

**Authorised Version No. 014**  
**Building and Construction Industry Security  
of Payment Act 2002**

**No. 15 of 2002**

Authorised Version incorporating amendments as at  
15 April 2026

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**Building and Construction Industry Security  
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**No. 15 of 2002**

Authorised Version incorporating amendments as at  
15 April 2026

**The Parliament of Victoria enacts as follows:**

**Part 1—Preliminary**

**1 Purpose**

The main purpose of this Act is to provide for entitlements to progress payments and the release of performance securities for persons who carry out construction work or who supply related goods and services under construction contracts.

S. 1  
amended by  
No. 43/2025  
s. 3.

**2 Commencement**

- (1) Subject to subsection (2), this Act comes into operation on a day to be proclaimed.
- (2) If this Act does not come into operation before 31 January 2003, it comes into operation on that day.

**3 Object of Act**

- (1) The object of this Act is to ensure that any person who undertakes to carry out construction work or who undertakes to supply related goods and services under a construction contract is entitled to receive, and is able to recover, progress payments, and is entitled to the release of a performance security, in relation to the carrying out of that work and the supplying of those goods and services.

S. 3(1)  
amended by  
Nos 42/2006  
s. 4(1)(a)(i)(ii),  
43/2025  
s. 4(1).

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S. 3(2)  
amended by  
No. 42/2006  
s. 4(1)(b),  
substituted by  
No. 43/2025  
s. 4(2).

(2) The means by which this Act ensures that a person is entitled to receive a progress payment or the release of a performance security is by granting a statutory entitlement to that payment or that performance security in accordance with this Act.

S. 3(3)  
amended by  
No. 43/2025  
s. 4(3)(a).

(3) The means by which this Act ensures that a person is able to recover a progress payment or obtain the release of a performance security is by establishing a procedure that involves—

S. 3(3)(a)  
amended by  
No. 43/2025  
s. 4(3)(b).

(a) the serving of a payment claim by the person claiming payment; and

S. 3(3)(b)  
amended by  
No. 43/2025  
s. 4(3)(c).

(b) the serving of a payment schedule by the person by whom the payment is payable; and

S. 3(3)(d)  
amended by  
No. 42/2006  
s. 4(1)(c).

(c) the referral of any disputed claim to an adjudicator for determination; and

(d) the payment of the amount of the progress payment determined by the adjudicator; and

S. 3(3)(e)  
amended by  
No. 43/2025  
s. 4(3)(d).

(e) the recovery of the progress payment in the event of a failure to pay; and

S. 3(3)(f)  
inserted by  
No. 43/2025  
s. 4(3)(e).

(f) the serving of a performance security claim by the person claiming release of the performance security; and

S. 3(3)(g)  
inserted by  
No. 43/2025  
s. 4(3)(e).

(g) the serving of a performance security schedule by the person who must release the performance security; and

S. 3(3)(h)  
inserted by  
No. 43/2025  
s. 4(3)(e).

(h) the release of the whole or part of a performance security determined by the adjudicator; and

- (i) the recovery of the whole or part of a performance security in the event of a failure to release the performance security. **S. 3(3)(i) inserted by No. 43/2025 s. 4(3)(e).**
- (4) It is intended that this Act does not limit— **S. 3(4) substituted by No. 42/2006 s. 4(2).**
- (a) any other entitlement that a claimant may have under a construction contract; or
- (b) any other remedy that a claimant may have for recovering that other entitlement.

#### 4 Definitions and interpretation

- (1) In this Act— **S. 4 (Heading) amended by No. 43/2025 s. 5(1).**
- adjudicated amount*** means the amount of a progress payment that an adjudicator determines to be payable as referred to in section 23 together with any amount added to that amount under section 45(7); **S. 4 amended by No. 43/2025 s. 5(12) (ILA s. 39B(1)).**
- adjudicated amount*** means— **S. 4(1) def. of *adjudicated amount* inserted by No. 43/2025 s. 5(3).**
- (a) in relation to a progress payment claim—the amount that an adjudicator determines to be payable under section 23(1)(a) together with any amount that is required to be added to, or deducted from, that amount under section 28Q(3) or 45A(2); or
- (b) in relation to a performance security claim—the amount that an adjudicator determines is required to be released under section 23(1A) together with any amount that is required to be added to, or deducted from, that amount under section 28Q(3) or 45A(2);

#### Note

Subsection (2) provides an interpretative provision that relates to the definition of ***adjudicated amount***.

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S. 4(1) def. of *adjudication application* amended by No. 43/2025 s. 5(4).

*adjudication application* means an application referred to in section 18 or 18A;

S. 4(1) def. of *adjudication certificate* inserted by No. 42/2006 s. 5(a).

*adjudication certificate* means a certificate provided by an authorised nominating authority under section 28Q;

S. 4(1) def. of *adjudication determination* inserted by No. 42/2006 s. 5(a).

*adjudication determination* means a determination made by an adjudicator under section 23;

S. 4(1) def. of *adjudication fees* inserted by No. 42/2006 s. 5(a), amended by No. 43/2025 s. 5(5).

*adjudication fees* means any fees or expenses charged by an authorised nominating authority or by an adjudicator under this Act;

*adjudication response* means a response referred to in section 21;

S. 4(1) def. of *adjudication review* inserted by No. 42/2006 s. 5(a), repealed by No. 43/2025 s. 5(2).

\* \* \* \* \*

S. 4(1) def. of *adjudication review application* inserted by No. 42/2006 s. 5(a), repealed by No. 43/2025 s. 5(2).

\* \* \* \* \*

***adjudicator***, in relation to an adjudication application, means the person appointed in accordance with this Act to determine the application;

***authorised nominating authority*** means a person authorised by the Authority under section 42 to nominate persons to determine adjudication applications;

S. 4(1) def. of ***authorised nominating authority*** amended by No. 34/2013 s. 35(Sch. 2 item 1.1(a)).

***Authority*** means the Victorian Building Authority established under the **Building Act 1993**;

S. 4(1) def. of ***Authority*** amended by No. 34/2013 s. 35(Sch. 2 item 1.1(b)).

\* \* \* \* \*

S. 4(1) def. of ***Building Commission*** repealed by No. 34/2013 s. 35(Sch. 2 item 1.1(c)).

***business day*** means a day that is not—

- (a) a Saturday or Sunday; or
- (b) a day that is wholly or partly observed as a public holiday throughout Victoria; or
- (c) a day during the period commencing on 22 December in any year and ending on 10 January in the following year;

S. 4(1) def. of ***business day*** amended by No. 43/2025 s. 5(6).

***certified debt*** in relation to a claimant, means the amount specified in a debt certificate as being owed to the claimant;

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S. 4(1) def. of  
*claimable  
variation*  
inserted by  
No. 42/2006  
s. 5(a),  
repealed by  
No. 43/2025  
s. 5(2).

\* \* \* \* \*

S. 4(1) def. of  
*claimant*  
amended by  
No. 43/2025  
s. 5(7).

*claimant* means a person who serves a payment claim under section 14 or a performance security claim under section 17A(1);

*claimed amount* means an amount of a progress payment claimed to be due for construction work carried out, or for related goods and services supplied, as referred to in section 14;

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

*construction work* has the meaning given in section 5;

*debt certificate* means a certificate issued under section 33;

S. 4(1) def. of  
*defects  
liability period*  
inserted by  
No. 43/2025  
s. 5(3).

*defects liability period*, in relation to a construction contract, means the period that—

- (a) starts on the day of the practical completion of construction work under the contract; and
- (b) ends on the day on which work to rectify any omission or defect in the construction work (as required or

directed under the construction contract  
or any Act or regulations) is completed;

**designated trust account** means an account kept  
with a recognised financial institution  
(whether in the name of the respondent or  
otherwise) for the purpose of holding  
amounts payable to claimants under this Act;

S. 4(1) def. of  
*designated  
trust account*  
amended by  
No. 42/2006  
s. 5(b).

**discharge notice** means a notice referred to in  
section 40;

**due date** means—

- (a) the day on which a progress payment  
becomes due and payable under section  
12(1); or
- (b) the day on which a performance  
security is due to be released under  
section 12(1A);

S. 4(1) def. of  
*due date*  
substituted by  
No. 43/2025  
s. 5(8).

\* \* \* \* \*

S. 4(1) def. of  
*excluded  
amount*  
inserted by  
No. 42/2006  
s. 5(a),  
repealed by  
No. 43/2025  
s. 5(2).

**exercise** in relation to a function, includes perform  
a duty;

**function** includes power, authority or duty;

**GST** has the same meaning as it has in the A New  
Tax System (Goods and Services Tax)  
Act 1999 of the Commonwealth;

S. 4(1) def. of  
*GST*  
inserted by  
No. 43/2025  
s. 5(3).

**judgment** includes order;

**named month** means January, February, March,  
April, May, June, July, August, September,  
October, November or December;

S. 4(1) def. of  
*named month*  
inserted by  
No. 43/2025  
s. 5(3).

***notice of claim*** means a notice referred to in section 32;

***payment claim*** means a claim referred to in section 14;

S. 4(1) def. of *payment schedule* amended by No. 43/2025 s. 5(9).

***payment schedule*** means a schedule referred to in section 15 or 18(2A);

S. 4(1) def. of *performance bond* inserted by No. 43/2025 s. 5(3).

***performance bond*** means a security issued to or executed in favour of a party to a construction contract to secure the performance by another party of obligations under the contract and includes—

- (a) a guarantee; and
- (b) a bond;

S. 4(1) def. of *performance security* inserted by No. 43/2025 s. 5(3).

***performance security*** means a performance bond or retention money;

S. 4(1) def. of *performance security claim* inserted by No. 43/2025 s. 5(3).

***performance security claim*** means a claim referred to in section 17A;

S. 4(1) def. of *performance security schedule* inserted by No. 43/2025 s. 5(3).

***performance security schedule*** means a schedule referred to in section 17E or 18A(2);

***practical completion***, in relation to construction work under a construction contract, means—

S. 4(1) def. of *practical completion* inserted by No. 43/2025 s. 5(3).

- (a) if the contract provides for a day on which there is practical completion of the construction work, that day; or
- (b) in any other case, the day on which—
  - (i) the construction work is completed as required under the construction contract; and
  - (ii) there are no omissions or defects in the construction work that materially prevent the intended use of the work;

***principal*** means a principal referred to in section 31;

***progress payment*** means a payment that includes—

S. 4(1) def. of *progress payment* substituted by Nos 42/2006 s. 5(c), 43/2025 s. 5(10).

- (a) the final payment for—
  - (i) construction work carried out under a construction contract; or
  - (ii) related goods and services supplied under the contract; or
- (b) a single or one-off payment for—
  - (i) construction work carried out under a construction contract; or
  - (ii) related goods and services supplied under the contract; or

- (c) a payment that is based on an event or date (known in the building and construction industry as a "milestone payment");

**Note**

The amount of a progress payment is calculated in accordance with sections 10 and 11.

***recognised financial institution*** means an authorised deposit-taking institution within the meaning of the Banking Act 1959 of the Commonwealth;

***related goods and services*** has the meaning given in section 6;

***release***, in relation to a performance security, means—

- (a) in the case of a performance bond, the return or cancellation of the bond; or
- (b) in the case of retention money, payment of the money to the party who has carried out the construction work, or supplied related goods and services, under a construction contract;

***respondent*** means a person on whom a payment claim is served under section 15(1) or on whom a performance security claim is served under section 17E;

***retention money*** means—

- (a) money (inclusive of GST) retained by a party to a construction contract, out of money payable by that party under the contract to another party to the contract, as security for the performance of obligations of that other party under the contract in relation to the carrying out of construction work, or the supply of

S. 4(1) def. of *release* inserted by No. 43/2025 s. 5(3).

S. 4(1) def. of *respondent* amended by No. 43/2025 s. 5(11).

S. 4(1) def. of *retention money* inserted by No. 43/2025 s. 5(3).

related goods and services, by that other party; or

- (b) money (inclusive of GST) paid to a party to a construction contract, by or on behalf of another party to the contract, and retained as security for the performance of obligations of that other party under the contract in relation to the carrying out of construction work, or the supply of related goods and services, by that other party;

\* \* \* \* \*

S. 4(1) def. of *review adjudicator* inserted by No. 42/2006 s. 5(a), repealed by No. 43/2025 s. 5(2).

\* \* \* \* \*

S. 4(1) def. of *review determination* inserted by No. 42/2006 s. 5(a), repealed by No. 43/2025 s. 5(2).

***scheduled amount*** means the amount of a progress payment that is proposed to be made under a payment schedule, as referred to in section 15;

S. 4(1) def. of *scheduled amount* amended by No. 42/2006 s. 5(d).

***variation*** in relation to a construction contract, means a change in the scope of the construction work to be carried out, or the related goods and services to be supplied, under the contract.

S. 4(1) def. of *variation* inserted by No. 42/2006 s. 5(a).

S. 4(2)  
inserted by  
No. 43/2025  
s. 5(12).

- (2) For the purposes of paragraph (b) of the definition of *adjudicated amount*—
- (a) any amount that is required to be added to the adjudicated amount under section 28Q(3) or 45A(2)(a) is taken to be part of the amount of the performance security to be released; and
  - (b) any amount that is required to be deducted from the adjudicated amount under section 45A(2)(b) is taken to reduce the amount of the performance security to be released.

