substantial relevance to the functions of the registrar.

41 Annual report on operation of Act and registry

- (1) As soon as practicable after each financial year, but not later than 30 September, the general manager must give the Minister a report containing—
 - (a) a review of the operation of this Act and the registry during the preceding financial year; and
 - (b) proposals for improving the operation of, and forecasts of the workload of, the registry in the present financial year.
- (2) The Minister must table a copy of the report in the Legislative Assembly within 14 sitting days after receiving the report.

Division 2 Registration of authorised nominating authorities

42 Application for registration

- (1) A person may apply to the registrar for registration as an authorised nominating authority.
- (2) The application must—
 - (a) be in the approved form; and
 - (b) be signed by or for the applicant; and
 - (c) be accompanied by the fee prescribed under a regulation for the application.

43 What the application must state

The application must state the following—

- (a) the name and address of the applicant;
- (b) an address in Queensland for service of documents;
- (c) the address of the applicant's principal place of business;

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- (d) the names of the individuals to be involved in the day to day running of the applicant's business as an authorised nominating authority;
- (e) the qualifications and experience of the applicant, and individuals to be involved in the day to day running of the applicant's business, relevant to dealing with adjudication applications;
- (f) whether the applicant represents the interests of a particular sector of the building or construction industry;
- (g) the matters the applicant will consider in appointing adjudicators to decide adjudication applications;
- (h) the ongoing training and support the applicant will make available to adjudicators;
- (i) other details, required in the approved form for the application, to enable the registrar to decide whether the applicant is a suitable person to be registered as an authorised nominating authority.

44 Consideration of application for registration

The registrar must consider the application and either grant, or refuse to grant, the application.

45 Criteria for granting application for registration

The registrar may grant the application for registration only if the registrar is satisfied the applicant is a suitable person to be registered as an authorised nominating authority.

46 Suitability of person to be registered

In deciding whether an applicant is a suitable person to be registered, the registrar may have regard to the following matters—

- (a) whether the person, or an individual engaged or employed by the person, has a conviction for a relevant offence, other than a spent conviction;

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- (b) whether the person, or an individual engaged or employed by the person—
 - (i) held a registration under this division, or a licence or registration under a corresponding law, that was suspended or cancelled; or
 - (ii) has been refused registration under this division or a licence or registration under a corresponding law;
- (c) whether the applicant represents the interests of a particular sector of the building or construction industry and, if so, whether this would make the applicant unsuitable to appoint adjudicators;
- (d) the matters stated in the application for registration under section 43;
- (e) anything else relevant to the person's ability to conduct business as an authorised nominating authority.

47 Inquiries into application for registration

- (1) Before deciding the application, the registrar—
 - (a) may make inquiries to decide the suitability of the applicant to be registered; and
 - (b) may, by notice given to the applicant, require the applicant to give the registrar within the reasonable time of at least 28 days stated in the notice, further information or a document the registrar reasonably requires to decide the application.
- (2) The applicant is taken to have withdrawn the application if, within the stated time, the applicant does not comply with a requirement under subsection (1)(b).
- (3) A notice under subsection (1)(b) must be given to the applicant within 28 days after the registrar receives the application.
- (4) The information or document under subsection (1)(b) must, if the notice requires, be verified by a statutory declaration.

48 Decision on application for registration

- (1) If the registrar decides to grant the application, the registrar must issue a certificate of registration to the applicant.
- (2) If the registrar decides to impose conditions on the registration, the registrar must immediately give the applicant an information notice for the decision.
- (3) If the registrar decides to refuse to grant the application, the registrar must immediately give the applicant an information notice for the decision.

49 Failure to decide application for registration

- (1) Subject to subsections (2) and (3), if the registrar fails to decide the application within 28 days after its receipt, the failure is taken to be a decision by the registrar to refuse to grant the application.
- (2) Subsection (3) applies if—
 - (a) a person has made an application for registration; and
 - (b) the registrar has under section 47(1)(b), required the applicant to give the registrar further information or a document.
- (3) The registrar is taken to have refused to grant the application if the registrar does not decide the application within 28 days after the registrar receives the further information or document.
- (4) If the application is refused under this section, the applicant is entitled to be given an information notice for the decision by the registrar.

50 Term of registration

- (1) A registration becomes effective on the day the certificate of registration is issued or on the day of the registration's renewal and ends either—
 - (a) 3 years after that day; or

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- (b) on the earlier day stated in the certificate of registration.
- (2) The earlier day may be decided by the registrar.

51 Conditions of registration

- (1) A registration is subject to the following conditions—
 - (a) the authorised nominating authority must comply with this Act;
 - (b) the authorised nominating authority must ensure that the authority's registration, or a copy of the registration, is displayed at the authority's principal place of business so that it is easily visible to a person as the person enters the place;
 - (c) other reasonable conditions the registrar considers appropriate to give effect to this Act and that are stated in the certificate of registration or in an information notice given under subsection (3).
- (2) Conditions may be imposed under subsection (1)(c)—
 - (a) when registration first happens or is renewed or amended; or
 - (b) at another time if the registrar considers this is necessary to ensure that an authorised nominating authority effectively performs the authority's functions under this Act.
- (3) If the registrar decides to impose conditions on the authorised nominating authority under subsection (2)(b)—
 - (a) the registrar must immediately give the authority an information notice for the decision; and
 - (b) the conditions take effect when the information notice is received by the authorised nominating authority or the later day stated in the notice.

