



**Australian Government**  
**Australian Building and  
Construction Commission**

# Security of Payment

**QUEENSLAND**



# What is 'Security of Payment'?

In general terms, 'security of payment' refers to a building contractor's right to receive payments that are due as outlined in their contract. For example, a head contractor must pay a subcontractor's progress payments on time.

Each state and territory has its own security of payment laws. Broadly, the laws provide a rapid statutory mechanism for resolving payment disputes on an interim basis. This is known as adjudication. There are however, significant differences in how the laws operate and strict timeframes required for adjudication applications.

This fact sheet sets out the key requirements for the Queensland security of payment regime to assist you in ensuring that you get paid on time and that you pay your subcontractors on time.

## Security of Payment Laws – Queensland

In Queensland, the Building Industry Fairness (Security of Payment) Act 2017 (Qld) (the BIF Act), governs security of payment for all payment claims made from 17 December 2018 (Including in relation to contracts made prior to this date).<sup>1</sup>

- The object of the BIF Act is to ensure that a person is entitled to receive, and is able to recover, progress payments if the person undertakes to carry out construction work under a construction contract; or undertakes to supply related goods and services under a construction contract.
- The BIF Act ensures that a person is entitled to receive a progress payment by granting a statutory entitlement to that payment, regardless of whether the relevant construction contract makes provision for progress payments.
- The BIF Act ensures that a person is able to recover a progress payment by establishing a procedure that involves making a payment claim, the provision of a payment schedule, the referral of any disputed claim to an adjudicator for determination and the payment of the amount of the progress payment determined by the adjudicator.

To use the mechanisms in the BIF Act to recover money due and owing to you, you must meet certain criteria and strict timeframes for the provision of certain information. These are summarised in Attachment A to this fact sheet.

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<sup>1</sup> Any payment claims validly served under the BCIPA Act prior to 17 December 2018 will be governed by the Building and Construction Industry Payments Act 2004 (Qld) (the BCIPA Act).

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**Disclaimer:** The checklist is intended only to provide a general overview of the Security of Payment legislation in each State and Territory. It is not intended to be a comprehensive statement of the requirements of the Security of Payment Legislation and nor does it constitute legal advice. You should refer to the specific provisions of the relevant Security of Payment legislation to ensure compliance with the applicable requirements.

# The role of the ABCC

The Australian Building and Construction Commission (ABCC) monitors and promotes compliance with the *Building and Construction Industry (Improving Productivity) Act 2016* (BCIIP Act), designated building laws and the *Code for the Tendering and Performance of Building Work 2016* (Code) by building industry participants.

Building contractors and building industry participants become subject to the Code (code covered entities) from the first time they submit an expression of interest or tender for Commonwealth funded building work on or after 2 December 2016.

The Code imposes a number of security of payment obligations on code covered entities.

## I'm owed money. How can the ABCC help me?

The ABCC may be able to assist you if:

- you are not getting paid, or have been paid late for building work you have undertaken; and
- you have been engaged on a project in respect of that building work, by a building contractor who does Commonwealth funded building work (a code covered entity).

The ABCC may determine that the code covered entity has breached the Code. In these circumstances, the ABCC can intervene and seek that the code covered entity voluntarily rectify its Code breach, which may include making overdue payments.

Depending on the seriousness of the breach, the ABCC may also recommend to the Attorney-General and Minister for Industrial Relations that a sanction be imposed on the code covered entity. If a sanction is imposed by the Minister, the code covered entity may be prevented from tendering for Commonwealth funded work in future for a period of time.

Unfortunately, the ABCC cannot order a code covered entity to pay amounts that are due and owing in the same way that a court can.

To report to the ABCC that you are owed money, please complete and submit the Security of Payment Reporting Claimant form accessible at <https://www.abcc.gov.au/building-code/contractors/construction-phase/security-payment>.

## I owe my subcontractors money. What are my Code obligations?

If you are a code covered entity, you must comply with the security of payment obligations under the Code which include the following:

- Comply with state and territory security of payment laws.
- Ensure payments that are due and payable are made in a timely way and not unreasonably withheld.
- Have documented dispute settlement processes detailing how disputes about payments to subcontractors will be resolved.
- Ensure disputes about payments are resolved in a reasonable, timely and co-operative way.
- Comply with any project bank account or trust arrangement that may apply on a Commonwealth funded project.
- Report disputed or delayed progress payments to the ABC Commissioner.

You must report disputed or delayed progress payments to the ABC Commissioner in the following circumstances:

1. An amount is certified by a Principal (or Superintendent) under a contract and not paid within the contractual timeframe.
2. An amount is specified in a payment schedule/notice of dispute issued under the security of payment laws and not paid by the date prescribed by those laws.
3. Other than in Western Australia and the Northern Territory, no payment schedule/notice of dispute is issued in response to a valid payment claim and the full amount of the payment claim is not paid by the date prescribed by the security of payment laws.
4. An adjudicator makes a determination under the relevant state and territory security of payment legislation and the adjudicated amount is not paid by the date prescribed by the security of payment laws.
5. A third party such as a court, arbitrator, or expert issues a binding determination and the amount determined is not paid in accordance with the determination.

