

# **Building Industry Fairness (BIF) Reforms Implementation and Evaluation Panel**

## **Operating Procedures**



**Queensland  
Government**

## Contents

1. Establishment and authority .....	3
2. Role and objectives.....	3
3. Membership .....	4
4. Meetings .....	4
5. Out of session and flying minutes .....	4
6. Correspondence and delegated authority .....	4
7. Secretariat support and record keeping .....	5
8. Conflict of interest and right to information .....	5
9. Reporting responsibilities .....	6
Attachment 1: Building Industry Fairness Reforms Implementation and Evaluation Panel Terms of Reference	7
Attachment 2: Building Industry Fairness Reforms Implementation and Evaluation Panel biographies	9

## 1. Establishment and authority

The Minister for Housing and Public Works, the Hon. Mick de Brenni, announced the establishment of the Building Industry Fairness Reforms Implementation and Evaluation Panel (BIF Panel) on 12 June 2018.

Section 200A of the *Building Industry Fairness (Security of Payment) Act 2017* (the BIF Act) provides for a review of the operation and effectiveness of the 2017 suite of building and construction reforms by a panel of not more than 4 appropriately qualified persons, appointed by the Minister. Under s200A of the BIF Act, the Minister provided to the panel its Terms of Reference which are attached at Attachment 1.

Within scope for review, is the BIF Act, the non-conforming products legislation (*Building and Construction Legislation (Non-conforming Building Products—Chain of Responsibility and Other Matters) Amendment Act 2017*) as well as the imminent Plumbing and Drainage Act 2018 (currently Plumbing and Drainage Bill 2018). In its initial phase, the Panel will be focussed on the implementation and evaluation of Phase 1 of Project Bank Accounts (Chapter 2 of the BIF Act).

## 2. Role and objectives

The role and objectives of the Implementation and Evaluation Panel are set down in the Terms of Reference for the Panel (Attachment 1).

The Panel will work with the government, building and construction industry and other stakeholders to determine:

1. the effectiveness of the governments implementation of the suite of building industry reforms;
2. the effectiveness of the legislative framework in achieving policy intent;
3. opportunities to realise improved security of payment outcomes for industry prior to the commencement of project bank accounts in the private sector; and
4. the indicative economic impacts and outcomes of the building industry reforms.

The Panel will ensure stakeholder and community access to the evaluation process and will be responsible for:

- a. agreeing in consultation with the Minister and the Department the Panel's evaluation plan, work program and stakeholder engagement plan
- b. advising on the overarching design and direction of the evaluation of the suite of building reforms
- c. making recommendations to the Minister for establishment and membership of an Industry Reference Group to advise the Panel and support the evaluation process;
- d. agreeing data metrics and overseeing the collection of baseline, benchmark and cost-benefit data
- e. consulting with building industry stakeholders
- f. reviewing reports of external consultants engaged by the Department to undertake evaluation programs and data analysis; and
- g. reporting to the Minister on the findings of evaluation programs at agreed milestone (see Reporting responsibilities.)

Panel members are appointed for a 12 month term which commenced on 14 May 2018.

### 3. Membership

Under s200A of the BIF Act, the Panel is to consist of no more than four appropriately qualified persons. The persons appointed by the Minister are:

- **Ms Bronwyn Weir, Chair of the Evaluation Panel:** Bronwyn is a legal specialist in regulatory practice, enforcement and compliance matters in the building and construction industry.
- **Ms Jennifer Robertson, Deputy Chair of the Evaluation Panel:** Jennifer is a corporate governance consultant and practicing lawyer and Deputy Chair of the Queensland Building and Construction Commission (QBCC).
- **Mr Troy Lewis:** Troy is a specialist in construction litigation and security of payment law and a Partner with Holding Redlich.
- **Ms Fionna Aitchison Reid:** Fionna is the Director of construction law firm, Aitchison Reid.

See Attachment 2 for Panel member biographies.

### 4. Meetings

The BIF Panel will meet face-to-face in Brisbane, every two-three weeks throughout 2018. Meeting frequency will be reviewed in December 2018 but, at a minimum, will meet every six weeks for the duration of the Panel's appointment.

