



New South Wales

# Environmental Planning and Assessment Amendment (Fire Safety and Building Certification) Regulation 2017

under the

Environmental Planning and Assessment Act 1979

His Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Environmental Planning and Assessment Act 1979*.

Minister for Planning

## Explanatory note

The object of this Regulation is to implement some of the recommendations made as a result of the independent statutory review of the *Building Professionals Act 2005*. This is achieved by amending the provisions of the *Environmental Planning and Assessment Regulation 2000* dealing with fire safety and building certification so as to:

- (a) require plans and specifications to be submitted in relation to work on certain fire safety systems in class 2–9 buildings, and
- (b) introduce critical stage inspections for class 2–9 buildings, and
- (c) clarify who can undertake fire safety certificate assessments for class 1b–9 buildings, and
- (d) introduce a new alternative solution report for fire safety alternative solutions for class 1b–9 buildings, and
- (e) require fire safety statements and fire safety certificates to be in a form approved by the Secretary of the Department of Planning and Environment.

This Regulation is made under the *Environmental Planning and Assessment Act 1979*, including sections 81A (5), 85A (7), 109H (3) (d), 109Q and 157 (the general regulation-making power).

## **Environmental Planning and Assessment Amendment (Fire Safety and Building Certification) Regulation 2017**

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### **1 Name of Regulation**

This Regulation is the *Environmental Planning and Assessment Amendment (Fire Safety and Building Certification) Regulation 2017*.

### **2 Commencement**

This Regulation commences on the day on which it is published on the NSW legislation website.

## **Schedule 1      Amendment of Environmental Planning and Assessment Regulation 2000**

### **[1]    Clause 3 Definitions**

Insert in appropriate order in clause 3 (1):

*competent fire safety practitioner*—see clause 167A.

### **[2]    Clause 130 Procedure for determining application for complying development certificate and notification requirements**

Omit clause 130 (2A), (2B) and (2D). Insert instead:

- (2A) A certifying authority must not issue a complying development certificate for building work that involves an alternative solution under the *Building Code of Australia* in respect of a fire safety requirement unless the certifying authority:
- (a) has obtained or been provided with an alternative solution report that:
    - (i) was prepared by a competent fire safety practitioner, and
    - (ii) includes a statement that the alternative solution complies with the relevant performance requirement of the *Building Code of Australia*, and
    - (iii) identifies the deemed-to-satisfy provisions of the *Building Code of Australia* being varied and the corresponding performance requirements, and
    - (iv) describes and justifies the alternative solution, including the acceptance criteria and parameters on which the justification is based and any restrictions or conditions of the alternative solutions, and
    - (v) if the certifying authority requires its inclusion—includes a copy of the brief for the fire engineering analysis, and
  - (b) has endorsed the alternative solution report with a statement that the certifying authority is satisfied that it has been appropriately prepared, and
  - (c) is satisfied that the plans show, and the specifications describe, the physical elements of the alternative solution (where they are capable of being shown and described).
- (2B) Subclause (2A) clause does not apply to building work relating to a class 1a or 10 building.

### **[3]    Clause 134 Form of complying development certificate**

Insert after clause 134 (1) (f):

- (f1) the following details of any alternative solution report about the building work that complies with clause 130 (2A) (a) and (b):
  - (i) the title of the report,
  - (ii) the date on which the report was made, and the version number of the report,
  - (iii) the name of the competent fire safety practitioner who prepared the report,
- (f2) if any of the building work is exempt from compliance with the *Building Code of Australia* because of clause 164B—the details of that exemption,

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# public consultation draft

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Environmental Planning and Assessment Amendment (Fire Safety and Building Certification) Regulation 2017 [NSW]  
Schedule 1 Amendment of Environmental Planning and Assessment Regulation 2000

---

**[4] Clause 134 (2)**

Insert “If any of the building work is exempt from compliance with the *Building Code of Australia* because of clause 164B, that fire safety schedule must include details of that exemption.” after “Part 9).”.

**[5] Clause 136AA**

Insert after clause 136A:

**136AA Condition relating to fire safety systems in class 2–9 buildings**

- (1) A complying development certificate for building work involving the installation, extension or modification of any relevant fire safety system in a class 2, 3, 4, 5, 6, 7, 8 or 9 building must be issued subject to the condition required by this clause.
- (2) The condition required by this clause is that the building work involving the installation, modification or extension of the relevant fire safety system cannot commence unless:
  - (a) the following documents, endorsed by a competent fire safety practitioner, have been submitted to the principal certifying authority:
    - (i) plans that show the layout, extent and location of key components of the relevant fire safety system,
    - (ii) specifications that describe the basis for design, installation and construction of the relevant fire safety system, including any alternative solutions proposed for the system, and
  - (b) those documents have been endorsed by a competent fire safety practitioner as:
    - (i) complying with the relevant provisions of the *Building Code of Australia*, or
    - (ii) in the case of building work involving the minor modification or minor extension of an existing fire safety system only—subject to an exemption under clause 164B.
- (3) In this clause:

***relevant fire safety system*** means any of the following:

  - (a) a hydraulic fire safety system within the meaning of clause 165,
  - (b) a fire detection and alarm system,
  - (c) a mechanical ducted smoke control system.

