

Combustible Cladding

Fact Sheet



The Clock is Ticking

As a result of increased safety concerns over combustible cladding on a number of buildings throughout Queensland, on 1 October 2018 the Queensland Government introduced new legislation requiring owners of particular buildings to register their building and complete a 'Combustible Cladding Checklist' ("the Checklist").

Under the amended *Building Regulation 2006* ("the Regulation"), the 'owner' of a 'private building' that comprises two (2) or more lots is taken to be the relevant body corporate. Therefore, all obligations imposed by the Regulation on owners extends to bodies corporate, which includes the completion of the Checklist.

If the body corporate fails to complete the Checklist to the stage required, the body corporate may be prosecuted or may face disciplinary action by the Queensland Building and Construction Commission ("QBCC").

KEY DATES

The following must be complete by:

- **29 March 2019:** the body corporate must register the building and complete Part 1 of the Checklist.
- **29 May 2019*:** the body corporate must engage a building industry professional and complete the building industry professional statement and complete Part 2 of the Checklist.
- **27 August 2019*:** the body corporate must engage a fire engineer and register the fire engineer's details on the Safer Buildings website.
- **3 May 2021*:** the body corporate must complete Part 3 of the Checklist and lodge the completed building fire safety risk assessment report.

** some buildings will not require further assessment by a building industry professional and/or a fire engineer. Consequently, you may not be required by the QBCC to complete all 3 parts of the Checklist.*

Is Your Building One of Them?

Owners of buildings in Queensland that are:

- a class 2 - 9 building;
- of Type A or B construction; and
- built (or have had the cladding altered) after 1 January 1994 and before 1 October 2018,

must complete the Checklist.

If you are not sure of the class of your building, we have enclosed the QBCC's Classification Summary of Buildings and Structures

Fact Sheet for assistance. The body corporate should seek expert advice if it is unsure whether the building falls within the class and type of construction caught by the Regulation. Alternatively, the body corporate can obtain a copy of the certificate of classification for the building from the local council.

Part One: 29 March 2019

In order to complete Part 1 of the Checklist the body corporate must:

1. Register the body corporate's details and the address of the building on the Safer Buildings website, www.saferbuildings.qld.gov.au ("Safer Buildings Website");
2. Fill out and print Part 1 of the Checklist;
3. Sign and date Part 1 of the Checklist in the presence of a qualified witness. The qualified witness must also sign and date the Checklist. A qualified witness includes a Justice of the Peace, Commissioner for Declarations or a lawyer; and
4. Upload the completed Checklist to the Safer Buildings Website.

Part Two: 29 May 2019

The body corporate will be required to proceed with Part 2 of the Checklist if:

1. After completing Part 1, the online system indicates the building may be an 'affected private building' as defined in the Regulation;
2. A QBCC investigator reasonably suspects the building particulars provided in Part 1 are false or misleading and gives the body corporate notice of that suspicion; or
3. The body corporate did not complete Part 1 of the Checklist.

If the body corporate already knows or suspects the building has combustible cladding, the body corporate can skip Part 2 of the Checklist and engage a qualified fire engineer to complete Part 3.

Part 2 of the Checklist requires the body corporate to engage a 'building industry professional' to prepare a building industry professional statement. Section 16O of the Regulation and the Safer Buildings Website provide a list of qualifications a person

must have in order to be considered a suitable building industry professional.

To complete Part 2, the body corporate must:

1. Engage a building industry professional;
2. Register the details of the building industry professional on the Safer Buildings Website;
3. Download, print and provide a copy of the approved building industry professional statement to the body corporate's chosen building industry professional to complete;
4. Upload a copy of the completed and signed building industry professional statement to the Safer Buildings Website;
5. Fill out and print Part 2 of the Checklist;
6. Sign and date the Checklist in the presence of a qualified witness. The qualified witness must also sign and date the Checklist; and
7. Upload the completed Checklist to the website.

Part Three: 27 August 2019 to 3 May 2021

The body corporate will be required to complete Part 3 of the Checklist if:

1. As a result of all Part 2, the online system indicates that the building may be an 'affected private building';
2. The body corporate knows or suspects that the building is an 'affected private building' and gives notice to the QBCC;
3. A QBCC investigator reasonably suspects the completed Checklist provided in Part 2 is false or misleading and gives the body corporate notice of that suspicion; or
4. The body corporate did not complete Part 2 of the Checklist.

