

CONSTRUCTION CONTRACTS BILL 2004

Explanatory Memorandum

Introduction

This Act delivers the Government's commitment to introduce security of payment legislation for the building and construction industry.

The *Construction Contracts Bill* supports good payment practices in the building and construction industry by:

1. Prohibiting payment provisions in contracts that slow or stop the movement of funds through the contracting chain;
2. Implying fair and reasonable payment terms into contracts that are not in writing;
3. Clarifying the right to deal in unfixed materials when a party to the contract becomes insolvent; and
4. Providing an effective rapid adjudication process for payment disputes.

In particular, it is based on enforcing the contract between the parties and does not introduce a separate, and possibly conflicting, statutory right to payment. The Act applies to contracts for the carrying out of construction work and related services. The Act also covers contracts for the provision of related professional services and the supply of goods and materials to the construction site.

This legislation supports the privity of the contract between the parties. Where there is no written contract covering the basic payment provisions of the right to be paid, how to deal with variations, how to claim payment and how to dispute it, or the rate of interest on late payments, the Act provides for fair and effective terms to be implied into the contract. The Act also provides implied terms to deal with the contentious issues of ownership of unfixed goods or materials when a contractor becomes insolvent, and the status of retention moneys. This means the parties should have clear contractual payment rights and obligations so that misunderstanding and disputes are minimised.

The Act provides a rapid adjudication process that operates in parallel to any other legal or contractual remedy. The rapid adjudication process allows an experienced and independent adjudicator to review the claim, and where satisfied that some payment is due, make a binding determination for money to be paid.

Its primary aim is to keep the money flowing in the contracting chain by enforcing timely payment and sidelining protracted or complex disputes. The process is kept simple, and therefore cheap and accessible—even for small claims.

The effectiveness of rapid adjudication depends on rapid access to capable adjudicators. To ensure the expert and independent status of adjudicators they will be registered by a Registrar appointed under this Act. The parties to a contract may agree on an adjudicator at the outset of the project, or when a dispute arises. If the parties have not agreed on an adjudicator, the party wishing to make a claim may go to a prescribed appointer who will appoint a suitable

registered adjudicator. Prescribed appointers will typically be professional bodies active in the industry, but free of sectional interests.

This Act cannot remedy every security of payment issue. Insolvency can only be addressed by Commonwealth legislation. Participants in the industry still have to look after their own commercial interests. This Act provides the industry with simple and effective tools to clarify rights to be paid and to enforce those rights.

Long title

The long title sets out the purpose of the Act which is to prohibit or modify certain provisions in construction contracts; to imply provisions in construction contracts about certain matters if there are no written provisions about the matters in the contracts and to provide a means for adjudicating payment disputes arising under construction contracts.

Part 1 Preliminary

This part contains the title of the Act, the relevant commencement provisions, the objectives of the Act and definitions of terms used within the Act.

Clause 1 Short title

This is a formal clause titling the Act.

Clause 2 Commencement

Makes provisions for the commencement of the Act, on a date or dates to be set by proclamation. This allows for example, adjudicators to be registered prior to the rest of the Act coming into effect and for the operational parts, that include references to the State Administrative Tribunal, to be delayed pending establishment of that Tribunal.

Clause 3 Interpretation

Defines the terms used in the Act.

“construction contract” This defines the types of contracts to which the Act applies.

“payment claims” This defines the types of claims which can be submitted for rapid adjudication. This will restrict rapid adjudication to claims for work actually done by the contractor and for which he may have payment obligations in turn. It does not cover peripheral claims not related to core work.

Clause 4 “Construction Work”

Section 1) Defines what is included in a “civil work” and in a “site in WA”

Section 2) Defines what is and is not covered by the meaning of construction work and therefore covered by the Act.

Section 3) This section details what is not included in the meaning of construction work and therefore not covered by the Act.

Section 4) Excludes the construction of any watercraft from the coverage of the Act.

Clause 5 Goods and services related to construction work

Section 1) Outlines instances when goods are related to construction work and therefore covered by the Act.

