

1 February 2017

Katherine Sarah
Policy Officer, Regulatory Policy
Better Regulation Division
Department of Finance, Services and Innovation
Level 9, McKell Building
2-24 Rawson Place
Sydney NSW 2000

Dear Katherine

Re: Proposed reforms to building fire safety

The Association of Accredited Certifiers (AAC) must in the first instance acknowledge and thank Minister Dominello and his policy staff for their enormous effort and continued motivation in preparation of the draft legislation. Never in the recent history of building certification, has a Minister embraced and proactively contributed, listened and managed a reform of fire safety legislation with as much expediency and integrity, not to mention fairness and balance considering the differing interest of over 20 stakeholders at one time.

The AAC has prepared this submission in response to the proposed reforms to building fire safety and the *Draft Environmental Planning Assessment Amendment (Fire Safety and Building Certification) Regulation 2017*. The AAC was keen to read the Draft Regulation and we appreciate the opportunity to provide a submission on behalf of the Association's members.

The AAC is a united alliance that provides practical support to professionals actively participating in the certification of building and subdivision works in New South Wales. The AAC represents the interests and views of members to government bodies, key stakeholders and organisations within the building. It provides members with information, education and training to enhance their businesses and professional careers.

Detailed comments are contained in the following pages and the key points of the AAC submission are as follows:

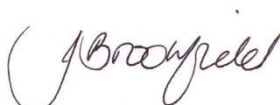
- The term '**performance solution**' should replace '*alternative solution*'.
- The report to be called a '**fire safety engineer report**', rather than just '*performance solution report*', as it reinforces the issue being dealt with is in relation to fire and needs to be procured by a fire safety engineer.

- The term **'fire safety engineer'** should replace *'competent fire safety practitioner'*, as fire engineering (even if minor) should only be undertaken by accredited fire safety engineers where it relates to fire safety elements or systems. The term competent fire safety practitioner is too generic and not readily and currently understood. The legislation must specify that the provider of the report is an accredited fire safety engineer in accordance with the provisions of the regulation and as already defined under cl 3(1). This is to maintain the current level of rigour in the new legislation.
- The adoption of Clause 164B is not supported in its current form and should be deleted until further consultation and review is conducted. In its current form it is open to misuse, wrongful or conflict free application and may give rise to 'shopping around' for interpretations within the competent fire safety practitioner profession and likewise within the certifying authority profession.
- It is imperative that documentation is provided to the certifying authority prior to the issue of the Complying Development Certificate or the Construction Certificate. The certifying authority has little to no control of the process on site once the installation has commenced. Therefore it is better managed and controlled if the documentation is provided prior to the issue of the relevant Complying Development Certificate or Construction Certificate.
- Notification / referral times allowed for Clause 152 applications should be changed to, **"as soon as practicable after receiving an application for an occupation certificate for the building"**, instead of specifying a two-day timeframe. The issue is ensuring the documentation to Fire and Rescue NSW and the works on site are sufficiently completed for Fire and Rescue NSW to make a valid and fair assessment of the installation.
- Delete Clause 164B as it can lead to misuse and to the inconsistent application between Principal Certifying Authorities, Accredited Certifiers, competent fire safety practitioners

Members of the AAC Executive are always available to provide any comment or assistance you may require. We believe it appropriate that we are closely and actively engaged with any reforms, using the collective experience and extensive knowledge of the AAC Directors. We can provide advice on appropriate transitional periods, appropriate education and training and the development of standard templates.

If you would like to discuss any of these issues discussed further, please contact me on 1300 735 935 or email jbrookfield@accreditedcertifiers.com.au.

Yours sincerely



Jill Brookfield
Executive Officer

[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.

