

# Building Industry Fairness (Security of Payment) Bill 2017

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

## 1      **Clause 2 (Commencement)**

Page 16, line 13—

*omit, insert—*

and (3), 270 to 277, 279, 280, 282 to 285, 288 to  
297, 299 to 303 and 305

## 2      **Clause 8 (Definitions for chapter)**

Page 21, lines 23 to 32 and page 22, lines 1 and 2—

*omit.*

## 3      **Clause 8 (Definitions for chapter)**

Page 22, line 21, ‘thing’—

*omit, insert—*

building

## 4      **Clause 8 (Definitions for chapter)**

Page 22, line 24, ‘(2)’—

*omit.*

## 5      **Clause 8 (Definitions for chapter)**

Page 22, lines 25 to 30 and page 23, lines 1 to 6—

*omit.*

## 6      **Clause 8 (Definitions for chapter)**

Page 23, lines 12 to 30 and page 24, lines 1 to 11—

*omit, insert—*

***State authority—***

(a) means—

- (i) an agency, authority, commission, corporation, instrumentality, office, or other entity, established under an Act or by authority of the State for a public or State purpose; or
  - (ii) a corporation, owned or controlled by the State, a local government or an entity mentioned in subparagraph (i), if declared by regulation to be a State authority; or
  - (iii) a subsidiary of a corporation mentioned in subparagraph (ii); or
  - (iv) a part of an entity mentioned in subparagraphs (i) to (iii); but
- (b) does not include an entity prescribed by regulation.

**7 Clause 15 (Amendment of building contract)**

Page 29, lines 7 to 11—

*omit, insert—*

- (2) However, if the amendment of the building contract includes an increase in the contract price, the contract becomes 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.

**8 Clause 16 (Building contracts for residential construction work)**

Page 29, line 19, after ‘for’—

*insert—*

is

**9 Clause 16 (Building contracts for residential construction work)**

Page 30, line 10, ‘means a building’—

*omit.*

**10 Clause 16 (Building contracts for residential construction work)**

Page 30, lines 25 and 26—

*omit, insert—*

*residence* means a type of building or structure prescribed by regulation.

*residential construction work*—

- (a) means any of the following work if carried out by a licensed

**11 Clause 23 (Head contractor must establish project bank account)**

Page 35, lines 12 to 25 and page 36, lines 1 to 28—

*omit, insert—*

**23 Head contractor must establish project bank account**

- (1) The head contractor must 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 amounts paid under the head contract, paid under a subcontract with a subcontractor beneficiary or authorised to be deposited under section 28(e);

- (b) an account (*retention account*) for amounts held as a retention amount for a subcontract with a subcontractor beneficiary;
- (c) an account (*disputed funds account*) for amounts the subject of a payment dispute.

Maximum penalty—500 penalty units.

- (2) The building contract may provide for the date by which the project bank account must be established but only to the extent that the date is not—
  - (a) less than 20 business days after the building contract is entered into; or
  - (b) later than 20 business days after the head contractor enters into the first subcontract for the building contract.
- (3) The project bank account must be established by the date provided for its establishment under the building contract.
- (4) However, if the contract does not provide for a date for establishment of a project bank account, or provides for a date incompatible with subsection (2), the project bank account must be established within 20 business days after the head contractor enters into the first subcontract for the building contract.
- (5) Also, if a regulation prescribes a maximum period within which a project bank account must be established, the project bank account must be established within the prescribed period.
- (6) Despite subsections (1) to (5), subsection (7) 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.

- (7) The head contractor must establish the project bank account within 20 business days after the start date.

Maximum penalty—500 penalty units.

- (8) 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 would, apart from this subsection, have been required for the contract; and
- (b) the day practical completion for the building work carried out under the contract would occur.

- (9) In this section—

***practical completion***, for building work carried out under 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 practical completion of the work is achieved—the day that work carried out under the contract would reasonably be estimated to be 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.

**12 Clause 24 (Particular requirements for trust accounts)**

Page 37, line 14, before, ‘payment instructions’—

*insert—*

information relevant to

**13 Clause 27 (All payments from principal to be deposited in project bank account)**

Page 39, line 5—

*omit, insert—*

- (b) the amount is paid into court; or
- (c) the amount is paid directly to a person under chapter 4; or
- (d) the principal has a reasonable excuse.

**14 Clause 28 (Limited purposes for which money may be deposited into project bank account)**

Page 39, lines 27 and 28—

*omit, insert—*

- (c) paying an amount held as a retention amount; or
- (d) paying an amount the subject of a payment dispute; or
- (e) making another payment prescribed by regulation.

**15 Clause 30 (Head contractor to cover shortfalls)**

Page 40, lines 17 to 21—

*omit, insert—*

- (1) This section applies if—
  - (a) an amount is due to be paid from a trust account to a subcontractor beneficiary; and

- (b) there is an insufficient amount available in the trust account to pay the amount to the subcontractor beneficiary.
- (2) The head contractor must, as soon as the head contractor becomes aware there is an insufficient amount available, deposit into the trust account an amount equal to the shortfall.