Section 2) Outlines instances when professional services are related to construction work and therefore covered by the Act.

Section 3) Outlines when on-site services are related to construction work and therefore covered by the Act.

Section 4) This section states that the Regulations may prescribe goods, professional services or on-site services that are not related to construction work.

Clause 6 Payment Dispute

Sets out the instances when a payment dispute arises.

Section a) Deals with claims for late or disputed payment.

Section b) Deals with failure to refund retention money.

Section c) Deals with failure to return security.

Clause 7 Construction contracts to which this Act applies

Section 1) This Act applies to a construction contract which is entered into after this Act comes into operation. It does not have retrospective effect.

Section 2) Makes the Act apply to construction work in Western Australia. (see definition) regardless of where the contract is made, or whether, it is in writing or not.

Section 3) The Act does not apply to contracts that are for employment only.

Section 4) The Act does not apply to a construction contract that is a home building work contract under section 3(1) of the *Home Building Contracts Act 1991*.

Section 5) The Regulations may prescribe a construction contract or a class of construction contracts that are not covered by this Act. This allows for fine tuning of coverage or to clarify coverage where there is doubt.

Clause 8 Application to Crown

This Act binds the Crown.

Part 2 — Content of construction contracts

This part outlines provisions that are prohibited in a construction contract and stipulates when provisions are implied in a construction contract. These clauses allow the Principal to a contract to avoid paying for work done under the contract simply because the Principal has not yet been paid under a separate contract.

Division 1—Prohibited provisions

Clause 9 Prohibited: pay if paid/when paid provisions

This clause is intended to ensure that money flows down the contracting chain by banning “pay if paid/pay when paid” clauses. These clauses allow the Principal to a contract to avoid paying for work done under the contract simply because the Principal has not yet been paid under a separate contract.

Clause 10 *Prohibited: provisions requiring payment to be made after 50 days*

This clause prevents principals circumventing the intent of clause 9 by specifying unreasonably long payment terms. A Principal attempting a long payment period is penalised by the contract being amended to require payment in 28 days.

Clause 11 *Prohibited: prescribed provisions*

Provisions that are prescribed by the Regulations to be prohibited provisions have no effect. This allows for further fine tuning if creative attempts are made to circumvent the intent of clause 9.

Clause 12 *Other provisions of contract not affected*

If a provision in a construction contract has no effect because of section 9 or 11 or is modified under section 10 this does not affect the operation of other provisions of the contract. Such provisions must be read on their merits in accordance with normal contractual principles.

Division 2—Implied Provisions

Clause 13 *Variations of contractual obligations*

This clause implies the provisions in Schedule 1 Division 1 into a construction contract that does not have a written provision about variation of the contractor's obligations under the contract. This ensures the parties to a contract, and the adjudicator, arbitrator or court in the event of a dispute, have clear written provisions about payment for variation to the contract work.

Clause 14 *Contractor's entitlement to be paid*

This clause implies the provisions in Schedule 1 Division 2 into a construction contract that does not have a written provision about the amount or a means of determining the amount that the contractor is entitled to be paid for the obligations the contractor has performed. This ensures the parties to a contract, and the adjudicator, arbitrator or court in the event of a dispute, have clear written provisions about how payments are to be valued.

Clause 15 *Contractor's entitlement to claim progress payments*

This clause implies the provisions in Schedule 1 Division 3 into a construction contract that does not have a written provision about whether a contractor is able to make a claim to the Principal for a progress payment for the obligations the contractor has performed. This ensures the parties to a contract, and the adjudicator, arbitrator or court in the event of a dispute, have clear written provisions about the rights to progress payments.

Clause 16 *Making claims for payment*

This clause implies the provisions in Schedule 1 Division 4 into a construction contract that does not have a written provision about how a party is to make a claim to another party for

payment. This ensures the parties to a contract, and the adjudicator, arbitrator or court in the event of a dispute, have clear written provisions about the process for making payment claims.