52 Registration required to perform functions of authorised nominating authority

A person must not accept an adjudication application or refer it to an adjudicator unless the person is an authorised nominating authority.

Maximum penalty—500 penalty units.

53 Authorised nominating authority must ensure adjudicators are registered

An authorised nominating authority must not refer an adjudication application to a person unless the person is registered as an adjudicator under division 3.

Maximum penalty—500 penalty units.

54 Authorised nominating authority must comply with registration conditions

- (1) An authorised nominating authority must not contravene a condition of the registration.

Maximum penalty—200 penalty units.

- (2) The penalty under subsection (1) may be imposed whether or not the registration is suspended or cancelled because of the contravention.

55 Form of certificate of registration

A certificate of registration must state the following particulars—

- (a) the authorised nominating authority's name;
- (b) the address of the authority's principal place of business;
- (c) the day the registration becomes effective;
- (d) the day the registration expires;
- (e) the registration number;
- (f) the registration conditions.

Division 3 Registration of adjudicators

56 Application for registration

- (1) An individual may apply to the registrar for registration as an adjudicator.
- (2) The application must—
 - (a) be in the approved form; and
 - (b) be signed by or for the applicant; and
 - (c) be accompanied by the fee prescribed under a regulation for the application.

57 What the application must state

The application must state the following—

- (a) the name and address of the applicant;
- (b) an address in Queensland for service of documents;
- (c) the experience and qualifications of the applicant, relevant to deciding adjudication applications;
- (d) other details, required in the approved form for the application, to enable the registrar to decide whether the applicant is a suitable person to be registered as an adjudicator.

58 Consideration of application for registration

The registrar must consider the application and either grant, or refuse to grant, the application.

59 Criteria for granting application for registration

The registrar may grant the application only if the registrar is satisfied the applicant is a suitable person to be registered as an adjudicator.

60 Suitability of person to be registered

- (1) A person is not a suitable person to be registered as an adjudicator unless the person holds—
 - (a) an adjudication qualification; or
 - (b) another qualification that the registrar considers to be equivalent to an adjudication qualification.
- (2) In deciding whether an applicant is a suitable person to be registered, the registrar may have regard to the following matters—
 - (a) whether the person has a conviction for a relevant offence, other than a spent conviction;
 - (b) whether the person—
 - (i) held a registration under this division, or a licence or registration under a corresponding law, that was suspended or cancelled; or
 - (ii) has been refused registration under this division or a licence or registration under a corresponding law;
 - (c) the experience and qualifications of the person;
 - (d) the matters stated in the application for registration under section 57;
 - (e) anything else relevant to the person's ability to carry out the person's functions as an adjudicator.

61 Inquiries into application for registration

- (1) Before deciding the application, the registrar—
 - (a) may make inquiries to decide the suitability of the applicant to be registered; and
 - (b) may, by notice given to the applicant, require the applicant to give the registrar within the reasonable time of at least 28 days stated in the notice, further information or a document the registrar reasonably requires to decide the application.

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- (2) The applicant is taken to have withdrawn the application if, within the stated time, the applicant does not comply with a requirement under subsection (1)(b).
- (3) A notice under subsection (1)(b) must be given to the applicant within 28 days after the registrar receives the application.
- (4) The information or document under subsection (1)(b) must, if the notice requires, be verified by a statutory declaration.

62 Decision on application for registration

- (1) If the registrar decides to grant the application, the registrar must issue a certificate of registration to the applicant.
- (2) If the registrar decides to impose conditions on the registration, the registrar must immediately give the applicant an information notice for the decision.
- (3) If the registrar decides to refuse to grant the application, the registrar must immediately give the applicant an information notice for the decision.

63 Failure to decide application for registration

- (1) Subject to subsections (2) and (3), if the registrar fails to decide the application within 28 days after its receipt, the failure is taken to be a decision by the registrar to refuse to grant the application.
- (2) Subsection (3) applies if—
 - (a) a person has made an application for registration; and
 - (b) the registrar has under section 61(1)(b), required the applicant to give the registrar further information or a document.
- (3) The registrar is taken to have refused to grant the application if the registrar does not decide the application within 28 days after the registrar receives the further information or document.

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- (4) If the application is refused under this section, the applicant is entitled to be given an information notice for the decision by the registrar.

64 Term of registration

- (1) A registration becomes effective on the day the certificate of registration is issued or on the day of the registration's renewal and ends either—
- (a) 3 years after that day; or
 - (b) on the earlier day stated in the certificate of registration.
- (2) The earlier day may be decided by the registrar.

