



Building Industry Fairness (Security of Payment) Bill 2017



Queensland

Building Industry Fairness (Security of Payment) Bill 2017

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2017

A Bill

for

An Act to provide for the security of payment in the building and construction industry by providing for effective, efficient, and fair processes for securing payment, and to amend this Act, the *Building Act 1975*, the *Judicial Review Act 1991*, the *Plumbing and Drainage Act 2002* and the *Queensland Building and Construction Commission Act 1991* for particular purposes, and to repeal the *Building and Construction Industry Payments Act 2004* and the *Subcontractors' Charges Act 1974*

[s 1]

The Parliament of Queensland enacts—	1
Chapter 1 Preliminary	2
Part 1 Introduction	3
1 Short title	4
This Act may be cited as the <i>Building Industry Fairness (Security of Payment) Act 2017</i> .	5 6
2 Commencement	7
(1) This Act, other than the following provisions, commences by proclamation—	8 9
• chapter 9, part 1, division 1	10
• chapter 9, parts 2 and 3	11
• sections 250 to 256, 260 to 265, 266(2) and (3), 267(2) and (3), 270 to 285, 288 to 297, 299 to 303 and 305	12 13
• section 307(2), other than to the extent it inserts new definition <i>minimum financial requirements</i> .	14 15
(2) The <i>Acts Interpretation Act 1954</i> , section 15DA does not apply to chapter 9, part 1, division 2 or 3.	16 17
<i>Note—</i>	18
The <i>Acts Interpretation Act 1954</i> , section 15DA, provides for the automatic commencement of certain Acts 1 year after they are assented to.	19 20 21

3	The main purpose of Act	1
(1)	The main purpose of this Act is to help people working in the building and construction industry in being paid for the work they do.	2 3 4
(2)	The main purpose of this Act is to be achieved primarily by—	5
(a)	requiring the use of project bank accounts for particular building contracts; and	6 7
(b)	granting an entitlement to progress payments, whether or not the relevant contract makes provision for progress payments; and	8 9 10
(c)	establishing a procedure for—	11
(i)	making payment claims; and	12
(ii)	responding to payment claims; and	13
(iii)	the adjudication of disputed payment claims; and	14
(iv)	the recovery of amounts claimed; and	15
(d)	enabling the use of a statutory charge in favour of subcontractors for payment of the work they do.	16 17
Part 2	Application and operation of Act	18 19
4	Act binds all persons	20
	This Act binds all persons, including the State, and, as far as the legislative power of the Parliament permits, the Commonwealth and the other States.	21 22 23

[s 5]

Part 3	Interpretation	1
5	Definitions	2
	The dictionary in schedule 2 defines particular words used in this Act.	3 4
6	Subcontracts, subcontractors and subcontracted work	5
(1)	A contract is a <i>subcontract</i> for another contract if—	6
(a)	performance of the contract contributes to the performance of the other contract because the work, required to be carried out under the contract, will form all or part of the work required to be carried out under the other contract; and	7 8 9 10 11
(b)	the contribution mentioned in paragraph (a) is not merely coincidence.	12 13
	<i>Example for paragraph (b)—</i>	14
	the purchase of tools from a retail store	15
(2)	To remove any doubt, it is declared that—	16
(a)	the contribution mentioned in subsection (1)(a) may be indirect because the contract contributes to the performance of 1 or more other subcontracts in order to contribute to the other contract; and	17 18 19 20
	<i>Note—</i>	21
	A subcontract that contributes directly to a contract would have 1 entity that is both a party to the subcontract and a party to the contract.	22 23 24
(b)	a contract may be a subcontract for another contract regardless of whether any party to the contract is also a party to the other contract.	25 26 27
(3)	If the party to a contract, who is required to carry out work under the contract, subcontracts all or part of the work—	28 29

-
- (a) the resulting subcontract is a subcontract for the contract; and
- (b) the person required to carry out the work under the subcontract is a **subcontractor** for the contract; and
- (c) the work required to be carried out under the subcontract is the **subcontracted work** for the contract.
- (4) The categories of subcontracts are first tier subcontracts, second tier subcontracts, third tier subcontracts and so on.
- (5) A subcontract is a **first tier subcontract** for a contract if—
- (a) performance of the subcontract contributes directly to the performance of the contract; and
- (b) 1 person is both a party to the subcontract and a party to the contract.
- (6) A subcontract is a **second tier subcontract** for a contract if—
- (a) performance of the subcontract contributes to the performance of the contract only by also contributing to the performance of another subcontract for the contract; and
- (b) no party to the subcontract is also a party to the contract; and
- (c) 1 person is both a party to the subcontract and a party to the other subcontract.
- (7) A subcontract is a **higher subcontract** for another subcontract if—
- (a) performance of the other subcontract contributes to the performance of the subcontract because the work, required to be carried out under the other subcontract, will form all or part of the work required to be carried out under the subcontract; and
- (b) both subcontracts are subcontracts for the same contract.
- Example—*
- A first tier subcontract would be a higher subcontract for a third tier subcontract if the work required to be carried out under the third tier

[s 7]

subcontract will form all or part of the work required to be carried out
under the first tier subcontract. 1
2

Chapter 2 Project bank accounts 3

Part 1 Preliminary 4

7 Purpose of chapter 5

The main purpose of this chapter is to ensure that money to be
paid to particular subcontractors is held in a way that protects
the interests of the subcontractors. 6
7
8

8 Definitions for chapter 9

In this chapter— 10

building means a fixed structure that is wholly or partly
enclosed by walls or is roofed. 11
12

building contract— 13

(a) means a contract or other arrangement for carrying out
building work in Queensland (whether or not the
contract or arrangement is also for other matters); but 14
15
16

(b) does not include a subcontract. 17

building work— 18

(a) means— 19

(i) the erection or construction of a building; or 20

(ii) the renovation, alteration, extension, improvement
or repair of a building; or 21
22

-
- (iii) the provision of lighting, heating, ventilation, airconditioning, water supply, sewerage or drainage in connection with a building; or 1
2
3
- (iv) any site work (including the construction of retaining structures) related to work of a kind referred to above; or 4
5
6
- (v) the preparation of plans or specifications for the performance of building work; or 7
8
- (vi) contract administration carried out by a person in relation to the construction of a building designed by the person; or 9
10
11
- (vii) fire protection work; or 12
- (viii) carrying out a completed building inspection; or 13
- (ix) the inspection or investigation of a building, and the provision of advice or a report, for termite management systems for the building or for termite infestation in the building; and 14
15
16
17
- (b) includes work prescribed by regulation; and 18
- (c) does not include work prescribed by regulation. 19
- contracted building work***, for a building contract, means the building work required to be carried out under the contract. 20
21
- contract price*** see section 10. 22
- defects liability period***, for a building contract, means— 23
- (a) the period worked out under the contract as being the period— 24
25
- (i) starting on the day of practical completion for the work; and 26
27
- (ii) ending on the last day any omission or defect in the work may be required or directed to be rectified under the contract; or 28
29
30
- (b) if the contract does not provide for a period mentioned in paragraph (a)—the statutory defects liability period 31
32

[s 8]

under the <i>Queensland Building and Construction Commission Act 1991</i> , section 67NA.	1 2
<i>disputed funds account</i> see section 23(1)(c).	3
<i>fire protection work</i> see the <i>Queensland Building and Construction Commission Act 1991</i> , schedule 2.	4 5
<i>first tier subcontract</i> see section 6(5).	6
<i>general trust account</i> see section 23(1)(a).	7
<i>head contractor</i> means the party to a building contract who is required to carry out building work under the contract.	8 9
<i>maintenance work</i> —	10
(a) means work required on an ongoing basis to—	11
(i) prevent deterioration or failure of a thing; or	12
(ii) restore a thing to its correct operating specifications; or	13 14
(iii) replace a component at the end of its working life; but	15 16
(b) does not include—	17
(i) improving a building to increase its capabilities or functions; or	18 19
(ii) improving a building to meet new statutory requirements applying to the thing; or	20 21
(iii) a refurbishment or replacement of a building that extends the life of the building.	22 23
<i>payment dispute</i> see section 35(2).	24
<i>practical completion</i> , for building work, means—	25
(a) the day for practical completion as worked out under the building contract for the work; or	26 27
(b) if the building contract for the work does not provide for the day of practical completion—the day the work is completed—	28 29 30

-
- (i) in compliance with the contract, including all plans and specifications for the work and all statutory requirements applying to the work; and
- (ii) without any defects or omissions, other than minor defects or minor omissions that will not unreasonably affect the intended use of the work.
- principal** means the party to a building contract for whose benefit building work is to be carried out under the contract.
- project bank account** see section 9(1).
- related entity** see section 19.
- retention account** see section 23(1)(b).
- retention amount** means an amount that—
- (a) is payable as part of the contract price under a building contract, but may, under the contract, be withheld from payment—
- (i) during the progress of the building work the subject of the contract; or
- (ii) during the defects liability period for the contract; or
- (iii) both during the progress of the building work and for a maintenance period; and
- (b) is withheld from payment under a building contract to give financial protection in relation to the need to correct defects in the work, or otherwise to secure, wholly or partly, the performance of the contract.
- site testing** see the *Queensland Building and Construction Commission Act 1991*, schedule 2.
- State authority**—
- (a) means—
- (i) a department; or

[s 9]

- (ii) an agency, authority, commission, corporation, instrumentality, office, or other entity, established under an Act or under State authorisation for a public or State purpose; or 1
2
3
4
 - (iii) a corporation owned by the State or a local government, or a subsidiary of a corporation owned by the State or a local government, declared by regulation to be a State authority; or 5
6
7
8
 - (iv) a part of an entity mentioned in subparagraphs (i) to (iii); but 9
10
- (b) does not include an entity prescribed by regulation. 11
- subcontractor beneficiary**, for a project bank account, means a subcontractor that— 12
13
- (a) as a party to a subcontract for the building contract is required to carry out subcontracted work; and 14
15
 - (b) is a beneficiary of the project bank account. 16
- supplier** see section 11. 17
- variation**, of a building contract, means an addition to, or an omission from, the building work required to be carried out under the contract. 18
19
20

9 What is a **project bank account** 21

- (1) A **project bank account** is a trust over the following amounts— 22
23
- (a) an amount paid by the principal to the head contractor under a building contract; 24
25
 - (b) an amount a subcontractor is entitled to be paid by the head contractor under a first tier subcontract; 26
27
 - (c) a retention amount withheld from a subcontractor under a first tier subcontract; 28
29
 - (d) an amount that is the subject of a payment dispute. 30
- (2) The head contractor is the trustee of the project bank account. 31

-
- (3) The head contractor and each subcontractor are the beneficiaries of the project bank account and have a beneficial interest in the amounts held on trust under the project bank account to the extent of—
- (a) for a subcontractor—an amount the subcontractor is entitled to be paid under its subcontract, including a retention amount and an amount the subject of a payment dispute; or
 - (b) for the head contractor—the remainder for the project bank account.
- (4) A subcontractor—
- (a) becomes a beneficiary when its subcontract is entered into; and
 - (b) ceases to be a beneficiary when paid all amounts, including any retention amount, it is entitled to be paid under its subcontract.
- (5) In this section—
- remainder*, for a project bank account, means the amount held in trust under the project bank account after subtracting all of the following amounts—
- (a) an amount a subcontractor is entitled to be paid by the head contractor under a first tier subcontract;
 - (b) a retention amount withheld from a subcontractor under a first tier subcontract;
 - (c) an amount that is the subject of a payment dispute.
- subcontractor*, for a building contract, means a subcontractor, other than a supplier, for a first tier subcontract for the building contract.

10 Contract price

- (1) The *contract price*, for a building contract, means the amount the head contractor is entitled to be paid under the contract or, if the amount can not be accurately calculated, the reasonable

[s 11]

estimate of the amount the head contractor is entitled to be paid under the contract.	1 2
(2) An amount mentioned in subsection (1) is inclusive of GST.	3
11 Who is a <i>supplier</i>	4
(1) A subcontractor is a <i>supplier</i> if, under their subcontract, the subcontractor is only required to supply goods or services without also carrying out building work.	5 6 7
(2) However, a subcontractor is not a <i>supplier</i> if the goods supplied are—	8 9
(a) materials or components that were specifically manufactured, or significantly modified, by the subcontractor for incorporation into the building work to be carried out under the head contract for the subcontract; or	10 11 12 13 14
(b) plant or materials that were specifically manufactured, or significantly modified, by the subcontractor for use in connection with the building work to be carried out under the head contract for the subcontract.	15 16 17 18
(3) In this section—	19
<i>head contract</i> , for a subcontract, means the building contract—	20 21
(a) that is not also a subcontract; and	22
(b) for which the subcontracted work is to form all or part of the contracted building work.	23 24
<i>Note</i> —	25
The subcontracted work may first form part of other subcontracted work before it forms part of the building work to be carried out under the head contract.	26 27 28
12 References to particular terms in this chapter	29
In this chapter—	30

(a)	a reference to a building contract in association with a reference to a project bank account is a reference to the building contract for which the project bank account is required; and	1 2 3 4
(b)	a reference to a principal in association with a reference to a project bank account is a reference to the principal for the building contract for which the project bank account is required; and	5 6 7 8
(c)	a reference to a head contractor in association with a reference to a project bank account is a reference to the head contractor for the building contract for which the project bank account is required; and	9 10 11 12
(d)	a reference to a subcontract in association with a reference to a project bank account is a reference to a subcontract for the building contract for which the project bank account is required; and	13 14 15 16
(e)	a reference to a subcontractor beneficiary in association with a reference to a project bank account is a reference to a subcontractor beneficiary for the project bank account; and	17 18 19 20
(f)	a reference to a trust account in association with a reference to a project bank account is a reference to a trust account opened for the project bank account.	21 22 23
Part 2	When project bank accounts required	24 25
Division 1	Building contracts requiring project bank account	26 27
13	Building contracts requiring a project bank account	28
(1)	A project bank account is required for a building contract if—	29

[s 14]

- (a) the contract is a PBA contract under section 14 or 15;
and
 - (b) the head contractor enters into a subcontract for all or
part of the contracted building work.
 - (2) However, a project bank account is not required for a building
contract if it is a building contract for which a project bank
account is not required under division 2.
 - (3) If a project bank account is required for a building contract
under subsection (1), the requirement continues until the
contract ends, regardless of any of the following—
 - (a) a variation, or any other amendment, of the contract;
 - (b) a change in the contract price;
 - (c) a change in the work to be carried out under the
contract.
- 14 Particular government building contracts**
- (1) A building contract is a PBA contract if—
 - (a) the principal for the contract is—
 - (i) the State; or
 - (ii) a State authority that has decided a project bank
account is to be established for the contract; and
 - (b) more than 50% of the contract price is for building
work; and
 - (c) the contract price for the building contract is \$1 million
or more but not more than \$10 million; and
 - (d) the building contract is not a subcontract for another
building contract.
 - (2) A building contract may, by regulation, be declared a PBA
contract if the principal for the contract is the State or a State
authority.

15	Amendment of building contract	1
(1)	A building contract becomes a PBA contract if—	2
(a)	before an amendment of the contract, the contract is not a building contract described in section 14; but	3 4
(b)	after an amendment of the contract, the contract is a building contract described in section 14.	5 6
(2)	However, if the only amendment of the building contract is an increase in the contract price, the contract is a PBA contract only if the amendment of the contract, together with any earlier amendments of the contract, increases the contract price by 30% or more.	7 8 9 10 11
(3)	In this section—	12
	<i>amendment</i> , of a building contract, includes any variation of the contract or change in the contract price.	13 14
Division 2	Building contracts not requiring project bank account	15 16
16	Building contracts for residential construction work	17
(1)	A project bank account is not required for a building contract if the only building work that the contract is for residential construction work.	18 19 20
(2)	However, subsection (1) does not apply to a building contract if—	21 22
(a)	the principal for the contract is the department; and	23
(b)	the residential construction work relates to 3 or more living units.	24 25
(3)	For subsection (2)(b)—	26
(a)	a single detached dwelling is taken to be 1 living unit; and	27 28
(b)	a residential unit is taken to be 1 living unit; and	29

[s 16]

(c) a duplex is taken to be 2 living units. 1

(4) In this section— 2

building envelope, for a residence or related roofed building, 3
means the outermost sides of the aggregation of the 4
components of a building that have the primary function of 5
separating the internal part of the residence or related roofed 6
building from the external environment. 7

Example of a building envelope— 8

the slab and footings system, an external wall and a roof 9

related roofed building means a building— 10

(a) means a building that— 11

(i) has a roof designed to be part of the building and is 12
impervious to water or wind; and 13

(ii) is, or is proposed to be, on the site of a residence or 14
proposed residence; and 15

(iii) is used, or proposed to be used, for a purpose 16
related to the use of a residence or proposed 17
residence; but 18

(b) does not include— 19

(i) a residence; or 20

(ii) a building if the roof is a sail, umbrella or similar 21
thing. 22

regulated amount means \$3,300 or the higher amount, if any, 23
prescribed by a regulation. 24

residential construction work means— 25

(a) any of the following work if carried out by a licensed 26
contractor and the insurable value of the work is more 27
than the regulated amount— 28

(i) the erection or construction of a residence or 29
related roofed building; 30

(ii)	building work within the building envelope of a residence or related roofed building;	1 2
(iii)	building work for anything attached or connected to a residence or related roofed building that requires building or plumbing approval;	3 4 5
(iv)	the erection, construction or installation of a swimming pool within the meaning of the <i>Building Act 1975</i> , schedule 2;	6 7 8
(v)	other building work prescribed by regulation; and	9
(b)	includes additional work, whether or not it is building work, that may be contracted to be carried out under a building contract if—	10 11 12
(i)	for work relating to a residence—the work is carried out on the site of the residence or proposed residence and is for residential purposes; or	13 14 15
(ii)	for work relating to a related roofed building—the work is carried out on the site of the building or proposed building and is for residential purposes.	16 17 18
	<i>residential unit</i> means a part of a building designed for separate occupation as a residence.	19 20
17	Building contracts for maintenance work	21
	A project bank account is not required for a building contract if the only building work that the contract is for is maintenance work.	22 23 24
18	Government contracts tendered before commencement	25
(1)	A project bank account is not required for a building contract if—	26 27
(a)	the principal is the State or a State authority; and	28

[s 19]

- (b) the first time the tender for the contract was issued or advertised was before the commencement of this section. 1
2
3
- (2) To remove any doubt, it is declared that the project bank account continues to not be required for the building contract regardless of any of the following— 4
5
6
 - (a) a variation, or any other amendment, of the contract; 7
 - (b) a change in the contract price; 8
 - (c) a change in the work to be carried out under the contract. 9
10

Division 3 Related entities 11

19 Who is a *related entity* 12

- (1) A person is a *related entity* for another person if— 13
 - (a) for individuals—they are members of the same family; 14
or 15
 - (b) for an individual and a corporation—the individual or a member of the individual’s family— 16
17
 - (i) is a majority shareholder, director or secretary of the corporation or a related body corporate of the corporation; or 18
19
20
 - (ii) has an interest of 50% or more in the corporation; 21
or 22
 - (c) for an individual and a trustee of a trust—the individual or a related entity under another provision of this section is a beneficiary of the trust; or 23
24
25
 - (d) for corporations—they are related bodies corporate; or 26
 - (e) for a corporation and a trustee of a trust—the corporation or a related entity under another provision of this section is a beneficiary of the trust; or 27
28
29

(f)	for trustees of 2 or more trusts—	1
(i)	a person is a beneficiary of both trusts; or	2
(ii)	a person is a beneficiary of 1 trust and a related entity under another provision of this section is a beneficiary of the other trust.	3 4 5
(2)	Also, a person is a <i>related entity</i> for another person if the persons acquire interests in a land holding trust and the acquisitions form, evidence, give effect to or arise from what is substantially 1 arrangement.	6 7 8 9
(3)	In this section—	10
	<i>family</i> , for a person, means—	11
(a)	the person’s spouse; or	12
(b)	a parent of the person or the person’s spouse; or	13
(c)	a grandparent of the person or the person’s spouse; or	14
(d)	a brother, sister, nephew or niece of the person or the person’s spouse; or	15 16
(e)	a child of the person or the person’s spouse; or	17
(f)	a grandchild of the person; or	18
(g)	the spouse of any person mentioned in paragraphs (b) to (f).	19 20
	<i>land holding trust</i> see the <i>Duties Act 2001</i> , schedule 6.	21
	<i>related body corporate</i> see the Corporations Act, section 50.	22
20	Application of chapter if parties to a subcontract are related entities	23 24
(1)	This section applies if—	25
(a)	a project bank account is required for a building contract; and	26 27
(b)	a subcontractor, for a first tier subcontract, is a related entity for the head contractor.	28 29

[s 21]

- (2) A project bank account is also required for the first tier subcontract if the subcontractor further subcontracts all or part of the building work it is required to carry out under the subcontract. 1
2
3
4
- (3) For the purpose of subsection (2), this chapter, other than this division, applies as if— 5
6
- (a) a reference to a principal is taken to be a reference to the head contractor; and 7
8
- (b) a reference to a head contractor is taken to be a reference to the subcontractor for a first tier subcontract; and 9
10
- (c) a reference to a subcontractor (the *higher subcontractor*) for a first tier subcontract is taken to be a reference to a subcontractor for a second tier subcontract to which the higher subcontractor is a party. 11
12
13
14
- (4) To remove any doubt, it is declared that the subcontractor continues to be a subcontractor beneficiary under the project bank account for the building contract. 15
16
17
- (5) In this section— 18
subcontractor does not include a supplier. 19

21 Notices about related entities 20

- (1) This section applies if a project bank account is established for a building contract. 21
22
- (2) If the principal knows that a subcontractor beneficiary is a related entity for the head contractor, the principal must advise the commissioner of the matter in the approved form within 5 business days after the person first knows the subcontractor beneficiary is a related entity for the head contractor. 23
24
25
26
27
28
- Maximum penalty—50 penalty units. 29
- (3) For subsection (2), the principal is taken to know a subcontractor beneficiary is a related entity for the head contractor if the principal ought reasonably to know. 30
31
32

-
- (4) If the head contractor enters into a subcontract with a related entity, the head contractor must advise the commissioner and the principal, in the approved form, within 5 business days after entering into the subcontract.
- Maximum penalty—200 penalty units.

Part 3 Project bank accounts

Division 1 Application

22 Application of part

This part applies if a project bank account is required for a building contract under section 13.

Division 2 Establishing project bank accounts

23 Head contractor must establish project bank account

- (1) The head contractor must, within 20 business days after entering into the first subcontract for the building contract, establish a project bank account by opening all of the following trust accounts at the office or a branch of a financial institution within the State—
- (a) an account (*general trust account*) for deposit of amounts relating to the project bank account and withdrawal of amounts payable to a beneficiary;
 - (b) an account (*retention account*) for amounts held as a retention amount;
 - (c) an account (*disputed funds account*) for amounts the subject of a payment dispute.
- Maximum penalty—500 penalty units.

[s 24]

- (2) However, subsection (3) applies if the head contractor has already entered into a subcontract for the building contract before the day (the *start date*) a project bank account is required for the contract.
- Note—*
- Under section 15 a project bank account may be required for a building contract after an amendment of the contract.
- (3) The head contractor must establish the project bank account within 10 business days after the start date.
- Maximum penalty—500 penalty units.
- (4) This section does not apply to a head contractor if the contractor can prove that there is less than 90 days between—
- (a) the day a project bank account is required for the contract; and
- (b) the day of practical completion for the contract.
- (5) In this section—
- practical completion*, for a building contract, means—
- (a) the day for practical completion as worked out under the contract; or
- (b) if the contract does not provide for the day of practical completion—the day that building work carried out under the contract is completed—
- (i) in compliance with the contract, including all plans and specifications for the work and all statutory requirements applying to the work; and
- (ii) without any defects or omissions, other than minor defects or minor omissions that will not unreasonably affect the intended use of the work.

24 Particular requirements for trust accounts

- (1) The head contractor must ensure the following for trust accounts for the project bank account—

-
- (a) deposits of amounts to, and withdrawals of amounts from, the trust accounts can only be made using electronic transfers; and
 - (b) withdrawals from the trust accounts can only be made using a payment instruction given to the financial institution; and
 - (c) transfers between the trust accounts can only be made using a payment instruction given to the financial institution.

Maximum penalty—500 penalty units.

- (2) The head contractor must ensure that the principal can view—
 - (a) deposits of amounts to, and withdrawals of amounts from, a trust account from the project bank account; and
 - (b) payment instructions given to a financial institution about the project bank account; and
 - (c) account payment reports.

Maximum penalty—200 penalty units.

- (3) In this section—

principal includes an agent or employee of the principal if the principal informs the head contractor that the agent or employee is authorised to view the information mentioned in subsection (2).

25 Name of trust account

If opening an account at a financial institution in relation to a project bank account, the head contractor must ensure the account's name includes the words 'trust account'.

Maximum penalty—200 penalty units.

[s 26]

26	Notice of trust account's opening, closing or name change	1 2
(1)	This section applies if the head contractor takes any of the following actions in relation to the project bank account—	3 4
(a)	opens a trust account;	5
(b)	changes the name of a trust account;	6
(c)	closes a trust account.	7
(2)	The head contractor must give the principal written notice of taking the action within 10 business days after taking it. Maximum penalty—200 penalty units.	8 9 10
(3)	The written notice must state the following—	11
(a)	the name of the project bank account;	12
(b)	the name of the trust account;	13
(c)	the name of the financial institution where the trust account is or was kept;	14 15
(d)	the identifying number of the financial institution;	16
	<i>Note—</i>	17
	The identifying number is commonly referred to as the bank state branch number (BSB).	18 19
(e)	the trust account number.	20

Division 3 Payments to project bank account 21

27	All payments from principal to be deposited in project bank account	22 23
(1)	Subsection (2) applies if the principal pays an amount—	24
(a)	to the head contractor under the building contract; or	25
(b)	that otherwise reduces the unpaid amount of the contract price for the building contract.	26 27

-
- (2) The principal must deposit the amount into the general trust account for the project bank account unless—
- (a) the amount was due to be paid before the project bank account was established; or
 - (b) the principal has a reasonable excuse.
- Maximum penalty—200 penalty units.
- (3) An amount deposited under subsection (2) is taken to be a payment made by the principal to the head contractor and discharges the principal's liability to pay that amount to the head contractor under the building contract.
- (4) If an amount is paid to the head contractor or its agent in contravention of subsection (2), the head contractor must deposit the amount into the general trust account as soon as practicable after receiving the amount.
- Maximum penalty for subsection (4)—200 penalty units or 2 years imprisonment.

28 Limited purposes for which money may be deposited into project bank account

- The head contractor must not cause an amount to be deposited into a trust account for any purpose other than—
- (a) paying the head contractor an amount the head contractor is entitled to be paid under the building contract; or
 - (b) paying a subcontractor beneficiary an amount that the beneficiary is entitled to be paid under a subcontract for the building contract; or
 - (c) paying an amount the subject of a payment dispute; or
 - (d) making another payment prescribed by regulation.
- Maximum penalty—200 penalty units or 1 year's imprisonment.

