

Plumbing and Drainage Bill 2018

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

1 Clause 2 (Commencement)

Page 10, line 8—

omit, insert—

(1) This Act, other than the following provisions, commences on a day to be fixed by proclamation—

- part 9, division 1A, other than section 176F(2)
- sections 192A to 192K, 193A to 193G and 196(3) to (6)
- schedule 2, amendments of the *Building Industry Fairness (Security of Payment) Act 2017*.

2 Clause 17 (Inquiry about applicant)

Page 15, line 27, ‘40’—

omit, insert—

20

3 Clause 18 (Extending decision period for application)

Page 16, line 26, ‘40’—

omit, insert—

20

4 Clause 18 (Extending decision period for application)

Page 16, line 32, ‘40’—

omit, insert—

20

5 Clause 19 (Deciding application)

Page 18, line 8, ‘40’—

omit, insert—

20

6 Clause 65 (Installing things as part of plumbing or drainage work)

Page 45, line 18, ‘*on-site treatment*’—

omit, insert—

on-site sewage treatment

7 Clause 81 (Who is a *relevant person* for notifiable work)

Page 56, line 23, ‘(1)’—

omit.

8 Clause 81 (Who is a *relevant person* for notifiable work)

Page 57, lines 7 to 19—

omit.

9 Clause 83 (Action after notifiable work is finished)

Page 59, line 10, ‘81(1)(c)’—

omit, insert—

81(c)

10 After clause 157

Page 96, line 4, ‘and transitional’—

omit, insert—

, transitional and validation

11 After clause 158

Page 96, line 9, after ‘Transitional’—

insert—

and validation

12 After clause 173

Page 101, after line 5—

insert—

173A Holder of particular licence taken to hold associated occupation licence in relevant period

(1) This section applies to a person if—

(a) either—

(i) the person held a contractor’s licence under the *Queensland Building and Construction Commission Act 1991* of 1 of the following classes of licence in any period from 10 November 2014 to the commencement (the *relevant period*)—

(A) a plumbing and drainage licence;

(B) a drainage licence;

(C) a drainage—on-site sewerage facility licence (maintenance);

(D) a drainage—on-site sewerage facility licence (maintenance and installation);

(E) a plumbing and draining restricted to plumbing licence;

(F) a plumbing and draining restricted to tanks—water supply licence; or

(ii) the person held a nominee supervisor’s licence or site supervisor’s licence

under the *Queensland Building and Construction Commission Act 1991* of 1 of the following classes of licence in the relevant period—

- (A) a plumbing and drainage licence;
 - (B) a drainage licence;
 - (C) a drainage—on-site sewerage facility licence (maintenance);
 - (D) a drainage—on-site sewerage facility licence (maintenance and installation); and
- (b) the person did not hold in the relevant period an associated occupational licence for the contractor's licence, nominee supervisor's licence or site supervisor's licence.
- (2) The person is taken to have held for the relevant period an associated occupational licence for the contractor's licence, nominee supervisor's licence or site supervisor's licence.
- (3) In this section—

associated occupational licence means—

- (a) for a plumbing and drainage licence—a plumbers licence and drainers licence under the *Plumbing and Drainage Regulation 2003*, schedule 1, items 1 and 2; or
- (b) for a drainage licence—a drainers licence under the *Plumbing and Drainage Regulation 2003*, schedule 1, item 2; or
- (c) for a drainage—on-site sewerage facility licence (maintenance)—a drainer—on-site sewerage facility licence under the *Plumbing and Drainage Regulation 2003*, schedule 2, item 8, for the scope of work stated in item 8, column 4, paragraph (a) of the schedule; or

- (d) for a drainage—on-site sewerage facility licence (maintenance and installation)—a drainer—on-site sewerage facility licence under the *Plumbing and Drainage Regulation 2003*, schedule 2, item 8, for the scope of work stated in item 8, column 4, paragraph (b) of the schedule; or
- (e) for a plumbing and draining restricted to plumbing licence—a plumbers licence under the *Plumbing and Drainage Regulation 2003*, schedule 1, item 1; or
- (f) a plumbing and draining restricted to tanks—water supply licence—a plumbers licence under the *Plumbing and Drainage Regulation 2003*, schedule 1, item 1.

drainage licence means the class of licence mentioned in the *Queensland Building and Construction Commission Regulation 2003*, schedule 2, part 19.

drainage—on-site sewerage facility licence (maintenance) means the class of licence mentioned in the *Queensland Building and Construction Commission Regulation 2003*, schedule 2, part 19A, section 1(1).

drainage—on-site sewerage facility licence (maintenance and installation) means the class of licence mentioned in the *Queensland Building and Construction Commission Regulation 2003*, schedule 2, part 19A, section 1(2).

plumbing and drainage licence means the class of licence mentioned in the *Queensland Building and Construction Commission Regulation 2003*, schedule 2, part 18.

plumbing and draining restricted to plumbing licence means the class of licence of that name mentioned in the *Queensland Building and Construction Commission Regulation 2003*,

section 43.

plumbing and draining restricted to tanks—water supply licence means the class of licence of that name mentioned in the *Queensland Building and Construction Commission Regulation 2003*, section 43.

