



New South Wales

# Environmental Planning and Assessment Amendment (Inspections and Penalty Notices) Regulation 2009

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*.

KRISTINA KENEALLY, M.P.,  
Minister for Planning

## Explanatory note

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

- (a) to prescribe conditions of development consents dealing with the obligations of persons having the benefit of those consents in relation to proposed development involving certain excavation that affects adjoining premises, and
- (b) to require conditions to be imposed on complying development certificates dealing with the obligations of persons having the benefit of those certificates in relation to proposed development involving certain excavation that affects adjoining premises, and
- (c) to require records to be made of certain inspections carried out by certifying authorities, and
- (d) to prescribe time frames within which copies of certain records and other documents relating to inspections and the determination of applications under the *Environmental Planning and Assessment Act 1979* are to be provided to specified bodies, and
- (e) to provide for the issue of penalty notices in respect of specified offences, and
- (f) to limit the authority of councils and persons appointed by councils to issue penalty notices in respect of certain offences, and
- (g) to prescribe further savings and transitional provisions consequent on the enactment of the *Environmental Planning and Assessment Amendment Act 2008*.

## **2009 No 39**

Environmental Planning and Assessment Amendment (Inspections and Penalty Notices)  
Regulation 2009

Explanatory note

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This Regulation is made under the *Environmental Planning and Assessment Act 1979*, including sections 81A (5), 105, 109E, 109Q, 127A and 157 (the general regulation-making power) and clause 1 of Schedule 6.

## **Environmental Planning and Assessment Amendment (Inspections and Penalty Notices) Regulation 2009**

under the

Environmental Planning and Assessment Act 1979

### **1 Name of Regulation**

This Regulation is the *Environmental Planning and Assessment  
Amendment (Inspections and Penalty Notices) Regulation 2009*.

### **2 Commencement**

This Regulation commences on 2 March 2009.

## **2009 No 39**

Environmental Planning and Assessment Amendment (Inspections and Penalty Notices) Regulation 2009

Schedule 1 Amendment of Environmental Planning and Assessment Regulation 2000

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## **Schedule 1 Amendment of Environmental Planning and Assessment Regulation 2000**

### **[1] Clause 98E**

Insert after clause 98D:

#### **98E Condition relating to shoring and adequacy of adjoining property**

- (1) For the purposes of section 80A (11) of the Act, it is a prescribed condition of development consent that if the development involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
  - (a) protect and support the adjoining premises from possible damage from the excavation, and
  - (b) where necessary, underpin the adjoining premises to prevent any such damage.
- (2) The condition referred to in subclause (1) does not apply if the person having the benefit of the development consent owns the adjoining land or the owner of the adjoining land has given consent in writing to that condition not applying.

### **[2] Clause 129C**

Insert after clause 129B:

#### **129C Record of site inspections**

- (1) A council or accredited certifier must make a record of each inspection carried out by the council or accredited certifier for the purposes of clause 129B.
- (2) Any council or accredited certifier who is required to make such a record but is not the certifying authority in relation to the issue of the complying development certificate concerned must, within 2 days after the carrying out of the inspection, provide a copy of the record to the certifying authority.
- (3) The record must include the following:
  - (a) the date of the application for the complying development certificate,
  - (b) the address of the property at which the inspection was carried out,
  - (c) the type of inspection,

- (d) the date on which the inspection was carried out,
- (e) if the inspection was carried out by a council, the name of the council and the identity and signature of the individual who carried out the inspection on behalf of the council,
- (f) if the inspection was carried out by an accredited certifier, the identity of the accredited certifier, including, in a case where the accredited certifier is an accredited body corporate, the identity of the individual who carried out the inspection on behalf of the body corporate,
- (g) if the inspection was carried out by an accredited certifier, the accreditation number of the accredited certifier, including, in a case where the accredited certifier is an accredited body corporate, the accreditation number of the individual who carried out the inspection on behalf of the body corporate,
- (h) details of the current fire safety measures in the existing buildings on the site that will be affected by the proposed development concerned,
- (i) details as to whether or not the plans and specifications accompanying the application for the complying development certificate adequately and accurately depict the existing site conditions,
- (j) details of any features of the site, or of any building on the site, that would result in the proposed development the subject of the application for the complying development certificate:
  - (i) not being complying development, or
  - (ii) not complying with the *Building Code of Australia*.

