

Queensland Building and Construction Commission (Mechanical Services Licences) Amendment Regulation 2021

Explanatory notes for Subordinate Legislation 2021 No.107

made under the

Queensland Building and Construction Commission Act 1991

General Outline

Short title

Queensland Building and Construction Commission (Mechanical Services Licences) Amendment Regulation 2021

Authorising law

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

Policy objectives and the reasons for them

The policy objectives of the *Queensland Building and Construction Commission (Mechanical Services Licences) Amendment Regulation 2021* (Amendment Regulation) are to:

- enhance the existing transitional arrangements for the mechanical services licensing framework that commenced on 1 January 2020;
- ensure suitably qualified mechanical services – refrigeration and air conditioning (RAC) occupational workers perform mechanical services work in high risk buildings; and
- prevent widespread non-compliance or unemployment resulting from RAC occupational worker licence applications being unable to be decided before the 31 December 2021 deadline.

The QBCC Act establishes the mechanical services licence, while the *Queensland Building and Construction Commission Regulation 2018* (QBCC Regulation) prescribes the technical details, such as the licence classes, technical and experience requirements, and transitional arrangements. The new mechanical services licensing framework recognises the three specialist streams of mechanical services work (air conditioning and refrigeration, medical gas and plumbing work).

The QBCC Regulation transitional provisions are intended to recognise businesses and workers who, immediately before the new licensing framework commenced, were lawfully performing work that now falls within the scope of work for the new licence class.

Transitional provisions enable mechanical services – medical gas occupational licence applicants who can demonstrate the following to be eligible to be licensed:

- a minimum of two years' experience performing work within the scope of the new licence class (work must be performed before 1 January 2020); and
- at least six months safety compliant work.

These particular provisions do not apply to the plumbing and RAC licence classes as these sectors were already licensed trades, albeit only contractor, nominee and site supervisor licences existed for the RAC trade.

Prior to commencement of the mechanical services licensing framework, RAC workers did not need to be licensed or hold prescribed qualifications to undertake this type of work. Under the new licensing framework, workers performing this work must be occupationally licensed by 1 January 2022 and to do so must hold the prescribed technical qualifications.

Since the new mechanical services licensing framework commenced, industry and the QBCC have raised concerns that some applicants are unable to meet the technical qualification requirements for mechanical services - RAC occupational licence (RAC occupational licence). Some applicants do not hold the prescribed technical qualification and will be unable to continue to work in the RAC industry, regardless of any experience they may have performing the work within the scope of the new licence.

The Amendment Regulation addresses the issue by establishing an alternative licensing pathway, like that provided in the transitional provisions for the mechanical services – medical gas occupational licence class. However, for the alternative licensing pathway to apply, applicants must submit an application to the QBCC on or before 30 September 2021.

The early lodgement requirement enables the QBCC to work with applicants to ensure they have adequate evidence to meet licensing requirements and assess the application prior to 31 December 2021 when it becomes an offence to perform the work without an appropriate licence.

Achievement of policy objectives

The QBCC Regulation delegates the technical qualification requirements for individuals licensed under the QBCC Act to the Technical Qualification for licensing document (TQ document). The TQ document does not, nor is it intended to, contain transitional qualification requirements.

The Amendment Regulation amends the QBCC Regulation to recognise experienced RAC workers who do not hold the prescribed technical qualifications for the RAC occupational licence. The amendments will enable individuals to meet licensing eligibility requirements for the RAC occupational licence if they do not hold the prescribed qualifications, provided the applicant:

- submits an application for the mechanical services – RAC occupational licence to the QBCC on or before 30 September 2021;

- can demonstrate a minimum of two years' experience performing work within the scope of the RAC occupational licence and that experience was obtained before 1 January 2020, when the new mechanical services licensing framework commenced; and
- satisfies the QBCC that for at least six months has carried out safety compliant work that is within the scope of the licence for which they have applied.

The Regulation will require applications to be submitted on or before 30 September 2021 for applicants to be eligible for a licence using experience as the alternative to holding the technical qualifications. The alternative licensing pathway will also apply to licence applications that were lodged prior to the commencement of this Amendment Regulation and have not yet been decided by the QBCC.

These amendments recognise previously unlicensed individuals who have competently been performing mechanical services – RAC work without holding a formal qualification.

Consistency with policy objectives of authorising law

The Amendment Regulation is consistent with the objectives of the QBCC Act, which includes regulating the building industry to ensure the maintenance of proper standards in the industry.

Inconsistency with policy objectives of other legislation

The Amendment Regulation is not inconsistent with the policy objectives of other legislation.

Alternative ways of achieving policy objectives

As the transition to the new framework is prescribed in regulation, the policy objectives can only be achieved by making the Amendment Regulation.

Benefits and costs of implementation

Regulating mechanical services work through the QBCC provides a consistent regulatory framework across the building and construction industry, maintains professional standards within industry and delivers consumer protection.

The costs for the regulator to implement the amendment regulation are consistent with other licences regulated by the QBCC. The costs of regulation will be funded by revenue raised from licensing fees and compliance activities and is anticipated to provide a cost-neutral result.

Implementation of the Amendment Regulation is not expected to incur additional costs for government departments.

The Amendment Regulation will benefit licence applicants who demonstrate they have the relevant skills and experience to safely perform mechanical services RAC work to the appropriate standard. These applicants will not need to undertake further training to lawfully perform the mechanical services work they were competently performing prior to the introduction of the licensing requirements.

The Amendment Regulation will also benefit the building industry and consumers by reducing the likelihood of a labour shortage. It will help to ensure that individuals are not working unlicensed, breaching the licensing laws and compromising consumer health and safety.

Consistency with fundamental legislative principles

The mechanical services licence imposes a regulatory burden on the building and construction industry. However, the Amendment Regulation minimises the impact of the regulatory burden by balancing the rights and liberties of existing workers and the need to provide consumer protection.

The Amendment Regulation:

- has sufficient regard to the institution of parliament and only contains matters appropriate to subordinate legislation; and
- is consistent with fundamental legislative principles.

Consultation

The QBCC Mechanical Services Stakeholder Group comprising representatives from the Air conditioning and Mechanical Contractors Association, Master Plumbers Association of Queensland, Plumbing and Pipe Trade Employees Union, Australian Institute of Refrigeration, Air conditioning and Heating, the Australian Refrigeration Mechanics Association and QBCC have been consulted.

These stakeholders acknowledge the issue and support the proposed Amendment Regulation.

The Office of Best Practice Regulation was consulted in relation to the proposed transitional arrangements and advised that they are unlikely to result in significant adverse impacts and that no further regulatory analysis is required.