[s 29]

Division 4	Payments from project bank account	1 2
29	All payments to subcontractor beneficiaries to be paid from project bank account	3 4
(1)	This section applies if a subcontractor beneficiary is entitled to be paid an amount under its subcontract.	5 6
(2)	The head contractor may only pay the amount to the subcontractor beneficiary from a trust account. Maximum penalty—200 penalty units or 1 year’s imprisonment.	7 8 9 10
(3)	To remove any doubt, it is declared that the obligation under subsection (2) applies whether or not the amount to be paid is held in a trust account when the amount is due.	11 12 13
	<i>Note—</i> See section 30 about head contractors covering shortfalls.	14 15
30	Head contractor to cover shortfalls	16
(1)	This section applies if the head contractor knows there will be an insufficient amount available in a trust account to pay an amount to a subcontractor beneficiary.	17 18 19
(2)	The head contractor must immediately deposit into the trust account an amount equal to the shortfall. Maximum penalty—100 penalty units or 1 year’s imprisonment.	20 21 22 23
(3)	In this section— shortfall means an amount equal to the difference between the amount available in a trust account and the amount to be paid from the trust account.	24 25 26 27

31	Limited purposes for which money may be withdrawn from project bank account	1 2
(1)	The head contractor must not withdraw an amount from a trust account for any purpose other than—	3 4
(a)	paying a subcontractor beneficiary an amount that the head contractor is liable to pay the subcontractor under a subcontract for the building contract; or	5 6 7
(b)	paying to the head contractor an amount that the principal is liable to pay the head contractor for contracted building work but only to the extent the head contractor is not also liable to pay a subcontractor beneficiary for the same work; or	8 9 10 11 12
(c)	returning an amount paid in error by the principal; or	13
(d)	making another payment prescribed by regulation.	14
	Maximum penalty—300 penalty units or 2 years imprisonment.	15 16
(2)	The head contractor must repay to the trust account all amounts that the head contractor withdraws in contravention of subsection (1) as soon as practicable after withdrawing the amount.	17 18 19 20
	Maximum penalty—300 penalty units or 2 years imprisonment.	21 22
(3)	The head contractor is taken to have made a withdrawal if the head contractor authorises any person to make the withdrawal or knowingly contributes to the withdrawal being made.	23 24 25
32	Order of priority	26
(1)	This section applies if there is an insufficient amount available in a trust account to pay any of the following amounts in full—	27 28 29
(a)	an amount (the <i>subcontractor's amount</i>) a subcontractor beneficiary is entitled to be paid under its subcontract;	30 31 32

[s 33]

- (b) an amount the head contractor is entitled to be paid under the building contract; 1
2
- (c) making another payment (a *prescribed payment*) prescribed by regulation. 3
4
- (2) The head contractor must not withdraw an amount from the trust account to pay itself or make a prescribed payment until the subcontractor's amount is paid in full to the subcontractor beneficiary. 5
6
7
8
- Maximum penalty—300 penalty units or 2 years imprisonment. 9
10
- (3) However, the head contractor may withdraw an amount before the subcontractor's amount is paid in full if the withdrawal is to make a payment ordered by a court or for an adjudication under this Act. 11
12
13
14

33 Insufficient amounts available for payments 15

- (1) This section applies if— 16
- (a) there are 2 or more subcontractor beneficiaries (each a *claimant*) due to be paid an amount from a trust account at the same time; and 17
18
19
- (b) the amount held in the trust account is insufficient to satisfy in full all of the amounts due to be paid to the subcontractor beneficiaries. 20
21
22
- (2) The amount to be paid to each subcontractor beneficiary is to be reduced in proportion to the amounts due to be paid to each. 23
24
25
- Example—* 26
- If one subcontractor beneficiary is due to be paid \$50,000 and another subcontractor beneficiary is due to be paid \$30,000 but only \$40,000 is available, the beneficiaries are to be paid \$25,000 and \$15,000 respectively. 27
28
29
30
- (3) While there continues to be insufficient amounts held in the trust account, the head contractor must not pay a claimant unless the amount paid complies with subsection (2). 31
32
33

Maximum penalty—100 penalty units or 1 year’s imprisonment. 1
2

- (4) Nothing in subsection (2) relieves the head contractor of its liability to pay in full each claimant the amounts they are due to be paid. 3
4
5

Division 5 Retention amounts 6

34 Dealing with retention amounts 7

- (1) The head contractor must ensure that if an amount held in trust under a project bank account is a retention amount, the amount is held in the retention account for the project bank account. 8
9
10
11

Maximum penalty—200 penalty units or 2 years imprisonment. 12
13

- (2) The head contractor must not withdraw an amount held in the retention account unless the withdrawal is to make any of the following payments in accordance with the building contract— 14
15
16
17

(a) payment to a subcontractor beneficiary of an amount withheld under the beneficiary’s subcontract; 18
19

(b) payment to the head contractor of an amount to correct defects in the building work, or otherwise to secure, wholly or partly, the performance of a subcontract by a subcontractor beneficiary; 20
21
22
23

(c) a payment ordered by a court. 24

Maximum penalty—300 penalty units or 2 years imprisonment. 25
26

- (3) The head contractor must ensure an amount held in the retention account is identifiable as being held for the subcontractor beneficiary that is entitled to be paid the amount. 27
28
29
30

[s 35]

Maximum penalty—100 penalty units. 1

Division 6 Payment disputes 2

35 When payment dispute occurs 3

- (1) This section applies if the head contractor is to pay an amount (the *instructed amount*) from a trust account to a subcontractor beneficiary in relation to a progress payment. 4
5
6
- (2) A *payment dispute* occurs if— 7
 - (a) the head contractor gave a payment schedule to the subcontractor beneficiary in relation to the progress payment; and 8
9
10
 - (b) the instructed amount is less than the amount the head contractor proposed to pay the subcontractor beneficiary under the payment schedule. 11
12
13

36 Dealing with amounts if payment dispute occurs 14

- (1) This section applies if the head contractor is to pay an amount (the *instructed amount*) from a trust account to a subcontractor beneficiary in relation to a progress payment and a payment dispute occurs. 15
16
17
18
- (2) The head contractor must, as soon as it becomes aware of the payment dispute, transfer an amount to the disputed funds account that is equal to the difference between— 19
20
21
 - (a) the amount the head contractor proposed to pay under the payment schedule; and 22
23
 - (b) the instructed amount. 24

Maximum penalty—200 penalty units or 1 year's imprisonment. 25
26
- (3) The head contractor must ensure that the amount transferred under subsection (2) is not paid to any person other than the 27
28

subcontractor beneficiary or to another person in the
circumstances prescribed by regulation. 1 2

Maximum penalty—300 penalty units or 2 years
imprisonment. 3 4

- (4) However, if an amount held in the disputed funds account is
no longer needed for the purpose it is held, the head contractor
must return the amount to the general trust account within 5
business days after the contractor becomes aware it is no
longer needed for that purpose. 5 6 7 8 9

Maximum penalty—50 penalty units. 10

Division 7 Ending project bank account 11

37 Ending project bank account 12

- (1) The head contractor may dissolve a project bank account only
if— 13 14

- (a) there are no longer any subcontractor beneficiaries for
the project bank account; or 15 16

Note— 17

A subcontractor beneficiary ceases to be a beneficiary when paid
all amounts, including any retention amounts, it is entitled to be
paid under its subcontract. See section 9. 18 19 20

- (b) the only remaining building work to be carried out under
the building contract is maintenance work. 21 22

- (2) The head contractor dissolves a project bank account by— 23

- (a) closing the trust accounts; and 24

- (b) giving written notice to the principal that the project
bank account has been dissolved. 25 26

- (3) When dissolving a project bank account, the head contractor
may pay itself the following amounts— 27 28

- (a) any amount that is interest the contractor is entitled to
under section 44; 29 30

[s 38]

	(b) any remaining amount that is not otherwise owing to another person.	1 2
38	Unauthorised ending of project bank account	3
(1)	While a project bank account is required for a building contract, the head contractor must not dissolve the project bank account.	4 5 6
	Maximum penalty—500 penalty units or 1 year’s imprisonment.	7 8
(2)	The head contractor is taken to dissolve a project bank account if it—	9 10
	(a) withdraws all amounts held in trust under the project bank account; or	11 12
	(b) closes any of the trust accounts.	13
Division 8	Other	14
39	Amounts in project bank account unavailable for head contractor’s debts	15 16
(1)	An amount paid, or required to be paid, into a trust account for a project bank account can not be—	17 18
	(a) used for payment of the debt of a creditor of the head contractor; or	19 20
	(b) attached or taken in execution under a court order or process for the benefit of a creditor of the head contractor.	21 22 23
(2)	Subsection (1) ceases to apply to the amount if lawfully withdrawn from the trust account.	24 25
(3)	In this section—	26
	<i>creditor</i> does not include a subcontractor beneficiary to the extent it is entitled to be paid an amount under its subcontract.	27 28

40	No power of head contractor to invest	1
(1)	The head contractor must not invest funds held in a trust account for the project bank account in any form of investment.	2 3 4
	Maximum penalty—200 penalty units or 1 year’s imprisonment.	5 6
(2)	Subsection (1) does not apply to interest on an amount held in the trust account paid by the financial institution at which the account is held.	7 8 9
41	Power to employ agents	10
(1)	The head contractor may employ, or otherwise engage, an agent to do any act relating to the project bank account on behalf of the contractor.	11 12 13
(2)	The head contractor is liable for the acts and defaults of its agent as if they were the contractor’s own acts and defaults.	14 15
(3)	The costs of employing or engaging an agent under subsection (1) are not recoverable from the project bank account or any of the beneficiaries.	16 17 18
42	Power to delegate	19
(1)	The head contractor may, using the approved form, delegate to a person resident in the State any powers of the contractor in relation to a project bank account, other than the power to delegate.	20 21 22 23
(2)	The delegation takes effect—	24
(a)	if the person accepts the delegation; and	25
(b)	during the periods stated in the approved form.	26
(3)	The head contractor is liable for the acts and defaults of its delegate as if they were the contractor’s own acts and defaults.	27 28
(4)	Subsection (5) applies if—	29

[s 43]

- (a) a person is delegated a power of a head contractor under subsection (1); and 1
2
- (b) the person purports to— 3
 - (i) exercise a different power of the head contractor; 4
or 5
 - (ii) exercise the power while the delegation is not in force; or 6
7
 - (iii) exercise the power after the delegation has been revoked by the head contractor or by operation of law; and 8
9
10
- (c) another person relies on the power purportedly exercised by the delegate. 11
12
- (5) Unless the other person had actual notice that the delegate was not authorised to exercise the power, the purported exercise of the power is taken to be as valid as if it were exercised under a delegation that was in force and authorised the purported exercise of the power. 13
14
15
16
17
- (6) The costs relating to the delegation are not recoverable from the project bank account or any of the beneficiaries. 18
19

43 Head contractor not entitled to payment for administration of project bank account or fees 20
21

The head contractor is not entitled to payment from the project bank account, or from a subcontractor beneficiary, for any amount relating to— 22
23
24

- (a) the administration of the project bank account by the contractor; or 25
26
- (b) fees payable for the project bank account. 27

44 Interest earned on amounts held in project bank account 28

- (1) The head contractor is entitled to receive all interest earned on amounts held in a trust account for a project bank account. 29
30

-
- (2) Subject to any amount to be paid under this chapter, the head contractor may withdraw an amount equal to the interest once every 12 months or on the dissolution of the project bank account. 1
2
3
4
- 45 Account to be kept by head contractor** 5
- (1) A head contractor must keep written records of all transactions involving amounts held in a trust for a project bank account that will— 6
7
8
- (a) sufficiently explain the transactions; and 9
- (b) provide a true position in relation to the outcome of the transactions; and 10
11
- (c) enable accurate accounts to be prepared from time to time; and 12
13
- (d) enable convenient and proper audit of the transactions. 14
- Maximum penalty—300 penalty units or 1 year’s imprisonment. 15
16
- (2) Any words used in the records to explain a transaction must be in the English language. 17
18
- (3) The head contractor must retain a copy of the records for a period of not less than 7 years. 19
20
- Maximum penalty—300 penalty units or 1 year’s imprisonment. 21
22
- 46 Right of head contractor to apply to Supreme Court for directions** 23
24
- (1) The head contractor may apply to the Supreme Court for directions about— 25
26
- (a) an amount held in trust under a project bank account; or 27
- (b) the administration of the project bank account; or 28
- (c) the exercise of a power by the head contractor. 29

[s 47]

(2)	An application made under subsection (1) must be served on all subcontractor beneficiaries for the project bank account unless otherwise directed by the Supreme Court.	1 2 3
47	No assignment of entitlement by head contractor	4
	An assignment by the head contractor of an entitlement of the head contractor to an amount held in trust under the project bank account is of no effect.	5 6 7
48	Equity and court’s jurisdiction preserved	8
(1)	A principle of equity relating to trusts applies for a project bank account except to the extent that the principle is inconsistent with this Act.	9 10 11
(2)	Nothing in this chapter affects a court’s inherent jurisdiction to supervise a project bank account as a trust.	12 13
Part 4	Information sharing	14
49	Notice of project bank account before entering subcontracts	15 16
(1)	This section applies if a project bank account is required for a building contract under section 13.	17 18
(2)	Before entering into a subcontract for the building contract, the head contractor must give the subcontractor the following information using the approved form—	19 20 21
(a)	that a project bank account will be used for making payments to the subcontractor;	22 23
(b)	details of the financial institution at which the trust accounts for the project bank account are to be held.	24 25
	Maximum penalty—200 penalty units or 1 year’s imprisonment.	26 27

- (3) However, if the head contractor entered into a subcontract for the building contract before the day (the *start date*) a project bank account is required for the contract, the head contractor must give the subcontractor the information within 10 business days after the start date.

Note—

Under section 15 a project bank account may be required for a building contract only after an amendment of the contract.

50 Principal to be given information about subcontracts

- (1) This section applies if a project bank account is required to be established for a building contract under section 13.

- (2) The head contractor must, within 5 business days after establishing the project bank account, give the principal the information prescribed by regulation.

Maximum penalty—200 penalty units.

- (3) The head contractor must, within 5 business days after a change in information given to the principal under subsection (2), advise the principal of the change using the approved form.

Note—

A change would include the addition of a subcontractor beneficiary.

Maximum penalty—200 penalty units.

- (4) A notice given under this section must be given in the approved form.

51 Principal and subcontractor to be given copy of payment instruction

- (1) This section applies if a head contractor gives a financial institution an instruction about a payment from a trust account for a project bank account.

- (2) The head contractor must, as soon as practicable after giving the instruction, give a copy of the instruction to—

[s 52]

(a)	the principal; and	1
(b)	if the payment is to a subcontractor beneficiary—the subcontractor beneficiary.	2 3
	Maximum penalty—100 penalty units.	4
(3)	However, the copy of the instruction need only include the information prescribed by regulation.	5 6
(4)	In giving a copy of the instruction under subsection (2), the head contractor must not give the principal or subcontractor beneficiary information the contractor knows is false or misleading in a material particular.	7 8 9 10
	Maximum penalty—200 penalty units.	11
52	Principal to inform commissioner of discrepancies	12
(1)	This section applies if a head contractor gives a principal a copy of a payment instruction under section 51.	13 14
(2)	The principal must inform the commissioner of any discrepancies in the payment instruction as soon as practicable after becoming aware of the discrepancies.	15 16 17
	Maximum penalty—100 penalty units.	18
(3)	In this section—	19
	<i>discrepancies</i> , for a payment instruction, means—	20
(a)	an error in the account number for a subcontractor beneficiary; or	21 22
(b)	payment to an entity, other than the head contractor, that is not an subcontractor beneficiary; or	23 24
(c)	payment to a subcontractor beneficiary if the name of the beneficiary and the account name do not match.	25 26

Part 5	Effect of insolvency or termination of building contract	1 2
53	Definitions for part	3
	In this part—	4
	<i>administrator</i> see the Corporations Act, section 9.	5
	<i>controller</i> see the Corporations Act, section 9.	6
	<i>insolvency official</i> means—	7
	(a) an administrator, controller, provisional liquidator or liquidator; or	8 9
	(b) trustee in bankruptcy; or	10
	(c) any person having a similar function to an office mentioned in paragraph (a) or (b).	11 12
	<i>liquidator</i> see the Corporations Act, section 9.	13
	<i>provisional liquidator</i> see the Corporations Act, section 9.	14
	<i>trustee in bankruptcy</i> , for an individual, means—	15
	(a) in relation to a bankruptcy—the trustee of the estate of the bankrupt; or	16 17
	(b) in relation to a composition or scheme of arrangement under division 6 of part IV of the <i>Bankruptcy Act 1966</i> (Cwlth)—the trustee of the composition or scheme of arrangement; or	18 19 20 21
	(c) in relation to a personal insolvency agreement under part X of the <i>Bankruptcy Act 1966</i> (Cwlth)—the trustee of the agreement; or	22 23 24
	(d) in relation to the estate of a deceased person in respect of which an order has been made under part XI of the <i>Bankruptcy Act 1966</i> (Cwlth)—the trustee of the estate.	25 26 27

[s 54]

54	Right of principal to step in as trustee	1
(1)	This section applies if a project bank account is established for a building contract and—	2 3
(a)	the contract is terminated by the principal for a default by the head contractor; or	4 5
(b)	if the head contractor is an individual—he or she is an insolvent under administration within the meaning of the Corporations Act, section 9; or	6 7 8
(c)	if the head contractor is a company—	9
(i)	it has a provisional liquidator, liquidator, administrator or controller appointed; or	10 11
(ii)	it is wound up, or is ordered to be wound up by the Court within the meaning of the Corporations Act, section 9; or	12 13 14
(d)	another circumstance prescribed by regulation.	15
(2)	The principal may give a notice to the head contractor advising that the principal will replace the head contractor as trustee of the project bank account.	16 17 18
(3)	From the day the notice is given to the head contractor—	19
(a)	the head contractor is discharged as trustee for the project bank account; and	20 21
(b)	the principal is appointed as trustee for the project bank account.	22 23
(4)	The notice—	24
(a)	divests the amounts held in trust under the project bank account from the head contractor; and	25 26
(b)	vests the amounts held in trust under the project bank account in the principal.	27 28
(5)	However, the head contractor continues to be entitled to any amount of interest that the head contractor would otherwise be entitled to under section 44.	29 30 31
(6)	In this section—	32

<i>head contractor</i> includes an insolvency official for the head contractor.	1 2
55 Information to be given to principal as trustee	3
(1) This section applies if the principal for a project bank account is appointed as trustee for the project bank account under section 54.	4 5 6
(2) The head contractor must, as soon as practicable, give the principal the information the principal will require to act as trustee of the project bank account, including, for example, the following information—	7 8 9 10
(a) details of the relevant financial institution;	11
(b) sufficient information to enable the principal to contact each subcontractor beneficiary;	12 13
(c) the details of a bank account into which each subcontractor beneficiary is to be paid amounts from the project bank account.	14 15 16
Maximum penalty—200 penalty units or 1 year’s imprisonment.	17 18
(3) The head contractor must, as soon as practicable, inform the relevant financial institution that the principal will act as the trustee of the project bank account.	19 20 21
Maximum penalty—50 penalty units.	22
(4) In this section—	23
<i>relevant financial institution</i> , for a project bank account, means the financial institution at which the trust accounts for the project bank account are held.	24 25 26
<i>head contractor</i> includes an insolvency official for the head contractor.	27 28

[s 56]

56	Principal as trustee	1
(1)	This section also applies if the principal for a project bank account is appointed as trustee for the project bank account under section 54.	2 3 4
(2)	As trustee of the project bank account, the principal may only make the payments to the subcontractor beneficiaries or head contractor (as a beneficiary) that are required to be made under this chapter.	5 6 7 8
(3)	To remove any doubt, it is declared that—	9
(a)	the trustee is not entitled to any payment from the project bank account; and	10 11
(b)	the head contractor is not relieved of their obligation to top up any short fall in the project bank account; and	12 13
(c)	the head contractor continues to be a beneficiary of the project bank account; and	14 15
(d)	an amount paid, or required to be paid, into a project bank account can not be—	16 17
(i)	used for payment of the debt of a creditor of the principal; or	18 19
(ii)	attached or taken in execution under a court order or process by a creditor of the principal; or	20 21
(iii)	used to pay bank fees.	22
57	Protection from civil liability	23
	A principal appointed as trustee under section 54 does not incur civil liability for performing a function or exercising a power of a trustee if the conduct is engaged in good faith and without negligence.	24 25 26 27

Part 6	Other	1
58	Limited liability of principal	2
	Nothing in this chapter creates or supports a right of action against the principal by a subcontractor beneficiary, or the head contractor, as a beneficiary of a project bank account.	3 4 5
59	Application of <i>Personal Property Securities Act 2009</i> (Cwlth)	6 7
	(1) A project bank account—	8
	(a) is declared to be a statutory interest to which section 73(2) of the <i>Personal Property Securities Act 2009</i> (Cwlth) applies; and	9 10 11
	(b) has priority over all security interests in relation to all money held in trust under the project bank account.	12 13
	(2) In this section—	14
	<i>security interest</i> has the meaning given by the <i>Personal Property Securities Act 2009</i> (Cwlth), section 12.	15 16
60	Application of <i>Trust Accounts Act 1973</i> and <i>Trusts Act 1973</i>	17 18
	The <i>Trust Accounts Act 1973</i> and the <i>Trusts Act 1973</i> do not apply to a project bank account or a trustee or beneficiary of a project bank account.	19 20 21

[s 61]

Chapter 3	Progress payments	1
Part 1	Preliminary	2
Division 1	Application and operation of chapter	3 4
61	Application of chapter	5
(1)	Subject to this section, this chapter applies to construction contracts entered into after the commencement of this chapter—	6 7 8
(a)	whether written or oral, or partly written and partly oral; and	9 10
(b)	whether expressed to be governed by the law of Queensland or a jurisdiction other than Queensland.	11 12
(2)	This chapter does not apply to—	13
(a)	a construction contract to the extent that it forms part of a loan agreement, a contract of guarantee or a contract of insurance under which a recognised financial institution undertakes—	14 15 16 17
(i)	to lend an amount or to repay an amount lent; or	18
(ii)	to guarantee payment of an amount owing or repayment of an amount lent; or	19 20
(iii)	to provide an indemnity relating to construction work carried out, or related goods and services supplied, under the construction contract; or	21 22 23
(b)	a construction contract for the carrying out of domestic building work if a resident owner is a party to the contract, to the extent the contract relates to a building or part of a building where the resident owner resides or intends to reside; or	24 25 26 27 28

-
- (c) a construction contract under which it is agreed that the consideration payable for construction work carried out under the contract, or for related goods and services supplied under the contract, is to be calculated other than by reference to the value of the work carried out or the value of the goods and services supplied.
- (3) This chapter does not apply to a construction contract to the extent it includes—
- (a) provisions under which a party undertakes to carry out construction work, or supply related goods and services in relation to construction work, as an employee of the party for whom the work is to be carried out or the related goods and services are to be supplied; or
- (b) provisions under which a party undertakes to carry out construction work, or to supply related goods and services in relation to construction work, as a condition of a loan agreement with a recognised financial institution; or
- (c) provisions under which a party undertakes—
- (i) to lend an amount or to repay an amount lent; or
- (ii) to guarantee payment of an amount owing or repayment of an amount lent; or
- (iii) to provide an indemnity relating to construction work carried out, or related goods and services supplied, under the construction contract.
- (4) This chapter does not apply to a construction contract to the extent it deals with construction work carried out outside Queensland or related goods and services supplied for construction work carried out outside Queensland.
- (5) In this section—
- resident owner*, in relation to a construction contract for carrying out domestic building work, means a resident owner under the *Queensland Building and Construction Commission*

[s 62]

	<i>Act 1991</i> , schedule 1B, section 1, but does not include a person—	1 2
	(a) who holds, or should hold, an owner-builder permit under the <i>Queensland Building and Construction Commission Act 1991</i> relating to the work; or	3 4 5
	(b) who is a building contractor within the meaning of the <i>Queensland Building and Construction Commission Act 1991</i> .	6 7 8
62	Effect of giving notice of claim for subcontractors' charges	9 10
	(1) This section applies if a person gives a notice of claim under chapter 4 in relation to construction work or related goods and services the subject of a construction contract.	11 12 13
	(2) Proceedings or other action may not be started or continued by the person under part 3 for all or part of the construction work or related goods and services.	14 15 16
	(3) Without limiting subsection (2), if the person gave a respondent a payment claim for all or part of the construction work or related goods and services before or at the same time as giving the notice of claim—	17 18 19 20
	(a) the respondent is not required to pay an amount to the person under section 77(2) in relation to the claim; and	21 22
	(b) amounts may not be recovered by the person as a debt owing to the person in any court of competent jurisdiction in relation to the claim; and	23 24 25
	(c) if the person made an adjudication application in relation to the claim and the application has not been decided by an adjudicator before the notice of the claim of charge is given, the person is taken to have withdrawn the application; and	26 27 28 29 30
	(d) if the person made an adjudication application in relation to the claim and the application has been	31 32

decided by an adjudicator before the notice of the claim of charge was given—	1 2
(i) the respondent to the application is not required to pay the adjudicated amount under section 90; and	3 4
(ii) the registrar must not give the person an adjudication certificate under section 91 relating to the adjudication; and	5 6 7
(iii) any adjudication certificate provided in relation to the adjudication can not be enforced by the person under section 93 as a judgment of a court; and	8 9 10
(e) the person may not suspend, or continue to suspend, carrying out all or part of the construction work or the supply of the related goods and services under section 98.	11 12 13 14
(4) This section does not affect the operation of section 95 and an adjudication application taken to have been withdrawn by the person under subsection (3)(c) is taken to have been withdrawn for the purpose of section 95.	15 16 17 18
(5) This section does not stop the person serving, under this chapter, a payment claim in relation to all or part of the construction work or related goods and services and taking other action under this chapter in relation to that claim, if the notice of claim in so far as it relates to the construction work or related goods and services, or part, is withdrawn.	19 20 21 22 23 24
(6) In this section— <i>notice of claim</i> see section 122(1).	25 26
63 Act does not limit claimant's other rights	27
A claimant's entitlements and remedies under this chapter do not limit—	28 29
(a) another entitlement a claimant may have under a construction contract; or	30 31

[s 64]

- (b) any remedy a claimant may have for recovering the
other entitlement. 1
2

Division 2 Interpretation 3

64 Definitions for chapter 4

In this chapter— 5

adjudicated amount see section 88(1). 6

adjudication application see section 79(1). 7

adjudication certificate see section 91(1). 8

adjudication response see section 82(1). 9

adjudicator, in relation to an adjudication application, means
an adjudicator appointed under section 81 to decide the
application. 10
11
12

carry out construction work means— 13

(a) carry out construction work personally; or 14

(b) directly or indirectly, cause construction work to be
carried out; or 15
16

(c) provide advisory, administrative, management or
supervisory services for carrying out construction work. 17
18

claimant see section 75(1). 19

complex payment claim means a payment claim for an
amount more than \$750,000 (exclusive of GST) or, if a greater
amount is prescribed by regulation, the amount prescribed. 20
21
22

construction contract means a contract, agreement or other
arrangement under which 1 party undertakes to carry out
construction work for, or to supply related goods and services
to, another party. 23
24
25
26

construction work see section 65. 27

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- due date*, for a progress payment, means the day the progress payment becomes payable under section 73. 1
2
- payment claim* see section 68(1). 3
- payment schedule* see section 69. 4
- progress payment* means a payment to which a person is entitled under section 70, and includes, without affecting any entitlement under the section— 5
6
7
- (a) the final payment for construction work carried out, or for related goods and services supplied, under a construction contract; or 8
9
10
- (b) a single or one-off payment for carrying out construction work, or for supplying related goods and services, under a construction contract; or 11
12
13
- (c) a payment that is based on an event or date, known in the building and construction industry as a ‘milestone payment’. 14
15
16
- reference date* see section 67. 17
- related goods and services* see section 66. 18
- relevant construction contract*, for a progress payment or payment claim, means the construction contract to which the progress payment, or to which the payment claim, relates. 19
20
21
- respondent* see section 75(1). 22
- standard payment claim* means a payment claim that is not a complex payment claim. 23
24

65 Meaning of *construction work* 25

- (1) *Construction work* means any of the following work— 26
- (a) the construction, alteration, repair, restoration, maintenance, extension, demolition or dismantling of buildings or structures, whether permanent or not, forming, or to form, part of land; 27
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29
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[s 65]

- (b) the construction, alteration, repair, restoration, maintenance, extension, demolition or dismantling of any works forming, or to form, part of land, including walls, roadworks, powerlines, telecommunication apparatus, aircraft runways, docks and harbours, railways, inland waterways, pipelines, reservoirs, water mains, wells, sewers, industrial plant and installations for land drainage or coast protection; 1
2
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- (c) the installation in any building, structure or works of fittings forming, or to form, part of land, including heating, lighting, airconditioning, ventilation, power supply, drainage, sanitation, water supply, fire protection, security and communications systems; 9
10
11
12
13
- (d) the external or internal cleaning of buildings, structures and works, so far as it is carried out in the course of their construction, alteration, repair, restoration, maintenance or extension; 14
15
16
17
- (e) any operation that forms an integral part of, or is preparatory to or is for completing, work of the kind referred to in paragraph (a), (b) or (c), including— 18
19
20
 - (i) site clearance, earthmoving, excavation, tunnelling and boring; and 21
22
 - (ii) the laying of foundations; and 23
 - (iii) the erection, maintenance or dismantling of scaffolding; and 24
25
 - (iv) the prefabrication of components to form part of any building, structure or works, whether carried out on-site or off-site; and 26
27
28
 - (v) site restoration, landscaping and the provision of roadways and other access works; 29
30
- (f) the painting or decorating of the internal or external surfaces of any building, structure or works; 31
32

