

# Building and Other Legislation Amendment Regulation 2019

Explanatory notes for Subordinate Legislation 2019 No.152

made under the

*Building Act 1975*  
*State Penalties Enforcement Act 1999*

## General Outline

### Short title

*Building and Other Legislation Amendment Regulation 2019*

### Authorising law

Section 163 and 261 of the *Building Act 1975*  
Section 165 of the *State Penalties Enforcement Act 1999*

### Policy objectives and the reasons for them

#### Private Building Certifiers Professional Indemnity Insurance

The *Building Act 1975* (BA) establishes a licensing framework for building certifiers. If an individual wants to perform private certifying functions they must hold the appropriate endorsement under the BA and meet the eligibility requirement prescribed in the *Building Regulation 2006* (the Regulation).

The Regulation requires private building certifiers to hold Professional Indemnity (PI) insurance for works that arise while performing building certifying functions.

Section 163 of the BA restricts the endorsement of a licence for private certification unless the applicant holds the PI insurance as prescribed under the Regulation. Private building certifiers seeking to renew their licence must also provide evidence that they continue to hold the required PI insurance.

Private building certifiers had been experiencing increasing difficulty in obtaining exclusion free PI insurance to cover all private certifying functions, with insurers no longer offering exclusion free PI insurance. Exclusions identified in the policies being offered include working with cladding, or more generally, non-conforming building products.

The amendments will enable private building certifiers to perform all private certifying functions, with PI insurance with an exclusion relating to certain cladding. This exclusion will apply until 30 June 2021, to be reviewed in May 2021.

#### Miscellaneous amendments relating to Combustible Cladding

The *Building and Other Legislation Amendment Regulation 2018* which amended the Regulation was made by the Governor in Council on 26 July 2018 (Minute No. 314) and commenced on 1 October 2018. This Regulation established a three-part process for certain building owners to determine if their building contains potentially combustible cladding, using an online register and checklist. The Queensland Building and Construction Commission (QBCC) is responsible for maintenance of, and ensuring compliance with, the register.

The QBCC has requested some administrative and operational changes which will support its regulatory functions under this Regulation and will also assist registered persons in completing the combustible cladding checklist process.

The changes include:

- the ability for registered building owners to re-submit checklist parts;
- refined definitions to assist building owners to comply with their reporting requirements and to support the QBCC in reviewing information provided;
- an authority for QBCC to prepare a Building Industry Professional statement in extenuating circumstances;
- requirements for registered owners to provide evidence to QBCC that a private affected building notice has been erected, or evidence from a certifier that confirms that the combustible cladding on a building complies with the Building Code of Australia (including penalties for not undertaking actions); and
- a requirement for Fire Engineers to notify building owners and the QBCC when the Fire Engineer reasonably believes that a building will require fire risk mitigation measures (including penalties for not undertaking actions).

New penalties will be introduced which can be imposed against a registered owner for not performing a regulatory action. This will reinforce the importance of these steps being undertaken.

## **Achievement of policy objectives**

The *Building and Other Legislation Amendment Regulation 2019* (Amendment Regulation) achieves the policy objectives by:

- permitting a private building certifier to continue to perform their function, with PI insurance that has an exclusion relating to certain cladding, for a time limited period;
- improving administrative and regulatory functions of the QBCC in administering the combustible cladding checklist process which will also assist registered owners to fulfil their legislative obligations;
- imposing penalties against registered owners for not taking required actions; and
- requiring that fire engineers notify building owners and the QBCC when they reasonably believe a private building will require risk mitigation measures.

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

The Amendment Regulation is consistent with the objects of the *Building Act 1975*.

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

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

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

Relating to PI insurance requirements, while a large proportion of PI insurance policies are due for renewal before August 2019, this amendment will allow the Queensland Building and Construction Commission to continue to issue licences enabling private certifiers to operate.

The exclusion is time limited to allow the Department of Housing Public Works to continue exploring further options to address this issue and return to insurers being willing to write comprehensive insurance policies.

The Department has also been working with jurisdictional colleagues through the Senior Officers' Group (which provide policy advice to the Building Ministers' Forum). The matter was also discussed at the Building Ministers' Forum on 18 July 2019.

Amendments in Part 4A, combustible cladding, are considered necessary to achieve administrative and operational improvements to the combustible cladding checklist process. As the checklist is established within the regulation, operational enhancements can only be achieved by amending the regulation. These changes will benefit both the regulator and registered persons in administering or completing the combustible cladding checklist process.

## **Benefits and costs of implementation**

The Amendment Regulation will benefit the community by ensuring that private building certifiers can continue to consider and assess building development applications. The Amendment Regulation will also benefit the QBCC in regulating the combustible cladding checklist process and assist registered persons to meet their obligations.

Minimal costs will be incurred by Government in the implementation of the Amendment Regulation.

## **Consistency with fundamental legislative principles**

The Amendment Regulation has been drafted in accordance with fundamental legislative principles as defined in section 4 of the *Legislative Standards Act 1992*.

## **Consultation**

The QBCC and peak industry bodies have been consulted and have no objection to the regulatory amendments.

In accordance with the Queensland Government Guide to Better Regulation, the Office of Best Practice Regulation was consulted in relation to the regulatory proposal and confirmed that no further regulatory assessment is required for the proposed amendments as the proposals appear unlikely to result in significant adverse impacts.