

# Building Industry Fairness (Security of Payment) (Transitional) 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, Michael de Brenni MP, Minister for Housing and Public Works, Minister for Digital Technology and Minister for Sport provide this human rights certificate with respect to the *Building Industry Fairness (Security of Payment) (Transitional) Regulation 2020* (transitional regulation) made under the *Building Industry Fairness (Security of Payment) Act 2017* (BIF Act).

In my opinion, the transitional 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

The transitional regulation facilitates the operation of certain amendments made by the *Building Industry Fairness (Security of Payment) and Other Legislation Amendment Act 2020* (BIFOLA Act) to the BIF Act, commencing on 1 October 2020.

The BIFOLA Act does not provide specific transitional provisions for amendments to the BIF Act relating to progress payments. Accordingly, the transitional regulation provides transitional provisions for the following sections in Part 4 of the BIFOLA Act:

- section 64, which amends the definition of ‘complex payment claim’ under section 64 of the BIF Act to remove reference to GST.
- section 74, which amends section 99 of the BIF Act which requires the claimant to give notice to a respondent about their intention to start proceedings in a court to recover an amount owed to the claimant. Section 74 extends the timeframe for giving a notice from 20 business days after the due date for the progress payment to 30 business days.

Without transitional provisions, the BIFOLA Act amendments may affect existing payment claims and proceedings, causing confusion for industry. The transitional regulation provides that section 64 will apply to payment claims made on or after 1 October 2020, while section 74 will apply to payment claims that are due for payment on or after 1 October 2020. This will help avoid any misunderstanding or misinterpretation about the effect of the progress payment amendments.

## Human Rights Issues

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

The transitional regulation will clarify the application of sections 64 and 74 of the BIFOLA Act and does not limit any human rights.

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

The transitional regulation does not limit, restrict or interfere with human rights.

## Conclusion

I consider that the transitional regulation is compatible with the *Human Rights Act 2019* because it does not limit any human rights.

**MICHAEL DE BRENNI MP**  
MINISTER FOR HOUSING AND PUBLIC WORKS  
MINISTER FOR DIGITAL TECHNOLOGY  
MINISTER FOR SPORT

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