Quorum will be met with three Panel members in attendance, provided one is either the Chair or Deputy Chair.

Proxies are not permitted to attend Panel meetings in the place of Panel members given the appointment terms set down in the BIF Act.

### 5. Out of session and flying minutes

The BIF Evaluation Panel may be required to make decisions between meetings. Where it is impracticable to call a special meeting prior to the decision needing to be made, a 'flying minute' may be used for making the decision. Flying minutes will be used in limited circumstances only and where the decision is of an important and urgent nature.

All emails relating to flying minutes must be authorised by the Chair of the Panel. Each Panel member will be sent a copy of the email and be required to provide a 'yes' or 'not' response to each motion in the minute. Panel members are able to contact one another before responding to the email. Responses must be made by email and a copy of email responses will be kept as a record. Decisions will be made if agreed by a quorum of Panel members (see Meetings).

The resolution will be circulated electronically to all members and matters decided in this way must be ratified at the first available meeting of the Panel.

### 6. Correspondence and delegated authority

The Panel has established an independent email address ([BIFPanel@hpw.qld.gov.au](mailto:BIFPanel@hpw.qld.gov.au)) for the receipt of incoming correspondence from stakeholders. The Panel's email address will be promoted in all outward facing communications and correspondence.

The Panel Secretariat will provide the Panel with an updated, rolling incoming and outgoing correspondence register at each meeting.

The Panel will review and ratify the registers at each meeting.

The Panel has delegated the response to routine incoming correspondence to the Panel Secretariat and will ratify such responses recorded in the register at each meeting.

Unusual, complex or sensitive correspondence will be referred by the Secretariat to the Chair in the first instance for advice and instruction.

Panel Members independently receiving, on behalf of the Panel, incoming correspondence will refer the correspondence to the Panel Secretariat for management and response under the above terms.

## **7. Secretariat support and record keeping**

The Panel Secretariat will prepare an agenda for all meetings of the Panel. Panel members may nominate agenda items at least seven days prior to each panel meeting.

Agenda and papers will be distributed to the Panel at least three working days prior to each Panel meeting.

The Secretariat will capture decisions and actions directed by the Panel in minutes of each meeting and each flying minute (as outlined above). These minutes will be distributed to the Panel within two working days after each Panel meeting.

The Secretariat will maintain a record of all Panel business including, but not limited to:

- agenda
- minutes
- incoming and outgoing correspondence
- briefing and research papers
- published documents including discussion papers, surveys and other evaluation tools
- reports and findings.

## **8. Conflict of interest and right to information**

The Panel recognises that members have been appointed to the Panel by the Minister due, in significant part, to their professional experience and expertise which stems from previous as well as current industry experience. This knowledge is valuable but must also be managed to ensure community expectations of persons working with and for government are able to meet.

The Panel is committed to managing conflict of interest matters in accordance with the following principles:

- Supremacy of the public interest
- Supporting transparency and accountability
- Promoting integrity and impartiality
- Adopting a risk-based approach.

The Panel members are subject to contractual confidentiality obligations, the Code of Conduct for the Queensland Public Service and the Department of Housing and Public Work's Conflict of Interest Policy.

The Panel members acknowledge that where a standing or arising conflict of interest has been disclosed and the member intends to continue with the relationship, event, engagement or the like, they are at all times bound by and must act in accordance with their obligations of confidentiality in relation to the work of the Panel.

Each Panel member will maintain an individual conflict of interest register capturing both standing and arising, actual, perceived or potential conflicts of interest. Conflict of interest registers will be updated prior to every Panel meeting (currently, approximately each three weeks) and will be routinely submitted to the Department of Housing and Public Works for scrutiny and advice.

Standing disclosures will include existing, standing relationships between Panel members and industry or other related entities which have the potential to give rise to a conflict of interest

(including any potential or perception of a conflict of interest). All Panel members' standing disclosures have been considered by the Department of Housing and Public Works and the relationships deemed manageable and/or presenting no current conflict risk.

