



New South Wales

Environmental Planning and Assessment Further Amendment Regulation 1998

under the

Environmental Planning and Assessment Act 1979

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

CRAIG KNOWLES, M.P.,

Minister for Urban Affairs and Planning

Explanatory note

The object of this Regulation is to amend the *Environmental Planning and Assessment Regulation 1994* as a consequence of the enactment of the *Statute Law (Miscellaneous Provisions) Act 1998*. The amendments deal principally with matters (such as building construction and fire safety) that have formerly been dealt with by the *Local Government Act 1993* and the regulations under that Act.

This Regulation is made under the *Environmental Planning and Assessment Act 1979*, including section 157 (the general regulation-making power).

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Clause 1 Environmental Planning and Assessment Further Amendment Regulation 1998

**Environmental Planning and Assessment Further
Amendment Regulation 1998**

1 Name of Regulation

This Regulation is the *Environmental Planning and Assessment Further Amendment Regulation 1998*.

2 Commencement

This Regulation commences on the commencement of the *Environmental Planning and Assessment Amendment Regulation 1998*.

**3 Amendment of Environmental Planning and Assessment
Regulation 1994**

The *Environmental Planning and Assessment Regulation 1994* is amended as set out in Schedule 1.

4 Notes

The explanatory note does not form part of this Regulation

Schedule 1 Amendments

(Clause 3)

[1] Clause 5A Building Code of Australia

Omit " 1 January 1998" wherever occurring.
Insert instead "the prescribed date".

[2] Clause 5A (2)

Insert at the end of clause 5A:

- (2) For the purposes of this clause, the prescribed date is the date prescribed for the purposes of the definition of *Building Code of Australia* in clause 4 (1) of the *Local Government (Approvals) Regulation 1993*.

[3] Clauses 6, 7, 8, 20, 23 and 113

Omit "Secretary" wherever occurring (including the headings to the clauses).
Insert instead "Director".

[4] Clause 49 Application of Division

Omit "51A" from clause 49 (2). Insert instead "51B".

[5] Clause 50A Forwarding of submissions to concurrence authorities

Insert "79 or" after "section".

[6] Clause 75A How must an application for a complying development certificate be made?

Omit "transmission, and" from clause 75A (1) (c).
Insert instead "transmission".

[7] Clause 75A (1) (d)

Omit the paragraph.

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[8] Clause 76B

Insert after clause 76A:

76B Copyright in documents forming part of or accompanying applications for complying development certificates—applicant's indemnification

Upon an application being made under section 85A (1) of the Act for a complying development certificate, the applicant, not being entitled to copyright, is taken to have indemnified all persons using the application and any accompanying documents in accordance with the Act against any claim or action in respect of breach of copyright.

[9] Clause 79A Applications for construction certificates

Omit "transmission, and" from clause 79A (1) (c).
Insert instead "transmission".

[10] Clause 79A (1) (d)

Omit the paragraph.

[11] Clause 79J Applications for occupation certificates

Omit "transmission, and" from clause 79J (1) (c).
Insert instead "transmission".

[12] Clause 79J (1) (d)

Omit the paragraph.

[13] Clause 79Q Occupation and use of new buildings: section 109M (2) of the Act

Insert at the end of clause 79Q (before the note at the end of that clause):

- (2) A person who is prescribed for the purposes of section 115M of the Act (as referred to in section 115H (a) of the Act) in relation to Crown building work involving the erection of a new building is prescribed for the purposes of section 109M (2) (d) of the Act in relation to that building.

[14] Clause 79Q, note

Omit "This clause prescribes such a circumstance." from the note at the end of clause 79Q.

Insert instead "Subclause (1) of this clause prescribes such circumstances. Subsection (2) (d) provides for the disapplication of that section in the case of buildings erected by or on behalf of the Crown or by or on behalf of prescribed persons. Subclause (2) of this clause prescribes such persons."

[15] Clause 79R Applications for subdivision certificates

Omit "transmission, and" from clause 79R (1) (c).

