



New South Wales

Environmental Planning and Assessment Further Amendment (Quality of Construction) Regulation 2004

under the

Environmental Planning and Assessment Act 1979

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Environmental Planning and Assessment Act 1979*. (S04/01130)

DIANE BEAMER, M.P.,

Minister Assisting the Minister for Infrastructure and Planning (Planning Administration)

Explanatory note

The object of this Regulation is to amend the *Environmental Planning and Assessment Regulation 2000* so as:

- (a) to require a certifying authority, when notifying the issue of an occupation certificate, to send the consent authority and the council a copy of each compliance certificate that he or she relied on when issuing the occupation certificate, and
- (b) to allow, until 1 July 2005, suitably qualified people who are employees of, or nominated by, principal certifying authorities (but who may not be accredited certifiers) to carry out certain inspections of class 1 or 10 buildings under the *Building Code of Australia*, subject to their not being disqualified (otherwise than by section 109ZG (1) (d) or (1A) of the *Environmental Planning and Assessment Act 1979*) by the conflict of interest provisions in that section that apply to accredited certifiers, and
- (c) to require records to be made and kept of those inspections, and
- (d) to prescribe occasions on which critical stage inspections must be carried out on building work relating to a class 1, 5, 6, 7, 8, 9 or 10 building only if they relate to building work for which a principal certifying authority is first appointed on or after 1 July 2004, and

2004 No 456

Environmental Planning and Assessment Further Amendment (Quality of Construction)
Regulation 2004

Explanatory note

- (e) to allow inspections of building sites at the commencement of building work to be made at the same time as the next required inspection, but only if the principal certifying authority agrees, and
- (f) to make it clear that an inspection of a manufactured home or dwelling built in sections away from a site that is transported to and installed or assembled on a site is not a critical stage inspection for the purposes of the *Environmental Planning and Assessment Act 1979*, and
- (g) to allow for the possibility that certain inspections may be missed by unavoidable circumstances and consequently should not be necessary inspections in such a case, while requiring that principal certifying authorities must nevertheless be satisfied that the work that was the subject of the missed inspection was satisfactory before an occupation certificate is issued, and
- (h) to require a principal contractor or an owner builder to give at least 48 hours notice to the principal certifying authority before any inspection is required to be carried out, and
- (i) to require accreditation bodies and accredited certifiers to keep records of the number of lots that will be created by subdivisions for which subdivision certificates are issued instead of an estimate of cost, and
- (j) to require a "Section 149 Certificate" issued on or after 9 July 2004 to state whether the land to which it relates is wholly or partly bush fire prone land, or is not bush fire prone land, and
- (k) to increase fees for building certificate applications made on or after 1 August 2004, and
- (l) to authorise a consent authority or council to impose a fee of not more than \$30 for lodging a complying development certificate, construction certificate, occupation certificate or subdivision certificate with the consent authority or council on or after 1 August 2004.

The amendments will have effect on and from 9 July 2004, except where specified otherwise above.

This Regulation is made under the *Environmental Planning and Assessment Act 1979*, including sections 80 (11), 81A (5), 105 (1) (n1) and (4), 109E (3) (d) and (4), 109Q and 157 (the general regulation-making power).

Environmental Planning and Assessment Further Amendment (Quality of Construction) Regulation 2004

under the

Environmental Planning and Assessment Act 1979

1 Name of Regulation

This Regulation is the *Environmental Planning and Assessment Further Amendment (Quality of Construction) Regulation 2004*.

2 Commencement

- (1) This Regulation commences on 9 July 2004, except as provided by subclause (2).
- (2) Schedule 2 (Amendments relating to fees) commences on 1 August 2004.

3 Amendment of Environmental Planning and Assessment Regulation 2000

The *Environmental Planning and Assessment Regulation 2000* is amended as set out in Schedules 1 and 2.

2004 No 456

Environmental Planning and Assessment Further Amendment (Quality of Construction) Regulation 2004

Schedule 1

Miscellaneous amendments

Schedule 1 Miscellaneous amendments

(Clause 3)

[1] Clause 138 Compliance certificates

Omit clause 138 (3). Insert instead:

- (3) A copy of each compliance certificate relied on in issuing an occupation certificate must be forwarded to the consent authority and the council when a certifying authority notifies them of the issue of an occupation certificate.