To report a disputed or delayed progress payment to the ABCC, please complete and submit the Code Covered Entity Security of Payment reporting from accessible at [abcc.gov.au/building-code/contractors/construction-phase/security-payment](https://abcc.gov.au/building-code/contractors/construction-phase/security-payment).

# Contact the ABCC

For further information and assistance, contact the ABCC via the avenues below:



**ABCC hotline**  
1800 003 338



abcc.gov.au

**ABCC – Security of Payment information**  
[abcc.gov.au/building-code/contractors/construction-phase/security-payment](https://abcc.gov.au/building-code/contractors/construction-phase/security-payment)



**ABCC – Presentation**  
ABCC representatives are available to present an information session at your workplace.  
[abcc.gov.au/book-presentation](https://abcc.gov.au/book-presentation)

# Where else can I go for help?

**Protecting your small business (ASIC)**

<https://asic.gov.au/for-business/small-business/protecting-your-small-business/>

***Building and Construction Industry Payments Act 2004 (QLD)***

<https://www.legislation.qld.gov.au/view/whole/html/repealed/current/act-2004-006>

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

<https://www.legislation.qld.gov.au/view/html/inforce/2019-07-01/act-2017-043>

**Queensland Building and Construction Commission**

<https://www.qbcc.qld.gov.au/new-laws/security-payment-laws>

**Adjudication Registry**

There is a single Adjudication Registry within the Queensland Building and Construction Commission, which administers the security of payment legislations and appoint adjudicators based on their skills, knowledge and experience. Adjudication applications must be made to the Adjudication Registry within the Queensland Building and Construction Commission, rather than to an Authorised Nominating Authority used in other states. <https://www.qbcc.qld.gov.au/adjudication/what-adjudication>

# Attachment A

## Key BIF Act Requirements (from 17 Dec 2018)

REQUIREMENT	DETAILS
<b>You must be a party to a construction contract for the BIF Act to apply</b>	Construction contract can be either <b>written, oral</b> or <b>both</b> .
<b>Entitlement to claim progress payment</b>	<p>From each reference date under a construction contract, a person who has undertaken to carry out construction work under the contract is entitled to a progress payment (section 70).</p> <p><b>'reference date'</b> in relation to a construction contract means:</p> <ol style="list-style-type: none"> <li>a. a date pursuant to the contract for a progress payment claim to be made; or</li> <li>b. if the contract makes does not provide for the matter:               <ol style="list-style-type: none"> <li>i. the last day of the named month in which the construction work was first carried out under the contract; and</li> <li>ii. the last day of each later named month</li> </ol> </li> </ol> <p>If a construction contract is terminated and the contract does not provide for a reference date surviving beyond termination, the final reference date for the contract is the date the contract is terminated (section 67).</p>
<b>Issuing a payment claim</b>	<p>If entitled to a progress payment, claimant may issue a payment claim (section 75(1)).</p> <p>Payment claim must identify the construction work to which progress payment relates and must indicate the amount of the progress payment that the claimant claims to be due (section 68(1)).</p> <p>There is no longer a requirement for a payment claim to state that it is made under the Act. The consequence of this amendment is that any claim for payment (including any invoice) will potentially be a payment claim.</p> <p>Unless the payment claim relates to a final payment, the claim must be served only within the later of the following: the period determined by or in accordance with the terms of the construction contract (if any); or the period of 6 months after the construction work to which the claim relates was last carried out (section 75(2)).</p> <p>A Final payment must be served within the later of the following periods: as per contractual terms; or 28 days after the end of the last defects liability period, if any, worked out under the contract; or 6 months after completion of all construction to be carried out under the relevant construction contract (section 75(3)).</p> <p>A claimant cannot serve more than 1 payment claim for each reference date under the construction contract, but may include in any payment claim an amount that has been the subject of a previous payment claim (section 75(4)).</p>

