

# **Building Amendment Regulation (No. 2) 2013**

Explanatory notes for SL 2013 No. 284

made under the

*Building Act 1975*

## **General Outline**

### **Short title**

*Building Amendment Regulation (No.2) 2013*

### **Authorising law**

Section 13 of the *Building Act 1975* (BA)

### **Policy objectives and the reasons for them**

A new streamlined legislative scheme for assessing building work proposed to be undertaken over or near sewers, water mains, stormwater drains or combined sanitary drains (relevant infrastructure) commenced on 1 November 2013. The scheme was primarily introduced to significantly reduce the regulatory burden, costs and delays associated with building approvals for building work over or near relevant infrastructure.

The policy objective of the amendment regulation is to refine the technical aspects of the new scheme to ensure it meets its objective of reducing the regulatory burden, costs and delays associated with obtaining building approvals.

### **Achievement of policy objectives**

The technical aspects of the new scheme are set out in a new mandatory part of the Queensland Development Code (QDC) called 1.4 – Building Over or Near Relevant Infrastructure (MP 1.4).

MP 1.4 contains two performance criteria that must be satisfied, and building solutions that are treated as acceptable means of satisfying the criteria. The building solutions are known as 'acceptable solutions'. One performance criteria is intended to ensure building work does not damage relevant infrastructure. The other aims to ensure building work does not impede access to the infrastructure required for the purpose of inspecting, maintaining or replacing the infrastructure.

The second performance criteria also aims to ensure building work does not impede the infrastructure's ventilation. The acceptable solution for the second performance criteria is described in MP 1.4 as 'A2'.

Under the scheme, building certifiers may grant building approvals for building work over or near relevant infrastructure if the proposed building work complies with MP 1.4. If a building development application (building application) does not comply with the relevant acceptable solutions, it must be referred to the service provider that owns the infrastructure so it may exercise jurisdiction as a concurrence agency.

Two separate public consultation processes for the scheme were conducted before the scheme was introduced. In addition, officers of the Department of Housing and Public Works (the department) worked extensively with a wide range of stakeholders to develop the scheme.

Since the commencement of MP 1.4, it has become clear that the acceptable solution A2 includes a stipulation that effectively limits its application to the extent that most building work will not meet the acceptable solution. As a result, most building applications for such work are required to be referred to relevant service providers so they may exercise their jurisdiction as concurrence agencies. Assessment of a building application by a concurrence agency takes up to twenty business days and attracts an application fee.

As a result of the problematic stipulation in A2, the new scheme is not meeting its objective of reducing the regulatory burden, costs and delays associated with obtaining building approvals. Accordingly, the current version of MP 1.4 will be replaced by a version of the part that does not include the stipulation mentioned.

In addition, some stakeholders have alerted the department to the fact that some types of building work currently regulated by MP 1.4 do not have the potential to damage relevant infrastructure, or impede access to, or ventilation for, such infrastructure. It has been decided that such building work should not be regulated by MP 1.4. Accordingly, the application provision for the replacement version of MP 1.4 excludes such building work. The effect of this is that MP 1.4 will not apply to such building work.

Under the BA, a part of the QDC is replaced only when a regulation approves the replacement. The amendment regulation will achieve its policy objective by amending the *Building Regulation 2006* (BR) to approve the replacement of the current version of MP 1.4 with a new version of the part.

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

The amendments of the BR are consistent with the objectives of the BA, which regulates, among other things, building work.

## **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**

The amendment regulation provides the only reasonable means of refining the scheme to ensure it meets its objective of reducing the regulatory burden, costs and delays associated with obtaining building approvals.

## **Benefits and costs of implementation**

The amendment regulation will benefit the community by refining a streamlined legislative scheme for assessing building work over or near relevant infrastructure. The refinements will ensure the scheme reduces the regulatory burden and costs and delays associated with obtaining building approvals for such work.

No significant administrative costs will be associated with implementing the amendment regulation.

## **Consistency with fundamental legislative principles**

The amendment regulation has been drafted with regard to fundamental legislative principles as defined in section 4 of the *Legislative Standards Act 1992*. The amendment regulation is consistent with fundamental legislative principles.

## **Consultation**

Before the new scheme was introduced, two separate public consultation processes were conducted. In addition, the department worked extensively with a wide range of stakeholders to develop the scheme, including the technical aspects of MP 1.4. Since the commencement of the scheme, on 1 November 2013, officers of the department have worked closely with key stakeholders in relation to the refinements of the scheme implemented by the amendment regulation.

The proposed changes are supported by the Department of Energy and Water Supply, the Local Government Association of Queensland, the Australian Institute of Building Surveyors, the Master Builders Association of Queensland, the Housing Industry Association and key service providers, including Unitywater and Queensland Urban Utilities.