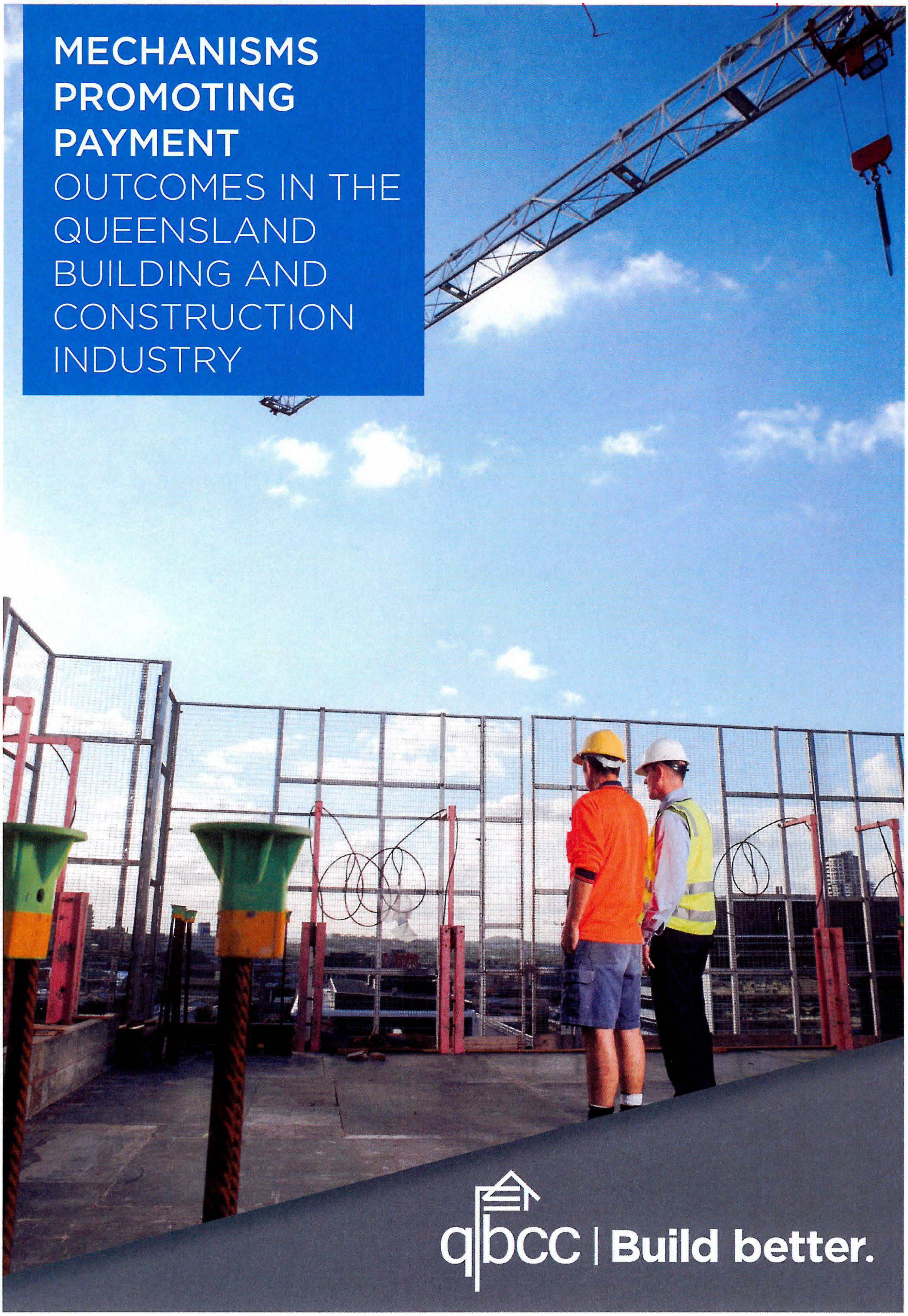
MECHANISMS PROMOTING PAYMENT OUTCOMES IN THE QUEENSLAND BUILDING AND CONSTRUCTION INDUSTRY



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Queensland Building and Construction Commission

The Queensland Building and Construction Commission (QBCC) was established on 1 December 2013 by the *Queensland Building and Construction Commission Act 1991* (QBCC Act) to regulate building work carried out in Queensland.