Clause 17 Responding to claims for payment

This clause implies the provisions in Schedule 1 Division 5 into a construction contract that does not have a written provision about when and how a party is to respond to a claim for payment made by another party. This ensures the parties to a contract, and the adjudicator, arbitrator or court in the event of a dispute, have clear written provisions about the process for responding to or disputing payment claims.

Clause 18 Time for payment

This clause implies the provisions in Schedule 1 Division 5 into a construction contract that does not have a written provision about a time by when a payment must be made. This ensures the parties to a contract, and the adjudicator, arbitrator or court in the event of a dispute, have clear written provisions about when a payment must be made before it becomes due.

Clause 19 Interest on overdue payments

This clause implies the provisions in Schedule 1 Division 6 into a construction contract that does not have a written provision about interest to be paid on any payment that is not made at the time required by the contract. This ensures the parties to a contract, and the adjudicator, arbitrator or court in the event of a dispute, have clear written provisions about interest payable on overdue payments.

Clause 20 Ownership of goods

This clause implies the provisions in Schedule 1 Division 7 into a construction contract that does not have a written provision about when the ownership of goods related to construction work and supplied to the site of the work by the contractor passes from the contractor. This ensures the parties to a contract, and the adjudicator, arbitrator or court in the event of a dispute, have clear written provisions about when ownership of goods passes from the contractor.

Clause 21 Duties as to unfixed goods on insolvency

This clause implies the provisions in Schedule 1 Division 8 into a construction contract that does not have a written provision about what happens to unfixed goods if either the Principal or another person is supplying goods and services that are related to construction work. These provisions protect the contractor's title to goods or materials delivered to the site but not incorporated in the works in the event the Principal to the relevant contract becomes insolvent.

Clause 22 *Retention money*

This clause implies the provisions in Schedule 1 Division 9 into a construction contract that does not have a written provision about the status of money retained by the Principal for the performance by the contractor of its obligations. These provisions confirm that retention moneys are the property of the contractor and are held in trust by the Principal. This allows the retention money to be returned to the contractor in the event of insolvency of the Principal.

Clause 23 *Implied provisions: interpretation etc.*

This clause ensures that the *Interpretation Act 1984* and sections 3 of this Act apply to the interpretation and construction of a provision that is implied in a construction contract despite any provision in a construction contract to the contrary.

Part 3—Adjudication of disputes

This part provides a detailed explanation of the adjudication process.

Division 1—Preliminary

Clause 24 *Interpretation of “construction contract”*

This clause ensures that construction contracts are interpreted with any prohibited provisions excluded and implied provisions included.

Division 2—Commencing adjudication

Clause 25 *Who can apply for adjudication*

Any party to the contract may apply to have the dispute adjudicated unless an application for adjudication has already been made by a party even though a determination has not been made or if the dispute is the subject of an order, judgement or other finding by an arbitrator or other person or a court or other body dealing with a matter arising under a construction contract. This prevents two adjudicators considering the same dispute, or re-opening a settled dispute.

Clause 26 *Applying for adjudication*

Section 1) Sets out the process for commencing adjudication of a payment dispute under this Act.

Section 2) Sets out how a claim must be presented and what information it must contain.

Clause 27 *Responding to an application for adjudication*

Section 1) Sets out the process for responding to an application to adjudicate a payment claim under this Act.

Section 2) Sets out how a response must be presented, and what information it must contain.

Clause 28 *Appointment of adjudicator in absence of agreed appointment*

Section 1) Sets out the duties of a prescribed appointer when presented with a claim for adjudication under clause 26.

Section 2) Allows the Registrar to appoint an adjudicator if a prescribed appointer fails to act.

Section 3) Sets out the duties of the Registrar when acting under section 2).

Clause 29 *Adjudicators: conflicts of interest*

Section 1) Covers conflict of interest of adjudicators.

Section 2) Sets out the duties of a disqualified adjudicator.

Section 3) A party can apply to the State Administrative Tribunal to obtain a declaration that an appointed adjudicator is disqualified.

