

WESTERN AUSTRALIA

Building and Construction Industry (Security of Payment) Amendment Bill 2025

DRAFT BILL FOR PUBLIC COMMENT

The Government proposes to introduce into Parliament a Bill to amend the *Building and Construction Industry (Security of Payment) Act 2021* and to make related and consequential amendments to other Acts.

This draft Bill has been prepared for public comment but it does not necessarily represent the Government's settled position.

All submissions must be forwarded to: sopreform@lgirs.wa.gov.au

For further information please see the Department of Local Government, Industry Regulation and Safety website at www.lgirs.wa.gov.au.

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Western Australia

Building and Construction Industry (Security of Payment) Amendment Bill 2025

A Bill for

An Act to amend the *Building and Construction Industry (Security of Payment) Act 2021* and to make related and consequential amendments to other Acts.

The Parliament of Western Australia enacts as follows:

1 **Part 1 — Preliminary**

2 **1. Short title**

3 This is the *Building and Construction Industry (Security of*
4 *Payment) Amendment Act 2025*.

5 **2. Commencement**

6 This Act comes into operation as follows —

- 7 (a) Part 1 — on the day on which this Act receives the
8 Royal Assent (*assent day*);
9 (b) Part 3 — on the day after assent day;
10 (c) the rest of the Act — on a day fixed by proclamation,
11 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) establishing a system of trusts, including for the
purposes of the general law, for 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 carried out
by those persons to provide those
persons with statutory remedies and
other actions in common law and
equity;

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;

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

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- 1 (b) includes any entity prescribed by the
2 regulations to be a State agency;
3 **trust account** means —
4 (a) a construction trust account; or
5 (b) a retention money trust account;
6 **trust contract** has the meaning given in section 76A;
7

8 **6. Section 14 amended**

9 After section 14(2) insert:
10

- 11 (3) Subsection (2) does not apply to the following pay
12 when paid provisions of a construction contract if the
13 principal of the contract is a State agency —
14 (a) an express provision that requires the head
15 contractor for the contract to pay an amount
16 owing to a subcontractor in connection with the
17 contract on the same day that the principal pays
18 the amount owing to the head contractor;
19 (b) any other provision of the contract or another
20 construction contract to which the head
21 contractor and the subcontractor are parties that
22 facilitates or gives effect to the provision
23 referred to in paragraph (a).
24

25 **7. Part 3 Division 1A inserted**

26 After Part 3 Division 1 insert:
27

28 **Division 1A — Payment withholding**

29 **27A. Terms used**

30 In this Division —

31 **claim** means either of the following —

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

head contractor statement, for a claim, has the meaning given in section 27C(1).

27B. Application of Division

This Division applies to a construction contract if —

- (a) the principal of the contract is —
 - (i) a State agency; or
 - (ii) a GTE, but only if the contract expressly provides that this Division applies to the contract;
- and
- (b) a head contractor, who is not a State agency or GTE, and the principal are parties to the contract.

27C. Head contractor must give statement to principal

- (1) A claim made by the head contractor to the principal of a contract must be accompanied by a written statement (a ***head contractor statement***).
- (2) The head contractor statement must include the following information —
 - (a) whether or not the head contractor has paid the full amount claimed by each subcontractor in connection with the contract;
 - (b) if the head contractor has not paid the full amount claimed by any 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.

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- 1 (3) The information set out in subsection (2)(b) is not
2 required to be included in a head contractor statement
3 if —
- 4 (a) the head contractor has reached an agreement in
5 writing with the subcontractor to pay less than
6 the full amount claimed by the subcontractor
7 and the agreed amount has been paid to the
8 subcontractor; or
- 9 (b) the full amount claimed by the subcontractor
10 will be paid out of the amount claimed in the
11 claim for which the statement is prepared.
- 12 (4) The head contractor must give the head contractor
13 statement, in the approved form, to the principal of the
14 contract —
- 15 (a) on the date specified for that purpose in the
16 contract; or
- 17 (b) if no date is specified for that purpose in the
18 contract —
- 19 (i) if the statement is for a payment
20 claim — no later than 5 business days
21 before the due date for payment under
22 section 20; or
- 23 (ii) otherwise — no later than 20 business
24 days after the claim is made.
- 25 (5) The principal of the contract may, after receiving the
26 head contractor statement, request any further
27 information reasonably required for the principal to
28 assess whether to withhold an amount from the head
29 contractor under section 27D.
- 30 (6) A claim made by the head contractor to the principal of
31 a contract is not invalid only because it is not
32 accompanied by a head contractor statement.