## 5 Definition of *construction work*

- (1) In this Act, *construction work* means any of the following work—
- (a) the construction, alteration, repair, restoration, maintenance, extension, demolition or dismantling of buildings or structures forming, or to form, part of land (whether permanent or not);
  - (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 the purposes of 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

S. 5(1)(c)  
amended by  
No. 42/2006  
s. 6(a).

- protection, security and communications systems;
- (d) the external or internal cleaning of buildings, structures or works, so far as it is carried out in the course of their construction, alteration, repair, restoration, maintenance or extension; **S. 5(1)(d) amended by No. 42/2006 s. 6(b).**
- (e) any operation which forms an integral part of, or is preparatory to or is for rendering complete, 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 **S. 5(1)(e)(iv) amended by No. 42/2006 s. 6(a).**
  - (v) site restoration, landscaping and the provision of roadways and other access works;
- (f) the painting or decorating of the internal or external surfaces of any building, structure or works; **S. 5(1)(f) amended by No. 42/2006 s. 6(a).**
- (g) any other work of a kind prescribed for the purposes of this subsection.
- (2) Despite subsection (1), **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;
- (c) any other work of a kind prescribed for the purposes of this subsection.

## 6 Definition of *related goods and services*

- (1) In this Act, *related goods and services*, in relation to construction work, means any of the following goods and services—
  - (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 in relation to construction work;
    - (iii) building, engineering, interior or exterior decoration or landscape advisory or technical services in relation to construction work;
  - (c) goods and services of a kind prescribed for the purposes of this subsection.
- (2) Despite subsection (1), *related goods and services* does not include any goods or services of a kind prescribed for the purposes of this subsection.

- (3) In this Act, a reference to related goods and services includes a reference to related goods or services.

S. 6(3)  
inserted by  
No. 42/2006  
s. 7.

## 7 Application of Act

- (1) Subject to this section, this Act applies to any construction contract, whether written or oral, or partly written and partly oral, and so applies even if the contract is expressed to be governed by the law of a jurisdiction other than Victoria.

- (2) This Act does not apply to—

- (a) a construction contract that 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 money or to repay money lent;  
or

(ii) to guarantee payment of money owing or repayment of money lent; or

(iii) to provide an indemnity with respect to construction work carried out, or related goods and services supplied, under the construction contract; or

- (b) a construction contract which is a domestic building contract within the meaning of the **Domestic Building Contracts Act 1995** between a builder and a building owner (within the meaning of that Act), for the carrying out of domestic building work (within the meaning of that Act), other than a contract where the building owner is in the business of building residences and the contract is entered into in the course of, or in connection with, that business; or

S. 7(2)(b)  
substituted by  
No. 42/2006  
s. 8.

S. 7(2)(ba)  
inserted by  
No. 42/2006  
s. 8.

- (ba) a construction contract for the carrying out of any work of a kind referred to in section 6 of the **Domestic Building Contracts Act 1995** relating to a residence other than—
- (i) a contract where the person for whom the work is, or is to be, carried out is a person who is in the business of building residences and the contract is entered into in the course of, or in connection with, that business; or
  - (ii) a contract where the work carried out, or to be carried out, under the contract is, or is part of or is incidental to work to be carried out under another construction contract; 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 otherwise 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 to which it contains—
- (a) provisions under which a party undertakes to carry out construction work, or supply related goods and services, 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, as a condition of a loan agreement with a recognised financial institution; or

- (c) provisions under which a party undertakes—
  - (i) to lend money or to repay money lent;  
or
  - (ii) to guarantee payment of money owing  
or repayment of money lent; or
  - (iii) to provide an indemnity with respect 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 to which it deals with—
  - (a) construction work carried out outside  
Victoria; and
  - (b) related goods and services supplied in  
respect of construction work carried out  
outside Victoria.
- (5) This Act does not apply to any construction  
contract, or class of construction contracts,  
prescribed for the purposes of this section.
- (6) This Act does not apply to a construction contract  
entered into before the commencement of this  
section.

## **8 Act binds the Crown**

This Act binds the Crown in right of Victoria and,  
so far as the legislative power of the Parliament  
permits, the Crown in all its other capacities.

Pt 2 (Heading)  
amended by  
No. 43/2025  
s. 6.

## **Part 2—Rights to progress payments and release of performance securities**

S. 9  
amended by  
No. 42/2006  
s. 9,  
substituted by  
No. 43/2025  
s. 7.

### **9 Rights to progress payments and release of performance securities**

- (1) A person is entitled under this Act to a progress payment under a construction contract if the person has undertaken to carry out construction work or to supply related goods and services under the contract.
- (2) A person is entitled under this Act to the release of the whole or a part of a performance security under a construction contract.
- (3) A person is entitled to the release of a performance security under subsection (2) whether a claim for the release is served alone or in conjunction with a payment claim for a progress payment.

S. 10  
amended by  
No. 42/2006  
s. 10(2) (ILA  
s. 39B(1)).

### **10 Amount of progress payment**

- (1) The amount of a progress payment to which a person is entitled in respect of a construction contract is to be—
  - (a) the amount calculated in accordance with the terms of the contract; or
  - (b) if the contract makes no express provision with respect to the matter, the amount calculated on the basis of the value of—
    - (i) construction work carried out or undertaken to be carried out by the person under the contract; or
    - (ii) related goods and services supplied or undertaken to be supplied by the person under the contract—

S. 10(b)(i)  
amended by  
No. 42/2006  
s. 10(1)(a).

S. 10(b)(ii)  
amended by  
No. 42/2006  
s. 10(1)(b).

as the case requires.

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*	*	*	*	*	S. 10(2)(3) inserted by No. 42/2006 s. 10(2), repealed by No. 43/2025 s. 8.
*	*	*	*	*	Ss 10A, 10B inserted by No. 42/2006 s. 11, repealed by No. 43/2025 s. 9.

**11 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—
- (a) in accordance with the terms of the contract; or
  - (b) if the contract makes no express provision with respect to the matter, having regard to—
    - (i) the contract price for the work; and
    - (ii) any other rates or prices set out in the contract; and
    - (iii) any variation agreed to by the parties to the contract by which the contract price for the work or any other rate or price set out in the contract is to be adjusted; and
    - (iv) if any of the work is defective, the estimated cost of rectifying the defect.

S. 11(1)  
amended by  
No. 42/2006  
s. 12(a)(i).

S. 11(1)(b)(iii)  
substituted by  
Nos 42/2006  
s. 12(a)(ii),  
43/2025  
s. 10(1).

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S. 11(2)  
amended by  
No. 42/2006  
s. 12(b)(i).

(2) Related goods and services supplied or undertaken to be supplied under a construction contract are to be valued—

(a) in accordance with the terms of the contract;  
or

(b) if the contract makes no express provision with respect to the matter, having regard to—

(i) the contract price for the goods and services; and

(ii) any other rates or prices set out in the contract; and

(iii) any variation agreed to by the parties to the contract by which the contract price for the goods and services or any other rate or price set out in the contract is to be adjusted; and

(iv) if any goods are defective, the estimated cost of rectifying the defect.

S. 11(2)(b)(iii)  
substituted by  
Nos 42/2006  
s. 12(b)(ii),  
43/2025  
s. 10(2).

(3) For the purposes of subsection (2)(b), the valuation of materials and components that are to form part of any building, structure or work arising from construction work is to be on the basis that 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 for whom construction work is being carried out.

**12 Due date for payment of progress payment or  
release of performance security**

S. 12  
(Heading)  
substituted by  
No. 43/2025  
s. 11(1).

S. 12  
amended by  
No. 42/2006  
s. 13 (ILA  
s. 39B(1)).

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

S. 12(1)  
substituted by  
No. 43/2025  
s. 11(2).

(a) subject to subsection (1B), on the day on which the payment becomes due and payable under the contract; or

(b) if the contract does not expressly provide for when a progress payment is due, on the day that is 10 business days after the earliest day on which a payment claim may be served under section 14A in relation to the progress payment.

(1A) A performance security under a construction contract is due to be released—

S. 12(1A)  
inserted by  
No. 43/2025  
s. 11(2).

(a) subject to subsection (1B), on the day on which the performance security must be released under the contract; or

(b) if the contract does not expressly provide for when a performance security must be released, on the day that is 10 business days after the earliest day on which a performance security claim may be served under section 17B(1) in relation to the performance security.

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S. 12(1B)  
inserted by  
No. 43/2025  
s. 11(2).

(1B) A term or provision in a construction contract has no effect to the extent that it provides for the payment of a progress payment or the release of a performance security later than the day that is 20 business days after—

- (a) a payment claim is served under Division 1 of Part 3 in relation to the progress payment; or
- (b) a performance security claim is served under Division 1A of Part 3 in relation to the performance security.

S. 12(2)  
inserted by  
No. 42/2006  
s. 13.

(2) Interest is payable on the unpaid amount of a progress payment that has become due and payable in accordance with subsection (1) at the greater of the following rates—

- (a) the rate for the time being fixed under section 2 of the **Penalty Interest Rates Act 1983**; or
- (b) the rate specified under the construction contract.

S. 12(3)  
inserted by  
No. 43/2025  
s. 11(3).

(3) Interest may be payable on the unpaid amount of a performance security that has become due to be released in accordance with subsection (1A) at the greater of the following rates—

- (a) the rate for the time being fixed under section 2 of the **Penalty Interest Rates Act 1983**;
- (b) the rate specified under the construction contract.

### **12A Lien in respect of unpaid progress payment**

S. 12A  
inserted by  
No. 42/2006  
s. 14.

- (1) If a progress payment under a construction contract becomes due and payable, the claimant is entitled to exercise a lien in respect of the unpaid amount over any unfixated plant or materials supplied by the claimant for use in connection with the carrying out of construction work for the respondent.
- (2) The claimant must serve a notice in the prescribed form on the respondent before exercising a lien under subsection (1).
- (3) A lien under subsection (1) is extinguished on the claimant receiving the progress payment.
- (4) Any lien or charge over the unfixated plant or materials existing before the date on which the progress payment becomes due and payable takes priority over a lien under subsection (1).
- (5) Subsection (1) does not confer on the claimant any right against a third party who is the owner of the unfixated plant or materials.

### **13 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—
  - (a) construction work carried out or undertaken to be carried out under the contract; or
  - (b) related goods and services supplied or undertaken to be supplied under the contract.

S. 13(1)(a)  
amended by  
No. 42/2006  
s. 15(1)(a).

S. 13(1)(b)  
amended by  
No. 42/2006  
s. 15(1)(b).

(2) In this section—

**money owing**, in relation to a construction contract, means money owing for—

- (a) construction work carried out under the contract; or
- (b) related goods and services supplied under the 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 money 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 money; or
- (b) that makes the due date for payment of money owing by the first party to the second party dependent on the date on which payment of the whole or any part of that money is made to the first party by the third party; or
- (c) that otherwise makes any of the following contingent or dependent on the operation of another contract—
  - (i) the liability to pay money owing;
  - (ii) the due date for payment of money owing;
  - (iii) a person's right to claim money owing;
  - (iv) a person's right to claim the release of a performance security.

S. 13(2) def. of  
*pay when  
paid provision*  
amended by  
Nos 42/2006  
s. 15(2)(a)(b),  
43/2025 s. 12.

### 13A Notice-based time bar provisions

S. 13A  
inserted by  
No. 43/2025  
s. 13.

- (1) A notice-based time bar provision may be declared under this section to be unfair in relation to a particular entitlement under the contract if compliance with the provision—
  - (a) is not reasonably possible; or
  - (b) would be unreasonably onerous.
- (2) A notice-based time bar provision may be declared to be unfair by—
  - (a) an adjudicator for the purposes of adjudicating matters under Part 3 in relation to the contract; or
  - (b) a court for the purposes of a proceeding for the recovery of money, the release of a performance security or the enforcement of other rights under the contract; or
  - (c) an arbitrator for the purposes of an arbitration proceeding under the contract or under any separate agreement between the parties to that contract; or
  - (d) an expert appointed by the parties to the contract for the purposes of a proceeding to determine a matter under the contract.
- (3) A notice-based time bar provision, which is declared to be unfair under this section—
  - (a) has no effect on the particular entitlement that is the subject of an adjudication or proceeding in which it was declared to be unfair; and
  - (b) continues to have effect in other circumstances or proceedings arising under the contract or a related contract.

- (4) The party in an adjudication process or proceeding who alleges that a notice-based time bar provision is unfair bears the onus of establishing that it is unfair.
- (5) In determining whether a notice-based time bar provision is unfair, the adjudicator, court, arbitrator or expert must take the following matters into account—
  - (a) when the party required to give notice would reasonably have become aware of the last day on which notice could be given;
  - (b) when and how notice is required to be given;
  - (c) the relative bargaining power of each party in entering into the contract;
  - (d) if compliance with the provision is alleged to be unreasonably onerous— whether the matters set out in the notice are final and binding;
  - (e) that the parties to the contract have read and understood the terms of the contract;
  - (f) that the party required to give notice has the commercial and technical competence of a reasonably competent contractor;
  - (g) any matter prescribed by the regulations for the purposes of this subsection.
- (6) In determining whether a notice-based time bar provision is unfair, the adjudicator, court, arbitrator or expert must not take into account the provisions of any related contract or the things that happened under any related contract.
- (7) For the purposes of subsection (5)—
  - (a) it is conclusively presumed that the parties to the contract have read and understood the terms of the contract; and

(b) it is presumed that the party required to give notice has the commercial and technical competence of a reasonably competent contractor.

