



Planning &
Environment

**COMMENTARY ON
PROPOSED FIRE SAFETY
CHANGES TO THE
ENVIRONMENTAL
PLANNING AND
ASSESSMENT
REGULATION 2000**



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PURPOSE

This document explains the aims of proposed changes to the Environmental Planning and Assessment Regulation 2000 in relation to provisions for fire safety in the design, construction and approval of new buildings and building work. The document should be read in conjunction with the draft regulation. Comments are invited on the draft regulation **until 31 January 2017**.

See www.planning.nsw.gov.au/Have-Your-Say/Community-Consultations on how to lodge a submission.

BACKGROUND

In September 2016, the NSW Government announced its response to the statutory review of the Building Professionals Act 2005 (BP Act) (see www.bpb.nsw.gov.au/news/strengthening-certification-nsw). The Government's response marks an important milestone in strengthening the NSW building regulation and certification system.¹

The initial reform priorities are:

- New measures to facilitate better use and sharing of certification data
- A package of fire safety reforms for both new and existing buildings
- Establishment of a new inter-government agency Building Regulators Committee (BRC)
- Exposure draft Bill to rewrite the BP Act and overhaul regulation of certifiers
- Consolidation of key building provisions in the Environmental Planning and Assessment Act 1979 (EP&A Act) and allocation of responsibility for these provisions to the Minister for Innovation and Better Regulation.

The proposed fire safety reforms have been developed through targeted consultation with key industry and community stakeholders. They are considered a first step towards strengthening the NSW building regulation and certification system and will integrate with future reforms.

1. *This is the building control system for NSW of which the certification system is part. It is the system of regulatory controls for ensuring new and existing buildings meet expectations - in terms of safety, health, amenity, sustainability and planning requirements. The building control system specifies when approval is required for the erection of a building and building and use changes. It specifies, among other things: the*

approval/certification process, including matters on which the relevant authority must be satisfied before issuing approval/certification; the minimum inspections required during the construction phase; and the process for sign-off when the development is satisfactorily completed. It also covers the regulation of building safety maintenance and compliance and enforcement.

Further reforms are anticipated including to: improve rigour in the certification process; strengthen and streamline building safety maintenance regulation; improve certainty for approvals of changes to existing buildings; clarify roles and responsibilities; and provide better support for certifiers and industry generally. It is intended to look at the system holistically so that buildings are fit for occupation on day one and remain that way throughout their effective lives.

These proposed further reforms will be the subject of consultation. The implementation of agreed reforms will be staged.

THE DRAFT FIRE SAFETY REGULATION

The draft regulation proposes changes to building regulation and certification covering seven areas:

- the involvement of competent fire safety practitioners in certain specialist fire safety functions.
- requiring submission of plans and specifications for relevant fire safety system work relating to class 2 – 9 buildings.
- limited exemptions from compliance with some Building Code of Australia standards relating to relevant fire safety system work.
- new critical stage inspections for class 2 – 9 buildings.
- new inspections of fire safety system work relating to Class 2 and 3 buildings by Fire and Rescue NSW before occupation certificates (OCs) are issued.
- requiring an Alternative (Performance) Solution report for all fire safety Alternative Solutions for class 1b – 9 buildings
- requiring fire safety certificates and statements to be in a form approved by the Secretary of the Department of Planning and Environment (DPE).

Involvement of 'competent fire safety practitioners'

As a number of the proposed reforms require the use of a 'competent fire safety practitioner' to perform specific functions, the Government is progressing a separate project to develop a co-regulatory accreditation framework which is aimed at providing clear guidance on what it means to be a 'competent fire safety practitioner'.

The co-regulatory accreditation framework will centre around recognising industry bodies and their accreditation schemes that cover certain fire safety functions that require a competent fire safety practitioner. It will outline the process for industry bodies and their schemes to be deemed to provide competent fire safety practitioners. For example, the framework may include:

- requirements for industry bodies who administer accreditation schemes, such as a code of conduct;
- requirements for industry bodies' accreditation schemes, for example, that individuals must have insurance; and
- procedures for the Government's administration of the framework, for example, imposing conditions on approved industry bodies.

The commencement of the proposed competent fire safety practitioner amendments will need to take into consideration any outcomes arising from this process. Further targeted consultation with stakeholders will be undertaken to determine appropriate transition and commencement periods.

It is anticipated that the Department of Finance, Services and Innovation will release a draft accreditation framework for public consultation in early 2017. If you would like to be notified when this consultation commences, please indicate this in your submission or send your name and contact details to policy@finance.nsw.gov.au.

Submission of fire safety system plans and specifications and their retention on site

The EP&A Regulation will require that before installing, extending or modifying **relevant fire safety systems** (see glossary), plans and specifications for the fire safety system work must be endorsed by a competent fire safety practitioner as compliant with relevant requirements and submitted to the certifying authority. The specifications must, among other things, describe any Alternative Solutions that apply to the design for the system.