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, claimed by a head contractor —
- (a) if a head contractor statement or further information is not given to the principal in relation to the claim under section 27C;
 - (b) if, after receiving a head contractor 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, while an amount is withheld —
- (a) suspend work or supply under section 62; or

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- 1 (b) exercise, under section 64, a lien in relation to
2 any unpaid amount over any unfixed plant or
3 materials under the relevant contract; or
4 (c) take any action to recover the amount, or
5 adjudicate or dispute the claim for the amount,
6 including any action arising from a failure to
7 receive the amount.

8 **27E. Right to withhold applies to all claims in relation to**
9 **same amount**

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

- 14 (a) despite anything to the contrary in the
15 construction contract or any other contract or
16 agreement; and
17 (b) whether the claim is made —
18 (i) under this Act or under the contract; or
19 (ii) before or after notice of the withholding
20 is given under section 27D;
21 and
22 (c) whether or not another claim is made in relation
23 to the same amount.

24 **27F. Adjudication application taken to be withdrawn if**
25 **progress payment withheld**

- 26 (1) This section applies if —
27 (a) a progress payment, or part of a progress
28 payment, is withheld under section 27D; and
29 (b) the claimant has, before the withholding,
30 applied for adjudication of the payment claim
31 for the progress payment on a ground referred
32 to in section 28(1)(b).
33 (2) The adjudication application is taken to be withdrawn
34 under section 31.

- 1 (3) The claimant remains liable for the fees and expenses
2 of the adjudicator, if any, incurred or paid by the
3 claimant before the withdrawal of the adjudication
4 application under subsection (2).
- 5 (4) The claimant is not entitled to a refund of the
6 application fee, if any, paid to an authorised
7 nominating authority for the application.
- 8 (5) Nothing in this section prevents a person from making
9 a new adjudication application in relation to the same
10 payment claim after the progress payment ceases to be
11 withheld under section 27D.

12 **27G. Payment of amount withheld**

- 13 (1) If the principal of a contract is satisfied that the
14 circumstances set out in section 27D(1) no longer
15 apply in relation to an amount withheld, the principal
16 must, as soon as reasonably practicable, pay the
17 amount withheld to the head contractor.
- 18 (2) The principal of the contract must give the head
19 contractor written notice of —
- 20 (a) the principal's intention to pay the amount
21 withheld; and
- 22 (b) the date on which the amount will be paid.
- 23 [DN: I agree that this didn't sit well in s 27D
24 and I think it warrants having its own section.
25 Do we need anything more here?]

26 **8. Section 30 amended**

- 27 (1) In section 30(2) delete “respondent within 1 business day after
28 the application is made.” and insert:
29
- 30 respondent.
- 31
- 32 (2) After section 30(2) insert:
33
- 34 (2A) An adjudication application is not invalid merely
35 because subsection (2) is not complied with.
36

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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.

- (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.

1 **12. Section 50 amended**

2 After section 50(5)(f) insert:

3

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

9

10 **13. Part 4 heading replaced**

11 Delete the heading to Part 4 and insert:

12

13 **Part 4 — Statutory trusts**

14 **Division 1 — Retention money trusts**

15

16 **14. Section 69 amended**

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

19

20 Division —

21

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

23

24 Division,

25

26 **15. Section 70 amended**

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

28

29 Division

30

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- 1 (2) In section 70(2):
2 (a) delete “Part,” and insert:
3
4 Division,
5
6 (b) in paragraph (c)(ii) delete “Part” and insert:
7
8 Division
9
10 (3) In section 70(3):
11 (a) delete “Part” (1st and 2nd occurrences) and insert:
12
13 Division
14
15 (b) delete “Part.” and insert:
16
17 Division.
18
19 (4) In section 70(4) delete “Part” (each occurrence) and insert:
20
21 Division
22
23 Note: The heading to amended section 70 is to read:
24 **Construction contracts to which Division applies**
25 **16. Section 71 amended**
26 (1) In section 71(1) and (2) delete “Part” and insert:
27
28 Division
29
30 (2) In section 71(3) delete “Part — ” and insert:
31
32 Division —
33

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

2

3 Division

4

5 **17. Section 72 amended**

6 (1) In section 72(1) and (2) delete “Part” (each occurrence) and
7 insert:

8

9 Division

10

11 (2) Delete section 72(3).

