



New South Wales

Environmental Planning and Assessment Amendment (Fire Safety Reports) Regulation 2015

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*.

ROBERT STOKES, MP
Minister for Planning

Explanatory note

The objects of this Regulation are:

- (a) to remove the requirement for the Fire Commissioner to provide an initial fire safety report and a final fire safety report in relation to certain buildings (but to give the Commissioner the option of providing such reports), and
- (b) to update references to legislation referred to in two definitions.

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

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1 Name of Regulation

This Regulation is the *Environmental Planning and Assessment Amendment (Fire Safety Reports) Regulation 2015*.

2 Commencement

This Regulation commences on the day on which it is published on the NSW legislation website.

Schedule 1 Amendment of Environmental Planning and Assessment Regulation 2000

[1] Clause 8N Projects or concept plans for which approval may not be given concerning environmentally sensitive land or sensitive coastal locations

Omit “*State Environmental Planning Policy (Major Development) 2005*” from the definition of ***environmentally sensitive area of State significance*** in clause 8N (3).

Insert instead “*State Environmental Planning Policy (State and Regional Development) 2011*”.

[2] Clause 8N (3), definition of “sensitive coastal location”

Omit “*State Environmental Planning Policy (Major Development) 2005*”.

Insert instead “Schedule 4A to the Act”.

[3] Clause 144 Referral of certain plans and specifications to Fire and Rescue NSW

Omit clause 144 (3)–(6). Insert instead:

- (3) The Fire Commissioner must notify the certifying authority of the date of receipt of documents under subclause (2) (the ***document receipt date***) within 2 days after receiving those documents and must, within 10 days after receiving those documents, notify the certifying authority whether or not an initial fire safety report for the building will be provided.
- (4) The Fire Commissioner may provide the certifying authority with an initial fire safety report for the building, but only if notice has been given to the certifying authority in accordance with subclause (3) that an initial fire safety report will be provided.
- (5) An initial fire safety report may recommend conditions to be imposed on the erection, rebuilding, alteration, enlargement or extension of the building to which the report relates.
- (6) The certifying authority must not issue a construction certificate for a building to which this clause applies unless it has taken into consideration an initial fire safety report for the building issued in accordance with this clause.
- (6A) The certifying authority may issue a construction certificate without taking an initial fire safety report into consideration if:
 - (a) the Fire Commissioner has notified the certifying authority in accordance with subclause (3) that an initial fire safety report will not be provided, or
 - (b) the Fire Commissioner has failed to notify the certifying authority within 10 days after the document receipt date whether or not an initial fire safety report will be provided, or
 - (c) the Fire Commissioner has given notice in accordance with subclause (3) that an initial fire safety report will be provided, but such a report is not provided within 28 days after the document receipt date.
- (6B) If the certifying authority does not adopt any recommendation in an initial fire safety report that it is required to take into consideration because the certifying authority does not agree with the recommendation, the certifying authority must cause written notice to be given to the Fire Commissioner of the fact that it has not adopted the recommendation and of the reasons why it has not adopted the recommendation.

- (6C) If the Fire Commissioner has notified the certifying authority within 10 days after the document receipt date that an initial fire safety report will be provided but has failed to provide the report within 28 days after the document receipt date, the certifying authority must notify the Fire Commissioner in writing if a construction certificate is issued.

[4] Clause 144 (9)

Omit “New South Wales Fire Brigades” wherever occurring in the definition of *initial fire safety report*.

Insert instead “Fire and Rescue NSW”.

[5] Clause 152 Reports of Fire Commissioner: section 109H

Omit clause 152 (4). Insert instead:

- (4) If a request has been made to the Fire Commissioner under this clause and no notice of the refusal of the application has been received by him or her, the Fire Commissioner may furnish the certifying authority with a final fire safety report for the building.

[6] Clause 152 (5)

Omit “the 7-day period”.

Insert instead “7 days after the Fire Commissioner receives the request for the report”.

[7] Clause 152 (6)

Omit the subclause. Insert instead:

- (6) In this clause:
final fire safety report for a building means a written report specifying whether or not the Fire Commissioner is satisfied:
- (a) that the building work complies with any alternative solution in respect of a Category 2 fire safety provision that was the subject of the construction certificate, and
 - (b) that all of the fire hydrants in the fire hydrant system will be accessible for use by Fire and Rescue NSW, and
 - (c) that all of the couplings in the fire hydrant system will be compatible with those of the fire appliances and equipment used by Fire and Rescue NSW.

[8] Schedule 7 Savings and transitional provisions

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

**Provisions consequent on making of
Environmental Planning and Assessment
Amendment (Fire Safety Reports) Regulation 2015**

Application of amendments relating to fire safety reports

- (1) If a certifying authority has forwarded to the Fire Commissioner the documents required by clause 144 before the commencement of the

2015 amendments and has not, on or before that commencement, determined the application for the construction certificate:

- (a) the certifying authority must not determine the application otherwise than in accordance with this clause, and
 - (b) the certifying authority must notify the Fire Commissioner within 28 days that it has forwarded those documents and that the application for the construction certificate has not been determined, and
 - (c) clause 144, as amended by the 2015 amendments, applies to the determination of the application for the construction certificate as if the date of the notification given under paragraph (b) were the document receipt date.
- (2) In this clause:
- the 2015 amendments* means the amendments made by the *Environmental Planning and Assessment Amendment (Fire Safety Reports) Regulation 2015*.