The QBCC carries out regulatory functions under the QBCC Act, the *Plumbing and Drainage Act 2002* (PD Act) and the *Building and Construction Industry Payments Act 2004* (BCIP Act).

Responsibility for the policy and legislative development relating to the Queensland building and construction industry rests with the Department of Housing and Public Works.

MECHANISMS PROMOTING PAYMENT OUTCOMES

There are a five of key regulatory mechanisms that operate to promote better payment outcomes within the Queensland building and Construction Industry. These mechanisms cannot prevent the insolvency of businesses building and construction industry but aim to facilitate viability of businesses in the industry, provide a minimum level of financial requirements to assist business manage their financial responsibilities and promote better payment outcomes for industry stakeholders.

Key mechanisms are the:

- licensing framework - minimum financial requirements;
- licensing framework - exclusion provisions;
- ability to make a charge under the *Subcontractor's Charges Act 1975*;
- contractual protections provided by Part 4A of the QBCC Act; and
- ability to make payment claims and seek rapid adjudication of payment disputes under the *Building and Construction Industry Payments Act 2004*.

1. LICENSING: MINIMUM FINANCIAL REQUIREMENTS POLICY

The Minimum Financial Requirements (MFR) policy commenced in October 2014 following a review of the financial and reporting requirements for licensed contractors. The new MRF policy replaced the former Financial Requirements for Licensing (FRL) policy.

The QBCC is now able to move more quickly and decisively in dealing with issues of non-payment under the MFR policy with licensees required to pay all undisputed debts within industry or agreed trading terms or risk licence suspension or cancellation.

Under the MFR policy, the QBCC undertook 286 non-payment of debts investigations, resulting in the suspension of 75 licences and the cancellation of 54 licences. Since the introduction of the MFR policy on 1 October 2014, the QBCC has recovered $3,902,736 for creditors.

FINANCIAL INVESTIGATIONS - ACTIVITY UNDER MFR POLICY 1 OCTOBER 2014 - 30 JUNE 2015

Financial audits	51
Non-payment of debts investigations	286
Suspension - non-payment of debt	75
Suspension - non-compliance with audit	3
Suspension - not meeting MFR	9
Cancellation - non-payment of debt	54
Cancellation - non-compliance with audit	1
Cancellation - not meeting MFR	8

$3,902,736 in unpaid debts recovered for subcontractors and suppliers

2. LICENSING: EXCLUSIONS

The QBCC Act has exclusion provisions which operate to exclude individuals or companies from holding a contractor's or nominee supervisor's licence if they have had a recent insolvency event or have a director, secretary or influential person who is an excluded individual. The exclusion provisions provides for an initial exclusion of 3 years with permanent exclusions applying where a person is excluded for two separate events. The purpose of exclusions is to minimise the risk of harm to consumers, subcontractors, employees, suppliers and other stakeholders by preventing those responsible for poor financial management from running a business in the building and construction industry. Given the significant, ramifications, an individual's initial period for exclusion is for a term consistent with relevant bankruptcy legislation, with permanent exclusion applying to individuals who have for two separate events. The exclusion and permanent exclusions, and the fact that they apply to licensees, directors, secretary and other influential persons operate to reduce the risk of phoenixing in Queensland's building and construction industry.

Licence Suspensions and Cancellations

The QBCC assesses a licensee's entitlement to hold a licence and imposes exclusions, disqualifications and bans. Last financial year there were 79 companies and 162 individuals excluded from holding a QBCC contractor or nominee supervisor licence for five years due to their involvement in a financial failure. Permanent exclusion was imposed on 44 individuals for their involvement in a second financial failure. There were 13 contractor licences immediately suspended during 2014-22015 due to insolvent trading or other serious risk.

