



# NEWSLETTER

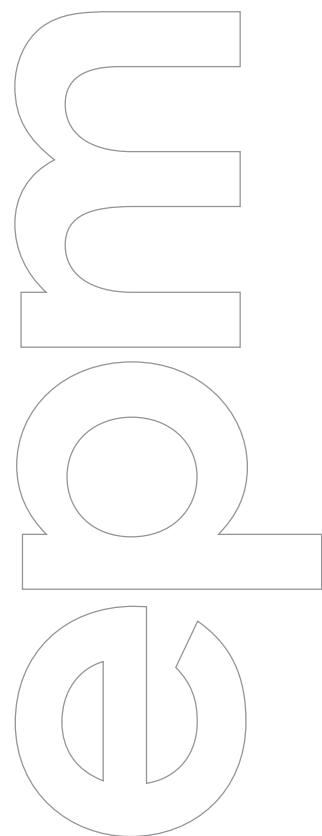
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## SUMMER 2017

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### This Edition

- Cyber Risks – Is Your Business Protected? Are You Prepared for Mandatory Data Breach Reporting in February 2018?
- BIM, Should I Care Whether or not it's Implemented on my Project?
- The QLD Government Ushering in a New Age of Fairness in the Building and Construction Industry
- The Advantages of Providing Affordable Housing



# CYBER RISKS –

## IS YOUR BUSINESS PROTECTED? ARE YOU PREPARED FOR MANDATORY DATA BREACH REPORTING IN FEBRUARY 2018?

Cyber risks represent one of the biggest threats to businesses today. We will discuss a few of those risks, some basic risk management tips, how you can insure yourself against those exposures and talk about the Government's response to the increasing threat through the Notifiable Data Breaches Bill.

Cyber incidents are becoming more and more common and Australia is increasingly being targeted and is now the 5th most targeted country for cyber-attacks globally according to a recent Symantec Internet Security Threat Report. These attacks are not only targeted at what most would consider the normal targets (large corporations) but 40% of all cybercrime is directed at small to medium enterprises according to the Government's Computer Emergency Response Team. SMEs are often the least prepared to counter that threat.

Cyber threats are commonly divided into three categories:

- **Computer as a target** - the target of the crime is the computer itself. These threats include computer viruses, denial of service attacks and malware.
- **Computer as a tool** - the target of the crime is the person controlling the computer. These threats include fraud and identity theft, phishing scams and other spam emails. Cyber criminals rely on the vulnerabilities of employees and business owners to work their way into your system and compromise your security.
- **Cyber Extortion** – your system is locked and can only be unlocked by payment of a ransom.

**IT risk management strategies** include:

- Ensure all computers and portable devices have **passwords** and that they are regularly changed, ensuring that they have a combination of upper case, lower case, numbers and symbols
- Keep your operating systems up to date
- Restrict and control administrative privileges
- Always lock computers when leaving them
- Remove ex-employees' access to your system

**Your Cyber risk management plan should include Cyber insurance** as not all risks can be eliminated. Cyber insurance provides a variety of covers and should provide an incident response solution to help you work through your breach response. Cyber insurance policies cover a variety of your exposures such as:

**First Party Losses** (losses that you would directly incur) which include:

- Business Interruption losses which are not covered under traditional business interruption policies or business pack policies due to a lack of insured damage
- Cyber extortion costs such as the hiring of negotiation experts, covering extortion demands and prevention of future attacks
- Electronic data replacement

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### Third Party losses include:

- Damages payable to your clients resulting from data breaches
- Defence costs to fund the legal costs of defending claims
- Regulatory breach protection to cover legal expenses and the costs of civil fines and penalties.

### Cyber Incident Response:

Policies should also provide cover to assist you to properly respond to a Cyber incident:

- Crisis management consultants – IT, legal, public relations
- IT security and forensics
- Assistance with mandatory data breach reporting
- Assistance with breach response and remediation action
- Costs of notification to your clients of a security breach
- Costs of monitoring to prevent further attacks.

### Mandatory Data Breach reporting

The Government has responded to the growing risk of Cyber attacks to individuals and businesses with the of the *Notifiable Data Breaches Act* which is an amendment to the *Privacy Act*.

The new law requires businesses with an annual turnover of more than \$3 million that are covered by the *Privacy Act* to report to the Australian Information Commissioner and clients if their data has been compromised.

