



New South Wales

# Building and Construction Industry Security of Payment Amendment Regulation 2019

under the

Building and Construction Industry Security of Payment Act 1999

*[The following enacting formula will be included if the Regulation is made:]*

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Building and Construction Industry Security of Payment Act 1999*.

Minister for Better Regulation and Innovation

## Explanatory note

The objects of this Regulation are as follows:

- (a) to exempt owner occupier construction contracts from the operation of the *Building and Construction Industry Security of Payment Act 1999* (the *Act*),
- (b) to specify the offences with respect to retention money trust accounts that are executive liability offences,
- (c) to specify the offences under the Act and the *Building and Construction Industry Security of Payment Regulation 2008* for which penalty notices may be issued and the amount of the penalty payable.

This Regulation is made under the *Building and Construction Industry Security of Payment Act 1999* (as amended by the *Building and Construction Security of Payment Amendment Act 2018*) including sections 7 (5), 34B (2) and (4), 34D (1) (b) (ii) and 35 (the general regulation-making power).

## **Building and Construction Industry Security of Payment Amendment Regulation 2019**

under the

Building and Construction Industry Security of Payment Act 1999

### **1 Name of Regulation**

This Regulation is the *Building and Construction Industry Security of Payment Amendment Regulation 2019*.

### **2 Commencement**

This Regulation commences on the day on which Schedule 1 [35] to the *Building and Construction Industry Security of Payment Amendment Act 2018* commences and is required to be published on the NSW legislation website.

## Schedule 1 Amendment of Building and Construction Industry Security of Payment Regulation 2008

[1] **Clause 3A**

Insert after clause 3:

**3A Application of Act**

For the purposes of section 7 (5) of the Act, owner occupier construction contracts are prescribed as a class of construction contracts to which the Act does not apply.

[2] **Clause 5A**

Insert after clause 5:

**5A Executive liability offences**

Section 34D of the Act applies to an offence against clause 6 (1), 8, 11, 12, 14, 15 (3) or 17.

**Note.** Section 34D of the Act provides for the personal liability of directors for certain offences committed by a corporation.

[3] **Clause 20 Exemptions**

Omit “a construction contract of a kind referred to in section 7 (2) (b)” from clause 20.

Insert instead “an owner occupier construction contract”.

[4] **Schedule 3**

Insert after Schedule 2:

### Schedule 3 Penalty notice offences

For the purposes of section 34B of the Act:

- (a) each offence specified in this Schedule is an offence for which a penalty notice may be issued, and
- (b) the amount payable under any such penalty notice is the amount specified in this Schedule for the offence.

<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision</b>	<b>Penalty for an individual</b>	<b>Penalty for a corporation</b>
<b>Offences under the Act</b>		
Section 13 (7)	\$2,200	\$11,000
Section 26A (5)	\$1,100	\$5,500
Section 26B (5)	\$1,100	\$5,500
Section 26D (3)	\$1,100	\$5,500
Section 26E (2)	\$1,100	\$5,500
<b>Offences under this Regulation</b>		
Clause 6 (1)	\$2,200	\$11,000
Clause 7 (3)	\$2,200	\$11,000

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# public consultation draft

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Building and Construction Industry Security of Payment Amendment Regulation 2019 [NSW]  
Schedule 1 Amendment of Building and Construction Industry Security of Payment Regulation 2008

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<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision</b>	<b>Penalty for an individual</b>	<b>Penalty for a corporation</b>
Clause 8 (1) or (2)	\$2,200	\$11,000
Clause 11	\$2,200	\$11,000
Clause 12	\$2,200	\$11,000
Clause 14 (1) or (2)	\$2,200	\$11,000
Clause 15 (3)	\$2,200	\$11,000

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