



New South Wales

# Local Government Regulations Amendment (Building Code of Australia) Regulation 1997

under the  
Local Government Act 1993

His Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Local Government Act 1993*.

ERNIE PAGE  
Minister for Local Government

## Explanatory note

The object of this Regulation is to amend various Regulations made under the *Local Government Act 1993* in view of

- (a) the proposed use in New South Wales, from 1 July 1997, of the 1996 edition of the *Building Code of Australia* (the Code) in place of the 1990 edition, and
- (b) the commencement, on the same date, of Schedule 1 to the *Local Government Amendment Act 1996* (which deals with fire safety).

The 1996 edition of the Code (which consists of 2 Volumes) replaces the prescriptive regulation of building contained in the 1990 edition with a performance-based scheme of regulation.

Schedule 6 [3] to this regulation provides for a transitional period of 3 months for general compliance with the new Code in respect of class 1 and class 10 buildings. During that period, plans and specifications accompanying a building application will be taken to comply with Volume 2 of the 1996 edition of the Code if they would comply with the 1990 edition.

## 1997 No 267

Local Government Regulations Amendment (Building Code of Australia) Regulation 1997

Explanatory note

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Similarly, if the provisions of the 1990 edition of the Code would be complied with in the erection of the proposed building, the provisions of Volume 2 of the 1996 edition are taken to be complied with in that respect.

Schedule 1 [8] to the *Local Government Amendment Act 1996* (the amending Act) inserts a definition of *essential fire or other safety measures* in the Dictionary to the *Local Government Act 1993*. Schedule 3 of this regulation (among other things) inserts clause 6B in the *Local Government (General) Regulation 1993* to prescribe the measures that are essential fire or other safety measures for the purpose of that definition. The amending Act also inserts other provisions relating to fire safety, such as sections 653A and 653B which, respectively, require the maintenance and certification of essential fire or other safety measures. Schedule 3 to this regulation also prescribes the standards to which those measures are to be maintained and the certification procedure in relation to them. Fire safety is dealt with in Section C of the Code.

This Regulation is made under the *Local Government Act 1993*, including section 748 and Schedule 6 (the general regulation-making power) and the sections specifically referred to in the Regulation.

## **Local Government Regulations Amendment (Building Code of Australia) Regulation 1997**

### **1 Name of Regulation**

This Regulation is the *Local Government Regulations Amendment (Building Code of Australia) Regulation 1997*.

### **2 Commencement**

This Regulation commences on 1 July 1997.

### **3 Amendment of Local Government (Approvals) Regulation 1993**

The *Local Government (Approvals) Regulation 1993* is amended as set out in Schedule 1.

### **4 Amendment of Local Government (Orders) Regulation 1993**

The *Local Government (Orders) Regulation 1993* is amended as set out in Schedule 2.

### **5 Amendment of Local Government (General) Regulation 1993**

The *Local Government (General) Regulation 1993* is amended as set out in Schedule 3.

### **6 Amendment of Local Government (Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 1995**

The *Local Government (Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 1995* is amended as set out in Schedule 4.

### **7 Amendment of Local Government (Manufactured Home Estates and Manufactured Homes) Regulation 1995**

The *Local Government (Manufactured Home Estates and Manufactured Homes) Regulation 1995* is amended as set out in Schedule 5.

## **1997 No 267**

Clause 8      Local Government Regulations Amendment (Bulging Code of Australia) Regulation 1997

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### **8 Amendment of Local Government (Water, Sewerage and Drainage) Regulation 1993**

The *Local Government (Water, Sewerage and Drainage) Regulation 1993* is amended as set out in Schedule 6.

### **9 Amendment of Local Government (Savings and Transitional) Regulation 1993**

The *Local Government (Savings and Transitional) Regulation 1993* is amended as set out in Schedule 7.

### **10 Notes**

The explanatory note does not form part of this Regulation.

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## Schedule 1 Amendment of Local Government (Approvals) Regulation 1993

(Clause 3)

### [ 1 ] Clause 4 Definitions

Omit the definitions of *Building Code of Australia* and *essential service* from clause 4 (1).

Insert instead:

*Building Code of Australia* means the document of that name consisting of Volume One (subtitled *Class 2 to Class 9 Buildings*) and Volume Two (subtitled *Class 1 and Class 10 Buildings Housing Provisions*) published on behalf of the Australian Building Codes Board in October 1996, and incorporating:

- (a) the amendments to the Code released by the Australian Building Codes Board before 1 July 1997, and
- (b) the New South Wales variations set out in the relevant Appendix to Volume One, and incorporated in Volume Two, of the Code, together with any amendments to those variations made before 1 July 1997.

### [2] Clause 4 (1)

Insert in alphabetical order:

*building approval* means an approval referred to in item 1 or 7 of Part A of the Table to section 68 of the Act.

*certificate of classification* means a certificate referred to in clause 46.

*fire safety certificate* means a certificate referred to in clause 27.

*interim certificate of classification* means a certificate referred to in clause 48.

*interimfire safety statement* means a statement referred to in clause 27A.

*statutory fire safety measure* means an essential fire or other safety measure specified in Schedule 3 to the *Local Government (General) Regulation 1993*.

**1997 No 267**

Local Government Regulations Amendment (Building Code of Australia) Regulation 1997

Schedule 1 Amendment of Local Government (Approvals) Regulation 1993

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**[3] Clause 4 (3)**

Insert after the subclause:

**Note.** Such definitions include definitions of the following terms: alternative solution, fire compartment, assessment method, fire resistance level (FRL), deemed-to-satisfy, performance requirement.

**[4] Clause 4 (3A)**

Insert after clause 4 (3):

(3A) For the purposes of this Regulation:

- (a) a reference in the *Building Code of Australia* to the **appropriate authority** is a reference to the relevant council, and
- (b) the reference in the *Building Code of Australia* in the definition of **Certificate of Accreditation** to a State or Territory accreditation authority is a reference to the Director-General when exercising his or her functions under Division 5 of Part 1 of Chapter 7 (sections 120–123B) of the Act.