13 Insertion of new pt 9, div 1A

Page 102, after line 1—

insert—

Division 1A Amendment of Building Industry Fairness (Security of Payment) Act 2017

176A Act amended

This division amends the *Building Industry Fairness (Security of Payment) Act 2017*.

Note—

See also the amendments in schedule 2.

176B Amendment of s 2 (Commencement)

Section 2—

insert—

- (1A) However, chapter 8, part 1A commences on the date of assent of the *Plumbing and Drainage Act 2018*.

176C Amendment of s 8 (Definitions for chapter)

- (1) Section 8, definitions *disputed funds account* and *retention account—*
omit.

(2) Section 8—

insert—

disputed funds trust account see section 23(1)(c).

retention trust account see section 23(1)(b).

176D Amendment of s 9 (What is a *project bank account*)

(1) Section 9(1)(b) and (3)(a), ‘under’—

omit, insert—

in connection with

(2) Section 9(4)(b)—

omit, insert—

(b) ceases to be a beneficiary when paid all amounts it is entitled to be paid in connection with its subcontract, including a retention amount and an amount the subject of a payment dispute.

(3) Section 9(5), definition *remainder*, paragraph (a), ‘under’—

omit, insert—

in connection with

176E Insertion of new s 10A

After section 10—

insert—

10A When amount is liable to be paid to subcontractor

The head contractor for a project bank account is liable to pay an amount to a subcontractor beneficiary if any of the

following apply in connection with a subcontract between the head contractor and the subcontractor beneficiary—

- (a) the amount is due to be paid to the subcontractor beneficiary in connection with the subcontract;
- (b) the amount is certified, or otherwise assessed, as payable to the subcontractor beneficiary under the subcontract;
- (c) the head contractor gives the subcontractor beneficiary a payment schedule for the amount;
- (d) under section 77 the head contractor is liable to pay the amount to the subcontractor beneficiary;
- (e) the head contractor must pay the amount to the subcontractor beneficiary because of an adjudication under chapter 3, part 4 of a disputed progress payment relating to the subcontract;
- (f) the head contractor must pay the amount to the subcontractor beneficiary because of a final and binding dispute resolution process;
- (g) a court or tribunal orders the head contractor to pay the amount to the subcontractor beneficiary.

176F Amendment of s 11 (Who is a *supplier*)

(1) Section 11(2)—

omit, insert—

(2) However, a subcontractor is not a *supplier* if the subcontractor is required under any of the

following Acts to hold a licence or other authority to lawfully supply the goods or services—

- (a) the *Building Act 1975*;
 - (b) the *Electrical Safety Act 2002*;
 - (c) the *Plumbing and Drainage Act 2002*;
 - (d) the *Queensland Building and Construction Commission Act 1991*;
 - (e) another Act prescribed by regulation.
- (2) Section 11(2)(c), ‘2002’—
omit, insert—
2018
- (3) Section 11(3)—
omit.

176G Amendment of s 19 (Who is a *related entity*)

- (1) Section 19(3), definition *family*, paragraph (d), after ‘sister,’—
insert—
aunt, uncle,
- (2) Section 19(3), definition *family*, paragraph (f), after ‘person’—
insert—
or the person’s spouse

176H Amendment of s 23 (Head contractor must establish project bank account)

- (1) Section 23(1)(b), ‘*retention account*’—
omit, insert—
retention trust account

- (2) Section 23(1)(c), '*disputed funds account*'—
omit, insert—
disputed funds trust account

176I Amendment of s 25 (Name of trust account)

- Section 25, 'words 'trust account''—
omit, insert—
word 'trust'

176J Amendment of s 26 (Notice of trust account's opening, closing or name change)

- (1) Section 26(2), 'written notice'—
omit, insert—
notice, in the approved form,
- (2) Section 26(2), '10 business days'—
omit, insert—
5 business days
- (3) Section 26(3), 'written notice must state the following'—
omit, insert—
approved form must require the following information
- (4) Section 26(3)(a)—
omit.
- (5) Section 26(3)(b) to (e)—
renumber as section 26(3)(a) to (d).

