

# Building and Construction Industry Security of Payment Act 2009

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## Building and Construction Industry Security of Payment Act 2009

An Act to provide for progress payments to be made in a timely fashion under building or construction contracts or contracts for the supply of goods and services relating to building or construction, for disputes in relation to such payments to be adjudicated in a timely and informal way, to repeal the [Contractors' Debts Act 1939](#) , and for related purposes

[Royal Assent 17 December 2009]

Be it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

### **PART 1 - Preliminary**

#### **1. Short title**

This Act may be cited as the [Building and Construction Industry Security of Payment Act 2009](#) .

#### **2. Commencement**

This Act commences on the day on which this Act receives the Royal Assent.

#### **3. Object**

The object of this Act is to ensure that any person who undertakes to carry out building work or construction work (or who undertakes to supply building or construction-related goods and services) under a building or construction contract, including such a contract that relates to a residential structure, is entitled to receive, and is able to recover, progress payments in relation to the work or goods and services.

#### **4. Interpretation**

In this Act, unless the contrary intention appears –

**adjudicated amount** means the amount of a progress payment that an adjudicator determines to be payable under [section 25](#) ;

**adjudication application** means an application made under [section 21](#) ;

**adjudication certificate** means an adjudication certificate issued under [section 26\(4\)](#) ;

**adjudication fees** means fees or expenses charged by a nominating authority under [section 32](#) or by an adjudicator under [section 37](#) ;

**adjudication response** means a response lodged with an adjudicator under [section 23](#) ;

**adjudicator**, in relation to an adjudication application, means a person who has accepted under [section 22\(4\)](#) a referral of the adjudication application;

**building** includes a proposed building or part of a building and a building that is able to be relocated;

**Building Code of Australia** means the code produced by the Australian Building Codes Board relating to the design and construction of buildings;

**building or construction contract** means a contract, or other arrangement, under which one party undertakes to carry out building work or construction work for, or to supply building or construction-related goods and services to, another party;

**building or construction-related goods and services** has the meaning it has in [section 6](#) ;

**building work or construction work** has the meaning it has in [section 5](#) ;

**claimant** means a person by whom a payment claim is served under [section 17](#) ;

**claimed amount** means –

(a) an amount of a progress payment claimed, in accordance with [section 17](#) , in a payment claim, to be due for building work or construction work carried out or for building or construction-related goods and services supplied; or

(b) any other amount specified in the payment claim in accordance with [section 17\(3\)](#) ;

**due date**, in relation to a progress payment, means the due date for the progress payment as determined in accordance with [section 15](#) ;

**fire safety system** includes any one or more of the following:

(a) booster assemblies;

(b) fire mains, hydrants and hose reels;

(c) sprinklers;

(d) fire and smoke alarms;

(e) fire control centres;

(f) structures or devices to mitigate the fire hazard in respect of special fire hazard buildings within the meaning of the [Building Regulations 2014](#) ;

(g) stairwell pressurisation;

(h) air-handling systems;

(i) smoke and heat vents;

**nominating authority** means a person who is authorised to be a nominating authority under [section 31\(2\)](#) ;

**payment claim** means a claim made under [section 17](#) ;

**payment schedule** means a payment schedule provided to a claimant under [section 18](#) ;

**plumbing installation** means –

- (a) a system of water supply; or
- (b) a system of sewage or sullage drainage or disposal; or
- (c) a system of stormwater drainage, roof drainage or trade waste; or
- (d) an on-site waste water management system;

**progress payment** means a progress payment to which a person is entitled under [section 12](#) and includes –

- (a) the final payment for building work or construction work carried out, or for building or construction-related goods and services supplied, under a building or construction contract; and
- (b) a single or one-off payment for carrying out building work or construction work, or supplying building or construction-related goods and services, under a building or construction contract; and
- (c) a payment that is based on an event or date;

**recognised financial institution** means –

- (a) an authorised deposit-taking institution; or
- (b) a "body regulated by APRA" within the meaning of the *Australian Prudential Regulation Authority Act 1998* of the Commonwealth; or
- (c) a prescribed person or body, or a member of a prescribed type of persons or bodies;

**reference date**, in relation to a building or construction contract, means –

- (a) a date determined by, or in accordance with, the terms of the contract as the date on which a claim for a progress payment may be made in relation to –
  - (i) work carried out, or undertaken to be carried out, under the contract; or
  - (ii) building or construction-related goods and services supplied, or undertaken to be supplied, under the contract; or
- (b) if the contract does not expressly provide for such a date, the last day of each month in which –
  - (i) building work or construction work is carried out under the contract; or
  - (ii) building or construction-related goods and services are supplied under the contract;

**residential structure** means a building or structure that is a class 1 or a class 10 building or structure within the meaning of the Building Code of Australia, as in force from time to time;

**respondent** means a person on whom a payment claim is served under [section 17](#) ;

**road infrastructure** means –

- (a) any land that is to be used as a road (whether public or private); or
- (b) any land that is to be used as a footpath, bike path or public thoroughfare for pedestrians or vehicles; or
- (c) any structures or works that are associated with, or co-located with, such a road, path or thoroughfare, including –
  - (i) kerbing, guttering, roundabouts, median strips and barriers; and
  - (ii) parking places or facilities; and
  - (iii) bridges, viaducts and tunnels; and

(iv) other works carried out in, on, under or over a road, path or thoroughfare;

**scheduled amount** means the amount of a progress payment that is proposed to be made under a payment schedule;

**Security of Payments Official** means the person who, in accordance with [section 30](#), is the Security of Payments Official;

**structure** includes a proposed structure, part of a structure and a temporary structure;

**temporary structure** includes any –

(a) booth, tent or other temporary enclosure, whether or not a part of the booth, tent or enclosure is permanent; and

(b) temporary seating structure; and

(c) stage, platform, or tower, that is temporary; and

(d) temporary bridge; and

(e) structure that does not form part of the land and is temporary; and

(f) structure of a prescribed type.

#### **4A. Interpretation of *business day***

(1) In this Act, unless the contrary intention appears –

***business day*** means any day other than –

(a) a Saturday or Sunday; or

(b) a day specified in [section 4](#) of the [Statutory Holidays Act 2000](#); or

(c) a day specified in [Part 1 of Schedule 1](#) to the [Statutory Holidays Act 2000](#); or

(d) a day specified in [Part 1](#) or [2 of Schedule 2](#) to the [Statutory Holidays Act 2000](#); or

(e) the 27th, 28th, 29th, 30th or 31st of December.

(2) For the purposes of the definition of *business day* in [subsection \(1\)](#), a day referred to in that definition is a holiday for all of the day and in the whole of the State.

