

Improved Security of Payment Act in Queensland

New payment laws were introduced in Queensland in December 2018.

The *Building Industry Fairness (Security of Payment) Act 2017* (BIF Act) came into being on 17 December 2018 and this introduces changes to payment claims, payment schedules and the adjudication process. Our view is that these changes make the act friendlier to the claimant.

A short overview of these changes is provided below.

Payment Claims

Payment claims no longer need to be endorsed as a claim under the Security of Payment Act. Every claim that you submit will automatically be covered under the BIF Act. We suggest to replace the previous note:

This is a payment claim made under the Building and Construction Industry Security of Payment Act 2004 QLD

With a friendlier:

Please pay the total amount on or before the due date for payment. If you are unable to pay the total amount, please respond with a payment schedule within 15 business days after the date you received this invoice/ payment claim as required under the Building Industry Fairness (Security of Payment) Act 2017.

The payment claim must still comply with the previous requirements, including identifying the construction works subject to payment and be within six months of the reference date.

Payment Schedule

There are no real changes to the previous process of issuing a payment schedule in response to a payment claim. However, the time limit to issue the schedule is now 15 business days for all payment claims whatever the amount (unless the Contract contains a shorter period).

Failure to provide a payment schedule is now an offence, carrying a penalty and possibility of disciplinary action by the Queensland Building and Construction Commission. The one exception to providing a schedule is if the respondent pays the payment claim on full and on time. It must be remembered if the respondent plans to dispute a payment claim in an adjudication, then the respondent needs to include its reasons for dispute in the payment schedule otherwise these reasons cannot be introduced during the adjudication. This is a major change to the old Act, which did allow new reasons to be introduced for payment claims exceeding \$750,000.

The BIF Act also removes the previous second chance that respondents use to have to issue a payment schedule. Previously the claimant had to notify the respondent that no payment schedule had been received and then the respondent had five business days to benefit from this second chance and issue a payment schedule.

Adjudication Process

Firstly, as alluded to above, if no payment schedule has been received the claimant can proceed to adjudication without providing further notice. The claimant now has an extended period of 30 business days to make an adjudication application and this applies to a situation where the respondent fails to provide a payment schedule (and fails to pay in full and on time) or a situation where a payment schedule has been issued but for less than the amount of the payment claim.

One exception to the 30 business days is the case where the respondent has issued a payment schedule but fails to pay the amount schedule on time. For this situation the claimant has 20 business days from the payment due date to make an adjudication application.

The BIF Act also introduces specified requirements for the adjudication application itself including its form, identification of the payment claim and payment schedule and how the application is served.

The adjudicator now has only four business days to accept a referral and cannot decline unless they have a reasonable excuse. The adjudicator can also now take into account the behaviour of the two parties when allocating costs. Claimants should certainly be wary of submitting adjudication applications which have little chance of success i.e. frivolous claims.

Conclusions

The changes introduced by the BIF Act are quite significant and appear to benefit claimants. Certainly, respondents need to be aware that any payment claim received (even without a reference to the Act) is likely to be an invoice for the purpose of the Act. Both parties need to be aware of the time limits contained in the Act.

For assistance with payment claims, payment schedules or adjudication applications please email us at info@geoecs.com.au.