176K Amendment of s 27 (All payments from principal to be deposited in project bank account)

Section 27(1)—

omit, insert—

- (1) Subsection (2) applies if the principal pays an amount to the head contractor—
 - (a) under the building contract; or
 - (b) because the principal is liable under section 77 to pay the amount to the head contractor in relation to the building contract; or
 - (c) because of an adjudication under chapter 3, part 4 of a disputed progress payment relating to the building contract; or
 - (d) because of a final and binding dispute resolution process relating to the building contract; or
 - (e) because of a court order relating to the building contract; or
 - (f) for any other reason that reduces the unpaid amount of the contract price for the building contract.

176L Amendment of s 28 (Limited purposes for which money may be deposited into project bank account)

- (1) Section 28, after ‘trust account’—

insert—

, for the project bank account,

- (2) Section 28(a) and (b)—

omit, insert—

- (a) paying the head contractor an amount the principal must deposit into the general trust account under section 27(2); or
- (b) paying a subcontractor beneficiary an amount the head contractor is liable to pay the subcontractor beneficiary in connection with its subcontract with the head contractor; or

176M Amendment of s 29 (All payments to subcontractor beneficiaries to be paid from project bank account)

Section 29(1)—

omit, insert—

- (1) This section applies if the head contractor is liable to pay an amount to a subcontractor beneficiary in connection with its subcontract with the head contractor.

176N Amendment of s 30 (Head contractor to cover shortfalls)

Section 30(2), from ‘, as soon’ to ‘available,’—

omit, insert—

immediately

176O Amendment of s 31 (Limited purposes for which money may be withdrawn from project bank account)

Section 31(1)(a)—

omit, insert—

- (a) paying a subcontractor beneficiary an amount the head contractor is liable to pay the subcontractor beneficiary in

connection with its subcontract with the head contractor; or

176P Amendment of s 32 (Order of priority)

- (1) Section 32(1)(a), ‘due to be paid to’—
omit, insert—
the head contractor is liable to pay
- (2) Section 32(1)(b), ‘retention account’—
omit, insert—
retention trust account
- (3) Section 32(2), ‘adjudication under this Act’—
omit, insert—
adjudication under chapter 3, part 4

176Q Amendment of s 33 (Insufficient amounts available for payments)

- (1) Section 33(1)—
omit, insert—
 - (1) This section applies if—
 - (a) the head contractor is liable to pay 2 or more subcontractor beneficiaries (each a *claimant*) an amount from a trust account at the same time; and
 - (b) the total amount held in the trust account is insufficient to satisfy in full all of the amounts liable to be paid to the claimants; and
 - (c) at the time an amount liable to be paid to a claimant is due to be paid, the head contractor has not complied with its obligation under section 30 to cover the insufficient amount.

- (2) Section 33(2), ‘due’—
omit, insert—
liable
- (3) Section 33(2), example, ‘due’—
omit.
- (4) Section 33(4)—
omit, insert—
 - (4) Nothing in this section relieves the head contractor of its liability to pay in full the amounts the head contractor is liable to pay each claimant.

176R Amendment of s 34 (Dealing with retention amounts)

- (1) Section 34(1), ‘retention account’—
omit, insert—
retention trust account
- (2) Section 34(2) and (3)—
omit, insert—
 - (2) If a project bank account is not established until after a retention amount is withheld from a subcontractor beneficiary, subsection (1) applies to that part of the retention amount still withheld past 5 business days after the project bank account is established.
Note—
Under section 15 a project bank account may be required for a building contract only after an amendment of the contract.
 - (3) If subsection (2) causes the head contractor to deposit a retention amount into the retention trust account, the head contractor must give written notice of the deposit to the

subcontractor beneficiary from whom the amount was withheld.

Maximum penalty—100 penalty units.

- (4) The notice of the deposit must—
 - (a) be given to the subcontractor beneficiary as soon as practicable after making the deposit; and
 - (b) state the amount of the deposit and when the deposit was made.
- (5) The head contractor must ensure a retention amount held in the retention trust account is identifiable as being held for the subcontractor beneficiary from whom it was withheld.

Maximum penalty—100 penalty units.

