

# Building (Approval of Amendment of QDC) Amendment Regulation 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* (HR Act), I, Michael de Brenni MP, Minister for Energy, Renewables and Hydrogen and Minister for Public Works and Procurement, provide this human rights certificate with respect to the *Building (Approval of Amendment of QDC) Amendment Regulation 2020* (Amendment Regulation) made under the *Building Act 1975*.

In my opinion, the Amendment Regulation, as tabled in the Legislative Assembly, is compatible with the human rights protected by the HR Act. I base my opinion on the reasons outlined in this statement.

## Overview of the Subordinate Legislation

On 18 October 2019, an amendment to the *Building Regulation 2006* (the Regulation) commenced along with the adoption of QDC Part 2.5—Use of external cladding (QDC Part 2.5). QDC Part 2.5 bans two materials from being used as external cladding on new buildings:

- Aluminium Composite Panels (ACPs) of greater than 30 per cent polyethylene core by mass on any building, and
- Expanded polystyrene (EPS) product in any external wall insulation and finish (rendered) system on a Class 2-9 building of Type A or Type B construction.

Clause 6 of QDC Part 2.5 deals with cladding rectification work on existing buildings and permits the retention of ACP of greater than 30 per cent polyethylene core by mass as part of an alternative (performance-based) solution developed by a registered fire engineer. This was included with the intent of supporting cost-effective rectification of buildings. A similar provision to allow retention of existing EPS product is not included in QDC Part 2.5.

Since QDC Part 2.5 commenced, a number of implementation issues have been raised. Several buildings registered in the combustible cladding checklist process and a number of government owned buildings, have EPS cladding and may be able to be safely rectified with a performance-based solution involving the retention of EPS.

It was not intended that EPS removal and reinstallation for inspection or as part of a performance-based solution be regulated by QDC Part 2.5. Therefore, the amended QDC Part 2.5 will clarify that:

- where EPS is proposed to be retained on a building as part of a performance-based solution developed by a registered fire engineer, the EPS ban does not apply; and

- the EPS ban does not apply to any Class 2-9 buildings of Type C construction or to Class 1 and 10 buildings/structures.

On 8 December 2020, the amended QDC Part 2.5 was published on the Department of Energy and Public Works website. The Amendment Regulation will adopt the amended QDC Part 2.5, replacing the previous version of QDC Part 2.5 published on 18 October 2019.

## Human Rights Issues

### Human rights relevant to the subordinate legislation (Part 2, Division 2, HR Act)

In my opinion, the human rights under the HR Act that are relevant to the Amendment Regulation are:

1. *Section 16: Right to life*

Right to life is relevant to the proposed action as QDC 2.5 deals with matters relating to building fire safety which in turn has the potential to cause injury, illness or death.

### Consideration of reasonable limitations on human rights (section 13, HR Act)

(a) the nature of the right

Every person has the right to life and has the right not to be arbitrarily deprived of life.

(b) the nature of the purpose of the limitation, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The proposed amendments are consistent with a free and democratic society based on human dignity, equality and freedom. There is a lawful authority or a legal foundation for the government to regulate the construction of buildings. The National Construction Code (NCC) is called up under the *Building Act 1975* (Building Act) as the performance-based code for Queensland, subject to any variations administered through the QDC.

The NCC includes requirements for building fire safety to ensure the safety of building occupants and fire brigade personnel. Building fire safety is an important matter and all Queenslanders have the right to feel safe in all buildings where they live, work and visit. A need to mitigate the fire risk caused by combustible external cladding has been identified.

The use of combustible external cladding must be appropriately regulated. The ban on high risk building cladding products introduced restrictions on the use of such materials.

(c) the relationship between the limitation and its purpose, including whether the limitation helps to achieve the purpose

The use of a performance-based solution prepared by a qualified fire engineer (to demonstrate an acceptable level of fire safety in a building) is not permitted due to the ban on certain combustible cladding products. The intent of the proposed amendments is to ensure that an adequate level of building fire safety can be demonstrated (while supporting cost effective rectification of buildings) without compromising the safety of building occupants.

(d) whether there are any less restrictive and reasonably available ways to achieve the purpose

There are no less restrictive and reasonably available ways identified that satisfy the technical requirements for buildings that represent the minimum level that must be achieved.

(e) the balance between the importance of the purpose of the limitation and the importance of preserving the human right, taking into account the nature and extent of the limitation

The limit on human rights is appropriate given the government's responsibility to ensure that appropriate building fire safety requirements are applied. A performance-based solution cannot be developed and approved unless the fire safety performance requirements of the NCC are satisfied. This means that the solution would need to demonstrate that the fire safety strategy of the building is not compromised by the presence of any combustible product remaining on the external wall.

## Conclusion

I consider that the Amendment Regulation is compatible with the HR Act because it may limit, restrict or interfere with a human right, but that limitation is reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

**MICHAEL DE BRENNI MP**  
MINISTER FOR ENERGY, RENEWABLES AND HYDROGEN  
MINISTER FOR PUBLIC WORKS AND PROCUREMENT

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