

Queensland Building and Construction Commission (Mechanical Services Licences) Amendment 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* (HR Act), I, the Honourable Mick de Brenni MP, Minister for Energy, Renewables and Hydrogen and Minister for Public Works and Procurement make this human rights certificate with respect to the *Queensland Building and Construction Commission (Mechanical Services Licences) Amendment Regulation 2021* (Amendment Regulation) made under the *Queensland Building and Construction Commission Act 1991* (QBCC Act).

In my opinion, the *Queensland Building and Construction Commission (Mechanical Services Licences) Amendment Regulation 2021*, 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

The QBCC Act establishes a licensing framework for the regulation of building work. While the Act establishes the licences, the *Queensland Building and Construction Commission Regulation 2018* (QBCC Regulation) prescribes the technical details such as licence classes, technical and experience requirements, and transitional provisions.

On 1 January 2020, a new mechanical services licensing framework was introduced, which regulates previously unregulated medical gas work and establishes dedicated licence classes for mechanical services work including plumbing and refrigeration and air conditioning (RAC) work. Since its introduction, the RAC sector and the Queensland Building and Construction Commission (QBCC) have advised that greater recognition is needed for experienced RAC workers who are transitioning into the framework.

The Amendment Regulation will amend the QBCC Regulation to enable existing RAC workers who do not hold formal qualifications to be occupationally licensed provided they:

- submit an application for the mechanical services – RAC occupational licence to the QBCC on or before 30 September 2021;
- can demonstrate they have 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
- satisfy the QBCC that for at least six months has carried out safety compliant work that is within the scope of the licence being applied for.

While the Regulation will require applications to be submitted on or before 30 September 2021, the QBCC will be able to continue to work with the applicant and assess the application after this date.

Human Rights Issues

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

The Regulation engages the following human rights protected by the HR Act:

- Recognition and equality before the law (section 15 of the HR Act)
- Right to life (section 16 of the HR Act)
- Right to privacy and reputation (section 25 of the HR Act)

I am of the view that the Amendment Regulation promotes (and does not limit) these human rights for the following reasons:

- The Amendment Regulation includes transitional provisions that recognise, for a limited time, industry experience and safe work practices as an alternative to holding formal qualifications for the mechanical services - RAC occupational licence.
- The Amendment Regulation protects against discrimination based on age of the applicant or their qualifications. The alternative licensing pathway will ensure that applicants who have acquired relevant experience throughout their working life, are eligible for a licence. Older workers, with adequate experience will not be unreasonably prohibited from holding a licence for work they have performed for a long period of time.

Consideration of reasonable limitations on human rights (section 13 *Human Rights Act 2019*)

(a) the nature of the right

Right to recognition and equality before the law (section 15 of the HR Act)

Section 15 of the HR Act provides that every person is equal before the law and is entitled to the equal protection of the law without discrimination. This requires public entities, as well as courts and tribunals in undertaking certain functions, to treat people equally when applying the law and to not apply the law in a discriminatory way.

The Amendment Regulation includes transitional provisions that recognise industry experience and safe work practices as an alternative to holding formal qualifications for the mechanical services - RAC occupational licence. However, clause 3 of the Amendment Regulation requires applications to be submitted on or before 30 September 2021 if they are to be assessed through this alternative licensing pathway. Individuals with formal qualifications can submit their application at any time, provided they hold a mechanical services licence by 31 December 2021.

The Amendment Regulation limits a person's right to recognition and equality before the law by establishing an earlier application deadline for individuals that do not hold technical

qualifications but have relevant work experience and wish to apply through the transitional alternative licensing pathway.

Right to life (section 16 of the HR Act)

Section 16 of the HR Act provides that every person has the right to life and has the right not to be arbitrarily deprived of life. This right places positive obligations on the State in relation to protecting the health and safety of its citizens, and in particular to protect the lives of people in their care.

From 1 January 2022 all individuals applying for a mechanical services occupational licence will need to meet the prescribed technical qualifications. This requirement benchmarks standards and protects the health and safety of occupants of high risk buildings. The Amendment Regulation will enable individuals without qualifications to obtain a mechanical services licence prior to 1 January 2022. However, these licensees will be required to work for a licensed contractor and meet stringent experience requirements, including demonstrating a minimum of six months of safety compliance work. The amendments therefore preserve life while enabling existing workers to continue to work in their trade.

Right to privacy and reputation (section 25 of the HR Act)

The right to privacy and reputation protects a person's right to not have their privacy and reputation unlawfully or arbitrarily interfered with. The nature of the right to privacy and reputation is very broad but contains internal limitations. The protection against interference with privacy is limited to unlawful and arbitrary interference. The notion of arbitrary interference extends to interferences which may be lawful, but are unreasonable, unnecessary and disproportionate.

The human right is limited by clause 3 of the Amendment Regulation which requires the QBCC to be satisfied that the applicant for a RAC occupational licence meets the eligibility requirements and this may facilitate the QBCC requesting information from the applicant.