REQUIREMENT	DETAILS
<b>Responding to or disputing a payment claim (issuing a payment schedule)</b>	<p>Person on whom payment claim is served may reply to claim with a payment schedule (section 18(1)).</p> <p>If given a payment claim, the respondent must respond to the payment claim by giving the claimant a payment schedule within the earlier of (section 76(1)):</p> <ol style="list-style-type: none"> <li>a. the period, if any, specified under the relevant construction contract;</li> <li>b. 15 business days after the payment claim is given to the respondent.</li> </ol> <p>This applies to both standard payment claims and complex payment claims regardless of the reference date (in contrast to section 18(3) of the BCIP Act, stating that a respondent had 30 business days to issue a payment schedule for complex payment claims served more than 90 days after the reference date).</p> <p>However, the respondent is not required to give the claimant the payment schedule if the amount claimed in the payment claim is paid in full on or before the due date (section 76(2)).</p> <p>Payment schedule must identify the payment claim to which it relates; and must state the amount of the payment (if any) that respondent proposes to make. If the amount proposed to be paid is less than claimed amount, the payment schedule must explain why and provide reasons for withholding payment (section 69(a) to 69(c)).</p> <p>Failure to issue a payment schedule in time will result in the respondent:</p> <ul style="list-style-type: none"> <li>• Being liable to pay the amount claimed on the due date for the progress payment (section 76(2)); and</li> <li>• Being liable to a penalty of up to 100 penalty units and open to disciplinary action under the Queensland Building and Construction Commission Act 1991 (Qld) if the amount of the payment claim is not paid in full by the due date for payment (section 76(1)(b)).</li> </ul>
<b>Due date for payment</b>	<p>Either:</p> <ul style="list-style-type: none"> <li>• As per contractual terms (unless void under s 67U or s 67W of the QBCC Act or 'pay when paid' provision) (s73(1)(a)); or</li> <li>• If no (or void) contractual terms, then 10 business days after the progress claim is made (s 73(1)(b)).</li> </ul>

# Attachment A

## Key BIF Act Requirements (from 17 Dec 2018)

REQUIREMENT	DETAILS
Consequences of not paying claimant	<p>lf:</p> <ul style="list-style-type: none"> <li>the respondent becomes liable under section 77(2) of the BIF Act to pay the claimed amount to the claimant by not issuing a payment schedule as required under section 76 within the statutory timeframe; and fails to pay whole or part of claimed amount on or before due date; or</li> <li>the respondent provides a payment schedule to claimant within statutory timeframes; and payment schedule indicates scheduled amount; and respondent fails to pay whole or part of scheduled amount on or before due date:</li> </ul> <p>the claimant may:</p> <ul style="list-style-type: none"> <li>Recover unpaid portion of claimed amount as a debt in court of competent jurisdiction (section 78(2)(a)); or</li> <li>May make adjudication application under BIF Act in relation to claim (section 78(2)(b)); and</li> <li>May service written notice on respondent of intention to suspend construction work under contract (section 78(3)).</li> </ul> <p>Pursuant to section 78(5) of the BIF Act, an “amount owed” is defined as follows:</p> <ol style="list-style-type: none"> <li>if the respondent did not respond to the payment claim with a payment schedule as required under section 76—the amount claimed under the payment claim; or</li> <li>if the respondent did respond to the payment claim with a payment schedule as required to do so under section 76—the amount proposed to be paid under the payment schedule.</li> </ol>

REQUIREMENT	DETAILS
Adjudication of payment dispute	<p><b>Requirements to access adjudication</b></p> <p>Claimant may apply for adjudication of payment claim if:</p> <ul style="list-style-type: none"> <li>The respondent fails to pay an “amount owed” to the claimant by the due date for the payment (section 79(1)(a)); or</li> <li>Respondent provides a payment schedule, but the scheduled amount is less than the claimed amount (section 79(1)(b)).</li> </ul> <p><b>Notice requirements</b></p> <p>Where the respondent fails to respond to a payment claim by serving a payment schedule within the required timeframe, the claimant no longer has to provide the respondent with a second chance to provide a payment schedule before proceeding to adjudication (in contrast to Notice requirements of section 20A(2) of the BCIPA Act). However, a written notice (a warning notice), in the approved form, will need to be provided to the respondent if the claimant intends to commence court proceedings in a court to recover an unpaid amount owed to the claimant (section 99(2)).</p> <p><b>Adjudication process</b></p> <p>Adjudication application must be in the approved form, made to the registrar for adjudication (with copy served on respondent) and be made within:</p> <ol style="list-style-type: none"> <li>for an application relating to a failure to give a payment schedule and pay the full amount stated in the payment claim, 30 business days after the later of the following days:             <ol style="list-style-type: none"> <li>the due date for payment of the payment claim;</li> <li>the last day the respondent could have given a payment schedule under section 76; or</li> </ol> </li> <li>or an application relating to a failure to pay the full amount stated in the payment schedule, 20 business days after the due date for the progress payment to which the claim relates; or</li> <li>for an application relating to the amount stated in the payment schedule being less than the amount stated in the payment claim, 30 business days after the claimant receives the payment schedule.</li> </ol> <p>The Adjudication Registrar may refer an adjudication application to an adjudicator to determine.</p>

