

## PLANNING SYSTEM

Act and regulation changes

<b>Circular</b>	PS 10 - 031
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<b>Related</b>	

# Changes to the Environmental Planning and Assessment Regulation 2000

The purpose of this circular is to advise consent authorities, other planning system users and the public of recent regulation changes as a result of the Environmental Planning and Assessment Further Amendment Regulation 2010.

## Introduction

The Environmental Planning and Assessment Further Regulation 2010 (the Amending Regulation) was made on 20 December 2010. The Amending Regulation makes miscellaneous changes to the Environmental Planning and Assessment Regulation 2000 (the EP&A Regulation) in relation to:

- fees and charges
- development control plans
- smoke alarms in moveable dwellings
- BASIX completion receipts
- fire safety alternative solutions
- compliance cost notices, and
- existing use rights

This circular outlines the extent of the changes, most of which were anticipated in the draft Environmental Planning and Assessment Regulation 2010 that was publicly exhibited from September to November 2010.

## Fees and charges

The Amending Regulation includes changes to Part 15 of the EP&A Regulation including:

- an increase in fixed planning fees and charges to take into account movements in the consumer price index since the fees were last revised. (Note: sliding scale fees based on cost of development or capital investment

value have not changed, but will be subject to a separate review in 2011),

- a revision of Part 3A modification fees to include a three-tiered fee scheme that more closely reflects the level of environmental assessment required for each project proposal.
- prescribing a standard maximum fee of \$50,000 for critical infrastructure projects (reduced from the current fee which is twice the maximum Part 3A fee otherwise payable),
- establishing fees for BASIX (Building Sustainability Index) certificates to provide for the ongoing administration and maintenance of the online system. This includes the following certificate fees:
  - \$50 for single detached dwellings,
  - \$25 for alterations and additions to dwellings, and
  - a variable fee scale for dual occupancies, multi-dwelling housing and residential flat buildings based on the number of dwellings.

The new fees and charges will commence on **1 July 2011**, with the exception of the BASIX certificate fees which will commence on **25 February 2011**. Further information on the arrangements for payment of the BASIX certificate fees will be provided closer to this time.

The current fee regime in the EP&A Regulation will continue to apply until the commencement dates above.

## Development control plans

The Amending Regulation amends clause 289A of the EP&A Regulation relating to development control plans ('DCPs').

Clause 289A currently operates as a 'sunset provision' for old DCPs that do not meet the requirements of section 74C of the *Environmental Planning and Assessment Act 1979* (the EP&A Act). The sunset provision is due to expire in March 2011, after which time existing DCPs that do not meet the new requirements will be rendered invalid.

To avoid invalidating existing DCPs, the Amending Regulation will remove the sunset date and continue to save old DCPs until the relevant Standard Instrument (SI) LEP is made.

Furthermore, the Amending Regulation will provide councils with an additional 6 months after the SI LEP is in place to update their DCPs in line with the new SI LEP, during which time old DCP provisions can continue to apply so long as the provisions are not inconsistent with, and capable of operating in conjunction with, the new SI LEP.

For example, DCP provisions could be used in the 6 month period after the SI LEP was made if those provisions do not contradict or conflict with the objectives, development standards and permissibility provisions in the SI LEP.

The types of DCP provisions that may be capable of operating in conjunction with the new SI LEP include:

- relevant controls necessary to regulate the type of development permitted on the land (eg. the old DCP regulates low density residential development on the site and the new SI LEP permits such development), or
- DCP provisions that provide further details to assist in achieving the purpose of the SI LEP (eg. if the SI LEP identifies an issue for consideration, and the old DCP provides supporting information on that issue), or
- address other matters a DCP can include that are not covered, or not otherwise inconsistent with, the SI LEP (eg. advertising and notification requirements, criteria for giving orders under 121B etc).

These types of existing DCP provisions may continue to be used for up to 6 months after the SI LEP is made. After that time, all DCPs will be rendered invalid unless they meet the requirements of section 74C of the EP&A Act. These changes to DCP savings provisions commence on **1 January 2011**.