**[5] Clause 7 Matters to accompany applications for building approvals**

Insert at the end of clause 7 (1) (d):

- (e) except in the case of a class 1a or class 10 building:
  - (i) a list of the measures for ensuring the safety of persons in the building in the event of fire that are proposed to be implemented in the building or on the land on which the building is situated, and
  - (ii) if the application relates to a proposal to carry out any alteration or rebuilding of, or addition to, an existing building, a separate list of such of those measures as are currently implemented in the building or on the land on which the building is situated.

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- (1A) A list referred to in subclause (1) (e) must describe the extent, capability and basis of design of each of the measures concerned.
  - (1B) If the application involves the use of an alternative solution, the application must also be accompanied by:
    - (a) details of the performance requirements that the alternative solution is intended to meet,
    - (b) details of the assessment methods used to establish compliance with those performance requirements.

**[6] Clause 7A**

Omit the clause. Insert instead:

**7A Change of use of existing buildings**

- (1) An application for approval to change the use of a building to a use that is not consistent with the current classification of the building must be accompanied by the following:
  - (a) a list of the measures for ensuring the safety of persons in the building in the event of fire that are proposed to be implemented in the building or on the land on which the building is situated in connection with the proposed change of use of the building,
  - (b) a separate list of such of those measures as are currently implemented in the building or on the land on which the building is situated.
- (2) The list must describe the extent, capability and basis of design of each of the measures concerned.
- (3) This clause does not apply to or in respect of an application for an approval to change the use of a building that, if granted, would result in the building concerned being used as a class 1a or a class 10 building.

**[7] Clause 19 Standards to be met for approval**

Insert at the end of clause 19:

- (2) This clause is subject to clause 25.

**[8] Clause 21 Referral of certain applications to New South Wales Fire Brigades**

Omit clause 21 (1) and (2). Insert instead:

- (1) A council must forward to the Commissioner of New South Wales Fire Brigades a copy of an application for approval to erect a building if the application provides for an alternative solution to meet the performance requirements contained in any one or more of the following provisions of Volume One of the *Building Code of Australia*, namely, CP9, EP1.3, EP1.4, EP1.6, EP2.2 and EP3.2.
- (1A) Subclause (1) applies only if the application relates to:
  - (a) a class 9a building that will have a total floor area of 2000 m<sup>2</sup> or more, or
  - (b) a building other than a class 9a building that will have:
    - (i) a fire compartment with a total floor area of more than 2000 m<sup>2</sup>, or
    - (ii) a total floor area of more than 6000 m<sup>2</sup>.
- (1B) The copy of the application is to be forwarded within 7 days after the council receives it.
- (1C) The council must also forward the following with the copy of the application:
  - (a) copies of the plans and specifications that accompanied the application,
  - (b) the details that accompanied the application in relation to the following:
    - (i) the performance requirements that the alternative solution is intended to meet,
    - (ii) the assessment methods used to establish compliance with those performance requirements.
- (2) The Commissioner of New South Wales Fire Brigades must furnish a written report to the council specifying whether or not the Commissioner is satisfied, on the basis of the application, that the alternative solution will meet such of the performance requirements referred to in subclause (1) as it is intended to meet.



**[9] Clause 22**

Omit the clause. Insert instead:

**22 Schedule of essential fire or other safety measures**

- (1) When giving a building approval, a council must attach to the approval a schedule specifying all of the measures (both current and proposed) that it requires for the building, and the land on which the building is situated, so as to ensure the safety of persons in the building in the event of fire.
- (2) The schedule must include such of the measures listed in the application for the approval as are statutory fire safety measures.
- (3) The schedule:
  - (a) must distinguish between:
    - (i) the measures that are currently implemented in the building or on the land on which the building is situated, and
    - (ii) the measures that are to be implemented as a condition of the approval, and
  - (b) must specify the minimum standard of performance for each such measure.
- (4) This clause does not apply to or in respect of a class 1a or a class 10 building unless the approval would result in the building's being used as a building of another class.

**[10] Clause 23 Approval of change of use of building**

Insert at the end of clause 23:

- (3) The council is not to issue the new certificate of classification unless it has received a fire safety certificate in relation to the change of use of the building.
- (4) However, the council may issue an interim certificate of classification with respect to a portion of a building if it has received an interim fire safety statement with respect to that portion.

## 1997 No 267

Local Government Regulations Amendment (Building Code of Australia) Regulation 1997

Schedule 1 Amendment of Local Government (Approvals) Regulation 1993

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### [11] Clause 25 Compliance with standards

Omit “Part E1” from clause 25 (2) and (3) wherever occurring. Insert instead “provisions EP1.3, EP1.4, EP1.6, EP2.1, EP2.2 and EP3.2. of Volume One, and P2.3.2 of Volume Two.”.

### [12] Clause 25 (4) and (5)

Insert after clause 25 (3):

- (4) Despite subclauses (2) and (3), the council may approve the use of
  - (a) a building being changed from that of one class to that of another class, or
  - (b) an existing building as a place of public entertainment,

without the building’s being made to comply with the provisions of EP1.3, EB1.4, EP1.6, EP2.2 and EP3.2 of Volume One of the *Building Code of Australia* if the council has received a report from the Commissioner of New South Wales Fire Brigades to the effect that, in the opinion of the Commissioner, the building might be exempted from being made to comply with those provisions.

- (5) An approval granted under subclause (4) must be granted subject to any conditions that the Commissioner might recommend.

### [13] Clauses 27, 27A and 27B

Omit clause 27. Insert instead:

#### **27 Certification of essential fire or other safety measures**

- (1) It is a condition of an approval to erect a building, or to change the use of a building to a use that is not consistent with the current classification of the building, that the owner of the building must cause the council to be given a certificate (*a fire safety certificate*) in relation to each essential fire or other safety measure included in the schedule to the approval.