#### **5. Meaning of "building work or construction work"**

(1) For the purposes of this Act, "building work or construction work" means any of the following:

(a) the construction, erection, re-erection, alteration, repair, restoration, maintenance, extension, adding to, underpinning, removal, demolition, or dismantling, of –

(i) buildings; or

(ii) structures that form, or are to form, part of land;

(b) the construction, alteration, repair, restoration, maintenance, extension, removal, demolition or dismantling of works that form, or are to form, part of land, including –

(i) walls; and

(ii) road infrastructure; and

(iii) energy infrastructure and telecommunications facilities; and

(iv) aviation landing facilities and railway infrastructure; and

- (v) marine infrastructure, water and sewerage infrastructure, drainage infrastructure, dams and canals and installations for the purposes of irrigation, land drainage or coast or river protection; and
- (vi) structures, such as poles, wires and netting, erected to support or protect agricultural, horticultural or forestry products; and
- (vii) structures (other than underground structures constructed to enable access to minerals) to enable persons to gain access to places on which agricultural, horticultural, forestry, tourist or mining activities are being, or are to be, carried out;
- (c) the installation or alteration in, or removal from, any building, structure or works, of systems, and services, that form, or are to form, part of land, including –
  - (i) heating, ventilation, air-conditioning and cooling systems; and
  - (ii) power supply, lighting and communication systems; and
  - (iii) passenger lifts and goods lifts; and
  - (iv) plumbing installations; and
  - (v) fire safety systems and security systems;
- (d) any operation that forms an integral part of, is preparatory to, or completes, work referred to in [paragraph \(a\)](#) , [\(b\)](#) or [\(c\)](#) , including –
  - (i) site clearance, earth-moving, excavation, tunnelling, boring and filling; and
  - (ii) the preparation of foundations; and
  - (iii) the erection, maintenance or dismantling of plant and equipment; and
  - (iv) the prefabrication of components to form part of any building, structure or works, whether the prefabrication is carried out on-site or off-site; and
  - (v) site restoration, landscaping and the provision of road infrastructure and other works to enable access to land or a part of land;
- (e) the internal or external cleaning of buildings, structures, or works, that is carried out in the course of the construction, alteration, repair, restoration, maintenance, extension, removal, demolition or dismantling of the buildings, structure or works;
- (f) the painting or decoration of the internal or external surfaces of any building, structure or works;
- (g) other work of a type prescribed to be a type of building work or construction work for the purposes of this Act.
- (2) Despite [subsection \(1\)](#) , the following work is not building work or construction work for the purposes of this Act:
  - (a) the drilling for, or extraction of, oil or natural gas;
  - (b) the extraction (whether by underground or surface working) of minerals, including tunnelling or boring, or the construction of underground works for the purpose of such extraction;
  - (c) other work of a type prescribed to not be building work or construction work for the purposes of this Act.

## **6. Meaning of "building or construction-related goods and services"**

(1) For the purposes of this Act, "building or construction-related goods and services", in relation to building work or construction work, means any of the following:

- (a) goods of the following kind:
    - (i) materials and components that are to form part of any building, structure or work arising from building work or construction work;
    - (ii) plant or materials (whether supplied by sale, hire or otherwise) for use in connection with the carrying out of building work or construction work;
  - (b) services of the following kind:
    - (i) the provision of labour to carry out building work or construction work;
    - (ii) architectural, design, land surveying, quantity surveying, engineering, building surveying or project management services in relation to building work or construction work;
    - (iii) inspection, reporting, or advisory, services provided in respect of buildings, building systems and services, energy and sustainability systems and services, geotechnical, engineering, interior decoration, exterior decoration or landscape services provided in relation to building work or construction work;
  - (c) goods and services of a type prescribed to be a type of building or construction-related goods and services for the purposes of this Act.
- (2) Despite [subsection \(1\)](#) , "building or construction-related goods and services" does not include goods or services of a type that is prescribed to not be building or construction-related goods and services for the purposes of this Act.
- (3) A reference in this Act to building or construction-related goods and services is to be taken to be a reference to building or construction-related goods, building or construction-related services, or both.

## **PART 2 - Application and Effect of Act in Relation to other Acts, Contracts, &c.**

### **7. Application of Act**

- (1) This Act applies to any building or construction contract, whether the contract –
- (a) is written or oral; or
  - (b) is partly written and partly oral; or
  - (c) is expressed to be governed by the law of a jurisdiction other than Tasmania.
- (2) This Act does not apply to a building or construction contract to the extent to which it relates to building work or construction work carried out outside this State.
- (3) Despite [subsection \(2\)](#) , this Act applies to any building or construction contract in so far as the contract relates to the supply by a person in this State of building or construction-related goods and services, even though the goods and services are supplied in respect of building work or construction work carried out outside this State.
- (4) However, despite [subsection \(3\)](#) , nothing in this Act is to be taken to entitle a person to a payment if a claim for the payment has been made under the law of another jurisdiction.
- (5) Despite [subsection \(1\)](#) , this Act does not apply to a building or construction contract –
- (a) that forms part of a loan agreement, a contract of guarantee or a contract of insurance, if the agreement or contract is an agreement or contract under which a recognised financial institution undertakes –
    - (i) to lend money or to repay money lent; or
    - (ii) to guarantee payment of money owing or repayment of money lent; or

(iii) to provide an indemnity in respect of building work or construction work carried out, or building or construction-related goods and services supplied, under the building or construction contract; or

(b) under which it is agreed that the consideration payable for building work or construction work carried out under the contract, or for building or construction-related goods and services supplied under the contract, is to be calculated otherwise than by reference to the value of the work carried out or the value of the goods and services supplied.

(6) This Act does not apply to a building or construction contract to the extent to which it contains provisions under which a party –

(a) undertakes to carry out building work or construction work; or

(b) undertakes to supply building or construction-related goods and services –

as an employee of the party for whom the work is to be carried out or the goods and services are to be supplied, or as a condition of a loan agreement with a recognised financial institution.

(7) This Act does not apply to a building or construction contract to the extent to which it contains provisions under which a party undertakes –

(a) to lend money or to repay money lent; or

(b) to guarantee payment of money owing or repayment of money lent; or

(c) to provide an indemnity in respect of building work or construction work carried out, or building or construction-related goods and services supplied, under the building or construction contract.

(8) This Act does not apply to a building or construction contract, or a class of building or construction contracts, prescribed to be a contract or class of contracts to which this Act does not apply.

## **8. Act binds Crown**

This Act binds the Crown in right of Tasmania and, so far as the legislative power of Parliament permits, in all its other capacities.

## **9. Act does not limit other entitlements or remedies**

This Act does not limit –

(a) any other entitlement that a claimant may have under a building or construction contract; or

(b) any other remedy that a claimant may have for recovering any such other entitlement.

## **10. Effect on civil proceedings**

(1) Subject to [section 11](#), nothing in [Part 4](#), [5](#), [6](#) or [7](#) affects any right that a party to a building or construction contract –

(a) may have under the contract; or

(b) may have under [Part 3](#) in respect of the contract; or

(c) may have, apart from this Act, in respect of anything done or omitted to be done under the contract.

