



Queensland

Building and Other Legislation Amendment Regulation (No. 4) 2011

Explanatory Notes for SL 2011 No. 265

made under the

Building Act 1975

Fire and Rescue Service Act 1990

Plumbing and Drainage Act 2002

Sustainable Planning Act 2009

General outline

Short title

Building and Other Legislation Amendment Regulation (No. 4) 2011.

Authorising law

Sections 13(3), 32(1), 261(2)(a), 261(2)(b), 261(2)(c) and 261(2)(h) of the *Building Act 1975*

Section 154(2)(a) of the *Fire and Rescue Service Act 1990*

Sections 45(1), 145(2) and 145(2)(a) of the *Plumbing and Drainage Act 2002*

Sections 250, 254 and 763 of the *Sustainable Planning Act 2009*

Policy objectives and the reasons for them

Amendment to the *Building Regulation 2006*

QDC Mandatory Part 5.4 for Child Care Centres

New national laws for early childhood education and care services, prepared on the basis of a National Agreement endorsed by the Council of Australian Governments in December 2009, will commence on 1 January 2012.

Under consequential amendments to the Queensland laws, new and renovated education and care services, excluding new outside school hours care services, will be required to comply with the National Construction Code Series when the National Construction Code undergoes its annual amendment in May 2012. Amendments of the *Building Regulation 2006* are required to replace the current version of QDC MP 5.4 with a revised part to cover the interim period prior to the annual amendment to the National Construction Code.

Requirements for inspecting footings of detached houses

The *Building Regulation 2006* provides mandatory inspection stages for single detached houses, sheds and swimming pools. Each stage of building work comprises a range of ‘aspects’ to be inspected. For example, an aspect of a footing stage includes a check of the boundary clearances.

Under the current regime, building certifiers may use any ‘competent person’ to provide assistance with inspections for any of the ‘aspects’ of the footings stage. However, currently, the *Building Regulation 2006* specifies a building certifier must inspect the footings of a detached house and undertake the home’s final inspection.

Amendments are required to provide that, for the purposes of the ‘boundary clearance’ aspect of a footings inspection, only a cadastral surveyor is a ‘competent person’ able to assist a building certifier with the inspection. For the ‘reinforcement of slab and footing system’ aspect of the footings inspection, amendments that specify that only a registered professional engineer is a ‘competent person’ are required.

Provided the above aspects are inspected by a person of the new restricted categories of ‘competent person’, the building certifier responsible for approving the work may sign the certificate of inspection without personally inspecting the footings stage.

Refund of building variation and fast track application fees

The *Building Regulation 2006* provides for the variation of the application of particular building assessment provisions which are contained in the *Building Act 1975*, the *Building Regulation 2006*, the BCA and the QDC. If building work or proposed building work does not, or will not, comply with a provision of the building assessment provisions, a person may apply (via a variation application), to the Chief Executive of the Department of Local Government and Planning for a variation of how the provision applies to the building work.

A variation application must be decided within 20 business days of the application being made. It is possible to request fast-tracking of the application in two business days. The *Building Regulation 2006* prescribes fees for variation applications and fast-track requests.

Currently, where the Chief Executive refuses a request to fast-track a variation application decision, the Chief Executive must refund the fast-track fee to the applicant.

Apart from a provision allowing for a refund where a fast-track request is refused from the outset (prior to consideration), there is no provision in the *Building Regulation 2006* allowing for a refund of fees paid. The only method of refunding the fees is via an ex gratia payment which must then be disclosed through the annual estimates committee process. Ex-gratia payments are not considered appropriate for routine fee refunds. A better mechanism for refunding fees is required.

Requirements for water-based fire safety installations

Currently, there is no clear methodology and no established process for testers to use when testing fire hydrants and sprinkler systems against relevant Australian standards to determine whether a non-compliant test result is due to a temporary water supply network problem. This has resulted in inconsistencies in the application of the standard.

The Department of Local Government and Planning established a technical working group comprising the Queensland Fire and Rescue Service, the National Fire Industry Association, the Master Plumbers Association of Queensland, the Association of Hydraulic Services Consultants Australia, water service providers, designers and testers.

To allow for consistency in application of the standards and reporting, the technical working group developed a testing procedure and communication

protocol in the event that testing of a building's fire safety system produces a negative result.

Amendments to the *Building Regulation 2006* are required to adopt an amended version of QDC MP 6.1 'Commissioning and maintenance of fire safety installations' which will require testers of water-based fire safety installations to follow a stringent testing procedure for determining water pressure and flow, report the test results in a document, provide a copy of the document to the building occupier or owner and keep a copy of it themselves for a minimum of five years.

