

# ***Queensland Building and Construction Commission and Other Legislation Amendment Regulation (No. 1) 2015***

## **Explanatory notes for SL 2015 No. 29**

made under the

*Building and Construction Industry Payments Act 2004*  
*Queensland Building and Construction Commission Act 1991*  
*State Penalties Enforcement Act 1999*

## **General Outline**

### **Short title**

*Queensland Building and Construction Commission and Other Legislation Amendment Regulation (No. 1) 2015*

### **Authorising law**

Sections 101 and 120 of the *Building and Construction Industry Payments Act 2004* (BCIP Act).

Section 19 of the *Queensland Building and Construction Commission Act 1991* (QBCC Act).

Sections 67AR and 67AW(2)(a), and schedule 1B (specifically sections 7(2), 9(2) and 46(1)) of the QBCC Act.

Section 165(3) of the *State Penalties Enforcement Act 1999*.

### **Policy objectives and the reasons for them**

#### *Summary*

The objectives of the *Queensland Building and Construction Commission and Other Legislation Amendment Regulation (No. 1) 2015* (QBCCOLA Regulation) are to:

1. improve the effectiveness of the demerit system to reduce the frequency of offending by licensees who engage in continuing breaches of the legislation
2. reduce the regulatory requirements governing domestic building contracts and clarify contractual terms and requirements
3. prescribe mandatory training requirements for adjudicators, and
4. prescribe two policies to improve the adjudication process under the BCIP Act.

The QBCCOLA Regulation complements reforms made under the *Queensland Building and Construction Commission and Other Legislation Amendment Act 2014* (QBCCOLA Act) and under amendments made in 2014 to the BCIP Act.

## **QBCCOLA Act**

A number of reforms to the building and construction industry aimed at reducing red tape and increasing compliance are contained in provisions of the QBCCOLA Act which will commence at the same time as the QBCCOLA Regulation.

Consequential changes to regulations are also required to facilitate the QBCCOLA Act amendments.

### Demerit point system

Currently, licensees under the QBCC Act incur demerit points if they are convicted of a demerit point offence (two points) or become a judgement debtor (10 points). A person who accumulates 30 demerit points within a three year period will have their licence cancelled and be disqualified from holding a licence for three years.

The QBCCOLA Act increases the flexibility of the demerit point system by removing the demerit offences from the Act and allowing them to be placed in the regulation. It also removes the limit on the number of points that may be allocated for a demerit offence. This addresses feedback that the old regime was ineffective because of the small number of offences that attracted demerit points and the limited points that could be allocated.

### Domestic building contracts

The QBCCOLA Act repeals the *Domestic Building Contracts Act 2000* (DBC Act) and inserts a new schedule 1B into the QBCC Act to provide for the matters dealt with previously by the repealed provisions.

The new provisions in the QBCC Act will outline different contractual requirements and offences based on the value of the domestic building work to be performed. This will effectively reduce regulatory requirements governing domestic building contracts.

## **BCIP Act reforms**

The BCIP Act is aimed at ensuring contractors receive and are able to recover progress payments if they carry out construction work or supply related goods and services under a construction contract. The BCIP Act was amended in 2014 following a comprehensive review. Among other things, the amended BCIP Act established a single Adjudication Registry in the Commission, discontinued the process of authorised nominating authorities appointing adjudicators, revised timeframes to resolve payment disputes and changed the timeframes for parties to respond to complex claims.

### Adjudicator responsibilities

Authorised nominating authorities previously played an important role in providing a 'buffer' between adjudicators and the parties to a dispute by undertaking various administrative

functions that would otherwise require direct contact between the two. This helped to avoid the potential for a conflict of interest. While the responsibility to appoint adjudicators has transferred to the Adjudication Registry, the Registry has not assumed any of the administrative functions previously performed by authorised nominating authorities. With the administrative burden placed solely on adjudicators, the likelihood of them having direct contact with the parties to the dispute has increased.

### Cost of adjudication

The establishment of a single Adjudication Registry to appoint adjudicators has resulted in a lack of market competition. In the development of the amended BCIP Act, stakeholders raised concerns that the new framework would increase the costs associated with adjudication.