- (2) A fire safety certificate is to be given:
- (a) in the case of the erection of a new building or the addition of a new part to an existing building, on completion of the building or part, and
  - (b) in the case of structural alterations to an existing building, on completion of the alterations, and
  - (c) in the case of a change of use of an existing building, before the change of use.
- (3) A fire safety certificate is to be in or to the effect of Form 5.
- (4) A fire safety certificate is to state, in relation to each essential fire or other safety measure implemented in the building or on the land on which the building is situated:
- (a) that the measure has been assessed by a person (chosen by the owner of the building) who is properly qualified to do so, and
  - (b) that, as at the date of the assessment, the measure was found to to be capable of performing to a standard not less than that required by the schedule to the relevant approval.
- (5) A copy of the certificate is to be given to the Commissioner of New South Wales Fire Brigades, and a further copy is to be prominently displayed in the building in a location specified by the council.
- (6) This clause does not apply to or in respect of a class 1a or a class 10 building.
- (7) In this clause, **assess** includes inspect, verify, and, in relation to a new item of equipment, test.

**Note.** Maintenance standards for essential fire or other safety measures referred to in section 653A of the *Local Government Act 1993*, and certification procedures relating to that maintenance referred to in section 653B of that Act, are prescribed by Part 2A of the *Local Government (General) Regulation 1993* (clauses 6A-6J).

**27A Interim fire safety statements**

- (1) Prior to completion of a new building, or a new part of an existing building, the owner of the building may cause the council to be given a statement (an *interim fire safety statement*) with respect to a portion of the new building or part.
- (2) The provisions of clause 27 (3)–(7) apply to an interim fire safety statement in the same way as they apply to a fire safety certificate.
- (3) The giving of an interim fire safety statement does not affect the requirements of clause 27 with respect to the giving of a fire safety certificate on completion of the building or part of the building concerned.

**27B Fire safety certificates not required to deal with certain measures**

- (1) A fire safety certificate is not required to deal with any essential fire or other safety measure the subject of
  - (a) an annual fire safety statement within the meaning of the *Local Government (General) Regulation 1993*, or
  - (b) a fire safety certificate within the meaning of the *Local Government (Orders) Regulation 1993*,given within the previous 6 months, unless the council otherwise determines.
- (2) The council may make such a determination only if
  - (a) it is of the opinion that the measure will be affected by the activity the subject of the relevant approval, and
  - (b) it has specified in the schedule attached to the approval that a certificate is required in relation to that measure.

**[14] Clause 30 Consideration of reports from New South Wales Fire Brigades**

Omit the clause.

**[15] Clause 44**

Omit the clause. Insert instead:

**44 Council discretion in relation to classification of buildings**

If there is any doubt or dispute about the classification of a building, the building is to be classified in whichever of the classes mentioned in A3.2 of Volume One, and 1.3.2 of Volume Two, of the *Building Code of Australia* that the council considers appropriate, and the decision of the council is taken to be an approval for the purposes of any appeal under the Act.

**[16] Clause 45 Occupation prohibited pending issue of certificate of classification**

Insert “or interim certificate of classification” after “classification” in clause 45 (1).

**[17] Clause 46 Certificate of classification**

Insert after clause 46 (3):

- (3A) However, the council is not to issue a certificate of classification in relation to a building or part of a building unless it has received a fire safety certificate for the building or part.

**[18] Clause 48**

Omit the clause. Insert instead:

**48 Interim certificates of classification**

- (1) If it approves the occupation of a portion of an uncompleted building, the council must issue an interim certificate of classification for that portion.

**1997 No 267**

Local Government Regulations Amendment (Building Code of Australia) Regulation 1997

Schedule I Amendment of Local Government (Approvals) Regulation 1993

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- (2) If it approves the occupation of a further portion of an uncompleted building, the council:
  - (a) must revoke the existing interim certificate of classification, and
  - (b) must issue a further interim certificate of classification for both the existing portion and the further portion.
- (3) However, the council is not to issue an interim certificate of classification for a portion of a building unless it has received:
  - (a) a fire safety certificate for the whole of the building, or
  - (b) an interim fire safety statement for the portion or portions concerned.
- (4) The provisions of clause 46 (1)-(5) apply to an interim certificate of classification in the same way as they apply to a certificate of classification.

**[19] Clause 49 Reports of Commissioner of New South Wales Fire Brigades**

Omit clause 49 (1) and (2). Insert instead:

- (1) Before issuing a certificate of classification or interim certificate of classification for a building referred to in clause 21, the council must request the Commissioner of New South Wales Fire Brigades to furnish it with a report in respect of the building.
- (2) Within 7 days after receiving a request from the council under subclause (1), the Commissioner must furnish the council with a report specifying whether or not:
  - (a) the building complies with provisions CP9, EP1.3, EP1.4, EP1.6, EP2.2 and EP3.2 of Volume One of the *Building Code of Australia*, and
  - (b) the fire hydrants in the fire hydrant system will be accessible for use by New South Wales Fire Brigades, and

- (c) the couplings in the fire hydrant system will be compatible with those of the fire appliances and equipment used by New South Wales Fire Brigades.

**[20] Clause 49 (3)**

Insert “or interim certificate of classification” after “certificate of classification”.

**[21] Clause 49 (3)**

Omit “Director-General” Insert instead “Commissioner”.

**[22] Clause 52 Adoption of Building Code of Australia**

Omit “the standards set out in” from clause 52 (1).  
Insert instead “the relevant provisions of”.

**[23] Clause 52 (1) (b)**

Omit “clause B1.1 of the *Building Code of Australia* and the provisions of that Code entitled ‘NSW Part H102 Temporary Structures’ ”.

Insert instead “Part B1 and NSW Part H102 of Volume One of the *Building Code of Australia*”.