-
- (g) carrying out the testing of soils and road making materials during the construction and maintenance of roads; 1
2
3
- (h) any other work of a kind prescribed by regulation. 4
- (2) To remove doubt, it is declared that **construction work** includes building work within the meaning of the *Queensland Building and Construction Commission Act 1991*. 5
6
7
- (3) However, **construction work** does not include any of the following work— 8
9
- (a) the drilling for, or extraction of, oil or natural gas; 10
- (b) the extraction, whether by underground or surface working, of minerals, including tunnelling or boring, or constructing underground works, for that purpose. 11
12
13
- 66 Meaning of *related goods and services*** 14
- (1) ***Related goods and services***, in relation to construction work, means any of the following— 15
16
- (a) goods of the following kind— 17
- (i) materials and components to form part of any building, structure or work arising from construction work; 18
19
20
- (ii) plant or materials (whether supplied by sale, hire or otherwise) for use in connection with the carrying out of construction work; 21
22
23
- (b) services of the following kind— 24
- (i) the provision of labour to carry out construction work; 25
26
- (ii) architectural, design, surveying or quantity surveying services relating to construction work; 27
28
- (iii) building, engineering, interior or exterior decoration or landscape advisory services relating to construction work; 29
30
31

[s 67]

- (iv) soil testing services relating to construction work; 1
- (c) goods and services, relating to construction work, of a 2
kind prescribed by regulation. 3
- (2) In this chapter, a reference to related goods and services 4
includes a reference to related goods or services. 5
- 67 Meaning of *reference date*** 6
- (1) A *reference date*, for a construction contract, means— 7
- (a) a date stated in, or worked out under, the contract as the 8
date on which a claim for a progress payment may be 9
made for construction work carried out, or related goods 10
and services supplied, under the contract; or 11
- (b) if the contract does not provide for the matter— 12
- (i) the last day of the month in which the construction 13
work was first carried out, or the related goods and 14
services were first supplied, under the contract; and 15
- (ii) the last day of each later month. 16
- (2) However, if a construction contract is terminated and the 17
contract does not provide for, or purports to prevent, a 18
reference date surviving beyond termination, the final 19
reference date for the contract is the date the contract is 20
terminated. 21
- 68 Meaning of *payment claim*** 22
- (1) A *payment claim*, for a progress payment, is a written 23
document that— 24
- (a) identifies the construction work or related goods and 25
services to which the progress payment relates; and 26
- (b) states the amount (the *claimed amount*) of the progress 27
payment that the claimant claims is payable by the 28
respondent; and 29
- (c) requests payment of the claimed amount; and 30

	(d) includes the other information prescribed by regulation.	1
(2)	The amount claimed in the payment claim may include an amount that—	2 3
	(a) the respondent is liable to pay the claimant under section 98(3); or	4 5
	(b) is held under the construction contract by the respondent and that the claimant claims is due for release.	6 7
69	Meaning of <i>payment schedule</i>	8
	A <i>payment schedule</i> , responding to a payment claim, is a written document that—	9 10
	(a) identifies the payment claim to which it responds; and	11
	(b) states the amount of the payment, if any, that the respondent proposes to make; and	12 13
	(c) if the amount proposed to be paid is less than the amount stated in the payment claim—states why the amount proposed to be paid is less, including the respondent’s reasons for withholding any payment.	14 15 16 17
Part 2	Right to progress payments	18
70	Right to progress payments	19
	For each reference date under a construction contract, a person is entitled to a progress payment if the person has carried out construction work, or supplied related goods and services, under the contract.	20 21 22 23
71	Amount of progress payment	24
	The amount of a progress payment to which a person is entitled under a construction contract is—	25 26

[s 72]

- (a) if the contract provides for the matter—the amount calculated in accordance with the contract; or 1
2
- (b) if the contract does not provide for the matter—the amount calculated on the basis of the value of construction work carried out, or related goods and services supplied, by the person in accordance with the contract. 3
4
5
6
7

72 Valuation of construction work and related goods and services 8
9

- (1) Construction work carried out under a construction contract is to be valued— 10
11
 - (a) if the contract provides for the matter—in accordance with the contract; or 12
13
 - (b) if the contract does not provide for the matter—having regard to— 14
15
 - (i) that part of the contract price that is for the work; and 16
17
 - (ii) any other rates or prices stated in the contract; and 18
 - (iii) any variation agreed to by the parties to the contract by which the contract price, or any other rate or price stated in the contract, is to be adjusted by a specific amount; and 19
20
21
22
 - (iv) if any of the work is defective, the estimated cost of rectifying the defect. 23
24
- (2) Related goods and services supplied under a construction contract are to be valued— 25
26
 - (a) if the contract provides for the matter—in accordance with the contract; or 27
28
 - (b) if the contract does not provide for the matter—having regard to— 29
30
 - (i) that part of the contract price that is for the goods and services; and 31
32

(ii)	any other rates or prices stated in the contract; and	1
(iii)	any variation agreed to by the parties to the contract by which the contract price, or any other rate or price stated in the contract, is to be adjusted by a specific amount; and	2 3 4 5
(iv)	if any of the goods are defective, the estimated cost of rectifying the defect.	6 7
(3)	For subsection (2)(b), for materials and components that are to form part of any building, structure or work arising from construction work, the only materials and components to be included in the valuation are those that have become or, on payment, will become the property of the party or other person for whom construction work is being carried out.	8 9 10 11 12 13
(4)	In this section—	14
	<i>contract price</i> , for a construction contract, means the amount the contracted party is entitled to be paid under the contract or, if the amount can not be accurately calculated, the reasonable estimate of the amount the contracted party is entitled to be paid under the contract.	15 16 17 18 19
	<i>contracted party</i> , for a construction contract, means the party to the contract who is required to carry out the construction work under the contract.	20 21 22
73	Due date for payment	23
(1)	A progress payment under a construction contract becomes payable—	24 25
(a)	if the contract provides for the matter—on the day on which the payment becomes payable under the contract; or	26 27 28
	<i>Notes—</i>	29
	1 A ‘pay when paid’ provision in a construction contract has no effect, see section 74.	30 31
	2 A provision in a construction management trade contract or subcontract providing for payment of a progress payment	32 33

[s 73]

- later than 25 business days is void, see the *Queensland Building and Construction Commission Act 1991*, section 67U. 1
2
3
- 3 A provision in a commercial building contract providing for 4
payment of a progress payment later than 15 business days 5
is void, see the *Queensland Building and Construction 6
Commission Act 1991*, section 67W. 7
- (b) if the contract does not provide for the matter—on the 8
day that is 10 business days after the day a payment 9
claim for the progress payment is made under part 3. 10
- (2) Interest for a construction contract is payable on the unpaid 11
amount of a progress payment that has become payable at the 12
greater of the following rates— 13
- (a) the rate stated in the contract; 14
- (b) the rate prescribed under the *Civil Proceedings Act 15
2011*, section 59(3) for a money order debt. 16
- (3) However, for a construction contract to which the *Queensland 17
Building and Construction Commission Act 1991*, section 18
Q67P applies because it is a building contract, interest is 19
payable at the penalty rate under that section. 20
- (4) Each of the following construction contracts are taken to be a 21
contract to which subsection (1)(b) applies— 22
- (a) a construction contract that includes a ‘pay when paid’ 23
provision; 24
- (b) a construction management trade contract or subcontract 25
mentioned in the *Queensland Building and 26
Construction Commission Act 1991*, section 67U; 27
- (c) a commercial building contract mentioned in the 28
*Queensland Building and Construction Commission Act 29
1991*, section 67W. 30
- (5) In this section— 31
- ‘*pay when paid*’ provision, of a construction contract, see 32
section 74. 33

74	Effect of ‘pay when paid’ provisions	1
(1)	A ‘pay when paid’ provision of a construction contract has no effect in relation to any payment for construction work carried out, or related goods and services supplied, under the construction contract.	2 3 4 5
(2)	In this section—	6
	<i>amount owing</i> , in relation to a construction contract, means an amount owing for construction work carried out, or related goods and services supplied, under the construction contract.	7 8 9
	<i>‘pay when paid’ provision</i> , of a construction contract, means a provision of the contract—	10 11
(a)	that makes the liability of 1 party (the <i>first party</i>) to pay an amount owing to another party (the <i>second party</i>) contingent on payment to the first party by someone else (the <i>third party</i>) of the whole or any part of that amount; or	12 13 14 15 16
(b)	that makes the due date for payment of an amount owing by the first party to the second party dependent on the date on which payment of the whole or any part of that amount is made to the first party by the third party; or	17 18 19 20
(c)	that otherwise makes the liability to pay an amount owing, or the due date for payment of an amount owing, contingent or dependent on the operation of another contract.	21 22 23 24

Part 3 **Claiming progress payments** 25

75 **Making payment claim** 26

(1)	A person (the <i>claimant</i>) who is, or who claims to be, entitled to a progress payment may give a payment claim to the person (the <i>respondent</i>) who, under the relevant construction contract, is or may be liable to make the payment.	27 28 29 30
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[s 75]

- (2) Unless the payment claim relates to a final payment, the claim must be given before the end of whichever of the following periods is the longest—
- (a) the period, if any, worked out under the construction contract;
 - (b) the period of 6 months after the construction work to which the claim relates was last carried out or the related goods and services to which the claim relates were last supplied.
- (3) If the payment claim relates to a final payment, the claim must be given before the end of whichever of the following periods is the longest—
- (a) the period, if any, worked out under the relevant construction contract;
 - (b) 28 days after the end of the last defects liability period for the construction contract;
 - (c) 6 months after the completion of all construction work to be carried out under the construction contract;
 - (d) 6 months after the complete supply of related goods and services to be supplied under the construction contract.
- (4) The claimant can not make more than 1 payment claim for each reference date under the construction contract.
- (5) A payment claim may include an amount that was included in a previous payment claim unless the inclusion would cause the re-agitation of a matter.
- (6) A payment claim that includes an amount that would cause a re-agitation of a matter is of no effect to the extent it relates to that amount.
- (7) In this section—
- defects liability period***, for a construction contract, means—
- (a) the period worked out under the contract as being the period—

-
- (i) starting on the day of practical completion of the construction work; and
- (ii) ending on the last day any omission or defect in the construction work or related goods or services may be required or directed to be rectified under the contract; or
- (b) if the contract does not provide for a period mentioned in paragraph (a)—the statutory defects liability period under the *Queensland Building and Construction Commission Act 1991*, section 67NA.
- final payment*** means a progress payment that is the final payment for construction work carried out, or for related goods and services supplied, under a construction contract.
- practical completion***, for a construction contract, means—
- (a) the day for practical completion as worked out under the contract; or
- (b) if the contract does not provide for the day of practical completion—the day that construction work carried out under the contract is completed—
- (i) in compliance with the contract, including all plans and specifications for the work and all statutory requirements applying to the work; and
- (ii) without any defects or omissions, other than minor defects or minor omissions that will not unreasonably affect the intended use of the work.

- 76 Responding to payment claim**
- (1) If given a payment claim, a respondent must respond to the payment claim by giving the claimant a payment schedule (whether or not the respondent intends to pay the amount stated in the claim), unless the respondent has a reasonable excuse.
- Maximum penalty—100 penalty units.

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Note—

A failure to give a payment schedule in response to a payment claim is also ground for taking disciplinary action under the *Queensland Building and Construction Commission Act 1991*.

- (2) The respondent must give the payment schedule to the claimant before the end of the period that is—
- (a) if responding to a standard payment claim—10 business days after the day the payment claim is given to the respondent; or
 - (b) if responding to a complex payment claim given to the respondent within 90 days after the reference date to which the claim relates—15 business days after the day the payment claim is given to the respondent; or
 - (c) if responding to a complex payment claim given to the respondent more than 90 days after the reference date to which the claim relates—30 business days after the day the payment claim is given to the respondent.
- (3) However, if the relevant construction contract provides for a shorter period for giving the payment schedule to the claimant, the payment schedule must be given within the period provided under the contract.

Examples—

- 1 If a payment claim is a standard payment claim and the relevant construction contract requires a payment schedule to be given within 20 business days, then the payment schedule must be given within 20 business days after the payment claim is given.
- 2 If a payment claim is a standard payment claim and the relevant construction contract requires a payment schedule to be given within 5 business days, then the payment schedule must be given within 5 business days after the payment claim is given.

77 Consequences of failing to give payment schedule

- (1) This section applies if a respondent given a payment claim does not respond to the claim by giving the claimant a payment schedule as required under section 76.

-
- (2) The respondent is liable to pay the amount claimed under the payment claim to the claimant on the due date for the progress payment to which the payment claim relates.

78 Consequences of failing to pay claimant

- (1) This section applies if a respondent given a payment claim for a progress payment does not pay the amount owed to the claimant in full on or before the due date for the progress payment.
- (2) The claimant may either—
- (a) recover the unpaid portion of the amount owed from the respondent, as a debt owing to the claimant, in a court of competent jurisdiction; or
 - (b) apply for adjudication of the payment claim under part 4.
- (3) In addition to the action mentioned in subsection (2), the claimant may give the respondent written notice of the claimant’s intention to suspend carrying out construction work, or supplying related goods and services, under the relevant construction contract under section 98.
- (4) The notice to suspend work must state that it is made under this Act.
- (5) In this section—
- amount owed***, to a claimant for a payment claim, means—
- (a) if the respondent did not respond to the payment claim with a payment schedule as required under section 76—the amount claimed under the payment claim; or
 - (b) if the respondent did respond to the payment claim with a payment schedule as required to do so under section 76—the amount proposed to be paid under the payment schedule.

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Part 4	Adjudication of disputed progress payments	1
		2
79	Application for adjudication	3
(1)	A claimant may apply to the registrar for adjudication of a payment claim (an <i>adjudication application</i>) if—	4
		5
(a)	the claimant is entitled to apply for adjudication under section 78(2)(b) because of a failure by the respondent to pay an amount owed to the claimant by the due date for the payment; or	6
		7
		8
		9
(b)	the amount stated in the payment schedule, given in response to the payment claim, is less than the amount stated in the payment claim.	10
		11
		12
(2)	An adjudication application—	13
(a)	must be in the approved form; and	14
(b)	must be made within—	15
(i)	for an application relating to a failure to give a payment schedule and pay the full amount stated in the payment claim—30 business days after the due date for the progress payment to which the claim relates; and	16
		17
		18
		19
		20
(ii)	for an application relating to a failure to pay the full amount stated in the payment schedule—40 business days after the due date for the progress payment to which the claim relates; or	21
		22
		23
		24
(iii)	for an application relating to the amount stated in the payment schedule being less than the amount stated in the payment claim—30 business days after the claimant receives the payment schedule; and	25
		26
		27
		28
		29
(c)	must identify the payment claim and the payment schedule, if any, to which it relates; and	30
		31

-
- (d) must be accompanied by the fee prescribed by regulation for the application; and
 - (e) may include the submissions relevant to the application the claimant chooses to include.
- (3) The submissions for the adjudication application must not, in total, exceed the number or length prescribed by regulation.
 - (4) A copy of an adjudication application must be given to the respondent.
 - (5) The registrar must, within 4 business days after the application is received, refer the application to a person eligible to be an adjudicator under section 80.

80 When adjudicator ineligible to adjudicate

An adjudicator is not eligible to adjudicate an adjudication application if the adjudicator—

- (a) is a party to the construction contract to which the application relates; or
- (b) has a conflict of interest as prescribed by regulation.

81 Appointment of adjudicator

- (1) If the registrar refers an adjudication application to an adjudicator for a decision, the adjudicator must, unless the adjudicator has a reasonable excuse, accept or reject the referral within 4 business days after the referral is made.
- (2) The adjudicator may accept the referral by serving written notice of the acceptance on the claimant, the respondent and the registrar.
- (3) The adjudicator may reject the referral by notifying the registrar of the refusal.
- (4) If the adjudicator rejects the referral or does not accept it within the time required under section (1)—

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- (a) the registrar must refer the adjudication application to another adjudicator within 4 business days after becoming aware of the refusal or failure; and
- (b) no fee is payable for referring the adjudication application to another adjudicator.
- (5) The other adjudicator may accept the referral by serving written notice of the acceptance on the claimant, the respondent and the registrar.
- (6) The other adjudicator may reject the referral by notifying the registrar of the refusal.
- (7) On accepting a referral of an adjudication application under subsection (1) or (4), an adjudicator is taken to have been appointed to decide the application.

82 Adjudication response

- (1) After being given notice of an adjudicator's acceptance of an adjudication application under section 81, the respondent may give the adjudicator a response to the adjudication application (the *adjudication response*).
- (2) However, the respondent must not give an adjudication response if the respondent failed to give the claimant a payment schedule as required under section 76.
- (3) The adjudication response—
 - (a) must be in writing; and
 - (b) must identify the adjudication application to which it relates; and
 - (c) may include the submissions relevant to the response the respondent chooses to include.
- (4) However, the adjudication response must not include—
 - (a) any reasons (*new reasons*) for withholding payment that were not included in the payment schedule when given to the claimant; and

-
- (b) submissions relevant to the response that, in total, exceed the number or length prescribed by regulation. 1
2
- (5) The adjudicator may require the respondent to resubmit the adjudication response without the new reasons. 3
4
- 83 Time for making adjudication response 5**
- (1) If responding to a standard payment claim, the respondent must give the adjudicator the adjudication response within the later of the following periods to end— 6
7
8
- (a) 10 business days after receiving a copy of the adjudication application; 9
10
- (b) 7 business days after receiving notice of the adjudicator’s acceptance of the adjudication application. 11
12
- (2) If responding to a complex payment claim, the respondent must give the adjudicator the adjudication response within the later of the following to end— 13
14
15
- (a) 15 business days after receiving a copy of the adjudication application; 16
17
- (b) 12 business days after receiving notice of the adjudicator’s acceptance of the adjudication application. 18
19
- (3) However, the respondent may apply to the adjudicator for an extension of time, of up to 15 additional business days, to give the adjudication response to the adjudicator. 20
21
22
- (4) The application must— 23
- (a) be in writing; and 24
- (b) be made within the later of the following periods to end— 25
26
- (i) 5 business days after receiving a copy of the adjudication application; 27
28
- (ii) 2 business days after receiving notice of the adjudicator’s acceptance of the adjudication application; and 29
30
31

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- (c) include the reasons for requiring the extension of time. 1
 - (5) If the application is granted, the respondent may give the 2
adjudicator the adjudication response no later than the end of 3
the extension of time granted by the adjudicator. 4
 - (6) If the respondent gives the adjudicator an adjudication 5
response under this section, the respondent must give a copy 6
of the response to the claimant not more than 2 business days 7
after giving the response to the adjudicator. 8
- 84 Adjudication procedures** 9
- (1) Subject to the time requirements under section 85, an 10
adjudicator must decide the following as quickly as 11
possible— 12
 - (a) an adjudication application; 13
 - (b) applications for extensions of time under section 83. 14
 - (2) For a proceeding conducted to decide an adjudication 15
application, an adjudicator— 16
 - (a) must decide— 17
 - (i) whether he or she has jurisdiction to adjudicate the 18
application; and 19
 - (ii) whether the application is frivolous or vexatious; 20
and 21
 - (b) may ask for further written submissions from either 22
party and must give the other party an opportunity to 23
comment on the submissions; and 24
 - (c) may set deadlines for further submissions and 25
comments by the parties; and 26
 - (d) may call a conference of the parties; and 27
 - (e) may carry out an inspection of any matter to which the 28
claim relates. 29
 - (3) If a conference is called, it must be conducted informally and 30
the parties are not entitled to any legal representation. 31

-
- (4) The adjudicator’s power to decide an adjudication application is not affected by the failure of either or both of the parties to make a submission or comment within time or to comply with the adjudicator’s call for a conference of the parties.
- 85 Time for deciding adjudication application**
- (1) Subject to section 86, an adjudicator must decide an adjudication application no later than—
- (a) for a standard payment claim—10 business days after the response date; or
 - (b) for a complex payment claim—15 business days after the response date.
- (2) The *response date* is—
- (a) if the adjudicator is given an adjudication response under section 83—the day on which the adjudicator receives the response; or
 - (b) otherwise—the last day on which the respondent could give the adjudicator an adjudication response under section 83.
- (3) An adjudicator must not decide an adjudication application before the end of the period that the respondent may give an adjudication response to the adjudicator under section 83, unless—
- (a) the adjudicator decides he or she does not have jurisdiction to adjudicate the application; or
 - (b) the adjudicator decides the application is frivolous or vexatious.
- 86 Extending time for deciding adjudication application**
- (1) An adjudicator may decide an adjudication application within a longer period if—

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- (a) the claimant and respondent may, before or after the end of the maximum period under section 85(1), agree in writing that the adjudicator has additional time to decide the application; or
 - (b) the application relates to a complex payment claim and, in the opinion of the adjudicator, the claimant and respondent have sought, but failed, to reach an agreement mentioned in paragraph (a).
- (2) The *longer period* is—
- (a) if subsection (1)(a) applies—the additional time agreed to by the claimant and respondent; or
 - (b) if subsection (1)(b) applies—5 business days after the time the adjudicator would otherwise have to decide the application under section 85(1).

87 Valuation of work etc. in later adjudication application

- (1) This section applies if, in deciding an adjudication application, an adjudicator has decided the value of—
- (a) any construction work carried out under a construction contract; or
 - (b) any related goods and services supplied under a construction contract.

Note—

See section 72 for the valuation of construction work and related goods and services.

- (2) An adjudicator must, in any later adjudication application that involves the working out of the value of the construction work or of the related goods and services, give the work, or the goods and services, the same value as that previously decided by the adjudicator unless the claimant or respondent satisfies the adjudicator concerned that the value of the work, or the goods and services, has changed since the previous decision.
- (3) However, if a decision or order of a court changes the value of the construction work or of the related goods and services, the

adjudicator must give the work, or the goods and services, the
same value as changed by the decision or order unless the
claimant or respondent satisfies the adjudicator concerned that
the value of the work, or the goods and services, has changed
since the decision or order.

88 Adjudicator's decision

- (1) An adjudicator is to decide—
 - (a) the amount of the progress payment, if any, to be paid by the respondent to the claimant (the *adjudicated amount*); and
 - (b) the date on which any amount became or becomes payable; and
 - (c) the rate of interest payable on any amount.
- (2) In deciding an adjudication application, the adjudicator is to consider the following matters only—
 - (a) the provisions of this chapter and, to the extent they are relevant, the provisions of the *Queensland Building and Construction Commission Act 1991*, part 4A;
 - (b) the provisions of the relevant construction contract;
 - (c) the payment claim to which the application relates, together with all submissions, including relevant documents, that have been properly made by the claimant in support of the claim;
 - (d) the payment schedule, if any, to which the application relates, together with all submissions, including relevant documents, that have been properly made by the respondent in support of the schedule;
 - (e) the results of any inspection carried out by the adjudicator of any matter to which the claim relates.
- (3) However, the adjudicator must not consider any of the following—

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- (a) an adjudication response, to which the adjudication application relates, that was not given to the adjudicator within the time required under section 83; 1
2
3
 - (b) a reason included in an adjudication response to the adjudication application, if the reason is prohibited from being included in the response under section 82; 4
5
6
 - (c) an adjudication response to the extent that it includes submissions that, in total, exceed the number or length prescribed by regulation under section 82(4)(b). 7
8
9
 - (4) The adjudicator’s decision must— 10
 - (a) be in writing; and 11
 - (b) include the reasons for the decision, unless the claimant and the respondent have both asked the adjudicator not to include the reasons in the decision. 12
13
14
 - (5) The adjudicator must give a copy of the decision to the registrar at the same time the adjudicator gives a copy of the decision to the claimant and respondent. 15
16
17
 - Maximum penalty for subsection (5)—40 penalty units. 18
- 89 Adjudicator may correct clerical mistakes etc.** 19
- (1) This section applies if the adjudicator’s decision includes— 20
 - (a) a clerical mistake; or 21
 - (b) an error arising from an accidental slip or omission; or 22
 - (c) a material miscalculation of figures or a material mistake in the description of a person, thing or matter mentioned in the decision; or 23
24
25
 - (d) a defect of form. 26
 - (2) The adjudicator may, on the adjudicator’s own initiative or on the application of the claimant or respondent, correct the decision. 27
28
29
 - (3) The adjudicator must, if requested by the registrar, correct the decision. 30
31

90	Respondent required to pay adjudicated amount	1
	If an adjudicator decides that a respondent is required to pay an adjudicated amount, the respondent must pay the amount to the claimant on or before—	2 3 4
	(a) the day that is 5 business days after the day on which a copy of the adjudicator’s decision is given to the respondent by the adjudicator; or	5 6 7
	(b) if the adjudicator decides a later date for payment under section 88(1)(b)—the later date.	8 9
	Maximum penalty—200 penalty units.	10
	<i>Note—</i>	11
	A failure to pay an adjudicated amount on or before the due date is also a ground for taking disciplinary action under the <i>Queensland Building and Construction Commission Act 1991</i> .	12 13 14
91	Adjudication certificate	15
	(1) As soon as practicable after being given a copy of a decision by an adjudicator, but no later than 5 business days after being given the decision, the registrar must give the claimant a certificate (an <i>adjudication certificate</i>) of the decision stating the following matters—	16 17 18 19 20
	(a) the name of the claimant;	21
	(b) the name of the respondent who is liable to pay the adjudicated amount;	22 23
	(c) the adjudicated amount;	24
	(d) the date on which payment of the adjudicated amount was required to be paid to the claimant;	25 26
	(e) the rate of interest payable on the adjudicated amount;	27
	(f) the fees, identified in the decision, that the respondent is to pay;	28 29
	(g) that the certificate is made under this Act.	30

[s 92]

- (2) However, the registrar does not have to give the claimant an adjudication certificate if— 1
2
- (a) the respondent is not required to pay an amount under 3
the decision; or 4
- (b) the adjudicator decided he or she does not have 5
jurisdiction to decide the application; or 6
- (c) the adjudicator decided the adjudication application is 7
frivolous or vexatious. 8
- 92 Consequences of not paying adjudicated amount 9**
- (1) If the respondent fails to pay the whole or any part of the 10
adjudicated amount to the claimant as required under section 11
90, the claimant may give the respondent written notice of the 12
claimant’s intention to suspend carrying out construction 13
work, or supplying related goods and services, under the 14
construction contract under section 98. 15
- (2) The notice about suspending work must state that it is made 16
under this Act. 17
- 93 Filing of adjudication certificate as judgment debt 18**
- (1) An adjudication certificate may be filed as a judgment for a 19
debt, and may be enforced, in a court of competent 20
jurisdiction. 21
- (2) An adjudication certificate can not be filed under this section 22
unless it is accompanied by an affidavit by the claimant 23
stating that the whole or a part of the adjudicated amount has 24
not been paid to the claimant at the time the certificate is filed. 25
- (3) If the affidavit states that part of the adjudicated amount has 26
been paid, the judgment is for the unpaid part of the amount 27
only. 28
- (4) If the respondent commences proceedings to have the 29
judgment set aside— 30
- (a) the respondent is not, in those proceedings, entitled— 31

-
- (i) to bring any counterclaim against the claimant; or 1
- (ii) to raise any defence in relation to matters arising 2
under the construction contract to which the 3
adjudication certificate relates; or 4
- (iii) to challenge the adjudicator’s decision; and 5
- (b) the respondent is required to pay into the court, as 6
security, the unpaid portion of the adjudicated amount 7
pending the final decision in those proceedings. 8
- 94 Claimant may make new application in certain 9
circumstances 10**
- (1) Subsection (2) applies if an adjudicator, who accepts a referral 11
to decide an adjudication application (the *original* 12
application), does not decide the application within the period 13
required under section 85. 14
- (2) The claimant may do either of the following within 5 business 15
days after the period mentioned in subsection (1)— 16
- (a) request the registrar refer the original application to 17
another adjudicator; or 18
- (b) make a new adjudication application (the *new* 19
application) under section 79. 20
- (3) If the claimant requests the registrar refer the original 21
application to another adjudicator— 22
- (a) the registrar must refer the application to another 23
adjudicator within 4 business days after the request is 24
made; and 25
- (b) no fee is payable for referring the original application to 26
another adjudicator. 27
- (4) Also, if another adjudicator accepts the referral, this division 28
applies for the original application with the following 29
changes— 30
- (a) the claimant must give the adjudicator a copy of his or 31
her submissions included in the original application 32

