



New South Wales

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

under the

Environmental Planning and Assessment Act 1979

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

Minister for Planning

Explanatory note

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

- (a) require plans and specifications to be submitted in relation to work on certain fire safety systems in class 2–9 buildings, and
- (b) introduce critical stage inspections for class 2–9 buildings, and
- (c) introduce a new alternative solution report for fire safety alternative solutions for class 1b–9 buildings, and
- (d) require fire safety statements and fire safety certificates to be in a form approved by the Secretary of the Department of Planning and Environment, and
- (e) provide for the Secretary of the Department of Finance, Services and Innovation to recognise persons as competent fire safety practitioners (who are qualified, under the amended provisions, to prepare alternative solution reports and endorse plans and specifications).

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

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

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1 Name of Regulation

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

2 Commencement

This Regulation commences on 1 October 2017 and is required to be published on the NSW legislation website.

Schedule 1 Amendment of Environmental Planning and Assessment Regulation 2000

[1] Clause 3 Definitions

Insert in alphabetical order in clause 3 (1):

competent fire safety practitioner—see clause 167A.

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

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

- (2A) A certifying authority must not issue a complying development certificate for building work that involves an alternative solution under the *Building Code of Australia* in respect of a fire safety requirement unless the certifying authority:
- (a) has obtained or been provided with an alternative solution report that:
 - (i) was prepared by or on behalf of a person with the qualifications required by this clause, and
 - (ii) includes a statement that the alternative solution complies with the relevant performance requirements of the *Building Code of Australia*, and
 - (iii) where relevant, identifies the deemed-to-satisfy provisions of the *Building Code of Australia* being varied, 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 solution, and
 - (v) includes a copy of the brief on which the justification of the alternative solution was based, and
 - (b) is satisfied that:
 - (i) the report correctly identifies both the performance requirements and the deemed-to-satisfy provisions of the *Building Code of Australia*, and
 - (ii) 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, as defined in the *Building Code of Australia*.

[3] Clause 130 (5)

Insert after clause 130 (4):

- (5) A person has the *qualifications required by this clause* if:
- (a) the person is a competent fire safety practitioner who is also a fire safety engineer and the report is about an alternative solution under the *Building Code of Australia* in respect of the requirements set out in EP1.4, EP2.1, EP2.2, DP4 and DP5 in Volume 1 for:
 - (i) a class 9a building, as defined in the *Building Code of Australia*, that is proposed to have a total floor area of 2,000 square metres or more, or
 - (ii) any building (other than a class 9a building so defined) that is proposed to have a fire compartment, as defined in the *Building*

- Code of Australia*, with a total floor area of more than 2,000 square metres, or
- (iii) any building (other than a class 9a building so defined) that is proposed to have a total floor area of more than 6,000 square metres, or
- (b) the person is a competent fire safety practitioner, in the case of any other report.

[4] 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 is required to be obtained or provided under clause 130 (2A):
 - (i) the title of the report,
 - (ii) the date on which the report was made,
 - (iii) the reference number and version number of the report,
 - (iv) the name of the competent fire safety practitioner who prepared the report or on whose behalf the report was prepared,
 - (v) if the competent fire safety practitioner who prepared the report or on whose behalf the report was prepared is an accredited certifier—the accreditation number of that practitioner,
- (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,

[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, as defined in the *Building Code of Australia*, 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) plans have been submitted to the principal certifying authority that show:
 - (i) in the case of building work involving the installation of the relevant fire safety system—the layout, extent and location of key components of the relevant fire safety system, or
 - (ii) in the case of building work involving the modification or extension of the relevant fire safety system—the layout, extent and location of any new or modified components of the relevant fire safety system, and
 - (b) specifications have been submitted to the principal certifying authority that:
 - (i) describe the basis for design, installation and construction of the relevant fire safety system, and

