



BIFOLA Reforms Certifier Webinar

Objectives

As a building certifier, you should:

- Recognise new key BIFOLA terms and concepts
- Understand how reforms impact certification process
- Understand how reforms impact your role as a certifier
- Feel confident you know how to comply with the new laws
- Know where to find more information

BIFOLA Overview

BIFOLA stands for **B**uilding **I**ndustry **F**airness and **O**ther **L**egislation **A**men~~de~~ment Act.

BIFOLA Act was made on 23 July 2020

Makes changes to:

- *Building Industry Fairness (Security of Payment) Act 2017* (BIF Act)
- *Queensland Building and Construction Commission Act 1991* (QBCC Act)
- *Building Act 1975*

Rolling commencement dates – from 1 October 2020

BIFOLA Overview

BIFOLA Objectives

- ✓ **Ensure everyone gets paid** – improves Project Bank Account framework introduced in 2018 and introduces new payment dispute options.
- ✓ **Industry Confidence and Growth** – improves QBCC’s capability in terms of licensing; monitoring and reporting on minimum financial requirements (MFR) and enforcing penalties regarding offences for non-compliance with laws.
- ✓ **Fulfil Government commitments to Industry** – as outlined in Queensland Building Plan.

Building Act and certification

- ✓ New obligations on clients and certifiers to provide certain notices
- ✓ Owner who is not the client can request certifier documentation
- ✓ Owner who is not the client can request additional certifying functions
- ✓ Primary duty of a certifier to act in public interest
- ✓ Timeframes for certifiers keeping inspection documentation
- ✓ Certifier demerit points and disqualification
- ✓ Limitations on making minor complaints about building certifiers to QBCC
- ✓ Accreditation bodies prescribed in regulation
- ✓ Updates to terminology

REFORMS AFFECTING BUILDING CERTIFIER'S ROLE

Certifier notification requirements

Certifier engaged by building owner or building development applicant:

- Certifier must give the local government notice of their engagement within 5 business days – *Form 56*.

Certifier engaged by a person other than the owner or applicant (i.e. a client or building contractor):

- Certifier must give the owner their name and details of their responsibilities within 15 business days – *Form 18*
- Certifier must give the local government notice of their engagement within 15 business days – *Form 56*

Notification forms and templates will be available on the Business QLD website:

<https://www.business.qld.gov.au/industries/building-property-development/building-construction/forms-guidelines/forms>

Certifier notification requirements

If the person (the Client) who engages the building certifier is not the owner or building development applicant:

- the Client must give the private certifier the owner's name and contact details within 10 business days.

If the owner's name or contact details change:

- the Client must give notice of the change to the private certifier within 5 business days.

Notification forms and templates will be available on the Business QLD website:

<https://www.business.qld.gov.au/industries/building-property-development/building-construction/forms-guidelines/forms>

Obtaining certification documents

BEFORE work reaches the final stage:

- A building owner (if they did not engage the certifier) of any class of building can request inspection documentation for any stages of certification
- At any time before the final stage inspection via a written notice given to the building certifier
- Template on the QBCC website – *s124A Request for Certifier Inspection Documentation*
- The building certifier must comply within 5 business days
- Failure to comply with a request is an offence and penalties may apply – 20 PU.

Note: No change to the final stage documentation already required to be given to the owner.

Additional certifying functions

- A building owner (if they did not engage the certifier) can request additional certifying functions
- Additional to the standard stage inspections already required
- Template on the QBCC website – *s143B Additional Certification Notice*
- Certifying functions must relate to compliance with the BCA or QDC
- Building owner requesting the additional inspections must pay for the reasonable costs associated with the additional functions
- Offences against certifiers and clients for failure to comply

Note: the QBCC's domestic building contract templates, the QBCC website and the Domestic Building Contracts Guide will be updated with information on the new requirements.

