



## An example of how Queensland Security of Payment Legislation differs to NSW

**Case Note: CPB Contractors Pty Ltd v MSS Projects (NSW) Pty Ltd t/as MSS Steel [2025] QSC 239**

### Executive Summary

This case is a reminder that security of payment legislation operates differently in Queensland vs New South Wales.

### Introduction

In this case, the Queensland Supreme Court held that the adjudicator's finding that there was no valid payment schedule was a jurisdictional error that rendered an adjudication determination void. The primary question was whether the payment schedule issued by the joint venture was a valid payment schedule.

### Facts

CPB Contractors Pty Ltd, alongside other parties, formed an unincorporated joint venture (the **Plaintiff**). The Plaintiff entered into a subcontract for steel supply with MSS Projects (NSW) Pty Ltd (the **Respondent**). The Respondent served a payment claim seeking payment for \$2,557,707.59 under the Building Industry Fairness (Security of Payment) Act 2017 (QLD) (the **BIF Act**). The Plaintiff proposed by way of a payment schedule to

pay significantly less at \$227,925.58. The Respondent, dissatisfied with the scheduled amount, sought adjudication of the dispute. The adjudicator determined that the payment schedule did not comply with s 69(c) of the BIF Act, rendering the plaintiff liable to pay the full payment claim of \$2,557,707.59. Subsequently, the Plaintiff sought judicial review of the adjudication decision, arguing that the adjudicator had fallen into jurisdictional error as the payment schedule was valid.

## Issues

The Court was asked to determine the following questions:

1. Was the Plaintiff's payment schedule valid under s 69(c) of the BIF Act?
2. If so, was the adjudicator's decision void for jurisdictional error?

## Supreme Court Decision

The Court held that the Plaintiff's payment schedule was valid under the BIF Act. Consequently, the adjudicator's determination was void for jurisdiction error.

## Legal Reasoning

The Court held that the existence of a valid payment schedule was a jurisdictional fact. Sections 76, 82 and 88 of the BIF Act provide that if no valid payment schedule exists, the respondent is barred from providing an adjudication response, and the adjudicator's role is limited to determining the claim as though the full amount is payable.

The Court also held that the payment schedule complied with s 69(c) of the BIF Act as the reasons provided sufficient particularisation for the Respondent to understand the work being claimed. Given that a valid payment schedule existed, the adjudication determination was void as the adjudicator's contrary conclusion constituted an error in the determination of a jurisdictional fact.

Conversely, the NSW approach has generally characterised an adjudicator's assessment of whether a response amounts to a valid payment schedule as a matter within jurisdiction, rather than as a jurisdictional fact. In *Martinus Rail Pty Ltd v Qube RE Services (No 2) Pty Ltd* [2025] NSWCA 49, it was held that the Building and Construction Industry Security of Payment Act

1999 (NSW) (**SOPA**) allows the adjudicator to determine whether a document meets the statutory requirements. Consequently, in Queensland, the validity of a payment schedule is a jurisdictional fact that can be reviewed by the Court, whereas in NSW, the same error will usually be immune from judicial intervention.

## Key Takeaways

1. Queensland allows judicial review of payment schedule validity, while NSW adopts a narrower approach, arguably insulating such errors from challenge.
2. In Queensland, a payment schedule must meet the s 69 BIF Act requirements, and, once that threshold is met, it will be valid.

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