

Proclamation—Building Industry Fairness (Security of Payment) Act 2017

Explanatory notes for Subordinate Legislation 2018 No. 176

made under the

Building Industry Fairness (Security of Payment) Act 2017

General Outline

Short title

Proclamation commencing certain sections of the *Building Industry Fairness (Security of Payment) Act 2017*.

Authorising law

Section 2 of the *Building Industry Fairness (Security of Payment) Act 2017* (the Act).

Policy objectives and the reasons for them

The objective of the Proclamation is to commence the following provisions of the Act on 17 December 2018:

- section 3(2)(b) to (d) of chapter 1
- chapter 3
- chapter 4
- chapter 5
- section 201(2)(b) to (g) of chapter 7
- the provisions of chapter 8 that are not in force
- sections 278, 304(2), 306 and 308 of chapter 9
- schedule 1

Chapter 3 includes provisions relating to progress payments.

Chapter 4 includes modernised and simplified provisions relating to subcontractor's charges.

Chapter 5 provides for the establishment of the Adjudication Registry and adjudicators.

Chapter 7, section 201(2)(b) – (g) provides for a regulation to prescribe:

- details about adjudication qualification requirements;
- the grading of adjudicators;
- continuing professional development that must be undertaken by adjudicators;
- limits on fees payable to adjudicators;
- procedures for the lodgement of adjudication applications with the registrar and the processing of adjudication applications by the registrar; and

- limitations on submissions and accompanying documents for adjudication applications and adjudication responses.

Parts 1, 2 and 3 and section 211(1)(a)(ii) and (5) of chapter 8 - Transitional and repeal, provide for the repeal of the *Building and Construction Industry Payments Act 2004* (BCIPA) and the *Subcontractors' Charges Act 1974* (SCA), and include transitional regulation-making powers.

Sections 278, 304(2), 306 and 308 of chapter 9 - Amendments to other Acts, amend the *Queensland Building and Construction Act 1991* (QBCC Act) to insert new notification requirements for defects liability periods, provide for escalating demerit points to be issued for failure to comply with a direction to rectify, remove a reference to BCIPA, and insert a reference to schedule 1.

Schedule 1 makes consequential amendments to the *Judicial Review Act 1991* and QBCC Act to replace references to the repealed BCIPA and SCA with references to the relevant sections of the *Building Industry Fairness (Security of Payment) Act 2017*.

Achievement of policy objectives

Commencing chapters 3-5 of the Act will implement changes relating to progress payments, adjudicators, the adjudication registry, and subcontractors' charges. The commencement of the remaining sections will support implementation of chapters 3-5 of the Act, as well as the repeal of the BCIPA and SCA.

Consistency with policy objectives of authorising law

The Proclamation is consistent with the objectives of the Act.

Inconsistency with policy objectives of other legislation

There is no inconsistency with the policy objectives of other legislation.

Alternative ways of achieving policy objectives

The policy objectives can only be achieved by making the Proclamation.

Benefits and costs of implementation

The benefit of proclaiming the above sections of the *Building Industry Fairness (Security of Payment) Act 2017* is that it supports the implementation of stage 2 of the Act. Stage 2 will introduce more effective, efficient and fair processes for securing payment, including by making the process for progress payment claims and adjudication of disputed payments, easier. It also provides for a more independent adjudication registry and a high standard of skills and training for registered adjudicators and prospective adjudicators.

As outlined in the explanatory notes to the *Building Industry Fairness (Security of Payment) Bill 2017*, any costs arising from implementation of the Act will be met from existing resources.

Consistency with fundamental legislative principles

The Proclamation is consistent with fundamental legislative principles.

Consultation

The Queensland Productivity Commission has confirmed that under the Queensland Government Guide to Better Regulation, the proposed proclamation is excluded from regulatory impact analysis as it is of a machinery nature.