



Western Australia

Building and Construction Industry (Security of Payment) Amendment Act 2026

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Western Australia

Building and Construction Industry (Security of Payment) Amendment Act 2026

No. 16 of 2026

An Act to amend the *Building and Construction Industry (Security of Payment) Act 2021* and to make amendments to the *Building Services (Registration) Act 2011*.

[Assented to 21 October 2026]

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This is the *Building and Construction Industry (Security of Payment) Amendment Act 2026*.

2. Commencement

This Act comes into operation as follows —

- (a) Part 1 — on the day on which this Act receives the Royal Assent;
- (b) the rest of the Act — on a day fixed by proclamation, and different days may be fixed for different provisions.

Part 2 — *Building and Construction Industry (Security of Payment) Act 2021* amended

3. Act amended

This Part amends the *Building and Construction Industry (Security of Payment) Act 2021*.

4. Section 3 amended

Delete section 3(2)(c) and insert:

- (c) providing those persons with statutory remedies and other actions in equity by establishing a system of trusts in relation to the following —
 - (i) money retained to secure the performance of the contractual obligations of those persons;
 - (ii) certain rights, payments and entitlements relating to work or supply undertaken by those persons;
- and

5. Section 4 amended

In section 4(1) insert in alphabetical order:

construction payment entitlement has the meaning given in section 76F(1);

construction trust has the meaning given in section 76F(2);

construction trust account has the meaning given in section 76A;

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GTE has the meaning given in the *Government Trading Enterprises Act 2023* section 3(1);

State agency —

- (a) has the meaning given in the *Procurement Act 2020* section 5; and
- (b) includes any entity prescribed by the regulations to be a State agency;

trust account means —

- (a) a construction trust account; or
- (b) a retention money trust account;

trust contract has the meaning given in section 76A;

6. Section 14 amended

After section 14(2) insert:

- (3) Subsection (2) does not apply to the following —
 - (a) an express provision in a construction contract if —
 - (i) a principal or a head contractor, who is a State agency, is a party to the contract; and
 - (ii) the provision requires a head contractor or subcontractor to pay an amount owing in connection with the contract on the same day that the amount is paid to the head contractor or subcontractor;
 - (b) any other provision of the contract or another construction contract that facilitates or gives effect to the provision referred to in paragraph (a)(ii).

7. Part 3 Division 1A inserted

After Part 3 Division 1 insert:

Division 1A — Payment withholding

27A. Terms used

In this Division —

claim means either or both of the following —

- (a) a payment claim;
- (b) a claim, made under a construction contract, for the payment of an entitlement under the construction contract;

claim statement has the meaning given in section 27C(1).

27B. Application of Division

- (1) In this section —

relevant construction contract means a construction contract to which a principal and head contractor are parties, but only if —

- (a) the head contractor is not a State agency or GTE; and
- (b) the principal of the contract is a State agency or GTE; and
- (c) if the principal of the contract is a GTE — at the time the contract is first entered into with the head contractor, the contract expressly provides that this Division applies to the contract;

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relevant subcontract means a construction contract to which a head contractor and a subcontractor are parties, but only if —

- (a) the head contractor is a State agency or GTE; and
 - (b) the subcontractor is not a State agency or GTE; and
 - (c) at the time the contract is first entered into with the subcontractor, the contract expressly provides that this Division applies to the contract.
- (2) This Division applies to and in relation to —
- (a) a relevant construction contract; and
 - (b) a relevant subcontract as if —
 - (i) a reference to a head contractor is a reference to the subcontractor who is a party to the relevant subcontract; and
 - (ii) a reference to a principal is a reference to the head contractor who is a party to the relevant subcontract.

27C. Head contractor must give statement to principal

- (1) A head contractor of a contract who makes a claim in relation to the contract must give the principal of the contract a written statement (a **claim statement**), in the approved form, in relation to the claim.
- (2) The claim statement must include the following information —
 - (a) whether or not the head contractor has paid the full amount claimed by each subcontractor engaged by the head contractor in connection with the contract;

- (b) if the head contractor has not paid the full amount claimed by a subcontractor — the following information in relation to the subcontractor —
 - (i) the subcontractor's name;
 - (ii) the amount that has not been paid to the subcontractor;
 - (iii) details of the unpaid claim made by the subcontractor;
 - (iv) the reasons the full amount has not been paid;
 - (c) any other information reasonably required by the principal of the contract.
- (3) The information set out in subsection (2)(b) is not required to be included in a claim statement if —
 - (a) the head contractor has entered a written agreement with the subcontractor to pay less than the full amount claimed and the agreed amount has been paid; or
 - (b) the full amount claimed by the subcontractor will be paid out of the amount claimed in the claim for which the statement is prepared.
- (4) The head contractor must give the claim statement to the principal of the contract —
 - (a) on the date specified for that purpose in the contract; or
 - (b) if no date is specified for that purpose in the contract —
 - (i) if the statement is for a payment claim — no later than 5 business days before the due date for payment under section 20; or

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- (ii) otherwise — no later than 20 business days after the claim is made.
- (5) The principal of the contract may, after receiving the claim statement, request any further information reasonably required for the principal to assess whether to withhold an amount from the head contractor under section 27D.
- (6) A claim made by the head contractor to the principal of a contract is not invalid only because a claim statement is not given to the principal.

