

Building and Plumbing Newsflash 578

Building Industry Fairness (Security of Payment) and Other Legislation Amendment Regulation 2020

Purpose

To advise that the Building Industry Fairness (Security of Payment) and Other Legislation Amendment Regulation 2020 (BIFOLA Regulation) has been approved to support recent changes to Queensland's security of payment laws.

Background

The *Building Industry Fairness (Security of Payment) and Other Legislation Amendment Act 2020* (BIFOLA Act) implements a range of reforms to enhance Queensland's security of payment reforms and improve standards and integrity in the building and construction industry.

Amendments to the *Building Industry Fairness (Security of Payment) Act 2017* (BIF Act) in the BIFOLA Act introduce a streamlined trust account framework to replace Project Bank Accounts and provide improved protections for monies in dispute.

The BIFOLA Act also amended the *Queensland Building and Construction Commission Act 1991* as a result of recommendations made by the Special Joint Taskforce (Taskforce), which investigated allegations of fraudulent behaviour relating to subcontractor non-payment.

The amendments also aim to improve standards and integrity in the building and construction industry.

The BIFOLA Regulation provides the supporting detail for these reforms.

What has changed?

Building Industry Fairness (Security of Payment) Regulation 2018 (BIF Regulation)

Amendments to the BIF Regulation will commence on **1 March 2021** to align with the commencement of the new trust account framework.

The BIFOLA Regulation amends the BIF Regulation by:

- providing inclusions and exclusions for the definition of 'project trust work' contained in the BIF Act
- providing key definitions such as 'residential construction work' which are used to determine eligibility for the new trust framework
- prescribing the information to be included in notices or directions to be given to trustees, beneficiaries, the Queensland Building and Construction Commission (QBCC), principals and/or financial institutions under the amended BIF Act.

It also provides the supporting detail for trust records and auditing and reporting requirements for the new framework as outlined below.

Trust records

The BIFOLA Regulation amendments prescribe what records a trustee must keep, including key documents relating to the trust account such as contracts, payment claims, payment schedules and notices given to beneficiaries.

The amendments also provide how trust records must be kept. Trustees:

- will need to include certain information in the trust account ledger and records of deposits and withdrawals for the trust account
- must also prepare a monthly trust account ledger trial balance statement showing the amounts held in trust for each beneficiary.

Additionally, the BIF Regulation will set out the process for completing a bank reconciliation.

Auditing and reporting

Under the new trust account framework, trustees must engage an auditor to carry out a review of the trust account. The amendments to the BIF Regulation generally require a retention trust account to be reviewed annually, however there is flexibility for trustees to change when a review is started.

An account review report prepared by an auditor must include:

- details of any identified non-compliance with the requirements for the trust account under the Act
- an explanation of the review methodology used to complete the review.

Queensland Building and Construction Commission Regulation 2018 (QBCC Regulation)

Amendments to the QBCC Regulation further implement the Taskforce recommendations to:

- enable sharing of information between the QBCC and relevant investigating and prosecuting authorities throughout Australia
- require applicants for a licence, including executive officers for a company, to provide formal proof of identity
- require the licensee register to include, where applicable, the licensee's Australian Business Number and Australian Company Number.

The BIFOLA Regulation also makes minor amendments to the QBCC Regulation as a result of the BIFOLA Act amendments. These include:

- prescribing the Acts under which an 'occupational licence' may be granted, including the Acts that regulate occupational licensing for plumbing, gas-fitting and pest control
- providing exclusions to the amended definition of 'fire protection work' under the QBCC Act
- amendments to allow fire protection and plumbing and drainage occupational licensees to perform relevant work on their homes up to \$11,000 without the need for a separate contractor's licence, in line with other licence holders under the QBCC Act.

The QBCC Regulation amendments commenced on **1 October 2020**.

Building Industry Fairness (Security of Payment) (Transitional) Regulation 2020 (BIF Transitional Regulation)

The BIFOLA Act:

- further refined and strengthened chapter 3 of the BIF Act which provides for progress payments for the building and construction industry
- amended the definition of 'complex payment claim' under section 64 of the BIF Act to remove reference to GST.

Additionally, it extended the period in which a claimant must notify a respondent about their intention to start proceedings in a court to recover a debt, from 20 business days after the due date for payment to 30 business days.

To support the commencement of these amendments, the BIF Transitional Regulation will confirm that the:

- amended definition of 'complex payment claim', where the reference to GST has been removed, will only apply to payment claims made on or after 1 October 2020
- requirement of 30 business days, rather than 20 business days, to notify the respondent about intended court proceedings to recover amounts owed, will only apply where the payment claim was due for payment on or after 1 October 2020.

The BIF Transitional Regulation commenced on **1 October 2020**.

More information

For more information about the changes:

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

Contact us

Building Legislation and Policy
Department of Housing and Public Works
Email: BLP@hpw.qld.gov.au

If you have not received this newsflash directly from Building Legislation and Policy, you can subscribe via bcqnewsflash@qld.gov.au