

Security of payment



Fact sheet 1

Project bank accounts

Issue

The Queensland Government is committed to making sure that subcontractors get paid on-time and in-full, every time.

Project bank accounts (PBAs) create a fair system where progress payments are safely held in trust independent of the head contractor and principal.

To make sure that we get the system right, the government will roll out the PBA model to both government and private sector projects over \$1 million from January 2019, subject to successful outcomes from implementation on government projects between \$1 million and \$10 million.

Background

A PBA is a trust account which aims to ensure payment for work completed by subcontractors. A key feature of the PBA is that money paid into it is held in trust. In events such as insolvency, the money is held safely in trust in the PBA for the head contractor and subcontractors who have contracted directly with the head contractor. A PBA can also increase speed of payment.

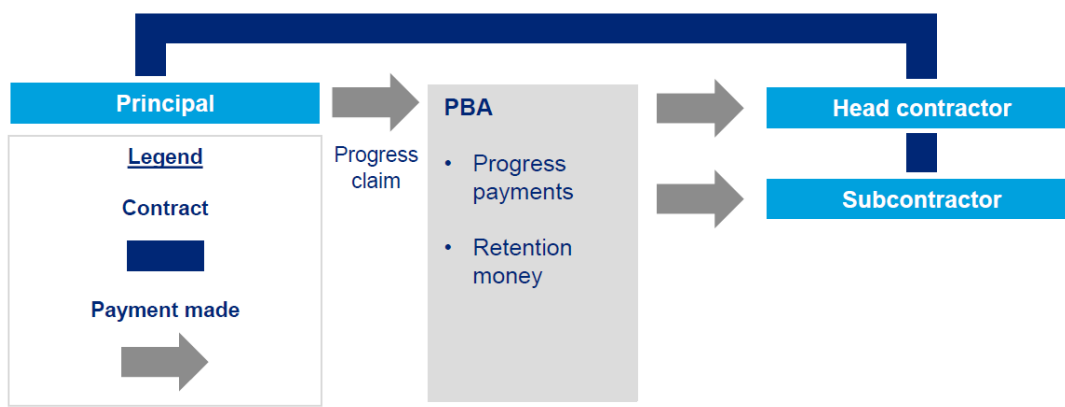


Possible impact

The proposed model will require the head contractor to establish and manage the PBA (including the account and trust arrangements with subcontractors) and will extend to the “first layer” subcontractors only. It is not proposed to extend PBAs beyond subcontractors that contract directly with the head contractor.

The effect of the PBA is to “quarantine” progress payments, ensuring subcontractors get paid for work completed.

This diagram illustrates the contractual relationships and the flow of payments for the proposed PBA model.



