

Building and Construction Industry Payments Amendment Bill 2014

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

1 **Clause 5 (Amendment of s 17 (Payment claims))**

Page 6, line 24 and page 7, lines 1 to 4—

omit, insert—

Section 17(4) to (6)—

2 **Clause 6 (Insertion of new s 17A)**

Page 8, lines 12 to 20—

omit, insert—

defects liability period, for a construction contract, means the period, if any, worked out under the contract as being the period—

- (a) starting on the day the construction work is practically or substantially completed, or the related goods and services are supplied, under the contract; and
- (b) 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.

3 **Clause 8 (Insertion of new s 18A)**

Page 9, lines 2 and 3—

omit, insert—

- (1) This section applies if, in reply to a payment claim, the respondent serves a payment schedule on the claimant.

4 Clause 9 (Replacement of s 19 (Consequences of not paying claimant if no payment schedule))

Page 10, after line 30—

insert—

- (5) The claimant can not start proceedings under subsection (3)(a)(i) to recover the unpaid portion of the claimed amount from the respondent as a debt unless—
 - (a) the claimant gives the respondent a notice under section 20A(2); and
 - (b) the 5 business days for the respondent to serve the payment schedule, as stated in the notice, has ended.
- (6) If the claimant starts proceedings under subsection (3)(a)(i) to recover the unpaid portion of the claimed amount from the respondent as a debt—
 - (a) judgement in favour of the claimant is not to be given by a court unless the court is satisfied the respondent—
 - (i) did not serve a payment schedule on the claimant within the time that the respondent may serve the schedule on the claimant; and
 - (ii) failed to pay the whole or any part of the claimed amount on or before the due date for the progress payment to which the payment claim relates; and
 - (b) the respondent is not, in those proceedings, entitled—
 - (i) to bring any counterclaim against the claimant; or

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

5 Clause 10 (Amendment of s 20 (Consequences of not paying claimant under payment schedule))

Page 10, line 33, '(1)'—

omit.

6 Clause 10 (Amendment of s 20 (Consequences of not paying claimant under payment schedule))

Page 11, lines 5 and 6—

omit.

7 Clause 11 (Insertion of new s 20A)

Page 11, lines 10 to 34 and page 12, lines 1 to 21—

omit, insert—

20A Notice required before starting particular proceedings

- (1) This section applies if a claimant serves a payment claim on a respondent and—
 - (a) the respondent—
 - (i) fails to serve a payment schedule on the claimant under this part; and
 - (ii) fails to pay the whole or any part of the claimed amount on or before the due date for the progress payment to which the payment claim relates; and
 - (b) the claimant intends to—
 - (i) start proceedings to recover an unpaid portion of the claimed

amount as a debt owing to the claimant; or

- (ii) apply for adjudication of the payment claim.
- (2) Before taking the intended action mentioned in subsection (1)(b), the claimant must first give the respondent notice of the claimant's intention to take the action.
- (3) The notice must—
 - (a) be given to the respondent within 20 business days immediately following the due date for payment; and
 - (b) state that the respondent may serve a payment schedule on the claimant within 5 business days after receiving the notice; and
 - (c) state it is made under this Act.
- (4) However, this section does not apply if the claimant previously gave the respondent a notice under this section for the unpaid portion of the claimed amount.
- (5) The giving of a notice under subsection (2) 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.

8 Clause 12 (Amendment of s 21 (Adjudication application))

Page 12, lines 26 to 31 and page 13, lines 1 to 3—

omit, insert—

- (2) Section 21(2)(a) and (b)—

omit, insert—

- (a) the claimant gives the respondent a notice under section 20A(2); and
 - (b) the 5 business days for the respondent to serve the payment schedule, as stated in the notice, has ended.
- (3) Section 21(3)(a) and (b)—
omit, insert—
 - (a) must be in the approved form; and
 - (b) must be made to the registrar; and
- (4) Section 21(3)(c)(iii), ‘5 day period’—
omit, insert—
5 business days
- (5) Section 21(3)(e)—
omit, insert—
 - (e) must be accompanied by the fee prescribed by regulation for the application; and
- (6) Section 21(6), ‘authorised nominating authority to which an

9 Clause 14 (Replacement of s 24 (Adjudication responses))

Page 16, after line 22—

insert—

- (7) If the claimant proposes to give the adjudicator a claimant’s reply, the claimant must give the adjudicator notice of the proposal within 5 business days after receiving a copy of the adjudication response unless the claimant gives the reply within the 5 business days.

10 Clause 15 (Replacement of s 25 (Adjudication procedures))

Page 17, lines 29 to 36 and page 18, lines 1 to 3—
omit.

11 Clause 15 (Replacement of s 25 (Adjudication procedures))

Page 18, lines 4 to 34 and page 19, lines 1 to 16—
omit, insert—

25A Time requirements for adjudication proceedings

- (1) An adjudicator must decide an adjudication application on or before the deadline for deciding the application but not before the end of the minimum consideration period for deciding the application.
- (2) However, the claimant and respondent may, before or after the deadline, agree in writing that the adjudicator has additional time to decide the application.
- (3) The *minimum consideration period* for deciding an adjudication application is—
 - (a) the period within which the respondent may give an adjudication response to the adjudicator under section 24A; but
 - (b) if the claimant may give a claimant's reply under section 24B—the period mentioned in paragraph (a) plus the period within which the claimant may give the reply.

Note—

Only a complex payment claim may involve a claimant's reply. See section 24B.

