

Health Legislation Amendment Bill 2014

Amendments during consideration in detail to be moved by
The Honourable the Minister for Housing and Public Works

1 After clause 15

Page 13, after line 19—

insert—

Part 2A

**Amendment of Building
and Construction
Industry Payments
Amendment Act 2014**

15A Act amended

This part amends the *Building and Construction Industry Payments Amendment Act 2014*.

15B Replacement of s 44 (Insertion of new pt 7, div 2)

Section 44—

omit, insert—

44 Insertion of new pt 7, div 2

After section 112—

insert—

Division 2

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

113 Definitions for div 2

In this division—

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

former, in relation to a provision, means the provision as in force immediately before the amendment of the provision under the amendment Act.

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

114 Registration of authorised nominating authorities

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registration or application for renewal of registration made, but not decided, before the commencement is taken to be withdrawn.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

application for registration means an application for registration as an authorised nominating authority under repealed section 42.

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

115 Adjudication applications made to authorised nominating authorities for referral to adjudicators

- (1) This section applies to an adjudication application made to an authorised nominating authority, but not yet referred to an adjudicator, under former section 21 before the commencement.
- (2) The authorised nominating authority must refer the application, as soon as practicable, to a person eligible to be an adjudicator under section 22.

Note—

Section 116 would apply in relation to the payment claim to which the adjudication application relates, including in relation to the adjudication of the payment claim.

- (3) Former section 107(2) continues for the purpose of referring the adjudication application under subsection (2) despite the repeal of that section under the amendment Act.
- (4) An adjudication application referred to an adjudicator under subsection (2) is taken to have been referred by the registrar.

116 Outstanding matters for existing payment claims to be dealt with under transitional version of the Act

- (1) This section applies if a payment claim was served on a respondent before the commencement.
- (2) From the commencement, the transitional version of the Act applies to any outstanding matters under this Act relating to the payment claim, including, for example, the following—

- (a) replying to the payment claim by serving a payment schedule on the claimant;
 - (b) the consequences of not paying any or all of the claimed amount for the progress payment to which the payment claim relates;
 - (c) making an adjudication application for adjudication of the payment claim;
 - (d) the adjudication of the payment claim, including—
 - (i) the giving of an adjudication response;
 - (ii) the adjudication procedures;
 - (iii) the adjudicator's decision;
 - (iv) correcting a clerical mistake in an adjudicator's decision;
 - (v) the consequences of not paying the claimant the adjudicated amount;
 - (vi) the filing of an adjudication certificate as a judgement debt;
 - (vii) an adjudicator's entitlement to be paid for adjudicating the payment claim;
 - (e) the claimant suspending work under the construction contract relevant to the payment claim.
- (3) However, a matter mentioned in subsection (2)(c) may be subject to section 115 and subsection (2) does not release an authorised nominating authority of its obligation under that section.
- (4) To remove any doubt, it is declared that this section does not apply if—

- (a) a payment claim was served on a respondent before the commencement and there are, at the commencement, no outstanding matters under this Act relating to the payment claim; or
 - (b) a payment claim is served on a respondent after the commencement and includes an amount that has been the subject of a payment claim that was served on a respondent before the commencement.
- (5) In this section—

transitional version of the Act means the unamended Act as amended by the following amendments of the amendment Act—

- (a) the amendment of the following sections to the extent a reference to the authorised nominating authority in the sections is replaced with a reference to the registrar—

- (i) section 4(4)(d)(ii);
- (ii) section 21(6);
- (iii) section 23(1);
- (iv) section 30(1)(a), (4) and (6);
- (v) section 32(2)(a);

Example of the effect of paragraph (a)—

Claimants may ask the registrar for an adjudication certificate.

- (b) the amendment of section 21(3)(a), (b) and (e);

Example of the effect of paragraph (b)—

- 1 Adjudication applications are to be made to the registrar in the approved form.

- 2 Adjudication applications are to be accompanied by the fee prescribed by regulation for the application.
- (c) the insertion of new section 35B;
 - (d) the amendment of section 84;
 - (e) the amendment of section 100;
 - (f) the replacement of section 101;
 - (g) the amendment of section 111(2);
 - (h) the amendment of the definition *business day*, as defined in schedule 2.

outstanding matter, under this Act, includes a matter under this Act that has yet to be started or is incomplete.

117 New payment claims for existing contracts transitioned to new time requirements

- (1) This section applies if a payment claim—
 - (a) is to be served on a respondent after the commencement; and
 - (b) relates to a construction contract entered into before the commencement.
- (2) The 6 month maximum period for serving the payment claim under section 17A(2)(b) or (3)(c) is extended to 12 months.
- (3) This section expires 6 months after the commencement.

118 Previously expired payment claims not revived by new section 17A

To remove any doubt, it is declared that a claimant can not rely on section 17A(3)(b) to serve a payment claim if, before the commencement, the claimant failed to serve the

claim on a respondent within the time required under former section 17(4).

119 Transitional regulation-making power

- (1) A regulation (a *transitional regulation*) may make provision of a savings or transitional nature to allow or facilitate the change from the operation of the unamended Act to the operation of this Act, as amended by the amendment Act.
- (2) A transitional regulation—
 - (a) may have retrospective operation to a day not earlier than the day this section commences; and
 - (b) must declare it is a transitional regulation.
- (3) This section and any transitional regulation expire 1 year after the commencement.

120 Mandatory training about adjudication changes

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

Editor's note—

Legislation ultimately amended—

- *Building and Construction Industry Payments Act 2004*

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