**16 Clause 31 (Limited purposes for which money may be withdrawn from project bank account)**

Page 41, line 14—

*omit, insert—*

- (d) transferring the money to another trust account as required under this chapter; or
- (e) making another payment prescribed by regulation.

**17 Clause 32 (Order of priority)**

Page 41, line 27 to 32 and page 42, lines 1 to 14—

*omit, insert—*

- (1) A head contractor must not withdraw an amount from a trust account for a project bank account to pay itself, or make another payment prescribed by regulation, unless—
  - (a) there would still be a sufficient amount available in the trust account after the withdrawal to pay all amounts due to be paid to the subcontractor beneficiaries at the time of the withdrawal; and
  - (b) the withdrawal will not reduce a retention amount, for a subcontract, held in the retention account before the retention amount may be released under the subcontract.

Maximum penalty—300 penalty units or 2 years imprisonment.

- (2) However, the head contractor may withdraw an amount contrary to subsection (1) if the withdrawal is to make a payment ordered by a court or for an adjudication under this Act.

**18 Clause 33 (Insufficient amounts available for payments)**

Page 42, line 23, after ‘paid’—

*insert—*

by the head contractor

**19 Clause 34 (Dealing with retention amounts)**

Page 43, lines 8 to 24—

*omit, insert—*

- (1) The head contractor must ensure that a retention amount for a subcontract with a subcontractor beneficiary is held in the retention account for the project bank account.

Maximum penalty—200 penalty units or 2 years imprisonment.

- (2) The head contractor must not withdraw any part of the amount from the retention account unless the withdrawal is to make—
- (a) either of the following payments if made in accordance with the subcontract—
- (i) a payment to the subcontractor beneficiary of an amount withheld under the subcontract;
- (ii) a 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 the subcontract; or

- (b) a payment ordered by a court.

## **20 Clause 35 (When payment dispute occurs)**

Page 44, lines 3 to 13—

*omit, insert—*

### **35 When payment dispute occurs**

- (1) A *payment dispute* occurs if—
  - (a) a subcontractor beneficiary gives the head contractor a payment claim for a progress payment under section 75; and
  - (b) the head contractor gives a payment schedule to the subcontractor beneficiary for the progress payment; and
  - (c) the head contractor prepares a payment instruction to pay an amount from a trust account to the subcontractor beneficiary for the progress payment but the amount stated in the instruction is less than the amount the head contractor proposed to pay under the payment schedule.
- (2) A *payment dispute* also occurs if—
  - (a) a subcontractor beneficiary gives the head contractor a payment claim for a progress payment under section 75; and
  - (b) the head contractor fails to give a payment schedule to the subcontractor beneficiary for the progress payment as required to do so under section 76; and
  - (c) under section 77, the head contractor becomes liable to pay the subcontractor beneficiary the amount claimed in the payment claim.

**21 Clause 36 (Dealing with amounts if payment dispute occurs)**

Page 44, lines 14 to 28 and page 45, lines 1 to 10—

*omit, insert—*

**36 Dealing with amounts if payment dispute occurs**

- (1) If a payment dispute occurs, the head contractor must transfer an amount to the disputed funds account that is equal to the difference between—
  - (a) whichever of the following amounts apply for the dispute—
    - (i) for a payment dispute mentioned in section 35(1)—the amount the head contractor proposed to pay the subcontractor beneficiary under a payment schedule;
    - (ii) for a payment dispute mentioned in section 35(2)—the amount the head contractor is liable to pay the subcontractor beneficiary under section 77; and
  - (b) whichever of the following amounts apply for the dispute—
    - (i) if the head contractor prepared a payment instruction for payment to the subcontractor beneficiary of an amount in relation to the payment dispute—the amount stated in the payment instruction;
    - (ii) if the head contractor did not prepare a payment instruction—\$0.

Maximum penalty—200 penalty units or 1 year's imprisonment.

- (2) The amount must be transferred—

- (a) for a payment dispute mentioned in section 35(1)—when the head contractor prepares a payment instruction for payment to the subcontractor beneficiary for the progress payment; or
  - (b) for a payment dispute mentioned in section 35(2)—when the head contractor becomes liable to pay the subcontractor beneficiary under section 77.
- (3) However, the head contractor need not comply with subsection (1) to the extent that the amount to be transferred is more than the contract price for the subcontract with the subcontractor beneficiary.
- (4) The head contractor may pay an amount, relating to a payment dispute involving a subcontractor beneficiary, from the disputed funds account to—
  - (a) the subcontractor beneficiary; or
  - (b) the head contractor in accordance with the outcome of a dispute resolution process; or
  - (c) another person in the circumstances prescribed by regulation.
- (5) The head contractor must ensure that the amount transferred under subsection (1) is not paid to any person other than in compliance with subsection (4).

Maximum penalty—300 penalty units or 2 years imprisonment.

- (6) If an amount is transferred under subsection (1), the head contractor must immediately, in writing, inform the subcontractor beneficiary of when the amount was transferred into the disputed funds account.

Maximum penalty—50 penalty units.

- (7) Subsection (8) applies to an amount held in the disputed funds account relating to a payment

dispute involving a subcontractor beneficiary if 60 days have elapsed since notice of the transfer was given to the subcontractor beneficiary under subsection (6).