Amendment to the *Building Fire Safety Regulation 2008*

Under the *Building Fire Safety Regulation 2008*, a person may carry out maintenance of a prescribed fire safety installation only if the person is an 'appropriately qualified person' as defined by the *Building Fire Safety Regulation 2008*. The definition currently covers a Queensland Building Services Authority licence covering fire safety installations of that type. However, Fire protection plumbers licensed through the Plumbing Industry Council also have the necessary expertise to test a building fire safety system.

Amendments of the *Building Fire Safety Regulation 2008* are required to expand the definition of 'appropriately qualified person' to allow plumbers licensed by the Plumbing Industry Council (PIC) to inspect, test and maintain fire hydrants or fire sprinkler systems to carry out that work under QDC MP 6.1. It is anticipated that these amendments will increase the pool of licensees available to perform testing in accordance with the Regulation.

The amendments are closely related to the amendments of the *Building Regulation 2006* adopting the new QDC MP 6.1 mentioned above and the amendments of the *Plumbing and Drainage Regulation 2003* mentioned below.

Amendment to the *Standard Plumbing and Drainage Regulation 2003*

Deletion of Schedule 5 list

Schedule 5 of the *Standard Plumbing and Drainage Regulation 2003* lists local governments whose jurisdictional areas may contain relevant remote areas, for which they can dispense with the requirement for plumbing inspectors to inspect plumbing and drainage work for compliance with the relevant technical standards.

Schedule 5 is for reference purposes only and the operational provisions for defining the remote areas are contained elsewhere in the *Standard Plumbing and Drainage Regulation 2003*. Given that the schedule serves no technical purpose and its presence in the regulation has created confusion among local governments about the operation of the ‘remote area’, it is proposed that the schedule and some related provisions in the *Standard Plumbing and Drainage Regulation 2003* be removed.

Amendment of Part 2 provisions for greater consistency

The terminology for plumbing work, drainage work and on-site sewerage work need to be aligned to clarify the intention that all plumbing and drainage work comply with the relevant parts of the Plumbing Code of Australia and the QDC mandatory parts referred to in the *Standard Plumbing and Drainage Regulation 2003* and the Queensland Plumbing and Wastewater Code.

Exclusion of certain Australian Standards from the application of the Plumbing Code of Australia

The *Standard Plumbing and Drainage Regulation 2003* requires that plumbing and drainage work comply with specified parts of the Plumbing Code of Australia, subject to certain exceptions. Additional exceptions are proposed to be created for AS/NZS 3500.3:2003 (Storm water drainage) and AS/NZS 1546.2:2001 (Waterless composting toilets).

Updating Schedule 1 – removing Australian/New Zealand standards

The Australian and New Zealand standards cited in the *Standard Plumbing and Drainage Regulation 2003* as ‘applied provisions’ for plumbing and drainage work are referenced separately within relevant parts of the Plumbing Code of Australia and the Queensland Plumbing and Wastewater Code. It is proposed that this duplication be removed by deleting duplicated standards from the *Standard Plumbing and Drainage Regulation 2003*.

Updating Schedule 1 – including QDC Mandatory Parts 3.5, 4.2 and 4.3

Various components of these mandatory parts of the QDC include standards for plumbing and drainage work. It is proposed that an amendment be made to the *Standard Plumbing and Drainage Regulation 2003* to clarify that the plumbing and drainage components of those mandatory parts are ‘applied provisions’ with which all plumbing and drainage work must comply.

This will allow plumbing inspectors to inspect the plumbing and drainage works at the inspection stage, to ensure that works comply with the relevant mandatory parts. Building certifiers will continue to assess compliance of the proposed works in accordance with the relevant mandatory parts, at the building approval stage. Building certifiers will be responsible for certifying that the work complies with the relevant code.

Amendment to the *Plumbing and Drainage Regulation 2003*

The trade test is one of a number of criteria listed in the *Plumbing and Drainage Regulation 2003* Schedules for determining the qualifications or practical experience of an applicant for certain plumbing licences and endorsements under the Regulation.

In the past, the trade test has been treated as a means of gaining recognition of prior learning for all of the competencies that lead to fire protection licensing outcomes.

Registered training organisations in Queensland are currently conducting alternative recognition of prior learning processes which have superseded the trade test. As the trade test has not been administered by a registered training organisation for some time it is now proposed (after extensive consultation) that all references to the trade test be removed.

