

Queensland Building and Construction Commission and Other Legislation Amendment Regulation (No. 1) 2016

Explanatory notes for SL 2016 No. 5

made under the

Building Act 1975

Building and Construction Industry Payments Act 2004

Professional Engineers Act 2002

Plumbing and Drainage Act 2002

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) 2016*

Authorising law

Section 261 of the *Building Act 1975*

Section 111 of the *Building and Construction Industry Payments Act 2004* (BCIP Act)

Section 165 of the *State Penalties Enforcement Act 1999*

Section 116 of the *Queensland Building and Construction Commission Act 1991* (QBCC
Act)

Section 145 of the *Plumbing and Drainage Act 2002*

Section 144 of the *Professional Engineers Act 2002* (PE Act)

Policy objectives and the reasons for them

Summary

The objectives of the *Queensland Building and Construction Commission and Other
Legislation Amendment Regulation (No. 1) 2016* (QBCCOLA Regulation) are to:

1. allow a wider range of pool owners to upgrade their pool barriers without having to obtain a building development approval
2. prescribe the adjudication qualification that prospective adjudicators must obtain in order to be registered
3. allow the Queensland Building and Construction Commission (QBCC) to deter licensees who contract with unlicensed persons
4. streamline, clarify and update licensing requirements for QBCC licensees
5. make it easier for provisional occupational plumbers and drainers licence holders to upgrade to an open occupational licence
6. clarify and modernise the requirements for electing members to the Board of Professional Engineers of Queensland (the Board).

Background

Pool fencing

Since 27 July 2012, all work for a fence forming a barrier for an existing non-shared pool associated with a house or townhouse (a class 1a building under the National Construction Code) has been prescribed as self-assessable building work, provided that certain conditions are satisfied. Self-assessable work must comply with applicable building requirements, but a building approval (provided by a building certifier) is not required for the work. As a matter of policy, only low risk building activities are prescribed as self-assessable work.

Previous amendments to the *Building Regulation 2006* (BR) exempted owners of particular regulated pools from the requirement to obtain a building approval for upgrading their pool barriers. As a result of the exemption, relevant pool owners can engage a pool safety inspector (PSI) to inspect the work done on their pool barriers rather than obtaining a costly building approval and having to deal with the paperwork and delays associated with such an approval.

Currently, the exemption from the requirement to obtain a building approval does not extend to work for barriers for shared regulated pools. Nor does it extend to work for barriers for pools associated with units, motels or hostels (class 1b, 2, 3 or 4 buildings under the National Construction Code). The QBCCOLA Regulation will expand the scope of the exemption so it applies to building work for barriers for all types of regulated pool, regardless of the type of dwelling it is associated with and whether it is shared or not shared. Work to a pool barrier will still require inspection by a PSI, however.

Adjudication qualification

The BCIP Act provides the framework for registering adjudicators in Queensland. To be considered suitable for registration, a person must hold the prescribed adjudication qualification or another qualification that the Adjudication Registrar considers to be equivalent.

A 2013 review of the BCIP Act recommended a number of improvements to the ongoing training of adjudicators, including that the existing adjudication qualification be amended to include additional elements, such as analysis of building contracts, ethical obligations, building and construction law and contract law. The adjudication qualification was removed from the *Building and Construction Industry Payments Regulation 2004* (BCIP Regulation).

The amendment regulation will prescribe a new adjudication qualification for prospective adjudicators.

Penalty infringement notices

Under section 51B of the QBCC Act, a licensed contractor must not engage a person to carry out building work unless the person holds a contractor's licence of the appropriate class under the Act. This provision is aimed at protecting consumers and supporting licensed contractors who do the right thing and contract with licensed and skilled tradespeople.

This is one of the primary offences committed by licensed contractors, however, the QBCC does not have the ability to issue penalty infringement notices (PIN) for the offence and instead must pursue noncompliant licensees through costly and time-consuming prosecutions. The amendment regulation will improve the QBCC's ability to moderate the behaviour of these licensees.

