

# Building and Other Legislation Amendment Regulation 2025

## 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, Samuel O'Connor, Minister for Housing and Public Works and Minister for Youth provide this human rights certificate with respect to the *Building and Other Legislation Amendment Regulation 2025* (BOLA Regulation) made under the *Building Act 1975*, *Plumbing and Drainage Act 2018* and *Queensland Building and Construction Commission Act 1991*.

In my opinion, the BOLA 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

As outlined below, the BOLA Regulation makes changes to subordinate legislation, to reduce regulatory burden, maintain certainty and stability and improve productivity within the building and construction industry, while continuing to support efficient risk-based regulatory effort and appropriate building standards.

### ***Building Regulation 2021***

The *Building Regulation 2006* (BR 2006) expired on 31 August 2021 and the *Building Regulation 2021* (BR 2021) commenced on 1 September 2021. The new regulation replicated and updated the obligations and requirements under the BR 2006.

### Professional Indemnity Insurance

The *Building Act 1975* (Building Act) establishes a licensing framework for building certifiers, including private building certifiers. To be able to perform private certifying functions, an individual must hold the appropriate licence, including any relevant endorsement, under the Building Act and meet the eligibility requirements prescribed in the BR 2021.

Section 163 of the Building Act requires an applicant for a private certifier licence to hold the professional indemnity insurance (PII) prescribed under the BR 2021. Until August 2019, this PII was required to be exclusion free.

In 2019, the BR 2006 was amended to allow a private building certifier to hold PII with exclusions for particular cladding-related work, for an exemption period until 30 June 2021. In 2020, this exemption period was extended until 30 June 2022 and in 2021, the BR 2006 was repealed and replaced with the BR 2021.

In 2022, the challenges faced by building certifiers in acquiring compliant and affordable PII persisted, so the BR 2021 was amended to extend the exemption period until 30 June 2023.

A 2022 report prepared for the department by PriceWaterhouseCoopers Australia on the PII arrangements for building certifiers in Queensland, asserted that exclusion-free policies were unlikely to be attainable and affordable beyond 2023, so the exemption period was extended for a further two years until 30 June 2025.

At a time when governments are driving increased construction in response to the housing crisis, there is a need to ensure sufficient building certifiers exist to meet the targets within the timeframes. Building certification is critical in ensuring buildings are safe and comply with the National Construction Code (NCC).

The department has engaged with the key stakeholders and no concerns were raised with extending the current exemption period for a further two years, from 1 July 2025 until 30 June 2027.

The two-year extension period will provide ongoing certainty about PII provisions for certifiers and industry, and it will allow for the consideration of the outcomes and recommendations of the Productivity Commission review, expected to be completed by the end of 2025.

The BOLA Regulation will also ensure that if the PII exemption applies for a private certifier and their licence is in force when the exemption period ends (30 June 2027), the exemption will continue to apply for the certifier after that date until the end of the 1-year period after the licence was granted or last renewed, unless the licence is earlier cancelled, suspended, amended or surrendered.

#### Extension to the Modern Homes standards exemption (adoption of an amended Queensland Development Code part)

The NCC 2022 included the Modern Homes standards, which require new houses and units to be designed and constructed to increase accessibility for everyone including older people, people with a disability and families with young children.

In Queensland the accessibility requirements commenced on 1 October 2023.

Prior to the introduction of the Modern Homes standards, various stakeholders raised concerns with the application of accessibility requirements to existing narrow lots, and pre-built smaller dwellings that had not yet been installed on a lot. At the time, industry stakeholders were concerned that compliance with the Modern Homes standards accessibility provisions on narrow lots, would limit the house designs that could be delivered on these existing lots and make them less appealing to consumers.

It was suggested that developers would apply to local governments to amend subdivision plans to remove narrow lots. This would inevitably require consequential changes to surrounding lots, that would delay the supply of housing across an entire development.

Concerns were also raised regarding off site smaller modular dwellings, such as completed homes and homes either built, or under construction, at 1 October 2023, which would be prevented from being installed and certified at a later date.

To support Queensland's adoption of the Modern Homes standards, and in response to the extensive engagement with industry, a suite of local transitional measures were implemented, including exemptions and alternative compliance pathways. The supporting measures relating

to the accessibility requirements were adopted through a new Queensland Development Code Mandatory Part 4.5 – Liveable dwellings and grading to floor wastes (QDC MP 4.5).

Included in QDC MP 4.5, is an 18-month exemption from the accessibility standards for certain new dwellings on narrow lots with a frontage of 12.5 metres or less and certain existing pre-built small dwellings in particular circumstances, being:

- if the lots were created prior to 1 October 2023 (and in other limited circumstances) or
- if a class 1a dwellings of 55m<sup>2</sup> or less in floor area has been completed by 1 October 2023, but not installed.

The current time limited exemptions will expire on 31 March 2025.