- (ii) identify the provisions of the *Building Code of Australia* upon which the design of the system is based, and
 - (c) those plans and specifications:
 - (i) have been certified by a compliance certificate referred to in section 109C (1) (a) of the Act as complying with the relevant provisions of the *Building Code of Australia*, or
 - (ii) unless they are subject to an exemption under clause 164B, have been endorsed by a competent fire safety practitioner as complying with the relevant provisions of the *Building Code of Australia*, and
 - (d) if those plans and specifications were submitted before the complying development certificate was issued—each of them was endorsed by the certifying authority with a statement that the certifying authority is satisfied that it correctly identifies both the performance requirements and the deemed-to-satisfy provisions of the *Building Code of Australia*, and
 - (e) if those plans and specifications were not submitted before the complying development certificate was issued—each of them was endorsed by the principal certifying authority with a statement that the principal certifying authority is satisfied that it correctly identifies both the performance requirements and the deemed-to-satisfy provisions of the *Building Code of Australia*.
- (3) In this clause:
relevant fire safety system means any of the following:
- (a) a hydraulic fire safety system within the meaning of clause 165,
 - (b) a fire detection and alarm system,
 - (c) a mechanical ducted smoke control system.

[6] Clause 144A

Omit the clause. Insert instead:

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

- (1) A certifying authority must not issue a construction certificate for building work that involves an alternative solution under the *Building Code of Australia* in respect of a fire safety requirement unless the certifying authority:
 - (a) has obtained or been provided with an alternative solution report that:
 - (i) was prepared by or on behalf of a person with the qualifications required by this clause, and
 - (ii) includes a statement that the alternative solution complies with the relevant performance requirements of the *Building Code of Australia*, and
 - (iii) where relevant, identifies the deemed-to-satisfy provisions of the *Building Code of Australia* being varied, 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 solution, and
 - (v) includes a copy of the brief on which the justification of the alternative solution is based, and

- (b) is satisfied that:
 - (i) the report correctly identifies both the performance requirements and the deemed-to-satisfy provisions of the *Building Code of Australia*, and
 - (ii) the plans show, and the specifications describe, the physical elements of the alternative solution (where they are capable of being shown and described).
- (2) This clause does not apply to building work relating to a class 1a or 10 building, as defined in the *Building Code of Australia*.
- (3) A person has the **qualifications required by this clause** if:
 - (a) the person is a competent fire safety practitioner who is also a fire safety engineer and the report is about an alternative solution under the *Building Code of Australia* in respect of the requirements set out in EP1.4, EP2.1, EP2.2, DP4 and DP5 in Volume 1 for:
 - (i) a class 9a building, as defined in the *Building Code of Australia*, that is proposed to have a total floor area of 2,000 square metres or more, or
 - (ii) any building (other than a class 9a building so defined) that is proposed to have a fire compartment, as defined in the *Building Code of Australia*, with a total floor area of more than 2,000 square metres, or
 - (iii) any building (other than a class 9a building so defined) that is proposed to have a total floor area of more than 6,000 square metres, or
 - (b) the person is a competent fire safety practitioner, in the case of any other report.

[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, as defined in the *Building Code of Australia*, must be issued subject to the conditions required by this clause.
- (2) The condition required by this clause is that the building work involving the installation, modification or extension of the relevant fire safety system cannot commence unless:
 - (a) plans have been submitted to the principal certifying authority that show:
 - (i) in the case of building work involving the installation of the relevant fire safety system—the layout, extent and location of key components of the relevant fire safety system, or
 - (ii) in the case of building work involving the modification or extension of the relevant fire safety system—the layout, extent and location of any new or modified components of the relevant fire safety system, and

- (b) specifications have been submitted to the principal certifying authority that:
 - (i) describe the basis for design, installation and construction of the relevant fire safety system, and
 - (ii) identify the provisions of the *Building Code of Australia* upon which the design of the system is based, and
 - (c) those plans and specifications:
 - (i) have been certified by a compliance certificate referred to in section 109C (1) (a) of the Act as complying with the relevant provisions of the *Building Code of Australia*, or
 - (ii) unless they are subject to an exemption under clause 164B, have been endorsed by a competent fire safety practitioner as complying with the relevant provisions of the *Building Code of Australia*, and
 - (d) if those plans and specifications were submitted before the complying development certificate was issued—each of them was endorsed by the certifying authority with a statement that the certifying authority is satisfied that it correctly identifies both the performance requirements and the deemed-to-satisfy provisions of the *Building Code of Australia*, and
 - (e) if those plans and specifications were not submitted before the complying development certificate was issued—each of them was endorsed by the principal certifying authority with a statement that the principal certifying authority is satisfied that it correctly identifies both the performance requirements and the deemed-to-satisfy provisions of the *Building Code of Australia*.
- (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.