Amendment to the *Sustainable Planning Regulation 2009*

Fire safety in existing residential care buildings

Recently, the *Building Act 1975* was amended to introduce a new chapter dealing with fire safety for residential care buildings built, approved or applied for, before 1 June 2007. QDC MP 2.3 – ‘Fire safety in existing residential care buildings’ is a fire safety standard for the new chapter. The *Sustainable Planning Regulation 2009* is now proposed to be amended to grant referral agency jurisdiction (as an advice agency) to the Queensland Fire and Rescue Service with respect to work done to comply with QDC MP 2.3.

Achievement of policy objectives

Amendment to the *Building Regulation 2006*

QDC Mandatory Part 5.4 for Child Care Centres

The amendments of the Regulation adopt a revised version of a part of the QDC entitled ‘MP 5.4 Child Care Centres’. The revised version will apply

to existing services that undergo renovations or new education and care services that will be covered by new national laws until commencement of the BCA in May 2012.

Requirements for inspecting footings of detached houses

The *Building Regulation 2006* is being amended to provide that for the purposes of the ‘boundary clearance’ aspect of a footings inspection, only a cadastral surveyor is a ‘competent person’ able to assist a building certifier with the inspection. For the ‘reinforcement of slab and footing system’ aspect of the footings inspection, the amendments specify that only a registered professional engineer is a ‘competent person’.

Refund of building variation and fast track application fees

Amendments to the *Building Regulation 2006* will allow for the refund of fees paid where processing times are not met for variation applications and fast-track variation applications.

Requirements for water-based fire safety installations

Amendments to the *Building Regulation 2006* are proposed to adopt an amended version of QDC MP 6.1 ‘Commissioning and maintenance of fire safety installations’ which will require testers of water-based fire safety installations to follow a stringent testing procedure for determining water pressure and flow, report the test results in a document, provide a copy of the document to the building occupier or owner and keep a copy of it themselves for a minimum of five years.

Amendment to the *Building Fire Safety Regulation 2008*

Under the *Building Fire Safety Regulation 2008*, a person may carry out maintenance of a prescribed fire safety installation only if the person is an ‘appropriately qualified person’ as defined by the *Building Fire Safety Regulation 2008*. The definition currently covers a Queensland Building Services Authority licence covering fire safety installations of that type. However, Fire protection plumbers licensed through the Plumbing Industry Council also have the necessary expertise to test a building fire safety system.

Proposed amendments of the *Building Fire Safety Regulation 2008* will expand the definition of ‘appropriately qualified person’ to allow plumbers licensed by the Plumbing Industry Council (PIC) to inspect, test and maintain fire hydrants or fire sprinkler systems to carry out that work under ‘QDC MP 6.1 Commissioning and maintenance of fire safety installations’.

It is anticipated that these amendments will increase the pool of licensees available to perform testing in accordance with the Regulation.

Amendment to the *Standard Plumbing and Drainage Regulation 2003*

Amendments to the provisions in the *Standard Plumbing and Drainage Regulation 2003* will give effect to the policy objectives discussed above.

Amendment to the *Plumbing and Drainage Regulation 2003*

Amendments of the *Plumbing and Drainage Regulation 2003* will remove all references to the trade test discussed above.

Amendment to the *Sustainable Planning Regulation 2009*

Fire safety in existing residential care buildings

The Sustainable Planning Regulation is being amended to grant referral agency jurisdiction (as an advice agency) to the Queensland Fire and Rescue Service with respect to work done to comply with the new QDC MP 2.3.

Consistency with policy objectives of authorising law

The amendments are consistent with the policy objectives of the authorising laws.

Inconsistency with policy objectives of other legislation

The subordinate legislation is not inconsistent with any policy objectives of any legislation.

Benefits and costs of implementation

Amendment to the *Building Regulation 2006*

QDC Mandatory Part 5.4 for Child Care Centres

Impacts on Business

These amendments are not expected to result in any additional costs for business. Early childhood education and care services are already required to meet the existing Part of the QDC. These changes do not change the level of requirements for services. The amended BCA will not be as prescriptive as the current Part.

