



New South Wales

Building and Construction Industry Security of Payment Amendment (Supporting Statement) Regulation 2014

under the

Building and Construction Industry Security of Payment Act 1999

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Building and Construction Industry Security of Payment Act 1999*.

ANDREW CONSTANCE, MP
Minister for Finance and Services

Explanatory note

The object of this Regulation is to prescribe a form for supporting statements relating to payment claims made under section 13 of the *Building and Construction Industry Security of Payment Act 1999*. The prescribed form requires all relevant contracts between head contractors and subcontractors to be listed and identified as either paid or in dispute. The prescribed form also includes a declaration to be made by head contractors stating that all subcontractors have been paid all amounts, including retention amounts, that are due and payable and not subject to a dispute.

This Regulation is made under the *Building and Construction Industry Security of Payment Act 1999*, including sections 13 (9) (which provides for the regulations to prescribe a form for supporting statements) and 35 (1) (the general regulation-making power).

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1 Name of Regulation

This Regulation is the *Building and Construction Industry Security of Payment Amendment (Supporting Statement) Regulation 2014*.

2 Commencement

This Regulation commences on 21 April 2014 and is required to be published on the NSW legislation website.

Schedule 1 Amendment of Building and Construction Industry Security of Payment Regulation 2008

[1] Clause 4A

Insert after clause 4:

4A Supporting statements

- (1) For the purposes of the definition of *supporting statement* in section 13 (9) of the Act, the form contained in Schedule 1 is prescribed.
- (2) A reference to an amount due and payable in a supporting statement does not include a reference to an amount in dispute between the head contractor and a subcontractor. Any subcontractors with whom an amount is in dispute with the head contractor must be separately identified in the attachment to the supporting statement.
- (3) A reference to an amount due and payable in a supporting statement includes a reference to a retention amount due and payable.
- (4) The requirement for a head contractor to provide a supporting statement under section 13 (7) of the Act relates only to those subcontractors or suppliers directly engaged by the head contractor.
- (5) Any payments referred to in a supporting statement that are due and payable and not in dispute must be paid in full before any declaration in the prescribed form is signed.

[2] Schedule 1

Insert at the end of the Regulation:

Schedule 1 Form

(Clause 4A (1))

Supporting statement by head contractor regarding payment to subcontractors

This statement must accompany any payment claim served on a principal to a construction contract by a head contractor.

For the purposes of this statement, the terms “principal”, “head contractor”, “subcontractor”, and “construction contract” have the meanings given in section 4 of the *Building and Construction Industry Security of Payment Act 1999*.

Head contractor: [*business name of head contractor*]

ABN: [*ABN*]

* 1. has entered into a contract with: [*business name of subcontractor*]

ABN: [*ABN*]

Contract number/identifier: [*contract number/identifier*]

OR

* 2. has entered into a contract with the subcontractors listed in the attachment to this statement.

* [*Delete whichever of the above does not apply*]

This statement applies for work between [*start date*] and [*end date*] inclusive (the construction work concerned), subject of the payment claim dated [*date*].

I, [full name], being the head contractor, a director of the head contractor or a person authorised by the head contractor on whose behalf this declaration is made, hereby declare that I am in a position to know the truth of the matters that are contained in this supporting statement and declare that, to the best of my knowledge and belief, all amounts due and payable to subcontractors have been paid (not including any amount identified in the attachment as an amount in dispute).

Signature:

Date:

Full name:

Position/Title:

Attachment

Schedule of subcontractors paid all amounts due and payable				
Subcontractor	ABN	Contract number/ identifier	Date of works (period)	Date of payment claim (head contractor claim)

Schedule of subcontractors for which an amount is in dispute and has not been paid				
Subcontractor	ABN	Contract number/ identifier	Date of works (period)	Date of payment claim (head contractor claim)