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# Government response to the Building Industry Fairness Reforms Implementation and Evaluation Panel report

2019

## Foreword

The building and construction industry plays an important part in Queensland's economy with a value of \$46 billion and employing approximately 240,000 people. As an election commitment in 2015 and later through the October 2017 Queensland Building Plan, the government has driven significant reform in this critical part of the economy, particularly regarding security of payment.

The imperative for project bank accounts (PBA) and payment reform to support cultural and structural change is ongoing. The Australian building and construction industry faces consistently higher rates of insolvency and delayed and non-payment than other industries in Australia. It is reported that each year the industry faces almost \$3 billion in unpaid debts. The industry's level of insolvency is also grossly disproportionate to its overall share of annual Gross Domestic Product. These high and disproportionate rates of insolvency and non-payment are not just a reflection of market forces but a combination of business and cultural practices that affect the industry.

Security of payment reforms facilitate subcontractors getting paid for the work they do. This provides the opportunity for businesses to reinvest in job creation and helps prevent mental illness and suicide brought about by financial stress from non-payment of work.

To maximise the effectiveness and operation of the security of payment reforms the government appointed the independent Building Industry Fairness Reforms Implementation and Evaluation Panel (Panel). The Panel provided their report to the Minister for Housing and Public Works, Minister for Digital Technology and Minister for Sport on 29 March 2019. The Panel's evaluation primarily focused on PBAs, consistent with the government's commitment to conduct an evaluation before implementing PBA reforms to all building projects over \$1 million.

The Panel confirmed the *Building Industry Fairness (Security of Payment) Act 2017* (BIF Act) meets the government's intent of making systemic changes to encourage cultural change across the industry. The Panel confirmed they had sufficient information to inform their work, and the government considers the thorough analysis the Panel has undertaken provides a solid evidence base for refinement to the framework to enhance security of payment outcomes. The Panel provided 20 recommendations which give a clear indication of how to implement this structural reform in a way that continues to enhance protections over subcontractor money, while managing the significant financial, operational and cultural transition across the entire building and construction industry.

The government considers that the recommendations provide a balance between enhancing the legislative framework for better impact and commencing the reforms in the private sector to extend the protections more widely. The government has undertaken further investigation and impact assessment to inform this response.

***The Queensland Government response accepts or accepts in-principle all the Panel's recommendations.***

There has always been a legal requirement to pay subcontractors on time. The holding in trust of project and retention funds owed to subcontractors intentionally forces a cultural change to the way contractors fund working capital for their business. Whilst the Panel's

recommendations result in a different PBA framework, there will be no compromise to payment protections or loss of transparency over project funds. However, the phasing of the PBA reforms to the private sector, and its timing, is critical for its successful implementation. Sufficient time will be allowed for businesses to change their financial management practices and adapt to not having the ability to co-mingle project funds and use on other projects, and to allow for market readiness, industry education and for the Queensland Building and Construction Commission (QBCC) to prepare for their new oversight role.

The government's response to each of the Panel's recommendations is detailed below.

Finally, the government would like to thank the Panel, their supporting Industry Reference Group, Secretariat and members of the building and construction industry that gave thoughtful consideration on how to effectively implement this significant reform.

