

# Building and Plumbing Newsflash 576

## Building Industry Fairness (Security of Payment) and Other Legislation Amendment Act 2020 brings in new building laws

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### Purpose

To advise that a Proclamation has been approved that sets out commencement dates for provisions of the *Building Industry Fairness (Security of Payment) and Other Legislation Amendment Act 2020* (BIFOLA Act). Amendments introducing new security of payment reforms, measures to enhance building certification and to strengthen certain licensing provisions will commence on 1 October 2020. Other amendments will commence at later dates.

### Background

The BIFOLA Act amends the *Building Industry Fairness (Security of Payment) Act 2017* (BIF Act), *Architects Act 2002*, *Professional Engineers Act 2002*, *Retirement Villages Act 1999*, *Queensland Building and Construction Commission Act 1991* (QBCC Act) and *Building Act 1975* (Building Act).

The BIFOLA Act further delivers on the [2017 Queensland Building Plan](#) reforms and implements the government's responses to two independent reports relating to the building and construction industry; the [Building Industry Fairness Reforms Implementation and Evaluation Panel \(Panel\) report](#), and the [Special Joint Taskforce \(Taskforce\) report](#). The BIFOLA Act also responds to the national [Building Confidence report](#) recommendations.

### What are the new laws?

#### *BIFOLA Act*

The BIFOLA Act will enhance Queensland's building and construction industry by:

- implementing the recommendations of the Panel and Taskforce
- progressively implementing trust accounts to all eligible building and construction projects valued at \$1 million or more
- strengthening the Minimum Financial Requirements for licensing
- improving standards and integrity in the industry by:
  - o preventing excluded individuals from holding a site supervisor licence
  - o improving the Queensland Building and Construction Commission's (QBCC's) information-sharing ability about licensing across jurisdictions.
- introducing amendments relating to fire protection definitions and validating the current practice where related trades, such as plumbers, can install fire collars that are incidental to their work
- introducing a penalty for delaying or obstructing the rectification of building work
- strengthening the certification profession by:
  - o clarifying that a certifier's primary duty is to act in the public interest
  - o giving owners the right to have additional non-mandatory building inspections and inspection documentation
  - o introducing a demerit system for certifiers in line with other building and construction industry licensees
  - o improving professional standards for certifiers by requiring accreditation standards bodies to have their professional development schemes regularly reviewed

- improving the audit and investigation powers of the Board of Architects of Queensland (BOAQ) and Board of Professional Engineers of Queensland (BPEQ)
- empowering the BOAQ and BPEQ to promote high professional standards.

See below for commencement dates for these provisions.

## *Building Industry Fairness (Security of Payment) Act 2017*

### **Security of payment reforms that do not relate to the new trust account framework**

Amendments to the BIF Act introduce new security of payment reforms to strengthen the progress payment and adjudication process, benefiting all participants in the building and construction industry.

These amendments arise from the Panel and the Taskforce recommendations and will commence on **1 October 2020**.

#### **Payment withholding request**

Head contractors and subcontractors who have not been paid an adjudicated amount will be able to make a 'payment withholding request' to the party that is above their contractor. For the head contractor this can be the financier to the principal.

Once served with a payment withholding request, the financier or higher party would need to withhold the requested amount from money that would be payable to the respondent.

The payment withholding request will apply to all construction contracts, not just to project trust account contracts.

#### **Charge over property**

A head contractor who has not been paid an adjudicated amount, will be able to lodge a statutory charge over the property where the work took place and that is owned by the principal/respondent or a related entity of the principal/respondent.

The charge over property offers the head contractor/claimant the ability to seek an order that the property be sold to satisfy the respondent's debt to the claimant.

#### **Supporting statement**

Payment claims made by head contractors will need to be accompanied by a supporting statement. This will apply to all construction contracts, not just to trust account contracts. The statement will need to declare that all subcontractors have been paid the amounts they are owed and list all subcontractors who have not been paid in full.

A penalty will apply for supplying false or misleading information in the statement.

#### **Paying scheduled amount**

A penalty will apply for failure to pay the scheduled amount.

### **New trust account framework**

The new framework will be simplified by reducing the number of trust accounts.

Currently three trust accounts must be established; a general account, a retention account, and a disputed funds account.

Under the new framework a trust account will need to be established for each eligible contract, and a retention trust account if cash retentions are held. One retention trust account will be needed per contractor, as opposed to a retention trust account being held per contract.