Comment

The term “**performance solution**” should replace “alternative solution” throughout the document

(2A) (a) Need to specify the report is a “**fire safety engineering report**” rather than just “performance solution report” as it reinforces the issue being dealt with is in relation to fire and needs to be procured by a fire safety engineer

(i) This reference is misleading as the term “competent fire safety practitioner” is too generic and not readily and currently understood. The legislation must specify that the provider of the report is an accredited “**fire safety engineer**” in accordance with the provisions of the regulation and as already defined under cl 3(1). This is to maintain the current level of rigour in the new legislation.

(b) This clause is not required as there is no necessity for the peer review of the report to be provided. It is not understood why the certifying authority needs to endorse the report.

Is endorsement meant for the technical content or the above process?

If administrative, then there is no need for the clause as the content must be provided and the responsibility is already inferred by the legislation as to the format and content.

If technical, then why is the certifying authority rechecking and validating the work of the fire safety engineer given they have already made various statements relating to the reports validity?

The fire safety engineering report must form part of the approved documents therefore its already required to be assessed.

(c) This clause effectively verifies the validity of the report to the drawings and specifications, as the certifying authority approves the documentation to reflect the fire engineering hence item (b) above is not required.

Recommendation

Rectify all reference to alternative solution to performance solution

2(a) The report to be called a “fire safety engineer report”

(i) The term competent fire safety practitioner be changed to fire safety engineer in clauses 130, 134, 144A, 152B, as fire engineering (even if minor) should not be undertaken by non-accredited fire safety engineers where it relates to fire safety elements or systems.

(b) Delete the clause as not necessary.

Proposed wording

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~~ **a performance 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~~ **a performance solution** report that:

- (i) was prepared by a ~~competent fire safety practitioner~~ **fire safety engineer**, and
- (ii) includes a statement that the ~~alternative solution~~ **performance 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~~ **performance solution**, including the acceptance criteria and parameters on which the justification is based and any restrictions or conditions of the ~~alternative solutions~~ **performance 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,

Comment

(f1) Reference should be to fire safety engineering report for consistency and continuity with current legislation.

(iii) Reference must be made to the “**fire safety engineer**”, not the “competent fire safety practitioner” in the case of authoring or providing a fire safety engineering report in accordance with the International Fire Engineering Guidelines. This is consistent with current legislation, and changing can reduce rigour in the provision of reports.

(f2) This clause is to be deleted as not currently adequately documented, understood or able to be effectively incorporated without risk of misuse. With further review and consultation this may work, however it must be constructed to prevent misuse, wrongful or conflict free application. The application of this clause may give rise to ‘shopping around’ for interpretations within the competent fire safety practitioner profession and likewise within the certifying authority profession.

Recommendation

(f1) Change the reference to “fire safety engineering report”

(iii) Change “competent fire safety practitioner” to the “fire safety engineer”

(f2) Delete this clause until further consultation and review carried out.

Proposed wording

Insert after clause 134 (1)(f):

(f1) the following details of any ~~alternative solution~~ **fire safety engineering** 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~~ **fire safety engineer** 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, delete~~

[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).”.

Comment

The adoption of 164B is currently not supported in its current form.

With further review and consultation this may work, however it must be constructed to prevent misuse, wrongful or conflict free application. The application of this clause may give rise to “shopping around” for interpretations within the competent fire safety practitioner profession and likewise within the certifying authority profession.

Recommendation

Delete this clause until further consultation and review carried out.

Proposed wording

Delete the clause at this stage

[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.

Comment

The term should be “**performance solution**” throughout the document

(1) and (2) the wording is not supported in its current format.

As discussed and strongly emphasised in the consultation sessions with the Minister, it is imperative that the documentation is provided to the certifying authority **prior to the issue of the Complying Development Certificate or the Construction Certificate**.

The certifying authority has little to no control of the process on site once the installation has commenced, therefore it is better managed and controlled if the documentation is provided prior to the issue of the relevant Complying Development Certificate or Construction Certificate.

This also means the builder can and is encouraged to select the competent fire safety practitioner prior to the tender process, as the acceptance of the competent fire safety practitioner will rest with the certifying authority at this stage.

