



PART 4 AMENDMENT OF BUILDING INDUSTRY FAIRNESS (SECURITY OF PAYMENT) ACT 2017

# BUILDING INDUSTRY FAIRNESS (SECURITY OF PAYMENT) AND OTHER LEGISLATION AMENDMENT BILL 2020

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Section Number	Section Heading	Section Summary	Penalty Units		Civil Penalty for Executives (\$)	Maximum Penalty for Companies (\$)	Maximum Jail Time
			Individual	Company			
18	Contracted party must open project trust account	(1) If a project trust account is required for a contract under section 12, the contracted party must open an account at a financial institution	500	2500	66,725	333,625	
18A	Restrictions for project trust account	A trustee must ensure the trust account is held at an approved financial institution	200	1000		133,450	
		The project trust account name must include the trustee's name and the word 'trust'	200	1000		133,450	
		Transfers in and out of the trust must only be using a method that creates an electronic record of the transfer	500	2500		333,625	
18B	Notice of project trust account's opening, closing or name change	(2) If a project trust account is opened, has its name changed, is closed or transferred, then within 5 business days of any of those actions occurring the trustee must notify the contracting party and the commissioner using an approved form	200	1000		133,450	
18C	Change of financial institution	A trustee must not transfer the project trust account to an alternative financial institution unless that financial institution is an approved institution and all amounts held in the trust are transferred and the trustee informs the contracting party and commissioner and the subcontractor beneficiaries	200	1000		133,450	
19	All payment from contracting party to be deposited in project trust account	(2) - If a contracting party must make a payment to the contracted party, the contracting party must deposit the amount into the project trust account for the contract unless particular circumstances exist	200	1000	26,690	133,450	
		(4) If an amount is paid to the contracted party but not into the project trust account, then the contracted party must deposit the amount into the project trust account as soon as practicable	200	1000		133,450	2 years imprisonment

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19A	Limited purposes for which money may be deposited in project trust account	(1) A trustee must not cause money to be deposited into a project trust account for any purpose other than: paying the trustee, as the contracted party, an amount the contracting party must deposit into the account under section 19(2); paying a subcontractor beneficiary an amount the contracted party is liable to pay the beneficiary in connection with a subcontract; repaying an amount withdrawn from the account in error or making another payment prescribed by regulation	200	1000		133,450	1 year's imprisonment
20	All payments to subcontractor beneficiaries to be paid from project trust account	(2) A contracted party may only pay the amount to the subcontractor beneficiary from the project trust account and by depositing the amount into the account of a financial institution nominated by the beneficiary	200	1000		133,450	1 year's imprisonment
20A	Limited purposes for which money may be withdrawn from project trust account	(1) A trustee must not withdraw monies from a project trust account for any purpose other than paying a subcontractor beneficiary; paying a contracted party for contracted work; returning an amount paid in error; depositing a retention amount into a retention trust account; making a payment in accordance with an adjudication or order by a court; or another payment prescribed by the regulation	300	1000	40,035	133,450	2 years imprisonment
		(2) If a trustee withdraws an amount in contravention of (1), then the trustee must repay all such amounts as soon as practicable after the trustee becomes aware they've been in contravention of that subsection	300	1500	40,035	200,175	2 years imprisonment
20B	Order of priority	A trustee must not withdraw money from the project trust account unless there would be a sufficient amount remaining in the project trust account to pay all the amounts the contracted party is liable to pay subcontractor beneficiaries	300	1500	40,035	200,175	2 years imprisonment
		(2) If a trustee withdraws an amount in contravention of (1), then the trustee must repay all such amounts as soon as practicable after the trustee becomes aware they've been in contravention of that subsection	300	1500	40,035	200,175	2 years imprisonment
20B	Order of priority	A trustee must not withdraw money from the project trust account unless there would be a sufficient amount remaining in the project trust account to pay all the amounts the contracted party is liable to pay subcontractor beneficiaries	300	1500	40,035	200,175	2 years imprisonment

