



Queensland

Building and Other Legislation Amendment Regulation 2019

Subordinate Legislation 2019 No. 152

made under the

Building Act 1975

State Penalties Enforcement Act 1999

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Part 1 Preliminary

1 Short title

This regulation may be cited as the *Building and Other Legislation Amendment Regulation 2019*.

Part 2 Amendment of Building Regulation 2006

2 Regulation amended

This part amends the *Building Regulation 2006*.

3 Amendment of s 160 (Definitions for part)

(1) Section 160—

insert—

approved way, for giving the QBCC a document, means—

- (a) using the online system to give the document to the QBCC; or
- (b) if the QBCC commissioner approves another way for giving the document to the QBCC and publishes the way on the QBCC's website—giving the document to the QBCC in the way approved.

cladding fire risk, for a private building, means a risk of injury or illness happening to a person—

- (a) arising from fire or smoke, or falling debris related to a fire, at the building; and
- (b) relating to cladding forming part of, or attached or applied to, an external wall or

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another external part of the building other than the roof.

relevant local government, for a private building, means the local government in whose local government area the building is situated.

(2) Section 16O, definition *online system*, note—

omit, insert—

Note—

The online system can be accessed at www.saferbuildings.qld.gov.au

4 Amendment of s 16S (Application of subdivision)

Section 16S(2)(b), ‘by using the online system’—

omit, insert—

in the approved way

5 Amendment of s 16T (Giving completed checklist and related statement to QBCC)

(1) Section 16T(1), ‘by using the online system’—

omit, insert—

in the approved way

(2) Section 16T(2)(b)—

omit, insert—

(b) prepared by—

(i) a building industry professional; or

(ii) if the QBCC commissioner authorises a QBCC investigator to prepare a building industry professional statement—the QBCC investigator.

6 Amendment of s 16X (Giving completed checklist and related assessment and statement to QBCC)

- (1) Section 16X(1), from ‘unless’ to ‘online system’—
omit, insert—
within the compliance period, give to the QBCC,
in the approved way
- (2) Section 16X(2)(a), ‘prepared’—
omit, insert—
prepared, signed and dated
- (3) Section 16X(3)—
omit, insert—
(3) A fire engineer statement must—
(a) be in the approved form; and
(b) be prepared and signed by a fire engineer on
the same day as the building fire safety risk
assessment; and
(c) state, based on the matters mentioned in
subsection (2)(b) and (c), whether or not
there is a cladding fire risk for the building.

7 Amendment of s 16Y (Keeping completed checklist and related assessment and statement)

- (1) Section 16Y(2), ‘or (c)’—
omit.
- (2) Section 16Y(3), after ‘subsection (1)(b)’—
insert—
or (c)
- (3) Section 16Y(3)(a), from ‘document’ to ‘private building,’—
omit, insert—
fire engineer statement states there is a cladding

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fire risk for the building,

(4) Section 16Y(3)(a)(ii)—

omit, insert—

(ii) the day a building certifier gives the owner a compliance certificate stating the combustible cladding complies with the BCA;

8 Replacement of s 16Z (Application of subdivision)

Section 16Z—

omit, insert—

16Z Application of subdivision

This subdivision applies in relation to an owner's private building if a fire engineer statement states there is a cladding fire risk for the building.

9 Amendment of s 16ZA (Displaying affected private building notice)

(1) Section 16ZA(3)(a), 'building fire safety risk assessment'—

omit, insert—

fire engineer statement

(2) Section 16ZA(3)(b)(ii)—

omit, insert—

(ii) a building certifier gives the owner a compliance certificate stating the combustible cladding complies with the BCA.

(3) Section 16ZA—

insert—

(4) The owner must give the QBCC, in the approved way, a compliance notice within the period—

- (a) starting on the day the owner displays the affected private building notice; and
- (b) ending 5 business days after the day mentioned in paragraph (a).

Maximum penalty—10 penalty units.

- (5) Also, if the circumstance in subsection (3)(b)(ii) happens, the owner must give the QBCC, in the approved way, a copy of the compliance certificate within the period—

- (a) starting on the day the building certifier gives the owner the compliance certificate; and
- (b) ending 5 business days after the day mentioned in paragraph (a).

Maximum penalty—10 penalty units.

- (6) In this section—

compliance notice means a notice, in the approved form, stating an affected private building notice is being displayed in accordance with subsection (2).