(2) Nothing done under or for the purposes of [Part 4](#) , [5](#) , [6](#) or [7](#) affects any civil proceedings arising under a building or construction contract, whether under [Part 4](#) , [5](#) , [6](#) or [7](#) , except as provided by [subsection \(3\)](#) .

(3) In proceedings before a court or tribunal in relation to a matter arising under a building or construction contract, the court or tribunal –

(a) must allow for an amount to be paid to a party to the contract, under or for the purposes of [Part 4](#) , [5](#) , [6](#) or [7](#) , in any award or order it makes in those proceedings; and

(b) may make the orders that it considers appropriate for the restitution of any amount so paid, and any other orders it thinks appropriate, having regard to its decision in those proceedings.

## **11. Parties cannot contract out of Act**

(1) The provisions of this Act have effect despite any provision to the contrary in any contract.

(2) A provision of a contract or other agreement, whether in writing or not, is void if it is a provision –

(a) under which the operation of this Act is, or is purported to be, excluded, modified or restricted, or that has the effect of excluding, modifying or restricting, the operation of this Act; or

(b) that may reasonably be construed as an attempt to deter a person from taking action under this Act.

## **PART 3 - Rights to Progress Payments**

### **12. Rights to progress payments**

(1) A person –

(a) who has undertaken to carry out building work or construction work under a building or construction contract; or

(b) who has undertaken to supply building or construction-related goods and services under a building or construction contract –

is entitled, on and from each reference date, to a progress payment.

(2) The amount of the progress payment is to be the amount calculated in accordance with the terms of the contract.

(3) However, if the contract does not expressly provide for the calculation of the amount of the progress payment, the amount of the progress payment is to be –

(a) the amount calculated on the basis of the value of the building work or construction work –

(i) carried out before the reference date by the person under the contract; or

(ii) undertaken to be carried out before the reference date by the person under the contract; or

(b) the amount calculated on the basis of the value of the building or construction-related goods and services –

(i) supplied by the person under the contract before the reference date; or

(ii) undertaken to be supplied by the person under the contract before the reference date.

### **13. How value of building work or construction work, &c., to be determined**

- (1) The value of building work or construction work carried out under a building or construction contract is to be determined in accordance with the terms of the contract.
- (2) However, if a building or construction contract does not expressly determine the value of building work or construction work, or specify how the value of building work or construction work is to be determined, the value of the building work or construction work is to be determined having regard to –
  - (a) the contract price for the work, including any GST that may be payable in relation to the work; and
  - (b) any other rates or prices set out in the contract; and
  - (c) any variation agreed to by the parties to the contract by which the contract price, or any other rate or price set out in the contract, is to be adjusted by a specific amount; and
  - (d) if any of the work is defective, the estimated cost of rectifying the defect.
- (3) The value of building or construction-related goods and services supplied, or undertaken to be supplied, under a building or construction contract is to be determined in accordance with the terms of the contract.
- (4) However, if a building or construction contract does not expressly determine the value of building or construction-related goods and services, or specify how the value of building or construction-related goods and services is to be determined, their value is to be determined having regard to –
  - (a) the contract price for the building or construction-related goods and services; and
  - (b) any other rates or prices set out in the contract; and
  - (c) any variation agreed to by the parties to the contract by which the contract price, or any other rate or price set out in the contract, is to be adjusted by a specific amount; and
  - (d) if any of the goods are defective, the estimated cost of rectifying the defect.
- (5) If building or construction-related goods and services consist of materials and components that are to form part of any building, structure, or work, arising from building work or construction work, the only materials and components to be included in the valuation are those that have become (or, on payment, will become) the property of the party for whom the building work or construction work is being carried out.

#### **14. Liens over unpaid amounts**

- (1) If a progress payment becomes due and payable, the claimant is entitled to exercise a lien in respect of the unpaid amount over any unfixed plant or materials supplied by the claimant for use in connection with the carrying out of the building work or construction work for the respondent.
- (2) A lien or charge –
  - (a) over any unfixed plant or materials supplied by the claimant for use in connection with the carrying out of the building work or construction work for the respondent; and
  - (b) that existed before the date on which the progress payment becomes due or payable – takes priority over a lien under [subsection \(1\)](#).
- (3) [Subsection \(1\)](#) does not confer on the claimant any right against a third party who is the owner of the unfixed plant or materials.
- (4) A claimant is not entitled to exercise a lien under [subsection \(1\)](#) in respect of an unpaid amount if the claimant receives the progress payment in respect of the amount.

## 15. Due date for payment

(1) A progress payment under a building or construction contract becomes due and payable on the date on which the payment becomes due and payable in accordance with the terms of the contract.

(2) Despite [subsection \(1\)](#) –

(a) if a contract does not expressly provide for when a progress payment becomes due and payable; and

(b) a payment claim is made under [section 17](#) in relation to the progress payment – the progress payment becomes due and payable before the expiry of the applicable day, as determined under [section 19\(3\)](#), in relation to the claim.

(3) Interest is payable, on the unpaid amount of a progress payment that has become due and payable, at the rate –

(a) prescribed under the [Supreme Court Civil Procedure Act 1932](#) in respect of a judgment for money payable to a person; or

(b) specified in the building or construction contract –  
whichever is greater.

## 16. "Pay-when-paid" provisions of no effect

(1) In this section –

**money owing**, in relation to a building or construction contract, means money owing for –

(a) building work or construction work carried out, or undertaken to be carried out, under the contract; or

(b) building or construction-related goods and services supplied, or undertaken to be supplied, under the contract;

**pay-when-paid provision**, of a building or construction contract, means a provision of the contract –

(a) that makes the liability of one party ("the first party") to pay money owing to another party ("the second party") contingent on payment to the first party by a further party ("the third party") of the whole or a part of that money; or

(b) that makes the due date for payment of money owing by the first party to the second party dependent on the date on which payment of the whole or a part of that money is made to the first party by the third party; or

(c) that otherwise makes the liability to pay money owing, or the due date for payment of money owing, contingent or dependent on the operation of another contract.

(2) A pay-when-paid provision of a building or construction contract has no effect in relation to any payment for –

(a) building work or construction work carried out, or undertaken to be carried out, under the contract; or

(b) building or construction-related goods and services supplied, or undertaken to be supplied, under the contract.

## PART 4 - Payment Claims and Payment Schedules

### 17. Claims for payment may be made

(1) A person (in this Act referred to as a "claimant") who is, or who claims to be, entitled to a progress payment under [section 12](#) in respect of a building or construction contract may serve a payment claim on the person who is, or may be, liable under the contract to make the payment.

(2) A payment claim must –

(a) be in writing; and

(b) be addressed to the person on whom it is served; and

(c) state the name of the claimant; and

(d) identify the building work or construction work, or building or construction-related goods and services, to which the progress payment relates, in sufficient detail to enable the person on whom it is served to assess the claim; and

(e) specify the amount of the progress payment that the claimant claims is due; and

(f) state that the claim is made under this Act; and

(g) include the prescribed details, if any.

