

Building Industry Fairness (Security of Payment) Regulation 2018

Explanatory notes for SL 2018 No. 16

made under the

Building Industry Fairness (Security of Payment) Act 2017
Queensland Building and Construction Commission Act 1991
State Penalties Enforcement Act 1999

General Outline

Short title

Building Industry Fairness (Security of Payment) Regulation 2018

Authorising law

Sections 8 (definition of “building work”, paragraphs (b) and (c)), 16(4) (definition of “residence”), 28(e), 31(1)(e), 36(10) (definition of “dispute resolution process”), 50(2), 51(3), 54(1)(d), 200A(6)(c) (definition of “2017 suite of building and construction reforms”), and 201 of the *Building Industry Fairness (Security of Payment) Act 2017*. Sections 67AR, 67AW(2)(a) and 116 of the *Queensland Building and Construction Commission Act 1991*.

Section 165(2) of the *State Penalties Enforcement Act 1999*.

Policy objectives and the reasons for them

The policy objectives of the *Building Industry Fairness (Security of Payment) Regulation 2018* (regulation) are to:

- prescribe certain matters in relation to project bank accounts to support the commencement of chapter 2 of the *Building Industry Fairness (Security of Payment) Act 2017* (the Act) on 1 March 2018;
- prescribe new infringement notice offences for the Act, under the *State Penalties Enforcement Regulation 2014* (SPE Regulation);
- prescribe certain sections under the Queensland Building and Construction Commission Act 1991 (QBCC Act) as demerit point offences under the *Queensland Building and Construction Commission Regulation 2003* (QBCC Regulation).

Achievement of policy objectives

The policy objectives are achieved by prescribing for:

- the definition of “building work” under section 8—work that is and is not building work;
- section 16(4), definition of “residence”—the buildings and structures that are a residence;
- section 28(e)—payments to a head contractor or a subcontractor beneficiary under the *Building and Construction Industry Payments Act 2004* (BCIPA);
- section 31(1)(e)—that the head contractor may withdraw an amount from a trust account for the purpose of making a payment under BCIPA;
- section 36(10), definition of “dispute resolution process”—sets out what is the “dispute resolution process” under the disputed funds account provisions;
- section 50(2)—the information that the head contractor must give to the principal within 5 business days after entering into a subcontract for the building contract;
- section 51(3)—the information that is required to be contained in the copy of information the head contractor gives to the principal and the subcontractor beneficiary;
- section 54(1)(d) provides for additional circumstances where a principal may step in as trustee of the PBA;
- section 200A(6), definition of “2017 suite of building and construction reforms”—the *Building and Construction Legislation (Non-conforming Building Productions—Chain of Responsibility and Other Matters) Amendment Act 2017* as part of the 2017 suite of building and construction reforms;
- new infringement notice offences for the Act under the SPE Regulation;
- sections 42C and 72AA of the QBCC Act as demerit point offences under chapter 2AA of the QBCC Regulation.

The proposed regulation will also make a range of consequential amendments to the SPE Regulation to reflect the consolidation of provisions dealing with investigators that occurred under the Act.

Consistency with policy objectives of authorising law

The regulation is consistent with the main objectives of the Act.

Inconsistency with policy objectives of other legislation

The regulation is consistent with the policy objectives of other legislation.

Alternative ways of achieving policy objectives

The policy objectives can only be achieved by making the regulation and amending other regulations.

Benefits and costs of implementation

Implementation of the regulation is not expected to incur additional costs for the State Government.

Consistency with fundamental legislative principles

The regulation is consistent with fundamental legislative principles.

Consultation

The Ministerial Construction Council and the Queensland Productivity Commission was consulted on the development of the regulation.