Endorsement of documentation by a builder or developer selected competent fire safety practitioner, that is NOT accepted to the certifying authority, can be averted if the documentation is provided prior to the Complying Development Certificate or Construction Certificate being issued.

(2)(b)(ii) this clause is to be deleted as clause 164B is not currently adequately documented as per previous comments.

(3) consideration must also be given to inserting the definition of relevant fire safety system into clause 3 (1) of the Environmental Planning and Assessment Regulations 2000 rather than in the body of the legislation, given its use in various areas. This eliminates replication and makes the definitions more

concise for users of the legislation, i.e. definitions should be in the definitions section where possible.

Recommendation

Rectify all reference to alternative solution to performance solution

(1) The wording is to be amended to state that it “must be issued ***in accordance with the requirements of this clause***”

(2)(b)(ii) This clause is to be deleted

(3) Delete and insert the definition of relevant fire safety system into clause 3 (1) of the Environmental Planning and Assessment Regulations 2000

Proposed wording

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~~ **in accordance with the requirements of** this clause.

(2) The ~~condition required by this clause is that the building work~~ **relevant Complying Development Certificate** involving the installation, modification or extension of the relevant fire safety system cannot ~~commence~~ **be issued** 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~~ **performance 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.** ~~deleted~~

(3) ~~In this clause:~~

relevant fire safety system means any of the following:

- (i) a hydraulic fire safety system within the meaning of clause 165,
- (ii) a fire detection and alarm system,
- (iii) a mechanical ducted smoke control system. **deleted and definition moved to clause 3(1) of the Environmental Planning and Assessment Regulations 2000-**

[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
 - (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 1 a or 10 building.

Comment

The term should be “**performance solution**” throughout the document

(1) (a) Need to specify the report is a “**fire safety engineering report**” rather than just performance solution report as it reinforces the issue being dealt with is in relation to fire and needs to be procured by a fire safety engineer

(i) This reference is misleading as the term competent fire safety practitioner is too generic and not readily and currently understood. The legislation must specify that the provider of the report is an accredited “**fire safety engineer**” in accordance with the provisions of the regulation and as already defined under cl 3(1). This is to maintain the current level of rigour in the new legislation.

(1)(b) This clause is not required as there is no necessity for the peer review of the report to be provided. It is not understood why the certifying authority needs to endorse the report.

Is endorsement meant for the technical content or the above process?

If administrative then there is no need for the clause as the content must be provided and the responsibility is already inferred by the legislation as to the format and content.

If technical then why is the certifying authority rechecking and validating the work of the fire safety engineer given they have already made various statements relating to the reports validity?

The fire safety engineering report must form part of the approved documents in any case therefore its already required to be assessed and considered in the approval process.

The alternative is to have the fire safety engineer that prepared the report make the statement rather than the certifying authority should any comment be required at all.

(1)(c) This clause effectively verifies the validity of the report to the drawings and specifications, as the

certifying authority approves the documentation to reflect the fire engineering hence item (b) above is not required.

Recommendation

Rectify all reference to alternative solution to performance solution

(1) (a) The report to be called a fire safety engineer report

(i) The term competent fire safety practitioner be changed to fire safety engineer in clauses 130, 134, 144A, 152B, as fire engineering (even if minor) should not be undertaken by non-accredited fire safety engineers where it relates to fire safety elements or systems.

(1) (b) Delete the clause as not necessary OR make it the responsibility of the fire safety engineer to confirm it has been appropriately prepared.

Proposed wording

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~~ **a performance 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~~ **a performance solution** report that:
 - (i) was prepared by a ~~competent fire safety practitioner~~ **fire safety engineer**, and
 - (ii) includes a statement that the ~~alternative solution~~ **performance 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~~ **performance solution**, including the acceptance criteria and parameters on which the justification is based and any restrictions or conditions on the ~~alternative solutions~~ **performance 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 delete~~
 - (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 1 a or 1 0 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 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 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:
- (i) a hydraulic fire safety system within the meaning of clause 165,
 - (ii) a fire detection and alarm system,
 - (iii) a mechanical ducted smoke control system.