For Panel members who provide legal advice by acting or advising government, private bodies or individuals in relation to construction contracts and/or construction disputes, the following processes will be followed:

1. Where a Panel member's firm intends to act or advise parties to government contracts that are subject to Phase 1 PBAs:
  - a. the Panel member will not personally act in or advise on those matters
  - b. the Panel member's firm will have in place internal organisational 'firewalls' (or ethical walls) which will ensure that the Panel member does not have access to documents relating to the matter
  - c. staff or partners of the firm acting on the matter will undertake not to discuss the matter with the Panel member
  - d. the clients for whom the Panel member's firm is acting will be advised of the above arrangements
  - e. the above arrangements will be maintained until the day following the delivery of the Panel's final report to the Minister; and
  - f. the Panel member will disclose that their firm is acting under the above arrangements in their conflict of interest register.
2. Where a Panel member's firm intends to act for or advise clients on security of payment matters, the making of progress claims or the issuing of payment schedules, unpaid progress claims, adjudication and/or subcontractor's charges matters, it is accepted that these matters will not generally give rise to a conflict of interest and that the Panel member:
  - a. need not disclose every matter their firm acts on or intends to act on in their conflict of interest register
  - b. will exercise their discretion about which matters should be disclosed taking into account the above principles.

The Panel further recognises the potential for conflict of interest to arise from within the department and through external sources, including consultants contracted to support the Panel in its work. The Panel is committed to ensuring separation and independence between the work undertaken by the Panel and the units or offices within the department responsible for the development of the legislation under review. Further, the Panel is committed to ensuring the separation and independence of its work and prior work undertaken by consultants and other external agencies in support of the development of the legislation under review.

The Panel acknowledges that, as a Ministerially-appointed Panel, all work products produced in the undertaking of its work may be subject to Right to Information legislation.

## 9. Reporting responsibilities

The Chair of the Panel will provide oral reports to the Minister on an ad hoc basis throughout 2018.

A written interim report will be provided by the Panel to the Minister prior to the end of 2018 with a further report to be provided at the conclusion of the Panel's current term of appointment, in May 2019.

Under s200A(5) of the BIF Act, the Minister must table in the Legislative Assembly a report of the outcome of the review as soon as practicable after the review is complete.

## Attachment 1: Building Industry Fairness Reforms Implementation and Evaluation Panel Terms of Reference

### Introduction

The *Building Industry Fairness (Security of Payment) Act 2017* (BIF Act) received royal assent on 10 November 2017. The BIF Act includes a suite of reforms including the introduction of project bank accounts, improved provisions for progress payments and subcontractor's charges and changes to the adjudication registry. The objective of these reforms is to improve the security of payment for subcontractors and support long term industry growth and efficiencies.

Project bank accounts (PBAs) will be implemented in three phases, with the first phase of implementation of PBAs, applying to government building and construction projects between \$1 million - \$10 million, commencing on 1 March 2018. Phase 2 of PBAs applying to all building and construction projects valued over \$1 million and Phase 3 extending application of PBAs to cover lower tiers of subcontractors will commence at a later date.

In relation to PBAs specifically, the government has committed to an evaluation of Phase 1 of PBA implementation to inform roll out of PBAs to the private sector.

The BIF Act requires that a review of the operation and effectiveness of the 2017 suite of building and construction industry reforms be conducted and that a report on the outcome of the review be tabled by the Minister in Parliament. The BIF Act requires that the review be started no later than 1 September 2018. The Building Industry Fairness Reforms Implementation and Evaluation Panel (the Panel) has been established early to ensure appropriate opportunity for industry stakeholders to engage with the process.

Section 12 of the *Building Industry Fairness (Security of Payment) Regulation 2018* prescribed the *Building and Construction Legislation (Non-Conforming Building Products – Chain of Responsibility and Other Matters) Amendment Act 2017* as part of the 2017 suite of building and construction reforms for the purposes of the review.

