

Building and Plumbing Newsflash 579

Building Industry Fairness (Security of Payment) and Other Legislation Amendment Regulation 2020 brings in new building laws

Purpose

To advise that the following changes commence on 1 October 2020. Amendments made to the:

- *Building Act 1975* (Building Act) by the *Building Industry Fairness (Security of Payment) and Other Legislation Amendment Act 2020* (BIFOLA Act); and
- Building Regulation 2006 (Building Regulation) by the Building Industry Fairness (Security of Payment) and Other Legislation Amendment Regulation 2020 (BIFOLA Regulation).

Background

Building Act amendments introduced through the BIFOLA Act

The [BIFOLA Act](#) received assent on 23 July 2020 and among other things, amends the Building Act to implement the first phase of certification reforms in the [2017 Queensland Building Plan](#) and address issues identified through the national [Building Confidence Report](#). The Building Act amendments, except for the alternative licensing pathway provisions, commence on 1 October 2020.

These amendments will:

- enhance the professional standards and the independence of building certifiers
- strengthen the certification and inspection process
- require notification of engagement to the relevant local government by the certifier if the owner is the client or when the client is not the owner
- allow owners to require additional non-mandatory inspections and inspection documentation
- make it clear that a certifier's primary duty is to act in the public interest
- require accreditation standards bodies to have their professional development schemes regularly reviewed
- enhance compliance through new laws regarding disqualification and the introduction of a demerit point scheme.

BIFOLA Regulation 2020

Consequential amendments made to the Building Regulation through the BIFOLA Regulation support implementation of the Building Act provisions and commence on 1 October 2020.

Prescribed detail of the Demerit Point Scheme

The BIFOLA Act introduces a Demerit Point Scheme for building certifiers, which provides that a building certifier's licence will be disqualified if they accrue 30 demerit points within a three-year period.

The following is an overview of the Demerit Point Scheme.

- Demerit offences commence on 1 October 2020.
- A single offence can have no more than 10 demerit points allocated for the breach.
- A maximum of 20 demerit points can be accrued per investigation or audit.
- 30 demerit points or more within a three-year period will result in disqualification.
- A person's building certifier licence will be cancelled if they become a disqualified person.
- Demerit points must be allocated if a person is convicted of a demerit offence through a court finding, payment of an infringement notice or registration of an unpaid infringement notice with the State Penalties Enforcement Registry.
- When demerit points are allocated, the individual will be notified that they have accumulated demerit points.
- The disqualification period for a person cannot be longer than 1 year in the first instance or three years if the individual has been disqualified within the last 10 years.
- Points and disqualification records will be published on the QBCC Certifier Register.

For more information on the demerit point scheme, read Part 5 of the *Building Act 1975* (Disqualified Individuals).

The BIFOLA Regulation establishes a new schedule in the Building Regulation which prescribes the demerit offences and assigns demerit point values for each offence.

Administrative amendments

Other amendments to the Building Regulation are administrative in nature and include:

- extending the record keeping period for a decision about a competent person (refer s19 of the Building Regulation), from five years to seven years, to align with the Building Act requirements.
- giving effect to the replacement Code of Conduct for Building Certifiers made by the Chief Executive which clarifies that the certifier's primary duty is to act in the public interest.
- prescribing all accreditation standards bodies in a single statutory instrument (the Building Regulation) for consistency.
- listing all mandatory parts of the Queensland Development Code (QDC) in the Building Regulation to improve legislative arrangements and make it more accessible for industry and consumers.

Other amendments to the Building Regulation:

- will ensure the current provisions of the Queensland Development Code (QDC) that regulate the design and siting of residential buildings will continue to apply to those buildings pending possible regulatory changes in the future.
- update the QDC by replacing the current version of the part of the QDC known as 'MP 4.1 - Sustainable Buildings' (QDC 4.1) with a new version of the part.

The pending [Queensland Development Code MP 4.1–Sustainable buildings](#) (QDC 4.1) has been updated to include separate cooling and heating load limits as part of the energy efficiency (star rating) of new residential dwellings. The version published on 15 September 2020, has been amended. Read a [summary of changes](#). The QDC 4.1 is now **proposed to commence on 1 March 2021**.

Supporting administrative documents from 1 October 2020

The following forms have been created and amended to facilitate compliance with the new and amended Building Act and Building regulation provisions:

- amended form 11 – Certificate/interim certificate of occupancy
- amended form 18 – Notice to the owner that a private certifier has been engaged
- new form 33 – Additional certification notice
- new form 34 – Change in owner details notice
- new form 35 – Owner request for inspection documentation
- new form 39 – Client gives owner details to private certifier
- amended form 56 – Notice to the local government that a private certifier has been engaged.

You can access all the building forms on the [Business Queensland website](#).

For more information about requests for additional certification inspection/s or requests for inspection documentation visit the [Department of Housing and Public Works' website](#).

Other documents amended from 1 October 2020 include:

- a replacement [Code of Conduct for Building Certifiers](#) to include the primary duty of a building certifier is to always act in the public interest.
- **updated Guidelines** made under section 258 of the Building Act:
 - Inspections of Class 1 and Class 10 Buildings and Structures
 - Inspections of Class 2 to 9 Buildings
 - Assessment of Competent Persons
 - Certificates of Occupancy.

You can access all the building guidelines on the [Business Queensland website](#).

More information

For more information about the changes:

- Read the [BIFOLA Regulation](#)
- Visit the [Department of Housing and Public Works website](#)

Contact us

Building Legislation and Policy
Department of Housing and Public Works
Email: BLP@hpw.qld.gov.au

If you have not received this newsflash directly from Building Legislation and Policy, you can subscribe via bcqnewsflash@qld.gov.au