

# Proclamation - Building Industry Fairness (Security of Payment) and Other Legislation Amendment Act 2020

## Human Rights Certificate

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

In accordance with section 41 of the *Human Rights Act 2019*, I, Michael de Brenni MP, Minister for Housing and Public Works, Minister for Digital Technology and Minister for Sport provide this human rights certificate with respect to the *Proclamation - Building Industry Fairness (Security of Payment) and Other Legislation Amendment Act 2020* (the Proclamation) made under the *Building Industry Fairness (Security of Payment) and Other Legislation Amendment Act 2020* (the BIFOLA Act).

In my opinion, the Proclamation, as tabled in the Legislative Assembly, 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 Subordinate Legislation

The purpose of the Proclamation is to fix various dates for the commencement of certain provisions under the BIFOLA Act.

The BIFOLA Act provides for amendments to the following Acts:

- *Architects Act 2002* (Architects Act)
- *Building Act 1975* (Building Act)
- *Building Industry Fairness (Security of Payment) Act 2017* (BIF Act)
- *Professional Engineers Act 2002* (Professional Engineers Act)
- *Queensland Building and Construction Commission Act 1991* (QBCC Act)
- *Retirement Villages Act 1999*.

The Proclamation specifies that the provisions of the BIFOLA Act, which alter the eligibility criteria for the later phases of the new trust account framework under the BIF Act, commence on 27 August 2020.

The Proclamation specifies that the following provisions commence on 1 October 2020:

- BIF Act amendments relating to progress payments, including the new payment enforcement mechanisms (payment withholding request, charge over property and offence for failure to pay the scheduled amount) and supporting statements;
- all Building Act amendments, other than the provisions that establish an alternative licensing pathway for building certifiers; and
- QBCC Act amendments, including the provision providing for a statutory review of the role of property developers in the building and construction industry; amendments

implementing Special Joint Taskforce recommendations; expanding the offence for failing to release retentions to apply to other forms of security; removing entitlement to a licence if an equivalent interstate or New Zealand licence is suspended or cancelled; clarifying the 'occupational licence' definition; and provisions that exclude site supervisors from holding a licence in certain circumstances.

The Proclamation specifies that the following provisions commence on 1 March 2021:

- amendments of the Architects Act and Professional Engineers Act; and
- the new trust account framework which replaces the present project bank account (PBA) framework under the BIF Act. This will initially apply to the existing PBA cohort i.e. eligible State government building contracts with a contract price between \$1 million and \$10 million.

The Proclamation also specifies that QBCC Act amendments in relation to the definitions of 'fire protection work' and 'fire protection equipment' commence on 1 May 2021.

Commencement of these provisions will implement various recommendations of three recent reports for the building and construction industry:

- Building Fairness – An Evaluation of Queensland's Building Industry Fairness Reforms;
- Special Joint Taskforce – Investigating subcontractor non-payment in the Queensland building industry; and
- Building Confidence – Improving the effectiveness of compliance and enforcement systems for the building and construction industry across Australia.

It will also further progress the Queensland Building Plan 2017, which aims to create a safer, fairer and more sustainable construction industry.

## Human Rights Issues

Upon analysis, the Proclamation does not affect or engage a human right. Commencement of the Proclamation is designed to ensure the effective implementation of the amendments within the BIFOLA Act.

This is an administrative, machinery of government function that does not affect or engage a human right.

## Conclusion

I consider that the Proclamation is compatible with the *Human Rights Act 2019* because the mechanical nature of the commencement does not affect or engage any human rights.

**MICHAEL DE BRENNI MP**  
MINISTER FOR HOUSING AND PUBLIC WORKS  
MINISTER FOR DIGITAL TECHNOLOGY AND  
MINISTER FOR SPORT