

Queensland



Subordinate Legislation 1994 No. 103

Building Act 1975

BUILDING (FLAMMABLE AND COMBUSTIBLE LIQUIDS) REGULATION 1994

TABLE OF PROVISIONS

Section		Page
PART 1—PRELIMINARY		
1	Short title	5
2	Commencement	5
3	Application	5
4	Definitions	5
5	Separation distances	6
6	Conflict with standards	7
PART 2—OFFENCES		
7	Licensed premises must comply with standards	7
8	Portable package for flammable and combustible liquids	7
9	Storage of flammable and combustible liquids on premises	8
10	Alteration to premises or business	8
11	Failure to return licence	8
12	Improper use of information	8
PART 3—LICENSING OF PREMISES		
13	Application for licence	9
14	Decision on application	10
15	Licences	10
16	Renewal of licences	10
17	Amendment of licences	11

18	Transfer of licences	12
19	Suspension, cancellation and refusal to renew—grounds	12
20	Suspension, cancellation and refusal to renew—procedures	13
21	Return of suspended or cancelled licence	14
22	Surrender of licences	14
23	Applications	14

PART 4—FLAMMABLE AND COMBUSTIBLE LIQUIDS ADVISORY COMMITTEE

Division 1—Establishment, functions and powers of Committee

24	Establishment of Committee	15
25	Functions of Committee	15
26	Powers of Committee	16
27	Secretary to Committee	16

Division 2—Meetings of Committee

28	Conduct of business	16
29	Times and places of meetings	16
30	Presiding at meetings	16
31	Quorum and voting at meetings	17
32	Disclosure of interests	17

Division 3—Membership

33	Membership of Committee	18
34	Presiding officer of Committee	18
35	Appointment of Committee members	18
36	Remuneration of Committee members	19
37	Deputy members	19
38	Resignation	19

PART 5—APPEALS AND VARIATIONS PANEL

Division 1—Membership, functions and powers

39	Appointment of Panel	20
40	Functions of Panel	20
41	Powers of Panel	20
42	Membership of Panel	20
43	Remuneration of Panel members	21

Division 2—Proceedings

44	Conduct of business	21
45	Times and places of meetings	21
46	Presiding at meetings	21
47	Voting	22
48	Disclosure of interests	22

PART 6—APPEALS

49	Decisions subject to appeal	23
50	Notice of decision	23
51	Right of appeal to Panel	23
52	How to start appeal	24
53	Time and place of hearing	24
54	Hearing procedures	24
55	Powers of Panel on appeal	25
56	Notice of Panel's decision	25

PART 7—VARIATIONS

57	Application of Part	25
58	Application for variation	26
59	Procedure for deciding application	26
60	Decision on application	27
61	Effect of variation	27

PART 8—PUBLIC SAFETY

62	Works in interest of public safety	27
63	Recovery of costs and expenses of works	28

PART 9—TRANSITIONAL

64	Definitions	28
65	Pending applications about licences	28
66	Licences	29
67	Committee membership	29
68	Preservation of appeal rights	30
69	Pending appeals	30

70	Pending applications for variation	31
71	Expiry of Part	31

PART 1—PRELIMINARY

Short title

1. This regulation may be cited as the *Building (Flammable and Combustible Liquids) Regulation 1994*.

Commencement

2. This regulation commences on 26 March 1994.

Application

3.(1) This regulation applies to the storage and handling of flammable and combustible liquids.

(2) This regulation does not apply to flammable or combustible liquid—

- (a) stored in or about a mine to which the *Mines Regulations Act 1964* or *Coal Mining Act 1925* applies; or
- (b) if the *Petroleum Act 1923* or *Petroleum (Submerged Lands) Act 1982* applies, or a permit, licence or other authority issued or granted under either of the Acts for the exploration for, or production of, petroleum applies; or
- (c) stored on land having an area of more than 5 ha that is used or intended to be used by the occupier for agricultural, horticultural, floricultural or pastoral purposes, unless the flammable or combustible liquid is stored for resale; or
- (d) stored in a way exempted by AS 1940 and, if there is a right to an exemption under the standard, only if the precautions forming part of the standard are complied with.