(3) A payment claim may also include an amount –

(a) that the respondent is liable to pay the claimant under [section 29\(3\)](#) ; or

(b) that is held under the building or construction contract by the respondent, as security or otherwise, and that the claimant claims is due for release.

(4) A claimant must not serve more than one payment claim in respect of each reference date under the building or construction contract.

(5) However, [subsection \(4\)](#) does not prevent the claimant from including in a payment claim an amount that has been the subject of a previous claim.

(6) A payment claim may be served only within whichever of the following periods occurs later:

(a) the period determined by or in accordance with the terms of the building or construction contract;

(b) the period of 12 months after –

(i) the building work or construction work to which the claim relates was last carried out; or

(ii) the building or construction-related goods and services to which the claim relates were last supplied.

## **18. Schedules for payment may be provided to claimant**

(1) A person (in this Act referred to as the "respondent") on whom a payment claim is served by a claimant may provide to the claimant a payment schedule in relation to the claim.

(2) A payment schedule –

(a) must identify the payment claim to which the schedule relates; and

(b) must indicate the amount of the payment, if any, that the respondent proposes to make (in this Act referred to as the "scheduled amount").

(3) If the scheduled amount is less than the claimed amount, the schedule must specify why the amount is less.

(4) If the amount is less because the respondent is withholding payment of the claim for any reason, the schedule must specify the respondent's reasons for withholding the payment.

## 19. Consequences of failing to provide payment schedule within relevant period

(1) In this section –

**building practitioner** means any of the following persons:

(a) a building services provider, or an owner builder, within the meaning of the [Building Act 2016](#) ;

(b) a person who holds a practitioner's licence, or a contractor's licence, under the [Occupational Licensing Act 2005](#) , authorising the person to perform electrical work within the meaning of [Part 1 of Schedule 2](#) to that Act;

(c) a person who holds a subsisting certificate of registration under the [Plumbers and Gas-fitters Registration Act 1951](#) to perform a class of plumbing work referred to in that Act;

(d) a person who holds a high risk work licence under the regulations under the [Work Health and Safety Act 2012](#) ;

(e) a person who holds a subsisting certificate of registration under the [Plumbers and Gas-fitters Registration Act 1951](#) to perform a class of gas-fitting referred to in that Act;

(f) a person who is registered as an architect under the [Architects Act 1929](#) ;

(g) a prescribed person;

**owner**, in relation to land, means any one or more of the following:

(a) the person in whom is vested a fee simple in the land;

(b) if the land is not registered under the [Land Titles Act 1980](#) and is subject to a mortgage, the person for the time being holding the equity of redemption in that mortgage;

(c) if the land is held under a tenancy for life, the person who is the life tenant;

(d) if the land is held under a lease for a term of not less than 99 years or for a term of not less than another prescribed period, the person who is the lessee of the land;

(e) a person who has a prescribed interest in the land.

(2) If –

(a) a claimant serves a payment claim on a respondent; and

(b) the respondent does not provide to the claimant a payment schedule –

(i) before the end of the period in which the payment is required to be made under the building or construction contract under which the payment is to be made; or

(ii) before the expiry of the applicable day in relation to the payment claim made to the respondent –

whichever period expires earlier or, in a case to which [subsection \(3\)\(a\)](#) applies, later, the respondent becomes liable to pay the claimed amount to the claimant on the due date for the progress payment to which the payment claim relates.

(3) In [subsection \(2\)\(b\)\(ii\)](#) , the applicable day in relation to a payment claim made to the respondent –

(a) is the day 20 business days after the payment claim is served on the respondent, if –

(i) the claim relates to a residential structure to be built on land; and

(ii) the respondent is the owner of the land; and

(iii) the respondent is not a building practitioner; or

(b) is, in any other case, the day 10 business days after the payment claim is served on the respondent.

- (4) [Subsection \(5\)](#) applies to a claimant if the respondent –
- (a) becomes liable under [subsection \(2\)](#) to pay to the claimant the claimed amount; and
  - (b) does not pay all of the claimed amount on or before the due date for the progress payment to which the payment claim relates.
- (5) If this subsection applies to a claimant, the claimant –
- (a) may –
    - (i) apply to a court of competent jurisdiction to recover from the respondent the unpaid part of the claimed amount, as a debt due to the claimant; or
    - (ii) make an adjudication application under [section 21](#) in relation to the payment claim; and
  - (b) may serve notice on the respondent of the claimant's intention to suspend carrying out building work or construction work, or supplying goods and services, under the building or construction contract.
- (6) A notice served under [subsection \(5\)\(b\)](#) must specify that the notice is made under this Act.
- (7) If an application is made by a claimant to a court in accordance with [subsection \(5\)\(a\)\(i\)](#) to recover from the respondent, as a debt, the unpaid part of the claimed amount specified in a payment claim, the court may give judgment entitling the claimant to recover the unpaid part as a debt due and payable, if the court is satisfied that the respondent –
- (a) is liable under [subsection \(2\)](#) to pay to the claimant the claimed amount; and
  - (b) has not paid all of the claimed amount on or before the due date for the progress payment to which the payment claim relates.
- (8) A respondent in proceedings under this section in a court of competent jurisdiction is not entitled in those proceedings –
- (a) to bring a cross-claim against the claimant; or
  - (b) to raise a defence in relation to matters arising under, or relating to the subject matter of, the building or construction contract.

## **20. Consequences of not paying claimant in accordance with payment schedule**

- (1) [Subsection \(2\)](#) applies to a claimant if –
- (a) the claimant serves a payment claim on a respondent; and
  - (b) the respondent provides a payment schedule to the claimant –
    - (i) within the period in which the payment is required to be made under the building or construction contract under which the payment is to be made; or
    - (ii) within the period before the expiry of the applicable day determined under [section 19](#) in relation to the payment claim –
- whichever period expires earlier or, in a case to which [section 19\(3\)\(a\)](#) applies, later; and
- (c) the payment schedule indicates a scheduled amount that the respondent proposes to pay to the claimant; and
  - (d) the respondent does not pay to the claimant all of the scheduled amount on or before the due date for the progress payment to which the payment claim relates.
- (2) If this subsection applies to a claimant, the claimant –
- (a) may –
    - (i) apply to a court of competent jurisdiction to recover from the respondent the unpaid part of the scheduled amount, as a debt due to the claimant; or

- (ii) make an adjudication application under [section 21](#) in relation to the payment claim; and
  - (b) may serve notice on the respondent of the claimant's intention to suspend carrying out building work or construction work, or supplying goods and services, under the building or construction contract.
- (3) A notice served under [subsection \(2\)\(b\)](#) must specify that the notice is made under this Act.
- (4) If an application is made by a claimant to a court in accordance with [subsection \(2\)\(a\)\(i\)](#) to recover from the respondent, as a debt, the unpaid part of the scheduled amount specified in a payment claim, the court may give judgment entitling the claimant to recover the unpaid part as a debt due and payable, if the court is satisfied that –
- (a) [subsection \(2\)](#) applies to the claimant; and
  - (b) the respondent has not paid all of the scheduled amount on or before the due date for the progress payment to which the payment claim relates.
- (5) A respondent in proceedings under this section in a court of competent jurisdiction is not entitled in those proceedings –
- (a) to bring a cross-claim against the claimant; or
  - (b) to raise a defence in relation to matters arising under, or relating to the subject matter of, the building or construction contract.