Rec No.	Evaluation Panel Recommendation	Queensland Government Response
1	<p>That further phasing of the PBA reforms be as follows:</p> <p>(a) Phase 2: add all government and private projects valued at \$10M (excluding GST) or more;</p> <p>(b) Phase 3: add private projects in the range of \$3M to \$10M (excluding GST); and</p> <p>(c) Phase 4: add private projects in the range of \$1M to \$3M (excluding GST).</p> <p>The timing of the commencement of each phase be as follows:</p> <p>(i) Phase 2: at least 2 months after the passing of any amendments to the BIF Act;</p> <p>(ii) Phase 3: 4-6 months after Phase 2; and</p> <p>(iii) Phase 4: 4-6 months after Phase 3.</p>	<p><b>Accepted</b></p> <p>The government accepts this recommendation.</p> <p>Holding project and retention funds in trust is in line with the existing PBA framework. It is acknowledged that business restructuring and removal of project and retention funds from operating capital is an intended consequence of the reforms and some businesses may need to change their financial management practices and find other sources of working capital from savings, by increasing debt, or liquidating assets.</p> <p>Acknowledging this as the intended consequence, the Panel highlighted that without effective management of the financial transition, destabilisation through head contractor stress or failure could affect contractors, subcontractors and the community as a whole.</p> <p>It is proposed to introduce PBA reforms to the public and private sectors progressively in three further phases. This will provide a balance between commencing the protections and providing sufficient time for market adjustment, contractors to change their financial management practices and possibly find other sources of working capital from savings, increasing debt or liquidating assets. Further phases will not commence before the legislative framework has been settled.</p> <p>A number of building and construction industry reforms have been progressed over the past two years which aim to create a safer, fairer and more sustainable industry. The timing of the implementation of the phases will recognise the ongoing efforts of the industry in this regard.</p> <p>Legislating the timing of the phased commencement of PBA reforms will provide industry certainty to transition and prepare their business operations. The government will engage with key stakeholders and establish transitional arrangements to support industry during the phased commencement.</p>
2	<p>The BIF Act be amended to provide that:</p> <p>(a) 'building work' is as defined in the <i>Queensland Building and Construction Commission Act 1991</i> (QBCC Act);</p>	<p><b>Accepted</b></p> <p>The government accepts this recommendation.</p>

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	<p>(b) revoke section 4 of the <i>Building Industry Fairness (Security of Payment) Regulation 2018</i>;</p> <p>(c) in section 9(5) of the BIF Act, amend definition of ‘subcontractor’ to provide that <i>‘subcontractor’ for a building contract means a party who enters into a first-tier subcontract for construction work or services within the meaning of section 65 or 66(1)(b) of the BIF Act regardless of the value of the first-tier subcontract unless a minimum value is prescribed by regulations.</i></p> <p>(d) revoke section 11 of the BIF Act;</p> <p>(e) amend section 14 to provide that a building contract solely for services within the meaning of section 66(1)(b) of the BIF Act is not a PBA contract; and</p> <p>(f) amend Chapter 2 of the BIF Act as necessary to provide that a building contract that is a subcontract for another building contract is not a PBA contract unless otherwise prescribed.</p>	<p>The definitions in the BIF Act for ‘building work’ and ‘subcontractor’ will be amended to clarify the application of PBA and other requirements for industry. The government is seeking to ensure the broadest protection across the building and construction industry. Clear and consistent interpretation will support understanding requirements and compliance.</p> <p>Clarifying the definition for ‘building work’ so that it aligns with the definition in the QBCC Act will provide industry with clarity about the contracts that require a PBA. It will also ensure only QBCC licensed contractors will be required to open a PBA which will aid effective compliance and enforcement action.</p> <p>Contracts solely for the supply of construction related services within the meaning of section 66(1)(b) of the BIF Act (including architectural, design, surveying and other advisory services) will be excluded from the requirements to establish a PBA.</p> <p>Consistent with the current framework, a PBA will not be required for contracts less than \$1 million; for domestic building contracts involving less than three living units; or for maintenance, civil and transport infrastructure projects.</p> <p>Amending the definition for ‘subcontractor’ to include civil construction work and consultants will offer the protection of the PBA to a larger section of the industry.</p> <p>Providing a head of power in the BIF Act to prescribe in Regulation circumstances which would require a subcontractor (second-tier contractor) to establish a PBA, will allow government to monitor and respond quickly and effectively to ensure avoidance practices do not undermine the integrity of the PBA framework.</p>
3	<p>That Chapter 2 of the BIF Act be amended to remove the requirement for a disputed funds trust account as part of the PBA framework.</p>	<p><b>Accepted</b></p> <p>The government accepts this recommendation, in conjunction with the enhanced protections offered in recommendation 5 that will meet the policy intent of protecting monies in dispute.</p>
4	<p>That Chapter 3 of the BIF Act be amended to make it an offence for a person given a payment</p>	<p><b>Accepted</b></p> <p>The government accepts this recommendation.</p>