Definitions

4. In this regulation—

“**approved**” means approved by a local government;

“**AS 1940**” means Australian Standard 1940 ‘The Storage and Handling of

Flammable and Combustible Liquids’;

“**boundary**” has the meaning given by AS 1940;

“**chief executive**” means the chief executive of the department;

“**combustible liquid**” has the meaning given by AS 1940;

“**Committee**” means the Flammable and Combustible Liquids Advisory Committee;

“**Committee member**” means a member of the Committee;

“**continued licence**” means a licence taken to have been issued to a person under section 66(2);

“**flammable liquid**” has the meaning given by AS 1940;

“**installation**” has the meaning given by AS 1940;

“**laboratory**” means premises where flammable or combustible liquid is used mainly for analysis, research or teaching;

“**licence**” means a licence in force under Part 3;

“**licensed premises**” means premises to which a licence relates;

“**package**” has the meaning given by AS 1940;

“**Panel**” means an Appeals and Variations Panel;

“**Panel member**” means a member of a Panel;

“**premises**” means the whole or part of any land, building or other structure (including an oil refinery, drum depot, tank depot, factory, workshop, shop, warehouse and store) where flammable or combustible liquid is, or is to be, stored;

“**protected works**” has the meaning given by AS 1940;

“**secretary**” means the secretary to the Committee.

Separation distances

5. For the purpose of measuring separation distances under an Australian Standard in its application under this regulation—

- (a) the boundary of licensed premises is taken to be protected works;
and

- (b) the distances must not be measured as if the boundary did not exist.

Conflict with standards

6. If there is a conflict between this regulation and an Australian Standard mentioned in this regulation, this regulation prevails.

PART 2—OFFENCES

Licensed premises must comply with standards

7.(1) Subject to sections 16(4), 17(6) and 61, the occupier of licensed premises must ensure the premises comply with the following standards (as far as they are relevant to the premises or an installation on the premises)—

- (a) AS 1940;
- (b) another Australian Standard mentioned in this regulation.

Maximum penalty—20 penalty units.

(2) The occupier of a laboratory is not required to comply with AS 1940 if—

- (a) the laboratory is built as required by Australian Standard 2982 ‘Laboratory Construction’ (the “**laboratory standard**”); and
- (b) the occupier complies with the requirements of the laboratory standard for the storage of flammable and combustible liquids.

Portable package for flammable and combustible liquids

8. A person must not dispense flammable or combustible liquid into a portable package unless it is—

- (a) a substantial leak-proof metal container with a tight fitting closure;
or

- (b) a container complying with Australian Standard 2906 'Fuel Container—Portable—Plastics and Metal'; or
- (c) an approved container.

Maximum penalty—20 penalty units.

Storage of flammable and combustible liquids on premises

9. An occupier of premises must not store flammable or combustible liquid on the premises, or permit flammable or combustible liquid to be stored on the premises, except under a licence.

Maximum penalty—20 penalty units.

Alteration to premises or business

10. A licensee must give written notice to the local government before—

- (a) a material alteration or addition to licensed premises is made; or
- (b) a material change in the nature of the business, trade or industry carried on at the premises is made.

Maximum penalty—20 penalty units.

Failure to return licence

11. A person who is required to return a licence under a notice mentioned in section 21 on the cancellation or suspension of the licence must comply with the requirement, unless the person has a reasonable excuse for not complying with it.

Maximum penalty—5 penalty units.

Improper use of information

12.(1) A Committee member must not improperly use information acquired as a member to gain, directly or indirectly, an advantage for the member or someone else.

(2) A Panel member must not improperly use information acquired as a member to gain, directly or indirectly, an advantage for the member or

someone else.

Maximum penalty—20 penalty units.