**[24] Clauses 53–55**

Omit the clauses. Insert instead:

**53 Allotment of land**

- (1) The council may refuse to grant approval to an application for approval to erect a class 1 building on an allotment of land that has an area of less than 230 m<sup>2</sup>.
- (2) The council may also refuse to grant approval to an application for approval to erect a class 1 building on an allotment of land if it is not satisfied that the area and dimensions of the allotment are sufficient to provide for:

**1997 No 267**

Local Government Regulations Amendment (Building Code of Australia) Regulation 1997

Schedule 1 Amendment of Local Government (Approvals) Regulation 1993

---

- (a) the general amenity and safety of both any building to be erected on the allotment and any other building existing on the allotment at the time the building is to be erected, and
  - (b) the health and safety of the occupants of those buildings, and
  - (c) the amenity and safety of any buildings on adjoining allotments and the health and safety of the occupants of those buildings.
- (3) However, such an application is not to be refused on the grounds referred to in subclause (2) if:
- (a) the allotment was created by a subdivision that was the subject of a development consent under the *Environmental Planning and Assessment Act 1979* and the terms of the consent indicate that it was intended that one or more class 1 buildings would be erected on the allotment, or
  - (b) development consent to erect the building on the allotment is in force under that Act, or
  - (c) the allotment size is in accordance with criteria contained in a local approvals policy, or
  - (d) the allotment of land concerned was in existence as a separate parcel on 27 February 1942, or
  - (e) the proposed building is to replace an existing class 1 building.
- (4) In determining allotment size requirements for adoption in a local approvals policy for the purposes of subclause (3) (c), the council must have regard to subclause (2) (a), (b) and (c).
- (5) In this clause:
- (a) a reference to the erection of a building does not include a reference to the making of additions or alterations to the building, and
  - (b) a reference to a class 1 building includes a reference to a class 2 building that comprises 2 dwellings only.
- (6) This clause does not affect the operation of clause 12.



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**54 Site occupancy for dwellings**

- (1) The council may refuse to grant approval to an application for approval to erect a class 1 building, or a class 10 building appurtenant to a class 1 building, on an allotment of land if it is not satisfied that the unoccupied part of the allotment after the building has been erected will constitute an area of private open space that:
  - (a) will be well integrated with the class 1 building and any other building on the allotment, and
  - (b) will provide a useable, healthy outdoor environment for the occupants of the buildings.
- (2) However, such an application is not to be refused on the grounds referred to in subclause (1) if
  - (a) the class 1 building, together with any other building on the allotment, will occupy no more than two-thirds of the allotment and there will be a single unoccupied area of at least 45 m<sup>2</sup> for each dwelling on the allotment, or
  - (b) the building is to be erected on the allotment pursuant to a development consent in force under the *Environmental Planning and Assessment Act 1979*, or
  - (c) the occupied and unoccupied proportions of the allotment will be in accordance with criteria contained in a local approvals policy.
- (3) In determining the proportion of allotments that may be occupied for adoption in a local approvals policy for the purposes of subclause (2) (c), the council must have regard to subclause (1) (a) and (b).
- (4) In this clause:
  - (a) **occupied** means occupied by a building (other than a structure used for the recreational enjoyment of open space, such as an open-air swimming pool or tennis court) or part of a building, and
  - (b) a reference to a class 1 building includes a reference to a class 2 building that comprises 2 dwellings only.
- (5) This clause does not affect the operation of clause 12.

**1997 No 267**

Local Government Regulations Amendment (Building Code of Australia) Regulation 1997

Schedule 1 Amendment of Local Government (Approvals) Regulation 1993

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**55 Site occupancy for dwelling combined with other buildings**

- (1) The council may refuse to grant approval to an application for approval to erect a combined class 4 and class 6 building on an allotment of land if it is not satisfied that the unoccupied part of the allotment after the building has been erected will constitute an area of open space that:
  - (a) will be well integrated with the building and any other building on the allotment, and
  - (b) will provide a useable, healthy outdoor environment for the occupants of the class 4 building.
- (2) However, such an application is not to be refused on the grounds referred to in subclause (1) if
  - (a) the combined class 4 and class 6 building is to be erected on the allotment pursuant to a development consent granted under the *Environmental Planning and Assessment Act 1979*, or
  - (b) the occupied and unoccupied proportions of the allotment will be in accordance with criteria contained in a local approvals policy.
- (3) In determining the proportion of allotments that may be occupied for adoption in a local approvals policy for the purposes of subclause (2) (b), the council must have regard to subclause (1) (a) and (b).
- (4) In this clause, **occupied** means occupied by a building.
- (5) This clause does not affect the operation of clause 12.

**[25] Clause 57 Walls of class 1 buildings**

Omit “building to the boundary line” from clause 57 (2) (f).  
Insert instead “building to a distance closer to the boundary line (or building to the boundary line)”.

**[26] Clause 57 (8)**

Insert after clause 57 (7):

- (8) In this clause, *storey* means a space within a building that is situated between one floor level and the floor level next above, or, if there is no floor above, the ceiling or roof above, but not:
- (a) a space that contains only:
    - (i) a lift shaft, stairway or meter room, or
    - (ii) a bathroom, shower room, laundry, water closet or other sanitary compartment, or
    - (iii) accommodation intended for not more than 3 vehicles, or
    - (iv) a store room, or
    - (v) a combination of the above, or
  - (b) a mezzanine,

and the relevant definition in the *Building Code of Australia* does not apply.

**[27] Clause 151 inspections by Commissioner of New South Wales Fire Brigades**

Omit “a condition of an approval concerning the provision, maintenance or certification of essential services in a building” from clause 151 (a).

Insert instead “the implementation, maintenance or certification of essential fire or other safety measures applicable to a building”.

**[28] Clause 151 (b)**

Insert “653A, 653B,” after “sections”.

**1997 No 267**

Local Government Regulations Amendment (Building Code of Australia) Regulation 1997

Schedule 1 Amendment of Local Government (Approvals) Regulation 1993

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**[29] Clause 152 Local approvals policies: standards**

Insert after clause 152 (1):

- (1A) An activity referred to in item 1 or 7 of Part A of the Table to section 68 of the Act must also comply with:
- (a) the deemed-to-satisfy provisions of Volume One, or Section 3 of Volume Two, of the *Building Code of Australia*, or
  - (b) if there are no such deemed-to-satisfy provisions in Volume One or Section 3 of Volume Two, the performance requirements of Volume One, or Section 2 of Volume Two, of the *Building Code of Australia*.