Additional certifying functions

Additional Certifying Function Process:

1. Owner gives client *s143B Additional Certification Notice* (within 10 business days)
2. Client gives copy of *s143B Additional Certification Notice* to the Certifier (within 5 business days)
3. An **agreed day** for completing the inspection/function is determined. Failing agreement, the certifier decides.
4. Certifier performs additional certifying functions on or before the **agreed day** (unless certifier has reasonable excuse)
5. Certifier gives the owner and client copies of all documentation (within 5 business days)

Other certifier requirements

- Certifiers have a duty to **act in the public interest at all times**
- This duty prevails if there are any inconsistencies
- Significant penalties may apply for a certifier's failure to act in the public interest
- Certifiers must keep copies of **inspection documentation for 7 years** from completion of the building work.
- **Accreditation Bodies** prescribed in regulation

Note: the Certifier Code of Conduct will be updated – HPW website.

Changes to terminology

BUILDING CODE OF AUSTRALIA (BCA) SECTION 12

- Clarification has been provided that the BCA is made up of National Construction Code (NCC) volumes 1 and 2 (including the Queensland Appendixes)

QUEENSLAND DEVELOPMENT CODE (QDC) SECTION 13

- The QDC will now be prescribed by regulation
- Previously it was contained in schedule 1 of the Building Act, and supplemented with amendments made by regulation.
- Also, the QDC must now be published on DHPW's website (and not only its amendments).

PERFORMANCE SOLUTION SCHEDULE 2

- Formerly known as **alternative solution**
- If a building solution does not satisfy either the deemed-to-satisfy provisions under the BCA, or an acceptable solution under the QDC, a performance solution is a material, system, or method of building complying with the BCA or QDC performance requirements.

RESIDENTIAL DESIGN & SITING PROVISIONS SCHEDULE 2

- Formerly known as **boundary clearance and site cover provisions**
- Refers to the QDC requirements addressing the design and siting of residences.
- Examples include boundary setbacks and building heights.

CERTIFICATE OF OCCUPANCY SCHEDULE 2

- Formerly known as **certificate of classification**
- A certificate given by a building certifier when a building or structure is substantially complete. The certificate details the building's classification, such as a class 6 (retail).
- *Note: does not apply to class 1a (single dwelling) and class 10 buildings and structures.*

REGULATION OF BUILDING CERTIFIERS

Certifier demerit points

- Demerit offences committed from 1 October 2020
- Allocated after conviction of an offence:
 - Court finding
 - Payment of infringement notice
 - Registration of an unpaid infringement notice with SPER
- Notice sent to licensee
- Points published on the Certifier Register
- Maximum of 20 demerits per audit or investigation
- **30 demerit points or more within a 3 year period may lead to disqualification**

Certifier demerit points

Disqualification Process:

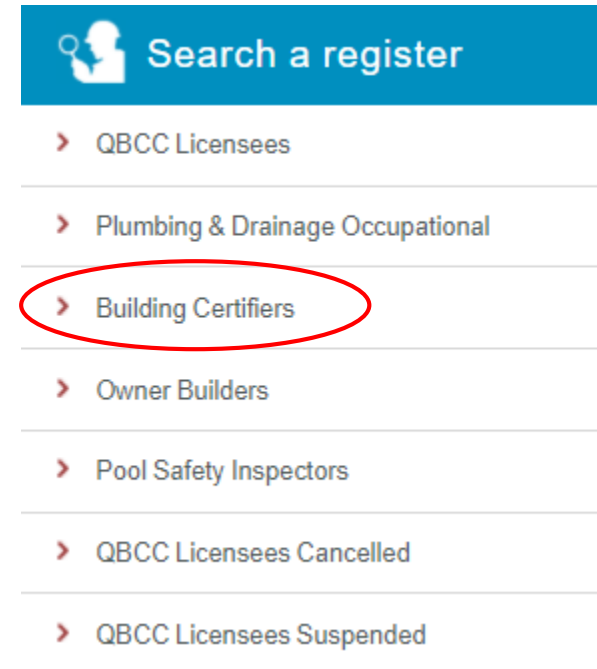
1. Notice of proposed disqualification
2. Certifier has opportunity to provide submissions
3. QBCC decision to disqualify or no further action
4. Certifier disqualified and licence cancelled
 - for up to 1 year (first time disqualified) OR
 - up to 3 years (if they've already been disqualified within the last 10 years)
5. Disqualification information published on the Certifier Register.

