

Building and Other Legislation (Public Cyclone Shelters) Amendment Regulation 2023

Explanatory notes for Subordinate Legislation 2023 No.98

made under the

Building Act 1975

State Penalties Enforcement Act 1999

General Outline

Short title

Building and Other Legislation (Public Cyclone Shelters) Amendment Regulation 2023

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

Public cyclone shelters are buildings that are designed and maintained to provide last resort shelter from cyclones for people who do not have access to buildings which meet current building standards.

Currently, 13 buildings (or parts of buildings) in Queensland are designated for use as public cyclone shelters. Each building, or part of a building, is owned and maintained by the State or a local government. There are currently no building standards (building assessment provisions) for public cyclone shelters under the *Building Act 1975* or the *Building Regulation 2021*.

The existing public cyclone shelters were designed, constructed, and approved under building assessment provisions for various types of buildings (or parts of buildings), other than cyclone shelters, such as school sports halls. They were constructed in compliance with the *Design Guidelines for Queensland Public Cyclone Shelters* issued by the Queensland Government in 2006 (the Design Guidelines). The Design Guidelines provide guidance on the location, design, and construction of public cyclone shelters. They are intended to ensure shelters can

accommodate members of the public safely during cyclonic events. Before each cyclone season, each existing public cyclone shelter is maintained in accordance with the *Queensland Public Cyclone Shelters – Maintenance Guidelines* (the Maintenance Guidelines) to ensure it is suitable for occupation by the public during a cyclone.

In the future, building and owning a public cyclone shelter may not be restricted to government. It is not considered to be appropriate for the private sector to only be required to comply with discretionary guidelines for what are significant life-saving buildings, as the guidelines are unenforceable. Such reliance would risk deviation from appropriate design, construction, and maintenance standards for shelters.

The key policy objective of the *Building and Other Legislation (Public Cyclone Shelters) Amendment Regulation 2023* (‘the Regulation’) is to regulate buildings, or parts of buildings, to be used as public cyclone shelters in Queensland to ensure they can provide appropriate shelter and accommodation for members of the public during a cyclone.

It is intended that the new framework will primarily apply to privately-owned buildings. The existing non-regulatory (guideline-based) framework for the design, construction and maintenance of public cyclone shelters owned by the State or a local government will be retained and will sit alongside the new regulatory framework. It is intended that the owner of a government-owned building will have the option to opt into the regulatory framework if they choose to.

Most of the buildings to which the new regulatory framework will apply will have a dual purpose. For example, they may be used as a school hall for most of the year and used as a public cyclone shelter in the event of a cyclone.

Achievement of policy objectives

The Regulation achieves the policy objectives by introducing a new regulatory framework for public cyclone shelters that includes:

- a new part of the Queensland Development Code to be known as MP 3.8, which will set minimum standards for the location, design, construction, maintenance and operation of privately-owned buildings or parts of buildings used as public cyclone shelters; and
- an offence provision (section 78D) that provides that the owner or occupier of a building must not, without a reasonable excuse, use the words ‘public cyclone shelter’ in a broadcast or publication to describe a building unless it meets the definition *public cyclone shelter* set out in the Regulation.

The purpose of the offence provision is to prevent confusion around the identification of public cyclone shelters and to ensure that shelters are operated by the local disaster management group.

A building or part of a building owned by the State, or a local government will meet the definition public cyclone shelter in the Regulation if the building or part is

activated for use as a public cyclone shelter by the local disaster management group under a local disaster management plan.

The existing buildings referred to in the following list will meet the definition of public cyclone shelter:

- Bowen State High School Cyclone Shelter
- Edmonton Cyclone Shelter
- Heatley Secondary College Cyclone Shelter
- Ingham State High School Cyclone Shelter
- Innisfail State High School Cyclone Shelter
- Mackay Cyclone Shelter
- Port Douglas State School Cyclone Shelter
- Proserpine State School Cyclone Shelter
- Redlynch State College Cyclone Shelter
- Townsville Regional Council (Northshore Development) Cyclone Shelter
- Tully State School Cyclone Shelter
- Weipa Cyclone Shelter
- Yeppoon State High School Cyclone Shelter

Therefore, the owner or occupier of one of the buildings (or parts) may use the words 'public cyclone shelter' in a broadcast or publication to indicate their building, (or part) is a public cyclone shelter without contravening section 78D.

In the future, other government-owned buildings, or parts of buildings, may meet the definition public cyclone shelter.