176S Insertion of new s 34A

Chapter 2, part 3, division 5—

insert—

34A Withdrawing retention amounts held in retention trust account

- (1) The head contractor must not withdraw any part of a retention amount held in the retention trust account unless the withdrawal is to make—
 - (a) a payment to the subcontractor beneficiary from whom the amount was withheld; or
 - (b) a payment to the head contractor that is—
 - (i) to correct defects in subcontracted work, or otherwise to secure, wholly or partly, the performance of the related subcontract; and

- (ii) made under the related subcontract; and
 - (iii) made after the end of the defects liability period for the related subcontract; or
- (c) a payment ordered by a court; or
- (d) a payment to a subcontractor beneficiary, engaged on behalf of the head contractor, that—
- (i) is to correct defects or omissions in subcontracted work; and
 - (ii) would be made in accordance with the related subcontract if it were made to the head contractor.

Maximum penalty—300 penalty units or 2 years imprisonment.

(2) In this section—

related subcontract, for a retention amount, means the subcontract under which the retention amount was withheld from payment.

176T Insertion of new s 34B

Chapter 2, part 3, division 6—

insert—

34B Definitions for division

In this division—

appeal, of an outcome of a dispute resolution process, includes a review of the outcome of the dispute resolution process.

dispute resolution process means a process prescribed by regulation.

176U Amendment of s 35 (When payment dispute occurs)

(1) Section 35(1)(c)—

omit, insert—

(c) the head contractor does not prepare a payment instruction to pay the full amount proposed to be paid under the payment schedule.

(2) Section 35(2)—

insert—

(d) the head contractor does not prepare a payment instruction to pay the full amount claimed in the payment claim.

176V Amendment of s 36 (Dealing with amounts if payment dispute occurs)

(1) Section 36, heading, ‘Dealing with’—

omit, insert—

Obligation to transfer

(2) Section 36(1), ‘disputed funds account’—

omit, insert—

disputed funds trust account

(3) Section 36(3) to (10)—

omit, insert—

(3) However, the head contractor need not comply with subsection (1) for an amount the subject of a payment dispute mentioned in subsection 35(2) to the extent the amount to be transferred is more than the contract price for the subcontract with the subcontractor beneficiary.

(4) The ***contract price***, for a subcontract, means the amount the subcontractor is entitled to be

paid under the subcontract or, if the amount can not be accurately calculated, the reasonable estimate of the amount the subcontractor is entitled to be paid under the subcontract.

- (5) An amount mentioned in subsection (4) is inclusive of GST.
- (6) Immediately after transferring an amount under subsection (1), the head contractor must inform the subcontractor beneficiary in writing of when the amount was transferred into the disputed funds trust account.

Maximum penalty—50 penalty units.

- (7) In this section—

transfer means—

- (a) transfer from the general trust account or retention trust account; or
- (b) to the extent there is insufficient funds available in the accounts mentioned in paragraph (a)—transfer or deposit from another source.

176W Insertion of new ss 36A–36C

Chapter 2, part 3, division 6—

insert—

36A Identifying amounts held in the disputed funds trust account

The head contractor must ensure an amount held in the disputed funds trust account is identifiable as being held for the subcontractor beneficiary who is a party to the payment dispute for which the amount is held.

Maximum penalty—100 penalty units.

36B Withdrawing amounts held in disputed funds trust account

- (1) The head contractor must not withdraw any part of an amount held in the disputed funds trust account unless the withdrawal is to—
 - (a) make a payment to—
 - (i) the subcontractor beneficiary who is a party to the payment dispute for which the amount is held; or
 - (ii) the head contractor in accordance with the outcome of a dispute resolution process; or
 - (iii) another person in the circumstances prescribed by regulation; or
 - (b) comply with the head contractor's obligation under section 36C(2).

Maximum penalty—300 penalty units or 2 years imprisonment.

- (2) However, if the outcome of the dispute resolution process mentioned in subsection (1)(a)(ii) may be appealed, the withdrawal for the payment to the head contractor under that provision must not be made until—
 - (a) the conclusion of the period within which the appeal may be commenced; and
 - (b) if the appeal is commenced—the conclusion of the appeal.

36C Returning amounts held in disputed funds trust account after particular time

- (1) This section applies if—

- (a) the head contractor transfers an amount into the disputed funds trust account under section 36; and
 - (b) at the end of the relevant day any part of the amount remains in the disputed funds trust account.
- (2) As soon as practicable after the relevant day, the head contractor must—
- (a) if the amount was transferred from the general trust account or retention trust account—return the remaining amount to the trust account from which it was transferred; or
 - (b) otherwise—withdraw the remaining amount for payment to the head contractor.

Maximum penalty—50 penalty units.