[2] Clause 151 Procedure for determining application for occupation certificate

Insert after clause 151 (2) (c):

- (d) a copy of the record required to be made of each of the following:
 - (i) all critical stage inspections and any other inspections carried out because they were required by the principal certifying authority under section 109E (3) (d) of the Act,
 - (ii) any inspection carried out under clause 162A (4A) (a),
 - (iii) any missed inspection to which clause 162C applies,
- (e) a copy of any compliance certificate and of any other documentary evidence, whether or not of a kind referred to in Part A2, clause A2.2, of the *Building Code of Australia*, relied on in issuing the occupation certificate.

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

Omit “the development site must be inspected on and after 1 July 2004” wherever occurring in clause 162A (4) and (6).

Insert instead “the occasions on which building work for which a principal certifying authority is first appointed on or after 1 July 2004 must be inspected are”.

[4] Clause 162A (4A)

Insert after clause 162A (4):

- (4A) However, in the case of a class 1 or 10 building, an inspection on an occasion described in subclause (4) (a)–(f) that occurs before 1 July 2005 is not prescribed for the purposes of section 109E (3) (d) of the Act if:
- (a) the inspection is carried out by a person considered by the principal certifying authority to be suitably qualified to carry out the inspection (but who is not necessarily an accredited certifier) and employed, or nominated for the purpose of carrying out the inspection, by the principal certifying authority, and
 - (b) the person would not be disqualified by section 109ZG of the Act (except by subsection (1) (d) or (1A) of that section) from issuing a Part 4A certificate in relation to any aspect of the development concerned.
 - (c) the person makes a record of each inspection carried out by him or her, and provides a copy of that record to the principal certifying authority, as required by clause 162B for a critical stage inspection or any other inspection required by the principal certifying authority.

[5] Clause 162A (5)

Omit “the development site must be inspected”.

Insert instead “the occasions on which building work must be inspected are”.

[6] Clause 162A (7)

Insert after clause 162A (6):

- (7) Any inspection required by this clause to be carried out at the commencement of building work may be carried out at the same time as the earlier of the next occasion prescribed by subclause (4) (b), (5) (b) or (6) (b) for an inspection of a building of the class concerned or the next inspection (if any) required by the principal certifying authority under section 109E (3) (d) of the Act, but only if the principal certifying authority agrees.

2004 No 456

Environmental Planning and Assessment Further Amendment (Quality of Construction) Regulation 2004

Schedule 1

Miscellaneous amendments

[7] Clause 162B Record of inspections conducted under section 109E (3)

Insert “and any other inspection carried out because it was required by the principal certifying authority under section 109E (3) (d) of the Act” after “critical stage inspection” in clause 162B (1).

[8] Clause 162A (7)

Insert after clause 162A (6):

- (7) This clause does not prescribe any occasion on which a manufactured home or dwelling built off the site in sections and transported to the site for assembly is required to be inspected.

[9] Clause 162C

Insert after clause 162B:

162C Progress inspection unavoidably missed

- (1) If the circumstances described in subclause (2) apply:
 - (a) an inspection, other than a final inspection, that would be prescribed for the purposes of section 109E (3) (d) of the Act in the absence of this clause, is not prescribed for the purposes of that paragraph, and
 - (b) an inspection that is not prescribed for the purposes of that paragraph, but is required to be carried out by the principal certifying authority under that paragraph, need not be carried out.
- (2) The circumstances are:
 - (a) the inspection was missed because of circumstances that the principal certifying authority considers were unavoidable, and
 - (b) the principal certifying authority is satisfied that the work that would have been the subject of the missed inspection was satisfactory, and
 - (c) the principal certifying authority, as soon as practicable after becoming aware of the circumstances that caused the inspection to be missed, makes a record in accordance with subclause (3).

