



New South Wales

Building and Construction Industry Security of Payment Amendment (Trust Account Annual Report) Regulation 2020

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 object of this Regulation is to amend the *Building and Construction Industry Security of Payment Regulation 2020* to require a head contractor who has not provided an annual report on a retention money trust account for the financial year commencing on 1 July 2019 to do so within a 6-month period.

This Regulation is made under the *Building and Construction Industry Security of Payment Act 1999*, including sections 12A and 35 (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 (Trust Account Annual Report) Regulation 2020*.

2 Commencement

This Regulation commences on the day on which it is published on the NSW legislation website.

Schedule 1 Amendment of Building and Construction Industry Security of Payment Regulation 2020

[1] Clause 20A

Insert after clause 20—

20A Trust account annual report—financial year commencing 1 July 2019

- (1) A head contractor who operated a retention money trust account during the financial year commencing on 1 July 2019 must, within 6 months of the day on which this clause commences, provide the Secretary with the following in relation to the financial year—
 - (a) an account review report for the account,
 - (b) a retention money trust account statement for the account, in the form approved by the Secretary.Maximum penalty—200 penalty units.
- (2) Subclause (1) does not apply to a head contractor if—
 - (a) there have been no amounts deposited into or withdrawn from the retention money trust account during the financial year, and
 - (b) no amount is retained in the account at the end of the financial year, and
 - (c) the contractor has, within 6 months of the day on which this clause commences, given the Secretary written notice of the facts mentioned in paragraphs (a) and (b).
- (3) A fee of \$1,500 must accompany an account review report and retention money trust account statement provided to the Secretary for the purposes of this clause.
- (4) This clause does not apply to a head contractor who has—
 - (a) complied with clause 16 of the repealed Regulation in relation to the financial year, or
 - (b) otherwise complied, before the commencement of this clause, with subclauses (1) and (3) in relation to the financial year.
- (5) A head contractor must not provide a retention money trust account statement to the Secretary for the purposes of this clause knowing the statement is false or misleading in a material particular.
Maximum penalty—200 penalty units.

- (6) In this clause—

account review report, for a retention money trust account, means a report given by a registered company auditor certifying that, based on a review of the operation of the account, in the auditor's opinion the account operator has complied with all of the requirements of Part 2 of the repealed Regulation in relation to the account during the financial year.

financial year means a period of 12 months commencing on 1 July.

registered company auditor has the same meaning as in the *Corporations Act 2001* of the Commonwealth.

repealed Regulation means the *Building and Construction Industry Security of Payment Regulation 2008*, as in force immediately before 1 September 2020.

retention money trust account has the same meaning as in Part 2.

[2] Schedule 1 Penalty notice offences

Insert in appropriate order in the table, under the matter relating to “Offences under this Regulation”—

Clause 20A(1)	\$4,400	\$4,400
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