Part 3 of the checklist is completed in two parts, namely:

1. By 27 August 2019, the body corporate must include on the Safer Buildings Website the name and registration number of the fire engineer engaged by the body corporate; and
2. By 3 May 2021, the body corporate must give to the QBCC:
 - a. A building fire safety risk assessment report prepared by a qualified fire engineer about the cladding, including an assessment of the combustibility of the material that makes up the cladding and if the cladding is assessed to be combustible cladding; and
 - b. Part 3 of the Checklist, completed, signed and witnessed.

The Finer Print

It is an offence to not complete Part 1, 2 and 3 of the Checklist when, and if, required.

If you will not be able to complete Part 1, 2 or 3 within the time required, the body corporate may apply to the QBCC for an extension of time. However, an application for an extension of time must be made in the approved form at least 28 days prior to the time for compliance of each part.

The body corporate must keep a copy of the completed Part 1, 2 and 3 (if completed) and all obtained documents and reports in support for at least seven (7) years from the date a copy is given to the QBCC. Failing to keep a copy of the documents is an offence.

If, as a result of Part 3, the building is determined an 'affected private building', the body corporate is obligated to comply with certain notification and signage requirements.

Committee Liability

Committee members are entitled to immunity from civil liability under s101A of the *Body Corporate and Community Management Act 1977* providing they:

- act in good faith; and
- act without negligence.

If a committee member fails to seek proper advice when prudent to do so and fails to comply with their obligations under the Regulation, then the committee member may be exposing themselves to personal liability, especially if any concern has been raised by lot owners. It is important to remember that if the committee members are aware of any issues in the common property, they are obliged to ensure adequate action is taken.

Our Team

Active Law's construction team are very experienced in all aspects of construction law, including statutory compliance, as well as all other aspects of law affecting the construction industry. The construction team at Active Law can swiftly identify your rights and obligations and can ensure you make the best submission possible in your circumstances and comply with your statutory obligations.

Paul Hick is an experienced construction lawyer with 35 years of construction experience. Formerly employed with the QBCC, Emma Ward has invaluable insight into QBCC process and regulation.

Please let us know if the Building and Construction Law team at Active Law can assist your Body Corporate.



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CLASSIFICATION SUMMARY OF BUILDINGS AND STRUCTURES

This list provides the definitions of Building Classes as set out in the Building Code of Australia.

Classes of Building		
Class 1	Class 1a	A single dwelling being a detached house, or one of a group of two or more attached dwellings, each being a building, separated by a fire-resisting wall, including a row house, terrace house, town house or villa unit.
	Class 1b	A boarding house, guest house, hostel or the like with a total area of all floors not exceeding 300m ² , and where not more than 12 people reside, and is not located above or below another dwelling or another Class of building other than a private garage.
Class 2	A building containing 2 or more sole-occupancy units each being a separate dwelling.	
Class 3	A residential building, other than a Class 1 or 2 building, which is a common place of long term or transient living for a number of unrelated persons. Example: boarding-house, hostel, backpackers accommodation or residential part of a hotel, motel, school or detention centre.	
Class 4	A dwelling in a building that is Class 5, 6, 7, 8 or 9 if it is the only dwelling in the building.	
Class 5	An office building used for professional or commercial purposes, excluding buildings of Class 6, 7, 8 or 9.	
Class 6	A shop or other building for the sale of goods by retail or the supply of services direct to the public. Example: café, restaurant, kiosk, hairdressers, showroom or service station.	
Class 7	Class 7a	A building which is a car park.
	Class 7b	A building which is for storage or display of goods or produce for sale by wholesale.
Class 8	A laboratory, or a building in which a handicraft or process for the production, assembling, altering, repairing, packing, finishing, or cleaning of goods or produce is carried on for trade, sale or gain.	
Class 9	A building of a public nature.	
	Class 9a	A health care building, including those parts of the building set aside as a laboratory.
	Class 9b	An assembly building, including a trade workshop, laboratory or the like, in a primary or secondary school, but excluding any other parts of the building that are of another class.
	Class 9c	An aged care building.
Class 10	A non-habitable building or structure.	
	Class 10a	A private garage, carport, shed or the like.
	Class 10b	A structure being a fence, mast, antenna, retaining or free standing wall, swimming pool or the like.
	Class 10c	A private bushfire shelter.

Note: The classification of buildings and the type of construction can vary from the standard model depicted in the tables. Concessions can be provided that change the type of construction. The concessions can relate to the design of the building, its size, and the number of escapes.

Types of Construction		
Rise in storeys	Class of building 2, 3, 9	Class of building 5, 6, 7, 8
4 or more	A	A
3	A	B
2	B	C
1	C	C

The digital National Construction Code (NCC) and individual volumes can be accessed for free from the Australian Building Codes Board (ABCB) at www.abcb.gov.au