As at 28 August 2015, a total of 1,921 individuals and 534 companies are currently subject to an exclusion period under the QBCC Act. In addition, 674 individuals (comprising 461 former licensees and 213 individuals who have never held a licence) have been permanently excluded from holding a contractor's licence or nominee supervisor's licence since the exclusion provisions commenced in 2007.

3. CHARGES UNDER THE SUBCONTRACTORS CHARGES ACT 1974

The *Subcontractors' Charges Act 1974* enables a subcontractor to secure payment where there are payment issues between the contractor and subcontractor. The Act allows subcontractors to make a charge requiring the Principal in the contractual chain to hold money payable, or to become payable, to the head contractor pending resolution of the payment dispute. The Act enables payment to be made directly from the Principal to the subcontractor promoting security of payment for the subcontractor. The Subcontractors' Charges Act has broad application to all contracts or subcontracts for construction work, and is not limited to building work regulated under the QBCC Act.

4. CONTRACTUAL PROTECTIONS - PART 4A QBCC ACT

Part 4A of the QBCC act applies to all contracts and arrangements for the carrying out of building work in Queensland other than domestic building contracts or contracts exclusively for construction work that is not building work.

Part 4A contains a range of requirements designed to reduce the risk of dispute and to encourage prompt payments. In particular, there are set timeframes for the payment of progress payments, minimum rates for penalty interest accruing for late payment, set retention amounts and securities to prevent misuse. Failure to comply with the requirements of Part4A vary and can include the accrual of penalty interest, demerit points or enforcement actions through prosecution or the issue of infringement notices.

5. BUILDING AND CONSTRUCTION INDUSTRY PAYMENTS ACT 2004

The *Building and Construction Industry Payments Act 2004* (BCIP Act) provides persons supplying goods and services under a construction contract (other than a contract for domestic building work) with an entitlement to stage payments.

The BCIP Act also establishes a statutory based system of rapid adjudication and the interim resolution of payment disputes involving building and construction work contracts. Adjudication provides a quick and cost effective option to resolve payment disputes, promoting cash-flow without impacting on the substantive contractual rights of either party.

Amendments to BCIP Act

Following extensive consultation the Building and Construction Industry Payments Amendment Bill 2014 was introduced into Parliament on 21 May 2014. Following a parliamentary committee process, the Bill was passed on 11 September 2014. The amended BCIP Act commenced on 15 December 2014 and included three main areas of reform:

- Appointment of adjudicators and the adjudication process: The amended BCIP Act establishes a single adjudication registry within the QBCC to monitor performance and appoint adjudicators based on skills, knowledge and experience.
- Amendment of timeframes for claimants and respondents: The amended BCIP Act introduces a dual-model regime involving standard and complex claim categories. Complex payment claims are claims for more than $750,000 (exclusive of GST). Standard payment claims are claims for $750,000 or less. Related amendments include additional timeframes for respondents to provide a payment schedule and an adjudication response and the exclusion of 22 December to 10 January from the definition of business days to reflect industry shut down.
- Provision of additional information in adjudication response: The amended BCIP Act also allows the respondent for complex claims to include in its adjudication response all relevant reasons for withholding payment, whether or not these matters were raised in the payment schedule. Claimants have the ability to reply to any new reasons raised in an adjudication response.

The BCIP Act reforms implemented in December 2014 assist to reduce regulatory burden and costs associated with adjudication and provide a fairer and more transparent process for the appointment of adjudicators.

Lodgement and Allocation of Adjudication Applications

Adjudication applications can be lodged at the Registry, over the counter at any QBCC office, by mail, by fax and online. As at 30 June 2015, 422 of the 712 applications lodged for the year were lodged at the QBCC. Of these, 402 applications represented standard claims and 20 applications were complex claims. The remaining 290 claims were lodged prior to the delineation between the two types of applications. The majority of applications were lodged online.