27D. Principal may withhold payments

- (1) The principal of a contract may, in either or both of the following circumstances, withhold an amount, or part of an amount, forming part of a claim made by a head contractor —
 - (a) if a claim statement or further information is not given to the principal in relation to the claim under section 27C;
 - (b) if, after receiving a claim statement in relation to the claim, the principal reasonably believes —
 - (i) the statement or further information requested by the principal is false or misleading in a material particular; or
 - (ii) the statement does not comply with this Division; or
 - (iii) the head contractor who provided the statement has not complied with Part 4; or
 - (iv) that if the amount is paid, the head contractor who provided the statement will not comply with Part 4.

- (2) The principal of the contract must, as soon as reasonably practicable, give the head contractor written notice of the withholding.
- (3) The notice must include the following information —
 - (a) details of the claim for the amount being withheld;
 - (b) the amount being withheld;
 - (c) the reason for withholding the amount.
- (4) Part 2 Division 2 and Part 3 Divisions 1 and 2 do not apply to, or in relation to, an amount while it is withheld.
- (5) A head contractor must not, on the basis of the withholding —
 - (a) suspend work or supply under section 62; or
 - (b) exercise, under section 64, a lien in relation to any unpaid amount over any unfixed plant or materials under the contract; or
 - (c) take any action arising from, or in connection with, a failure to receive the amount.

27E. Right to withhold prevails

The principal of a construction contract to which this Division applies may withhold, and continue to withhold, an amount under section 27D in relation to a claim —

- (a) despite anything to the contrary in the construction contract or any other contract or agreement; and
- (b) whether the claim is made —
 - (i) under this Act or the contract (or both);
 - or

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- (ii) before or after notice of the withholding is given under section 27D;
- and
- (c) whether or not another claim is made in relation to the same amount.

27F. Adjudication application taken to be withdrawn if progress payment withheld

- (1) This section applies if —
 - (a) a progress payment, or part of a progress payment, is withheld under section 27D; and
 - (b) the claimant has, before the withholding, applied for adjudication of the payment claim for the progress payment on a ground referred to in section 28(1); and
 - (c) the application has not been finally determined.
- (2) The adjudication application is taken to be withdrawn under section 31.
- (3) The claimant remains liable for the fees and expenses of the adjudicator, if any, incurred or paid by the claimant before the withdrawal of the adjudication application under subsection (2).
- (4) The claimant is not entitled to a refund of the application fee, if any, paid to an authorised nominating authority for the application.
- (5) Nothing in this section prevents a person from making a new adjudication application in relation to the same payment claim after the progress payment ceases to be withheld under section 27D.

27G. Payment of amount withheld

- (1) If the principal of a contract is satisfied that the circumstances set out in section 27D(1) no longer apply in relation to an amount withheld, the principal must, as soon as reasonably practicable, pay the amount withheld to the head contractor.
- (2) The principal of the contract must give the head contractor written notice of —
 - (a) the principal’s intention to pay the amount withheld; and
 - (b) the date on which the amount will be paid.

8. Section 30 amended

- (1) In section 30(2) delete “respondent within 1 business day after the application is made.” and insert:

respondent.

- (2) After section 30(2) insert:

- (2A) An adjudication application is not invalid merely because subsection (2) is not complied with.

9. Section 34 amended

- (1) In section 34(4) delete “claimant within 1 business day after the response is given to the adjudicator.” and insert:

claimant.

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(2) After section 34(4) insert:

(5) An adjudication response is not invalid merely because subsection (4) is not complied with.

10. Section 42 amended

(1) In section 42(3) delete “party within 1 business day after the application is made.” and insert:

party.

(2) After section 42(3) insert:

(3A) An adjudication review application is not invalid merely because subsection (3) is not complied with.

11. Section 45 amended

(1) In section 45(4) delete “review within 1 business day after the response is given to the review adjudicator.” and insert:

review.

(2) After section 45(4) insert:

(5) An adjudication review response is not invalid merely because subsection (4) is not complied with.