**[6] Clause 144A**

Omit the clause. Insert instead:

**144A Alternative solution report required for certain fire safety aspects of building work**

- (1) A certifying authority must not issue a construction certificate for building work that involves an alternative solution under the *Building Code of Australia* in respect of a fire safety requirement unless the certifying authority:
  - (a) has obtained or been provided with an alternative solution report that:
    - (i) was prepared by a competent fire safety practitioner, and
    - (ii) includes a statement that the alternative solution complies with the relevant performance requirement of the *Building Code of Australia*, and

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# public consultation draft

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Environmental Planning and Assessment Amendment (Fire Safety and Building Certification) Regulation 2017 [NSW]  
Schedule 1 Amendment of Environmental Planning and Assessment Regulation 2000

---

- (iii) identifies the deemed-to-satisfy provisions of the *Building Code of Australia* being varied and the corresponding performance requirements, and
  - (iv) 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
  - (v) if the certifying authority requires its inclusion—includes a copy of the brief for the fire engineering analysis, and
  - (b) has endorsed the alternative solution report with a statement that the certifying authority is satisfied that it has been appropriately prepared, and
  - (c) is satisfied that the plans show, and the specifications describe, the physical elements of the alternative solution (where they are capable of being shown and described).
- (2) This clause does not apply to building work relating to a class 1a or 10 building.

**[7] Clause 146B**

Insert after clause 146A:

**146B Condition relating to fire safety systems in class 2–9 buildings**

- (1) A construction certificate for building work involving the installation, extension or modification of any relevant fire safety system in a class 2, 3, 4, 5, 6, 7, 8 or 9 building must be issued subject to the conditions required by this clause.
- (2) The condition required by this clause is that the building work involving the installation, modification or extension of the relevant fire safety system cannot commence unless:
  - (a) the following documents have been submitted to the principal certifying authority:
    - (i) plans that show the layout, extent and location of key components of the relevant fire safety system,
    - (ii) specifications that describe the basis for design, installation and construction of the relevant fire safety system, including any alternative solutions proposed for the system, and
  - (b) those documents have been endorsed by a competent fire safety practitioner as:
    - (i) complying with the relevant provisions of the *Building Code of Australia*, or
    - (ii) in the case of building work involving the minor modification or minor extension of an existing fire safety system only—subject to an exemption under clause 164B.
- (3) In this clause:  
**relevant fire safety system** means any of the following:
  - (a) a hydraulic fire safety system within the meaning of clause 165,
  - (b) a fire detection and alarm system,
  - (c) a mechanical ducted smoke control system.

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# public consultation draft

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Environmental Planning and Assessment Amendment (Fire Safety and Building Certification) Regulation 2017 [NSW]  
Schedule 1 Amendment of Environmental Planning and Assessment Regulation 2000

---

**[8] Clause 147 Form of construction certificate**

Insert after clause 147 (1) (f):

- (g) the following details of any alternative solution report about the building work that complies with clause 144A (1) (a) and (b):
  - (i) the title of the report,
  - (ii) the date on which the report was made, and the version number of the report,
  - (iii) the name of the competent fire safety practitioner who prepared the report,
- (h) if any of the building work is exempt from compliance with the *Building Code of Australia* because of clause 164B—the details of that exemption.

**[9] Clause 147 (2)**

Insert “If any of the building work is exempt from compliance with the *Building Code of Australia* because of clause 164B, that fire safety schedule must include details of that exemption.” after “Part 9).”.

**[10] Clause 152 Reports of Fire Commissioner: section 109H**

Omit “7 days” from clause 152 (5). Insert instead “10 days”.