**[3] Clause 130 Procedure for determining application for complying development certificate**

Insert at the end of clause 130 (4) (c):

, and

- (d) the record of any inspection made for the purposes of clause 129B in relation to the issue of the complying development certificate unless the inspection was carried out by the council.

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### [4] Clause 136H

Insert after clause 136G:

#### **136H Condition relating to shoring and adequacy of adjoining property**

- (1) A complying development certificate for development must be issued subject to a condition that if the development involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the certificate must at the person's own expense:
  - (a) protect and support the adjoining premises from possible damage from the excavation, and
  - (b) where necessary, underpin the adjoining premises to prevent any such damage.
- (2) The condition referred to in subclause (1) does not apply if the person having the benefit of the complying development certificate owns the adjoining land or the owner of the adjoining land has given consent in writing to that condition not applying.

### [5] Clause 142 Procedure for determining application for construction certificate

Insert at the end of clause 142 (2) (e):

, and

- (f) the record of any inspection made for the purposes of clause 143B in relation to the issue of the construction certificate.

### [6] Clause 142 (2A)

Insert after clause 142 (2):

- (2A) A copy of a record of inspection referred to in subclause (2) (f) need not be given to a consent authority or council that carried out the inspection.

### [7] Clause 143C

Insert after clause 143B:

#### **143C Record of site inspections**

- (1) A council, consent authority or accredited certifier must make a record of each inspection carried out by the council, consent authority or accredited certifier for the purposes of clause 143B.
- (2) Any council, consent authority or accredited certifier who is required to make such a record but is not the certifying authority

in relation to the issue of the construction certificate concerned must, within 2 days after the carrying out of the inspection, provide a copy of the record to the certifying authority.

- (3) The record must include the following:
- (a) the registered number of the relevant development application,
  - (b) the address of the property at which the inspection was carried out,
  - (c) the type of inspection,
  - (d) the date on which the inspection was carried out,
  - (e) if the inspection was carried out by a council, the name of the council and the identity and signature of the individual who carried out the inspection on behalf of the council,
  - (f) if the inspection was carried out by an accredited certifier, the identity of the accredited certifier, including, in a case where the accredited certifier is an accredited body corporate, the identity of the individual who carried out the inspection on behalf of the body corporate,
  - (g) if the inspection was carried out by an accredited certifier, the accreditation number of the accredited certifier, including, in a case where the accredited certifier is an accredited body corporate, the accreditation number of the individual who carried out the inspection on behalf of the body corporate,
  - (h) details of the current fire safety measures in the existing building the subject of the inspection,
  - (i) details as to whether or not the plans and specifications accompanying the application for the construction certificate adequately and accurately depict the condition of the existing building the subject of the inspection,
  - (j) details as to whether or not any building or subdivision work authorised by the relevant development consent has commenced on the site.

**[8] Clause 144 Referral of certain plans and specifications to New South Wales Fire Brigades**

Omit “As soon as practicable” from clause 144 (2).

Insert instead “Within 7 days”.

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

Omit clause 162A (7A) (as inserted by Schedule 4.2 [10] to the *Environmental Planning and Assessment Amendment Act 2008*).

Insert instead:

- (7A) Inspections of building work must be made on the following occasions in addition to those required by the other provisions of this clause for the building work:
  - (a) in the case of a swimming pool, after the construction of the swimming pool is completed and the barrier (if one is required under the *Swimming Pools Act 1992*) has been erected and before the pool is filled with water,
  - (b) in the case of a class 2, 3, 4, 5, 6, 7, 8 or 9 building, after excavation for, and before the placement of, any footings.