QBCC Licensing

A core function of the QBCC is to license Queensland's building and construction industry. Licences are divided into classes which restrict the scope of work a licensee can perform according to their skills and training. Licensing provisions are set out under the QBCC Regulation and it is important that they reflect current training requirements, building practices and industry terminology.

The QBCC has identified that some licences do not reflect current industry practice and that some technical qualifications and experience requirements required for certain licences are out of date. Additionally, clarification is needed about whether certain work requires a licence.

Plumbing licensing

Under most licensing frameworks, provisional licences are targeted at people with limited experience or following disciplinary proceedings. Conversely, provisional occupational licences in the plumbing industry are not representative of a plumber's experience or disciplinary record.

To obtain a provisional licence, a Certificate III in plumbing and drainage must be completed. To upgrade to an open occupational licence, licensees must accrue at least 12 months' industry experience as well as a post-trade qualification. As the post-trade qualification incorporates business administration training, once an open occupational licence is obtained, the holder is also entitled to a trade contractor licence, which allows them to contract with the public and engage employees.

However, many provisional licensees choose not to complete the post-trade qualifications required for an open licence, and therefore a contractor licence. Under the current system, this means they must remain on a provisional licence, even though they may have extensive industry experience. While provisional and open licence holders can undertake the same scope of work, provisional licensees cannot undertake work unsupervised and provisional licences must be renewed annually (as opposed to five yearly for open licences).

The QBCCOLA Regulation will make it easier for these provisional plumbers and drainers to upgrade to an open occupational licence, recognise the industry experience of those licensees without post-trade qualifications and implement cost savings for licensees by allowing them to apply for a licence every five years rather than annually.

Board of Professional Engineers of Queensland

The Board oversees the registration of persons as registered professional engineers in Queensland (RPEQs). The Board consists of seven members, who are appointed for a three year term.

Under the PE Act, the Board must include one member who is the academic head or an academic representative of a school of engineering prescribed under regulation. Currently there are 10 schools of engineering prescribed. However, organisational changes within universities have led to the names of some of the schools being changed to reflect faculty restructures, resulting in the *Professional Engineers Regulation 2003* (PE Regulation) being out-of-date.

The PE Act also requires one member of the Board to be a RPEQ elected under the Act. The PE Regulation outlines the procedures for the election of a RPEQ to the Board. Currently the voting process is restricted to postal voting using paper ballot forms. Facilitating this process is costly and requires significant staff resources.

The QBCCOLA Regulation will improve the usability of the voting system by clarifying and modernising the requirements for electing members to the Board, by enabling electronic voting.

Achievement of policy objectives

Pool fencing

The QBCCOLA Regulation will expand the scope of the exemption from the requirement to obtain a building approval for building work for particular pool barriers. It will do so by omitting the section of the BR that restricts the exemption of work for regulated pools that are associated with class 1a buildings and are not shared pools. As a result of the omission, the exemption will apply to work for barriers for all types of regulated pools provided particular conditions are satisfied.

The QBCCOLA Regulation will allow owners of shared pools or pools associated with units, motels or hostels to upgrade their pool barrier without having to obtain a costly building approval, provided they have the work inspected by a PSI.

The QBCCOLA Regulation will also introduce an additional condition that is intended to ensure that if one or more assessable building requirements that are additional to those

forming the pool safety standard apply to the building work for a pool barrier, the exemption will not apply and a building approval must be obtained for the work.

For example, a pool owner decides to replace their pool barrier and use the structure for two purposes: as a balustrade on the edge of a balcony or deck as well as a pool barrier. The structure must comply with the pool safety standard as well as additional building requirements under the National Construction Code for balustrades. The additional requirements are intended to help ensure people do not fall off the balcony or deck. Because of the safety risk associated with the construction of a balustrade, the work is not self-assessable work and therefore a building approval must be obtained for the work. As a building approval would be required to be obtained for the construction of a balustrade if the balustrade did not serve as a pool barrier, the exemption for pool barriers will not apply.

