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Related	N/A

Building Fire Safety Regulation new and changed requirements

The purpose of this circular is to inform certifiers, councils, industry practitioners, and affected building owners of new and changed fire safety regulation requirements that will soon apply in NSW.

Introduction

This circular outlines the changes to the *Environmental Planning and Assessment Regulation 2000* (the EP&A Regulation) introduced by the *Environmental Planning and Assessment Amendment (Fire Safety and Building Certification) Regulation 2017* (the Amending Regulation), to improve fire safety in new and existing buildings. The changes relate to complex buildings and do not affect houses or related outbuildings like garages and carports.

The Amending Regulation will come into effect on 1 October 2017. From that date, some new requirements will apply immediately (such as new requirements activating Fire and Rescue NSW (FRNSW) input). Other new and changed requirements will generally only apply to development authorised by a **development consent** or **complying development certificate** (CDC) granted after 1 October 2017.

Background

In September 2016, the NSW Government announced its response to the statutory review of the *Building Professionals Act 2005*. The government's response marked an important milestone in strengthening the NSW **building regulation system**.

That response endorsed several initial reform priorities, one of which was the introduction of a package of fire safety reforms for both new and existing buildings.

A draft regulation was publicly exhibited from 16 December 2016 until 31 January 2017. Submissions received indicated general support for the proposals, and the final Amending Regulation has considered comments and recommendations made.

Whilst the Amending Regulation contains important improvements, they are considered only a first step towards a strengthened building regulation system. Any future reforms will be subject to consultation prior to being finalised and implemented.

Overview of the Amending Regulation

The Amending Regulation introduces changes covering the following key areas:

1. A new role of competent fire safety practitioner where independent, specialist expertise is needed.
2. Submission and endorsement of plans and details for certain fire protection system work relating to Class 2 to 9 buildings.
3. A new process for allowing limited exemptions from compliance with the **Building Code of Australia** (BCA) for minor fire protection system work.
4. New critical stage inspections for buildings where people sleep.
5. New inspections by FRNSW of fire safety system work relating to Class 2 and 3 buildings.
6. Documenting, endorsing and checking non-standard fire safety designs (alternative solutions) for Class 1b to 9 buildings.
7. Fire safety statement assessments
8. Standardising fire safety certificates and statements.

The new and changed requirements

Involvement of competent practitioners

Competent fire safety practitioner is a new role in the EP&A Regulation for professionals and technicians who have specialist fire safety skills. The Amending Regulation will require that they be involved in key parts of the regulatory process.

The Department of Finance, Services and Innovation (DFSI) is presently working on establishing a co-regulatory framework for recognising industry schemes for accrediting individuals as **competent fire safety practitioners**.

In the interim, certifying authorities will need to ensure that the person who performs one of the new functions is competent, and to confirm this in writing. This will also apply to building owners required to submit annual and supplementary fire safety statements.

The Department of Planning and Environment (DPE) is proposing to soon issue guidance that will assist certifying authorities and building owners in identifying competent persons.

Submission of fire safety system plans and specifications and their retention on site

The Amending Regulation requires that before installing, extending or modifying a **relevant fire safety system**, plans and specifications for the work must be endorsed by a **competent fire safety practitioner** and submitted to the certifying authority.

A **relevant fire safety system** is a hydraulic fire safety system, fire detection and alarm system and a mechanical ducted smoke control system.

The Amending Regulation also requires that current copies of the endorsed plans and specifications be kept on the construction site and made available for inspection on request by the certifying authority, the consent authority and FRNSW during the construction period. The principal contractor is responsible for making sure this occurs.

The plans and details for these works can be submitted with the application for the **construction certificate** (CC) or CDC, or afterwards, but must be submitted before the works commence. If submitted after the CDC/CC application has been determined, they must be submitted to the Principal Certifying Authority (PCA).

The design presented must also be confirmed as compliant either via a compliance certificate, or endorsement by a **competent fire safety practitioner**.

The certifying authority must check that the submitted documentation is complete and accurate.

The aims of these reforms are to increase confidence that fire system designs are compliant, and fire safety system works are undertaken in accordance with the endorsed design. Submission of the plans and specifications also means that they become part of the building record. This should improve life-cycle building safety regulation and management.

Limited exemptions from compliance with BCA for minor fire protection system works

The Amending Regulation introduces additional flexibility in relation to the standards that must be met by building work involving the **minor** modification or extension of a **relevant fire safety system**.

Strict application of the BCA to these kinds of works would not only mean that the new hardware and components such as ductwork, pipes, fans, pumps and valves must comply, but also the operational performance of the new or extended part (and hence the existing system).

For older systems, meeting these operational performance standards may be impractical without a major system upgrade and significant costs.

The aim of this reform is to strike a balance between fire safety and practical impacts, whilst ensuring that the affected fire safety system remains capable of delivering the level of performance expected in a fire event.

This new process is optional.

A certifier can only exempt works from needing to comply with BCA provisions relating to operational performance of the system in limited circumstances. These include where the existing level of system operational performance will not be reduced and where an independent **competent fire safety practitioner** has endorsed the proposed non-compliance.

As is currently the case, any new hardware and components must comply with the applicable current BCA provisions.

New critical stage inspections

The Amending Regulation introduces two new kinds of critical stage inspections to focus on passive fire and smoke containment measures in multi-unit residential buildings, and other buildings in which persons sleep.