(8) In this section—

***notice-based time bar provision*** means a provision of a construction contract that makes any of the following contingent or dependent on the provision of notice by a party to the contract—

- (a) an entitlement to be paid for—
  - (i) construction work carried out or undertaken to be carried out; or
  - (ii) related goods and services supplied or undertaken to be supplied, under the contract;
- (b) an extension of time for doing a thing that affects an entitlement referred to in paragraph (a);
- (c) the release of a performance security;

***notice*** includes any of the following—

- (a) notice of the actual or estimated time of doing a thing;
- (b) notice of the actual or estimated cost of doing a thing;
- (c) notice of intention to do a thing;
- (d) notice of the description of a thing;
- (e) notice of a prescribed matter.

Pt 3 (Heading)  
amended by  
No. 43/2025  
s. 14.

## Part 3—Procedure for recovering progress payments and release of performance securities

### Division 1—Payment claims and payment schedules

S. 14  
(Heading)  
amended by  
No. 43/2025  
s. 15(1).

#### 14 Payment claims in respect of progress payments

S. 14  
substituted by  
No. 42/2006  
s. 16.

S. 14(1)  
amended by  
No. 43/2025  
s. 15(2).

(1) A person referred to in section 9(1) who is or who claims to be entitled to a progress payment (the *claimant*) may serve a payment claim in accordance with this Division on the person who, under the construction contract concerned, is or may be liable to make the payment.

(2) A payment claim—

- (a) must be in the relevant prescribed form (if any); and
- (b) must contain the prescribed information (if any); and
- (c) must identify the construction work or related goods and services to which the progress payment relates; and
- (d) must indicate the amount of the progress payment that the claimant claims to be due (the *claimed amount*); and
- (e) must state that it is made under this Act.

S. 14(3)  
substituted by  
No. 43/2025  
s. 15(3).

(3) The claimed amount may include any amount that the other person is liable to pay the claimant under section 29(4).

\* \* \* \* \*

S. 14(4)–(9)  
repealed by  
No. 43/2025  
s. 15(4).

**14A Earliest time at which a payment claim may be served**

S. 14A  
inserted by  
No. 43/2025  
s. 16.

- (1) A payment claim may be served on a person—
- (a) on and from the last day of—
    - (i) the named month in which the construction work was first carried out under a construction contract; and
    - (ii) each subsequent named month during which any further construction work is carried out under that contract; and
  - (b) on and from the last day of—
    - (i) the named month in which any related goods or services were first supplied under a construction contract; and
    - (ii) each subsequent named month during which any further related goods or services are supplied under that contract.
- (2) Despite subsection (1), if a payment claim in respect of a progress payment relates to the carrying out of construction work or the supply of related goods or services—
- (a) in the period starting on 1 December and ending on 21 December in any year, the payment claim may be served on a person on and from 22 December of that year; or
  - (b) in the period starting on 22 December and ending on 31 December in any year, the payment claim may be served on a person on and from 31 January in the following year.

- (3) Despite subsections (1) and (2), if a construction contract provides that a payment claim may be served on a person in relation to the carrying out of construction work or supplying related goods or services on and from a day that is earlier than a day permitted under subsection (1) or (2) (as the case may be), the payment claim may be served on and from that day.
- (4) Despite subsections (1) and (2), if a notice of termination is served on a party to a construction contract or a construction contract is terminated by agreement, a payment claim may be served on a person on and from the day on which the contract provides is the day on which the contract is terminated.
- (5) If a claimant serves a payment claim on a person before the earliest day that a payment claim may be served under this section (the *earliest day*)—
  - (a) the payment claim is not invalid; and
  - (b) the payment claim is taken to be served on the earliest day; and
  - (c) the time within which the person may serve a payment schedule on the claimant does not commence until the earliest day.

**Note**

This subsection is relevant to calculating when a progress payment under a construction contract becomes due and payable under section 12(1)(b).

- (6) The claimant's entitlement to serve a payment claim on a person is not affected by the termination, purported termination or expiry of the construction contract under which the person is or may be liable to make the payment.

**14B Certain provisions in construction contract have no effect**

S. 14B  
inserted by  
No. 43/2025  
s. 16.

- (1) A provision of a construction contract has no effect to the extent that it—
  - (a) provides that the earliest day for service of a payment claim in respect of any type of progress payment must be on a day that is later than the last day of each named month in which the construction work was carried out or the related goods and services were supplied; or
  - (b) provides that a payment claim for a milestone payment (within the meaning of paragraph (c) of the definition of *progress payment*) must be served less frequently than once a month.
- (2) Despite subsection (1)(a), a construction contract may provide that the earliest day for service of a payment claim relating to construction work carried out or related goods and services supplied in the period starting on 22 December and ending on 31 December, is 31 January in the following year.

**14C Latest time at which payment claim may be served**

S. 14C  
inserted by  
No. 43/2025  
s. 16.

- A payment claim may be served no later than the day before the latest of the following—
- (a) the date (if any) determined under the terms of the construction contract as the latest day on which the payment claim may be served;
  - (b) the date that is 6 months after the practical completion of all construction work to be carried out under the construction contract;
  - (c) the date that is 6 months after the supply of all related goods and services to be supplied under the construction contract.

S. 14D  
inserted by  
No. 43/2025  
s. 16.

#### 14D Frequency of payment claims

- (1) Unless a construction contract provides otherwise, a claimant may not serve on a person more than one payment claim in the named month in which construction work was carried out or undertaken to be carried out or related goods or services were supplied or undertaken to be supplied.
- (2) Nothing in subsection (1) prevents the claimant from—
  - (a) serving a single payment claim on a person in respect of more than one progress payment; or
  - (b) including in a payment claim any amount that has been the subject of a previous payment claim and that has not been paid before the subsequent payment claim is served; or
  - (c) serving a payment claim in a named month for construction work carried out or undertaken to be carried out or related goods or services supplied or undertaken to be supplied in a previous named month.

#### 15 Payment schedules

S. 15(1)  
amended by  
No. 43/2025  
s. 17(1).

- (1) A person on whom a payment claim is served (the *respondent*) may reply to the claim by serving a payment schedule on the claimant.

- (2) A payment schedule—

S. 15(2)(b)  
amended by  
No. 42/2006  
s. 17(1).

- (a) must identify the payment claim to which it relates; and
- (b) must indicate the amount of the payment (if any) that the respondent proposes to make (the *scheduled amount*); and

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- |   |   |   |   |  |   |
|---|---|---|---|--|---|
| * | * | * | * | *  |   |
|   |   |   |   |  | S. 15(2)(c)<br>inserted by<br>No. 42/2006<br>s. 17(2),<br>repealed by<br>No. 43/2025<br>s. 17(2). |
|   |   |   |   |  |   |
|   |   |   |   | (d) must be in the relevant prescribed form<br>(if any); and   | S. 15(2)(d)<br>inserted by<br>No. 42/2006<br>s. 17(2).  |
|   |   |   |   |  |   |
|   |   |   |   | (e) must contain the prescribed information<br>(if any).   | S. 15(2)(e)<br>inserted by<br>No. 42/2006<br>s. 17(2).  |
|   |   |   |   |  |   |
|   |   |   |   | (3) If the scheduled amount is less than the claimed<br>amount, the schedule must indicate why the<br>scheduled amount is less and (if it is less because<br>the respondent is withholding payment for any<br>reason) the respondent's reasons for withholding<br>payment. |   |
|   |   |   |   | (4) If—  |   |
|   |   |   |   | (a) a claimant serves a payment claim on a<br>respondent; and  |   |
|   |   |   |   | (b) the respondent does not serve a payment<br>schedule on the claimant—   | S. 15(4)(b)<br>amended by<br>No. 43/2025<br>s. 17(3).   |
|   |   |   |   | (i) within the time required by the relevant<br>construction contract; or  |   |
|   |   |   |   | (ii) within 10 business days after the<br>payment claim is served;   |   |
|   |   |   |   | whichever time expires earlier—  |   |
|   |   |   |   | the respondent becomes liable to pay the claimed<br>amount to the claimant on the due date for the<br>progress payment to which the payment claim<br>relates.  |   |

## **16 Consequences of not paying claimant where no payment schedule**

(1) This section applies if the respondent—

S. 16(1)(a)  
amended by  
No. 43/2025  
s. 18(1).

- (a) becomes liable to pay the claimed amount to the claimant under section 15(4) as a consequence of having failed to serve a payment schedule on the claimant within the time allowed by that 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) In those circumstances, the claimant—

S. 16(2)(a)  
substituted by  
No. 42/2006  
s. 18(1).

- (a) may—
  - (i) recover the unpaid portion of the claimed amount from the respondent, as a debt due to the claimant, in any court of competent jurisdiction; or
  - (ii) make an adjudication application under section 18(1)(b) in relation to the payment claim; and

S. 16(2)(b)  
amended by  
No. 43/2025  
s. 18(2).

- (b) may serve a notice in the prescribed form (if any) on the respondent of the claimant's intention—
  - (i) to suspend carrying out construction work under the construction contract; or
  - (ii) to suspend supplying related goods and services under the construction contract.

(3) A notice referred to in subsection (2)(b) must state that it is made under this Act.

- (4) If the claimant commences 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 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 cross-claim against the claimant; or
- (ii) to raise any defence in relation to matters arising under the construction contract.
- S. 16(4) substituted by No. 42/2006 s. 18(2).
- S. 16(4)(a) substituted by No. 43/2025 s. 18(3).

### **17 Consequences of not paying claimant in accordance with 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—
- (i) within the time required by the relevant construction contract; or
- (ii) within 10 business days after the payment claim is served—
- whichever time expires earlier; and
- (c) the payment schedule indicates a scheduled amount that the respondent proposes to pay to the claimant; and
- S. 17(1)(b) amended by No. 43/2025 s. 19(1).

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(d) the respondent fails to pay the whole or any part of the scheduled amount to the claimant on or before the due date for the progress payment to which the payment claim relates.

(2) In those circumstances, the claimant—

**S. 17(2)(a)  
substituted by  
No. 42/2006  
s. 19(1).**

(a) may—

(i) recover the unpaid portion of the scheduled amount from the respondent, as a debt due to the claimant, in any court of competent jurisdiction; or

(ii) make an adjudication application under section 18(1)(a)(ii) in relation to the payment claim; and

**S. 17(2)(b)  
amended by  
No. 43/2025  
s. 19(2).**

(b) may serve a notice in the prescribed form (if any) on the respondent of the claimant's intention to suspend—

(i) carrying out construction work under the construction contract; or

(ii) supplying related goods and services under the construction contract.

(3) A notice referred to in subsection (2)(b) must state that it is made under this Act.

**S. 17(4)  
substituted by  
No. 42/2006  
s. 19(2).**

(4) If the claimant commences 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 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 cross-claim against the claimant; or

- (ii) to raise any defence in relation to matters arising under the construction contract.

## **Division 1A—Claims for release of performance securities**

Pt 3 Div. 1A  
(Heading and  
ss 17A–17H)  
inserted by  
No. 43/2025  
s. 20.

### **17A Claims for release of performance securities**

S. 17A  
inserted by  
No. 43/2025  
s. 20.

- (1) A person referred to in section 9(2) who is or who claims to be entitled to the release of the whole or a part of a performance security (the *claimant*) may serve a claim on the person who, under the construction contract concerned, is or may be liable to release the performance security.
- (2) A claim for the release of the whole or part of a performance security must—
  - (a) be in the prescribed form (if any); and
  - (b) identify the construction work or related goods and services to which the performance security and the claim relates; and
  - (c) specify the type and amount of performance security claimed; and
  - (d) state that it is made under this Act; and
  - (e) contain any other prescribed information.
- (3) The claimant's entitlement to serve a performance security claim on a person is not affected by the termination, purported termination or expiry of the construction contract under which the person is or may be liable to release the performance security.

#### **Note**

Section 9(2) provides that a person is entitled to the release of the whole or part of a performance security.

S. 17B  
inserted by  
No. 43/2025  
s. 20.

**17B Earliest time a performance security claim may be served**

- (1) A claim for the release of the whole or part of a performance security may be served on a person no earlier than the earliest of the following—
  - (a) a day that is at least 20 business days after the end of the relevant defects liability period for the construction work carried out or related goods or services supplied under the construction contract to which the performance security relates;
  - (b) on or after a day, or on or after the day of the occurrence of an event (if any), specified in the construction contract.
- (2) If a claimant serves a performance security claim on a person before the earliest day that a performance security claim may be served under this section (the *earliest day*)—
  - (a) the performance security claim is not invalid; and
  - (b) the performance security claim is taken to be served on the earliest day; and
  - (c) the time within which the person may serve a performance security schedule on the claimant does not arise until the earliest day.

**Note**

Subsection (2) is relevant to calculating when a performance security under a construction contract becomes due to be released under section 12(1A)(b).

**17C Latest time at which a performance security claim may be served**

S. 17C  
inserted by  
No. 43/2025  
s. 20.

A performance security claim may be served no later than the latest of—

- (a) the day (if any) determined under the construction contract as the latest day on which the performance security claim may be served; or
- (b) the last day of the named month following the named month in which the last defects liability period set out in the construction contract (if any) ends.

**17D Overriding contract provisions have no effect**

S. 17D  
inserted by  
No. 43/2025  
s. 20.

A provision of a construction contract that purports to do any of the following has no effect—

- (a) override the right of a claimant to serve a performance security claim under section 17A;
- (b) provide that the earliest day on which a performance security claim may be served is before the earliest day referred to in section 17B;
- (c) provide that the latest day on which a performance security claim may be served is after the latest day referred to in section 17C.

