

Article Information

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Significant NSW Security of Payment amendments to apply to contracts entered into on or after 21 October 2019

The long awaited changes to the NSW Security of Payment regime will commence in respect of construction contracts entered into on or after 21 October 2019. The largely contractor friendly changes are significant and need to be understood and applied to effectively access the Act's cash-flow benefits.

The Department of Finance, Services and Innovation has announced that the *Building and Construction Industry Security of Payment Amendment Act 2018* and the accompanying amendments to the *Building and Construction Industry Security of Payment Regulation 2008* will commence operation on 21 October 2019.

A staged commencement of various provisions of the Act was considered, but the NSW Government has elected to proceed on the basis of a single commencement date with the amended Act applying to construction contracts (as defined under the *Building and Construction Industry Security of Payment Act*) entered into on and from 21 October 2019.

The amending act introduces changes to:

1. Reference Dates;
2. Due dates for payment;
3. Endorsement of payment claims;
4. Withdrawal of adjudication applications;
5. Time for adjudicator to make a determination;
6. Judicial review;
7. Claimants in liquidation;
8. Accessorial and executive liability; and
9. Introduces a raft of administrative and enforcement related enhancements.

Offences around retention trusts have been elevated to "Executive Liability Offences" exposing directors and individuals involved in the management of companies to penalties of up to \$22,000, no new statutory trust arrangement has commenced, as the form of mandatory statutory trusts, if any, is yet to be resolved.

For commentary on the amendments, please see our [August 2018 update](#) and our [May 2019 update](#).