



Queensland

Standard Plumbing and Drainage Amendment Regulation (No. 1) 2013

Explanatory Notes for SL 2013 No. 138

made under the

Plumbing and Drainage Act 2002

General outline

Short title

Standard Plumbing and Drainage Amendment Regulation (No. 1) 2013.

Authorising law

Section 145 of the *Plumbing and Drainage Act 2002*

Policy objectives and the reasons for them

A new legislative scheme to cut red tape associated with routine plumbing work was introduced on 1 November 2012. The new scheme is set out in the *Plumbing and Drainage Act 2002* (PDA) and related subordinate legislation, including the *Standard Plumbing and Drainage Regulation 2003* (SPDR).

The notifiable work scheme expands the category of plumbing and drainage work that does not require a compliance permit and mandatory local government inspections, by introducing a new category of work known as 'notifiable work'. (Work requiring a compliance permit and mandatory local government inspections is known as 'compliance assessable work'.) Under the notifiable work scheme, plumbers and

drainers can undertake notifiable work without first having to obtain a compliance permit or having to request assessment of completed work. A licensed plumber or drainer is simply required to give the Plumbing Industry Council (PIC) written notice of the completed work. In most cases, a fee is payable by the person lodging the notice.

To ensure the continuation of public health and safety standards and to improve compliance with relevant standards, notifiable work is the subject of audit programs undertaken by the PIC and local government inspectors. The fees for the lodgement of notices of notifiable work have been calculated to cover the cost of the audit programs.

A licensee may request a local government inspection of notifiable work if they wish to do so, to obtain advice about their work from a local government inspector and seek assurance that their work complies with the SPDR. Requested inspections may attract a cost-recovery fee fixed by a local government under the *Local Government Act 2009* or the *City of Brisbane Act 2010*.

The *Housing and Other Legislation Amendment Act 2013* (HOLA) includes amendments of the PDA, many of which relate to the notifiable work scheme. Amendments of the SPDR are required to align the SPDR with the PDA as amended by the HOLA.

The policy objectives of the Regulation are to:

- align the SPDR with the PDA as amended by the HOLA; and
- clarify when compliance assessable work (work requiring local government approval) is taken to be 'completed', to ensure that a plumber is not allowed to delay an inspection of compliance assessable work by the local government, by refusing to complete an insignificant aspect of the work; and
- include in the SPDR other minor amendments necessary to consolidate definitions within the SPDR.

The Regulation promotes a consistent legislative framework for plumbing and drainage. It also facilitates the ongoing operation of the notifiable work scheme which reduces red tape for most routine plumbing work.

Achievement of policy objectives

The Regulation includes amendments of the SPDR primarily required to align it with the PDA as amended by the HOLA. In particular, the Regulation:

- removes references to 'on-site sewerage work' that are redundant as a result of amendments in the HOLA clarifying that 'on-site sewerage work' is a subset of 'drainage work';
- clarifies the distinction between on-site sewerage work that is compliance assessable work and on-site sewerage work that is notifiable work or minor work;
- removes references to 'on-site sewerage facility' that are redundant as a result of amendments in the HOLA clarifying that 'an on-site sewerage facility' is a subset of 'drainage';
- specifies when a local government is required to inspect notifiable work;
- removes parts of the definition of *notifiable work* that are redundant as a result of amendments in the HOLA;
- provides that a rectification notice for notifiable work can be issued to both the responsible person for the work and any licensed contractor involved;
- replaces references in the SPDR to the 'assessment' of notifiable work with references to the 'inspection' of notifiable work, to align the terminology used in the SPDR with the terminology used in the HOLA;
- replaces two definitions of *responsible person* with a single comprehensive definition of the term; and
- removes the definition of *48 hours* from section 17 and inserts a definition of the term into the SPDR, schedule 6 (Dictionary) that applies for inspecting notifiable work as well as for assessing compliance assessable work.

The Regulation also clarifies when compliance assessable work is taken to be 'completed', to ensure that a plumber is not allowed to delay a local government inspection of compliance assessable work, by refusing to complete an insignificant aspect of the work.

Consistency with policy objectives of authorising law

The Regulation is consistent with the objectives of the *Plumbing and Drainage Act 2002*.

