

Building Industry Fairness (Security of Payment) Amendment Regulation 2023

Explanatory notes for Subordinate Legislation 2023 No. 62

Made under the

Building Industry Fairness (Security of Payment) Act 2017

General Outline

Short title

Building Industry Fairness (Security of Payment) Amendment Regulation 2023

Authorising law

Section 201 of the *Building Industry Fairness (Security of Payment) Act 2017*.

Policy objectives and the reasons for them

The Queensland Treasury's Principles for Fees and Charges (Principles) requires agencies to set fees and charges to accurately reflect the cost of providing their services and to ensure these fees and charges maintain their value over time. Where a regular comprehensive review of fees and charges is not cost effective or no specific indexation method has been otherwise approved, agencies are required to annually apply the Government Indexation Rate to their fees and charges.

The fees under Schedule 2 of the *Building Industry Fairness (Security of Payment) Regulation 2018* are charged based on the amount of the progress payment being claimed. The fees increase incrementally based on certain thresholds of progress payment values. The highest category of fee is a percentage of the progress payment amount, up to a maximum value. The progress payment thresholds and percentage in the *Building Industry Fairness (Security of Payment) Regulation 2018* are also required to be increased annually by the Government Indexation Rate to ensure the fees are not eroded over time and remain proportional to the progress payment value. The automated fee unit conversion approach cannot be applied to these progress payment thresholds and percentage, as they are not in themselves a fee. Rather, they enable the appropriate category to be selected for determining the applicable fee. In this case, the thresholds and the percentage are required to be amended annually to reflect indexation.

Achievement of policy objectives

The Amendment Regulation will achieve its objective by amending the fee schedule in the BIF Regulation to increase the progress payment thresholds and percentage to reflect the applicable indexation rate.

In the case of section 1(h) of the *Building Industry Fairness (Security of Payment) Regulation 2018*, the existing formula (which uses a percentage of the progress payment amount) has been converted to 'fee units equal to' the dollar value calculated using the formula. For example, if an adjudication application is made on 1 July 2023 for a progress payment with a value of \$1,300,000, the actual fee would be \$998.49. The fee unit equivalent of this fee would be 942 fee units.

Consistency with policy objectives of authorising law

The amendments are consistent with the policy objectives of the authorising law.

Inconsistency with policy objectives of other legislation

The Amendment Regulation is not inconsistent with any policy objectives of any legislation.

Alternative ways of achieving policy objectives

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

Benefits and costs of implementation

An amendment to the *Building Industry Fairness (Security of Payment) Regulation 2018* will be required every year to increase the progress payment thresholds and percentage to reflect the applicable indexation rate. However, the maximum cap under section 1(h), column 3 has been converted to fee units so will be indexed automatically alongside the fee unit values for sections 1(a) – (g) of Schedule 2 of the *Building Industry Fairness (Security of Payment) Regulation 2018*. This imposes a minor administrative burden on the Department of Energy and Public Works but is the only way of achieving the indexation approach for the thresholds.

Consistency with fundamental legislative principles

The Amendment Regulation is consistent with fundamental legislative principles.

Consultation

In accordance with the Queensland Government Guide to Better Regulation, the Office of Best Practice Regulation was not consulted in relation to the Amendment Regulation. The Department of Energy and Public Works applied a self-assessable exclusion from undertaking further regulatory impact analysis (category (h) - Regulatory proposals that put forward standard annual fee variations in line with or below a government endorsed indexation factor). This exclusion category applies to the proposed Amendment Regulation.

Given its machinery nature, there was no external consultation on this Amendment Regulation.