

Construction Contracts Amendment Bill 2016

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Western Australia

LEGISLATIVE ASSEMBLY

(As amended during consideration in detail)

Construction Contracts Amendment Bill 2016

A Bill for

An Act to amend the *Construction Contracts Act 2004*.

The Parliament of Western Australia enacts as follows:

s. 1

1 **1. Short title**

2 This is the *Construction Contracts Amendment Act 2016*.

3 **2. Commencement**

4 This Act comes into operation as follows —

- 5 (a) sections 1 and 2 — on the day on which this Act
6 receives the Royal Assent;
- 7 (b) the rest of the Act other than sections 7 and 20 — on
8 15 December 2016;
- 9 (c) sections 7 and 20 — on 3 April 2017.

10 **3. Act amended**

11 This Act amends the *Construction Contracts Act 2004*.

12 **4. Section 3 amended**

13 (1) In section 3 delete the definition of *payment claim*.

14 (2) In section 3 insert in alphabetical order —

15

16 *business day* means a day other than —

- 17 (a) a Saturday, Sunday or public holiday; or
- 18 (b) a day in the period beginning on 25 December
19 in a year and ending on 7 January in the
20 following year;

21 *payment claim* —

- 22 (a) means a claim made under a construction
23 contract —
- 24 (i) by the contractor to the principal for
25 payment of an amount in relation to the
26 performance by the contractor of its
27 obligations under the contract; or

- 1 (ii) by the principal to the contractor for
- 2 payment of an amount in relation to the
- 3 performance or non-performance by the
- 4 contractor of its obligations under the
- 5 contract;
- 6 and
- 7 (b) includes a payment claim that includes matters
- 8 covered by a previous payment claim;
- 9

10 **5. Section 4 amended**

11 In section 4(3):

- 12 (a) in paragraph (c) delete “constructing any plant for the
- 13 purposes of” and insert:
- 14
- 15 fabricating or assembling items of plant used for
- 16
- 17 (b) delete paragraph (d).

18 **6. Section 6 amended**

19 (1) In section 6:

- 20 (a) delete “For the purposes” and insert:
- 21
- 22 (1) For the purposes
- 23
- 24 (b) before paragraph (a) insert:
- 25
- 26 (aa) a payment claim is rejected or wholly or partly
- 27 disputed; or
- 28

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- 1 (c) in paragraph (a) delete “full, or the claim has been
2 rejected or wholly or partly disputed; or” and insert:
3
4 full; or
5
- 6 (2) At the end of section 6 insert:
7
- 8 (2) Despite subsection (1), a payment dispute does not
9 arise under subsection (1)(aa) or (a) to the extent to
10 which the payment claim includes matters that were the
11 subject of an application for adjudication that has been
12 dismissed or determined under section 31(2).
- 13 (3) If a payment dispute arises under both
14 subsection (1)(aa) and (a) in relation to a payment
15 claim then, for the purposes of this Act, the dispute
16 arises on the earlier of the 2 occurrences.
17

18 **7. Section 10 amended**

19 In section 10 delete “50 days” (each occurrence) and insert:
20
21 42 days
22

23 Note: The heading to amended section 10 is to read:
24 **Prohibited: provisions requiring payment to be made after**
25 **42 days**

26 **8. Section 26 amended**

27 In section 26(1) delete “28 days” and insert:
28
29 90 business days
30

1 **9. Section 27 amended**

2 In section 27(1) delete “14 days” and insert:

3

4 10 business days

5

6 **10. Section 28 amended**

7 In section 28(1) delete “5 days” and insert:

8

9 5 business days

10

11 **11. Section 29 amended**

12 In section 29(2)(b) delete “5 days” and insert:

13

14 5 business days

15

16 **12. Section 31 amended**

17 (1) In section 31(1) in the definition of *prescribed time* delete
18 “14 days” (each occurrence) and insert:

19

20 10 business days

21

22 (2) In section 31(2)(a):

23 (a) after subparagraph (i) insert:

24

25 (ia) the applicant gives written notice, to the
26 adjudicator and each other party to the
27 dispute, that they wish to withdraw the
28 application; or

29

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- 1 (b) in subparagraph (ii) delete “26; or” and insert:
2
3 26(1) and (2)(b) and (c); or
4
5 (c) after subparagraph (ii) insert:
6
7 (ii) the application has not been prepared in
8 accordance with section 26(2)(a), unless
9 the adjudicator is satisfied that the
10 application complies with
11 section 26(2)(a) sufficiently for the
12 adjudicator to commence adjudicating
13 the dispute; or
14
15 (3) After section 31(2) insert:
16
17 (2A) Without limiting subsection (2)(b), an appointed
18 adjudicator may, with the consent of the parties, make
19 a determination under subsection (2)(b) in terms agreed
20 to by the parties.
21
22 **13. Section 32 amended**
23 Delete section 32(3)(c) and insert:
24
25 (c) adjudicate a payment dispute simultaneously
26 with one or more other payment disputes if
27 satisfied that doing so will not adversely affect
28 the adjudicator’s ability to adjudicate the
29 disputes in accordance with section 30.
30

1 **14. Section 37 amended**

2 In section 37(2)(b) delete “28 days” and insert:

3

4 20 business days

5

6 **15. Section 39 amended**

7 Delete section 39(4) and insert:

8

9 (4) Interest under subsection (2) ceases to accrue when a
10 copy of the determination is filed in a court under
11 section 43.

12

13 **16. Section 42 amended**

14 In section 42(2)(d) and (3) delete “3 days” and insert:

15

16 3 business days

17

18 **17. Section 43 amended**

19 Delete section 43(2) and (3) and insert:

20

21 (2) A party entitled to be paid an amount under a
22 determination may enforce the determination by filing
23 in a court of competent jurisdiction —

24 (a) a copy of the determination that the Building
25 Commissioner has certified to be a true copy;
26 and

27 (b) an affidavit as to the amount not paid under the
28 determination.

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1 (3) On filing under subsection (2), the determination is
2 taken to be an order of the court, and may be enforced
3 accordingly.
4

5 Note: The heading to amended section 43 is to read:

6 **Determinations may be enforced as orders of court**

7 **18. Section 46 amended**

8 In section 46(2) delete “14 days” and insert:

9
10 10 business days
11

12 **19. Part 6 inserted**

13 After section 56 insert:
14

15 **Part 6 — Transitional provisions**

16 **Division 1 — Provisions relating to the *Construction***
17 ***Contracts Amendment Act 2016***

18 **57. Resubmitted claims: previous adjudications**

19 The reference in section 6(2) to an adjudication that has
20 been dismissed or determined under section 31(2)
21 includes a reference to an adjudication that was
22 dismissed or determined under section 31(2) before
23 15 December 2016.

24 **58. Extension of periods of time**

25 (1) This section applies to a period of time, specified in
26 section 26(1), 28(1) or 29(2)(b), that expired before
27 15 December 2016.

1 (2) If a thing that could be done, or was required to be
2 done, within the period was not done, and the period,
3 as extended by the amendment in the *Construction*
4 *Contracts Amendment Act 2016* section 8, 10 or 11
5 (whichever is relevant), expires on or after
6 15 December 2016, the thing may be done within the
7 period as extended.

8 **59. Effect of notices under s. 42(1) after commencement**
9 **and before 1 January 2017**

10 A notice purportedly given for the purposes of
11 section 42(1) on or after 15 December 2016 and before
12 1 January 2017, but which was not given in compliance
13 with section 42(2)(d), is taken to be as valid and as
14 effective as it would have been if section 42(2)(d) had
15 not been amended by the *Construction Contracts*
16 *Amendment Act 2016* section 16.
17

18 **20. Section 60 inserted**

19 After section 59 insert:
20

21 **60. Payment periods: contracts entered into before**
22 **3 April 2017**

23 Section 10 applies to a construction contract entered
24 into before 3 April 2017 as if the *Construction*
25 *Contracts Amendment Act 2016* section 7 had not come
26 into operation.
27

28