**[11] Clauses 152A and 152B**

Insert after clause 152:

**152A Reports of Fire and Rescue NSW for class 2 or 3 buildings containing certain fire safety systems: section 109H**

- (1) A certifying authority must request Fire and Rescue NSW to furnish it with a fire safety system report no later than 2 days after receiving any application for an occupation certificate for a class 2 or 3 building for building work that involves installing, extending or modifying a relevant fire safety measure in the building.
- (2) The certifying authority is not required to make such a request if it has already refused the application.
- (3) If it refuses the application after making such a request but before receiving a fire safety system report, the certifying authority must cause notice of the refusal to be given to Fire and Rescue NSW.
- (4) If a request has been made to Fire and Rescue NSW under this clause and no notice of the refusal of the application has been received by the certifying authority, Fire and Rescue NSW may furnish the certifying authority with a fire safety system report for the building.
- (5) The certifying authority must not issue an occupation certificate for the building unless it has taken into consideration any fire safety system report for the building that has been furnished to it within 10 days after Fire and Rescue NSW receives the request for the report.
- (6) A fire safety system report must be in writing and must specify whether or not Fire and Rescue NSW is satisfied:
  - (a) that the relevant fire safety system is capable of performing to at least the standard in the current fire safety schedule for the building, and


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# public consultation draft

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Environmental Planning and Assessment Amendment (Fire Safety and Building Certification) Regulation 2017 [NSW]  
Schedule 1 Amendment of Environmental Planning and Assessment Regulation 2000

---

- (b) that any fire hydrant in the fire hydrant system will be accessible for use by Fire and Rescue NSW, and
  - (c) that any coupling in the fire hydrant system will be compatible with those of the fire appliances and equipment used by Fire and Rescue NSW.
- (7) In this clause: 
- relevant fire safety system** means any of the following:
- (a) a hydraulic fire safety system within the meaning of clause 165,
  - (b) a fire detection and alarm system,
  - (c) a mechanical ducted smoke control system.


## **152B Alternative solution report must be considered before issuing occupation certificate**

A certifying authority 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:

- (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) identifies the deemed-to-satisfy provisions of the *Building Code of Australia* being varied and the corresponding performance requirements, and
  - (ii) 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
  - (iii) depicts the physical elements of the alternative solution on the plans for the building (where they are capable of being shown), and
  - (iv) if the certifying authority requires its inclusion, includes a copy of the brief for the fire engineering analysis, and
- (b) the certifying authority is satisfied that the relevant building work was constructed or installed in accordance with the report.

## **[12] Clause 153 Fire safety certificates: section 109H**

Insert after clause 153 (2):

- (2A) A certifying authority must not issue an occupation certificate for a building for building work that involves installing, extending or modifying a fire safety measure in the building unless any fire safety certificate required for the installation, extension or modification of the fire safety measures was issued by a competent fire safety practitioner. 

## **[13] Clause 155 Form of occupation certificate**

Insert after clause 155 (1) (e):

- (f) the following details of any alternative solution report about the building work involved that complies with clause 130 (2A) (a) and (b) or 144A (1) (a) and (b):
  - (i) the title of the report,

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# public consultation draft

---

Environmental Planning and Assessment Amendment (Fire Safety and Building Certification) Regulation 2017 [NSW]  
Schedule 1 Amendment of Environmental Planning and Assessment Regulation 2000

---

- (ii) the date on which the report was made, and the version number of the report,
- (iii) the name of the competent fire safety practitioner who prepared the report.



**[14] Clause 162A Critical stage inspections required by section 109E (3) (d)**

Insert before clause 162A (5) (b):



- (a) prior to covering of fire protection at service penetrations to fire-resistant walls, floors and ceilings, for a minimum of 20% of the total floor area of each storey of the building, and
- (a1) prior to 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% of sole-occupancy units on each storey of the building containing sole-occupancy units, and

**[15] Clause 162A (6) (a)**

Insert before clause 162A (6) (b):

- (a) prior to covering of fire protection at service penetrations to fire-resistant walls, floors and ceilings, for a minimum of 20% of the total floor area of each storey of the building, and

**[16] Clause 164B**

Insert after clause 164A:

**164B Certain building work on fire safety systems may be exempt from compliance with the BCA standards**

- (1) An interested person in relation to building work involving the modification or extension of any relevant fire safety system may lodge with the certifying authority an objection that compliance with any specified provision of the *Building Code of Australia* is unreasonable or unnecessary in the particular circumstances of the case.
- (2) The interested person must specify the grounds of the objection and must furnish the certifying authority with a copy of the plans and specifications for the building work.
- (3) A certifying authority is to make a determination about the application, and notify the applicant of that determination, within 30 days after receiving the application.
- (4) If the certifying authority is satisfied that the applicant's objection is well founded, it may do either or both of the following:
  - (a) exempt the building work, either conditionally or unconditionally, from any specified provision of the *Building Code of Australia*,
  - (b) direct that specified requirements are to apply to the proposed building work.
- (5) A certifying authority may only exempt such building work if:
  - (a) the non-compliance with the *Building Code of Australia* relates only to the operational performance of the relevant fire safety system, and
  - (b) the certifying authority is satisfied that the non-compliance will not reduce the operational performance of the relevant fire safety system, and



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# public consultation draft

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Environmental Planning and Assessment Amendment (Fire Safety and Building Certification) Regulation 2017 [NSW]  
Schedule 1 Amendment of Environmental Planning and Assessment Regulation 2000

---

- (c) a competent fire safety practitioner (other than the competent fire safety practitioner who prepared the plans and specifications) has endorsed the non-compliance.