Comment

The term should be “**performance solution**” throughout the document
(1) and (2) the wording is not supported in its current format.

As discussed in the consultation sessions with the Minister it is imperative that the documentation is provided to the certifying authority **prior to the issue of the Complying Development Certificate or the Construction Certificate**.

The certifying authority has little to no control of the process on site once the installation has commenced, therefore it is better managed and controlled if the documentation is provided prior to the issue of the relevant Complying Development Certificate or Construction Certificate.

This also means the builder can and is encouraged to select the competent fire safety practitioner prior to the tender process, as the acceptance of the competent fire safety practitioner will rest with the certifying authority at this stage.

Endorsement of documentation by a builder or developer selected competent fire safety practitioner, that is NOT accepted to the certifying authority, can be averted if the documentation is provided prior to the Complying Development Certificate or Construction Certificate being issued.

(2)(a) Needs to have the following wording inserted as there appears to be no requirement for the provision of documentation from a competent fire safety practitioner in the wording of the clause contrary to the requirements for Complying Development Certificate etc

“**endorsed by a competent fire safety practitioner, have been submitted to the principal certifying authority.**”

(2)(b)(ii) This clause is to be deleted as clause 164B is not currently adequately documented as per previous comments.

(3) Consideration must also be given to inserting the definition of relevant fire safety system into clause 3 (1) of the Environmental Planning and Assessment Regulations 2000 rather than in the body of the legislation, given its use in various areas. This eliminates replication and makes the definitions more concise for users of the legislation, i.e. definitions should be in the definitions section where possible.

Recommendation

(1) The wording is to be amended to state that it “must be issued ***in accordance with the requirements of this clause***”

(2)(a) Insert after “(a) the following documents,”

“endorsed by a competent fire safety practitioner, have been submitted to the principal certifying authority.”

(2)(b)(ii) This clause is to be deleted

(3) Delete and insert the definition of relevant fire safety system into clause 3 (1) of the Environmental Planning and Assessment Regulations 2000

Proposed wording

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 condition required by~~ **in accordance with the requirements of** this clause.

(2) ~~The condition required by this clause is that the building work~~ **relevant Construction Certificate** involving the installation, modification or extension of the relevant fire safety system cannot ~~commence~~ **be issued** 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~~ **performance solutions** proposed for the system, and

(b) those documents have been endorsed by a competent fire safety practitioner as:

- (j) complying with the relevant provisions of the *Building Code of Australia*, or
- (iii) ~~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.~~ **deleted**

(3) ~~In this clause:~~

relevant fire safety system means any of the following:

- (i) ~~a hydraulic fire safety system within the meaning of clause 165,~~
- (ii) ~~a fire detection and alarm system,~~
- (iii) ~~a mechanical ducted smoke control system.~~ **deleted and definition moved to clause 3(1) of the Environmental Planning and Assessment Regulations 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.

Comment

The term should be “**performance solution**” throughout the document

(g) Reference should be to “**fire safety engineering report**” for consistency and continuity with current legislation.

(iii) Reference must be made to the “**fire safety engineer**”, not the “competent fire safety practitioner” in the case of authoring or providing a fire safety engineering report in accordance with the International Fire Engineering Guidelines. This is consistent with current legislation, and changing can reduce rigour in the provision of reports.

(h) This clause is to be deleted as not currently adequately documented, understood or able to be effectively incorporated without risk of misuse. With further review and consultation this may work, however it must be constructed to prevent misuse, wrongful or conflict free application. The application of this clause may give rise to ‘shopping around’ for interpretations within the competent fire safety practitioner profession and likewise within the certifying authority profession.

Recommendation

(g) Change the reference to “**fire safety engineering report**”

(iii) Change “competent fire safety practitioner” to the “**fire safety engineer**”

(h) Delete this clause until further consultation and review carried out.