PART 3—LICENSING OF PREMISES

Application for licence

13.(1) An occupier of premises may apply to the local government for the grant of a licence to store flammable or combustible liquid on the premises.

(2) The application must comply with section 23.

(3) The application also must—

- (a) state the location or proposed location of the premises; and
- (b) be accompanied by a site plan of the premises showing the relative positions on the premises of all existing and proposed drum depots, tank depots, protected works and other buildings; and
- (c) give details of the maximum quantities of flammable and combustible liquids to be stored on the premises (including details of the class, name and description of the liquids and, if relevant, the respective quantities to be stored on separate parts of the premises); and
- (d) give details of how the flammable and combustible liquids are to be stored (including a description of the tanks, drums or other packages to be used for storage and details about whether the tanks are, or are to be, above-ground or underground); and
- (e) state the type of business, trade or industry to be carried on at the premises; and
- (f) state Australian Standards under which tanks on the premises are to be, or have been, built; and
- (g) give details of any existing or proposed fixed fire-extinguishing system or water supply system for firefighting purposes; and

- (h) for proposed premises—be accompanied by drawings (in duplicate and to scale) showing the layout of proposed pipelines; and
- (i) for an application involving a tank built under an Australian Standard providing for the issue of a certificate about the tank—be accompanied by the certificate; and
- (j) give other details, and be accompanied by other documents, relevant to the application that the local government may, by written notice, reasonably require.

Decision on application

14.(1) The local government must consider the application and—

- (a) grant the licence; or
- (b) grant the licence on conditions the local government considers to be necessary and reasonable; or
- (c) refuse to grant the licence.

(2) If the local government decides to grant the licence, it must issue the licence to the applicant promptly.

Licences

15.(1) A licence must be in the form decided by the local government.

(2) Each condition of a licence must be specified in the licence.

(3) A licence ends on 30 June next following its issue.

(4) A licence does not have effect during the period for which it is suspended.

Renewal of licences

16.(1) A licensee may apply to the local government for the renewal of the licence.

(2) The application must comply with section 23.

(3) The local government must consider the application and either—

- (a) grant the renewal; or
- (b) refuse to grant the renewal under section 20.

(4) A local government may renew a continued licence even if the licensed premises do not comply in all respects with the requirements of this regulation, but only if the local government is satisfied the premises are not a risk to public safety.

(5) If the local government decides to grant the renewal, it must issue a renewal of the licence to the applicant promptly.

(6) A renewal—

- (a) must be in the form decided by the local government; and
- (b) begins at the end of the day on which, apart from its renewal, the licence would have ended; and
- (c) ends on 30 June next following the grant of the renewal.

Amendment of licences

17.(1) A licensee may apply to the local government for an amendment of the licence.

(2) The application must comply with section 23.

(3) The local government, by written notice, may require the applicant to give further information or documents relevant to the application.

(4) The local government must consider the application and either—

- (a) amend the licence (including a condition of the licence) in the way sought; or
- (b) refuse to amend the licence.

(5) The local government may amend the licence only if the local government is satisfied on reasonable grounds that the premises comply with the requirements of this regulation.

(6) However, a local government may amend a continued licence that does not comply in all respects with the requirements of this regulation if it is satisfied that—

- (a) the premises will not be a risk to public safety; and

- (b) the existing safeguards against the spread of fire to buildings adjoining the premises will not be unduly reduced.

(7) Before a local government decides an application for an amendment of a continued licence, it must consult with the Commissioner of Fire Service.

(8) If the local government decides to amend the licence, it must promptly give the applicant written notice of the amendment.

(9) The notice is taken to form part of the licence.

Transfer of licences

18.(1) A licensee may transfer the licence only with the approval of the local government.

(2) An application for approval of the transfer of a licence must—

- (a) be made to the local government; and
- (b) comply with section 23.

(3) The local government, by written notice, may require the applicant to give further information or documents relevant to the application.

(4) The local government must consider the application and either—

- (a) approve the transfer; or
- (b) refuse to approve the transfer.