12. Section 50 amended

After section 50(5)(f) insert:

- (fa) in the case of an adjudication review — the amount of adjudication fees and expenses, and the proportion of that amount, payable or paid by a party in relation to the adjudication that is the subject of the review;

13. Section 62 amended

In section 62(1)(c) delete “retention money relating to the progress payment into a retention money trust account as required by” and insert:

money relating to the progress payment that is required to be paid into a trust account under

14. Part 4 heading replaced

Delete the heading to Part 4 and insert:

Part 4 — Statutory trusts

Division 1 — Retention money trusts

15. Section 69 amended

- (1) In section 69(1) and (2) delete “Part —” and insert:

Division —

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- (2) In section 69(3) delete “Part,” and insert:

Division,

16. Section 70 amended

- (1) In section 70(1) delete “Part” (each occurrence) and insert:

Division

- (2) In section 70(2):

- (a) delete “Part,” and insert:

Division,

- (b) in paragraph (c)(ii) delete “Part” and insert:

Division

- (3) In section 70(3):

- (a) delete “Part” (1st and 2nd occurrences) and insert:

Division

- (b) delete “Part.” and insert:

Division.

- (4) In section 70(4) delete “Part” (each occurrence) and insert:

Division

Note: The heading to amended section 70 is to read:

Construction contracts to which Division applies

17. Section 71 amended

- (1) In section 71(1) and (2) delete “Part” and insert:

Division

- (2) In section 71(3) delete “Part —” and insert:

Division —

- (3) In section 71(5)(b) delete “Part” and insert:

Division

18. Section 72 amended

- (1) In section 72(1) and (2) delete “Part” and insert:

Division

- (2) Delete section 72(3).

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19. Section 73 amended

In section 73 in the note delete “Part.” and insert:

Division.

20. Section 74 amended

- (1) In section 74(1) delete “Part” (each occurrence) and insert:

Division

- (2) After section 74(1) insert:

- (1A) A party to a construction contract who, without reasonable excuse, fails to comply with subsection (1) commits an offence.

Penalty for this subsection: a fine of \$50 000.

- (3) In section 74(2) delete “Part” (each occurrence) and insert:

Division

- (4) After section 74(5) insert:

- (6) Despite subsections (4) and (5), a single retention money trust account must be established for all retention money required to be retained under a contract for which a construction trust is created under Division 2.

21. Section 76 amended

After section 76(2)(g) insert:

- (ga) for the purpose of withdrawing accrued interest in accordance with section 78(5); or

22. Part 4 Division 2 inserted

After section 76 insert:

Division 2 — Construction trusts

Subdivision 1 — Preliminary

76A. Terms used

In this Division —

construction payment has the meaning given in section 76F(1);

construction trust account, for a construction trust, means an account opened in accordance with this Division for the purposes of the construction trust;

contracting party, for a trust contract, means the party to the contract —

- (a) for whom construction work is to be carried out; or
- (b) to whom related goods and services are to be supplied;

exempt contract means a construction contract of a kind prescribed by the regulations for the purposes of this Division;

prescribed construction money threshold means the amount prescribed by the regulations for the purposes of this Division;

trust contract means the following —

- (a) a State agency contract (as defined in section 76C);
- (b) a first-tier subcontract (as defined in section 76D(1));
- (c) a related entity subcontract (as defined in section 76E(2)).

76B. Continued application of Division

A trust contract continues to be a trust contract regardless of any variation or other amendment of the contract after the date on which the contract is first entered into.

Subdivision 2 — Certain construction contracts identified as trust contracts

76C. State agency contracts

A construction contract is a ***State agency contract*** if —

- (a) a principal and head contractor are parties to the contract; and
- (b) the principal is a State agency or GTE; and
- (c) the head contractor is not a State agency or GTE; and
- (d) at the time the contract is first entered into —
 - (i) if the principal is a State agency — it is not an exempt contract and the value of the contract is equal to, or more than, the prescribed construction money threshold; or

- (ii) if the principal is a State agency or GTE — it expressly provides that it is a trust contract for the purposes of this Division.

76D. First-tier subcontracts

- (1) A construction contract is a ***first-tier subcontract*** if —
 - (a) a head contractor and a subcontractor (a ***first-tier subcontractor***) are parties to the contract; and
 - (b) the head contractor is a State agency or GTE; and
 - (c) at the time the contract is first entered into with the first-tier subcontractor, the contract expressly provides that it is a trust contract for the purposes of this Division; and
 - (d) the first-tier subcontractor is not a State agency or GTE.
- (2) This Division applies to a first-tier subcontract as if a reference to a head contractor in section 76G is a reference to a first-tier subcontractor.