- (3) In this section—
- relevant day***, for an amount transferred into the disputed funds trust account, means—
- (a) if the amount is the subject of a dispute resolution process and the outcome of the process can not be appealed—the day the dispute resolution process ends; or
 - (b) if the amount is the subject of a dispute resolution process and the outcome of the dispute resolution process may be appealed—
 - (i) the last day by which the appeal may be commenced; or
 - (ii) if an appeal from the outcome of the process is commenced—the day the appeal is decided; or

- (c) otherwise—the day that is 60 days after the notice of the transfer was given to the subcontractor beneficiary under section 36(7).

176X Amendment of s 37 (Ending project bank account)

- (1) Section 37(1), note, from ‘amounts, including’—
omit, insert—

amounts the head contractor is liable to pay the subcontractor beneficiary in connection with a first tier subcontract, including a retention amount and an amount the subject of a payment dispute. See section 9.

- (2) Section 37—
insert—

- (4) In this section—

maintenance work does not include work for which a retention amount has been withheld under a subcontract with a subcontractor beneficiary.

176Y Amendment of s 39 (Amounts in project bank account unavailable for head contractor’s debts)

Section 39(3), definition *creditor*, from ‘it is entitled’—

omit, insert—

the head contractor is liable to pay an amount to the subcontractor beneficiary in connection with its subcontract with the head contractor.

176Z Amendment of s 50 (Principal to be given information about subcontracts)

Section 50(2)—

omit, insert—

- (2) The head contractor must give the principal the information prescribed by regulation—
- (a) if the head contractor entered into a subcontract for the building contract before the day a project bank account is required to be established under section 13—within 5 business days after the project bank account is required to be established; or

Note—

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

- (b) otherwise—within 5 business days after entering into a subcontract for the building contract.

Maximum penalty—200 penalty units.

176ZA Amendment of s 52 (Principal to inform commissioner of discrepancies)

Section 52(1), after ‘a copy of’—

insert—

information contained in

176ZB Insertion of new ch 2, pt 5, div 1, hdg

Chapter 2, part 5, before section 53—

insert—

Division 1

Interpretation

176ZC Insertion of new ch 2, pt 5, div 2, hdg

Chapter 2, part 5, before section 54—

insert—

**Division 2 Principal may step in
as trustee**

**176ZD Amendment of s 54 (Right of principal to
step in as trustee)**

Section 54(2), ‘written notice’—

omit, insert—

notice, in the approved form,

176ZE Insertion of new ch 2, pt 5, div 3, hdg

Chapter 2, part 5, after section 54—

insert—

Division 3 Principal as trustee

176ZF Insertion of new s 54A

Chapter 2, part 5, before section 55—

insert—

54A Application of division

This division applies if a principal is appointed as trustee for a project bank account under section 54.

**176ZG Amendment of s 55 (Information to be given
to principal as trustee)**

(1) Section 55(1)—

omit.

(2) Section 55(2) and (3), after ‘as soon as

practicable'—

insert—

after the principal is appointed trustee

(3) Section 55(2)—

insert—

(d) a copy of the records of transactions that the head contractor was required to keep under section 45(1).

(4) Section 55(2) to (5)—

renumber as section 55(1) to (4).

176ZH Insertion of new s 55A

After section 55—

insert—

55A Right of principal to apply to Supreme Court for directions

- (1) As trustee for the project bank account, the principal may apply to the Supreme Court for directions about—
 - (a) an amount held in trust under the project bank account; or
 - (b) the administration of the project bank account; or
 - (c) the exercise of a power by the principal.
- (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.

176ZI Amendment of s 56 (Principal as trustee)

- (1) Section 56(1)—
omit.
- (2) Section 56(2), ‘are required to’—
omit, insert—
may
- (3) Section 56(2) and (3)—
renumber as section 56(1) and (2).

176ZJ Amendment of s 57 (Protection from civil liability)

Section 57, ‘A principal appointed as trustee under section 54’—

omit, insert—

As trustee for the project bank account, the principal

176ZK Replacement of s 76 (Responding to payment claim)

Section 76—

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 within whichever of the following periods ends first—
 - (a) the period, if any, within which the respondent must give the payment schedule under the relevant construction contract;

- (b) 15 business days after the payment claim is given to the respondent

Maximum penalty—100 penalty units.

Note—

A failure to give a payment schedule as required under this section 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 the payment schedule if the amount claimed in the payment claim is paid in full on or before the due date for the progress payment to which the payment claim relates.

176ZL Amendment of s 88 (Adjudicator’s decision)

Section 88(6), ‘decision to the registrar’—

omit, insert—

decision, and notice of the fees and expenses to be paid to the adjudicator for the decision, to the registrar

176ZM Amendment of s 165 (Conditions of registration)

- (1) Section 165(1)(c)—

renumber as section 165(1)(d).