(5) If the local government decides to approve the transfer, it must promptly give the applicant written notice of its approval.

Suspension, cancellation and refusal to renew—grounds

19. Each of the following is a ground for the suspension or cancellation of a licence or a refusal to renew a licence—

- (a) the licensee has contravened a condition of the licence;
- (b) the licence was obtained on the basis of incorrect or misleading information;
- (c) the licensee has been found guilty of an offence against this regulation;

- (d) because of a change of circumstances involving the licensed premises, the licensee cannot comply with this regulation as far as it relates to the premises.

Suspension, cancellation and refusal to renew—procedures

20.(1) If the local government believes that reasonable grounds exist to suspend or cancel a licence, or to refuse to renew a licence, (the “**action**”), the local government must give the licensee a notice (the “**show cause notice**”).

(2) The show cause notice must—

- (a) be in writing; and
- (b) state the action proposed; and
- (c) state the grounds for proposing to take the action; and
- (d) outline the facts and circumstances forming the basis for the local government’s belief; and
- (e) if the action proposed is to suspend the licence—state the proposed suspension period; and
- (f) invite the licensee to show cause within a specified period (not less than 28 days) why the action proposed should not be taken.

(3) If, after considering all representations made within the specified period, the local government still has the beliefs mentioned in subsection (1) about the action proposed, it may—

- (a) if the show cause notice was a notice of intention to suspend the licence for a specified period—suspend the licence for a period not longer than the specified period; or
- (b) if the show cause notice was a notice of intention to cancel the licence—
 - (i) cancel the licence; or
 - (ii) suspend the licence for a period; or
- (c) if the show cause notice was a notice of intention to refuse to renew the licence—refuse to renew the licence.

(4) The decision takes effect on the later of the following—

- (a) the day notice of the decision is given to the licensee under section 50;
- (b) the day specified in the notice.

Return of suspended or cancelled licence

21.(1) If the local government cancels or suspends a person's licence, the local government may, by written notice, require the person to return the licence to the local government within the period (not less than 14 days) specified in the notice.

(2) If—

- (a) a suspended licence is returned; and
- (b) the licence is still current at the end of the suspension period;

the local government must return the licence to the licensee at the end of the period.

Surrender of licences

22.(1) A licensee may surrender the licence by written notice given to the local government.

(2) The licence must accompany the notice.

(3) The surrender takes effect on the later of the following—

- (a) the day the notice is given;
- (b) the day specified in the notice.

Applications

23.(1) This section applies to the following applications—

- (a) an application for a licence under section 13;
- (b) an application for the renewal of a licence under section 16;
- (c) an application for an amendment of a licence under section 17;
- (d) an application for an approval of the transfer of a licence under section 18.

(2) The application must—

- (a) be in writing; and
- (b) be in a form approved by the chief executive; and
- (c) be signed by or for the applicant; and
- (d) be accompanied by the fee for the application; and
- (e) if the application is an application for the renewal of a licence—be made—
 - (i) before 1 June of the year in which the licence ends; or
 - (ii) if the licence is issued in June—before it ends.

(3) The fee mentioned in subsection (2)(d) is the amount that—

- (a) the local government considers to be reasonable; and
- (b) is not more than the reasonable cost of doing the thing for which the fee is payable.

PART 4—FLAMMABLE AND COMBUSTIBLE LIQUIDS ADVISORY COMMITTEE

Division 1—Establishment, functions and powers of Committee

Establishment of Committee

24. A Flammable and Combustible Liquids Advisory Committee is established.

Functions of Committee

25. The Committee has the following functions—

- (a) to consider, and give information or advice to the Minister on, any issue referred to it by the Minister;
- (b) on its own initiative, to make recommendations to the Minister

for the amendment of this regulation;

- (c) on its own initiative, to consider, and give information or advice to the Minister on, any issue about the administration of this regulation;
- (d) other functions conferred on the Committee under this regulation.

Powers of Committee

26.(1) The Committee has the powers given by this regulation.