Since the BCIP Act amendments commenced on 15 December 2014, the Registry has processed and assessed adjudication applications as per the Adjudicator Grading and Referral Policy 2015 to determine a suitable adjudicator to refer the application to. Once referred to an adjudicator, the adjudicator is required to complete forms relating to conflict of interest, rate agreement, delivery of application, and if applicable, agent nomination, before the Registry will confirm the referral.

Adjudication Decisions

The Registry, through general conditions of registration, relies upon the cooperation of adjudicators in providing it with critical information so as to enable the monitoring of adjudicators and publishing of key statistics and all adjudication decisions.

When an adjudicator makes a decision on an application, the adjudicator is required to notify the Registry. Following the adjudicator's release of the decision to the claimant and respondent, the adjudicator is required to notify the Registry and to provide the Registry with a copy of the decision. The Registry then publishes the decision on the QBCC website.

The average time for a decision to be made on a standard claim, from lodgement of application to a decision being made, is 17.71 days.

The average time for a decision on a complex claim, from lodgement of application to a decision being made, is 32.8 days.

CLAIMED STATISTICS

Total value of claims	$2,085,015,904
Maximum claim	$360,995,183
Minimum claim	$138
Average claim	$2,928,393

REGISTRY OUTCOMES

Adjudications lodged	712
Decisions released	424

DECISION STATISTICS

Total value of claims - decision released	$1,864,193,626
Maximum claim value - decision released	$360,995,183
Minimum claim value - decision released	$480
Average claim value - decision released	$4,396,683
Total value of adjudicated amount - decision released	$766,290,515

MECHANISMS TO PROMOTE PAYMENT OUTCOMES IN THE BUILDING AND CONSTRUCTION INDUSTRY

SUBCONTRACTORS' CHARGES ACT 1974

- Assists subcontractors to secure payment where there are payment issues between the contractor and subcontractor
- Subcontractor can make a charge requiring the Principal in the contractual chain to hold all money payable or to become payable to the head contractor pending resolution of the payment dispute.
- Allows payment from principal directly to the subcontractor.
- Includes contracts or subcontracts for construction work - not limited to building work regulated by the QBCC.

BUILDING AND CONSTRUCTION INDUSTRY PAYMENTS ACT 2004 (BCIPA)

- Provides a right to stage payments and for the rapid adjudication of payment disputes
- Assists contractors and suppliers of goods and services under a construction contract (not domestic building work or contracts with a homeowner)
- Short strict timeframes ensure a speedy process
- Does not impact on the contractual rights of parties
- Cost effective option for the resolution of payment disputes
- Broad application - not limited to contracts for building work and no requirement for applicants or respondents to be licensed provided the work is not regulated building work

QUEENSLAND BUILDING AND CONSTRUCTION COMMISSION ACT 1991 - PART 4A - CONTRACTUAL PROTECTIONS

- Applies to contracts and subcontracts for building work (other than domestic building contracts)
- Requires contracts and subcontracts, and other prescribed matters, to be in writing to reduce the risk of dispute
- Encourages prompt payments by requiring progress payments to be made within a set time from the issue of a payment claim (15 days for a building contract or 25 days for a subcontract)
- Provides for penalty interest to accrue on late progress payments at a minimum rate set
- Sets limits for retention amounts and securities to prevent misuse
- Consequences for failing to meet requirements include the accrual of penalty interest, allocation of demerit points, issue of infringement notices or risk of prosecution

QUEENSLAND BUILDING AND CONSTRUCTION COMMISSION ACT 1991 – MINIMUM FINANCIAL REQUIREMENTS POLICY

- Requires licensed contractors to pay their debts as they fall due
- Any person owed money from a licensed contractor may lodge a complaint
- Enables the QBCC to take action against an licensee's licence if payment is not made and not in genuine dispute
- Encourages licensees to manage their accounts to ensure payments are made on time and action is taken relation to any disputed amounts
- Failure to pay or act may result in licence suspension or cancellation