- (2) Section 165(1)—

insert—

- (c) the adjudicator must complete the mandatory training as prescribed by regulation;

- (3) Section 165(3), ‘subsection (1)(c)’—

omit, insert—

subsection (1)(d)

(4) Section 165—

insert—

(4) The mandatory training that may be prescribed under subsection (1)(c) may include training about—

(a) the difference between processes under this Act and the equivalent processes under the repealed *Building and Construction Industry Payments Act 2004*; or

(b) amendments of this Act.

176ZN Amendment of s 185 (Adjudicator must give information to registrar)

Section 185(1), ‘in writing’—

omit, insert—

in the approved form

176ZO Replacement of s 190 (Who may prosecute)

Section 190—

omit, insert—

190 Proceedings for offences

(1) A proceeding for an offence against this Act may be started only within 1 year after the offence comes to the complainant’s knowledge, but no later than 2 years after the commission of the offence.

(2) 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.

- (3) A proceeding for an offence against this Act may be started only by a person authorised in writing by the commissioner, either generally or in a particular case, to start the proceeding.
- (4) The written authorisation is evidence that the person is authorised to start the proceeding.

176ZP Insertion of new ch 8, pt 1A

Chapter 8, before part 1—

insert—

Part 1A Provisions for transitional arrangements before repeal

201A References in ch 2 relating to progress payments

- (1) This section applies until the repeal of the *Building and Construction Industry Payments Act 2004*.
- (2) A reference in chapter 2 to a payment claim is taken to be a reference to a payment claim made under the *Building and Construction Industry Payments Act 2004*.
- (3) A reference in chapter 2 to a payment schedule is taken to be a reference to a payment schedule made under the *Building and Construction Industry Payments Act 2004*.
- (4) A reference in chapter 2 to a progress payment is taken to be a reference to a progress payment under the *Building and*

Construction Industry Payments Act 2004.

- (5) A reference in chapter 2 to an adjudication under chapter 3, part 4 is taken to be a reference to an adjudication under the *Building and Construction Industry Payments Act 2004*, part 3, division 2.

201B No subcontractors' charges over money held in trust

- (1) This section applies until the repeal of the *Subcontractors' Charges Act 1974*.
- (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) In this section—

subcontractor's charge means a charge within the meaning of section 3 of the *Subcontractors' Charges Act 1974*.

201C Repeal of transitional regulation

The Building Industry Fairness (Security of Payment) (Transitional) Regulation 2018, SL No. 17 is repealed.

176ZQ Insertion of new s 205A

Chapter 8, part 2—

insert—

205A References in ch 2 relating to progress payments

- (1) This section applies from the commencement.
- (2) A reference in chapter 2 to a payment claim includes a reference to a payment claim made under the repealed Act, including as

preserved under section 205.

- (3) A reference in chapter 2 to a payment schedule includes a reference to a payment schedule made under the repealed Act, including as preserved under section 205.
- (4) A reference in chapter 2 to a progress payment includes a reference to a progress payment the right to which arose under the repealed Act, including as preserved under section 205.
- (5) A reference in chapter 2 to an adjudication under chapter 3, part 4 includes a reference to an adjudication under the repealed Act, part 3, division 2, including as preserved under section 205.

176ZR Amendment of s 209 (Unfinished matters for existing subcontractors' charges to be dealt with under the repealed Act)

Section 209—

insert—

- (2A) However, a reference to a subcontractor's charge in section 117 includes a reference to a subcontractor's charge mentioned in subsection (2).

176ZS Amendment of s 211 (Transitional regulation-making power)

- (1) Section 211(4), from 'This section' to 'expire'—
omit, insert—

A transitional regulation expires

- (2) Section 211—
insert—

- (4A) This section expires 1 year after the day of

the commencement of subsection (1)(a)(ii).

(3) Section 211(5)—

insert—

commencement means—

- (a) for a transitional regulation made under subsection (1)(a)(i)—the commencement of that subsection; or
- (b) for a transitional regulation made under subsection (1)(a)(ii)—the commencement of that subsection.

176ZT Amendment of s 307 (Amendment of sch 2 (Dictionary))

Section 307(1), ‘*demerit matter*,’—

omit.

176ZU Amendment of sch 2 (Dictionary)

- (1) Schedule 2, definitions *disputed funds account* and *retention account*—

omit.

- (2) Schedule 2—

insert—

appeal, for chapter 2, part 3, division 6, see section 34B.

disputed funds trust account, for chapter 2, see section 23(1)(c).

dispute resolution process, for chapter 2, part 3, division 6, see section 34B.

retention trust account, for chapter 2, see section 23(1)(b).

