

Fire Safety Standard Guidelines

Enforcement, Appeal Options and Extensions of Time



Queensland Government

Department of Local Government and Planning
Department of Emergency Services

Purpose

This guideline provides information on extensions of time, appeal options and enforcement provisions related to the new fire safety legislation for budget accommodation buildings. This guideline is intended to assist owners of budget accommodation buildings, local council officers, fire officers, consultants and designers in bringing budget accommodation buildings into compliance with the Fire Safety Standard. It should be read in conjunction with the legislation, the Fire Safety Standard and the other guidelines listed on the back page of this guideline.

Introduction

On 1 July 2002, new laws (legislation) introduced by the Queensland Government took effect to ensure the safe evacuation of occupants from budget accommodation buildings. The new legislation requires all budget accommodation buildings built, approved, or which an application was made prior to 1 January 1992, when the Building Code of Australia was introduced into Queensland, to comply with the prescribed Fire Safety Standard. The Standard requires the installation of smoke alarms and emergency lighting within the first 12 months and compliance for any additional work within a further two-year period. Owners and occupiers of all existing budget accommodation buildings are also required to prepare and implement a Fire Safety Management Plan (FSMP) by 30 June 2003.

The aim of this guideline is to provide owners or operators of budget accommodation buildings with an understanding of the following components of the legislation:

1. **Extensions of time:** the circumstances in which a building owner may request an extension of time to comply with the Fire Safety Standard;
2. **Notices and written advice:** the types of notices and written advice which can be issued by a local council and the Queensland Fire and Rescue Service (QFRS);

3. **Appeals:** how a building owner could appeal against the content of a notice that had been issued, and an overview of the principles of rights of appeal and natural justice; and
4. **Enforcement:** who enforces the legislation, what processes are followed and the penalties that may be imposed.

1. Extensions of time

Can I request an extension of time to upgrade my building?

Section 12I of the *Building Act 1975* allows councils to extend the period of time available for upgrading a building in order to comply with the Fire Safety Standard. The legislation recognises that circumstances may arise where building owners may not be able to install the required fire safety installation or undertake the necessary work within the set timeframe prescribed by the legislation.

Building owners encountering problems implementing the required work within the prescribed timeframes (i.e. either by 30 June 2003 or 30 June 2005), may apply to their local council for an extension of time to complete the work. If a building owner chooses to apply for an extension of time, the grounds for undue hardship to the building occupants must be demonstrated to the council.

What criteria could be considered 'undue hardship' on the building occupants?

In all cases, the building owner must demonstrate that the buildings' occupants will suffer undue hardship. This may include, but is not limited to, the following:

- Building occupants becoming homeless if the building had to close as a result of not achieving compliance with the Fire Safety Standard within the prescribed time;



- Building occupants becoming severely inconvenienced that may impact upon their health or wellbeing; and/or
- Building occupants becoming ill or injured due to building alterations or arrangements to complete the work within the prescribed time.

What information should the extension of time application include?

- Details of the building owner's circumstances and reasons why the building cannot be brought into compliance with the Fire Safety Standard within the prescribed timeframes;
- Details of hardship imposed on the occupants should an extension of time not granted;
- Details of what fire safety systems will be installed by 30 June 2003 and 30 June 2005;
- Details of a work program identifying the percentage of work which can be completed within the prescribed timeframes; and
- Details of the timeframe to have all works completed, which provides full compliance with the Fire Safety Standard (this should state a reasonable timeframe, i.e. weeks rather than months, and months rather than years).

Examples of 'undue hardship' circumstances on the building occupants

The following scenarios represent typical examples of undue hardship to the occupants, which may be considered as reasonable grounds for a council to grant an extension of time.

For each of the above circumstances, the council would examine and consider all of the evidence provided by the owner. The council would make a decision based on hardship factors placed on the occupants, in conjunction with the risk to life should a fire occur in the building. In making these decisions the council may consult with any entity they consider to be appropriate in deciding the application.

