

Building Industry Fairness (Security of Payment) and Other Legislation Amendment Bill 2024

Statement of Compatibility

Prepared in accordance with Part 3 of the *Human Rights Act 2019*

In accordance with section 38 of the *Human Rights Act 2019*, I, Meaghan Scanlon, Minister for Housing, Local Government and Planning and Minister for Public Works, make this statement of compatibility with respect to the Building Industry Fairness (Security of Payment) and Other Legislation Amendment Bill 2024.

In my opinion, the Building Industry Fairness (Security of Payment) and Other Legislation Amendment Bill 2024 is compatible with the human rights protected by the *Human Rights Act 2019*. I base my opinion on the reasons outlined in this statement.

Overview of the Bill

This Bill seeks to amend a range of Acts, including:

- *Building Industry Fairness (Security of Payment) Act 2017* (BIF Act) to clarify and simplify elements of the Project and Retention Trust Account Framework (the framework) and support software development that complies with the framework's requirements; clarifying who is a 'subcontractor beneficiary' and when 'beneficial interest' arises; clarifying trust account ledger and simplifying record keeping requirements; clarifying the treatment of GST in retention trust accounts; simplifying independent account review requirements; and clarifying previously applied trust account eligibility thresholds are maintained upon the implementation of new framework phases.
- The BIF Act and *Queensland Building and Construction Commission Act 1991* (QBCC Act), to clarify the QBCC may disclose information or documents to the Department of Housing, Local Government, Planning and Public Works (DHLGPPW) for the purposes of assessing whether the BIF Act and QBCC Act are effective in achieving the policy intent.
- *Queensland Building and Construction Commission Act 1991* (QBCC Act), *Building Act 1975* (BA) and the *Plumbing and Drainage Act 2018* (PDA), to formalise the government's response to several recommendations from the 'QBCC Governance Review 2022' including right sizing the QBCC Board from 10 to seven members; publication of the QBCC Board 'Conflict of Interests Register'; and transferring the responsibility of prescribing technical qualification requirements for licences issued by the QBCC commissioner to the DHLGPPW chief executive.
- QBCC Act, *Architects Act 2002* (Architects Act) and the *Professional Engineers Act 2002* (PE Act) for miscellaneous amendments to clarify existing provisions, support industry and consumers and improve regulatory processes.

Human Rights Issues

Human rights relevant to the Bill (Part 2, Division 2 and 3 *Human Rights Act 2019*)

In my opinion, the human rights under the *Human Rights Act 2019* that are relevant to the Bill are:

- Freedom of expression (section 21);
- Property rights (section 24);
- Privacy and reputation (section 25); and

For the reasons outlined below I am of the view that the Bill is compatible with each of these human rights.

If human rights may be subject to limitation if the Bill is enacted – consideration of whether the limitations are reasonable and demonstrably justifiable (section 13 *Human Rights Act 2019*)

Freedom of expression

Clauses of the Bill relating to false or misleading information for architects and professional engineers

(a) the nature of the right

Section 21 of the HR Act provides that every person has the right to freedom of expression, which includes the freedom to seek, receive and impart information and ideas of all kinds. This includes the right to hold and express an opinion and to seek out and receive the expression of others' opinions. Ideas and opinions can be expressed orally, in writing, in print, by way of art or in another way chosen by the person.

The Bill clarifies that offences for providing information that a person knows is false or misleading as part of registration processes for architects and professional engineers extends to professional organisations that assess the qualification, experience and competency of applicants as part of the co-regulatory registration framework. In 2020, section 31A was inserted in the Architects Act and PE Act to clarify this policy intent; however, it remains unclear if the previous amendment achieved its aim. The right to freedom of expression is engaged in the Bill to the extent that it clarifies applicants must not knowingly provide false or misleading information to entities involved in the assessment and registration framework for architects and professional engineers.

(b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

It is important that architects and professional engineers are granted registration based on accurate and relevant information. It is also considered reasonable that a registered architect or professional engineer is held to appropriately high standards, as their work is integral to the safety of buildings and other structures, and it is important that those carrying out this work are fit and proper.

This protects consumers and the broader public interest by ensuring architectural and professional engineering work is carried out by appropriately qualified and experienced practitioners that comply with relevant requirements and standards.

(c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

The engagement with human rights helps to achieve the purpose by ensuring that the Board of Architects of Queensland and the Board of Professional Engineers of Queensland (the Boards) can continue to effectively regulate the architectural and engineering professions through ensuring only appropriately qualified and experienced architects and professional engineers are registered.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

No less restrictive or reasonably available ways to achieve the purpose have been identified as the Queensland architecture and professional engineering registration frameworks are provided only through legislation.

(e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

The Architects and PE Acts provide for existing show cause processes to ensure that all relevant information is considered before an architect or professional engineers' registration is cancelled. This ensures a registered architect or professional engineer has the ability to respond and demonstrate why information provided during the assessment process before registration is not false and misleading information, or they did not know it was false or misleading. Further, the respective Board must demonstrate that the registered architect or professional engineer 'knew' the information was false or misleading, which is a high threshold.