12 **18. Section 73 amended**

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

14

15 Division.

16

17 **19. Section 74 amended**

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

19

20 Division

21

22 (2) At the end of section 74(1) insert:

23

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

25

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

27

28 Division

29

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1 (4) After section 74(5) insert:
2

3 (6) Despite subsections (4) and (5), a single retention
4 money trust account must be established for all
5 retention money required to be retained under a
6 contract for which a construction trust is created under
7 Division 2.
8

9 **20. Part 4 Division 2 inserted**

10 After section 76 insert:
11

12 **Division 2 — Construction trusts**

13 **Subdivision 1 — Preliminary**

14 **76A. Terms used**

15 In this Division —

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

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

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

24 *prescribed construction money threshold* means the
25 amount prescribed by the regulations for the purposes
26 of this Division;

27 *trust contract* means the following —

28 (a) a State agency contract (as defined in
29 section 76C);

30 (b) a first-tier subcontract (as defined in
31 section 76D(1));

32 (c) a related entity subcontract (as defined in
33 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) the principal is a State agency; and
- (b) the head contractor is not a State agency or GTE; and
- (c) the principal and head contractor are parties to the contract; and
- (d) at the time the contract is first entered into —
 - (i) 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) it expressly provides that it is a trust contract for the purposes of this Part.

76D. First-tier subcontracts

(1) A construction contract is a *first-tier subcontract* if —

- (a) a principal, who is a State agency or GTE, enters into a construction contract with another State agency or GTE, who is the head contractor for the contract; and
- (b) the head contractor engages a subcontractor (a *first-tier subcontractor*) in connection with the performance of the contract; and
- (c) at the time the subcontract is first entered into with the first-tier subcontractor, the subcontract expressly provides that it is a trust contract for the purposes of this Part; and
- (d) the first-tier subcontractor is not a State agency or GTE.

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- 1 (2) This Division applies to a first-tier subcontract as if a
2 reference to a head contractor in section 76G is a
3 reference to a first-tier subcontractor.

4 **76E. Related entity subcontracts**

- 5 (1) In this section —
6 *family member*, of a person, means —
7 (a) the person's spouse; or
8 (b) a parent of the person or the person's spouse; or
9 (c) a grandparent of the person or the person's
10 spouse; or
11 (d) a brother, sister, aunt, uncle, nephew, niece or
12 cousin of the person or the person's spouse; or
13 (e) a child of the person or the person's spouse; or
14 (f) a grandchild of the person or the person's
15 spouse; or
16 (g) the spouse of any person referred to in
17 paragraphs (b) to (f);

18 *first-tier subcontract* has the meaning given in
19 section 76D(1);

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

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

- 24 (a) a family member of the party;
25 (b) a related body corporate of the party;
26 (c) a corporation in which the party or a family
27 member of the party has an interest of at
28 least 50%;
29 (d) a person with an interest of at least 50% in the
30 party, and any family member of the person;
31 (e) the trustee of a trust, other than a construction
32 trust, in relation to which the party, a family
33 member of the party or a related body corporate
34 of the party is a beneficiary;

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

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

- 1 (2) A construction contract is a *related entity subcontract*
2 if —
- 3 (a) a party to another trust contract enters into the
4 construction contract with a subcontractor; and
- 5 (b) the subcontractor is —
- 6 (i) a related entity of the party to the other
7 trust contract (a *related entity*
8 *subcontractor*); and
- 9 (ii) a beneficiary of the construction trust
10 for the other trust contract.
- 11 (3) If a construction trust is created for both the other trust
12 contract and the related entity subcontract, a separate
13 construction trust is created for each contract.
- 14 (4) This Division applies to, and in relation to, a related
15 entity subcontract as if a reference to —
- 16 (a) a head contractor in section 76G is a reference
17 to the related entity subcontractor; and
- 18 (b) a construction trust (other than in this section)
19 includes a reference to the separate construction
20 trust, if any, created for the related entity
21 subcontract.
- 22 (5) This section does not apply to, or in relation to —
- 23 (a) the principal of a trust contract; or
- 24 (b) a GTE unless the GTE is a party to a first-tier
25 subcontract.