Scenario One:

A not-for-profit association operates a boarding house for disadvantaged members of the community. The association has insufficient cash reserves to fund the necessary building work in order to bring the building into compliance with the Fire Safety Standard by 1 July 2003 or 1 July 2005. The only means of obtaining additional funding to complete the work within the timeframes would be to raise the rent. However, the tenants are unable to afford any increase in rent, forcing them out on to the streets to become homeless. Similarly, if the council refused the application for extension of time, the association would have no choice but to close the facility, resulting in the tenants being forced on to the streets.

The association considered its position and decides to make application to council for an additional six months to complete the necessary building work to comply with the Fire Safety Standard, during which time they will be able to raise the additional funding to complete the work. The extension of time application for this scenario should provide the following information:

- *Reasons why the required work cannot be completed by the prescribed timeframe;*
- *Details about the lack of alternative accommodation should the occupants be forced on to the streets;*
- *Details of building assessment for compliance with the Fire Safety Standard;*
- *The building's Fire Safety Management Plan, including temporary evacuation measures;*
- *A detailed construction program, which identifies the work that can be carried out within the prescribed timeframes and will result in the building being largely compliant with the Fire Safety Standard;*
- *Details of the remaining percentage of work being completed within the additional six months; and*
- *Details of how the additional funds will be raised to complete the work within the six months.*



Scenario Two:

A three-storey timber building is used as a supported accommodation facility.

In order to comply with the Fire Safety Standard, an internal staircase needs to be fire-isolated and this staircase is the only weatherproof exit available to the occupants of the building. Before construction work can commence on the staircase, an additional exit needs to be installed so that the occupants of the building have a means of egress, which is not open to the elements of the weather.

Without the installation of the additional exit, occupants would be forced to use an external exit causing undue hardship, as this exit would have to provide, on a daily basis, both access and egress for the occupants on each storey.

Due to construction difficulties and the extent of planned work, it is not possible to complete the planned work during the available time, therefore additional time is required.

Again the building owner would provide all the necessary information to allow the council to consider whether the application should be accepted.

2. Notices and written advice

Notices and written advice can be issued by government bodies as a way of informing a building owner about the laws that apply to their building. The notices and advice may cover different issues. For this legislation, they may be issued either by the local council or the Queensland Fire and Rescue Service, and in each case they must be issued in writing. The following describes the different types of notices or advice, which may be issued by each authority.

Types of notices or written advice issued by local councils

There are three key types of notices issued by local councils in relation to buildings - decision notices, show cause notices and enforcement notices. A local council may also provide advice on the written request of an owner.

A **decision notice** must be issued by a local council when a building owner has lodged a development application.

A **show cause notice** must be issued if a local council proposes to issue an enforcement notice. This notice invites the building owner to show cause why the enforcement notice should not be given.

An **enforcement notice** must be issued when a local council believes a building owner is committing a development offence. A development offence would include when a building owner is:

- not complying with the Fire Safety Standard within the specified time frame;
- carrying out building work without a development approval; or
- not complying with a decision notice issued by the council.

Written advice may be provided to an owner in the following circumstances:

- upon receipt of an owner's written application for advice as to conformity with the Fire Safety Standard; or
- upon request for an extension of time to make their building comply with the Fire Safety Standard.

Types of notices issued by the QFRS

The QFRS only issues a compliance notice for one of two reasons:

- an occupier of the premises is required to take measures for the purpose of reducing the risk of a fire, or reducing potential danger to persons, property or the environment, in the event of a fire occurring on the premises; or
- an occupier of the premises is required to take steps as directed by, or in accordance with the notice, within the specified time.

For further information on how QFRS enforce the notices, refer to the section on Enforcement.



3. Appeals

What can I appeal against?

Notices issued by either the local council or the QFRS can be appealed.

How do I appeal a decision or written advice?

If building owners do not agree with a decision or the conditions of a decision, they can appeal to a Tribunal under the *Integrated Planning Act 1997 (IPA)*. The appeal must be made within 20 business days after receiving the decision or written advice.

Reasons for a building owner appealing against a decision or the conditions of a decision may include the following:

- the building owner may want to submit an alternative solution rather than comply with the acceptable solutions detailed in the Fire Safety Standard;
- the building owner believes the local council has misinterpreted the legislation; or
- the building owner believes the conditions imposed by the local council are onerous and excessive.

