

Building Industry Fairness (Security of Payment) and Other Legislation Amendment Act 2020

Explanatory notes for Subordinate Legislation 2020 No.158

made under the

Building Industry Fairness (Security of Payment) and Other Legislation Amendment Act 2020

General Outline

Short title

Proclamation commencing certain sections of the *Building Industry Fairness (Security of Payment) and Other Legislation Amendment Act 2020*.

Authorising law

Section 2 of the *Building Industry Fairness (Security of Payment) and Other Legislation Amendment Act 2020* (the BIFOLA Act).

Policy objectives and the reasons for them

The BIFOLA Act was assented to on 23 July 2020.

Section 2 of the BIFOLA Act provides for the commencement of provisions that did not commence on assent or a fixed day, to commence on a day to be fixed by proclamation.

The objective of the Proclamation is to fix the commencement day for certain sections of the BIFOLA Act.

The Proclamation specifies that the provisions of the BIFOLA Act which alter the eligibility criteria for the later phases of the new trust account framework under the BIF Act commence on 27 August 2020.

The Proclamation specifies that the following provisions commence on 1 October 2020:

- *Building Industry Fairness (Security of Payment) Act 2017* (BIF Act) amendments relating to progress payments, including the new payment enforcement mechanisms (payment withholding request, charge over property and offence for failure to pay the scheduled amount) and supporting statements;

- all *Building Act 1975* amendments, other than the provisions that establish an alternative licensing pathway for building certifiers; and
- *Queensland Building and Construction Commission Act 1991* (QBCC Act) amendments, including the provision providing for a statutory review of the role of property developers in the building and construction industry; amendments implementing Special Joint Taskforce recommendations; expanding the offence for failing to release retention amounts to apply to other forms of security; removing entitlement to a licence if the equivalent interstate or New Zealand licence is suspended or cancelled; clarifying the 'occupational licence' definition; provisions that exclude site supervisors from holding a licence in certain circumstances; and providing the ability to prescribe continuing licence classes for a broader range of licences, including occupational licences (e.g. fire protection).

The Proclamation specifies that a previous power to prescribe certain continuing licence classes under the QBCC Act will be repealed on 2 October 2020.

The Proclamation specifies that the following provisions commence on 1 March 2021:

- amendments of the *Architects Act 2002* and *Professional Engineers Act 2002*; and
- the new trust account framework. This replaces the present project bank account (PBA) framework under the BIF Act and will initially apply to the existing PBA cohort i.e. eligible State government building contracts with a contract price between \$1 million and \$10 million.

The Proclamation also specifies that the QBCC Act amendments in relation to the definitions of 'fire protection work' and 'fire protection equipment' commence on 1 May 2021.

Commencement of these provisions will implement various recommendations of three recent reports for the building and construction industry:

- Building Fairness – An Evaluation of Queensland's Building Industry Fairness Reforms;
- Special Joint Taskforce – Investigating subcontractor non-payment in the Queensland building industry; and
- Building Confidence – Improving the effectiveness of compliance and enforcement systems for the building and construction industry across Australia.

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. Progressing reforms to the above-mentioned legislation will specifically address the QBP commitments to improve security of payment, building certification and licensing.

Achievement of policy objectives

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

Consistency with policy objectives of authorising law

The Proclamation is consistent with the objectives of the BIFOLA 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 commencement of provisions which further improve the building and construction industry, particularly in relation to security of payment, building certification and licensing.

Any government costs arising from commencement of the various reforms 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 building and construction industry stakeholders was consulted on the proposed commencement dates outlined in the Proclamation. Commencement dates reflect the industry disruption caused by the COVID-19 pandemic and allow for sufficient time for industry to prepare for the reforms.

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).