65 Conditions of registration

- (1) A registration is subject to the following conditions—
- (a) the adjudicator must comply with this Act;
 - (b) other reasonable conditions the registrar considers appropriate to give effect to this Act and that are stated in the certificate of registration or in an information notice given under subsection (3).
- (2) Conditions may be imposed under subsection (1)(b)—
- (a) when registration first happens or is renewed or amended; or
 - (b) at another time if the registrar considers this is necessary to ensure that an adjudicator effectively performs the adjudicator's functions under this Act.
- (3) If the registrar decides to impose conditions on the registration under subsection (2)(b)—
- (a) the registrar must immediately give the adjudicator an information notice for the decision; and
 - (b) the conditions take effect when the information notice is received by the adjudicator or the later day stated in the notice.

66 Registration required to perform functions of adjudicator

A person must not accept or decide an adjudication application unless the person is an adjudicator.

Maximum penalty—500 penalty units.

67 Adjudicator must comply with registration conditions

- (1) An adjudicator must not contravene a condition of the registration.

Maximum penalty—200 penalty units.

- (2) The penalty under subsection (1) may be imposed whether or not the registration is suspended or cancelled because of the contravention.

68 Form of certificate of registration

A certificate of registration must state the following particulars—

- (a) the registrant's name;
- (b) the day the registration becomes effective;
- (c) the day the registration expires;
- (d) the registration number;
- (e) the registration conditions.

Division 4 Renewals of registrations of authorised nominating authorities and adjudicators

69 Definitions for div 4

In this division—

registrant means—

- (a) for a person applying for a renewal of registration as an authorised nominating authority, that person; or

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- (b) for a person applying for a renewal of registration as an adjudicator, that person.

registration means—

- (a) for a renewal of registration as an authorised nominating authority, that registration; or
- (b) for a renewal of registration as an adjudicator, that registration.

70 Applications for renewal of registration

- (1) A registrant may apply to the registrar for the renewal of the registration.
- (2) The application must be made at least 1 month before the registration ends and must—
 - (a) be in the approved form; and
 - (b) be signed by or for the applicant; and
 - (c) be accompanied by the fee prescribed under a regulation for the application.
- (3) The registrar must consider the application and renew, or refuse to renew, the registration.
- (4) In deciding whether to grant the application, the registrar may have regard to the matters to which the registrar may have regard in deciding whether an applicant for registration is a suitable person to be registered.
- (5) If the registrar decides to refuse to renew the registration, the registrar must immediately give the registrant an information notice for the decision.
- (6) If the registrar decides to impose conditions on the registration, the registrar must immediately give the registrant an information notice for the decision.
- (7) A registration may be renewed by—
 - (a) endorsing the existing certificate of registration; or
 - (b) cancelling the existing certificate and issuing another certificate.

71 Inquiries into application for renewal of registration

- (1) Before deciding the application, the registrar may, by notice given to the registrant, require the registrant to give the registrar, within a reasonable period of at least 28 days stated in the notice, further information or a document the registrar reasonably requires to decide the application.
- (2) The registrant is taken to have withdrawn the application if, within the stated period, the registrant does not comply with the requirement.

72 Registration taken to be in force while application for renewal is considered

- (1) If an application is made under section 70, the registrant's registration is taken to continue in force from the day that it would, apart from this section, have ended until the application is decided under section 70 or taken to have been withdrawn under section 71(2).
- (2) However, if the application is refused, the registration continues in force until the information notice for the decision is given to the registrant.
- (3) Subsection (1) does not apply if the registration is earlier suspended or cancelled.

Division 5 Amendment of registrations of authorised nominating authorities and adjudicators

73 Definitions for div 5

In this division—

registrant means—

- (a) for a registrant applying for amendment of a registration as an authorised nominating authority, that registrant; or
- (b) for a registrant applying for amendment of a registration as an adjudicator, that registrant.

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registration means—

- (a) for an amendment of a registration as an authorised nominating authority, that registration; or
- (b) for an amendment of a registration as an adjudicator, that registration.

74 Application for amendment of registration

- (1) A registrant may apply to the registrar for an amendment of the registration including any conditions imposed by the registrar.
- (2) The application must—
 - (a) be in the approved form; and
 - (b) be signed by or for the applicant; and
 - (c) be accompanied by the fee prescribed under a regulation for the application.
- (3) The registrar must consider the application and amend, or refuse to amend, the registration.
- (4) If the registrar decides to refuse to amend the registration, the registrar must immediately give the registrant an information notice for the decision.
- (5) If the registrar decides to impose a condition on the amended registration, the registrar must immediately give the registrant an information notice for the decision.
- (6) A registration may be amended by—
 - (a) endorsing the existing registration with details of the amendment; or
 - (b) cancelling the existing registration and issuing another registration containing the amendment.

75 Inquiries into application for amendment

- (1) Before deciding the application, the registrar may, by notice given to the registrant, require the registrant to give the registrar, within a reasonable period of at least 28 days stated

in the notice, further information or a document the registrar reasonably requires to decide the application.