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20C	Insufficient amounts available for payments	(3) If a trustee makes a payment to two or more subcontractor beneficiaries in proportion to their entitlement, then the trustee must inform the commissioner of the payment as soon as practicable after making it	100	500		66,725	1 year's imprisonment
21A	Unauthorised dissolution of project trust	(1) A person isn't permitted to dissolve a project trust before it may be dissolved under 21(1)	500	2500		333,625	1 year's imprisonment
23	Notice of project trust before entering subcontracts	(1) If a project trust is required for a contract under section 12, then the contracted party must give each subcontractor a notice about the use of a project trust account	200	1000		133,450	1 year's imprisonment
23A	Subcontractor beneficiary to be informed of particular withdrawals	(2) Within 5 business days after making a withdrawal to pay a subcontractor beneficiary or making a withdrawal from the project trust account to put monies into the retention account, the trustee must give the subcontractor beneficiary a notice of the withdrawal that includes information prescribed by regulation	100	500		66,725	
23B	Subcontractor beneficiary may request particular information	(2) The trustee must give the person the requested information within 10 business days after being given the request unless: the trustee has reasonable excuse; the information is already available to the person; or the information has not changed since it was previously given to the person	100	500		66,725	
24	Contracting party to report related entities	(2) The contracting party must inform the commissioner 5 business days after the party learns of the related entities	50	250		33,362.5	
24A	Contracting party to report failure to establish project trust	(2) If a contracting party was required to establish a project trust and a project trust account hasn't been opened, the contracting party must report the matter to the commissioner	100	500		66,725	
25	Contracted party to report related entities	(2) If a contracted party enters into a subcontract with a related entity for the party, the contracted party must inform the commissioner about entering into such an arrangement within 5 business days of entering into the subcontract	200	1000		133,450	

Section Number	Section Heading	Section Summary	Penalty Units		Civil Penalty for Executives (\$)	Maximum Penalty for Companies (\$)	Maximum Jail Time
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34	Contracting party withholding retention account must open retention trust account	(2) The contracting party must open an account for the retention trust at a financial institution before withholding the retention amount from payment	500	2500	66,725	333,625	
34A	Restrictions for retention trust account	(1) Trustee must ensure that a retention trust account is held at an approved financial institution	200	1000		133,450	
		(2) The retention trust account must be held under a name that includes the trustee's name and the word 'trust'	200	1000		133,450	
		(3) Deposits to and withdrawals from the retention trust account are to be made using only methods that create an electronic record of the transfer	500	2500		333,625	
		(4) A trustee must not close the retention trust account unless all retention monies have been released to the parties entitled to it under the relevant contract; or the account is transferred to an alternative financial institution	200	1000		133,450	
34B	Notice of retention trust account's opening, closing or name change	(2) If a trustee opens a retention trust account, changes the name of the account, closes the account or transfers the account, the trustee must notify the commissioner of the action (and any other information required by the regulation) within 5 business days of taking the action	200	1000		133,450	
34C	Change of financial institution	(1) A trustee is not to transfer the retention trust account to an alternative financial institution unless the alternative financial institution is an approved financial institution; and all amounts held in the account are transferred to the alternative financial institution and the trustee informs all the contracted parties about the transfer	200	1000		133,450	
35	All retention amounts withheld must be deposited in retention trust account	(2) The contracting party must ensure the retention amount is held in a retention trust account for the party	200	1000		133,450	
		(3) If an amount is held by a contracting party before a retention trust was required, the party must deposit the amount in the retention trust account within 5 business days after the retention trust is required	200	1000		133,450	