Proposed wording

Insert after clause 147 (1) (f):

(g) the following details of any ~~alternative solution~~ **fire safety engineering** 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~~ **fire safety engineer** 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, delete~~

[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).”.

Comment

The adoption of 164B is currently not supported in its current form.

With further review and consultation this may work, however it must be constructed to prevent misuse, wrongful or conflict free application. The application of this clause may give rise to “shopping around for interpretations within the competent fire safety practitioner profession and likewise within the certifying authority profession.

Recommendation

Delete this clause until further consultation and review carried out.

Proposed wording

Delete the clause at this stage

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

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

Comment

We see no reason for the increase of the time to provide a report to 10 days, however subject to construction industry acceptance and concurrence we have no objection provided it aligns with the revisions to clause 152A.

Recommendation

Agree if the same as in clause 152A

Proposed wording

N/a

[11] Clauses 152A

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
 - (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.

Comment

Clause 152A(1)

Issue1

This clause should not apply to buildings where there is already a fire safety engineering report required according to clause 144 and subsequently a referral to Fire and Rescue NSW according to clause 152. The clause causes replication in the process, which we believe is not the intent of better regulation.

Issue 2

We do not believe the provision of the referral to Fire and Rescue NSW is commercial at 2 days. This will be near impossible to manage for many projects given the amount of documentation that may be provided with the Occupation Certificate application. The issue is ensuring the documentation to Fire and Rescue NSW and the works on site are sufficiently completed for Fire and Rescue NSW to make a valid and fair assessment of the installation. This is an assessment that must be made by the certifying authority so as not to waste time of all involved.

The timing should be as per the wording of clause 152 currently, being:-

“as soon as practicable after receiving an application for an occupation certificate for the

building”

Allowing this timing will ensure the site is vetted for completeness and Fire and Rescue NSW can add real value rather than have to re-attend due to incomplete works, especially given they only have a 10 day window to attend.

(6) (a) The Association is concerned that Fire and Rescue NSW will not be able to make the statement in accordance with this clause due to legal liability issues.

Confirmation that Fire and Rescue NSW can make this statement needs to be sought given the implications of the statement.

Proper specific construction industry consultation may need to be made specifically on this issue.

(7) Consideration must also be given to inserting the definition of relevant fire safety system into clause 3 (1) of the Environmental Planning and Assessment Regulations 2000 rather than in the body of the legislation, given its use in various areas. This eliminates replication and makes the definitions more concise for users of the legislation i.e. definitions should be in the definitions section where possible.

Recommendation

Clause 152A(1)

Issue1

This clause should be amended to apply only to buildings that do not have the referral requirements according to clause 152. The wording should reflect this.

Issue 2

The wording is to reflect the current notification / referral times allowed for clause 152 applications, i.e. as soon as practicable after receiving an application for an occupation certificate for the building.

(6) (a) Confirmation that Fire and Rescue NSW can make this statement needs to be sought given the implications of the statement otherwise delete this statement at this stage.

(7) Delete and insert the definition of relevant fire safety system into clause 3 (1) of the Environmental Planning and Assessment Regulations 2000

Proposed wording

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) **For class 2 and 3 buildings other than those that need referral in accordance with clause 152, a** certifying authority must request Fire and Rescue NSW to furnish it with a fire safety system report **no later than 2 days as soon as practicable** 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 delete-~~

(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.~~ **Delete and insert the definition of relevant fire safety system into clause 3 (1) of the Environmental Planning and Assessment Regulations 2000**

[11] Clauses 152B

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.

Comment

The term should be “**performance solution**” throughout the document

(a) Need to specify the report is a “**fire safety engineering report**” rather than just performance solution report and it is provided by a “**fire safety engineer**” rather than a competent fire safety practitioner.

The report need not be endorsed, but should form part of the Complying Development Certificate or Construction Certificate issued for the building. This ties the report to the approvals rather than just having it endorsed.

