

Building Industry Fairness (Security of Payment) (Retention Trust Training) Amendment Regulation 2021

Explanatory notes for Subordinate Legislation 2021 No. 181

made under the

Building Industry Fairness (Security of Payment) Act 2017

General Outline

Short title

Building Industry Fairness (Security of Payment) (Retention Trust Training) Amendment Regulation 2021

Authorising law

Section 41 and 201(1) of the *Building Industry Fairness (Security of Payment) Act 2017* (BIF Act)

Policy objectives and the reasons for them

The objective of the *Building Industry Fairness (Security of Payment) (Retention Trust Training) Amendment Regulation 2021* (the Retention Trust Training Regulation) is to prescribe the compulsory retention trust training (the training) and period within which the training must be completed by participants. The training will assist trustees and nominated persons to understand the requirements and obligations that apply to them under the trust framework in BIF Act.

The BIF Act requires a person responsible for administering a retention trust account, whether the trustee or another nominated person, to complete the training prescribed by regulation. The requirement to undertake the training does not apply until the training is prescribed in a regulation.

Retention trust accounts will hold monies across multiple projects for as long as a contractor holds cash retention amounts. Therefore, it is important contractors fully understand their accounting, record keeping and other compliance obligations.

The Retention Trust Training Regulation prescribes that the training is the training course provided by the Queensland Building and Construction Commission (QBCC). It is intended that the course will take approximately two hours to complete including assessment, be free of charge and be progressively offered through a number of means to provide flexibility for participants.

The regulation also specifies the periods within which the training must be completed. These periods are generous and account for new and existing trustees and circumstances where a nominated person changes.

Achievement of policy objectives

The policy objectives will be achieved by prescribing that the training is the training course called 'Mandatory retention trust training', provided by the QBCC. The objectives will be further achieved by prescribing that existing trustees and nominated persons and persons who become a trustee or nominated person on or before 31 January 2022, must complete the training by 28 February 2022. The Regulation clarifies that training completed prior to commencement will also satisfy the training requirement. For persons that become a trustee or a nominated person for administering the retention trust account after 31 January 2022, the training must be completed within 20 business days of withholding the first retention amount. Where the trustee nominates a new or replacement person to administer the retention trust account, the training must be completed within 20 business days of making the nomination. It is intended that this should only apply to a person nominated after 31 January 2022 and where the trustee or a nominated person for that trustee has previously completed the training.

The training will be subject to an evaluation following full implementation of the trust account framework in 2023 to ensure that it is meeting the desired training intent.

Consistency with policy objectives of authorising law

The Retention Trust Training Regulation is consistent with the main objects of the BIF Act, that is to help people working in the building and construction industry in being paid for the work they do.

Inconsistency with policy objectives of other legislation

No inconsistencies with the policy objectives of other legislation have been identified.

Alternative ways of achieving policy objectives

The policy objectives can only be achieved by making the Retention Trust Training Regulation. These issues cannot be addressed administratively or by other policy means.

Benefits and costs of implementation

The primary benefit of the Retention Trust Training Regulation is introducing a training obligation to ensure trustees and nominated persons understand the trust account framework established by the BIF Act and the obligations and responsibilities that will apply to them. Having persons administering retention trust accounts effectively will maximise the benefits of the trust framework and reduce the administrative burden on the QBCC in having to further educate industry and undertake compliance action.

The training is being offered to participants free of charge and with flexible delivery options so should impose only a very minor time burden on participants.

There will be a minor cost for QBCC to deliver the training, however, it is understood efficiencies will be realised through sharing of systems development across QBCC.

Consistency with fundamental legislative principles

The Retention Trust Training Regulation has sufficient regard to the institution of Parliament, is consistent with the policy objectives of the authorising law and only contains matters appropriate to subordinate legislation. Therefore, the Regulation is consistent with fundamental legislative principles as outlined in the *Legislative Standards Act 1992*.

Consultation

During drafting of the relevant BIF Act provision concerning mandatory training, industry stakeholders were consulted and provided feedback that the training should be cost-effective, accessible to regional businesses and flexible enough to cover relevant officers in a building company.

The Ministerial Construction Council, which comprises of key industry stakeholders, was consulted and supports the training approach and no concerns were raised regarding the overview of the proposed content.

The Office of Best Practice Regulation was consulted and advised that no further regulatory impact assessment is required under the Queensland Government Guide to Better Regulation.