Section 4) Sets out how the application must be made, and prevents an application to disqualify an adjudicator after the adjudicator has given a determination.

Division 3—The adjudication process

Clause 30—Object of the adjudication process

The object of an adjudication process is to determine the dispute fairly, quickly, informally and inexpensively as possible. The adjudicator is expected to balance the need for precision with the need for a rapid outcome.

Clause 31 *Adjudicator’s functions*

Section 1) Defines “prescribed time” in relation to an appointed adjudicator receiving a service of response.

Section 2) Sets out the duties of an adjudicator when presented with a payment claim.

Section 3) Provides for an application that is not dealt with by the adjudicator to be deemed to be dismissed. A dismissed application (as opposed to a determined application, can be re-submitted to a different adjudicator- see clause 37).

Clause 32 *Adjudication procedure*

Section 1) Sets out the rules that an appointed adjudicator has to follow when making a determination. It emphasises the need to act informally and on the basis of the written submissions rather than through formal hearings.

Section 2) Sets out what an appointed adjudicator can do in order to obtain sufficient information to make a determination.

Section 3) Provides a mechanism to disputes extend the time for making a determination, adjudicate simultaneously 2 or more payment disputes and with the consent of all the parties concerned, adjudicate the payment dispute simultaneously with another payment dispute. Adjudicating 2 or more disputes at the same time allows for related claims to be dealt with together: e.g. a variation claim made by a subcontractor to the head contractor (dispute 1) and the same claim made by the head contractor to the owner (dispute 2).

Section 4) This streamlines the process for managing related claims.

Section 5) This prevents a claimant or respondent from refusing to engage in the process, and then seek to overturn a determination on the grounds that it was denied natural justice by not being heard.

Section 6) This allows the adjudicator reasonable freedom to suit the nature of the dispute and the sophistication of the parties.

Clause 33 Interest up to determination

This allows the adjudicator to award interest so that there is no benefit to a party from delaying payment and forcing a claim into adjudication under this Act.

Clause 34 Costs of parties to payment disputes

Section 1) Parties to a payment dispute bear their own costs in relation to the adjudication of a payment dispute subject to subsection 2. This allows each party to determine the amount of effort it puts in and prevents a weak party being bullied out of an adjudication by the threat of a massive costs order.

Section 2) In the case of frivolous or vexatious conduct on the part of or unfounded submissions by another party the adjudicator has the power to apportion all or some of the costs to another party. This provides some discouragement to the making of frivolous or vexatious claims.

Section 3) If the adjudicator makes a decision under section 2) he must decide the amount of the costs, the date on which the amount is payable, give reasons for the decisions and communicate the decisions and the reasons in writing to the parties.

Section 4) Ensures the provisions relating to enforcing payment apply to frivolous and vexatious claims.

Clause 35 Certificates of completion etc., effect of

Most standard form construction contracts provide for a “final certificate” to conclusively determine the total amount of the contract. Serious complications can arise if a payment claim were adjudicated in a way that overturned a final certificate. This clause allows a party to provide a copy of a final certificate to the adjudicator, the adjudicator can only enforce payment of the amount set out in the final certificate.

Clause 36 Determination, content of

This clause sets out the requirements for a determination.

Clause 37 Dismissed applications

Section 1) An appointed adjudicator must give reasons for dismissing an application for adjudication and communicate the decision and reasons in writing to the parties.

Section 2) This allows a claimant to re-formulate a claim to overcome an adjudicator’s objections and re-submit it, thus preserving the right to rapid adjudication. The 28 days limit ensures that the threat of a claimant seeking rapid adjudication under this Act cannot be unreasonably prolonged.

Division 4—Effect of determinations

Clause 38 Determinations have effect despite other proceedings

An appointed adjudicator's determination is binding on the parties to the construction contract under which the payment dispute concerned arose even though other proceedings may have commenced before an arbitrator, other person, court or other body. This is a key provision in this Act that ensures money continues to flow in the contracting chain, even though the claim for payment is disputed under the contract.