The Commissioner can impose civil penalties of up to \$340,000 for individuals and up to \$1.7 million for companies.

The onus is on business owners to notify all related parties of a data breach and you maybe also subject to significant civil penalties. The Act comes into effect on 22nd February 2018.

### Summary

All businesses should have appropriate cyber risk management policies and procedures in place and consider taking out cyber insurance, and also be properly prepared for the new data breach regime.

For further information see:

<https://www.oaic.gov.au/engage-with-us/consultations/notifiable-data-breaches/>

<http://www.plannedcover.com.au/cyber-insurance/>

**Simon Gray & Shane Richards**

Planned Cover





# BIM, SHOULD I CARE WHETHER OR NOT IT'S IMPLEMENTED ON MY PROJECT?

It's that buzzword, or buzzacronym . . . around our industry at the moment which seems to get a lot of attention at several milestones throughout a project, but rarely results in any real action or change. Even when our consultants sell to us in their proposals that they 'empower their employees with first-class technology and BIM systems,' we still seem to end up with the same old package of documentation that is issued to a Contractor for the purpose of tendering and constructing a building and come across the same old issues of incomplete, inaccurate and uncoordinated design. As a project stakeholder, it begs the question, 'what is BIM, and should I care?'

First and foremost, it's important to squash the most common misconception that BIM is 3D modelling – false! While many BIM models include 3D spatial information, 3D modelling itself is not BIM. Breaking down the acronym, Building Information Modelling is the process of integrating all sorts of information related to a project, spatial being one of these, in a single (or set of connected) models. This can occur before, during, and after construction.

In traditional forms of documentation, a retaining wall may be represented on a plan as a large red dash. The only way we know that its retaining wall is by providing a legend for the user and assigning meaning to the large red dash – and it's the same story to the designer in the native CAD file. However, through the implementation of BIM practices, the retaining wall becomes more than just a dashed red line. It becomes a digital retaining wall holding attributes like its dimensions, footing system, material, loading capacity and even estimated cost and construction sequence and duration. Furthermore, this element develops relationships with other elements in the model, such as the earthworks or drainage network.

That way, if one element is changed, associated elements can react to the change accordingly, governed by their relationship to the element.

So, does BIM drive complete, accurate and coordinated design? Does it save time or money? Should I care if BIM is implemented on my project? When considering these questions, it's important to keep in mind that BIM is not the one-stop solution to your typical project issues and design risks. Yes, BIM is an approach that can be leveraged to improve coordination and accuracy, reducing issues that arise on site and therefore time and cost. However, this does not alleviate the need for expert design consultants and robust QA systems. Therefore, what's more important is careful selection of consultants and their integration as a team. There's no point selecting an architect who is on the bleeding edge of BIM principals, and pairing them with services consultants who may be experts in their discipline, but have very limited experience in the BIM approach.

Put simply, if you are a project owner who is simply looking for a quality product that is delivered on time and on budget, then no, you should not care whether or not BIM is implemented on your project. Instead, you should focus on selecting good quality, highly experienced consultants that will, as a team, be well equipped to design the project with or without BIM systems. However, if you are a project owner, who can see the opportunity to utilise BIM beyond construction and into building operation such as building management systems, well that's another story.

**Jordan Graham**  
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# THE QLD GOVERNMENT USHERING IN A NEW AGE OF FAIRNESS IN THE BUILDING AND CONSTRUCTION INDUSTRY

The Queensland Parliament has passed the *Building Industry Fairness (Security of Payment) Bill 2017*, which replaces the *Building and Construction Industry Payments Act 2004* and *Subcontractors Charges Act 1974*, and gives effect to the Government's Project Bank Accounts policy.

The purpose behind the streamlined legislation is in the name – to ensure "fair" processes for securing payment. The legislation aims to crack down on shadow directors and phoenixing activities, reduce insolvency rates in the building industry, reduce opportunities for head contractors to delay payment and allow subcontractors to take action to resolve payment issues faster.

## What are the key provisions?

### Project Bank Accounts (PBAs)

The most significant and controversial change under this legislation is the introduction of PBAs. A two-stage adoption process will see the requirement for mandatory PBAs rolled-out across Queensland. An initial stage, to begin on 1 January 2018, will see the requirement applied to government building and construction projects. A second stage, to begin 1 January 2019, will expand the application of the mandatory PBA to all building and construction projects over \$1 million.

