

# Building (Queensland Development Code) Amendment Regulation 2023

Explanatory notes for Subordinate Legislation 2023 No. 136

made under the

*Building Act 1975*

## General Outline

### Short title

*Building (Queensland Development Code) Amendment Regulation 2023*

### Authorising law

Sections 13 and 261 of the *Building Act 1975*

### Policy objectives and the reasons for them

The policy objectives of the *Building (Queensland Development Code) Amendment Regulation 2023* (Amendment Regulation) are to:

- amend Queensland Development Code Mandatory Part 4.1 – Sustainable buildings (QDC 4.1) to better align Queensland building legislation with the National Construction Code 2022 (NCC 2022) energy efficiency requirements for new dwellings
- adopt a new Queensland Development Code Mandatory Part 4.5 – Livable dwellings and grading to floor wastes (QDC 4.5) to facilitate introduction of the Livable Housing Design standard and provide variations to the NCC 2022 requirements for grading to floor wastes.

The policy objectives of QDCs 4.1 and 4.5 are to:

- provide industry with certainty and clarity about the transitional and implementation arrangements for the NCC 2022 in Queensland (the applicable standard and commencement timeframe)
- resolve inconsistencies between the NCC 2022 and the relevant Australian Standard for graded floor wastes
- provide savings for consumers through reduced building construction and renovation costs and through reduced electricity bills, which will relieve cost-of living pressures
- meet obligations under the Australian Building Codes Board (ABCB) Intergovernmental Agreement<sup>1</sup> (IGA), which commits jurisdictions to minimising

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<sup>1</sup> Clause 19.3.a in *An Agreement between the Governments of Commonwealth of Australia, the States and the Territories to continue in existence and provide for the operation of the Australian Building Codes Board 2020*.

variations to the NCC

- contribute to achieving the government's emissions reduction targets.

## **Achievement of policy objectives**

The policy objectives are achieved by the Amendment Regulation giving effect to the amended QDC 4.1 and the new QDC 4.5 published on 19 September 2023.

The updated QDC 4.1 and introduction of QDC 4.5 will provide industry with certainty and clarity on the application of NCC 2022 in Queensland.

### QDC 4.1

QDC 4.1 will facilitate Queensland's transition to the residential energy efficiency provisions in the NCC 2022 by:

- removing variations from the NCC 2022, which will allow Queensland's new homeowners to benefit from energy bill savings that result from the adoption of higher residential energy efficiency requirements in NCC 2022. This includes preventing use of a 2009 glazing calculator to reflect contemporary window design and removing an optional credit for new houses installed with a solar Photovoltaic (PV) energy system;
- providing an additional compliance pathway which will allow industry to apply deemed-to-satisfy residential energy efficiency provisions applicable to houses in the NCC 2019 with an optional credit for an outdoor living area to achieve a 7-star rating
- retaining and expanding the optional credit of up to 1 star statewide where an outdoor living area is included with new houses and new units in apartment buildings.

The removal of the existing variations allows Queensland's adoption of the NCC 2022's 7-star (out of 10) energy rating for the dwelling's building shell (roof, walls, windows and floors) and the new 'whole-of-home' energy budget for the dwelling's major fixtures and appliance, and any on-site solar PV energy system.

The changes to QDC 4.1 will satisfy Queensland's obligations under the ABCB's IGA to minimise its variations to the NCC 2022. QDC 4.1 also supports the Queensland Government's commitment to the Queensland Climate Action Plan (QCAP), which has sets emissions reduction targets of 30 per cent below 2005 levels by 2030 and zero net emissions by 2050. Better aligning with the NCC 2022 residential energy efficiency requirements will support the achievement of these targets.

QDC 4.1 will commence on 1 May 2024. This will align with the adoption of the provisions in Victoria, and acknowledges the delayed release of accredited Nationwide House Energy Rating Scheme (NatHERS) software tools used to assess the energy efficiency of houses.

QDC 4.1's commencement on 1 May 2024 will not affect NCC 2022 requirements relating to condensation and electric vehicle charging readiness. These will commence on 1 October 2023.

