



Queensland

Building Industry Fairness (Security of Payment) Regulation 2018

Subordinate Legislation 2018 No. 16

made under the

Building Industry Fairness (Security of Payment) Act 2017
Queensland Building and Construction Commission Act 1991
State Penalties Enforcement Act 1999

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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;
 - (b) a registered professional engineer under the *Professional Engineers Act 2002*, schedule 2;
 - (c) a surveyor under the *Surveyors Act 2003*, schedule 3.

[s 4]

(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
 - (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

[s 5]

- (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.
- (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).

[s 6]

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—

[s 10]

- (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

-
- 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).

[s 13]

Part 3 **Amendment of other regulations**

Division 1 **Amendment of Queensland Building and Construction Commission Regulation 2003**

13 **Regulation amended**

This division amends the *Queensland Building and Construction Commission Regulation 2003*.

14 **Amendment of sch 2AA (Demerit offences)**

Schedule 2AA—

insert—

s 42C(1)	10
s 72AA(1)	4
s 72AA(2)	4

Division 2 **Amendment of State Penalties Enforcement Regulation 2014**

15 **Regulation amended**

This division amends the *State Penalties Enforcement Regulation 2014*.

16 **Amendment of sch 1 (Infringement notice offences and fines for nominated laws)**

- (1) Schedule 1, entry for *Building Act 1975*, entry for section 246CP(4)—

omit.

- (2) Schedule 1, entry for *Building Act 1975*, administering authority for an infringement notice offence that is an offence against a provision of the *Building Act 1975*, or an infringement notice about the offence entry, paragraph (c)—

omit, insert—

- (c) for an infringement notice served by an investigator appointed under the *Queensland Building and Construction Commission Act 1991*, section 104B—the Queensland Building and Construction Commission; or

- (3) Schedule 1, entry for *Building Act 1975*, administering authority for an infringement notice offence that is an offence against a provision of the *Building Act 1975*, or an infringement notice about the offence entry, paragraph (d)—

omit.

- (4) Schedule 1, entry for *Building Act 1975*, authorised person for service of infringement notices entry, paragraph (a)(ii)—

omit, insert—

- (ii) an investigator appointed under the *Queensland Building and Construction Commission Act 1991*, section 104B; or

- (5) Schedule 1, entry for *Building Act 1975*, authorised person for service of infringement notices entry, paragraph (e), ‘246CD(3), 246CF(2) or 246CP(4)’—

omit, insert—

246CD(3) or 246CF(2)

- (6) Schedule 1, entry for *Building Act 1975*, authorised person for service of infringement notices entry, paragraph (g), ‘246CD(3), 246CF(2) or 246CP(4)’—

omit, insert—

246CD(3) or 246CF(2)

[s 16]

- (7) Schedule 1, entry for *Building Act 1975*, authorised person for service of infringement notices entry, paragraph (g)(ii)—
omit, insert—
- (ii) an investigator appointed under the *Queensland Building and Construction Commission Act 1991*, section 104B; or
- (8) Schedule 1, entry for *Building Act 1975*, authorised person for service of infringement notices entry, paragraph (h)(ii)—
omit, insert—
- (ii) an investigator appointed under the *Queensland Building and Construction Commission Act 1991*, section 104B
- (9) Schedule 1—
insert—

Building Industry Fairness (Security of Payment) Act 2017

Column 1 Infringement notice offence	Column 2 Infringement notice fine (penalty units)	
	Individual	Corporation
s 21(4)	10	40
s 23(1)	20	60
s 23(7)	20	60
s 24(1)	20	60
s 26(2)	2	4
s 27(2)	5	10
s 29(2)	20	60
s 31(1)	20	60

	Column 1 Infringement notice offence	Column 2 Infringement notice fine (penalty units)	
		Individual	Corporation
s 34(1)	<p>Administering authority for an infringement notice offence that is an offence against a provision of the <i>Building Industry Fairness (Security of Payment) Act 2017</i>, or an infringement notice about the offence—the Queensland Building and Construction Commission</p> <p>Authorised person for service of infringement notices—</p> <p>(a) the commissioner appointed under the <i>Queensland Building and Construction Commission Act 1991</i>, section 20D; and</p> <p>(b) an investigator appointed under the <i>Queensland Building and Construction Commission Act 1991</i>, section 104B</p>	20	40
(10)	<p>Schedule 1, entry for <i>Plumbing and Drainage Act 2002</i>, entry for section 33H—</p> <p><i>omit.</i></p>		
(11)	<p>Schedule 1, entry for <i>Plumbing and Drainage Act 2002</i>, administering authority for an infringement notice offence that is an offence against a provision of the <i>Plumbing and Drainage Act 2002</i>, or an infringement notice about the offence, paragraph (b)—</p> <p><i>omit, insert—</i></p> <p>(b) for an infringement notice served by an investigator appointed under the <i>Queensland Building and Construction Commission Act 1991</i>, section 104B—the Queensland Building and Construction Commission; or</p>		

[s 16]

- (12) Schedule 1, entry for *Plumbing and Drainage Act 2002*, authorised person for service of infringement notices entry, paragraph (b)—

omit, insert—

- (b) an investigator appointed under the *Queensland Building and Construction Commission Act 1991*, section 104B; or

- (13) Schedule 1, entry for *Queensland Building and Construction Commission Act 1991*—

insert—

s 104H

1

- (14) Schedule 1, entry for *Queensland Building and Construction Commission Act 1991*, authorised person for service of infringement notices entry, paragraph (b)—

omit, insert—

- (b) an investigator appointed under the *Queensland Building and Construction Commission Act 1991*, section 104B

ENDNOTES

- 1 Made by the Governor in Council on 22 February 2018.
- 2 Notified on the Queensland legislation website on 22 February 2018.
- 3 The administering agency is the Department of Housing and Public Works.

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