(a) (i), (ii) (iii) (iv) These are superfluous as they have already been determined and included in the documentation that was issued with the Complying Development Certificate or Construction Certificate for the building. If these issues were not included in the fire safety engineering report then the report would be non compliant according to clauses 144A(i) and 147 of the draft legislation and could render the Complying Development Certificate or Construction Certificate invalid.

Recommendation

Rectify all reference to alternative solution to performance solution

(a) The wording is to reflect fire safety engineering report, by a fire safety engineer and that was part of the Complying Development Certificate or Construction Certificate approval.

(a) (i), (ii) (iii) (iv) delete the clauses as not necessary.

Proposed wording

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~~ **performance 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~~ **fire safety engineering** report, prepared by a ~~competent fire safety practitioner~~ **fire safety engineer** for the purposes of clause 130 (2A) (a) or 144A (1) (a) and ~~endorsed that formed part of the Construction Certificate or Complying Development Certificate issued for the building~~ 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.

Comment

Location of clause

Is the clause change better positioned under clause 155 (2) rather than clause 153?

Recommendation

Recheck location

Proposed wording

N/a

[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,
- (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.

Comment

(f) Need to specify the report is a “**fire safety engineering report**” rather than just performance solution report as it reinforces the issue being dealt with is in relation to fire and needs to be procured by a fire safety engineer

(iii) Need to also refer to the report by the fire safety engineer rather than competent fire safety practitioner as per previous comments.

Recommendation

(f) The report to be called a fire safety engineer report

(iii) The term competent fire safety practitioner be changed to fire safety engineer

Proposed wording

Insert after clause 155 (1) (e):

(f) the following details of any ~~alternative solution~~ **fire safety engineering** 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,
- (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~~ **fire safety engineer** who prepared the report.

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

Insert after 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

Comment

(a)

Item 1

The clause needs to also cater for existing buildings, hence wording needs to reflect this

Item 2

The issue of how the representative 20% portion of the floor is selected is still to be clarified and this may be subject to inconsistency unless proper guidelines are provided.

(a1)

Item 1

The clause needs to also cater for existing buildings, hence wording needs to reflect this

Item 2

We believe that this is an excessive sample of the building and infers a project management and quality control role, rather than a sampling role.

The overall increase in cost of approvals on the basis of this additional inspection regime is in the order of at least 160% to 200% of the current fee regime for class 2 and 3 buildings.

Another major concern is the resourcing of the inspection given they must be carried out by an Accredited Certifier, of which there is a great shortage. Allowing others to carry out inspection may assist in the resourcing of the function however this has been frowned upon in the past.

This regime increases time on site to nearly three to four times that which is required at the moment.

We therefore suggest the inspection regime is 20% of the number of sole occupancy units of the building rather than 30% per floor.

Recommendation

(a) Alter wording to include existing buildings.

(a1)

Alter wording to include existing buildings.

Reduce the percentage to 20% of the total number of sole occupancy units.

Proposed wording

Insert after 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 in the case of existing buildings, 20% of the total floor area of the new works subject to the approval,** 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~~ **20% of the total number of sole occupancy units contained in** the building ~~containing sole occupancy units,~~ **and in the case of existing buildings, 30% of the total number of sole occupancy units where included in the new works subject to the approval,** 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,

Comment

(a)
Item 1

The clause needs to also cater for existing buildings, hence wording needs to reflect this

Item 2

The issue of how the representative 20% portion of the floor is selected is still to be clarified and this may be subject to inconsistency unless proper guidelines are provided.

Recommendation

(a) Alter wording to include existing buildings.

Proposed wording

(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 in the case of existing buildings, 20% of the total floor area of the new works subject to the approval,**

[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

(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.

Comment

This is not accepted by the Association as it can lead to misuse and also to the inconsistent application between Principal Certifying Authorities, Accredited Certifiers, competent fire safety practitioners, etc ,where a different person will accept different thresholds of concession.

