

# Plumbing and Drainage Regulation 2019

Explanatory notes for Subordinate Legislation 2019 No. 42

made under the

*Body Corporate and Community Management Act 1997*

*Building Act 1975*

*Health Act 1937*

*Planning Act 2016*

*Plumbing and Drainage Act 2018*

*Queensland Building and Construction Commission Act 1991*

*State Penalties Enforcement Act 1999*

## General Outline

### Short title

*Plumbing and Drainage Regulation 2019*

### Authorising law

Section 322 of the *Body Corporate and Community Management Act 1997*

Section 261 of the *Building Act 1975*

Section 180 of the *Health Act 1937*

Section 284 of the *Planning Act 2016*

Section 157 of the *Plumbing and Drainage Act 2018*

Section 116 of the *Queensland Building and Construction Commission Act 1991*

Section 165 of the *State Penalties Enforcement Act 1999*

### Policy objectives and the reasons for them

The key policy objective of the *Plumbing and Drainage Regulation 2019* ('the Regulation') is to prescribe matters provided for under the *Plumbing and Drainage Act 2018* (the PD Act 2018 or the Act).

Particular provisions of the PD Act 2018 commenced on 11 September 2018 on Royal Assent. Some other provisions of the Act commenced by Proclamation on 19 October 2018.

The provisions that are not in force, other than part 9, division 3 of the Act, will commence on 1 July 2019. On that day, section 158 of the Act will repeal the *Plumbing and Drainage Act 2002* (PD Act 2002) and therefore will also repeal the *Plumbing and Drainage Regulation 2003* (PDR 2003) and the *Standard Plumbing and Drainage Regulation 2003* (SPDR 2003) which were made under the PD Act 2002. As a version of the Queensland Plumbing and Wastewater Code was approved by the SPDR 2003, section 158 will also repeal that version.

The Regulation has been developed following an extensive review of the State's plumbing laws. It reproduces aspects of the PD Act 2002, the PDR 2003 and the SPDR 2003 in a contemporary form.

The objectives of the Regulation are to:

- support the operation and implementation of the PD Act 2018 by prescribing matters provided for under the Act; and
- transition particular provisions of the PD Act 2002, the PDR 2003 and the SPDR 2003 into the Regulation; and
- introduce shorter timeframes for obtaining authorisation for plumbing and drainage work; and
- approve a contemporary plumbing code that will include all plumbing and drainage standards for Queensland that are required to vary and complement national plumbing and drainage standards.

## **Achievement of policy objectives**

The Regulation achieves the policy objectives by:

- prescribing the categories of plumbing or drainage work, being permit work, notifiable work, minor work and unregulated work;
- approving a new, contemporary plumbing code that:
  - encompasses all of Queensland's technical requirements, including the requirements currently set out in the to-be-repealed version of the Queensland Plumbing and Wastewater Code, the PDA 2002 and the SPDR 2003; and
  - varies and complements the national standards in the Plumbing Code of Australia;
- prescribing the code requirements for plumbing and drainage work, which are the requirements that the work and plans for the work must comply with;
- prescribing how compliance with the code requirements can be achieved;
- prescribing the scope of work authorised by classes of licence and endorsements on licences;
- providing for processes for obtaining, transferring or cancelling treatment plant approvals;
- providing for improved processes for obtaining authorisations for permit work, notifiable work (or both), including a fast-track process for particular work and a standard process for more complex work.

The fast-track process is intended to ensure most home owners are able to obtain a permit for plumbing or drainage work for their new house (or

townhouse) and garage within two business days of making their application. Under the PD Act 2002, a permit is not required to be issued earlier than 20 business days after an application for the permit is made. Several local governments in Queensland have implemented fast-track processes for this type of work and have reported time and cost saving benefits for industry, consumers. In particular, the shorter timeframe allows contractors and their employees to commence and finish the construction of the family home more quickly and results in a reduction in holding costs for construction projects. The fast-track process provided for by the Regulation builds upon the experience of the local governments mentioned by rolling out the fast-track process state-wide, making time and cost savings available to all Queenslanders.

A local government need not assess the plans accompanying a fast-track application for a permit, to ensure the proposed work will comply with the code requirements, before issuing a permit. It only needs to satisfy itself that the application is properly made.

By contrast, the plans accompanying an application (a 'standard application') for a permit for a complex project, such as those for multi-unit residential and commercial buildings, must be assessed for compliance with the code requirements before a permit for the project is issued.

As the assessment process for a standard application takes time, a permit need not be issued in response to such an application earlier than 10 business days after the application is made. However, this timeframe is significantly shorter than the timeframe of 20 business days provided for in the PD Act 2002, allowing contractors and their employees to commence and finish the construction of commercial projects more quickly.

The Regulation requires a local government to give an applicant for a permit an information notice if it decides to refuse the application, or to approve the application and issue the permit with a condition. A person who is given, or required to be given, an information notice for a decision made under the Act (including a regulation made under the Act), is entitled to appeal against the decision under the *Planning Act 2016*. Also, a person is entitled, under that Act, to appeal against a failure of a local government to decide a permit application within the required timeframe.