[s 95]

- within 5 business days after the adjudicator accepts the referral; 1
2
- (b) the respondent must give the adjudicator a copy of his or 3
her submissions included in an adjudication response, if 4
any, for the original application within 5 business days 5
after the adjudicator accepts the referral; 6
- (c) the response date for the application under section 85(2) 7
is the day— 8
- (i) the adjudicator receives the copy of the submission 9
for the respondent; or 10
- (ii) if the respondent does not give the adjudicator the 11
copy of the submission within the period 12
mentioned in paragraph (b)—immediately after the 13
end of the period; 14
- (d) in deciding the adjudication application, the adjudicator 15
must not consider any submissions other than— 16
- (i) the submissions mentioned in paragraph (a) or (b); 17
or 18
- (ii) further written submissions asked for by the 19
adjudicator under section 84(2)(b). 20
- (5) This division applies to the new application in the same way it 21
applies to any other adjudication application made under 22
section 79. 23
- (6) However, the claimant may, despite section 79(2)(b), make the 24
new application within 5 business days after the claimant 25
becomes entitled to act under section (2). 26

95 Adjudicator's fees 27

- (1) An adjudicator is entitled to be paid for adjudicating an 28
adjudication application— 29
- (a) the amount, by way of fees and expenses, agreed 30
between the adjudicator and the parties to the 31
adjudication; or 32

-
- (b) if no amount is agreed, the amount, for fees and expenses, that is reasonable having regard to the work done and expenses incurred by the adjudicator. 1
2
3
- (2) A regulation may prescribe the maximum amount for fees and expenses (the *prescribed maximum*) an adjudicator may be paid for adjudicating an adjudication application. 4
5
6
- (3) Despite subsection (1), an adjudicator is not entitled to be paid any amount that is more than the prescribed maximum. 7
8
- (4) The claimant and respondent are jointly and severally liable to pay the adjudicator's fees and expenses. 9
10
- (5) The claimant and respondent are each liable to contribute to the payment of the adjudicator's fees and expenses in equal proportions unless the adjudicator decides otherwise. 11
12
13
- (6) An adjudicator is not entitled to be paid any fees or expenses for adjudicating an adjudication application if the adjudicator fails to make a decision on the application. 14
15
16
- (7) An adjudicator does not fail to make a decision only because— 17
18
- (a) the adjudication application is withdrawn; or 19
- (b) the adjudicator decided he or she did not have jurisdiction to adjudicate the application; or 20
21
- (c) the adjudicator decided the application was frivolous or vexatious; or 22
23
- (d) the adjudicator refuses to communicate the adjudicator's decision on an adjudication application until the adjudicator's fees and expenses are paid. 24
25
26
- (8) Also, if a court finds that the adjudicator's decision is void and unenforceable, the adjudicator is still entitled to be paid any fees or expenses for adjudicating the application if the adjudicator acted in good faith in adjudicating the application. 27
28
29
30
- (9) In this section— 31
- adjudicating*, an adjudication application, includes accepting, considering and deciding the application. 32
33

[s 96]

96	Deciding fees payable by claimant and respondent	1
(1)	When making a decision about an adjudication application, an adjudicator may also decide the following—	2 3
(a)	the proportion of the adjudicator’s fees and expenses to be paid by the claimant and respondent;	4 5
(b)	the proportion of the fee, payable for the adjudication application under section 79(2)(d), for which the respondent is to reimburse the claimant.	6 7 8
(2)	In making the decision, the adjudicator—	9
(a)	must consider the conduct of the claimant and respondent; and	10 11
(b)	may consider any of the following matters—	12
(i)	the relative success of the claimant or respondent in the adjudication;	13 14
(ii)	whether the claimant or respondent commenced or participated in the adjudication for an improper purpose;	15 16 17
(iii)	whether the claimant or respondent commenced or participated in the adjudication without reasonable prospects of success;	18 19 20
(iv)	the reasons given by the respondent for not making the progress payment the subject of the adjudication application;	21 22 23
(v)	whether an adjudication application is withdrawn;	24
(vi)	the services provided by the adjudicator in adjudicating the adjudication application, including the amount of time taken to consider discrete aspects of the amount claimed;	25 26 27 28
(vii)	another matter the adjudicator considers relevant in making the decision.	29 30
(3)	In this section—	31

<i>adjudicating</i> , an adjudication application, includes accepting, considering and deciding the application.	1 2
<i>conduct</i> , of the claimant and respondent, includes—	3
(a) whether the claimant or respondent has acted unreasonably leading up to, or during, the adjudication; or	4 5 6
(b) whether the respondent attempted to include new reasons in an adjudication response in contravention of section 82(4).	7 8 9
<i>new reasons</i> see section 82(4)(a).	10
97 Withdrawing from adjudication	11
(1) An adjudication application—	12
(a) is withdrawn if the claimant has given a written notice of discontinuation to the adjudicator and respondent; or	13 14
(b) is taken to have been withdrawn if the respondent has, before an adjudicator has decided the application, paid the claimant the amount stated in the payment claim the subject of the adjudication application.	15 16 17 18
<i>Note—</i>	19
Despite the withdrawal of an adjudication application an adjudicator is still entitled to be paid fees for considering the application, see section 95.	20 21 22
(2) If subsection (1)(b) applies, the claimant must as soon as practicable inform the adjudicator that the adjudication application has been withdrawn because of payment.	23 24 25
Part 5 Suspending work	26
98 Claimant’s right to suspend work	27
(1) A claimant may suspend carrying out construction work, or supplying related goods and services, under a construction	28 29

[s 99]

- contract if at least 2 business days have passed since the claimant gave notice of intention to do so to the respondent under section 78 or 92. 1
2
3
- (2) The right conferred under subsection (1) exists until the day on which the claimant receives payment from the respondent of the amount mentioned in section 78(1) or 90(1), and continues for another 3 business days immediately following that day. 4
5
6
7
8
- (3) If, in exercising the right to suspend carrying out construction work or supplying related goods and services under a construction contract, the claimant incurs a loss or expense because the respondent removes any part of the work or supply from the contract, the respondent is liable to pay the claimant the amount of the loss or expense. 9
10
11
12
13
14
- (4) A claimant who suspends carrying out construction work, or supplying related goods and services under a construction contract under subsection (1) is not liable for any loss or damage suffered by the respondent, or by any person claiming through the respondent, because of the claimant not carrying out that work or not supplying those goods and services, during the suspension. 15
16
17
18
19
20
21

Part 6 **Court proceedings for debt recovery** 22 23

99 Notice required before starting particular proceedings 24

- (1) This section applies if— 25
- (a) after being given a payment claim, the respondent fails to pay the amount stated in the claim on or before the due date for the progress payment to which the claim relates; and 26
27
28
29
- (b) because of the failure to pay, the claimant intends to start proceedings in a court to recover the unpaid portion of the amount owed to the claimant. 30
31
32

Note—

See section 78 for the claimants right to recover from a respondent an amount owed to the claimant.

- (2) Before taking the intended action, the claimant must give the respondent written notice (a **warning notice**), in the approved form, of the claimant’s intention to start the proceedings.
- (3) The claimant must not give the respondent the warning notice later than 20 business days after the due date for the progress payment.
- (4) The claimant must not take the intended action before the end of 5 business days after giving the respondent the warning notice.
- (5) The giving of a warning notice does not—
 - (a) require the claimant to complete the action stated in the notice; or
 - (b) prevent the claimant from taking different action to that stated in the notice.

100 Proceedings to recover unpaid amount as debt

- (1) This section applies if a claimant starts proceedings in a court under section 78(2)(a) to recover an unpaid amount from a respondent as a debt owing to the claimant.
- (2) Judgment in favour of the claimant is not to be given by a court unless the court is satisfied that—
 - (a) the respondent did not pay the amount to the claimant on or before the due date for the progress payment to which the payment claim relates; and
 - (b) if the respondent’s liability to pay the amount arises because of a failure to give a payment schedule—the respondent did not give the claimant a payment schedule within the time required to do so under this Act.
- (3) The respondent is not, in those proceedings, entitled—
 - (a) to bring any counterclaim against the claimant; or

(b)	allow the part of the decision not affected by the error to remain binding on the parties to the proceeding.	1 2
102	Service of notices	3
(1)	A notice or other document that, under this chapter, is authorised or required to be given to a person may be given to the person in the way, if any, provided under the relevant construction contract.	4 5 6 7
(2)	Subsection (1) is in addition to, and does not limit or exclude, the <i>Acts Interpretation Act 1954</i> , section 39 or the provisions of any other law about the giving of notices.	8 9 10
(3)	To remove any doubt, it is declared that nothing in this Act—	11
(a)	excludes the proper service of notices or documents by a person's agent; or	12 13
(b)	requires a person's acknowledgement of a notice or document properly given to the person.	14 15
Chapter 4	Subcontractors' charges	16
Part 1	Preliminary	17
Division 1	Application and operation of chapter	18 19
103	Application to particular domestic building work	20
	This chapter does not apply to domestic building work relating to a detached dwelling that is carried out for an individual, unless the work is carried out for the purpose of a	21 22 23

[s 104]

business conducted by the individual either alone or as a 1
member of a partnership. 2

Division 2 Interpretation 3

104 Definitions 4

In this chapter— 5

contractor, for a contract, means the party to the contract who 6
is required to carry out work under the contract. 7

contract price, for a contract, means the amount the 8
contractor is entitled to be paid under the contract or, if the 9
amount can not be accurately calculated, the reasonable 10
estimate of the amount the contractor is entitled to be paid 11
under the contract. 12

court means the Magistrates Court, District Court or Supreme 13
Court in which a proceeding may be taken under this chapter. 14

defects liability period, for a contract, means— 15

(a) the period worked out under the contract as being the 16
period— 17

(i) starting on the day of practical completion for the 18
work; and 19

(ii) ending on the last day any omission or defect in the 20
work may be required or directed to be rectified 21
under the contract; or 22

(b) if the contract does not provide for a period mentioned 23
in paragraph (a)—the statutory defects liability period 24
under the *Queensland Building and Construction* 25
Commission Act 1991, section 67NA. 26

land means any land within Queensland and includes land 27
under water. 28

notice of claim see section 122(1). 29

-
- person** includes an unincorporated association. 1
- practical completion**, for work, means— 2
- (a) the day for practical completion as worked out under the 3
contract for the work; or 4
- (b) if the contract for the work does not provide for the day 5
of practical completion—the day the work is 6
completed— 7
- (i) in compliance with the contract, including all plans 8
and specifications for the work and all statutory 9
requirements applying to the work; and 10
- (ii) without any defects or omissions, other than minor 11
defects or minor omissions that will not 12
unreasonably affect the intended use of the work. 13
- retention amount** means an amount that— 14
- (a) is payable as part of the contract price under a contract, 15
but may, under the contract, be withheld from 16
payment— 17
- (i) during the progress of the work the subject of the 18
contract; or 19
- (ii) during the defects liability period for the contract; 20
or 21
- (iii) both during the progress of the work and for a 22
maintenance period; and 23
- (b) is withheld from payment under a contract to give 24
financial protection in relation to the need to correct 25
defects in the work, or otherwise to secure, wholly or 26
partly, the performance of the contract. 27
- security**, for a contract, means something— 28
- (a) given to, or for the direct or indirect benefit of, the party 29
to the contract for whom the work the subject of the 30
contract is to be performed, by the contractor; and 31

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- (b) intended to secure, wholly or partly, the performance of the contract; and 1
2
- (c) in the form of either, or a combination of both, of the following— 3
4
- (i) an amount of money, other than an amount held as a retention amount; 5
6
- (ii) 1 or more valuable instruments, whether or not exchanged for, or held instead of, a retention amount. 7
8
9
- structure**, for a structure on land under water, includes a structure made up of component parts that include— 10
11
- (a) component parts fixed to the land; and 12
- (b) component parts that rise and fall with the rise and fall of the water, and that are otherwise confined in their location by component parts fixed to the land. 13
14
15
- Example of a structure included under this definition—* 16
- A marina made up of fixed pylons, and pontoons that rise and fall with the water level that are otherwise confined in their location by the pylons. 17
18
19
- subcontractor's charge** see section 109(4). 20
- valuable instrument** means any of the following— 21
- (a) banker's undertaking; 22
- (b) bond; 23
- (c) inscribed stock; 24
- (d) guarantee policy; 25
- (e) interest-bearing deposit; 26
- (f) another instrument, to the extent it is convertible into an amount of money. 27
28
- variation**, of a contract, means an addition to, or an omission from, the work required to be carried out under the contract. 29
30
- work** see section 105. 31

105	Meaning of <i>work</i>	1
(1)	<i>Work</i> , for a contract—	2
(a)	means labour, whether skilled or unskilled, carried out by a person in connection with—	3 4
(i)	the construction, decoration, alteration or repair of a building or other structure; or	5 6
(ii)	the development or working of a mine, quarry, sandpit, drain, embankment or other excavation in or on land; or	7 8 9
(iii)	the placement, fixation or erection of materials, plant or machinery used or intended to be used for a purpose mentioned in subparagraph (i) or (ii); or	10 11 12
(iv)	the alteration or improvement of a thing; or	13
(v)	the demolition, removal or relocation of a building or other structure; and	14 15
(b)	includes—	16
(i)	the supply of materials used by a subcontractor in connection with other work the subject of a contract; or	17 18 19
(ii)	the manufacture or fabrication, wherever it happens, of project-specific components for a contract; or	20 21 22
(iii)	the supply of labour for a contract, other than labour that is only administrative in nature; but	23 24
(c)	does not include—	25
(i)	the mere delivery of goods sold by a vendor under a contract for the sale of goods; or	26 27
(ii)	labour done by a person under a contract of service; or	28 29
(iii)	labour done by a person in connection with the testing of materials or the taking of measurements; or	30 31 32

[s 106]

- (iv) a contract for the hire of plant or machinery not intended to be incorporated into work mentioned in paragraph (a). 1
2
3
- (2) In this section— 4
manufacture or fabrication, of project-specific components for a contract, does not include— 5
6
- (a) the manufacture or fabrication of project-specific components if— 7
8
- (i) the components have not been fixed in place for the purposes of the contract; and 9
10
- (ii) the components could, without substantial change, reasonably be used other than for the purpose of the contract; or 11
12
13
- (b) the manufacture or fabrication of project-specific components if the manufacture or fabrication consists merely of cutting something to size or mixing things together. 14
15
16
17
- Example of mixing things together—* 18
mixing things together to make concrete or asphalt 19
- project-specific components*, for a contract, means components meeting the particular requirements of the contract, other than components that are standard or ordinary product lines of a commercially available specification. 20
21
22
23
- 106 References to amount payable under contract and to completion of work specified in subcontract** 24
25
- In this chapter, unless a contrary intention appears— 26
- (a) a reference to the amount of money payable under a contract is taken to include all amounts that, under the contract, contribute to a complete or partial satisfaction of the contract price; and 27
28
29
30
- (b) a reference to the payment of any money in reduction of the contract price for a contract includes all amounts 31
32

	that, under the contract, contribute to a complete or partial satisfaction of the contract price; and	1 2
	(c) a reference to completion of the work specified in a subcontract let by a contractor under a contract is taken to be completion of the work by a subcontractor who has given notice of a charge in relation to the contract, subcontract or any other subcontract under the contract.	3 4 5 6 7
107	When work specified in contract completed	8
	In this chapter, the work specified in a contract is taken to be completed when, with any variations, omissions or deductions authorised or agreed, it has been performed in accordance with the contract, whether or not the contractor—	9 10 11 12
	(a) is later employed to do additional work in relation to the work but is not specified in the contract; or	13 14
	(b) is liable to rectify defects in the work discovered after the performance of the work and during a defects liability period for the contract.	15 16 17
Part 2	Right to subcontractor's charge	18 19
108	Contracts to which this part applies	20
	This part applies if a person contracts with another person for the carrying out of work in relation to land or a building.	21 22
109	Charges in favour of subcontractors	23
	(1) Each subcontractor for the contract is entitled to a charge over money payable to—	24 25
	(a) the contractor under the contract; or	26
	(b) another subcontractor under a higher subcontract.	27

[s 110]

- (2) Also, if payment can not be satisfied by a charge mentioned in subsection (1), the subcontractor is entitled to a charge on any security for the contract or higher subcontract. 1
2
3
- (3) However, a security for the contract or higher subcontract is only available to the extent— 4
5
- (a) of the security's maximum possible value for securing performance of the contract or higher subcontract; and 6
7
- (b) it is not required to be used for securing the performance of the contract or higher subcontract. 8
9
- (4) A charge mentioned in subsection (1) or (2) is a *subcontractor's charge*. 10
11
- (5) A subcontractor's charge secures payment in accordance with the subcontract of all money that is payable, or is to become payable, to the subcontractor for the subcontracted work. 12
13
14

110 Limits on amount recoverable under subcontractor's charge 15
16

The total amount recoverable under a subcontractor's charge can not exceed the amount payable— 17
18

- (a) to the subcontractor under its subcontract; or 19

Example— 20

If the amount payable to the subcontractor for work is \$18,000, the subcontractor's charge can not be for more than \$18,000. 21
22

- (b) if the charge relates to money payable to the contractor under the contract—to the contractor under the contract; 23
24
or 25

Example— 26

If the amount payable to the subcontractor for work is \$18,000 and the amount payable to the contractor under the contract is \$11,000, the subcontractor's charge for the related contract can not be for more than \$11,000. 27
28
29
30

- (c) if the charge relates to money payable to another subcontractor under a higher subcontract—to the other subcontractor under the higher subcontract. 31
32
33

-
- 111 Subcontractor's charge valid although provision of the subcontract still to be complied with** 1
2
- A subcontractor's charge may be for money, the payment of 3
which is governed by a provision of the subcontract that is 4
still to be complied with, including, for example, the 5
following— 6
- (a) a provision establishing a procedure for the certification 7
of the amount, quality or value of work that has been 8
performed; 9
 - (b) a provision establishing a procedure for the resolution of 10
a dispute about the amount, quality or value of work that 11
has been performed. 12
- 112 Damages etc. not covered by subcontractor's charge** 13
- A subcontractor's charge can not include the following— 14
- (a) damages for breach of contract or in tort; 15
 - (b) an amount payable on the basis of an extra-contractual 16
remedy, including, for example, as reasonable 17
compensation for work done; 18
 - (c) damages or other relief under another chapter or another 19
Act; 20
 - (d) damages or other relief under an Act of another State or 21
the Commonwealth. 22
- 113 All money paid in reduction of contract price generally 23
subject to subcontractor's charge** 24
- (1) For a subcontractor's charge, the amount of money payable to 25
the contractor under the contract is taken to include all money 26
paid in reduction of the contract price to any person other than 27
the subcontractor claiming the charge, unless that money is 28
paid— 29
 - (a) in good faith and not for the purpose of defeating or 30
impairing a subcontractor's charge; and 31
-

[s 114]

(b)	without contravening section 126.	1
(2)	Subsection (1) applies in relation to money payable to another subcontractor for a higher subcontract as if—	2 3
(a)	a reference in the subsection to a contractor were a reference to the other subcontractor; and	4 5
(b)	a reference in the subsection to the contract were a reference to the higher subcontract.	6 7
114	Assignments etc. of no effect against subcontractors' charge	8 9
(1)	An assignment, disposition or charge of any kind that is made or given by a contractor for money that is or is to become payable to the contractor under the contract has no effect against a subcontractor's charge.	10 11 12 13
(2)	However, subsection (1) does not apply to an assignment, disposition or charge made or given by the contractor to the contractor's employees for wages payable to them in relation to the contract.	14 15 16 17
(3)	Subject to this chapter, money that is, or is to become, payable to the contractor can not be attached or passed or charged by operation of law so as to defeat or impair a subcontractor's charge.	18 19 20 21
(4)	Subsections (1) to (3) apply in relation to another subcontractor for a higher subcontract as if—	22 23
(a)	a reference in the subsections to a contractor were a reference to the other subcontractor; and	24 25
(b)	a reference in the subsections to the contract were a reference to the higher subcontract.	26 27
115	Insufficient money available for claims	28
(1)	This section applies if—	29

-
- (a) there are 2 or more subcontractor's charges made against a contractor for the same contract; and
- (b) the money that is, or is to become, payable to the contractor under the contract is insufficient to satisfy all of the subcontractor's charges for the contract in full.
- (2) The total amount recoverable under the subcontractor's charges is reduced in proportion to the amounts of the charges.
- Example—*
- If there is a subcontractor's charge for \$5,000, another for \$10,000 and the amount remaining to be paid to the contractor is only \$12,000, the amount recoverable under the charges would be reduced to \$4,000 and \$8,000 respectively.
- (3) The money mentioned in subsection (1)(b) includes money that is, or is to become, payable on the basis of a subcontractor's charge on a security for the contract, including money payable under 130 or under an order of the court under section 132.
- (4) Subsection (1) applies in relation to another subcontractor for a higher subcontract as if—
- (a) a reference in the subsections to a contractor were a reference to the other subcontractor; and
- (b) a reference in the subsections to the contract were a reference to the higher subcontract.

116 Assignment and transmission of subcontractor's charge

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

[s 117]

117	No subcontractor's charges over money held in trust under a project bank account	1 2
	No entitlement to a subcontractor's charge exists to the extent it relates to money held in trust under a project bank account.	3 4
118	Limit of 1 claim for work	5
(1)	A subcontractor may make more than 1 claim in relation to money that is payable, or is to become payable, to the subcontractor for subcontracted work, however—	6 7 8
(a)	each claim must be about a separate and distinguishable item of work done by the subcontractor under the subcontract; and	9 10 11
(b)	there must not be more than 1 claim about any 1 item.	12
(2)	A subcontractor's charge that is inconsistent with subsection (1) is of no effect and does not attach.	13 14
Part 3	Information to be given to subcontractor	15 16
119	Request for information about building contract or security	17 18
(1)	If requested in writing by a subcontractor, the contractor must give the subcontractor the following information within 10 business days after the request is made—	19 20 21
(a)	the name of the person who engaged the contractor under the contract;	22 23
(b)	the address of—	24
(i)	the person's place of business; or	25
(ii)	if the person does not have a place of business—the person's place of residence;	26 27

-
- (c) the information about the contract that would enable the subcontractor to give a notice of claim to a person under section 122;
 - (d) advice as to whether there are any securities in existence for the contract;
 - (e) if known to the contractor, the name and address of the holder of each security mentioned in paragraph (d).

Maximum penalty—20 penalty units.

- (2) Subsection (3) applies if, in response to a request under subsection (1), the contractor tells the subcontractor of the existence of a security but does not give the name and address of the holder of the security.

- (3) If requested in writing by the subcontractor, the person who engaged the contractor under the contract must give the subcontractor the name and address of the holder of the security within 10 business days after the request is made.

Maximum penalty—20 penalty units.

- (4) Subsections (1) to (3) apply in relation to another subcontractor for a higher subcontract as if—
 - (a) a reference in the subsections to a contractor is were a reference to the other subcontractor; and
 - (b) a reference in the subsections to the contract is were a reference to the higher subcontract.

120 Damages payable for failure to give information

- (1) This section applies if a person fails to give a subcontractor information as required under section 119.
- (2) The person is liable to pay the subcontractor an amount for damages that the subcontractor incurred as a consequence of the failure.
- (3) Damages under subsection (2) must be decided by the court on the application of the subcontractor.

[s 121]

- (4) In a proceeding mentioned in subsection (3) the person is
excused from the liability under subsection (2) if the person
satisfies the court that the person has a reasonable excuse for
the failure.

Part 4 Claiming subcontractor's charge

Division 1 Preliminary

121 Application of part

- (1) This part applies if a subcontractor intends to claim a
subcontractor's charge on money payable to the contractor for
the contract or to another subcontractor for a higher
subcontract.
- (2) For applying this part in relation to money payable to another
subcontractor for a higher subcontract—
- (a) a reference in a provision to a contractor is taken to be a
reference to the other subcontractor; and
- (b) a reference in a provision to the contract is taken to be a
reference to the higher subcontract.

Division 2 Action by subcontractor

122 Notice of claim

- (1) To claim a subcontractor's charge over money payable to the
contractor under the contract, the subcontractor must give
written notice (a *notice of claim*) to the person obliged to pay
the money under the contract.
- (2) The notice of claim must be made in the approved form and—
- (a) state the amount of the claim; and

-
- (b) include details of the work done by the subcontractor, certified as prescribed by a qualified person; and
- (c) include the other information prescribed by regulation.
- (3) The amount of the claim must be certified by a qualified person, as prescribed by regulation.
- (4) The notice of claim may be given even if the work is not completed, or payment of the money relating to the charge is not yet due.
- (5) However, if the work has been completed, the notice of claim must be given within 3 months after practical completion for the work.
- (6) The claim may relate only to—
- (a) money payable to the subcontractor by the date the notice is given; and
- (b) money to become payable to the subcontractor after the date the notice is given if the money is for work done by the subcontractor before that date.
- (7) To remove any doubt, it is declared that a subcontractor's charge on money payable under the contract includes a charge on a retention amount for the contract.
- (8) If the notice of claim relates only to a retention amount for the contract, the notice—
- (a) may be given at any time while work under the contract is being performed; and
- (b) must be given within 3 months after the expiration of the defects liability period for the contract.
- (9) If the notice of claim is not given in compliance with this section, the notice is of no effect and the subcontractor's charge does not attach.
- (10) In this section—
qualified person see section 147(1).