Existing review mechanisms also ensure a decision to cancel a registration is appropriate and proportionate in the circumstances.

(f) any other relevant factors

Nil.

Property rights

Clauses of the Bill that amend the Architects Act, PE Act and QBCC Act clarifying existing sections relating to registration and licensing

(a) the nature of the right

Section 24 of the HR Act provides that a person must not be arbitrarily deprived of the person's property. The definition of 'property' arguably may include a registration or licence that is required under legislation to allow a person to carry out work. Further, 'arbitrary' may also refer to conduct that is unpredictable or unjust, as well as unreasonable in terms of not being proportionate to a particular action that being sought to address an issue.

The Bill engages with property rights to the extent that the Boards governing the respective registration frameworks may cancel an architect or professional engineer's registration if they believe on reasonable grounds that registration occurred because of a materially false or misleading representation or document.

The Bill also clarifies the QBCC can investigate and cancel or suspend the licence of the person responsible for building work, in addition to the licensee in control of the building site, if the work causes death or grievous bodily harm of a person or poses a serious risk to health and safety. The current provisions were inserted in 2017, however it is unclear if the grounds relate to building or other work on a site carried out by a licensee or whether it relates to the licensee in control of the building site.

- (b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

It is important that architects and professional engineers are granted registration based on accurate and relevant information. It is also considered reasonable that a registered architect or professional engineer is held to appropriately high standards, as their work is integral to the safety of buildings and other structures, and it is important that those carrying out this work are fit and proper. This protects consumers and the broader public interest by ensuring architectural and professional engineering work is carried out by appropriately qualified and experienced practitioners that comply with relevant requirements and standards.

Similarly, it is important that building work carried out on a site is not only to a high standard but carried out in a way that complies with workplace safety requirements. The existing provision provides that grounds for licence cancellation or suspension is for serious events only – death, grievous bodily harm or serious risk to the health and safety of a person – which are important workplace, consumer and public safety protections.

- (c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

The engagement with human rights helps to achieve the purpose by ensuring that the Boards and the QBCC can continue to effectively regulate the architectural and engineering professions and broader building industry licensees. This is achieved through ensuring only appropriately qualified and experienced architects and professional engineers hold registration and that QBCC licensees carry out work on a building site in a safe and competent way.

- (d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

No less restrictive or reasonably available ways to achieve the purpose have been identified.

The Queensland architecture and professional engineering registration frameworks and building industry licensing framework are provided only through legislation.

- (e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

Engagement with the right to property (i.e. registration or licence) is appropriate when considering that architectural, professional engineering and building work generally should be performed to a high standard and in a way that is safe. It is important to ensure consumers and workers are protected, while balancing the rights of individuals to carry out their work and livelihood.

To ensure this balance, the Architects, PE and QBCC Acts all provide for existing show cause processes to ensure that all relevant information is considered before a registration or licence is cancelled. Existing review mechanisms also ensure a decision to cancel a registration or licence is appropriate and proportionate in the circumstances.

(f) any other relevant factors

Nil.

Privacy and reputation

Clauses of the Bill relating to information sharing

(a) the nature of the right

Section 25 of the *Human Rights Act 2019* provides that a person has the right not to have the person's privacy, family, home or correspondence unlawfully or arbitrarily interfered with. Relevantly, the right protects privacy in the sense of personal information, data collection and correspondence (as well as also extending to an individual's private life more generally). The notion of arbitrary interference extends to those interferences which may be lawful, but are unreasonable, unnecessary and disproportionate.

The Bill engages with privacy rights to the extent the amendments provide for the sharing of information held by the QBCC with DHLGPPW for the purposes of monitoring the effectiveness of the BIF Act and QBCC Act and to ensure the main purposes of these statutes is being achieved.

(b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

Monitoring the effectiveness of policy that is operationalised in legislation is paramount to ensuring a fit for purpose legislative framework is in effect and that the underlying policy intent is being achieved. That is, enhancing security of payment outcomes for subcontractors in Queensland. For these reasons, this purpose is considered consistent with a free and democratic society based on human dignity, equality and freedom.

(c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

The limitation helps to achieve the purpose as it ensures DHLGPPW can analyse the effectiveness of the BIF Act and QBCC Act in operation, and should it be required, will provide DHLGPPW with the opportunity to potentially strengthen and/or adjust the framework's operation to the benefit of affected industry participants.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

A less restrictive, albeit less effective way of achieving the purpose of the Bill could be to seek information directly from industry participants. This approach however is not considered fit for purpose as a broad section of data and information is required for effective analysis. Further, DHLGPPW is not privy to the contact details of QBCC licensees.

To that end, no less restrictive and reasonably available / effective ways to clarify and strengthen the framework have been identified.

To ensure that there is an appropriate balance between the right to privacy and the need for government to assess and ensure the effective implementation of policy intent via legislation, existing safeguards are in place to ensure that this information is not misused. Section 200E of the BIF Act imposes significant penalties of up to 100 penalty units for those who disclose or gives access to the information to anyone else, and/or uses the information for any reason other than the intended purpose.