The additional occasions on which buildings under construction must be inspected are:

- For Class 2 and 3 buildings and Class 4 parts:
 - prior to covering of fire protection at service penetrations in building elements required to resist internal fire or smoke spread – the site must be visited enough times to ensure that at least one of each type of protection method for each type of service, on each storey of the building affected by building work, is inspected
 - prior to covering the junction of any fire-resisting construction bounding an apartment or residential suite – the site must be visited enough times to ensure that the bounding construction to at least 30% of the apartments or residential suites on each storey of the building containing this type of accommodation is inspected.
- For Class 9a and 9c buildings, prior to covering of service penetrations in building elements required to resist internal fire or smoke spread – to the same extent as required for multi-unit residential buildings (refer above).

These inspections apply to the construction of new buildings, and extensions and alterations to existing buildings where work on these passive measures is being undertaken.

The aim of this reform is to ensure a reasonably representative sample of these kinds of measures are checked.

Additional inspections by FRNSW

The Amending Regulation expands FRNSW's current inspection role under the planning system.

FRNSW can already inspect certain projects during construction to issue a final fire safety report for a limited class of buildings over a certain size and involving specific kinds of fire safety alternative solutions.

The Amending Regulation provides FRNSW with a new discretionary power to inspect and assess fire safety system work relating to multi-unit residential (Class 2 and 3) buildings. This applies irrespective of the building's size and whether there is a fire safety alternative solution.

Fire safety system works include the installation, modification or extension of a **relevant fire safety system**.

To enable FRNSW the opportunity to inspect and assess the fire safety system works, the PCA must notify FRNSW as soon as practicable after receiving an application for an occupation certificate (OC). FRNSW then has 10 days to inspect the building and issue a report regarding the fire safety systems. If a report is issued the PCA must consider it before issuing an OC.

The Amending Regulation allows multiple requests and reports to be dealt with in one document.

Documenting, endorsing and checking non-standard fire safety designs (alternative solutions)

The BCA is a performance-based building code which allows non-standard designs (alternative solutions) which are demonstrated to comply with the performance requirements.

The Amending Regulation introduces new and changed requirements for fire safety alternative solutions that relate to Class 1b to 9 buildings. The aims of these changes are to:

- ensure there is a record of all accepted fire safety alternative solutions that apply to a development,
- improve construction compliance, and
- clarify compliance checking.

The Amending Regulation requires an alternative solution report to be submitted for building work relating to a Class 1b to 9 building that involves a fire safety alternative solution.

The report must be submitted with an application for a CC or CDC, or for a modified CC or CDC. The Amending Regulation also requires that related certificates record **each** report and details about the person who prepared it.

In combination, these provisions require reports to cover **every** fire safety alternative solution for a development no matter when they arise during the project.

Alternative solution reports

A fire safety alternative solution report must be prepared by or on behalf of a **competent fire safety practitioner** (and in some cases a fire safety engineer). Importantly, the report must include a copy of the brief on which the justification for accepting the alternative solution is based.

The required content of these reports is intended to reflect industry good practice and what is expected under the International Fire Engineering Guidelines.

Compliance checking and confirmation

The certifying authority must check the report to confirm it includes the required content and that the BCA provisions specified in the report are accurate and correct. Also, that the plans and specifications show and describe the physical aspects of the alternative solution.

The Amending Regulation also clarifies what is expected at project end. Before an OC can be issued the certifying authority must be satisfied that the building work has been carried out in accordance with the fire safety alternative solution report (if one was required). If a fire engineer was required to be involved, additional confirmation must be provided in a compliance certificate or further report.

Fire safety statement assessments

Assessments for fire safety statements will need to be undertaken by a **competent fire safety practitioner**, instead of a 'properly qualified person'. This means that building owners who submit annual or supplementary fire safety statements will need to choose a **competent fire safety practitioner**.

This proposal has not been extended to fire safety certificates at this point in time due to concerns raised by stakeholders during the public exhibition of the draft Amending Regulation. The fire safety certificate regime is proposed to be the subject of review and reform.

Until the co-regulatory accreditation framework is established by DFSI, affected building owners will need to be satisfied that the person engaged to undertake the assessments are competent to do so, and must set this out in writing.

The aim of this reform is to increase confidence in the ongoing performance of fire safety measures. As previously mentioned, DPE will issue guidance to assist building owners with these important decisions.

A fact sheet containing more details for building owners can be found here:
<http://www.planning.nsw.gov.au/Policy-and-Legislation/Under-review-and-new-Policy-and-Legislation/Building-Regulation-and-Certification-Reform>

Form of fire safety certificates and statements

The Amending Regulation now allows the Secretary of DPE to prescribe standard template forms for fire safety certificates and statements. The aim is to achieve greater consistency in terms of content and presentation. The forms will be published once finalised.

Note that the Amending Regulation now requires fire safety statements to also include the name and contact details of the person who issued the statement and the name and contact details of the **competent fire safety practitioner(s)** who undertook the assessments.

Transitional arrangements

Some of the new and changed requirements under the Amending Regulation commence on 1 October 2017. Others will commence later.

The requirements that commence on 1 October are:

- the requirement to request a fire safety systems report from FRNSW before an OC is issued in relation to a Class 2 or 3 building involving the installation, extension or modification of a **relevant fire safety system**.
- the requirement to engage a **competent fire safety practitioner** rather than a properly qualified person to undertake fire safety statement assessments.
- the requirement for extra information to be shown in a fire safety statement.

As previously mentioned, the remaining new or changed requirements will generally only apply to development authorised by a development consent or CDC granted after 1 October 2017.

Further Information

For further information please contact the Department of Planning and Environment's information centre on 1300 305 695.

More [building circulars](#) can be found on the Department of Planning and Environment website.

Authorised by:

Carolyn McNally
Secretary

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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