[s 123]

- 123 Copy of notice of claim to contractor** 1
- (1) This section applies if a subcontractor gives a notice of claim to a person obliged to pay money to a contractor under a contract. 2
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4
- (2) The subcontractor must— 5
- (a) give the contractor a copy of the notice of claim; and 6
- (b) advise the contractor of the name and address of the person given the notice of claim. 7
8
- (3) If the subcontractor does not comply with subsection (2), the notice is of no effect and the subcontractor's charge does not attach. 9
10
11
- 124 Copy of notice of claim to the holder of a security** 12
- (1) This section applies if— 13
- (a) a subcontractor gives a notice of claim to a person (the *recipient*) obliged to pay money to a contractor under a contract; and 14
15
16
- (b) a person other than the recipient holds a security for the contract. 17
18
- (2) The subcontractor must give a copy of the notice of claim to the person who holds the security. 19
20
- (3) If a copy of the notice of claim is not given as required under subsection (2), the claimed subcontractor's charge does not attach to the security. 21
22
23
- (4) To remove any doubt, it is declared that subsection (3) does not affect a subcontractor's charge to the extent it otherwise attaches under this chapter. 24
25
26
- 125 Withdrawing a notice of claim** 27
- (1) A subcontractor may at any time withdraw, wholly or partly, a notice of claim by giving notice of the withdrawal, in the 28
29

approved form, to the person to whom the subcontractor gave
the notice of claim. 1
2

- (2) If a subcontractor withdraws, wholly or partly, a notice of
claim under subsection (1), the subcontractor must give a
copy of the notice of withdrawal to each of the persons to
whom the subcontractor gave a copy of the notice of claim. 3
4
5
6

Division 3 Action by person given notice of claim 7 8

126 Person given notice of claim must retain money 9

- (1) This section applies if a notice of claim is given to a person
under section 122 because the person is obliged to pay money
to a contractor under a contract. 10
11
12
- (2) The person must retain a sufficient part of the money that is or
is to become payable by the person under the contract to
satisfy the claim until the court in which the claim is heard
makes an order about to whom, and in what way, the money is
to be paid. 13
14
15
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17
- (3) If the person fails to retain the money as required under
subsection (2), the person is personally liable to pay to the
subcontractor the amount of the claim, not exceeding the
amount that the person is required to retain under subsection
(2). 18
19
20
21
22
- (4) However, the person may, at any time after the notice of claim
is given to the person, pay into court the amount that the
person is required to retain under subsection (2). 23
24
25
- (5) An amount paid into court by a person under subsection (4)— 26
- (a) may be paid out only under an order of the court; and 27
 - (b) discharges the person of all further liability relating to
the amount and of the costs of any proceeding in relation
to the amount. 28
29
30

[s 127]

127	Person given notice of claim must comply with request from security holder about s 130 or 131	1 2
(1)	This section applies if a subcontractor—	3
(a)	gives a notice of claim to a person obliged to pay money to a contractor under a contract; and	4 5
(b)	gives the holder of a security for the contract a copy of the notice of claim.	6 7
(2)	The holder of the security may, in writing, ask the person for information the holder reasonably requires to comply with section 130 or 131.	8 9 10
(3)	The person must comply with a request made under subsection (2) to the greatest practicable extent.	11 12
(4)	Subsection (5) applies if—	13
(a)	the person fails to comply with a request made under subsection (2); and	14 15
(b)	because of the failure the security holder does not comply with section 130(1) or 131(1).	16 17
(5)	The person, instead of the holder of the security, is personally liable to pay the subcontractor the amount the subcontractor is liable to be paid under section 130(2) or 131(2).	18 19 20
Division 4	Action by contractor given copy of notice of claim	21 22
128	Contractor given copy of notice of claim must respond [S11]	23 24
(1)	This section applies if a subcontractor gives a contractor a copy of a notice of claim.	25 26
(2)	The contractor must give both of the following persons a written response to the claim within 5 business days after the contractor is given the copy of the notice of claim—	27 28 29

-
- (a) the person given the notice of claim; 1
 - (b) the subcontractor. 2
- Maximum penalty—20 penalty units. 3
- (3) The response to the claim must be made in the approved form 4
and either— 5
 - (a) accept liability to pay the amount claimed; or 6
 - (b) accept liability to pay an amount stated in the response, 7
but otherwise dispute the claim; or 8
 - (c) dispute the claim. 9

Division 5 Payment of claim 10

129 Payment of amount claimed 11

- (1) This section applies if— 12
 - (a) a subcontractor gives a notice of claim to a person under 13
section 122 because the person is obliged to pay money 14
to a contractor under a contract; and 15
 - (b) the subcontractor gives a copy of the notice of claim to a 16
contractor under section 123; and 17
 - (c) in the contractor's response to the claim under section 18
128, the contractor— 19
 - (i) accepts liability to pay the amount claimed; or 20
 - (ii) accepts liability to pay an amount stated in the 21
response but otherwise disputes the claim. 22
- (2) If, in the response to the claim, the contractor accepts liability 23
to pay the amount claimed, the person given the notice of 24
claim must pay the subcontractor the amount the person is 25
required to retain. 26
- (3) If, in the response to the claim, the contractor accepts liability 27
to pay an amount stated in the response but otherwise disputes 28
the claim, the person given the notice of claim must pay the 29

[s 130]

- subcontractor the amount the person is required to retain, up to the amount stated in the response. 1
2
- (4) However, the person given the notice of claim is required to comply with subsection (2) or (3) only if, after payment is made under that subsection, the retained amount will be equal to or more than the unsatisfied amount. 3
4
5
6
- (5) A payment made by a person in compliance with this section discharges the person of all further liability relating to the amount paid and of the costs of any proceeding relating to the amount paid. 7
8
9
10
- (6) In this section— 11
- retained amount* means the total of— 12
- (a) all amounts still retained by a person under section 126(2); and 13
14
- (b) all amounts paid into court by a person under section 126(4). 15
16
- unsatisfied amount* means the total of all amounts of claims for which a notice of claim has been given, other than amounts that— 17
18
19
- (a) have been satisfied by payment under subsection (2) or (3); or 20
21
- (b) are the subject of a notice of claim that has been withdrawn. 22
23
- 130 Use of security for benefit of subcontractor if contractor accepts liability for all claims** 24
25
- (1) This section applies if— 26
- (a) a subcontractor gives a notice of claim to a person under section 122 because the person is obliged to pay money to a contractor under a contract; and 27
28
29
- (b) the subcontractor gives a copy of the notice of claim to the contractor under section 123; and 30
31

-
- (c) in the contractor's response to the claim under section 128, the contractor accepts liability to pay the amount claimed; and
- (d) the unsatisfied amount for the contract is more than the retained amount for the contract.
- (2) The holder of a security for the contract must—
- (a) retain the security until a court in which a subcontractor's claim is heard makes an order under section 132 about enforcing the charge over the security; or
- (b) instead of retaining the security—
- (i) if the security is held as an amount of money—pay the amount, up to the difference amount for the contract, to the subcontractor or subcontractors to whom the acceptance of liability relates; or
- (ii) if the security is not held as an amount of money but may be converted into an amount of money—convert the security, wholly or partly, into an amount of money and pay the amount, up to the difference amount for the contract, to the subcontractor or subcontractors to whom the acceptance of liability relates.
- (3) If the holder of the security does not comply with subsection (2), the holder is personally liable to pay to a subcontractor the amount of the subcontractor's claim to the extent that the security would have been capable under this chapter, if the holder had complied with the subsection, of satisfying the claim.
- (4) A payment of an amount under subsection (2)(b) discharges the holder of the security of all further liability for the amount paid and of the costs of any proceeding in relation to the amount paid.
- (5) Subsections (2) and (3) do not stop the holder of the security from exercising an entitlement to use the security for securing the performance of the contract, including by keeping control

[s 131]

of the security until the security would be required to be surrendered, wholly or partly, if this section did not apply.	1 2
(6) A provision of the contract, or of another arrangement, about the security, including a provision of the security itself, and including a provision providing for the surrender, wholly or partly, of the security, is of no effect to the extent it purports—	3 4 5 6
(a) to stop the holder of the security from complying with subsection (2); or	7 8
(b) to operate to the detriment of a person if the holder complies with subsection (2).	9 10
(7) In this section—	11
<i>difference amount</i> , for a contract, means the amount by which the unsatisfied amount for the contract is more than the retained amount for the contract.	12 13 14
<i>retained amount</i> , for a contract, means the total of—	15
(a) all amounts a person is retaining under section 126(1) for the contract; and	16 17
(b) all amounts a person has paid into court under section 126(4) for the contract; and	18 19
(c) all amounts the holder of a security for the contract has paid to a subcontractor under subsection (2)(b) in relation to the security.	20 21 22
<i>unsatisfied amount</i> , for a contract, means the total of all amounts of claims for the contract for which a notice of claim has been given, other than amounts that have been—	23 24 25
(a) satisfied by payment under section 126(2) or (3); or	26
(b) the subject of a notice of claim that has been withdrawn.	27
131 Use of security for benefit of subcontractor if contractor does not accept liability for all claims	28 29
(1) This section applies if—	30

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- (a) a subcontractor gives a notice of claim to a person under section 122 because the person is obliged to pay money to a contractor under a contract; and
- (b) the subcontractor gives a copy of the notice of claim to the contractor under section 123; and
- (c) in the contractor's response to the claim under section 128, the contractor disputes the claim (does not accept liability to pay the amount claimed); and
- (d) the unsatisfied amount for the contract is more than the retained amount for the contract.
- (2) The holder of a security for the contract must—
- (a) retain the security until a court in which a subcontractor's claim is heard makes an order under section 132 about enforcing the charge over the security; or
- (b) instead of retaining the security—
- (i) if the security is held as an amount of money—pay the amount, up to the difference amount for the contract, into court; or
- (ii) if the security is not held as an amount of money but may be converted into an amount of money—convert the security, wholly or partly, into an amount of money and pay the amount, up to the difference amount for the contract, into court.
- (3) If the holder of the security does not comply with subsection (2), the holder is personally liable to pay the subcontractor the amount of the subcontractor's claim to the extent that the security would have been capable under this chapter, if the holder had complied with the subsection, of satisfying the claim.
- (4) A payment of an amount under subsection (2)(b) discharges the holder of the security of all further liability for the amount paid and of the costs of any proceeding in relation to the amount paid.

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- (5) Subsections (2) and (3) do not stop the holder of the security from exercising an entitlement to use the security for securing the performance of the contract, including by keeping control of the security until the security would be required to be surrendered, wholly or partly, if this section did not apply.
- (6) A provision of the contract, or of another arrangement, about the security, including a provision of the security itself, and including a provision providing for the surrender, wholly or partly, of the security, is of no effect to the extent it purports—
- (a) to stop the holder of the security from complying with subsection (2); or
 - (b) to operate to the detriment of a person if the holder complies with subsection (2).
- (7) An amount paid into court under subsection (2)(b) may be paid out only under an order of the court.
- (8) In this section—
- difference amount***, for a contract, means the amount by which the unsatisfied amount for the contract is more than the retained amount for the contract.
- retained amount***, for a contract, means the total of—
- (a) all amounts a person is retaining under section 126(2) for the contract; and
 - (b) all amounts a person has paid into court under section 126(4) for the contract; and
 - (c) all amounts the holder of a security for the contract has paid into court under subsection (2)(b) in relation to the security.
- unsatisfied amount***, for a contract, means the total of all amounts of claims of charge for the contract for which a notice of claim has been given, other than amounts that have been—
- (a) satisfied by payment under section 126(2) or (3); or
 - (b) the subject of a notice of claim that has been withdrawn.

132	Authority of court for security	1
(1)	This section applies if the holder of a security for a contract—	2
(a)	is retaining the security under section 130(2)(a) or 131(2)(a) for a subcontractor's charge; or	3 4
(b)	has paid an amount for the security into court under section 131(2)(b) for a subcontractor's charge.	5 6
(2)	The court may make the order it considers appropriate for enforcing the subcontractor's charge over the security, including an order for realising the security.	7 8 9
(3)	However, the court may make an order for realising the security only if the holder of the security is no longer entitled, under any contract or other arrangement about the security, including under the security itself, to use the security—	10 11 12 13
(a)	for securing the performance of the contract; or	14
(b)	in some other way provided for in the contract.	15
(4)	Without limiting the orders the court may make under subsection (2), the court may order the holder of the security to produce the security to the court.	16 17 18
(5)	A precondition or expiry provision for the security is of no effect to the extent that the provision purports to stop the realisation of a security under subsection (2).	19 20 21
(6)	In this section—	22
	<i>expiry provision</i> , for a security, means a provision of a contract or another arrangement about the security, including a provision of the security itself, under which the security stops, wholly or partly, having effect.	23 24 25 26
	<i>precondition provision</i> , for a security, means a provision of a contract or another arrangement about the security, including a provision of the security itself, stating the circumstances that are to apply before the holder of the security may exercise an entitlement to use the security for securing the performance of a contract.	27 28 29 30 31 32

[s 133]

133	Particular subcontractor securities of no effect	1
	To the extent that something is given by or for a subcontractor	2
	for securing, wholly or partly, the performance by a contractor	3
	of the contractor's contract it is of no effect.	4
Part 5	Enforcing subcontractor's charge	5
		6
134	Recovering amount claimed	7
(1)	This section applies if—	8
(a)	a subcontractor gives a notice of claim to a person under	9
	section 122 because the person is obliged to pay money	10
	to a contractor under a contract; and	11
(b)	the person does not pay, or make satisfactory	12
	arrangements for paying, the subcontractor the amount	13
	claimed.	14
(2)	The subcontractor may recover the amount claimed from the	15
	person, as a debt owing to the subcontractor, in any court of	16
	competent jurisdiction.	17
(3)	Without limiting the arrangements a person may make for	18
	paying a subcontractor an amount claimed, a person makes	19
	satisfactory arrangements for paying an amount claimed if the	20
	person pays into court the amount the person is required to	21
	retain under section 129.	22
135	Enforcing subcontractor's charge on behalf of other subcontractors	23
		24
(1)	An action to enforce a subcontractor's charge under this	25
	chapter may be brought by or on behalf of any number of	26
	subcontractors claiming subcontractor's charges.	27

-
- (2) Every action brought by a subcontractor to enforce a subcontractor's charge is deemed to be also brought on behalf of every other subcontractor—
- (a) who has given a notice of claim under 122; and
 - (b) whose charge has not been extinguished under 136(3); and
 - (c) who becomes a party to the action in accordance with *Uniform Civil Procedure Rules 1999* and subsection (3).
- (3) Subject to the *Uniform Civil Procedure Rules 1999*, a subcontractor may become a party at any time before the date appointed for the hearing or any adjournment of the hearing.

136 Proceedings for subcontractor's charges

- (1) A proceeding for a subcontractor's charge must—
- (a) be started within—
 - (i) if the claim is for the retention amount only—4 months after the balance of the retention amount is payable; and
 - (ii) otherwise—1 month after notice of the claim is given under section 122 to the person by whom the money is payable; and
 - (b) be brought by way of action.
- (2) For a proceeding for a subcontractor's charge, it is sufficient if the subcontractor proves that the charge attached to money payable or a security in existence on any date before the date of hearing.
- (3) A subcontractor's charge is extinguished if the proceedings to enforce it are not started as required under subsection (1).

137 Claims of charge relating to retention amount not limited

To remove any doubt, it is declared that, for a subcontractor's charge relating only to a retention amount—

(2)	The court must hear and determine the application summarily and may make such order as it considers appropriate.	1 2
140	Vexatious claims	3
(1)	A person who vexatiously, or without reasonable grounds, gives a notice of claim to another person is liable to pay to a person prejudicially affected by the claim an amount for the damages the person incurs because of the claim.	4 5 6 7
(2)	Without limiting subsection (1), a person gives a notice of a claim without reasonable grounds if the person knows, or ought reasonably to know, that the amount of the claim unreasonably exceeds the amount actually payable to the person.	8 9 10 11 12
(3)	Damages mentioned in subsection (1) must be decided by a court on an application by the person prejudicially affected.	13 14
Part 7	Miscellaneous	15
141	Effect of payment made under order of the court	16
	A payment of money by a person to another person in compliance with an order of a court made under this chapter is, to the extent of the amount paid, a sufficient discharge of the person's liability to pay the money to another person who, if not for the order, would have been entitled to receive payment of that money.	17 18 19 20 21 22
142	Court jurisdiction	23
	Claims and all other matters arising under this chapter between a person claiming a subcontractor's charge and any other person alleged to be liable to pay an amount claimed or otherwise interested in money that may be affected by a claim of a subcontractor's charge and between persons claiming a subcontractor's charge may be heard, determined and	24 25 26 27 28 29

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	enforced by proceedings under this chapter in a court of competent jurisdiction.	1 2
143	Consolidation of actions	3
	If separate actions are brought under this chapter against the same person, or against several persons in relation to the whole or any part of the work required to be carried out under the same contract, the court may order those actions be consolidated on the terms the court considers appropriate.	4 5 6 7 8
144	Power to proceed in absence of person against whom proceedings brought	9 10
	The court may proceed to hear and determine an action or a dispute in the absence of any person to whom an originating process or application is directed on proof on oath of the service of the originating process or application.	11 12 13 14
145	Costs	15
	Costs of proceedings under this chapter as between party and party are at the discretion of the court.	16 17
146	Appeal	18
	An appeal lies from a decision of the court given in any proceeding under this chapter as if it were a decision given in a proceeding brought otherwise than under this chapter.	19 20 21
147	Qualified persons	22
	(1) A person is a <i>qualified person</i> for the purpose of certifying a notice of claim under section 122 if the person is—	23 24
	(a) an architect registered under the <i>Architects Act 2002</i> ; or	25
	(b) a registered professional engineer under the <i>Professional Engineers Act 2002</i> ; or	26 27

-
- (c) a person licensed under the *Queensland Building and Construction Commission Act 1991* to carry out or supervise work of the type to which the claim relates; or
- (d) a quantity surveyor who is a member of the Australian Institute of Quantity Surveyors; or
- (e) a person having expert knowledge of the work to which the claim relates and who is accepted in a particular case as a qualified person by the contractor and subcontractor.
- (2) A person must not give a certificate for a claim that relates to any work if the person—
- (a) performed any of the work; or
- (b) has a direct or indirect financial interest in the work.
- (3) If a person gives a certificate for a claim in contravention of subsection (2), the claim is of no effect and the relevant subcontractor's charge does not attach.
- (4) A person who gives a certificate for a claim does not have a financial interest in the work only because the person is paid a fee for giving the certificate.
- (5) A person who gives a certificate for a claim does not incur civil liability by reason only of the giving of the certificate unless the person is convicted of fraud in relation to giving the certificate.

148 Right to recover debt generally preserved

Unless otherwise expressly provided for under this chapter, nothing in this chapter affects the right of a person to whom a debt is due and owing for work done to maintain a personal action to recover the debt against the person liable for it, and a judgment obtained by the plaintiff in any action brought does not affect a charge or other right to which the plaintiff is entitled under this chapter.

Chapter 5	Administration	1
Part 1	Registry and staff	2
Division 1	Registry	3
149	Registry	4
(1)	The Adjudication Registry (the <i>registry</i>) established under the repealed <i>Building and Construction Industry Payments Act 2004</i> is continued.	5 6 7
(2)	The registry consists of the registrar and those employees (<i>registry staff</i>) of the employing office that are assigned to the registry.	8 9 10
(3)	The role of the registry staff is limited to assisting the registrar perform his or her functions or exercise a power.	11 12
(4)	Only registry staff may assist the registrar perform his or her functions or exercise a power.	13 14
(5)	In this section— <i>employing office</i> see the <i>Queensland Building and Construction Commission Act 1991</i> , schedule 2.	15 16 17
Division 2	Registrar	18
150	Adjudication registrar	19
(1)	There is to be an Adjudication Registrar (the <i>registrar</i>).	20
(2)	The registrar is appointed by the Governor in Council.	21
(3)	A person is eligible for appointment as the registrar only if the person—	22 23

-
- (a) is eligible for admission in the legal profession under the *Legal Profession Act 2007*, section 30; and
- (b) has particular knowledge and experience of public administration or other matters of substantial relevance to the functions of the registrar.
- Examples of other matters for paragraph (b)—*
- the application of laws relating to building or dispute resolution processes
- (4) The commissioner may appoint a person to act as registrar for a period of not more than 6 months—
- (a) during a vacancy in the office; or
- (b) during any period, or all periods, when the registrar is absent from duty or, for another reason, can not perform the duties of the office.
- (5) The registrar is appointed under this Act and not the *Public Service Act 2008*.
- (6) The registrar is an employee of the employing office.
- (7) In this section—
- employing office* see the *Queensland Building and Construction Commission Act 1991*, schedule 2.

151 Disqualification from appointment

A person is disqualified from being appointed as the registrar if the person—

- (a) has a recorded conviction, other than a spent conviction, for an indictable offence; or
- (b) is, or has been, convicted of an offence against this Act; or
- (c) is an insolvent under administration within the meaning of the Corporations Act, section 9; or
- (d) is not able to manage a corporation because of the Corporations Act, part 2D.6; or

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- (e) is a member of the board within the meaning of the *Queensland Building and Construction Commission Act 1991*; or 1
2
3
- (f) is a person engaged by the commission under a contract to provide advice or a particular service. 4
5
- 152 Term of appointment** 6
- (1) The registrar holds office for the term stated in the person's appointment as registrar. 7
8
- (2) The stated term must not be more than 3 years. 9
- (3) The registrar may be reappointed. 10
- 153 Conditions of appointment** 11
- The registrar is to be paid the remuneration and allowances decided by the Governor in Council. 12
13
- 154 Registrar's functions and powers** 14
- (1) The registrar is responsible for managing the registry and the administration of the registry. 15
16
- (2) The registrar has the following functions— 17
- (a) referring adjudication applications to adjudicators; 18
- (b) keeping a register containing details of adjudicators (the *adjudicator register*); 19
20
- (c) ensuring the adjudicator register is available for inspection by a person— 21
22
- (i) if a regulation prescribes a fee for the inspection— 23
on payment of the fee prescribed; or 24
- (ii) otherwise—without charge; 25
- (d) supplying a certificate as to the correctness of a matter in the adjudicator register to a person paying the fee prescribed by regulation for the certificate; 26
27
28

(e) keeping and publishing records of decisions by adjudicators;	1 2
(f) keeping account of fees paid or payable to the registrar;	3
(g) collecting statistical data and other information relevant to the administration of the registry for the commissioner's report to the Minister under section 157;	4 5 6 7
(h) administering the continuing professional development requirements prescribed by regulation for adjudicators;	8 9
(i) making a code of conduct for adjudicators;	10
(j) providing an advisory service to consumers about the role of the registry or the adjudication process;	11 12
(k) reporting to the commissioner about the administration of the registry;	13 14
(l) performing another function given under this Act or another Act.	15 16
(3) The registrar has the powers reasonably necessary to perform the registrar's functions.	17 18
(4) The registrar must perform the registrar's functions and exercise the registrar's powers impartially and transparently.	19 20
(5) The commissioner must not direct the registrar in performing a function mentioned in subsection (2)(a), (d) or (e).	21 22
155 Registrar's policy	23
(1) The registrar may make a policy about the administration of chapter 3 or this chapter.	24 25
(2) However, the policy does not take effect until approved by regulation.	26 27
(3) The commissioner must—	28
(a) publish the policy on the commission's website; and	29

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- (b) keep copies of the policy available for inspection, free of charge, at the commission's office when the office is open to the public; and
- (c) if asked, advise where copies of the policy may be obtained.

156 Delegation by registrar 6

The registrar may delegate the registrar's powers under this Act or another Act to an appropriately qualified member of the registry staff. 7
8
9

Division 3 Other matters 10

157 Annual report on operation of chapter and registry 11

- (1) As soon as practicable after each financial year, but not later than 30 September, the commissioner must give the Minister a report including—
 - (a) a review of the operation of chapter 3 and the registry during the preceding financial year; and
 - (b) proposals for improving the operation of, and forecasts of the workload of, the registry in the present financial year.
- (2) The report may be included in the commission's annual report.
- (3) Unless the report is included in the commission's annual report, the Minister must table a copy of the report in the Legislative Assembly within 14 sitting days after receiving the report.
- (4) In this section—
annual report means an annual report prepared under the *Financial Accountability Act 2009*, section 63.

Part 2	Adjudicators	1
Division 1	Preliminary	2
158	Definitions for chapter	3
	In this chapter—	4
	<i>accepted representations</i> see section 172(2).	5
	<i>adjudicated amount</i> see section 88(1).	6
	<i>adjudication application</i> see section 79(1).	7
	<i>conviction</i> means a finding of guilt, or the acceptance of a plea of guilty, by a court, whether or not a conviction is recorded.	8 9 10
	<i>corresponding law</i> means a law applying, or that applied, in another State, the Commonwealth or a foreign country that provides, or provided, for the same matter as this part or a provision of this part.	11 12 13 14
	<i>information notice</i> , for a decision of the registrar under this part, is a written notice stating—	15 16
	(a) the decision; and	17
	(b) the reasons for the decision; and	18
	(c) that the person to whom the notice is given may have the decision reviewed within 28 days; and	19 20
	(d) how the person may have the decision reviewed.	21
	<i>original decision</i> see section 177(1).	22
	<i>payment claim</i> means a claim mentioned in section 75.	23
	<i>proposed action</i> see section 171(3)(a).	24
	<i>review decision</i> see section 178(2).	25
	<i>review notice</i> see section 178(3).	26
	<i>show cause notice</i> see section 171(2).	27

[s 159]

- show cause period* see section 171(3)(e). 1
- spent conviction* means a conviction— 2
- (a) for which the rehabilitation period under the *Criminal Law (Rehabilitation of Offenders) Act 1986* has expired 3
under that Act; and 4
5
- (b) that is not revived as prescribed by section 11 of that 6
Act. 7

Division 2 Registration of adjudicators 8

159 Application for registration as adjudicator 9

- (1) An individual may apply to the registrar for registration as an 10
adjudicator. 11
- (2) The application— 12
- (a) must be— 13
- (i) in the approved form; and 14
- (ii) signed by or for the applicant; and 15
- (iii) accompanied by the fee prescribed by regulation 16
for the application; and 17
- (b) must state the following— 18
- (i) the name and address of the applicant; 19
- (ii) an address in Queensland for service of 20
documents; 21
- (iii) the experience and qualifications of the applicant, 22
relevant to deciding adjudication applications; 23
- (iv) other details, required in the approved form for the 24
application, to enable the registrar to decide 25
whether the applicant is a suitable person to be 26
registered as an adjudicator. 27

160	Consideration of application	1
(1)	The registrar must consider the application and either grant, or refuse to grant, the application.	2 3
(2)	The registrar may grant the application only if the registrar is satisfied the applicant is a suitable person to be registered as an adjudicator.	4 5 6
161	Suitability of person to be registered	7
(1)	A person is not eligible to be registered as an adjudicator unless the person holds—	8 9
(a)	an adjudication qualification; or	10
(b)	another qualification that the registrar considers to be equivalent to an adjudication qualification.	11 12
(2)	In deciding whether an applicant is a suitable person to be registered as an adjudicator, the registrar may have regard to the following matters—	13 14 15
(a)	whether the person—	16
(i)	has a conviction for a relevant offence, other than a spent conviction; or	17 18
(ii)	held a registration under this part, or a licence or registration under a corresponding law, that was suspended or cancelled; or	19 20 21
(iii)	has been refused registration under this part or a licence or registration under a corresponding law; or	22 23 24
(iv)	is an insolvent under administration within the meaning of the Corporations Act, section 9; or	25 26
(v)	is competent to adjudicate matters under chapter 3; or	27 28
(b)	whether the person’s registration with a professional association was cancelled because of disciplinary action;	29 30 31

[s 162]

- (c) the experience and qualifications of the person; 1
 - (d) the matters stated in the application for registration 2
under section 159; 3
 - (e) anything else relevant to the person's ability to perform 4
the person's functions as an adjudicator. 5
- (3) In this section— 6
- adjudication qualification* means a qualification issued by a 7
body prescribed by regulation to an individual stating that the 8
individual has achieved an adjudication competency standard 9
prescribed by regulation. 10
- relevant offence* means— 11
- (a) an indictable offence, other than an indictable offence 12
that is taken to be a simple offence under the Criminal 13
Code, section 659; or 14
 - (b) an offence against this Act; or 15
 - (c) an offence against a corresponding law; or 16
 - (d) an offence against the *Queensland Building and 17
Construction Commission Act 1991* or a law of another 18
State or the Commonwealth that provides for the same 19
matter as that Act or a provision of that Act; or 20
 - (e) an offence against the repealed *Domestic Building 21
Contracts Act 2000* or a law of another State or the 22
Commonwealth that provides for the same matter as that 23
Act or a provision of that Act; or 24
 - (f) an offence, relating to the provision of services as an 25
adjudicator, against a law applying, or that applied, in 26
the State, the Commonwealth, another State or a foreign 27
country. 28

162 Request for further information 29

- (1) The registrar may, by written notice given to the applicant, 30
require the applicant to give the registrar further information 31

-
- or a document the registrar reasonably requires to decide the application. 1
2
- (2) The requirement— 3
- (a) must state the period, of at least 28 days, within which 4
the applicant must give the registrar the information or 5
document; or 6
- (b) may require the information or document be verified by 7
statutory declaration. 8
- (3) The registrar may, before the end of the stated period, extend 9
the time for complying with the requirement. 10
- (4) Unless the registrar extends the time for comply with the 11
requirement, the applicant is taken to have withdrawn the 12
application if he or she does not comply with the requirement 13
with the stated period. 14

163 Decision on application for registration 15

- (1) If the registrar decides to grant the application, the registrar 16
must issue a certificate of registration to the applicant. 17
- (2) If the registrar decides to impose conditions on the 18
registration, the registrar must immediately give the applicant 19
an information notice for the decision. 20
- (3) If the registrar decides to refuse to grant the application, the 21
registrar must immediately give the applicant an information 22
notice for the decision. 23

164 Term of registration 24

- Registration as an adjudicator becomes effective on the day 25
the certificate of registration is issued or on the day of the 26
registration's renewal and ends either— 27
- (a) 3 years after that day; or 28
- (b) on the earlier day decided by the registrar and stated in 29
the certificate of registration. 30

[s 165]

165	Conditions of registration	1
(1)	Registration as an adjudicator is subject to the following conditions—	2 3
(a)	the adjudicator must comply with this chapter;	4
(b)	the adjudicator must complete continuing professional development as prescribed by regulation;	5 6
(c)	other reasonable conditions the registrar considers appropriate to give effect to this chapter and that are stated in the certificate of registration or in an information notice given under subsection (3).	7 8 9 10
(2)	Conditions may be imposed under subsection (1)(b)—	11
(a)	when registration first happens or is renewed or amended; or	12 13
(b)	at another time if the registrar considers the conditions are necessary to ensure that an adjudicator effectively performs the adjudicator’s functions under this chapter.	14 15 16
(3)	If the registrar decides to impose conditions on the registration under subsection (2)(b)—	17 18
(a)	the registrar must immediately give the adjudicator an information notice for the decision; and	19 20
(b)	the conditions take effect when the information notice is received by the adjudicator or the later day stated in the notice.	21 22 23
166	Form of certificate of registration	24
	A certificate of registration must state the following particulars—	25 26
(a)	the adjudicator’s name;	27
(b)	the day the registration becomes effective;	28
(c)	the day the registration expires;	29
(d)	the registration number;	30