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

Omit “forthwith” from clause 162B (2).

Insert instead “, within 2 days after the record is made,”.

**[11] Clause 162C Progress inspection unavoidably missed**

Omit “As soon as practicable” from clause 162C (4).

Insert instead “Within 2 days”.

**[12] Clause 162C (5)**

Omit “As soon as practicable”. Insert instead “Within 2 days”.

**[13] Clause 266 Council to keep certain documents relating to development applications and consents**

Insert after clause 266 (1) (o):

- (p) a copy of the record of any inspection made for the purposes of clause 143B in respect of the proposed development concerned.

**[14] Clause 267 Council to keep certain documents relating to complying development certificates**

Insert after clause 267 (h):

- (i) a copy of the record of any inspection made for the purposes of clause 129B in respect of the proposed development concerned.



**[15] Clause 284 Penalty notice offences: section 127A**

Omit clause 284 (4). Insert instead:

- (4) Despite subclause (3), the persons referred to in subclause (3) (a) and (b) only are declared to be authorised persons for the purposes of section 127A of the Act for the following offences:
- (a) an offence referred to in section 125 (1) of the Act in relation to a contravention of section 85A (10A) or (11) (a), 109D (2) or (3), 109E (3) (d), 109F (1) (b), 109H (3) (a) or (b), (4) (a), (5) (a) or (b) or (6) (a), 109J (1) (a), (b), (e), (f) or (g), or (2) (a), or
  - (b) an offence referred to in section 125 (2) of the Act in relation to a contravention of clause 126 (2), 130 (3) or (4), 134 (1), (2) or (2A), 138 (1), (2) or (3), 142 (1) or (2), 143A (2), 144 (2), (5), (6) or (7), 146, 147 (1) or (2), 151 (1) or (2), 152 (3), 153 (1) or (2), 154A (2), 154B (2), 154C (1), 155 (1) or (2), 157 (5), 160 (1) or (2), 162 (1), 162B (1) or (2), 162C (4) or (5) (a) or (b) or 227A (2).

**[16] Schedule 5**

Omit the Schedule. Insert instead:

**Schedule 5 Penalty notice offences**

(Clause 284)

**Offences under the Act**

<b>Column 1</b>	<b>Column 2</b>
<b>Provision of Act</b>	<b>Penalty</b>
Section 125 (1) of the Act in relation to contravention of section 75D (1)	\$1,500 for an individual \$3,000 for a corporation
Section 125 (1) of the Act in relation to contravention of section 76A (1)	In the case of development relating to a Class 1 or Class 10 building: (a) \$750 for an individual (b) \$1,500 for a corporation In any other case: (a) \$1,500 for an individual (b) \$3,000 for a corporation

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## Schedule 1 Amendment of Environmental Planning and Assessment Regulation 2000

