



Queensland

Building Industry Fairness (Security of Payment) Act 2017

Building Industry Fairness (Security of Payment) Regulation 2018

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Building Industry Fairness (Security of Payment) Regulation 2018

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Building Industry Fairness (Security of Payment) Regulation 2018

Part 1 Introduction

1 Short title

This regulation may be cited as the *Building Industry Fairness (Security of Payment) Regulation 2018*.

2 Commencement

This regulation commences on 1 March 2018.

Part 2 Project bank accounts

3 Work included as building work—Act, s 8

- (1) This section prescribes particular work as building work for the Act, section 8, definition *building work*, paragraph (b).
- (2) The following work is building work—
 - (a) the erection, management and removal of scaffolding if the scaffolding is or was used for carrying out other building work;
 - (b) work that is a building certifying function within the meaning of the *Building Act 1975*, section 10;
 - (c) the assessment of the energy efficiency of a building under the Building Code of Australia or the Queensland Development Code.
- (3) Also, work performed by any of the following professionals as part of their professional practice is building work but only to the extent the work relates to other building work—
 - (a) an architect under the *Architects Act 2002*, schedule 2;

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- (b) a registered professional engineer under the *Professional Engineers Act 2002*, schedule 2;
 - (c) a surveyor under the *Surveyors Act 2003*, schedule 3.
- (4) In this section—
- Building Code of Australia*** see the *Building Act 1975*, section 12.
- Queensland Development Code*** see the *Building Act 1975*, section 13.

4 Work that is not building work—Act, s 8

- (1) For the Act, section 8, definition *building work*, paragraph (c), the following work is prescribed—
- (a) the construction, maintenance or repair of a busway, road or railway;
 - (b) the construction, maintenance or repair of a tunnel for a busway, road or railway;
 - (c) an authorised activity for a resource authority.
- (2) In this section—
- authorised activity*** see the *Mineral and Energy Resources (Common Provisions) Act 2014*, schedule 2.
- busway***—
- (a) means a route especially designed and constructed for, and dedicated to, the priority movement of buses for passenger transport; and
 - (b) includes—
 - (i) places for the taking on and letting off of passengers of buses using the busway; and
 - (ii) a causeway or culvert in, on, or under a busway that is associated with the busway; and
 - (iii) another structure that supports a busway or has the purpose of ensuring the safe or efficient use of a busway.

Examples for subparagraph (iii)—

bridge, fence, gate, pedestrian overpass, pillar, sign

driveway means—

- (a) a surface constructed—
 - (i) on a private property; and
 - (ii) for the purpose of driving or riding of motor vehicles to or from the property and a road; and
 - (iii) for which the right to use the surface is restricted to persons with an interest in the property and their invitees; or
- (b) a surface constructed—
 - (i) between the boundary of a private property and that part of a road used for the driving or riding of motor vehicles; and
 - (ii) for the purpose of driving or riding of motor vehicles to or from the property and the road.

private property includes a separate or distinct parcel of land for which an interest is recorded in a register under the *Land Act 1994*.

railway—

- (a) means a guided system designed for the movement of rolling stock having the capability of transporting passengers, livestock or freight on a track with a gauge of 600 mm or more; and
- (b) includes a railway station or platform.

resource authority see the *Mineral and Energy Resources (Common Provisions) Act 2014*, section 10.

road—

- (a) means an area of land—
 - (i) whether surveyed or unsurveyed, dedicated, notified or declared to be a road for public use; or

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- (ii) whether surveyed or unsurveyed, taken under an Act, for the purpose of a road for public use; or
 - (iii) developed, or to be developed, for the public use of driving or riding of motor vehicles; and
- (b) includes—
- (i) a street, esplanade, highway, pathway, thoroughfare, toll road, track or stock route; and
 - (ii) a causeway or culvert in, on, or under a road that is associated with the road; and
 - (iii) a structure in, on, or under a road that is associated with the road; and
- (c) does not include a driveway.

rolling stock means a vehicle that operates on or uses a railway, including, for example, a carriage, locomotive, rail car, tram or trolley.

5 Residence—Act, 16

- (1) This section prescribes particular types of buildings and structures for the Act, section 16(4), definition *residence*.
- (2) Each of the following structures is a residence if fixed to land and designed to be used for residential purposes—
 - (a) a single detached dwelling;
 - (b) 1 or more attached dwellings that are separated by a common wall;

Examples—

duplex, row house, terrace house, townhouse, villa unit

 - (c) a building, of not more than 3 storeys, containing 2 or more separate residential units.
- (3) Part of a structure mentioned in subsection (2) is also a residence if the part is designed to be used for residential purposes.

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- (4) A manufactured home fixed, or intended to be fixed, to land in a residential park is also a residence.
- (5) However, the following things are not a residence—
- (a) a boat, caravan, motor vehicle, tent, trailer or train; or
 - (b) a building designed as a temporary or movable building, other than a manufactured home as mentioned in subsection (4).
- (6) For subsection (2)(c), the number of storeys of a building is calculated by excluding 1 storey of the building if more than 50% of the floor area of at least 1 storey of the building is designed to accommodate motor vehicles.

Example—

If a building has 3 storeys containing residential units and another storey where more than 50% of the floor area of the storey is designed to accommodate motor vehicles, the number of storeys of the building is 3.