10 **Amendment of s 16ZB (Giving copy of building fire safety risk assessment to lot owners and tenants)**

- (1) Section 16ZB(2)(a), from ‘when the assessment’ to ‘after the assessment’—

omit, insert—

when the fire engineer statement is given to the owner—within 60 business days after the statement

- (2) Section 16ZB(3), from ‘building fire safety risk assessment’ to ‘assessment at,’—

omit, insert—

fire engineer statement is given to the owner,

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leave a copy of the building fire safety risk assessment at,

(3) Section 16ZB(4)(b)—

omit, insert—

(b) a building certifier gives the owner a compliance certificate stating the combustible cladding complies with the BCA;

11 Amendment of s 16ZC (Definition for subdivision)

(1) Section 16ZC, heading, ‘Definition’—

omit, insert—

Definitions

(2) Section 16ZC, definition *relevant provision*, ‘16W(1) or 16X(1)’—

omit, insert—

16W(1), 16X(1), 16ZA(4) or (5), or 16ZQ(5)

12 Amendment of s 16ZG (New owner’s obligation to display affected private building notice)

Section 16ZG(3)(a), ‘building fire safety risk assessment’—

omit, insert—

fire engineer statement

13 Amendment of s 16ZH (Building industry professional statement)

(1) Section 16ZH(1), ‘A building industry professional’—

omit, insert—

A person

(2) Section 16ZH(1)(b)—

omit, insert—

- (b) give a copy of the statement to the relevant local government for the building; and
 - (c) if the person is a building industry professional—give a copy of the statement to the QBCC.
- (3) Section 16ZH(2), ‘The building industry professional’—

omit, insert—

If the person is a building industry professional,
the person

- (4) Section 16ZH(3)—

omit.

14 Insertion of new s 16ZHA

After section 16ZH—

insert—

16ZHA Notifying owner of fire safety risk mitigation measures

- (1) This section applies if a fire engineer is engaged by the owner of a private building under section 16W.
- (2) If the fire engineer decides a fire safety risk mitigation measure should be put in place at the building (the *recommendation*), the fire engineer must, within 5 business days of making the decision, either—
 - (a) prepare and sign a building fire safety risk assessment for the building stating the recommendation; or
 - (b) notify the QBCC, in the approved form, of the recommendation.

Maximum penalty—10 penalty units.

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(3) In this section—

fire safety risk mitigation measure, in relation to a private building, means a measure that reduces the risk of—

- (a) a fire at the building; or
- (b) injury or illness to a person arising from a fire at the building.

Examples—

- immediate, or more frequent, servicing and maintenance of the fire safety system of a building
- the removal of vegetation, vehicles or other flammable things from a building
- the removal of material forming part of, or attached or applied to, an external wall or another external part of a building
- the carrying out of emergency evacuation drills
- partial or complete evacuation of a building

15 Amendment of s 16ZI (Building fire safety risk assessment and fire engineer statement)

(1) Section 16ZI(2)(b), after ‘government’—

insert—

for the building

(2) Section 16ZI(4)—

omit.

16 Amendment of s 16ZJ (Order to give completed combustible cladding checklist (part 1))

Section 16ZJ(b), ‘by using the online system’—

omit, insert—

in the approved way

17 Amendment of s 16ZK (Order to obtain building industry professional statement)

Section 16ZK(b), ‘by using the online system’—

omit, insert—

in the approved way

18 Amendment of s 16ZL (Order to obtain building fire safety risk assessment and fire engineer statement)

Section 16ZL(b), ‘by using the online system’—

omit, insert—

in the approved way

19 Amendment of s 16ZM (Notice about compliance period)

Section 16ZM(1)(b)—

omit, insert—

(b) the QBCC reasonably believes there is a cladding fire risk for the owner’s private building.

20 Amendment of s 16ZN (Proof of agency)

Section 16ZN(2), ‘by using the online system’—

omit, insert—

in the approved way

21 Insertion of new ss 16ZQ and 16ZR

After section 16ZP—

insert—

16ZQ Giving replacement checklist

(1) This section applies if a person has given the QBCC 1 or more of the following documents for

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- a private building (each the *original checklist*)—
- (a) a completed combustible cladding checklist (part 1) under section 16Q(1)(b);
 - (b) a completed combustible cladding checklist (part 2) under section 16T(1)(a);
 - (c) a completed combustible cladding checklist (part 3) under section 16X(1)(a).
- (2) The owner of the building may at any time apply, in the approved form, to the QBCC commissioner to replace the original checklist.
- (3) If the QBCC commissioner considers the replacement of the original checklist is reasonable in the circumstances, the QBCC commissioner may permit the owner to give the QBCC a copy of a completed checklist (the *replacement checklist*), that is of the same type as the original checklist—
- (a) in the approved way; and
 - (b) within a reasonable stated period.
- (4) If the QBCC commissioner reasonably suspects the original checklist contains an error or omission, the QBCC commissioner may give the owner of the building a notice that—
- (a) states the suspected error or omission; and
 - (b) requires the owner to give the QBCC either of the following in the approved way and within a reasonable stated period—
 - (i) a copy of a completed checklist (also the *replacement checklist*), that is of the same type as the original checklist, with the suspected error or omission corrected;

-
- (ii) a statement explaining why the original checklist does not contain the suspected error or omission.
- (5) The owner must comply with the notice unless the owner has a reasonable excuse.
- Maximum penalty—20 penalty units.
- (6) A replacement checklist given to the QBCC in the approved way, and within the period mentioned in subsection (3) or (4)(b), is taken to be given to the QBCC within the compliance period applying under section 16Q, 16T or 16X to the replaced original checklist.