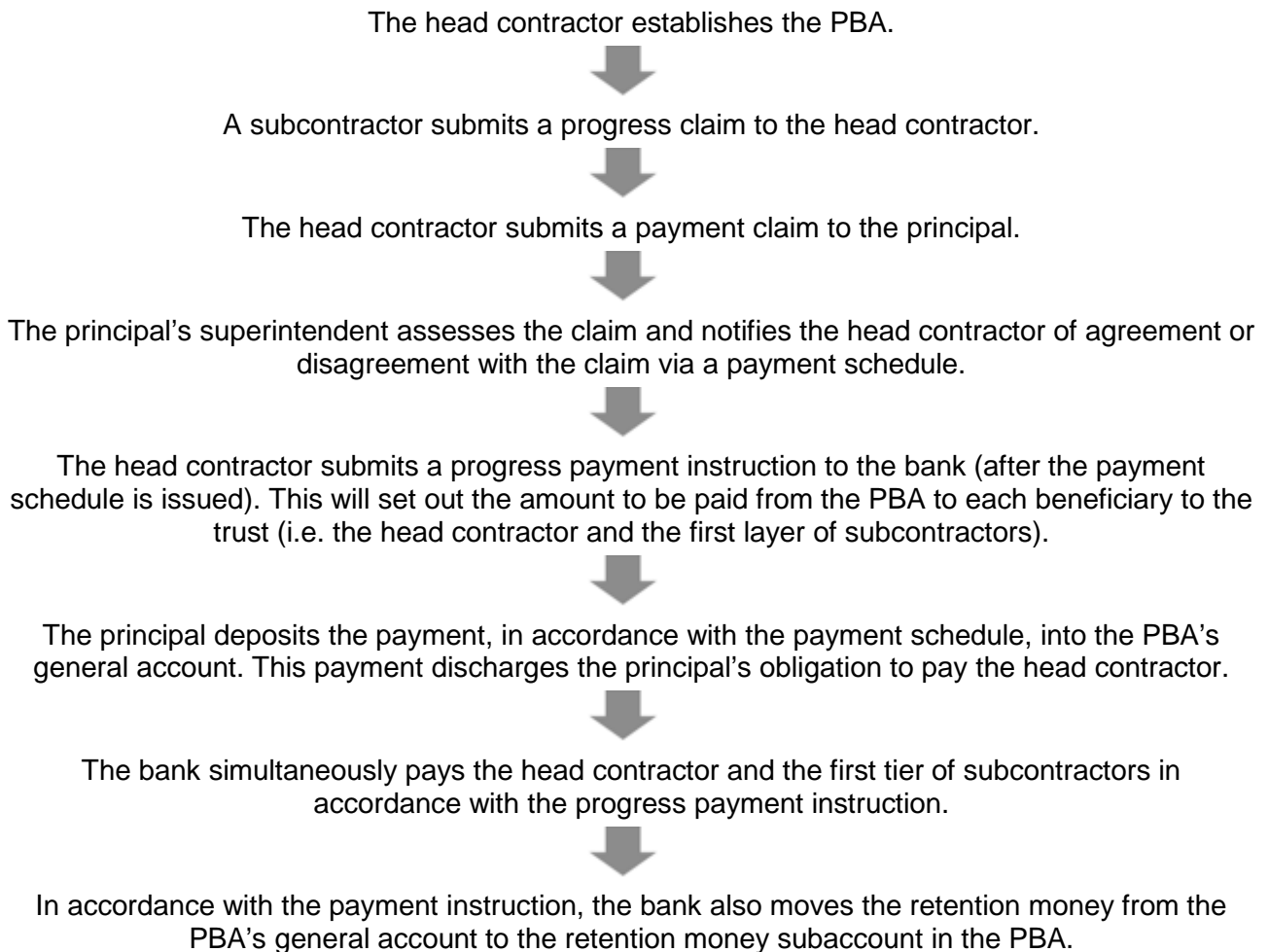
The principal has no control over the PBA, or any viewing rights of the PBA.

Two separate accounts will be required—one general account to process progress payments and the other for retention funds.

The head contractor is entitled to any interest on the account and may withdraw interest when the final certificate is issued under the contract or on termination of the contract.



PBA Process



Implementation of PBAs

PBAs will be implemented for government building and construction projects (excluding engineering projects) valued at between \$1 and 10 million from 1 January 2018. This will be achieved through amendments to current contractual and administrative arrangements.

Questions

We want you to comment on the proposed package of reforms and initiatives.

1. Do you have any suggestions about how the model discussed above could be improved?
2. What would be the most effective way of implementing the model for head contractors?
3. Do you have any other suggestions about how the proposed PBAs should be implemented in practice?
4. What support should government provide to assist the building and construction sector transition to PBAs for all projects (excluding engineering projects) valued over \$1 million?



5. How could the PBA model be adapted to private single residential construction over \$1 million?
6. Should PBAs be expanded to large residential projects and developments, such as retirement villages?
7. Do you have any other feedback to assist the department to ensure effective implementation of PBAs in the building and construction industry?

Have your say

Community and industry consultation will be held around the State and online from November 2016. You are invited to comment on the proposed reform options by:

- attending an industry or community engagement session—details available at www.hpw.qld.gov.au
- completing the online survey on the Queensland Government's *Get Involved* website: www.getinvolved.qld.gov.au
- joining us in our Engagement Space at www.hpw.qld.gov.au
- preparing a written response and sending it to:
 - email: qldbuidingplan@hpw.qld.gov.au
 - post: Queensland Building Plan
Department of Housing and Public Works
GPO Box 2457
CITY EAST BRISBANE QLD 4000

Security of payment



Fact sheet 2

Amendments to the *Building and Construction Industry Payments Act 2004*

Issue

There was strong feedback during security of payment consultation on the need for fair rules that are easily understandable and accessible. This is key to making sure that subcontractors get paid on-time and in-full every time.

In order to ensure that the rules around subcontractor payments are fair, the Government proposes amendments to the *Building and Construction Industry Payments Act 2004* (BCIPA) to improve the operation and enhance the independence of the Adjudication Registry. Amendments are also proposed to improve the BCIPA claims process.

Background

The BCIPA provides a statutory right to progress payments under construction contracts. The BCIPA also makes provision for a system of adjudication for rapid resolution of disputes. Adjudication is available to persons who enter into a written or oral contract to carry out construction work or supply related goods and services. While the BCIPA provides a right to payment, it does not guarantee payment.