- (e) the registration conditions. 1

Division 3 **Renewals of registrations of** 2
 adjudicators 3

167 Applications for renewal of registration 4

- (1) An adjudicator may apply to the registrar for the renewal of 5
the adjudicator’s registration. 6
- (2) The application must be made at least 1 month before the 7
registration ends and must— 8
- (a) be in the approved form; and 9
- (b) be signed by or for the applicant; and 10
- (c) be accompanied by the fee prescribed by regulation for 11
the application. 12
- (3) The registrar must consider the application and renew, or 13
refuse to renew, the registration. 14
- (4) In deciding whether to grant the application, the registrar may 15
have regard to the matters mentioned in section 161(2). 16
- (5) The registrar must not renew the registration if— 17
- (a) the applicant would not be eligible to be registered as an 18
adjudicator under section 161(1); or 19
- (b) the applicant has not completed the required continuing 20
professional development prescribed under section 21
165(1). 22
- (6) If the registrar decides to refuse to renew the registration, the 23
registrar must give the applicant an information notice for the 24
decision. 25
- (7) If the registrar decides to impose conditions on the 26
registration, the registrar must give the applicant an 27
information notice for the decision. 28
- (8) A registration may be renewed by— 29

[s 168]

- (a) endorsing the existing certificate of registration; or 1
- (b) cancelling the existing certificate and issuing another 2
certificate. 3

168 Request for further information 4

- (1) The registrar may, by written notice given to the applicant, 5
require the applicant to give the registrar further information 6
or a document the registrar reasonably requires to decide the 7
application. 8
- (2) The requirement— 9
 - (a) must state the period, of at least 28 days, within which 10
the applicant must give the registrar the information or 11
document; or 12
 - (b) may require the information or document be verified by 13
statutory declaration. 14
- (3) The registrar may, before the end of the stated period, extend 15
the time for complying with the requirement. 16
- (4) Unless the registrar extends the time for comply with the 17
requirement, the applicant is taken to have withdrawn the 18
application if he or she does not comply with the requirement 19
within the stated period. 20

**169 Registration taken to be in force while application for 21
renewal is considered 22**

- (1) If an application is made under section 167, the adjudicator’s 23
registration is taken to continue in force from the day that it 24
would, apart from this section, have ended until the 25
application is decided under section 167 or is withdrawn. 26
- (2) However, if the application is refused, the registration 27
continues in force until the information notice for the decision 28
is given to the applicant. 29
- (3) Subsection (1) does not apply if the registration is earlier 30
suspended or cancelled. 31

Division 4	Suspension or cancellation of registrations of adjudicators	1 2
170	Grounds for suspension or cancellation	3
(1)	Each of the following is a ground for suspending or cancelling an adjudicator’s registration—	4 5
(a)	the adjudicator is not, or is no longer, a suitable person to hold the registration;	6 7
(b)	the adjudicator has contravened a requirement of the code of conduct made by the registrar under section 181;	8 9
(c)	the adjudicator has contravened a condition of the registration;	10 11
(d)	the registration was issued because of a materially false or misleading representation or declaration.	12 13
(2)	For forming a belief that the adjudicator is not, or is no longer, a suitable person to hold registration, the registrar—	14 15
(a)	must have regard to section 161(1); and	16
(b)	may have regard to the matters mentioned in section 161(2).	17 18
171	Show cause notice	19
(1)	This section applies if the registrar believes a ground exists to suspend or cancel an adjudicator’s registration.	20 21
(2)	The registrar must give the adjudicator a notice under this section (a <i>show cause notice</i>).	22 23
(3)	The show cause notice must state—	24
(a)	the action (the <i>proposed action</i>) the registrar proposes taking under this division; and	25 26
(b)	the grounds for the proposed action; and	27
(c)	an outline of the facts and circumstances forming the basis for the grounds; and	28 29

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- (d) if the proposed action is suspension of the registration—the proposed suspension period; and 1
2
- (e) an invitation to the adjudicator to show within a stated period (the *show cause period*) why the proposed action should not be taken. 3
4
5
- (4) The show cause period must be a period ending at least 21 days after the show cause notice is given to the adjudicator. 6
7
- 172 Representations about show cause notices** 8
- (1) The adjudicator may make written representations about the show cause notice to the registrar in the show cause period. 9
10
- (2) The registrar must consider all representations (the *accepted representations*) made under subsection (1). 11
12
- 173 Ending show cause process without further action** 13
- (1) This section applies if, after considering the accepted representations for the show cause notice, the registrar no longer believes a ground exists to suspend or cancel the registration. 14
15
16
17
- (2) The registrar must not take any further action in relation to the show cause notice. 18
19
- (3) The registrar must give the adjudicator written notice that no further action is to be taken in relation to the show cause notice. 20
21
22
- 174 Suspension or cancellation** 23
- (1) This section applies if— 24
- (a) there are accepted representations for the show cause notice and, after considering the representations, the registrar still believes a ground exists to suspend or cancel the registration; or 25
26
27
28
- (b) there are no accepted representations. 29

[s 175]

-
- (2) If the registrar believes suspension or cancellation of the registration is warranted, the registrar may—
- (a) if the proposed action stated in the show cause notice was to suspend the registration for a stated period—suspend the registration for not longer than the stated period; or
 - (b) if the proposed action stated in the show cause notice was to cancel the registration—either cancel the registration or suspend it for a period.
- (3) The registrar must immediately give an information notice for the decision to the adjudicator.
- (4) The decision takes effect on the later of the following days—
- (a) the day the information notice is given to the adjudicator;
 - (b) the day stated in the information notice for that purpose.

175 Immediate suspension of registration

- (1) The registrar may suspend an adjudicator's registration immediately if the registrar believes—
- (a) a ground exists to suspend or cancel the registration; and
 - (b) it is necessary to suspend the registration immediately because there is an immediate and serious harm to the effectiveness of the adjudication of payment claims under chapter 3.
- (2) The suspension—
- (a) must be effected by an information notice for the decision given by the registrar to the adjudicator to suspend the adjudicator's registration together with a show cause notice; and
 - (b) begins when the notices are given to the adjudicator; and
 - (c) continues until the earliest of the following happens—

[s 176]

	(i) the registrar cancels the remaining period of the suspension;	1 2
	(ii) the show cause notice is finally dealt with;	3
	(iii) 28 days have passed since the notices were given to the adjudicator.	4 5
176	Effect of suspension or cancellation of registration of adjudicator	6 7
	(1) This section applies if—	8
	(a) the registration of an adjudicator is suspended or cancelled or otherwise ends; and	9 10
	(b) an adjudication application has been referred to the adjudicator for adjudication of a payment claim; and	11 12
	(c) the adjudicator has not yet made a decision under section 88 for the adjudication application.	13 14
	(2) Within 4 business days after the registration is suspended, cancelled or ends, the registrar must refer the adjudication application to a person eligible to be an adjudicator under section 80.	15 16 17 18
	(3) No fee is payable for the referral.	19
	(4) The adjudicator is not entitled to any fees or expenses in relation to the adjudication application.	20 21
Division 5	Internal review of registration decisions	22 23
177	Applying to registrar for internal review	24
	(1) A person who is given, or is entitled to be given, an information notice for a decision under divisions 1 to 4 (the <i>original decision</i>) may apply to the registrar for an internal review of the original decision.	25 26 27 28

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

178 Internal review of original decision

- (1) This section applies if a person applies for an internal review of an original decision under section 177.
- (2) After reviewing the original decision, the registrar must make a further decision (the *review decision*) to—
 - (a) confirm the original decision; or
 - (b) amend the original decision; or
 - (c) substitute another decision for the original decision.
- (3) The registrar must immediately give the applicant notice of the review decision (the *review notice*).
- (4) The review notice must comply with the QCAT Act, section 157(2).
- (5) If the registrar does not give the notice within 28 days after the application is made, the registrar is taken to have made a review decision confirming the original decision on the 28th day after the application is made.
- (6) If the review decision confirms the original decision, for the purpose of an application to QCAT for an external review, the original decision is taken to be the review decision.
- (7) If the review decision amends or substitutes the original decision, for the purpose of an application to QCAT for an

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external review, the original decision as amended or
substituted is taken to be the review decision. 1
2

179 Stay of operation of original decision 3

- (1) If an application is made for an internal review of an original
decision, the applicant may immediately apply, as provided
under the QCAT Act, to QCAT for a stay of the decision. 4
5
6
- (2) QCAT may stay the decision to secure the effectiveness of the
review and any later review by QCAT. 7
8
- (3) The stay— 9
- (a) may be given on conditions QCAT considers 10
appropriate; and 11
- (b) operates for the period fixed by QCAT; and 12
- (c) may be revoked or amended by QCAT. 13
- (4) The period of the stay must not extend past the time when the
registrar makes a review decision about the original decision
and any later period QCAT allows the applicant to enable the
applicant to apply to QCAT for a review of the review
decision. 14
15
16
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18
- (5) The application affects the decision, or carrying out of the
decision, only if the decision is stayed. 19
20

**Division 6 External review of registration
decisions** 21
22

180 Applying to QCAT for external review 23

A person who has applied for an internal review of an original
decision under division 5 and is dissatisfied with the review
decision may apply, as provided under the QCAT Act, to
QCAT for an external review of the review decision. 24
25
26
27

Note—

The QCAT Act requires the application to be made within 28 days after the day the applicant is notified of the reviewable decision. If the registrar did not notify the applicant of the reviewable decision within 28 days (the *first 28 days*) after the applicant applied for a review of an original decision, the applicant would have 28 days to apply to QCAT for an external review starting at the end of the first 28 days.

Division 7 Code of conduct

181 Code of conduct for adjudicators

- (1) The registrar may make a code of conduct for adjudicators.
- (2) The code of conduct, or an amendment or replacement of the code, does not take effect until approved by regulation.
- (3) The Minister must, within 14 sitting days after the code of conduct, or an amendment or replacement of the code, takes effect, table a copy of the code in the Legislative Assembly.
- (4) A failure to comply with subsection (4) does not invalidate or otherwise affect the code of conduct.
- (5) The commissioner must—
 - (a) publish the code of conduct on the commission’s website; and
 - (b) keep copies of the code of conduct available for inspection, without charge, at the commission’s office at any time that office is open to the public; and
 - (c) if asked, advise where code of conduct of the policy may be obtained.

[s 182]

Division 8	Other provisions about adjudicators	1
182	Adjudicator must comply with registration conditions	2
(1)	An adjudicator must not contravene a condition of the registration.	3
	Maximum penalty—200 penalty units.	4
(2)	The penalty under subsection (1) may be imposed whether or not the registration is suspended or cancelled because of the contravention.	5
		6
		7
		8
183	Surrender of registration	9
(1)	An adjudicator may surrender the adjudicator’s registration by giving the registrar written notice of the surrender.	10
		11
(2)	The surrender takes effect on the later of the following—	12
(a)	the day the notice is given;	13
(b)	the day specified in the notice.	14
184	Replacement of certificate of registration	15
(1)	An adjudicator may apply to the registrar for replacement of the adjudicator’s certificate of registration if the certificate has been damaged, destroyed, lost or stolen.	16
		17
		18
(2)	The application must—	19
(a)	include information about the circumstances in which the certificate was damaged, destroyed, lost or stolen;	20
	and	21
		22
(b)	be accompanied by the fee prescribed by regulation for the application.	23
		24
(3)	The registrar must consider the application and either grant, or refuse to grant, the application.	25
		26

-
- (4) The registrar must grant the application if the registrar is satisfied the certificate of registration has been damaged, destroyed, lost or stolen in a way that requires its replacement.
- (5) If the registrar decides to grant the application, the registrar must, as soon as practicable, issue another certificate of registration to the applicant.
- (6) If the registrar decides to refuse to grant the application, the registrar must immediately give the applicant an information notice for the decision.

185 Adjudicator must give information to registrar

- (1) An adjudicator must inform the registrar, in writing, of any of the following matters within 10 business days after it happens—
- (a) the adjudicator changes address of his or her place of business or residence;
 - (b) the adjudicator is convicted of a relevant offence;
 - (c) the adjudicator’s registration with a professional association is cancelled because of disciplinary action.
- Maximum penalty—40 penalty units.
- (2) In this section—
relevant offence see section 161(4).

186 Protection from liability for adjudicators

- An adjudicator is not personally liable for anything done or omitted to be done in good faith—
- (a) in performing the adjudicator’s functions under this chapter; or
 - (b) in the reasonable belief that the thing was done or omitted to be done in the performance of the adjudicator’s functions under this chapter.

[s 187]

187	False or misleading statements	1
	A person must not, for an application made under this part, state anything to the registrar the person knows is false or misleading in a material particular.	2 3 4
	Maximum penalty—100 penalty units.	5
188	False or misleading documents	6
(1)	A person must not, for an application made under this part, give a document to the registrar that includes information the person knows is false or misleading in a material particular.	7 8 9
	Maximum penalty—100 penalty units.	10
(2)	Subsection (1) does not apply to a person if the person, when giving the document—	11 12
(a)	tells the registrar, to the best of the person’s ability, how it is false or misleading; and	13 14
(b)	if the person has, or can reasonably obtain, the correct information—gives the correct information to the registrar.	15 16 17
Chapter 6	Legal proceedings	18
Part 1	Offences	19
189	Proceedings for offences	20
(1)	A proceeding for an offence against this Act is to be heard and decided summarily.	21 22
(2)	The proceedings must start—	23
(a)	within 1 year after the commission of the offence; or	24

(b)	within 6 months after the offence comes to the complainant's knowledge, but within 1 year after the commission of the offence.	1 2 3
(3)	A statement in a complaint for an offence against this Act that the matter of the complaint came to the complainant's knowledge on a stated day is evidence the matter came to the complainant's knowledge on that day.	4 5 6 7
190	Who may prosecute	8
(1)	A prosecution may only be started by a person authorised in writing by the commissioner, either generally or in a particular case, to start the prosecution.	9 10 11
(2)	The written authorisation is evidence that the person is authorised to start the prosecution.	12 13
191	Enforcement action to comply with prescribed guidelines	14
(1)	An entity considering taking enforcement action must consider a guideline, about taking enforcement action, prescribed by regulation.	15 16 17
(2)	A failure to comply with subsection (1) does not invalidate or otherwise affect the enforcement action.	18 19
(3)	Nothing in subsection (1)—	20
(a)	affects the functions of Director of Public Prosecutions under the <i>Director of Public Prosecutions Act 1984</i> , section 10; or	21 22 23
(b)	affects the power of the Director of Public Prosecutions to act under the <i>Director of Public Prosecutions Act 1984</i> , section 11; or	24 25 26
(c)	prevents a person from complying with a guideline made by the Director of Public Prosecutions under the <i>Director of Public Prosecutions Act 1984</i> , section 11(1).	27 28 29

[s 192]

(4)	To the extent of any inconsistency between a guideline prescribed under subsection (1) and a guideline mentioned in subsection (3)(c), the latter guideline prevails.	1 2 3
(5)	In this section—	4
	<i>enforcement action</i> means a proceeding for an offence against this Act or issuing an infringement notice for an offence against this Act.	5 6 7
	<i>infringement notice</i> see the <i>State Penalties Enforcement Act 1999</i> , schedule 2.	8 9
192	Payment of penalties and fines	10
(1)	A penalty recovered because of a proceeding for an offence against this Act prosecuted by a person authorised by the commissioner must be paid to the commission.	11 12 13
(2)	A fine recovered because of an infringement notice for an offence against this Act and for which the commission is the administering authority must be paid to the commission.	14 15 16
(3)	In this section—	17
	<i>administering authority</i> , for an infringement notice, see the <i>State Penalties Enforcement Act 1999</i> , schedule 2.	18 19
	<i>infringement notice</i> see the <i>State Penalties Enforcement Act 1999</i> , schedule 2.	20 21
Part 2	Evidence	22
193	Application of division	23
	This division applies to a proceeding under this Act.	24
194	Appointments and authority	25
	The registrar’s appointment must be presumed unless a party to the proceeding, by reasonable notice, requires proof of it.	26 27

195	Evidentiary aids	1
(1)	A certificate signed by the registrar certifying anything about the contents of the register is evidence of the thing stated.	2 3
(2)	A certificate signed by the registrar stating any of the following is evidence of the matters stated—	4 5
(a)	that an individual was or was not at a time or during a period, or is or is not, an adjudicator;	6 7
(b)	that a stated document is a record or document, a copy of a record or document, or an extract from a record or document, kept under this chapter.	8 9 10
196	Proof of signature unnecessary	11
	A signature purporting to be the signature of the registrar is evidence of the signature it purports to be.	12 13
Part 3	Civil liability for officials	14
197	Protection from liability	15
(1)	The commissioner, registrar and staff of the registry do not incur civil liability for an act done, or omission made, honestly and without negligence under this Act.	16 17 18
(2)	If subsection (1) prevents a civil liability attaching to a person, the liability attaches instead to the State.	19 20
Chapter 7	Miscellaneous	21
198	Approved forms	22
(1)	The commissioner may approve forms for use under this Act.	23

[s 199]

(2)	Information in an approved form must, if the approved form requires, be verified by a statutory declaration.	1 2
(3)	An approved form has no effect if information in the form must be verified by a statutory declaration and it is not.	3 4
199	Delegations	5
(1)	The commissioner may delegate the commissioner's functions or powers under this Act to an appropriately qualified officer of the commission.	6 7 8
(2)	In this section— <i>appropriately qualified</i> includes having the qualifications, experience or standing appropriate to perform the function or exercise the power.	9 10 11 12
200	Contracting out prohibited	13
(1)	The provisions of this Act have effect despite any provision to the contrary in any contract, agreement or arrangement.	14 15
(2)	A provision of a contract, agreement or arrangement is of no effect to the extent to which it—	16 17
(a)	is contrary to this Act; or	18
(b)	purports to exclude, limit or change the operation of this Act; or	19 20
(c)	has the effect of excluding, limiting or changing the operation of this Act; or	21 22
(d)	may reasonably be construed as an attempt to deter a person from taking action under this Act.	23 24
201	Regulation-making power	25
(1)	The Governor in Council may make regulations under this Act.	26 27
(2)	A regulation may—	28

-
- (a) provide for payment instructions for project bank accounts; and 1
2
 - (b) for an adjudication qualification, prescribe the following— 3
4
 - (i) the name of the qualification; 5
 - (ii) the bodies that may issue the qualification; 6
 - (iii) the name of the adjudication competency to be achieved to gain the qualification; 7
8
 - (iv) the elements that must be successfully completed to achieve the competency; and 9
10
 - (c) prescribe the grading of adjudicators; and 11
 - (d) prescribe the continuing professional development that must be undertaken by adjudicators; and 12
13
 - (e) prescribe the limits on fees payable to adjudicators; and 14
 - (f) prescribe procedures for— 15
 - (i) the lodgement of adjudication applications with the registrar, including the last time during a day that applications may be lodged; and 16
17
18
 - (ii) the processing of adjudication applications by the registrar; and 19
20
 - (g) provide for fees payable under this Act. 21

Chapter 8 Transitional and repeal 22

Part 1 Repeal 23

202 Acts repealed 24

- (1) The Building and Construction Industry Payments Act 2004, No. 6 is repealed. 25
26

(2)	The Subcontractors' Charges Act 1974, No. 37 is repealed.	1
Part 2	Transitional provisions for the repealed Building and Construction Industry Payments Act 2004	2 3 4 5
203	Definitions for part	6
	In this part—	7
	<i>existing</i> , in relation to a matter, means the matter as in force immediately before the commencement.	8 9
	<i>repealed Act</i> means the repealed <i>Building and Construction Industry Payments Act 2004</i> , as in force immediately before its repeal.	10 11 12
	<i>repealed</i> , in relation to a provision, means the provision as in force immediately before its repeal.	13 14
204	Continuation of existing appointments and employment	15
(1)	An existing registration of an adjudicator under part 4 of the repealed Act continues on the same terms and conditions as the appointment made under the repealed Act.	16 17 18
(2)	However, the registration is subject section 161.	19
(3)	An existing appointment of an adjudicator to decide an adjudication application under section 23 of the repealed Act continues for the adjudication of the application.	20 21 22
(4)	An existing appointment of the registrar under section 37 of the repealed Act continues on the same terms and conditions as the appointment made under the repealed Act.	23 24 25
(5)	An appointment continued under subsection (4) ends when a person is appointed as registrar under section 150.	26 27

205	Unfinished matters for existing payment claims to be dealt with under the repealed Act	1 2
(1)	This section applies if a payment claim was given to a respondent before the commencement and, at the commencement, there are unfinished matters for the payment claim.	3 4 5 6
(2)	Despite the repeal of the <i>Building and Construction Industry Payments Act 2004</i> , the repealed Act continues to apply for the payment claim and any unfinished matters for the claim.	7 8 9
(3)	In this section—	10
	<i>unfinished matter</i> , for a payment claim, includes a matter under the repealed Act that has yet to be started or completed, including, for example, the following—	11 12 13
(a)	replying to the payment claim by serving a payment schedule on the claimant;	14 15
(b)	the consequences of not paying any or all of the claimed amount for the progress payment to which the payment claim relates;	16 17 18
(c)	making an adjudication application for adjudication of the payment claim;	19 20
(d)	the adjudication of the payment claim under the repealed Act, including—	21 22
(i)	the giving of an adjudication response; or	23
(ii)	the adjudication procedures; or	24
(iii)	the adjudicator’s decision; or	25
(iv)	correcting a clerical mistake in an adjudicator’s decision; or	26 27
(v)	the consequences of not paying the claimant the adjudicated amount; or	28 29
(vi)	the filing of an adjudication certificate as a judgment debt; or	30 31

[s 206]

	(vii) an adjudicator's entitlement to be paid for adjudicating the payment claim, including accepting, considering and deciding the application;	1 2 3 4
	(e) the claimant suspending work under the construction contract relevant to the payment claim.	5 6
206	References to repealed Act	7
	A reference in an Act or document to the repealed Act may, if the context permits, be taken to be a reference to this Act.	8 9
Part 3	Transitional provisions for the repealed Subcontractors' Charges Act 1974	10 11 12
207	Definitions for part	13
	In this part—	14
	<i>repealed Act</i> means the repealed <i>Subcontractors' Charges Act 1974</i> , as in force immediately before its repeal.	15 16
	<i>repealed</i> , in relation to a provision, means the provision as in force immediately before its repeal.	17 18
	<i>subcontractors' charge</i> means a charge within the meaning of section 3 of the repealed Act.	19 20
208	Preservation of existing entitlement to subcontractors' charges	21 22
	(1) This section applies if, before the commencement, a subcontractor became entitled to a subcontractors' charge under the repealed Act and the entitlement had not been extinguished or otherwise ended before the commencement.	23 24 25 26

-
- (2) The entitlement to the subcontractors' charge continues under this Act until it is extinguished or otherwise ends under this Act. 1
2
3
- 209 Unfinished matters for existing subcontractors' charges to be dealt with under the repealed Act** 4
5
- (1) This section applies if, before the commencement, a subcontractor gave a person a notice of claim of charge for a subcontractors' charge and, at the commencement, there are unfinished matters for the charge. 6
7
8
9
- (2) Despite the repeal of the *Subcontractors' Charges Act 1974*, the repealed Act continues to apply for the notice of claim and subcontractors' charge, and any unfinished matters for the charge. 10
11
12
13
- (3) To remove any doubt, it is declared that if a subcontractor became entitled to a subcontractors' charge before the commencement, but had not given a person a notice of claim of charge in relation to the charge, the person must secure the charge in accordance with this Act. 14
15
16
17
18
- (4) In this section— 19
- notice of claim of charge* means a notice complying with repealed section 10(1)(a). 20
21
- unfinished matter*, for a subcontractors' charge, includes a matter under the repealed Act that has yet to be started or completed, including, for example, the following— 22
23
24
- (a) giving a person who holds a security a notice under repealed section 10(1)(aa); 25
26
- (b) giving a person a notice of having made a claim under repealed section 10(1)(b); 27
28
- (c) a person given a notice of claim of charge retaining money under repealed section 11; 29
30
- (d) the giving of a contractor's notice under repealed section 11(3). 31
32

[s 210]

- (e) the use of securities for the subcontractors' charge under repealed section 11A to 11D; 1
2
- (f) the giving of information under repealed section 9A or 11E; 3
4
- (g) the paying of money for the subcontractors' charge; 5
- (h) the enforcement of the subcontractors' charge. 6

210 References to repealed Act 7

A reference in an Act or document to the repealed Act may, if the context permits, be taken to be a reference to this Act. 8
9

Part 4 Other transitional provision 10

211 Transitional regulation-making power 11

- (1) A regulation (a *transitional regulation*) may make provision about a matter for which— 12
13
 - (a) it is necessary to make provision to allow or facilitate the doing of anything to achieve— 14
15
 - (i) the operation of this Act in relation to project bank accounts; or 16
17
 - (ii) the transition from the operation of a repealed Act to the operation of this Act; and 18
19
 - (b) this Act does not make provision or sufficient provision. 20
- (2) A transitional regulation may have retrospective operation to a day not earlier than the day of the commencement. 21
22
- (3) A transitional regulation must declare it is a transitional regulation. 23
24
- (4) This section and any transitional regulation expire 1 year after the day of the commencement. 25
26
- (5) In this section— 27

<i>repealed Act</i>	means the repealed <i>Building and Construction Industry Payments Act 2004</i> or the repealed <i>Subcontractors' Charges Act 1974</i> .	1 2 3
Chapter 9	Amendment of this and other Acts	4 5
Part 1	Amendment of this Act	6
Division 1	Amendment commencing on assent	7
212	Act amended This part amends this Act.	8 9
213	Amendment of long title Long title, from ‘, and to amend’— <i>omit</i> .	10 11 12
Division 2	Extended application of project bank accounts to private and local government building contracts	13 14 15
214	Replacement of s 14 (Particular government building contracts) Section 14— <i>omit, insert—</i>	16 17 18 19

[s 215]

14 Particular private and government building contracts	1 2
A building contract is a PBA contract if—	3
(a) more than 50% of the contract price is for building work; and	4 5
(b) the contract price for the building contract is \$1 million or more; and	6 7
(c) the head contractor enters into a subcontract for all or part of the contracted building work; and	8 9 10
(d) the building contract is not a subcontract for another building contract.	11 12
215 Replacement of s 16 (Building contracts for residential construction work)	13 14
Section 16—	15
<i>omit, insert—</i>	16
16 Building contracts for limited residential construction work	17 18
(1) A project bank account is not required for a building contract if the only building work that the contract is for is residential construction work relating to less than 3 living units.	19 20 21 22
(2) For subsection (1)—	23
(a) a single detached dwelling is taken to be 1 living unit; and	24 25
(b) a residential unit is taken to be 1 living unit; and	26 27
(c) a duplex is taken to be 2 living units.	28
(3) In this section—	29
<i>building envelope</i> , for a residence or related roofed building, means the outermost sides of the	30 31

-
- aggregation of the components of a building that 1
have the primary function of separating the 2
internal part of the residence or related roofed 3
building from the external environment. 4
- Example of a building envelope—* 5
the slab and footings system, an external wall and a roof 6
- regulated amount** means \$3,300 or the higher 7
amount, if any, prescribed by a regulation. 8
- related roofed building—** 9
- (a) means a building that— 10
- (i) has a roof designed to be part of the 11
building and is impervious to water or 12
wind; and 13
- (ii) is, or is proposed to be, on the site of a 14
residence or proposed residence; and 15
- (iii) is used, or proposed to be used, for a 16
purpose related to the use of a 17
residence or proposed residence; but 18
- (b) does not include— 19
- (i) a residence; or 20
- (ii) a building if the roof is a sail, umbrella 21
or similar thing. 22
- residential construction work** means— 23
- (a) any of the following work if carried out by a 24
licensed contractor and the insurable value 25
of the work is more than the regulated 26
amount— 27
- (i) the erection or construction of a 28
residence or related roofed building; 29
- (ii) building work within the building 30
envelope of a residence or related 31
roofed building; 32

[s 216]