76E. Related entity subcontracts

- (1) In this section —
family member, of a person, means —
 - (a) the person's spouse; or
 - (b) a parent of the person or the person's spouse; or
 - (c) a grandparent of the person or the person's spouse; or
 - (d) a brother, sister, aunt, uncle, nephew, niece or cousin of the person or the person's spouse; or

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- (e) a child of the person or the person's spouse; or
- (f) a grandchild of the person or the person's spouse; or
- (g) the spouse of any person referred to in paragraphs (b) to (f);

related body corporate has the meaning given in the *Corporations Act 2001* (Cth) section 9;

related entity, of a party to a trust contract, means the following —

- (a) a family member of the party;
- (b) a related body corporate of the party;
- (c) a corporation in which the party or a family member of the party has an interest of at least 50%;
- (d) a person with an interest of at least 50% in the party, and any family member of the person;
- (e) the trustee of a trust, other than a construction trust, in relation to which the party, a family member of the party or a related body corporate of the party is a beneficiary;
- (f) the beneficiary of a trust, other than a construction trust, in relation to which the party, a family member of the party or a related body corporate of the party is a trustee;
- (g) a person, or class of persons, prescribed by the regulations;

spouse, of a person, means an individual who is —

- (a) lawfully married to the person; or
- (b) the de facto partner of the person.

- (2) A construction contract is a ***related entity subcontract*** if —
- (a) a party to another trust contract enters into the construction contract with a subcontractor; and
 - (b) the subcontractor is —
 - (i) a related entity of the party to the other trust contract (a ***related entity subcontractor***); and
 - (ii) a beneficiary of the construction trust for the other trust contract.
- (3) Subsection (2)(a) does not apply to or in relation to a party or a subcontractor who is a State agency or a GTE.
- (4) A construction trust created for the related entity subcontract is a separate construction trust from the construction trust created for the other trust contract.
- (5) This Division applies to and in relation to a related entity subcontract as if a reference to a head contractor in section 76G is a reference to the related entity subcontractor.

Subdivision 3 — Establishment of construction trust

76F. Creation of construction trust

- (1) In this section —
- construction payment***, for a trust contract, means any amount paid by the contracting party for the trust contract to the trustee of the trust in connection with the performance of the trust contract;
- construction payment entitlement***, in relation to a trust contract, means a person's right or entitlement to be

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paid in connection with the performance of the trust contract.

- (2) A **construction trust** for a trust contract is a trust over the following, which are taken to be held on trust by the trustee of the trust from the creation of the trust —
- (a) all construction payments for the trust contract received by the trustee;
 - (b) the trustee's construction payment entitlements in relation to the trust contract.
- (3) A construction trust for a trust contract is created on the day on which the first of the following occurs —
- (a) a construction payment for the trust contract is first received by the trustee of the construction trust;
 - (b) an amount is first paid into a construction trust account for the construction trust.

76G. Head contractor is both trustee and beneficiary of construction trust

- (1) The head contractor for a trust contract —
- (a) is the trustee of the construction trust for the trust contract; and
 - (b) is both the trustee and a beneficiary of the trust.
- (2) The head contractor —
- (a) becomes the trustee and a beneficiary of the construction trust when the trust is created; and
 - (b) ceases to be the trustee and a beneficiary of the trust when the trust is lawfully dissolved.

- (3) The head contractor has a beneficial interest in the following —
- (a) any amount paid in advance by the principal for the purpose of reimbursing the following, if specified in the trust contract —
 - (i) costs incurred by the head contractor; or
 - (ii) the head contractor's margin;
 - (b) the amount held on trust after subtracting all amounts the beneficiaries, other than the trustee, are entitled to be paid in connection with the trust.
- (4) Subsection (3)(a) does not apply to the head contractor unless the trust contract expressly provides that the provision applies.
- (5) If a court, in the exercise of its jurisdiction to supervise the administration of the construction trust, replaces the trustee of the trust, the replacement trustee must carry out all of the obligations of the trustee under this Act in relation to the administration of the trust.

76H. Beneficial interests of contracting parties

- (1) In this section —
- advance payment***, in relation to a trust contract —
- (a) means a payment, including a prepayment or a deposit, made in advance of the performance of an obligation under, or in connection with, the contract, whether made before or after a construction trust account is opened for the construction trust for the contract; but
 - (b) does not include any amount in which a person, other than the contracting party for the contract, has a beneficial interest.

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- (2) A contracting party for a trust contract who makes an advance payment in relation to the contract —
- (a) is a beneficiary of the construction trust for the trust contract; and
 - (b) has a beneficial interest in the advance payment.

Example for this subsection:

If the contracting party pays \$50 000 in advance and a subcontractor has a construction payment entitlement of \$20 000, the contracting party's advance payment is reduced to \$30 000.