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	<p>claim to pay less than the amount stated in a payment schedule.</p>	<p>The government is committed to ensuring everyone is paid on time for their work.</p> <p>This new penalty will apply to all parties in the contracting chain including principals, head contractors and subcontractors, and will ensure the continued flow of money through the contracting chain.</p>
5	<p>That Chapter 3 of the BIF Act be amended to provide that:</p> <p>(a) on or after making an adjudication application, a claimant may serve a payment withholding request on a party above the respondent in the contractual chain to require that party to retain sufficient money to cover the claim out of the money that is or becomes payable by that party to the respondent;</p> <p>(b) a person receiving a payment withholding request who fails to comply with such a request will become jointly and severally liable with the respondent;</p> <p>(c) that where the claimant is a head contractor and the adjudication application is made against the principal:</p> <p>(i) the claimant may issue a payment withholding request on a financier or funder of the project; and</p> <p>(ii) the claimant may issue a charging order on the property on which the building work the subject of the adjudication application is being carried out, but only if the adjudicated amount is</p>	<p><b>Accepted in principle</b></p> <p>The government is committed to improving security of payment for all contractors where money is owed.</p> <p>To protect disputed amounts and reduce the risk of non-payment by the head contractor following adjudication, a subcontractor will be able to give a payment withholding request to the principal.</p> <p>Noting payment withholding requests are provided for in other jurisdictions (NSW and Victoria), it is proposed a payment withholding request attach to any amount that is or will become payable to the head contractor, including retention amounts. A payment withholding request will apply where an adjudication application is lodged under Chapter 3 of the BIF Act and therefore would not just apply to projects requiring a PBA.</p> <p>The ability to issue a charging order or impose a lien over property will ensure there are protections for everyone along the contractual chain, including head contractors when principals or developers fail to pay what they owe. These measures, accepted in principle, have long been a feature in security of payment laws in several countries including New Zealand, Canada and the USA.</p> <p>Queensland will be the first jurisdiction to introduce protections to help head contractors secure payment by a principal or developer. As there is no 'model' legislation on which to base these measures, the government will engage with key stakeholders during drafting to ensure these protections meet the objectives.</p>

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	not paid by the due date as stated in the adjudicated decision.	
6	<p>That the BIF Act be amended to remove the requirement for a retention trust account as part of a PBA and instead require the creation of a retention trust account by all contractors in the contractual chain and any private sector principals withholding cash retentions in relation to any:</p> <p>(a) project which requires a PBA; or                      (b) prescribed work.</p>	<p><b>Accepted</b></p> <p>The government accepts this recommendation.</p> <p>The BIF Act will be amended to require a single retention trust account be held by all building and construction contractors in the contractual chain and by private sector principals.</p> <p>A retention trust will be required by a contracting party who holds or intends to hold cash retentions under a building contract, construction management trade contract or subcontract. Only one retention trust per contractor will be required. As the requirement to operate a retention trust account has been decoupled from the requirement to establish a project trust, a retention trust account may be required even when the contractor does not require a project trust.</p> <p>The existing policy was to apply PBAs at all levels of the contracting chain. Whilst the project trust account will only apply at the first tier, the intent is to apply the retention trust account to all building contractors, including private sector principals, who hold cash retentions.</p> <p>Supported by recommendations 7 through 10, this recommendation achieves the policy intent of ensuring cash retention amounts held along the contractual chain are not co-mingled with the head contractor’s working capital or used for other purposes.</p> <p>Interest on retention trust accounts will initially be able to be retained by the account holder to support the transition and offset the costs associated with change to working capital. Following the phased implementation of the PBA reforms, the government will consider how interest may be returned to the government and/or regulator to fund compliance, enforcement and public benefit schemes.</p>
7	The BIF Act require that the retention trust account requirements proposed in recommendation 6 require:	<p><b>Accepted</b></p> <p>The government accepts this recommendation.</p>

