

Queensland Building and Construction Commission (Mechanical Services Licences) 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*, I, the Honourable Michael de Brenni MP, Minister for Housing and Public Works, Minister for Digital Technology and Minister for Sport make this human rights certificate with respect to the Queensland Building and Construction Commission (Mechanical Services Licences) Amendment Regulation 2020 (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 2020, 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 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 licence was introduced, which regulates previously unregulated medical gas work and establishes dedicated licence classes for mechanical services work. Since its introduction, industry and the QBCC have advised that more time is needed to allow applicants to understand and meet licensing requirements, including minimum financial requirements. Further, industry has advised that greater recognition is needed for experienced workers who are transitioning into the framework.

The Amendment Regulation will amend the QBCC Regulation to:

- give applicants for a contractors or nominee supervisor mechanical services plumbing or medical gas licence more time to meet the mechanical services licensing requirements, particularly the Minimum Financial Requirements for licensing
- allowing the QBCC to issue a conditional licence restricting the scope of work that the licensee may lawfully perform under the licence, in circumstances where the licensee is unable to demonstrate competence in the full scope of work; and
- clarify and extend the alternative pathway provisions to recognise relevant technical qualifications and experience for applicants of the mechanical services plumbing and medical gas licence classes during the transitional period.

Human Rights Issues

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

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

- Right to recognition and equality before the law (section 15);
- Right to life (section 16);
- Freedom of expression (section 21);
- Privacy and reputation (section 25); and
- Right to liberty and security of person (section 29).

For the reasons outlined below, I am of the view that the Amendment Regulation promotes (and does not limit) the following human rights:

Right to recognition and equality before the law

Section 15 of the Human Rights 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 protects against discrimination based on age of the applicant or their qualifications, particularly where an applicant holds a qualification attained under an older apprenticeship or training scheme.

Right to life

Section 16 of the Human Rights Act provides that every person has the right to life and has the right not to be arbitrarily deprived of life. This right place 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.

The enhanced regulatory framework (implemented through this Amendment Regulation) for the installation, maintenance and commissioning of medical gas systems is crucial in preserving life and supporting medical care to patients.

Right to liberty and security of person

Section 29 of the Human Rights Act provides that every person has the right to liberty and security of person, where the right to security means reasonable steps must be taken to ensure the physical safety of individuals at risk of harm.

In my view, the Amendment Regulation protects the right to security of licensees, co-workers and the community by only permitting suitably qualified and experienced individuals to lawfully perform mechanical services work. Enabling the QBCC to restrict the scope of work that may be performed by a licensee ensures individuals may carry out building work only to the extent of their demonstrated knowledge and experience. For the mechanical services (medical gas) licence, this ensures the physical safety of medical patients and practitioners who

utilise medical gas by ensuring work is performed to required health and safety standards by a competent person.

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

Freedom of expression

(a) the nature of the right

Section 21 of the Human Rights Act protects an individual's right to hold an opinion without interference and to seek, receive and express or impart information and ideas orally, in writing or print, by the way of art or other means. Any act which may be perceived by reasonable members of the public as trying to convey some meaning can be defined as imparting information and ideas, whether or not it is conveyed to a specific person.

Clauses 6 and 7 of the Amendment Regulation allows the QBCC to issue a conditional licence restricting the type of work an individual can legally perform. This could be perceived as limiting an individual's right to seek out or express information when performing work.

(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 licencing framework seeks to protect people who work and live in high-risk buildings, such as high-rise residential apartments and office buildings, commercial retail centres, health care facilities and recreational establishments. These buildings are more likely to have larger, more complex mechanical systems which, if incorrectly installed and maintained, pose higher risks of fire, poor ventilation, exposure to harmful gases, bacteria and inadequate acoustic controls.

The purpose of the regulatory framework for the installation, maintenance and commissioning of medical gas systems is to ensure health and safety standards are met for the safety of occupants in high risk or complex buildings, consistent with the mechanical services licensing framework as a whole. The enhanced regulatory framework (implemented through this Amendment Regulation) prevents persons from performing work when they are inexperienced or unqualified, consequently causing loss of life or risking the health and safety of others should a system be incorrectly installed.

In my view, the purpose of the limitation is to ensure individuals who perform work under a mechanical services licence, possess the necessary qualifications or experience to maintain high standards of work. Conditions placed on a mechanical services licence aim to protect the health of the public from sub-standard medical gas, plumbing or air conditioning and refrigeration work.

This purpose is consistent with the right to life (protected under section 16 of the Human Rights Act), in the context of the positive obligations placed 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. It is also consistent with the right to security of person (protected under section 29 of the Human Rights Act), which similarly places positive obligations on the State to ensure the physical safety of those who are in danger of physical harm (including bodily and mental integrity, or

freedom from injury to the body and mind). This is a proper purpose that is consistent with a free and democratic society based on human dignity, equality and freedom.

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

The limitation on the freedom of expression further assists in achieving the purpose of the amendment by permitting individuals to carry out work only where they are qualified and/or experienced to the necessary standard. The limitation ensures individuals cannot perform types of work under a mechanical services licence to which they do not possess the necessary qualifications or experience to perform. A condition that restricts an individual from performing aspects of work helps achieve the purpose of ensuring the quality and safety of mechanical systems is maintained.

