

Building and Construction Industry Security of Payment Regulation 2008

[2008-139]



New South Wales

Status Information

Currency of version

Historical version for 21 April 2014 to 30 April 2015 (accessed 1 July 2024 at 14:23)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

Provisions in force

The provisions displayed in this version of the legislation have all commenced.

Notes—

- **Does not include amendments by**
[Building and Construction Industry Security of Payment Amendment \(Retention Money Trust Account\) Regulation 2015 \(111\)](#) (LW 5.3.2015) (not commenced — to commence on 1.5.2015)

Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

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Building and Construction Industry Security of Payment Regulation 2008



New South Wales

1 Name of Regulation

This Regulation is the *Building and Construction Industry Security of Payment Regulation 2008*.

2 Commencement

This Regulation commences on 1 September 2008.

Note—

This Regulation replaces the *Building and Construction Industry Security of Payment Regulation 2001* which is repealed on 1 September 2008 by section 10 (2) of the *Subordinate Legislation Act 1989*.

3 Interpretation

(1) In this Regulation:

the Act means the *Building and Construction Industry Security of Payment Act 1999*.

(2) Notes included in this Regulation do not form part of this Regulation.

4 Recognised financial institutions

Each person or body that is a **body regulated by APRA**, within the meaning of the *Australian Prudential Regulation Authority Act 1998* of the Commonwealth, is prescribed for the purposes of the definition of **recognised financial institution** in section 4 of the Act.

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.

5 Exemptions

A person is exempt from the operation of Division 2A of Part 3 of the Act in the person's capacity as a principal contractor (within the meaning of that Division) under a construction contract of a kind referred to in section 7 (2) (b) of the Act.

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)