

House of Assembly—No 221A

As reported with an amendment, report agreed to and passed remaining stages,
31 October 2017

South Australia

**Building and Construction Industry Security of
Payment (Review) Amendment Bill 2017**

A BILL FOR

An Act to amend the *Building and Construction Industry Security of Payment Act 2009*.

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

- 5 This Act may be cited as the *Building and Construction Industry Security of Payment (Review) Amendment Act 2017*.

2—Commencement

This Act will come into operation on a day to be fixed by proclamation.

3—Amendment provisions

- 10 In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *Building and Construction Industry Security of Payment Act 2009*

4—Amendment of section 4—Interpretation

- 15 (1) Section 4, definition of *business day*—delete the definition and substitute:
 - business day* means any day except—
 - (a) Saturday, Sunday or a public holiday; or

(b) any other day which falls between 22 December in any year and 10 January in the following year (inclusive);

(2) Section 4—after the definition of *claimed amount* insert:

Commissioner means the person holding or acting in the office of Small Business Commissioner;

5—Insertion of sections 7A and 7B

After section 7 insert:

7A—Administration of Act

The Commissioner is responsible for the administration of this Act.

7B—Commissioner's functions

The Commissioner has the following functions:

- (a) investigating and researching matters affecting the interests of parties to construction contracts;
- (b) publishing determinations of adjudicators in relation to adjudication applications in a manner determined by the Commissioner;
- (c) publishing reports and information on subjects of interest to the parties to construction contracts;
- (d) giving advice (to an appropriate extent) on the provisions of this Act and other subjects of interest to the parties to construction contracts;
- (e) providing information and facilitating or conducting education programs relating to the provisions of this Act for the benefit of participants in the building and construction industry;
- (f) making reports to the Minister on questions referred to the Commissioner by the Minister and other questions of importance affecting the administration of this Act.

6—Amendment of section 29—Nominating authorities

(1) Section 29(1) to (3) (inclusive)—delete subsections (1) to (3) and substitute:

- (1) Subject to this section and the regulations, the Minister may, on application made by any person, grant the applicant an authority to nominate adjudicators for the purposes of this Act.
- (2) An authority under subsection (1) may be granted for a term (not exceeding 5 years) determined by the Minister.
- (3) An authority under subsection (1) may be renewed by the Minister from time to time, for a term (not exceeding 5 years) determined by the Minister, on application by the authorised nominating authority.
- (3a) An application for the grant or renewal of an authority under this section must be accompanied by the prescribed fee.

(3b) The Minister—

- (a) may impose conditions on an authority under subsection (1) on granting or renewing the authority; and
- (b) may vary or revoke a condition of an authority under subsection (1), or impose further conditions on an authority, at any time by notice in writing to the authorised nominating authority.

(3c) The Minister may—

- (a) limit the number of persons who may, for the time being, be authorised under this section; and
- (b) refuse an application under subsection (1) if authorising the applicant would result in any such number being exceeded.

(3d) The Minister may revoke an authority under subsection (1) if the Minister is satisfied that the authorised nominating authority has breached or failed to comply with—

- (a) a requirement of this Act or the regulations; or
- (b) a condition of the authority.

(3e) If the Minister—

- (a) refuses to grant or renew an authority under this section (otherwise than on the ground referred to in subsection (3c)(b)); or

- (b) revokes an authority,

the applicant or authorised nominating authority (as the case may be) may apply to the Administrative and Disciplinary Division of the District Court for a review of the Minister's decision to take that action.

(2) Section 29(7)—delete subsection (7) and substitute:

(7) An authorised nominating authority must, at the times specified by the Commissioner, provide the Commissioner with—

- (a) a copy of any determination of an adjudicator appointed to determine an adjudication application on referral of the authority; and
- (b) any other information specified by the Commissioner relating to the activities of the authority under this Act (including information as to the fees charged by the authority under this Act).

(8) An authorised nominating authority required to provide a determination of an adjudicator or other information under this section must provide the determination or information within the time specified by the Commissioner.

Maximum penalty: \$20 000.

- (9) An authorised nominating authority cannot be compelled to give information under this section if the information might tend to incriminate the authority of an offence or is privileged on the ground of legal professional privilege.

5 **7—Insertion of sections 32A and 32B**

Before section 33 insert:

32A—Offence relating to assault etc in relation to progress payments

10 A person must not directly or indirectly assault, threaten or intimidate, or attempt to assault, threaten or intimidate, a person in relation to an entitlement to, or claim for, a progress payment under this Act.

Maximum penalty:

- 15 (a) in the case of an individual—\$50 000 or imprisonment for 2 years or both;
- (b) in the case of a body corporate—\$250 000.

32B—Imputing conduct to bodies corporate

- 20 (1) For the purposes of proceedings for an offence against this Act, the conduct and state of mind of an officer, employee or agent of a body corporate acting within the scope of his or her actual, usual or ostensible authority will be imputed to the body corporate.
- (2) For the purposes of this section, a reference to *conduct* or *acting* includes a reference to failure to act.

8—Insertion of section 33A

25 After section 33 insert:

33A—Immunity from liability

30 Neither the Commissioner nor the Crown incurs any liability for the publication by the Commissioner in good faith in accordance with section 7B(b) of a determination of an adjudicator in relation to an adjudication application.

9—Repeal of section 36

Section 36—delete the section

Schedule 1—Transitional provisions

1—Revocation of authorisations

- 35 (1) The authorisation of a person who was, immediately before the commencement of this clause, authorised under section 29 of the principal Act to nominate adjudicators for the purposes of that Act is, by force of this subclause, revoked.

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- (2) Despite subclause (1), an adjudication application made to a person referred to in that subclause that has not been finally determined before the commencement of this clause may be continued and completed under the provisions of the principal Act.
 - (3) In addition, nothing in subclause (1) affects the right of a person referred to in that subclause to recover an amount payable for services provided under the principal Act in respect of an application referred to in subclause (2).
 - (4) In this clause—

principal Act means the *Building and Construction Industry Security of Payment Act 2009* (as in force immediately before the commencement of this clause).