26 **Subdivision 3 — Establishment of construction trust**

27 **76F. Creation of construction trust**

- 28 (1) In this section —
- 29 *construction payment*, for a trust contract, means —
- 30 (a) any amount paid by a principal to a head
31 contractor in connection with the performance
32 of the trust contract; and
- 33 (b) advance payments or deposits paid by a
34 principal in connection with the performance of
35 the trust contract;

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- 1 **construction payment entitlement**, in relation to a trust
2 contract, means a person's right or entitlement to be
3 paid in connection with the performance of the trust
4 contract, including, but not limited to, the following —
- 5 (a) any amount awarded to the person by a court,
6 tribunal or other decision-maker in connection
7 with the performance of the trust contract or a
8 subcontract under the trust contract;
- 9 (b) any amount certified as the amount owed to the
10 person in relation to the trust contract in a
11 certificate given to the person in accordance
12 with the trust contract.
- 13 (2) A **construction trust** for a trust contract is a trust over
14 the following, which are taken to be held on trust by
15 the trustee of the trust from the creation of the trust —
- 16 (a) all construction payments for the trust contract
17 received by the trustee;
- 18 (b) all construction payment entitlements in
19 relation to the trust contract.
- 20 (3) A construction trust for a trust contract is created on
21 the day on which the first of the following occurs —
- 22 (a) a subcontractor undertakes to carry out
23 construction work or supply related goods and
24 services in connection with the performance of
25 the trust contract;
- 26 (b) a construction payment for the trust contract is
27 received by the head contractor for the trust
28 contract;
- 29 (c) an amount is paid into a construction trust
30 account for the construction trust.
- 31 (4) A person's construction payment entitlement in
32 relation to a trust contract must be determined by the
33 following, if applicable, in order of priority —
- 34 (a) whichever is the greater amount of the
35 following —
- 36 (i) a scheduled amount indicated in a
37 payment schedule given to the person in
38 relation to the trust contract;

- 1 (ii) an amount certified as the amount owed
2 to the person in relation to the trust
3 contract in a certificate given to the
4 person in accordance with the trust
5 contract;
6 (b) an amount the parties to the trust contract
7 determine in writing to be the person's
8 construction payment entitlement in relation to
9 the trust contract.

10 **76G. Head contractor is both trustee and beneficiary of**
11 **construction trust**

- 12 (1) The head contractor for a trust contract —
13 (a) is the trustee of the construction trust for the
14 trust contract; and
15 (b) is both a trustee and beneficiary of the trust.
16 (2) The head contractor —
17 (a) becomes the trustee and a beneficiary of the
18 construction trust when the trust is created; and
19 (b) ceases to be the trustee and a beneficiary of the
20 trust when the trust is lawfully dissolved.
21 (3) The head contractor has a beneficial interest in the
22 following —
23 (a) any amount paid in advance by the principal for
24 the purpose of reimbursing certain costs
25 incurred by the head contractor or the head
26 contractor's margin, as specified in the trust
27 contract;
28 (b) the amount held on trust after subtracting all
29 amounts the beneficiaries, other than the
30 trustee, are entitled to be paid in connection
31 with the trust.
32 (4) Subsection (3)(a) does not apply to the head contractor
33 unless the trust contract expressly provides that the
34 provision applies.
35 (5) If a court, in the exercise of its jurisdiction to supervise
36 the administration of the construction trust, replaces the
37 trustee of the trust, the replacement trustee must carry

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1 out all of the obligations of the trustee under this Act in
2 relation to the administration of the trust.

3 **76H. Beneficial interests: principals**

4 (1) A principal who makes an advance payment or pays a
5 deposit in connection with the performance of a trust
6 contract —

7 (a) is a beneficiary of the construction trust for the
8 trust contract; and

9 (b) has a beneficial interest in the amounts paid,
10 including deposits paid before a construction
11 trust account is opened for the construction
12 trust

13 (2) For the purposes of subsection (1), an amount is no
14 longer taken to be paid in advance if another
15 beneficiary has a beneficial interest in the amount.