**[30] Clause 152A**

Insert after clause 152:

**152A Council discretion in relation to certain provisions of Building Code of Australia**

- (1) If, in applying provision C1.2 (a) (ii) of the *Building Code of Australia*, there is any doubt or dispute about the natural ground level (because of prior excavation or other cause) the level is to be determined in a manner approved by the council.
- (2) If a building is to be built over a public road, railway, bus terminal or similar public facility:
  - (a) the council is to determine the fire resistance level (FRL) of each structural member in, immediately above or immediately alongside the public facility having regard to the particular circumstances and the fire resisting construction of buildings, and
  - (b) if a structural member is susceptible to damage, the council may determine the materials to be used for the construction of that member.

**[31] Schedule 1 Forms**

Insert after Form 4:

**Form 5 Fire safety certificate/interim fire safety statement**

Local Government Act 1993

Local Government (Approvals) Regulation 1993

Application reference.. ..

Council .....

Address of building.. ..

Owner's name .....

Owner's address.....

List of essential fire or other safety measures designated by Council in the Schedule attached to its approval:

**Measure Standard of Performance**

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I, ..... of .....

certify that:

- (a) each of the essential fire or other safety measures listed above has been assessed by a person chosen by me, and



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## Schedule 2 Amendment of Local Government (Orders) Regulation 1993

(Clause 4)

### [1] Clause 3 Definitions

Omit the definition of *Building Code of Australia* from clause 3 (1).  
Insert instead:

*Building Code of Australia* has the same meaning as it has in the *Local Government (Approvals) Regulation 1993*.

### [2] Clause 3 (1)

Insert in alphabetical order:

*fire safety certificate* means a certificate referred to in clause 5E.

*fire safety order* means an order under item 4 of the Table to section 124 of the Act.

*statutory fire safety measure* means an essential fire or other safety measure specified in Schedule 3 to the *Local Government (General) Regulation 1993*.

### [3] Part 1 A

Insert after clause 5:

#### Part 1 A Fire safety orders

##### Division 1 Preliminary

###### 5A Application of Part

This Part does not apply to or in respect of a class 1a or a class 10 building.

###### 5B Definitions

In this Part, a reference to a Form is a reference to a Form set out in Schedule 7.

## **Division 2 Essential fire or other safety measures**

### **5C Council may require schedule of essential fire or other safety measures**

Without limiting the nature of the fire safety orders that a council may otherwise give with respect to a building, a council may, by such an order, require the owner of the building to give written notice to the council of the measures that are currently implemented in the building, and on the land on which the building is situated, for ensuring the safety of persons in the building in the event of fire.

### **5D Schedule of essential fire or other safety measures**

- (1) When giving a fire safety order, a council must attach to the order a schedule specifying all of the measures (both current and proposed) that it requires for the building concerned, and the land on which the building is situated, so as to ensure the safety of persons in the building in the event of fire.
- (2) The schedule must include such of the measures listed in the notice under clause 5C as are statutory fire safety measures.
- (3) The schedule:
  - (a) must distinguish between:
    - (i) the measures that are currently implemented in the building or on the land on which the building is situated, and
    - (ii) the measures that are to be implemented in compliance with the fire safety order, and
  - (b) must specify the minimum standard of performance for each such measure.

### **5E Certification of essential fire or other safety measures**

- (1) A person to whom a fire safety order is given must, within the time specified in the order, cause the council to be given a certificate (a *fire safety certificate*) in relation to each essential fire or other safety measure included in the schedule to the order.



- (2) A fire safety certificate is to be in or to the effect of Form 1.
- (3) A fire safety certificate is to state, in relation to each essential fire or other safety measure implemented in the building or on the land on which the building is situated:
  - (a) that the measure has been assessed by a person (chosen by the owner of the building) who is properly qualified to do so, and
  - (b) that, as at the date of the assessment, the measure was found to be capable of performing to a standard not less than that required by the schedule to the order.
- (4) A copy of the certificate is to be given, to the Commissioner of New South Wales Fire Brigades, and a further copy is to be prominently displayed in the building in a location specified by the council.
- (5) In this clause, **assess** includes inspect and verify and, in relation to a new item of equipment, test.

**Note.** Maintenance standards for essential fire or other safety measures referred to in section 653A of the *Local Government Act 1993*, and certification procedures relating to that maintenance referred to in section 653B of that Act are prescribed by the *Local Government (General) Regulation 1993* (Part 2A, being clauses 6A–6J).

**5F Fire safety certificates not required to deal with certain measures**

- (1) A fire safety certificate is not required to deal with any essential fire or other safety measure the subject of:
  - (a) an annual fire safety statement within the meaning of the *Local Government (General) Regulation 1993*, or
  - (b) a fire safety certificate within the meaning of the *Local Government (Approvals) Regulation 1993*,given within the previous 6 months, unless the council otherwise determines.

**1997 No 267**

Local Government Regulations Amendment (Building Code of Australia) Regulation 1997

Schedule 2 Amendment of Local Government (Orders) Regulation 1993

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- (2) The council may make such a determination only if:
- (a) it is of the opinion that the measure will be affected by the work required by the relevant order, and
  - (b) it has specified in the schedule attached to the order that the certificate is required to deal with that measure.

**[4] Part 2**

Omit the heading to the Part.

Insert instead “Other orders requiring or prohibiting the doing of things to or on premises”.

**[5] Clause 6**

Omit the clause. Insert instead:

**6 Fire safety orders**

For the purposes of section 202 (1) (b) of the Act, the following provisions are prescribed:

- (a) such of the provisions of Part 2 of Chapter 7 of the Act as relate to the carrying out of, or compliance with, a fire safety order,
- (b) such of the provisions of this Regulation as relate to the implementation, maintenance or certification of essential fire or other safety measures applicable to a building.

**[6] Schedule 7**

Insert after Schedule 6:

**Schedule 7 Forms**

(Clause 5B)

**Form 1 Fire safety certificate**

Local Government Act 1993

Local Government (Orders) Regulation 1993

Order reference.....

Council .....

Address of building .....

Owner's name .....

Owner's address.....