Any appeal against a decision or written advice should be directed to:

The Registrar
The Building and Development Tribunal
PO Box 31
Brisbane Albert Street QLD 4002
Phone: (07) 3237 0403
Fax: (07) 3237 1244
www.dlgp.qld.gov.au

How do I appeal against a show cause notice?

A show cause notice enables a building owner to make representations to the local council to show cause why an enforcement notice should not be issued. The notice must detail how representations can be made, where they can be made or sent, and state either a day or time for making the representations, or a period within which the representations must be made.

How do I appeal an enforcement notice?

Depending on circumstances, it may be possible for a building owner to make representations to the person who issued the enforcement notice. Where this is not possible, the course of action depends upon the nature of the enforcement notice.

- Where the notice is about compliance with a planning scheme, the appeal would be taken to the Planning and Environment Court. A building owner would be advised to seek legal advice prior to pursuing this course of action.
- Where the notice is about compliance with the *Building Act 1975*, the appeal would be made to the Building and Development Tribunal.

In either case, the building owner must make the appeal within 20 business days of receiving the enforcement notice.

How do I appeal against a compliance notice?

Depending on circumstances, it may be possible for a building owner to make representations to the person who issued the compliance notice. If this is not possible, the building owner is to direct an appeal to:

The Commissioner
Queensland Fire and Rescue Service
GPO Box 1425
Brisbane QLD 4001

The notice from the QFRS will indicate the timeframes to comply or when an appeal must be lodged. This is usually expressed in elapsed days, including weekends and public holidays.

4. Enforcement

Who can enforce the law?

Local council and the QFRS will be responsible for enforcing various components of the new legislation. The range of enforcement for either entity will depend on the area of non-compliance and on which law the non-compliance falls under.



Under what circumstances can the council enforce the law?

A council can enforce the law when a building owner fails to:

- comply with the provisions of the Fire Safety Standard;
- comply with a decision notice from the council relating to the following:
 - a request for an extension of time; and
 - advice about complying with the Fire Safety Standard;
- implement or update the FSMP;
- apply for building development applications for additional work or alterations to an existing budget accommodation building;
- display the FSMP to the public, occupants or Fire Service; and
- apply for a new Certificate of Classification when a building has a change of use, or where circumstances change the FSMP management procedures that form all or part of an alternative solution used in satisfying the performance criteria of the Fire Safety Standard (Refer to the guideline "Application of the Fire Safety Standard").

Under what circumstances can the QFRS enforce the law?

QFRS can enforce the law when a building owner fails to:

- implement and maintain a FSMP;
- make available a FSMP to the QFRS on request;
- allow fire officers to enter the building for the purpose of inspecting fire safety installations;
- maintain residential evacuation unit signs;
- maintain fire safety installations;
- maintain clear paths of exit travel throughout the building;
- maintain occupancy numbers to prevent overcrowding;
- reduce the risk of fire where there exists an excessive fire load or fire potential; and
- comply with a compliance notice issued by the QFRS.

What processes will local council use in order to enforce these laws?

If a local council has issued a decision notice, they are empowered to ensure that a building owner complies with the notice. An authorised officer may enter a place at any reasonable time to find out whether the conditions on which a notice was issued have been or are being complied

with, or to inspect work carried out under a notice. If they are not satisfied, they may choose to issue a show cause notice.

A local council is not required to carry out mandatory inspections. A local council may decide to carry out an approved inspection program to monitor compliance with the new legislation. The local council must give at least 14 days notice, but not more than 28 days, before commencing an approved inspection program. An authorised local council officer can enter the accommodation areas of a building to monitor compliance with the Fire Safety Standard and the Fire Safety Management Plan.

If the council believe that a building does not comply with the legislation, they may issue a show cause notice. This notice invites the building owner to show cause why the enforcement notice should not be given. If the council decides that the building owner has not provided reasonable grounds to explain the issues contained in the show clause notice, they may then issue an enforcement notice. If the enforcement notice is not complied with, a breach will occur.