- (3) The contracting party —
- (a) becomes a beneficiary of the construction trust when the trust is created; and
 - (b) ceases to be a beneficiary of the construction trust when the trust is lawfully dissolved.

76I. Beneficial interests of subcontractors

- (1) A subcontractor is a beneficiary of a construction trust for a trust contract if the subcontractor enters into a construction contract with the trustee of the construction trust to carry out construction work or supply related goods and services in connection with the performance of the trust contract.
- (2) The subcontractor has a beneficial interest in the property of the construction trust to the extent of the subcontractor's construction payment entitlement in relation to the trust contract.
- (3) The subcontractor —
- (a) becomes a beneficiary of the construction trust when the work is carried out or the related goods and services are supplied by the

subcontractor in connection with the
performance of the trust contract; and

- (b) ceases to be a beneficiary of the construction
trust when the trust is lawfully dissolved.

- (4) The subcontractor's construction payment entitlement
in relation to the trust contract arises on the day on
which the subcontractor carries out the work or
supplies the related goods and services in connection
with the performance of the trust contract, whether or
not —

- (a) the right to receive payment under the contract
has been confirmed, asserted or verified; or
- (b) the amount of the payment has been
determined; or
- (c) the payment has become payable; or
- (d) a claim for the payment has been made or
determined.

**76J. Determination of amount of construction payment
entitlement**

- (1) Subject to subsection (3), the amount of a person's
construction payment entitlement in relation to a trust
contract is limited to the following amounts, if
applicable —
 - (a) an amount certified as the amount owed to the
person in a certificate or indicated in a payment
schedule given to the person under —
 - (i) the trust contract; or
 - (ii) a subcontract under which the person
undertakes to carry out work or supply
related goods and services in connection
with the performance of the trust
contract;

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- (b) an amount the parties to the trust contract or the subcontract agree in writing to be the person's construction payment entitlement in relation to the trust contract.
- (2) If at least 2 of the amounts referred to in subsection (1) specify different amounts for the same construction payment entitlement of the person, the amount of the person's construction payment entitlement is taken to be the highest amount of whichever of the following applies —
 - (a) the scheduled amount indicated in the payment schedule;
 - (b) the amount certified as the amount owed to the person;
 - (c) the agreed amount.
- (3) The amount of a person's construction payment entitlement in relation to a trust contract is the amount, if any, payable under an order, determination or decision made by a court, tribunal or other decision-maker in relation to an amount referred to in subsection (1).

76K. Dissolution of construction trusts

A construction trust for a trust contract is dissolved —

- (a) for a trust contract other than a related entity subcontract — on the date, if any, specified for that purpose in the trust contract; or
- (b) if no date is specified for that purpose or the trust contract is a related entity subcontract — on whichever of the following occurs first —
 - (i) the day occurring 6 months after the last day on which a progress payment claim

for a final payment for the trust contract
may be made under section 23(5);

- (ii) the date on which the only remaining
work to be carried out under the trust
contract is work that may be carried out
under an exempt contract.

Subdivision 4 — Construction trust accounts

76L. Obligations of trustees

- (1) The trustee of a construction trust must open a
construction trust account with a recognised financial
institution.
- (2) The construction trust account for a trust contract must
be opened —
 - (a) within 10 business days after entering into the
trust contract; or
 - (b) if a period is specified in the trust contract —
within that period.
- (3) A single construction trust account must not be used
for more than 1 construction trust.
- (4) A construction trust account for a construction trust
must not be used for any of the following —
 - (a) retention money held on trust under Division 1;
 - (b) money held on trust in relation to a different
construction trust;
 - (c) any other purpose that is not related to the
construction trust for which the account was
opened.

76M. Requirements for construction trust accounts

- (1) The following requirements apply to a construction trust account opened under this Division —
 - (a) the account must be a deposit or transaction account of the recognised financial institution;
 - (b) the name of the account and the description of the account must include the words “trust account”.
- (2) The trustee of a construction trust must, as soon as practicable, give written notice of the account to —
 - (a) each person who is or becomes a beneficiary of the trust; and
 - (b) the contracting party for the trust contract.
- (3) The notice must contain the following information —
 - (a) the name of the recognised financial institution with which the account has been opened;
 - (b) the name of the account;
 - (c) the BSB number and account number for the account;
 - (d) that all construction payments for the trust contract are required to be paid into the account;
 - (e) any other information prescribed by the regulations.
- (4) The trustee of a construction trust must give written notice of any change in the information contained in the notice, as soon as practicable after the change occurs, to —
 - (a) each person who is a beneficiary of the trust; and

- (b) the contracting party for the trust contract.

