



New South Wales

# Clean Air (Domestic Solid Fuel Heaters) Regulation 1997

under the  
Clean Air Act 1961

His Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Clean Air Act 1961*.

PAM ALLAN, MP.,  
Minister for the Environment

## Explanatory note

The object of this Regulation is to repeal and remake, with no changes in substance, those provisions of the *Clean Air Regulations 1964* that relate to domestic solid fuel heaters. The new Regulation deals with the following matters:

- (a) the sale of domestic solid fuel heaters (Part 2),
- (b) certificates of compliance for domestic solid fuel heaters (Part 3),
- (c) certificates of exemption for domestic solid fuel heaters (Part 4),
- (d) other matters of a minor, consequential or ancillary nature (Parts 1 and 5).

This Regulation is made under the *Clean Air Act 1961*, including section 34 (the general regulation making power).

This Regulation is made in connection with the staged repeal of subordinate legislation under the *Subordinate Legislation Act 1989*.

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## 1997 No 363

Clause 1 Clean Air (Domestic Solid Fuel Heaters) Regulation 1997

Part 1 Preliminary

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# Clean Air (Domestic Solid Fuel Heaters) Regulation 1997

## Part 1 Preliminary

### 1 Name of Regulation

This Regulation is the *Clean Air (Domestic Solid Fuel Heaters) Regulation 1997*.

### 2 Commencement

This Regulation commences on 1 August 1997.

### 3 Definitions

In this Regulation:

***accredited testing laboratory*** means a laboratory accredited by the National Association of Testing Authorities (or by an equivalent organisation in a country other than Australia) as being capable of conducting the test for determining flue gas emissions specified in AS 4013:1992.

***approved*** means approved by the Authority.

***AS 4012:1992*** means the document entitled “AS 4012/NZS 7402: 1992 *Domestic solid fuel burning appliances—method for determination of power output and efficiency*”, published by Standards Australia and as in force at the commencement of this Regulation.

***AS 4013:1992*** means the document entitled “AS 4013/NZS 7403; 1992 *Domestic solid fuel burning appliances—method for determination of flue gas emission*”, published by Standards Australia and as in force at the commencement of this Regulation.

***AS 4014:1992*** means the document entitled “AS 4014/NZS 7404: 1992 *Domestic solid fuel burning appliances—test fuels*”, published by Standards Australia and as in force at the commencement of this Regulation.

*AS 9000:1994* means the document entitled “AS/NZS ISO 9000:1994 *Quality Management and Quality Assurance Standards*”, published by Standards Australia and as in force at the commencement of this Regulation.

*Authority* means the Environment Protection Authority.

*catalytic combustor* means a device installed in the gas stream of a heater to permit the secondary combustion gas to ignite at a lower temperature than it would in the absence of such a device.

*central heating appliance* has the meaning given to it in AS 4013:1992.

*certificate of compliance* means a certificate of compliance in force under Part 3.

*certificate of exemption* means a certificate in force under Part 4, being a certificate exempting all heaters in a model line from compliance with Part 3.

*heater* means any solid fuel burning appliance to which this Regulation applies, as referred to in clause 4 (1), being an appliance that is designed, manufactured or adapted for domestic use.

*model line* means a line of heaters of a particular type that are made by the same manufacturer and that are similar in design.

*sell* includes supply for sale, exhibit or offer for sale, have in possession for sale or for distribution for sale and conduct negotiations for sale.

*the Act* means the *Clean Air Act 1961*.

#### 4 Application of Regulation

- (1) This Regulation applies to any solid fuel burning appliance that is designed, manufactured or adapted for domestic use (referred to in this Regulation as a *heater*).
- (2) This Regulation applies to the wholesale and retail sale of heaters, other than heaters of the following kind:
  - (a) any masonry appliance built on site,
  - (b) any central heating appliance,

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- (c) any cooking stove appliance as defined in AS 4013:1992,
- (d) any appliance intended for use solely for heating water,
- (e) any appliance intended for use solely for distributing heat through ducts.