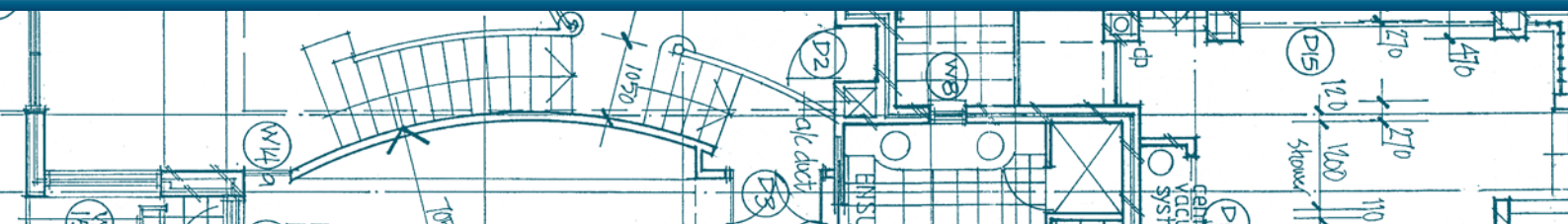
How are owners informed of breaches administered by the council?

Under the new legislation, it is possible that a decision about a breach can be issued by the local council in a decision notice. Under the *Building Act 1975*, any decision notice about compliance with the Fire Safety Standard must be in writing and forwarded to the owners.

What processes will the QFRS use in order to enforce these laws?

If the QFRS has issued a compliance notice, they are empowered to ensure the building owner complies with the notice. An authorised QFRS officer may enter any part of the building at any time to inspect whether the requirements of the notice have been complied with, or whether action has been taken to comply with the notice.

The QFRS have other powers under legislation that allows for the serving of notices relating to the reduction of fire hazards, and the installation and maintenance of fire safety installations. For further information, refer to the guideline "Fire Safety Audits".



How are owners informed of breaches administered by the QFRS?

Under the new legislation, the decision about a breach is issued by the QFRS through a compliance notice. Under the *Queensland Fire and Rescue Service Act 1990*, it is possible for officers of the QFRS to issue "On-the-Spot" fines when non-compliance is detected. The value of the fines can range from \$75.00 to \$1875.00 for individuals, or higher fines for companies. A list of penalties and breaches under the *Queensland Fire and Rescue Service Act 1990* can be obtained from the following website: www.fire.qld.gov.au/buildingsafety/

What is the extent of enforcement powers if owners do not comply with the new laws?

Generally, failure to respond to a notice will result in complaint and summons being heard in a Magistrate's Court. The maximum penalties are set by legislation and refer to a penalty unit valued at \$75.00 (as at June 2002).

A time line that illustrates the requirements for decisions from councils, the decision making process, and the possible enforcement process that can occur, is presented in Figure 1.

Further information explaining an owner's obligations, potential breaches and enforcement procedures can be found in Table 2 of this guideline. Additional information may also be obtained from the specialised publication entitled "Queensland Building Work Enforcement Guidelines".

The penalties for various aspects of non-compliance are summarised in Table 1.

Nature of non-compliance	Maximum penalty units	Maximum penalty \$ (June 2002 when 1 PU = \$75.00)
Council notices issued under the <i>Building Act 1975</i>		
Building does not conform with the Fire Safety Standard within the specified time period	165	\$12 375.00
Owner does not comply with decision notice by Council relating to conditions associated with request for extension of time to implement the Fire Safety Standard	165	\$12 375.00
Owner does not comply with decision notice by Council relating to conditions associated with matters not complying with the Fire Safety Standard	165	\$12 375.00
Owner does not prepare or implement or change a FSMP due to changed circumstances	100	\$7500.00
Public and residents not able to inspect a FSMP.	20	\$1500.00
Council issues an Enforcement Notice after a Show Cause and the Enforcement Notice is not followed or complied with	1665	\$124 875.00
Council notices etc issued under the <i>Standard Building Regulation 1993</i>		
Owners fail to keep records showing the owner is complying with the Fire Safety Standard	20	\$1500.00
QFRS notices etc issued under the <i>Fire and Rescue Service Act 1990</i>		
Owner of budget accommodation building fails to prepare a FSMP by 1 July 2003	100	\$7500.00
Public and residents not able to inspect a FSMP	20	\$1500.00
QFRS notices etc issued under the <i>Building Fire Safety Regulation 1991</i>		
Lack of evacuation training at least each 12 months	10	\$750.00
Lack of a record of evacuation training in the FSMP	10	\$750.00
Examples of "On-the-Spot" fines able to be issued by QFRS		
Failure to maintain evacuation plan	1	\$75.00
Failure to produce evacuation plan for inspection	1	\$75.00
Failure to maintain prescribed emergency light	5	\$375.00

Table 1: Maximum enforcement penalties.



