

Building and Other Legislation (Cladding) Amendment Regulation 2018

Explanatory notes for SL 2018 No. 110

made under the

Building Act 1975

State Penalties Enforcement Act 1999

General Outline

Short title

Building and Other Legislation (Cladding) Amendment Regulation 2018

Authorising law

Section 261 of the *Building Act 1975*

Section 165 of the *State Penalties Enforcement Act 1999*

Policy objectives and the reasons for them

The policy objectives of the *Building and Other Legislation (Cladding) Amendment Regulation 2018* are to determine the extent of the use of potentially combustible cladding on existing private buildings in Queensland and raise awareness with building owners of the risks associated with potentially combustible cladding.

Since the mid-1990's cladding has been used on some buildings' external wall assembly to improve its appearance, protect against the weather and provide sound and thermal insulation. Some types of cladding, such as aluminium composite panels, have also been used for their malleability, light weight characteristics and aesthetics.

Recent events have shown that when fitted to the exterior of buildings, certain types of cladding can significantly contribute to the propagation of flame and facilitate rapid fire spread to other areas of a building. Degradation of material in a fire can also lead to combustible material dripping, pooling or detaching while flaming onto lower areas which may result in further fire spread.

The Queensland Government has completed an audit of Queensland Government-owned buildings coordinated by the Non-Conforming Building Products Audit Taskforce. Buildings of concern identified through the audit have been referred to asset-owning agencies to manage rectification work. Private buildings were not subject to the audit due to the number of buildings involved (estimated to be at least 12,000), the lack of

detailed building information available, the complexity of assessing some buildings and limited enforcement powers.

The *Building and Other Legislation (Cladding) Amendment Regulation 2018* will compel owners of buildings considered 'in-scope' to complete an online checklist to identify which buildings are affected by combustible cladding. This information will ensure:

- building owners have the necessary information to make informed decisions about the fire safety risks associated with their building;
- future policy decisions will be informed by evidence-based data to determine community need and benefits; and
- Queensland Fire and Emergency Services can operationalise resources to respond to identified high risk buildings and clusters of affected buildings.

Achievement of policy objectives

The policy objectives of the *Building and Other Legislation (Cladding) Amendment Regulation 2018* will be achieved by requiring owners of particular buildings to undertake an assessment of the material on the external walls of their building. The buildings that are captured are class 2-9 buildings (this includes a range of buildings from multi-residential to shopping centres and private health facilities) of Type A or Type B construction. Class 1 and 10 buildings, detached houses and sheds, will not be captured.

Buildings that are in-scope are those that received a building development approval after 1 January 1994 to construct the building or to alter the external wall assembly of the building. This will result in buildings which may be older than 1 January 1994 having to undertake rectification work if an alteration has been undertaken.

For the purposes of Part 4A of the *Building Regulation 2006*, "cladding" is defined as including sarking and insulation. Experience from investigations undertaken by the Non-Conforming Building Products Audit Taskforce shows that the risk of fire spread, and ignition is not limited to just the cladding but is also from the entire wall assembly, including the insulation and sarking.

The *Building and Other Legislation (Cladding) Amendment Regulation 2018* establishes a three-stage process, managed through an online system, for building owners to identify whether their building has combustible cladding.

- Part 1 - register and answer generic questions about the building to determine if the building is privately owned, if it is a class 2-9 building, its approximate size and the materials used on the outside of the building (where known).
- Part 2 - engage a building industry professional to answer technical questions such as whether the building is a Type A or Type B and to confirm if the material used on the outside is potentially combustible. Building owners are able to bypass this part and move straight to Part 3 where they are aware their building has combustible cladding.
- Part 3 - engage a fire engineer to prepare a building fire safety risk assessment. This will require testing of the cladding to determine its composition, identify the type of insulation material used, the percentage of the building covered by the cladding, whether existing fire safety measures will be able to cope with the identified higher risk, whether rectification is necessary (noting that rectification options will not be provided) and identify if any risk mitigation measures should occur (such as prohibiting smoking and barbecues on balconies).

As the building owner moves through the process, there are multiple exit points, depending on the data provided by the building owner.

The Queensland Building and Construction Commission (QBCC) is the responsible body, and regulator, of the on-line checklist and register. The Commissioner of the QBCC has the ability to delegate their functions or powers to an appropriately qualified relevant officer of the QBCC. Appropriate penalties are set to encourage compliance including the ability to issue penalty infringement notices. Penalties may be applied for such matters as failing to complete each part of the checklist by the required time, advising occupants of certain buildings about existence of combustible cladding and failure to retain documentation.

Consistency with policy objectives of authorising law

The *Building and Other Legislation (Cladding) Amendment Regulation 2018* is consistent with the objects of the *Building Act 1975*.

Inconsistency with policy objectives of other legislation

The *Building and Other Legislation (Cladding) Amendment Regulation 2018* is consistent with the policy objectives of other legislation.

Alternative ways of achieving policy objectives

The *Building and Other Legislation (Cladding) Amendment Regulation 2018* is the only means of compelling building owners to undertake an assessment of their buildings external wall assembly, where required.

Benefits and costs of implementation

The *Building and Other Legislation (Cladding) Amendment Regulation 2018* will benefit the community by identifying which Queensland privately-owned buildings contain combustible cladding.

Costs will be incurred by building owners who are required to engage a building industry professional or a fire engineer.

Consistency with fundamental legislative principles

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

Consultation

Consultation occurred with the Queensland Building and Construction Commission, Board of Professional Engineers of Queensland, Board of Architects of Queensland, Engineers Australia, Australian Institute of Building Surveyors, Master Builders Queensland, National Fire Industry Association, Construction, Forestry, Mining and

Energy Union, Housing Industry Association, Property Council of Australia and Strata Community Australia (Qld).

General support was received for the amendments to the *Building Regulation 2006* and the intent to understand the prevalence of potentially combustible cladding on Queensland buildings. A period of approximately 2 months from the date the Regulation is made, to commencement, has been provided for. This allows for building owners and building industry professionals to understand their obligations, provide further education to the industry and increase industry and community awareness. This additional time allows for building owners, and where necessary their agents, to prepare and comply with the Regulation.

The Queensland Productivity Commission was consulted on the development of the regulation.