



New South Wales

Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021

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*.

ROB STOKES, MP
Minister for Planning and Public Spaces

Explanatory note

The object of this Regulation is to repeal and remake, with amendments, certain provisions of the *Environmental Planning and Assessment Regulation 2000*, which will be repealed on 1 March 2022 under the *Subordinate Legislation Act 1989*, section 10(2).

This Regulation deals with the following matters—

- (a) certification of development for the purposes of the *Environmental Planning and Assessment Act 1979*, Part 6, including compliance certificates, construction certificates, subdivision works certificates, occupation certificates and subdivision certificates,
- (b) fire safety of buildings and obligations on persons relating to fire and building safety,
- (c) other minor related matters.

This Regulation primarily comprises or relates to matters under the *Environmental Planning and Assessment Act 1979*, Part 6 and section 10.13(1)(d). The *Subordinate Legislation Act 1989*, Schedule 5, clause 12(2) provides that a regulatory impact statement is not required.

Table of Concordance

For the purposes of comparison, this table shows certain provisions of the *Environmental Planning and Assessment Regulation 2000*, as in force immediately before the commencement of this Regulation, and the corresponding provisions of this Regulation—

Old provision	New provision
cl 103	s 57
cl 103A	s 58
cl 104	s 59
cl 138	ss 4, 5
cl 138A	s 6

Old provision	New provision
cl 139	s 7
cl 139A	s 11
cl 140	s 12
cl 142	s 13
cl 142A	s 119
cl 143	s 14
cl 143A	s 15
cl 143B	s 16
cl 143C	s 17
cl 144	ss 25–29
cl 144A	s 18
cl 145	s 19
cl 146	s 20
cl 146A	s 21
cl 146B	s 22
cl 147	s 23
cl 148	s 24
cl 148A	s 30
cl 148B	s 31
cl 148C	s 32
cl 148E	s 33
cl 148F	s 34
cl 148G	s 34
cl 148H	s 35
cl 148I	s 36
cl 148J	s 119
cl 149	s 37
cl 149A	s 38
cl 151	s 39
cl 151A	s 119
cl 152	s 50
cl 152A	s 51
cl 152B	s 40
cl 153	s 41
cl 154	s 42
cl 154A	s 43
cl 154B	s 44

Old provision	New provision
cl 154C	s 45
cl 154D	s 47
cl 154E	s 48
cl 154F	s 46
cl 155	s 49
cl 156	s 52
cl 156A	s 53
cl 157	s 54
cl 158	s 55
cl 160	s 56
cl 160B	s 119
cl 161	s 73
cl 161A	s 66
cl 161B	s 67
cl 162	s 68
cl 162AA	s 69
cl 162A	s 61
cl 162AB	s 62
cl 162B	s 63
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cl 184	ss 108, 109
cl 185	s 109
cl 186	ss 108, 109
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cl 186B	s 99
cl 186C	s 100
cl 186D	s 101
cl 186E	s 102
cl 186S	ss 103, 104
cl 186T	s 105
cl 186U	s 106
cl 187	ss 115–117
cl 188	s 111
cl 189	s 112
cl 190A	s 113
cl 190B	s 114
cl 224	ss 19, 120
cl 226	s 121
cl 227A	s 75
cl 262B	s 72
cl 267A	s 70
cl 268A	s 76
cl 284	Sch 1
cl 295	s 122
Sch 1, cl 6	ss 8, 9, 10
Sch 1, cl 6A	s 10
Sch 1, cl 6AB	s 30
Sch 1, cl 7	s 8
Sch 5	Sch 1

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Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021*.

2 Commencement

- (1) This Regulation commences on 1 January 2022, except as provided by subsection (2), and is required to be published on the NSW legislation website.
- (2) Schedule 3[7]–[9] and 4 commence on the day on which this Regulation is published on the NSW legislation website.