### Objective

Established under s200A of *Building Industry Fairness (Security of Payment) Act 2017*, the Panel will be established to support the review of the operation and effectiveness of the 2017 suite of building and construction reforms.

### Terms of Reference

The Panel will work with the government, building and construction industry and other stakeholders to determine:

1. the effectiveness of the governments implementation of the suite of building industry reforms
2. the effectiveness of the legislative framework in achieving policy intent
3. opportunities to realise improved security of payment outcomes for industry prior to the commencement of project bank accounts in the private sector; and
4. the indicative economic impacts and outcomes of the building industry reforms.

### Scope and functions

The Panel will be appointed to provide external and independent advice and for ensuring stakeholder and community access to the evaluation process. The Panel will be responsible for the following:

- a. agreeing in consultation with the Minister and the Department the Panel's evaluation plan, work program and stakeholder engagement plan
- b. advising on the overarching design and direction of the evaluation of the suite of building reforms



- c. making recommendations to the Minister for establishment and membership of an Industry Reference Group to advise the Panel and support the evaluation process
- d. agreeing data metrics and overseeing the collection of baseline, benchmark and cost-benefit data
- e. consulting with building industry stakeholders
- f. reviewing reports of external consultants engaged by the Department to undertake evaluation programs and data analysis; and
- g. reporting to the Minister on the findings of evaluation programs at agreed milestones.

The Department of Housing and Public Works will provide secretariat support to the Panel as required.

It is expected the Panel will meet at least every six weeks (excluding holidays periods) for the duration of the appointment in accordance with the Panel's agreed work programs and Stakeholder engagement plan.

### **Commencement and duration**

The Panel is not intended to continue beyond the introduction of project bank accounts in the private sector. Panel members will be appointed for a term of approximately 12 months commencing on 14 May 2018.

The Minister must table in Parliament a report on the outcome of the review as soon as practicable after the review is completed (S200A(5)).

### **Remuneration**

The Chair and members of the Panel will be remunerated under a consultancy arrangement and are eligible to be reimbursed for reasonable out of pocket expenses including domestic travel, accommodation costs, motor vehicle allowances and meals.



## Attachment 2: Building Industry Fairness Reforms Implementation and Evaluation Panel biographies



### **Bronwyn Weir**

Bronwyn has been a lawyer for over 20 years. She advises government on regulatory practice, enforcement and compliance matters.

Bronwyn was co-appointed with Professor Peter Shergold by the Building Ministers Forum to make recommendations on a national best practice approach to regulation of the building sector. This work was commissioned shortly after the London Grenfell Tower fire. The appointment reflects Bronwyn's in-depth knowledge of building regulation having acted over many years for building regulators, local government, fire brigades and the architects' board in Victoria. Bronwyn was a member of the Building Regulations Advisory Committee for over 10 years giving her detailed knowledge of the National Construction Code. She is also a legal advisor to the Victorian Cladding Taskforce. Bronwyn is advising the Queensland government on its security of payment reforms as chair of the Building Industry Fairness Implementation and Evaluation Panel.

In addition to the building sector, Bronwyn has advised regulators in the education sector including early childhood and vocational education, the health sector, primary industries, animal welfare and food safety. She has conducted reviews of regulatory systems and processes and advises regulators on administrative law, enforcement and operationalising risk-based decision-making.

Bronwyn recently established Weir Legal and Consulting Pty Ltd after working for several years as a senior partner in a large law firm.



### **Jennifer Robertson**

Jennifer Robertson is a Consultant at Board Matters, a corporate governance consulting firm which provides specialised and tailored governance services for boards and their directors including board reviews, structural reviews and trouble-shooting advice. Board Matters clients include listed companies, Government Owned Corporations, not-for-profit entities and SMEs.

After more than 10 years in private legal practice, Jennifer made the strategic career move to become a corporate governance consultant at Board Matters. Throughout her private practice career, Jennifer undertook business studies at QUT. It was during her studies at QUT that Jennifer decided to make the leap into the world of corporate governance consulting. Today, after over 10 years at Board Matters, Jennifer is still a practicing lawyer, governance consultant and company director.