The Regulation allows a local government to opt out of the requirement to have a fast-track process for its local government area, by declaring it will not deal with any permit application as a fast-track application. The Regulation also allows a local government to expand the category of fast-track permit work provided for in the Regulation, for its local government area, to encompass permit work that would otherwise have to be included in a standard application.

The Regulation allows an eligible person to apply to a local government to extend the term of a permit or otherwise amend the permit. Under the PD Act 2002, a permit issued by a local government remained in force for two years after it was issued. Under the Regulation, most permits remain in

force for a period stated in the permit that is at least two years in duration and the term of the permit may be extended up for to two years. The Regulation does not limit the number of times that an eligible person may apply for an extension.

The process for applying for an amendment of a permit is the same as the process for applying for a new permit, except information provided with the original application need not be included in an amendment application if it has not significantly changed. Similarly, the local government need not reconsider a matter considered when the original application was decided.

The Regulation includes provisions for obtaining permits for permit work or notifiable work (or both) to be carried out by, or for, a public sector entity. These provisions allow a person to apply to either the local government, or the public sector entity, for a permit for the work.

- providing for processes for inspecting, enforcing and certifying permit work and notifiable work.

The Regulation requires most work that is the subject of a permit to be inspected by a local government inspector at particular stages or when the work is finished (or both), to ensure it is compliant. If the inspector is not satisfied the work is compliant, the inspector may give the responsible person for the work an action notice requiring the responsible person to take particular action required to satisfy the local government the work is compliant. It is expected that, in many cases, an action notice will state that the responsible person must rectify particular defective work and arrange for the rectified work to be inspected for compliance.

If the inspector considers there is a substantial inconsistency between the work and an approved plan for the work, the inspector may, by giving the responsible person an action notice, require the responsible person to stop carrying out the work and apply for an amended permit. Alternatively, the inspector may require, by action notice, that the responsible person provide the local government with an as-constructed diagram that accurately represents the work.

The Regulation requires a local government to certify work the local government considers to be compliant by giving the responsible person for the work an inspection certificate or a final inspection certificate for the work. Section 69 of the Act makes it an offence to use plumbing or drainage that is the result of permit work, unless an inspection certificate, or final inspection certificate, has been issued for the permit work.

A local government must give the responsible person an inspection certificate for work considered compliant, before all of the work authorised by the permit has been completed, if the certificate is requested in writing.

By contrast, a local government is required to give the responsible person a

final inspection certificate only if all of the work for one or all of the premises the subject of the permit has been completed, relevant requirements relating to compliance have been satisfied and the local government is satisfied that the plumbing or drainage resulting from, or affected by, the work is operational and fit for use.

The Regulation allows particular local governments to declare that work carried out in remote parts of their local government areas need not be inspected. Instead of inspecting the work, the local governments may accept a notice from the responsible person for the work or another suitably qualified person certifying the work is compliant and the plumbing or drainage resulting from, or affected by, the work is operational and fit for use. The Regulation also allows for other circumstances in which work need not be inspected and may instead be the subject of a notice certifying it is compliant.

Most notifiable work that is not the subject of a permit need not be inspected. Notifiable work that is not the subject of a permit may be inspected by the local government under an audit program or at the request of the responsible person for the notifiable work. An action notice may be given to the responsible person if the inspector is not satisfied the work is compliant.

- providing for the installation and maintenance of plumbing and drainage, and related matters;
- prescribing the particulars of licensees to be included in the register of licensees for the Act;
- providing for a register of notices about notifiable work;
- providing for registers that must be kept by local governments;
- providing for miscellaneous matters, including the fees payable to the Queensland Building and Construction Commission (QBCC) for various matters, including applications for licences;
- providing for penalties that form part of a new, strong penalty framework introduced by the Act.

During consultation processes for the Plumbing and Drainage Bill 2018, industry stakeholders expressed concern about defective plumbing and drainage work being performed by unlicensed persons. In particular, they noted that there was insufficient deterrence to prevent unlicensed persons from continuing to perform defective work. As a result, it was suggested that consumers were being left with defective work resulting in significant financial burden and safety risks. The new penalty framework was designed to address these concerns.

The new penalty framework is intended to deter an individual from carrying out, supervising or directing work if they do not hold a licence for the work. It is also intended to deter a person from supervising or directing another person to carry out work if the other person does not have a licence for the work. This deterrence is achieved by the introduction of a sliding scale of penalties for the offences mentioned that increase for repeat offences or if

the work done is grossly defective work. The maximum penalties are:

- for a first offence—250 penalty units;
- for a second offence—300 penalty units; and
- for a third or later offence, or if the work is grossly defective work—350 penalty units or 1 year's imprisonment.

The penalties are considered proportionate and appropriate for deterring unlicensed persons from entering the market and are expected to ensure a high rate of compliance with standards and protect consumers and licensees from loss. The possibility of imprisonment is particularly targeted at repeat, high-level offenders.

