

## The countdown is on!!!

There have been some major changes to laws governing the Building & Construction Industry in Queensland during 2018 with the last phase of changes for the year commencing on Monday **17 December 2018**. Following is a summary of some key changes around Security of Payment, Defects Liability Periods and Retentions.

### Security of Payment Changes

The next phase of the *Building Industry Fairness (Security of Payment) Act 2017 (BIF Act)* changes will apply to any Payment Claim issued from 17 December 2018.

#### Key Takeaways:

1. Make sure you can identify when a communication you receive is a valid Payment Claim – a claim no longer needs to say that it is made under the legislation.
2. No second chance to issue a Payment Schedule – you must ensure that a Payment Schedule is issued on time and includes all of the reasons for withholding payment.

#### Payment Claims

From 17 December 2018 claimants will no longer be required to include the 'magic words' (*ie this is a payment claim made under the Building and Construction Industry Payments Act 2004*) on a Payment Claim.

A Payment Claim will need to be a written document that:

1. Identifies the construction work that it relates to;
2. States the amount being claimed; and
3. Requests payment. Any document that has the word 'invoice' on it will be deemed a request for payment.

This means that every invoice you receive has the potential to be a payment claim under the BIF Act. Other correspondence could also be a payment claim, for example if an email complies with the 3 requirements then it could also be a payment claim.

Payment claims still need to attach to a reference date, so it is important that you are able to identify these dates so payment claims that you do issue are valid.

For Claimants: make sure you aren't inadvertently issuing payment claims – that email that you send to the builder advising that the bathroom at South Street is finished, confirming the price and sending your bank account details for payment could be a payment claim (even if it isn't an invoice). This means that it will be easy to use up reference dates by mistake.

For Respondents: make sure you can identify when something is a payment claim so that you know when and how to respond with a payment schedule.

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### Payment Schedules

If you receive a payment claim you must respond with a payment schedule within the shorter of:

1. The time stated in your contract; or
2. 15 business days.

If you don't respond with a payment schedule you will be deemed liable to pay the claim amount to the claimant. You also run the risk of a fine and QBCC disciplinary proceedings.

The only time you don't need to issue a payment schedule is if you pay the amount of the payment claim in full on or before the due date for payment.

There will no longer be any second chance provisions for issuing a payment schedule. It is essential that you raise all reasons for disputing payment in the payment schedule as you will not be able to raise any new issues if the dispute proceeds to adjudication under the BIF Act.

### **Defects Liability Periods & Retention**

The *Queensland Building and Construction Commission Act 1991 (QBCC Act)* will now provide for a statutory defects liability period for building contracts where retention or security may be withheld after practical completion and the contract doesn't provide for the release of the retention or security at the end of an identifiable period.

The defects liability period will be the period stated in the contract or, if no period is stated, 12 months starting of the day of practical completion.

The person holding the security (eg the Head Contractor) will have to give the other party (eg the Subcontractor) a written notice within 10 business days before the end of the defects liability period stating:

1. The date the defects liability period ends; and
2. The amount of retention to be paid to the other party, if no amount is required to correct defects, and the date the retention amount is proposed to be paid.

Those holding retention or security run the risk of a fine if they don't give the correct notice. The QBCC Act will also make it an offence to fail to release retention (without a reasonable excuse) on or before the day it is due to be paid. A maximum fine of 200 penalty units (currently \$26,110) or 1 year's imprisonment could apply to this offence.

### **Other Changes**

There are also some other changes around the adjudication process for payment disputes in the BIF Act, replacement of the current Subcontractor's Charge Act 1974 with chapter 4 of the BIF Act, amendments to the QBCC Act to address corporate phoenixing, increased financial oversight by the QBCC, the introduction of mandatory and prohibited contract terms and the introduction of offences which could result in a party to a building contract being prosecuted and fined for breaching that contract or publishing a misleading advertisement about their business.

It is now more important than ever for businesses in the Building and Construction Industry to be across the regulatory framework they operate in.

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For more information contact our [Construction Law Team](#).

**Kylie Howell**, Section Head

**Brian Conrick**, Senior  
Consultant

**Ebony Archer**, Lawyer

Alison Cassidy, Paralegal

#### Contact Us

Phone 07 4688 2188  
[www.cqlaw.com.au](http://www.cqlaw.com.au)

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