76N. Payments into construction trust accounts

- (1) A contracting party for a trust contract who has been notified of the establishment of a construction trust account by a trustee must make all construction payments for the trust contract into the account, including payments made in accordance with the following —
 - (a) a determination of an adjudicator or review adjudicator under Part 3;
 - (b) a decision of an arbitrator in any arbitration under the contract;
 - (c) a decision of an expert appointed under the contract;
 - (d) an order of a court or tribunal.
- (2) If an amount is paid, in contravention of subsection (1), into another account held by the trustee, the trustee must, within 24 hours of becoming aware of the payment, pay the same amount into the construction trust account.

76O. Trustee to cover shortfalls

- (1) This section applies if there is an insufficient amount available in a construction trust account to pay an amount due and payable to a beneficiary of the trust on the day on which a construction payment for the trust contract is paid into the account.
- (2) The trustee must immediately deposit an amount equal to the difference between the amount available in the account for payment and the amount to be paid from the account.

- (3) This section does not apply to a trustee who is insolvent (as defined in the *Building Services (Registration) Act 2011* section 63A(1)).

76P. Restriction on withdrawals from construction trust accounts

- (1) A trustee must not withdraw money from a construction trust account other than in accordance with this section.
- (2) Money may be withdrawn from a construction trust account only as follows —
- (a) for the purpose of making a payment relating to a person's beneficial interest in the construction trust;
 - (b) for the purpose of withdrawing the money in accordance with section 76S(3);
 - (c) in accordance with the determination of an adjudicator or review adjudicator under Part 3;
 - (d) in accordance with a decision of an arbitrator;
 - (e) in accordance with an order of a court or tribunal;
 - (f) in accordance with a decision of an expert appointed to determine a matter under a trust contract in relation to which the account was established;
 - (g) for the purpose of returning money paid into the account in error;
 - (h) for the purpose of transferring money to another trust account opened in accordance with this Division;
 - (i) for the purpose of withdrawing accrued interest in accordance with section 78(5);

- (j) for the purpose of exercising the right to an indemnity from the trust for the trustee's expenses in administering the trust in the circumstances set out in —
 - (i) if a direction of a kind prescribed by the regulations is obtained from a court — section 86(b) or (c); or
 - (ii) section 86(a);
 - (k) for any other purpose, or in any other circumstances, prescribed by the regulations.
- (3) For the purposes of subsection (2)(a), a payment relates to a person's beneficial interest in the construction trust for a trust contract if the payment is made —
 - (a) to the person in accordance with this Act; or
 - (b) to repay an amount paid by the trustee of the construction trust to the person before the contracting party for the trust contract has paid the trustee.
- (4) Money may be withdrawn from a construction trust account only —
 - (a) by cheque or electronic funds transfer; and
 - (b) in accordance with any other requirements prescribed by the regulations, including requirements for notices of proposed withdrawals.
- (5) A trustee is taken to have withdrawn an amount from a construction trust account if —
 - (a) the trustee authorises another person to make the withdrawal; or
 - (b) the trustee knowingly contributes to the withdrawal being made.

**76Q. Amounts in construction trust account unavailable
for trustee's debts**

- (1) An amount paid, or required to be paid, into a construction trust account held by a trustee must not be —
 - (a) used to recover a debt owed to a creditor of the trustee; or
 - (b) attached or taken in execution under a court order or process for the benefit of a creditor of the trustee.
- (2) Subsection (1) —
 - (a) applies in relation to the trustee, whether in the capacity of trustee or otherwise; and
 - (b) ceases to apply to an amount once lawfully withdrawn from the trust account; and
 - (c) does not apply to the extent that it would interfere with the right of a beneficiary, other than a beneficiary who is also the trustee, under this Division.

**76R. Insufficient amounts available for beneficiary
subcontractors**

- (1) This section applies if —
 - (a) a trustee of a construction trust is required to pay 2 or more other beneficiaries an amount from the construction trust account at the same time; and
 - (b) the total amount held in the construction trust account is insufficient to satisfy the full amount required to be paid to each beneficiary; and

- (c) the trustee has not complied with its obligation to cover the insufficient amount; and
 - (d) the trustee is a corporation under external administration (as defined in the *Corporations Act 2001* (Cth) Schedule 2).
- (2) The trustee must, in accordance with the regulations, apply to a court for a direction in relation to the payment to the beneficiaries of the construction trust.
- (3) Nothing in this section relieves the trustee of the liability to pay in full the amounts the beneficiaries are entitled to be paid in connection with the trust contract.