- (2) The registrant is taken to have withdrawn the application if, within the stated period, the registrant does not comply with the requirement.

Division 6 Suspension or cancellation of registrations of authorised nominating authorities and adjudicators

76 Definitions for div 6

In this division—

registrant means—

- (a) for a person registered as an authorised nominating authority, that person; or
- (b) for a person registered as an adjudicator, that person.

registration means—

- (a) for a registration as an authorised nominating authority, that registration; or
- (b) for a registration as an adjudicator, that registration.

77 Grounds for suspension or cancellation

- (1) Each of the following is a ground for suspending or cancelling a registration—
 - (a) the registrant is not, or is no longer, a suitable person to hold the registration;
 - (b) the registrant has contravened a condition of the registration;
 - (c) the registration was issued because of a materially false or misleading representation or declaration.

- (2) For forming a belief that the ground mentioned in subsection (1)(a) exists, the registrar may have regard to the matters to which the registrar may have regard in deciding whether a proposed registrant is a suitable person to hold the registration.²²

78 Show cause notice

- (1) This section applies if the registrar believes a ground exists to suspend or cancel a registration.
- (2) The registrar must give the registrant a notice under this section (a *show cause notice*).
- (3) The show cause notice must state—
- (a) the action (the *proposed action*) the registrar proposes taking under this division; and
 - (b) the grounds for the proposed action; and
 - (c) an outline of the facts and circumstances forming the basis for the grounds; and
 - (d) if the proposed action is suspension of the registration—the proposed suspension period; and
 - (e) an invitation to the registrant to show within a stated period (the *show cause period*) why the proposed action should not be taken.
- (4) The show cause period must be a period ending at least 21 days after the show cause notice is given to the registrant.

79 Representations about show cause notices

- (1) The registrant may make written representations about the show cause notice to the registrar in the show cause period.
- (2) The registrar must consider all representations (the *accepted representations*) made under subsection (1).

²² See sections 46 and 60 (Suitability of person to be registered).

80 Ending show cause process without further action

- (1) This section applies if, after considering the accepted representations for the show cause notice, the registrar no longer believes a ground exists to suspend or cancel the registration.
- (2) The registrar must not take any further action about the show cause notice.
- (3) The registrar must give the registrant a notice that no further action is to be taken about the show cause notice.

81 Suspension or cancellation

- (1) This section applies if—
 - (a) there are accepted representations for the show cause notice and, after considering them, the registrar still believes a ground exists to suspend or cancel the registration; or
 - (b) there are no accepted representations.
- (2) If the registrar believes suspension or cancellation of the registration is warranted, the registrar may—
 - (a) if the proposed action stated in the show cause notice was to suspend the registration for a stated period—suspend the registration for not longer than the stated period; or
 - (b) if the proposed action stated in the show cause notice was to cancel the registration—either cancel the registration or suspend it for a period.
- (3) The registrar must immediately give an information notice for the decision to the registrant.
- (4) The decision takes effect on the later of the following days—
 - (a) the day the information notice is given to the registrant;
 - (b) the day stated in the information notice for that purpose.

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82 Immediate suspension of registration

- (1) The registrar may suspend a registration immediately if the registrar believes—
 - (a) a ground exists to suspend or cancel the registration; and
 - (b) it is necessary to suspend the registration immediately because there is an immediate and serious harm to the effectiveness of the adjudication of payment claims under this Act.
- (2) The suspension—
 - (a) must be effected by an information notice for the decision given by the registrar to the registrant to suspend the registrant's registration together with a show cause notice; and
 - (b) operates immediately the notices are given; and
 - (c) continues to operate until the earliest of the following happens—
 - (i) the registrar cancels the remaining period of the suspension;
 - (ii) the show cause notice is finally dealt with;
 - (iii) 28 days have passed since the notices were given to the registrant.
- (3) Subsection (4) applies if—
 - (a) a suspension under this section stops because—
 - (i) the registrar cancels the remaining period of the suspension; or
 - (ii) the show cause notice is finally dealt with by a decision being made not to cancel or suspend the registration; or
 - (iii) 28 days have passed since the notices mentioned in subsection (2)(a) were given to the registrant; and
 - (b) the registrant has returned the certificate of registration to the registrar under section 83.

- (4) The registrar must, as soon as practicable, give the certificate of registration to the registrant.

83 Return of cancelled or suspended registration to registrar

- (1) This section applies if the registrar has cancelled or suspended a registration and given an information notice for the decision to the registrant.
- (2) The registrant must return the certificate of registration to the registrar within 7 days after receiving the information notice, unless the registrant has a reasonable excuse.

Maximum penalty for subsection (2)—20 penalty units.