- (8) The head contractor must, as soon as practicable, return the amount to the trust account from which it was transferred unless the amount is the subject of an ongoing dispute resolution process.

Maximum penalty—50 penalty units.

- (9) To remove any doubt, it is declared that the limitation imposed under subsection (4) ceases to apply to the amount if returned to the general trust account or retention account under subsection (8).

- (10) In this section—

*dispute resolution process* means a process prescribed by regulation.

## **22 Clause 38 (Unauthorised ending of project bank account)**

Page 46, lines 9 to 13—

*omit, insert—*

- (2) Without limiting subsection (1), the head contractor is taken to dissolve a project bank account if it closes any of the trust accounts while a project bank account is still required for the building contract.

## **23 Clause 40 (No power of head contractor to invest)**

Page 47, line 7, after ‘interest’—

*insert—*

earned

## **24 Clause 45 (Account to be kept by head contractor)**

Page 49, line 7, after ‘trust’—

*insert—*

account

**25 Clause 50 (Principal to be given information about subcontracts)**

Page 51, lines 12 to 14—

*omit, insert—*

- (2) The head contractor must, within 5 business days after entering into a subcontract for the building contract, give the principal the information prescribed by regulation.

**26 Clause 50 (Principal to be given information about subcontracts)**

Page 51, line 16, after ‘after’—

*insert—*

becoming aware of

**27 Clause 51 (Principal and subcontractor to be given copy of payment instruction)**

Page 51, line 26, after ‘instruction’—

*insert—*

information

**28 Clause 51 (Principal and subcontractor to be given copy of payment instruction)**

Page 51, lines 27 to 31—

*omit, insert—*

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

- (2) The head contractor must, as soon as practicable after giving the financial institution the payment instruction, ensure a copy of the information contained in the payment instruction is given to—

**29 Clause 51 (Principal and subcontractor to be given copy of payment instruction)**

Page 52, line 5 and 7, ‘instruction’—

*omit, insert—*

information

**30 Clause 52 (Principal to inform commissioner of discrepancies)**

Page 52, line 17, ‘discrepancies.’—

*omit, insert—*

discrepancies or after it ought to reasonably have known of the discrepancies.

**31 Clause 52 (Principal to inform commissioner of discrepancies)**

Page 52, line 24, ‘an’—

*omit, insert—*

a

**32 Clause 54 (Right of principal to step in as trustee)**

Page 54, lines 10 and 12, ‘it’—

*omit, insert—*

the company

**33 Clause 54 (Right of principal to step in as trustee)**

Page 54, lines 15 and 16—

*omit, insert—*

- (d) another circumstance, prescribed by regulation, happens.
- (2) The principal may give a written notice to the head contractor

**34 Clause 54 (Right of principal to step in as trustee)**

Page 54, line 24 to 32—

*omit, insert—*

- (4) The notice—
  - (a) divests the amounts held in trust under the project bank account from the head contractor as trustee; and
  - (b) vests the amounts held in trust under the project bank account in the principal as trustee.
- (5) However, the head contractor continues to be entitled to an amount of interest that the head contractor would have been entitled to under section 44, up to the divestment.
- (6) Nothing in this section relieves the head contractor of their liability for an act or failure committed as trustee.
- (7) In this section—

**35 Clause 55 (Information to be given to principal as trustee)**

Page 55, lines 23 to 28—

*omit, insert—*

- (4) A person with information the principal will require to act as trustee of the project bank account must give the information to the principal if requested in writing by the principal.  
Maximum penalty—50 penalty units.

(5) In this section—

*relevant financial institution*, for a project bank account, means the financial institution at which the trust accounts for the project bank account are held.

*head contractor* includes an insolvency official for the head contractor.

### 36 **Clause 56 (Principal as trustee)**

Page 56, lines 10 to 17—

*omit, insert—*

- (a) the principal as trustee is not entitled to any payment from the project bank account, other than payment of an amount for interest earned under section 44; and
- (b) the head contractor is not relieved of their obligation to top-up any shortfall in the project bank account under section 30; and
- (c) the head contractor continues to be a beneficiary of the project bank account; and
- (d) the principal as trustee is responsible for preparing any payment instructions required for payments from the project bank account; and
- (e) an amount paid, or required to be paid, into a project bank account can not be—

### 37 **Clause 61 (Application of chapter)**

Page 58, lines 6 to 12—

*omit, insert—*

- (1) Subject to subsections (2) to (4), this chapter applies to construction contracts—

- (a) whether written or oral, or partly written and partly oral; and
- (b) whether expressed to be governed by the law of Queensland or a jurisdiction other than Queensland; and
- (c) whether entered into before or after the commencement of this section, other than to the extent the repealed *Building and Construction Industry Payments Act 2004* continues to apply to unfinished matters under section 205.

**38      Clause 62 (Effect of giving notice of claim for subcontractors' charges)**

Page 60, lines 28 and 29 and page 61, lines 1 and 2, 'notice of the claim of charge'—

*omit, insert—*

notice of claim

**39      Clause 68 (Meaning of payment claim)**

Page 67, after line 7—

*insert—*

- (3) A written document bearing the word 'invoice' is taken to satisfy subsection (1)(c).