It is not anticipated that the exemption apply broadly, noting the specific requirements that must be met. It is not possible however, to identify the stakeholders that may be seeking to rely on this change, such as consumers that may meet the parameters of the exemption but have had difficulties finalising the development application for the narrow lot, or installation of a pre-built dwelling prior to 31 March 2025.

If the exemptions are not extended, impacts could present material hardship for such consumers. It is also possible that it could create delays in the supply of housing across an entire development with affected lots.

The BOLA Regulation will extend the exemption period by a further 18 months, so that the exemptions end 30 September 2026 (instead of the current 31 March 2025). This involves revision to the QDC MP 4.5 (to prescribe the revised exemption period) and amendment to the BR 2021 to reference the revised QDC MP 4.5.

### ***Plumbing and Drainage Regulation 2019***

In 2019, an occupational licence fee waiver was established through the Plumbing and Drainage (Occupational Licence Fee) Amendment Regulation 2019.

The occupational licence fee waiver is prescribed in section 119 of the Plumbing and Drainage Regulation 2019 (PD Regulation) which provides that if a person holds both a *Queensland Building and Construction Commission Act 1991* (QBCCA) licence and associated occupational licence, set out in Schedule 9 of the PD Regulation, no fee is payable for the associated occupational licence.

On 1 May 2021, a new fire protection licensing framework commenced in Queensland which reduced the number of fire protection licence types and classes. Consequential amendments were made to Schedule 9 of the PD Regulation, to link restricted water plumber—fire protection occupational licences, with associated fire protection QBCCA licences under the new fire protection licensing framework, so that the occupational licence fee waiver would apply.

However, some types of associated QBCCA licences were not captured, preventing some licensees from receiving an occupational licence fee waiver.

The BOLA Regulation makes minor amendments to the PD Regulation to ensure that an occupational licence fee waiver is equitably applied to all relevant licensees.

### ***Queensland Building and Construction Commission (Minimum Financial Requirements) Regulation 2018***

The *Queensland Building and Construction Commission (Minimum Financial Requirements) Regulation 2018* (the MFR Regulation) prescribes minimum financial requirements for contractor licensees. This includes annual reporting requirements, where certain financial information must be provided to the Queensland Building and Construction Commission (QBCC).

Under the MFR Regulation, licensees are assigned a category based on the maximum revenue they can earn in a financial year. The lowest categories are self-certifying (SC) categories which include SC1, for licensees with a maximum revenue of up to \$200,000, and SC2, for licensees with a maximum revenue of between \$200,001 and \$800,000.

Consultation indicated that individual SC licensees are low risk in terms of potential financial impacts on consumers and other licensees or workers. It was also advised that historically, there is limited regulatory action taken against individual SC licensees in relation to their annual reporting obligations. As a result, the QBCC collects and collates a large amount of information that is not proving to be of significant regulatory benefit.

The BOLA Regulation makes amendments to the MFR Regulation to remove the regulatory and administrative burden on approximately 50,000 individual self-certifying contractor licensees.

### ***Queensland Building and Construction Commission Regulation 2018***

The BOLA Regulation makes minor transitional amendments to the *Queensland Building and Construction Commission Regulation 2018* (QBCC Regulation) to assist the ongoing implementation of Queensland's revised fire protection licensing framework.

On 1 May 2021, a revised industry-led fire protection licensing framework commenced. This followed extensive work and significant consultation, including through public consultation and a committee of industry representatives. Changes included:

- Creating a single 'fire protection – passive stream' licence
- Expanding the definition of 'fire protection equipment to capture all elements of passive fire protection work – the definition now includes fire or smoke walls, fire collars, fire penetration joint and ceiling (i.e. newly regulated passive fire protection work).

Transitional arrangements were provided to support existing licensees and unlicensed workers who would require a licence (i.e. for newly regulated work) to ensure a smooth transition to the revised framework.

The BOLA Regulation makes minor amendments to extend existing transitional arrangements to 1 May 2030, including those for:

- Licensed builders who will need a relevant fire protection licence to continue personally carrying out the work and generally directly or indirectly causing the work to be carried out, or providing building work services.
- Certain unlicensed workers (i.e. those carrying out relevant work for an appropriately licensed contractor prior to 1 May 2021 and who are continuing to carry out this work for an appropriately licensed contractor) who will need to obtain an occupational licence to carry out this work.
- The BOLA Regulation also makes minor amendments to extend the current transitional timeframes for remaining fire protection upskilling requirements to 1 May 2030.

## Human Rights Issues

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

The human rights under the HR Act that are relevant to the BOLA Regulation includes the right to life outlined in section 16. This right includes an obligation on the State to take appropriate steps and adopt positive measures to protect the lives of individuals.

The BOLA Regulation extends existing transitional arrangements for the revised fire protection licensing framework that commenced on 1 May 2021. The revised framework maintains and enhances public health and safety standards and therefore positively addresses obligations of the right to life of all Queenslanders. The amendments to transitional arrangements will support industry readiness in the transition to the revised framework.