Insert instead "transmission."

[16] Clause 79R (1) (d)

Omit the paragraph.

[17] Clause 80 Definitions

Omit the definition of *fire safety schedule*.

Insert instead, in alphabetical order:

annual fire safety statement means a statement referred to in clause 80GA.

critical fire safety measure means a fire safety measure that is identified in a fire safety schedule as a critical fire safety measure. being a measure that is of such a nature, or is implemented in such an environment or in such circumstances, that the measure requires periodic assessment and certification at intervals of less than 12 months.

fire exit, in relation to a building, means any exit to the building that has been provided in compliance with any requirement imposed by or under the Act or this Regulation or by or under any other law, whether or not that law is currently in force.

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fire safety schedule means a schedule issued in accordance with clause 80C or 80GF (2), and includes:

- (a) a schedule attached to a building approval in accordance with clause 22 of the *Local Government (Approvals) Regulation 1993*, and
- (b) a schedule attached to a fire safety order in accordance with clause 5D of the *Local Government (Orders) Regulation 1993*,

as those regulations were in force immediately before the commencement of the *Environmental Planning and Assessment Amendment Act 1997*.

fire safety statement means an annual fire safety statement or a supplementary fire safety statement.

fire-isolated, when used in connection with the words "stairway, passageway or ramp", means a fire-isolated stairway, fire-isolated passageway or fire-isolated ramp, as the case may be, within the meaning of the *Building Code of Australia*.

supplementary fire safety statement means a statement referred to in clause 80GC.

[18] Clause 80 (2)

Insert at the end of clause 80:

- (2) For the purposes of this Part, an essential fire safety measure is applicable to a building:
 - (a) if it is included in a fire safety schedule for the building, or
 - (b) if it is included among the essential services (within the meaning of *Ordinance No 70* under the *Local Government Act 1919*) attached to an approval or order referred to in Part 59 of that Ordinance. being an approval or order that was in force immediately before 1 July 1993, or

- (c) if it is included among the essential services (within the meaning of the *Local Government (Approvals) Regulation 1993*) attached to an approval referred to in clause 22 of that Regulation, being the latest such approval granted during the period from 1 July 1993 to 30 June 1997, or
- (d) if it is included among the essential services (within the meaning of the *Local Government (Orders) Regulation 1993*) attached to an order referred to in clause 6 (1) of that Regulation, being the latest such order given during the period from 1 July 1993 to 30 June 1997.

[19] Clause 80C Fire safety schedules

Insert after clause 80C (3) (c):

- (c1) must identify each measure that is a critical fire safety measure and the intervals (being intervals of less than 12 months) at which supplementary fire safety statements must be given to the council in respect of each such measure, and

[20] Clause 80E What is a final fire safety certificate?

Insert "or fire safety statement" after "other fire safety certificate" in clause 80E (5).

[21] Clause 80E (8)

Insert "or fire safety statement" after "later fire safety certificate" in clause 80E (8).

[22] Part 7B, Divisions 4A, 4B and 4C

Insert after Division 4 of Part 7B:

Division 4A Fire safety statements

80GA What is an annual fire safety statement?

- (1) An annual fire safety statement is a statement that certifies:
 - (a) that each essential fire safety measure specified in the statement has been assessed by a properly qualified person and was found, when it was assessed, to be capable of performing:
 - (i) in the case of an essential fire safety measure applicable by virtue of a fire safety schedule, to a standard no less than that specified in the schedule, or
 - (ii) in the case of an essential fire safety measure applicable otherwise than by virtue of a fire safety schedule, to a standard no less than that to which the measure was originally designed and implemented, and
 - (b) that a properly qualified person (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 did not disclose any grounds for a prosecution under Division 4C.
- (2) The assessment and inspection must have been carried out within the period of 3 months prior to the date on which the annual fire safety statement is issued.
- (3) The choice of person to carry out an assessment or inspection is up to the owner of the building.
- (4) The person who carries out the assessment must inspect and verify the performance of each fire safety measure being assessed.

