

Building Industry Fairness (Security of Payment) Act 2017

Explanatory notes for Subordinate Legislation 2022 No. 30

made under the

Building Industry Fairness (Security of Payment) Act 2017

General Outline

Short title

Proclamation which repeals the Proclamation made under the *Building Industry Fairness (Security of Payment) Act 2017* on 27 August 2020.

Authorising law

Section 2 of the *Building Industry Fairness (Security of Payment) Act 2017* (BIF Act).

Policy objectives and the reasons for them

The *Building Industry Fairness (Security of Payment) and Other Legislation Amendment Act 2020* (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 phased application of the new trust account framework (framework), which was inserted into the BIF Act primarily by section 63 of the BIFOLA Act. The framework replaced the former Project Bank Account (PBA) model under existing Chapter 2 of BIF Act with a more streamlined trust model.

The first phase of the framework began on 1 March 2021 and applies to eligible Queensland Government contracts valued between \$1 million and \$10 million (Phase 1B). These kinds of contracts used PBAs.

A Proclamation was made on 27 August 2020 and notified on 28 August 2020 (SL No. 159 of 2020) to fix the commencement dates of the later phases as follows:

- **Chapter 9, part 1, division 1** commenced on 1 July 2021 [expansion to Queensland Government and Hospital and Health Services contracts valued at \$1 million or more (Phase 2A)].
- **Chapter 9, part 1, division 2** commenced on 1 January 2022 [expansion to eligible private sector, local government, statutory authority, and government-owned corporations' contracts valued at \$10 million or more (Phase 2B)].
- **Chapter 9, part 1, division 3** commences on 1 July 2022 [expansion to eligible private sector, local government, statutory authority, and government-owned corporations' contracts valued at \$ 3 million or more (Phase 3)].

- **Chapter 9, part 1, division 4** commences on 1 January 2023 [expansion to all eligible contracts valued at \$1 million or more (full implementation) (Phase 4)].

A health check was undertaken of industry readiness before the framework expanded to the private sector on 1 January 2022. The health check found that the sector was broadly 'ready' for Phase 2B implementation, but some challenges exist for subsequent phases.

In light of the findings of the health check, the ongoing impacts of the COVID-19 pandemic, market capacity in the industry and, most recently, the significant natural disaster events in South-East Queensland, Government approved an extension of the commencement dates for Phases 3 and 4 of the framework by nine months respectively. This will mean that Phase 3 will now commence on 1 April 2023 and Phase 4 on 1 October 2023.

This extension will allow more time for industry stakeholders to prepare and for Government to support industry with the transition.

The objective of the Proclamation is to repeal the existing Proclamation made on 27 August 2020. A further Proclamation also be made to replace the existing commencement dates for Phases 3 and 4 specified in the repealed Proclamation, with new dates that provide an additional nine months respectively.

Extension of the Phase 3 and 4 commencement dates will continue to align with the intent of the 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.

Continuing the measured implementation of the framework will also further progress the Queensland Building Plan (QBP) 2017 and QBP Update 2021, which aim to create a safer, fairer and more sustainable construction industry. Fixing revised commencement dates for the later trust phases under the BIF Act specifically addresses the QBP commitment in the area of security of payment.

Achievement of policy objectives

The policy objectives will be achieved by making the Proclamation to repeal the existing Proclamation and making a further Proclamation to fix new commencement dates for the provisions of the BIF Act which relate to Phases 3 and 4 of the framework.

Consistency with policy objectives of authorising law

The Proclamation 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 Proclamation. These issues cannot be addressed administratively or by other policy means.

Benefits and costs of implementation

The benefit of the Proclamation is the continued phased implementation of the framework, which will allow the extended application of trust accounts to more contracts in the building and construction industry in a measured and appropriate manner. This will 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.

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 Energy and Public Works applied a self-assessable exclusion from undertaking further regulatory impact analysis [category (g) – Regulatory proposals that are of a machinery nature].