

Building Industry Fairness (Security of Payment) and Other Legislation Amendment Regulation 2018

Explanatory notes for Subordinate Legislation 2018 No. 177

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) and Other Legislation Amendment Regulation 2018.

Authorising law

Sections 34B, 79(2)(d), 80(b), 95(2), 155, 165, 181 and 201 of the *Building Industry Fairness (Security of Payment) Act 2017* (BIF Act).

Sections 67AR, 67AW(2)(a) and 116 of the *Queensland Building and Construction Commission Act 1991* (QBCC Act).

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) and Other Legislation Amendment Regulation 2018* (Amendment Regulation) are to:

- prescribe certain matters in relation to progress payments and adjudicators to support the commencement of chapters 3 and 5 of the Act on 17 December 2018;
- prescribe new infringement notice offences for the Act under the *State Penalties Enforcement Regulation 2014* (SPER);
- prescribe certain sections under the QBCC Act as demerit point offences; and
- make consequential amendments to the *Building Industry Fairness (Security of Payment) Regulation 2018* to support the repeal of the *Building and Construction Industry Payments Act 2004* (BCIPA) and the *Subcontractors' Charges Act 1974* (SCA).

Achievement of policy objectives

The policy objectives are achieved by prescribing:

- the circumstances where a conflict of interest would prevent an adjudicator from considering an adjudication application;
- the maximum amount for fees and expenses an adjudicator may be paid for an adjudication application for an adjudicated amount of up to \$25,000;
- the continuing professional development an adjudicator must undertake as a condition of their registration;
- the mandatory training that an adjudicator must undertake relating to the differences between BCIPA and the new legislative provisions;
- for an adjudication qualification:
 - (i) the name of the qualification
 - (ii) the body that may issue the qualification
 - (iii) the name of the competency to be achieved to gain the qualification
 - (iv) the elements that must be successfully completed to achieve the competency;
- the criteria for the grading of adjudicators;
- the procedure for referring adjudication applications to adjudicators by the registrar;
- limitations on submissions and accompanying documents for payment claims for less than \$25,000;
- the procedure for the lodgement of adjudication applications with the registrar, including the last time during a day that the application may be lodged;
- fees payable under the Act, including fees for making an adjudication application and adjudicator registration and renewal fees; and
- the CPD policy, Adjudicator Referral policy and Code of Conduct for adjudicators, made by the registrar.

The Amendment Regulation also prescribes new infringement notice offences under the SPER for certain provisions of the Act and new demerit point offences under the *Queensland Building and Construction Commission Regulation 2018*.

Finally, the Amendment Regulation makes consequential amendments to the *Building Industry Fairness (Security of Payment) Regulation 2018* to reflect the repeal of the BCIPA and SCA.

Consistency with policy objectives of authorising law

The Amendment Regulation is consistent with the main objects of the authorising laws.

Inconsistency with policy objectives of other legislation

The Amendment 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 Amendment Regulation.

Benefits and costs of implementation

The Amendment Regulation supports the implementation of stage 2 of the BIF 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 transparent and independent adjudication registry and a high standard of skills and training for registered adjudicators and prospective adjudicators.

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

Consistency with fundamental legislative principles

The proposed Amendment Regulation is consistent with fundamental legislative principles.

Consultation

Registered adjudicators, members of the Queensland Law Society and the Ministerial Construction Council were consulted on the adjudicator policies and the detail to be prescribed under the Amendment Regulation.

The Queensland Productivity Commission reviewed the proposed amendments under the *Building Industry Fairness (Security of Payment) and Other Legislation Amendment Regulation 2018* and considered that no further regulatory impact analysis was required.