**40      Clause 69 (Meaning of payment schedule)**

Page 67, line 17—

*omit, insert—*

respondent's reasons for withholding any payment; and

- (d) includes the other information prescribed by regulation.

**41 Clause 70 (Right to progress payments)**

Page 67, line 20, ‘For’—

*omit, insert—*

From

**42 Clause 72 (Valuation of construction work and related goods and services)**

Page 68, lines 16 and 31, ‘that part of the contract price that is’—

*omit, insert—*

the contract price

**43 Clause 73 (Due date for payment)**

Page 70, line 19, ‘Q67P’—

*omit, insert—*

67P

**44 Clause 75 (Making payment claim)**

Page 72, lines 23 to 32 and page 73, lines 1 to 25—

*omit, insert—*

(5) A payment claim may include an amount that was included in a previous payment claim.

(6) In this section—

*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.

**~~45 Clause 76 (Responding to payment claim)~~**

~~Page 73, lines 26 to 32 and page 74, lines 1 to 30—~~

~~omit, insert~~

## **~~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 before the end of the response period.~~

~~Maximum penalty 100 penalty units.~~

~~Note—~~

~~A failure to give a payment schedule or pay a claimed amount within the response period is also grounds for taking disciplinary action under the *Queensland Building and Construction Commission Act 1991*.~~

- ~~(2) However, the respondent is not required to give the claimant a payment schedule if the respondent pays the amount claimed in the payment claim before the end of the response period.~~

- ~~(3) In this section—~~

~~**response period**, for responding to a payment claim, means the shorter of the following periods—~~

- ~~(a) the period provided for under the relevant construction contract for responding to a payment claim;~~
- ~~(b) the period that is 15 business days after the day the payment claim is given to the respondent.~~

## **46 Clause 79 (Application for adjudication)**

Page 76, lines 16 to 20—

~~omit, insert—~~

- ~~(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 later of the following days—~~

- (A) the day of the due date for the progress payment to which the claim relates;
- (B) the last day the respondent could have given the payment schedule under section 76; or

**47      Clause 79 (Application for adjudication)**

Page 76, line 22, ‘40’—

*omit, insert—*

20

**48      Clause 79 (Application for adjudication)**

Page 77, lines 5 to 11—

*omit, insert—*

- (3) A copy of an adjudication application must be given to the respondent.
- (4) 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.

**49      Clause 81 (Appointment of adjudicator)**

Page 77, line 29, ‘section’—

*omit, insert—*

subsection

**50      Clause 81 (Appointment of adjudicator)**

Page 78, line 12, ‘(4)’—

*omit, insert—*

(5)

**51      Clause 82 (Adjudication response)**

Page 78, lines 28 to 31 and page 79, lines 1 and 2—

*omit, insert—*

- (4) However, the adjudication response must not include any reasons (*new reasons*) for withholding payment that were not included in the payment schedule when given to the claimant.

**52      Clause 83 (Time for making adjudication response)**

Page 79, lines 20 to 22—

*omit, insert—*

- (3) However, if responding to a complex payment claim, 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.

**53      Clause 84 (Adjudication procedures)**

Page 80, lines 30 and 31—

*omit, insert—*

- (3) If a conference is called, it must be conducted informally and the parties are not entitled to any legal representation unless allowed by the adjudicator.

**54      Clause 86 (Extending time for deciding adjudication application)**

Page 81, lines 28 and 29 and page 82, lines 1 to 14—

*omit, insert—*

- (1) The claimant and respondent for an adjudication application may, before or after the end of the maximum period for deciding the application under section 85(1), agree in writing that the

adjudicator has additional time to decide the application.

- (2) Despite section 85(1), an adjudicator may decide an adjudication application within a longer period if—
- (a) the claimant and respondent have informed the adjudicator that they have agreed under subsection (1) 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 failed to reach an agreement mentioned in subsection (1).
- (3) The *longer period* is—
- (a) if subsection (2)(a) applies—the additional time agreed to by the claimant and respondent under subsection (1); or
  - (b) if subsection (2)(b) applies—5 business days after the time the adjudicator would otherwise have to decide the application under section 85(1).

**55 Clause 87 (Valuation of work etc. in later adjudication application)**

Page 82, line 25, ‘An’—

*omit, insert—*

Any

**56 Clause 88 (Adjudicator’s decision)**

Page 84, lines 6 to 18—

*omit, insert—*

being included in the response under section 82.

- (4) Also, the adjudicator may disregard an adjudication application or adjudication response to the extent that the submissions or accompanying documents contravene any limitations relating to submissions or accompanying documents prescribed by regulation.
- (5) The adjudicator's decision must—
  - (a) be in writing; and
  - (b) include the reasons for the decision, unless the claimant and the respondent have both asked the adjudicator not to include the reasons in the decision.
- (6) 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.

Maximum penalty for subsection (6)—40 penalty units.

