

Building (Approval of Amendment of QDC) Amendment Regulation 2019

Explanatory notes for SL 2019 No. 208

made under the

Building Act 1975

General Outline

Short title

Building (Approval of Amendment of QDC) Amendment Regulation 2019

Authorising law

Section 13 and 261 of the *Building Act 1975*

Policy objectives and the reasons for them

On 3 July 2019, the Minister for Housing and Public Works, Minister for Digital Technology and Minister for Sport announced that a ban would be introduced against the use of aluminium composite panels (ACP) with a polyethylene (PE) core greater than 30%. This ban would restrict usage across all buildings in Queensland.

ACP with a PE core greater than 30% are recognised as being highly flammable. Likewise, expanded polystyrene (EPS) is also recognised as a highly flammable product. These products present a potential fire safety risk to buildings on external walls, due to their combustible nature.

Amendments were made to the National Construction Code (NCC) (volumes 1 and 2 are the Building Code of Australia) in 2018 to introduce more stringent testing and verification methods to prevent the use of combustible cladding on buildings. However, to put this beyond doubt, Queensland can vary the NCC by introducing a new part to the Queensland Development Code (QDC). Section 35 of the *Building Act 1975* (BA) provides that where the NCC is inconsistent with a part of the QDC, the part prevails to the extent of the inconsistency.

This *Building (Approval of Amendment of QDC) Amendment Regulation 2019* (Amendment Regulation) adopts a new QDC Code Part 2.5 – Use of external cladding. It bans the use of ACP with a PE core greater than 30% by mass on any building in any external cladding, external insulation or façade. It also prohibits the use of EPS in class

2 to 9 buildings in any external wall insulation and finished (rendered) including as an attachment.

The ban supports the recent amendment to the *Building Regulation 2006* which included a temporary exclusion for building certifiers from holding professional indemnity insurance for works involving non-compliant external cladding. It is intended to support building certifiers from increased exposure to insurance risks from the use of these products and support the intention of making professional indemnity insurance more available and appropriate for the level of risk.

The BA, Section 13, provides that the Chief Executive responsible for the BA may amend the QDC by adding another part. The amendment will not take effect until the Chief Executive publishes the amendment on the department's website and a regulation approves the amendment. The regulation must state the date on which the amendment was published.

The QDC must be considered by a building certifier when assessing a building development application and prevents them from issuing a building development approval where these products are proposed to be used.

Achievement of policy objectives

The Amendment Regulation achieves the policy objectives by:

- reducing the risk to building certifiers from the use of these products and support the intention of making professional indemnity insurance more available and appropriate for the level of risk; and
- making buildings safer for occupation / use in Queensland.

Consistency with policy objectives of authorising law

The Amendment Regulation is consistent with the objects of the BA. The amendment will regulate building development approvals/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 to the QDC part was identified as the preferred way to manage the ban.

The ban could have been introduced via an amendment to the *Building Regulation 2006* which would have strictly prohibited the use. However, the Queensland Development Code was considered the preferred method as the BA explicitly states that it overrides the NCC to the extent of any inconsistency.

The Queensland Government has called upon the Commonwealth Government to ban the importation of ACP, but this has not occurred. However, if an importation ban was introduced, the QDC Part could be removed.

Benefits and costs of implementation

The Amendment Regulation will benefit building certifiers by reducing the risk from the use of these products and support the intention of making professional indemnity insurance more available and appropriate for the level of risk.

The Amendment Regulation will also have safety benefits for building occupants/users by making buildings safer.

Minimal costs will be incurred by Government in the implementation of the Amendment Regulation.

The impact on industry is expected to be low as it is understood that ACP of this type are not distributed by major suppliers. The ban will put this beyond doubt. The use of EPS in larger buildings, e.g. multi storey buildings, is infrequent and this ban will also put the matter beyond doubt.

Consistency with fundamental legislative principles

The Amendment Regulation has been drafted in accordance with fundamental legislative principles as defined in section 4 of the *Legislative Standards Act 1992*.

The prohibition on ACP is not expected to have significant impact on the rights and liberties of individuals as the ban will be applied consistently to all new building work. Similar impacts could apply to individuals planning to use EPS for a class 2-9 building of Type A or B construction where a building application had not been lodged.

The ban is designed to support building occupants by ensuring that safer building products are used, protecting their rights to live in safe and well-constructed buildings.

It is envisaged that this will have a positive impact on the insurance industry by recognises the products that they are concerned about and that impact on the provision and cost of insurance.

Consultation

Broad consultation was undertaken with a range of industry stakeholders, including members of the Ministerial Construction Council in the preparation of the QDC Part. There was broad support for the ban and the certainty that it brings about the use of products that are combustible on the external walls of buildings.

The Queensland Productivity Commission reviewed the draft QDC Part 2.5 and confirmed that:

- adopting the new QDC Part would be unlikely to result in significant adverse impacts for new applications for building work; and
- no further analysis and consultation in the form of a Regulatory Impact Statement would be beneficial at this stage.

Upon commencement, the new QDC Part will only apply to new applications for building work.