

Proposed changes to Environmental Planning and Assessment Regulation

Clause	Comment
152A	<p>This requirement for additional checks by FRNSW is unnecessary. It is considered that the existing notification requirements under 152 together with the proposed changes for competent fire safety practitioners (and accreditation scheme) to certify the design and installation of relevant fire safety systems, will be adequate to reduce the risk that fire safety systems are not designed/installed adequately.</p> <p>FRNSW is unable to keep up with the current level of submissions under the FEBQ, 144 and 152 process and do not provide comments/responses within a reasonable time period. This already has a major impact on the delivery of projects. FRNSW will be overwhelmed with submissions under this proposed 152A provision and this will have an adverse impact on the performance of their other more important roles. For example, a simple CDC or CC for internal alternations to a single Class 2 SOU that involves adjustment of smoke alarms will need to be referred at OC stage under this clause. Such minor works does not warrant independent checking. I understand that FRNSW will have the discretion not to inspect for these minor works, however this process adds substantial administration work required to make application to the brigade and for the brigade to consider whether or not to inspect and advise of such, which is not productive.</p> <p>Further, this process will cause unnecessary delay in issuing an OC and this is likely to lead to occupation of premises prior the issue of the OC in some cases.</p>
152B	<p>This is sloppy drafting of this clause.</p> <p>Firstly, the term 'certifying authority' is used on five occasions. The first, second and fifth occasion is a reference to the PCA (construction phase). The third and fourth occasion is a reference to the certifying authority at CC application stage. Refer below. This could lead to confusion in interpretation of the clause and therefore this clause should be redrafted.</p> <p><i>'A certifying authority [PCA] must not issue an occupation certificate for a building for which building work that involves an alternative solution under the Building Code of Australia in respect of a fire safety requirement was carried out unless:</i></p>

	<p>(a) <i>the certifying authority [PCA] has obtained or been provided with the alternative solution report, prepared by a competent fire safety practitioner for the purposes of clause 130 (2A) (a) or 144A (1) (a) and endorsed by the certifying authority [CA at CC stage], that:</i></p> <p>(i) <i>identifies the deemed-to-satisfy provisions of the Building Code of Australia being varied and the corresponding performance requirements, and</i></p> <p>(ii) <i>describes and justifies the alternative solution, including the acceptance criteria and parameters on which the justification is based and any restrictions or conditions on the alternative solutions, and</i></p> <p>(iii) <i>depicts the physical elements of the alternative solution on the plans for the building (where they are capable of being shown), and</i></p> <p>(iv) <i>if the certifying authority [CA at CC stage], requires its inclusion, includes a copy of the brief for the fire engineering analysis, and</i></p> <p>(b) <i>the certifying authority [PCA] is satisfied that the relevant building work was constructed or installed in accordance with the report.</i></p> <p>Secondly, the addition of sub clause (iii) as part of subclause (a) is not appropriate as it reads:</p> <p><i>'(a) the certifying authority has obtained or been provided with the alternative solution report, prepared by a competent fire safety practitioner for the purposes of clause 130 (2A) (a) or 144A (1) (a) and endorsed by the certifying authority, that:</i></p> <p>.....</p> <p><i>(iii) depicts the physical elements of the alternative solution on the plans for the building (where they are capable of being shown), and.....'</i></p> <p>The plans referred to in subclause (iii) are not part of the alt sol report, they are a separate document and would need to be referred to directly in the first paragraph of clause (a).</p>
<p>153 (2A); 170; and 171</p>	<p>Clause 153(2A) requires that the fire safety certificate be issued by a competent fire safety practitioner and clause 171 requires that the assessment of the system must be carried out by a competent fire safety practitioner. The driver for this, as stated in your Commentary document, is that fire safety certificates are commonly used as verification that fire safety measure works have been completed satisfactorily (as a type of installation certificate) . The statement required to be made in a fire safety certificate as specified in clause 170 is that:</p> <p><i>'A final fire safety certificate is a certificate issued by or on behalf of the owner of a building to the effect that each essential fire safety measure specified in the current fire safety schedule for the building to which the certificate relates:</i></p> <p>(a) <i>has been assessed by a properly qualified person competent fire safety practitioner, and</i></p>

	<p><i>(b) was found, when it was assessed, to be capable of performing to at least the standard required by the current fire safety schedule for the building for which the certificate is issued.'</i></p> <p>This means that the author of the certificate (being required to be a competent fire safety practitioner on behalf of the owner) may not be the same as the person who has carried out the assessment (who is also required to be a competent fire safety practitioner). I do not expect that this is the intent of the Department. I expect that the the intent would be that the person who has carried out the assessment is the same person who issues the fire safety certificate. On this basis the wording required to be in the fire safety certificate does not reflect this intention. A separate and specific statement is should be provided in the fire safety certificate that relates to the intent of 153(2A) and 171 (4A).</p>
162A	Clarification is required on how to determine 20% of the floor area of a storey in the case of alternations and additions. I assume the intent is 20% of the part of the storey directly involving in the alternations/additions and not the whole storey.
162A(6)(a)	In a commercial building it would not be unusual that the building will contain floor area up to or more than 20% of a storey without any required fire stopping. I expect tht it is not your intention that the certifier identify/inspect as the mandatory inspection that 20% part of the storey that does not contain any fire stopping. If so, you may need to amend this clause to prevent this.
164B	<p>Clarification is required on the relationship of proposed clause 164B and existing clause 143 (1).</p> <p><i>'143 A certifying authority must not issue a construction certificate for building work under a development consent that authorises a change of building use unless:</i></p> <p><i>(a) the fire protection and structural capacity of the building will be appropriate to its new use, and</i></p> <p><i>(b) the building will comply with such of the Category 1 fire safety provisions as are applicable to the new use,</i></p> <p><i>assuming that the building work is carried out in accordance with the plans and specifications to which the construction certificate relates and any conditions to which the construction certificate is subject.</i></p> <p>In relation to a building alternations relating to a change of use, an exemption will not be able to be provided for category 1 fire safety provisions.</p> <p>Clarification is required as to whether the competent fire safety practitioner endorsing the non-compliance needs to be an independent person (not work for the same company as the person who prepared the plans and specifications)</p>

167A	<p>Sub clause 4 (b) refers to Division 4 of Part 9 and requires the owner to be satisfied that the person is competent. Sub clause 4 (a) refers to Clause 153 fire safety certificates and requires the certifying authority to be satisfied that the person is competent. Since fire safety certificates required under Clause 153 are fire safety certificates referred to in Division 4 of Part 9, does the competent person need to 'authorised' by both the certifying authority and the owner? The clause can be read this way, however I understand tht this is not your intention as stated in you commentary which clarifies that for development that the PCA is responsible for, the PCA is responsible for confirming the adequacy of the person.</p>
171(4A)	<p>This is sloppy drafting of this clause. A final fire safety certificate is not authorized or required by a development consent or construction certificate as stated in this clause. A final fire safety certificate is required under clauses 149 (2), 155 (2) and 153 relating to the application and issue of occupation certificates.</p> <p>This clause should read:</p> <p><i>'(4A) A final fire safety certificate issued in relation to work that has been authorised or required by a development consent, complying development certificate, construction certificate or fire safety order authorised or required by a development consent or construction certificate, and involving building work in a class 1b, 2, 3, 4, 5, 6, 7, 8 or 9 building, must not be issued unless the assessment of essential fire safety measures was carried out by a competent fire safety practitioner.'</i></p>