Impacts on Community

It is unlikely there will be any negative impact on the community. There will be a positive impact on the community in that there will be continued clarity on how and where standards apply. This will promote consistent and uniform application of standards. There will also be an assurance that education and care services will meet minimum acceptable standards of construction and functionality

Impacts on Government

There is no cost to Government. The amendments will continue to provide simplified and consistent building standards for early childhood education and care services

Requirements for inspecting footings of detached houses

Impacts on Business

These amendments are not expected to result in any additional costs for business. A positive benefit of the amendments is that building certifiers will now have the flexibility to use specified competent persons (engineer and cadastral surveyor) to assist with inspections of certain aspects of the footing stage of houses. The proposal will also provide clarification to industry about the inspection requirements.

Impacts on Community

It is unlikely there will be any negative impact on the community. A positive impact will be that the amendments ensure that the public interest is protected through appropriately qualified and experienced persons conducting inspections of house footings during construction.

Impacts on Government

There are no anticipated additional costs to Government. Housing projects constructed by the Queensland Government are self-assessable development, meaning they must comply with relevant building codes and standards. However, the Government is not subjected to the requirements for inspection of building work in the same manner as the private sector.

Refund of building variation and fast track application fees

Currently there is no provision in the *Building Act 1975* or the *Building Regulation 2006* allowing for a refund of fees paid for variation applications. The proposed amendments will allow for the refund of fees paid where processing times are not met for variation applications and

fast-track variation applications. No financial implications would result as the proposed amendments would be performed as an administrative function of the Department of Local Government and Planning.

Requirements for water-based fire safety installations

No negative impact or extra cost is expected by the proposed amendments as the plumbing and fire protection industries will be provided with the requested clarity through the strengthened testing methodology. The new testing procedures will provide a more consistent application of the standard and increased certainty to the industry, particularly where testing is conducted to assess the potential impact of reduced mains pressures.

Amendment to the *Building Fire Safety Regulation 2008*

Amending the definition of an ‘appropriately qualified person’ will increase the pool of licensees available to perform testing.

Amendment to the *Standard Plumbing and Drainage Regulation 2003*

No impacts are expected from the amendments to Schedule 5 as it is for reference purposes only.

Amendment to the *Plumbing and Drainage Regulation 2003*

This proposal will have limited impacts on business, as building certifiers and plumbing inspectors will maintain roles in the approval process. It will actually provide clarity to building certifiers and plumbing inspectors about what they are to assess when inspecting work in accordance with QDC MP 4.2 and MP 4.3. As building certifiers are unable to assess certain plumbing elements of the QDC, the work being undertaken by building certifiers will essentially not be altered. The role of plumbing inspectors will predominantly remain the same, but will allow assessment of plumbing work against requirements of the QDC as well as plumbing legislation. Designers and building owners may also be positively impacted, being confident in knowing that the design and the construction of buildings meet the requirements of QDC MP 4.2 and MP 4.3.

This proposal should result in positive impacts for the community. The main benefits are building owners will be certain that their properties are compliant with the QDC and that they have been assessed by appropriately qualified people. Additional assessment costs should be minimal or non-existent as the assessment by plumbing inspectors will be able to be completed while undertaking regular inspections.

This proposal will have a minimal impact on Government. It will improve the ability of local governments to enforce compliance with the QDC and will place a minimal burden on existing processes.

Amendment to the *Sustainable Planning Regulation 2009*

Fire safety in existing residential care buildings

The Sustainable Planning Regulation is being amended to grant referral agency jurisdiction (as an advice agency) to the Queensland Fire and Rescue Service with respect to work done to comply with the new QDC MP 2.3. This provides a benefit to the community and industry as the Queensland Fire and Rescue Service are experts in assessing compliance with fire safety requirements and is particularly important in light of the recent fire (November 2011) in a nursing home in the Sydney suburb of Quakers Hill.

Consistency with fundamental legislative principles

The subordinate legislation is consistent with fundamental legislative principles.

Consultation

Extensive consultation has been undertaken with the Department of Education and Training, the Queensland Reconstruction Authority, planning representatives of the Department of Local Government and Planning, the Department of Public Works and Queensland Treasury.

Consultation has also occurred with the Australian Building Codes Board, the Local Government Association of Queensland, the Association of Hydraulic Services Consultants Australia, the Master Plumbers Association of Queensland, the National Fire Industry Association, the Queensland Fire and Rescue Service, the Queensland Building Services Authority, representatives of the fire safety design and installation industry, and local governments, including Brisbane City Council.

The Queensland Office for Regulatory Efficiency (QORE) has been consulted regarding the need for a Regulatory Assessment Statement (RAS).

ENDNOTES

- 1 Laid before the Legislative Assembly on . . .
- 2 The administering agency is the Department of Local Government and Planning.

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