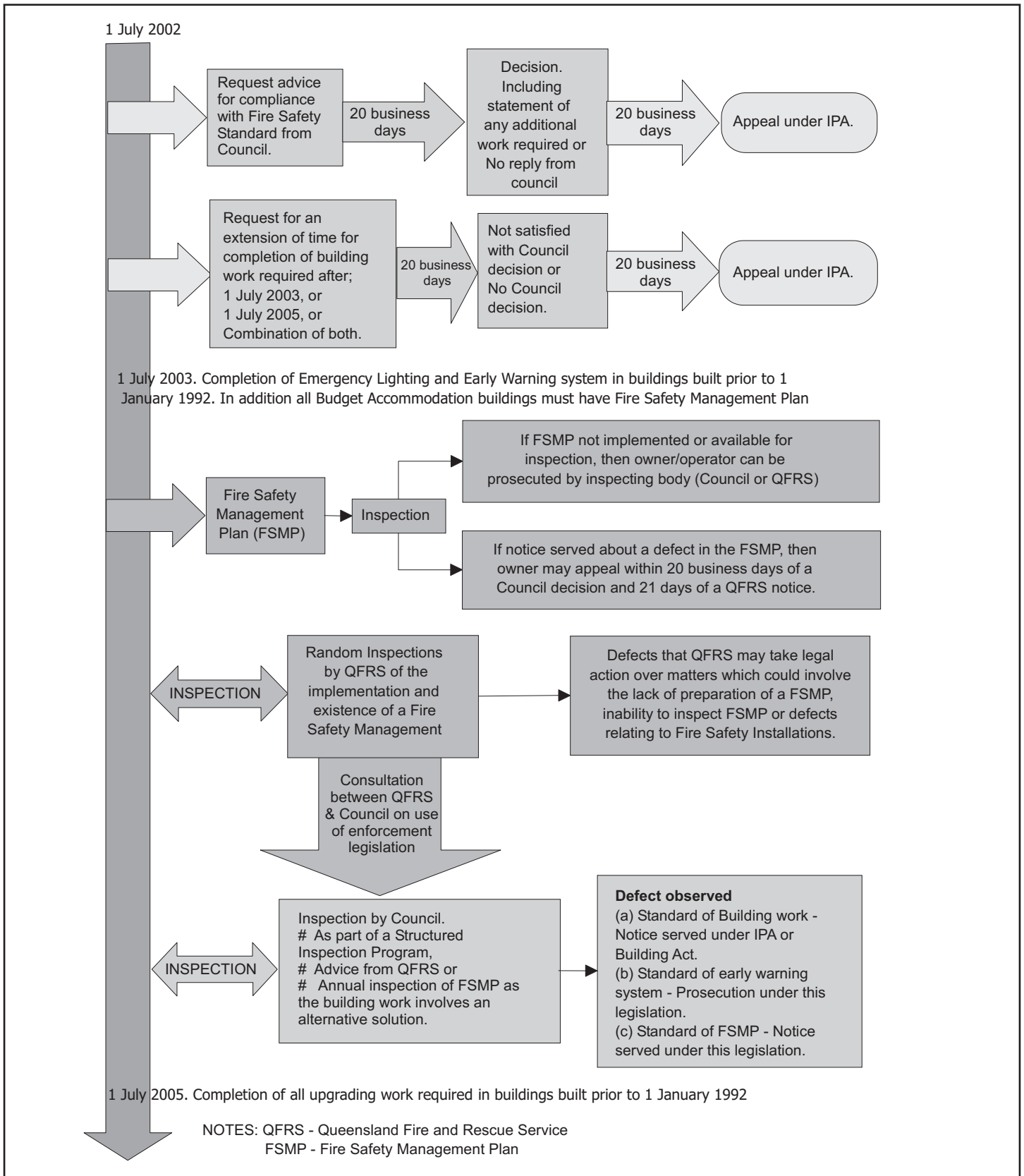
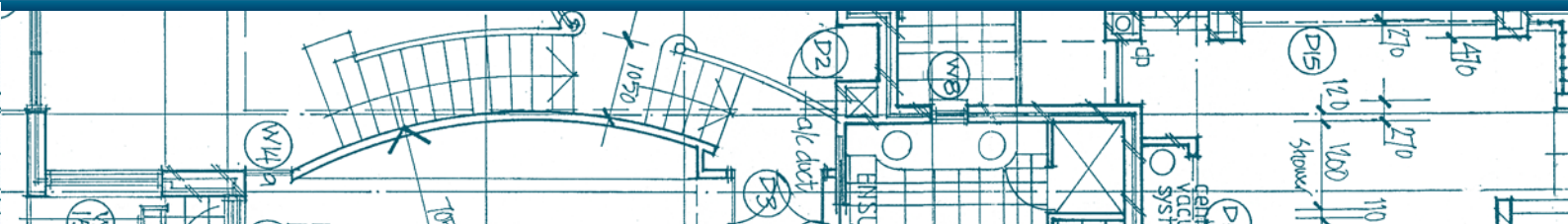