84 Effect of suspension or cancellation of registration of authorised nominating authority or adjudicator

- (1) This section applies if—
- (a) the registration of an authorised nominating authority or an adjudicator is suspended or cancelled or otherwise ends; and
 - (b) an adjudication application has been made to the authorised nominating authority, or referred to the adjudicator, for an adjudication of a payment claim; and
 - (c) an adjudicator has not made a decision under section 26²³ in relation to the adjudication application.
- (2) The adjudication application is taken to have been withdrawn by the claimant under section 32(2)(a)²⁴ and the claimant may make a new adjudication application under section 21.²⁵
- (3) Despite section 21(3)(c), a new adjudication application may be made at any time within 5 business days after the claimant becomes aware the registration has ended.

23 Section 26 (Adjudicator's decision)

24 Section 32 (Claimant may make new application in certain circumstances)

25 Section 21 (Adjudication application)

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- (4) Part 3, division 2,²⁶ applies to a new application mentioned in this section in the same way as it applies to an application under section 21.
- (5) Neither the authorised nominating authority nor the adjudicator is entitled to any fees or expenses in relation to the adjudication application taken to have been withdrawn.

85 Issue of adjudication certificate by registrar

- (1) This section applies if—
 - (a) an adjudication application has been made to an authorised nominating authority for the adjudication of a payment claim; and
 - (b) the adjudication application has been referred to an adjudicator; and
 - (c) the registration of the authorised nominating authority is suspended or cancelled or otherwise ends after the claim has been referred to the adjudicator; and
 - (d) the adjudicator has made a decision under section 26 in relation to the adjudication application.
- (2) The registrar may provide an adjudication certificate under section 30²⁷ as if the registrar were the authorised nominating authority.
- (3) The authorised nominating authority must provide the registrar with the information and documents requested by the registrar to enable the registrar to provide the adjudication certificate, unless the authorised nominating authority has a reasonable excuse.

Maximum penalty—200 penalty units.

- (4) The adjudicator must provide the registrar with the information and documents requested by the registrar to

26 Part 3 (Procedure for recovering progress payments), division 2 (Adjudication of disputes)

27 Section 30 (Consequences of not paying claimant adjudicated amount)

enable the registrar to provide the adjudication certificate, unless the adjudicator has a reasonable excuse.

Maximum penalty—200 penalty units.

Division 7 Other provisions about registrations of authorised nominating authorities and adjudicators

86 Definitions for div 7

In this division—

registrant means—

- (a) for a person registered as an authorised nominating authority, that registrant; or
- (b) for a person registered as an adjudicator, that registrant.

registration means—

- (a) for a registration as an authorised nominating authority, that registration; or
- (b) for a registration as an adjudicator, that registration.

87 Surrender of registration

- (1) A registrant may surrender the registrant's registration by notice given to the registrar.
- (2) The registrant's certificate of registration must accompany the notice.
- (3) The surrender takes effect on the later of the following—
 - (a) the day the notice is given;
 - (b) the day specified in the notice.

88 Application for replacement of certificate of registration

- (1) A registrant may apply for replacement of the registrant's certificate of registration if the certificate has been damaged, destroyed, lost or stolen.
- (2) The application must—
 - (a) be made to the registrar; and
 - (b) include information about the circumstances in which the certificate was damaged, destroyed, lost or stolen; and
 - (c) be accompanied by the fee prescribed under a regulation for the application.

89 Decision about application for replacement of certificate of registration

- (1) The registrar must consider the application and either grant, or refuse to grant, the application.
- (2) The registrar must grant the application if the registrar is satisfied the certificate of registration has been destroyed, lost or stolen, or damaged in a way to require its replacement.
- (3) If the registrar decides to grant the application, the registrar must, as soon as practicable, issue another certificate of registration to the applicant to replace the damaged, destroyed, lost or stolen certificate.
- (4) If the registrar decides to refuse to grant the application, the registrar must immediately give the applicant an information notice for the decision.

90 False or misleading statements

A person must not, for an application made under this part, state anything to the registrar the person knows is false or misleading in a material particular.

Maximum penalty—50 penalty units.

91 False or misleading documents

- (1) A person must not, for an application made under this part, give a document to the registrar containing information the person knows is false or misleading in a material particular.

Maximum penalty—50 penalty units.

- (2) Subsection (1) does not apply to a person if the person, when giving the document—
- (a) tells the registrar, to the best of the person's ability, how it is false or misleading; and
 - (b) if the person has, or can reasonably obtain, the correct information—gives the correct information to the registrar.

Part 5 Review of decisions

Division 1 Internal review of decisions

92 Review process starts with internal review

- (1) Subject to this division, a person who is given, or is entitled to be given, an information notice for a decision under part 4²⁸ (the *original decision*) may apply for a review of the decision under this part.
- (2) The review must be, in the first instance, by way of an application for internal review under section 93.

93 Application for review to be made to the registrar

The person may apply to the registrar for a review of the original decision.

94 Applying for review

- (1) The application must be made within 28 days after—
 - (a) if the person is given an information notice for the decision—the day the person is given the information notice; or
 - (b) if paragraph (a) does not apply—the day the person otherwise becomes aware of the decision.
- (2) The registrar may, at any time, extend the time for applying for the review.
- (3) The application must be in writing and state fully the grounds of the application.

