

Queensland Building and Construction Commission and Other Legislation Amendment Regulation 2019

Explanatory notes for Subordinate Legislation 2019 No. 252

made under the

Queensland Building and Construction Commission Act 1991

Building Industry Fairness (Security of Payment) Act 2017

General Outline

Short title

Queensland Building and Construction Commission and Other Legislation Amendment Regulation 2019

Authorising law

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

Section 201 of the *Building Industry Fairness (Security of Payment) Act 2017* (BIF Act).

Policy objectives and the reasons for them

The objective of the Amendment Regulation is to correct minor errors and omissions that have been identified in the Queensland Building and Construction Commission Regulation 2018 (QBCC Regulation) and the Building Industry Fairness (Security of Payment) Regulation 2018 (BIF Regulation).

QBCC Regulation amendments

Omission of contractor licence fee

In 2018, an administrative error occurred during the remake of the QBCC Regulation. This resulted in the omission of a licence fee for a one-year licence for an individual contractor in categories 3-7 from 1 September 2018. In the previous version of the QBCC Regulation, a licence fee of \$629.00 was prescribed for this purpose.

Maximum liability under Queensland Home Warranty Scheme

In 2016, the terms and conditions of the Queensland Home Warranty Scheme (QHWS) were transferred into the QBCC Regulation. During this transfer, a typographical error occurred. The QBCC Regulation incorrectly lists a maximum total liability under the QHWS for a duplex prior to practical completion as \$900,000 instead of \$600,000 (where optional additional cover is taken out). It is necessary to correct this error to avoid any unintended consequences for the QHWS.

Scope of work for certain QBCC licences – fire collar installation

Fire collars are used to maintain the integrity of fire-rated walls, floors and ceilings through which services such as plumbing and electrical installations pass.

There has been uncertainty within industry about whether plumbers may install fire collars or if this work can only be undertaken by holders of the 'Passive fire protection—fire collars, penetrations and joint sealing' licence, issued by the QBCC.

The scope of work for the plumbing and drainage contractor licence under the QBCC Regulation allows licensees to install plumbing and drainage services. The installation of fire collars does not meet the traditional definition of 'plumbing and drainage'. For example, the work is not contemplated by the relevant provisions of the *Plumbing and Drainage Act 2018*, nor the plumbing codes and standards.

Industry feedback has suggested that prohibiting plumbers from installing fire collars will have significant ramifications for industry. For example:

- cause delays in construction projects where the work is being performed by a plumber presently
- result in a shortage of contractors available to perform the work
- making plumbing contractors who have unwittingly been performing this work without the appropriate licence liable to enforcement.

Other QBCC-licensed trades, such as gasfitters, may also be impacted as they also typically carry out service installations that require the installation of fire collars.

BIF Regulation amendments

In late 2018, an administrative error occurred during the drafting of an amendment to the BIF Regulation which resulted in an incorrect application fee being prescribed for certain adjudication applications. The fee for adjudication applications for progress payments of over \$1,065,600 was previously 0.07% of the progress payment amount. During drafting of the amendment, the application fee for these applications was incorrectly prescribed as 0.7% of the progress payment amount, instead of 0.07%. This change took effect from 17 December 2018.

Further, indexation has not been applied consistently to adjudication application fees from year to year, particularly the fee for the highest category of adjudication applications (i.e. those over \$1,065,600). For example, in some years, the indexation rate has only been applied to the maximum fee for this category, while in other years both the threshold and the maximum fee have been indexed. This has resulted in a

situation where, in some very limited circumstances, the current application fee for adjudication of a progress payment in the highest category is lower than the fee that applies to the category below.

Achievement of policy objectives

QBCC Regulation amendments

Omission of contractor licence fee

The Amendment Regulation will achieve the policy objective by reinserting the prescribed annual licence fee for an individual contractor in categories 3-7 under Schedule 7 of the QBCC Regulation. The prescribed fee will also be adjusted to reflect government indexation (2.25%) of fees for 2019. This amendment will commence on notification of the Amendment Regulation. A transitional provision will also require the refunding of relevant fees collected by the QBCC to date since 1 September 2018.