80GB Annual fire safety statement to be given to council

- (1) Each year, the owner of a building to which an essential fire safety measure is applicable must cause the council to be given an annual fire safety statement for the building.
- (2) An annual fire safety statement for a building:
 - (a) must deal with each essential fire safety measure in the building premises. and
 - (b) must be given:
 - (i) within 12 months after the last such statement was given, or
 - (ii) if no such statement has previously been given, within 12 months after a final fire safety certificate was first issued for the building.
- (3) As soon as practicable after an annual fire safety statement is issued, the owner of the building to which it relates:
 - (a) must cause a copy of the statement (together with a copy of the current fire safety schedule) to be given to the Commissioner of New South Wales Fire Brigades, and
 - (b) must cause a further copy of the statement (together with a copy of the current fire safety schedule) to be prominently displayed in the building.
- (4) Subclause (3) (b) ceases to apply to an annual fire safety statement only when every essential fire safety measure with which it deals has become the subject of a later fire safety certificate or fire safety statement.

80GC What is a supplementary fire safety statement?

- (1) A supplementary fire safety statement is a statement that certifies that each critical fire safety measure specified in the statement has been assessed by a properly qualified

person and was found, when it was assessed, to be capable of performing to a standard not less than that required by the current fire safety schedule for the building for which the statement is issued.

- (2) The assessment must have been carried out within the period of one month prior to the date on which the supplementary fire safety statement is issued.
- (3) The choice of person to carry out the assessment is up to the owner of the building.
- (4) The person who carries out the assessment must inspect and verify the performance of each fire safety measure being assessed.

80GD Supplementary fire safety statement to be given to council

- (1) The owner of building premises in which a critical fire safety measure is implemented must cause the council to be given periodic supplementary fire safety statements for that measure.
- (2) A supplementary fire safety statement for a critical fire safety measure must be given at such intervals (being intervals of less than 12 months) as is specified in respect of that measure in the current fire safety schedule for the building.
- (3) As soon as practicable after a supplementary fire safety statement is issued, the owner of the building to which it relates:
 - (a) must cause a copy of the statement (together with a copy of the current fire safety schedule) to be given to the Commissioner of New South Wales Fire Brigades, and
 - (b) must cause a further copy of the statement (together with a copy of the current fire safety schedule) to be prominently displayed in the building.

- (4) Subclause (3) (b) ceases to apply to a supplementary fire safety statement only when every critical fire safety measure with which it deals has become the subject of a later fire safety certificate or fire safety statement.

80GE Form of fire safety statements

A fire safety statement is to be in Form 15A.

Division 4B Fire safety maintenance

80GF Essential fire safety measures to be maintained

- (1) The owner of a building to which an essential fire safety measure is applicable must not fail to maintain each essential fire safety measure in the building premises:
- (a) in the case of an essential fire safety measure applicable by virtue of a fire safety schedule, to a standard no less than that specified in the schedule, or
 - (h) in the case of an essential fire safety measure applicable otherwise than by virtue of a fire safety schedule, to a standard no less than that to which the measure was originally designed and implemented.
- (2) As soon as practicable after receiving a request in that regard from the owner of a building to which an essential fire safety measure is applicable otherwise than by virtue of a fire safety schedule, the council must provide the owner with a schedule of the essential fire safety measures applicable to the building premises.

Division 4C Miscellaneous fire safety offences

80GG Fire safety notices

- (1) If:
- (a) a building's fire exit includes any fire-isolated stairway, passageway or ramp, and

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- (b) a notice in Form 15B is not at all times displayed in a conspicuous position adjacent to a doorway providing access to, but not within, that stairway, passageway or ramp,

the occupier of the part of the premises adjacent to the stairway, passageway or ramp is guilty of an offence.

- (2) A notice in the form prescribed under the *Local Government Act 1919* or the *Local Government Act 1993* for the purposes of a provision corresponding to this clause is taken to comply with the requirements of this clause.