Clause 39 Payment of amount determined and interest

Section 1) A party that is liable to pay an amount under a determination must pay it before the date specified in the determination.

Section 2) This provides for fair interest if a determination is not paid on time.

Section 3) This ensures interest can be recovered as part of the determination.

Section 4) This aligns with normal court practice.

Clause 40 Progress payments under determinations to be on account

This clause ensures that a payment made as part of a determination is part of the total contract sum, and is not a separate payment in addition to contractual rights.

Clause 41 Determinations are final

Section 1) Once a determination is made the adjudicator cannot amend or cancel it unless the parties consent and a party to the dispute may then not apply for an adjudication of the dispute. This ensures the payment of a determination is not delayed by appeals.

Section 2) If a determination contains an accidental slip, omission, error, or a material mistake in the description of any person, thing or matter, an adjudicator after notifying the parties may correct the determination. This allows for minor corrections, rather than reconsideration of matters of substance.

Division 5—Enforcing determinations

This Division sets out the rights a successful claimant has to enforce payment of a determination.

Clause 42 Non-compliance by Principal, contractor may suspend its obligations

Section 1) Where a determination provides for the Principal to pay the contractor a specified amount and if the Principal does not pay in accordance with the determination the contractor may give the Principal notice of his intention to stop the performance of its obligations. This provides some incentive to ensure prompt payment, and gives the claimant protection if it stops work.

Section 2) Outlines the requirements of the notice.

Section 3) Provides for the contractor to stop the performances of his obligations for not longer than 3 days if the Principal has not paid the contractor.

Section 4) States that section 3) does not prevent the contractor from resuming the performance of its obligations at any time.

Section 5) Outlines the rights and liabilities when a contractor suspends the performance of its obligations.

Clause 43 Determinations may be enforced as judgments

Section 1) Defines a court of competent jurisdiction.

Section 2) Allows for a determination to be enforced in the same way as a judgement or court order and if such leave is given may be entered in terms of the determination.

Section 3) Enables a determination that is signed by an adjudicator and certified by the Registrar as having being made by a registered adjudicator under this part. Certification by the Registrar allows the court to treat the determination on its face value, without inviting argument on the bona fides of the adjudicator or the process.

Division 6—General

Clause 44 Costs of adjudications

Section 1) The costs of an adjudication are limited to the costs of the adjudicator, any testing or expert investigation.

Section 2) This section sets out the rate an appointed adjudicator is entitled to be paid. This rate can be agreed between the adjudicator and the parties but cannot be more than the maximum rate prescribed by the Regulations. If a rate is not agreed then the rate published by the Registrar is the rate that will prevail.

Section 3) This section allows an adjudicator who is disqualified to be paid for adjudication work done before the disqualification is notified to the parties.

Section 4) This allows the adjudicator to require payment before handing down a determination.

Section 5) Parties involved in a payment dispute are jointly and severally liable to pay the costs of an adjudication of the dispute.

Section 6) Provides for parties involved in a dispute to share the costs equally.

Section 7) The adjudicator may require a party to pay a greater share or all of the costs for frivolous or vexatious claims.

Section 8) Provides for an adjudicator to require one or more parties to provide reasonable deposit or security for the costs of an adjudication. Normally the claimant would provide any deposit.

Section 9) A prescribed appointer before appointing an adjudicator may require the applicant to provide a deposit or reasonable security.

Section 10) This allows the adjudicator to equalize costs.

Section 11) This allows failure to pay a share of costs to be treated as failure to pay a determination.

Section 12) This allows the adjudicator to sue for its fee or costs.

Clause 45 Effect of this part on civil proceedings

Section 1) A party to a construction contract can initiate proceedings before an arbitrator, court, other person or body in relation to a dispute or matter arising under a contract. This allows a complex claim to be fully and properly considered in parallel with an adjudication under this Act.

Section 2) Although proceedings in relation to a payment dispute may have been initiated, the adjudication is to proceed despite those proceedings unless all the parties in writing request the adjudicator to discontinue the adjudication.