## **PART 5 - Adjudication of Disputes**

### **21. Applications for adjudication**

- (1) A claimant may, in writing, apply to a nominating authority, chosen by the claimant, to have a payment claim adjudicated.
- (2) A claimant may only make an application under [subsection \(1\)](#) if –
- (a) the respondent provided a payment schedule under [section 18](#) but the scheduled amount specified in the schedule is less than the claimed amount specified in the payment claim; or
  - (b) the respondent provided a payment schedule under [section 18](#) but did not pay to the claimant all of the scheduled amount by the due date for payment of the amount; or
  - (c) the respondent failed to provide a payment schedule to the claimant under [section 18](#) and did not pay all of the claimed amount by the due date for payment of the amount.
- (3) An application made under [subsection \(1\)](#) pursuant to –
- (a) [subsection \(2\)\(a\)](#) must be made within 10 business days after the claimant receives the payment schedule; or
  - (b) [subsection \(2\)\(b\)](#) must be made within 20 business days after the due date for payment.
- (4) A claimant may only make an application under [subsection \(1\)](#) pursuant to [subsection \(2\)\(c\)](#) if –
- (a) the claimant has notified the respondent, within 20 business days after the due date for payment, that –
    - (i) the claimant intends to make the application; and
    - (ii) the respondent may provide a payment schedule to the claimant within 5 business days after the notice is given; and
  - (b) the respondent has not provided a payment schedule within the period of 5 business days since the notice was given to the respondent; and

- (c) the application is made within 10 business days after the end of the 5-day period referred to in [paragraph \(b\)](#) .
- (5) An application made under [subsection \(1\)](#) –
- (a) must identify the payment claim and the payment schedule, if any, to which it relates; and
- (b) must be accompanied by the application fee, if any, that the nominated authority may have determined; and
- (c) may contain any submissions relating to the application that the applicant thinks fit.
- (6) The application fee may not be greater than an amount, if any, determined by the Minister, by notice published in the *Gazette*, to be the maximum amount of the application fee.
- (7) A copy of an application made under [subsection \(1\)](#) must be served on the respondent.
- (8) A claimant may, at any time before an application made under [subsection \(1\)](#) has been determined by an adjudicator, withdraw the application by notice served on the adjudicator and the respondent.
- (9) A claimant who withdraws an application under [subsection \(8\)](#) is liable to pay any fees and expenses to which an adjudicator is entitled under [section 37\(1\)](#) in relation to the application.

## **22. Appointment of adjudicator**

- (1) A nominating authority to which an adjudication application is made in relation to a building or construction contract is to refer the matter as soon as practicable to a person who is a qualified adjudicator.
- (2) A person is a qualified adjudicator if the person is a natural person with the qualifications, expertise and experience, if any, determined by the Security of Payments Official to be required.
- (3) A nominating authority to which an adjudication application is made in relation to a building or construction contract may not refer the matter to a qualified adjudicator –
- (a) if the adjudicator is a party to the building or construction contract; or
- (b) in circumstances prescribed for the purposes of this subsection.
- (4) A qualified adjudicator may accept an adjudication application referred to the adjudicator under [subsection \(1\)](#) by serving notice of acceptance on the claimant and the respondent in relation to the application.

## **23. Response by respondent to adjudication application**

- (1) A respondent who has provided a payment schedule to the claimant within the period specified in [section 19\(2\)\(b\)](#) or [section 21\(4\)\(b\)](#) may lodge with the adjudicator a response to the claimant's adjudication application.
- (2) An adjudication response may be lodged under [subsection \(1\)](#) within –
- (a) 10 business days after receiving a copy of the adjudication application; or
- (b) 5 business days after receiving notice of an adjudicator's acceptance of the application – whichever period expires later.
- (3) An adjudication response –
- (a) must be in writing; and

- (b) must identify the adjudication application to which it relates; and
- (c) may contain any submissions relevant to the response that the respondent thinks fit.
- (4) A respondent must not include in an adjudication response reasons for withholding payment, unless those reasons have already been included in the payment schedule provided to the claimant.
- (5) A copy of the adjudication response must be served on the claimant.
- (6) An adjudicator may not consider an adjudication response if it was made after the end of the period under [subsection \(2\)](#) in which the respondent may lodge an adjudication response.

## **24. Adjudication proceedings**

- (1) An adjudicator is to determine an adjudication application as soon as practicable and, in any case –
  - (a) within –
    - (i) 10 business days after the date on which the adjudicator receives the adjudication response; or
    - (ii) if the respondent lodged a payment schedule in relation to the payment claim to which the application relates, 10 business days after the date by which the respondent may, under [section 23](#), lodge with the adjudicator an adjudication response; or
    - (iii) if the respondent did not lodge a payment schedule in relation to the payment claim to which the application relates, 10 business days after the date on which the adjudicator accepted the application under [section 22\(4\)](#); or
  - (b) within a further period, if any, agreed to by the claimant and the respondent.
- (2) In adjudication proceedings –
  - (a) an adjudicator may request further written submissions from a party to the proceedings; and
  - (b) if an adjudicator requests a party to make further written submissions, the adjudicator must give the other party an opportunity to comment on the submissions.
- (3) An adjudicator may specify periods in which submissions and comments may be made by parties to the adjudication proceedings.
- (4) An adjudicator may call a conference of the parties to adjudication proceedings and may invite to attend the conference those persons who, in the opinion of the adjudicator, have an interest in, or may assist in the consideration of, the matter to which the proceedings relate.
- (5) A conference is to be conducted informally and may not be attended by a legal representative of any party.
- (6) An adjudicator may carry out an inspection of any matter that relates to a payment claim to which the adjudication proceedings relate.

