



New South Wales

# Environmental Planning and Assessment Amendment (Entertainment Venues) 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, MP  
Minister for Planning

## Explanatory note

The object of this Regulation is to amend the *Environmental Planning and Assessment Regulation 2000 (the Principal Regulation)*, consequentially on the commencement of provisions of the *Environmental Planning and Assessment Amendment Act 2008* that omitted provisions relating to places of public entertainment and introduced reviewable conditions (for extended hours of operation and increases in the maximum number of permitted persons) that may be applied to development consents for certain buildings.

In particular, this Regulation:

- (a) inserts a definition of *entertainment venue*, being a building used as a cinema, theatre or concert hall or an indoor sports stadium, and
- (b) requires entertainment venues to comply with the Principal Regulation and the *Building Code of Australia*, and
- (c) omits specific requirements that applied to places of public entertainment in relation to the following matters:
  - (i) existing uses of buildings,
  - (ii) fire protection and structural capacity on change of building use,
  - (iii) upgrading of buildings on rebuilding, alteration, enlargement or extension,
  - (iv) certain conditions applying to development consents or complying development certificates for use,
  - (v) development standards for change of building use or building work involving an existing building,

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- (vi) duration of development consents where the use involves certain licensed premises,
  - (vii) occupation and the form of occupation certificates for use,
  - (viii) modification of *Building Code of Australia* standards,
  - (ix) exemption from fire safety standards, and
- (d) makes savings and transitional arrangements for entertainment venues that were places of public entertainment relating to orders, and
  - (e) enables reviewable conditions to be imposed on development consents for entertainment venues, function centres, pubs, registered clubs and restaurants, and
  - (f) requires signage relating to the maximum number of persons to be displayed in entertainment venues, function centres, pubs, registered clubs and restaurants that are subject to such a condition as part of a development consent.

This Regulation is made under the *Environmental Planning and Assessment Act 1979*, including the definitions of **development** and **development standards** set out in section 4 (1), sections 78A (1), 79C (1), 80A (10C) and (11), 84A (1) and (3), 85A (1), 108 (1), 109H (5) and 109M (2), paragraph (k) of the definition of **activity** set out in section 110 (1) and clause 1 (1) of Schedule 6 and section 157 (the general regulation-making power).

## **Environmental Planning and Assessment Amendment (Entertainment Venues) Regulation 2009**

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### **1 Name of Regulation**

This Regulation is the *Environmental Planning and Assessment Amendment (Entertainment Venues) Regulation 2009*.

### **2 Commencement**

This Regulation commences on 26 October 2009 and is required to be published on the NSW legislation website.

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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 3 Definitions**

Insert in alphabetical order in clause 3 (1):

*entertainment venue* means a building used as a cinema, theatre or concert hall or an indoor sports stadium.

**[2] Clause 7 Building Code of Australia**

Omit clause 7 (2A) and (3).

**[3] Clause 40**

Omit the clause. Insert instead:

**40 Object of Part**

The object of this Part is to regulate existing uses under section 108 (1) of the Act.

**[4] Clause 46A Conditions applying to existing uses and other lawful uses for the purposes of places of public entertainment**

Omit the clause.

**[5] Clause 93 Fire safety and other considerations**

Omit “, or the use of an existing building as a place of public entertainment,” from clause 93 (1).

**[6] Clause 94 Consent authority may require buildings to be upgraded**

Omit “nearby, or” from clause 94 (1) (b) (ii). Insert instead “nearby.”.

**[7] Clause 94 (1) (c)**

Omit the paragraph.

**[8] Clause 94 (2A) and (2B)**

Omit the subclauses.

**[9] Clause 98 Compliance with Building Code of Australia and insurance requirements under the Home Building Act 1989**

Insert after clause 98 (1):

- (1A) For the purposes of section 80A (11) of the Act, it is prescribed as a condition of a development consent for a temporary structure that is used as an entertainment venue, that the temporary

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structure must comply with Part B1 and NSW Part H102 of Volume One of the *Building Code of Australia*.

**[10] Clause 98 (2) (b)**

Insert “, other than a temporary structure to which subclause (1A) applies” after “building”.

**[11] Clause 98 (3)**

Omit the subclause. Insert instead:

- (3) In this clause, a reference to the *Building Code of Australia* is a reference to that Code as in force on the date the application is made for the relevant:
- (a) development consent, in the case of a temporary structure that is an entertainment venue, or
  - (b) construction certificate, in every other case.

**Note.** There are no relevant provisions in the *Building Code of Australia* in respect of temporary structures that are not entertainment venues.