14 Insertion of new clauses 192A–192K

Page 109, after line 24—

insert—

192A Omission of s 67AZAA (When demerit points allocated for direction to rectify or remedy)

Section 67AZAA—

omit.

192B Amendment of s 74AA (Definitions for part)

Section 74AA—

insert—

install and ***installer***—

A person *installs* a building product in a building, and is an *installer* of the building product, if the person—

- (a) personally installs the product in the building; or
- (b) supervises the installation of the product in the building; or
- (c) carries out the relevant work in relation to which the product is installed in the building; or
- (d) engages a person to do an activity mentioned in paragraph (a), (b) or (c).

responsible person, for a building product, means—

- (a) a person who designed, manufactured, imported or supplied the product; or
- (b) if the product has been associated with a building—a person who installed the product in the building; or

- (c) an architect or engineer who, in designing a building, specified that the product be associated with the building.

192C Amendment of s 74AE (Who is a person in the chain of responsibility for a building product)

Section 74AE—

insert—

- (c) the person is an architect or engineer who, in designing a building, specifies that the product be associated with the building.

192D Amendment of s 74AG (Additional duty relating to accompanying information)

(1) Section 74AG—

insert—

- (4A) An architect or engineer who, in designing a building, specifies that a building product be associated with the building must ensure, so far as reasonably practicable, that when the architect or engineer gives the design to another person the design is accompanied by the information prescribed by regulation for this subsection.

(2) Section 74AG(5), ‘(4) or subsection (6)’—

omit, insert—

(4) or (5) or subsection (7)

(3) Section 74AG(4A) to (6)—

renumber as section 74AG(5) to (7).

192E Amendment of s 74AH (Additional duties relating to recalls)

- (1) Section 74AH(3)—
renumber as section 74AH(6).
- (2) Section 74AH—
insert—
- (3) An architect or engineer must not, in designing a building, specify a building product be associated with the building that the architect or engineer knows, or ought reasonably to know, is the subject of a recall order or corresponding recall order.
- (4) Subsection (5) applies if—
 - (a) a building product becomes the subject of a recall order or corresponding recall order after an architect or engineer, in designing a building, specifies the building product be associated with the building; and
 - (b) the architect or engineer knows, or ought reasonably to know, the building product has become the subject of the recall order or corresponding recall order.
- (5) The architect or engineer must, at the architect's or engineer's own expense—
 - (a) inform each person to whom the architect or engineer has given the design of the recall order or corresponding recall order; and
 - (b) either—
 - (i) amend the design to remove the specification; or
 - (ii) give each person to whom the architect or engineer has given the

design a written notice specifying an alternative building product to be associated with the building.

192F Amendment of s 74AW (Minister may make recall order)

Section 74AW(4)—

omit.

192G Amendment of s 74AZ (Nature of recall order)

(1) Section 74AZ(1)(b)(v) to (vii)—

renumber as section 74AZ(1)(b)(vi) to (viii).

(2) Section 74AZ(1)(b)—

insert—

(v) for a building product that an architect or engineer has, in designing a building, specified be associated with the building—the action the architect or engineer must take to ensure the specification is removed from the design;

Examples of action for (v)—

- amending the design to remove the specification
- giving written notice to persons to whom the design has been given specifying an alternative building product to be associated with the building

(3) Section 74AZ(2), ‘a supplier or installer’—

omit, insert—

an architect, engineer, installer or supplier

192H Amendment of s 74AZA (Supplier or installer must help responsible person)

- (1) Section 74AZA, heading, ‘Supplier or installer’—

omit, insert—

Suppliers, installers and particular architects and engineers

- (2) Section 74AZA(1), ‘, other than a supplier or installer of a building product’—

omit.

- (3) Section 74AZA(1)(a)—

omit, insert—

- (a) produces a copy of the recall order to any of the following persons—

(i) a supplier or installer of a building product the subject of the order;

(ii) an architect or engineer who, in designing a building, specifies that a building product the subject of the order be associated with the building; and

- (4) Section 74AZA(1)(b) and (2), ‘supplier or installer’—

omit, insert—

supplier, installer, architect or engineer

- (5) Section 74AZA(2)—

insert—

Examples of reasonable help by architect or engineer—

- ceasing to specify the recalled building product in designs
- identifying or contacting persons to whom the architect or engineer gave a design specifying

the recalled building product be associated with a building

192I Amendment of s 74AZC (Minister may publish warning statement)