[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 is required to be obtained or provided under clause 144A (1):
 - (i) the title of the report,
 - (ii) the date on which the report was made,
 - (iii) the reference number and version number of the report,
 - (iv) the name of the competent fire safety practitioner who prepared the report or on whose behalf the report was prepared,
 - (v) if the competent fire safety practitioner who prepared the report or on whose behalf the report was prepared is an accredited certifier—the accreditation number of that practitioner,
- (h) if any of the building work is exempt from compliance with the *Building Code of Australia* because of clause 164B—the details of that exemption.

[9] Clause 147 (2)

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

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

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

[11] Clause 152 (5A)

Insert after clause 152 (5):

- (5A) If the Fire Commissioner furnished a report for a building under clause 152A, the Fire Commissioner is not required to also prepare a separate report under this clause.

[12] Clauses 152A and 152B

Insert after clause 152:

152A Reports of the Fire Commissioner for class 2 or 3 buildings containing certain fire safety systems: section 109H

- (1) A certifying authority must request the Fire Commissioner to furnish it with a fire safety system report as soon as practicable after receiving any application for an occupation certificate for a class 2 or 3 building for building work, as defined in the *Building Code of Australia*, that involved installing, extending or modifying a relevant fire safety system in the building.
- (2) The certifying authority is not required to make such a request:
 - (a) if it has already refused such an application, or
 - (b) if clause 144 applies to the building work and the Fire Commissioner has furnished a report for the building under clause 152.
- (3) If the certifying authority 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 the Fire Commissioner.
- (4) If a request has been made to the Fire Commissioner under this clause and no notice of the refusal of the application has been received from the certifying authority, the Fire Commissioner 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 the Fire Commissioner receives the request for the report.
- (6) A fire safety system report must be in writing and must specify whether or not the Fire Commissioner is 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.
- (7) In this clause:

relevant fire safety system means any of the following:

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

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

A certifying authority must not issue an occupation certificate for a building for which building work that involves an alternative solution under the *Building Code of Australia* in respect of a fire safety requirement that was carried out unless:

- (a) the certifying authority is satisfied that the relevant building work was constructed or installed in accordance with the alternative solution report that accompanied the complying development certificate or construction certificate, if such a certificate was required by clause 130 or 144A, and
- (b) if a fire safety engineer was required by clause 130 or 144A to be involved in the preparation of the alternative solution report—the certifying authority has obtained a compliance certificate or written report prepared by a fire safety engineer that includes a statement that the building work relating to the alternative solution that was the subject of the first certificate or report has been completed and is consistent with that alternative solution.

[13] Clause 153A Compliance certificate required for certain fire safety aspects of building work

Omit the clause.

[14] 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 is required for the purposes of either clause 130 (2A) or 144A (1):
 - (i) the title of the report,
 - (ii) the date on which the report was made,
 - (iii) the reference number and version number of the report,
 - (iv) the name of the competent fire safety practitioner who prepared the report or on whose behalf the report was prepared,
 - (v) if the competent fire safety practitioner who prepared the report or on whose behalf the report was prepared is an accredited certifier—the accreditation number of that practitioner.

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

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

- (a) prior to covering of fire protection at service penetrations to building elements that are required to resist internal fire or smoke spread, inspection of a minimum of one of each type of protection method for each type of service, on each storey of the building comprising the building work, and
- (a1) prior to covering the junction of any internal fire-resisting construction bounding a sole-occupancy unit, and any other building element required to resist internal fire spread, inspection of a minimum of 30% of sole-occupancy units on each storey of the building containing sole-occupancy units, and

[16] Clause 162A (6) (a)

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

- (a) in relation to a critical stage inspection of a class 9a and 9c building, as defined in the *Building Code of Australia*—prior to covering of fire protection at service penetrations to building elements that are required to resist internal fire or smoke spread, inspection of a minimum of one of each type of protection method for each type of service, on each storey of the building comprising the building work, and