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	<ul style="list-style-type: none"> <li>(a) all retentions to be held in a single bank account that is only for retentions;</li> <li>(b) the bank account name must include the words 'trust';</li> <li>(c) the trustee of the retention trust is the person entitled to hold retentions;</li> <li>(d) the beneficiaries of the retention trust are the trustee and any persons from whom the retentions have been held;</li> <li>(e) monies held on trust for a beneficiary other than the trustee are deemed to be a charge in favour of the beneficiary but only to the extent that that beneficiary is entitled to the money withheld from them;</li> <li>(f) section 59 of the BIF Act be amended to also apply to the retention trust account;</li> <li>(g) detailed trust accounting records must be kept; and</li> <li>(h) mandatory external auditing of trust accounting records.</li> </ul>	<p>To ensure that money held in a retention trust account is identifiable and secured, the BIF Act will be amended to provide for detailed trust accounting records, mandatory account reviews, and other statutory protections including a charge deemed over monies within the account to ensure the greatest possible protections in the event of insolvency or bankruptcy.</p> <p>Mandatory trust account reviews will be required initially within the first six months of a retention trust being opened and continuing at least annually thereafter. Consideration will be given to how these requirements can be aligned to existing financial audit requirements for licensees for administrative and cost efficiency. The government will engage with key stakeholders to determine ways to support transition for industry.</p> <p>The government accepts this recommendation, in conjunction with recommendations 6 and 13.</p>
8	<p>That there be a requirement for all contractors in the contractual chain and any prescribed person wishing to hold retentions to undergo compulsory training and assessment by an approved training organisation on the management of a retention trust account by a specified time, after which, any contractor who has not successfully completed the compulsory training will not be entitled to hold retentions.</p>	<p><b>Accepted</b></p> <p>The government accepts this recommendation.</p> <p>All contractors wishing to hold cash retentions will be required to complete training and assessment by an approved training provider on the management of a retention trust prior to them opening a retention trust account. The retention trust account will hold monies across multiple projects for a number of years with the account existing in perpetuity. It is important all contractors fully understand their role as trustee and their accounting, record keeping and other compliance obligations. Similar mandatory training is required for trustees operating solicitors, real estate and auctioneer trust accounts in Queensland.</p>



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		<p>The government considers that in addition to supporting the integrity of the account and its records, training will positively contribute to the improved payment practice and culture in the industry.</p> <p>It is intended the training will be required only once prior to the retention trust account being operated and will be appropriate to the building industry with multiple delivery options, for example, face to face and online training. A certificate of completion will need to be provided to the regulator together with the notice of opening the account. Only training providers approved by the regulator will be able to deliver training. These trainers will be identified on the regulator’s website.</p> <p>The government will engage with key stakeholders to ensure the effectiveness of the training delivered, and to determine appropriate modes of delivery and ways to support transition for industry.</p>
9	<p>That the QBCC be given adequate powers to:</p> <ul style="list-style-type: none"> <li>(a) monitor and enforce compliance with the retention trust account requirements set out in recommendation 7;</li> <li>(b) freeze retention trust accounts; and</li> <li>(c) administer a retention trust account in certain circumstances such as where an account holder becomes insolvent or unable to manage the account.</li> </ul>	<p><b>Accepted</b></p> <p>The government accepts this recommendation.</p> <p>The government acknowledges industry’s preference that, for commercial reasons, private sector principals should not have an oversight role.</p> <p>Within that context, the government agrees that the necessary oversight responsibilities sit with the QBCC. Acknowledging the QBCC’s intent to become a risk-based regulator, the government supports the QBCC monitoring and enforcing PBA compliance not through direct viewing access, but rather through risk-based monitoring, proactive and reactive oversight and enforcement. Reporting about PBA establishment and providing account review reports to the QBCC will arm the QBCC with information to support this role.</p> <p>In accepting this recommendation, the government believes that the integrity of the retention trust account will be upheld and there will be enhanced protection over money held in retention where a contractor or principal becomes insolvent or unable to manage the account.</p> <p>The government will work with the QBCC to develop a risk-based monitoring, proactive and reactive oversight and enforcement framework; and in conjunction with recommendation 15 ensure the QBCC has sufficient powers to execute its role.</p>