Section 74AZC(2)(b)—

omit, insert—

- (b) a responsible person for the building product has already undertaken a recall of the building product; or

192J Amendment of s 74A (Commission may investigate grounds for taking disciplinary action)

Section 74A(2), ‘inspector’—

omit, insert—

investigator

192K Amendment of s 74C (Proper grounds for taking disciplinary action against person not a licensee)

Section 74C(1)(g), ‘inspector’—

omit, insert—

investigator

15 Insertion of new clauses 193A–193G

Page 110, after line 4—

insert—

193A Amendment of s 86 (Reviewable decisions)

Section 86(4), ‘inspector’—

omit, insert—

investigator

193B Amendment of s 87A (No stay by QCAT of particular decisions)

Section 87A(1A), ‘inspector’—

omit, insert—

investigator

193C Amendment of s 92 (Tribunal may conduct public examination)

Section 92(c)(ii), ‘inspector’—

omit, insert—

investigator

193D Amendment of s 95 (Expedited hearing of domestic building disputes or reviews)

Section 95(5), ‘inspector’—

omit, insert—

investigator

193E Amendment of s 99 (Licensee register)

Section 99(3)(d), ‘Act and the provision of this Act’—

omit, insert—

Act, or the *Building Industry Fairness (Security of Payment) Act 2017*, and the provision of the Act

193F Amendment of sch 1 (Transitional and validating provisions)

(1) Schedule 1, section 77, ‘section 104.’—

omit, insert—

section 104B.

- (2) Schedule 1, section 77(2) and (3), ‘inspector’—
omit, insert—
investigator

193G Amendment of sch 1 (Transitional and validating provisions)

Schedule 1, part 15—
insert—

77A Validation of particular continued appointments

- (1) An existing appointment of a person continued as mentioned in section 77 is taken to have been continued as mentioned in that section from the commencement of the section as originally enacted.

Note—

Section 77 as originally enacted commenced on 10 November 2017.

- (2) Anything done between 10 November 2017 and the commencement of this section by a person as the holder of the appointment is taken to have been validly done by the person as if the appointment had been continued as mentioned in section 77 as in force after the commencement.
- (3) Nothing in this section continues the appointment of a person beyond the end of that appointment under section 104D.

16 Clause 196 (Amendment of sch 2 (Dictionary))

Page 113, after line 34—

insert—

- (3) Schedule 2, definition *demerit points*—
omit, insert—

demerit points see section 67AQ.

- (4) Schedule 2, definition *domestic building work*, ‘, for schedule 1B,’—

omit.

- (5) Schedule 2, definition *residential construction work*, ‘, for part 5,’—

omit.

- (6) Schedule 2—

insert—

install and *installer*, for part 6AA, see section 74AA.

responsible person, for part 6AA, see section 74AA.

17 Schedule 1 (Dictionary)

Page 122, lines 28 to 30—

omit, insert—

permit means a permit—

- (a) that authorises the carrying out for premises of either or both the permit work or notifiable work, stated in the permit for the premises; and
- (b) that is issued by—
- (i) if the work is to be carried out by or for a public sector entity—
- (A) the public sector entity; or
- (B) the local government for the local government area in which the premises is located; or
- (ii) otherwise—the local government for the local government area in which the premises is located.

18 Schedule 1 (Dictionary)

Page 124, after line 6—

insert—

public sector entity—

(a) means—

(i) a department or part of a department;
or

(ii) an agency, authority, commission, corporation, instrumentality, office, or other entity, established under an Act for a public or State purpose; or

(iii) a government owned corporation; or

(iv) a rail government entity under the *Transport Infrastructure Act 1994*; but

(b) does not include a distributor-retailer under the *South-East Queensland Water (Distribution and Retail Restructuring) Act 2009*, section 8.

19 Schedule 2 (Acts amended)

Page 133, after line 3—

insert—

Building Industry Fairness (Security of Payment) Act 2017

1 Sections 115(1)(b) and 135(1), ‘subcontractor’s charges’—

omit, insert—

subcontractors’ charges

2 Section 117, heading and section 136, heading, ‘subcontractor’s charges’—

omit, insert—

subcontractor’s charge

3 Section 114, heading, and sections 208 and 209, ‘subcontractors’ charge’—

omit, insert—

subcontractor’s charge

4 Section 207, definition *subcontractors’ charge*—

omit, insert—

subcontractor’s charge means a charge within the meaning of section 3 of the repealed Act.

20 Long title

Long title, after ‘this Act,’—

insert—

the *Building Industry Fairness (Security of Payment) Act 2017*,

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