[17] Clause 164B

Insert after clause 164A:

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

- (1) A person may lodge with the certifying authority an objection that compliance with any specified provision of the *Building Code of Australia* that relates to the operational performance of a relevant fire safety system is unreasonable or unnecessary in the particular circumstances of the case.
- (2) A person may lodge an objection under this clause only if the person has, or will have, the benefit of:
 - (a) a complying development certificate subject to a condition under clause 136AA in relation to building work involving the minor modification or extension of any relevant fire safety system, or
 - (b) a construction certificate subject to a condition under clause 146B in relation to building work involving the minor modification or extension of any relevant fire safety system.
- (3) The objection 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.
- (4) If the certifying authority is satisfied that an objection is well founded, it may exempt the building work, either conditionally or unconditionally, from any specified provision of the *Building Code of Australia*.
- (5) A certifying authority may only exempt the 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, and
 - (d) a fire safety certificate or fire safety statement that relates to or includes the fire safety system being modified or extended was issued for the building no more than 6 months before the objection was made.

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 complying development certificate or construction certificate (see clauses 134 and 147, respectively).
- (6) This clause does not apply to building work that is required by a fire safety order.

- (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.

[18] 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 one or more provisions 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 who have undergone particular training or assessment carried out by a specified professional organisation or body or an 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 or bodies are to follow in order to be considered for inclusion in such an order, including requirements about auditing and complaints handling.
- (4) Until an order is published under subclause (1) and one or more persons have been recognised as a competent fire safety practitioner for a particular function under this Regulation:
 - (a) for the purposes of the functions referred to in clauses 130, 136AA, 144A, 146B and 164B, any person who, in the written opinion of the relevant 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 the functions referred to in 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.

[19] 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).

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

Omit “properly qualified person” wherever occurring.

Insert instead “competent fire safety practitioner”.

[21] Clause 177 Annual fire safety statement to be given to consent authority and Fire Commissioner and prominently displayed in building

Insert after clause 177 (4):

- (5) In relation to land to which the *State Environmental Planning Policy (Kosciuszko National Park—Alpine Resorts) 2007* applies, a reference in this clause to the provision of fire safety statements for premises in ski resort areas to the council is taken to be a reference to the Minister.

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

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

[23] Clause 181 Form of fire safety statements

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

[24] Clause 181 (1) (i) and (j)

Insert after clause 181 (1) (h):

- (i) the name and contact details of the person who issued the statement,
- (j) the name and contact details of the competent fire safety practitioner who endorsed the statement.

[25] Clause 190B

Insert after clause 190A:

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

- (1) The principal contractor for building work must ensure that the most recently endorsed copy of the plans and specifications for any relevant fire safety system for the building that were required, by conditions under clause 136AA or 146B, to be submitted to the principal certifying authority:
 - (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.

[26] Schedule 7 Savings and transitional provisions

Insert at the end of the Schedule with appropriate Part and clause numbering:

Part Provisions consequent on making of Environmental Planning and Assessment Amendment (Fire Safety and Building Certification) Regulation 2017

Definition

In this Part:

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

Applications for complying development certificates

An application for a complying development certificate that was made, but not finally determined, before the commencement of the amending Regulation, is to be determined as if the amending Regulation had not been made.

Applications for construction certificates or occupation certificates where existing consent

- (1) An application for a construction certificate that is required in relation to building work the subject of an existing consent is to be determined as if the amending Regulation had not been made.
- (2) An application for an occupation certificate that is required in relation to building work the subject of an existing consent is to be determined as if the following provisions of the amending Regulation had not been made:
 - (a) Schedule 1 [1]–[10],
 - (b) Schedule 1 [12] to the extent that it inserts clause 152B,
 - (c) Schedule 1 [13]–[25].
- (3) In this clause:

existing consent means any of the following:

 - (a) a development consent granted, or a complying development certificate issued, before the commencement of the amending Regulation,
 - (b) a development consent granted, or a complying development certificate issued, after the commencement of the amending Regulation for which application was made before that commencement.