

# Building Industry Fairness (Security of Payment) and Other Legislation Amendment (Postponement) Regulation 2021

## 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, the Honourable Mick 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 Industry Fairness (Security of Payment) and Other Legislation Amendment (Postponement) Regulation 2021* (the postponement regulation) made under the *Building Industry Fairness (Security of Payment) and Other Legislation Amendment Act 2020*.

In my opinion, the postponement regulation, 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

Section 15DA of the *Acts Interpretation Act 1954* (AI Act) provides that if a law has not commenced within one year of assent, the provisions not commenced will commence automatically on the next day. However, a regulation may extend this period to not more than two years.

On 23 July 2020, the *Building Industry Fairness (Security of Payment) and Other Legislation Amendment Act 2020* (BIFOLA Act) received assent. The BIFOLA Act amends a number of Acts including the *Building Industry Fairness (Security of Payment) Act 2017*, the *Queensland Building and Construction Commission Act 1991* (QBCC Act) and the *Building Act 1975* (Building Act).

Section 2 of the BIFOLA Act provides that the following provisions commence on a date to be fixed by proclamation:

- sections 46–48, 50 and 54(1), which establish an alternative recognition pathway for the licensing of building certifiers under the Building Act; and
- section 125A, which repeals a licensing exemption for head contractors under the QBCC Act.

While all other provisions of the BIFOLA Act have commenced, these provisions have yet to be proclaimed and, unless delayed by the postponement regulation, will automatically commence on 24 July 2021.

The postponement regulation will defer the automatic commencement of these provisions to 24 July 2022.

### *Alternative recognition pathway*

Currently, under the Building Act, applicants for a Queensland Building and Construction Commission (QBCC) building certifier licence (new or renewal) are required to hold current accreditation. Accreditation can only be obtained via the prescribed accreditation standards bodies which assess applicants against specific qualifications, experience, competence and continuing professional development (CPD) requirements.

The BIFOLA Act amends the Building Act to establish an alternative recognition pathway, which will enable formerly licensed certifiers without current accreditation to be licensed provided they meet the prescribed requirements (including qualifications and experience requirements)

The postponement regulation seeks to extend the period of commencement of the provisions under the BIFOLA Act that establish an alternative recognition pathway for the licensing of building certifiers under the Building Act to 24 July 2022.

The extension of time allows further policy development to finalise the requirements to be prescribed in the *Building Regulation 2006*. For instance, the ongoing development of the technical and experience qualifications in-line with current accreditation standards; develop a licence fee structure; develop CPD requirements and allow the QBCC to finalise complex administrative and operational arrangements.

### *Head contractor licensing exemption*

Section 42 of the QBCC Act provides that, unless exempt under Schedule 1A of the Act, a person must not carry out, or undertake to carry out, building work unless they hold an appropriate contractor licence.

Under section 8, Schedule 1A of the QBCC Act, an unlicensed head contractor may enter into building contracts and arrange for building work to occur, provided the work is:

- not residential construction work or domestic building work; and
- carried out by an appropriately licensed contractor.

Section 125A of the BIFOLA Act provides for the repeal of the licensing exemption for head contractors. The provision was included in the BIFOLA Act as a result of a recommendation of the former Transport and Public Works Parliamentary Committee, following feedback about misuse of the licensing exemption.

The postponement regulation will allow the Department of Energy and Public Works additional time to consult on implementation.

## **Human Rights Issues**

### **Human rights relevant to the subordinate legislation (Part 2, Division 2 and 3 *Human Rights Act 2019*)**

The postponement regulation does not affect or engage a human right.

## Conclusion

I consider that the *Building Industry Fairness (Security of Payment) and Other Legislation Amendment (Postponement) Regulation 2021* is compatible with the *Human Rights Act 2019* because it does not raise a human rights issue.

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

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