

# Building and Plumbing Newsflash 562

## Building Industry Reforms (Stage 2) – commenced 17 December 2018

### Changes to progress payments, adjudication and subcontractors' charges and new retention requirements

#### Purpose

To advise that the next stage of security of payment reforms in relation to progress payments, adjudication and subcontractors' charges (chapters 3 to 5) and new retention requirements (section 278) commenced on **17 December 2018**.

#### Background

On 10 November 2017, the *Building Industry Fairness (Security of Payment) Act 2017*, (BIF Act) introduced a suite of reforms to ensure Queenslanders who work in our building and construction industry are paid for the work they do. The BIF Act reforms are commencing progressively, and the next stage commenced on **17 December 2018**. This stage will make changes to progress payments, adjudication and subcontractors' charges and introduce new requirements related to retentions.

Progress payment and adjudication requirements were contained in the *Building and Construction Industry Payments Act 2004* (BCIPA).

Subcontractors' charges requirements were contained in the *Subcontractors' Charges Act 1974* (SCA).

The BCIPA and SCA were repealed on **17 December 2018** and replaced by chapters 3, 4 and 5 of the BIF Act.

Retention requirements are contained in the *Queensland Building and Construction Commission Act 1991* Part 4A.

#### What's changing?

##### Progress payments

The progress payment reforms will result in the following changes:

- **payment claims** will not have to include specific wording indicating they are made under the legislation. An invoice will be considered a payment claim as long as it sets out the amount claimed, and the construction work (or related goods and services) it relates to. If your contract does not provide progress payment due dates, then the BIF Act will provide one for you, which is 10 business days after the claim is made.
- a **payment schedule** must be issued within **15 business days** (or earlier if provided in the contract) after the payment claim has been provided. The payment schedule must be issued in response to every payment claim, unless the full amount of the payment claim is paid by the due date. If you, as a claimant, dispute the amount in the payment schedule, you can now choose to proceed straight to adjudication.
- A maximum **penalty** of 100 penalty units may apply for not supplying a payment schedule where a claim is not paid in full by the due date.



## Adjudication

Changes to the independent adjudication system will make it easier and quicker to have issues resolved. These include:

- new application timeframes of up to **30 business days**
- **no new reasons** can be provided by the respondent other than those provided in the valid payment schedule, and if a valid payment schedule is not issued, a respondent **cannot issue any response** to an adjudication application
- should an adjudication decision require a payment to be made, this must be paid within **five business days** or another date set by an adjudicator. A maximum **penalty** of 200 penalty units may apply for failing to pay the adjudicated amount. Previously there was no penalty.
- in deciding the proportion of an adjudicator's fees to be paid by both parties, the adjudicator **must** consider the conduct of both parties to the adjudication
- the Adjudication Registry will automatically issue a certificate to claimants for all adjudication decisions.

## Subcontractors' charges

The reforms to subcontractors' charges include:

- modernised and simplified legislative provisions
- new, simplified forms to be available on the Queensland Building and Construction Commission (QBCC) website by 17 December 2018.
- when a subcontractor provides a notice of claim of charge, the contractor receiving the notice must respond to the subcontractor (and give notice to the person higher in the contractual chain) within **10 business days** of receiving the notice of claim. The response must advise if the contractor agrees with or disputes the claim. A maximum **penalty** of 20 penalty units may apply.

## Retentions

The BIF Act will also make changes to the QBCC Act in relation to requirements for retention monies or security held under a building contract. The QBCC Act already provides some requirements however these will be strengthened.

The BIF Act will introduce:

- a statutory default **defects liability period of 12 months** from the date of practical completion where a contract does not provide for a defects liability period
- a requirement for the person (excluding principals) withholding a retention under a building contract to notify the person that they are withholding the retention from within **10 business days** of the defects liability period ending (5 business days under a higher subcontract); and
- significant penalties apply for not paying a retention or security to a contractor, in accordance with the contract, without a reasonable excuse. Typically, a contract would provide for this at the end of the defects liability period. A maximum **penalty** of 200 penalty units or one year's imprisonment may apply.

## More information

### Other resources

Key resources for BIF Act requirements is as follows:

- [Building Industry Fairness \(Security of Payment\) Act 2017](#)
- [Building Industry Fairness \(Security of Payment\) and Other Legislation Amendment Regulation 2018](#)
- [Proclamation - Building Industry Fairness \(Security of Payment\) Act 2017](#)

For more information and resources visit [www.qld.gov.au/securityofpayment](http://www.qld.gov.au/securityofpayment) or contact HPW at [SecurityofPayment@hpw.qld.gov.au](mailto:SecurityofPayment@hpw.qld.gov.au).

For further information about protecting your payment rights visit [www.qbcc.qld.gov.au](http://www.qbcc.qld.gov.au)

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