Maximum liability under QHWS

The Amendment Regulation will correct the maximum total liability under the QHWS for a duplex prior to practical completion (where optional cover has been taken out) to be \$600,000 instead of \$900,000. This amendment will commence on notification of the Amendment Regulation.

Scope of work for certain QBCC licences – fire collar installation

The Amendment Regulation will amend the scopes of work for relevant contractor licences to include the installation of fire collars. However, this will be limited to fire collar installations that are incidental to other work the licensee has carried out. For example, a plumber will be able to fit a fire collar as part of a plumbing pipe installation but could not seal penetrations made by an electrician to install cabling.

The changes will apply to all trades that typically carry out service installations, i.e. plumbing and drainage, gasfitting, sprinkler-fitting and refrigeration, air conditioning and mechanical services. The Amendment Regulation also clarifies that fire collar installations carried out in association with electrical work or the installation of data and communications cabling do not require a QBCC licence, as these trades are not regulated by the QBCC.

BIF Regulation amendments

The Amendment Regulation will correct the current application fee for adjudication applications for progress payments of over \$1,065,600 to be 0.07% of the progress payment amount. This change will apply retrospectively from 17 December 2018.

The Amendment Regulation will also adjust the threshold value for the highest category of adjudication applications to reflect the approved Queensland Government indexation rate for 2019 of 2.25%, i.e. a change from \$1,065,600 to \$1,089,576. This amendment will apply retrospectively from 1 July 2019. A

transitional provision will ensure that this change does not negatively impact existing applications received to date from 1 July 2019.

Consistency with policy objectives of authorising law

The Amendment Regulation is consistent with the main objects of the QBCC Act and the BIF Act, that is to regulate the building industry and help people working in the industry to be paid for the work they do.

Inconsistency with policy objectives of other legislation

The Amendment Regulation is consistent with the policy objectives of other legislation.

Alternative ways of achieving policy objectives

The policy objectives can only be achieved by correcting the errors and omissions that have been identified within the QBCC Regulation and BIF Regulation. These issues cannot be addressed administratively or by other policy means.

Benefits and costs of implementation

QBCC Regulation amendments

Omission of contractor licence fee

The Amendment Regulation will reinstate the ability of the QBCC to charge a fee for a one-year licence for individual contractors in categories 3-7. This will ensure the QBCC is administering a licensing regime that is based on cost recovery. The QBCC will absorb the minor costs of refunding relevant licence fees collected since 1 September 2018. As this amount is not significant, the refunds will not negatively impact the QBCC's financial sustainability or services.

Maximum liability under QHWS

The Amendment Regulation will have a beneficial impact on the sustainability of the QHWS by preventing the scheme from being exposed to unintended financial and legal liability.

Scope of work for certain QBCC licences – fire collar installation

The Amendment Regulation will have a beneficial impact for industry and consumers by clarifying that plumbers and other relevant trades can undertake fire collar installations that are incidental to their work without requiring an additional QBCC licence.

BIF Regulation amendments

The Amendment Regulation will confirm the correct application fee that the Adjudication Registry is to charge for the highest category of adjudication applications. It will also have the benefit of greater consistency in applying the Queensland Government approved indexation rate to these application fees.

Consistency with fundamental legislative principles

The Amendment Regulation is consistent with fundamental legislative principles. The provisions that are being applied retrospectively are considered to be beneficial provisions in accordance with section 34 of the *Statutory Instruments Act 1992*, as they will not operate to the disadvantage of a person.

Consultation

The Ministerial Construction Council Subcommittee for Fire Protection Licensing, which includes representatives of key industry bodies and Queensland Fire and Emergency Services, was consulted and supported the proposed changes relating to licensing for fire collar installations.

The Queensland Productivity Commission was consulted on potential regulatory impacts. As the proposed amendments were unlikely to result in adverse impacts on stakeholders, regulatory impact analysis was not required.