

Building and Plumbing Newsflash 590

Commencement of Queensland's new Building Regulation 2021 proposed for 1 September 2021

Purpose

To advise that a remade Building Regulation 2021 (BR 2021) is proposed to commence on 1 September 2021.

Background

The Building Regulation 2006 (BR 2006) will expire (sunset) on 31 August 2021 and is proposed to be remade.

A 'sunset' review of the BR 2006 built on the certification reforms introduced through the *Building Industry Fairness (Security of Payment) and Other Legislation Amendment Act 2020*.

As part of the process, the Department of Energy and Public Works consulted industry and used the feedback to help draft the proposed new BR 2021, which is expected to commence on 1 September 2021.

What are the key changes to expect?

The BR 2021 continues to support the objectives of the *Building Act 1975* and generally maintains the obligations and requirements in the BR 2006, except for the following changes to:

- consider human rights in line with the *Human Rights Act 2019*
- renumber sections
- reorder parts of the regulation to improve useability
- make administrative and drafting style updates
- make requirements easier to understand
- remove outdated transitional provisions
- provide for necessary transitional arrangements, including continuing the combustible cladding checklist obligations for private building owner which strengthen fire safety for building occupants
- increase the maximum penalty for giving false or misleading documents/certificates to a building certifier to strengthen the certification process
- improve record keeping practices for building certifiers
- keep existing local governments' powers to help manage bushfire prone areas, areas with flood risks, and simple building work in their local areas
- make amendments to other legislation to remove references to the BR 2006 and reflect the new BR 2021, including prescribing when an infringement notice can be issued for an offence.

Other amendments

The BR 2021 will remove redundant and repetitive provisions and makes the following amendments.

Operation of the inspection framework

The laws allow a building certifier to use a 'competent person' or Queensland Building and Construction Commission (QBCC) licensee to help them in inspecting and assessing building work. However, before using a 'competent person' the building certifier must assess the person and appoint them as a 'competent person'.

The following changes have been made to clarify:

- when a building certifier, or an appointed competent person, can accept certain documentation (an aspect certificate) for a stage of work or an aspect of work that is stated in a building development approval
- that a relevant building certifier is not required to appoint another building certifier as a competent person to sign a compliance certificate for certain mandatory stages of work for detached Class 1a (houses) or class 10 buildings (sheds) or structures (decks)
- that while a competent person can give inspection help to the building certifier, it is a building certifier's responsibility to issue the noncompliance notice and take the relevant enforcement action. These amendments also recognise that a builder has appeal rights when a notice is issued by the building certifier, however, no appeal rights exist when a notice is issued by a competent person
- when prescribing the excavation for the footing system and/or slab as a stage of work, all aspects of the work must be inspected and assessed for compliance with the building development approval
- for a single detached class 1a building (house) a stage of work for a footing system includes all types of footing including a slab.

Accepted development (self-assessable)

Amendments will clarify:

- when measuring the 1-metre height of a retaining wall, the footing is not to be included
- the type of retaining wall that can be safely built without needing a building development approval
- a smoke alarm and a smoke detector are a minor component for a fire safety system for the purpose of particular repairs, maintenance or alterations
- a pool owner who performs work on their regulated pool and relies on Schedule 5, section 5 (accepted development work) to perform the work without a building development approval, must ensure the pool is inspected in the way stated in the regulation.

Building certifier's record keeping obligations

The regulation requires a building certifier to keep specific information about their assessment and decision to appoint a person as a competent person. In the BR 2006 this was an offence, which has been split into two separate offences under the BR 2021. One offence for failing to keep specific information (as prescribed) and a separate offence for failing to keep the records for seven years.

The splitting of the offence provision will encourage more open and transparent decision making when appointing a competent person and help maintain the integrity of the certification and inspection process.

Combustible cladding

It is important that building owners continue to identify and address the risk of combustible cladding on buildings. The BR 2021 includes transitional arrangements that keep the obligations for private building owner to complete the combustible cladding checklist. The new regulation also maintains obligations such as record keeping, display of affected building notices, and the QBCC's ability to replace a checklist.

The BR 2021 also enables a person to be prosecuted for an offence under the expired combustible cladding provisions.

Forms and guidelines

All building forms and guidelines have been updated to reflect the new numbering and parts of the BR 2021. The building form numbering has not changed, except for two forms. Further information about the forms and guidelines can be found on the Department of Energy and Public Works website from 1 September 2021. The forms and guidelines will be made available on the [Business Queensland website](#).

More information

For more information on the new legislation visit the [Department of Energy and Public Works website](#).

For more building industry information please visit the [Business Queensland website](#).

Contact us

Building Policy
Department of Energy and Public Works
Email: BLP@epw.qld.gov.au

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