

Building and Other Legislation Amendment Bill 2022

Explanatory Notes

FOR

Amendment to be moved during consideration in detail by the Honourable Mick de Brenni MP, Minister for Energy, Renewables and Hydrogen and Minister for Public Works and Procurement

Short title

The short title of the Bill is the Building and Other Legislation Amendment Bill 2022.

Policy objectives and the reasons for them

On 29 March 2022, the Building and Other Legislation Amendment Bill 2022 was introduced into the Legislative Assembly.

The Bill amends several Acts, including the *Building Act 1975* (Building Act).

Clause 21 amends section 256 of the Building Act to provide the Queensland Building and Construction Commission (QBCC) with powers to commence proceedings for offences related to the Combustible Cladding Checklist (Checklist).

The QBCC and local governments can issue an Infringement Notice for combustible cladding checklist offences. However, although local governments can also commence court proceedings under the Building Act the QBCC requires express permission from the relevant local government to commence a proceeding.

The intention of this amendment was to give the QBCC the same enforcement powers as local governments regarding the Checklist offence provisions. However, the amended section could be interpreted to restrict this power to use by the QBCC only.

To address this issue, an amendment is required to clarify that local governments or a person authorised by that local government also has the power to commence prosecutions relating to these offences.

Queensland established the Checklist process in 2018 requiring private building owners to self-assess their buildings for combustible cladding. At the end of the process, for those buildings identified with combustible cladding the owners receive a report from a Fire Engineer detailing the type of cladding, extent of the problem and what actions to take to mitigate any cladding fire risk before rectifying their building.

The amendments in the Building and Other Legislation Amendment Bill 2022 are intended to provide the QBCC with the power to take enforcement action for breaches of offences relating to the Checklist process. It was intended that this be in addition to local governments existing powers.

Achievement of policy objectives

As noted in the Building and Other Legislation Amendment Bill 2022, local governments have the power under the Building Act to commence prosecution for failure to comply with the Checklist. This recognizes the long term and valuable contribution that local governments make to administering building legislation in their area.

However, it is possible to read that the proposed wording in the Building and Other Legislation Amendment Bill 2022 might limit this power to just the QBCC. The amendment in consideration in detail proposes to put it beyond doubt that the power can be exercised by both the local government and the QBCC, as was originally intended.

Alternative ways of achieving policy objectives

There are no alternative ways of achieving the policy objectives other than by legislative amendment.

Estimated cost for government implementation

The amendment related to the power to prosecute for offences for failure to comply with the combustible cladding checklist is not anticipated to cost any further expense than the amendment as originally intended.

Consistency with fundamental legislative principles

Legislation should not adversely affect rights and liberties, or impose obligations, retrospectively – *Legislative Standards Act 1992*, section 4(3)(g)

Section 4(3)(g) of the *Legislative Standards Act 1992* provides that whether legislation has sufficient regard to the rights and liberties of individuals may depend on whether the legislation adversely affects rights and liberties, or imposes obligations, retrospectively. This amendment is not considered to affect the rights and liberties of persons.

Consultation

The Department of Energy and Public Works discussed this matter with the QBCC and agreed that an amendment was required.

Notes on provisions

Part 1 Preliminary

Clause 1 Short title

Clause 1 provides that the Act may be cited as the *Building and Other Legislation Amendment Act 2022*.

Part 3 Amendment of *Building Act 1975*

Clause 21 – Amendment to clause 21 (Amendment of s 256 (Prosecution of offences))

Clause 21 – The amendment proposed in the Building and Other Legislation Amendment Bill 2022 is to give the QBCC the same powers as local governments to take enforcement action for failure to comply with the combustible cladding checklist.

The QBCC and local governments can issue an Infringement Notice for combustible cladding checklist offences. However, where local governments can also commence court proceedings, under the *Building Act 1975*, QBCC requires express permission from the relevant local government to commence a proceeding.

As the administrator of the cladding checklist and industry regulator, the QBCC is considered better placed to take enforcement action for breaches of offences relating to the combustible cladding checklist process.

However, it is possible to read clause 21 of the Building and Other Legislation Amendment Bill 2022 in a way that might limit this power to just the QBCC. The amendment in consideration in detail proposes to put it beyond doubt that the power can be exercised by both the local government and the QBCC, as was originally intended.