**17E Performance security schedules**

S. 17E  
inserted by  
No. 43/2025  
s. 20.

- (1) A person on whom a performance security claim is served (the *respondent*) may serve a performance security schedule on the claimant.
- (2) A performance security schedule—
  - (a) must identify the performance security to which it relates; and

- (b) must identify the amount of the performance security that is proposed to be released if it is not the same amount of the performance security that relates to the performance security claim; and
  - (c) must indicate when the respondent proposes to release the performance security, or any part of the performance security; and
  - (d) must be in the relevant prescribed form (if any); and
  - (e) must contain the prescribed information (if any).
- (3) If the respondent proposes to release less than the amount of the performance security that relates to the performance security claim, the schedule must indicate why the amount to be released is less, and the respondent's reasons for this.
- (4) The respondent becomes liable to release the amount of the performance security that relates to the performance security claim on the due date for the release of the performance security if—
- (a) a claimant serves a performance security claim for that amount of the performance security on the respondent; and
  - (b) the respondent does not serve a performance security schedule on the claimant within whichever of the following times expires earlier—
    - (i) the time required by the relevant construction contract; or
    - (ii) 10 business days after the performance security claim is served.

**17F Consequences of not releasing performance security  
where no performance security schedule**

S. 17F  
inserted by  
No. 43/2025  
s. 20.

- (1) This section applies if the respondent—
  - (a) becomes liable under section 17E(4) to release the whole or part of the performance security; and
  - (b) fails to release the whole or part of the performance security on the due date for the release of the performance security to which the claim relates.
- (2) The claimant may—
  - (a) apply to a court of competent jurisdiction for an order that the respondent must release the whole or part of the performance security to which the claim relates; or
  - (b) make an adjudication application under section 18A(1) in relation to the performance security claim.
- (3) If the claimant commences proceedings under subsection (2)(a) for an order that the respondent must release the whole or part of the performance security to which the claim relates—
  - (a) judgment in favour of the claimant is not to be given 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 cross-claim against the claimant; or
    - (ii) to raise any defence in relation to matters arising under the construction contract.

S. 17G  
inserted by  
No. 43/2025  
s. 20.

**17G Consequences of not releasing whole or part of  
performance security in accordance with  
performance security schedule**

- (1) This section applies if—
- (a) a claimant has served a performance security claim on a respondent; and
  - (b) the respondent has served a performance security schedule on the claimant within whichever of the following times expires earlier—
    - (i) within the time required by the relevant construction contract;
    - (ii) within 10 business days after the performance security claim is served; and
  - (c) the performance security schedule indicates the respondent proposes to release the whole or part of the performance security; and
  - (d) the respondent fails to release the whole or part of the performance security indicated in the performance security schedule on or before the due date for release of the performance security to which the performance security claim relates.
- (2) The claimant may—
- (a) apply to a court of competent jurisdiction for an order that the respondent must release the whole or part of the performance security to which the performance security claim relates; or
  - (b) make an adjudication application under section 18A(1) in relation to the performance security claim.

- (3) If the claimant commences a proceeding under subsection (2)(a) for an order that the respondent must release the whole or part of the performance security to which the claim relates—
- (a) judgment in favour of the claimant is not to be given unless the court is satisfied of the existence of the circumstances described in subsection (1); and
  - (b) the respondent is not, in those proceedings, entitled—
    - (i) to bring any cross-claim against the claimant; or
    - (ii) to raise any defence in relation to matters arising under the construction contract.

**17H Entitlement to have recourse to a performance security**

S. 17H  
inserted by  
No. 43/2025  
s. 20.

- (1) A party to a construction contract is not entitled to have recourse to the whole or a part of a performance security under a construction contract unless—
- (a) the party has served the party who provided the performance security under the contract with a notice of intention to have recourse to the performance security; and
  - (b) at least 5 business days have passed since the party served that notice or, if the contract provides for a longer period, that period has passed.
- (2) A notice of intention to have recourse to a performance security must—
- (a) be in writing in the prescribed form (if any); and

- (b) identify the construction contract and the provisions of the contract that the party relies on to have recourse to the performance security; and
  - (c) if the intention is not to have recourse to the whole of the performance security, state the amount of the performance security to which the party intends to have recourse; and
  - (d) describe the circumstances that entitle the party to have recourse to the performance security.
- (3) The requirements in subsections (1) and (2) are taken to form part of every construction contract and are to have effect despite any other provision of the contract that purports to override these requirements.

## **Division 2—Adjudication of disputes**

### **18 Adjudication applications—payment claims**

S. 18  
(Heading)  
amended by  
No. 43/2025  
s. 21(1).

S. 18(1)  
substituted by  
No. 42/2006  
s. 20(1),  
amended by  
No. 43/2025  
s. 21(2)(a).

S. 18(1)(a)  
amended by  
No. 43/2025  
s. 21(2)(b).

- (1) Subject to subsection (2), a claimant may apply for adjudication of a payment claim (an *adjudication application*) if—
- (a) the respondent serves a payment schedule on the claimant under Division 1 but—
    - (i) the scheduled amount indicated in the payment schedule is less than the claimed amount indicated in the payment claim; or
    - (ii) the respondent fails to pay the whole or any part of the scheduled amount to the

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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.

**S. 18(1)(b)**  
amended by  
No. 43/2025  
s. 21(2)(c).

- (2) An adjudication application to which subsection (1)(b) applies may not be made unless the claimant has served a notice in the prescribed form (if any) on the respondent within 10 business days after the due date for payment informing the respondent that—

**S. 18(2)**  
substituted by  
Nos 42/2006  
s. 20(1),  
43/2025  
s. 21(3).

- (a) the claimant intends to apply for adjudication of the payment claim; and
- (b) the respondent may serve a payment schedule on the claimant in response to the notice within 5 business days after receiving the notice.

- (2A) A respondent who receives a notice under subsection (2) may serve on the claimant a payment schedule that complies with the requirements in section 15(2) and (3) within 5 business days after receiving the notice.

**S. 18(2A)**  
inserted by  
No. 43/2025  
s. 21(3).

- (3) An adjudication application—

**S. 18(3)**  
substituted by  
No. 42/2006  
s. 20(1).

- (a) must be in writing; and

- (b) subject to subsection (4), must be lodged with an authorised nominating authority chosen by the claimant; and

**S. 18(3)(b)**  
amended by  
No. 43/2025  
s. 21(4)(a).

- (c) in the case of an application under subsection (1)(a)(i), must be lodged within 10 business days after the claimant receives the payment schedule; and

**S. 18(3)(c)**  
amended by  
No. 43/2025  
s. 21(4)(b).

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S. 18(3)(d)  
amended by  
No. 43/2025  
s. 21(4)(c).

(d) in the case of an application under subsection (1)(a)(ii), must be lodged within 10 business days after the due date for payment; and

S. 18(3)(e)  
amended by  
No. 43/2025  
s. 21(4)(d).

(e) in the case of an application under subsection (1)(b), must be lodged within 5 business days after the end of the 5 business-day period referred to in subsection (2)(b); and

(f) must identify the payment claim and the payment schedule (if any) to which it relates; and

(g) must be accompanied by the application fee (if any) determined by the authorised nominating authority; and

(h) may contain any submissions relevant to the application that the claimant chooses to include.

S. 18(4)  
substituted by  
No. 42/2006  
s. 20(1).

(4) If the construction contract to which the payment claim relates lists 3 or more authorised nominating authorities, the application must be made to one of those authorities chosen by the claimant.

S. 18(5)  
substituted by  
No. 43/2025  
s. 21(5).

(5) The claimant must serve a copy of the adjudication application on the respondent within 3 business days after lodging the application with the authorised nominating authority.

S. 18(6)  
repealed by  
No. 42/2006  
s. 20(2).

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S. 18(7)  
amended by  
No. 43/2025  
s. 21(6).

(7) It is the duty of an authorised nominating authority with which an adjudication application is lodged to refer the application to an adjudicator as soon as practicable.

- (8) An adjudicator to whom an application is referred under subsection (7) must be a person who is eligible to be an adjudicator as referred to in section 19.

S. 18(8)  
amended by  
No. 42/2006  
s. 20(3).

**18A Adjudication applications—performance security claims**

S. 18A  
inserted by  
No. 43/2025  
s. 22.

- (1) Subject to subsection (2), a claimant may apply for adjudication of a performance security claim if—
- (a) the respondent serves a performance security schedule on the claimant under Division 1A but—
    - (i) the schedule indicates that the amount of the performance security that the respondent agrees to release is less than the amount claimed in the performance security claim; or
    - (ii) the respondent fails to release the whole or any part of the scheduled amount to the claimant by the due date for release of the amount claimed; or
  - (b) the respondent fails to serve a performance security schedule on the claimant under Division 1A and fails to release the whole or any part of the claimed amount by the due date for release of the amount.
- (2) An adjudication application under subsection (1)(b) may not be made unless the claimant has served a notice in the prescribed form (if any) on the respondent within 10 business days after the due date for release of the amount claimed informing the respondent that—
- (a) the claimant intends to apply for adjudication of the performance security claim; and

- (b) the respondent may serve a performance security schedule on the claimant within 5 business days after receiving the notice.
- (3) A respondent who receives a notice under subsection (2) may serve on the claimant a performance security schedule that complies with the requirements in section 17E(2) and (3) within 5 business days after receiving the notice.
- (4) An adjudication application—
  - (a) must be in writing; and
  - (b) subject to subsection (5), must be lodged with an authorised nominating authority chosen by the claimant; and
  - (c) in the case of an application under subsection (1)(a)(i), must be lodged within 10 business days after the claimant receives the performance security schedule; and
  - (d) in the case of an application under subsection (1)(a)(ii), must be lodged within 10 business days after the due date for release of the performance security; and
  - (e) in the case of an application under subsection (1)(b), must be lodged within 5 business days after the end of the 5 business-day period referred to in subsection (2)(b); and
  - (f) must identify the performance security claim and the performance security schedule (if any) to which it relates; and
  - (g) must be accompanied by the application fee (if any) determined by the authorised nominating authority; and
  - (h) may contain any submissions relevant to the application that the claimant chooses to include.

- (5) If the construction contract to which the payment claim relates lists 3 or more authorised nominating authorities, the application must be made to one of those authorities chosen by the claimant.
- (6) The claimant must serve a copy of the adjudication application on the respondent within 3 business days after lodging the application with the authorised nominating authority.
- (7) It is a duty of an authorised nominating authority with which an adjudication application is lodged to refer the application to an adjudicator as soon as practicable.
- (8) An adjudicator to whom an application is referred under subsection (7) must be a person who under section 19 is eligible to be an adjudicator.

#### **19 Eligibility criteria for adjudicators**

- (1) A person is eligible to be an adjudicator in relation to a construction contract—
  - (a) if the person is a natural person; and
  - (b) if the person has any qualifications, expertise and experience that may be prescribed for the purposes of this section.
- (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) if the person is an employee of a party to the contract; or
  - (c) in the circumstances that are prescribed for the purposes of this section; or
  - (d) if the person is in a class of person that is prescribed for the purposes of this section.

## 20 Appointment of adjudicator

- (1) An adjudicator accepts an adjudication application by causing notice of acceptance to be served on the claimant and the respondent.
- (2) The acceptance takes effect when the last of the notices is served under subsection (1).
- (3) On accepting an adjudication application, the adjudicator is taken to have been appointed to determine the application.
- (4) An adjudicator must give a copy of a notice of acceptance under subsection (1) to the Authority within 10 business days after accepting an adjudication application under subsection (1).

S. 20(4)  
amended by  
No. 34/2013  
s. 35(Sch. 2  
item 1.2).

## 21 Adjudication responses

- (1) Subject to subsection (2A), the respondent may lodge with the adjudicator a response to the claimant's adjudication application (the *adjudication response*) at any time within—
  - (a) 5 business days after receiving a copy of the application; or
  - (b) 2 business days after receiving notice of an adjudicator's acceptance of the application—whichever time expires later.
- (2) The adjudication response—
  - (a) must be in writing; and
  - (b) must identify the adjudication application to which it relates; and
  - (c) must include the name and address of any relevant principal of the respondent and any other person who the respondent knows has a financial or contractual interest in the matters that are the subject of the adjudication application; and

S. 21(1)  
amended by  
No. 42/2006  
s. 21(1)(a).

S. 21(2)(c)  
substituted by  
No. 42/2006  
s. 21(1)(b).

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					S. 21(2)(ca) inserted by No. 42/2006 s. 21(1)(b), repealed by No. 43/2025 s. 23(1).	
				(d)	may contain any submissions relevant to the response that the respondent chooses to include but may not contain a reason why the respondent did not—	S. 21(2)(d) amended by No. 43/2025 s. 23(2).
				(i)	include the whole of the claimed amount in the payment schedule served on the claimant under section 15 or 18(2A) if that reason was not set out in the payment schedule; or	S. 21(2)(d)(i) inserted by No. 43/2025 s. 23(2).
				(ii)	offer to release the whole or part of the performance security in the performance security schedule served on the claimant under section 17E or 18A(3) if that reason was not set out in the performance security schedule..	S. 21(2)(d)(ii) inserted by No. 43/2025 s. 23(2).
				(2A)	The respondent may lodge an adjudication response if the respondent has served on the claimant—	S. 21(2A) inserted by No. 42/2006 s. 21(2), substituted by No. 43/2025 s. 23(3).
				(a)	a payment schedule within the time specified in section 15(4)(b) or 18(2A); or	
				(b)	a performance security schedule within the time specified in section 17E(4)(b) or 18A(3).	
				(2B)	A payment schedule or a performance security schedule referred to in subsection (2A) may be attached to an adjudication response lodged under that subsection.	S. 21(2B) inserted by No. 42/2006 s. 21(2), substituted by No. 43/2025 s. 23(4).

