

# Security of Payment Amendment Regulation



[fairtrading.nsw.gov.au/consultation-tool/security-of-payment-amendment-regulation](http://fairtrading.nsw.gov.au/consultation-tool/security-of-payment-amendment-regulation)

27-05-2019

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## • The Issue

**Consultation period:** 27/05/2019 12:00 am to 21/06/2019 5:00 pm

### What is this about?

The NSW Government is continuing to progress reforms to the building and construction industry to provide greater financial security and prompter payments for subcontractors. As a result, we are seeking feedback on proposed amendments to the Building and Construction Industry Security of Payment Regulation 2008 (the Regulation).

Amending the Regulation is required to facilitate commencement of the *Building and Construction Industry Security of Payment Amendment Act 2018* (the Amendment Act).

### What has happened so far?

The Amendment Act was assented to on 28 November 2018. It contains reforms to the *Building and Construction Industry Security of Payment Act 1999* (the Act) to promote cash flow in the supply chain, increase transparency of payments and provide greater protections to subcontractors. The Amendment Act has not commenced.

On 20 December 2018, Fair Trading publicly released a paper seeking feedback on a proposed staggered approach for commencing the reforms in the Amendment Act. Different commencement dates were specified depending on:

- whether the reforms have an impact on industry practices,
- the need for subordinate legislation or administrative changes, and
- the need for allowing industry a transitional period to prepare for implementation.

The paper also sought initial feedback on proposed amendments to the Regulation.

The feedback received suggested it would be preferable to have a single commencement date for all of the reforms and that the date should be set without undue delay. It was also recognised that the industry would need an appropriate period of time to prepare for commencement.

## What are the changes?

The Building and Construction Industry Security of Payment Amendment Regulation 2019 (the amending Regulation) contains only those reforms which are critical to facilitating commencement of the Amendment Act. These reforms include:

- exempting owner occupier construction contracts from the operation of the Act,
- specifying the offences with respect to retention money trust accounts as executive liability offences, and
- specifying the offences under the Act and Regulation for which penalty notices may be issued and the amount of the penalty payable.

## Next steps

Fair Trading is seeking feedback on the amending Regulation from 27 May 2019 to 21 June 2019.

All submissions received will be acknowledged. Once the consultation period has closed, feedback will be analysed.

It is anticipated that the amending Regulation will be finalised and published mid-year. It is proposed that the Amendment Act and amending Regulation will commence three months after the amending Regulation is published.

Fair Trading is currently undertaking targeted stakeholder consultation to inform the development of the Code of Practice for authorised nominating authorities. It is anticipated that a draft Code of Practice will be released for consultation mid-year allowing it to be ready for commencement of the Amendment Act and amending Regulation.

Fair Trading will continue to develop further amendments to the Regulation which were previously subject to stakeholder consultation but are not critical to facilitating commencement of the Amendment Act. These reforms were subject to mixed stakeholder views and are therefore being separately progressed to not unreasonably delay commencement. In the meantime, Fair Trading will continue to consult with stakeholders on these amendments with a view to publicly releasing a draft amending Regulation later this year.

More information about the progress of the review will be made available on this website.

## Have your say

Stakeholders and interested parties are invited to review the amending Regulation and provide comments.

All submissions will be publicly available. If you do not want your personal details or any part of your submission published, please let us know in your submission together with reasons.

- **Milestones**

- **August 2018:** exposure draft Bill with accompanying explanatory statement was released, and a consultation paper on a proposal for a statutory trust for public consultation
- **September 2018:** Consultation ended
- **21 November 2018:** The Building and Construction Industry Security of Payment Amendment Bill 2018 passed Parliament
- **28 November 2018:** The Building and Construction Industry Security of Payment Amendment Act 2018 assented
- **December 2018:** Options paper released for consultation on the implementation of the Security of Payment Reforms
- **May 2019:** Draft Regulation released for public consultation
- **June 2019:** Consultation ends

## Documents

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[Draft Security of Payment Amendment Regulation 2019 \(PDF File, 151.3 KB\)](#)

## Have your say

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### Open

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Days remaining for your submission: 21 (of 26)

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Started:

27/05/2019 12:00 am

Submissions close:

21/06/2019 5:00 pm

**We invite you to tell us your views by using our online form. You don't have to answer every question but your submission needs to address the specific issues raised in the documents and where possible provide evidence to support your feedback (eg are there any reports or papers you can refer to?).**

[Close the online form](#)

Required fields are marked with an asterisk \*

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If you can't use our online form, you can email your submission to [securityofpaymentpolicy@finance.nsw.gov.au](mailto:securityofpaymentpolicy@finance.nsw.gov.au). We will publish your submission if not told otherwise.

If you can't provide your submission electronically, you can send your submission by mail to:

Security of Payment Amendment Regulation consultation  
Better Regulation  
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LISAROW NSW 2252