**[12] Clauses 98C and 98D**

Omit the clauses. Insert instead:

**98C Conditions relating to entertainment venues**

For the purposes of section 80A (11) of the Act, the requirements set out in Schedule 3A are prescribed as conditions of development consent for the use of a building as an entertainment venue.

**98D Condition relating to maximum capacity signage**

- (1) For the purposes of section 80A (11) of the Act, the requirement set out in subclause (2) is prescribed as a condition of development consent (including an existing development consent) for the following uses of a building, if the development consent for the use contains a condition specifying the maximum number of persons permitted in the building:
- (a) entertainment venue,
  - (b) function centre,
  - (c) pub,
  - (d) registered club,
  - (e) restaurant.
- (2) From 26 January 2010, a sign must be displayed in a prominent position in the building stating the maximum number of persons,

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as specified in the development consent, that are permitted in the building.

- (3) Words and expressions used in this clause have the same meanings as they have in the standard instrument set out in the *Standard Instrument (Local Environmental Plans) Order 2006*.

### [13] Clause 124B

Omit the clause (as inserted by Schedule 2.10 [10] to the *Environmental Planning and Assessment Amendment Act 2008*).

Insert instead:

#### **124B Development for which review condition may be imposed**

- (1) Development consent for the following uses of a building may be the subject of a review condition:
- (a) entertainment venue,
  - (b) function centre,
  - (c) pub,
  - (d) registered club,
  - (e) restaurant.
- (2) Words and expressions used in this clause have the same meanings as they have in the standard instrument set out in the *Standard Instrument (Local Environmental Plans) Order 2006*.

### [14] Clause 131 Development standards for change of building use

Omit “or the use of an existing building as a place of public entertainment” from clause 131 (1).

### [15] Clause 131 (2) (a)

Omit “, structural capacity, sanitary facilities and ventilation”.

Insert instead “and structural capacity”.

### [16] Clause 132 Development standards for building work involving the alteration, enlargement or extension of an existing building

Omit clause 132 (1). Insert instead:

- (1) This clause applies to development for which a complying development certificate is sought involving the alteration, enlargement or extension of an existing building, otherwise than in connection with a change of building use of an existing building.

**[17] Clause 136A Compliance with Building Code of Australia and insurance requirements under the Home Building Act 1989**

Insert after clause 136A (1):

- (1A) A complying development certificate for a temporary structure that is used as an entertainment venue must be issued subject to the condition that the temporary structure must comply with Part B1 and NSW Part H102 of Volume One of the *Building Code of Australia* (as in force on the date the application for the relevant complying development certificate is made).

**[18] Clause 136A (3) (b)**

Insert “, other than a temporary structure that is used as an entertainment venue” after “building”.

**[19] Clause 136A, note**

Insert at the end of the clause:

**Note.** There are no relevant provisions in the *Building Code of Australia* in respect of temporary structures that are not entertainment venues.

**[20] Clauses 136E–136G**

Omit the clauses.

**[21] Clause 154 Health, safety and other issues: section 109H**

Omit clause 154 (1A). Insert instead:

- (1A) For the purposes of section 109H (5) (d) of the Act, a final occupation certificate authorising a person to commence occupation or use of a temporary structure as an entertainment venue must not be issued unless:
- (a) the certifying authority has inspected the temporary structure, and
  - (b) the temporary structure is suitable for its proposed use as an entertainment venue, including for the number of persons proposed to occupy or use the temporary structure.

**[22] Clause 154 (2), definition of “large tent or marquee”**

Omit the definition.

**[23] Clause 155 Form of occupation certificate**

Omit the note to the clause. Insert instead:

**Note.** The only circumstance in which the occupation or use of a temporary structure requires an occupation certificate is when the temporary structure is to be used as an entertainment venue.

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**[24] Clause 156 Occupation and use of new buildings: section 109M (2)**

Omit “other than a tent or marquee having a floor area greater than 100 square metres that is proposed to be used as a place of public entertainment” from clause 156 (1) (b).

Insert instead “other than a temporary structure that is an entertainment venue”.

**[25] Clause 187 Modification and supplementation of Building Code of Australia standards**

Omit clause 187 (1) (a1) and (a3) and (2) (a) (ib).

**[26] Clause 187 (1) (a2)**

Omit “temporary structure as a place of public entertainment”.

Insert instead “building as an entertainment venue”.

**[27] Clause 187 (1) (b)**

Omit “or the use of an existing building as a place of public entertainment referred to in paragraph (a1)”.

**[28] Clause 187 (2) (a) and (b) and Note and (6) (a)**

Omit “, 98C, 98D, 136A, 136E or 136G” wherever occurring.

Insert instead “or 136A”.