## QDC 4.5

QDC 4.5 will prescribe the following exemptions for the livable housing design provisions in the NCC 2022:

- new houses to be built on narrow lots with a frontage measuring 12.5 metres wide and less, where the lots were created prior to 1 October 2023, or were created after 1 October 2023 and on or before 31 March 2025 but only if:
  - a properly made application for a development permit for reconfiguring of a lot to create the lot was made prior to 1 October 2023, or
  - the lot is identified in a disclosure plan under the *Land Sales Act 1984* prior to 1 October 2023.
- pre-built class 1a buildings 55m<sup>2</sup> or less in floor area (small pre-built houses), which have been wholly or predominantly manufactured off-site, completed prior to 1 October 2023 and installed on a lot on or prior to 31 March 2025
- repairs and maintenance, and renovations specifically to bathrooms and toilets, in existing houses (class 1a buildings) and units in an apartment building (class 2) in limited circumstances
- the requirement to have at least one accessible toilet on the ground or entry of an existing house in circumstances where there is no habitable room on the ground or entry level. The exemption instead requires at least one compliant toilet to be constructed on the lowest level of an existing house where there is a habitable room.

The exemptions for narrow lots and small pre-built houses will end on 31 March 2025, and will apply on a permanent basis for repairs and maintenance, and renovations to bathrooms and toilets.

QDC 4.5 resolves an inconsistency in the grading requirements for a level-free entrance to showers with the livable housing design provisions in NCC 2022 and the Australian Standard for waterproofing in wet areas (AS 3740:2021).

QDC 4.5 also provides alternative compliance solutions for the new NCC 2022 requirements for floors to be graded to wastes in houses and units on the ground or entry level of an apartment building.

The exemptions and alternative compliance solutions are subject to section 37 of *Building Act 1975*. Where they do apply, however, they will reduce the compliance costs incurred by industry associated with the design, construction, repair, maintenance and renovation of residential buildings, which can then be passed onto consumers.

The grading to floor waste alternative compliance solutions will commence on notification of the Amendment Regulation. However, the livable housing design exemptions and alternative compliance solutions will only come into force on 1 October 2023. This aligns with the commencement of the livable housing design provisions in the NCC 2022 on 1 October 2023.

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

The Amendment Regulation is consistent with the *Building Act 1975* and its objects to regulate the carrying out of building work to ensure proper standards in the building industry and protect public 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**

The Amendment Regulation will give effect to amendments to the QDC 4.1 and new QDC 4.5, which implements Queensland specific transitional arrangements that are necessary to support industry to effectively transition to the NCC 2022 requirements.

The QDC parts are the only mechanism to enable Queensland to vary the NCC requirements and therefore there is no other way of achieving the policy objectives.

## **Benefits and costs of implementation**

The impacts of the Modern Homes Standards were initially assessed through national regulatory impact assessment processes<sup>2</sup> prior to Building Ministers considering whether they should be included in NCC 2022.

On 30 April 2021, Building Ministers considered adoption of minimum standards for accessible housing. The decision taken by a majority of Ministers acknowledged the costs identified in the Decision Regulatory Impact Statement (DRIS) but reflected their assessment that a regulatory solution would result in significant and lasting benefit to Australians who need access to homes with accessible features.

On 26 August 2022, Building Ministers considered upgraded energy efficiency provisions for residential buildings. Ministers considered the DRIS prepared by the ABCB on upgraded residential energy efficiency provisions and agreed to include those provisions in NCC 2022.

On both occasions, Ministers recognised that individual jurisdictions may make modifications to implementation to address local circumstances.

Queensland specific variations proposed for the QDC retain the policy intent of the Modern Homes standards, while providing additional compliance pathways and supporting industry transition through limited time exemptions to form a comprehensive package of transitional measures.

### Alignment of residential energy efficiency provisions

Queensland's alignment with NCC 2022, particularly its residential energy efficiency provisions, have been estimated to provide about \$506 million in savings and benefits, largely through reduced energy bills for consumers.

