



New South Wales

# Environmental Planning and Assessment Amendment (Identification of Buildings with Combustible Cladding) Regulation 2017

under the

Environmental Planning and Assessment Act 1979

*[The following enacting formula will be included if this Regulation is made:]*

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 make provision for the identification of, and collection of information about, buildings to which combustible cladding has been applied. The proposed scheme applies to all buildings other than class 1, class 1a or class 10 buildings, single storey class 2, 3 or 9 buildings, class 5, 6, 7 or 8 buildings of 2 storeys or less or temporary structures.

The proposed scheme requires the owner of a building to which combustible cladding has been applied to provide the Secretary of the Department of Planning and Environment with:

- (a) details of the building and the combustible cladding, and
- (b) a cladding statement (which is a statement to the effect that the cladding on the building has been inspected by a properly qualified person and setting out that person's opinion as to whether the cladding presents a risk to the safety of persons or to the spread of fire, in the event of a fire, and details of actions necessary to address any such risk).

This Regulation also provides that:

- (a) an authorised fire officer or a local council may require the owner of any building to provide the Secretary with details of the building and any cladding applied to it, and
- (b) the Secretary may maintain a register of buildings to which combustible cladding has been applied.

This Regulation is made under the *Environmental Planning and Assessment Act 1979*, including section 157 (1) (d) (which provides for the making of regulations for or with respect to obligations on persons regarding fire safety) and section 158E (which provides for the making of regulations relating to NSW planning services and information).

## **Environmental Planning and Assessment Amendment (Identification of Buildings with Combustible Cladding) Regulation 2017**

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### **1 Name of Regulation**

This Regulation is the *Environmental Planning and Assessment Amendment (Identification of Buildings with Combustible Cladding) Regulation 2017*.

### **2 Commencement**

This Regulation commences 3 months after the day on which it is published on the NSW legislation website.

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

### [1] Clause 167 Application of Part

Insert after clause 167 (1) (b):

- (c) Division 7C does not apply to:
  - (i) a class 1 building, or
  - (ii) a single storey class 2, 3 or 9 building, or
  - (iii) a class 5, 6, 7 or 8 building of 2 storeys or less.

### [2] Part 9, Division 7C

Insert after Division 7B:

#### Division 7C Identification of buildings with combustible cladding

**Note.** Clause 167 provides that this Division does not apply to a class 1, class 1a or class 10 building, a single storey class 2, 3 or 9 building, a class 5, 6, 7 or 8 building of 2 storeys or less or a temporary structure.

#### 186S Definitions

In this Division:

**building with combustible cladding** means any building that has combustible cladding applied to any of its external walls or to any other external area of the building, other than a roof.

**combustible cladding** means any cladding comprised of materials that are capable of readily burning (such as timber, polystyrene, vinyl or polyethylene) and includes any cladding system that incorporates elements that are capable of readily burning (such as combustible framing or insulation behind the surface cladding). [\(concern as to the broadness of this definition and potential to capture other building elements such as timber windows, soffit's etc...\)](#)

#### 186T Owners of building with combustible cladding must provide details of building and its cladding

- (1) The owner of a building with combustible cladding must provide the Secretary with details about the building and its cladding. [\(in order to determine if combustible cladding is present, a report must be produced. This is most cases will be by a p\[professional third party\].](#)
- (2) The following details are required to be provided under this clause:
  - (a) the name and address of the owner of the building,
  - (b) the address of the building,
  - (c) the classification of the building under the *Building Code of Australia* [\(difficult to determine without professional assistance\).](#)
  - , (d) the number of storeys in the buildings, above and below ground,
  - (e) a description of any combustible cladding applied to the building, including the materials of which the cladding is comprised, [difficult to determine without professional assistance\).](#)
  - (f) a description of the extent of application of combustible cladding to the building and of the parts of the building to which it is applied. [difficult to determine without professional assistance\).](#)
- (3) Those details must be provided:
  - (a) in the case of a building that was or had been occupied before this clause commenced—within 3 months after the commencement of this clause.

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(as the OC or strata manager is likely the lodging party, 3 months is insufficient to convene meetings for authority, assess the presence of cladding, determine if it is combustible and register..-or

(b) in any other case—within 3 months after the building is first occupied.

Further, who will be authorised to register schemes and will the Register have a verification process.

Implications for schemes that register as a precaution and are impacted due to stigma and impact on value.

What process is there to be removed from the register?

What obligations and there for disclosure of schemes on the Register?

- (4) Those details must be provided through the NSW planning portal, unless the Secretary agrees in writing that they may be provided in another manner.