List of essential fire or other safety measures designated by Council in the Schedule attached to its order:

**Measure Standard of Performance**

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I, ....., of .....

certify that:

- (a) each of the essential fire or other safety measures listed above has been assessed by a person chosen by me, and

**1997 No 267**

Local Government Regulations Amendment (Building Code of Australia) Regulation 1997

Schedule 2      Amendment of Local Government (Orders) Regulation 1993

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- (b) the persons concerned were, to the best of my knowledge and belief, properly qualified to conduct the relevant assessments, and
  - (c) based on the results of the assessments undertaken, each of the measures listed above is capable of functioning at a standard of performance not less than that required by the schedule attached to the Council's order, and
- (c) the information contained in this Certificate is, to the best of my knowledge and belief, true and accurate.

Date ..... Signed. ....  
(Owner/agent)

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## Schedule 3 Amendment of Local Government (General) Regulation 1993

(Clause5)

### [ 1 ] Clause 3 Definitions

Insert in alphabetical order:

*annual fire safety statement* means a statement referred to in clause 6H.

*building approval* means an approval referred to in item 1 or 7 of Part A of the Table to section 68 of the Act.

*fire safety order* means an order referred to in item 4 of the Table to section 124 of the Act.

### [2] Clause 3 (2)

Insert at the end of clause 3:

- (2) In this Regulation, a reference to a Form is a reference to a Form set out in Schedule 2.

### [3] Part 2A

Insert after clause 6:

## Part 2A Maintenance of essential fire or other safety measures

### Division 1 Preliminary

#### 6A Application of Part

This Part applies to and in respect of a class 1b, class 2, class 3, class 4, class 5, class 6, class 7, class 8 or class 9 building.

#### 6B Prescribed essential fire or other safety measures

For the purposes of the definition of *essential fire or other safety measures* in the Dictionary to the Act, the following measures are prescribed:

- (a) the measures specified in Schedule 3,

**1997 No 267**

Local Government Regulations Amendment (Building Code of Australia) Regulation 1997

Schedule 3 Amendment of Local Government (General) Regulation 1993

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- (b) in relation to any particular building, the measures specified in the most recent of the schedules relating to the building referred to in:
  - (i) clause 22 of the *Local Government (Approvals) Regulation 1993*, or
  - (ii) clause 5D of the *Local Government (Orders) Regulation 1993*.

**6C Transitional provision: certain essential services taken to be essential fire or other safety measures**

- (1) This clause applies to a building that is not the subject of a building approval granted on or after 1 July 1997 or a fire safety order given on or after 1 July 1997.
- (2) The following essential services are taken to be essential fire or other safety measures in relation to a building to which this clause applies:
  - (a) such essential services as are attached to an approval or order referred to in Part 59 of *Ordinance No 70* made under the *Local Government Act 1919*, being an approval or order that was in force immediately before the repeal of that Ordinance, or
  - (b) such essential services as are attached to an approval referred to in clause 22 of the *Local Government (Approvals) Regulation 1993* (as in force immediately before 1 July 1997), being the latest approval relating to the building that was granted during the period commencing on 1 July 1993 and ending on 30 June 1997, or
  - (c) such essential services as were submitted to the council in response to an order referred to in clause 6 (1) of the *Local Government (Orders) Regulation 1993* (as in force immediately before 1 July 1997), being the latest order relating to the building that was given during the period commencing on 1 July 1993 and ending on 30 June 1997.

(3) In this clause:

*essential service* means:

- (a) in relation to an approval or order referred to in subclause (2) (a), an essential service within the meaning of *Ordinance No 70* under the *Local Government Act 1919*, as in force immediately before 1 July 1993, or
- (b) in relation to an approval referred to in subclause (2) (b), an essential service within the meaning of the *Local Government (Approvals) Regulation 1993*, as in force immediately before 1 July 1997.
- (c) in relation to an order referred to in subclause (2) (c), an essential service within the meaning of the *Local (Orders) Regulation 1993*, as in force immediately before 1 July 1997.

## **Division 2 Prescribed standards of maintenance**

### **6D Prescribed standard of maintenance for essential fire or other safety measures**

For the purposes of section 653A of the Act, the standard to which an essential fire or other safety measure applicable to a building is to be maintained is the relevant standard prescribed by this Division.

### **6E Buildings the subject of approval or certain order after 30 June 1997**

- (1) This clause applies to an essential fire or other safety measure applicable to a building in respect of which a building approval is granted, or a fire safety order is given, on or after 1 July 1997.
- (2) The standard to which an essential fire or other safety measure to which this clause applies is:
  - (a) the standard specified in the schedule attached to the building approval, or
  - (b) the standard specified in the schedule attached to the fire safety order, or

## 1997 No 267

Local Government Regulations Amendment (Building Code of Australia) Regulation 1997

Schedule 3 Amendment of Local Government (General) Regulation 1993

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- (c) in relation to a building the subject of both a building approval and a fire safety order:
  - (i) the standard specified in the schedule attached to the approval, or
  - (ii) the standard specified in the schedule attached to the order,whichever is the later.

### 6F Other buildings: transitional

- (1) This clause applies to an essential fire or other other safety measure applicable **to** a building that is not the subject of a building approval granted on or after 1 July 1997 or a fire safety order given on or after 1 July 1997.
- (2) The standard to which an essential fire or other safety measure to which this clause applies is to be maintained is the standard specified in the most recent order or approval referred to in clause 6C (2) (a), (b) or (c).
- (3) As soon as practicable after receiving a request in that regard from the owner of a building to which, the council must provide the owner with a schedule of the essential fire or other safety measures applicable to the building as at 1 July 1997.

### Division 3 Prescribed certification procedure

#### 6G Prescribed certification procedures for essential fire or other safety measures

For the purposes of section 653B of the Act, the certification procedure concerning the maintenance of essential fire or other safety measures applicable to a building is the certification procedure prescribed by this Division.

#### 6H Annual fire safety statement to be given to council

- (1) The owner of a building must cause the council to be given a statement (an *annual fire safety statement*) in relation to each essential fire or other safety measure implemented in the building or on the land on which the building is situated.



- (2) The first annual fire safety statement must be given:
  - (a) in relation to a building in respect of which the council receives a fire safety certificate within the meaning of the *Local Government (Approvals) Regulation 1993* or the *Local Government (Orders) Regulation 1993* before 1 July 1998—within 12 months after the date on which the council receives that certificate, or
  - (b) in relation to any other building—at any time before 1 July 1998.
- (3) Subsequent annual fire safety statements are to be given within 12 months after the last such certificate was given.
- (4) An annual fire safety statement is to be in or to the effect of Form 1.
- (5) A copy of the statement is to be given to the Commissioner of New South Wales Fire Brigades, and a further copy is to be prominently displayed in the building in a location specified by the council.