95 Review decision

- (1) After reviewing the original decision, the registrar must make a further decision (the ***review decision***) to—
 - (a) confirm the original decision; or
 - (b) amend the original decision; or
 - (c) substitute another decision for the original decision.
- (2) The registrar must immediately give the applicant notice of the review decision (the ***review notice***).
- (3) If the review decision is not the decision sought by the applicant, the review notice must also state—
 - (a) the reasons for the review decision; and
 - (b) that the applicant may apply to the tribunal for a review of the review decision, within 28 days after the person is given the notice; and
 - (c) how to apply to the tribunal for a review; and
 - (d) that the applicant may apply to the tribunal for a stay of the review decision.
- (4) If the registrar does not give the notice within 28 days after the application is made, the registrar is taken to have made a review decision confirming the original decision on the 28th day after the application is made.

- (5) If the review decision confirms the original decision, for the purpose of an application to the tribunal for a review, the original decision is taken to be the review decision.
- (6) If the review decision amends the original decision, for the purpose of an application to the tribunal for a review, the original decision as amended is taken to be the review decision.

96 Stay of operation of decision

- (1) If an application is made for a review of an original decision, the applicant may immediately apply for a stay of the decision to the tribunal.
- (2) The tribunal may stay the decision to secure the effectiveness of the review and any later review by the tribunal.
- (3) The stay—
 - (a) may be given on conditions the tribunal considers appropriate; and
 - (b) operates for the period fixed by the tribunal; and
 - (c) may be revoked or amended by the tribunal.
- (4) The period of the stay must not extend past the time when the registrar makes a review decision about the original decision and any later period the tribunal allows the applicant to enable the applicant to apply to the tribunal for a review of the review decision.
- (5) The application affects the decision, or carrying out of the decision, only if the decision is stayed.

Division 2 Review by tribunal

97 Who may apply to tribunal for a review

A person who has applied for the review of an original decision under division 1 and is dissatisfied with the review decision may apply to the tribunal for a review of the review decision.

98 Stay of operation of decision

- (1) The tribunal may grant a stay of the operation of the review decision to secure the effectiveness of the review by the tribunal.
- (2) The stay—
 - (a) may be given on conditions the tribunal considers appropriate; and
 - (b) operates for the period fixed by the tribunal; and
 - (c) may be revoked or amended by the tribunal.
- (3) The period of the stay must not extend past the time when the tribunal completes the review.
- (4) The review by the tribunal affects the decision, or carrying out of the decision, only if the decision is stayed.

Part 6 Miscellaneous

99 No contracting out

- (1) The provisions of this Act have effect despite any provision to the contrary in any contract, agreement or arrangement.
- (2) A provision of any contract, agreement or arrangement (whether in writing or not) is void to the extent to which it—
 - (a) is contrary to this Act; or
 - (b) purports to annul, exclude, modify, restrict or otherwise change the effect of a provision of this Act, or would otherwise have the effect of excluding, modifying, restricting or otherwise changing the effect of a provision of this Act; or
 - (c) may reasonably be construed as an attempt to deter a person from taking action under this Act.

100 Effect of pt 3 on civil proceedings

- (1) Subject to section 99, nothing in part 3²⁹ affects any right that a party to a construction contract—
 - (a) may have under the contract; or
 - (b) may have under part 2³⁰ in relation to the contract; or
 - (c) may have apart from this Act in relation to anything done or omitted to be done under the contract.
- (2) Nothing done under or for part 3 affects any civil proceedings arising under a construction contract, whether under part 3 or otherwise, except as provided by subsection (3).
- (3) In any proceedings before a court or tribunal in relation to any matter arising under a construction contract, the court or tribunal—
 - (a) must allow for any amount paid to a party to the contract under or for part 3 in any order or award it makes in those proceedings; and
 - (b) may make the orders it considers appropriate for the restitution of any amount so paid, and any other orders it considers appropriate, having regard to its decision in the proceedings.

101 Adjudicator must give copy of decision to authorised nominating authority

An adjudicator must, as soon as practicable, give a copy of the adjudicator's decision under section 26(3)³¹ to the authorised nominating authority that referred the adjudication application to the adjudicator.

29 Part 3 (Procedure for recovering progress payments)

30 Part 2 (Rights to progress payments)

31 Section 26 (Adjudicator's decision)

102 Authorised nominating authority must give information to registrar

An authorised nominating authority must, at the times specified by the registrar, give the registrar—

- (a) a copy of the decisions given to it by adjudicators; and
- (b) the other information required in the approved form.

103 Service of notices

- (1) A notice or other document that under this Act is authorised or required to be served on a person may be served on the person in the way, if any, provided under the construction contract concerned.
- (2) Subsection (1) is in addition to, and does not limit or exclude, the *Acts Interpretation Act 1954*, section 39 or the provisions of any other law about the service of notices.