The Regulation supports the penalty framework introduced by the Act by including maximum penalties of 20 penalty units for a range of offences that may affect the quality and safety of work, including offences involving a licensee's failure:

- to request timely local government inspections of work;
  - to give an inspector the help the inspector requires to inspect the work;
  - to comply with an action notice relating to defective work given by an inspector;
  - to give the relevant water service provider timely notice that a prescribed water meter has been installed by the licensee;
  - to give the local government timely notice of having installed or maintained a testable backflow prevention device;
  - to give the owner or premises and the local government a service report after servicing a greywater use or on-site sewage facility.
- including amendments of other regulations, including amendments to the *State Penalties Enforcement Regulation 2014* (SPER 2014) to ensure that there are penalty infringement notice offences for a large range of offences under the PD Act 2018 and the Regulation.

By providing for these infringement notice offences, the amendments to the SPER 2014 allow an authorised person to issue a penalty infringement notice imposing fine for an offence under the PD Act 2018 or the Regulation, and therefore allow for timely, cost-efficient enforcement outcomes to be achieved for contraventions of the Act and the Regulation.

## **Consistency with policy objectives of authorising law**

The Regulation is consistent with the main objective of the Act, which is to regulate the carrying out of plumbing or drainage work in a way that reduces risks to public health and safety and the environment.

## **Consistency with policy objectives of other legislation**

The Regulation is consistent with the policy objectives of other legislation. In particular, it is consistent with other State laws that regulate the carrying out of building work in a way that reduces risks to public health and safety and the environment.

## **Inconsistency with policy objectives of other legislation**

There is no inconsistency with the policy objectives of other legislation.

## **Alternative ways of achieving policy objectives**

The policy objectives can only be achieved by making the Regulation.

## **Benefits and costs of implementation**

The benefits and costs of implementing the Regulation are not significantly different from the benefits and costs of the operation of the current PDR 2003 and the SPDR 2003, which the Regulation replaces.

## **Consistency with fundamental legislative principles**

The Regulation is consistent with fundamental legislative principles.

## **Consultation**

The Regulation resulted from a review of Queensland's plumbing laws over the past five years, involving extensive analysis and consultation with stakeholders.

The policy objectives reflected in the Regulation have been informed and refined in partnership with industry and the community and formed part of the Queensland Building Plan discussion paper consultation process.

Over 112 representatives from 46 organisations, and representatives of relevant government agencies and community stakeholders participated in the review of Queensland's plumbing legislative framework, including:

- Advanced Enviro-Septic
- Association of Hydraulic Consultants Services Australia
- Australian Industry Group
- Australian Institute of Building Surveyors
- Australian Wastewater Treatment Association
- Backflow Prevention Association of Australia Inc.
- Brisbane City Council
- Cairns Regional Council
- Evergreen Wastewater
- Fraser Coast Regional Council
- Gold Coast City Council
- Gympie Regional Council
- Housing Industry Association
- Institute of Plumbing Inspectors Queensland
- Ipswich City Council
- Isaac Regional Council

- Livingstone Shire Council
- Local Government Association of Queensland
- Lockyer Valley Regional Council
- Logan City Council
- Master Builders Queensland
- Master Plumbers' Association of Queensland
- Members of the Public
- Moreton Bay Regional Council
- National Fire Industry Association, Queensland and Victoria
- Noosa Shire Regional Council
- Plumbers Union Queensland
- Plumbing and Drainage licensees
- Queensland Building and Construction Commission
- Queensland Fire and Emergency Services
- Queensland Health
- Queensland Urban Utilities
- Queensland Water Directorate
- Redland City Council
- Royal Institution of Chartered Surveyors
- Scenic Rim Regional Council
- Service Trades Council
- Services Trades Queensland
- Seqwater
- Sunshine Coast Regional Council
- TAFE Queensland SkillsTech
- Toowoomba Regional Council
- Townsville City Council
- Unity water.

The Queensland Productivity Commission was consulted throughout the review and confirmed that a Regulatory Impact Statement was not required as the legislative proposals were not likely to result in significant adverse impacts.

The comprehensive consultation process conducted for the Act, the Regulation and the new plumbing code included:

- preliminary consultation workshops with key plumbing and building stakeholders;
- an online survey published on the 'Get Involved' website;
- state-wide information forums held across Queensland between 20 June and 17 July 2014;
- the release of an exposure draft of the Regulation in November 2016 for a three-month consultation period as part of the Queensland Building Plan (QBP) consultation process;
- 15 public consultation sessions held throughout Queensland to encourage participation in the QBP which were attended by over 1100 participants representing key industry stakeholders, including licensees, local governments and consumers;



- the release of a second consultation draft of the Regulation on 17 November 2018 for a three-week public consultation period;
- over 27 consultation workshops conducted with industry stakeholders by the Department throughout the review in the period from February 2014 to November 2018.

All feedback received throughout the consultation process was considered by the Department of Housing and Public Works and the Regulation reflects much of that feedback.