**186U Owners of buildings may be directed to provide details of building and its cladding**

- (1) The owner of a building may be directed in writing to provide the Secretary with details of any cladding that has been applied to the building.
- (2) Such a direction may be given only by:
- (a) an authorised fire officer, or
  - (b) the council of the area in which the building is located.
- (3) The following details are required to be provided under this clause:
- (a) the name and address of the owner of the building,
  - (b) the address of the building,
  - (c) the classification of the building under the *Building Code of Australia*,
  - (d) the number of storeys in the buildings, above and below ground,
  - (e) a description of the combustible cladding applied to the building, including the materials of which the cladding is comprised,
  - (f) a description of the extent of application of combustible cladding to the building and of the parts of the building to which it is applied.
- (4) A person who has been directed to provide details under this clause must ensure that the details are provided within the time specified in the direction, which must be at least 14 days after it is given.
- (5) Those details must be provided through the NSW planning portal, unless the Secretary agrees in writing that they may be provided in another manner.
- (6) An authorised fire officer or a council must notify the Secretary of any direction given by the officer or council under this clause.
- (7) In this clause:  
***authorised fire officer*** means an authorised fire officer within the meaning of section 121ZC of the Act.

**186V Owners of building with combustible cladding must follow up with cladding statement**

- (1) The owner of a building with combustible cladding must provide the Secretary with a cladding statement, or progress report on a cladding statement, for the building, as required by this clause.
- (2) A ***cladding statement*** is a statement to the effect that the cladding applied to a building has been inspected by a properly qualified person [\(definition or guidance required\)](#) and must include:
- (a) a determination as to whether or not, in the opinion of that person, the cladding presents a risk to the safety of persons or to the spread of fire, in the event of a fire, and
  - (b) if that person is of the opinion that the cladding could present a risk to the safety of persons or to the spread of fire, in the event of a fire—details of actions that are necessary to address the risk.
- (3) A cladding statement must also contain the following details:
- (a) the name and address of the owner of the building,
  - (b) the address of the building,

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- (c) the number of storeys in the buildings, above and below ground,
  - (d) a description of the combustible cladding applied to the building, including the materials of which the cladding is comprised,
  - (e) a description of the extent of application of combustible cladding to the building and of the parts of the building to which it is applied,
  - (f) the details of the properly qualified person who inspected the combustible cladding,
  - (g) an explanation of the reasons for that person's determination as to whether or not the combustible cladding presents a risk to the safety of persons or to the spread of fire,
  - (h) if that determination is that the combustible cladding could present such a risk—an explanation of the reasons for choosing the specified actions necessary to address the risk,
  - (i) a description of any documentation prepared or relied on by the properly qualified person to support any opinion referred to in the statement.
- (4) A cladding statement may be provided at the same time as the details provided under clause 186T or 186U.
- (5) A cladding statement must be provided:
- (a) in the case of a class 2, 3, 9a or 9c building, or part of such a building, that is not fitted with a fire sprinkler system [\(to what extent is a fire sprinkler system required?\)](#)—within 7 months after the commencement of this clause or after the building first being occupied, whichever occurs later, or
  - (b) in the case of a class 9b building used as an early childhood centre, or part of such a building, that is not fitted with a fire sprinkler system—within 7 months after the commencement of this clause or after the building first being occupied, whichever occurs later, or
  - (c) in any other case—within 11 months after the commencement of this clause or after the building first being occupied, whichever occurs later.
- (6) In the case of a building referred to in subclause (5) (c), if a cladding statement has not been provided within 7 months after the commencement of this clause or after the building first being occupied, whichever occurs later, a progress report on a cladding statement must be provided.
- (7) A cladding statement must be provided through the NSW planning portal, unless the Secretary agrees in writing that it may be provided in another manner.

**186W Register of buildings with combustible cladding [\(Obligations for disclosure\)](#)**

- (1) The Secretary may establish and maintain a register of buildings with combustible cladding.
- (2) The register may contain:
  - (a) any details or statement provided to the Secretary by the owner of a building under this Division, and
  - (b) any other information that the Secretary considers appropriate.
- (3) The Secretary may do any or all of the following:
  - (a) make the register, or any part of it, available to Fire and Rescue NSW, any council, or any other person,
  - (b) make the register, or any part of it, available to the public,

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- (c) publish the register, or any part of it, on a website maintained by the Department.

**[3] Schedule 5 Penalty notice offences**

Insert in appropriate order under the heading “**Section 125 (2) of the Act in relation to contravention of the following provisions of this Regulation**”:

clause 186T	1,500	3,000
clause 186U	1,500	3,000
clause 186V	1,500	3,000

[Penalties are listed in dollars and appear insufficient to be compel schemes to register.](#)