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10	<p>That a phase in of the requirement for a retention trust account be aligned to the phases for the expansion of PBAs at set out in recommendation 1 such that:</p> <p>(a) in Phases 2 and 3 where a PBA is required, all head contractors and private sector principals must hold any retentions from those projects in a retention trust account; and</p> <p>(b) in Phase 4</p> <p style="padding-left: 20px;">(i) all contractors in the contractual chain holding retentions on a project for 'building work'; and</p> <p style="padding-left: 20px;">(ii) private sector principals on projects requiring a PBA,</p> <p>must hold any retentions from those projects in a retention trust account.</p>	<p><b>Accepted</b></p> <p>The government accepts this recommendation.</p> <p>The retention trust account requirements will be implemented progressively in further phases aligned to the phasing of PBAs to the public and private sector.</p> <p>The government will engage with key stakeholders and establish transitional arrangements to support industry during the phased commencement.</p>
11	<p>That the BIF Act be amended to remove the requirement for lodgement of information with the principal other than:</p> <p>(a) details of the PBAs opening, closing or name change; and</p> <p>(b) a supporting statement with any payment claim, which includes a declaration that:</p> <p style="padding-left: 20px;">(i) all subcontractors have been paid the amounts due and payable to them for construction work done; or</p> <p style="padding-left: 20px;">(ii) identifies those subcontractors which have not been paid and the amounts outstanding, if any.</p>	<p><b>Accepted</b></p> <p>The government accepts this recommendation.</p> <p>Simplifying the role of the principal and reducing administration for contractors and principals will reduce compliance costs without compromising transparency over the movement of project funds and protections for subcontractors. The principal will still have an obligation to report suspected breaches to improve chain of responsibility and reinforce cultural change.</p> <p>The government supports the recommendation requiring supporting statements. The Special Joint Taskforce has also recommended the government consider placing obligations on a head contractor to declare its subcontractors have been paid. This will give principals confidence the money is flowing through the contracting chain and increase transparency over unpaid amounts, and provide increased assurance for subcontractors.</p>

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	<p>(c) The failure to comply with (b) or the provision of false information in a supporting statement should be an offence.</p> <p>In making this recommendation, it follows that the Panel recommends that section 24(2), 24(3), 50, 51 (as it relates to principals) and 52 of the BIF Act be repealed.</p>	<p>It is understood the provision of statutory declarations in relation to subcontractor payments are required under most standard head contracts (including Queensland Government capital works contracts) with the key concern of industry that falsified declarations are rarely enforced.</p> <p>The BIF Act will be amended to require a head contractor's payment claim to a principal to include a supporting statement and to apply to all construction contracts between a principal and head contractor (not only limited to PBA building contracts).</p> <p>The government also supports the recommended offence provisions for providing false information in the supporting statement.</p>
12	<p>That section 23(1) of the BIF Act be amended to provide that for each building contract requiring a PBA, the head contractor must:</p> <p>(a) open a separate bank account that is a project trust account;</p> <p>(b) the bank account must have the name "trust"; and</p> <p>(c) the project trust account must correlate with the trust accounting records required by recommendation 13.</p>	<p><b>Accepted</b></p> <p>The government accepts the Panel's recommendation to continue to ensure project funds are attached to the project and not co-mingled.</p> <p>Having the word 'trust' in the name of the account will also continue to protect monies in the account and ensure financial institutions recognise the money as being held on trust. The trust accounting records will further enhance integrity and transparency over the project trust account.</p>
13	<p>That section 45 of the BIF Act be amended to require that for projects requiring a PBA the head contractor must keep detailed trust accounting records which include:</p> <p>(a) information relating to all transactions to and from the PBA;</p> <p>(b) details of all beneficiaries;</p> <p>(c) all payment claims and supporting statements, if any;</p> <p>(d) all payment schedules;</p>	<p><b>Accepted</b></p> <p>The government accepts this recommendation.</p> <p>There are existing Acts that govern the trust requirements for money held by persons such as real estate agents and solicitors. These are well established and well operating systems which will provide an ability to leverage on knowledge and tested frameworks to give greater confidence to industry.</p> <p>The BIF Act will be amended to require trustees of project trust accounts and retention trust accounts maintain and reconcile detailed trust accounting records in accordance with the prescribed</p>