### **5 Notes**

The explanatory note and table of contents do not form part of this Regulation.

## Part 2 Sale of heaters

### 6 Requirement for certificates of compliance

- (1) A person must not sell a heater to any other person unless:
  - (a) the heater is marked in accordance with AS 4013:1992, and
  - (b) a certificate of compliance is in force in relation to the heater's model line, and
  - (c) in the case of a sale to a person whose business includes the wholesale or retail sale of heaters, a copy of the certificate is given to the purchaser.

Maximum penalty: 200 penalty units in the case of a corporation, or 100 penalty units in the case of an individual.

- (2) Subclause (1) (c) does not require a copy of a certificate to be given to a person to whom a copy of the certificate has previously been given.
- (3) This clause does not apply to a heater in a model line for which a certificate of exemption is in force.

### 7 Requirement for catalytic combustors to be guaranteed

A person must not sell a heater with a catalytic combustor unless:

- (a) the person provides the buyer with a warranty for the combustor against inherent defects for 2 years from the date of sale, and against disintegration for 3 years from the date of sale, and
- (b) the person provides the buyer with a manual that includes instructions on how to inspect and replace the combustor, and
- (c) the heater has built-in provision to accommodate a commercially available temperature sensor within the combustor or within 25 millimetres of the combustor surface, and
- (d) access is available to the combustor for inspection or replacement.

Maximum penalty: 200 penalty units in the case of a corporation, or 100 penalty units in the case of an individual.

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Part 2 Sale of heaters

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### 8 Requirement as to maximum smoke emission

- (1) A person must not sell a heater unless:
  - (a) for a heater that has a catalytic combustor, the heater has an average particulate emission factor of not more than 3.0 grams for each kilogram of oven dry fuel mass, or
  - (b) for a heater that does not have a catalytic combustor, the heater has an average particulate emission factor of not more than 55 grams for each kilogram of oven dry fuel mass.

Maximum penalty: 200 penalty units in the case of a corporation, or 100 penalty units in the case of an individual.

- (2) For the purposes of this clause:
  - (a) oven dry fuel mass is calculated by subtracting the mass of free moisture (M1) from the total mass of the test fuel (M2) in accordance with AS 4014:1992, and
  - (b) a heater's particulate emission factor is calculated by dividing the mass in grams of the total emission from the heater's flue during a specific burn cycle (M1) by the mass in kilograms of dry fuel used in the burn cycle (M2).



## Part 3 Certificates of compliance

### 9 Applications for certificates of compliance

- (1) A person may apply to the Authority for a certificate of compliance for a model line, but only if at least one heater in the model line has been tested by an accredited testing laboratory in accordance with AS 4013:1992.
- (2) An application:
  - (a) must be in the approved form, and
  - (b) must be accompanied by a statement that all heaters in the model line are marked in accordance with AS 4012:1992 and AS 4013:1992, and
  - (c) must be accompanied by the appropriate application fee specified in subclause (4).
- (3) When making the application, the applicant must also provide the Authority with:
  - (a) a copy of the test report under subclause (1), or
  - (b) a national certificate of compliance for solid fuel heaters issued in respect of the model line by an approved organisation.
- (4) The application fee is \$200 if a copy of the test report is provided, or \$100 if the national certificate of compliance is provided.
- (5) If a copy of the test report is provided, it must include the following:
  - (a) the date of the test and the type of test,
  - (b) the name and address of the accredited testing laboratory that tested the heater in the model line,
  - (c) the name and qualifications of the person in charge of the test,
  - (d) the emission rate of the heater,
  - (e) a statement from the person in charge of the test that:
    - (i) the heater does not have an emission rate higher than the applicable rate specified in clause 8, and
    - (ii) the applicant has provided the documentation set out in AS 4013:1992.

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Part 3              Certificates of compliance

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- (6) The applicant is required to retain the documentation set out in AS 4013:1992 for a period of 5 years from the date of the application.