The Adjudication Registry is located within the Queensland Building and Construction Commission (QBCC).



Possible Impact

Proposed improvements to the adjudication process include:

- Strengthening the impartiality and independence of the Registry
- Providing that the Adjudication Registrar and officers of the Registry must solely perform functions related to the operation of the BCIPA
- Requiring advice on BCIPA to only be provided by Adjudication Registry officers
- Ensuring adjudicators maintain and develop their skills and knowledge, including amendments that will require continuing professional development (CPD) to retain and renew adjudicator registration
- Imposing a limit on the level of fees that can be charged by adjudicators

Proposed enhancements to the BCIPA claims process include:

- Removing the requirement to state that a payment claim is being made under the BCIPA. This will allow claimants to benefit from the provisions of the BCIPA, without having to make a specific statement to make the BCIPA provisions apply.
- Extending the timeframes to lodge an adjudication application by 20 days to ensure parties have enough time to prepare their adjudication application.
- Addressing a loophole to allow claimants to use the BCIPA. If a contract is terminated for convenience, and is silent on the issue of provisions regarding payment that survives termination, the reference date will be taken to be the date that the contract was terminated. This will allow a claimant to claim for the work undertaken up to the point of termination.
- Permitting an adjudicator to order that the claimant be reimbursed by the respondent for the cost of the application fee, in whole or in part.
- Giving an adjudicator the discretion to order that the respondent pay interest on the amount, backdated from the date of the payment claim. This will ensure the claimant can be compensated for the cost of pursuing payment through the adjudication process.

Questions

1. What are your views on the proposed amendments to the BCIPA that are discussed above?
2. What amendments to the BCIPA could further enhance the claims process?
3. Please provide any other feedback you consider will assist the government in implementing these reforms.



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Department of Housing and Public Works
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CITY EAST BRISBANE QLD 4000

Queensland Home Warranty Scheme



Introduction

The Department of Housing and Public Works is seeking public feedback on how the Queensland Home Warranty Scheme (the Scheme) can deliver improved benefits to consumers.

Background

The Scheme is administered by the Queensland Building and Construction Commission (QBCC) and provides consumers with insurance cover for residential construction. Generally, the Scheme covers loss where a building contractor licensed by the QBCC fails to complete residential construction work or performs and then fails to rectify defective residential construction work.

A licensee who contracts with a consumer to carry out residential construction work valued at more than \$3300 must pay a premium on behalf of the consumer to the QBCC. The Scheme applies to detached houses and multiple dwellings not more than three storeys.

Due to recent changes which expanded coverage, the Scheme now applies to:

- swimming pool construction (which need not relate to construction of a building)
- installation of manufactured homes
- building work within the 'building envelope' (e.g. painting or tiling work on the inside or outside of a residence or related roof building, such as a shed)

The changes also enable owners to purchase a higher level of coverage if they wish and provide a process for payment of a premium where contract variations occur. The Scheme's terms and conditions have been transferred from a Queensland Building and Construction Board policy into the *Queensland Building and Construction Commission Regulation 2003*.



What are the proposed reforms?

The changes have delivered a number of benefits to both consumers and licensed contractors. It is important that the effectiveness of the recent changes are considered as well as whether the Scheme is meeting the needs of Queenslanders. We would like feedback on the following:

- whether discretionary powers of the QBCC in its decision-making are adequate e.g. clarifying the criteria for when a contract is 'properly terminated'
- whether the present level of coverage is adequate
- whether coverage for prefabricated homes should include defects that occurred in off-site manufacture
- whether the present method of premium calculation for common property is suitable e.g. repair and replacement of gutters
- whether pre-payment and over-pricing reductions by the QBCC are appropriate
- whether the threshold (currently \$3,300) for home warranty coverage, which has not been amended for years, is still appropriate
- imposing a higher premium with respect to a licensed contractor who has a higher than average percentage of claims or directions to rectify against them.

Possible impacts

- Improvements to the Scheme would be aimed at improving equity, fairness and transparency in decision-making as well as improving its operation generally.
- Making further changes to the Scheme within a short period of time could confuse consumers and industry.
- Further changes to the Scheme could impact on premiums.

Questions

1. What aspects of the current Scheme would you change and why?
2. Do you feel the current Scheme provides sufficient coverage (both the amount of cover and the type of work covered)?
3. Do you have any issues with the present premium calculation method, particularly for common property?
4. Should the contract threshold remain at \$3300 before a premium is required or should it be raised? What would be the implications if the threshold was raised?



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