(2) The Committee also may do all things necessary or convenient to be done in performing its functions.

Secretary to Committee

27.(1) There is to be a secretary to the Committee.

(2) The secretary has the powers and functions conferred by the presiding officer of the Committee.

(3) The functions may include functions for a Panel.

Division 2—Meetings of Committee

Conduct of business

28. Subject to this Part, the Committee may conduct its business (including its meetings) in the way it considers appropriate.

Times and places of meetings

29. Meetings of the Committee are to be held at the times and places the Committee decides.

Presiding at meetings

30.(1) The presiding officer of the Committee is to preside at all meetings at which the presiding officer is present.

(2) If the presiding officer is not present at a meeting, a Committee member chosen by the members present at the meeting is to preside.

Quorum and voting at meetings

31. At a meeting of the Committee—

- (a) a quorum consists of a majority of the number of Committee members; and
- (b) the person presiding—
 - (i) has a deliberative vote; and
 - (ii) if the votes on an issue to be decided are equal—has a casting vote.

Disclosure of interests

32.(1) If—

- (a) a Committee member has a direct or indirect financial interest in an issue being considered, or about to be considered, by the Committee; and
- (b) the interest could conflict with the proper performance of the member's duties in the consideration of the issue;

the member must disclose the nature of the interest to a meeting of the Committee as soon as practicable after the relevant facts come to the member's knowledge.

(2) The disclosure must be recorded in the Committee's minutes and the member must not, without the Committee's approval—

- (a) be present when the Committee considers the issue; or
- (b) take part in a decision of the Committee on the issue.

(3) Another Committee member who also has a direct or indirect financial interest in the issue must not—

- (a) be present when the Committee is making its decision to give an approval mentioned in subsection (2); or
- (b) take part in making the decision to give the approval.

(4) Subsections (2) and (3) do not apply to the member if the other Committee members present at the meeting decide unanimously that the interest is not of a material nature.

Division 3—Membership

Membership of Committee

33. The Committee consists of the following members—

- (a) a representative of the department;
- (b) a representative of local governments nominated by the Local Government Association of Queensland (Incorporated);
- (c) a representative of the Brisbane City Council nominated by the Council;
- (d) a representative of the Commissioner of Fire Service nominated by the Commissioner;
- (e) a representative of the Australian Institute of Petroleum nominated by the Institute;
- (f) any other representatives the Minister considers appropriate.

Presiding officer of Committee

34. The member mentioned in section 33(a) is to be the presiding officer of the Committee.

Appointment of Committee members

35.(1) The Committee members are to be appointed by the Minister.

(2) A Committee member's appointment is for the term (not longer than 3 years) specified in the member's instrument of appointment.

(3) Before appointing a member to an office mentioned in section 33(b) to (e), the Minister must, by written notice, request the entity on whose nomination the appointment is to be made to give to the Minister, within the period specified in the notice, a nomination of a person for appointment to

the office.

(4) If the entity does not comply with the request, the Minister may appoint a person to the office as the representative of the entity as if the person had been properly nominated.

Remuneration of Committee members

36.(1) A Committee member is to be paid the fees and allowances fixed by the Governor in Council.

(2) Subsection (1) does not apply to a Committee member in performing functions as an officer of the public service.

Deputy members

37.(1) The Minister may appoint a deputy member of the Committee for a Committee member during any period when the Committee member is absent from duty or, for another reason, cannot perform the functions of the office.

(2) A deputy may be appointed for a Committee member only on the nomination of the entity that nominated the Committee member for appointment.

(3) While the deputy member's appointment remains in force—

- (a) the deputy member is taken to be a Committee member; and
- (b) if the deputy member was appointed for the member who is the presiding officer of the Committee—the deputy member is taken to be the presiding officer.

Resignation

38. A Committee member may resign by signed notice given to the Minister.

PART 5—APPEALS AND VARIATIONS PANEL

Division 1—Membership, functions and powers

Appointment of Panel

39. The Minister may appoint persons to form an Appeals and Variations Panel.

Functions of Panel

40. A Panel has the following functions—

- (a) to decide appeals under this regulation;
- (b) to decide applications for variations of this regulation;
- (c) other functions conferred on the Panel under this regulation.