**61 Contents of statement: buildings the subject of an approval or order after 30 June 1997**

- (1) This clause applies to a building in respect of which a building approval is granted, or a fire safety order is given, on or after 1 July 1997.
- (2) The annual fire safety statement for such a building is to state:
  - (a) that the essential fire or other safety measure:
    - (i) has been assessed by a person (chosen by the owner of the building) who is properly qualified to do so, and
    - (ii) at the date of the assessment, was found to be capable of performing to a standard not less than the relevant standard prescribed by clause 6E, and

**1997 No 267**

Local Government Regulations Amendment (Building Code of Australia) Regulation 1997

Schedule 3 Amendment of Local Government (General) Regulation 1993

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- (b) that a person (chosen by the owner of the building) who is properly qualified to do so (whether the person referred to in paragraph (a) or another person) has inspected the building and has certified that, at the date of the inspection, the condition of the building does not disclose any grounds for a prosecution under section 654, 655, 656 or 657 of the Act.
- (3) In this clause, ~~assess~~ includes inspect and verify and, in relation to a new item of equipment, test.

**6J Contents of statement: other buildings**

- (1) This clause applies to a building other than a building in respect of which a building approval is granted, or a fire safety order is given, on or after 1 July 1997.
- (2) The annual fire safety statement for such a building is to state:
  - (a) that the essential fire or other safety measure:
    - (i) has been assessed by a person (chosen by the owner of the building) who is properly qualified to do so, and
    - (ii) as at the date of the assessment, was found to be capable of performing to a standard not less than that to which the measure was originally required to be designed and implemented, and
  - (b) that a person (chosen by the owner of the building) who is properly qualified to do so (whether the person referred to in paragraph (a) or another person) has inspected the building and has certified that, as at the date of the inspection, the condition of the building does not disclose any grounds for a prosecution under section 654, 655, 656 or 657 of the Act.
- (3) In this clause, ~~assess~~ includes inspect and verify and, in relation to a new item of equipment, test.

**[4] Clause 10**

Insert after clause 9:

**10 Operation of certain doors relating to fire exits**

- (1) For the purposes of section 657 (b) of the Act, a door referred to in that paragraph must be capable of being operated:
  - (a) in accordance with the requirements of the approval or order pursuant to which the door was installed, or
  - (b) if any order in respect of the door is or has been given subsequent to its installation—in accordance with the requirements of the most recent of those orders.
- (2) In this clause, *approval* and *order*, respectively, include an approval and an order that is, because of clause 14 or clause 18 of Schedule 7 to the Act, taken to be an approval or an order given under the Act.

**[5] Schedules 2 and 3**

Insert after Schedule 1:

**Schedule 2 Forms**

(Clause 3)

**Form 1 Annual fire safety statement**

Local Government Act 1993

Local Government (General) Regulation 1993

Application/Order reference .....

Council .....

Address of building .....

Owner's name .....

Owner's address.....

**1997 No 267**

Local Government Regulations Amendment (Building Code of Australia) Regulation 1997

Schedule 3 Amendment of Local Government (General) Regulation 1993

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List of essential fire or other safety measures:

<b>Measure</b>	<b>Standard of Performance</b>
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I, ....., of .....,

certify that:

- (a) each of the essential fire or other safety measures listed above has been assessed by a person chosen by me, and
- (b) the building has been inspected by a person chosen by me who, for the purposes of that inspection, had regard to the provisions of sections 654-657, inclusive, of the Act, and
- (c) the persons concerned were, to the best of my knowledge and belief, properly qualified to conduct the relevant assessments, and
- (d) based on the results of the assessments undertaken:

- (i) each of the measures listed above:
  - is capable of functioning at a standard of performance not less than that required by the schedule attached to the Council's approval or in the Council's order (as the case requires), and

\*\* was found to have been designed and installed, and to be capable of performing, to a standard not less than that to which the measure was originally required to be designed and installed, and

\* delete if neither an approval under item 1 or 7 of Part A of the Table to section 68 of the Act has been granted, nor an order under item 4 of the Table to section 124 of the Act has been given, on or after 1 July 1997 in respect of the building

\*\* delete if an approval under item 1 or 7 of Part A of the Table to section 68 of the Act has been granted, or an order under item 4 of the Table to section 124 of the Act has been given, on or after 1 July 1997 in respect of the building

(ii) in the case of the matters referred to in sections 654-657, inclusive, of the Act, the condition of the building does not disclose any grounds for a prosecution under any of those sections, and

(e) the information contained in this Certificate is, to the best of my knowledge and belief, true and accurate.

Date..... Signed.....  
(Owner/agent)

**Schedule 3 Essential fire or other safety measures**

(Clause 6B)

The installation, implementation and maintenance of any of the following items of equipment, forms of construction and fire safety strategies:

- access panels, doors and hoppers to fire resisting shafts
- automatic fail safe devices
- automatic fire detection and alarm systems
- automatic fire suppression systems
- emergency lighting

**1997 No 267**

Local Government Regulations Amendment (Building Code of Australia) Regulation 1997

Schedule 3 Amendment of Local Government (General) Regulation 1993

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- emergency lifts
- emergency warning and intercommunication systems
- exit signs
- fire control centres and rooms
- fire dampers
- fire doors
- fire hydrant systems
- fire seals protecting openings in fire resisting components of the building
- fire shutters
- fire windows
- hose reel systems
- lightweight construction
- mechanical air handling systems
- perimeter vehicle access for emergency vehicles
- portable fire extinguishers
- safety curtains in proscenium openings
- smoke and heat vents
- smoke dampers
- smoke detectors and heat detectors
- smoke doors
- solid core doors
- stand-by power systems
- wall wetting sprinkler and drencher systems
- warning and operational signs

**Schedule 4 Amendment of Local Government (Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 1995**

(Clause 6)

**[1] Clause 73 Site boundary arrangements**

Omit “fire resistance and sound transmission requirements of the *Building Code of Australia* relating to class 1 buildings” from clause 73 (5).

