

29th January 2019

CCF2019-504

Security of Payments Reforms: Implementation
Regulatory Policy, BRD
Department of Finance, Services and Innovation

Submitted by email: securityofpayment2018@finance.nsw.gov.au

To whom it may concern,

CCF NSW is pleased to respond to the **Security of Payment Reforms – Implementation Options Paper – December 2018**, released for comment on 20 December 2018.

We have responded to all Questions in the Paper.

We note our response was listed in the Paper as required 28 January but presume that was an oversight given the date was an Australian public holiday.

If you have any questions about our submission please do not hesitate to contact us.

Yours sincerely,



David Castledine
Chief Executive Officer

Security of Payment Reforms – Implementation

Options Paper – December 2018

Released for comment on 20 December 2018

Commencement Options

Question 1 (and so 2)

CCF NSW supports the proposed start date of February 2019 for the related reforms

Question 2 (and so 4)

CCF NSW supports the proposed start date of 01 June 2019 for the related reforms

Question 5 (and so 6)

CCF NSW supports the proposed start date of December 2019 for the related reforms, on the conditions that there is a 3-month transitional period following a genuine and practical consultation period of two months.

Question 7 (and so 8 and 9)

We support the reforms applying to a construction contract entered into after commencement. We note that having three separate start dates adds complexity, but this is manageable and is preferred to further delays.

Regulation Reforms – Retention Monies

Question 10

We have always said that money held on retention is not the money of the receiver. However, the current 'Retention Money in Trust' as written is a bad law. It has manifestly failed to achieve the goal of the Act and so has failed industry by driving a valuable form of escrow out of a section of the market.

It might, in a theoretical world where contractors cannot access other forms of escrow with less red tape attached, only achieve its stated intent if it were to cover the entire chain and had no threshold limit. But, in the real world, if the Government did open up in its current form as prescribed in the Regulation, retention money would *completely* disappear as a form of escrow in NSW.

In short, at whatever threshold the limit is set in clause 5 of the Regulation, retention money will largely cease to be used. CCF NSW predicted just this outcome in 2014 when the Government first proposed it and have been proven correct by the Government's own data - the Government chose to ignore our advice then.

In our last submission we proposed altering the Regulation to say money taken on retention should be held in a Retention Deemed Trust (RDT) that does not require a trust account to be actually established. It could then have no dollar threshold and could go down the chain. Effectiveness without red-tape.

This is a bad law in its current form and should be dispensed with.

Question 11:

We do NOT support lowering the threshold

Question 12:

Remove it completely or implement the Retention Deemed Trust (RDT) for retention as detailed above in Q10.

Question 13:

Not in its current form.

Question 14:

Yes.

Question 15:

See Q5.

Question 16:

This is good intentioned, but nonetheless further drives industry away from using Retention Money as a form of escrow.

Question 17:

Note response to Q10, 15 and 16. In the alternative, Yes.

Question 18:

Note response to Q10, 15 and 16. In the alternative, Yes. Determining this fee should be part of the Regulation consultation process.

Regulation Reforms – Offences

Question 19:

Yes.



The Voice of the Industry

Question 20:

Yes.

Question 21:

No.

Question 22 to 27 inclusive:

For the reasons outline in our response to Q10, No.

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