

# Building and Other Legislation (Queensland Development Code Update) Amendment Regulation 2023

## 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 and Other Legislation (Queensland Development Code Update) Amendment Regulation 2023* made under the *Building Act 1975* and the *Planning Act 2016*.

In my opinion, the *Building and Other Legislation (Queensland Development Code Update) Amendment Regulation 2023*, 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 National Construction Code (NCC) volumes 1 and 2, also known as the Building Code of Australia (BCA), sets out the minimum technical design and construction requirements for buildings, including farm buildings, across Australia. These requirements set the minimum required level for the safety, health, amenity, accessibility and sustainability of certain buildings. Class 7 and class 8 buildings, such as buildings for storage, production, assembling, altering, repairing, finishing, packing or cleaning of goods or produce, which may relate to farming are included.

The BCA is given legal effect in Queensland through the *Building Act 1975* (Building Act) and associated subordinate legislation, including the *Building Regulation 2021* (Building Regulation). The BCA may also be varied in Queensland through statutory instruments, such as the Queensland Development Code (QDC).

On 1 June 2015 the Queensland Development Code Mandatory Part 3.7 – Farm Buildings (QDC MP 3.7) commenced, giving concessions from certain provisions relating to farm buildings contained in Volume One of the BCA. QDC MP 3.7 was introduced in response to requests from the agricultural industry (particularly poultry and piggery suppliers) to reduce construction costs and red tape for new farm buildings. This QDC part offered greater concessions for Queensland farmers across a range of BCA fire safety requirements for class 7 and 8 buildings.

On 1 May 2016 BCA amendments commenced, also giving concessions for farm buildings and separately defining a ‘farm shed’ with no requirement for water supply. In some cases, the BCA concessions go beyond the concessions in the QDC MP 3.7.

The amended QDC MP 3.7 better aligns with the BCA 2022, while maintaining a high fire safety standard in Queensland.

Section 261(2)(a) of the Building Act provides that the Governor in Council may make regulations under the Act with respect to building work.

Section 284 of the *Planning Act 2016* (the Planning Act) provides that the Governor in Council may make regulations under the Planning Act with respect to planning matters.

The *Building and Other Legislation (Queensland Development Code Update) Amendment Regulation 2023* (Amendment Regulation) support the objectives of the Building Act and the Planning Act and makes the following amendments.

The Amendment Regulation gives effect to the amended QDC MP 3.7 to:

- Provide an additional acceptable solution A3(4) to allow several additional water supply options to be used for firefighting purposes for farm buildings. Currently QDC MP 3.7 requires a 144,000-litre water storage tank to be installed for farm buildings.
- Include a new definition for ‘vehicle storage farm shed’ to recognise structures that pose an extremely low fire risk of harm and loss of property (e.g. no walls, minimal and infrequent occupation) and these will not require a firefighting water storage or supply. Currently QDC MP 3.7 requires a 144,000-litre water storage tank for firefighting purposes to be installed for farm buildings.
- Prescribe the water quality standard that applies for firefighting purposes in acceptable solution A3(5) to ensure the safety of Queensland firefighters. Currently no water quality requirements exist in QDC MP 3.7, however these standards are already prescribed in the published Queensland Fire and Emergency Services (QFES) position statement on water quality.
- Update the definitions to be self-contained.
- Update outdated or repealed legislation and references including adoption of the latest version of most Australian Standards referenced and adoption of referenced BCA 2022 provisions.
- Restructure the content in a new format to align with the BCA 2022.

The Amendment Regulation also amends section 88 of the Building Regulation and Schedule 9, part 3, division 3, table 3, item 1, column 2, paragraph (b)(i) of the Planning Regulation 2017 to align with the amended QDC MP 3.7.

## Human Rights Issues

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

During the development of the Amendment Regulation, due regard was given to its compatibility with the *Human Rights Act 2019* (HR Act).

The Amendment Regulation is considered to engage human rights through the amendment of QDC MP 3.7 only to the extent that is reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom as outlined below.

The Amendment Regulation will reduce unnecessary costs which impact the relative competitiveness of Queensland's regional agricultural sector. The Amendment Regulation promotes the *right to life*, by introducing a water quality requirement to ensure water used for fire-fighting purposes to be suitable for human contact. The water quality requirement could potentially limit *property rights* (monetary cost) as explored below.

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

(a) the nature of the right

Section 16 Right to life states every person has the right to life and has the right not to be arbitrarily deprived of life. Section 24 (2) of the HR Act requires that a person must not be arbitrarily deprived of the person's property such as a person's monetary property.

The amendments to QDC MP 3.7 engage and promote the *right to life* by introducing a water quality control requirements based on Australian Standard AS 2419.1:2021 for water to be used for Queensland firefighters. The quality of water in a water storage tank or in an additional water supply option should be suitable for human contact.

By introducing a water quality requirement some farmers may incur additional costs.

(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 amendment provides Queensland farmers with similar options for the provision of dedicated firefighting water supply to those provided in the BCA for farm buildings, while retaining adequate protections for firefighters and residents in line with QFES policies.

Significant cost and time savings are expected to be achieved by the amendment, including:

- a construction cost saving of up to \$100,000 where farmers opt to use additional on-site water supply options (such as dams, bores or rivers) rather than constructing a water storage tank.
- A construction cost saving, where a structure falls in the definition of a 'vehicle storage farm shed' as the structure does not require an on-site water storage or supply.
- A cost saving in regulatory fees for referral applications as these will no longer be required where additional on-site water supply options as prescribed in QDC MP3.7 are used.

No additional costs are expected to be imposed by the additional siting requirements for water supply options in the amendments.

A potential cost increase may result from the requirement for water supply options to meet water quality standards. This impact is unlikely to be significant, and the costs are expected to be negated by the savings realised by the other measures outlined above.

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

A potential cost may result for the requirement for water supply options to meet water quality standards. This impact is unlikely to be significant, and any cost associated with utilising additional on-site water supply options is expected to be negated by the savings realised by not having to construct a water tank as currently required. The cost to provide the water quality required under Australian Standard AS 2419.1:2021 may limit the persons *property right* in a monetary capacity. However, the limitation helps to achieve the purpose to ensure that the quality of water used for fire-fighting is suitable for human contact. This will ensure the safety of firefighters, farmers and the community when the water is used for fighting fires. Preservation of the *right to life* without any limitation means firefighters, farmers and other lives may be at risk should the quality of water not be appropriate.

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

There are no less restrictive and reasonably available ways to ensure the water quality provided by farmers will be suitable for human contact for firefighting purposes as required under AS 2419.1:2021.

(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 purpose of the limitation is to ensure that the quality of water used for fire-fighting purposes is suitable for human contact. This will ensure the safety of firefighters, farmers and the community when the water is used for fighting fires. Preservation of the *right to life* without any limitation means firefighters, farmers and other lives may be at risk should the quality of water not be appropriate.

(f) any other relevant factors

There are no other factors considered relevant.

## Conclusion

I consider that the *Building and Other Legislation (Queensland Development Code Update) Amendment Regulation 2023* is compatible with the *Human Rights Act 2019* because it limits human rights only to the extent that 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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