16 Example for this subsection:

17 If the principal pays \$50 000 in advance and a
18 subcontractor has a construction payment entitlement of
19 \$20 000 in relation to the contract, the principal's advance
20 payment is reduced to \$30 000.

21 (3) The principal —

22 (a) becomes a beneficiary of the construction trust
23 when the trust is created; and

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

26 **76I. Beneficial interests: subcontractors**

27 (1) A subcontractor who undertakes to carry out
28 construction work or supply related goods and services
29 in connection with the performance of a trust contract
30 has a beneficial interest in the subcontractor's
31 construction payment entitlements in relation to the
32 trust contract.

33 (2) The subcontractor —

34 (a) becomes a beneficiary of the construction trust
35 when the undertaking is made by the
36 subcontractor in connection with the
37 performance of the trust contract; and

- 1 (b) ceases to be a beneficiary of the construction
2 trust when the trust is lawfully dissolved.
- 3 (3) A subcontractor's construction payment entitlement in
4 relation to a trust contract arises on the day the
5 subcontractor carries out an obligation in connection
6 with the performance of the trust contract, whether or
7 not —
- 8 (a) the right to receive payment under the contract
9 has been confirmed, asserted or verified; or
- 10 (b) the amount of the payment has been
11 determined; or
- 12 (c) the payment has become payable; or
- 13 (d) a claim for the payment has been made or
14 determined.

15 **76J. Dissolution of construction trusts**

16 A construction trust for a trust contract is dissolved —

- 17 (a) on the date specified for that purpose in the
18 trust contract; or
- 19 (b) if no date is specified for that purpose, the
20 earlier of the following —
- 21 (i) 6 months after the last day on which a
22 progress payment claim for a final
23 payment for the trust contract may be
24 made under section 23(5); or
- 25 (ii) on the date on which the only remaining
26 work to be carried out under the trust
27 contract is work that may be carried out
28 under an exempt contract.

29 **Subdivision 4 — Construction trust accounts**

30 **76K. Obligations of trustees**

- 31 (1) The trustee of a construction trust must open a
32 construction trust account with a recognised financial
33 institution.
- 34 (2) The construction trust account must be opened —
- 35 (a) within 10 business days after the day on which
36 the trust is created; or

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- 1 (b) if a period is specified in the trust contract for
2 which the construction trust is required —
3 within that period.
- 4 (3) A single construction trust account must not be used
5 for more than 1 construction trust.
- 6 (4) A construction trust account must not be used for any
7 purpose other than the construction trust for which it
8 was opened, including the following —
- 9 (a) retention money held on trust under Division 1;
10 (b) money held on trust by the trustee of a different
11 construction trust.
- 12 **76L. Requirements for construction trust accounts**
- 13 (1) The following requirements apply to a construction
14 trust account opened under this Division —
- 15 (a) the account must be a deposit or transaction
16 account of the recognised financial institution;
- 17 (b) the name of the account and the description of
18 the account must include the words “trust
19 account”.
- 20 (2) The trustee of a construction trust must, as soon as
21 practicable after opening the construction trust account
22 for the trust, give written notice of the account to —
- 23 (a) each person who is or becomes a beneficiary of
24 the trust; and
- 25 (b) if the principal is not a beneficiary of the
26 trust — the principal.
- 27 (3) The notice must contain the following information —
- 28 (a) the name of the recognised financial institution
29 with which the account has been opened;
- 30 (b) the name of the account;
- 31 (c) the BSB number and account number for the
32 account;
- 33 (d) that all construction payments for the trust
34 contract are required to be paid into the
35 account;
- 36 (e) any other information prescribed by the
37 regulations.

(4) The trustee of a construction trust must give written notice of any change in the information, as soon as practicable after the change occurs, to —

- (a) each person who is a beneficiary of the trust; and
- (b) if the principal is not a beneficiary of the trust — the principal.

76M. Payments into construction trust accounts

(1) The principal of 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) the determination of an adjudicator, expert or review adjudicator under Part 3;
- (b) the decision of an arbitrator;
- (c) the 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.

76N. Trustee to cover shortfalls

(1) In this section —

shortfall, in a construction trust account, means an amount equal to the difference between the amount available in the trust account for payment and the amount to be paid from the account.