Inconsistency with policy objectives of other legislation

The Regulation is consistent with the policy objectives of other legislation.

Benefits and costs of implementation

For the benefit of the plumbing and drainage industry and consumers, the Regulation clarifies aspects of the notifiable work scheme, including by:

- distinguishing on-site sewerage work that is compliance assessable work from on-site sewerage work that is notifiable work or minor work; and
- providing that a rectification notice for notifiable work can be issued to both the responsible person for the work and any licensed contractor involved; and
- specifying when a local government is required to inspect notifiable work.

Because the scheme has already been implemented there are no additional financial costs associated with this Regulation.

Consistency with Fundamental Legislative Principles

The Regulation has been drafted with regard to fundamental legislative principles as defined in section 4 of the *Legislative Standards Act 1992*. The Regulation is consistent with those principles.

Consultation

In 2012, extensive consultation about the notifiable work scheme was undertaken prior to its introduction via amendments of the PDA and the SPDR. Stakeholders, including members of the plumbing industry, individual plumbing licensees, local governments and the general public participated in the consultation process.

Amendments included in the *Housing and Other Legislation Amendment Bill 2012* support and refine the notifiable work scheme. The amendments were subject to consideration by the Transport, Housing and Local Government Committee of the Queensland Parliament. Issues raised by the Committee have been addressed in the Regulation.

The Regulation contains minor consequential amendments that are necessary to ensure the effective operation of the notifiable work scheme.

The proposal to make the Regulation was submitted to Office of Best Practice Regulation (OBPR) for assessment against the Regulatory Impact Statement (RIS) system guidelines. OBPR advised that the proposal was considered not to produce significant impacts from a regulatory burden perspective, and that a RIS was not required.

Notes on Provisions

Part 1 Preliminary

Short Title

Clause 1 sets out the short title of the Regulation.

Regulation Amended

Clause 2 provides that this regulation amends the *Standard Plumbing and Drainage Regulation 2003*.

Amendment of s 3 (Status)

Clause 3 removes from section 3(3) a reference to 'or on-site sewerage work' that is redundant as a result of amendments in the HOLA clarifying that 'on-site sewerage work' is a subset of 'drainage work'.

Amendment of s 6C (Notifiable work-Act, sch, definition notifiable work)

Clause 4 removes from section 6C parts of the definition of *notifiable work* that are redundant as a result of:

- amendments of section 87 of the PDA included in the HOLA; and
- new section 81A, inserted into the PDA by the HOLA.

The clause removes the words 'as part of a single transaction' because those words have been included in section 87(2) of the PDA. The effect of section 87 is that multiple pieces of notifiable work that form part of a single transaction, for example plumbing work for a kitchen renovation, can be included in a single notice of notifiable work required to be given to the PIC.

The clause also introduces a note that draws the attention of the reader to the presence of section 81A.

New section 81A allows a licensee proposing to undertake a combination of notifiable work and compliance assessable work, or notifiable work only, to make a compliance request and seek a compliance permit and certificate for the work from the relevant local government.

In addition, the clause renumbers section 6C(5) as section 6C(4), following the removal of the existing version of section 6C(4).

Amendment of pt 3, hdg (Compliance assessment)

Clause 5 replaces the reference in the heading for part 3 to the 'assessment' of notifiable work with a reference to the 'inspection of notifiable work', to align the terminology used in the heading with the terminology used in the HOLA.

Amendment of s 13 (Application of pt 3)

Clause 6 removes from section 13(1) a reference to 'on-site sewerage work' that is redundant as a result of amendments in the HOLA clarifying that 'on-site sewerage work' is a subset of 'drainage work'.

The clause also replaces a reference in section 13(2) to the 'assessment' of notifiable work with a reference to the 'inspection' of notifiable work, to align the terminology used in the section with the terminology used in the HOLA.

In addition, the clause updates a cross-reference in the note following section 13, required to be updated as a result of an amendment of section 87 of the PDA.

Amendment of s 14 (General requirements for plans the subject of a compliance request)

Clause 7 removes from section 14 references to 'or on-site sewerage facility' that are redundant as a result of amendments in the HOLA clarifying that 'an on-site sewerage facility' is a subset of 'drainage'.