Powers of Panel

41.(1) A Panel has the powers given by this regulation.

(2) A Panel also may do all things necessary or convenient to be done in performing its functions.

Membership of Panel

42.(1) A Panel is to consist of—

- (a) the presiding officer of the Committee; and
- (b) a representative of the Local Government Association of Queensland (Incorporated) nominated by the chief executive after consultation with the Association; and
- (c) a representative of the Australian Institute of Petroleum; and
- (d) for an application made by the State—a person employed by the State; and
- (e) if a fire related issue is involved—a person nominated by the chief executive after consultation with the Commissioner of Fire

Service; and

- (f) any other persons nominated by the presiding officer of the Panel who the presiding officer considers have qualifications or experience appropriate to the issue to be decided.

(2) The person mentioned in subsection (1)(a) is to be the presiding officer of the Panel.

(3) In this section—

“**fire related issue**” means an issue about—

- (a) fire protection facilities; or
- (b) a risk to public safety from the danger of fire; or
- (c) the spread of fire to buildings and adjoining premises.

Remuneration of Panel members

43.(1) A Panel member is to be paid the fees and allowances fixed by the Governor in Council.

(2) Subsection (1) does not apply to a Panel member in performing functions as an officer of the public service.

Division 2—Proceedings

Conduct of business

44. Subject to this Part, a Panel may conduct its business (including its meetings) in the way it considers appropriate.

Times and places of meetings

45. Meetings of a Panel are to be held at the times and places the Panel decides.

Presiding at meetings

46.(1) The presiding officer of a Panel is to preside at all meetings at

which the presiding officer is present.

(2) If the presiding officer is not present at a meeting, a Panel member chosen by the members present at the meeting is to preside.

Voting

47.(1) A Panel is to exercise a power or perform a function by a majority vote of the Panel members.

(2) If the votes are equal, the person presiding has a casting vote.

Disclosure of interests

48.(1) If—

- (a) a Panel member has a direct or indirect financial interest in an issue being considered, or about to be considered, by the Panel; and
- (b) the interest could conflict with the proper performance of the member's duties in the consideration of the issue;

the member must disclose the nature of the interest to a meeting of the Panel as soon as practicable after the relevant facts come to the member's knowledge.

(2) The disclosure must be recorded in the Panel's minutes and the member must not, without the Panel's approval—

- (a) be present when the Panel considers the issue; or
- (b) take part in a decision of the Panel on the issue.

(3) Another member who also has a direct or indirect financial interest in the issue must not—

- (a) be present when the Panel is making its decision to give an approval mentioned in subsection (2); or
- (b) take part in making the decision to give the approval.

(4) Subsections (2) and (3) do not apply to the member if the other Panel members present at the meeting decide unanimously that the interest is not of a material nature.

PART 6—APPEALS

Decisions subject to appeal

49. This Part applies to the following decisions of a local government—

- (a) a decision under section 14(1) to grant a licence on conditions;
- (b) a decision under section 14(1) to refuse to grant a licence;
- (c) a decision under section 17(4) to refuse to amend a licence;
- (d) a decision under section 18(4) to refuse to approve the transfer of a licence;
- (e) a decision under section 20(3) to refuse to grant a renewal of a licence;
- (f) a decision under section 20(3) to suspend a licence;
- (g) a decision under section 20(3) to cancel a licence.

Notice of decision

50.(1) The chief executive officer of the local government must give notice of the local government's decision to the applicant or licensee.

(2) The notice must—

- (a) be in writing; and
- (b) be given within 21 days after the decision was made; and
- (c) specify the decision; and
- (d) specify the reasons for the decision; and
- (e) contain a statement to the effect that, subject to this regulation, an appeal against the decision may be made to a Panel.

(3) The validity of a decision is not affected by a failure to comply with this section.

