



29 January 2019

Security of Payment Reforms: Implementation
Regulatory Policy, BRD
Department of Finance, services and Innovation

By e-mail: securityofpayment2018@finance.nsw.au

**Re: Security of Payment Reforms - Implementation
Options Paper - December 2018**

The Master Builders Association of New South Wales (MBANSW) wishes to submit the following comments, referring to the question numbers in the Options Paper.

1. MBANSW considers that a commencement date in February 2019 would not allow sufficient time for industry to provide proper notice and education.
2. MBANSW is of the view that the penalties in section 13 should be delayed. See answer to question 20 below.
3. No in relation to due dates.
4. In relation to the due dates reducing the maximum payment period for payments from a head contractor to a subcontractor from 30 to 20 business days, MBANSW is of the view that the same should be delayed until the end of 2019. This is to allow further time for works to be completed under head contracts which have been signed prior to these amendments and on the basis of payments to subcontractors under the previous criteria of 30 business days. Whilst the amendment would apply to subcontracts entered into after the commencement date they would affect head contracts entered into prior to the commencement date. Alternatively, there should be an exemption for subcontracts under head contracts signed before the commencement date.
5. MBANSW considers the "owner-occupier" exemption to be a critical issue for small business builders in the residential sector and the wording of the proposed Regulation is critical and accordingly should be attended to as soon as possible.
7. Yes, subject to the issue referred to in question 4.
8. No.
9. Yes, again referring to question 4 in relation to head contracts.

10. Yes.

11. No. The reduction to \$10 million will affect builders that may not have the capacity or cash flow to comply with the retention money trust obligations. The legislation does not affect principals and as such the builder is not receiving 100% of its claim however it is required to pay out 100% to the subcontractor and the retention trust.

12. MBANSW is not supportive of a reduction of the threshold unless there is evidence that the measure does reduce insolvencies or hardship, none of which has been provided to date. Further, more analysis of the effect on small builders is required to ensure the reduction of the threshold does not in fact cause insolvency difficulties for those small builders.

13. MBANSW supports extending the retention money trust obligations to the entire contracting chain, as this is where the majority of insolvencies occur, however has reservations as to compliance by these smaller subcontractors.

Each party in the contracting chain should be responsible for any compliance and it should not be the responsibility of the contractor above that responsible party.

14. Yes. The annual reporting is only done by those complying with the legislative requirements and does nothing to ensure the implementation, which goes unnoticed.

15. The proposed change should not commence until there is satisfactory evidence of its effectiveness and the ability of that portion of the industry to comply.

16. Inspection could be abused by those in the industry wishing to obtain information on head contractor financials. Careful consideration will be needed as to what may be inspected so the subcontractor cannot have access to financials beyond the actual retention held for them. This would mean a subcontractor should not be privy to banking records but instead only the ledger pertaining to their particular retention should the money be held for all retentions in a single account.

Any inspection regime needs to be carefully thought out, specified and discussed with industry prior to proper consideration.

17. Yes.

19. Yes.

20. No for penalties in relation to supporting statements. These statements are not well-known in the industry, especially in relation to small builders. This is even despite concerted efforts by MBANSW in bringing this to the attention of its members. Further, no evidence has ever been shown that the statements are effective in relation to insolvencies. In fact, the industry considers them to be confusing to fill out and worthless in providing any assistance to ensure payment.

Yours faithfully

A handwritten signature in blue ink, appearing to read 'R Collings', is positioned above the printed name.

Robert Collings
General Counsel
Master Builders Association of New South Wales