



New South Wales

Building and Construction Industry Security of Payment Amendment Regulation 2019

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*.

KEVIN ANDERSON, MP
Minister for Better Regulation and Innovation

Explanatory note

The objects of this Regulation are as follows:

- (a) to exempt owner occupier construction contracts from the operation of the *Building and Construction Industry Security of Payment Act 1999* (the *Act*),
- (b) to specify the offences with respect to retention money trust accounts that are executive liability offences,
- (c) to specify the offences under the Act and the *Building and Construction Industry Security of Payment Regulation 2008* for which penalty notices may be issued and the amount of the penalty payable.

This Regulation is made under the *Building and Construction Industry Security of Payment Act 1999*, including sections 7 (5), 34B (2) and (4), 34D (1) (b) (ii) and 35 (the general regulation-making power).

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Building and Construction Industry Security of Payment Act 1999

1 Name of Regulation

This Regulation is the *Building and Construction Industry Security of Payment Amendment Regulation 2019*.

2 Commencement

This Regulation commences on 21 October 2019 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 3A**

Insert after clause 3:

3A Application of Act

For the purposes of section 7 (5) of the Act, owner occupier construction contracts are prescribed as a class of construction contracts to which the Act does not apply.

[2] **Clause 5A**

Insert after clause 5:

5A Executive liability offences

Section 34D of the Act applies to an offence against clause 6 (1), 8, 11, 12, 14, 15 (3) or 17.

Note. Section 34D of the Act provides for the personal liability of directors for certain offences committed by a corporation.

[3] **Clause 20 Exemptions**

Omit “a construction contract of a kind referred to in section 7 (2) (b)”.

Insert instead “an owner occupier construction contract”.

[4] **Schedule 3**

Insert after Schedule 2:

Schedule 3 Penalty notice offences

For the purposes of section 34B of the Act:

- (a) each offence specified in this Schedule is an offence for which a penalty notice may be issued, and
- (b) the amount payable under any such penalty notice is the amount specified in this Schedule for the offence.

Column 1	Column 2	Column 3
Provision	Penalty for an individual	Penalty for a corporation
Offences under the Act		
Section 13 (7)	\$2,200	\$11,000
Section 26A (5)	\$1,100	\$5,500
Section 26B (5)	\$1,100	\$5,500
Section 26D (3)	\$1,100	\$5,500
Section 26E (2)	\$1,100	\$5,500
Offences under this Regulation		
Clause 6 (1)	\$2,200	\$11,000
Clause 7 (3)	\$2,200	\$11,000

Column 1	Column 2	Column 3
Provision	Penalty for an individual	Penalty for a corporation
Clause 8 (1) or (2)	\$2,200	\$11,000
Clause 12	\$2,200	\$11,000
Clause 14 (1) or (2)	\$2,200	\$11,000
Clause 15 (3)	\$2,200	\$11,000