## **25. Determination of adjudication application**

- (1) An adjudicator is to determine an adjudication application –
  - (a) by determining whether or not all or part of a progress payment is to be paid by the respondent to the claimant; and
  - (b) if the adjudicator determines that all or part of a progress payment is to be paid by the respondent to the claimant, by determining –

- (i) the amount of the payment; and
  - (ii) the date on which the payment became or becomes payable; and
  - (iii) the rate of interest payable on the amount.
- (2) In determining an adjudication application, an adjudicator is to consider only the following matters:
- (a) the provisions of this Act;
  - (b) the provisions of the building or construction contract to which the application relates;
  - (c) the payment claim to which the application relates, together with all submissions (including relevant documentation) that have been duly made by the claimant in support of the claim;
  - (d) the payment schedule, if any, to which the application relates, together with all submissions (including relevant documentation) that have been duly made by the respondent in support of the schedule;
  - (e) the results of any inspection carried out by the adjudicator of any matter to which the claim relates.
- (3) An adjudicator may determine an adjudication application even if –
- (a) a party fails to make a submission or comment within the period specified by the adjudicator; or
  - (b) a party fails to attend a conference called by the adjudicator.
- (4) The adjudicator's determination –
- (a) must be in writing; and
  - (b) must include the reasons for the determination, unless the claimant and the respondent have both requested the adjudicator not to include the reasons in the determination.
- (5) If an adjudicator, in determining an adjudication application, has determined in accordance with [section 13](#) the value of building work or construction work carried out, or of building or construction-related goods and services supplied, under a building or construction contract, the same value is to be determined for that work or those goods and services in any determination of a subsequent adjudication application in relation to the contract.
- (6) Despite [subsection \(5\)](#), a different value may be determined if a party to the subsequent adjudication application satisfies the adjudicator of that application that the value of the works or goods and services has changed since the value was first determined.
- (7) An adjudicator may determine that a party to an adjudication is required to pay to another party to the adjudication some or all of the costs that have been incurred by the other party because of frivolous or vexatious conduct, or the making of unfounded submissions, by the first-mentioned party.
- (8) An adjudicator may, on his or her own initiative or on the application of a claimant or respondent, correct –
- (a) a clerical mistake in a determination under this section; or
  - (b) an error arising from an accidental slip or omission in a determination under this section; or
  - (c) a material miscalculation of figures or a material mistake in the description of a person, thing or matter referred to in a determination under this section; or
  - (d) a defect of form in a determination under this section.

## **26. Respondent must pay amount determined by adjudicator**

- (1) If an adjudicator determines that a respondent is required to pay an adjudicated amount, the respondent must pay that amount to the claimant before –
  - (a) the end of the period of 5 business days immediately after the date on which the adjudicator's determination is served on the respondent; or
  - (b) a later date, if any, determined under [section 25\(1\)\(b\)\(ii\)](#) .
- (2) If a respondent does not pay to the claimant all of the adjudicated amount in accordance with [subsection \(1\)](#) , the claimant may do either or both of the following:
  - (a) request the nominating authority to which the adjudication application was made to issue an adjudication certificate under this section;
  - (b) serve notice on the respondent of the claimant's intention to suspend carrying out building work or construction work, or supplying building or construction-related goods and services, under the building or construction contract.
- (3) A notice under [subsection \(2\)\(b\)](#) must specify that it is made under this Act.
- (4) A nominating authority that receives a request under [subsection \(2\)\(a\)](#) in relation to an adjudication application may issue an adjudication certificate in relation to the application.
- (5) An adjudication certificate issued under this section must specify that it is made under this Act and specify the following matters:
  - (a) the name of the claimant;
  - (b) the name of the respondent who is liable to pay the adjudicated amount;
  - (c) the adjudicated amount;
  - (d) the date on which payment of the adjudicated amount was due to be paid to the claimant.
- (6) If an amount of interest that is due and payable on the adjudicated amount is not paid by the respondent –
  - (a) the claimant may request the nominating authority to specify in the adjudication certificate the amount of interest payable; and
  - (b) the amount so specified is added to, and becomes part of, the adjudicated amount.
- (7) If the claimant has paid the respondent's share of the adjudication fees in relation to the adjudication but has not been reimbursed by the respondent for that amount –
  - (a) the claimant may request the nominating authority to specify in the adjudication certificate that amount; and
  - (b) the amount so specified is added to, and becomes part of, the adjudicated amount.

## **27. Adjudication certificate may be filed as judgment for debt**

- (1) An adjudication certificate may be filed as a judgment for a debt in a court of competent jurisdiction.
- (2) An adjudication certificate that is filed as a judgment for a debt in a court of competent jurisdiction is enforceable as a judgment for a debt.
- (3) An adjudication certificate may only be filed under this section if it is accompanied by an affidavit by the claimant stating that a part of the adjudicated amount has not been paid at the time the certificate is filed.

- (4) If the affidavit specifies that part of the adjudicated amount has not been paid, the judgment is only for that part of that amount.
- (5) If the respondent commences proceedings to have the judgment set aside, the respondent –
- (a) is not, in those proceedings, entitled –
    - (i) to bring a cross-claim against the claimant; or
    - (ii) to raise a defence in relation to matters arising under, or relating to the subject matter of, the building or construction contract; or
    - (iii) to challenge the adjudicator's determination; and
  - (b) must pay into the court as security the unpaid part of the adjudicated amount, pending the final determination of those proceedings.

## **28. When claimant may make new adjudication application**

- (1) [Subsection \(2\)](#) applies to a claimant if –
- (a) a claimant fails to receive, within 4 business days after the claimant makes an adjudication application, an adjudicator's notice of acceptance of the application under [section 22\(4\)](#) ; or
  - (b) an adjudicator in relation to an adjudication application fails to determine the application within the time allowed by [section 24](#) .
- (2) If this subsection applies to a claimant, the claimant –
- (a) may withdraw the adjudication application made to the adjudicator, by serving notice in writing on the adjudicator or the nominating authority to whom the application was made; and
  - (b) may make a new adjudication application under [section 21](#) .
- (3) Despite [section 21\(3\)](#) , a new adjudication application may be made at any time within 5 business days after the claimant becomes entitled to withdraw the previous application under [subsection \(2\)](#) .

## **PART 6 - Claimant's Right to Suspend Building Work or Construction Work or Supply**

### **29. Claimant may suspend work or supply**

- (1) A claimant may suspend the carrying out of building work or construction work, or the supply of building or construction-related goods and services, under a building or construction contract, if at least 2 business days have passed since the claimant served notice on the respondent under [section 19](#) , [20](#) or [26](#) of the claimant's intention to do so.
- (2) A claimant may not suspend the carrying out of building work or construction work, or the supply of building or construction-related goods and services, under a building or construction contract, after the end of the period of 3 business days immediately after the date on which the claimant receives payment for the amount payable by the respondent under [section 19](#) , [20](#) or [26](#) .
- (3) If a claimant –
- (a) in accordance with this section, suspends the carrying out of building work or construction work, or the supply of building or construction-related goods and services, under a building or construction contract; and
  - (b) incurs loss or expenses as a result of the removal, by the respondent, from a contract, of a part of the work or supply –

the respondent is liable to pay the claimant the amount of the loss or expense.

