# Security of Payment - Changes to Legislation: What Builders Need to Know

With record insolvency levels in the construction industry, the NSW Government has moved to tighten up the security of payment regime to improve cash flow and payment terms within the industry and provide further relief to residential builders.

With the commencement of the Building and Construction Industry Security of Payment Regulation 2020 (NSW) (**Regulations**), owner occupier residential contracts entered into from and after 1 March 2021 are now caught by the security of payment regime.

Whilst the changes mean that residential builders can now access the security of payment regime for owner occupier residential contracts without having to commence proceedings in a tribunal or court, builders should be aware of the strict time requirements and limitations of the security of payment legislation.

To ensure you are not caught out by any non-compliance with the technicalities of the security of payment process and for general information, see: SOPA workflow and SOPA flowchart.

In addition to the above, the following important changes also apply:

- **Trust account requirements for construction contracts over $20 million**
    - A head contractor must ensure that the money is paid into the retention money trust account established with an approved ADI as soon as possible, and by no later than 5 business days after receiving the money.
    - A head contractor must not withdraw retention money from a retention money trust account except for the purpose of payment in accordance with the terms of the construction contract under which the money was retained by the head contractor, as agreed in writing between the head contractor and subcontractor, for the purpose of payment of an adjudicated amount, or in accordance with an order of the court or tribunal.
    - Retention money held by a head contractor is not available for the payment of the debts of the head contractor. However, clause 12(1) of the Regulations does not affect any just claim the head contractor may have against or upon retention money.
    - A head contractor must keep a separate ledger for retention money held in respect of each subcontractor in connection with each construction contract and provide the subcontractor with a copy at least once every 3 months or as agreed in writing (but at least once every 6 months).

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- **Supporting statements**
    - The requirement for a head contractor to provide a supporting statement under section 13(7) of the Building and Construction Industry Security of Payment Act 1999 (NSW) relates only to those subcontractors or suppliers directly engaged by the head contractor.

Further articles on the management of security of payment claims and adjudications can be found on the Bannermans website here.

## Key takeaways

- The NSW Government has tightened the security of payment regime to improve cash flow for builders.
- Owner occupier residential contracts from 1 March 2021 are now included in the security of payment regime.
- Head contractors must adhere to strict time requirements and limitations under the new legislation.
- Retention money must be managed in a trust account and cannot be used for the head contractor's debts.
- Supporting statements are required only for subcontractors directly engaged by the head contractor.

****The information contained in this article is general information only and not legal advice. The currency, accuracy and completeness of this article (and its contents) should be checked by obtaining independent legal advice before you take any action or otherwise rely upon its contents in any way.*

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