

Proclamation - Building Industry Fairness (Security of Payment) Act 2017

Explanatory notes for Subordinate Legislation 2025 No. 3

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 16 March 2023 (SL No. 16 of 2023).

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 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 2025.

A Proclamation was made on 16 March 2023 (SL No. 16 of 2023) to fix the commencement dates of the remaining phases as follows:

- **Chapter 9, part 1, division 3** scheduled to commence on 1 March 2025 [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 2025 [expansion to all eligible contracts valued at \$1 million or more, and retention amounts withheld under eligible contracts throughout the contractual chain (full implementation) (Phase 4)].

The Department of Housing and Public Works (the department) has continued to monitor the implementation and effectiveness of the framework. This monitoring has identified potential barriers to the successful rollout of the remaining two phases of the framework, including:

- the vulnerability of the industry to tougher financial conditions and key challenges such as tight profit margins, access to capital/cash flow, labour shortages, rising input costs, availability of materials, and compliance costs.

- an ongoing risk of insolvency, with data indicating insolvencies have been increasing year on year over the past three financial years in all states and territories (Queensland is the third highest jurisdiction for construction sector insolvencies, behind NSW and Victoria).
- the availability of software to support trustees to comply with their obligations under the framework.
- the potential to improve awareness and understanding of the framework and its requirements by smaller contractors (who are likely to be captured in the next phases).

The newly established Queensland Productivity Commission (QPC) will also be tasked with a regulatory review of the building and construction industry as its first priority.

In recognition of these factors the commencement dates for the remaining phases are being paused, with new commencement dates to be determined at a later time.

This approach will provide additional time for industry education, ongoing government support and a reduction of red tape for smaller contractors. It will also allow for the outcomes of the QPC's review into the building industry to be taken into consideration before the next phase of the framework commences.

Achievement of policy objectives

The policy objectives will be achieved by making the Proclamation to repeal the existing Proclamation.

Consistency with policy objectives of authorising law

The Proclamation is minor and machinery in nature and does not represent a change in policy.

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

Pausing commencement of the remaining phases of the framework will offer regulatory relief for the benefit of the whole building and construction industry. In the interim, subcontractors can continue to use other security of payment protections including adjudication, subcontractors' charges and payment withholding requests.

The proposed Proclamation will have no financial impact on the government or industry, as it maintains current status quo.

Consistency with fundamental legislative principles

The Proclamation is consistent with fundamental legislative principles.

Consultation

The department continues to engage with industry stakeholders and the regulator regarding the ongoing phased rollout of the trust account framework. Industry stakeholders express a range of views, with most indicating support for an extension to the commencement dates. However, some subcontractor organisations and software providers have indicated support for the remaining phases to commence as planned. There is also some support for a broader evaluation of the effectiveness of the framework, and the department will be liaising with the newly established QPC in relation to this matter.

The Office of Best Practice Regulation was notified of the proposed Proclamation. In accordance with the Queensland Government Better Regulation Policy, a summary Impact Analysis Statement was undertaken by the department, which assessed the proposed Proclamation as not representing a change in current policy.