**57      Clause 89 (Adjudicator may correct clerical mistakes etc.)**

Page 84, line 30, 'must'—

*omit, insert—*

may

**58      Clause 94 (Claimant may make new application in certain circumstances)**

Page 88, line 10, 'for'—

*omit, insert—*

from

**59      Clause 94 (Claimant may make new application in certain circumstances)**

Page 88, line 26, ‘section’—

*omit, insert—*

subsection

**60      Clause 96 (Deciding fees payable by claimant and respondent)**

Page 91, line 10, ‘section 82(4)(a)’—

*omit, insert—*

section 82(4)

**61      Clause 98 (Claimant’s right to suspend work)**

Page 92, line 6, ‘90(1)’—

*omit, insert—*

92(1)

**62      Clause 102 (Service of notices)**

Page 95, after line 7—

*insert—*

*Example—*

A contract may allow for the service of notices by email.

**63      Clause 104 (Definitions)**

Page 96, lines 15 to 26—

*omit.*

**64      Clause 104 (Definitions)**

Page 97, lines 2 to 27—

*omit.*

**65 Clause 106 (References to amount payable under contract and to completion of work specified in subcontract)**

Page 101, lines 3 to 7—

*omit, insert—*

- (c) a reference to completion of the work specified in a subcontract is taken to be completion of the work by a subcontractor who has given a notice of claim in relation to the contract, subcontract or a higher subcontract.

**66 Clause 107 (When work specified in contract completed)**

Page 101, lines 13 and 14—

*omit, insert—*

- (a) is later employed to do additional work that is connected or related to the work but is not specified in the contract; or

**67 Clause 115 (Insufficient money available for claims)**

Page 105, lines 1 and 6, ‘subcontractor’s’—

*omit, insert—*

subcontractors’

**68 Clause 115 (Insufficient money available for claims)**

Page 105, line 17, ‘130’—

*omit, insert—*

section 130

**69 Clause 115 (Insufficient money available for claims)**

Page 105, lines 21 and 23, ‘subsections’—

*omit, insert—*

subsection

**70 Clause 119 (Request for information about building contract or security)**

Page 106, line 21, after ‘made’—

*insert—*

, unless the contractor has a reasonable excuse

**71 Clause 119 (Request for information about building contract or security)**

Page 107, line 16, after ‘made’—

*insert—*

, unless the person has a reasonable excuse

**72 Clause 119 (Request for information about building contract or security)**

Page 107, lines 20 and 22, ‘is’—

*omit.*

**73 Clause 127 (Person given notice of claim must comply with request from security holder about s 130 or 131)**

Page 112, line 17, ‘130(1) or 131(1)’—

*omit, insert—*

130(2) or 131(2)

**74 Clause 128 (Contractor given copy of notice of claim must respond [S11])**

Page 112, line 24—

*omit.*

**75      Clause 128 (Contractor given copy of notice of claim must respond [S11])**

Page 112, lines 27 to 29—

*omit, insert—*

- (2) The contractor must give both of the following persons a written response to the claim within 10 business days after the contractor is given the copy of the notice of claim, unless the contractor has a reasonable excuse—

**76      Clause 128 (Contractor given copy of notice of claim must respond [S11])**

Page 113, line 5, ‘either’—

*omit.*

**77      Clause 129 (Payment of amount claimed)**

Page 114, lines 12 to 23—

*omit, insert—*

***retained amount***, in relation to a notice of claim given to a person, means the total of all amounts—

- (a) still retained by the person under section 126(2) in relation to the claim; and  
(b) paid into court by the person under section 126(4) in relation to the claim.

***unsatisfied amount***, in relation to a notice of claim given to a person, means the total of all amounts of claims for which the notice of claim has been given, other than amounts that have been—

- (a) satisfied by payment under subsection (2) or (3); or

- (b) the subject of a notice of claim that has been withdrawn.

**78      Clause 130 (Use of security for benefit of subcontractor if contractor accepts liability for all claims)**

Page 115, lines 7 and 10—

*omit, insert—*

- (a) retain the security until the court in which the subcontractor's claim is heard makes an order under section 132 about enforcing the subcontractor's charge over the security; or

**79      Clause 130 (Use of security for benefit of subcontractor if contractor accepts liability for all claims)**

Page 116, line 16, '126(1)'—

*omit, insert—*

126(2)

**80      Clause 130 (Use of security for benefit of subcontractor if contractor accepts liability for all claims)**

Page 116, line 26, '126(2) or (3)'—

*omit, insert—*

129(2) or (3)

**81      Clause 131 (Use of security for benefit of subcontractor if contractor does not accept liability for all claims)**

Page 117, lines 12 to 15—

*omit, insert—*

- (a) retain the security until the court in which the subcontractor's claim is heard makes an order under section 132 about enforcing the subcontractor's charge over the security; or

**82      Clause 131 (Use of security for benefit of subcontractor if contractor does not accept liability for all claims)**

Page 118, line 32, ‘126(2) or (3)’—

*omit, insert—*

129(2) or (3)

**83      Clause 134 (Recovering amount claimed)**

Page 120, line 22, ‘129’—

*omit, insert—*

126(2)