S. 21(3)  
substituted by  
No. 43/2025  
s. 23(5).

(3) If the respondent lodges an adjudication response with the adjudicator, the respondent must serve a copy of the response on the claimant within 3 business days after lodging the response with the adjudicator.

S. 21(4)  
amended by  
No. 42/2006  
s. 21(3).

(4) In this section *relevant principal* in relation to the respondent, means any person with whom the respondent has entered into a contract (that is not a construction contract exempted from this Act under section 7(2)(b) or 7(2)(ba)) for the provision by the respondent of construction work or goods and services if the construction work carried out or the goods and services supplied by the claimant to or for the respondent under the construction contract are, or are part of or incidental to, the construction work or goods and services that the first-mentioned person engaged the respondent to carry out or supply.

## 22 Adjudication procedures

(1) An adjudicator is not to determine an adjudication application until after the end of the period within which the respondent may lodge an adjudication response.

S. 22(2)  
substituted by  
No. 42/2006  
s. 22(1).

(2) An adjudicator must serve a written notice—

S. 22(2)(a)  
amended by  
No. 43/2025  
s. 24(1).

- (a) on any relevant principal (within the meaning of section 21(4)) and any other person who is included in the adjudication response under section 21(2)(c); and
- (b) on any other person who the adjudicator reasonably believes, on the basis of any submission received from the claimant or the respondent, is a person who has a financial or contractual interest in the matters that are the subject of the adjudication application.

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(3) An adjudicator is not to consider an adjudication response unless it was made before the end of the period within which the respondent may lodge the response.

(4) Subject to subsections (1) and (3), an adjudicator must determine an adjudication application as expeditiously as possible and, in any case—

**S. 22(4)**  
amended by  
**No. 42/2006**  
**s. 22(2)**,  
substituted by  
**No. 43/2025**  
**s. 24(2)**.

(a) within 10 business days after the latest of the following—

(i) the day on which the adjudicator is taken to have been appointed to determine the adjudication application under section 20;

(ii) the latest day on which the respondent may lodge an adjudication response with the adjudicator under section 21(1); or

(b) within any further time, not exceeding 20 business days, after the period under paragraph (a), to which the claimant and the respondent agree.

(4A) A claimant and a respondent must not unreasonably withhold their agreement under subsection (4)(b).

**S. 22(4A)**  
inserted by  
**No. 42/2006**  
**s. 22(3)**,  
amended by  
**No. 43/2025**  
**s. 24(3)**.

(4B) An adjudicator's determination of an adjudication application is not invalid solely because it is made after the time allowed for determining the adjudication application under subsection (4).

**S. 22(4B)**  
inserted by  
**No. 43/2025**  
**s. 24(4)**.

- (5) For the purposes of any proceedings conducted to determine an adjudication application, an adjudicator—
- (a) may request further written submissions from either party and must give the other party an opportunity to comment on those 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.

**S. 22(5AA)**  
inserted by  
No. 43/2025  
s. 24(5).

- (5AA) In the case of a payment claim, a submission under subsection (5) must not contain a reason as to why the respondent did not pay the whole or any part of the claimed amount if—
- (a) that reason was not set out in a payment schedule served by the respondent on the claimant; or
  - (b) the respondent did not serve a payment schedule on the claimant.

**S. 22(5AB)**  
inserted by  
No. 43/2025  
s. 24(5).

- (5AB) In the case of a performance security claim, a submission under subsection (5) must not contain a reason as to why the respondent did not offer to release the whole or any part of a claimed performance security if—
- (a) that reason was not set out in a performance security schedule served by the respondent on the claimant; or
  - (b) the respondent did not serve a performance security schedule on the claimant.

(5A) Any conference called under subsection (5)(c) is to be conducted informally and the parties are not entitled to legal representation unless this is permitted by the adjudicator.

S. 22(5A)  
inserted by  
No. 42/2006  
s. 22(4).

(6) The adjudicator's power to determine an application is not affected by the failure of either or both of the parties to make a submission or comment within the time or to comply with the adjudicator's call for a conference of the parties.

### 23 Adjudicator's determination

(1) An adjudicator is to determine—

(a) the amount of the progress payment (if any) to be paid by the respondent to the claimant; and

S. 23(1)(a)  
amended by  
No. 43/2025  
s. 25(1).

(b) the date on which that amount became or becomes payable; and

S. 23(1)(b)  
amended by  
No. 42/2006  
s. 23(1)(a).

(c) the rate of interest payable on that amount in accordance with section 12(2).

S. 23(1)(c)  
inserted by  
No. 42/2006  
s. 23(1)(b).

\* \* \* \* \*

Note to  
s. 23(1)  
amended by  
No. 42/2006  
s. 23(1)(c),  
repealed by  
No. 43/2025  
s. 25(2).

(1A) An adjudicator is to determine—

(a) whether the whole or part of a performance security must be released by the respondent to the claimant if the adjudicator is satisfied that—

S. 23(1A)  
inserted by  
No. 43/2025  
s. 25(3).

(i) all or the relevant part of the obligations secured by the performance

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security have been performed by the claimant; or

(ii) the performance security is due for release in accordance with the construction contract; and

(b) the amount of the performance security that must be released by the respondent to the claimant; and

(c) the date by which the respondent must release the amount of the performance security to the claimant; and

(d) the rate of interest payable on the amount of the performance security that must be released in accordance with section 12(3).

S. 23(2)  
amended by  
No. 42/2006  
s. 23(1)(d).

(2) In determining an adjudication application, the adjudicator must consider the following matters and those matters only—

(a) the provisions of this Act and any regulations made under this Act;

S. 23(2)(b)  
amended by  
No. 42/2006  
s. 23(1)(e).

(b) subject to this Act, 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 duly made by the claimant in support of the claim;

S. 23(2)(d)  
amended by  
No. 42/2006  
s. 23(1)(f).

(d) the payment schedule (if any) to which the application relates, together with all submissions (including relevant documentation) that have been duly 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.

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- (2A) In determining an adjudication application, the adjudicator must not take into account—
- (a) in the case of a payment claim—a reason as to why the respondent did not pay the whole or any part of the claimed amount if—
    - (i) that reason was not set out in a payment schedule served by the respondent on the claimant; or
    - (ii) the respondent did not serve a payment schedule on the claimant; or
  - (b) in the case of a performance security claim—a reason as to why the respondent did not offer to release the whole or any part of a claimed performance security if—
    - (i) that reason was not set out in a performance security schedule served by the respondent on the claimant; or
    - (ii) the respondent did not serve a performance security schedule on the claimant; or
  - (c) any other matter that is prohibited by this Act from being taken into account.

**S. 23(2A)**  
inserted by  
No. 42/2006  
s. 23(2),  
substituted by  
No. 43/2025  
s. 25(5).

- (2B) An adjudicator's determination is void—
- (a) to the extent that it has been made in contravention of subsection (2);
  - (b) if it takes into account any matter referred to in subsection (2A), to the extent that the determination is based on that matter.
- (3) The adjudicator's determination must be in writing and must include—
- (a) the reasons for the determination; and
  - (b) the basis on which any amount or date has been decided.

**S. 23(2B)**  
inserted by  
No. 42/2006  
s. 23(2).

**S. 23(2B)(b)**  
amended by  
No. 43/2025  
s. 25(6).

**S. 23(3)**  
substituted by  
No. 42/2006  
s. 23(3).

S. 23(4)  
substituted by  
No. 42/2006  
s. 23(3).

(4) If, in determining an adjudication application, an adjudicator has, in accordance with section 11, determined—

(a) the value of any construction work carried out under a construction contract; or

(b) the value of any related goods and services supplied under a construction contract—

the adjudicator (or any other adjudicator) is, in any subsequent adjudication application that involves the determination of the value of that work or of those goods and services, to give the work or the goods and services the same value as that previously determined 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 determination.

S. 23A  
(Heading)  
amended by  
No. 34/2013  
s. 35(Sch. 2  
item 1.3).

### **23A Adjudication determination to be given to parties and Authority**

The authorised nominating authority to whom the adjudication application was made must give a copy of the adjudication determination—

(a) to the claimant and the respondent, as soon as practicable after it is made; and

(b) to the Authority within 5 business days after it is made.

S. 23A  
inserted by  
No. 42/2006  
s. 24.

S. 23A(b)  
amended by  
No. 34/2013  
s. 35(Sch. 2  
item 1.4).

### **24 Correcting mistakes in determinations**

(1) An adjudicator may correct a determination made by him or her if the determination 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 any person, thing or matter referred to in the determination; or
  - (d) a defect of form.
- (2) The correction may be made—
- (a) on the adjudicator's own initiative; or
  - (b) on the application of the claimant or the respondent.
- (3) If a correction is made to a determination under this section, the authorised nominating authority to whom the adjudication application was made must give a copy of the corrected determination to the claimant and the respondent and the Authority as soon as practicable after the correction is made.

S. 24(3)  
inserted by  
No. 42/2006  
s. 25,  
amended by  
No. 34/2013  
s. 35(Sch. 2  
item 1.5).

\* \* \* \* \*

S. 24(4)  
inserted by  
No. 42/2006  
s. 25,  
repealed by  
No. 43/2025  
s. 26.

\* \* \* \* \*

Ss 25–27  
repealed by  
No. 42/2006  
s. 26.

## **28 Claimant may make new application if previous application not determined**

S. 28  
(Heading)  
amended by  
No. 43/2025  
s. 27(1).

- (1) This section applies if—
- (a) a claimant fails to receive an adjudicator's notice of acceptance of an adjudication application within 4 business days after the day on which the adjudicator receives the adjudication application; or

S. 28(1)(a)  
amended by  
No. 43/2025  
s. 27(2).

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- (b) an adjudicator who accepts an adjudication application fails to determine the application within the time allowed by section 22(4).
- (2) In either of those circumstances, the claimant—
- S. 28(2)(a) amended by No. 43/2025 s. 27(3).**
- (a) may withdraw the application by notice in writing in the prescribed form (if any) served on the adjudicator and the authorised nominating authority to whom the application was made; and
- S. 28(2)(b) amended by No. 43/2025 s. 27(4).**
- (b) may make a new adjudication application under section 18 in respect of a payment claim or section 18A in respect of a performance security claim.
- S. 28(2A) inserted by No. 43/2025 s. 27(5).**
- (2A) The authorised nominating authority must—
- (a) give a copy of a withdrawal notice under subsection (2) to the Authority as soon as is practicable; and
- (b) inform the Authority of every adjudication application that is not determined by the adjudicator and the reasons why the application was not determined.
- S. 28(3) amended by Nos 42/2006 s. 27, 43/2025 s. 27(6).**
- (3) Despite sections 18(3)(c), 18(3)(d) and 18(3)(e), a new adjudication application in respect of a payment claim may be lodged at any time within 5 business days after the claimant becomes entitled to withdraw the previous adjudication application under subsection (2).
- S. 28(3A) inserted by No. 43/2025 s. 27(7).**
- (3A) Despite section 18A(4)(c), (d) and (e), a new adjudication application in respect of a performance security claim may be lodged 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 referred to in this section in the same way as it applies to an application under section 18.

\* \* \* \* \*

Pt 3 Div. 2A  
(Heading and  
ss 28A–28L)  
inserted by  
No. 42/2006  
s. 28,  
amended by  
No. 34/2013  
s. 35(Sch. 2  
items 1.6–1.8),  
repealed by  
No. 43/2025  
s. 28.

## **Division 2B—Payment and recovery of adjudicated amounts**

Pt 3 Div. 2B  
(Heading and  
ss 28M–28R)  
inserted by  
No. 42/2006  
s. 28.

### **28M Respondent required to pay or release adjudicated amount**

S. 28M  
(Heading)  
amended by  
No. 43/2025  
s. 29(1).

S. 28M  
inserted by  
No. 42/2006  
s. 28.

- (1) If an adjudicator determines that a respondent is required to pay or release an adjudicated amount, the respondent must pay or release that 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 a copy of the adjudication determination is given to the respondent under section 23A; or
  - (b) if the adjudicator determines a later date under section 23(1)(b), that later date.

S. 28M(1)  
substituted by  
No. 43/2025  
s. 29(2).

S. 28N  
inserted by  
No. 42/2006  
s. 28,  
repealed by  
No. 43/2025  
s. 30.

S. 28O  
(Heading)  
amended by  
No. 43/2025  
s. 31(1).

S. 28O  
inserted by  
No. 42/2006  
s. 28.

S. 28O(1)  
amended by  
No. 43/2025  
s. 31(2).

S. 28O(1)(a)  
amended by  
No. 43/2025  
s. 31(3).

S. 28O(1)(b)  
amended by  
No. 43/2025  
s. 31(4).

S. 28O(3)  
substituted by  
No. 43/2025  
s. 31(5).

\* \* \* \* \*

## 28O Consequences of respondent not paying or releasing adjudicated amount

- (1) If the respondent fails to pay the whole or any part of an adjudicated amount in accordance with section 28M, the claimant may—
  - (a) request the authorised nominating authority to whom the adjudication application was made to provide an adjudication certificate under section 28Q; and
  - (b) serve a notice in the prescribed form (if any) on the respondent of the claimant's intention—
    - (i) to suspend carrying out construction work under the construction contract; or
    - (ii) to suspend supplying related goods and services under the construction contract.
- (2) A notice under subsection (1)(b) must state that it is made under section 28O(1) of this Act.
- (3) If the respondent fails to release the whole or any part of an adjudicated amount relating to a performance security in accordance with section 28M, the claimant may request the authorised nominating authority to whom the adjudication

application was made to provide an adjudication  
certificate under section 28Q.

