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Australia's property industry

## Creating for Generations

Security of Payment Reforms: Implementation  
Regulatory Policy, BRD  
Department of Finance, Services and Innovation  
Locked Bag 2906  
LISAROW NSW 2252

Email: [securityofpayment2018@finance.nsw.gov.au](mailto:securityofpayment2018@finance.nsw.gov.au)

Dear Sir/Madam

Thank you for the opportunity to provide feedback on the *Security of Payment – Implementation Options Paper*, which proposes various options for commencing the reforms enacted by the *NSW Building and Construction Industry Security of Payment Amendment Act 2018*

The Property Council of Australia welcomes the reforms under the *NSW Building and Construction Industry Security of Payment Amendment Act 2018*, however it should be noted that since these legislative amendments the economic indicators show that the construction and property industry is experiencing a downturn. The timeframe for the commencement of these reforms needs to take this tightening of the market into account to minimise the impact on the industry.

This is particularly pertinent for the new amendments related to the progress payments and payment claims. The Property Council notes that the option paper is advocating for a 1 June commencement date, however, the Property Council recommends a minimum of a 12-month transition period from the proclamation date. This timeframe will allow companies to change business and invoicing practices, as well as allow for time for education and development of processes especially for smaller operators.

The Property Council strongly supports that these new reforms will only apply to construction contracts entered after the date of commencement and does not apply to contracts negotiated prior to this date.

The Property Council of Australia agrees that the threshold for retention money trust requirements be kept at \$10 million. However, as is the current practice, these requirements should only apply to head contractors not the entire contracting chain.

The Property Council also supports the recommendation to remove the annual reporting requirements for trust accounts. This will reduce the regulatory and financial burden for trust account holders without reducing safeguards due to the new reform to allow subcontractors to inspect retention money trust records.

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The Property Council supports this new reform of subcontractors to inspect trust account records for monies that relate are held in trust for them. However, this inspection should be subject to an inspection fee, the amount charged on a cost recovery basis only.

The Property Council supports the new penalty offences outlined in the new reforms as an enforcement mechanism. However, we oppose executive liability applying to the offences outlined in the options paper, except in the case of wilful, deceptive or misleading conduct. In many instances, directors and senior executives rely on their managers to act in accordance with the legislation. We also oppose the proposal to apply accessorial liability to these executive liability offences under the Regulation, except in the case of wilful, deceptive and misleading conduct.

If you would like would like to discuss this issue further please contact Emma Ashton, Senior Policy Advisor, on [eamshon@propertycouncil.com.au](mailto:eamshon@propertycouncil.com.au) or 0402 277 247.

Yours sincerely,

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke that extends to the right, partially overlapping the typed name below it.

**Jane Fitzgerald**  
**Executive Director, NSW**  
**Property Council of Australia**