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

No less restrictive and reasonably available ways are available to achieve the purpose of ensuring that mechanical services work is only undertaken by experienced and qualified professionals for the health and safety of the public.

Where an applicant cannot demonstrate competence in the entire scope of works for the mechanical services licence class applied for, it is proposed to allow the QBCC to issue a conditional mechanical services licence that restricts the scope of works that may be performed under the licence. This amendment will enable individuals who have been working in a sector, and who have been performing specialised work prior to the introduction of the regulatory framework, to continue to perform that work.

This limitation on the scope of work able to be lawfully performed achieves the purpose of ensuring work is carried out by experienced individuals so it does not present a risk to the health and safety of building occupants or users. This is particularly important for medical gas system installations, permitted under a medical gas licence, which provide life-sustaining support to patients in health care facilities.

(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 importance of allowing the QBCC to issue a conditional mechanical services licence with a restriction on the scope of work able to be performed is due to the risk to health and safety of persons from incorrectly installed mechanical systems.

I consider that the importance of protecting people from risks of fire, poor ventilation, exposure to harmful gases, bacteria and inadequate acoustic controls from incorrectly installed or maintained systems far outweigh the need to preserve the right to freedom of expression through performing the full range of work permitted under a licence.

On balance, I consider the importance of ensuring the quality and safety of mechanical services systems, including medical gas systems, is maintained (and, in doing so, protecting the right to life and security of the person), outweighs the limitation on freedom of expression.

(f) any other relevant factors

Not applicable.

Privacy and reputation

(a) the nature of the right

Section 25 of the Human Rights Act provides that an individual has the right not to have their privacy, family, home or correspondence unlawfully or arbitrarily interfered with, and not to have their reputation unlawfully attacked. Relevantly, the right protects privacy in the sense of personal information, data collection and correspondence (as well as also extending to an individual's private life more generally). The notion of arbitrariness in the context of the right to privacy carries a particular human rights meaning of 'capriciousness, unpredictability, injustice and unreasonableness – in the sense of not being proportionate to the legitimate aim sought'.

The Amendment Regulation enables the QBCC to request an applicant's personal information, including details of technical qualifications and experience, in order to assess their eligibility for a mechanical services licence through alternative pathways during the transitional period. Personal information may be collected under the Amendment Regulation in the following clause:

- Clause 3 recognises a relevant plumbing apprenticeship and at least six months demonstrated experience in mechanical services work for a mechanical services – plumbing licence;
- Clause 3 recognises a relevant apprenticeship or engineering degree for the mechanical services - medical gas licence; and
- Clause 3 extends the alternative qualification to recognise two years' experience in medical gas work (obtained prior to 1 January 2020) for a mechanical services – medical gas site supervisor or occupational licence application, provided no breach of the *Work Health and Safety Act 2011* has occurred from the work for at least six months.

The Amendment Regulation limits a person's privacy by requiring a person to demonstrate that they meet the technical qualification and experience requirements for a mechanical services licence.

(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 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 seeks to protect people who work and live in high-risk buildings, such as high-rise residential apartments and office buildings, commercial retail centres, health care facilities and recreational establishments, from any risk that can result from incorrectly installed mechanical systems. To prevent these risks, it is therefore crucial the QBCC be able to collect the necessary information from applicants to demonstrate they have the experience and qualifications necessary to perform the work. This purpose is consistent with the right to life (protected under section 16 of the Human Rights Act), in the context of the positive obligations that right places 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. It is also consistent with the right to security of person (protected under section 29 of the Human Rights Act), which similarly places positive obligations on the State to ensure the physical safety of those who are in danger of physical harm (including bodily and mental integrity, or freedom

from injury to the body and mind). Protecting these rights is a proper purpose that is consistent with a free and democratic society based on human dignity, equality and freedom.

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

The collection of personal information under the Amendment Regulation helps to ensure appropriately qualified and experienced individuals are licenced for mechanical services work. The QBCC can lawfully request relevant information under section 33 and 37B of the QBCC Act to allow it to determine whether the applicant meets the licensing eligibility requirements and is 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

No less restrictive and reasonably available ways are available to achieve the purpose of ensuring that an individual is eligible to hold a mechanical services licence than by collecting evidence of their qualifications and experience.

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.

As a less restrictive measure, Clause 4 of the Amendment Regulation amends requirements for the collection of particular personal information during the transitional period. Clause 4 waives the requirement for applicants to provide certain financial information to the QBCC, to demonstrate they meet the minimum financial requirements, until 31 December 2020.

(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 collection of personal information under the Amendment Regulation is necessary to demonstrate that an individual is qualified and experienced to be licensed for mechanical services work. On balance, I consider the importance of ensuring applicants for mechanical services licences hold appropriate qualifications and experience to perform the work (and, in doing so, also protecting the right to life and right to security of person in the context of the risks arising from incorrectly installed mechanical systems) outweighs the limitation on the right to privacy and reputation.

(f) any other relevant factors

Not applicable.

Conclusion

I consider that the Queensland Building and Construction Commission (Mechanical Services Licences) Amendment Regulation 2020 is compatible with the *Human Rights Act 2019* because it does 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.

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