- (4) The *deadline*, for deciding an adjudication application relating to a standard payment

claim, is the day that is 10 business days after—

- (a) if the adjudicator was given an adjudication response in compliance with section 24A—the day on which the adjudicator receives the response; or
- (b) otherwise—the last day on which the respondent could have given the adjudicator the response.

(5) The *deadline*, for deciding an adjudication application relating to a complex payment claim, is the day that is 15 business days after—

- (a) if the adjudicator was given an adjudication response in compliance with section 24A—the day on which the adjudicator receives the response; or
- (b) otherwise—the last day on which the respondent could have given the adjudicator the response.

(6) However, if the claimant may give the adjudicator a claimant's reply under section 24B, the *deadline* for deciding the adjudication application is the day that is 15 business days after—

- (a) if the adjudicator was given a claimant's reply in compliance with section 24B—the day on which the adjudicator receives the reply; or
- (b) otherwise—the last day on which the claimant could have given the adjudicator the reply.

12 Clause 15 (Replacement of s 25 (Adjudication procedures))

Page 19, line 23, '25A(4)'—

omit, insert—

25A(2)

13 Clause 15 (Replacement of s 25 (Adjudication procedures))

Page 19, line 22, 'attempt, but fail, to'—

omit, insert—

fail to

14 Clause 15 (Replacement of s 25 (Adjudication procedures))

Page 19, lines 24 and 28, '25A(3)'—

omit, insert—

25A(5) or (6)

15 Clause 17 (Amendment of s 32 (Claimant may make new application in certain circumstances))

Page 20, lines 11 to 13—

omit, insert—

(1) Section 32(1)(b), 'section 25(3)'—

omit, insert—

section 25A or 25B

(2) Section 32(2)(a), 'authorised nominating authority to whom the application was made'—

omit, insert—

registrar

16 Clause 19 (Replacement of s 34 (Authorised nominating authority's fees))

Page 20, lines 18 to 28 and page 21, lines 1 to 12—

omit, insert—

19 Omission of s 34 (Authorised nominating authority's fees)

Section 34—

omit.

17 After clause 34

Page 27, after line 17—

insert—

34A Omission of s 85 (Issue of adjudication certificate by registrar)

Section 85—

omit.

18 Clause 37 (Amendment of s 100 (Effect of pt 3 on civil proceedings))

Page 28, line 10, 'must'—

omit, insert—

may

19 Clause 38 (Omission of s 101 (Adjudicator must give copy of decision to authorised nominating authority))

Page 28, lines 15 to 18—

omit, insert—

38 Replacement of s 101 (Adjudicator must give copy of decision to authorised nominating authority)

Section 101—

omit, insert—

101 Queensland Building and Construction Board's policy

- (1) The Queensland Building and Construction Board may make a policy governing the administration of this Act.
- (2) The policy does not take effect until approved by regulation.
- (3) Section 19(4) of the *Queensland Building and Construction Commission Act 1991* applies for a policy made under this section as if the policy were made under section 19 of that Act.
- (4) In this section—

Queensland Building and Construction Board means the Queensland Building and Construction Board established under the *Queensland Building and Construction Commission Act 1991*, section 10.

20 After clause 41

Page 29, after line 12—

insert—

41A Amendment of s 111 (Regulation-making power)

Section 111(2)—

insert—

- (c) prescribe procedures for—
 - (i) the lodgement of adjudication applications with the registrar, including the last time during a day that applications may be lodged; and
 - (ii) the processing of adjudication applications by the registrar.

21 Clause 44 (Insertion of new pt 7, div 2)

Page 30, line 28, after ‘registration’—

insert—

as an authorised nominating authority

22 Clause 44 (Insertion of new pt 7, div 2)

Page 30, lines 30 and 31—

omit.

23 Clause 44 (Insertion of new pt 7, div 2)

Page 31, lines 1 to 16—

omit, insert—

114 Applications to authorised nominating authorities for referral to adjudicators

- (1) This section applies to an adjudication application made, but not yet referred to an adjudicator, under section 21 before the commencement.
- (2) The adjudication application must be dealt with under the unamended Act, section 21 as if this Act had not been amended by the *Building and Construction Industry Payments Amendment Act 2014*.
- (3) In this section—
unamended Act means this Act as in force immediately before the commencement of this section.

24 Clause 44 (Insertion of new pt 7, div 2)

Page 31, after line 16—

insert—

115 Existing contracts not subject to new recovery of progress payment procedures

- (1) This section applies to a construction contract entered into before the commencement.
- (2) The existing recovery of progress payment provisions continue to apply for the recovery of progress payments relating to the construction contract as if the provisions had not been amended by the amending Act.
- (3) However, the changes made under the amending Act and relating to the functions of the authorised nominating authorities being transferred to the registrar do apply to the construction contract.

Examples—

- 1 Adjudication applications are to be made to the registrar in the approved form and be accompanied by the fee prescribed by regulation.
 - 2 The registrar refers adjudication applications to adjudicators.
 - 3 Claimants may ask the registrar for an adjudication certificate.
- (4) In this section—

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

existing recovery of progress payment provisions means the unamended Act, part 3, divisions 1 and 2.

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

116 Mandatory training about adjudication changes

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

25 Clause 45 (Amendment of sch 2 (Dictionary))

Page 32, lines 6 to 15—

omit, insert—

claimant's reply, for an adjudication application, see section 24B(2).

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.

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