

# **Building Industry Fairness (Security of Payment) and Other Legislation Amendment (Postponement) Regulation 2021**

Explanatory notes for Subordinate Legislation 2021 No.94

made under the

*Building Industry Fairness (Security of Payment) and Other Legislation Amendment Act 2020*

## **General Outline**

### **Short title**

*Building Industry Fairness (Security of Payment) and Other Legislation Amendment (Postponement) Regulation 2021*

### **Authorising law**

Section 15DA of the *Acts Interpretation Act 1954 (AI Act)*.

Section 2 of the *Building Industry Fairness (Security of Payment) and Other Legislation Amendment Act 2020*

### **Policy objectives and the reasons for them**

Section 15DA of the AI Act provides that if a law has not commenced within one year of assent, the provisions not commenced will automatically commence on the next day. However, a regulation may extend this period to no more than two years.

On 23 July 2020, the *Building Industry Fairness (Security of Payment) and Other Legislation Amendment Act 2020* (BIFOLA Act) received assent. The BIFOLA Act amends the *Building Industry Fairness (Security of Payment) Act 2017*, the *Queensland Building and Construction Commission Act 1991* (QBCC Act) and the *Building Act 1975* (Building Act).

Section 2 of the BIFOLA Act provides that the following provisions commence on a date to be fixed by proclamation:

- sections 46–48, 50 and 54(1), which establish an alternative recognition pathway for the licensing of building certifiers under the Building Act; and
- section 125A, which repeals a licensing exemption for head contractors under the QBCC Act.

While all other provisions of the BIFOLA Act have commenced, these provisions have yet to be proclaimed and, unless delayed, will automatically commence on 24 July 2021.

This regulation postpones the automatic commencement of these provisions to 24 July 2022.

*Alternative recognition pathway*

Sections 46–48, 50 and 54(1) of the BIFOLA Act will amend the Building Act to establish an alternative recognition pathway for the Queensland Building and Construction Commission (QBCC) to license building certifiers who do not hold current accreditation by a prescribed accreditation standards body.

The establishment of an alternative recognition pathway supports the delivery of the Queensland Building Plan's commitment to encourage entrants to the certification industry and to ensure certifiers are qualified and experienced at the appropriate level.

As outlined in the Building Act, the QBCC currently requires applicants for a building certifier licence to submit their current accreditation from a prescribed accreditation standards body. The prescribed qualifications and experience requirements for the proposed alternative pathway must be at least equal to those used by accreditation standards bodies in their assessment for accreditation.

Section 46 of the BIFOLA Act amends sections 155(1) and (2)(a) of the Building Act to establish an alternative recognition pathway for licensing certifiers who do not hold a current accreditation from a prescribed accreditation standard's body.

Section 47 of the BIFOLA Act amends section 156(c)(iv) of the Building Act to recognise the evidence needed to license an applicant who does not hold current accreditation with an accrediting body.

Section 48 of the BIFOLA Act amends section 167(3)(c) of the Building Act to enable an individual to renew their building certifier licence by recognising either a current accreditation or qualification and experience as prescribed.

Section 50 of the BIFOLA Act amends section 172(1) of the Building Act to enable the QBCC to exercise existing powers to suspend or cancel a building certifier licence or amend the licence to impose or remove a condition or change the level of licensing, if a licensee no longer holds accreditation with an accrediting body nor has the prescribed qualifications and experience.

Section 54(1) of the BIFOLA Act amends section 186(2) of the Building Act to acknowledge that individuals with prescribed qualifications and experience, and who are not currently accredited by an accreditation standards body, may be suitable to hold a building certifier licence.

Extending the automatic commencement of the BIFOLA Act provisions will allow the Department of Energy and Public Works additional time to consult on and finalise the framework for the alternative recognition pathway. The framework will include technical qualifications and experience, continuing professional development requirements and QBCC administrative processes.

### *Head contractor licensing exemption*

Section 42 of the QBCC Act provides that, unless exempt under Schedule 1A of the Act, a person must not carry out, or undertake to carry out, building work unless they hold an appropriate contractor licence.

Section 8, Schedule 1A currently allows unlicensed head contractors to enter into building contracts and arrange for building work to occur, provided the work is:

- not residential construction work or domestic building work; and
- carried out by an appropriately licensed contractor.

Section 125A of the BIFOLA Act provides for the repeal of the licensing exemption for head contractors. The provision was included in the BIFOLA Act as a result of a recommendation made by the Transport and Public Works Parliamentary Committee, following feedback about misuse of the licensing exemption.

The postponement regulation will allow additional time to consult on implementation.

## **Achievement of policy objectives**

The postponement regulation will extend the period before the automatic commencement of the relevant provisions to 24 July 2022 unless earlier commenced by proclamation.

## **Consistency with policy objectives of authorising law**

The postponement regulation is consistent with the objectives of the AI Act, the BIFOLA Act and the legislation that the BIFOLA Act amends.

## **Inconsistency with policy objectives of other legislation**

No inconsistencies with the policy objectives of other legislation have been identified.

## **Alternative ways of achieving policy objectives**

Given the provisions of the AI Act, the policy objectives can only be achieved by making the postponement regulation. These issues cannot be addressed administratively or by other policy means.

## **Benefits and costs of implementation**

The postponement regulation will achieve its policy objectives and no appreciable costs have been identified.

## **Consistency with fundamental legislative principles**

The postponement regulation is consistent with fundamental legislative principles.

## **Consultation**

The Ministerial Construction Council (MCC) has been consulted on the intention to postpone the commencement of the provisions of the BIFOLA Act relating to the alternative recognition pathway. MCC members include the Australian Institute of Building Surveyors, Master Builders Queensland and the Housing Industry Association.

Targeted consultation has also been undertaken with Master Builders Queensland, the National Fire Industry Association, the Plumbers' Union Queensland, the Civil Contractors' Federation of Queensland, the Queensland Major Contractors Association, the Property Council of Australia and the QBCC on the proposal to postpone the head contractor licensing exemption.

All parties consulted on the proposals support the postponement.

In accordance with *The Queensland Government Guide to Better Regulation*, the Office of Best Practice Regulation was not consulted in relation to the proposed postponement of the repeal of the head contractor licensing exemption as the proposal was assessed as falling within agency-assessed exclusion categories.

The Office of Best Practice Regulation was consulted in relation to the postponement of the alternative recognition pathway and considers that the proposal is unlikely to result in significant adverse impacts, is machinery in nature and that no further regulatory analysis is required.