Figure 1: Timeline relating to implementation of legislation and illustrating enforcement and appeal periods.

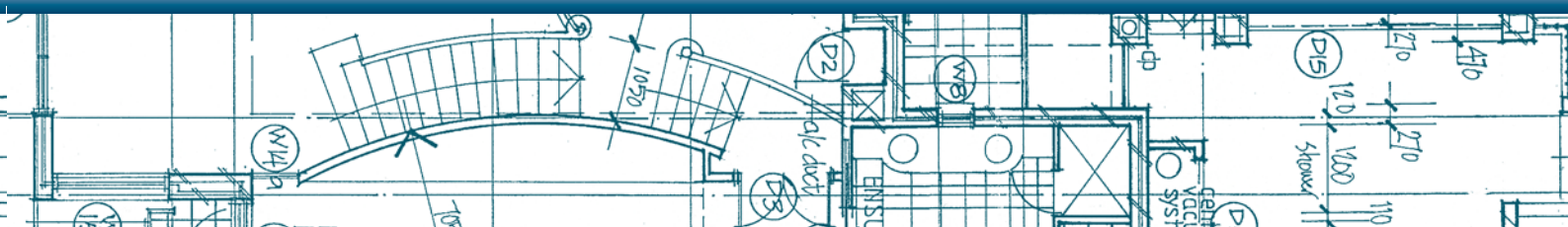


Nature of concern	Section of law	Nature of decision
A. Decisions relating to upgrading work on buildings		
Was the building constructed, approved or for which an application was made prior to 1 January 1992, and is it required to comply with the upgraded law?	12G ²	If the owner makes an error and a council inspection reveals that the extent of upgrading is greater than the owner's expectations then the council can prosecute under s.12G.
Does an early warning system have to be installed? Or Is existing system OK?	12H ²	OR
Does an emergency lighting system have to be installed? Or Is existing system OK?	12H ²	Serve a Show Cause Notice under s.21 and an Enforcement Notice under section 22 of the Building Act 1975. If this option is followed, please refer to a special section at the end of this table.
Do other sections of the building have to be upgraded to comply with the Fire Safety Standard?	12H ²	
Request council to determine if it agrees with owners determination of the extent of work or determine what works are required to satisfy the acceptable solutions.	12J ²	Council to provide written advice of a decision that determines if building conforms to the Fire Safety Standard. If it does not conform, the advice indicates what the owner must do ¹ to upgrade the building to the acceptable solution standard, and when this work must be completed.
B. Time extension requests		
Due to individual circumstances relating to occupants, can the upgrading period be extended? Prior to an owner's submission, the aspect of confidentiality should be discussed with the council CEO.	12I ²	The council decision must be based on undue hardship to building occupants. Decision may or may not extend the time. Conditions may be imposed.
C. Fire Safety Management Plan (FSMP)		
What is an owner's obligation to prepare a Fire Safety Management Plan (FSMP)?	12O ² 104 FB ⁶	All buildings must have a FSMP ⁷ . Should it be necessary to carry out building work, such as installing an early warning system, emergency lighting system or other work required by the fire safety standard, then a FSMP must be prepared within 1 month of the work occurring. If no work is required then a complying FSMP is not required until 1 July 2003. If one is not prepared or there is an alteration to a FSMP already prepared and being implemented, then the Council or QFRS may prosecute

Table 2: Typical examples of actions associated with notices.