The aims of the proposed reforms are to increase confidence that: fire system designs are code compliant; fire safety systems are properly installed and operational; and fire safety system maintenance can be adequately checked.

Submission of plans and details will: help the certifier's compliance checking; provide for the assessment and recording of Alternative Solutions relating to the designs; ensure that people who conduct inspections and other checks during the construction phase, and those carrying out the works, have access to these plans and details; and, since these plans and details become part of the building record, improve life-cycle building safety regulation and management.

The plans and details can be submitted with the application for the **construction certificate** (CC) or **complying development certificate** (CDC) or they may be submitted afterwards, however they must be submitted before the fire safety system work commences. If submitted after the CDC/CC application has been determined, they must be submitted to the Principal Certifying Authority (PCA).

The draft regulation also requires that current endorsed copies of these plans and specifications be kept on the construction site at all times. The principal contractor will be responsible for compliance with this requirement.

Limited exemptions from compliance with some Building Code of Australia standards

The proposed regulation will provide some flexibility for certain minor **relevant fire safety system** work associated with alterations and additions to existing buildings.

These existing buildings (for example industrial, commercial, and institutional buildings) may incorporate existing fire safety systems designed and installed to older standards. An addition or alteration to these buildings may involve extending or modifying the existing system.

Strict compliance with the current Building Code of Australia (BCA) requirements that apply to the fire safety system works may be unreasonable and unnecessary in these cases and may impose unreasonable costs.

It is proposed that certifying authorities will be able to set aside the need to strictly comply with certain requirements of the BCA for a minor modification or extension of an existing fire safety system. This will be triggered by a request from the applicant on the basis that compliance is unreasonable or unnecessary in the particular circumstances of the case. However, it is limited to only the requirements of the BCA relating to the operational performance of the affected part of the system.

There will be no need for an Alternative Solution, but the proposed exemption will be subject to the following:

- the certifying authority must be satisfied that the non-compliance will not reduce the operational performance of the existing fire safety system;
- another independent ‘competent fire safety practitioner’ has endorsed the proposed BCA variation.

As is currently the case, any new hardware and components must comply with current BCA standards.

New critical stage inspections

It is proposed to add two (2) new critical stage inspections to the list of inspections under clause 162A of the EP&A Regulation for Class 2-9 buildings. The focus of the new inspections is fire compartmentation due to evidence of a high level of defects in this area. Compartmentation helps to prevent the spread of fire through a building. However, as with the other critical stage inspections, the EP&A Regulation does not limit what must be checked when inspections are carried out.

The new inspections specify a minimum portion of areas for inspection. This is intended to ensure that a reasonably representative sample of these kinds of measures are checked throughout the building.

The first new inspection applies to Class 2-9 buildings generally. It requires that the building work now also be inspected prior to the covering of fire protection at service penetrations for a minimum area of 20 percent of the total floor area of the storey. This includes methods of fire protection such as fire stop collars, fire seals, fire pillows, and fire dampers.

The second new inspection applies only to Class 2 and 3 buildings (multi-unit residential buildings) and parts of Class 4 buildings. It requires that the building work now also be inspected prior to the covering the junction of any fire-resisting construction between or bounding a sole-occupancy unit, and any other building element – for a minimum of 30 percent of sole occupancy units on each storey of the building containing sole-occupancy units. This inspection should involve a check of, among other things, the compliance of the bounding construction, and for any gaps where the construction abuts other building elements.

Additional checks by Fire and Rescue NSW

The draft regulation proposes to expand Fire and Rescue NSW (FRNSW’s) current inspection role. Under the proposals, FRNSW would have the discretion to inspect and assess fire safety system work relating to multi-unit residential (Class 2 and 3) buildings ie.

where there is an installation, extension or modification of a **relevant fire safety systems** in Class 2 or 3 buildings (see glossary).

The aim of this reform is to provide for independent checking of certain buildings containing certain fire safety systems.

To enable FRNSW the opportunity to inspect and assess fire safety systems work: the PCA must notify FRNSW within two days of receiving an application for an OC; and a 10 day period must pass before the PCA can issue an OC during which time FRNSW can choose to inspect the building.

FRNSW will have the discretion to issue a report regarding the fire safety systems inspected and assessed within the 10 day period and the PCA must consider such a report before the OC can be issued.

Assessment by competent fire safety practitioners before issue of fire safety certificate and standardised certificates

The aim of this reform is to improve confidence in fire safety certificates and hence building fire safety.