It is considered that the BOLA Regulation does not limit the right to life.

The BOLA Regulation does potentially engage and limit the human right to recognition and equality before the law under section 15 of the HR Act, through amendments to the QDC MP 4.5 as explored below.

There are no other human rights affected or engaged by the BOLA Regulation.

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

*Amendment to the Building Regulation 2021 to extend the exemption from compliance with the Modern Homes standards under the QDC MP 4.5*

#### (a) the nature of the right

Sections 15(3) and (4) of the HR Act require all laws and policies to be applied equally and not have a discriminatory effect on particular groups, such as persons with a disability.

Section 15(5) allows positive measures, or differential treatment, to be taken for particular groups to ensure equality in law.

The Modern Homes standards, including the Livable Housing Design Standard (LHDS), in the NCC 2022 engage and promote the right to equality under section 15 of the HR Act.

The right is engaged and promoted as the livable housing design provisions in the NCC are enabled by the Building Act and are a positive measure to ensure equality in law.

Vulnerable persons, such as persons with disability or the elderly, will be better able to access dwellings with features appropriate to their needs, as more new dwellings comply with the LHDS.

Accessible dwellings include one step-free entry into the home, wider internal doorways and corridors, and an accessible sanitary compartment on ground (or entry) level, and reinforcing for future adaptations, such as grabrails in sanitary compartments and bathrooms.

(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

QDC MP 4.5 potentially limits the right to equality as it provides various exemptions to the application of the livable housing design provisions in the NCC 2022.

The further 18-month delay will provide an exemption of the livable housing design provisions in the NCC 2022 to certain narrow lots and certain small pre-built houses.

The exemption will only apply to:

- narrow lots created prior to 1 October 2023, or created after 1 October 2023 and on or before 30 September 2026 but only if:
  - a properly made application for a development permit for reconfiguring of a lot to create the lot was made prior to 1 October 2023; or
  - the lot is identified in a disclosure plan under the Land Sales Act 1984 prior to 1 October 2023.
- small pre-built houses that have been wholly or predominantly manufactured off-site, completed prior to 1 October 2023, and installed on a lot prior to 30 September 2026.

The purpose of the delay is to:

- provide industry stakeholders additional time to understand the complexities of and be able to comply with the livable housing design provisions.
- remove any incentive for developers applying to Local Government to amend subdivision plans to remove lots with a frontage less than 12.5 metres wide and in doing so reduce housing supply and exacerbate Queensland's current housing affordability crisis.
- ensure small prebuilt homes (less than 55m<sup>2</sup> in floor area) completed on or prior to 1 October 2023 can be supplied into the market.

Persons seeking housing may experience a reduced supply of small pre-built houses, or houses or units on narrow lots until 30 September 2026 without this provision.

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

By extending the exemption, to continue to allow non-compliance with the LHDS in the NCC 2022, the right to equality for persons seeking accessible housing will be impeded. Industry will not provide as many appropriate and tailored houses that meet the LHDS in the NCC 2022 to suit the needs of these potential consumers.

However, the exemption for small pre-built homes, will ensure that dwellings substantially completed prior to 1 October 2023, are able to be supplied into the Queensland market.

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

The 18-month delay to the commencement of the Modern Homes standards, including the LHDS, in the NCC 2022 for certain narrow lots and certain small pre-built houses is proportionate, and only affects this defined type of lots and houses.

There is no less restrictive way to achieve the purpose of the limitation. The extension means developers will understand that future lots and houses need to comply with the livable housing design provisions; and, as the exemption will only apply for 18-months, developers will have incentive to finalise these affected narrow lots and small pre-built houses to market. It is noted that a shorter extension of the current provisions will not be able to consider the outcomes of the Queensland Productivity Commission review into the building industry. This may result in further instability and confusion in the industry, which will be avoided by this provision.

(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

Industry may not have appropriate designs in place for accessible houses for narrow lots and small pre-built houses. The purpose of the limitation, is to provide industry additional time to understand and cater for the changes in the livable housing design requirements. It will also remove any incentive for developers to apply to Local Government to amend subdivision plans, to remove lots with a frontage of less than 12.5 metres wide. These scenarios will cause delays to the provision of housing supply during the current housing affordability crisis.

Preservation of the right to equality without any limitation means persons with disability, for example, may have immediate access to housing or units designed to account their needs.

On balance, the importance of increasing housing supply in the short-term outweighs the importance of preserving the human right on a temporary basis.

(f) any other relevant factors

There are no other factors considered relevant.

## Conclusion

I consider that the *Building and Other Legislation Amendment Regulation 2025* 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.

**SAM O'CONNOR MP  
MINISTER FOR HOUSING AND PUBLIC WORKS  
AND MINISTER FOR YOUTH**