**Note.** If the certifying authority exempts compliance with the *Building Code of Australia* under this clause, the exemption must be detailed in the terms of the construction certificate or the complying development certificate and any attached fire safety schedule (see clauses 134 and 147, respectively).

- (6) In this clause:

**interested person** means a person having the benefit of:

- (a) a complying development certificate subject to a condition under clause 136AA, or
- (b) a construction certificate subject to a condition under clause 146B.

**relevant fire safety system** means any of the following:

- (a) a hydraulic fire safety system within the meaning of clause 165,
- (b) a fire detection and alarm system,
- (c) a mechanical ducted smoke control system.

## [17] Clause 167A

Insert after clause 167:

### 167A Competent fire safety practitioners

- (1) The Secretary may, by order published in the Gazette, recognise a class of persons as **competent fire safety practitioners** for the purposes of this Regulation.
- (2) Without limiting the classes of persons who may be recognised, they may include:
  - (a) a class of persons holding a specified category of certificate of accreditation under the *Building Professionals Act 2005*, or
  - (b) a class of persons holding a specified category of certificate of accreditation under the *Building Professionals Act 2005* and having some other characteristic or qualification, or
  - (c) a class of persons being a member of a specified professional organisation or body or industry organisation or body.
- (3) In determining whether or not to make an order under this clause, the Secretary must have regard to any guidelines published by the Secretary about the steps that professional or industry organisations are to follow in order for their members to be considered for inclusion in such an order, including requirements about auditing and complaints handling.
- (4) Until an order is first published under subclause (1):
  - (a) for the purposes of clauses 130, 136AA, 144A, 146B, 153 and 164B, any person who, in the relevant written opinion of the certifying authority or principal certifying authority, as the case may be, is competent to perform the fire safety assessment functions under those clauses is taken to be a competent fire safety practitioner, and
  - (b) for the purposes of Divisions 4 and 5 of Part 9, any person who, in the written opinion of the relevant building owner, is competent to perform the fire safety assessment functions under those divisions is taken to be a competent fire safety practitioner.

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# public consultation draft

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Environmental Planning and Assessment Amendment (Fire Safety and Building Certification) Regulation 2017 [NSW]  
Schedule 1 Amendment of Environmental Planning and Assessment Regulation 2000

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(5) In this clause:

*Secretary* means the Secretary of the Department of Finance, Services and Innovation.

**[18] Clause 170 What is a final fire safety certificate?**

Omit “properly qualified person” from clause 170 (a).

Insert instead “competent fire safety practitioner”.

**[19] Clause 171 Issue of final fire safety certificates**

Insert after clause 171 (4):

(4A) A final fire safety certificate 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.

**[20] Clause 173 What is an interim fire safety certificate?**

Omit “properly qualified person” from clause 173 (1) (a).

Insert instead “competent fire safety practitioner”.

**[21] Clause 174 Form of fire safety certificates**

Insert “be made in the form approved by the Secretary and must” after “must” in clause 174 (1).

**[22] Clause 174 (1) (h)**

Insert after clause 174 (1) (g):

(i) the name and contact details of the person who issued the certificate.

**[23] Clause 175 What is an annual fire safety statement?**

Omit “properly qualified person” wherever occurring.

Insert instead “competent fire safety practitioner”.

**[24] Clause 178 What is a supplementary fire safety statement?**

Omit “properly qualified person”. Insert instead “competent fire safety practitioner”.

**[25] Clause 181 Form of fire safety statements**

Insert “be made in the form approved by the Secretary and must” after “must” in clause 181 (1).

**[26] Clause 181 (1) (i)**

Insert after clause 181 (1) (h):

(i) the name and contact details of the person who issued the statement.

**[27] Clause 190B**

Insert after clause 190A:

**190B Plans and specifications for certain fire safety systems must be kept on site**

(1) The principal contractor for building work must ensure that the most recently endorsed copy of the plans and specifications for any relevant fire safety system for the building:

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# public consultation draft

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Environmental Planning and Assessment Amendment (Fire Safety and Building Certification) Regulation  
2017 [NSW]  
Schedule 1 Amendment of Environmental Planning and Assessment Regulation 2000

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- (a) are kept on the site of the building work, and
  - (b) are made available for inspection on request by the certifying authority, consent authority, council and Fire and Rescue NSW at the times during which the building work is carried out.
- (2) In this clause:
- relevant fire safety system*** means any of the following:
- (a) a hydraulic fire safety system within the meaning of clause 165,
  - (b) a fire detection and alarm system,
  - (c) a mechanical ducted smoke control system.