Section 3) Evidence given in an adjudication cannot be used in other proceedings. This should encourage frank input to adjudications in order to promote quicker and better informed determinations.

Section 4) This allows for “payments on account” made through adjudication under this Act to be allowed for or modified in arbitrations or litigations.

Clause 46 Appeal, limited right of

Section 1) Enables a person who is aggrieved by a decision that an adjudicator is disqualified to appeal against the decision to the State Administrative Tribunal.

Section 2) Appeal to be made within 14 days after the person is notified of the decision and in accordance with rules of the court.

Section 3) The State Administrative Tribunal has the power to agree with or reverse the adjudicator’s decision.

Section 4) If the court reverses the adjudicator’s decision the Court must send the matter back to the adjudicator to make a determination and the adjudicator is to make the determination within 14 days after the date on which the matter is sent back or any extension of time consented to by the parties.

Section 5) Except as provided in section 1) a decision or determination of an adjudicator on an adjudication is not appealable. This is a key provision in this Act to prevent appeals being used to delay payment.

Part 4—Administration

This part provides for the appointment of a Registrar, the registration of adjudicators, appeals against registration decisions, and other administrative matters.

Clause 47 Registrar, appointment and functions

Section 1) The Minister by publication in the Gazette must establish an office called the Construction Contracts Registrar or any other name he thinks fit.

Section 2) The Minister is to designate a public service officer as the Registrar and this appointment is to be published in the Gazette.

Section 3) The Registrar’s functions are generally to register adjudicators and prescribed appointers, and to monitor and promote the effectiveness of this Act.

Section 4) This validates documents without requiring extensive proof.

Clause 48 Registering adjudicators

Section 1) The Regulations may prescribe the qualifications and experience required by a person to be a registered adjudicator.

Section 2) The Registrar may register an individual as a registered adjudicator on an individual application or on the nomination of a prescribed appointer.

Section 3) The fee for registration will be prescribed by Regulation.

Section 4) The Registrar must ensure that an individual is eligible to be registered.

Section 5) The Registrar may cancel the registration if the individual has stopped being eligible to be registered or has misconducted or is incompetent or unsuitable to conduct adjudications.

Section 6) The Registrar must keep a register of registered adjudicators and make it available for public inspection at no charge.

Section 7) A certificate by the Registrar which states that an individual is not a registered adjudicator is proof of the content of the certificate where there is no evidence to the contrary.

Clause 49 Appeals against registration decisions

Section 1) This clause provides a mechanism of appeal where a person who is aggrieved by a Registrar's decision can appeal to the State Administrative Tribunal.

Section 2) The appeal must be made within 14 days after the person is notified by the decision and in accordance with the rules of the State Administrative Tribunal.

Section 3) The State Administrative Tribunal may confirm or reverse the Registrar's decision.

Clause 50 Publication of adjudicators' decisions

Section 1) The Registrar is authorised to make a registered adjudicator's decision or report available for public inspection. This is to aid understanding of the Act and to promote consistency in the way adjudicators manage and determine adjudications.

Section 2) The Registrar is to ensure that the identities of the parties to an adjudication or any issue that the Registrar ascertains to be of a confidential nature are not included in the result or report which is made available to the public.

Section 3) No charge is payable for inspecting this result or report.

Clause 51 Appointers' and adjudicators' rates to be published

Section 1) The Registrar will ensure rates of registered adjudicators are published.

Section 2) A prescribed appointer is to ensure that the rate at which the appointer charges for its work is published in a manner approved by the Registrar.

Section 3) The parties are free to agree the rate with a registered adjudicator or prescribed appointer for work under the Act.

Section 4) A published or agreed rate is not to be more than the maximum rate that is prescribed by the Regulations.

Clause 52 Annual report

The Registrar must prepare an Annual Report for the financial year and present it to the Minister before 1 November in that year. This report must provide information on the operation and effectiveness of the Act.

Part 5 —Miscellaneous

Part 5 provides for miscellaneous items such as no contracting out, immunity from tortious liability, Regulations, and Review of the Act.