\* \* \* \* \* S. 28O(4)(5)  
repealed by  
No. 43/2025  
s. 31(6).

\* \* \* \* \* S. 28P  
inserted by  
No. 42/2006  
s. 28,  
repealed by  
No. 43/2025  
s. 32.

## 28Q Adjudication certificates

S. 28Q  
inserted by  
No. 42/2006  
s. 28.

(1) An adjudication certificate provided by an  
authorised nominating authority on a request  
under this Division must state that it is made  
under this Act.

S. 28Q(1)  
substituted by  
No. 43/2025  
s. 33(1).

(1A) An adjudication certificate relating to a payment  
claim must specify—

S. 28Q(1A)  
inserted by  
No. 43/2025  
s. 33(1).

- (a) the name of the person requesting the  
certificate; and
- (b) the adjudicated amount that must be paid;  
and
- (c) the name of the person who is liable to pay  
the adjudicated amount; and
- (d) the date on which payment of the adjudicated  
amount was due to be paid to the person  
requesting the certificate.

(1B) An adjudication certificate relating to a  
performance security claim must specify—

S. 28Q(1B)  
inserted by  
No. 43/2025  
s. 33(1).

- (a) the name of the person requesting the  
certificate; and

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- (b) the adjudicated amount of the performance security that must be released; and
- (c) the name of the person who is liable to release the adjudicated amount; and
- (d) the type of performance security and, if it is a performance bond, the name and address of the provider of the security; and
- (e) the date on which the adjudicated amount was due to be released to the person requesting the certificate.

S. 28Q(2)  
amended by  
No. 43/2025  
s. 33(2).

- (2) If any amount of interest that is due and payable on the adjudicated amount payable or to be released is not paid by the respondent, the person requesting the adjudication certificate may request the authorised nominating authority to specify the amount of interest payable in the adjudication certificate.

S. 28Q(3)  
substituted by  
No. 43/2025  
s. 33(3).

- (3) The following amounts are added to, and become part of, the adjudicated amount—
  - (a) any amount of interest that is specified in the adjudication certificate to be paid by the respondent;
  - (b) the amount of any fee charged by the authorised nominating authority for providing the certificate.

Note to  
s. 28Q(3)  
inserted by  
No. 43/2025  
s. 33(4).

**Note**

See also section 45A(2) for adjudication fee amounts that may be added to, or deducted from, the adjudicated amount.

S. 28Q(4)–(7)  
repealed by  
No. 43/2025  
s. 33(5).

\* \* \* \* \*

**28R Proceedings to recover adjudicated amount payable  
or to be released under section 28M**

**S. 28R  
inserted by  
No. 42/2006  
s. 28,  
substituted by  
No. 43/2025  
s. 34.**

- (1) A claimant who has been provided with an adjudication certificate under section 28Q(1A) or (1B) may file the adjudication certificate as a judgment for a debt due to the claimant in a court of competent jurisdiction for the unpaid portion of the adjudicated amount payable or to be released under section 28M(1).
- (2) An adjudication certificate may not be filed in a court under subsection (1) unless the claimant provides with the adjudication certificate an affidavit by the claimant stating that the whole or any part of the adjudicated amount payable or to be released under section 28M(1) has not been paid at the time the certificate is filed.
- (3) If the affidavit indicates that part of the adjudicated amount payable or to be released under section 28M(1) has been paid or released, the judgment is for the unpaid portion of that amount only.
- (4) If the respondent commences a proceeding to have the judgment set aside, the respondent—
  - (a) is not entitled—
    - (i) to commence a cross-claim against the claimant; or
    - (ii) to raise any defence in relation to matters arising under the construction contract; or
    - (iii) to challenge the adjudication determination; and
  - (b) is required to pay into the court as security the unpaid portion of the adjudicated amount payable or to be released under section

28M(1) pending the final determination of  
the proceeding.

- (5) Nothing in this section affects the operation of any  
Act requiring the payment of interest in respect of  
a judgment debt.

### **Division 3—Claimant's right to suspend construction work**

#### **29 Claimant may suspend work**

S. 29(1)  
amended by  
No. 42/2006  
s. 29(1)(a)(b).

- (1) A claimant may suspend the carrying out of  
construction work or the supply of related goods  
and services under a construction contract if at  
least 3 business days have passed since the  
claimant has caused a notice of intention to do so  
to be given to the respondent under section 16, 17  
or 28O.

S. 29(2)  
substituted by  
No. 42/2006  
s. 29(2).

- (2) The right conferred by subsection (1) exists  
until—

S. 29(2)(a)  
amended by  
No. 43/2025  
s. 35(a).

- (a) if the construction contract provides for a  
period of at least 1 business day for a return  
to work after the claimant receives payment  
from the respondent of an amount referred to  
in section 16(1), 17(1) or 28M, the end of  
that period; or

S. 29(2)(b)  
amended by  
No. 43/2025  
s. 35(b).

- (b) in any other case, the end of the period of  
3 business days immediately following the  
date on which the claimant receives payment  
from the respondent of an amount referred to  
in section 16(1), 17(1) or 28M.

- (3) The suspension in accordance with this section by  
a claimant of the carrying out of construction  
work or the supply of goods and services under a  
construction contract does not constitute a breach  
by the claimant of that contract.

- (4) If the claimant, in exercising the right to suspend the carrying out of construction work or the supply of related goods and services, 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 any such loss or expenses. **S. 29(4) inserted by No. 42/2006 s. 29(3).**
- (5) A claimant who suspends construction work or the supply of related goods and services in accordance with 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, as a consequence of the claimant not carrying out the work or not supplying those goods and services during the period of suspension. **S. 29(5) inserted by No. 42/2006 s. 29(3).**

#### **Division 4—Recovery from principal**

\* \* \* \* \*

**S. 29A inserted by No. 42/2006 s. 30, repealed by No. 43/2025 s. 36.**

### **30 Application**

This Division applies if—

- (a) an adjudicator has determined that an adjudicated amount or part of an adjudicated amount is payable by a respondent to a claimant in respect of a construction contract; and **S. 30(a) substituted by No. 42/2006 s. 31(1), amended by No. 43/2025 s. 37(a).**
- (b) the respondent fails to pay the whole or any part of the adjudicated amount to the claimant in accordance with section 28M(1); and **S. 30(b) substituted by No. 42/2006 s. 31(2), amended by No. 43/2025 s. 37(b).**

- (c) the claimant has obtained judgment for the adjudicated amount or part of the adjudicated amount as a debt in a court of competent jurisdiction.

### 31 Recovery from principal

S. 31(1)  
amended by  
No. 42/2006  
s. 31(3).

- (1) If the circumstances set out in section 30 apply, the claimant may obtain payment of the adjudicated amount or part of that amount in accordance with this Division out of money that is payable or becomes payable to the respondent by some other person (the *principal*) for construction work or goods and services that the principal engaged the respondent to carry out or supply under a contract.

- (2) However, the claimant can obtain payment from the principal under this Division only if the construction work carried out or the goods and services supplied by the claimant to or for the respondent under the construction contract are, or are part of or incidental to, the construction work or goods and services that the principal engaged the respondent to carry out or supply.

S. 31(3)  
inserted by  
No. 42/2006  
s. 31(4).

- (3) Subsection (1) does not apply to allow the claimant to obtain payment from a person who has engaged the respondent to carry out construction work or to supply goods and services under a construction contract exempted from this Act under section 7(2)(b) or 7(2)(ba).

### 32 Procedure for obtaining payment

- (1) The following procedure must be followed to obtain payment of the money owed—
- (a) firstly, a debt certificate must have been issued for the money owed (as provided by section 33); and
- (b) secondly, the claimant must serve a notice of claim on the principal.

- (2) A notice of claim is a notice in the prescribed form together with a copy of the debt certificate.

### **33 Certification of debt by court**

- (1) When judgment is given or entered in proceedings for the recovery of an adjudicated amount as a debt, the court may, by order made on the application of the claimant, issue a certificate (a *debt certificate*) in respect of the debt under this section.
- (2) A debt certificate is to be in a prescribed form.
- (3) In this section, *judgment* includes a default judgment.

### **34 Notice of claim operates as assignment of debt**

- (1) The service of a notice of claim on the principal operates to assign to the claimant the obligation of the principal to pay the money owed under the contract to the respondent.
- (2) The assignment is limited to the claimant's certified debt.
- (3) The assignment is subject to any prior assignment under this Division that is binding on the principal and the respondent.

### **35 Payment of respondent's debt by principal**

- (1) After a notice of claim is served on a principal in accordance with this Division, the principal must pay to the claimant the money that the principal owes to the respondent under the contract with the respondent.
- (2) The principal must make the payments to the claimant as they become payable under the contract with the respondent until whichever of the following first occurs—

- (a) the principal receives a discharge notice or discharge notices, indicating that the certified debt has been fully discharged; or
- (b) the payments are no longer payable under the contract between the principal and the respondent.

### 36 Priority of assignments

- (1) The priority of assignments under this Division is to be determined by the order of service of notices of claim on the principal.
- (2) Despite section 50(2), all notices of claim in respect of debts owed by the same respondent that are served on the principal within the period of 5 business days after the first notice of claim in respect of the respondent is served on the principal are taken to be served at the same time and, accordingly, take equal priority.
- (3) Despite section 35, the principal is not to make any payment to a claimant who serves a notice of claim until the 5 business day period has elapsed.
- (4) If assignments take equal priority, the principal is to make the payments by distributing the money payable between the claimants who have equal priority pro rata in proportion to the amount of their respective certified debts.
- (5) The principal must continue to make those payments to each claimant until whichever of the following first occurs—
  - (a) the principal receives a discharge notice, or discharge notices, indicating that each certified debt has been fully discharged; or
  - (b) the payments are no longer payable under the contract.

S. 36(2)  
amended by  
No. 43/2025  
s. 38(1).

S. 36(3)  
amended by  
No. 43/2025  
s. 38(2).

### **37 Stay of payments**

(1) If—

- (a) a notice of claim is served on a principal under this Division in relation to the payment of money owed to a respondent under a contract; and
- (b) before the notice was served, the principal had commenced proceedings in a court against the respondent in relation to that contract—

the principal may apply to the court for a stay of payments under this Division in respect of the notice of claim.

- (2) The court may grant a stay applied for under subsection (1) and make any ancillary orders it considers necessary.
- (3) Despite anything to the contrary in this Division, if a stay is granted under this section the principal is not required to make payments under this Division for the period of the stay.

### **38 Right of recovery if principal fails to pay**

- (1) An assignment effected by operation of this Division is valid at law.
- (2) Accordingly, if the principal fails to make any payment required to be made by this Division, the claimant may sue for and recover the debt assigned to the claimant, in the claimant's own name.
- (3) Proceedings for recovery of the debt may be taken in any manner in which the respondent might have taken them if there had been no assignment.

- (4) A claimant's right of recovery under this section is subject to any defence that the principal would have had against recovery of the debt by the respondent had there been no assignment, other than a defence based on something done by the principal after the notice of claim was served by the claimant.

**Example**

If the principal continues to make contract payments to the respondent, rather than the claimant, after having been served with a notice of claim, the claimant is still entitled to recover the money from the principal.

**39 When assignment ceases to operate**

- (1) If a certified debt is discharged, or the judgment that resulted in a debt certificate being issued in respect of the certified debt is set aside by a court, any assignment effected by operation of this Division in connection with that debt ceases to operate.
- (2) If only part of the certified debt is discharged, the assignment effected in respect of that part of the certified debt ceases to operate.
- (3) This section does not affect any payment or dealing that is made by a principal in good faith before the principal receives notice, and sufficient evidence of, the discharge or setting aside of the debt. To the extent necessary to give effect to that payment or dealing, the assignment effected by operation of this Division is taken to continue in force.

**Note**

If a principal makes a payment to a claimant (as required by section 35), instead of paying the respondent, without knowing that the debt owed to the claimant has been discharged by the respondent, this section protects the principal from being required by the respondent to make payment to the respondent.

#### **40 Claimant to provide discharge notice**

- (1) If a principal or the respondent makes a payment to the claimant in partial or full discharge of a certified debt, the claimant must, on the request of the person making the payment, give the person a discharge notice in respect of the payment.
- (2) A discharge notice must—
  - (a) be in the prescribed form; and
  - (b) acknowledge the payment of the amount paid; and
  - (c) be signed by the claimant.
- (3) If the claimant does not give the notice within 7 days of the payment and request, the claimant is to forfeit and pay to the person who made the payment a sum equal to the amount paid.
- (4) The person who made the payment may recover the forfeited amount in any court of competent jurisdiction as a debt due to the person.

#### **41 Respondent to give information about principal**

- (1) If an adjudication determination has been made under this Part in respect of a construction contract, the respondent, within 10 days business days after the demand of the claimant, must give to the claimant a notice in the prescribed form that sets out the name of any person from whom the claimant may be able to recover the adjudicated amount or part of the adjudicated amount under this Division.

