



Western Australia

Construction Contracts Amendment Act 2016

As at 29 Nov 2016

No. 55 of 2016

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Construction Contracts Amendment Act 2016

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Western Australia

Construction Contracts Amendment Act 2016

No. 55 of 2016

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

[Assented to 29 November 2016]

The Parliament of Western Australia enacts as follows:

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1. Short title

This is the *Construction Contracts Amendment Act 2016*.

2. Commencement

This Act comes into operation as follows —

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

3. Act amended

This Act amends the *Construction Contracts Act 2004*.

4. Section 3 amended

- (1) In section 3 delete the definition of *payment claim*.
- (2) In section 3 insert in alphabetical order —

business day means a day other than —

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

payment claim —

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

(ii) by the principal to the contractor for payment of an amount in relation to the performance or non-performance by the contractor of its obligations under the contract;

and

(b) includes a payment claim that includes matters covered by a previous payment claim;

5. Section 4 amended

In section 4(3):

(a) in paragraph (c) delete “constructing any plant for the purposes of” and insert:

fabricating or assembling items of plant used for

(b) delete paragraph (d).

6. Section 6 amended

(1) In section 6:

(a) delete “For the purposes” and insert:

(1) For the purposes

(b) before paragraph (a) insert:

(aa) a payment claim is rejected or wholly or partly disputed; or

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- (c) in paragraph (a) delete “full, or the claim has been rejected or wholly or partly disputed; or” and insert:

full; or

- (2) At the end of section 6 insert:

- (2) Despite subsection (1), a payment dispute does not arise under subsection (1)(aa) or (a) to the extent to which the payment claim includes matters that were the subject of an application for adjudication that has been dismissed or determined under section 31(2).
- (3) If a payment dispute arises under both subsection (1)(aa) and (a) in relation to a payment claim then, for the purposes of this Act, the dispute arises on the earlier of the 2 occurrences.

7. Section 10 amended

In section 10 delete “50 days” (each occurrence) and insert:

42 days

Note: The heading to amended section 10 is to read:

Prohibited: provisions requiring payment to be made after 42 days

8. Section 26 amended

In section 26(1) delete “28 days” and insert:

90 business days

9. Section 27 amended

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

10 business days

10. Section 28 amended

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

5 business days

11. Section 29 amended

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

5 business days

12. Section 31 amended

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

10 business days

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

(a) after subparagraph (i) insert:

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

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(b) in subparagraph (ii) delete “26; or” and insert:

26(1) and (2)(b) and (c); or

(c) after subparagraph (ii) insert:

(ia) the application has not been prepared in accordance with section 26(2)(a), unless the adjudicator is satisfied that the application complies with section 26(2)(a) sufficiently for the adjudicator to commence adjudicating the dispute; or

(3) After section 31(2) insert:

(2A) Without limiting subsection (2)(b), an appointed adjudicator may, with the consent of the parties, make a determination under subsection (2)(b) in terms agreed to by the parties.

13. Section 32 amended

Delete section 32(3)(c) and insert:

(c) adjudicate a payment dispute simultaneously with one or more other payment disputes if satisfied that doing so will not adversely affect the adjudicator’s ability to adjudicate the disputes in accordance with section 30.

14. Section 37 amended

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

20 business days

15. Section 39 amended

Delete section 39(4) and insert:

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

16. Section 42 amended

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

3 business days

17. Section 43 amended

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

- (2) A party entitled to be paid an amount under a determination may enforce the determination by filing in a court of competent jurisdiction —
- (a) a copy of the determination that the Building Commissioner has certified to be a true copy; and
 - (b) an affidavit as to the amount not paid under the determination.

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

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

Determinations may be enforced as orders of court

18. Section 46 amended

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

10 business days

19. Part 6 inserted

After section 56 insert:

Part 6 — Transitional provisions

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

57. Resubmitted claims: previous adjudications

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

58. Extension of periods of time

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

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

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

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

20. Section 60 inserted

After section 59 insert:

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

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

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