3 Definitions

- (1) The Dictionary in Schedule 2 defines words used in this Regulation.
Note— The *Environmental Planning and Assessment Act 1979* and the *Interpretation Act 1987* contain definitions and other provisions that affect the interpretation and application of this Regulation.
- (2) Words used in this Regulation have the same meanings as in the Standard Instrument, unless otherwise defined in this Regulation.
- (3) A reference in this Regulation to building work does not include a reference to physical activity involved in the erection of a temporary structure.
- (4) A reference in this Regulation to an existing building does not include a reference to a temporary structure.
- (5) In this Regulation, a reference to a class 1a or 10 building is a reference to—
 - (a) for the erection of a new building—a building that will be a class 1a or 10 building when completed, and
 - (b) for the alteration of an existing building—an existing class 1a or 10 building, and
 - (c) for the change of building use for an existing building—an existing building that will be a class 1a or 10 building as a result of the change of building use.

Part 2 Compliance certificates

4 Information to be included in compliance certificate—the Act, s 6.33(1)

- (1) A certifier must not issue a compliance certificate unless the certificate contains the following information—
- (a) the name of the certifier,
 - (b) if the certifier is a registered body corporate—the name of the individual who issued the certificate,
 - (c) if the certifier is a registered certifier—
 - (i) the registration number of the certifier, and
 - (ii) if the certifier is a registered body corporate—the registration number of the individual who issued the certificate,
 - (d) the signature of the individual who issued the certificate,
 - (e) a description of the development,
 - (f) the registered number and date of issue of a relevant development consent,
 - (g) the address and folio identifier of the land,
 - (h) the date of the certificate,
 - (i) a description of work that was inspected, how the work was inspected and the date and time at which the work was inspected,
 - (j) a statement of the matters in relation to which the certificate is issued.
- (2) A certifier must not issue a compliance certificate unless the certificate is accompanied by the documents referred to in the certificate that are relevant to the matters in relation to which the certificate is issued.
- Maximum penalty (subsections (1) and (2))—
- (a) for a corporation—300 penalty units, or
 - (b) for an individual—150 penalty units.

5 Copies of compliance certificates—the Act, s 6.33(1)

Within 2 days after issuing an occupation certificate, a certifier must give a copy of each compliance certificate relied on to issue the occupation certificate to—

- (a) the consent authority, and
- (b) if the consent authority is not the council—the council.

Maximum penalty—

- (a) for a corporation—300 penalty units, or
- (b) for an individual—150 penalty units.

6 Restriction on issue of compliance certificates—the Act, s 6.18

A certifier must not issue a compliance certificate of the kind referred to in the Act, section 6.4(e)(i) or (ii) for building work or subdivision work unless the required development consent is in force for the building or subdivision to which the work relates.

Maximum penalty—

- (a) for a corporation—300 penalty units, or
- (b) for an individual—150 penalty units.

Part 3 Construction certificates

Division 1 Applications for construction certificates—the Act, s 6.33(1)

7 Application for construction certificate

- (1) An application for a construction certificate must—
 - (a) be in the approved form, and
 - (b) include all the information and documents specified in the approved form or required by the Act or this Regulation, and
 - (c) be lodged on the NSW planning portal.
- (2) The application may only be made by a person who is eligible to appoint a principal certifier for the development.
- (3) The certifier for the development must notify the applicant through the NSW planning portal that the application has been lodged.
Maximum penalty (subsection (3))—
 - (a) for a corporation—150 penalty units, or
 - (b) for an individual—75 penalty units.