S. 41(1)  
amended by  
No. 43/2025  
s. 39(1).

S. 41(2)  
substituted by  
No. 43/2025  
s. 39(2).

- (2) A person must not give a person a notice under this section knowing that it is false or misleading in a material particular.

Penalty: 60 penalty units, in the case of a natural person;

300 penalty units, in the case of a body corporate.

S. 41(3)  
inserted by  
No. 43/2025  
s. 39(3).

- (3) A person must not fail to give a person a notice under this section.

Penalty: 60 penalty units, in the case of a natural person;

300 penalty units, in the case of a body corporate.

Pt 3 Div. 5  
(Heading)  
substituted by  
Nos 42/2006  
s. 32, 43/2025  
s. 40.

## **Division 5—Authorised nominating authorities and adjudicators**

### **42 Authorised nominating authorities**

S. 42(1)  
amended by  
No. 34/2013  
s. 35(Sch. 2  
item 1.9).

- (1) The Authority—

- (a) may, on application made by any person, authorise the applicant to nominate adjudicators for the purposes of this Act; and  
(b) may withdraw any authority so given.

S. 42(2)  
amended by  
No. 34/2013  
s. 35(Sch. 2  
item 1.9).

- (2) Before giving an authority under this section, the Authority must have regard to any guidelines issued by the Minister under section 44.

Note to s. 42  
amended by  
No. 34/2013  
s. 35(Sch. 2  
item 1.9).

#### **Note**

An applicant can appeal to the Building Appeals Board under section 144A of the **Building Act 1993** against a decision of the Authority to refuse an application or withdraw an authority under section 42.

### 43 The Authority may impose conditions

The Authority may, in accordance with the guidelines issued by the Minister under section 44—

- (a) impose conditions on an authority given under section 42; and
- (b) at any time, vary or revoke any conditions previously imposed on that authority.

#### Note

An applicant can appeal to the Building Appeals Board under section 144A of the **Building Act 1993** against the imposition or variation of a condition under section 43.

### 43A Functions of an authorised nominating authority

The functions of an authorised nominating authority are—

- (a) to nominate adjudicators for the purposes of this Act; and
- (b) to receive and refer adjudication applications to adjudicators; and

\* \* \* \* \*

- (d) to serve copies of adjudication determinations on certain persons; and

\* \* \* \* \*

- (f) to provide adjudication certificates; and

S. 43  
(Heading)  
amended by  
No. 34/2013  
s. 35(Sch. 2  
item 1.10).

S. 43  
amended by  
No. 34/2013  
s. 35(Sch. 2  
item 1.11).

S. 43A  
inserted by  
No. 42/2006  
s. 33.

S. 43A(c)  
repealed by  
No. 43/2025  
s. 41(1).

S. 43A(d)  
substituted by  
No. 43/2025  
s. 41(2).

S. 43A(e)  
repealed by  
No. 43/2025  
s. 41(1).

S. 43A(g)  
amended by  
Nos 34/2013  
s. 35(Sch. 2  
item 1.12),  
43/2025  
s. 41(3).

(g) to provide information to the Authority in  
accordance with this Part; and

(h) to generally carry out any other function or  
duty given to an authority, or imposed on an  
authority, by this Act.

S. 43B  
inserted by  
No. 42/2006  
s. 33.

**43B Authorised nominating authority to provide  
information**

S. 43B(1)  
amended by  
No. 34/2013  
s. 35(Sch. 2  
item 1.13).

(1) An authorised nominating authority must provide  
the Authority with such non-identifying  
information as may be reasonably requested by  
the Authority in relation to the activities of the  
authority under this Act.

(2) Information requested under subsection (1) may  
include information regarding—

S. 43B(2)(a)  
amended by  
No. 43/2025  
s. 42.

(a) the nomination of adjudicators; and

(b) the assessment of the eligibility of persons to  
be adjudicators; and

(c) the fees charged by the authorised  
nominating authority; and

(d) the fees charged by adjudicators.

(3) In this section *non-identifying information* means  
information—

(a) that does not identify any person or disclose  
their address or location; or

(b) from which any person's identity, address or  
location cannot reasonably be determined.

#### **43C Authorised nominating authority fees**

S. 43C  
inserted by  
No. 42/2006  
s. 33.

- (1) An authorised nominating authority may charge a fee for any service provided by the authority in connection with an adjudication application made to the authority.
- (2) In deciding on a fee under subsection (1), an authorised nominating authority must have regard to the guidelines regarding such fees issued by the Minister under section 44.

S. 43C(1)  
amended by  
No. 43/2025  
s. 43.

#### **44 Ministerial guidelines**

- (1) The Minister may from time to time issue guidelines relating to—
  - (a) the giving, variation or withdrawal of authorities under this Division; and
  - (b) appropriate fees that may be charged by an authorised nominating authority or an adjudicator.
- (1A) Guidelines relating to fees—
  - (a) may specify the fees or specify maximum or minimum fees; and
  - (b) may specify different fees for different classes of cases.
- (1B) Authorised nominating authorities and adjudicators, in determining fees under this Act, must have regard to the guidelines under this section in relation to fees.
- (2) The guidelines may provide for—
  - (a) the procedures for making applications;
  - (b) the information to be provided with applications;

S. 44(1)  
substituted by  
No. 42/2006  
s. 34.

S. 44(1)(b)  
substituted by  
No. 43/2025  
s. 44(1).

S. 44(1A)  
inserted by  
No. 43/2025  
s. 44(2).

S. 44(1B)  
inserted by  
No. 43/2025  
s. 44(2).

- (c) the qualifications and experience that are relevant to the carrying out of the functions of an authorised nominating authority;
  - (d) the financial resources necessary for carrying out the functions of an authorised nominating authority;
  - (e) any other matters relating to the capacity of applicants to carry out the functions of an authorised nominating authority;
  - (f) the conditions that may be imposed on an authority, including conditions relating to the processes to be followed by an authorised nominating authority in nominating adjudicators for the purposes of this Act.
- (3) Any guidelines issued by the Minister under subsection (1) must be published in the Government Gazette.

#### 45 Adjudicator's fees

S. 45  
(Heading)  
amended by  
No. 43/2025  
s. 45(1).

S. 45  
substituted by  
No. 42/2006  
s. 35.

S. 45(1)  
repealed by  
No. 43/2025  
s. 45(2).

\* \* \* \* \*

- (2) An adjudicator is entitled to be paid for determining an adjudication application—
- (a) the amount, by way of fees and expenses, that is agreed between the adjudicator and the parties to the adjudication; or

- (b) if no amount is agreed, the amount, by way of fees and expenses, that is reasonable having regard to the work done and expenses incurred by the adjudicator.
- (3) The claimant and respondent are jointly and severally liable to pay the adjudicator's fees and expenses.
- (4) As between themselves, the claimant and respondent are each liable to contribute to the adjudicator's fees and expenses in equal proportions or in such proportions as the adjudicator may determine.
- (5) An adjudicator is not entitled to be paid any fees or expenses in connection with the determination of an application if he or she fails to make a decision on the application (otherwise than because the application is withdrawn or the dispute between the claimant and respondent is resolved) within the time allowed by section 22(4) or 28I(10) (as the case requires).
- (6) Subsection (5) does not apply—
  - (a) in circumstances in which an adjudicator refuses to communicate his or her decision on an adjudication application until his or her fees and expenses are paid; or
  - (b) in such other circumstances as may be prescribed for the purposes of this section.

\* \* \* \* \*

S. 45(7)(8)  
repealed by  
No. 43/2025  
s. 45(4).

S. 45A  
inserted by  
No. 43/2025  
s. 46.

#### **45A Consequences of a party paying another party's share of adjudication fees**

- (1) If a party to an adjudication fails to pay the party's required contribution to the total amount of the adjudication fees, the other party may elect to pay the total amount of the adjudication fees.
- (2) If under subsection (1)—
  - (a) the claimant elects to pay the respondent's contribution to the total amount of adjudication fees, the adjudicator must determine that that amount is to be added to the adjudicated amount and the total of those amounts is then taken to be the adjudicated amount; or
  - (b) the respondent elects to pay the claimant's contribution to the total amount of adjudication fees, the adjudicator must determine that that amount is to be deducted from the adjudicated amount and the remaining adjudicated amount is then taken to be the adjudicated amount.

S. 46  
amended by  
Nos 42/2006  
s. 36, 43/2025  
s. 47.

#### **46 Liability of adjudicator**

An adjudicator is not personally liable for anything done or omitted to be done in good faith—

- (a) in the exercise of a power or the discharge of a duty under this Act or the regulations; or
- (b) in the reasonable belief that the act or omission was in the exercise of a power or the discharge of a duty under this Act or the regulations.

## **Division 6—Effect of Part on civil proceedings**

### **47 Effect of Part on civil proceedings**

- (1) Subject to section 48, nothing in this Part affects any right that a party to a construction contract—
  - (a) may have under the contract; or
  - (b) may have under Part 2 in respect of the contract; or
  - (c) may have apart from this Act in respect of anything done or omitted to be done under the contract.
- (2) Nothing done under or for the purposes of this Part affects any proceedings arising under a construction contract (including any arbitration proceedings or other dispute resolution proceedings), whether under this Part or otherwise, except as provided by subsections (3) and (4).
- (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 or released to a party to the contract under or for the purposes of this Part in any order, determination or award it makes in those proceedings; and
  - (b) may make such orders as it considers appropriate for the restitution of any amount so paid or released, and such other orders as it considers appropriate, having regard to its decision in those proceedings.

**S. 47(3)(a)  
amended by  
No. 43/2025  
s. 48(a).**

**S. 47(3)(b)  
amended by  
No. 43/2025  
s. 48(a).**

Building and Construction Industry Security of Payment Act 2002  
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Part 3—Procedure for recovering progress payments and release of  
performance securities

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**S. 47(4)**  
**amended by**  
**No. 43/2025**  
**s. 48(b).**

- (4) In any arbitration proceedings or other dispute resolution proceedings under the construction contract, the person determining the arbitration or dispute must allow for any amount paid or released to a party to the contract under or for the purposes of this Part in any order or determination or award the person makes in those proceedings.
- (5) Nothing in this Part affects any right that a principal may have under any contract except as expressly provided for in this Act.

## Part 3A—Administration

Pt 3A  
(Heading and  
ss 47A–47C)  
inserted by  
No. 42/2006  
s. 37.

### 47A Functions of the Authority

The functions of the Authority under this Act are—

S. 47A  
(Heading)  
amended by  
No. 34/2013  
s. 35(Sch. 2  
item 1.14).

(a) to keep under regular review the administration and effectiveness of this Act and the regulations; and

S. 47A  
inserted by  
No. 42/2006  
s. 37,  
amended by  
No. 34/2013  
s. 35(Sch. 2  
item 1.15).

(b) to keep a register of authorised nominating authorities in accordance with section 47B; and

(c) to keep records of adjudication determinations in accordance with section 47C; and

S. 47A(c)  
amended by  
No. 43/2025  
s. 49(1).

(d) to publish adjudication determinations in accordance with section 47C; and

S. 47A(d)  
amended by  
No. 43/2025  
s. 49(1).

(da) to provide information and other materials to educate—

S. 47A(da)  
inserted by  
No. 43/2025  
s. 49(2).

(i) persons who carry out construction work or who supply related goods and services under construction contracts with respect to their rights and obligations under this Act; and

(ii) authorised nominating authorities and adjudicators who perform functions under this Act; and

(db) to promote Victoria's security of payment laws to the building and construction sector (including principals);

S. 47A(db)  
inserted by  
No. 43/2025  
s. 49(2).

- (e) generally to carry out any other function or duty given to it, or imposed on it, by this Act.

S. 47B  
inserted by  
No. 42/2006  
s. 37.

#### **47B Register of authorised nominating authorities**

S. 47B(1)  
amended by  
No. 34/2013  
s. 35(Sch. 2  
item 1.16).

- (1) The Authority must keep a register containing details of authorised nominating authorities including the names of the principals and the contact details of those authorities.

S. 47B(2)  
amended by  
No. 34/2013  
s. 35(Sch. 2  
item 1.16).

- (2) The Authority must make the register available for inspection without charge to any person at the business address of the Authority during normal business hours.

S. 47C  
inserted by  
No. 42/2006  
s. 37.

#### **47C Recording and publishing of determinations**

S. 47C(1)  
amended by  
Nos 34/2013  
s. 35(Sch. 2  
item 1.17),  
43/2025  
s. 50(1).

- (1) The Authority must keep a record of any adjudication determinations that it receives.

S. 47C(2)  
amended by  
Nos 34/2013  
s. 35(Sch. 2  
item 1.17),  
43/2025  
s. 50(2).

- (2) The Authority may publish information in a determination received under section 23A if—
- (a) the information does not identify any person or body referred to in the determination or disclose the address or location of that person or body; and
  - (b) the identity, address or location of any person or body referred to in the determination cannot reasonably be determined from the information.

## Part 4—Miscellaneous

### 48 No contracting out

- (1) The provisions of this Act have effect despite any provision to the contrary in any contract.
- (2) A provision of any agreement, whether in writing or not—
  - (a) under which the operation of this Act is, or is purported to be, excluded, modified or restricted, or that has the effect of excluding, modifying or restricting the operation of this Act; or
  - (b) that may reasonably be construed as an attempt to deter a person from taking action under this Act—

is void.

