

Summary of BIF Changes

The key changes proposed are as follows:

1. Streamlining PBA requirements to require only one bank account per project through which all project payments from the principal must flow.
2. All contractors holding subcontractor cash retentions will be required to open a separate retention trust account in which all cash retentions across all projects must be held. The retention trust account will operate similar to a solicitor or real estate agent trust account requiring compulsory training in order to hold retentions and the keeping of trust accounting records and periodic auditing of those records by an external auditor.
3. Oversight of compliance with PBA trust account and the retention trust account requirements will be undertaken by the QBCC rather than the principal. However, in certain circumstances, the principal or subcontractor beneficiaries should be entitled to access relevant records.
4. The disputed funds trust account will be scrapped. However, there will be further protection for claimants.
5. Simplified reporting requirements for head contractors.

Details of the key changes:

- Each head contractor continues to be required to open one project bank account for each project into which all project funds are paid (Recommendation 12)
- A separate retentions trust account will no longer be required for each project (Recommendation 6)
- The disputed funds trust account no longer be required (Recommendation 3)
- To strengthen protections for claimants:
 - It will be an offence for a person given a payment claim to pay less than the amount stated in the payment schedule (Recommendation 4);
 - the claimant in an adjudication will be able to issue a payment withholding request to a party above the respondent to require sufficient money to be retained to cover the claimed amount (Recommendation 5);
 - if the claimant in the adjudication is a head contractor claiming against a respondent principal, then the head contractor may:
 - issue a withholding request on any financier or funder of the project (Recommendation 5);
 - subject to certain restrictions, issue a charge over the property on which the building works the subject of the adjudication application is being carried out (Recommendation 5); and
 - extending the warning notice in section 99(3) to 60 business days after the due date for payment or such other time as prescribed (Recommendation 20).
- Contractor withholding retentions will be required to hold them in a single retention trust account.
- To ensure that the bank accounts are recognised as trust accounts, the head contractor will need to:
 - keep and maintain detailed records of transactions (consistent with trust accounting principles);
 - undertake compulsory training on how to manage accounts in accordance with trust principles; and
 - be subject to mandatory external auditing of the trust accounting records.

- Aligning the definition of 'building work' with the definition in the QBCC Act and clarifying that beneficiaries to a PBA include:
 - subcontractors carrying out construction work (including civil works) where the head contract is a PBA;
 - consultants who undertake building contracts for design work (but without requiring these consultants to establish a PBA) (Recommendation 2);
 - set a minimum contract value for subcontractors to be beneficiaries to a PBA;
 - provide for a PBA to be established by first-tier subcontractors in certain circumstances (Recommendation 2).
- In response to concerns about principal oversight of the PBA framework, the QBCC will have expanded power with oversight of PBAs and retention trust accounts (Recommendations 9, 14, 15, 16, 18):
 - contractors will report to principals on limited key matters such as the PBA being opened, closed or the name changed. However, so that the principal can be assured that payments are being passed down the contractual chain, a supporting statement will be made by the head contractor with every payment claim. The supporting statement will set out what work has been paid for, and if any payment for work remains outstanding. If this supporting statement is made falsely, it will be an offence, which can be enforced by the QBCC (Recommendation 11); and
 - an obligation on head contractors to give subcontractors details of all amounts to be paid under the subcontract for progress payments as well as cash retentions (Recommendation 19).

Timing of the changes

- Currently PBAs are only required for State Government contracts with a value of \$1M to \$10M (including GST). To better manage the financial transition the following phases are proposed (note this is different to what the Panel recommended):
 - Phase 2 from July 2020: add all Government projects valued at \$10M (excluding GST) or more;
 - Phase 2A from July 2021: add private projects valued at \$10M or more;
 - Phase 3 from January 2022: add private projects in the range of \$3M to \$10M (excluding GST); and
 - Phase 4 from July 2022: add private projects in the range of \$1M to \$3M (excluding GST).