8 Documents to accompany application for construction certificate

- (1) This section applies to an application for a construction certificate for development that involves building work.
- (2) The application must be accompanied by—
 - (a) a detailed description of the development, and
 - (b) appropriate building work plans and specifications (referred to in this Part as *relevant building work plans and specifications*).
- (3) The detailed description of the development must indicate the following matters—
 - (a) for each proposed new building—
 - (i) the number of storeys in the building, including underground storeys, and
 - (ii) the gross floor area of the building in square metres, and
 - (iii) the site area of the land on which the building is to be erected in square metres,
 - (b) for each proposed new building to be used for residential accommodation—
 - (i) the number of existing dwellings on the land on which the new building will be erected, and
 - (ii) the number of existing dwellings that will be demolished in connection with the erection of the new building, and
 - (iii) the number of dwellings to be included in the new building, and
 - (iv) whether the new building will be attached to an existing building, and
 - (v) whether the new building will be attached to another new building, and
 - (vi) whether the building will include a dual occupancy, and
 - (vii) the materials to be used in the construction of the new building, using the abbreviations set out in the Table to this section.
- (4) The appropriate building work plans and specifications must include the following—
 - (a) detailed building work plans, drawn to a suitable scale and consisting of a block plan and a general plan, that show the following—

- (i) a plan of each floor section,
- (ii) a plan of each elevation of the building,
- (iii) the levels of the lowest floor, an unbuilt yard or area that belongs to the lowest floor and the adjacent ground,
- (iv) the height, design, construction and provision for fire safety and fire resistance, if any,
- (b) building work specifications that—
 - (i) describe the construction and the materials to be used to construct the building, and
 - (ii) describe the method of drainage, sewerage and water supply, and
 - (iii) state whether the materials to be used are new or second-hand and contain details of any second-hand materials to be used,
- (c) a description of an accredited building product or system sought to be relied on for the purposes of the Act, section 4.15(4),
- (d) a copy of a compliance certificate to be relied on,
- (e) if the development involves building work to alter, expand or rebuild an existing building— a scaled plan of the existing building,
- (f) for BASIX development, or for BASIX optional development if the development application was accompanied by a BASIX certificate— the other matters required by the relevant BASIX certificate.

Table

Walls	Code	Roof	Code	Floor	Code	Frame	Code
Brick (double)	11	Tiles	10	Concrete or slate	20	Timber	40
Brick (veneer)	12	Concrete or slate	20	Timber	40	Steel	60
Concrete or stone	20	Fibre cement	30	Other	80	Aluminium	70
Fibre cement	30	Steel	60	Not specified	90	Other	80
Timber	40	Aluminium	70			Not specified	90
Curtain glass	50	Other	80				
Steel	60	Not specified	90				
Aluminium	70						
Other	80						
Not specified	90						

9 Fire safety documents to accompany application for construction certificate

- (1) An application for a construction certificate for building work that does not relate to a dwelling house, or to a building or structure that is ancillary to a dwelling house, must be accompanied by—
 - (a) a list of the existing fire safety measures provided in relation to the land or an existing building on the land, and
 - (b) a list of the proposed fire safety measures to be provided in relation to the land and buildings on the land as a consequence of the building work.

- (2) An application for a construction certificate for fire alarm communication link works must be accompanied by—
 - (a) a plan that indicates the location of the new fire alarm communication link and associated works, and
 - (b) a document that describes the design, construction and mode of operation of the new fire alarm communication link and associated works.
- (3) An application for a construction certificate for an alteration to a hydraulic fire safety system must be accompanied by—
 - (a) a plan that indicates the location of the alteration and associated works, and
 - (b) a document that describes—
 - (i) the required pressure and flow characteristics of the hydraulic fire safety system that will be altered, and
 - (ii) the pressure and flow characteristics that will be available from the town main following mains pressure reduction by or on behalf of the relevant water utility, and
 - (iii) the design, construction and performance of the alteration and associated works.

- (4) In this section—

fire alarm communication link means the part of a fire alarm system that transmits a fire alarm signal from the system to an alarm monitoring network.

fire alarm communication link works means the installation or conversion of a fire alarm communication link to connect with the fire alarm monitoring network of a private service provider, but does not include works associated with the alteration of or change of building use for an existing building.

private service provider means a person or body that has entered into an agreement with Fire and Rescue NSW to monitor fire alarm systems.