## Smoke alarms in moveable dwellings

The Amending Regulation includes provisions requiring smoke alarms to be installed in existing and new moveable dwellings. This follows the introduction of requirements for smoke alarms to be installed in homes and other buildings where people sleep in 2006.

The moveable dwellings to which the new provisions will apply include:

- caravans, motor homes, campervans, holiday vans,
- buses and other vehicles converted to provide sleeping accommodation, regardless of whether they are registered for road use or not, and
- annexes and associated structures made of non-flexible material (not tents).

These provisions will commence on **25 February 2011**, with a period of six months for the implementation of the requirement, during which time it will not be an offence if a smoke alarm is not installed in a moveable dwelling.

A separate circular is being prepared to explain the changes in more detail.

## BASIX completion receipts

The Amending Regulation includes changes to clause 154C of the EP&A Regulation relating to BASIX completion receipts.

The Amending Regulation will change the requirement for a BASIX completion receipt to be generated "within two days of issuing a final occupation certificate" to **before** the issue of an occupation certificate.

The amendment is intended to boost compliance with the requirement to generate BASIX completion receipts, thereby providing more certainty that the BASIX commitments have been satisfied and improve BASIX data collection to support more effective policy development and review.

These provisions will commence on **25 February 2011**.

## Fire safety certification

The Amending Regulation includes amendments to clauses 130 and 144A of the EP&A Regulation relating to fire safety alternative solutions.

The amendments will remove the provision that would otherwise have made it a requirement after 1 March 2011 that **all building work** involving an alternative solution in respect of a fire safety requirement would need a fire safety engineer to

certify that the alternative solution complies with the Building Code of Australia.

In effect, the certification provisions will continue to apply only to certain building work in respect of:

- a Class 9a building that is proposed to have a total floor area of 2000 square metres or more,
- any building (other than a Class 9a building) that is proposed to have a fire compartment with a total floor area of more than 2000 square metres,
- any building (other than a Class 9a building) with a total floor area of more than 6000 square metres.

This provision will commence on **25 February 2011**.

### Compliance cost notices

The Amending Regulation will make provision for the form of compliance costs notices and specify that such notices cannot require the payment of certain costs and expenses.

This change supports the introduction of section 121CA of the EP&A Act on 25 February 2011, which enables consent authorities to issue compliance cost notices to recover the reasonable costs and expenses incurred for ensuring compliance with orders under section 121B of the EP&A Act.

The Amending Regulation outlines the matters a compliance cost notice must contain (eg. details of the development to which the notice relates) and sets out the matters a notice must not require payment for (eg. costs relating to an investigation that lead to the giving of an order).

These regulation provisions commence on **25 February 2011**, to coincide with the commencement of section 121CA of the EP&A Act.

Savings and transitional provisions in the EP&A Regulation also make it clear that a compliance cost notice can only be served in relation to an order that is given on or after 25 February 2011.

### Existing uses

The current EP&A Regulation includes limits on the type and extent of changes to existing uses that are permitted. The Amending Regulation removes one of those limits – the 1000 square metre premises restriction on the application of ‘change of use’ provisions for commercial or light industrial uses.

This amendment is intended to address concern that the existing limitation on floor area is unduly

restrictive, particularly for businesses such as bulky goods with larger floor areas.

The provision will commence on **25 February 2011**.

Other existing limitations on ‘change of use’ will continue to apply to these developments, including only allowing minor alterations and additions, limiting floor space increases to a maximum of 10 per cent, and not permitting rebuilding of premises or intensification of those existing uses.

### Further information

NSW Acts and Regulations can be accessed on the Parliamentary Counsel Office’s website at [www.legislation.nsw.gov.au](http://www.legislation.nsw.gov.au).

Note: This circular and others issued by the Department of Planning are available online at: [www.planning.nsw.gov.au](http://www.planning.nsw.gov.au)

### Authorised by:

Sam Haddad  
Director General  
NSW Department of Planning

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**Important note:** This circular does not constitute legal advice. Users are advised to seek professional advice and refer to the relevant legislation, as necessary, before taking action in relation to any matters covered by this circular.

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