Deciding body	Time for decision	Maximum penalty if decision not followed	Can decision be appealed	Maximum time for owner to consider to appeal	Appeal process under this new legislation
Owner to decide	1 year	165 Penalty units. \$12375.	A Complaint and Summons used to commence prosecution should be referred to the owner's legal advisor and the matter will be determined in the courts.	Nil	
Owner to decide	To be installed by 1 July 2003				
Owner to decide	To be installed by 1 July 2003				
Owner to decide	To be installed by 1 July 2005				
Council	20 business days	165 Penalty units. \$1237 ⁵	Yes	20 business days	An IPA appeal ²
Council	20 business days	165 Penalty units ⁵	Yes	20 business days	An IPA appeal
Council QFRS	The FSMP must be changed within 1 month if the fire safety system is altered	100 Penalty units	A Complaint and Summons used to commence prosecution should be referred to the owner's legal advisor and the matter will be determined in the courts.	Nil	

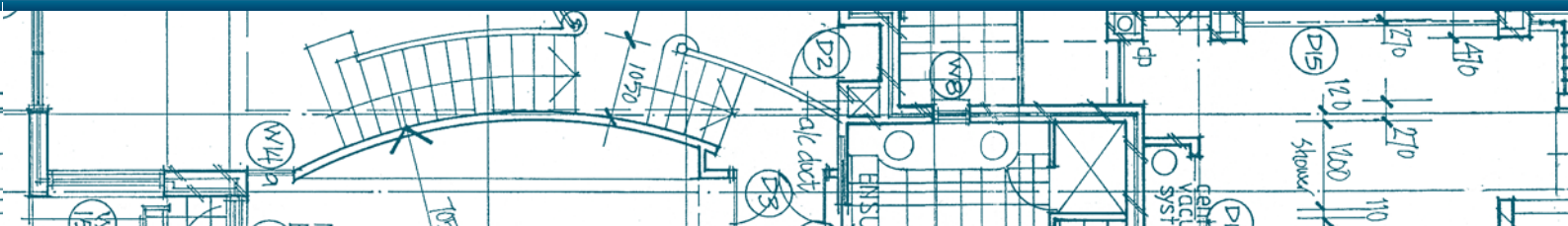


Nature of concern	Section of law	Nature of decision
C. Fire Safety Management Plan (FSMP)		
<p>What can happen if the FSMP is not implemented? What happens if the FSMP is not available for inspection by the occupants, public and QFRS?</p>	1120 ² 104FB ⁶	<p>The nature of the plan is such that information must be entered into the document and some information forwarded to the QFRS. Hence it will be obvious if it is not implemented. Occupants can also advise whether evacuation procedures have been practised.</p>
<p>What powers do the council and QFRS have to inspect my property?</p>	12P ² 104FG ⁶	<p>Members of the public can lodge complaints to the council or QFRS. In addition, the council structured inspection programs or a random inspection by the QFRS may reveal this defect.</p>
D. Inspections		
<p>What powers do the council and QFRS have to inspect my property?</p>	12R ²	<p>Under the <i>Local council Act 1993</i> the Council may implement a structured inspection program of buildings to check aspects like compliance with the building regulations. The council can either implement prosecution of observed defects or Show Cause and Enforcement notices to have the work rectified. The council must annually inspect budget accommodation buildings with the following features: Compliance with the Fire Safety Standard was achieved by an alternative solution that relies upon special management procedures set out in the FSMP.</p>
	55 ⁶	<p>The QFRS may at any time enter a budget accommodation building to inspect the special fire services or prescribed fire safety installations.</p>
Show Causes and Enforcement Notices		
<p>The council has issued a Show Cause Notice. What has to be done?</p>	21 ²	<p>The council will supply the facts and circumstances of why it believes that an Enforcement Notice should be issued. Owners can present a case showing where and why the council beliefs are incorrect, or how and when the defects are to be corrected. Aspects not related to building regulations are usually not relevant.</p>
<p>The council has issued an Enforcement Notice. What has to be done?</p>	22, 23, 24 ² IPA ⁸ 4.3. 11	<p>This notice must be based on the show cause and take into account the response to the Show Cause. Generally, in this case, the notice should specify the types and location of work to be performed to comply with the acceptable solutions. This will allow the owner to comply. The council can defer issuing a notice based on a construction program submitted during the show cause period.</p>

Table 2: Typical examples of actions associated with notices.