This condition will ensure that the approval requirements are appropriate to the complexity of the work involved.

Adjudication qualification

The QBCCOLA Regulation will amend the BCIP Regulation to prescribe the following details of the adjudication qualification a person must hold in order to be considered suitable to be registered as an adjudicator:

- Name of the qualification
- Bodies that may issue the qualification
- Name of the adjudication competency to be achieved to gain the qualification
- Elements that must be successfully completed to achieve the competency

Penalty infringement notices

The QBCCOLA Regulation will amend the *State Penalties Enforcement Regulation 2014* (SPE Regulation) to include section 51B as a new PIN offence for the QBCC Act. This PIN offence will apply when a licensed contractor engages a person to carry out building work without the appropriate class of licence. The QBCCOLA Regulation will also update an outdated reference in the SPE Regulation to a repealed section of the QBCC Act. The reference to section 42(9) will be replaced with 42(1).

QBCC Licensing

The QBCCOLA Regulation streamlines particular licence classes under the QBCC Regulation, removes experience requirements for certain trade contractor licences and modernises terminology to reflect industry practice. To reduce the need for ongoing amendments to the QBCC Regulation, the QBCCOLA Regulation will also remove the technical qualifications from all licence classes and have these stated in a referenced document.

The units of competency referenced in the technical qualifications for various licence classes are regularly updated or superseded under the Australian Qualifications Framework. As a result, the QBCC Regulation can become out of date. The amendments will mean training requirements can be readily amended and will also make the provisions more accessible to licensees. The QBCCOLA Regulation defines the technical qualifications document as the document called 'Technical Qualifications

for Licensing', that is approved by the chief executive and published on the department's website.

The QBCCOLA Regulation includes transitional provisions that apply to the builder restricted to swimming pool construction licence (schedule 2, part 10 of the QBCC Regulation) holders. Under the changes, the licence class will be removed and amalgamated with the swimming pool construction, installation and maintenance licence (schedule 2, part 51A). Part 10 licence holders will continue to be taken as licensees for this part until their licence is renewed, suspended or cancelled. On application for renewal, the application will be treated as a renewal for a part 51A licence. Also, a person who has undertaken training prior to the commencement of the changes will still be entitled to a licence provided they complete the relevant part 10 qualification and apply for a part 51A licence within 12 months of commencement of the QBCCOLA Regulation.

A further transitional provision provides for any application for a licence that is made, but not decided, prior to the commencement of the amendments. The licensing requirements that apply will be those that are current at the time the application is decided. Where units of competency and other training requirements have been updated, a person may still be eligible for a licence under the equivalency provisions for the licence.

The QBCCOLA Regulation will also clarify that work involved in the off-site manufacture of roof trusses and wall frames, including preparing plans and specifications and the manufacturing itself, does not constitute building work. This means that a licence is not required to under the work, which will help facilitate the cost-effective mass production of these components.

Plumbing licensing

The changes in the QBCCOLA Regulation will remove references in the *Plumbing and Drainage Regulation 2003* to 'post-trade qualifications' as a requirement for an open occupational plumbers licence or a drainers licence. This will allow provisional plumbers and drainers to upgrade to an open licence once they have gained at least one year's practical industry experience.

Under the new technical qualifications document provided for by the QBCC licensing amendments, the requirements for the plumbing and drainage and drainage contractor licences will be expanded to include the post-trade qualification previously required for an open occupational licence. This will ensure that when a provisional licence holder applies to upgrade to an open licence, the licensee will not be automatically eligible for a contractor's licence unless they obtain the relevant post-trade qualification.

The QBCCOLA Regulation will also amend the PD Regulation to include transitional provisions for outstanding licence applications. An application made for a plumbers or drainers licence that is made, but not decided, before the commencement of the QBCCOLA Regulation must be decided under the amended licensing requirements.