- (iii) building work for anything attached or connected to a residence or related roofed building that requires building or plumbing approval; 1
2
3
4
 - (iv) the erection, construction or installation of a swimming pool within the meaning of the *Building Act 1975*, schedule 2; 5
6
7
8
 - (v) other building work prescribed by regulation; and 9
10
 - (b) includes additional work, whether or not it is building work, that may be contracted to be carried out under a building contract if— 11
12
13
 - (i) for work relating to a residence—the work is carried out on the site of the residence or proposed residence and is for residential purposes; or 14
15
16
17
 - (ii) for work relating to a related roofed building—the work is carried out on the site of the building or proposed building and is for residential purposes. 18
19
20
21
- residential unit*** means a part of a building designed for separate occupation as a residence. 22
23

216 Insertion of new s 18A 24

Chapter 2, part 2, division 2— 25

insert— 26

18A Private or local government contracts entered into before particular date 27
28

(1) A project bank account is not required for a building contract if— 29
30

- (a) the principal is a private entity or a local government; and 31
32

(b)	the contract was entered into before the commencement of this section.	1 2
(2)	To remove any doubt, it is declared that this chapter does not apply to the building contract regardless of any of the following—	3 4 5
(a)	a variation, or any other amendment, of the contract;	6 7
(b)	a change in the contract price;	8
(c)	a change in the work to be carried out under the contract.	9 10
217	Insertion of new ch 2, pt 2, div 4	11
	Chapter 2, part 2—	12
	<i>insert—</i>	13
	Division 4 Multiple contracts	14
	21A Multiple contracts at same or adjacent sites	15
(1)	This section applies if the same head contractor and principal enter into 2 or more separate contracts that—	16 17 18
(a)	could be the subject of a single contract to carry out building work at the same site or adjacent sites; and	19 20 21
(b)	if they were the subject of a single contract, more than 50% of the contract price would be for carrying out building work; and	22 23 24
(c)	the combined contract price for all of the separate contracts is \$1 million or more.	25 26
(2)	The separate contracts are taken to be a single building contract for chapter 2.	27 28
(3)	This section does not apply to separate contracts	29

[s 218]

	if the contracts were entered into as a result of separate tender processes.	1 2
Division 3	Extended application of project bank accounts to all subcontractors	3 4
218	Amendment of s 8 (Definitions for chapter)	5
(1)	Section 8, definitions <i>building contract</i> , <i>first tier subcontract</i> , <i>head contractor</i> , <i>principal</i> and <i>supplier</i> —	6 7
	<i>omit.</i>	8
(2)	Section 8—	9
	<i>insert</i> —	10
	<i>building contract</i> —	11
(a)	means a contract or other arrangement for carrying out building work in Queensland (whether or not the contract or arrangement is also for other matters); and	12 13 14 15
(b)	includes a subcontract.	16
	<i>contracted party</i> , for a building contract, means the party to the contract who is required to carry out building work under the contract.	17 18 19
	<i>contracting party</i> , for a building contract, means the party to the contract for whom the building work the subject of the contract is to be carried out.	20 21 22 23
219	Amendment of s 9 (What is a <i>project bank account</i>)	24
(1)	Section 9, ‘principal’—	25
	<i>omit, insert</i> —	26
	contracting party	27

(2)	Section 9, ‘head contractor’—	1
	<i>omit, insert</i> —	2
	contracted party	3
(3)	Section 9(1)(b), ‘first tier’—	4
	<i>omit.</i>	5
(4)	Section 9(5), definition <i>subcontractor</i> —	6
	<i>omit.</i>	7
220	Amendment of s 10 (Contract price)	8
	Section 10(1), ‘head contractor’—	9
	<i>omit, insert</i> —	10
	contracted party	11
221	Omission of s 11 (Who is a <i>supplier</i>)	12
	Section 11—	13
	<i>omit.</i>	14
222	Amendment of s 14 (Particular private and government building contracts)	15
	Section 14(c) and (d)—	16
	<i>omit, insert</i> —	17
	(c) the contracted party enters into a	19
	subcontract for all or part of the contracted	20
	building work.	21
223	Amendment of s 18 (Government contracts tendered before commencement)	22
	Section 18(1), ‘principal’—	23
	<i>omit, insert</i> —	24
		25

[s 224]

	contracting party	1
224	Amendment of s 18A (Private or local government contracts entered into before particular date)	2
	Section 18A(1)(b), ‘principal’—	3
	<i>omit, insert—</i>	4
	contracting party	5
		6
225	Amendment of s 20 (Application of chapter if parties to a subcontract are related entities)	7
	(1) Section 20(1)(b) and (3), ‘head contractor’—	8
	<i>omit, insert—</i>	9
	contracted party	10
	(2) Section 20(5), definition <i>first tier subcontractor—</i>	11
	<i>omit.</i>	12
		13
226	Amendment of s 21 (Notices about related entities)	14
	(1) Section 21(2), (3) and (4), ‘principal’—	15
	<i>omit, insert—</i>	16
	contracting party	17
	(2) Section 21(2), (3) and (4), ‘head contractor’—	18
	<i>omit, insert—</i>	19
	contracted party	20
227	Amendment of ch 2, pt 3 (Project bank accounts)	21
	(1) Chapter 2, part 3, ‘principal’—	22
	<i>omit, insert—</i>	23
	contracting party	24

(2)	Chapter 2, part 3, ‘head contractor’—	1
	<i>omit, insert</i> —	2
	contracted party	3
228	Amendment of ch 2, pt 4 (Information)	4
(1)	Chapter 2. part 4, ‘principal’—	5
	<i>omit, insert</i> —	6
	contracting party	7
(2)	Chapter 2. part 4, ‘head contractor’—	8
	<i>omit, insert</i> —	9
	contracted party	10
229	Amendment of ch 2, pt 5 (Effect of insolvency or termination of building contract)	11
		12
(1)	Chapter 2. part 5, ‘principal’—	13
	<i>omit, insert</i> —	14
	contracting party	15
(2)	Chapter 2. part 5, ‘head contractor’—	16
	<i>omit, insert</i> —	17
	contracted party	18
230	Amendment of ch 2, pt 6 (Other)	19
(1)	Chapter 2, part 6, ‘principal’—	20
	<i>omit, insert</i> —	21
	contracting party	22
(2)	Chapter 2, part 6, ‘head contractor’—	23
	<i>omit, insert</i> —	24

[s 231]

	contracted party	1
231	Amendment of sch 2 (Dictionary)	2
(1)	Schedule 2, definitions <i>contracted party</i> , <i>contracting party</i> , <i>head contractor</i> , <i>principal</i> and <i>supplier</i> —	3 4
	<i>omit.</i>	5
(2)	Schedule 2—	6
	<i>insert</i> —	7
	<i>contracted party</i> , for chapter 2, see section 8.	8
	<i>contracting party</i> —	9
	(a) for chapter 2—see section 8; or	10
	(b) for chapter 4—see section 104.	11
Part 2	Amendment of Building Act 1975	12 13
232	Act amended	14
	This part amends the <i>Building Act 1975</i> .	15
233	Amendment of s 3 (Simplified outline of main provisions of Act)	16 17
	Section 3(8), ‘the establishment of the Pool Safety Council and’—	18 19
	<i>omit.</i>	20
234	Amendment of ch 8, pt 7, hdg (Complaints, investigations and disciplinary proceedings relating to pool safety inspectors)	21 22 23
	Chapter 8, part 7, heading, ‘Complaints, investigations’—	24

<i>omit, insert—</i>	1
Complaints	2
235 Amendment of ch 8, pt 7, div 2, hdg (Investigations)	3
Chapter 8, part 7, division 2, heading ‘Investigations’—	4
<i>omit.</i>	5
236 Omission of ss 246CP–246CX	6
Sections 246CP to 246CX—	7
<i>omit.</i>	8
237 Amendment of sch 2 (Dictionary)	9
(1) Schedule 2, definition <i>investigator</i> —	10
<i>omit.</i>	11
(2) Schedule 2—	12
<i>insert—</i>	13
<i>investigator</i> means a person appointed under the	14
<i>Queensland Building and Construction</i>	15
<i>Commission Act 1991</i> , section 104 as an	16
investigator to investigate compliance with	17
chapter 8.	18
(3) Schedule 2, definition <i>ground for disciplinary action</i> —	19
<i>insert—</i>	20
(ea) failing to comply with a written notice given	21
to the pool safety inspector under the	22
<i>Queensland Building and Construction</i>	23
<i>Commission Act 1991</i> , section 50C(2);	24
(eb) obstructing an investigator under the	25
<i>Queensland Building and Construction</i>	26
<i>Commission Act 1991</i> , section 107A;	27

243	Omission of pt 2, div 6, sdiv 4, hdg (Miscellaneous provisions)	1
		2
	Part 2, division 6, subdivision 4, heading—	3
	<i>omit.</i>	4
244	Omission of ss 33U and 33V	5
	Sections 33U and 33V—	6
	<i>omit.</i>	7
245	Amendment of s 128RA (False or misleading statements)	8
	Section 128RA, ‘investigator,’—	9
	<i>omit.</i>	10
246	Amendment of s 128S (False or misleading documents)	11
	Section 128S, ‘investigator,’—	12
	<i>omit.</i>	13
247	Amendment of s 128T (Obstruction of investigators or inspectors)	14
		15
	(1) Section 128T, heading, ‘investigators or’—	16
	<i>omit.</i>	17
	(2) Section 128T(1), ‘investigator or’—	18
	<i>omit.</i>	19
248	Amendment of s 128U (Impersonation of investigator or inspector)	20
		21
	Section 128U, ‘investigator or’—	22
	<i>omit.</i>	23

[s 249]

249	Amendment of schedule (Dictionary)	1
(1)	Schedule, definition <i>investigator</i> —	2
	<i>omit.</i>	3
(2)	Schedule—	4
	<i>insert</i> —	5
	<i>investigator</i> means a person appointed under the	6
	<i>Queensland Building and Construction</i>	7
	<i>Commission Act 1991</i> , section 104 as an	8
	investigator to investigate, monitor and enforce	9
	compliance with this Act.	10
Part 4	Amendment of Queensland	11
	Building and Construction	12
	Commission Act 1991	13
250	Act amended	14
	This part amends the <i>Queensland Building and Construction</i>	15
	<i>Commission Act 1991</i> .	16
251	Amendment of s 3 (Objects of Act)	17
	Section 3—	18
	<i>insert</i> —	19
	(f) to provide for the proper, efficient and	20
	effective management of the commission in	21
	the performance of its functions.	22
252	Insertion of new s 4AA	23
	Part 1, after section 4—	24
	<i>insert</i> —	25

4AA Who is an <i>influential person</i> for a company	1
(1) An <i>influential person</i> , for a company, is an individual, other than a director or secretary of the company, who controls or substantially influences the company's conduct.	2 3 4 5
(2) However, an influential person does not include—	6
(a) a professional, only because the advice given by the professional influences the company's conduct; or	7 8 9
(b) a regulator, only because the regulator, when exercising a power or performing a function under an Act or other law, influences the company's business; or	10 11 12 13
(c) an administrator, controller, provisional liquidator or liquidator within the meaning of the Corporations Act, section 9.	14 15 16
(3) Without limiting subsection (1), a person may be an influential person for a company if the person—	17 18 19
(a) is the chief executive officer or general manager of the company, or holds an equivalent position in the company; or	20 21 22
(b) is acting in a position mentioned in paragraph (a); or	23 24
(c) directly or indirectly owns, holds or controls 50% or more of the shares in the company, or 50% or more of a class of shares in the company; or	25 26 27 28
(d) gives instructions to an officer of the company and the officer generally acts on those instructions; or	29 30 31
(e) makes, or participates in making, decisions that affect the whole or a substantial part of	32 33

[s 252]

the company's business or financial standing; or	1 2
(f) engages in conduct or makes representations that would cause someone else to reasonably believe the person controls, or substantially influences, the company's business.	3 4 5 6 7
(4) In this section—	8
<i>professional</i> —	9
(a) means a person who provides professional advice to more than 1 client; but	10 11
(b) does not include a person who provides professional advice to a client in the person's capacity as an employee of the client.	12 13 14 15
<i>Example</i> —	16
a lawyer or accountant, employed in that capacity by a firm of lawyers or accountants, engaged by a company to give the company advice on a particular topic	17 18 19 20
<i>regulator</i> means—	21
(a) a person employed by a State, a local government or the Commonwealth; or	22 23
(b) a person engaged by a State, a local government or the Commonwealth to provide a particular service or carry out a particular activity; or	24 25 26 27
(c) an agent of a person mentioned in paragraph (b) if, in that capacity, the person provides the service or carries out the activity the person is engaged to provide or carry out.	28 29 30 31

253	Amendment of s 11 (Functions)	1
(1)	Section 11(c)—	2
	<i>omit.</i>	3
(2)	Section 11(d) and (da)—	4
	<i>renumber</i> as section 11(c) and (d).	5
254	Amendment of s 12 (Appointment)	6
(1)	Section 12, ‘7 members’—	7
	<i>omit, insert—</i>	8
	not more than 10 members	9
(2)	Section 12(2)—	10
	<i>omit, insert—</i>	11
	(2) In appointing a person as a member, the Governor in Council is to—	12 13
	(a) have regard to the person’s ability to make a contribution to the effective and efficient performance of the commission’s functions; and	14 15 16 17
	(b) have regard to the person’s experience and competence in the following areas—	18 19
	(i) building and construction;	20
	(ii) finance;	21
	(iii) corporate governance and risk;	22
	(iv) insurance, including knowledge and experience in the reinsurance market;	23 24
	(v) consumer advocacy and awareness;	25
	(vi) public sector governance, including administration and enforcement of laws; and	26 27 28

[s 255]

	(c) as far as possible, ensure the board has equal representation of the areas mentioned in paragraph (b).	1 2 3
255	Omission of pt 2, div 2, sdiv 3 (Board's policies)	4
	Part 2, division 2, subdivision 3—	5
	<i>omit.</i>	6
256	Amendment of s 20A (Meetings)	7
	Section 20A(2)(a), '4 members constitute'—	8
	<i>omit, insert—</i>	9
	the number of members that is half the number appointed at the time of the meeting constitutes	10 11
257	Amendment of s 31 (Entitlement to contractor's licence)	12
	Section 31(1)(c) and (2)(c)—	13
	<i>omit, insert—</i>	14
	(c) the applicant satisfies the minimum financial requirements for the licence; and	15 16
258	Amendment of s 35 (Imposition of conditions etc. on grant of licence)	17 18
	Section 35(3)(a) and (b)—	19
	<i>omit, insert—</i>	20
	(a) the licensee's financial circumstances must at all times satisfy the minimum financial requirements for the licence; and	21 22 23
	(b) variations of the contractor's turnover and assets must be notified, or notified and	24 25

	approved, in accordance with the minimum financial requirements for the licence.	1 2
259	Amendment of s 37A (Commission to advise licensee before licence due for renewal)	3 4
	Section 37A(2)(d)—	5
	<i>omit, insert—</i>	6
	(d) for a contractor’s licence—when the documentary evidence, required by the minimum financial requirements for the licence, must be given to the commission.	7 8 9 10
260	Amendment of s 42 (Unlawful carrying out of building work)	11 12
	Section 42(1) and (2)—	13
	<i>omit, insert—</i>	14
	(1) Unless exempt under schedule 1A, a person must not carry out, or undertake to carry out, building work unless the person holds a contractor’s licence of the appropriate class under this Act.	15 16 17 18
	Maximum penalty—	19
	(a) for a first offence—250 penalty units; or	20
	(b) for a second offence—300 penalty units; or	21
	(c) for a third or later offence, or if the building work carried out is tier 1 defective work—350 penalty units or 1 year’s imprisonment.	22 23 24 25
	(2) An individual who contravenes subsection (1) and is liable to a maximum penalty of 350 penalty units or 1 year’s imprisonment, commits a crime.	26 27 28

[s 261]

261	Amendment of s 42B (Carrying out building work without a nominee)	1
		2
(1)	Section 42B(1), penalty—	3
	<i>omit, insert—</i>	4
	Maximum penalty—	5
	(a) for a first offence—250 penalty units; or	6
	(b) for a second offence—300 penalty units; or	7
	(c) for a third or later offence, or if the building work carried out is tier 1 defective work—350 penalty units.	8 9 10
(2)	Section 42B—	11
	<i>insert—</i>	12
	(3) An individual who contravenes subsection (1) and is liable to a maximum penalty of 350 penalty units, commits a crime.	13 14 15
262	Amendment of s 42C (Unlawful carrying out of fire protection work)	16 17
(1)	Section 42C(1), penalty—	18
	<i>omit, insert—</i>	19
	Maximum penalty—	20
	(a) for a first offence—250 penalty units; or	21
	(b) for a second offence—300 penalty units; or	22
	(c) for a third or later offence, or if the fire protection work carried out is tier 1 defective work—350 penalty units or 1 year's imprisonment.	23 24 25 26
(2)	Section 42C—	27
	<i>insert—</i>	28
	(4) An individual who contravenes subsection (1) and	29

	is liable to a maximum penalty of 350 penalty units or 1 year's imprisonment, commits a crime.	1 2
263	Amendment of s 42D (Licensed contractor must not engage or direct unauthorised person for fire protection work)	3 4 5
	(1) Section 42D, penalty—	6
	<i>omit, insert—</i>	7
	Maximum penalty—	8
	(a) for a first offence—250 penalty units; or	9
	(b) for a second offence—300 penalty units; or	10
	(c) for a third or later offence, or if the fire protection work carried out is tier 1 defective work—350 penalty units or 1 year's imprisonment.	11 12 13 14
	(2) Section 42D—	15
	<i>insert—</i>	16
	(2) An individual who contravenes subsection (1) and is liable to a maximum penalty of 350 penalty units or 1 year's imprisonment, commits a crime.	17 18 19
264	Insertion of new s 42E	20
	Part 3, division 7—	21
	<i>insert—</i>	22
	42E Avoidance of contractual obligations causing significant financial loss	23 24
	(1) This section applies to a person who is a party to a building contract.	25 26
	(2) The person must not, without reasonable excuse, cause another party to the building contract to suffer a significant financial loss because the	27 28 29

[s 265]

	person deliberately avoids complying with, or fails to comply with, the contract.	1 2
	Maximum penalty—350 penalty units.	3
265	Amendment of pt 3, div 9A, hdg (Monitoring continued satisfaction of financial requirements and compliance with parts 4 and 5, and schedule 1B)	4 5 6
	Part 3, division 9A, heading, from ‘financial requirements’— <i>omit, insert—</i>	7 8
	minimum financial requirements and particular laws	9 10
266	Amendment of s 50A (Approved audit program)	11
(1)	Section 50A(1)(a)— <i>omit, insert—</i>	12 13
	(a) to find out if they continue to satisfy the minimum financial requirements;	14 15
(2)	Section 50A(1)— <i>insert—</i>	16 17
	(c) to find out if they have been complying with the <i>Building Act 1975</i> , chapter 8;	18 19
	(d) to find out if they have been complying with the <i>Building Industry Fairness (Security of Payment) Act 2017</i> , chapter 2.	20 21 22
(3)	Section 50A— <i>insert—</i>	23 24
	(3) In this section— <i>licensee</i> includes a pool safety inspector under the <i>Building Act 1975</i> .	25 26 27

267	Amendment of s 50C (Supply of financial records and other documents under approved audit program or for other reason)	1 2 3
(1)	Section 50C(1)(b)(i) and (3)(a), ‘financial requirements stated in the board’s policies’—	4 5
	<i>omit, insert—</i>	6
	minimum financial requirements	7
(2)	Section 50C(1)(b)(ii), (2)(b) and (3)(b), ‘part 4A, part 5 or schedule 1B’—	8 9
	<i>omit, insert—</i>	10
	the provision of an Act mentioned in section 50A(1).	11 12
(3)	Section 50C—	13
	<i>insert—</i>	14
	(6) In this section—	15
	<i>licensee</i> includes a pool safety inspector under the <i>Building Act 1975</i> .	16 17
268	Amendment of s 53A (Satisfying financial requirements at renewal)	18 19
(1)	Section 53A, heading, ‘financial requirements’—	20
	<i>omit, insert—</i>	21
	minimum financial requirements	22
(2)	Section 53A(1), ‘financial requirements stated in the board’s policies’—	23 24
	<i>omit, insert—</i>	25
	minimum financial requirements	26

[s 269]

269	Amendment of s 53B (False or misleading documents about financial requirements)	1 2
(1)	Section 53B, heading, ‘financial requirements’—	3
	<i>omit, insert—</i>	4
	minimum financial requirements	5
(2)	Section 53B(1), ‘financial requirements stated in the board’s policies’—	6 7
	<i>omit, insert—</i>	8
	the minimum financial requirements	9
270	Amendment of s 54 (Advertisements)	10
	Section 54—	11
	<i>insert—</i>	12
	(ba) does not include any false or misleading information; and	13 14
	<i>Examples—</i>	15
	stating that particular work may only be lawfully carried out by a licensee if it would be lawful for an unlicensed person to carry out the work	16 17 18
	stating that particular work must be carried out by a particular date to comply with a law if no such deadline exists under the law	19 20 21
	(bb) does not omit any information, if the omission of the information causes the advertisement to be misleading; and	22 23 24
271	Amendment of s 56AC (Excluded individuals and excluded companies)	25 26
(1)	Section 56AC(2)(c)(ii), ‘1 year’—	27
	<i>omit, insert—</i>	28
	2 years	29

(2)	Section 56AC(7), definition <i>construction company</i> —	1
	<i>omit, insert</i> —	2
	<i>construction company</i> means a company that	3
	directly or indirectly carries out building work or	4
	building work services in this or another State.	5
272	Amendment of s 67AQ (Definitions for pt 3E)	6
	Section 67AQ, definition <i>demerit matter</i> —	7
	<i>omit, insert</i> —	8
	<i>demerit matter</i> means—	9
	(a) a conviction for a demerit offence; or	10
	(b) an unsatisfied judgment debt; or	11
	(c) being given a direction to rectify or remedy.	12
273	Amendment of s 67AW (Demerit points for demerit matters)	13
		14
(1)	Section 67AW(1)—	15
	<i>insert</i> —	16
	(c) is given a direction to rectify or remedy.	17
(2)	Section 67AW(2)—	18
	<i>insert</i> —	19
	(c) for a direction to rectify or remedy—4	20
	points.	21
274	Insertion of new s 67AZAA	22
	Part 3E, division 2—	23
	<i>insert</i> —	24

[s 275]

67AZAA	When demerit points allocated for direction to rectify or remedy	1
		2
(1)	The commission must allocate demerit points to a person for a direction to rectify or remedy given to the person as soon as possible after giving the direction.	3 4 5 6
(2)	The demerit points take effect at the end of the period within which the person may apply for a review of the decision under part 7, division 3.	7 8 9
275	Amendment of s 67A (Definitions for pt 4A)	10
(1)	Section 67A, definition <i>contract price</i> — <i>omit.</i>	11 12
(2)	Section 67A— <i>insert</i> —	13 14
	<i>defects liability period</i> , for a building contract, means—	15 16
(a)	the period worked out under the contract as being the period—	17 18
(i)	starting on the day of practical completion for the building work under the contract; and	19 20 21
(ii)	ending on the last day any omission or defect in the building work under the contract may be required or directed to be rectified under the contract; or	22 23 24 25
(b)	if the contract does not provide for a period mentioned in paragraph (a)—the statutory defects liability period under section 67NA(2).	26 27 28 29
	<i>practical completion</i> , for a building contract, means—	30 31

(a)	the day for practical completion as worked out under the contract; or	1 2
(b)	if the contract does not provide for the day of practical completion—the day that building work carried out under the contract is completed—	3 4 5 6
(i)	in compliance with the contract, including all plans and specifications for the work and all statutory requirements applying to the work; and	7 8 9 10
(ii)	without any defects or omissions, other than minor defects or minor omissions that will not unreasonably affect the intended use of the work.	11 12 13 14
276	Insertion of new ss 67GA and 67GB	15
	Part 4A, division 2—	16
	<i>insert—</i>	17
	67GABuilding contracts to include mandatory conditions	18 19
(1)	A building contractor must not enter into a building contract that does not include the conditions (<i>mandatory conditions</i>) prescribed by regulation for inclusion in that type of building contract.	20 21 22 23 24
	Maximum penalty—80 penalty units.	25
(2)	Subsection (1) does not apply to a building contractor who enters into a building contract as a principal or a subcontractor.	26 27 28
(3)	A building contract is subject to the mandatory conditions regardless of whether the conditions are stated in the contract or not.	29 30 31
(4)	The mandatory conditions have effect despite any	32

[s 276]

provision to the contrary in a building contract.	1
(5) A provision of a building contract is of no effect to the extent to which it—	2 3
(a) is contrary to a mandatory condition; or	4
(b) purports to annul, exclude or change a mandatory condition; or	5 6
(c) may reasonably be construed as an attempt to deter a person from enforcing a mandatory condition.	7 8 9
(6) This section does not apply in relation to a condition of a building contract that imposes a greater or more onerous obligation on a building contractor than are imposed under the mandatory conditions.	10 11 12 13 14
67GB Particular conditions void in building contracts	15 16
(1) A building contractor must not enter into a building contract that includes a prohibited condition (<i>prohibited conditions</i>) prescribed by regulation.	17 18 19 20
Maximum penalty—80 penalty units.	21
(2) Subsection (1) does not apply to a building contractor who enters into a building contract as a principal or a subcontractor.	22 23 24
(3) A provision of a building contract is of no effect to the extent to which it—	25 26
(a) is or incorporates a prohibited condition; or	27
(b) may reasonably be construed as an attempt to enforce a prohibited condition.	28 29
(4) To remove any doubt, it is declared that this section does not apply to a building contract entered into before the commencement of this	30 31 32

	section but does apply to a provision of the	1
	contract included after the commencement to the	2
	extent the provision is a prohibited condition.	3
277	Amendment of s 67N (Limits for retention amounts and securities for building contracts after practical completion)	4
	Section 67N(2), ‘under the contract’—	5
	<i>omit, insert</i> —	6
	for the contract	7
278	Insertion of new ss 67NA–67NC	10
	Part 4A, division 2—	11
	<i>insert</i> —	12
	67NA Statutory defects liability period	13
	(1) This section applies if—	14
	(a) a building contract does not provide for a defects liability period; but	15
	(b) under the building contract—	16
	(i) a retention amount may be withheld; or	17
	(ii) a security may be held after practical completion in relation to the need to correct defects in the building work under the contract.	18
	(2) The building contract is subject to a condition that the retention amount or security must be released at the end of 12 months starting on the day of practical completion for the contract (the <i>statutory defects liability period</i>).	19
	(3) In this section—	20
	<i>defects liability period</i> , for a building contract,	21
		22
		23
		24
		25
		26
		27
		28
		29

[s 278]

means the period worked out under the contract as 1
being the period— 2

(a) starting on the day of practical completion 3
for the contract; and 4

(b) ending on the last day any omission or 5
defect in the building work for the contract 6
may be required or directed to be rectified 7
under the contract. 8

67NB Failure to pay retention amount 9

- (1) This section applies if a retention amount is 10
withheld under a building contract. 11
- (2) The contracting party must, unless the party has a 12
reasonable excuse, release the retention amount to 13
the contracted party in accordance with the 14
building contract, including, for example, 15
releasing the retention amount on or before the 16
day the amount is due to be paid under the 17
contract. 18
- Maximum penalty—200 penalty units or 1 year’s 19
imprisonment. 20
- (3) Subsection (2) does not apply to that part of a 21
retention amount that is— 22
- (a) paid into court to satisfy a notice of claim 23
under the *Building Industry Fairness* 24
(Security of Payment) Act 2017; or 25
- (b) the subject of a dispute between the parties 26
to the building contract unless, as an 27
outcome of the dispute, the amount is to be 28
paid to the contracted party. 29