(2) This section applies if there is an insufficient amount available in a construction trust account to pay an amount that has become payable to a beneficiary of the trust.

(3) The trustee must immediately deposit an amount equal to the shortfall in the construction trust account.

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- 1 **76O. Restriction on withdrawals from construction trust**
2 **accounts**
- 3 (1) A trustee must not withdraw money from a
4 construction trust account other than in accordance
5 with this section.
- 6 (2) Money may be withdrawn from a construction trust
7 account only —
- 8 (a) for the purpose of making a payment relating to
9 a person's beneficial interest in the construction
10 trust; or
- 11 (b) for the purpose of withdrawing the money in
12 accordance with section 76R(4); or
- 13 (c) in accordance with the determination of an
14 adjudicator or review adjudicator under Part 3;
15 or
- 16 (d) in accordance with a decision of an arbitrator;
17 or
- 18 (e) in accordance with an order of a court or
19 tribunal; or
- 20 (f) in accordance with a decision of an expert
21 appointed to determine a matter under a trust
22 contract in relation to which the account was
23 established; or
- 24 (g) for the purpose of returning money paid into
25 the account in error; or
- 26 (h) for the purpose of transferring money to
27 another trust account opened in accordance
28 with this Part; or
- 29 (i) for the purpose of withdrawing accrued interest
30 in accordance with section 78(3); or
- 31 (j) for any other purpose, or in any other
32 circumstances, prescribed by the regulations.
- 33 (3) For the purposes of subsection (2)(a), a payment relates
34 to a person's beneficial interest in the construction trust
35 for a trust contract if the payment is made —
- 36 (a) to the person in accordance with the trust
37 contract or a subcontract under the trust
38 contract; or

- 1 (b) to repay an amount paid by the trustee of the
2 construction trust to the person before the
3 principal of the contract has paid the trustee.
- 4 (4) Money may be withdrawn from a construction trust
5 account only —
- 6 (a) by cheque or electronic funds transfer; and
7 (b) in accordance with any other requirements
8 prescribed by the regulations, including
9 requirements for notices of proposed
10 withdrawals.
- 11 (5) A trustee is taken to have withdrawn an amount from a
12 construction trust account if —
- 13 (a) the trustee authorises another person to make
14 the withdrawal; or
15 (b) the trustee knowingly contributes to the
16 withdrawal being made.

17 **76P. Amounts in construction trust account unavailable**
18 **for trustee's debts**

- 19 (1) An amount paid, or required to be paid, into a
20 construction trust account held by a trustee must not
21 be —
- 22 (a) used to recover a debt owed to a creditor of the
23 trustee; or
24 (b) attached or taken in execution under a court
25 order or process for the benefit of a creditor of
26 the trustee.
- 27 (2) Subsection (1) —
- 28 (a) applies in relation to the trustee, whether in the
29 capacity of trustee or otherwise; and
30 (b) ceases to apply to an amount once lawfully
31 withdrawn from the trust account; and
32 (c) does not apply to the extent that it would
33 interfere with the right of a beneficiary, other
34 than a beneficiary who is also the trustee, under
35 this Part.

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76Q. 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 subcontractors (each a *payee*) 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 payee; and
 - (c) the trustee has not complied with its obligation to cover the insufficient amount.

- (2) The amount paid by the trustee to each payee must be reduced in proportion to the amount required to be paid to each payee.

Example for this subsection:

If 1 payee is required to be paid \$50 000 and another payee is required to be paid \$30 000, but only \$40 000 is available, the payees must be paid \$25 000 and \$15 000, respectively.

- (3) The trustee must not withdraw any further amount from the construction trust account to pay a payee, otherwise than in accordance with subsection (2), unless the amount has been paid into the construction trust account in relation to the subcontract to which the payee is a party.
- (4) Nothing in this section relieves the trustee of the liability to pay in full the amounts the beneficiaries of the construction trust are entitled to be paid in connection with the trust contract.

76R. Closure of construction trust accounts

- (1) A trustee may close a construction trust account 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 principal of the trust contract.