Right of appeal to Panel

51. A person to whom a notice of a decision is required to be given may

appeal to a Panel against the decision.

How to start appeal

52.(1) An appeal is started by—

- (a) giving the secretary a written notice of appeal in the form approved by the chief executive; and
- (b) paying with the notice the fee of \$300 for the appeal; and
- (c) giving a copy of the notice to the chief executive officer of the local government.

(2) The notice of appeal must be given within 28 days after the appellant receives notice of the decision appealed against.

(3) The notice of appeal must state—

- (a) the grounds of the appeal; and
- (b) the facts and circumstances relied on to support the grounds.

Time and place of hearing

53.(1) On receiving the notice of appeal, the secretary must refer the matter to the presiding officer of the Panel.

(2) The presiding officer must—

- (a) fix a day, time and place for the hearing of the appeal by the Panel; and
- (b) give written notice of the details to—
 - (i) the appellant; and
 - (ii) the chief executive officer of the local government.

Hearing procedures

54.(1) In conducting the hearing, the Panel may adjourn the proceeding to a time and place it considers appropriate.

(2) In deciding the appeal, the Panel must consider any representations made to it by the appellant or local government.

(3) If the appellant or local government does not appear at the hearing, it is taken that the party does not intend to make any representations.

(4) For matters not provided for by this regulation, the procedure for the appeal is to be decided by the Panel.

(5) However, in deciding the appeal the Panel must observe natural justice.

Powers of Panel on appeal

55.(1) In deciding the appeal, the Panel may—

- (a) confirm the decision appealed against; or
- (b) set aside the decision and substitute another decision.

(2) In substituting another decision, the Panel has the same powers as the local government.

(3) If the Panel substitutes another decision, the substituted decision is taken, for the purposes of this regulation, to be the local government's decision.

(4) The Panel's decision may be made on conditions.

Notice of Panel's decision

56. The secretary must give written notice of the Panel's decision to—

- (a) the appellant; and
- (b) the chief executive officer of the local government.

PART 7—VARIATIONS

Application of Part

57. This Part applies only to premises that are proposed to be used to store flammable or combustible liquid but would not comply with this regulation in all respects.

Application for variation

58.(1) An occupier of premises may apply to a Panel for a variation of this regulation in its application to the premises.

(2) However, an application may not be made about a thing that a local government can approve under this regulation or an Australian Standard.

(3) The application must—

- (a) be in writing; and
- (b) be in a form approved by the chief executive; and
- (c) be signed by or for the applicant; and
- (d) be given to the secretary; and
- (e) be accompanied by—
 - (i) the fee of \$300 for the application; and
 - (ii) a written submission stating the grounds of the application and the facts and circumstances relied on to support the grounds.

(4) The applicant must give copies of the application and submission to the chief executive officer of the local government concerned.

Procedure for deciding application

59.(1) The Panel may allow the application to be presented by the applicant, or the applicant's agent, in person.

(2) If subsection (1) applies, the secretary must—

- (a) fix a day, time and place for the Panel's consideration of the application; and
- (b) give written notice of the details to—
 - (i) the applicant; and
 - (ii) the local government.

(3) The local government to which the notice is given also may appear by its agent when the Panel considers the application.

Decision on application

60.(1) The Panel must consider the application and—

- (a) grant the application; or
- (b) grant the application on conditions the Panel considers to be necessary and reasonable; or
- (c) refuse to grant the application.

(2) The secretary must promptly give written notice of the Panel's decision to—

- (a) the applicant; and
- (b) the local government.

Effect of variation

61. If the Panel grants the application—

- (a) this regulation is taken to apply to the premises as if the regulation had been varied for the premises in accordance with the Panel's decision; and
- (b) if the decision is made on conditions—this regulation (as varied) applies only if the conditions are complied with.

PART 8—PUBLIC SAFETY

Works in interest of public safety

62.(1) This section applies if a local government believes on reasonable grounds that a dangerous condition has resulted, or is likely to result, from an escape of flammable or combustible liquid from a tank or package on premises to which this regulation applies.

