

Building Industry Fairness (Security of Payment) Act 2017

Explanatory notes for Subordinate Legislation 2023 No. 17

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 24 March 2022 (SL No. 31 of 2022).

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 model and is being gradually phased in for eligible Queensland building and construction contracts between 2021 and 2023.

A Proclamation was made on 24 March 2022 (SL No. 31 of 2022) to fix the commencement dates of the remaining phases as follows:

- **Chapter 9, part 1, division 3** scheduled to commence on 1 April 2023 [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** scheduled to commence on 1 October 2023 [expansion to all eligible contracts valued at \$1 million or more (full implementation) (Phase 4)].

An assessment was undertaken of industry readiness and capability before the framework expands to the smaller eligible contracts valued at \$3 million or more and \$1 million or more. The assessment found current trustees had broad understanding of the trust account requirements including when trusts are required and how to establish and operate the trust accounts. However, it also found that some challenges exist for subsequent phases including differing levels of awareness and understanding of the framework, and lack of software packages that can fully support and facilitate compliance with the trust record keeping requirements of the framework.

Additionally, industry capacity to adapt to the framework also continues to be impacted by market-wide factors. A December 2022 Infrastructure Market Capacity report released by Infrastructure Australia indicates an overheated construction market that is working to capacity. Escalating supply costs, labour shortages and worsening productivity continues to place pressure on construction companies, suppliers and projects, and this is impacting on workforce mental health and wellbeing. These pressures are not expected to ease until 2026.

In recognition of these factors and to support successful implementation of the framework, the commencement dates for the remaining two phases are being extended by approximately two years respectively:

- Phase 3 currently scheduled to commence on 1 April 2023, **will now commence on 1 March 2025.**
- Phase 4 currently scheduled to commence on 1 October 2023, **will now commence on 1 October 2025.**

This approach will provide certainty to industry regarding the ongoing commitment to security of payment and allow industry to continue planning for the remaining phases. It will also support software providers to develop accounting software to ensure software solutions are available in the market and facilitate trustee compliance.

The objective of the Proclamation is to repeal the existing Proclamation made on 24 March 2022 (SL No. 31 of 2022). Another Proclamation (Proclamation —*Building Industry Fairness (Security of Payment) Act 2017*) will also be made to replace the existing commencement dates for Phases 3 and 4 specified in the repealed Proclamation, with new dates that provide approximately an additional two years 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 (MCC), which consists of key industry stakeholders, was consulted on the proposed extension to the commencement dates. Most members of the MCC either indicated support for an extension to the commencement dates or acknowledged the reasons for the shift.

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).