- 1 (3) A trustee is taken not to dissolve the construction trust
2 by closing the construction trust account if the account
3 was only closed for the purpose of transferring the
4 account to another financial institution.
- 5 (4) In closing the account, the trustee may pay itself the
6 following amounts —
- 7 (a) any amount for interest that the trustee is
8 entitled to under section 78;
- 9 (b) any remaining amount that is not owing to
10 another beneficiary of the trust.
- 11

12 **21. Part 4 Division 3 heading inserted**

13 Before section 77 insert:

14

15 **Division 3 — Obligations and restrictions relating to**
16 **statutory trusts**

17

18 **22. Section 77 amended**

19 (1) At the beginning of section 77 insert:

20

- 21 (1) In this section —
- 22 *relevant matter* means any of the following —
- 23 (a) the amount of retention money required to be
24 paid into, or withdrawn from, a retention
25 money trust account;
- 26 (b) the amount of a payment required to be paid
27 into, or withdrawn from, a construction trust
28 account;
- 29 (c) the amount of a construction payment
30 entitlement in relation to a trust contract.
- 31

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1 (2) In section 77 delete “A decision on retention money that is
2 required to be paid into, or that can be withdrawn from, a
3 retention money trust account” and insert:
4

5 (2) A decision on a relevant matter
6

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

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

10 **23. Section 78 amended**

11 (1) Delete section 78(1) and insert:
12

13 (1) A party who holds money on trust in a trust account
14 must not invest the money held on trust in any form of
15 investment other than in accordance with this section.

16 (1A) Subject to subsections (2) and (2A), the person who
17 holds money on trust in a trust account is entitled to
18 receive interest (the *accrued interest*) earned on the
19 money held in the trust account.
20

21 (2) Delete section 78(3) and insert:
22

23 (2A) Interest earned on money held in a construction trust
24 account for a beneficiary of the trust is payable to the
25 beneficiary only if the interest is earned on the money
26 after it has become payable to the beneficiary.

27 (3) The trustee of a construction trust account may
28 withdraw an amount equal to the trustee’s entitlement
29 to the accrued interest —

30 (a) once every 12 months; and

31 (b) on the dissolution of the trust.

32 (3A) For the purposes of subsection (3)(a), the regulations
33 may make provision for the withdrawal of accrued
34 interest more often than once every 12 months.
35

24. Section 79 amended

After section 79(3) insert:

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

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

25. Section 85A inserted

After section 85 insert:

85A. Effect of assignment of beneficial entitlements

- (1) An assignment by a subcontractor of an entitlement of the subcontractor to an amount held on trust under this Part is of no effect.
- (2) A trustee is not entitled to set off, against any beneficial interest of a subcontractor, 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.

26. Section 87 deleted

Delete section 87.

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1 **27. Section 111 amended**

2 After section 111(2) insert:

3

- 4 (3) Nothing in this section is taken to affect the operation
5 of section 27B(a)(ii), 76C(d)(ii), 76D(1)(c) or
6 76G(3)(a).
7

8 **28. Section 112A inserted**

9 After section 112 insert:

10

11 **112A. No liability against protected parties**

12 (1) In this section —

13 *protected party* means any of the following —

- 14 (a) the State;
15 (b) a Minister;
16 (c) a State agency or GTE;
17 (d) an employee of a State agency or GTE;
18 (e) a person acting under the direction of a person
19 referred to in paragraph (a), (b), (c) or (d),
20 including an agent, contractor or advisor;

21 *relevant provision* means any of the following —

- 22 (a) section 14(3);
23 (b) Part 3 Division 1A;
24 (c) Part 4.

25 (2) A protected party is not liable to any action, liability or
26 demand arising from the following, whether arising
27 under a contract or otherwise —

- 28 (a) the enactment, commencement or operation of
29 a relevant provision or the making,
30 commencement or operation of any subsidiary
31 legislation made under, or for the purposes of, a
32 relevant provision;
33 (b) the affecting of a liability by a relevant
34 provision;

- 1 (c) compliance, or purported compliance, in good
2 faith, with a requirement of a relevant
3 provision;
- 4 (d) the doing of, or omitting to do, any other act,
5 matter or thing, in good faith in the
6 performance, or purported performance, of a
7 function —
- 8 (i) under a relevant provision; or
9 (ii) under any other law relating to
10 construction trusts; or
11 (iii) in connection with a construction trust.
12

