

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

## Human Rights Certificate

### Prepared in accordance with Part 3 of the *Human Rights Act 2019*

In accordance with section 41 of the *Human Rights Act 2019* (HR Act), I, the Honourable Sam O'Connor MP, Minister for Housing and Public Works and Minister for Youth, provide this human rights certificate with respect to the Proclamation - *Building Industry Fairness (Security of Payment) Act 2017* (BIF Act) made under section 2 of the BIF Act.

In my opinion, the Proclamation, as tabled in the Legislative Assembly, is compatible with the human rights protected by the HR Act. I base my opinion on the reasons outlined in this statement.

## Overview of the Subordinate Legislation

Section 2 of the BIF Act as amended by the *Building Industry Fairness (Security of Payment) and Other Legislation Amendment Act 2020* (BIFOLA Act) requires certain provisions of the Act to commence on a day to be fixed by proclamation, including the provisions within Chapter 9, Part 1, divisions 1 to 4. 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 has been 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 and to support successful implementation of the framework, the commencement dates for the remaining phases are being paused, with new commencement dates to be determined in future.

Pausing commencement of the remaining phases of the framework will offer regulatory relief for the benefit of the whole building and construction industry. 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.

The objective of the Proclamation is to repeal the existing Proclamation made on 16 March 2023 (SL No. 16 of 2023).

## Human Rights Issues

### Human rights relevant to the subordinate legislation (Part 2, Division 2, HR Act)

In my opinion, the human rights under the HR Act that are relevant to the Proclamation are:

- *Section 24- Property rights*

Repealing the existing dates and extending the commencement dates could temporarily reduce protections for subcontractors who otherwise would have fallen within the framework in the coming months.

### Consideration of reasonable limitations on human rights (section 13, HR Act)

(a) the nature of the right

This right recognises that all persons have the right to own property alone or in association with others and a person must not be arbitrarily deprived of the person's property.

(b) the nature of the purpose of the limitation, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The proposal to repeal the existing dates and pause the commencement dates of Phases 3 and 4 of the framework could temporarily reduce protections for subcontractors who otherwise would have fallen within the framework in the coming months. However, this possible impact is justified as the extension will offer a smoother rollout for industry generally, which will in turn benefit subcontractors. It will also allow time for any relevant findings from the QPC

review to be considered. Additionally, subcontractors can continue to utilise other security of payment protections including adjudication, subcontractors' charges and payment withholding requests.

- (c) the relationship between the limitation and its purpose, including whether the limitation helps to achieve the purpose

The assessment of industry readiness and capability for implementation of the framework found that some challenges exist for successful implementation of the next phases. Pausing commencement of the next phases will allow more time for industry stakeholders to prepare and for government to better support industry with the transition. Measured and appropriate implementation of the framework will ensure the benefits can be fully realised.

- (d) whether there are any less restrictive and reasonably available ways to achieve the purpose

There are no other less restrictive ways to achieve the purpose. For example, a less restrictive way would be commencing Phases 3 and 4 as currently scheduled. However, this does not achieve the purpose of the framework, because smaller contractors may not smoothly transition to the new requirements in the present timeframes. Pausing commencement of the next phases will provide more time to manage and address the identified challenges for the framework, apply learnings from previous phases and consider any relevant findings from the QPC review.

- (e) the balance between the importance of the purpose of the limitation and the importance of preserving the human right, taking into account the nature and extent of the limitation

On balance, I consider that the importance of providing more time for smaller industry stakeholders to prepare, and for government to better support industry with the transition and consider the outcomes of the QPC's review, outweighs any potential impact on the subcontractors right to property. Additionally, there are other security of payment protections including adjudication, subcontractors' charges and payment withholding requests that subcontractors can use when required.

## Conclusion

I consider that the Proclamation is compatible with the *Human Rights Act 2019* because it limits human rights only to the extent that is reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

**SAM O'CONNOR MP**  
MINISTER FOR HOUSING AND PUBLIC WORKS  
AND MINISTER FOR YOUTH