(e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

It is critical that legislation operates to achieve the underlying policy intent. Enabling the QBCC to share information with DHLGPPW supports this outcome. Without these amendments, DHLGPPW has limited ability to monitor the effectiveness of the operation of the BIF Act. The limitation on the right to privacy is balanced by the public interest objectives of the BIF Act and QBCC Act frameworks.

(f) any other relevant factors

Nil.

Clauses of the Bill that amend the QBCC Act in relation to licensing decisions

(a) the nature of the right

Section 25 of the HR Act provides that a person has the right not to have the person's privacy unlawfully or arbitrarily interfered with or not to have the person's reputation unlawfully attacked. This right is engaged to the extent that the QBCC keeps and publishes a licensee register under section 99 of the QBCC Act, which must include certain information such as cancellation or suspension of a licence. The Bill engages with this human right to the extent that it includes information about a QBCC licence suspension or cancellation in these circumstances.

(b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

It is important to promote transparency and support consumers and contractors in being aware of the work history of building industry licensees to make informed decisions before entering into a contract to carry out building work. This includes if a person has had their QBCC licence cancelled or suspended.

- (c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

The engagement with human rights helps to achieve the purpose by ensuring that the QBCC remains supported in publishing certain information for consumers and contractors to be aware if a person remains appropriately licensed, including relevant work history. This allows consumers and contractors to make informed decisions about whether to engage or conduct business with certain individuals to carry out building work.

- (d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

No less restrictive or reasonably available ways to achieve the purpose have been identified.

The Queensland building industry licensing framework is provided through legislation.

- (e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

It is important that consumers and contractors can determine if a person is appropriately licensed with the QBCC and are aware of relevant information about a licensee before entering into a contract to carry out building work. This helps support the aim that building work should be carried out to a high standard and in a way that is safe.

However, to ensure there is an appropriate balance between the right to privacy and the rights of consumers and contractors, the QBCC Act provides for show cause processes to ensure that all relevant information is considered before disciplinary action such as suspending or cancelling a licence. Existing review mechanisms also ensure a decision to suspend or cancel a licence is appropriate and proportionate in the circumstances.

Further, all periods for seeking a review, and making any appeal arising out of review, must have ended before information is included on the public QBCC licensee register. Information about a licence suspension or cancellation must be also removed from the register 10 years after the decision has been made. These mechanisms, collectively, provide an appropriate balance between providing relevant information to consumers and contractors and protecting a person's right to privacy.

- (f) any other relevant factors

Nil.

Clause of the Bill relating to the disclosure of interests

- (a) the nature of the right

Section 25 of the HR Act provides that a person has the right not to have the person's privacy unlawfully or arbitrarily interfered with or not to have the person's reputation unlawfully attacked. The Bill engages this right to the extent that any conflicts of interest disclosed by QBC Board members, must be made publicly available on the commission's website. Under section 20C of the QBCC Act, it is already a requirement for the disclosure of interests to be recorded in the board's minutes. The Bill introduces the requirement to publish the details of a

disclosure of interests recorded in the minutes in a public-facing register and will ensure publication can occur irrespective of a QBC Board member's consent. The bill also enables the Commission to publish details of former members disclosures as well as other information the commission considers appropriate.

(b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of limiting this right is to promote transparency and accountability regarding any conflicts of interest disclosed by QBC Board members. The conflicts of interest framework will be enhanced by establishing a public-facing conflict of interest register for the QBC Board.

(c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

The engagement with human rights helps to achieve the purpose by limiting the privacy of members to enhance transparency with consumers. Greater transparency will promote a strong ethical culture, prevent reputational harm and improve the relationship between the QBCC and consumers.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

No less restrictive or reasonably available ways to achieve the purpose have been identified.

The framework regarding the disclosure of interests is provided through legislation.

(e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

Existing QBCC processes for identifying, managing, and monitoring declared conflicts of interest can be enhanced by introducing a public-facing conflict of interest register for the QBC Board. Enhanced transparency and accountability will foster a strong ethical culture among QBC Board members and promote consumer confidence in the QBCC.

The limitation on the right to privacy and reputation is considered appropriate given the high standards of ethical practice that apply to QBC Board members. Appointment as a QBC board member brings with it certain responsibilities which, in many cases includes spending taxpayers' money and the custody and control of public assets. These and other functions and obligations of board members are outlined in the QBC Board Charter.

Further, the limitation is specific only to conflicts of interest relevant to the role as a QBC Board member. Section 20C of the QBCC Act provides that interests held by members in an issue being considered, or about to be considered by the board and where the interest conflicts, or may conflict with the proper performance of the member's duties about the consideration of the issue, are to be disclosed with the board.

On balance, the limitation on the right to privacy and reputation is considered appropriate to facilitate enhanced transparency and accountability of the QBC Board.

(f) any other relevant factors

Nil.

In my opinion, the Building Industry Fairness (Security of Payment) and Other Legislation Amendment Bill 2024 is compatible with human rights under the Human Rights Act 2019 because it limits a human right only to the extent that is reasonable and demonstrably justifiable in a free and democratic society based on human dignity, equality and freedom.

Meaghan Scanlon
Minister for Housing, Local Government and Planning and Minister for Public Works

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