13 **29. Section 114 amended**

14 (1) Before section 114(1) insert:
15

16 (1A) In this section —
17 *agency* and *chief executive officer* have the meanings
18 given in the *Public Sector Management Act 1994*
19 section 3(1).
20

21 (2) In section 114(2):

- 22 (a) delete “published by the Building Commissioner”;
23 (b) delete “the Building Commissioner directs when
24 publishing the approved form that it is recommended but
25 not mandatory.” and insert:

26
27 specified otherwise in the approved form when it is
28 published.
29

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

32 (4) After section 114(3) insert:
33

34 (4) For the purposes of section 27C, the Building
35 Commissioner may delegate the function under
36 subsection (1) to the chief executive officer of any
37 agency.

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- 1 (5) An approved form is taken not to be given in
2 accordance with this Act if information in the form
3 must be verified by a statutory declaration and is not.
4

5 **30. Section 115 amended**

6 In section 115(1) delete “of this Act.” and insert:
7

8 of this Act, other than Part 4 Divisions 2 and 3 (to the extent to
9 which they relate to construction trusts).
10

11 **31. Part 6A inserted**

12 After section 120 insert:
13

14 **Part 6A — Transitional and savings provisions**
15 **for *Building and Construction Industry (Security***
16 ***of Payment) Amendment Act 2025***

17 **120A. Term used: amending Act**

18 In this Part —

19 *amending Act* means the *Building and Construction*
20 *Industry (Security of Payment) Amendment Act 2025*.

21 **120B. *Interpretation Act 1984* not affected**

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

25 **120C. Savings and transitional regulations**

26 Regulations made under section 119 may include
27 provisions of a savings or transitional nature that arise
28 as a result of —

- 29 (a) the enactment of the amending Act; or
30 (b) the coming into operation of Part 3 Division 1A
31 or Part 4 Division 2.

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.
- (3) Part 4 Division 2, 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.
- (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).

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- 1 (2) A pre-commencement determination cannot be
2 quashed or set aside on or after commencement day on
3 the basis that a relevant former provision was not
4 complied with or didn't need to be complied with.
- 5 (3) An adjudication application or adjudication review
6 application made, but not yet determined, before
7 commencement day, and any response given in relation
8 to the application, are not invalid merely because a
9 relevant former provision was not complied with.
10

11 **32. Various references to “retention money” deleted**

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

13 **Table**

s. 78(4)	s. 79(1), (2)(a), (3) and (5)
s. 80(1) and (3)	s. 81(1)
s. 82(3)	s. 85(3)

1 **Part 3 — *Building Services (Complaint Resolution and***
2 ***Administration) Act 2011* amended**

3 **33. Act amended**

4 This Part amends the *Building Services (Complaint Resolution*
5 *and Administration) Act 2011*.

6 **34. Section 68 amended**

7 Delete section 68(2)(b) and insert:

- 8
- 9 (b) may require 1 or more of the following —
- 10 (i) that the person give information or an
- 11 answer that they do not currently
- 12 possess but have access to;
- 13 (ii) that the person give information or an
- 14 answer that they do not currently
- 15 possess but are able to create or derive
- 16 from information that they do possess or
- 17 have access to;
- 18 (iii) that the information or answer be given
- 19 orally;
- 20 (iv) that the information or answer be given
- 21 in writing (including if the information
- 22 or answer does not currently exist in
- 23 writing);
- 24 (v) that the information or answer be given
- 25 in a form specified in the direction
- 26 (including if the information or answer
- 27 does not currently exist in that form);
- 28 (vi) that the information or answer be given
- 29 at or delivered to a place specified in the
- 30 direction;
- 31 (vii) in the case of written information or a
- 32 written answer, that the information or
- 33 answer be delivered by the method
- 34 specified in the direction;

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- 1 (viii) that the information or answer be
2 verified by statutory declaration or in
3 another way specified in the direction
4 (including by a specified person or
5 person belonging to a specified class of
6 persons).

7 Example for this subsection:

8 A direction under subsection (1)(a) may require a person to
9 create and deliver a special purpose financial statement
10 that contains information that does not currently exist in a
11 document. The direction may also require the special
12 purpose financial statement to have been verified by an
13 accountant.
14

**Part 4 — *Building Services (Registration) Act 2011*
amended**

35. Act amended

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

36. 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.

37. 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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