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35A	Limited purposes for which money may be deposited in retention account	(1) A trustee must not cause an amount to be deposited into the retention trust account for any purpose other than withholding a retention amount from payment under a contract for which the trustee is the contracting party or repaying an amount withdrawn in error	200	1000		133,450	1 year's imprisonment
36	Limited purposes for which money may be withdrawn from retention trust account	(1) A trustee must not withdraw an amount from the retention trust account other than for paying a beneficiary who is a contracted party from whom a retention amount was withheld from payment; paying the trustee, as contracting party, to correct defects or omissions in contracted work; or otherwise to secure, wholly or partly, the performance of a contract	300	1500	40,035	200,175	2 years imprisonment
		(2) A trustee must not withdraw an amount from the retention trust account for a payment relating to correcting defects until after the end of the defects liability period that applies to those amounts	300	1500		200,175	
		(3) Trustee must repay all amounts withdrawn in contravention of subsection (1) as soon as practicable after withdrawing the amount	300	1500	40,035	200,175	2 years imprisonment
36A	All retention amounts withheld to be released from retention trust account	(2) Trustee must not release the retention amount other than by: withdrawing the amount from the retention trust account; and depositing the amount into the contracted party's account at a financial institution	200	1000		133,450	1 year's imprisonment
37A	Unauthorised dissolution of retention trust	(1) A trustee must not purport to dissolve the retention trust before it is dissolved under section 37(1)	500	2500		333,625	1 year's imprisonment
40	Notice of retention trust before withholding retention amount	(1) If a retention trust is set up, the contracting party must give the contracted party a notice about the use of a trust for the retention amount	200	1000		133,450	
40A	Beneficiary to be informed of transactions affecting retention amount	(2) Within 5 business days after making a deposit or withdrawing money, the trustee must give the contracted party from whom the retention amount was withheld a notice of the deposit or withdrawal	100	500		66,725	

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40B	Beneficiary may request particular information	(2) The trustee must give the person the requested information within 10 business days after being given the request unless the trustee has reasonable excuse; or the information is already available to the person or the information has not changed since it was previously given to the person	100	500		66,725	
41	Training before withholding retention amount	(5) The trustee must ensure each person nominated to administer the retention trust account on behalf of the trustee completes the training prescribed by the regulations	100	500		66,725	
		(6) If the trustee does not nominate a person to administer the retention trust account on the trustee's behalf, then the trustee must complete retention trust training within the period required by the regulations	100	500		66,725	
51	Trustee to cover shortfalls	(2) The trustee must immediately deposit an amount equal to any shortfall in the trust account	100	500		66,725	
51B	No power of trustee to invest	(1) The trustee for a project trust or retention trust must not invest the funds held in trust in any form of investment	200	1000		133,450	1 year's imprisonment
52	Trust records	(1) The trustee for a project trust or retention trust must keep records for the trust as required by this section	300	1500		200,175	1 year's imprisonment
52A	Monthly bank reconciliation	(1) The trustee for a project trust or retention trust must complete a bank reconciliation for the trust account within 15 business days after the end of each month	50	250		6,672.50	
53A	Power to require particular information	(4) The entity must comply with the requirement within the compliance period	100	500		66,725	
53B	Power to issue directions affecting trust accounts	(5) The trustee must comply with the direction within the period stated in the notice unless the direction is withdrawn	100	500		66,725	
53E	Obstructing special investigator	(1) A person must not obstruct a special investigator exercising powers under this Act, unless the person has a reasonable excuse	100	500		66,725	
53F	Impersonating special investigator	A person must not impersonate a special investigator	40	200		26,690	

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55B	Reports, records and information	(1) A financial institution at which a trust account is kept must, as soon as practicable after becoming aware that the account is overdrawn, report that matter to the commissioner in the way agreed under section 55	50	250		33,362.5	
		(2) A financial institution at which a trust account is kept must, if asked by a special investigator who has provided the institution with evidence of the investigator's appointment in relation to the trustee provide, for inspection or copying by the investigator requested records relating to the account or money deposited into the account; and provide the investigator with complete details of any transactions relating to the account	50	250		33,362.5	
57	Engaging auditor for review of trust account	(1) The trustee for a project or retention trust must engage an auditor to carry out a review of the trust account as required by this section	200	1000		133,450	1 year's imprisonment
57A	Account review report	(1) The auditor engaged by a trustee to carry out a review of a trust account under section 57 must prepare, and give to the trustee, an account review report for the account as required under this section	200	1000		133,450	
		(5) The auditor must give the Commissioner a copy of the account review report in the approved way within 20 business days of completing the relevant review	50	250		33,362.50	
		(6) When complying with subsection (5) the auditor must give the Trustees a copy of the account review report.	50	250		33,362.50	
57B	Trust records to be given to auditor	(2) The trustee must provide the auditor with all trust records requested by the auditor as soon as practicable after the records are requested	200	1000		133,450	
57C	Reporting serious breaches	(2) If the auditor reasonably believes any of the four circumstances identified within the subsection apply (including the auditor finding an irregularity relating to a trust account), the auditor must notify the commissioner of the belief within 5 days after forming the belief	200	1000		133,450	1 year's imprisonment



