

Building Industry Fairness (Security of Payment) Act 2017

Explanatory notes for Subordinate Legislation 2020 No.159

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 BIF Act).

Policy objectives and the reasons for them

The *Building Industry Fairness (Security of Payment) and Other Legislation Amendment Act 2020* (the BIFOLA Act) was assented to on 23 July 2020.

Section 2 of the BIF Act, as amended by the BIFOLA Act provides for the provisions within Chapter 9, Part 1, divisions 1 to 4 to commence on a day to be fixed by proclamation.

These divisions provide for the extended application of the new trust account framework, which is being inserted into the BIF Act primarily by section 63 of the BIFOLA Act. The new trust account framework will replace the present project bank account (PBA) framework under existing Chapter 2 of the BIF Act.

The objective of the Proclamation is to fix the commencement dates for the later phases of the new trust account framework as follows:

- Phase 2A (expand to eligible State government and Hospital and Health Services' building and construction contracts with a contract price of \$1 million or more) – 1 July 2021;
- Phase 2B (expand to also apply to eligible private sector, local government, statutory authorities and government-owned corporations building and construction contracts with a contract price of \$10 million or more) – 1 January 2022;

- Phase 3 (expand to also apply to eligible private sector, local government, statutory authorities' and government-owned corporations' building and construction contracts with a contract price of \$3 million or more) – 1 July 2022; and
- Phase 4 (expand to apply to all eligible building and construction contracts with a contract price of \$1 million or more) – 1 January 2023.

These phases broaden the application of the new framework to apply to more eligible contracts in the building and construction industry. Full implementation of the framework will occur on 1 January 2023.

Commencement of these provisions will implement certain recommendations of the Building Industry Fairness Implementation and Evaluation Panel Report (*Building Fairness – An Evaluation of Queensland's Building Industry Fairness Reforms*) which recommended that a phased commencement occur to allow industry time to manage the transition.

Commencement of the provisions will also further progress the Queensland Building Plan 2017 (QBP), which aims to create a safer, fairer and more sustainable construction industry. Fixing the commencement dates for the later trust phases under the BIF Act will specifically address the QBP commitment in the area of security of payment.

Achievement of policy objectives

The policy objectives are achieved by fixing the commencement dates for certain sections of the BIF Act.

Consistency with policy objectives of authorising law

The Proclamation is consistent with the objectives of the BIF Act.

Inconsistency with policy objectives of other legislation

The Proclamation is not inconsistent with the policy objectives of other legislation.

Benefits and costs of implementation

The benefit of the Proclamation is the staged implementation of the new trust account framework, which will extend application of the framework to apply to more contracts in the building and construction industry and further improve security of payment.

Any government costs arising from commencement of the provisions will be met from existing resources.

Consistency with fundamental legislative principles

The Proclamation is consistent with fundamental legislative principles.

Consultation

The Ministerial Construction Council, which consists of key industry stakeholders, was consulted on the proposed commencement dates outlined in the proclamation.

In accordance with the Queensland Government Guide to Better Regulation, the Office of Best Practice Regulation was not consulted in relation to the Proclamation. The Department of Housing and Public Works applied a self-assessable exclusion from undertaking further regulatory impact analysis (category (g) - Regulatory proposals that are of a machinery nature).