Jennifer currently maintains a number of company director roles. These include as Chair of the Defence Reserves Support Council Queensland, Deputy Chair of the Queensland Building and Construction Commission, Deputy Chair of the Building Industry Fairness Implementation and Evaluation Panel and she is the first non-pilot director on the board of Brisbane Marine Pilots in its 30 year history. Jennifer also chairs the Audit and Compliance Committee for Queensland Independent Schools Block Grant Authority. She is a Fellow of the Australian Institute of Company Directors and Member of the Queensland Law Society.



### **Troy Lewis**

Troy is a Partner in construction litigation specialising in arbitration, expert determination and substantive litigation of construction disputes in all states and territories of Australia.

Troy also specialises in claims involving the Security of Payment Acts Australia wide.

Troy has extensive experience advising and acting on behalf of clients in relation to construction disputes (substantive litigation in all superior courts, arbitration, expert determination and mediation) in a number of sectors including major commercial construction, civil works projects, infrastructure projects, water, energy and resources projects, PPP's, LNG projects and mining projects.

This includes on some of Queensland and Australia's biggest projects including:

- Wiggins Island Coal Export Terminal
- Riverside Walk
- Clem 7 Tunnel
- Victorian Comprehensive Cancer Centre PPP
- Diamantina Power Station
- Carnarvon Power Station
- Legacy Way
- Hamilton and Whitsunday Solar Farms
- GLNG Project
- Abbott Point Coal Terminal
- Sino Iron Project
- Northern Territory Secure Facilities PPP
- Soul Development
- Gold Coast Desalination Plant
- Lady Cilento Childrens Hospital
- Gateway Motorway Upgrade
- Murra Warra Wind Farm.

Troy also has extensive experience acting on behalf of both Claimants and Respondents in claims pursuant to the various Security of Payment Acts. This extensive experience ensures that Troy and the entire security of payment team understand the tips, tricks and traps associated with such claims.

Troy assists in the training of adjudicators in all states and territories of Australia and conducts courses in construction matters generally and the various Security of Payment Acts.

An industry expert in construction litigation, Troy has been recognised in 2012, 2013, 2014, 2015, 2016, 2017 and 2018 *Doyles Guides* as one of the Leading Construction and Infrastructure Lawyers in Queensland.

From 2014 until 2019, Troy was named in the *Best Lawyers* in Australia guide in the area of Construction/Infrastructure Law.

### **Qualifications**

- Bachelor of Laws (Hons)—Queensland University of Technology
- Bachelor of Business (Accounting)—Queensland University of Technology.



***Fionna Reid***

Fionna has been a construction lawyer since 2002 and is the director of Aitchison Reid, Building and Construction Lawyers, which was established in 2012. Fionna and her practice predominantly work for subcontractors, developers and owners.

Fionna actively participated in both Queensland government consultations in relation to security of payment, she made written submissions and was called as a witness to the Queensland Parliamentary subcommittee. Through the consultation process Fionna has become known as a vocal advocate for subcontractors. Fionna is actively involved with subcontractor organisations including the Subcontractors' Alliance.

Fionna has worked in multiple aspects of construction law including arbitration, adjudication, court proceedings, alternative dispute resolution, contract drafting and review. Fionna's first adjudication was in 2003.

Fionna's passion about security of payment was ignited in 2002, when she travelled the South Island of New Zealand, explaining the virtues of security of payment to subcontractors with the NZ Subcontractor's Federation's chairperson. After working in two jurisdictions (New Zealand and Queensland) Fionna has a unique perspective and an appreciation for the overarching philosophy of security of payment and how it works in the real world.

In an area of law that is often seen as complex and convoluted, Fionna's core strengths are her ability to simplify complex concepts (whether legal or construction industry orientated) into plain English and being able to interpret legislation within the constructs of the construction industry.

Fionna was the first person in New Zealand to complete co-joint Law and Building Science degrees. Fionna is the co-founder of Women in Building and Construction group and a NAWIC (QLD) award winner for 2016.