Currently, the fire safety certificate is a certificate issued by or on behalf of the building owner and verifies that each new and existing measure listed in the current fire safety schedule: has been assessed by a **properly qualified person** (chosen by the owner), and was found when assessed to be capable of performing to at least the standard specified in the current fire safety schedule. An OC for a class 1b-9 building cannot be issued unless the fire safety certificate has been issued relating to the whole building (unless an exception applies). Also, a fire safety certificate(s) must be provided to the council when a fire safety order is issued.

The fire safety certificate serves several purposes including: initiating the routine (usually annual) certification process; and as a link between the building certification process and fire safety maintenance regulation. However, in practice, and in relation to certified developments, it is also being relied upon by a number of PCAs as verification that fire safety measure works have been completed satisfactorily.

Two changes are proposed to the fire safety certificate regime. The first is to require that fire safety certificate assessments be carried out by competent fire safety practitioners as previously explained. The second is to standardise the form of the fire safety certificate.

Under these reforms, as is currently required, the person who carries out the assessment(s) will be chosen by the owner of the building. However, the owner will now need to be satisfied that they choose a competent fire safety practitioner.

For developments that PCAs are responsible for oversighting and then issuing an OC, the PCA will be responsible for confirming that the person chosen by the owner to assess fire safety measures required or affected by the development is a competent fire safety practitioner.

In the interim, pending the accreditation framework coming into effect, a guide will be issued to assist PCAs and building owners in fulfilling this responsibility.

Standardising the form of the fire safety certificate will improve the consistency of certificates.

Documenting, checking and endorsing of fire safety Alternative Solutions (non-standard fire safety designs)

The following proposals are limited to Class 1b to 9 buildings. The aims of these reforms are to:

- ensure there is a record of all accepted fire safety **Alternative Solutions** (see glossary) that apply to a development and hence knowledge of the fire safety standards to which the building has been designed and constructed. This is critically important to effective regulation and management of building safety maintenance and future building and use changes.
- clarify what is expected of the certifying authority when an Alternative Solution is proposed. Presently some certifying authorities are not undertaking compliance checking. For example, some are accepting fire engineering reports (FERs) without reviewing the report.
- improve construction compliance. The draft regulation requires that the certifying authority be satisfied that the physical elements of the fire safety Alternative Solution are shown on the building plans and described in the building specifications where possible. This will help contractors and persons conducting inspections as Alternative Solution reports can be lengthy and complex. The draft regulation also states that the certifying authority must be satisfied that a fire safety Alternative Solution has been satisfactorily implemented.

Reports and associated building plans

The draft regulation proposes that a report must be submitted to the certifying authority for endorsement for all fire safety Alternative Solutions that apply to a development relating to a Class 1b to 9 building. Without the report, and certifier endorsement, the CDC / CC will not be able to be issued. The current requirements of clause 130 and 144A of the EP&A Regulation requiring the submission of a compliance certificate or report for certain fire safety

Alternative Solutions applying to certain classes of buildings over a certain size will be superseded by the new process.

If an Alternative Solution is proposed after the issue of the CDC/CC, a modified CDC/CC will have to be issued to endorse what is proposed before the Alternative Solution can be implemented.

The draft regulation requires that the report be prepared by a competent fire safety practitioner. The nature of the Alternative Solution will determine the kind of competent fire safety practitioner that should be involved.

Fire safety Alternative Solutions can relate to various kinds of matters including: complex matters such as the fire safety design of the entire building or any portion of the building; all or part of a fire protection system or another kind of fire safety measure; or simple matters that involve a minor variance to a fire safety requirement.

A fire engineer should be involved if the evaluation which will serve to justify acceptance of the proposal involves a fire engineering analysis. On the other hand, someone more specialist (a fire protection system specialist) may be required for specialist matters such as an Alternative Solution for a fire sprinkler system design. Some simple Alternative Solutions may not require a fire engineering analysis or a specialist and a practitioner deemed competent may be appropriate to that particular matter.

The draft regulation also specifies the information the report must contain. The complexity of the Alternative Solution will determine the complexity and length of the report.

The draft regulation also requires that a copy of the fire engineering brief (FEB) accompany the report, unless exempted by the certifying authority. The FEB is a key element of the fire engineering methodology. Access to the FEB will help reviewers in determining whether the analysis presented in the Alternative Solution Report is consistent with the terms of the FEB. However, simple fire safety Alternative Solutions may not need to be accompanied by an FEB.

In addition, the draft regulation requires that the certifying authority is satisfied that the details of the accepted Alternative Solution are shown on the building plans and included in the building's specification where capable of being shown and included.

Recording fire safety Alternative Solutions

The draft regulation requires that a CDC/CC that endorses an Alternative Solution report includes a reference to the report. Also, since some complex/staged projects are the subject of more than one CC, the OC must include a collated list of references to all reports applicable to the completed development.

The aim of this reform is to ensure that important building design information on fire safety measures is documented and accessible.