10 BASIX certificate required for BASIX development

- (1) This section applies to an application for a construction certificate for—
 - (a) BASIX development, and
 - (b) BASIX optional development, if the development application was accompanied by a BASIX certificate.
- (2) The application must be accompanied by—
 - (a) a BASIX certificate that applied to the development when the development consent was granted, or
 - (b) another BASIX certificate issued no earlier than 3 months before the application is made.
- (3) The application for a construction certificate must also be accompanied by the other documents required by the BASIX certificate.
- (4) If the development involves the alteration of a BASIX building that contains more than 1 dwelling, the application must be accompanied by a separate BASIX certificate for each dwelling.

11 Withdrawal of application for construction certificate

- (1) An applicant may use the NSW planning portal to withdraw an application for a construction certificate at any time before the application is determined.
- (2) The certifier may, but is not required to, refund to the applicant the whole or part of the application fee paid in relation to a withdrawn application.

12 Certifier may require additional information

- (1) A certifier may require the applicant for a construction certificate to give the certifier information about the building work or a planning agreement that the certifier considers necessary to properly consider the application.
- (2) If an applicant requests information from a planning authority that is a party to a planning agreement for the purposes of complying with a certifier's request under this section, the planning authority may certify that specified requirements of the agreement have been complied with.
- (3) This section does not affect the certifier's duty to determine an application for a construction certificate.

13 Determination of application for construction certificate

- (1) A certifier must ensure the certifier's determination of an application for a construction certificate contains the following information—
 - (a) the date on which the application was determined,
 - (b) whether the application is approved or refused,
 - (c) if the application is refused—
 - (i) the reasons for the refusal, and
 - (ii) if the certifier is a consent authority—the applicant's right of appeal under the Act,
 - (d) if the construction certificate is issued subject to a condition of the kind referred to in section 111 or 117—
 - (i) the reasons for the condition, and
 - (ii) if the certifier is a consent authority—the applicant's right of appeal under the Act against the condition.
- (2) Within 2 days after determining the application, the certifier must use the NSW planning portal to—
 - (a) give the determination to the applicant, and
 - (b) give a copy of the following to the consent authority and council—
 - (i) the determination and the application to which it relates,
 - (ii) a construction certificate issued as a result of the determination,
 - (iii) the relevant building work plans and specifications,
 - (iv) any fire safety schedule attached to the construction certificate,
 - (v) other documents that were lodged with the application for the certificate, including a decision on an objection under section 111 or 117,
 - (vi) other documents given to the certifier under section 12,
 - (vii) the record of an inspection made under section 17 in relation to the issue of the construction certificate.
- (3) A copy of a record of inspection referred to in subsection (2)(b)(vii) is not required to be given to a consent authority or council that carried out the inspection.
- (4) In this Part, a reference to issuing a construction certificate includes a reference to endorsing the construction certificate on the relevant building work plans and specifications.
Maximum penalty (subsections (1) and (2))—
 - (a) for a corporation—300 penalty units, or

- (b) for an individual—150 penalty units.