**[29] Clause 187 (2) (a) (ia)**

Omit the subparagraph. Insert instead:

- (ia) the building proposed to be used as an entertainment venue, or

**[30] Clause 187 (4) and (12)**

Omit “, (a1), (a2) or (a3)” wherever occurring. Insert instead “or (a2)”.

**[31] Clause 187 (12) (a)**

Omit “, temporary structure or drive-in theatre”.

Insert instead “or temporary structure”.

**[32] Clause 187 (14)**

Omit “, a temporary structure or a drive-in theatre”.

Insert instead “or a temporary structure”.



- [33] Clause 188 Exemption from fire safety standards**  
Omit clause 188 (1) (a1).
- [34] Clause 188 (1) (b)**  
Omit “or the use of an existing building as a place of public entertainment referred to in paragraph (a1)”.
- [35] Clause 188 (5)**  
Omit “or (a1)”.
- [36] Clause 268A Commencement of development for temporary structures that are entertainment venues**  
Omit “2009” from clause 268A (1). Insert instead “2011”.
- [37] Clause 268A (2)**  
Omit “a tent or marquee that has a floor area greater than 100 square metres and is proposed to be used as a place of public entertainment”.  
Insert instead “a temporary structure that is an entertainment venue”.
- [38] Clause 268B Conditions applying under clause 40 or 41 of Schedule 6 to Act**  
Omit the clause.
- [39] Schedule 1 Forms**  
Omit “a place of public entertainment” from clause 2 (1) (n) (iii).  
Insert instead “an entertainment venue”.
- [40] Schedule 1, clause 2 (1) (o)**  
Omit the paragraph. Insert instead:  
    (o) in the case of a development involving the use of a building as an entertainment venue or a function centre, pub, registered club or restaurant—a statement that specifies the maximum number of persons proposed to occupy, at any one time, that part of the building to which the use applies.
- [41] Schedule 1, clause 4 (1) (i) (iii)**  
Omit “a place of public entertainment”.  
Insert instead “an entertainment venue”.

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**[42] Schedule 1, clause 4 (1) (j)**

Omit the paragraph. Insert instead:

- (j) in the case of a development involving the use of a building as an entertainment venue or a function centre, pub, registered club or restaurant—a statement that specifies the maximum number of persons proposed to occupy, at any one time, that part of the building to which the use applies.

**[43] Schedule 3A**

Omit the heading to the Schedule. Insert instead:

### **Schedule 3A Entertainment venues**

**[44] Schedule 3A, clause 1**

Omit the clause. Insert instead:

**1 Nitrate film**

An entertainment venue must not screen a nitrate film.

**[45] Schedule 3A, clause 3**

Omit “a place of public entertainment”.

Insert instead “an entertainment venue”.

**[46] Schedule 3A, clause 4 (1)**

Omit the subclause.

**[47] Schedule 3A, clause 4 (2)**

Omit “a place of public entertainment”.

Insert instead “an entertainment venue”.

**[48] Schedule 3A, clause 4 (2)**

Omit “the place of public entertainment”.

Insert instead “the entertainment venue”.

**[49] Schedule 3A, clauses 5–10, 12 and 13**

Omit the clauses.

**[50] Schedule 3A, clause 11**

Omit “a place of public entertainment” from clause 11 (1) and (2) (a) wherever occurring.

Insert instead “an entertainment venue”.

**[51] Schedule 7 Savings and transitional provisions**

Omit clause 1 from the Schedule. Insert instead:

**1 Definitions**

In this Part:

*amending Act* means the *Environmental Planning and Assessment Amendment Act 2008*.

*place of public entertainment* has the same meaning as it had before the commencement of Schedule 5.1 [1] to the amending Act.

**[52] Schedule 7**

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

**Section 121B Order No 13A**

- (1) An order No 13A in the Table to section 121B (1) of the Act, in force before the omission of order No 13A by Schedule 5.1 [6] to the amending Act, continues to have effect, if the building concerned is used as an entertainment venue, subject to subclauses (2) and (3).
- (2) Any part of any such order that relates to a matter prescribed by Schedule 3A to this Regulation that is repealed by *Environmental Planning and Assessment Amendment (Entertainment Venues) Regulation 2009* ceases to have effect.
- (3) If any such order is affected by subclause (2), enforcement action in respect of the order cannot be commenced or continued until the person to whom the order was given has been given notice of the content of the order as revised by subclause (2).

**Section 121H Notice of proposed order No 13A**

A notice under section 121H of the Act of a proposed order No 13A in the Table to section 121B (1) that was given before the omission of that order by Schedule 5.1 [6] to the amending Act ceases to have effect.