PBAs are externally administered bank accounts that operate as a trust account between the Principal and Head Contractor. Under the new regime, the Head Contractor is required to set up a PBA for the project within 20 business days after entering into the first subcontract. This will require the Head Contractor to set up three separate trust accounts for the project - being a general trust account, retention trust account and disputed funds trust account. A failure to do so may result in the Head Contractor incurring a significant penalty.

Moreover, the Head Contractor is required to deposit funds equal to any shortfalls in the PBA and the difference

between any disputed payment amount between the Head Contractor and a subcontractor. It is likely this will create significant challenges for Head Contractors in managing cash flow their projects.

On the other hand, this regime will be beneficial to Principals as it ensures their progress payments are quarantined for the benefit of subcontractors (and the Head Contractor is not re-directing payments to other projects).

Queensland is not the first state to introduce the PBA regime. WA introduced its regime in September 2016 with a threshold of \$1.5 million and NSW introduced its regime (only for retention monies) in May 2015 with a threshold of \$20 million.

## Other key provisions

Other key provisions in the new legislation include:

1. New mandatory conditions in building contracts.
2. Increased penalties for unlicensed building work.
3. A preserved right to issue a payment claim following termination of the Contract.
4. There is now no requirement to give a respondent a second chance to lodge a payment schedule.
5. Extended time limits for adjudication applications.
6. The adjudication response cannot provide new reasons not already contained within the payment schedule.

## What else is happening in QLD?

Queensland's *Building and Construction Legislation (Non-Conforming Building Products - Chain of Responsibility and Other Matters) Amendment Act 2017* (Qld) also recently commenced on 1 November 2017. The Act broadly introduces various duties regarding building products upon supply chain



participants (i.e. designers, manufacturers, importers and suppliers of building products), substantially expands the powers of the QBCC and establishes a Building Products Advisory Committee. The Act creates offences for the breach of duties, which carry penalties of up to 1,000 penalty units (\$126,150).

Understanding both amending acts is critical for players involved in the building and construction industry in Queensland.

The Queensland Government has shown a great deal of proactivity in combatting significant issues being experienced in the building and construction industry, especially with the introduction of the *Building Industry Fairness (Security of Payment) Bill 2017* and *Building and Construction Legislation (Non-Conforming Building Products - Chain of Responsibility and Other Matters) Amendment Act 2017* (Qld). It will be interesting to see if other Australian jurisdictions follow suit and consider implementing PBA regimes (if they have not done so already), revamp its Security of Payment legislation or develop their own legislative framework around non-conforming building products.

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# THE ADVANTAGES OF PROVIDING AFFORDABLE HOUSING

The New South Wales planning system gives developers a significant incentive to provide affordable rental housing. The State Environmental Planning Policy (Affordable Rental Housing) 2009 ('ARH SEPP') gives a floor space ratio ('FSR') bonus of up to 0.5:1 to developers who include affordable rental housing in a residential development which consists of a residential flat building, townhouses or a dual occupancy.

The condition is that the FSR bonus corresponds to the amount of affordable housing provided. For example, if 20% of the development is allocated to affordable rental housing, an FSR bonus of 0.2:1 is allocated. If 50% of the development is allocated to affordable rental housing, an FSR bonus of 0.5:1 is allocated. It should be noted that the affordable rental housing reverts to 'normal' housing after a period of 10 years.

The NSW Land and Environment Court has indicated that when the FSR bonus applies, Council local environmental plan ('LEP') and development control plan ('DCP') controls can be overridden. The rationale is that the FSR control in the LEP goes hand-in-hand with the other Council building envelope controls, such as setbacks, building footprint and height. When the FSR limit is increased, then that will automatically involve a disruption of other building envelope controls. In other words, if an FSR bonus is available, the building must go 'up' or 'out', beyond the limits otherwise allowed. However, this is subject to the requirement in the ARH SEPP that

the development must be 'compatible' with the character of the local area. In effect, the compatibility test replaces the building envelope controls in Council's LEP and DCP. There is case law on the meaning of 'compatible' and it does not mean that it must be precisely the same as surrounding development.

A further advantage of providing affordable rental housing under the ARH SEPP is that lesser parking requirements apply.

In order to qualify as a property on which affordable rental housing can be carried out, the site must be close to public transport. The development must also comply with all the normal requirements of the Apartment Design Guide.

The 0.5:1 FSR bonus can make a very significant difference to the viability of a residential development. Developers should consider this as an option for development of their site.

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