Division 2 Issue of construction certificates—the Act, s 6.8

14 Fire protection and structural capacity

- (1) A certifier must not issue a construction certificate for building work under a development consent that authorises a change of building use unless—
 - (a) the fire protection and structural capacity of the building will be appropriate to its new use, and
 - (b) the building will comply with the Category 1 fire safety provisions that apply to the new use.
 - (2) Subsection (1)(b) does not apply to the extent of an exemption under section 74(4), 111(4) or 117(1).
 - (3) A certifier must not issue a construction certificate for alteration building work unless, on completion of the building work, the fire protection and structural capacity of the building will not be reduced.
 - (4) For the purposes of subsections (1) and (3), the certifier may assume that the building work is carried out in accordance with—
 - (a) the relevant building work plans and specifications, and
 - (b) the conditions of the construction certificate.
 - (5) This section does not apply to building work required by a consent authority as a condition of a development consent that authorises a change of building use.
 - (6) In this section—
 - alteration building work** means building work that—
 - (a) involves the alteration of an existing building, and
 - (b) does not involve a change of building use.
 - fire protection and structural capacity** of a building means—
 - (a) the structural strength and load-bearing capacity of the building, and
 - (b) the measures to protect persons using the building, and to facilitate their safe egress from the building, if there is a fire, and
 - (c) the measures to restrict the spread of fire from the building to other buildings nearby.
- Maximum penalty (subsections (1) and (3))—
- (a) for a corporation—300 penalty units, or
 - (b) for an individual—150 penalty units.

15 Design requirements for residential apartment development

- (1) This section applies to a construction certificate for residential apartment development if the development application was required, under the *Environmental Planning and Assessment Regulation 2000*, clause 50, to be accompanied by a statement by a qualified designer.
 - (2) A certifier must not issue a construction certificate unless the certifier has received a statement by a qualified designer verifying that the relevant building work plans and specifications achieve or improve the design quality of the development for which development consent was granted, having regard to the design quality principles.
- Maximum penalty (subsection (2))—
- (a) for a corporation—600 penalty units, or

- (b) for an individual—300 penalty units.
- (3) If the development application was also required to be accompanied by a BASIX certificate for a building, the design quality principles do not need to be addressed to the extent to which they aim—
 - (a) to reduce consumption of mains-supplied potable water or greenhouse gas emissions in the use of—
 - (i) the building, or
 - (ii) the land on which the building is located, or
 - (b) to improve the thermal performance of the building.

16 Requirement for inspection

- (1) A certifier must not issue a construction certificate for development on a site that affects an existing building unless a certifier has carried out an inspection of the building.
Maximum penalty (subsection (1))—
 - (a) for a corporation—300 penalty units, or
 - (b) for an individual—150 penalty units.
- (2) If the development affects an existing building that is a class 1b, 2, 3, 4, 5, 6, 7, 8 or 9 building, an inspection must include the following parts of the building—
 - (a) the parts of the building affected by the development,
 - (b) the egress routes from the parts of the building affected by the development.

17 Record of site inspections

- (1) A certifier must make a record of each inspection carried out by the certifier for the purposes of section 16.
- (2) A certifier who is required to make a record, but who is not the certifier in relation to the issue of the construction certificate, must give a copy of the record to the certifier in relation to the issue of the certificate—
 - (a) through the NSW planning portal, and
 - (b) within 2 days after carrying out the inspection.
- (3) A record of an inspection must include the following information—
 - (a) the registered number of the relevant development application,
 - (b) the address of the site of the inspection,
 - (c) the type of inspection,
 - (d) the date of the inspection,
 - (e) if the inspection was carried out by a council—
 - (i) the name of the council, and
 - (ii) the name and signature of the individual who carried out the inspection,
 - (f) if the inspection was carried out by a registered certifier—
 - (i) the name and registration number of the registered certifier, and
 - (ii) if the registered certifier is a registered body corporate—the name and registration number of the individual who carried out the inspection,
 - (g) details of the current fire safety measures in the existing building,
 - (h) details about whether the relevant building work plans and specifications adequately and accurately describe the condition of the existing building,

- (i) details about whether building work authorised by the relevant development consent has commenced on the site.

Maximum penalty (subsections (1) and (2))—

- (a) for a corporation—300 penalty units, or
- (b) for an individual—150 penalty units.

18 Requirement for performance solution report

- (1) A certifier must not issue a construction certificate for building work that involves a performance solution unless the certifier—
 - (a) has obtained or been given a performance solution report, and
 - (b) is satisfied that—
 - (i) the report was prepared in accordance with the requirements set out in A2.2(4) of the *Building Code of Australia*, and
 - (ii) the relevant building work plans and specifications show and describe the physical elements of the performance solution, if possible.

