

Comments on the Proposed changes to the Environmental Planning and Assessment Regulation 2000

General

Replace all references to *'alternative solution'* with *'performance solution'* to be consistent with the BCA terminology.

Clauses 130 (2A)(a)(i)

It is recommended that *'was prepared by a competent fire safety practitioner, and'* is replaced with *'was issued by a competent fire safety practitioner, and'*

This is to clarify that the competent fire safety practitioner can be either the author, reviewer and/or authoriser of the report. This is consistent with current EP&A Regs.

Refer also to comment on definition of competent fire safety practitioner under clause 167A.

Clauses 144A (1)(a)(i)

It is recommended that *'was prepared by a competent fire safety practitioner, and'* is replaced with *'was issued by a competent fire safety practitioner, and'*

This is to clarify that the competent fire safety practitioner can be either the author, reviewer and/or authoriser of the report. This is consistent with current EP&A Regs.

Refer also to comment on definition of competent fire safety practitioner under clause 167A.

Clause 152A

It is recommended that assurance is sought from Fire & Rescue NSW (FRNSW) that they can resource their organisation with staff that are competent in the areas of fire safety systems design and installation consistent with their nominated role under the clause and that their existing obligations under clauses 144 and 152 are not affected by this additional work. FRNSW resources are already stretched. This additional work is likely to impact upon their existing responsibilities and if they are not provided with additional resources or their roles are clarified under the existing legislation, they will not be able to keep up and will fall further behind.

Clause 152B(a)

It is recommended that *'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'* is replaced with

'the certifying authority has obtained or been provided with the alternative solution report, issued 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'

This is to clarify that the competent fire safety practitioner can be either the author, reviewer and/or authoriser of the report. This is consistent with current EP&A Regs.

It is further recommended that sub-clause 152B(a)(iii) which states *'depicts the physical elements of the alternative solution on the plans for the building (where they are capable of being shown), and'* is clarified that the performance solution report does not need to include the plans for the building within the report.

It is adequate for the certifying authority to have received the plans showing, and the specifications describing, the physical elements of the performance solution (where they are capable of being shown and described) consistent with the requirements under clauses 130 and 144A.

The proposed amendment is to delete sub-clause 152B(a)(iii) and insert the following requirement instead.

152B(c) *'the certifying authority has obtained or been provided with plans for the building which depict the physical elements of the performance solution on the plans for the building (where they are capable of being shown), and'*

Refer also to comment on definition of competent fire safety practitioner under clause 167A.

Clause 153A

It is recommended clause 153A also be amended to replace 'compliance certificate' and 'fire safety engineer' terms and update references clauses to be consistent with the proposed changes in other clauses.

Clause 167A

It is recommended that the existing requirement for the work being performed by a 'fire safety engineer' under clauses 130, 144A and 153A to hold a Category C10 accreditation under the Building Professionals Act 2005 is retained until the equivalent level of competency is defined and published in the Gazette.

It is therefore recommended that sub-clause 167A(4)(a) is amended and split into two clauses.

(a) *'for the purposes of clauses 130, 144A, 152B and 153A, any person who holds a Category C10 accreditation under the Building Professionals Act 2005 is taken to be a competent fire safety practitioner, and'*

(aa) *'for the purposes of clauses 136AA, 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'*

This is to ensure that, in the interim, fire safety engineering work is undertaken by adequately competent fire safety practitioners in areas where existing accreditation schemes already are in place.

Other

It appears that the current wording of the clauses 144, 152 and 152A might extend too far for the fire brigade officers and they may not be adequately skilled or prepared to sign off on the fire safety systems as compliant with the BCA and relevant standards. This is unlikely to be the intent of these clauses. In particular, clause 152A(6)(a) requires FRNSW to be satisfied *'that the relevant fire safety system is*

capable of performing to at least the standard in the current fire safety schedule for the building'. This seems to place a significant burden on FRNSW who may not be appropriately skilled to make this assessment. Even if there are some people within FRNSW with appropriate skills, it is unlikely enough officers will be appropriately skilled for this role or have the time to make the required investigations. It should be left to professionals who are appropriately trained and skilled in the design and installation of the fire safety systems. FRNSW's role should only extend to notifying the certifier of defects where they believe they exist based upon their spot checks and holistic testing of the systems.

It is recommended that the requirement for work being undertaken by competent fire safety practitioners be extended to include the fire brigade under clauses 144, 152 and 152A to ensure all parties throughout the approvals process are competent to perform their nominated role and tasks. Alternatively, the requirements relating to fire brigade may need to be reduced so that they do not extend past their professional expertise.