- (7) In this section—

manufactured home see the *Manufactured Homes (Residential Parks) Act 2003*, section 10.

residential park see the *Manufactured Homes (Residential Parks) Act 2003*, section 12.

residential unit means a part of a building designed for separate occupation as a residence.

storey means a space within a building which is situated between one floor level and the next floor level, or if there is no floor above, the ceiling or roof above, but is not a mezzanine or space that contains only—

- (a) a lift, shaft, stairway or meter room; or
- (b) a bathroom, shower room, laundry, water closet or other sanitary compartment; or
- (c) accommodation intended for not more than 3 vehicles; or
- (d) any combination of a thing mentioned in paragraphs (a) to (c).

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6 Prescribed payments for deposits to project bank accounts—Act, s 28

- (1) A payment made because of an adjudication of either of the following payment claims under the *Building and Construction Industry Payments Act 2004* is prescribed as a payment for the Act, section 28(e)—
 - (a) a payment claim made by the head contractor for a building contract (a *head contract*) for which a project bank account is required;
 - (b) a payment claim made by a subcontractor, other than a supplier, for a first tier subcontract for a head contract.
- (2) In this section—

payment claim means a payment claim made under the *Building and Construction Industry Payments Act 2004*.

7 Prescribed payments for withdrawals from project bank accounts—Act, s 31

- (1) A payment made because of an adjudication of either of the following payment claims under the *Building and Construction Industry Payments Act 2004* is prescribed as a payment for the Act, section 31(1)(e)—
 - (a) a payment claim made by the head contractor for a building contract (a *head contract*) for which a project bank account is required;
 - (b) a payment claim made by a subcontractor, other than a supplier, for a first tier subcontract for a head contract.
- (2) In this section—

payment claim means a payment claim made under the *Building and Construction Industry Payments Act 2004*.

8 Dispute resolution process—Act, s 36

- (1) For the Act, section 36(10), definition *dispute resolution process*, the following processes are prescribed—

- (a) a proceeding in a court or tribunal;
 - (b) an adjudication of a payment claim under the *Building and Construction Industry Payments Act 2004*.
- (2) For the Act, section 36(10), definition *dispute resolution process*, arbitration as required by, or conducted in accordance with, a subcontract is also prescribed for that subcontract.

9 Prescribed information about subcontracts—Act, s 50

For the Act, section 50(2), the following information is prescribed in relation to a project bank account—

- (a) the name of each subcontractor beneficiary for the project bank account;
- (b) the name of the account for each of the subcontractor beneficiaries;
- (c) the name of the financial institution for each of the subcontractor beneficiaries;
- (d) the identifying number of the financial institution;

Note—

The identifying number is commonly referred to as the bank state branch number (BSB).

- (e) the account number for each of the subcontractor beneficiaries.

10 Prescribed information for payment instruction—Act, s 51

- (1) For the Act, section 51(3), the copy of information contained in a payment instruction that is prescribed to be given to a principal is—
- (a) the name of each person to be paid an amount under the payment instruction; and
 - (b) details of each of the following amounts—

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- (i) the amount to be paid to a subcontractor beneficiary under the payment instruction;
 - (ii) the amount, if any, to be paid under the payment instruction to the retention account, to be held as a retention amount for a subcontract with a subcontractor beneficiary;
 - (iii) the amount, if any, to be paid under the payment instruction to the disputed funds account, as an amount subject to a payment dispute involving a subcontractor beneficiary; and
- (c) the date an amount mentioned in paragraph (b) is to be paid under the payment instruction; and
 - (d) the name of the account into which an amount mentioned in paragraph (b)(i) is to be deposited under the payment instruction; and
 - (e) the name of the financial institution into which an amount mentioned in paragraph (b)(i) is to be deposited under the payment instruction; and
 - (f) the identifying number of the financial institution; and
- Note—*
- The identifying number is commonly referred to as the bank state branch number (BSB).
- (g) the account number into which an amount mentioned in paragraph (b)(i) is to be deposited under the payment instruction.
- (2) For the Act, section 51(3), the copy of information contained in a payment instruction that is prescribed to be given to a subcontractor beneficiary is—
- (a) details of each of the following amounts—
 - (i) the amount to be paid to the subcontractor beneficiary under the payment instruction;
 - (ii) the amount, if any, to be paid under the payment instruction to the retention account to be held as a

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- retention amount for a subcontract with the subcontractor beneficiary;
- (iii) the amount, if any, to be paid under the payment instruction to the disputed funds account as an amount subject to a payment dispute involving the subcontractor beneficiary; and
 - (b) the date an amount mentioned in paragraph (a) is to be paid under the payment instruction; and
 - (c) the name of the account into which an amount mentioned in paragraph (a)(i) is to be deposited under the payment instruction; and
 - (d) the name of the financial institution into which an amount mentioned in paragraph (a)(i) is to be deposited under the payment instruction; and
 - (e) the identifying number of the financial institution; and
- Note—*
- The identifying number is commonly referred to as the bank state branch number (BSB).
- (f) the account number into which an amount mentioned in paragraph (a)(i) is to be deposited under the payment instruction.

11 Circumstances enabling principal to step in as trustee— Act, s 54

A building contract being terminated for any reason is a circumstance prescribed for the Act, section 54(1)(d).

12 Review of Act—Act, s 200A

The *Building and Construction Legislation (Non-conforming Building Products—Chain of Responsibility and Other Matters) Amendment Act 2017* is prescribed for the Act, section 200A(6), definition *2017 suite of building and construction reforms*, paragraph (c).