(4) A claimant who, in accordance with this section, suspends the carrying out of building work or construction work, or the supply of building or construction-related goods and services, under a building or construction contract, is not liable for loss or damage suffered by the respondent, or a person claiming through a respondent, as a consequence of the claimant not carrying out the work, or supplying the services, during the period of suspension.

## **PART 7 - Administration**

### **Division 1 - Security of Payments Official**

#### **30. Security of Payments Official**

- (1) The Security of Payments Official for the purposes of this Act is to be –
- (a) the Director of Building Control within the meaning of the [Building Act 2016](#) ; or
  - (b) if the Minister appoints another person under [subsection \(2\)](#) , that person.
- (2) Subject to and in accordance with the [State Service Act 2000](#) , the Minister may appoint a person to be the Security of Payments Official for the purposes of this Act.

### **Division 2 - Nominating authorities**

#### **31. Nominating authorities**

- (1) A person may apply to the Security of Payments Official to be authorised to be a nominating authority.
- (2) The Security of Payments Official may, if he or she receives an application under [subsection \(1\)](#) , authorise to be a nominating authority a person specified in the application.
- (3) A person who is authorised to be a nominating authority is so authorised for a period of 3 years from the date of the authorisation, but may be reauthorised.
- (4) The Security of Payments Official may, by notice in writing to a person authorised to be a nominating authority –
- (a) impose a condition on the authorisation; or
  - (b) vary a condition imposed on the authorisation; or
  - (c) revoke a condition imposed on the authorisation.
- (5) The Security of Payments Official may only –
- (a) impose a condition on the authorisation of a person to be a nominating authority; or
  - (b) vary a condition imposed on the authorisation of a person to be a nominating authority –  
if –
    - (c) at least 14 days before, a notice has been served on the person inviting the person to show cause why the condition ought not be imposed or so varied; and
    - (d) the person has, for a period of at least 14 days from the date on which the notice under [paragraph \(c\)](#) was given, been given the opportunity to show cause why the condition ought not be imposed or so varied; and
    - (e) the Security of Payments Official has considered any reasons provided to him or her by the person as to why the condition ought not be imposed or so varied.
- (6) The Security of Payments Official may –

- (a) specify a maximum number of persons who may be authorised to be nominating authorities; and
- (b) refuse to authorise a person to be a nominating authority if the maximum number of persons have been authorised to be nominating authorities; and
- (c) revoke the authorisation of a person to be a nominating authority if the Security of Payments Official is satisfied that the nominating authority –
  - (i) has failed to comply with a request made to the authority under [section 33\(1\)](#) ; or
  - (ii) has contravened a condition imposed on the authorisation of the person to be a nominating authority; or
  - (iii) has otherwise failed to comply with a requirement of this Act.
- (7) A person may apply to the [Magistrates Court \(Administrative Appeals Division\) Act 2001](#) for a review of a decision by the Security of Payments Official to –
  - (a) refuse to authorise the person to be a nominating authority; or
  - (b) impose a condition on the authorisation of the person to be a nominating authority; or
  - (c) vary a condition imposed on the authorisation of the person to be a nominating authority.

### **32. Nominating authorities may charge fees**

- (1) A nominating authority may charge an amount for any service provided by the authority in connection with an adjudication application made to the authority.
- (2) An amount that may be charged by a nominating authority for a service must not be more than the amount, if any, determined by the Minister by notice published in the *Gazette*.
- (3) The claimant and respondent are –
  - (a) jointly and severally liable to pay an amount that is charged by a nominating authority in connection with an adjudication application made to the authority by the claimant; and
  - (b) each liable to contribute to the payment of the amount in equal proportions or, if the adjudicator in relation to the application determines different proportions, in the proportions so determined.

### **33. Nominating authorities to provide information**

- (1) The Security of Payments Official may request a nominating authority to provide to him or her information in relation to the activities of the authority under this Act, including information about any amounts charged by the authority under this Act.
- (2) A nominating authority must comply with a request of the Security of Payments Official under [subsection \(1\)](#) .

### **34. Nominating authority to advise Security of Payments Official if certain legal processes begin**

A nominating authority must notify the Security of Payments Official if the authority becomes aware that an application has been made to a court in relation to a building or construction contract in relation to which an adjudication application has been made to the authority.

## **Division 3 - Adjudicators**

### **35. Disqualification of adjudicator for interest**

- (1) An adjudicator in relation to an adjudication application is disqualified from adjudicating the application if he or she has a material personal interest in a building or construction contract, dispute, or party to the contract, to which the application relates.
- (2) As soon as practicable after becoming aware that he or she is disqualified from adjudicating an application, an adjudicator must –
  - (a) cease to deal with the application; and
  - (b) serve notice in writing on the claimant and the respondent, specifying that the adjudicator is disqualified from adjudicating the application.
- (3) An adjudicator who gives notice under [subsection \(2\)](#) in relation to an application must give notice in writing of the disqualification to the nominating authority that referred the application to him or her.
- (4) Any decision of an adjudicator, in relation to an adjudication application, is void if the adjudicator is disqualified from adjudicating the application.
- (5) Despite [section 37\(4\)](#), the adjudicator is entitled to any fees or charges to which he or she would, but for that subsection, be entitled, in relation to the adjudication application, in respect of the services provided by him or her before he or she ought to have been aware that he or she was disqualified under this section.
- (6) As soon as practicable after a nominating authority becomes aware that an adjudicator has ceased to deal with an adjudication application because he or she is disqualified from adjudicating the application, the nominating authority must refer the application to another adjudicator under [section 22](#).
- (7) If a respondent receives notice under [section 22\(4\)](#) of the acceptance of an adjudication application by an adjudicator (the "new adjudicator") to whom the application has been referred under [subsection \(6\)](#), an adjudication response provided to the previous adjudicator under [section 23](#) is of no effect unless it is provided under [section 23](#) to the new adjudicator.
- (8) The nominating authority is not entitled to charge any amount under [section 32](#) in relation to the referral of an application to another adjudicator in accordance with [subsection \(6\)](#).

### **36. Request and review in relation to disqualification of adjudicator**

- (1) A party to an adjudication application may, before the adjudicator in relation to the application has determined the application, by notice in writing to the adjudicator, request the adjudicator to take the actions specified in [section 35\(2\)](#), because, in the party's opinion, the adjudicator is disqualified from adjudicating the application.
- (2) A party to an adjudication application who makes a request to an adjudicator under [subsection \(1\)](#) must provide to the adjudicator particulars as to the grounds on which the party is of the opinion that the adjudicator is disqualified from adjudicating the application.
- (3) Within 7 days after receiving a notice under [subsection \(1\)](#), an adjudicator in relation to an adjudication application must –
  - (a) take the actions specified in [section 35\(2\)](#); or
  - (b) refuse to take the actions specified in [section 35\(2\)](#).
- (4) If, within 7 days after receiving a notice under [subsection \(1\)](#), an adjudicator fails to take the actions specified in [section 35\(2\)](#), a party to the adjudication application may apply to the

Magistrates Court (Administrative Appeals Division) for a review of the decision of the adjudicator not to take those actions.

