

Building Fire Safety (Combustible Cladding Rectification Work) Amendment Regulation 2019

Explanatory notes for SL 2019 No. 211

made under the

Building Act 1975
Fire and Emergency Services Act 1990

General Outline

Short title

Building Fire Safety (Combustible Cladding Rectification Work) Amendment Regulation 2019

Authorising law

Section 261 of the *Building Act 1975*
Section 128C and 154E of the *Fire and Emergency Services Act 1990*

Policy objectives and the reasons for them

The policy objective of the amendment is to apply a fee for Queensland Fire and Emergency Service (QFES) advice on combustible cladding rectification work.

The *Building and Other Legislation (Cladding) Amendment Regulation 2018* compels owners of buildings considered “in-scope” to complete an online checklist to identify which buildings are affected by combustible cladding. The checklist is a three-stage process, managed through an online system, for building owners to identify whether their building has combustible cladding.

To address the significant safety concerns associated with combustible cladding, some building owners will need to undertake rectification work that will require a building development application. QFES plays a key referral advice agency role in the building development assessment process, providing advice to building certifiers, for a fee, on fire safety standards. Existing fees are contained in the *Building Fire Safety Regulation 2008*.

A fee for QFES advice on combustible cladding rectification work is being implemented to ensure that QFES fees do not serve as a disincentive to the rectification of combustible cladding. Fees specified in the *Building Fire Safety (Combustible Cladding Rectification Work) Amendment Regulation 2019* (the Amendment Regulation) apply instead of the existing fees.

A fee for QFES advice on combustible cladding rectification work only applies to building work, the sole purpose of which is to alter combustible cladding or otherwise reduce the risk of fire in connection with combustible cladding. If building work includes other works that do not relate to reducing the risk of fire in connection with combustible cladding, existing fees as noted in Schedule 2 of the *Building Fire Safety Regulation 2008* will apply.

A fee for QFES advice on combustible cladding rectification work will be retrospectively applied from 1 July 2018 so as not to disadvantage those building owners that commenced combustible cladding rectification prior to the commencement date of the Amendment Regulation.

Achievement of policy objectives

The policy objectives will be achieved by:

- Introducing a fee for QFES advice on combustible cladding rectification work, based on an hourly rate (\$242 per hour) cost recovery fee system. The hourly rate fee system will provide a direct relationship between the cost of service delivery and the fee paid and has been developed consistent with the requirements of Queensland Treasury's Principles for Fees and Charges. Depending on the size of the building and the scope of combustible cladding works it is expected that these fees will be substantially less than existing referral fees.
- Defining that a fee for QFES advice on combustible cladding rectification work only applies to building work, the sole purpose of which is to alter combustible cladding or otherwise reduce the risk of fire in connection with combustible cladding.
- Introducing transitional provisions to provide for refunding of excess amounts paid for assessment services relating to combustible cladding rectification work and for development applications for combustible cladding rectification work that have been referred to QFES and not yet invoiced.

Consistency with policy objectives of authorising law

The policy objectives of the amendments to Parts 6, 9, and 10 of the *Building Fire Safety Regulation 2008* are consistent with the objectives of the *Building Act 1975* and *Fire and Emergency Services Act 1990*.

Inconsistency with policy objectives of other legislation

The Amendment Regulation is not inconsistent with the policy objectives of other legislation.

Alternative ways of achieving policy objectives

The policy objectives can only be achieved by making the Amendment Regulation.

Benefits and costs of implementation

The Amendment Regulation introduces a fee for QFES advice on combustible cladding rectification work and addresses concerns that the existing QFES fees for providing advice through the building approval process may be serving as a disincentive to the rectification of combustible cladding. The fee for QFES advice on combustible cladding rectification work is consistent with QFES's community safety goals.

Costs will be incurred by building owners who undertake building work to rectify combustible cladding.

Consistency with fundamental legislative principles

The Amendment Regulation is consistent with fundamental legislative principles.

Consultation

The Queensland Productivity Commission (QPC) was consulted on the development of the regulation. QPC raised that stakeholders had yet to be consulted on the proposed quantum of a fee for QFES advice on combustible cladding rectification work. As a result, QPC recommended stakeholders potentially adversely affected by the proposal should be provided with an opportunity to comment on the proposed quantum of the new fee before a final decision is made on the regulatory amendments.

In response to QPC's recommendation, QFES sought to consult with a number of key stakeholders. The organisations noted below accepted an invitation to attend a consultation session on 27 May 2019:

- Queensland Building and Construction Commission;
- Engineers Australia;
- Australian Institute of Building Surveyors;
- Master Builders Queensland;
- Australian Institute of Architects
- National Fire Industry Association; and
- Property Council of Australia.

Consultation also occurred with the Unit Association of Queensland; the Construction, Forestry, Mining and Energy Union; and the Building Products Industry Council with no issues raised.

General support was received for the amendments to the *Building Fire Safety Regulation 2008* and the intent of a fee for QFES advice on combustible cladding rectification work.