The disputed funds account will no longer exist, but added protections will be in place for subcontractors. Additionally, there will no longer be a requirement for the principal to have viewing access of the trust accounts.

Protections for subcontractors will be improved by extending the range of work that will be covered by the project trust account and placing a statutory charge over retention amounts held in trust. This charge will make the subcontractor a secured creditor in the event of bankruptcy. Once full implementation occurs, all subcontractors down the chain in a trust account project, will have the benefit of a retention trust.

The QBCC will have an increased role in compliance and enforcement of the trust account framework. It will have the ability to undertake audits, require independent audits of accounts, receive notifications about trust accounts, freeze trust accounts and appoint a special investigator.

### **Phased implementation**

The new project and retention trust account framework will be phased in gradually to all eligible contracts valued at \$1 million or more. This will ensure industry has time to adapt and prepare for the changes.

The implementation phases have been adjusted to allow for industry preparedness given the disruption caused by COVID-19. The dates below may be varied depending on industry conditions.

**From 1 March 2021**, the new trust account model will apply to eligible state government contracts valued between \$1M and \$10M. This cohort presently uses Project Bank Accounts (PBA).

The trust account framework will be further implemented to eligible contracts as follows:

- **1 July 2021**—government and Hospital and Health Services (HHS) building and construction contracts valued at \$1 million or more.
- **1 January 2022**— private sector, local government, statutory authorities' and government-owned corporations' building and construction contracts valued at \$10 million or more.
- **1 July 2022**— private sector, local government, statutory authorities' and government-owned corporations' building and construction contracts valued at \$3 million or more.
- **1 January 2023**— all eligible building and construction contracts valued at \$1 million or more (full implementation).

### ***Queensland Building and Construction Commission Act 1991***

Amendments to the QBCC Act are the result of the Taskforce investigation into complaints or allegations of fraudulent behaviour and subcontractor non-payment in Queensland's building industry.

Amendments to the QBCC Act commencing on **1 October 2020** will:

- strengthen and clarify an existing offence provision relating to causing significant financial loss that arises from non-compliance with contractual obligations
- introduce an offence for causing false and misleading information about a licensee's financial situation being given to the QBCC in relation to minimum financial requirements
- introduce a penalty for delaying or obstructing the rectification of building work
- prevent newly excluded individuals (i.e. those who become excluded individuals after 1 October 2020) from applying for, or continuing to hold, a site supervisor licence
- improve sharing of licensing information across jurisdictions
- provide the QBCC more time to start a prosecution.

The latter will provide the QBCC with more time to investigate and prosecute complex matters.

Other amendments to support the transition for mechanical services commenced on **23 July 2020**, Provisions validating relevant landscaping work and fire collars work were taken to have commenced on **1 January 2020**.

Amendments to definitions to support the new fire protection licensing framework will commence on **1 May 2021**.

The amendment to Schedule 1 of the QBCC Act to remove the contractor licensing exemption will commence at a later date following further consultation with industry stakeholders.

### *Building Act 1975*

The national Building Confidence report attributed systemic failures in building and construction industry to compliance and enforcement gaps within the industry. The 2017 Queensland Building Plan consultation also highlighted the need for improvements in the certification sector.

Amendments to the Building Act in the BIFOLA Act will:

- enhance the professional standards and independence of building certifiers
- strengthen the certification and inspection process
- give owners the ability to require additional non-mandatory inspections and inspection documentation
- make it clear that a certifier's primary duty is to act in the public interest.
- require accreditation standards bodies to have their professional development schemes regularly reviewed.

The majority of the amendments to the Building Act will commence on **1 October 2020**. However, the amendment to establish a new alternative licensing pathway for building certifiers will commence at a later date to be determined following further consultation.

### *Architects and Professional Engineers Acts*

The Building Confidence report also recommended ensuring that relevant regulators have a broad suite of powers so that effective compliance and enforcement action can be taken where necessary.

Amendments to the Architects Act and Professional Engineers Act will empower the respective boards to promote high professional standards. The Board of Architects of Queensland and Board of Professional Engineers of Queensland will have improved auditing and investigation powers which align with those of other building regulators.

Other amendments also improve registration requirements and clarify existing provisions to improve the operation of the Acts. These amendments will commence on **1 March 2021**.

## When do the changes take effect?

The [Proclamation](#) sets the commencement dates for various provisions.

## More information

For more information about the changes:

- [Read the BIFOLA Act](#)
- [Visit the Department of Housing and Public Works website](#)

## Contact us

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