

Queensland Building and Construction Commission (Mechanical Services Licences) Amendment Regulation 2020

Explanatory notes for Subordinate Legislation 2020 No.86

made under the

Queensland Building and Construction Commission Act 1991

General Outline

Short title

Queensland Building and Construction Commission (Mechanical Services Licences)
Amendment Regulation 2020

Authorising law

Section 116 of the *Queensland Building and Construction Commission Act 1991* (QBCC Act).

Policy objectives and the reasons for them

The key policy objectives of the *Queensland Building and Construction Commission (Mechanical Services Licence) Amendment Regulation 2020* (Amendment Regulation) are to enhance the existing transitional arrangements for the mechanical services licensing framework that commenced on 1 January 2020 and support industry through the Public Health Declaration relating to COVID-19.

The new mechanical services licensing requirements commenced on 1 January 2020 and are regulated by the Queensland Building and Construction Commission (QBCC). The Queensland Building and Construction Commission Regulation 2018 (QBCC Regulation) includes transitional provisions intended to recognise businesses and workers who, immediately before the mechanical services licence commenced, were undertaking work that now falls within the scope of work for the new licence.

Businesses and their nominees transitioning to the new framework must hold a mechanical services licence by 1 July 2020. Occupational employees and site supervisors working for a licensed contractor (or one who is undertaking the application process) do not need to be licensed until 1 January 2022.

Some licence applicants have had difficulty meeting or demonstrating that they meet the licensing requirements for reasons that can be categorised under two broad headings (1) transitional timeframes and (2) qualification requirements. The Public Health Declaration for the COVID-19 pandemic has further compounded these matters

by redirecting industry focus to employment, introducing social distancing measures and enhanced hygiene practices.

The objectives of the Regulation are to:

- extend the scope of the alternative qualifications and experience that may be recognised to licence businesses and individuals during the transitional period;
- extend the period that the alternative qualification and experience provisions will apply;
- enable the QBCC to impose a condition on a licence during the transitional period, which restricts the scope of work that may lawfully be performed to match the knowledge, skills and experience of the applicant; and
- provide medical gas businesses more time to understand and demonstrate they meet the minimum financial requirements.

Achievement of policy objectives

The QBCC Act establishes the mechanical services licence, while the QBCC Regulation prescribes the technical details, such as the licence classes, technical and experience requirements, and transitional arrangements.

The QBCC Regulation delegates the technical qualification requirements for individuals licensed under the QBCC Act to the *Technical Qualification for licensing* document (TQ document). The TQ document does not, nor is it intended to, contain transitional qualification requirements.

To transition existing workers into the mechanical services – plumbing and medical gas licence classes, the QBCC Regulation recognises certain qualifications and experience as an alternative to the technical qualifications prescribed in the TQ document.

Since commencement of the mechanical services licensing framework, new information has identified a need to broaden the scope of the alternative recognition provisions to recognise previously unlicensed individuals who have competently been performing medical gas work without holding a formal qualification or applicants who hold older or superseded qualifications.

The Amendment Regulation amends the QBCC Regulation to extend the scope of qualifications that may be used as an alternative to the TQ document requirements during the transitional period, to recognise for the:

- mechanical services – plumbing licence, any plumbing apprenticeship, provided the applicant can demonstrate at least six months experience performing the work within the scope of the licence class being applied for;
- mechanical services - medical gas licence, any relevant apprenticeship, provided the applicant can demonstrate they have performed medical gas work for at least six months in compliance with the *Work Health and Safety Act 2011* (WH&S Act);
- mechanical services - medical gas occupational and site supervisor licence classes a minimum of two years' experience, attained before 1 January 2020, as an alternative to formal qualifications, provided the applicant can demonstrate at least six months of the work complied with the WH&S Act.

The Amendment Regulation will extend the period the alternative qualification and experience provisions can be applied as follows. For applications for the:

- contractors or nominee supervisor mechanical services - plumbing and medical gas licence classes, until 31 December 2020.
- site supervisor and occupation mechanical services - plumbing and medical gas licence classes, until 31 December 2021.

The Amendment Regulation also enables the QBCC to issue a conditional licence restricting the scope of work that may be performed, where an applicant cannot demonstrate competence for the complete scope of work. Once issued, the licence will remain valid until it expires, is suspended or cancelled or surrendered, at which time the licensee would need to meet the licensing requirements for the complete scope of work for the licence class. These amendments will enable individuals who have been working in a sector, and who have been performing specialised work, to continue to perform that work.