80GH Fire exits

If a person:

- (a) places anything that may impede the free passage of persons:
- (i) in a stairway, passageway or ramp serving as or forming part of a building's fire exit, or
 - (ii) in a path of travel leading to a building's fire exit, or
- (b) interferes with, or causes obstruction or impediment to, the operation of any fire doors providing access to a stairway, passageway or ramp serving as or forming part of a building's fire exit, or
- (c) removes, damages or otherwise interferes with a notice displayed, in accordance with clause 80GG.

the person is guilty of an offence

80GI Doors relating to fire exits

If a person:

- (a) without lawful excuse, interferes with, or causes obstruction or impediment to, the operation of any door that:
- (i) serves as or forms part of a building's fire exit, or

- (ii) is situated in a path of travel leading to a building's fire exit, or
- (b) without lawful excuse, obstructs any doorway that:
 - (i) serves as or forms part of a building's fire exit, or
 - (ii) is situated in a path of travel leading to a building's fire exit,

the person is guilty of an offence.

80GJ Paths of travel to fire exits

If the owner of a building:

- (a) fails to ensure that:
 - (i) any stairway, passageway or ramp serving as or forming part of a building's fire exit, and
 - (ii) any path of travel leading to a building's fire exit,

is kept clear of anything that may impede the free passage of persons, or

- (b) fails to ensure that the operation of any door that:
 - (i) serves as or forms part of a building's fire exit, or
 - (ii) is situated in a path of travel leading to a building's fire exit,

has not been interfered with or otherwise obstructed or impeded, except with lawful excuse, or

- (c) fails to ensure that any notice required by clause 80GG to be displayed is so displayed,

the owner is guilty of an offence.

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[23] Clause 80J Prescribed matters for inspection by NSW Fire Brigades: section 118L (1) (b) of the Act

Insert "(including, in particular, clauses 80E (7) (b), 80GB (3) (b), 80GD (3) (b), 80GF, 80GG, 80GH, 80GI and SOGJ)" after "this Part" in clause 80J (b).

[24] Clause 80K

Insert after clause 80J:

80K Offences relating to certain Crown property

No proceedings may be taken for an offence under this Part with respect to a building:

- (a) that is situated on a reserve within the meaning of Part 5 of the *Crown Lands Act 1989*, or
- (b) that is a School of Arts or Mechanics Institute, except with the consent of the Minister administering the *Local Government Act 1993* given after consultation with the Minister administering the *Crown Lands Act 1989*.

[25] Clause 81S Run-off cover

Insert "but before the end of the period for which run-off cover is provided" after "the contract's expiry date" in clause 81S (1).

[26] Part 7F

Insert after Part 7E:

Part 7F Development by the Crown

81MM Prescribed persons: section 115H

- (1) The following persons are prescribed for the purposes of sections 115I and 115L of the Act (as referred to in section 115H (a) of the Act):
 - (a) a public authority (not being a council).
 - (b) a public utility.

-
- (c) an official university within the meaning of the *Higher Education Act 1988*,
 - (d) a TAFE establishment within the meaning of the *Technical and Further Education Commission Act 1990*.
- (2) The following persons are prescribed for the purposes of section 115M of the Act (as referred to in section 115H (a) of the Act) in relation to Crown building work for which development consent is required under Part 4 of the Act:
- (a) the Luna Park Reserve Trust,
 - (b) the Sydney Light Rail Company (ACN 064 062 933),
 - (c) the Pyrmont Light Rail Company Pty Ltd (ACN 065 183 913),
 - (d) the Light Rail Construction Company Pty Ltd (ACN 067 246 897).
- (3) The following persons are prescribed for the purposes of section 115M of the Act (as referred to in section 115H (a) of the Act) in relation to Crown building work that constitutes an activity within the meaning of Part 5 of the Act:
- (a) a determining authority that is a proponent of the activity within the meaning of Part 5 of the Act.
 - (b) a company SOC. within the meaning of the *State Owned Corporations Act 1989*, that is the subject of a certificate under section 37A of that Act in respect of that activity.