(5) If an application is made under [subsection \(4\)](#) in respect of an adjudicator, a party to the adjudication application is not required to take any action in respect of a determination of the adjudicator under [section 25](#) in relation to the adjudication application –

(a) until after the review is determined; and

(b) unless the decision of the adjudicator is upheld on the review.

(6) A review of a decision by an adjudicator that is conducted by the Magistrates Court (Administrative Appeals Division) may only relate to the grounds provided to the adjudicator under [subsection \(2\)](#) .

### **37. Adjudicator's fees**

(1) An adjudicator is entitled to be paid for adjudicating an adjudication application –

(a) the amount, by way of fees and expenses, that is agreed between the adjudicator and the parties to the adjudication; or

(b) if no amount is agreed between the adjudicator and the parties to the adjudication, the amount, by way of fees and expenses, that is reasonable having regard to the work done and the expenses incurred by the adjudicator.

(2) If a decision is made under the [Magistrates Court \(Administrative Appeals Division\) Act 2001](#) –

(a) to uphold a decision by an adjudicator under [section 36](#) not to take the action specified in [section 35\(2\)](#) , the adjudicator may charge the person who applied for the review the costs incurred by the adjudicator in relation to the review, unless the court has, under that Act, ordered those costs to be paid by a person other than the adjudicator; or

(b) not to uphold a decision by an adjudicator under [section 36](#) not to take the action specified in [section 35\(2\)](#) , the adjudicator may not pass on to the parties to the adjudication application any costs incurred by the adjudicator.

(3) The claimant and respondent are –

(a) jointly and severally liable to pay an amount that is charged by an adjudicator under [subsection \(1\)](#) ; and

(b) each liable to contribute to the payment of the amount in equal proportions or, if the adjudicator in relation to the application determines different proportions, in the proportions so determined.

(4) An adjudicator is not entitled to be paid fees or expenses in connection with the adjudication of an adjudication application if he or she fails, within the time allowed by [section 24](#) , to determine the application (other than because the application is withdrawn or the dispute between the claimant and respondent is otherwise resolved).

(5) [Subsection \(4\)](#) does not apply –

(a) if the adjudicator refuses to notify the parties of his or her determination until his or her fees or expenses are paid; or

(b) in other circumstances that are prescribed for the purposes of this paragraph.

### **38. Information in relation to determinations of adjudication applications**

- (1) An adjudicator is to provide a copy of his or her determination of an adjudication application under [section 25](#) to the nominating authority that referred the application to the adjudicator.
- (2) A nominating authority to which a determination is provided under [subsection \(1\)](#) must forward a copy of the determination to the Security of Payments Official in the manner and form required by the Official.
- (3) The Security of Payments Official is, by 1 March in a year, to submit to the Director of Building Control within the meaning of the [Building Act 2016](#) an annual report consisting of –
  - (a) a report in respect of the operation of the Act in the previous calendar year; and
  - (b) details of the fees and expenses paid to adjudicators during the calendar year; and
  - (c) the recommendations, if any, of the Official, as to how this Act, or operations under this Act, could be improved.

#### **Division 4 - Protection from liability**

##### **39. Protection from liability**

- (1) No action lies against the Security of Payments Official or any other person in relation to anything done or omitted to be done by a nominating authority in good faith –
  - (a) in performing the functions of the Security of Payments Official, or exercising the powers of the Security of Payments Official, under this Act; or
  - (b) in the reasonable belief that the thing was done or omitted to be done in the performance of the functions, or the exercise of the powers, of the Security of Payments Official under this Act.
- (2) No action lies against a nominating authority or any other person in relation to anything done or omitted to be done by the nominating authority in good faith –
  - (a) in performing the functions of the authority, or exercising the powers of the authority, under this Act; or
  - (b) in the reasonable belief that the thing was done or omitted to be done in the performance of the functions, or the exercise of the powers, of the nominating authority under this Act.
- (3) No action lies against an adjudicator in relation to anything done or omitted to be done by the adjudicator in good faith –
  - (a) in performing his or her functions, or exercising his or her powers, under this Act; or
  - (b) in the reasonable belief that the thing was done or omitted to be done in the performance of the adjudicator's functions, or the exercise of the adjudicator's powers, under this Act.

#### **PART 8 - Miscellaneous**

##### **40. Service of notices**

A notice or other document is effectively served under this Act if –

- (a) in the case of a natural person, it is –
  - (i) given to the person; or
  - (ii) left at, or sent by post to, the person's postal or residential address or place or address of business or employment last known to the server of the notice or other document; or
  - (iii) faxed to the person's fax number; or

- (iv) emailed to the person's email address, if the person has agreed to service by email; or
  - (v) delivered to the person by another electronic method, if the person has agreed to service by the method; and
- (b) in the case of any other person, it is –
- (i) left at, or sent by post to, the person's principal or registered office or principal place of business; or
  - (ii) faxed to the person's fax number; or
  - (iii) emailed to the person's email address, if the person has agreed to service by email; or
  - (iv) delivered to the person by another electronic method, if the person has agreed to service by the method.

#### **41. Regulations**

- (1) The Governor may make regulations for the purposes of this Act.
- (2) The regulations may be made so as to apply differently according to the factors specified in the regulations.
- (3) The regulations may –
  - (a) provide that a contravention of any of the regulations is an offence; and
  - (b) in respect of such an offence, provide for the imposition of a fine not exceeding 50 penalty units and, in the case of a continuing offence, a further fine not exceeding 10 penalty units for each day during which the offence continues.

#### **42. Status of notices**

A notice under this Act is not a statutory rule for the purposes of the [Rules Publication Act 1953](#) .

#### **43. Administration of Act**

Until provision is made in relation to this Act by order under [section 4 of the Administrative Arrangements Act 1990](#) –

- (a) the administration of this Act is assigned to the Minister for Workplace Relations; and
- (b) the department responsible to that Minister in relation to the administration of this Act is the Department of Justice.

#### **44. Transitional matters**

- (1) This Act does not apply to or in relation to a contract entered into before the commencement of this section.
- (2) Despite the repeal of the [Contractors' Debts Act 1939](#) by this Act, that Act continues to apply in respect of any attachment notice that is issued by a court before the day on which this section commences and to any payment into court of money pursuant to such a notice.

#### **PART 9 - Consequential amendments and repeal**

45.

See [Schedule 1](#) .

#### **46. Legislation repealed**

The legislation specified in [Schedule 2](#) is repealed.

#### **SCHEDULE 1 - Consequential Amendments**

The amendments effected by [Section 45](#) and this Schedule have been incorporated into the authorised version of the [Judicial Review Act 2000](#) .

#### **SCHEDULE 2 - Legislation repealed**

[Section 46](#)

[Contractors' Debts Act 1939](#) (No. 49 of 1939)