To facilitate industry transition to the NCC residential energy efficiency standards, QDC 4.1 changes Queensland's adoption of the standards from 1 October 2023 to 1 May 2024. This reflects delays to accreditation of software tools commonly used by the majority of

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<sup>2</sup> ACIL Allen, *National Construction Code 2022: Decision Regulation Impact Statement for a proposal to increase residential building energy efficiency requirements* (Report to Australian Building Codes Board, 25 August 2022) at <https://abcb.gov.au/ncc-2022-residential-energy-efficiency-final-decision-ris>; The Centre for International Economics, *Proposal to include minimum accessibility standards for housing in the National Construction Code Decision Regulation Impact Statement* (Prepared for the Australian Building Codes Board, February 2021) at <https://abcb.gov.au/sites/default/files/resources/2022/Final-decision-RIS-accessible-housing.pdf>.

industry to verify compliance with energy standards and will align Queensland with Victoria's commencement of the energy efficiency standards.

#### Additional compliance pathway for the residential energy efficiency provisions

Queensland's adoption of optional credits for class 1 and 2 buildings with outdoor living areas will facilitate transition to the residential energy efficiency provisions in the NCC 2022 by providing buildings with these features additional compliance pathways, providing further flexibility to industry and consumers.

#### 18-month delay in commencement to the NCC 2022 for narrow lots and pre-built houses

An 18-month delay to the commencement of the livable housing design provisions for narrow lots and small pre-built houses will be implemented. This provides industry with sufficient time to understand the provisions and adjust housing designs to provide appropriate and affordable housing to new home builders.

This will also allow affected lots and dwellings to be delivered to market without delay (particularly important in light of the current housing affordability crisis).

#### Exemptions and additional compliance solutions for bathrooms and toilets

In many cases, it will be impossible for existing dwellings to comply with the livable housing design provisions for repairs and maintenance, and renovations to bathrooms and toilets without demolishing existing walls and taking space away from other rooms.

The exemptions will allow repair and maintenance generally to dwellings, and renovations to bathrooms and toilets, in existing dwellings to be undertaken without significant room reconfiguration and added expense.

It may also be impractical to require new or existing houses to have at least one accessible toilet on the ground or entry level of a class 1a building, such as a house or townhouse – particularly where there is no other habitable rooms on that level.

The QDC 4.5 provides an alternative to requiring an accessible toilet on the ground or entry level if no habitable rooms exist on that level, provided a complying toilet is installed on the lowest level that contains a habitable room. This arrangement provides a practical and cost-effective alternative to the NCC 2022 requirement. However, where a toilet is voluntarily installed on the ground or entry level of the building which does not have a habitable room, the toilet must comply with the livable housing design requirements.

#### Additional compliance solutions for showers and graded floor wastes

The additional compliance solutions for showers and graded floor wastes will increase the choices available to NCC 2022 for accessible showers and grading to non-mandatory floor wastes, respectively. They will allow industry to select more appropriate and cost-effective options suitable for different types of showers and wet areas. In particular for floor wastes, the solutions provide an acceptable pathway for compliance whilst avoiding the situation where the floor waste could be lawfully omitted from a bathroom design.

## **Consistency with fundamental legislative principles**

The Amendment Regulation and QDCs 4.1 and 4.5 are consistent with the fundamental legislative principles as outlined in the *Legislative Standards Act 1992*.

These legislative instruments have sufficient regard to the rights and liberties of individuals, and to the institution of Parliament. It is made in accordance with the power and policy objectives of the *Building Act 1975*, only amends a statutory instrument and contains matters appropriate to subordinate legislation.

## **Consultation**

Changes to the NCC 2022 were assessed through national regulatory assessment processes that involved extensive consultation industry stakeholders and consumer advocates whose submissions were reflected in the final published code.

The Department of Energy and Public Works also commissioned analysis that suggests Queensland's alignment with the NCC 2022 residential energy efficiency standards will provide an overall benefit for Queensland.

Queensland-specific variations proposed for the QDC were developed in conjunction with industry and advocates including through the Minister for Energy, Renewables and Hydrogen and Minister for Public Works and Procurement's Ministerial Construction Council.

The proposed QDC's retain the policy intent of the NCC, while providing additional compliance pathways and supporting industry transition through limited time exemptions to form a comprehensive package of transitional measures.