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	<p>(e) any documentation relating to payment claims, schedules and payments; and                      (f) any information prescribed by regulations.</p> <p>The trust accounting records must be:</p> <ul style="list-style-type: none"> <li>(i) made available to the QBCC on request;</li> <li>(ii) made available to the principal or a beneficiary in certain circumstances; and</li> <li>(iii) subject to mandatory external auditing at specified intervals.</li> </ul>	<p>information requirements. Trust records will be retained for a minimum period of seven years from the date the money was received and must be available at the request of an independent auditor or an investigator/compliance officer of the QBCC.</p> <p>The government accepts that it is of benefit for subcontractors and principals to have access to information as it relates to them, and the circumstances when this will be appropriate are being considered in more detail to ensure head contractors' commercial-in-confidence information is appropriately protected. This may include having the right to inspect trust records for the trust accounts in which their money is being, or has been, held and allow them to be verified against the balances and transacting records of the associated trust accounts.</p> <p>Read in conjunction with recommendation 7, it is intended the mandatory external review will apply only to the retention trust. In the building and construction industry, a contractor may be required to open multiple project trust accounts as well as a single retention trust. To require an independent review for each of these accounts may represent a significant cost and would likely be much greater than the savings expected to be realised through the Panel's recommended 'simplifications' to the model.</p> <p>The government will engage with key stakeholders to develop suitable alternative reporting requirements for the project trust account which might include, for example, submitting account summary reports to the QBCC at the same time as submitting other financial reporting. The project trust will still be subject to the QBCC's monitoring and compliance audit program and the commissioner will have powers to direct external reviews by exception.</p>
14	<p>That the head contractor be required to lodge the following information within a specified number of days after entry into a contract that requires a PBA with the QBCC:</p> <ul style="list-style-type: none"> <li>(a) site address;</li> <li>(b) value of contract;</li> <li>(c) name of principal;</li> <li>(d) description of building work;</li> </ul>	<p><b>Accepted</b></p> <p>The government accepts this recommendation as it provides the QBCC with information necessary for it to complete compliance activities, which will help ensure the protections of monies for subcontractors working under a PBA.</p> <p>The reporting mechanisms for head contractors to provide the prescribed information is being considered to ensure head contractors are not unnecessarily burdened.</p>

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	<p>(e) bank in which the PBA will be or is established;</p> <p>(f) commencement date;</p> <p>(g) date for practical completion; and</p> <p>(h) any other prescribed information.</p>	<p>The financial and resourcing impact of the increased compliance and monitoring obligations of the QBCC are being considered in further detail.</p>
15	<p>That the QBCC's powers be reviewed and, if necessary, amended to ensure that it has the power to freeze PBAs, obtain any information related to PBAs from any person or class of persons including a principal, head contractor, beneficiary or bank including:</p> <p>(a) relevant building contracts, subcontracts or supply contracts;</p> <p>(b) documents relating to the establishment and operation of a PBA; and</p> <p>(c) all trust accounting records required to be kept by recommendation 13.</p>	<p><b>Accepted</b></p> <p>The government accepts this recommendation.</p> <p>The government considers that accepting this recommendation will strengthen regulatory oversight providing confidence for industry, support the integrity of the reforms, and enhance the protections afforded to subcontractor beneficiaries of a PBA.</p> <p>It is anticipated for information about trust accounts be reported to the QBCC, and that the QBCC will maintain a register and publish certain information about trust accounts. This will support transparency and accountability.</p> <p>The QBCC will need appropriate powers to investigate and request trust account records from trustees and the approved financial institutions. This may include power to make directions regarding the trust accounts, and to appoint special investigators to determine compliance with the requirements for holding trust accounts under the Act.</p> <p>The government is considering when it would be most appropriate for the QBCC to use these provisions, particularly relating to freezing the account. The government is confident that industry will be comfortable with the QBCC having such authority compared to existing principal oversight.</p> <p>The government will work with the QBCC to develop a risk-based monitoring, proactive and reactive oversight and enforcement framework and, in conjunction with recommendation 9, will ensure the QBCC has sufficient powers to execute its role.</p>
16	<p>There be a requirement for head contractors to notify the QBCC if a pro rata payment is made pursuant to section 33 of the BIF Act.</p>	<p><b>Accepted in principle</b></p>