-
- (3) The record of a missed inspection must include the following:
- (a) a description of the development to which the record relates and of the class of the building concerned,
 - (b) the address and land title particulars (such as the Lot and DP numbers) of the property concerned,
 - (c) the registered number of the development consent and the construction certificate or of the complying development certificate,
 - (d) the name and accreditation number of the principal certifying authority,
 - (e) the name, address and telephone number of the principal contractor or owner builder and, if that person is required to be the holder of a licence or permit, the number of that licence or permit,
 - (f) particulars of the inspection that was missed and of the circumstances that the principal certifying authority considers were unavoidable that caused it to be missed,
 - (g) a statement that the principal certifying authority is satisfied that the work that would have been the subject of the missed inspection was satisfactory,
 - (h) the documentary evidence that was relied on to satisfy the principal certifying authority that the work that would have been the subject of the missed inspection was satisfactory, including (but not limited to) documentary evidence of a kind referred to in Part A2, clause A2.2, of the *Building Code of Australia*.
- (4) As soon as practicable after a person who is not the principal certifying authority becomes aware that an inspection described in subclause (1) that was required to be carried out by him or her has been missed, he or she must inform the principal certifying authority of that fact and of the circumstances causing the inspection to be missed.
- (5) As soon as practicable after becoming aware that an inspection, other than a final inspection, has been missed, the principal certifying authority must notify that fact to:
- (a) the person by whom the principal certifying authority was appointed, and

2004 No 456

Environmental Planning and Assessment Further Amendment (Quality of Construction) Regulation 2004

Schedule 1

Miscellaneous amendments

(b) in the case of work for which a principal contractor is required to be appointed, the principal contractor or, in the case of work being done by an owner builder, the owner builder,

and must send a copy of the record made under this clause to the accreditation body that accredited, and the person who appointed, the principal certifying authority.

(6) In this clause, *final inspection* means an inspection described in clause 162A (4) (g), (5) (d) or (6) (c).

[10] Clause 163 Notice to allow inspections

Omit “building work is commenced at the site if a critical stage inspection is required before the commencement of the work”.

Insert instead “each required inspection needs to be carried out”.

[11] Clause 200 Accreditation bodies’ register

Omit clause 200 (2) (h) (iv). Insert instead:

(iv) except in the case of a subdivision certificate, the person’s estimate of the cost of each project, and

(v) in the case of a subdivision certificate, the number of lots that will be created by the subdivision.

[12] Clause 201 Other documents to be kept by accreditation bodies

Insert “and records, and all copies of notices and records,” after “all notices” in clause 201 (1) (b).

[13] Clause 205 Record keeping by accredited certifiers

Omit clause 205 (1) (f) (iv). Insert instead:

(iv) except in the case of a subdivision certificate, the person’s estimate of the cost of each project, and

(v) in the case of a subdivision certificate, the number of lots that will be created by the subdivision,

[14] Schedule 4 Planning certificates

Omit clause 11. Insert instead:

11 Bush fire prone land

If any of the land is bush fire prone land (as defined in the Act), a statement that all or, as the case may be, some of the land is bush fire prone land.

If none of the land is bush fire prone land, a statement to that effect.

2004 No 456

Environmental Planning and Assessment Further Amendment (Quality of Construction) Regulation 2004

Schedule 2 Amendments relating to fees

Schedule 2 Amendments relating to fees

(Clause 3)

[1] Clause 260 What is the fee for a building certificate?

Omit "\$70" wherever occurring in clause 260 (1) (a) and (c) and the Table to the clause.

Insert instead "\$210".

[2] Clause 260 (2)

Omit "\$25". Insert instead "\$75".

[3] Clause 260, Table

Omit "14 cents". Insert instead "42 cents".

[4] Clause 260, Table

Omit "\$322". Insert instead "\$966".

[5] Clause 260, Table

Omit "2.1 cents". Insert instead "6.3 cents".

[6] Clause 263 What other fees may be imposed?

Insert at the end of clause 263:

- (2) A consent authority or council may impose a fee of not more than \$30 for the lodging with it of any of the following certificates:
 - (a) a complying development certificate,
 - (b) a Part 4A certificate, if it is:
 - (i) a construction certificate, or
 - (ii) an occupation certificate, or
 - (iii) a subdivision certificate.

BY AUTHORITY