76S. Closure of construction trust accounts

- (1) A trustee may close a construction trust account —
 - (a) for the purpose of transferring the account to another financial institution; or
 - (b) if the construction trust is lawfully dissolved.
- (2) The trustee must, as soon as practicable after closing the account, give written notice of the closure to —
 - (a) each former beneficiary of the trust; and
 - (b) the contracting party for the trust contract.
- (3) In closing the account, the trustee may pay itself the following amounts —
 - (a) any amount for interest that the trustee is entitled to under section 78;
 - (b) any remaining amount that is not owing to another beneficiary of the trust.

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23. Part 4 Division 3 heading inserted

Before section 77 insert:

Division 3 — Obligations and restrictions relating to statutory trusts

24. Section 77 amended

(1) At the beginning of section 77 insert:

(1) In this section —

relevant matter means any of the following —

- (a) the amount of retention money required to be paid into, or withdrawn from, a retention money trust account;
- (b) the amount of a payment required to be paid into, or withdrawn from, a construction trust account;
- (c) the amount of a person's construction payment entitlement in relation to a trust contract.

(2) In section 77 delete “A decision on retention money that is required to be paid into, or that can be withdrawn from, a retention money trust account” and insert:

(2) A decision on a relevant matter

Note: The heading to amended section 77 is to read:

Decisions on amounts of retention money, construction payments and construction payment entitlements

25. Section 78 replaced

Delete section 78 and insert:

78. Trust account interest and fees

- (1) A trustee who holds money on trust in a trust account must not invest the money held on trust in any form of investment other than in accordance with this section.
- (2) Subject to subsections (3) and (4), the trustee is entitled to receive interest (the **accrued interest**) earned on the money held in the trust account.
- (3) Interest earned on money held in the trust account for a beneficiary of the trust is payable to the beneficiary if the interest is earned on the money after it has become payable to the beneficiary.
- (4) However, any interest payable to the beneficiary must be offset against any liability to pay interest to the beneficiary for late payment of the money.
- (5) The trustee may withdraw an amount equal to the trustee's entitlement to the accrued interest —
 - (a) once in each period prescribed by the regulations; and
 - (b) at any time on or after —
 - (i) for a retention money trust account — the retention money trust end date; or
 - (ii) for a construction trust account — the dissolution of the trust.
- (6) The fees and charges payable to the recognised financial institution for the establishment and operation of a trust account are payable by the party who established the account.

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26. Section 79 amended

After section 79(3) insert:

- (3A) A party to a construction contract who, without reasonable excuse, fails to comply with subsection (3)(a) commits an offence.

Penalty for this subsection: a fine of \$50 000.

27. Section 83 deleted

Delete section 83.

28. Section 85A inserted

After section 85 insert:

85A. Effect of assignment of beneficial entitlements

- (1) An assignment by a subcontractor of the subcontractor's entitlement to an amount arising under section 76I and held on trust under this Part is of no effect.
- (2) A trustee is not entitled to offset, against the subcontractor's entitlement, any liability of the subcontractor under another contract.
- (3) If a trustee assigns any entitlement to recourse to money held on trust under this Part —
- (a) the money continues to be held on trust under this Part; and
 - (b) this Act continues to apply to the assigned amount of money held on trust in the same way as it applied to the money before the assignment; and

- (c) the beneficial interest in the trust of any other party to the contract is not affected by the assignment.

29. Section 86 amended

- (1) Delete section 86(b) and insert:

- (b) the trustee is a corporation under external administration (as defined in the *Corporations Act 2001* (Cth) Schedule 2);

- (2) At the end of section 86 insert:

Note for this section:

The right to an indemnity from a trust permitted in the circumstances set out in paragraphs (b) and (c) is subject to certain requirements in relation to a construction trust — see section 76P(2)(j)(i).

30. Section 87 deleted

Delete section 87.

31. Section 111 amended

After section 111(2) insert:

- (3) Nothing in this section is taken to affect the operation of Part 3 Division 1A or Part 4 Division 2 in relation to a contract that expressly provides that a provision of either Division applies to the contract.

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32. Section 112A inserted

After section 112 insert:

112A. No liability against protected parties

(1) In this section —

protected party means any of the following —

- (a) the State;
- (b) the Minister and any other Minister of the State;
- (c) a State agency or GTE;
- (d) an employee of a State agency or GTE;
- (e) a person acting under the direction of a person referred to in paragraph (a), (b), (c) or (d), including an agent, contractor or advisor;

relevant provision —

- (a) means section 14(3) or a provision of Part 3 Division 1A or Part 4; and
 - (b) includes any subsidiary legislation made under, or for the purposes of, those provisions.
- (2) A protected party is not liable to any action, liability or demand arising (whether under a contract or otherwise) from the following —
- (a) the enactment, commencement or operation of a relevant provision;
 - (b) the affecting of a liability by a relevant provision;

- (c) compliance, or purported compliance, in good faith, with a requirement of a relevant provision;
 - (d) the doing of, or omitting to do, any other act, matter or thing, in good faith in the performance, or purported performance, of a function —
 - (i) under a relevant provision; or
 - (ii) under any other law relating to construction trusts; or
 - (iii) in connection with a construction trust;
 - (e) the exercise of any right under, or granted by, a relevant provision.
- (3) The State is also relieved of any liability arising from any other person doing, or omitting to do, anything described in subsection (2)(c) or (d).