This may also lead to a 'race to the bottom' scenario, whereby competent fire safety practitioner may seek to obtain concessions for systems that would otherwise not be worthy.

There is doubt that the industry could maintain a consistent approach and a level playing field as has already been the case in installation of systems, maintenance of essential fire safety measures and installation of services in general.

The application of this clause can also be exploited in other scenarios where people stretch the definition of minor in cases where buildings are extended or altered.

We again strongly recommend against this inclusion without looking better into the wording responsibility and risks.

This issue is better managed under performance in the meantime until proper due consideration has been given to the clause to ensure exploitation is minimized.

Recommendation

Delete the clause at this stage and insert at the next round of regulation reform after proper assessment and research to ensure there is limited risk to the consumer.

Proposed wording

Delete

[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.
- (5) In this clause:
Secretary means the Secretary of the Department of Finance, Services and Innovation.

Comment

(2) (c) and (3) Industry concern revolves around mere membership of individuals with professional organisations and the like. Therefore, the Secretary will need to ensure that there is competency testing and validation by the professional bodies for all persons that will qualify as competent fire safety practitioners. The regulation should reflect this.

(4) (a)

The association rejects the legislation change as it unfairly attributes the decision to determine competency of the competent fire safety practitioner on the certifying authorities.

The issue of assessment of competency has been avoided by government even though the legislative framework had been constructed to allow for this assessment within the Environmental Planning and Assessment Act 1979 and Environmental Planning and Assessment Regulations 2000 from day one.

The major issues of concern include but are not limited to the following:

- Non-existence of guidelines to allow certifying authorities to make a judgement of competency.
- Total lack of indemnity from legal action coming from the decision-making process.
- Issues of perceived conflict in that some competent fire safety practitioners may 'appear' to be favoured by some certifying authorities over others.
- Issues relating to restrict of trade if a person is not accepted.
- Inconsistency between different certifying authorities in the selection of persons.
- Liability on the basis of warranting a competent fire safety practitioner should they not perform
- Involvement in the selection and acceptance of designers and installers, where the impartiality

of the certifying authority is first and foremost and hence eroded if they form part of the design team selection process.

- Inability to access the competent fire safety practitioners' prior work performance, prior non-compliances, prior litigation and dubious actions.

It is better to attempt to obtain documentary evidence from proponents for the competent fire safety practitioner position whereby they certify their competence and are currently part of an organisation.

Recommendation

Alter the wording to allow the competent fire safety practitioner for clauses 130, 144A, 164B, if retained, to be the fire safety engineer, with the other application under clauses 136A, 146B and 153 being recognised / accredited / a member of one of the entities under clause 167A (2) above.

Proposed wording

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 class of persons holding a specified category of certificate of accreditation under the Building Professionals Act 2005, or
- 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
- a class of persons **that have been assessed as to their competency and** 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):

- for the purposes of clauses **130, 136AA, 144A, 146B and 153 and 164B**, any person who, ~~in the relevant written opinion of the certifying authority or principal certifying authority, as the case may be~~ **(i) can provide documentary evidence of complying with the requirements of Clause (2) above, or**

(ii) is a full current member of an association, organisation or body that deals in the accreditation or registration of persons involved in fire services design or installation and they provide evidence of their registration as well as certify they are competent to perform the fire safety assessment functions under those clauses

is taken to be a competent fire safety practitioner, and

- 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.

(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”.

Comment

No objection

[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.

Comment

No objection

[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”.

Comment

No objection

[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).

Comment

No objection

[22] Clause 174 (1) (h)

Insert after clause 174 (1) (g):
(i) the name and contact details of the person who issued the certificate.

Comment

No objection

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

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

Comment

No objection

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

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

Comment

No objection

[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 (l).

Comment

No objection

[26] Clause 181 (1) (i)

Insert after clause 181 (1) (h):

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

Comment

No objection

[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

(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.

Comment

No objection – definition of **relevant fire safety system** should be in definitions as per previous comments