Board of Professional Engineers of Queensland

To reduce the need for regular changes to the PE Regulation and clarify which engineering schools are prescribed, the PE Regulation will be amended to list the relevant universities only, so that any school of engineering, however described, that is a part of those universities is taken to be prescribed. As a result, the PE Regulation will remain current even where the name of a particular school of engineering changes.

It is also proposed to amend the PE Regulation to modernise the current procedures outlined for electing a registered professional engineer to the Board. The changes in the QBCCOLA Regulation provide for a system of electronic voting in addition to the current voting procedures involving paper ballot forms.

Under the amended voting model, the Board will have the ability to approve an entity as a voting services provider, to provide an electronic and postal voting system for an election. The voting services provider will be responsible for providing paper ballot forms to RPEQs upon request, the counting of votes and the keeping and disposal of ballot forms.

To preserve the integrity of the voting process, the QBCCOLA Regulation requires the electronic voting system to meet certain requirements, for example, not allowing a person to find out how a particular RPEQ cast his or her vote. The voting services provider must also perform certain functions in the presence of two witnesses, and must also make the tally of electronic votes and paper ballot forms available for inspection for three months after the election day.

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.

Allowing a wider range of pool owners to upgrade their pool barriers without having to obtain a building development approval will deliver cost and time savings for pool owners.

The prescribed adjudication qualification will ensure that new adjudicators have the appropriate skills and training to perform their functions.

Enabling the QBCC to deter noncompliant licensees will provide better safeguards for consumers.

Aligning QBCC licensing requirements with current building practices, training requirements, and industry terminology will reduce uncertainty and unnecessary costs for industry.

Enabling provisional occupational plumbers and drainers to more easily upgrade their licence to an open occupational licence will recognise the industry experience of those licensees without post-trade qualifications. It will also result in cost savings for those licensees, who will be able to hold an open licence for up to five years, rather than having to apply for a provisional licence every year.

Clarifying and modernising the requirements for electing members to the Board of Professional Engineers of Queensland will reduce the Board's administrative costs and resource burden, as well as improve the ease of use of the voting system for RPEQs.

Consistency with fundamental legislative principles

The removal of technical qualifications for licences from the QBCC Regulation and the creation of the new 'Technical Qualifications for Licensing' document may be regarded as breaching fundamental legislative principles as defined in section 4 of the *Legislative Standards Act 1992*. It could be argued that it does not have sufficient regard to the institution of Parliament in that it allows the sub-delegation of a power delegated by the Act. In this case the power to prescribe technical qualification requirements for a licence under the Act is sub-delegated to the chief executive who may set those requirements in a document which is not 'subordinate legislation' subject to the tabling and disallowance provisions under the *Statutory Instruments Act 1992*.

The approach which has been taken is justified on the basis that the information in the document is highly technical in nature and likely to be subject to regular change. Additionally, amendments to the document, and any changes to it, must be approved by a high level public service officer, the chief executive of the department in which the QBCC Act is administered, which is currently the Department of Housing and Public Works.

Consultation

The Consumer Reference Group (CRG), Industry Reference Group (IRG), Fire Protection Industry Board, and Master Builders Queensland have been consulted about the Commission licensing and experience requirements amendments relevant to each group. The CRG and IRG comprise representatives from peak consumer and building industry bodies respectively and are consultative groups for the QBCC.

The Pool Safety Consultative Group and the Building Industry Consultative Group were consulted about the changes to the BR.

Plumbing and drainage industry stakeholders including the Master Plumbers Association Queensland, the Plumbers Union Queensland and Services Trades Queensland have been consulted on the plumbing licensing changes and have indicated their support for the amendments.

Registered adjudicators and relevant industry organisations, such as the Queensland Law Society, Hutchinsons Builders, and the Royal Institution of Chartered Surveyors, were consulted on how to improve adjudicator training outcomes.

The Board and its key industry stakeholders, including Consult Australia, Engineers Australia, Institution of Fire Engineers and the Queensland Resources Council, support the Board election process being carried out electronically.