The clause also clarifies that 14(3)(a)(iv) applies to compliance assessable work for an on-site sewerage facility rather than on-site sewerage work that is notifiable work or minor work.

Amendment of s 14D (Additional requirements for plans for on-site sewerage facilities)

Clause 8 clarifies the application of section 14D by distinguishing between compliance assessable work for an on-site sewerage facility and other types of compliance assessable work.

The clause also omits section 14D(2)(a)(i), which is redundant because it replicates section 14(2)(a).

In addition, the clause renumbers section 14D(2)(a)(ii) and (iii) as section 14D(2)(a)(i) and (ii), following the removal of section 14D(2)(a)(i).

Amendment of s 15 (Certificates for plan given by competent person)

Clause 9 removes from section 15(1) a reference to 'or on-site sewerage work' that is redundant as a result of amendments in the HOLA clarifying that 'on-site sewerage work' is a subset of 'drainage work'.

The clause also removes from section 15(3) a reference to 'or on-site sewerage facility' that is redundant as a result of amendments in the HOLA clarifying that 'an on-site sewerage facility' is a subset of 'drainage'.

Amendment of pt 3, div 3, hdg (Assessing plumbing and drainage work or on-site sewerage work)

Clause 10 removes from the heading for part 3, division 3, a reference to 'or on-site sewerage work' that is redundant as a result of amendments in the HOLA clarifying that 'on-site sewerage work' is a subset of 'drainage work'.

Omission of s 17 (Definition for div 3)

Clause 11 omits section 17 which provides a definition of *48 hours* for provisions about assessing compliance assessable work.

Clause 29 inserts a definition of *48 hours* in the SPDR, schedule 6 (Dictionary), which applies for provisions about inspecting notifiable work as well as provisions about assessing compliance assessable work.

Amendment of s 18 (Request for compliance assessment of compliance assessable work or on-site sewerage work)

Clause 12 removes from section 18 references to 'or on-site sewerage work' that are redundant as a result of amendments in the HOLA clarifying that 'on-site sewerage work' is a subset of 'drainage work'.

Amendment of s 19 (Stages for assessment of compliance assessable work)

Section 19(1)(d) of the SPDR prescribes as a stage for assessment of compliance assessable work 'when the plumbing or drainage work, the subject of the request for compliance assessment, is completed'. Section 19(2)(b) requires the responsible person for the work to request an assessment of the completed work within 7 days after the work is completed.

Clause 13 clarifies when work is taken to be completed. It complements the notifiable work scheme by providing that compliance work is completed when it is operational (in working order and ready for use). The amendment provides the industry and consumers with clarity as well as consistency as between the requirements for notifiable work and those for work that is compliance assessable (i.e. work that requires a local government approval).

In the past, there have been times when a licensee has refused to finish compliance assessable work for a new building and request an assessment of the work until the licensee has been paid by the builder, even though the unfinished work is operational.

For example, in the past certain licensees have argued that because pipe was not lagged, or clips were not fastened, the work was not completed. However, in these cases the work was operational because it was capable of being used for the purpose for which it was installed.

Under the amended provision, work that is operational is taken to be completed. As a result, the licensee must request an assessment of the work within 7 days of it becoming operational.

By clarifying the meaning of 'completed', clause 13 will minimise the risk of deliberate delays occurring.

Amendment of s 19A (Stages for assessment of on-site sewerage work)

Clause 14 clarifies the distinction between on-site sewerage work that is compliance assessable work and on-site sewerage work that is notifiable work or minor work.

Amendment of s 19B (Obligations of responsible person for on-site sewerage work)

Clause 15 clarifies the distinction between on-site sewerage work that is compliance assessable work and on-site sewerage work that is notifiable work or minor work.

Amendment of s 20 (Assessment of stages of work by local government)

Clause 16 removes from section 20(1) a reference to 'or on-site sewerage work' that is redundant as a result of amendments in the HOLA clarifying that 'on-site sewerage work' is a subset of 'drainage work'.

The clause also removes from section 20(4) a reference to 'or on-site sewerage facility' that is redundant as a result of amendments in the HOLA clarifying that 'an on-site sewerage facility' is a subset of 'drainage'.