<b>Column 1</b>	<b>Column 2</b>
<b>Provision of Act</b>	<b>Penalty</b>
Section 125 (1) of the Act in relation to contravention of section 81A (2)	In the case of the erection of a Class 1 or Class 10 building: (a) \$750 for an individual (b) \$1,500 for a corporation In any other case: (a) \$1,500 for an individual (b) \$3,000 for a corporation
Section 125 (1) of the Act in relation to contravention of section 81A (4)	\$750 for an individual \$1,500 for a corporation
Section 125 (1) of the Act in relation to contravention of section 85A (10A)	\$750 for an individual \$1,500 for a corporation
Section 125 (1) of the Act in relation to contravention of section 85A (11) (a)	\$250 for an individual \$500 for a corporation
Section 125 (1) of the Act in relation to contravention of section 86 (1)	In the case of the erection of a Class 1 or Class 10 building: (a) \$750 for an individual (b) \$1,500 for a corporation In any other case: (a) \$1,500 for an individual (b) \$3,000 for a corporation
Section 125 (1) of the Act in relation to contravention of section 86 (2)	\$750 for an individual \$1,500 for a corporation
Section 125 (1) of the Act in relation to contravention of section 109D (2) or (3)	\$1,500 for an individual \$3,000 for a corporation
Section 125 (1) of the Act in relation to contravention of section 109E (3) (d)	\$750 for an individual \$1,500 for a corporation
Section 125 (1) of the Act in relation to contravention of section 109F (1) (b)	\$750 for an individual \$1,500 for a corporation
Section 125 (1) of the Act in relation to contravention of section 109H (3) (a) or (b), (4) (a), (5) (a) or (b) or (6) (a)	\$1,500 for an individual \$3,000 for a corporation
Section 125 (1) of the Act in relation to contravention of section 109J (1) (a), (b), (e), (f) or (g) or (2) (a)	\$1,500 for an individual \$3,000 for a corporation

<b>Column 1</b>	<b>Column 2</b>
<b>Provision of Act</b>	<b>Penalty</b>
Section 125 (1) of the Act in relation to contravention of section 109M (1)	In the case of a Class 1 or Class 10 building, \$330 In any other case: (a) \$1,500 for an individual (b) \$3,000 for a corporation
Section 125 (1) of the Act in relation to contravention of section 109N (1)	\$550
Section 125 (1) of the Act in relation to contravention of order No 1 in Table to section 121B	\$1,500 for an individual \$3,000 for a corporation
Section 125 (1) of the Act in relation to contravention of order No 2 in Table to section 121B given in relation to an unlawfully erected building	\$1,500 for an individual \$3,000 for a corporation
Section 125 (1) of the Act in relation to contravention of order No 8 in Table to section 121B	\$1,500 for an individual \$3,000 for a corporation
Section 125 (1) of the Act in relation to contravention of order No 9 in Table to section 121B	\$1,500 for an individual \$3,000 for a corporation
Section 125 (1) of the Act in relation to contravention of order No 10 in Table to section 121B	\$1,500 for an individual \$3,000 for a corporation
Section 125 (1) of the Act in relation to contravention of order No 11 in Table to section 121B	\$1,500 for an individual \$3,000 for a corporation
Section 125 (1) of the Act in relation to contravention of order No 15 in Table to section 121B	\$1,500 for an individual \$3,000 for a corporation
Section 125 (1) of the Act in relation to contravention of order No 18 in Table to section 121B	\$1,500 for an individual \$3,000 for a corporation
Section 125 (1) of the Act in relation to contravention of order No 19 in Table to section 121B	\$1,500 for an individual \$3,000 for a corporation
Section 125 (1) of the Act in relation to contravention of section 122E (3)	\$1,500 for an individual \$3,000 for a corporation

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## Environmental Planning and Assessment Amendment (Inspections and Penalty Notices) Regulation 2009

## Schedule 1 Amendment of Environmental Planning and Assessment Regulation 2000

<b>Column 1</b>	<b>Column 2</b>
<b>Provision of Act</b>	<b>Penalty</b>
Section 146A (3) of the Act in relation to contravention of clause 186A (2) or (4) of this Regulation	\$200
Section 146A (3) of the Act in relation to contravention of clause 186A (3), (5) or (6) of this Regulation	\$300
Section 146A (3) of the Act in relation to contravention of clause 186C (1) of this Regulation	\$200