## Attachment A

# Key BIF Act Requirements (from 17 Dec 2018)

REQUIREMENT	DETAILS
(cont'd) <b>Adjudication of payment dispute</b>	<p>Respondent may lodge a response to the claimant's adjudication application (the adjudication response), only if the respondent has provided a payment schedule within the time that the respondent may serve the schedule on the claimant (section 82(2)).</p> <p>The adjudication response must not include any reasons (new reasons) for withholding payment that were not included in the payment schedule when given to the claimant (section 82(4)). This applies even if the adjudication is for a complex payment claim (in contrast to section 24(5) of the BCIPA Act). Accordingly, respondents should ensure that payment schedules are prepared with the new regime in mind, setting out full and complete reasons for withholding payment.</p> <p>For a "standard payment claim" the respondent must give the adjudicator its adjudication response at any time <b>within 10 business days</b> after receiving a copy of the application; or <b>7 business days</b> after receiving notice of the adjudicator's acceptance of the application, whichever expires later (section 83(1)).</p> <p>For a "complex payment claim" the respondent must give the adjudicator its adjudication response at any time <b>within 15 business days</b> after receiving a copy of the application; or <b>12 business days</b> after receiving notice of the adjudicator's acceptance of the application, whichever expires later (section 83(2)).</p> <p>If responding to a complex payment claim, the respondent may apply to the adjudicator for an extension of time, of up to 15 additional business days, to give the adjudication response (section 83(3)).</p> <p>A copy of an adjudication response must be served on the claimant no more than 2 business days after it is given to the adjudicator (section 83(6)).</p> <p>Adjudicator must ordinarily determine an adjudication application within <b>10 business days</b> or <b>15 business days</b> for a "complex payment claim".</p> <p>Respondent must ordinarily pay the adjudicated amount (if any) within <b>5 business days</b> after adjudicator's decision is served (section 90).</p> <p><b>New offence for failing to pay adjudicated amount</b></p> <p>Failure to pay the adjudicated amount on or before the due date will result in the respondent being liable to a penalty of up to 200 penalty units and open to disciplinary action under the <i>Queensland Building and Construction Commission Act 1991</i> (Qld) (section 90 BIF Act).</p>

REQUIREMENT	DETAILS
<b>Why make a payment claim under the BIF Act?</b>	<p>Allows contractor to access statutory rights:</p> <ul style="list-style-type: none"> <li>• Adjudication (Chapter 3, Part 4)</li> <li>• Stop work notice if claimed, scheduled or adjudicated amount not paid (section 78(3) and 92(1))</li> <li>• As soon as practicable after being given a copy of a decision by an adjudicator, but no later than 5 business days after being given the decision, the registrar must give the claimant a certificate of the decision (section 91(1)). This is in contrast to section 30(1) of the BCIPA Act stating that if the respondent fails to pay the whole or any part of the adjudicated amount, the claimant may ask the registrar to provide an adjudication certificate.</li> </ul>
<b>Provisions that are of no effect</b>	<ul style="list-style-type: none"> <li>• "Pay when paid" provisions (section 74).</li> <li>• Provisions in agreement, whether in writing or not, that exclude, modify or restrict (or purport to; or have the effect of excluding, modifying or restricting) the operation of the BIF Act (section 200).</li> </ul>



## Attachment A

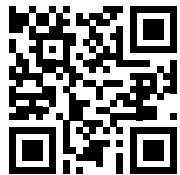
# Key BIF Act Requirements (from 17 Dec 2018)

REQUIREMENT	DETAILS
Retention monies	<p>The BIF Act introduced sections 67NA–67NC into Part 4A of the Queensland Building and Construction Commission Act 1991 (QBCC Act) as follows:</p> <ul style="list-style-type: none"><li>• If the contract does not provide for the release of that retention or security at the end of an identifiable period, then a default defects liability period of 12 months will apply (statutory defects liability period).</li><li>• unless a “reasonable excuse” is provided, if retention money is not released at the end of the defects liability period, the party failing to release retention money faces a maximum penalty of 200 penalty units or one (1) year imprisonment for failing to comply.</li><li>• Contractors are now required to provide subcontractors with a notice within 10 business days prior to the end of the defects liability period stating the following:<ul style="list-style-type: none"><li>• The date the defects liability period ends.</li><li>• For a retention amount:<ul style="list-style-type: none"><li>• The amount to be paid at the end of the defects liability period, if no amount is required to correct defects in the building work under the contract; and</li><li>• The date the retention amount is to be paid to the contracted party.</li></ul></li></ul></li><li>• If the defects liability period in a subcontract is linked to another building contract (the other period), and the contracting party for the subcontract is not given notice of the defects liability period for the other contract to enable notification within 10 business days, the contracting party must give the subcontractor notice within 5 business days after being given a notice for the other period.</li><li>• Failing to provide a notice under this Part is an offence and attracts a maximum penalty of 100 penalty units.</li></ul>



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