Amendment of s 21 (Covering plumbing and drainage or on-site sewerage facility)

Clause 17 removes from section 21 references to 'or on-site sewerage facility' that are redundant as a result of amendments in the HOLA clarifying that 'an on-site sewerage facility' is a subset of 'drainage'.

The clause also removes from section 21(1) a reference to 'or on-site sewerage work' that is redundant as a result of amendments in the HOLA clarifying that 'on-site sewerage work' is a subset of 'drainage work'.

Amendment of s 23 (General requirements for plans for assessed work)

Clause 18 removes from section 23(1) a reference to 'or on-site sewerage work' that is redundant as a result of amendments in the HOLA clarifying that 'on-site sewerage work' is a subset of 'drainage work'.

The clause also removes from section 23(2) a reference to 'or the relevant on-site sewerage facility' that is redundant as a result of amendments in the HOLA clarifying that 'an on-site sewerage facility' is a subset of 'drainage'.

Amendment of pt 3, div 4, hdg (Assessing compliance assessable work or on-site sewerage work in remote areas)

Clause 19 removes from the heading for part 3, division 4, a reference to 'or on-site sewerage work' that is redundant as a result of amendments in the HOLA clarifying that 'on-site sewerage work' is a subset of 'drainage work'.

Amendment of s 24 (Application of div 4)

Clause 20 removes from section 24 a reference to 'or on-site sewerage work' that is redundant as a result of amendments in the HOLA clarifying that 'on-site sewerage work' is a subset of 'drainage work'.

Amendment of s 25 (Meaning of remote area)

Clause 21 removes from section 25 a reference to 'or on-site sewerage facility' that is redundant as a result of amendments in the HOLA clarifying that 'an on-site sewerage facility' is a subset of 'drainage'.

Amendment of s 26 (Request for compliance assessment of compliance assessable work or on-site sewerage work)

Clause 22 removes from section 26 a reference to 'or on-site sewerage work' that is redundant as a result of amendments in the HOLA clarifying that 'on-site sewerage work' is a subset of 'drainage work'.

Amendment of s 28 (Plan of completed work)

Clause 23 removes from section 28 references to 'or on-site sewerage work' that are redundant as a result of amendments in the HOLA clarifying that 'on-site sewerage work' is a subset of 'drainage work'.

The clause also clarifies that section 28(2)(d) applies to compliance assessable work for an on-site sewerage facility rather than on-site sewerage work that is notifiable or minor work.

Amendment of s 29 (Notice of compliance)

Section 86A(3)(a) of the PDA provides that after a particular kind of compliance work has been completed, the local government must be given a notice stating that the work complies with the requirements of the SPDR. Section 29(2) of the SPDR provides that such a notice must be given within 10 business days after the work is completed.

Clause 24 clarifies when work is taken to be completed and therefore when a notice about the work must be given to the local government. By clarifying the meaning of 'completed', clause 24 will minimise the risk of deliberate delays occurring.

The clause complements the notifiable work scheme by providing that compliance work is completed when it is operational (in working order and ready for use). The amendment provides the industry and consumers with clarity as well as consistency between the requirements for notifiable work and those for work that is compliance assessable (work that requires a local government approval).

It is intended that compliance assessable work be taken to be operational if it is able to be used for the purpose for which it was installed.

Amendment of pt 3, div 5, hdg (Assessing notifiable work)

Clause 25 replaces the reference in the heading for part 3 to the 'assessment' of notifiable work with a reference to the 'inspection' of notifiable work, to align the terminology used in the heading with the terminology used in the HOLA.

Replacement of s 29A (Requests for assessment of notifiable work)

Section 90(b) of the PDA, as amended by the HOLA, provides that a regulation can stipulate actions that a local government may, or must, take when inspecting notifiable work. This could include requiring the local government to undertake an inspection within a limited time. Section 90(c) of the PDA, as amended by the HOLA, provides that a regulation may be made prescribing the circumstances in which a local government must inspect notifiable work.

Clause 26 requires a local government to inspect notifiable work at the request of a responsible person for the work, and provides for the timeframes for carrying out such an inspection.

It is intended that the responsible person will only arrange a time for an inspection with the local government if the responsible person has first consulted the occupier in relation to a proposal for an inspection and the occupier has agreed to provide access for the purposes of the inspection.