Deciding body	Time for decision	Maximum penalty if decision not followed	Can decision be appealed	Maximum time for owner to consider to appeal	Appeal process under this new legislation
Council QFRS		100 Penalty units	A Complaint and Summons used to commence prosecution should be referred to the owner's legal advisor and the matter will be determined in the courts.	Nil	
Council QFRS		20 Penalty units		Nil	
Council					
QFRS					
Council	21 business days to respond	NA	No, only first part of a process	20 business days to provide a case to the council	NA
Council	20 business days	1 665 Penalty units ⁹	Yes	20 business days	An IPA appeal ¹⁰³



² Section of the Building Act 1975.

³ The nature of work must be listed and include sufficient specific detail so that it can be implemented. It must not be vague and open to interpretation. It must be specific for the individual building and each case must be able to be treated on its merits.

⁴ The Registrar, Building & Development Tribunal, PH 3237 0403 OR www.dlgp.qld.gov.au/building_codes/

⁵ In June 2002, 1 Penalty Unit = \$75. Hence, 165 PU = \$12375.00, 100PU = \$7500.00 and 20PU = \$1500.00

⁶ Sections of the Queensland Fire and Rescue Act 1990

⁷ A FSMP is more than an evacuation plan. For more details refer to the Guideline "Fire Safety Management Plan"

⁸ Integrated Planning Act 1997

⁹ In June 2002, 1 Penalty Unit = \$75. Hence, 1665PU = \$124 875.00, 165PU = \$12375.00, 100PU = \$7500.00 and 20PU = \$1500.00

¹⁰ In June 2002, 1 Penalty Unit = \$75. Hence, 1665PU = \$124 875.00, 165PU = \$12375.00, 100PU = \$7500.00 and 20PU = \$1500.00

Use of guidelines

These guidelines are intended for use by-

- Building owners;
- Local councils;
- Building certifiers for acceptable solutions;
- Building certifiers with competence in fire safety for performance decisions; and
- Fire engineers, architects and building designers.

Associated guidelines

Other guidelines relating to fire safety in budget accommodation buildings provide specific guidance on various parts of the legislation, as well as illustrative examples using actual buildings as case studies.

The list of guidelines includes:

- Overview of the Fire Safety Standard;
- How to Comply with the Fire Safety Standard;
- Development Application Process;
- Budget Accommodation Buildings;
- Smoke Alarms & Emergency Lighting;
- Application of the Fire Safety Standard;
- Inspection and Maintenance Options;
- Fire Safety Audits; and
- Fire Safety Management Plans.

Case studies on actual buildings include:

- Fully compliant building;
- Large single storey building;
- Small supported accommodation building;
- Two storey timber hotel;
- Three storey boarding house; and
- Two storey backpacker hostel.

Guideline and case studies are available on the following websites:

www.dlgp.qld.gov.au

www.fire.qld.gov.au/building_safety

A copy of the legislation and the Fire Safety Standard are also available from these websites.

For further information

Department of Local Government and Planning
PO Box 31 Brisbane Albert Street
Queensland 4002 Australia
Phone: 1800 682 021 Fax: (07) 3237 1248

Queensland Fire and Rescue Service
GPO Box 1425 Brisbane
Queensland 4001 Australia
Phone: (07) 3247 8100 Fax: (07) 3247 8145

Disclaimer: Any representation, statement, opinion or advice expressed or implied in this publication is made in good faith but on the basis that the State of Queensland, its agents and employees are not liable (whether by reason of negligence, lack of care or otherwise) to any person for damage or loss whatsoever which has occurred or may occur in relation to that person taking or not taking (as the case may be) action in respect of any representation, statement, opinion or advice referred to above.