104 Proof of signature unnecessary

A signature purporting to be the signature of the registrar is evidence of the signature it purports to be.

105 Evidentiary aids

- (1) A certificate signed by the registrar certifying anything about the contents of the register is evidence of the thing stated.
- (2) A certificate signed by the registrar stating any of the following is evidence of the matters stated—
 - (a) that a person was or was not at a time or during a period, or is or is not, an authorised nominating authority;
 - (b) that an individual was or was not at a time or during a period, or is or is not, an adjudicator;
 - (c) that a stated document is a record or document, a copy of a record or document, or an extract from a record or document, kept under this Act.

106 Protection from liability

- (1) An official does not incur civil liability for an act done, or omission made, honestly and without negligence under this Act.
- (2) If subsection (1) prevents a civil liability attaching to an official, the liability attaches instead to the State.
- (3) In this section—
official means—
 - (a) the general manager; or
 - (b) the registrar; or
 - (c) a member of the staff of the registry.

107 Protection from liability for adjudicators and authorised nominating authorities

- (1) An adjudicator is not personally liable for anything done or omitted to be done in good faith—
 - (a) in performing the adjudicator's functions under this Act; or
 - (b) in the reasonable belief that the thing was done or omitted to be done in the performance of the adjudicator's functions under this Act.
- (2) No action lies against an authorised nominating authority or any other person for anything done or omitted to be done by the authorised nominating authority in good faith—
 - (a) in performing the nominating authority's functions under this Act; or
 - (b) in the reasonable belief that the thing was done or omitted to be done in the performance of the nominating authority's functions under this Act.

108 Summary offences

- (1) A proceeding for an offence against this Act is to be taken in a summary way under the *Justices Act 1886*.

- (2) The proceedings must start—
- (a) within 1 year after the commission of the offence; or
 - (b) within 6 months after the offence comes to the complainant's knowledge, but within 2 years after the commission of the offence.

109 Allegations of false or misleading information or document

In any proceeding for an offence against this Act defined as involving false or misleading information, or a false or misleading document, it is enough for a charge to state that the information or document was, without specifying which, 'false or misleading'.

110 Approved forms

The general manager may approve forms for use under this Act.

111 Regulation-making power

- (1) The Governor in Council may make regulations under this Act.
- (2) A regulation may—
 - (a) provide for fees; and
 - (b) for an adjudication qualification, prescribe the following—
 - (i) the name of the qualification;
 - (ii) the bodies that may issue the qualification;
 - (iii) the name of the adjudication competency to be achieved to gain the qualification;
 - (iv) the elements that must be successfully completed to achieve the competency.

Schedule 2 Dictionary

section 9

accepted representations see section 79(2).

adjudicated amount see section 26(1).

adjudication application see section 21(1).

adjudication certificate means a certificate provided by an authorised nominating authority under section 30.

adjudication fees means fees or expenses charged by an authorised nominating authority, or by an adjudicator, under this Act.

adjudication qualification means a certificate issued by a body prescribed under a regulation to an individual stating that the individual has achieved an adjudication competency standard prescribed under a regulation.

adjudication response see section 24(1).

adjudicator—

- (a) in relation to an adjudication application—means an adjudicator appointed under this Act to decide the application; and
- (b) otherwise—means an individual registered under part 4, division 3 as an adjudicator.

approved form means a form approved by the general manager under section 110.

authorised nominating authority means a person registered under part 4, division 2 as an authorised nominating authority.

authority means the Queensland Building Services Authority under the *Queensland Building Services Authority Act 1991*.

business day has the meaning given in the *Acts Interpretation Act 1954*, section 36 but does not include 27, 28, 29, 30 or 31 December.

Schedule 2 (continued)

carry out construction work means—

- (a) carry out construction work personally; or
- (b) directly or indirectly, cause construction work to be carried out; or
- (c) provide advisory, administrative, management or supervisory services for carrying out construction work.

claimant see section 17(1).

claimed amount see section 17(2).

construction contract means a contract, agreement or other arrangement under which one party undertakes to carry out construction work for, or to supply related goods and services to, another party.

construction work see section 10.

conviction means a finding of guilt, or the acceptance of a plea of guilty, by a court, whether or not a conviction is recorded.

corresponding law means a law applying, or that applied, in another State, the Commonwealth or a foreign country that provides, or provided, for the same matter as this Act or a provision of this Act.

domestic building work see the *Domestic Building Contracts Act 2000*, section 8.

due date, in relation to a progress payment, means the due date for the progress payment, as referred to in section 15.

function includes a power.

general manager means the general manager of the authority.

information notice, for a decision of the registrar under part 5, is a notice stating—

- (a) the decision; and
- (b) the reasons for the decision; and
- (c) that the person to whom the notice is given may have the decision reviewed within 28 days; and

Schedule 2 (continued)

- (d) how the person may have the decision reviewed; and
- (e) if the decision is that a licence be cancelled or suspended—a direction to the person to return the licence to the registrar within 7 days after receiving the notice.