The clause also requires the responsible person to give the inspector the help the inspector reasonably requires to inspect the work, for example help with measuring the dimensions of drainage installed.

The clause provides that an inspector does not fail to comply with the requirement to carry out an inspection set out in new section 29A(2) merely because the inspector is unable to enter the place where the work was performed in order to inspect the work. It is intended that if an inspector arrives at the premises where the notifiable work was performed, within a timeframe specified in section 29A(2), but is unable to enter the premises for any reason, the inspector is not taken to have failed to comply with section 29A(2).

The reasons for an inability to enter the place where the notifiable work was performed include the fact that the occupier is not present at the place or refuses to give the inspector access to the place.

An inspector for the local government may only enter private property with the permission of the occupier of the property or with a warrant.

Amendment of s 29B (Rectification notices for assessments under s 29A or the Act, s 87(4))

Clause 27 amends section 29B, so it refers to the 'inspection' of notifiable work rather than the 'assessment' of notifiable work. By doing so, the

clause aligns the terminology used in heading with the terminology used in the HOLA.

The clause also updates cross-references to section 87(4), required to be updated as a result of an amendment of section 87 of the PDA.

In addition, the clause replaces references to 'the responsible person' with references to a responsible person'. These changes are required because the definition of *responsible person* is such that more than one person can be a responsible person for notifiable work.

The policy intention is for the references to 'responsible person' to refer to any person who satisfies the definition of *responsible person* except where a particular responsible person who has been given a rectification notice is referred to (see clause 27(6)).

Clause 27(7) renumbers section 29B(8) as section 29B(10), to accommodate the new subsections included in new section 29B(8) and (9).

Clause 27(8) and *clause 27 (9)* provide that a licensed contractor who directs or supervises the performance of notifiable work may be treated as though they were a responsible person for the work. As a result of the provisions, a local government may give such a licensed contractor a rectification notice for the work as if the licensed contractor were a responsible person for the work, even if the licensed contractor is not licensed to perform the work.

The rationale for these amendments is that if a licensed contractor has engaged directly with a member of the public on a commercial basis, they must ensure the work is done properly for health and safety reasons. If the plumber who undertook the work fails to comply with a rectification notice, the licensed contractor can engage another licensed person to undertake the work.

Amendment of s 54A (Notice to water service provider about installation of meters)

Clause 28 omits the sectional definition of responsible person in section 54A(3), which applied only in relation to references to the term set out in section 54A.

The sectional definition is no longer required, as a single definition of *responsible person* that defines the term as it is used anywhere in the SPDR has been inserted in the SPDR, schedule 6 (Dictionary), by clause 29.

Amendment of sch 6 (Dictionary)

Clause 29 amends three definitions in the SPDR to align them with the PDA as amended by the HOLA.

The definition of *48 hours*, which provided for when a local government must start assessing compliance assessable work or on-site sewerage work, has been relocated from section 17 to the SPDR, schedule 6 (Dictionary).

The relocated definition has also been modified. The reference in the definition to 'or on-site sewerage work' has been omitted as it is redundant as a result of amendments in the HOLA clarifying that 'on-site sewerage work' is a subset of 'drainage work'. In addition, the definition has been expanded so it provides for when a local government must start inspecting notifiable work.

The definitions of *responsible person* in section 54A and the SPDR, schedule 6 (Dictionary) have been replaced with a single definition that applies for all references to the term in the SPDR. The reference in the definition to 'or on-site sewerage work' has been omitted as it is redundant as a result of amendments in the HOLA clarifying that 'on-site sewerage work' is a subset of 'drainage work'.

The clause also amends the definition of *competent person*. A reference in the definition to 'or on-site sewerage' and a reference to 'or on-site sewerage work' have been omitted as they are redundant as a result of amendments in the HOLA clarifying that 'on-site sewerage work' is a subset of 'drainage work'. Also, a reference to 'or an on-site sewerage facility' has been omitted as it is redundant as a result of amendments in the HOLA clarifying that 'an on-site sewerage facility' is a subset of 'drainage'.

ENDNOTES

- 1 Laid before the Legislative Assembly on . . .
- 2 The administering agency is the Department of Housing and Public Works.