



Queensland

Building Industry Fairness (Security of Payment) and Other Legislation Amendment Regulation 2024

Subordinate Legislation 2024 No. 85

made under the

Building Industry Fairness (Security of Payment) Act 2017
Queensland Building and Construction Commission Act 1991

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Part 1 Preliminary

1 Short title

This regulation may be cited as the *Building Industry Fairness (Security of Payment) and Other Legislation Amendment Regulation 2024*.

2 Commencement

This regulation commences on 1 July 2024.

Part 2 Amendment of Building Industry Fairness (Security of Payment) Regulation 2018

3 Regulation amended

This part amends the *Building Industry Fairness (Security of Payment) Regulation 2018*.

4 Insertion of new s 5A

After section 5—

insert—

5A Meaning of *project trust subcontract*—Act, s 9A

- (1) Each of the following services or work is, when associated with the construction, alteration, repair, restoration, maintenance or extension of a building, prescribed for section 9A(1)(b)(iv) of the Act—
 - (a) earthmoving and excavating;
 - (b) if the building is prefabricated—installing the building;

- (c) constructing a structure, or installing a prefabricated structure, associated with the building;
 - (d) installing a prefabricated component of the building or a structure associated with the building;
 - (e) cleaning the inside or outside of the building or a structure associated with the building;
 - (f) landscaping or restoring the site;
 - (g) other project trust work.
- (2) For section 9A(1)(c) of the Act, a subcontract is excluded from being a project trust subcontract if the only subcontracted work under the subcontract is 1 or more of the following—
- (a) drilling for or extracting oil or gas;
 - (b) tunnelling or boring for or extracting minerals;
 - (c) supplying or transporting a prefabricated building or structure or a prefabricated component of a building or structure.

5 Omission of s 10EA (Retention trust training—Act, s 41)

Section 10EA—

omit.

6 Replacement of pt 2, div 4 (Trust records)

Part 2, division 4—

omit, insert—

Division 4 Trust records

10F Ledger accounts and reconciliation statements—Act, s 52

- (1) For section 52(a) of the Act, the following records are prescribed for each project trust and retention trust—
 - (a) ledger accounts kept in accordance with subsection (2); and
 - (b) monthly reconciliation statements prepared in accordance with subsection (3) showing that the ledger accounts correctly record relevant transactions for the trust.
- (2) The ledger accounts for a project trust or retention trust must be kept as follows—
 - (a) the ledger accounts for the trust must be kept separately from the ledger accounts for any other trust and from any other accounting record;
 - (b) each relevant transaction for the trust must be recorded in the ledger accounts within 3 business days after the transaction occurs;
 - (c) there must be separate ledger accounts for the following—
 - (i) each beneficiary other than the trustee;
 - (ii) the trustee;
 - (iii) the trust account;
 - (d) before an electronic system used to keep the ledger accounts is changed or records are archived or deleted from the system, steps must be taken to ensure that the records remain accessible in a readable form.
- (3) A monthly reconciliation statement—
 - (a) must be prepared within 5 business days after the end of each month; and

- (b) must show a trial balance of the ledger accounts at the end of the month confirming that the total of debit balances equals the total of credit balances; and
 - (c) must show that the balance in the trust account ledger account at the end of the month is the same as the balance shown in the financial institution statement for the trust account at the end of the month.
- (4) In this section—
- relevant transaction***, for a project trust or retention trust—
- (a) means an activity or event that affects the financial position and value of interests in the trust; and
 - (b) includes—
 - (i) for a project trust—
 - (A) a claimant giving a payment claim under section 75 of the Act; and
 - (B) a respondent giving a claimant a payment schedule under section 76 of the Act; and
 - (C) any other activity or event that affects a claimant’s entitlement to a progress payment; and
 - (ii) for a retention trust—
 - (A) withholding an amount from payment to a beneficiary; and
 - (B) an activity or event that affects the beneficiary’s entitlement to the amount withheld.

10G Other trust records—Act, s 52

For section 52(a) of the Act, the following records are also prescribed for a project trust or retention trust—

- (a) each financial institution statement for the trust account relied on for a reconciliation;
- (b) each payment instruction directing payment from the trust account;
- (c) each notice received or given under the Act by the trustee;
- (d) for a project trust—
 - (i) documents comprising or evidencing each of the following—
 - (A) the project trust contract;
 - (B) each project trust subcontract for the project trust contract;
 - (C) each amendment of the project trust contract or a project trust subcontract for the project trust contract; and
 - (ii) each payment claim for a payment under a contract mentioned in subparagraph (i); and
 - (iii) each payment schedule responding to a payment claim mentioned in subparagraph (ii).

7 Omission of pt 2, div 7 (Auditing and reporting)

Part 2, division 7—

omit.

8 Insertion of new pt 7, div 4

Part 7—

insert—

Division 4 Transitional provisions for Building Industry Fairness (Security of Payment) and Other Legislation Amendment Regulation 2024

49 Existing trust account records—Act, s 52

- (1) This section applies in relation to a record that, immediately before the commencement—
 - (a) was mentioned in section 10F or 10G; and
 - (b) was required to be kept by the trustee for a project trust or retention trust.
- (2) The record continues to be prescribed for section 52(a) of the Act.

50 Changes affecting review of trust account

If section 215B of the Act applies in relation to a review of the trust account for a project trust or retention trust, sections 10K and 10L as in force immediately before the commencement continue to apply as if the *Building Industry Fairness (Security of Payment) and Other Legislation Amendment Regulation 2024* had not been made.

Part 3 **Amendment of Queensland Building and Construction Commission (Minimum Financial Requirements) Regulation 2018**

9 **Regulation amended**

This part amends the *Queensland Building and Construction Commission (Minimum Financial Requirements) Regulation 2018*.

10 **Amendment of s 11P (Working out actual revenue—trustees, partnerships or group companies)**

Section 11P(1), from ‘includes—’—

omit, insert—

includes all revenue received by the trust.

11 **Amendment of s 15 (Working out licensee’s assets)**

(1) Section 15(1)(b)—

omit.

(2) Section 15(1)(c), ‘, other than an amount mentioned in paragraph (b)’—

omit.

(3) Section 15(1)(c) to (o)—

renumber as section 15(1)(b) to (n).

(4) Section 15(2), ‘subsection (1)(l)(i)’—

omit, insert—

subsection (1)(k)(i)

(5) Section 15(3), definition *beneficial interest*—

omit.

12 Amendment of sch 3 (Dictionary)

Schedule 3, definition *building trust account*—

omit.

ENDNOTES

- 1 Made by the Governor in Council on 20 June 2024.
- 2 Notified on the Queensland legislation website on 21 June 2024.
- 3 The administering agency is the Department of Housing, Local Government, Planning and Public Works.

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