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		<p>The government accepts this recommendation in principle as it is expected to enhance security of payment protections by alerting the QBCC to possible head contractor financial stress.</p> <p>Further consideration of the recommendation and the operation of sections 30 and 33 of the BIF Act has occurred. To achieve the same intent of the Panel's recommendation (i.e. to assist the QBCC with early detection of financial distress) it is proposed the obligation to advise the QBCC would apply where a trustee is unable to cover a short fall in the account in accordance with section 30.</p>
17	<p>That the BIF Act provide for:                      (a) principals on a project requiring a PBA; or                      (b) beneficiaries to the PBA or to a retention trust account,                      to have reasonable access to appropriate trust accounting information.</p>	<p><b>Accepted</b></p> <p>The government accepts this recommendation, in conjunction with recommendation 13.</p> <p>The government recognises that parties to the trust accounts require assurance that monies are being adequately protected.</p> <p>The government accepts that it is of benefit for subcontractors and principals to have access to information as it relates to them, and the circumstances when this will be appropriate are being considered in more detail to ensure head contractors' commercial-in-confidence information is appropriately protected. This may include having the right to inspect trust records for the trust accounts in which their money is being or has been held and allow them to be verified against the balances and transacting records of the associated trust accounts.</p>
18	<p>That the BIF Act be amended to remove the ability for a principal to replace the head contractor as trustee of the PBA on insolvency of the head contractor or termination of the contract. Instead the QBCC, at its discretion, should be able to administer the PBA in these circumstances. The QBCC's powers should be reviewed to ensure that it can effectively administer the PBA in these circumstances.</p>	<p><b>Accepted</b></p> <p>In accepting this recommendation, the government believes that as regulator, the QBCC will be better placed to administer both the PBA and retention trust account in the case of a head contractor insolvency or termination of contract.</p> <p>The government will work with the QBCC and relevant stakeholders to determine an effective legislative framework.</p>
19	<p>That section 51 of the BIF Act (as it relates to subcontractors) be replaced with a requirement that within five (5) business days of each payment</p>	<p><b>Accepted</b></p> <p>The government accepts this recommendation.</p>

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	<p>instruction being issued to the bank in relation to a subcontractor, the head contractor is to issue a statement to that subcontractor with the following information:</p> <p>(a) the amount to be paid to the subcontractor under the payment instruction in relation that project; and</p> <p>(b) where cash retentions are held from that subcontractor for that project:</p> <p style="padding-left: 20px;">(i) the amount to be transferred to the retention trust account on behalf of that subcontractor in relation to that payment, if any;</p> <p style="padding-left: 20px;">(ii) the total amount held in the retention trust account on behalf of subcontractor following that payment, if any; and</p> <p>(c) any prescribed information.</p>	<p>The government considers that this recommendation is seeking to provide a balance between achieving increased communication and information sharing between head contractors and subcontractors and the administrative obligations for head contractors.</p> <p>It is considered appropriate to require a payment statement be made to any beneficiary that states the amount to be paid and, where cash retentions are withheld, provides information about the retention amounts. However, the government does not intend to duplicate existing payment notices (i.e. payment schedules in accordance with s76 of the BIF Act, and industry practice of providing remittance and payment summaries).</p>
20	<p>That section 99(3) of the BIF Act be amended to provide that a warning notice must be issued within 60 business days after the due date for payment or other alternative timeframe prescribed.</p>	<p><b>Accepted in principle</b></p> <p>The government accepts this recommendation in principle as it considers extending the time frame to issue a warning notice could provide claimants more time to apply to the Court, increasing access to security of payment protection.</p> <p>It is agreed there is an inconsistency in the time limits for making an adjudication application and initiating a court recovery process. The BIF Act could be amended to provide that a warning notice must be issued within 30 business days after the due date for payment to align with the maximum timeframe for making an adjudication application.</p> <p>However, further consideration must be given to the effects of this recommendation on the existing security of payment protections available under the adjudication provisions.</p>