(2) The local government may take the action and perform the works to remove, or lessen the extent of, the danger that it considers necessary in the interests of public safety.

Recovery of costs and expenses of works

63.(1) The local government may recover the amount of the costs and expenses incurred by it in taking the action and performing the works as a debt due to it—

- (a) from the responsible person; and
- (b) if there is more than 1 responsible person—from the responsible persons jointly and severally.

(2) The right of recovery—

- (a) is in addition to, and not in substitution for, another right of action the local government has apart from this section; and
- (b) does not operate to reduce the effect of another right of action.

(3) In this section—

“responsible person”, in relation to the escape of flammable or combustible liquid from a tank or package on premises, means the person whose contravention of this regulation caused the escape.

PART 9—TRANSITIONAL

Definitions

64. In this Part—

“former Committee” means the Flammable and Combustible Liquids Advisory Committee established under the former regulation;

“former regulation” means the *Flammable and Combustible Liquids Regulation 1990*;

“new Committee” means the Committee.

Pending applications about licences

65.(1) This section applies to the following applications made under the former regulation—

- (a) an application for the issue of a licence;
- (b) an application for the renewal of a licence;
- (c) an application for an alteration of a licence or a condition of a licence;
- (d) an application for the transfer of a licence.

(2) If the application was pending immediately before the commencement of this regulation, the application is taken to have been made under the relevant section of this regulation.

Licences

66.(1) This section applies if a person was the holder of a licence for premises under the former regulation immediately before the commencement of this regulation.

(2) On the commencement of this regulation, the licence is taken to have been issued to the person for the premises under this regulation.

(3) Subject to Part 3, a continued licence remains in force for the remainder of the period for which the licence was issued under the former regulation.

(4) Subsection (2) applies to a licence even if the licence was suspended at the commencement of this regulation.

(5) However, a suspended licence does not take effect under this section—

- (a) until the end of the period for which it was suspended; or
- (b) if its term ended during the suspension period.

Committee membership

67.(1) A person holding office immediately before the commencement of this regulation as a member of the former Committee is taken to have been appointed as a member of the new Committee under section 35.

(2) If the person was appointed to the former Committee on the nomination of an entity, the person is taken to have been appointed to the new Committee on the nomination of the entity.

(3) Subject to Part 4, the person holds office as a member of the new Committee for the remainder of the term for which the person was appointed under the former regulation.

(4) The member of the former Committee who was the presiding officer of the Committee immediately before the commencement of this regulation is taken to be the presiding officer of the new Committee.

Preservation of appeal rights

68.(1) This section applies if—

- (a) a decision was made by a local authority under the former regulation before the commencement of this regulation; and
- (b) the decision was a decision against which a person had the right to appeal to an Appeals and Variations Panel under the former regulation; and
- (c) at the commencement of this regulation—
 - (i) the period for starting the appeal under the former regulation had not ended; and
 - (ii) the person had not started the appeal under the former regulation.

(2) The person may appeal against the decision in the same way as if the decision were a decision of a local government under this regulation.

(3) However, the appeal must be started within 30 days after the person received notice of the decision under the former regulation.

Pending appeals

69.(1) This section applies if an appeal against a decision was properly started under the former regulation but was not referred to the presiding officer of an Appeals and Variations Panel under the former regulation before the commencement of this regulation.

(2) The decision is taken to be a decision of a local government, and the appeal is taken to have been started, under this regulation.

Pending applications for variation

70. If an application for a variation of the former regulation was pending immediately before the commencement of this regulation, the application is taken to have been made under section 58 of this regulation.

Expiry of Part

71. This Part expires 1 year after it commences.

ENDNOTES

1. Made by the Governor in Council on 24 March 1994.
2. Notified in the Gazette on 25 March 1994.
3. Laid before the Legislative Assembly on . . .
4. The administering agency is the Department of Housing, Local Government and Planning.