A building or part of a building that is not owned by the State or a local government will meet the definition of public cyclone shelter only if:

- the building is activated as a shelter for occupation by the public during a cyclone by the local disaster management group under a local disaster management plan for the local government area where the shelter is located; and
- the owner of the building has, in the past 12 months, obtained an annual compliance statement indicating the building complies with MP 3.8 and is suitable for occupation by the public during a cyclone.

To obtain a compliance statement, the owner of the building must arrange, each year, for an appropriately accredited person (an assessor) to inspect the building and provide the owner with a compliance statement. This annual requirement is intended to ensure a building is maintained regularly over time to an appropriate standard and is ready for use in the event of a cyclone.

A person will be taken to be an assessor and can issue a compliance statement, as an assessor, if they hold a current certificate of accreditation with an accredited standards body (currently AIBS and RICS) and hold a Queensland Building and Construction Commission building certifier-level 1 licence. This clarifies that separate to the building certification functions a building certifiers can provide advice about compliance with the Queensland Development Code Mandatory Part (QDC) 3.8 and issue a compliance statement.

If the State or a local government wishes to build or modify a building they own for use as a public cyclone shelter, they will have the option to ensure their building complies with the existing non-regulatory (guideline-based) framework, or to opt into the new regulatory framework.

Amendments to the *State Penalties Enforcement Regulation 2014* will prescribe section 78D as an infringement notice offence.

An infringement notice imposes a fine for a breach of an infringement notice offence. Prescribing section 78D as an infringement notice offence will provide administrators with a swift and inexpensive means of addressing breaches of section 78D that would otherwise be required to be dealt with by means of costly and time-consuming prosecutions. Offenders will benefit from a fixed and discounted penalty for the offence, avoidance of court proceedings, and no finding of guilt in relation to the offence.

The proposed regulatory framework will help to ensure that a building or part of a building may only be used to accommodate members of the public during a cyclone if it is fit for that purpose. The framework is reasonable and appropriate because it will provide an effective way to protect the health and safety of members of the public during a cyclone. In setting high standards for public cyclone shelters, the regulatory framework is proportional to the risks to public health and safety posed by cyclones.

Consistency with policy objectives of authorising law

The Regulation is consistent with the objectives of the Act, which include regulating building work and the occupation of buildings in the interests of promoting public health and safety.

Inconsistency with policy objectives of other legislation

No inconsistencies with the policy objectives of other legislation have been identified.

Alternative ways of achieving policy objectives

There are no reasonable and effective alternative ways of achieving the policy objectives other than by legislative amendment.

As compliance with the Design Guidelines and Maintenance Guidelines is not mandatory, there is potential for buildings constructed or modified by private

providers to be used as public cyclone shelters that fail to comply with the standards in the guidelines. This failure to comply could pose a risk of serious injury to members of the public who rely on public cyclone shelters for safety during a cyclone.

The new regulatory framework provides the only way to ensure that privately owned building can be built and maintained to the high standard required for it to be used as a public cyclone shelter.

Benefits and costs of implementation

The benefit of the regulatory framework will help to ensure that a building or part of a building may only be used to accommodate members of the public during a cyclone if it is fit for that purpose. This approach provides an effective way to protect the health and safety of members of the public during a cyclone, including reducing the potential for confusion around the identification of cyclone shelters.

Under the proposed framework compliance with MP 3.8 will be voluntary, as there will be no legal requirement to build or maintain a building as a public cyclone shelter. As a result, the proposal does not impose any costs on building owners or occupiers.

Consistency with fundamental legislative principles

The Regulation is consistent with fundamental legislative principles.

Consultation

Extensive consultation on the draft QDC MP 3.8 and the proposed regulatory framework was undertaken between 2017 and 2021.

Consultation throughout 2022 has been targeted at finalising the technical standards for the construction of cyclone shelters included in QDC MP 3.8 and the regulatory amendment. This included working closely with Dr Peter Mullins who prepared the current design and maintenance guidelines.

Stakeholders consulted include local authorities in areas impacted by tropical cyclones, government departments and organisations involved in disaster management, land use planning and development, building design, construction and maintenance, technical experts and industry organisations.

The Office of Best Practice Regulation confirmed that the proposal does not unduly add to the burden of regulation and is unlikely to result in significant adverse impacts and no further regulatory impact analysis was required under the Queensland Government Guide to Better Regulation.

All stakeholders consulted supported the new QDC MP 3.8 and the proposed regulatory framework.