

In September 2021, the WA government released its Action Plan for the implementation of the Building and Construction Industry (Security of Payment) Act 2021 (WA) (SOP Act). As advised in our June 2021 publication, "[Security of Payment Reform in Western Australia – What to Expect and What You Will Need to Do Differently](#)", the SOP Act represents a major departure from the current security for payment regime in WA.

The Action Plan outlines the key changes in the SOP Act and introduces a three-stage plan for the commencement of its operative parts.

Stage 1: New Security of Payment Laws (1 August 2022)

Stage 1 will introduce almost all of Parts 1, 2, 3, 5 and 6 of the SOP Act. Critically, this stage will mandate significant changes to parties who enter into a construction contract where the SOP Act applies. These changes include shorter time frames for payment, the use of payment schedules in responding to payment claims and an overhaul to the adjudication process.

Stage 2: Retention Trust Scheme (Phase 1) and New Regulator Powers (1 February 2023)

Stage 2 introduces retention trusts to construction contracts over AU\$1 million (Part 4 of the SOP Act) save for minor exclusions. Parties withholding retention or cash security will need to hold the money on trust in a separate bank account.

This stage will also see the Building Commission and Building Services Board granted broader powers to prevent entities with a history of insolvency, not paying adjudication debts or engaging in "phoenixing" from registering as a building contractor.

Stage 3: Retention Trust Scheme (Phase 2) and Fairer Contracting Practices (1 February 2024)

Stage 3 extends the scope of the retention trust scheme to construction contracts over AU\$20,000. Accordingly, the vast majority of construction contracts where the SOP Act applies will need to comply with the retention trust scheme requirements.

We note that residential contracts and those directly with government principals will remain excluded from the remit of the retention trust scheme.

A consultation draft of the supporting regulations to the SOP Act, which will govern the above changes, is anticipated in late 2021/early 2022.

If you would like further information on how the implementation of the SOP Act may affect your business or industry, please contact a member of our team.

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