notice means written notice.

original decision see section 92(1).

payment claim means a claim referred to in section 17.

payment schedule means a schedule referred to in section 18.

perform a function includes exercise a power.

progress payment means a payment to which a person is entitled under section 12, and includes, without affecting any entitlement under the section—

- (a) the final payment for construction work carried out, or for related goods and services supplied, under a construction contract; or
- (b) a single or one-off payment for carrying out construction work, or for supplying related goods and services, under a construction contract; or
- (c) a payment that is based on an event or date, known in the building and construction industry as a “milestone payment”.

proposed action see section 78(3)(a).

recognised financial institution means a bank, or other financial institution prescribed under a regulation.

reference date, under a construction contract, means—

- (a) a date stated in, or worked out under, the contract as the date on which a claim for a progress payment may be made for construction work carried out or undertaken to be carried out, or related goods and services supplied or undertaken to be supplied, under the contract; or
- (b) if the contract does not provide for the matter—

Schedule 2 (continued)

- (i) the last day of the named month in which the construction work was first carried out, or the related goods and services were first supplied, under the contract; and
- (ii) the last day of each later named month.

registrant—

- (a) for part 4, division 4, see section 69;
- (b) for part 4, division 5, see section 73;
- (c) for part 4, division 6, see section 76;
- (d) for part 4, division 7, see section 86.

registrar see section 36(2).

registration—

- (a) for part 4, division 4, see section 69;
- (b) for part 4, division 5, see section 73;
- (c) for part 4, division 6, see section 76;
- (d) for part 4, division 7, see section 86.

registry see section 36(1).

related goods and services see section 11.

relevant offence means—

- (a) an indictable offence, other than an indictable offence that is taken to be a simple offence under the *Criminal Code*, section 659; or
- (b) an offence against this Act; or
- (c) an offence against a corresponding law; or
- (d) an offence against the *Queensland Building Services Authority Act 1991* or a law of another State or the Commonwealth that provides for the same matter as that Act or a provision of that Act; or
- (e) an offence against the *Domestic Building Contracts Act 2000* or a law of another State or the

Schedule 2 (continued)

Commonwealth that provides for the same matter as that Act or a provision of that Act; or

- (f) an offence, relating to the provision of services as an authorised nominating authority or an adjudicator, against a law applying, or that applied, in the State, the Commonwealth, another State or a foreign country.

respondent see section 17(1).

review decision see section 95(1).

review notice see section 95(2).

scheduled amount see section 18(2)(b).

show cause notice see section 78(2).

show cause period see section 78(3)(e).

spent conviction means a conviction—

- (a) for which the rehabilitation period under the *Criminal Law (Rehabilitation of Offenders) Act 1986* has expired under that Act; and
- (b) that is not revived as prescribed by section 11 of that Act.

tribunal means the tribunal under the *Commercial and Consumer Tribunal Act 2003*.

Endnotes

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2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). However, no amendments have commenced operation on or before that day. Future amendments of the Building and Construction Industry Payments Act 2004 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

3 Key

Key to abbreviations in list of legislation and annotations

Key	Explanation	Key	Explanation
AIA	= Acts Interpretation Act 1954	(prev)	= previously
amd	= amended	proc	= proclamation
amdt	= amendment	prov	= provision
ch	= chapter	pt	= part
def	= definition	pubd	= published
div	= division	R[X]	= Reprint No.[X]
exp	= expires/expired	RA	= Reprints Act 1992
gaz	= gazette	reloc	= relocated
hdg	= heading	renum	= renumbered
ins	= inserted	rep	= repealed
lap	= lapsed	(retro)	= retrospectively
notfd	= notified	rv	= revised edition
o in c	= order in council	s	= section
om	= omitted	sch	= schedule
orig	= original	sdiv	= subdivision
p	= page	SIA	= Statutory Instruments Act 1992
para	= paragraph	SIR	= Statutory Instruments Regulation 2002
prec	= preceding	SL	= subordinate legislation
pres	= present	sub	= substituted
prev	= previous	unnum	= unnumbered

4 Table of reprints

Reprints are issued for both future and past effective dates. For the most up-to-date table of reprints, see the reprint with the latest effective date.

If a reprint number includes a letter of the alphabet, the reprint was released in unauthorised, electronic form only.

Reprint No.	Amendments included	Effective	Notes
0A	none	1 July 2004	
1	none	1 October 2004	

5 List of legislation

Building and Construction Industry Payments Act 2004 No. 6

date of assent 20 May 2004

ss 1–2 commenced on date of assent

ss 9, 36–98, 104–106, 108–113, sch 2 commenced 1 July 2004 (2004 SL No. 91)

remaining provisions commenced 1 October 2004 (2004 SL No. 186)

6 List of annotations

PART 8—AMENDMENT OF ACTS

pt 8 (s 113) om R1 (see RA ss 7(1)(k) and 40)

SCHEDULE 1—AMENDMENTS OF ACTS

om R1 (see RA s 40)