**84      Clause 135 (Enforcing subcontractor’s charge on behalf of other subcontractors)**

Page 121, lines 4 and 5, after ‘under’—

*insert—*

section

**85      Clause 139 (Application to court by person prejudicially affected)**

Page 122, line 24, ‘the’—

*omit.*

**86      Clause 162 (Request for further information)**

Page 135, line 11, ‘time for comply’—

*omit, insert—*

time to comply

**87      Clause 165 (Conditions of registration)**

Page 136, line 4, after ‘this chapter’—

*insert—*

and chapter 3

**88 Clause 165 (Conditions of registration)**

Page 136, line 11, ‘under subsection (1)(b)’—

*omit, insert—*

on an adjudicator’s registration

**89 Clause 165 (Conditions of registration)**

Page 136, line 18, ‘(2)(b)’—

*omit, insert—*

(1)(c)

**90 Clause 168 (Request for further information)**

Page 138, line 17, ‘comply’—

*omit, insert—*

complying

**91 Clause 181 (Code of conduct for adjudicators)**

Page 145, line 16, ‘(4)’—

*omit, insert—*

(3)

**92 Clause 181 (Code of conduct for adjudicators)**

Page 145, line 24—

*omit, insert—*

(c) if asked, advise where copies of the code of conduct

**93      Clause 185 (Adjudicator must give information to registrar)**

Page 147, lines 14 and 15—

*omit, insert—*

- (a) the adjudicator changes any of the following addresses—
  - (i) the address of the adjudicator;
  - (ii) the address in Queensland at which documents may be served on the adjudicator;

**94      Clause 185 (Adjudicator must give information to registrar)**

Page 147, line 21, ‘161(4)’—

*omit, insert—*

161(3)

**95      Clause 189 (Proceedings for offences)**

Page 148, lines 20 to 24 and page 149, lines 1 to 7—

*omit.*

**96      Clause 193 (Application of division)**

Page 150, lines 23 and 24, ‘division’—

*omit, insert—*

part

**97      Clause 198 (Approved forms)**

Page 151, line 23, ‘commissioner’—

*omit, insert—*

chief executive or commissioner

**98 After clause 200**

Page 152, after line 24—

*insert—*

**200A Review of Act**

- (1) The Minister must ensure a review of the operation and effectiveness of the 2017 suite of building and construction reforms.
- (2) The review must be conducted by a panel of not more than 4 appropriately qualified persons appointed by the Minister.
- (3) The Minister must prepare, and give to the panel, terms of reference to guide the conduct of the review.
- (4) The review must be started no later than 1 September 2018.
- (5) The Minister must table in the Legislative Assembly a report on the outcome of the review as soon as practicable after the review is completed.
- (6) In this section—

***2017 suite of building and construction reforms***  
means—

- (a) this Act; and
- (b) the amendments to other Acts made under this Act as passed; and
- (c) the other Acts prescribed by regulation.

**99 Clause 201 (Regulation-making power)**

Page 153, line 21 —

*omit, insert—*

- (g) prescribe limitations on submissions and accompanying documents for adjudication applications and adjudication responses; and

(h) provide for fees payable under this Act.

**100 Clause 203 (Definitions for part)**

Page 154, lines 13 and 14—

*omit.*

**101 Clause 204 (Continuation of existing appointments and employment)**

Page 154, lines 16 to 19 —

*omit, insert—*

- (1) An existing registration of an adjudicator under part 4 of the repealed Act continues as registration as an adjudicator under this Act—
  - (a) for the remainder of the term the registration was subject to under the repealed Act; and
  - (b) with the conditions imposed under the repealed Act, to the extent the conditions are consistent with this Act.
- (2) However, the continued registration is subject to this Act, including, for example—
  - (a) eligibility under section 161; and
  - (b) the conditions mentioned in section 165(1) and any other conditions imposed under that section; and
  - (c) any suspension or cancellation of the registration under chapter 5, part 2, division 4.

**102 Clause 207 (Definitions for part)**

Page 156, lines 17 and 18—

*omit, insert—*

***repealed***, in relation to a provision, means that

provision of the repealed Act.

**103 Clause 214 (Replacement of s 14 (Particular government building contracts))**

Page 160, lines 8 to 12—

*omit, insert—*

- (c) the building contract is not a subcontract for another building contract.

**104 Clause 215 (Replacement of s 16 (Building contracts for residential construction work))**

Page 161, lines 23 and 24—

*omit, insert—*

*residential construction work—*

- (a) means any of the following work if carried out by a

**105 Clause 219 (Amendment of s 9 (What is a project bank account))**

Page 165, line 4, ‘9(1)(b)’—

*omit, insert—*

9(1) and (5), definition *remainder*

**106 Clause 224 (Amendment of s 18A (Private or local government contracts entered into before particular date))**

Page 166, line 4. ‘18A(1)(b)’—

*omit, insert—*

18A(1)(a)

**107 Clause 225 (Amendment of s 20 (Application of chapter if parties to a subcontract are related entities))**

Page 166, line 12—

*omit, insert—*

(2) Section 20(5)—

**108 Clause 228 (Amendment of ch 2, pt 4 (Information))**

Page 167, line 4, after ‘Information’—

*insert—*

**sharing**

**109 Clause 231 (Amendment of sch 2 (Dictionary))**

Page 168, lines 3 to 11—

*omit, insert—*

(1) Schedule 2, definitions *head contractor, principal and supplier—*

*omit.*

(2) Schedule 2—

*insert—*

*contracted party*, for chapter 2, see section 8.