16ZR Removal of documents and entries from online system

The QBCC commissioner may remove a document or entry in relation to a private building from the online system if the QBCC commissioner considers the removal is reasonable in the circumstances.

22 Amendment of s 52 (Prescribed matters for private certification endorsement—Act, s 163)

Section 52—

insert—

- (3A) However, subsection (1) does not apply in relation to a private certifier during the exemption period to the extent the certifier performs private certifying functions directly related to external cladding, or the use of external cladding, that does not comply with any of the following—
- (a) an Act or other law of the Commonwealth or a State;
 - (b) an Australian Standard;

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- (c) the BCA.
- (5) In this section—
- exemption period* means the period starting on the commencement and ending on 30 June 2021.
- external cladding* means cladding or a cladding system—
- (a) forming part of, or attached or applied to, an external wall or other external part of a building other than a roof; and
- (b) made, in whole or in part, of composite material.
- (6) Subsections (3A) and (5) and this subsection expire on 1 July 2021.

23 Insertion of new pt 10, div 5

Part 10—

insert—

Division 5 Transitional provisions for Building and Other Legislation Amendment Regulation 2019

68 Definitions for division

In this division—

amended, in relation to a provision, means the provision as in force from the commencement.

amending regulation means the *Building and Other Legislation Amendment Regulation 2019*.

exempted licence means a private certifier's licence—

- (a) with a private certification endorsement made during the exemption period in reliance on section 52(3A) as in force during the exemption period; and
- (b) that is in force at the end of the exemption period.

exemption period means the period starting on the commencement of the amending regulation and ending on 30 June 2021.

external cladding means cladding or a cladding system—

- (a) forming part of, or attached or applied to, an external wall or other external part of a building other than a roof; and
- (b) made, in whole or in part, of composite material.

former, in relation to a provision, means the provision as in force from time to time before the commencement.

69 Application of particular provisions if documents given before commencement

- (1) This section applies in relation to a private building if—
 - (a) before the commencement, the QBCC was given a copy of a building fire safety risk assessment, or a fire engineer statement, for the building under former section 16X, 16ZI or 16ZL; and
 - (b) from the commencement, the QBCC reasonably believes, based on the matters mentioned in the assessment or the statement, there is a cladding fire risk for the building.
- (2) The QBCC may, within 60 business days after the

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commencement, give the owner of the building a notice (the *cladding fire risk notice*) stating there is a cladding fire risk for the building.

- (3) Subject to subsections (4) to (6), if the QBCC gives the owner the cladding fire risk notice, the following provisions are taken to apply in relation to the building as if the fire engineer statement stated there is a cladding fire risk for the building—
 - (a) amended section 16Y; and
 - (b) amended part 4A, division 2, subdivision 4.
- (4) The owner is taken to have complied with amended sections 16Y, 16ZA and 16ZB to the extent the owner has complied with former sections 16Y, 16ZA and 16ZB.
- (5) If the owner is not complying with amended section 16ZA(1) when the owner receives the cladding fire risk notice, the period mentioned in amended section 16ZA(3)(a) is taken to be—
 - (a) within 60 business days after the fire engineer statement was given to the owner; or
 - (b) if the notice is given to the owner less than 15 business days before the expiry of the period mentioned in paragraph (a)—within 15 business days after the notice is given to the owner.
- (6) If the owner has not complied with former section 16ZB(2)(a) or (3), the period mentioned in amended section 16ZB(2)(a) and (3) is taken to be—
 - (a) within 60 business days after the fire engineer statement was given to the owner; or

- (b) if the cladding fire risk notice is given to the owner less than 15 business days before the expiry of the period mentioned in paragraph (a)—within 15 business days after the notice is given to the owner.

70 Effect of ending of exemption period on particular private certifiers

- (1) This section applies to a private certifier who holds an exempted licence.
- (2) From 1 July 2021, section 52(1) applies in relation to the private certifier to the extent the certifier performs private certifying functions directly related to external cladding, or the use of external cladding, that does not comply with any of the following—
 - (a) an Act or other law of the Commonwealth or a State;
 - (b) an Australian Standard;
 - (c) the BCA.
- (3) This section does not limit section 52(1).

24 Amendment of sch 4 (Dictionary)

Schedule 4—

insert—

approved way, for giving the QBCC a document, for part 4A, see section 16O.

cladding fire risk, for a private building, for part 4A, see section 16O.

relevant local government, for a private building, for part 4A, see section 16O.

ENDNOTES

- 1 Made by the Governor in Council on 8 August 2019.
- 2 Notified on the Queensland legislation website on 9 August 2019.
- 3 The administering agency is the Department of Housing and Public Works.

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