**Offences under this Regulation**

<b>Column 1</b>	<b>Column 2</b>
<b>Provision of Regulation</b>	<b>Penalty</b>
Section 125 (2) of the Act in relation to contravention of clause 126 (2) of this Regulation	\$250 for an individual \$500 for a corporation
Section 125 (2) of the Act in relation to contravention of clause 130 (3) or (4) of this Regulation	\$750 for an individual \$1,500 for a corporation
Section 125 (2) of the Act in relation to contravention of clause 134 (1) or (2A) of this Regulation	\$750 for an individual \$1,500 for a corporation
Section 125 (2) of the Act in relation to contravention of clause 134 (2) of this Regulation	\$1,500 for an individual \$3,000 for a corporation
Section 125 (2) of the Act in relation to contravention of clause 138 (1), (2) or (3) of this Regulation	\$750 for an individual \$1,500 for a corporation
Section 125 (2) of the Act in relation to contravention of clause 142 (1) or (2) of this Regulation	\$750 for an individual \$1,500 for a corporation
Section 125 (2) of the Act in relation to contravention of clause 143A (2) of this Regulation	\$1,500 for an individual \$3,000 for a corporation
Section 125 (2) of the Act in relation to contravention of clause 144 (2), (5), (6) or (7) of this Regulation	\$1,500 for an individual \$3,000 for a corporation

<b>Column 1</b>	<b>Column 2</b>
<b>Provision of Regulation</b>	<b>Penalty</b>
Section 125 (2) of the Act in relation to contravention of clause 146 of this Regulation	\$750 for an individual \$1,500 for a corporation
Section 125 (2) of the Act in relation to contravention of clause 147 (1) of this Regulation	\$750 for an individual \$1,500 for a corporation
Section 125 (2) of the Act in relation to contravention of clause 147 (2) of this Regulation	\$1,500 for an individual \$3,000 for a corporation
Section 125 (2) of the Act in relation to contravention of clause 151 (1) or (2) of this Regulation	\$750 for an individual \$1,500 for a corporation
Section 125 (2) of the Act in relation to contravention of clause 152 (3) of this Regulation	\$750 for an individual \$1,500 for a corporation
Section 125 (2) of the Act in relation to contravention of clause 153 (1) or (2) of this Regulation	\$1,500 for an individual \$3,000 for a corporation
Section 125 (2) of the Act in relation to contravention of clause 154A (2) of this Regulation	\$750 for an individual \$1,500 for a corporation
Section 125 (2) of the Act in relation to contravention of clause 154B (2) of this Regulation	\$750 for an individual \$1,500 for a corporation
Section 125 (2) of the Act in relation to contravention of clause 154C (1) of this Regulation	\$250 for an individual \$500 for a corporation
Section 125 (2) of the Act in relation to contravention of clause 155 (1) of this Regulation	\$750 for an individual \$1,500 for a corporation
Section 125 (2) of the Act in relation to contravention of clause 155 (2) of this Regulation	\$1,500 for an individual \$3,000 for a corporation
Section 125 (2) of the Act in relation to contravention of clause 157 (5) of this Regulation	\$250 for an individual \$500 for a corporation
Section 125 (2) of the Act in relation to contravention of clause 160 (1) or (2) of this Regulation	\$750 for an individual \$1,500 for a corporation

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## Environmental Planning and Assessment Amendment (Inspections and Penalty Notices) Regulation 2009

## Schedule 1 Amendment of Environmental Planning and Assessment Regulation 2000

<b>Column 1</b>	<b>Column 2</b>
<b>Provision of Regulation</b>	<b>Penalty</b>
Section 125 (2) of the Act in relation to contravention of clause 162 (1) of this Regulation	\$750 for an individual \$1,500 for a corporation
Section 125 (2) of the Act in relation to contravention of clause 162B (1) of this Regulation	\$750 for an individual \$1,500 for a corporation
Section 125 (2) of the Act in relation to contravention of clause 162B (2) of this Regulation	\$250 for an individual \$500 for a corporation
Section 125 (2) of the Act in relation to contravention of clause 162C (4) or (5) (a) or (b) of this Regulation	\$750 for an individual \$1,500 for a corporation
Section 125 (2) of the Act in relation to contravention of clause 163 of this Regulation	\$750 for an individual \$1,500 for a corporation
Section 125 (2) of the Act in relation to contravention of clause 172 (1) (b) of this Regulation	\$1,500 for an individual \$3,000 for a corporation
Section 125 (2) of the Act in relation to contravention of clause 177 (1) of this Regulation	\$500, for the offence of failing to give an annual fire safety statement that occurs during the first week after the time for giving the statement expires.  \$1,000, for the offence of failing to give an annual fire safety statement that occurs during the second week after the time for giving the statement expires.  \$1,500, for the offence of failing to give an annual fire safety statement that occurs during the third week after the time for giving the statement expires.  \$2,000, for the offence of failing to give an annual fire safety statement that occurs during the fourth or any subsequent week after the time for giving the statement expires.
Section 125 (2) of the Act in relation to contravention of clause 177 (3) (b) of this Regulation	\$100

