

Building and Construction Industry Payments Amendment Act 2014 (Amendment Act)

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1. Industry Update

The Amendment Act will establish a single Adjudication Registry within the Queensland Building and Construction Commission (QBCC) to refer adjudication applications to adjudicators. The amendments mean that the current authorised nominating authorities (ANAs) will no longer undertake this function.

The Amendment Act will not commence until proclaimed. It is anticipated that this will occur before 22 December 2014.

2. Proposed Adjudication Application Fees

An adjudication application must be accompanied by the fee prescribed by regulation. The fee will be payable in accordance with section 21(3)(e) of the Act. It is proposed that this fee will operate on a sliding scale based on the payment claim amount. The scale of fees is listed below.

The majority of payment claims are expected to be not more than \$50,000. In the last financial year, 430 of the 670 adjudication applications received related to payment claims not more than \$50,000.

The adjudication application fee must be paid, or the payment details provided in the case of cheques, post, or fax applications, on lodgement of the application at the QBCC. Lodgement will be dated the day the application is received with payment or payment details provided, however an application will not be taken to be validly lodged until payment is received.

It is expected that the registry will accept payment by credit card via an online payment gateway for applications made online. The Registry will also accept payment by cheque or credit card for hard copy applications provided by fax, mail or over the counter at any of the nine QBCC offices around the state.

Proposed Scale of Fees

Claimed Amount	Section 21(3)(e) Application Fee
If the claimed amount is \$10,000 or less	\$50
If the claimed amount is more than \$10,000 but not more than \$50,000	\$150
If the claimed amount is more than \$50,000 but not more than \$100,000	\$250
If the claimed amount is more than \$100,000 but not more than \$250,000	\$350
If the claimed amount is more than \$250,000 but not more than \$500,000	\$450
If the claimed amount is more than \$500,000 but not more than \$750,000	\$550
If the claimed amount is more than \$750,000 but not more than \$1,000,000	\$650
If the claimed amount is more than \$1,000,000	0.07% of the claimed amount but not more than \$5000

3. Proposed Certificate Fee

(a) Payment of Certificate Fee

Upon commencement of the Amendment Act, section 30(1)(a) of the BCIPA will provide that, if the respondent fails to pay the whole or any part of the adjudicated amount to the claimant, under section 29 the claimant may ask the Adjudication Registrar to provide an adjudication certificate. An adjudication certificate application must be accompanied by the fee prescribed by regulation.

This fee will be payable direct to the QBCC in the same manner as the application fee.

The Certificate fee will be charged at a rate dependant on the claimed amount. This is to reflect the capped adjudication fee structure that the registry intends to implement for matters where the payment claim is for \$25,000 or less.

Claimed Amount	Certificate Fee
If the claimed amount is \$25,000 or less	\$50
If the claimed amount is more than \$25,000	\$100

4. Proposed Capped Adjudicator Fees

(a) Claimed Amount up to \$25,000

For applications with a payment claim value up to \$25,000 the Registry intends to refer such matters to adjudicators on the basis that they agree their fees be capped at an amount dependant on the claimed value. This will provide certainty to the parties in respect of fees for smaller value claims and will also ensure that the cost of adjudication remains viable for small sub-contractors.

The registry considers that the proposed fees are reasonable having regard for the work done and will reasonably cover the costs of an adjudicator making a decision.

It is further intended that upon receiving a referral from the Registry with the suggested capped fee, the adjudicator will have the option of deciding whether they are willing to accept referral of the application at the capped amount offered or decline. If an adjudicator does not think the capped amount offered is reasonable, the adjudicator will have the option of proposing an alternate capped amount to the registrar. The registrar will have regard to the counter offer proposed by the adjudicator and make a determination whether such a fee is warranted given the assessment of the application in accordance with the QBC Board Policy. If the registrar considers the counter offer reasonable, he will refer the application. If the registrar does not consider the counter offer reasonable, the registrar will offer the adjudication to another suitable adjudicator.

While it is proposed that the rates will be capped at an amount, the Registry will be expecting that adjudicators will only charge what they feel is reasonable. This will give adjudicators the opportunity to charge a smaller fee than the capped amount.

(b) Proposed capped adjudicator fees to be agreed on referral of application

Claimed Amount	Proposed Adjudicator Capped Fee
If claimed amount is \$5,000 or less	\$610
If claimed amount is more than \$5,000 but not more than \$15,000	\$900
If claimed amount is more than \$15,000 but not more than \$20,000	\$1800
If claimed amount is more than \$20,000 but not more than \$25,000	\$2000

5. Proposed Capped Hourly Rate Adjudicator Fees

(a) Claimed amount over \$25,000

For applications where the claimed amount is above \$25,000, it is proposed that adjudication applications will be decided at a capped hourly rate. A suitable adjudicator will be selected in accordance with the QBC Board Adjudicator Grading and Selection Criteria for Nomination of Adjudicators Policy. The adjudicator will be notified of this selection and a capped hourly rate to decide the application will be offered. The rates proposed will be inclusive of disbursements and GST.

(b) Determination of Hourly Rates

The hourly rates the registrar is proposing to offer have been determined after consideration of historical data as well as by way of communication with adjudicators about proposed fees. The registrar considers that after consultation with adjudicators regarding their proposed fees, the hourly rates proposed are reasonable and will reasonably cover the costs of an adjudicator making a decision.

(c) Grades of Adjudicator

The hourly rates the registrar is proposing to offer will reflect the three grades of adjudicator: Adjudicator, Advanced Adjudicator and Senior Adjudicator. After considering the adjudication application and determining what adjudicator is suitable, the rate offered will reflect that assessment.

(d) Offer of Hourly Rate

The adjudicator will have the option to decide if they are willing to accept the application at the hourly rate offered, or decline. It is proposed that if an adjudicator does not think the hourly rate offered is reasonable, they may propose another rate to the registrar. The registrar will have regard to the counter offer proposed by the adjudicator and make a determination whether such a fee is warranted given the assessment of the application in accordance with the QBC Board Policy. It is intended that if the registrar considers the counter offer reasonable, he will refer the application, if not, another suitable adjudicator may be offered the application.

(e) Proposed Hourly Rates to be offered by Adjudication Registry

Adjudicator Level	Hourly Rate
Adjudicator	\$260
Advanced Adjudicator	\$325
Senior Adjudicator	\$385