- (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

Right to recognition and equality before the law (section 15 of the HR Act)

The requirement for early lodgement of applications being assessed against the alternative licensing pathway is to provide sufficient time for the QBCC to work with applicants and collect sufficient evidence to assess the application before the 31 December 2021 deadline. The early lodgement does not affect the QBCC's ability to assess the application against the alternative licensing requirements by 31 December 2021, which is consistent with other applications.

The amendments are consistent with a free and democratic society based on human dignity, equality and freedom.

Right to life (section 16 of the HR Act)

The Amendment Regulation benchmarks standards for experienced RAC workers who do not hold qualifications. These requirements provide safeguards to protect the health and safety of

consumers and workers, while not unreasonably inhibiting experienced workers from continuing in their employment.

Right to privacy and reputation (section 25 of the HR Act)

The purpose of enabling the QBCC to collect an applicant's personal information for a mechanical services licence is to assess the applicant's suitability to be licensed.

The mechanical services licensing framework protects occupants of high-risk buildings, such as high-rise residential apartments and office buildings, commercial retail centres, health care facilities and recreational establishments, from the risks posed from substandard mechanical services work.

To enable the QBCC to assess a licence applicants' eligibility and suitability to hold a mechanical services licence it is critical that they can collect information and evidence about the applicants work credentials, including experience.

This purpose is consistent with the right to life protected under section 16 of the HR Act because the licensing requirements protect the health and safety of the broader community.

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

Right to recognition and equality before the law (section 15 of the HR Act)

Although the amendments partially limit some applicants, it also expands those applicant's ability to be licensed by recognising experience and safe work practices, which are not currently recognised for the mechanical services RAC licence classes. If the amendments are not made experienced and competent workers who do not hold formal qualifications may be unfairly prevented from continuing to work. Therefore, it is considered that the limitation imposed through the Amendment Regulation is justified in consideration of this human right.

Right to life (section 16 of the HR Act)

This limitation enables experienced and safe workers to continue working for their employee, while maintaining an adequate level of protection for citizens.

Right to privacy and reputation (section 25 of the HR Act)

The collection of personal information under the Amendment Regulation helps to ensure individuals performing mechanical services work are competent and meet benchmarked standards. The QBCC can lawfully request relevant information under section 33 and 37B of the QBCC Act to determine whether applicants meet the licensing eligibility requirements and are appropriately trained to undertake the work.

These licensing requirements have been established to protect the health and safety of the community from risks that arise from incorrect installation or maintenance of mechanical services systems. The collection of personal information under the Amendment Regulation is conducted lawfully under the QBCC Act and achieves the purpose of the licensing framework.

(d) whether there are any less restrictive and reasonably available ways to achieve the purpose
Right to recognition and equality before the law (section 15 of the HR Act)

There are no less restrictive or viable alternatives to achieve the purpose of the Amendment Regulation, which is to enhance transitional provisions to recognise experienced RAC workers.

Right to life (section 16 of the HR Act)

There are no less restrictive or viable alternatives to achieve the purpose of the Amendment Regulation, which is to enhance transitional provisions to recognise experienced RAC workers.

Right to privacy and reputation (section 25 of the HR Act)

No less restrictive or reasonably available way to achieve the purpose of the Amendment Regulation has been identified.

There are a number of protections and safeguards in place to ensure that the collection of personal information is not conducted arbitrarily nor is it unreasonable where it is used by the QBCC to make an assessment about a person's eligibility to hold a licence. Importantly, any information collected by the QBCC for licence applications is lawfully protected under section 110 of the QBCC Act, where unauthorised disclosure of the information incurs a maximum penalty of 100 penalty units.

(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

Right to recognition and equality before the law (section 15 of the HR Act)

The limitation is considered reasonable and is demonstrably justified.

The requirement for prospective licensees without technical qualifications to apply earlier than others (to be eligible for a licence) is necessary to provide the QBCC with adequate time to process applications. This will avoid adverse impacts on industry, such as labour shortages, higher costs, delays and potentially unsafe work from unlicensed individuals.

Right to life (section 16 of the HR Act)

The limitation is considered reasonable and is demonstrably justified.

It is important that applicants for the mechanical services RAC occupational licence demonstrate competence to undertake the work before being licensed, so that citizens' health and safety is protected.

Right to privacy and reputation (section 25 of the HR Act)

The limitation is considered reasonable and is demonstrably justified. It is important that applicants for the mechanical services RAC occupational licence demonstrate competence to undertake the work. The Amendment Regulation provides an alternative way for experienced workers, without formal qualifications to demonstrate this competence.

(f) any other relevant factors

Not applicable.

Conclusion

I consider that the *Queensland Building and Construction Commission (Mechanical Services Licences) Amendment Regulation 2021* is compatible with the *Human Rights Act 2019* because while it does limit human rights, that limitation is reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

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

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