### Transition training

A new section 120 in the BCIP Act is aimed at increasing the quality of adjudicator decisions by requiring adjudicators to maintain their skills and knowledge in a number of key areas. The QBCCOLA Regulation provides the transition training for this section.

## **Achievement of policy objectives**

### **QBCCOLA Act**

A proclamation will fix 1 July 2015 as the day of commencement of the QBCCOLA Act amendments for demerit points and domestic building contracts.

### Demerit points

The QBCCOLA Regulation will also amend the QBCC Regulation to prescribe the demerit offences and the number of points that may be allocated for each offence.

The increased number of demerit offences to be prescribed are aimed at targeting activities where noncompliance can have significant impacts on consumers. For example, inadequate supervision by licensed contractors and construction managers is the main contributor to defective building work in Queensland. The allocation of demerit points to supervision offences will deter contractors from inadequately supervising work and will mean that contractors take care in ensuring that building work complies with the relevant standard.

### Domestic building contracts

To complement the QBCCOLA Act amendments, amendments under the QBCCOLA Regulation will clarify the definition of home, prescribe the value of a level 2 contract and prescribe the form in which the Commission must publish the consumer building guide.

The QBCCOLA Regulation also includes changes to the SPE Regulation to reflect the repeal of the DBC Act. Of 16 new PIN offences to be included under the QBCC Act, 13 of these replicate PIN offences from the repealed DBC Act. Of the three new PIN offences, two relate to failure to lawfully claim for an extension of time and provide relevant information and the remaining PIN relates to the requirement for licensees to notify the Commission of any changes

to their details that must be reflected on the public licensee register. The Commission will be prescribed as the administering authority for the QBCC Act.

### **BCIP Act reforms**

To complement amendments to the BCIP Act made in 2014, the BCIP Regulation will be amended to give effect to two policies approved by the Queensland Building and Construction Board:

- ‘Adjudicator Responsibilities Policy 2015’ – The policy reminds adjudicators of the importance of remaining impartial and notes they may wish to engage an agent to undertake direct communications with the parties to the dispute on their behalf.
- ‘Adjudicator Grading and Referral Policy 2015’ – The policy revises the current ‘Adjudicator Grading and Selection Criteria for Nomination of Adjudicators Policy 2014’ to provide guidance on what may be considered a reasonable adjudicator fee. Revisions to the policy also remove outdated terminology and allow for the referral of multiple adjudications to a single adjudicator.

The QBCCOLA Regulation will also introduce the mandatory transition training requirements for adjudicators referred to under section 120 of the BCIP Act, to improve the quality of adjudicator decisions and align the skills and training of existing adjudicators with those of new applicants.

### **Consistency with policy objectives of authorising law**

The amendment regulation is consistent with the policy objectives of the authorising laws.

### **Inconsistency with policy objectives of other legislation**

The amendment regulation is consistent with the policy objectives of other legislation.

### **Benefits and costs of implementation**

No significant administrative costs will be associated with implementing the amendment regulation.

The improvements to the demerit system will strengthen the Commission’s ability to remove non-compliant licensees from the industry, providing better safeguards for consumers.

Clarifying contractual requirements will simplify the building process for licensees and homeowners.

The new adjudication policies and transition training requirements will improve the quality and effectiveness of adjudicator decisions and outcomes.

### **Consistency with fundamental legislative principles**

The amendment regulation has been drafted with regard to fundamental legislative principles as defined in section 4 of the *Legislative Standards Act 1992*. It is consistent with the fundamental legislative principles.

### **Consultation**

The QBCCOLA Bill was referred to the Transport Housing and Local Government Committee (Committee) for consideration. The Committee called for submissions and held a public hearing. Nineteen submissions were received and six witnesses were called to provide information to the Committee. The Committee recommended that the Bill be passed. The Bill was assented on 27 October 2014.

The Commission has consulted with its Consumer Reference Group (CRG) and Industry Reference Group (IRG) on various proposals. The CRG and IRG comprise representatives from peak consumer and building industry bodies respectively.

The Commission undertook consultation with adjudicators on the range of market fees.