The mechanical service licensing framework regulates previously unregulated medical gas work. Some applicants for the mechanical services contractor licence are needing to meet the minimum financial requirements (MFR) for the first time. The QBCC is working with these applicants to ensure all documentation is submitted and is sufficient to enable the QBCC to make informed assessments about the application. The COVID-19 pandemic has impacted the ability for many medical gas businesses to demonstrate compliance with the MFR before 1 July 2020.

While maintaining the overall policy intent of the MFR (to promote financially viable businesses and foster professional business practices in the Queensland building industry), the Amendment Regulation will give applicants for the mechanical services – medical gas contractor licence until 31 December 2020 to comply with certain sections of the minimum financial requirements. Specifically, Parts 3 (Requirements for preparing and giving information), 3B (Maximum revenue), 4 (Net tangible assets) and 4A (Current ratio) of the Queensland Building and Construction Commission (Minimum Financial Requirements) Regulation 2018. Consumer protection requirements are maintained by applying the debt payment requirements. These conditional licences will enable businesses to continue to operate, enter into contracts and receive payments.

The Amendment Regulation will require applicants for a mechanical services – medical gas contractor licence to provide the QBCC with the business's estimated maximum revenue. This will enable the QBCC to charge the same licence fee as would have been charged if the MFR had applied in full.

Consistency with policy objectives of authorising law

The amendment regulation is consistent with the objectives of the QBCC Act, which includes regulating the building industry to ensure the maintenance of proper standards in the industry.

Inconsistency with policy objectives of other legislation

The amendment regulation is consistent with the policy objectives of other legislation. It is also consistent with other State laws that regulate the carrying out of building work in a way that reduces risks to public health and safety.

Alternative ways of achieving policy objectives

The policy objectives can only be achieved by making the amendment regulation.

Benefits and costs of implementation

Regulating mechanical services work through the QBCC provides a consistent regulatory framework across the building and construction industry, maintains professional standards within industry and delivers consumer protection.

The costs for industry to implement the amendment regulation are consistent with other licences regulated by the QBCC. The costs of regulation will be funded by revenue raised from licensing fees and compliance activities and is anticipated to provide a cost-neutral result.

Implementation of the amendment regulation is not expected to incur additional costs for government departments.

The Amendment Regulation will benefit licence applicants who demonstrate they have the relevant skills and experience to safely and to the appropriate standard, perform mechanical services work. These applicants will not need to undertake further training to lawfully perform the mechanical services work they were competently performing prior to the introduction of the licensing requirements.

Consistency with fundamental legislative principles

The mechanical services licence imposes a regulatory burden on the building and construction industry. However, the Amendment Regulation minimises the impact of the regulatory burden by balancing the rights and liberties of existing workers and the need to provide consumer protection.

The Amendment Regulation:

- has sufficient regard to the institution of parliament and only contains matters appropriate to subordinate legislation; and
- is consistent with fundamental legislative principles.

Consultation

The policy objectives reflected in the Amendment Regulation have been informed and refined in consultation with the QBCC. The QBCC supports the proposals and will assist industry with the changes, including messaging and communication.

Targeted consultation occurred with key industry peak bodies, such as the Plumbers' Union Queensland, Master Plumbers Association of Queensland, National Fire Industry Association and the Air Conditioning and Mechanical Contractors Association. All were supportive of or raised no objections to the amendments.

The Ministerial Construction Council were informed of the amendments and have not raised any concerns. The Council comprises representatives from the following peak industry groups:

- Air Conditioning and Mechanical Contractors' Association;
- Association of Wall and Ceiling Industries Queensland;
- Australian Institute of Architects;
- Australian Institute of Building Surveyors;
- Australian Manufacturing Workers' Union;
- Australian Workers Union;
- Board of Architects of Queensland;
- Board of Professional Engineers of Queensland;
- Building Products Industry Council;
- Construction, Forestry, Maritime, Mining and Energy Union;
- Construction Skills Queensland;
- Consult Australia;
- Electrical Trades Union;
- Engineers Australia;
- Housing Industry Association;
- Insurance Council of Australia;
- Landscape Queensland;
- Local Government Association of Queensland;
- Master Builders Queensland;
- Master Concreters Australia;
- Master Electricians Australia;
- Master Painters Queensland;
- Master Plumbers Association of Queensland;
- National Association of Women in Construction;
- National Fire Industry Association;
- Plumbers' Union Queensland;
- Professionals Australia;
- Queensland Building and Construction Commission;
- Queensland Council of Unions;
- Queensland Major Contractors Association; and
- Subcontractors Alliance.

The QBCC supports the proposals and will assist industry with the changes, including messaging and communication.

The Queensland Productivity Commission was consulted and advised that no further regulatory impact assessment is required under the Queensland Government Guide to Better Regulation as the amendments appear unlikely to result in significant adverse impacts.