81NN Technical provisions of the State's building laws

For the purposes of section 115M of the Act, all of the provisions of the *Building Code of Australia* are prescribed as technical provisions of the State's building laws.

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[27] Clause 109 What other fees and charges may be imposed by this Act?

Omit the note at the end of the clause.

[28] Clause 112A Application for building certificate

Omit clause 112A (1).

[29] Clause 115 False or misleading statements

Insert "or council" after "consent authority".

[30] Clauses 115A and 115B

Insert after clause 115:

115A Penalty notice offences: section 127A

For the purposes of section 127A of the Act:

- (a) each offence created by a provision specified in Column 1 of Schedule 4A is a prescribed offence, and
- (b) the prescribed penalty for such an offence is the amount specified in Column 3 of Schedule 4A.

115B Short descriptions

- (1) For the purposes of section 145B of the *Justices Act 1902*, the prescribed expression for an offence created by a provision specified in Column 1 of Schedule 4A is:
 - (a) the expression specified in Column 2 of that Schedule, or
 - (b) if a choice of words is indicated in that expression, the words remaining after the omission of the words irrelevant to the offence.
- (2) For the purposes of any proceedings for an offence created by a provision specified in Column 1 of Schedule 4A, the prescribed expression for the offence is taken to relate to the offence created by the provision, as the provision was in force when the offence is alleged to have been committed.

- (3) The amendment or repeal of a prescribed expression does not affect the validity of any information, complaint, summons, warrant, notice, order or other document in which the expression is used.
- (4) Subclause (3) applies to any information, complaint, summons, warrant, notice, order or other document (whether issued, given or made before or after the amendment or repeal) that relates to an offence alleged to have been committed before the amendment or repeal.

[31] Schedule 4 Section 149 certificates

Omit item 8 of Schedule 4. Insert instead:

8 Whether any application to carry out development on the land was, at the time the application for the certificate was lodged, the subject of a notice by the Minister under section 76A (7) (b) of the Act declaring the development to be State significant development.

[32] Schedule 4A

Insert after Schedule 4:

Schedule 4A Penalty notice offences

(Clauses 115A and 115B)

Offences under this Regulation

Column 1	Column 2	Column 3
Clause 80GG	occupier fails to display fire safety notice in fire-isolated stairway/passageway/ramp of fire exit	\$300.00
Clause 80GJ (c)	owner fails to display fire safety notice in fire-isolated stairway/passageway/ramp of fire exit	\$300.00

[33] Schedule 5 Forms

Omit Form 16. Insert instead:

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Form 15A

Annual/Supplementary Fire Safety Statement
under the *Environmental Planning and Assessment Act 1979*

Certificate

type of statement

annual supplementary

***annual statement**

name owner/agent
address

I _____
of _____

certify:

- (a) that each essential fire safety measure specified in this statement has been assessed by a properly qualified person and was found, when it was assessed, to be capable of performing:
 - (i) in the case of an essential fire safety measure applicable by virtue of a fire safety schedule, to a standard no less than that specified in the schedule, or
 - (ii) in the case of an essential fire safety measure applicable otherwise than by virtue of a fire safety schedule, to a standard no less than that to which the measure was originally designed and implemented, and
 - (b) that a properly qualified person (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 did not disclose any grounds for a prosecution under Division 4C of Part 7B of the *Environmental Planning and Assessment Regulation 1994*, and
 - (c) the information contained in this certificate is, to the best of my knowledge and belief, true and accurate.
- (*Delete if this does not apply)

***supplementary statement**

I _____
of _____

certify

- (a) that each critical fire safety measure specified in this statement has been assessed by a properly qualified person and was found, when it was assessed, to be capable of performing to a standard not less than that required by the current fire safety schedule for the building for which the statement is issued, and
 - (b) the information contained in this certificate is, to the best of my knowledge and belief, true and accurate.
- (*Delete if this does not apply)