### **10 Certificates of compliance**

- (1) After receiving an application for a certificate of compliance, the Authority may issue such a certificate for the model line if it is satisfied that:
- (a) at least one heater in the model line has been tested by an accredited testing laboratory in accordance with AS 4013:1992, and
  - (b) the test results indicate that heaters in the model line do not have emission rates higher than the applicable rate specified in clause 8, and
  - (c) the structural components of heaters in the model line are not likely to cause the heater to exceed the applicable emission rate, and
  - (d) the following information will be marked on the outside of heaters in the model line in a permanent and legible manner:
    - (i) the name or trade mark of the manufacturer or distributor of the heater,
    - (ii) the serial number of the heater and the description of the model line,
    - (iii) the words “complies with AS 4013:1992”,
    - (iv) specification of the correct fuel types in accordance with AS 4014:1992.
- (2) If the Authority refuses to issue a certificate of compliance, the Authority is, by notice in writing, to inform the applicant of the reasons for refusing the application.

### **11 Duration of certificates of compliance**

A certificate of compliance remains in force until it is cancelled.

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**12 New certificates of compliance where changes made to model line**

- (1) If any change is made affecting the combustion process of a heater in the model line to which a certificate of compliance relates, the certificate holder must apply to the Authority for a new certificate of compliance for the model line.

Maximum penalty: 200 penalty units in the case of a corporation, 100 penalty units in the case of an individual.

- (2) An application under subclause (1) is to be dealt with in the same way as an application under clause 9.
- (3) Alternatively, if the applicant provides the Authority with:
- (a) details of the changes that have been made to the model line, and
  - (b) written advice by an accredited testing laboratory, or by an approved testing organisation, that the changes will not result in a rate of emission from heaters in the model line that exceed the applicable rate specified in clause 8,

the Authority may (on payment of a fee of \$200) issue a new certificate of compliance in respect of the heater.

**13 Quality assurance**

- (1) The Authority may at any time require a certificate holder:
- (a) to arrange (within such time as may be specified by the Authority) for the testing by an accredited testing laboratory of any heater chosen at random by the Authority from the model line, and
  - (b) if the certificate holder uses the quality assurance program specified in AS 9000:1994, to supply the Authority with details of that program and a written statement that the model line satisfies the requirements of that program.
- (2) The certificate holder:
- (a) must comply with any such requirement, and

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Part 3 Certificates of compliance

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- (b) must provide the Authority with the results of a test conducted under subclause (1) (a) within 14 days of receipt of the test report from the testing laboratory.

Maximum penalty: 200 penalty units in the case of a corporation, or 100 penalty units in the case of an individual.

- (3) The cost of a test conducted under subclause (1) (a) is to be met by the certificate holder.

### 14 Cancellation of certificates of compliance

- (1) The Authority may at any time cancel a certificate of compliance for a model line, by written notice given to the certificate holder, if it is satisfied that:
  - (a) the test results of a heater chosen at random by the Authority under clause 13 from the model line indicate that heaters in the model line have an emission rate higher than the applicable rate specified in clause 8, or
  - (b) the information required by clause 10 (1) (d) for heaters in the model line has been altered or removed, or caused to be altered or removed, by the certificate holder, or
  - (c) a change affecting the combustion process of a heater in the model line has been made by the certificate holder and the certificate holder has failed to apply to the Authority for a new certificate of compliance.
- (2) The cancellation takes effect, in respect of the certificate holder, at the expiry of 60 days after the day on which notice of the cancellation is given to the certificate holder under subclause (1).
- (3) As soon as practicable after receiving the notice, the certificate holder must give written notice of the cancellation of the certificate to each person:
  - (a) to whom the certificate holder has sold any heaters, and
  - (b) whose business includes the wholesale or retail sale of heaters.

Maximum penalty: 200 penalty units in the case of a corporation, or 100 penalty units in the case of an individual.

- (4) The cancellation of a certificate of compliance takes effect, in respect of a person to whom a written notice is given under subclause (3), at the expiry of 60 days after the day on which the notice is given to that person.