*contracting party*, for chapter 2, see section 8.

**110 Clause 235 (Amendment of ch 8, pt 7, div 2, hdg (Investigations))**

Page 169, lines 3 to 5—

*omit, insert—*

**235 Omission of ch 8, pt 7, div 2, hdg (Investigations)**

Chapter 8, part 7, division 2, heading—

*omit.*

**111 Clause 252 (Insertion of new s 4AA)**

Page 173, line 4—

*omit, insert—*

company, who is in a position to control or substantially influence

**112 Clause 271 (Amendment of s 56AC (Excluded individuals and excluded companies))**

Page 183, lines 1 to 5—

*omit, insert—*

(2) Section 56AC(4)—

*omit, insert—*

(4) If this section applies to an individual because of subsection (2), the individual is an ***excluded individual*** for the relevant company event unless the individual can satisfy the commissioner that at the time the individual ceased to be an influential person, director or secretary for the construction company the company was solvent.

(3) Section 56AC(7), definition *construction company*—

*omit, insert—*

***construction company***—

- (a) means a company that directly or indirectly carries out building work or building work services in this or another State; and
- (b) includes a company that, within 2 years immediately before a relevant company event for the company, directly or

indirectly carries out building work or building work services in this or another State.

**113 Clause 272 (Amendment of s 67AQ (Definitions for pt 3E))**

Page 183, lines 6 to 12—

*omit.*

**114 Clause 273 (Amendment of s 67AW (Demerit points for demerit matters))**

Page 183, lines 13 to 21—

*omit.*

**115 Clause 275 (Amendment of s 67A (Definitions for pt 4A))**

Page 184, lines 15 to 31 and page 185, lines 1 to 14—

*omit, insert—*

*defects liability period*, for a building contract, means—

- (a) the period worked out under the contract as being the period that—
  - (i) starts on the day of practical completion for the building work carried out under the contract; and
  - (ii) ends on the last day any omission or defect in the building work, carried out under the contract, 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(2).

***practical completion***, for building work carried out under a building contract, means—

- (a) the day practical completion of the work is achieved, as worked out under the contract; or
- (b) if the contract does not provide for the day practical completion of the work is achieved—the day the work 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.

**116 Clause 276 (Insertion of new ss 67GA and 67GB)**

Page 185, lines 26 to 28—

*omit, insert—*

- (2) Subsection (1) does not apply to a building contractor who—
  - (a) enters into a building contract as a principal; or
  - (b) enters into a subcontract as the contracted party.

**117 Clause 276 (Insertion of new ss 67GA and 67GB)**

Page 186, lines 22 to 24—

*omit, insert—*

- (2) Subsection (1) does not apply to a building contractor who—

- (a) enters into a building contract as a principal;  
or
- (b) enters into a subcontract as the contracted party.

**118 Clause 278 (Insertion of new ss 67NA–67NC)**

Page 187, lines 13 to 29, and page 188, lines 1 to 8—

*omit, insert—*

**67NA Statutory defects liability period**

- (1) This section applies to a building contract if—
  - (a) under the contract—
    - (i) a retention amount may be withheld; or
    - (ii) a security may be held after practical completion in relation to the need to correct defects in the building work under the contract; and
  - (b) the contract does not provide for the release of the retention amount or security at the end of an identifiable period.
- (2) The building contract is subject to a condition that the retention amount or security must be released to the person entitled to it at the end of 12 months starting on the day of practical completion for the contract (the *statutory defects liability period*).

**119 Clause 278 (Insertion of new ss 67NA–67NC)**

Page 189, lines 14 and 20, ‘contracting’—

*omit, insert—*

contracted

**120 After clause 282**

Page 191, after line 9—

*insert—*

**282AInsertion of new s 72AA**

Part 6, division 3—

*insert—*

**72AADelaying or obstructing compliance with direction to rectify or remedy**

- (1) A person must not, without reasonable excuse, delay rectifying building work that is defective or incomplete, or remedying consequential damage, as required by a direction given to the person under section 72(2).
- (2) A person must not, without reasonable excuse, obstruct another person rectifying building work that is defective or incomplete, or remedying consequential damage, as required by a direction given to the other person under section 72(2).

*Note—*

Contravention of subsection (1) or (2) is proper grounds for taking disciplinary action against a licensee or former licensee, see section 74B(1)(a).

**121 Clause 285 (Amendment of s 74B (Proper grounds for taking disciplinary action against a licensee and former licensees))**

Page 192, line 27—

*omit, insert—*

Section 74B(1)—

**122 Clause 293 (Replacement of s 104 (Appointment of inspectors))**

Page 199, line 4, ‘with’—

*omit, insert—*

within

**123 Clause 295 (Insertion of new pt 9, div 7A)**

Page 202, lines 11 and 12—

*omit, insert—*

- (b) whether the loss arose from a lawful seizure or lawful forfeiture; and
- (c) whether the loss arose from performing a function or exercising a power of an investigator in good faith and without negligence.