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Schedule 1

identification of building

location street _____
side of street _____
nearest cross street _____
house/unit no or name _____

date of assessment

owner's details

name _____
address _____

essential/critical fire

safety measures

measure	standard of performance
a	
•	
•	
a	
a	
•	
a	

date of statement

dated this _____ day of _____ 19

signature

owner/agent

*A copy of this certificate together with the relevant fire safety schedule must be forwarded to the council and the Commissioner of the New South Wales Fire Brigades.
A copy of this certificate together with the relevant fire safety schedule must be prominently displayed in the building.*

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Form 15B

**Offence relating to
fire exits**

By virtue of the regulations under the Environmental Planning and Assessment Act 1979, it is an offence:

- (a) to place anything in this exit that may impede the free passage of persons, or
- (b) to interfere with, or cause obstruction or impediment to, the operation of the doors providing access to this exit, or
- (c) to remove, damage or otherwise interfere with this notice.

Note

The words "OFFENCE RELATING TO FIRE EXITS" should be in letters of a height of 8 mm or more. The remaining words in the notice should be in letters and figures of a height of 2.5 mm or more

Form 16

Building certificate

issued under the *Environmental Planning and Assessment Act 1979*
Section 149D

certificate

The _____ Council certifies that, in relation to the building or pan of the building identified below:

- (a) there is no matter discernible by the exercise of reasonable care and skill that would entitle the council, under the *Environmental Planning and Assessment Act 1979* or the *Local Government Act 1993*:
 - (i) to order the building to be demolished, altered, added to or rebuilt, or
 - (ii) to take proceedings for an order or injunction requiring the building to be demolished, altered, added to or rebuilt, or
 - (iii) to take proceedings in relation to any encroachment by the building onto land vested in or under the control of the council, or
- (b) there is such a matter hut, in the circumstances, the council does not propose to make any such order or take any such proceedings.

* See notes below

identification of building

location

street: _____

side of street: _____

nearest cross street: _____

house/unit no or name: _____

particulars of building

classification of building: _____

description of part (where applicable) _____

owner _____

date of inspection of building or part

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subject land

lot or portion no _____
section _____
DP/SP or estate _____
lease no and type of holding _____
(if Crown land) _____
district, town or village _____
county/parish _____

schedule

the following written information was used by Council in deciding to issue this certificate

date of certificate

dated this _____ day of _____ 19 _____

signature

General Manager

applicant

name _____
address _____

office use

fee

receipt no

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notes

This certificate operates to prevent the council:

- (a) from making an order (or taking proceedings for the making of an order or injunction) under the *Environmental Planning and Assessment Act 1979* or the *Local Government Act 1993* requiring the building to be repaired, demolished, altered, added to or rebuilt, and
- (b) from taking proceedings in relation to any encroachment by the building onto land vested in or under the control of the council,

in relation to matters existing or occurring before the date of issue of this certificate.

This certificate operates to prevent the council, for a period of 7 years from the date of issue of this certificate:

- (a) from making an order (or taking proceedings for the making of an order or injunction) under the *Environmental Planning and Assessment Act 1979* or the *Local Government Act 1993* requiring the building to be repaired, demolished, altered, added to or rebuilt, and
- (b) from taking proceedings in relation to any encroachment by the building onto land vested in or under the control of the council,

in relation to matters arising only from the deterioration of the building as a result solely of fair wear and tear.

However, this certificate does not operate to prevent the council

- (a) from making order No 6 in the Table to section 121B of the *Environmental Planning and Assessment Act 1979*, or
- (b) from taking proceedings against any person under section 125 of the *Environmental Planning and Assessment Act 1979* with respect to that person's failure:
 - (i) to obtain a development consent with respect to the erection or use of the building, or
 - (ii) to comply with the conditions of a development consent.

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[34] Dictionary

Insert in alphabetical order:

building premises, in relation to a building, means the building and the land on which it is situated.