



Queensland

Building Industry Fairness (Security of Payment) (Transitional) Regulation 2018

Subordinate Legislation 2018 No. 17

made under the

Building Industry Fairness (Security of Payment) Act 2017

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Part 1 Preliminary

1 Short title

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

2 Commencement

This regulation commences on 1 March 2018.

3 Declaration that regulation is a transitional regulation— Act, s 211

This regulation is a transitional regulation.

Note—

Under section 211(4) of the Act, this regulation expires on 1 March 2019.

Part 2 Adjudicated amounts

4 All payments from principal to be deposited in project bank account—Act, s 27

(1) Section 27(2) of the Act also applies if a principal pays an amount to a head contractor because of an adjudication of a payment claim under the *Building and Construction Industry Payments Act 2004*.

(2) In this section—

payment claim see the *Building and Construction Industry Payments Act 2004*, schedule 2.

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Part 3 Payment disputes

5 When payment dispute occurs—Act, s 35

- (1) For chapter 2 of the Act, a *payment dispute* occurs if—
 - (a) a subcontractor beneficiary gives a head contractor a payment claim for a progress payment under the *Building and Construction Industry Payments Act 2004*; and
 - (b) the head contractor gives a payment schedule to the subcontractor beneficiary for the progress payment under the *Building and Construction Industry Payments Act 2004*; and
 - (c) the head contractor prepares a payment instruction to pay an amount from a trust account to the subcontractor beneficiary for the progress payment but the amount stated in the instruction is less than the amount the head contractor proposed to pay under the payment schedule.
- (2) For chapter 2 of the Act, a *payment dispute* also occurs if—
 - (a) a subcontractor beneficiary gives a head contractor a payment claim for a progress payment under the *Building and Construction Industry Payments Act 2004*; and
 - (b) the head contractor does not serve a payment schedule on the subcontractor beneficiary within the time that the head contractor may serve the schedule on the subcontractor beneficiary under the *Building and Construction Industry Payments Act 2004*; and
 - (c) under section 19 of the *Building and Construction Industry Payments Act 2004*, the head contractor becomes liable to pay the amount claimed in the payment claim to the subcontractor beneficiary.
- (3) In this section—

payment claim see the *Building and Construction Industry Payments Act 2004*, schedule 2.

payment schedule see the *Building and Construction Industry Payments Act 2004*, schedule 2.

progress payment see the *Building and Construction Industry Payments Act 2004*, schedule 2.

6 Particular amounts not already held in general trust account or retention account

- (1) This section applies if a head contractor must transfer an amount to the disputed funds account for a project bank account under section 36(1) of the Act but the amount is not held in the general trust account or retention trust account for the project bank account.
- (2) Section 36 of the Act applies for the amount as if—
 - (a) a reference to ‘transfer’ in section 36(1) and (7) of the Act is taken to include a reference to ‘deposit’; and
 - (b) a reference to ‘transferred’ in section 36(2), (3), (5), (6) or (8) of the Act is taken to include a reference to ‘deposited’.
- (3) If 60 days have elapsed since notice of the amount being deposited into the disputed funds account was given to a subcontractor beneficiary under section 36(6) of the Act, the head contractor may withdraw the amount.

7 Dealing with amounts if payment dispute occurs—Act, s 36

- (1) Until chapter 3 of the Act commences, the amount a head contractor must transfer under section 36(1) of the Act, because of a payment dispute mentioned in section 5, is an amount that is equal to the difference between—
 - (a) whichever of the following amounts apply for the dispute—
 - (i) for a payment dispute mentioned in section 5(1)—the amount the head contractor proposed to pay a

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- subcontractor beneficiary under a payment schedule;
- (ii) for a payment dispute mentioned in section 5(2)—the amount the head contractor is liable to pay a subcontractor beneficiary under section 19(2) of the *Building and Construction Industry Payments Act 2004*; and
- (b) whichever of the following amounts apply for the dispute—
- (i) if the head contractor prepared a payment instruction for payment to a subcontractor beneficiary of an amount in relation to the payment dispute—the amount stated in the payment instruction;
 - (ii) if the head contractor did not prepare a payment instruction—\$0.
- (2) The amount must be transferred—
- (a) for a payment dispute mentioned in section 5(1)—when the head contractor prepares a payment instruction for payment to the subcontractor beneficiary for the progress payment; or
 - (b) for a payment dispute mentioned in section 5(2)—when the head contractor becomes liable to pay an amount to the subcontractor beneficiary under section 19(2) of the *Building and Construction Industry Payments Act 2004*.
- (3) In this section—
- payment schedule** see the *Building and Construction Industry Payments Act 2004*, schedule 2.
- progress payment** see the *Building and Construction Industry Payments Act 2004*, schedule 2.

8 Contract price for subcontracts

- (1) For section 36(3) of the Act, the contract price for a subcontract means the amount the subcontractor is entitled to

be paid under the subcontract or, if the amount can not be accurately calculated, the reasonable estimate of the amount the subcontractor is entitled to be paid under the subcontract.