**124 After clause 301**

Page 204, after line 11—

*insert—*

**301AInsertion of new s 111AAA**

Part 10—

*insert—*

**111AAAE enforcement action to comply with prescribed guidelines**

- (1) An entity considering taking enforcement action must consider a guideline, about taking enforcement action, prescribed by regulation.
- (2) A failure to comply with subsection (1) does not invalidate or otherwise affect the enforcement action.
- (3) Nothing in subsection (1)—
  - (a) affects the functions of the Director of Public Prosecutions under the *Director of Public Prosecutions Act 1984*, section 10; or

- (b) affects the power of the Director of Public Prosecutions to act under the *Director of Public Prosecutions Act 1984*, section 11; or
  - (c) prevents a person from complying with a guideline made by the Director of Public Prosecutions under the *Director of Public Prosecutions Act 1984*, section 11(1).
- (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.
- (5) In this section—
- enforcement action*** means—
- (a) a proceeding for an offence against this Act; or
  - (b) issuing an infringement notice for an offence against this Act; or
  - (c) allocating demerit points for contraventions of section 73.
- infringement notice*** see the *State Penalties Enforcement Act 1999*, schedule 2.

## 125 After clause 303

Page 205, after line 12—

*insert—*

### **303A**Insertion of new s 115C

Part 10—

*insert—*

### **115C**Approved forms

The chief executive or commissioner may approve forms for use under this Act.

**126 Clause 304 (Amendment of s 116 (Regulations))**

Page 205, lines 14 to 18—

*omit, insert—*

(1) Section 116(2)—

*insert—*

(ab) prescribe the minimum financial requirements for the licences under this Act; and

(2) Section 116(2)(e)—

*omit, insert—*

(e) provide for the number of demerit points for demerit offences, including by—

(i) fixing the number of demerit points for any repeat of a demerit offence by a person; or

(ii) for section 73—authorising the commission to allocate from 4 to 10 demerit points, having regard to the defective or incomplete building work or consequential damage, or any repeat of the offence by a person.

**127 Clause 307 (Amendment of sch 2 (Dictionary))**

Page 207, after line 11—

*insert—*

***approved form*** means a form approved by the chief executive or the commissioner under section 115C.

**128 Clause 307 (Amendment of sch 2 (Dictionary))**

Page 207, line 20—

*omit, insert—*

commission under part 3E for—

**129 Schedule 1 (Consequential amendments)**

Page 209, lines 11 to 14—

*omit.*

**130 Schedule 2 (Dictionary)**

Page 211, line 2—

*omit, insert—*

section 5

**131 Schedule 2 (Dictionary)**

Page 211, lines 5 to 7, ‘, for chapter 3,’—

*omit.*

**132 Schedule 2 (Dictionary)**

Page 211, line 12, ‘commissioner’—

*omit, insert—*

chief executive or the commissioner

**133 Schedule 2 (Dictionary)**

Page 212, line 16—

*omit.*

**134 Schedule 2 (Dictionary)**

Page 212, lines 23 to 25—

*omit, insert—*

*defects liability period*, for a contract, means—

- (a) the period worked out under the contract as being the period that—
  - (i) starts on the day of practical completion for the work carried out under the contract; and
  - (ii) ends on the last day any omission or defect in the work, carried out under the contract, 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(2).

**135 Schedule 2 (Dictionary)**

Page 213, line 13, ‘, for chapter 4,’—  
*omit.*

**136 Schedule 2 (Dictionary)**

Page 213, line 15, ‘, for chapter 3,’—  
*omit.*

**137 Schedule 2 (Dictionary)**

Page 213, line 16, ‘(2)’—  
*omit.*

**138 Schedule 2 (Dictionary)**

Page 213, after line 16—  
*insert—*

***payment instruction*** means an instruction to a

financial institution for the payment of an amount from an account.

**139 Schedule 2 (Dictionary)**

Page 213, line 17, ‘, for chapter 3,’—  
*omit.*

**140 Schedule 2 (Dictionary)**

Page 213, lines 19 to 21—  
*omit, insert—*

***practical completion***, for work carried out under a contract, means—

- (a) the day practical completion of the work is achieved, as worked out under the contract; or
- (b) if the contract does not provide for the day practical completion of the work is achieved—the day the work 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.

**141 Schedule 2 (Dictionary)**

Page 213, line 23, ‘, for chapter 3,’—  
*omit.*

**142 Schedule 2 (Dictionary)**

Page 214, lines 10 to 12—

*omit, insert—*

***retention amount*** means an amount that—

- (a) is payable under a contract, but may, under that contract, be withheld from payment—
  - (i) during the progress of the work to be carried out under the contract; or
  - (ii) during the defects liability period for the contract; or
  - (iii) both during the progress of the work to be carried out under the contract and during the defects liability period; and
- (b) is withheld from payment under a contract for the purpose of giving financial protection to the person making the payment in relation to the need to correct defects in the work to be carried out under the contract, or otherwise to secure, wholly or partly, the performance of the contract.

**143 Schedule 2 (Dictionary)**

Page 214, line 19—

*omit.*

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