Note: the decision to disqualify a certifier is a reviewable decision.

Certifier demerit points

QBCC Certifier Register

- Demerit points
 - Offence
 - Dates the points took effect
- Disqualification
 - Details of the circumstances that led to the disqualification



Note: the QBCC has the discretion to not record information in the public register in certain circumstances.

Certifier complaints

Changes

- The QBCC can reject complaints that are frivolous, vexatious, or lacking in substance or credibility.
- Complaints must be made before the **cut-off day** (unless the certifier's conduct has or may have caused significant financial loss or other serious harm)

Cut-off day is either of the following:

1. Building development approval = within 7 years
2. Building development application = within 1 year.

Recap - you should now be aware
of these changes

What's changing?

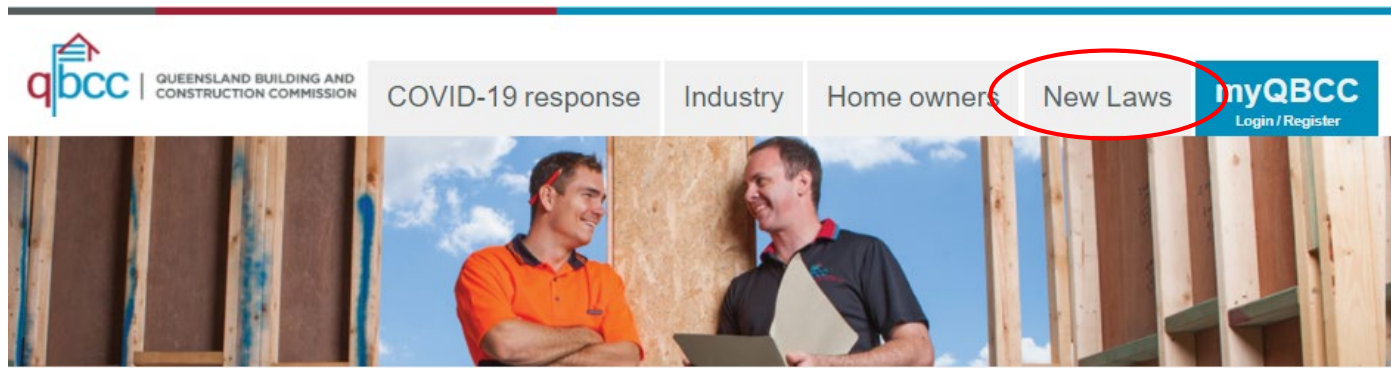
BIFOLA has made important changes to the Building Act including:

- ✓ demerit points and disqualification of licensed building certifiers
- ✓ the online certifier's register
- ✓ the process of making complaints about building certifiers to QBCC
- ✓ updated terminology
- ✓ the duty to act in the public interest
- ✓ the obligation to give owner certain inspection documents
- ✓ notices required to be given by building certifiers and clients during a building project
- ✓ the option for owners to request additional inspections

These new requirements apply from [1 October 2020](#).

Further Information

- QBCC Website – updated certifier sections and ‘New Laws’ page:
www.qbcc.qld.gov.au



- DHPW website: www.business.qld.gov.au/industries/building-property-development/building-construction/forms-guidelines

Questions?

Thank you!

Need more information?

Visit qbcc.qld.gov.au



299 Montague Road
West End Qld 4101
GPO Box 5099
Brisbane Qld 4001
qbcc.qld.gov.au