Insert instead “fire safety and sound insulation provisions relating to class 1 buildings contained in Section 3 of Volume Two of the *Building Code of Australia*.”.

**[2] Clause 74 Garages**

Omit “of the *Building Code of Australia* relating to Class 1 buildings” from clause 74 (2) (a).

Insert instead “relating to class 1 buildings contained in Section 3 of Volume Two of the *Building Code of Australia* ”.

**[3] Clause 74 (2) (b)**

Omit “of the *Building Code of Australia* relating to Class 10a buildings”.

Insert instead “relating to class 10 buildings contained in Section 3 of Volume Two of the *Building Code of Australia* ”.

**[4] Clause 89 Fire and smoke alarms**

Omit “NSW Clause E1.7” from clause 89 (1).

Insert instead “Part 3.7.2 of Volume Two”.

## 1997 No 267

Local Government Regulations Amendment (Building Code of Australia) Regulation 1997

Schedule 5 Amendment of Local Government (Manufactured Homes Estates and  
Manufactured Homes) Regulation 1995

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### **Schedule 5 Amendment of Local Government (Manufactured Homes Estates and Manufactured Homes) Regulation 1995**

(Clause 7)

#### **[1] Clause 45 Site boundary arrangements**

Omit “fire resistance and sound transmission requirements of the *Building Code of Australia* relating to class 1 buildings” from clause 45 (3).

Insert instead “fire safety and sound insulation provisions relating to class 1 buildings contained in Section 3 of Volume Two of the *Building Code of Australia*.”.

#### **[2] Clause 46 Garages**

Omit “of the *Building Code of Australia* relating to Class 1 buildings” from clause 46 (2) (a).

Insert instead “relating to class 1 buildings contained in Section 3 of Volume Two of the *Building Code of Australia*”,

#### **[3] Clause 46 (2) (b)**

Omit “of the *Building Code of Australia* relating to Class 10a buildings”.

Insert instead “relating to class 10 buildings contained in Section 3 of Volume Two of the *Building Code of Australia*”.

#### **[4] Clause 61 Fire and smoke alarms**

Omit “NSW Clause E1.7” from clause 61 (1).

Insert instead “Part 3.7.2 of Volume Two”.



Local Government Regulations Amendment (Building Code of Australia) Regulation 1997

Amendment of Local Government (Water, Sewerage and Drainage) Regulation 1993 Schedule 6

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**Schedule 6    Amendment of Local Government  
(Water, Sewerage and Drainage)  
Regulation 1993**

(Clause 8)

**[1]    Clause 48A Requirements as to water closet suites**

Omit “*Australian Building Code*” from clause 48A (2) (b).  
Insert instead “*Building Code of Australia*”.

**[2]    Dictionary**

Omit the definition of *Australian Building Code*.  
Insert instead:

*Building Code of Australia* has the same meaning as it  
has in the *Local Government (Approvals) Regulation  
1993*.

**1997 No 267**

Local Government Regulations Amendment (Building Code of Australia) Regulation 1997

Schedule 7      Amendment of Local Government (Savings and Transitional) Regulation  
1993

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**Schedule 7      Amendment of Local Government  
(Savings and Transitional) Regulation  
1993**

(Clause 9)

**[ 1 ]      Clause 5 Preservation of records**

Insert after clause 5 (1) (m):

- (m1) details of approved alternative solutions relating to building applications together with details of the assessment methods used to establish compliance with the relevant performance requirements,

**[2]      Clause 5 (6)**

Insert after clause 5 (5):

- (6) In subclause (1) (m1), *alternative solutions, assessment methods* and *performance requirements* have the same meanings as they have in the document known as the *Building Code of Australia* consisting of Volume One (subtitled *Class 2 to Class 9 Buildings*) and Volume Two (subtitled *Class 1 and Class 10 Buildings Housing Provisions*) published on behalf of the Australian Building Codes Board in October 1996, and incorporating:
  - (a) the amendments to the Code released by the Australian Building Codes Board before 1 July 1997, and
  - (b) the New South Wales variations set out in the relevant Appendix to Volume One, and incorporated in Volume Two, of the Code, together with any amendments to those variations made before 1 July 1997.

**[3] Part 10A:**

Insert after Part 10:

**Part 10A Provisions arising out of 1996 edition of Building Code of Australia**

**49A Definitions**

In this Part:

**BCA 1990** means the 1990 edition of the document entitled *Building Code of Australia* published by the Australian Building Codes Board, and incorporating New South Wales variations set out in the relevant appendix to that Code, as in force on 17 July 1995.

**BCA 1996** means the document known as consisting of Volume One (subtitled *Class 2 to Class 9 Buildings*) and Volume Two (subtitled *Class 1 and Class 10 Buildings Housing Provisions*) published on behalf of the Australian Building Codes Board in October 1996, and incorporating:

- (a) the amendments to the Code released by the Australian Building Codes Board before 1 July 1997, and
- (b) the New South Wales variations set out in the relevant Appendix to Volume One, and incorporated in Volume Two, of the Code, together with any amendments to those variations made before 1 July 1997.

**49B Compliance with BCA 1990 taken to be compliance with BCA 1996**

Despite the amendments made to the *Local Government (Approvals) Regulation 1993* by the *Local Government Regulations Amendment (Building Code of Australia) Regulation 1997*:

- (a) the plans and specifications accompanying an application for approval to erect a building, being an application that is made on or before 30 September 1997, are taken to comply with

**1997 No 267**

Local Government Regulations Amendment (Building Code of Australia) Regulation 1997

Schedule 7      Amendment of Local Government (Savings and Transitional) Regulation  
1993

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Volume Two of the BCA 1996 if those plans and specifications would comply with (or satisfy the requirements of) the BCA 1990, and

- (b) for the purposes of paragraph (a), if the provisions of the BCA 1990 would be complied with in the erection of the proposed building, the provisions of Volume Two of the BCA 1996 are taken to be complied with in the erection of the proposed building.