Clause 53 No contracting out

Section 1) This prevents contracting out of the Act.

Section 2) Ensures that a provision that has no effect because of the previous section does not affect the operation of other provisions of the contract where they do not impact on this Act..

Section 3) A party to a contract cannot waive an entitlement under this Act. However a party does not have to enforce a right if it does not want to.

Clause 54 Immunity from tortious liability

Section 1) Defines who is given immunity.

Section 3) Provides immunity for prescribed appointers, adjudicators or the Registrar.

Section 4) Clarifies the immunity.

Section 5) The State is still liable for the Registrar as its employee.

Clause 55 Regulations

Section 1) This clause empowers the Governor to make regulations for all matters necessary to give effect to the Act.

Section 2) The Regulations may regulate the practice and procedure in adjudications.

Clause 56 Review of Act

Section 1) This clause provides for the Act to be reviewed as soon as possible after the fifth anniversary of its commencement. The Minister is to prepare a Report which must be tabled in Parliament.

Section 2) As soon as is practicable after preparing the report, the Minister must table the Report.

Schedule 1—Implied provisions

Schedule 1 contains provisions that are implied in clauses 13 to 22 in the main Act. These provisions reflect normal practice in construction contracts. They only apply when there is no written contract covering these entitlements. Note that the wording of the provisions has been chosen to fit in with normal usage in construction contracts.

Division 1—Variations

Clause 1 Variations must be agreed

Requires the contractor and the Principal to agree on the nature and extent of the variations and the amount or a means of calculating the amount before the contractor is bound to perform any variation of its obligations under the contract. The contractor may still claim for a variation that has not been agreed.

Division 2—Contractor's entitlement to be paid

Clause 2 Contractor entitled to be paid

Section 1) Sets out a basic entitlement for the contractor to be paid for performing its obligations.

Section 2) The contractor is entitled to be paid for work done, even if it has not completed all the work under the contract.

Division 3—Claims for progress payments

Clause 3 *Entitlement to claim progress payments*

The contractor is entitled to make one or more claims for progress payments.

Clause 4 *When claims for progress payments can be made*

Section 1) The contractor can claim his first progress payment at any time after he has performed any of his obligations.

Section 2) Making a claim for progress payments does not prevent the contractor from making any other claim for money payable to him in connection with this contract.

Division 4—Making claims for payment

Clause 5 *Claim for payment, content*

Section 1) Defines a “payment claim”.

Section 2) Details the contents of a payment claim.

Section 3) Sets out how to calculate the amount due.

Section 4) Allows for aggregated claims.

Division 5—Responding to claims for payment

Clause 6 *Interpretation in Division 5*

Allows both the Principal and the contractor to make claims for payment.

Clause 7 *Responding to a payment claim*

Section 1) This clause sets out the rights of a party when responding to a payment claim.

Section 2) Sets out the contents of a notice of dispute.

Section 3) Outlines the obligations of a party if a claim is rejected or has been disputed.

Section 4) Sets out the entitlement of the Principal to retain a portion of any amount payable to the contractor.

Division 6—Interest on overdue payments

Clause 8 *Interest payable on overdue payments*

Section 1) Establishes a right to interest for late payments.

Section 2) Sets out the time for payment of interest.

Section 3) The rate of interest is equal to that prescribed under section 142 of the *Supreme Court Act 1935*.

Division 7—Ownership of goods

Clause 9 When ownership of goods supplied by contractor passes

This clause sets out when the ownership of goods that are related to construction work pass from the contractor.

Division 8—Duties as to unfixed goods on insolvency

Clause 10 Duties of Principal or landowner etc. as to unfixed goods on insolvency

Section 1) Defines an “insolvent”.

Section 2) Provides that goods supplied to a construction site but not paid for, and which have not become fixtures, remain the property of the contractor in the event the Principal becomes insolvent.

Division 9—Retention money

Clause 11 Retention money to be held on trust

Provides that retention money is held on trust by the Principal so that it can be refunded to the contractor in the event of insolvency of the Principal.