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Part 4                Certificates of exemption

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### **Part 4            Certificates of exemption**

#### **15 Applications for certificates of exemption**

- (1) A person may apply to the Authority for a certificate exempting all heaters in a model line from the requirements of Part 3.
- (2) An application for a certificate of exemption:
  - (a) must be in the approved form, and
  - (b) must be accompanied by a fee of \$200.

#### **16 Certificates of exemption**

- (1) The Authority may issue a certificate of exemption in respect of heaters in a model line if it is satisfied that:
  - (a) none of the heaters can be submitted for testing in accordance with AS 4013:1992, or
  - (b) the test results of a heater indicate that the heaters:
    - (i) have a maximum carbon dioxide output from the combustion chamber of less than 5% by volume, or
    - (ii) have a volumetric flow rate through the combustion chamber that is too high for total smoke capture,and, in any case, is satisfied that the heaters do not have an emission rate higher than the applicable rate specified in clause 8.
- (2) If the Authority refuses to issue a certificate of exemption, the Authority is, by notice in writing, to inform the applicant of the reasons for refusing the application.

#### **17 Duration of certificates of exemption**

A certificate of exemption remains in force until it is cancelled.

#### **18 New certificates of exemption where changes made to model line**

- (1) If any change is made affecting the combustion process of a heater in the model line to which a certificate of exemption relates, the certificate holder must apply to the Authority for a new certificate of exemption for the model line.

Maximum penalty: 200 penalty units in the case of a corporation, 100 penalty units in the case of an individual.
- (2) An application under this clause is to be dealt with in the same way as an application under clause 15.

## 19 Cancellation of certificates of exemption

- (1) The Authority may cancel a certificate of exemption, at any time and for any reason, by written notice given to the certificate holder.
- (2) The cancellation takes effect, in respect of the certificate holder, at the expiry of 60 days after the day on which notice of the cancellation is given to the certificate holder under subclause (1).
- (3) As soon as practicable after receiving the notice, the certificate holder must give written notice of the cancellation of the certificate to each person:
  - (a) to whom the certificate holder has sold any heaters, and
  - (b) whose business includes the wholesale or retail sale of heaters.

Maximum penalty: 200 penalty units in the case of a corporation, or 100 penalty units in the case of an individual.

- (4) The cancellation of a certificate of exemption takes effect, in respect of a person to whom a written notice is given under subclause (3), at the expiry of 60 days after the day on which the notice is given to that person.

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Clause 20      Clean Air (Domestic Solid Fuel Heaters) Regulation 1997

Part 5          Miscellaneous

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## Part 5      Miscellaneous

### 20    False or misleading statements

A person must not, in or in relation to an application under this Regulation, make any statement that the person knows to be false or misleading in a material particular.

Maximum penalty: 200 penalty units in the case of a corporation, or 100 penalty units in the case of an individual.

### 21    Interference with heaters

- (1) A person must not alter or remove from a heater the information required by clause 10 (1) (d).
- (2) A person must not:
  - (a) alter the structure, exhaust system or inlet air system of any heater in a model line to which a certificate of compliance or certificate of exemption relates, or
  - (b) make any change affecting the combustion process of heaters in a model line unless the person is the certificate holder for the model line, or
  - (c) mark on a heater that it complies with AS 4013:1992 if the heater is not in a model line the subject of a certificate of compliance.

Maximum penalty (subclauses (1) and (2)): 200 penalty units in the case of a corporation, or 100 penalty units in the case of an individual.

- (3) This clause extends to any person who causes or permits the doing of a thing that is prohibited under this clause.
- (4) Nothing in this clause makes it an offence for a person to carry out any repair work on any heater (including repairs or alterations in accordance with a notice under section 20 of the Act).

### 22    Amendment of Clean Air Regulations 1964

The *Clean Air Regulations 1964* are amended by omitting Part 7.

- (2) Any act, matter or thing that, immediately before the omission of Part 7 of the *Clean Air Regulations 1964*, had effect under that Part continues to have effect under this Regulation.