67NC Notice about end of defects liability period 30

- (1) This section applies if either of the following 31

-
- apply for a building contract— 1
- (a) a retention amount is withheld; 2
- (b) a security is held after practical completion 3
in relation to the need to correct defects in 4
the building work under the contract. 5
- (2) Within 10 business days before the end of the 6
defects liability period, the contracting party must 7
give the contracted party a notice (the *relevant* 8
notice), in the approved form, stating the 9
following— 10
- (a) the date that the defects liability period 11
ends; 12
- (b) for a retention amount— 13
- (i) the amount to be paid to the contracting 14
party at the end of the defects liability 15
period, if no amount is required to 16
correct defects in the building work 17
under the contract; and 18
- (ii) the date the retention amount is 19
proposed to be paid to the contracting 20
party. 21
- Maximum penalty—100 penalty units. 22
- (3) However, subsection (4) applies if— 23
- (a) the defects liability period relates to a 24
subcontract; and 25
- (b) the defects liability period is linked to the 26
defects liability period (the *other period*) for 27
another building contract; and 28
- (c) the contracting party for the subcontract is 29
only given a relevant notice for the other 30
period after a day that would enable the 31
party to comply with subsection (2). 32
- (4) Within 5 business days after being given a 33
-

[s 279]

	relevant notice for the other period, the	1
	contracting party must give the contracted party	2
	for the subcontract a relevant notice for the	3
	defects liability period for the subcontract.	4
	Maximum penalty—100 penalty units.	5
(5)	This section does not apply to a contracting party	6
	who enters into a building contract as a principal.	7
279	Omission of s 71G (Definition for pt 6)	8
	Section 71G—	9
	<i>omit.</i>	10
280	Amendment of s 71J (Requests for rectification of building work or remediation of consequential damage)	11
	Section 71J—	13
	<i>insert—</i>	14
(4)	Also, a request under subsection (1) or (2) must be	15
	made within 12 months after the person becomes	16
	aware of—	17
(a)	for a request under subsection (1)—the	18
	building work the person considers is	19
	defective or incomplete; or	20
(b)	for a request under subsection (2)—the	21
	consequential damage to the property.	22
281	Amendment of s 72 (Power to require rectification of building work and remediation of consequential damage)	23
(1)	Section 72—	25
	<i>insert—</i>	26
(2A)	The commission must make the direction no later	27
	than the end of the period prescribed by	28

	regulation.	1
(2)	Section 72(4), ‘at least 28 days’—	2
	<i>omit, insert—</i>	3
	the period prescribed by regulation	4
282	Amendment of s 72A (Powers and limitations of directions to rectify or remedy)	5
	Section 72A(4), ‘6 years and 3 months’—	6
	<i>omit, insert—</i>	7
	6 years and 6 months	8
283	Insertion of new s 72B	10
	Part 6, division 2—	11
	<i>insert—</i>	12
	72B Extending time to rectify or remedy	13
(1)	A person given a direction to rectify or remedy may apply to the commission for an extension of the period for compliance with the direction.	14 15 16
(2)	The application must—	17
(a)	be made before the end of the period stated in the direction; and	18 19
(b)	state the reasons the extension is needed.	20
(3)	The commission must decide whether or not to grant the extension, and inform the applicant of the decision, within 10 business days after receiving the application.	21 22 23 24
(4)	The commission may grant the extension only if satisfied it is likely to be impracticable for the applicant to comply with the direction within the period stated in the direction.	25 26 27 28

[s 284]

(5)	Also, the commission must grant the extension if satisfied the person affected by the building work the subject of the direction has agreed to the extension being applied for.	1 2 3 4
(6)	If the commission grants the extension, the commission must give the applicant a written notice stating the period within which the applicant must rectify the work or remedy the damage.	5 6 7 8 9
(7)	If the commission refuses to grant the extension, the commission must give the applicant written notice of the refusal.	10 11 12
(8)	If the commission fails to comply with subsection (3), the commission is taken to have decided to refuse the application.	13 14 15
(9)	The direction to rectify or remedy is stayed while the commission considers the application.	16 17
284	Amendment of s 73 (Offence to fail to comply with direction to rectify or remedy)	18 19
	Section 73, from ‘given’ to ‘72(2)’—	20
	<i>omit, insert—</i>	21
	to rectify or remedy given to the person, subject to any extension of time granted under section 72B	22 23
285	Amendment of s 74B (Proper grounds for taking disciplinary action against a licensee and former licensees)	24 25 26
	Section 74B—	27
	<i>insert—</i>	28
	(o) the licensee contravenes an offence provision of the <i>Building Industry Fairness (Security of Payment) Act 2017</i> ; or	29 30 31

	(r) the licensee contravenes section 67NC.	1
286	Amendment of s 86 (Reviewable decisions)	2
	Section 86(1)(d)—	3
	<i>omit, insert—</i>	4
	(d) a decision that there are reasonable grounds for concern that a licensee does not satisfy the minimum financial requirements;	5 6 7
287	Amendment of s 92 (Tribunal may conduct public examination)	8 9
	Section 92(b)(i)—	10
	<i>omit, insert—</i>	11
	(i) satisfies the minimum financial requirements for the licence held by the person; or	12 13 14
288	Amendment of s 103B (Developer register)	15
	(1) Section 103B(1), ‘section 72(5)(g)’—	16
	<i>omit, insert—</i>	17
	section 71I(1)	18
	(2) Section 103B(2) and (5), ‘section 72(10)’—	19
	<i>omit, insert—</i>	20
	section 73	21
289	Amendment of pt 9, hdg (Inspectors)	22
	Part 9, heading ‘Inspectors’—	23
	<i>omit, insert—</i>	24
	Investigators	25

[s 290]

290	Amendment of s 103G (Definitions for part)	1
(1)	Section 103G, definition <i>identity card</i> —	2
	<i>omit, insert</i> —	3
	<i>identity card</i> , for a provision about investigators, means an identity card issued under section 104F.	4 5
(2)	Section 103G, definition <i>offence warning</i> , ‘inspector’—	6
	<i>omit, insert</i> —	7
	investigator	8
(3)	Section 103G, definition <i>relevant Act</i> —	9
	<i>omit, insert</i> —	10
	<i>relevant Act</i> means—	11
	(a) this Act; or	12
	(b) the <i>Building Act 1975</i> ; or	13
	(c) the <i>Building Industry Fairness (Security of Payment) Act 2017</i> ; or	14 15
	(d) the <i>Plumbing and Drainage Act 2002</i> .	16
291	Amendment of s 103H (References to exercise of powers)	17
(1)	Section 103H, ‘inspector’—	18
	<i>omit, insert</i> —	19
	investigator	20
(2)	Section 103H, ‘inspectors’ powers’—	21
	<i>omit, insert</i> —	22
	investigators’ powers	23
292	Amendment of pt 9, division 2, hdg (Appointment of inspectors)	24 25
	Part 9, division 2, heading ‘inspectors’—	26

<i>omit, insert—</i>	1
investigators	2
293 Replacement of s 104 (Appointment of inspectors)	3
Section 104—	4
<i>omit, insert—</i>	5
Subdivision 1 Appointment	6
104 Investigators	7
(1) This part includes provision for the appointment of investigators, and gives investigators particular powers.	8 9 10
(2) The purpose of these provisions is to ensure the commission has available to it suitably qualified persons who can help the commission deal with issues about compliance under—	11 12 13 14
(a) this Act; or	15
(b) the <i>Building Act 1975</i> ; or	16
(c) the <i>Building Industry Fairness (Security of Payment) Act 2017</i> ; or	17 18
(d) the <i>Plumbing and Drainage Act 2002</i> .	19
104A Functions of investigators	20
An investigator has the following functions—	21
(a) to investigate, monitor and enforce compliance with—	22 23
(i) this Act; or	24
(ii) the <i>Building Act 1975</i> ; or	25
(iii) the <i>Building Industry Fairness (Security of Payment) Act 2017</i> ; or	26 27

[s 293]

(iv) the <i>Plumbing and Drainage Act 2002</i> ;	1
(b) to investigate or monitor whether an occasion has arisen for the exercise of powers under an Act mentioned in paragraph (a);	2 3 4 5
(c) to facilitate the exercise of powers under an Act mentioned in paragraph (a).	6 7
104B Appointment and qualifications	8
(1) The commission may, by instrument in writing, appoint any of the following persons as investigators—	9 10 11
(a) an officer or employee of the commission; or	12 13
(b) an employee of the employing office or of another government entity performing work for the commission under a work performance arrangement.	14 15 16 17
(2) However, the commission may appoint a person as an investigator only if the commission is satisfied the person is appropriately qualified.	18 19 20
104C Appointment conditions and limit on powers	21
(1) An investigator holds office on any conditions stated in—	22 23
(a) the investigator's instrument of appointment; or	24 25
(b) a signed notice given to the investigator; or	26
(c) a regulation.	27
(2) The instrument of appointment, a signed notice given to the investigator or a regulation may limit the investigator's powers.	28 29 30

(3) In this section—	1
<i>signed notice</i> means a notice signed by the commissioner.	2 3
104D When office ends	4
(1) The office of a person appointed as an investigator ends if any of the following happens—	5 6 7
(a) the term of office stated in a condition of office ends;	8 9
(b) under another condition of office, the office ends;	10 11
(c) the investigator’s resignation under section 104E takes effect.	12 13
(2) Subsection (1) does not limit the ways the office of a person as an investigator ends.	14 15
(3) In this section—	16
<i>condition of office</i> means a condition under which the investigator holds office.	17 18
104E Resignation	19
(1) An investigator may resign by signed notice given to the commission.	20 21
(2) However, if holding office as an investigator is a condition of the investigator holding another office, the investigator may not resign as an investigator without resigning from the other office.	22 23 24 25 26
Subdivision 2 Identity cards	27

[s 293]

104F Issue of identity card	1
(1) The commission must issue an identity card to each investigator.	2 3
(2) The identity card must—	4
(a) include a recent photo of the investigator; and	5 6
(b) include a copy of the investigator’s signature; and	7 8
(c) identify the person as an investigator appointed under this Act; and	9 10
(d) state an expiry date for the card.	11
(3) This section does not prevent the issue of a single identity card to a person for this Act and other purposes.	12 13 14
104G Production or display of identity card	15
(1) In exercising a power in relation to a person in the person’s presence, an investigator must—	16 17
(a) produce the investigator’s identity card for the person’s inspection before exercising the power; or	18 19 20
(b) have the identity card displayed so it is clearly visible to the person when exercising the power.	21 22 23
(2) However, if it is not practicable to comply with subsection (1), the investigator must produce the identity card for the person’s inspection at the first reasonable opportunity.	24 25 26 27
(3) For subsection (1), an investigator does not exercise a power in relation to a person only because the investigator has entered a place as mentioned in section 105(1)(b) or (d).	28 29 30 31

104H	Return of identity card	1
	If the office of a person as an investigator ends, the person must return the person’s identity card to the commission with 21 days after the office ends unless the person has a reasonable excuse.	2 3 4 5
	Maximum penalty—10 penalty units.	6
294	Amendment of pt 9, divs 3–8	7
(1)	Part 9, divisions 3 to 8, ‘inspector’— <i>omit, insert—</i> investigator	8 9 10
(2)	Part 9, divisions 3, 4, 5 and 6, heading ‘inspectors’— <i>omit, insert—</i> investigators	11 12 13
(3)	Part 9, divisions 3 to 8, ‘inspector’s’— <i>omit, insert—</i> investigator’s	14 15 16
295	Insertion of new pt 9, div 7A	17
	Part 9— <i>insert—</i>	18 19
	Division 7A Damage and compensation	20 21
	Subdivision 1 Damage	22

[s 295]

106SDuty to avoid inconvenience and minimise damage	1 2
In exercising a power, an investigator must take all reasonable steps to cause as little inconvenience, and do as little damage, as possible.	3 4 5 6
<i>Note—</i>	7
See also section 106U.	8
106TNotice of damage	9
(1) This section applies if—	10
(a) an investigator damages something when exercising, or purporting to exercise, a power; or	11 12 13
(b) a person (the <i>assistant</i>) acting under the direction or authority of an investigator damages something.	14 15 16
(2) However, this section does not apply to damage the investigator reasonably considers is trivial or if the investigator reasonably believes—	17 18 19
(a) there is no-one apparently in possession of the thing; or	20 21
(b) the thing has been abandoned.	22
(3) The investigator must give notice of the damage to a person who appears to the investigator to be an owner, or person in control, of the thing.	23 24 25
(4) However, if for any reason it is not practicable to comply with subsection (3), the investigator must—	26 27 28
(a) leave the notice at the place where the damage happened; and	29 30
(b) ensure it is left in a conspicuous position and in a reasonably secure way.	31 32

-
- (5) The investigator may delay complying with subsection (3) or (4) if the investigator reasonably suspects complying with the subsection may frustrate or otherwise hinder an investigation by the investigator.
- (6) The delay may be only for so long as the investigator continues to have the reasonable suspicion and remains in the vicinity of the place.
- (7) If the investigator believes the damage was caused by a latent defect in the thing or other circumstances beyond the control of the investigator or the assistant, the investigator may state the belief in the notice.
- (8) The notice must state—
- (a) particulars of the damage; and
 - (b) that the person who suffered the damage may claim compensation under section 106U.

Subdivision 2 Compensation

106U Compensation

- (1) A person may claim compensation from the commission if the person incurs loss because of the exercise, or purported exercise, of a power by or for an investigator including a loss arising from compliance with a requirement made of the person under this part.
- (2) The compensation may be claimed and ordered in a proceeding—
- (a) brought in a court with jurisdiction for the recovery of the amount of compensation claimed; or

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(b)	for an alleged offence against this Act or a relevant Act the investigation of which gave rise to the claim for compensation.	1 2 3
(3)	A court may order the payment of compensation only if it is satisfied it is just to make the order in the circumstances of the particular case.	4 5 6
(4)	In considering whether it is just to order compensation, the court must have regard to—	7 8
(a)	any relevant offence committed by the claimant; and	9 10
(b)	whether the loss arose from a lawful seizure or lawful forfeiture.	11 12
(5)	A regulation may prescribe other matters that may, or must, be taken into account by the court when considering whether it is just to order compensation.	13 14 15 16
(6)	Section 106S does not provide for a statutory right of compensation other than as provided by this section.	17 18 19
(7)	In this section—	20
	<i>loss</i> includes costs and damage.	21
	<i>relevant Act</i> means—	22
(a)	this Act; or	23
(b)	the <i>Building Act 1975</i> ; or	24
(c)	the <i>Building Industry Fairness (Security of Payment) Act 2017</i> ; or	25 26
(d)	the <i>Plumbing and Drainage Act 2002</i> .	27
296	Amendment of s 107A (Obstructing inspectors)	28
(1)	Section 107A, heading ‘inspectors’—	29
	<i>omit, insert—</i>	30

	investigators	1
(2)	Section 107A, ‘inspector’—	2
	<i>omit, insert</i> —	3
	investigator	4
297	Insertion of s 107B	5
	Part 9—	6
	<i>insert</i> —	7
	107B Impersonating investigator	8
	A person must not impersonate an investigator.	9
	Maximum penalty—40 penalty units.	10
298	Amendment of s 108A (Documents that must be kept for 7 years)	11
	Section 108A(1)(b)—	12
	<i>omit, insert</i> —	13
	(b) a building contractor’s financial records relevant to the minimum financial requirements for the licence held by the building contractor.	14
		15
		16
		17
		18
299	Amendment of s 108B (False or misleading statement)	19
	Section 108B(3), definition <i>official</i> , ‘inspector’—	20
	<i>omit, insert</i> —	21
	investigator	22
300	Amendment of s 108C (False or misleading document)	23
	Section 108C(5), definition <i>official</i> , ‘inspector’—	24
	<i>omit, insert</i> —	25

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investigator	1
301 Amendment of s 111 (Prosecutions for offences)	2
Section 111(2)—	3
<i>omit, insert—</i>	4
(2) A prosecution may only be started by a person authorised by the commission, or the Attorney-General, (either generally or in the particular case) to bring the prosecution.	5 6 7 8
(2A) However, the commission must not bring a prosecution for an offence against this Act that is a crime.	9 10 11
302 Amendment of s 111B (Liability of executive officer—particular offences committed by company)	12 13
Section 111B(5), definition <i>executive liability provision</i> , ‘section 42(9)’—	14 15
<i>omit, insert—</i>	16
section 42	17
303 Insertion of new s 115B	18
Part 10—	19
<i>insert—</i>	20
115B Commissioner’s policy	21
(1) The commissioner may make a policy to give guidance about—	22 23
(a) compliance with this Act; or	24
(b) making decisions under this Act; or	25
(c) consumers’ and licensees’ rights under this Act; or	26 27

(d) enforcement of this Act.	1	
(2) However, the policy does not take effect until approved by regulation.	2 3	
(3) The commissioner must—	4	
(a) publish the policy on the commission’s website; and	5 6	
(b) keep copies of the policy available for inspection, free of charge, at the commission’s office when the office is open to the public; and	7 8 9 10	
(c) if asked, advise where copies of the policy may be obtained.	11 12	
304 Amendment of s 116 (Regulations)	13	
Section 116—	14	
<i>insert—</i>	15	
(ab) prescribe the minimum financial requirements for the licences under this Act; and	16 17 18	
305 Insertion of new sch 1, pt 15	19	
Schedule 1—	20	
<i>insert—</i>	21	
Part 15	Transitional provisions for Building Industry Fairness (Security of Payment) Act 2017	22 23 24 25
76 Board’s policy	26	
(1) A policy, made by the board under repealed	27	

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section 19 and approved by regulation, in force 1
immediately before the commencement continues 2
in force— 3

(a) despite the repeal of section 19; and 4

(b) until the matters provided for under the 5
policy are prescribed by regulation. 6

Note— 7

The policies in force were the Rectification of Building 8
Work made by the board on 16 May 2014 and the 9
Minimum Financial Requirements made by the board 10
on 28 August 2015. 11

(2) A regulation may declare the day a policy 12
mentioned in subsection (1) expires under that 13
subsection. 14

77 Continuation of existing appointments of 15 particular investigators and inspectors 16

(1) An existing appointment of a person as an 17
inspector under section 104 continues as an 18
appointment as an investigator under section 104. 19

(2) An existing appointment of a person as an 20
inspector under repealed section 246CP of the 21
Building Act 1975 continues as an appointment as 22
an investigator under section 104. 23

(3) An existing appointment of a person as an 24
inspector under repealed section 33A of the 25
Plumbing and Drainage Act 2002 continues as an 26
appointment as an investigator under section 104. 27

(4) In this section— 28

existing appointment means an appointment in 29
force immediately before the commencement. 30

306	Amendment of sch 1B, s 45 (Relationship with other Acts)	1
		2
	Schedule 1B, section 45(2)—	3
	<i>omit.</i>	4
307	Amendment of sch 2 (Dictionary)	5
(1)	Schedule 2, definitions <i>board's policies</i> , <i>contract price</i> , <i>demerit matter</i> , <i>demerit points</i> , <i>direction to rectify or remedy</i> and <i>influential person</i> —	6
		7
		8
	<i>omit.</i>	9
(2)	Schedule 2—	10
	<i>insert</i> —	11
	<i>contract price</i> , for a building contract, means the amount payable under the contract for carrying out the building work the subject of the contract, including, if the contract has been the subject of a variation, the contract as varied.	12
		13
		14
		15
		16
	<i>defects liability period</i> , for part 4A, see section 67A.	17
		18
	<i>demerit points</i> means points allocated by the commission under this part for—	19
		20
	(a) a demerit offence; or	21
	(b) an unsatisfied judgment debt; or	22
	(c) giving a direction to rectify or remedy.	23
	<i>direction to rectify or remedy</i> means a direction given under section 72(2).	24
		25
	<i>influential person</i> see section 4AA.	26
	<i>minimum financial requirements</i> means the financial requirements prescribed by regulation.	27
		28
	<i>practical completion</i> , for part 4A, see section 67A.	29
		30

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Part 5	Consequential amendments	1
308	Acts amended	2
	Schedule 1 amends the Acts it mentions.	3

Schedule 1	Consequential amendments	1
	section 308	2
Judicial Review Act 1991		3
1	Schedule 1, part 2, ‘<i>Building and Construction Industry Payments Act 2004</i>, part 3, division 2’—	4
	<i>omit, insert—</i>	5
	<i>Building Industry Fairness (Security of Payment) Act 2017</i> , chapter 3, part 4	6
		7
		8
Queensland Building and Construction Commission Act 1991		9
		10
1	Section 45(2), ‘<i>Subcontractors’ Charges Act 1974</i>’—	11
	<i>omit, insert—</i>	12
	<i>Building Industry Fairness (Security of Payment) Act 2017</i>	13
		14
2	Section 67A, definition <i>payment claim</i>—	15
	<i>omit, insert—</i>	16
	<i>payment claim</i> see the <i>Building Industry Fairness (Security of Payment) Act 2017</i> , section 68.	17
		18
3	Section 67A, definition <i>progress payment</i>—	19
	<i>omit, insert—</i>	20

	<i>progress payment</i> see the <i>Building Industry Fairness (Security of Payment) Act 2017</i> , section 64.	1 2 3
4	Section 67AAA(2), definition <i>construction work</i>— <i>omit, insert—</i>	4 5
	<i>construction work</i> see the <i>Building Industry Fairness (Security of Payment) Act 2017</i> , section 65.	6 7 8
5	Section 67J(4)(b), ‘<i>Subcontractors’ Charges Act 1974</i>— <i>omit, insert—</i>	9 10
	<i>Building Industry Fairness (Security of Payment) Act 2017</i>	11 12
6	Section 106(6), definition <i>relevant Act</i>— <i>omit, insert—</i>	13 14
	<i>relevant Act</i> means this Act, the <i>Building Act 1975</i> or the <i>Building Industry Fairness (Security of Payment) Act 2017</i> .	15 16 17
7	Section 106A(7), definition <i>relevant Act</i>— <i>omit, insert—</i>	18 19
	<i>relevant Act</i> means this Act, the <i>Building Act 1975</i> or the <i>Building Industry Fairness (Security of Payment) Act 2017</i> .	20 21 22

Schedule 2	Dictionary	1
	section 8	2
	<i>accepted representations</i> , for chapter 5, see section 172(2).	3
	<i>adjudicated amount</i> , for chapter 3, see section 88(1).	4
	<i>adjudication application</i> , for chapter 3, see section 79(1).	5
	<i>adjudication certificate</i> , for chapter 3, see section 91(1).	6
	<i>adjudication response</i> , for chapter 3, see section 82(1).	7
	<i>adjudicator</i> means an individual registered under chapter 5, part 2, division 2 as an adjudicator.	8 9
	<i>administrator</i> , for chapter 2, part 5, see the Corporations Act, section 9.	10 11
	<i>approved form</i> means a form approved by the commissioner under section 198.	12 13
	<i>building</i> , for chapter 2, see section 8.	14
	<i>building contract</i> , for chapter 2, see section 8.	15
	<i>building work</i> , for chapter 2, see section 8.	16
	<i>business day</i> does not include—	17
	(a) a Saturday or Sunday; or	18
	(b) a public holiday, special holiday or bank holiday in the place in which any relevant act is to be or may be done; or	19 20 21
	(c) any day occurring within any of the following periods—	22
	(i) 22 to 24 December;	23
	(ii) 27 to 31 December;	24
	(iii) 2 to 10 January.	25
	<i>carry out construction work</i> , for chapter 3, see section 64.	26
	<i>claimant</i> , for chapter 3, see section 75(1).	27

<i>code of conduct</i> means a code of conduct for adjudicators made by the registrar under section 181.	1 2
<i>commission</i> means the Queensland Building and Construction Commission established under the <i>Queensland Building and Construction Commission Act 1991</i> , section 5.	3 4 5
<i>commissioner</i> means the commissioner appointed under the <i>Queensland Building and Construction Commission Act 1991</i> , section 20D.	6 7 8
<i>complex payment claim</i> , for chapter 3, see section 64.	9
<i>construction contract</i> , for chapter 3, see section 64.	10
<i>construction work</i> , for chapter 3, see section 65.	11
<i>contract price</i> —	12
(a) for chapter 2—see section 10; or	13
(b) for chapter 4—see section 104.	14
<i>contracted building work</i> , for chapter 2, see section 8.	15
<i>contracting party</i> , for chapter 4, see section 104.	16
<i>contractor</i> , for chapter 4, see section 104.	17
<i>controller</i> , for chapter 2, part 5, see the Corporations Act, section 9.	18 19
<i>conviction</i> , for chapter 5, part 2, see section 158.	20
<i>corresponding law</i> , for chapter 5, part 2, see section 158.	21
<i>court</i> , for chapter 4, see section 104.	22
<i>defects liability period</i> —	23
(a) for chapter 2, see section 8; or	24
(b) for chapter 4, see section 104.	25
<i>disputed funds account</i> , for chapter 2, see section 23(1)(c).	26
<i>domestic building work</i> see <i>Queensland Building and Construction Commission Act 1991</i> , schedule 1B, section 1.	27 28
<i>due date</i> , for a progress payment, for chapter 3, see section 64.	29 30

<i>fire protection work</i> , for chapter 2, see the Queensland Building and Construction Commission Act 1991, schedule 2.	1 2
<i>first tier subcontract</i> see section 6(5).	3
<i>general trust account</i> , for chapter 2, see section 23(1)(a).	4
<i>head contractor</i> , for chapter 2, see section 8.	5
<i>higher subcontract</i> see section 6(7).	6
<i>information notice</i> , for chapter 5, see section 158.	7
<i>insolvency official</i> , for chapter 2, part 5, see section 53.	8
<i>land</i> , for chapter 4, see section 104.	9
<i>liquidator</i> , for chapter 2, part 5, see the Corporations Act, section 9.	10 11
<i>maintenance work</i> , for chapter 2, see section 8.	12
<i>notice of claim</i> , for chapter 4, see section 122.	13
<i>original decision</i> , for chapter 5, see section 177(1).	14
<i>payment claim</i> , for chapter 3, see section 68(1).	15
<i>payment dispute</i> , for chapter 2, see section 35(2).	16
<i>payment schedule</i> , for chapter 3, see section 69.	17
<i>person</i> , for chapter 4, see section 104.	18
<i>practical completion</i> —	19
(a) for chapter 2, see section 8; or	20
(b) for chapter 4, see section 104.	21
<i>principal</i> , for chapter 2, see section 8.	22
<i>progress payment</i> , for chapter 3, see section 64.	23
<i>project bank account</i> , for chapter 2, see section 9(1).	24
<i>proposed action</i> , for chapter 5, see section 171(3)(a).	25
<i>recognised financial institution</i> means a bank, or other financial institution prescribed by regulation.	26 27
<i>provisional liquidator</i> , for chapter 2, part 5, see the Corporations Act, section 9.	28 29

<i>reference date</i> , for chapter 3, see section 67.	1
<i>registrar</i> see section 150(1).	2
<i>registry</i> , for chapter 5, see section 149(1).	3
<i>registry staff</i> , for chapter 5, see section 149(2).	4
<i>related entity</i> , for chapter 2, see section 19.	5
<i>related goods and services</i> , for chapter 3, see section 66.	6
<i>relevant construction contract</i> , for chapter 3, see section 64.	7
<i>respondent</i> , for chapter 3, see section 75(1).	8
<i>retention account</i> , for chapter 2, see section 23(1)(b).	9
<i>retention amount</i> —	10
(a) for chapter 2—see section 8; or	11
(b) for chapter 4—see section 104.	12
<i>review decision</i> , for chapter 5, see section 178(2).	13
<i>review notice</i> , for chapter 5, see section 178(3).	14
<i>second tier subcontract</i> see section 6(6).	15
<i>security</i> , for chapter 4, see section 104.	16
<i>show cause notice</i> , for chapter 5, see section 171(2).	17
<i>show cause period</i> , for chapter 5, see section 171(3)(e).	18
<i>site testing</i> , for chapter 2, see section 8.	19
<i>spent conviction</i> , for chapter 5, see section 158.	20
<i>standard payment claim</i> , for chapter 3, see section 64.	21
<i>State authority</i> , for chapter 2, see section 8.	22
<i>structure</i> , for chapter 4, see section 104.	23
<i>subcontract</i> see section 6(1).	24
<i>subcontracted work</i> see section 6(3)(c).	25
<i>subcontractor</i> see section 6(3)(b).	26
<i>subcontractor beneficiary</i> , for chapter 2, see section 8.	27
<i>subcontractor's charge</i> , for chapter 4, see section 109(4).	28

<i>supplier</i> , for chapter 2, see section 11.	1
<i>trustee in bankruptcy</i> , for chapter 2, part 5, see section 53.	2
<i>valuable instrument</i> , for chapter 4, see section 104.	3
<i>variation</i> —	4
(a) of a building contract, for chapter 2, see section 8; and	5
(b) of a contract, for chapter 4, see section 104.	6
<i>work</i> , for a contract, for chapter 4, see section 105.	7

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