33. Section 114 amended

- (1) Before section 114(1) insert:

- (1A) In this section —

agency and ***chief executive officer*** have the meanings given in the *Public Sector Management Act 1994* section 3(1).

- (2) In section 114(2):

- (a) delete “published by the Building Commissioner”;

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- (b) delete “the Building Commissioner directs when publishing the approved form that it is recommended but not mandatory.” and insert:

specified otherwise in the approved form when it is published.

- (3) In section 114(3) delete “published by the Building Commissioner”.

- (4) After section 114(3) insert:

- (4) For the purposes of section 27C, the Building Commissioner may delegate the function under subsection (1) to the chief executive officer of any agency.
- (5) An approved form is taken not to be given in accordance with this Act if —
- (a) information in the form must be verified by a statutory declaration and is not; or
 - (b) the form is required to be accompanied by a document and is not.

34. Section 115 amended

In section 115(1) delete “of this Act.” and insert:

of this Act, other than Part 4 Divisions 2 and 3 (to the extent to which they relate to construction trusts).

35. Part 6A inserted

After section 120 insert:

**Part 6A — Transitional and savings provisions
for *Building and Construction Industry (Security
of Payment) Amendment Act 2026***

120A. Term used: amending Act

In this Part —

amending Act means the *Building and Construction Industry (Security of Payment) Amendment Act 2026*.

120B. Interpretation Act 1984 not affected

This Part applies in addition to the *Interpretation Act 1984* and does not limit or otherwise affect the operation of the provisions of that Act.

120C. Savings and transitional regulations

Regulations made under section 119 may include provisions of a savings or transitional nature that arise as a result of the enactment of, or the coming into operation of, the amending Act.

120D. Transitional arrangements for construction trusts

- (1) Section 14, as amended by the amending Act, extends to and in relation to a construction contract entered into before the day on which that amendment comes into operation.
- (2) Part 3 Division 1A, as inserted by the amending Act, does not apply to, or in relation to, a construction contract entered into before the day on which that Division comes into operation.

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- (3) Part 4 Division 2, as inserted by the amending Act, does not apply to, or in relation to —
- (a) a construction contract entered into before the day on which that Division comes into operation; or
 - (b) a construction contract entered into —
 - (i) after the day on which that Division comes into operation; and
 - (ii) in connection with a contract referred to in paragraph (a).
- (4) Despite subsection (3), regulations made under section 119 may provide that Part 4 Division 2, as inserted by the amending Act, applies to and in relation to a construction contract entered into before the day on which that Division comes into operation.

120E. Transitional arrangements for adjudications and adjudication reviews

- (1) In this section —
- commencement day** means the day on which the amending Act section 8 comes into operation;
- pre-commencement determination** means —
- (a) an adjudicator's determination made under section 38 before commencement day; or
 - (b) a review adjudicator's determination made under section 48 before commencement day;
- relevant former provision** means any of the following provisions as in force immediately before commencement day —
- (a) section 30(2);
 - (b) section 34(4);

- (c) section 42(3);
- (d) section 45(4).
- (2) A pre-commencement determination cannot be quashed or set aside on or after commencement day on the basis that a relevant former provision was not complied with or didn't need to be complied with.
- (3) An adjudication application or adjudication review application made, but not yet determined, before commencement day, and any response given in relation to the application, are not invalid merely because a relevant former provision was not complied with.

36. Various references to “retention money” deleted

In the provisions listed in the Table delete “retention money”.

Table

s. 79(1), (2)(a), (3) and (5)	s. 80(1) and (3)
s. 81(1)	s. 82(3)
s. 85(3)	

**Part 3 — *Building Services (Registration) Act 2011*
amended**

37. Act amended

This Part amends the *Building Services (Registration) Act 2011*.

38. Section 17 amended

After section 17(2) insert:

- (3) In making a decision under this section, the Board may take into account events or matters occurring after the applicant applied for registration or renewal.

39. Section 18 amended

After section 18(2) insert:

- (3) In making a decision under this section, the Board may take into account events or matters occurring after the applicant applied for registration or renewal.

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