S. 48  
substituted by  
No. 42/2006  
s. 38.

### 49 Confidentiality

The Authority, a Commissioner (within the meaning of the **Building Act 1993**), the chief executive officer of the Authority and any member of staff of the Authority must not use or disclose any information received by the Authority under this Act except to the extent necessary for the performance of any functions or duties or the exercise of any powers of the Authority under this Act or under Subdivision 2 of Division 1A of Part 11 or Division 3 of Part 11 of the **Building Act 1993**.

S. 49  
substituted by  
No. 42/2006  
s. 38,  
amended by  
Nos 34/2013  
s. 35(Sch. 2  
item 1.18),  
11/2023 s. 53.

**S. 50**  
amended by  
No. 42/2006  
s. 39,  
substituted by  
No. 43/2025  
s. 51.

## **50 Service of documents**

- (1) A document that by or under this Act is authorised or required to be served on, given to or lodged with a person may be served on, given to or lodged with the person—
  - (a) in the manner (if any) required by the construction contract if it is reasonably practicable to do so; or
  - (b) in any other case—
    - (i) by personally delivering the document to the person; or
    - (ii) by leaving the document for the person at the person's ordinary place of business; or
    - (iii) by sending the document by post addressed to the person to the person's ordinary place of business; or
    - (iv) in any other manner instructed by the person as being an acceptable manner for the service, giving or lodging of the document; or
    - (v) in the prescribed manner.
- (2) The time at which a document is taken to have been served on, given to or lodged with a person under subsection (1) is taken to be—
  - (a) in the case of delivery in person—
    - (i) at the time at which the document is delivered to the person; or
    - (ii) if the person refuses to accept the document, when the document is put down in the person's presence and the person is informed of the nature of the document; or

- (b) in the case of a document left for the person at the person's ordinary place of business, when the document is left at the place of business with a person who appears to be employed by the business; or
- (c) in the case of a document that is posted—
  - (i) 7 business days after the day on which the document is posted; or
  - (ii) if the document is delivered to the person on an earlier day, on that day; or
- (d) in the case of a prescribed manner for the serving, giving or lodgement of a document, at the prescribed time.

**Note**

A document that is sent to a person by email or any other form of electronic communication is taken to be served on a person at the time the email or other form of electronic communication is received by the person. See section 13A of the **Electronic Transactions (Victoria) Act 2000**.

- (3) A document served on, given to or lodged with an agent of a person in accordance with this section is taken to have been served on, given to, or lodged with the person.

**51 Supreme Court—limitation of jurisdiction**

- (1) It is the intention of section 46, as amended by section 47 of the **Building Legislation Amendment (Fairer Payments on Jobsites and Other Matters) Act 2025**, to alter or vary section 85 of the **Constitution Act 1975**.

**S. 51**  
amended by  
**No. 42/2006**  
s. 40 (ILA  
s. 39B(1)).

**S. 51(1)**  
substituted by  
**No. 43/2025**  
s. 52(1).

S. 51(2)  
inserted by  
No. 42/2006  
s. 40,  
substituted by  
No. 43/2025  
s. 52(2).

- (2) It is the intention of section 28R, as substituted by section 34 of the **Building Legislation Amendment (Fairer Payments on Jobsites and Other Matters) Act 2025**, to alter or vary section 85 of the **Constitution Act 1975**.

## 52 Regulations

S. 52(1)  
substituted by  
No. 42/2006  
s. 41.

- (1) The Governor in Council may make regulations for or with respect to—
- (a) prescribing forms for any purpose of this Act;
  - (b) prescribing information to be provided under this Act;

S. 52(1)(ba)  
inserted by  
No. 43/2025  
s. 53.

- (ba) prescribing a provision or a class of provision in a construction contract or in a class of construction contract that is to be taken to be of no effect;

S. 52(1)(bb)  
inserted by  
No. 43/2025  
s. 53.

- (bb) prescribing circumstances in which a provision referred to in paragraph (ba) may be excepted from having no effect;
- (c) any other matter or thing required or permitted by this Act to be prescribed or necessary to be prescribed to give effect to this Act.

S. 52(2)  
substituted by  
No. 42/2006  
s. 41.

- (2) Regulations made under this Act—
- (a) may provide in a specified case or class of cases for the exemption of persons or things or a class of persons or things from any of the provisions of this Act whether unconditionally or on specified conditions and either wholly or to such an extent as is specified; and
  - (b) may differ according to differences in time, place and circumstance.

- (3) The commencement of a regulation referred to in section 5, 6 or 7 does not affect the operation of this Act with respect to construction work carried out, or related goods and services supplied, under a construction contract entered into before that commencement.

**53 Transitional provision—Building and Construction Industry Security of Payment (Amendment) Act 2006**

S. 53  
substituted by  
No. 42/2006  
s. 42.

This Act as amended by the **Building and Construction Industry Security of Payment (Amendment) Act 2006** (*the 2006 Act*) does not apply to or in respect of a payment claim for a progress payment to which a person is entitled under a construction contract entered into before the commencement of section 42 of the 2006 Act and any such payment claim is to be dealt with in accordance with this Act as if the 2006 Act had not been enacted.

**54 Transitional provisions—Building Legislation Amendment (Fairer Payments on Jobsites and Other Matters) Act 2025**

S. 54  
repealed by  
No. 42/2006  
s. 43,  
new s. 54  
inserted by  
No. 43/2025  
s. 54.

- (1) Subject to this section, this Act as amended by Part 2 of the amending Act applies in respect of a construction contract that is entered into before, on or after the commencement of Part 2 of the amending Act.
- (2) Subject to this section, the amendments (including repeals) made to Part 3 by Part 2 of the amending Act do not apply in respect of a payment claim served under section 14, or an adjudication application made under section 18 but not determined, before the commencement of Part 2 of the amending Act.

- (3) Despite subsection (2), section 28R as substituted by section 34 of the amending Act applies to an adjudication certificate relating to a payment claim that is served under Part 3 before, on or after the commencement of section 34 of the amending Act.
- (4) Section 41(1), as amended by section 39(1) of the amending Act, applies only in relation to an adjudication determination made under section 23 after the commencement of section 39(1) of the amending Act.
- (5) In regard to the amendment made to section 41(2) by section 39(2) of the amending Act—
  - (a) the amendment applies only to an offence alleged to have been committed under section 41(2) on or after the commencement of section 39(2) of the amending Act; and
  - (b) if an offence under section 41(2) is alleged to have been committed between 2 dates, one before and one after the commencement of section 39(2) of the amending Act, the offence is alleged to have been committed before the commencement of section 39(2) of the amending Act.
- (6) The repeal of Division 2A of Part 3 by section 28 of the amending Act and the amendments (including repeals) made consequent to that repeal by the amending Act do not apply in respect of an adjudication review application that is made but not determined before the commencement of section 28 of the amending Act.

- (7) Despite subsection (2), section 28 as amended by section 27 of the amending Act, applies in respect of an adjudication application that is made under section 18 and not determined before the commencement of section 27 of the amending Act.
- (8) Despite subsection (2), section 28Q as amended by section 33 of the amending Act, applies in respect of a payment claim that is served under Part 3 before, on or after the commencement of section 33 of the amending Act.
- (9) Despite subsection (2), section 50 as substituted by section 51 of the amending Act applies in respect of any document that is required to be served on, given to or lodged with a person on or after the commencement of section 51 of the amending Act.
- (10) Despite subsection (1), a regulation made under section 52(1)(ba) or (bb) as inserted by section 53 of the amending Act does not apply to a provision of a construction contract entered into before the commencement of any such regulation.
- (11) In this section—

*amending Act* means the **Building Legislation Amendment (Fairer Payments on Jobsites and Other Matters) Act 2025**.

S. 55  
inserted by  
No. 43/2025  
s. 54.

**55 Transitional regulations—Building Legislation Amendment (Fairer Payments on Jobsites and Other Matters) Act 2025**

- (1) The Governor in Council may make regulations containing provisions of a transitional nature, including matters of an application or savings nature, arising as a result of the enactment of the **Building Legislation Amendment (Fairer Payments on Jobsites and Other Matters) Act 2025** (including the repeals and amendments made by that Act).
  - (2) Regulations made under this section may—
    - (a) have a retrospective effect to a day on or from the day on which the **Building Legislation Amendment (Fairer Payments on Jobsites and Other Matters) Act 2025** receives the Royal Assent; and
    - (b) be of limited or general application; and
    - (c) leave any matter or thing to be decided by a specified person or class of person; and
    - (d) provide for the exemption of persons or classes of person from any of the regulations made under this section.
  - (3) Regulations made under this section have effect despite anything to the contrary in any Act (other than this Act or the **Charter of Human Rights and Responsibilities Act 2006**) or in any subordinate instrument.
  - (4) This section is **repealed** on the second anniversary of the day on which it comes into operation.
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## Endnotes

### 1 General information

See [www.legislation.vic.gov.au](http://www.legislation.vic.gov.au) for Victorian Bills, Acts and current authorised versions of legislation and up-to-date legislative information.

*Minister's second reading speech—*

*Legislative Assembly: 21 March 2002*

*Legislative Council: 24 April 2002*

The long title for the Bill for this Act was "A Bill to provide for entitlements to progress payments for persons who carry out construction work or who supply related goods and services under construction contracts and for other purposes."

#### **Constitution Act 1975:**

*Section 85(5) statement:*

*Legislative Assembly: 21 March 2002*

*Legislative Council: 24 April 2002*

*Absolute majorities:*

*Legislative Assembly: 24 April 2002*

*Legislative Council: 7 May 2002*

The **Building and Construction Industry Security of Payment Act 2002** was assented to on 14 May 2002 and came into operation on 31 January 2003: section 2(2).

### **INTERPRETATION OF LEGISLATION ACT 1984 (ILA)**

#### **Style changes**

Section 54A of the ILA authorises the making of the style changes set out in Schedule 1 to that Act.

#### **References to ILA s. 39B**

Sidenotes which cite ILA s. 39B refer to section 39B of the ILA which provides that where an undivided section or clause of a Schedule is amended by the insertion of one or more subsections or subclauses, the original section or clause becomes subsection or subclause (1) and is amended by the insertion of the expression "(1)" at the beginning of the original section or clause.

### **Interpretation**

As from 1 January 2001, amendments to section 36 of the ILA have the following effects:

- **Headings**

All headings included in an Act which is passed on or after 1 January 2001 form part of that Act. Any heading inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, forms part of that Act. This includes headings to Parts, Divisions or Subdivisions in a Schedule; sections; clauses; items; tables; columns; examples; diagrams; notes or forms. See section 36(1A)(2A).

- **Examples, diagrams or notes**

All examples, diagrams or notes included in an Act which is passed on or after 1 January 2001 form part of that Act. Any examples, diagrams or notes inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, form part of that Act. See section 36(3A).

- **Punctuation**

All punctuation included in an Act which is passed on or after 1 January 2001 forms part of that Act. Any punctuation inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, forms part of that Act. See section 36(3B).

- **Provision numbers**

All provision numbers included in an Act form part of that Act, whether inserted in the Act before, on or after 1 January 2001. Provision numbers include section numbers, subsection numbers, paragraphs and subparagraphs. See section 36(3C).

- **Location of "legislative items"**

A "legislative item" is a penalty, an example or a note. As from 13 October 2004, a legislative item relating to a provision of an Act is taken to be at the foot of that provision even if it is preceded or followed by another legislative item that relates to that provision. For example, if a penalty at the foot of a provision is followed by a note, both of these legislative items will be regarded as being at the foot of that provision. See section 36B.

- **Other material**

Any explanatory memorandum, table of provisions, endnotes, index and other material printed after the Endnotes does not form part of an Act. See section 36(3)(3D)(3E).

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Endnotes

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## 2 Table of Amendments

This publication incorporates amendments made to the **Building and Construction Industry Security of Payment Act 2002** by Acts and subordinate instruments.

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**Building and Construction Industry Security of Payment (Amendment) Act 2006, No. 42/2006**

*Assent Date:* 25.7.06  
*Commencement Date:* Ss 38, 39, 41 on 26.7.06: s. 2(1); ss 4–37, 40, 42, 43 on 30.3.07: s. 2(3)  
*Current State:* This information relates only to the provision/s amending the **Building and Construction Industry Security of Payment Act 2002**

**Building and Planning Legislation Amendment (Governance and Other Matters) Act 2013, No. 34/2013**

*Assent Date:* 18.6.13  
*Commencement Date:* S. 35(Sch. 2 item 1) on 1.7.13: s. 2  
*Current State:* This information relates only to the provision/s amending the **Building and Construction Industry Security of Payment Act 2002**

**Building Legislation Amendment Act 2023, No. 11/2023**

*Assent Date:* 6.6.23  
*Commencement Date:* S. 53 on 1.2.24: s. 2(2)  
*Current State:* This information relates only to the provision/s amending the **Building and Construction Industry Security of Payment Act 2002**

**Building Legislation Amendment (Fairer Payments on Jobsites and Other Matters) Act 2025, No. 43/2025**

*Assent Date:* 13.11.25  
*Commencement Date:* Ss 3–25(3), 25(5)–45(2), 45(4)–54 on 15.4.26: Special Gazette (No. 189) 14.4.26 p. 1  
*Current State:* This information relates only to the provision/s amending the **Building and Construction Industry Security of Payment Act 2002**

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**3 Explanatory details**

No entries at date of publication.