<b>Column 1</b>	<b>Column 2</b>
<b>Provision of Regulation</b>	<b>Penalty</b>
Section 125 (2) of the Act in relation to contravention of clause 180 (1) of this Regulation	<p>\$500, for the offence of failing to give a supplementary fire safety statement that occurs during the first week after the time for giving the statement expires.</p> <p>\$1,000, for the offence of failing to give a supplementary fire safety statement that occurs during the second week after the time for giving the statement expires.</p> <p>\$1,500, for the offence of failing to give a supplementary fire safety statement that occurs during the third week after the time for giving the statement expires.</p> <p>\$2,000, for the offence of failing to give a supplementary fire safety statement that occurs during the fourth or any subsequent week after the time for giving the statement expires.</p>
Section 125 (2) of the Act in relation to contravention of clause 180 (3) (b) of this Regulation	\$100
Section 125 (2) of the Act in relation to contravention of clause 182 (1) of this Regulation	\$1,500
Section 125 (2) of the Act in relation to contravention of clause 183 (1) of this Regulation	\$300
Section 125 (2) of the Act in relation to contravention of clause 184 (a), (b) or (c) of this Regulation	\$300
Section 125 (2) of the Act in relation to contravention of clause 185 (b) of this Regulation	\$300
Section 125 (2) of the Act in relation to contravention of clause 186 (a), (b) or (c) of this Regulation	\$300

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Column 1	Column 2
Provision of Regulation	Penalty
Section 125 (2) of the Act in relation to contravention of clause 227A (2) of this Regulation	\$250 for an individual \$500 for a corporation

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### [17] Schedule 7 Savings and transitional provisions

Insert at the end of the Schedule with appropriate clause numbers:

#### Section 121B orders

An order No 19 (as inserted by the amending Act) in the Table to section 121B of the Act may not be made in relation to building work or subdivision work that commenced before the commencement of that insertion.

#### Inspections

- (1) Clause 129B applies only to the issue of a complying development certificate for which an application was made after the commencement of that clause.
- (2) Clause 143B applies only to the issue of a construction certificate for which an application was made after the commencement of that clause.
- (3) An amendment made to clause 162A by the *Environmental Planning and Assessment Amendment (Inspections and Penalty Notices) Regulation 2009* does not apply in relation to building work for which the application for the relevant complying development certificate or construction certificate was made before the commencement of the amendment.

#### New time limits for referral of certain matters

- (1) The amendment made to clause 144 (2) by the *Environmental Planning and Assessment Amendment (Inspections and Penalty Notices) Regulation 2009* does not apply to an application for a construction certificate that was made before the commencement of the amendment.
- (2) The amendment made to clause 162B (2) by the *Environmental Planning and Assessment Amendment (Inspections and Penalty Notices) Regulation 2009* does not apply to a record in respect of an inspection that occurred before the commencement of the amendment.



- (3) An amendment made to clause 162C (4) or (5) by the *Environmental Planning and Assessment Amendment (Inspections and Penalty Notices) Regulation 2009* does not apply in respect of an inspection that was missed before the commencement of the amendment.