- (2) An amount mentioned in subsection (1) is inclusive of GST.

9 Effect of appeal on dispute resolution process

- (1) This section applies for section 36 of the Act if the outcome of a dispute resolution process may be appealed.
- (2) If the head contractor intends to pay an amount in accordance with the outcome of the dispute resolution process under section 36(4)(b) of the Act, the head contractor may only pay the amount after the conclusion of—
- (a) the period within which an appeal may be commenced; and
 - (b) if an appeal is commenced—the appeal.
- (3) For section 36(8) of the Act, the dispute resolution process is taken to be ongoing during—
- (a) the dispute resolution process; and
 - (b) the period within which an appeal may be commenced; and
 - (c) if an appeal is commenced—the appeal.
- (4) In this section—
appeal includes a review.

10 Identifying amounts in the disputed funds account

The head contractor for a project bank account must ensure an amount held in the disputed funds account for the project bank account is identifiable as being held for the subcontractor beneficiary that may be entitled to be paid the amount.

Maximum penalty—100 penalty units.

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Part 4 Ending project bank accounts

11 Ending project bank account—Act, s 37

For section 37 of the Act, maintenance work, in relation to a building contract, does not include any work for which a retention amount has been withheld under a subcontract with a subcontractor beneficiary.

Part 5 Payment discrepancies

12 Principal to inform commissioner of discrepancies—Act, s 52

Section 52 of the Act also applies if the head contractor gives the principal a copy of information contained in a payment instruction under section 51 of the Act.

Part 6 Principal as trustee

13 Written notice to principal to be in approved form

A written notice advising that a principal will replace a head contractor as trustee of a project bank account, given under section 54(2), must be in the approved form.

14 Principal to open trust accounts

- (1) This section applies if a principal is appointed as trustee for a project bank account under section 54 of the Act.
- (2) The principal must open all of the following trust accounts at the office or a branch of a financial institution within the State—

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- (a) an account (*principal's general trust account*) for amounts that are held in the general trust account for the project bank account;
 - (b) an account (*principal's retention account*) for amounts held in the retention account for the project bank account;
 - (c) an account (*principal's disputed funds account*) for amounts held in the disputed funds account for the project bank account.
- (3) The principal must open the trust accounts as soon as practicable after being appointed trustee of the project bank account.

15 Financial institution to transfer amounts to principal's trust accounts

- (1) This section applies if—
 - (a) a principal is appointed as trustee for a project bank account under section 54 of the Act; and
 - (b) the principal has opened trust accounts at a financial institution as required under section 14.
- (2) The financial institution must transfer—
 - (a) all amounts held in the general trust account for the project bank account to the principal's general trust account; and
 - (b) all amounts held in the retention account for the project bank account to the principal's retention account; and
 - (c) all amounts held in the disputed funds account for the project bank account to the principal's disputed funds account.
- (3) In this section—

principal's disputed funds account see section 14(2)(c).
principal's general trust account see section 14(2)(a).
principal's retention account see section 14(2)(b).

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16 Principal's trust accounts are project bank account

- (1) This section applies if—
 - (a) a principal is appointed as trustee for a project bank account under section 54 of the Act; and
 - (b) all amounts held in trust under the project bank account have been transferred to the trust accounts as required under section 15.
- (2) Chapter 2 of the Act applies to—
 - (a) the principal's general trust account as if it were the general trust account for the project bank account; and
 - (b) the principal's retention account as if it were the retention account for the project bank account; and
 - (c) the principal's disputed funds account as if it were the disputed funds account for the project bank account.
- (3) In this section—

principal's disputed funds account see section 14(2)(c).
principal's general trust account see section 14(2)(a).
principal's retention account see section 14(2)(b).

17 Principal to be given financial records

- (1) This section applies if a principal is appointed as trustee for a project bank account under section 54 of the Act.
- (2) The head contractor for the project bank account must, as soon as practicable after the principal is appointed trustee, give the principal a copy of the records that the head contractor was required to keep under section 45(1) of the Act.

18 Right of principal to apply to Supreme Court for directions

- (1) This section applies if a principal is appointed as trustee for a project bank account under section 54 of the Act.

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- (2) The principal may apply to the Supreme Court for directions about—
 - (a) an amount held in trust under the project bank account; or
 - (b) the administration of the project bank account; or
 - (c) the exercise of a power by the principal.
 - (3) An application made under subsection (1) must be served on all subcontractor beneficiaries for the project bank account unless otherwise directed by the Supreme Court.

Part 7 Subcontractors' charges

19 No subcontractor's charges over money held in trust under a project bank account

- (1) No entitlement to a subcontractor's charge exists to the extent it relates to money held in trust under a project bank account.
- (2) In this section—

subcontractor's charge means a charge within the meaning of section 3 of the *Subcontractors' Charges Act 1974*.

Part 8 Legal proceedings

20 Prosecutions for offences

A prosecution for an offence against the Act may be started within 1 year after the offence comes to the knowledge of the commission, but no later than 2 years after the offence is committed.

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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