Current requirements for documents to be sent to the consent authority, and to the council, will be augmented by requiring that details of the Alternative Solution report be sent to the council too.

Auditing the construction or installation of fire safety Alternative Solutions

The draft regulation will require the PCA to be satisfied that all accepted fire safety Alternative Solutions have been constructed or installed in accordance with their respective associated Alternative Solution Reports.

It is already a requirement that before an OC can be issued the PCA must be satisfied that, among other things, the building is suitable for occupation in accordance with its classification under the BCA. This additional requirement is consistent with this existing responsibility. It will also clarify the PCA's responsibility on Alternative Solutions.

It is expected that the PCA will inspect and assess the Alternative Solutions however, the PCA may require submission of certification to support the inspection and assessment.

Assessment for fire safety statements by competent fire safety practitioners and standardised statements

The draft regulation proposes that fire safety statement assessments must be carried out by a competent fire safety practitioner.

A fire safety statement verifies that the fire safety measures listed in the statement have been assessed by a properly qualified person (in the opinion of the building owner) and that, at the time of the assessment, they were found to be capable of performing to at least the standard specified in the current fire safety schedule. It also verifies that no fire safety breaches (eg obstructions of exits) were observed.

Presently the owner of a Class 1b to 9 building subject to the fire safety statement requirements must cause a fire safety statement(s) to be submitted to the council at least once each year. A copy of the statement(s) must be forwarded to FRNSW and another copy must be displayed in the building alongside the fire safety schedule.

As previously mentioned a new accreditation framework is being developed by the Department of Finance, Services and Innovation for these kinds of fire safety practitioners; however, until this is operational, owners will need to choose the person and be satisfied they are competent to undertake the tasks of inspecting and assessing their essential fire safety measures.

In the interim a guide will be issued to assist building owners in fulfilling this responsibility.

The other reform is to standardise the form of the fire safety statement to help ensure statements are complete and consistent.

Glossary

Alternative (performance) solutions means a method of achieving the standard of performance required, for a building to be considered compliant with the Building Code of Australia, other than by a prescriptive method of compliance (i.e. a *Deemed-to-Satisfy Solution*).

Building Code of Australia is a technical code containing Performance Requirements for the construction of buildings. It applies nationally. It provides the minimum necessary requirements for safety, health, amenity and sustainability in the design and construction of new (and new building work in existing buildings). For more information see www.abcb.gov.au

Certifying authority is an accredited person who issues certificates about building work or subdivision under Part 4A the *Environmental Planning and Assessment Act 1979*. They have expertise in building regulation and certification. They inspect construction or subdivision work at critical stages, which differ according to the type of development. In NSW, certifying authorities are either private or work for a local council and are accredited by the NSW Building Professionals Board. For more information see www.bpb.nsw.gov.au). Councils can also be certifying authorities.

Class 1b building are small residential buildings such as boarding houses, guest houses, hostels or the like which are less than 300m² in area, accommodate not more than 12 occupants and are not located above or below another type of building.

Class 2 and 3 buildings are large size residential buildings containing multiple dwellings i.e. a multi-storey apartment building; a hotel, motel or the like; a boarding house, guest house or hostel (not described in Class 1b) or a residential part of a school.

Class 4 building is a single residence located inside a Class 5-9 building (e.g. caretakers residence).

Class 5 – 9 buildings include a variety of commercial (office or shop), industrial (used for production, manufacture or storage) and public type buildings (hospitals, schools or theatres).

Complying development certificates state that proposed development is complying development and (if carried out as specified) will comply with relevant development standards and legislative requirements. Complying development is a combined planning and construction approval for straightforward development. The certificate authorises the commencement of development.

Construction certificates state that work completed in accordance with approved plans and specifications will comply with legislative requirements. A development application to councils needs to precede or accompany a construction certificate application. The certificate authorises the commencement of development.

Competent fire safety practitioner see the definition in the draft regulation.

Occupation certificates authorise the occupation and use of a new building, or a change of building use for an existing building.

Principal certifying authority is a type of certifying authority with specific roles under the *Environmental Planning and Assessment Act 1979* including conducting the final inspection of the building and issuing the occupation certificate at the completion of the development.

Properly qualified person, in the context of fire safety, is a term used in Part 9 of the Environmental Planning and Assessment (EP&A) Regulation 2000 in relation to fire safety certificates and fire safety statements. The term is not defined in the legislation. Under the current regulation the building owner decides who is properly qualified for the task.

Relevant fire safety systems: For the purposes of this draft regulation, a relevant fire safety system means:

- a hydraulic fire safety system.
- a fire detection and alarm system
- a mechanical ducted smoke control system.

Note that the term 'hydraulic fire safety system' is currently defined by clause 165 of the EP&A Regulation.