

Building Industry Fairness (Security of Payment) (Transitional) Regulation 2020

Explanatory Notes for Subordinate Legislation 2020 No. 242

Made under the

Building Industry Fairness (Security of Payment) Act 2017

General Outline

Short title

Building Industry Fairness (Security of Payment) (Transitional) Regulation 2020

Authorising law

Section 211E of the *Building Industry Fairness (Security of Payment) Act 2017*

Policy objectives and the reasons for them

The policy objectives of the *Building Industry Fairness (Security of Payment) (Transitional) Regulation 2020* (BIF Transitional Regulation) are to facilitate the operation of certain amendments made by the Building Industry Fairness (Security of Payment) and Other Legislation Amendment Act 2020 (BIFOLA Act) to the Building Industry Fairness (Security of Payment) Act 2017 (BIF Act), commencing on 1 October 2020.

The BIFOLA Act does not provide transitional provisions for certain amendments to the BIF Act relating to progress payments. The BIF Transitional Regulation provides transitional provisions for the following sections in Part 4 of the BIFOLA Act:

- Section 64 – which amends the definition of ‘complex payment claim’ under section 64 of the BIF Act to remove reference to GST.
- Section 74 – which amends section 99 of the BIF Act which requires the claimant to give notice to a respondent about their intention to start proceedings in a court to recover an amount owed to the claimant. Section 74 extends the timeframe for giving a notice from 20 business days after the due date for the progress payment, to 30 business days.

There is concern that without transitional provisions, the amendments may cause existing payment claims and proceedings to be affected causing confusion for industry. Clear transitional provisions will avoid any misunderstanding or misinterpretation about the application of the two specific amendments to progress payments.

For section 64, the amendment will apply to payment claims made on or after 1 October 2020. For Section 74, the amendment will apply to payment claims that are due for payment on or after 1 October 2020.

Achievement of policy objectives

The BIF Transitional Regulation will support the commencement of certain amendments to chapter 3 of the BIF Act.

The BIF Transitional Regulation provides that section 64 of the BIFOLA Act, which amends the definition of 'complex payment claim' to remove the reference to GST, will only apply to payment claims made on or after 1 October 2020.

The BIF Transitional Regulation makes it clear that section 74 of the BIFOLA Act, which extends the timeframe for a claimant to notify a respondent that they intend to start proceedings to recover an unpaid amount, only applies to payment claims where the due date for payment is on or after 1 October 2020.

Consistency with policy objectives of authorising law

The BIF Transitional Regulation is consistent with the policy intent of the BIFOLA Act.

Inconsistency with policy objectives of other legislation

The BIF Transitional Regulation is not inconsistent with the policy objectives of other legislation.

Benefits and costs of implementation

The BIF Transitional Regulation will provide the benefit of clear application of the amendments as they apply to payment claims and proceedings in effect prior to commencement. This will avoid confusion and misunderstanding within industry.

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

Consistency with fundamental legislative principles

The BIF Transitional Regulation is consistent with the fundamental legislative principles.

Consultation

The Department of the Premier and Cabinet and the Queensland Building and Construction Commission were consulted and raised no concerns about the proposed clarifications included in the BIF Transitional Regulation.

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

The government consulted on the policy intent of the proposed BIF Transitional Regulation with industry stakeholders through a subcommittee of the Ministerial Construction Council. The stakeholders included:

- Master Builders Queensland
- Master Electricians Australia
- National Fire Industry Association
- Australian Institute of Building Surveyors
- Australian Institute of Quantity Surveyors
- CPA Australia
- Master Plumbers Association of Queensland
- Housing Industry Association
- Chartered Accountants Australia and New Zealand
- The Association of Wall & Ceiling Industries
- Consult Australia
- Subcontractors' Alliance

The proposed BIF Transitional Regulation was supported.