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57D	Copy of account review report for commissioner						
Clause 65	Amendment of s 75 (Making payment claim)	(5B) The claimant must ensure the payment claim is accompanied with a supporting statement	100	500		66,725	
Clause 66	Amendment of s 76 (Responding to a payment claim)	(3) If the respondent gives the claimant a payment schedule, the respondent must pay the claimant the amount proposed in the payment schedule no later than the due date for the progress payment to which the payment schedule relates	100	500		66,725	
Clause 69	Amendment of s 88 (Adjudicator's decision)	(6) The adjudicator must give the registrar a copy of the decision and notice of all fees and expenses paid, and to be paid, to the adjudicator for the decision	40	200		26,690	
Clause 70	Replacement of s 90 (Respondent required to pay adjudicated amount)	(2) The respondent must pay the amount to the claimant on or before (i) the day that is 5 business days after the day on which the adjudicator gives a copy of the adjudicator's decision to the respondent; or (ii) if the adjudicator decides a later date for payment under section 88(1)(b) – the later date	200	1000		133,450	
		(3) If the respondent pays the amount to the claimant, the respondent must notify the registrar, using an approved way, within 5 business days after making the payment and provide the registrar with evidence the payment was made	20	100		13,345	
Clause 72	Amendment of s 97 (Withdrawing from adjudication)	(3) As soon as practicable after an adjudication application is withdrawn, the claimant must inform the registrar that the application has been withdrawn and whether it was withdrawn as mentioned in subsection (1)(a) or (b)	20	100		13,345	
97B	Higher party may be required to retain amount owed to respondent	(4) The claimant must give a copy of the payment withholding request to the respondent at the same time it gives the request to the higher party	50	250		33,362.50	
		(5) A person who is given a payment withholding request must, if the person is not the higher party for the adjudicated amount, give notice to the claimant about not being a higher party within 5 business days after receiving the request	50	250		33,362.50	

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97C	Obligation of higher party to retain amount payable to respondent	(2) The higher party must retain, out of the related amount payable to the respondent, either the adjudicated amount or the related amount payable to the respondent, whichever is less	50	250		33,362.50	
		(5) If the claimant is paid the adjudicated amount, the claimant must inform the higher party of the payment within 5 business days after the amount is paid	50	250		33,362.50	
97F	Respondent to provide information about higher party	(2) The respondent must comply with the requirement within 5 business days after receiving it	20	100		13,345	
		(3) The respondent must not, in purported compliance with the requirement, give the claimant information that the respondent knows is false or misleading in a material particular	100	500		66,725	
189A	Supply of financial records and other documents under approved audit program or for other reason	(3) The person must comply with the requirement within the period stated in the notice unless the person has a reasonable excuse	100	500		66,725	
Clause 80	Insertion of new ss 200C-200E	(1) A person must not, in relation to the administration of this Act, give an official information the person knows is false or misleading in a material particular	100	500		66,725	
200D	False or misleading information in particular documents	(2) A person must not give a document to another person that includes information the person knows is false or misleading in a material particular	100	500		66,725	
200E	Confidentiality of information	(2) A person must not disclose to anyone the information or information contained in the document, give access to the document to anyone else, use the information or document for any purpose other than exercising a power or performing a function under the Act for which the person obtained that information or document	100	500		66,725	
211C	Transferring existing project bank account to new scheme	(5) If the trustee transitions to the new scheme, the trustee must give notice of the transition, including the information prescribed by regulation, to each beneficiary affected by the transition	200	1000		133,450	

# ABOUT BENNETT & PHILP LAWYERS

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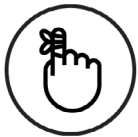
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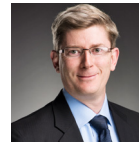
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