Maximum penalty (subsection (1))—

- (a) for a corporation—300 penalty units, or
- (b) for an individual—150 penalty units.

- (2) A performance solution report for a fire safety requirement must be prepared by or on behalf of—
 - (a) for a prescribed report—a person who is both an accredited practitioner (fire safety) and a fire safety engineer, or
 - (b) otherwise—a person who is an accredited practitioner (fire safety).

- (3) In this section—

prescribed report means a performance solution report for a requirement set out in EP1.4, EP2.1, EP2.2, DP4 or DP5 in Volume 1 of the *Building Code of Australia* for—

- (a) a class 9a building that is proposed to have a floor area of 2,000 square metres or more, or
- (b) a building, other than a class 9a building, that is proposed to have a fire compartment with a floor area of more than 2,000 square metres, or
- (c) a building, other than a class 9a building, that is proposed to have a floor area of more than 6,000 square metres.

19 Compliance with development consent and Building Code of Australia

- (1) A certifier must not issue a construction certificate for building work unless—
 - (a) the relevant building work plans and specifications include the matters required by a relevant BASIX certificate, if any, and
 - (b) the design and construction of the building, as described in the relevant building work plans and specifications and in other information given to the certifier under section 12, is consistent with the development consent, and
 - (c) the building will comply with the relevant requirements of the *Building Code of Australia* as in force at the time the application for the construction certificate was made.

Maximum penalty (subsection (1))—

- (a) for a corporation—300 penalty units, or
- (b) for an individual—150 penalty units.

- (2) Subsection (1)(c) does not apply—
 - (a) to a temporary building, or
 - (b) to the extent of an exemption under section 74(4), 111(4) or 117(1).
- (3) A certifier must not refuse to issue a construction certificate because a building product or system relating to the development does not comply with a requirement of the *Building Code of Australia* if—
 - (a) a certificate of conformity issued in accordance with the CodeMark scheme is in force in relation to the building product or system, and
 - (b) use of the building product or system is not prohibited under the *Building Products (Safety) Act 2017*.
- (4) The following persons do not incur liability as a consequence of acting in accordance with subsection (3)—
 - (a) a certifier,
 - (b) an employee of a certifier, if the certifier is a consent authority.

20 Compliance with conditions of development consent

A certifier must not issue a construction certificate for building work under a development consent unless the following have been complied with—

- (a) a condition of the development consent or an agreement referred to in the Act, section 4.17(6) requiring the provision of security before building work is carried out,
- (b) a condition of the development consent, referred to in the Act, section 7.11 or 7.12, requiring the payment of a monetary contribution or levy before building work is carried out,
- (c) a condition of the development consent that must be complied with before a construction certificate may be issued.

Maximum penalty—

- (a) for a corporation—300 penalty units, or
- (b) for an individual—150 penalty units.

21 Compliance with planning agreement

If a planning agreement specifies requirements of the agreement that must be complied with before a construction certificate for building work is issued, a certifier must not issue a construction certificate for the building work unless the certifier is satisfied the requirements have been complied with.

Maximum penalty—

- (a) for a corporation—300 penalty units, or
- (b) for an individual—150 penalty units.

22 Fire safety systems in class 2–9 buildings—the Act, s 6.33(1)

- (1) It is a condition of a construction certificate for building work involving the installation, extension or modification of a relevant fire safety system in a class 2, 3, 4, 5, 6, 7, 8 or 9 building that the building work must not commence unless—
 - (a) plans have been submitted to the principal certifier that show—
 - (i) for building work involving the installation of the relevant fire safety system—the layout, extent and location of key components of the relevant fire safety system, or

- (ii) for building work involving the extension or modification of the relevant fire safety system—the layout, extent and location of the new or modified components of the relevant fire safety system, and
 - (b) specifications have been submitted to the principal certifier that—
 - (i) describe the basis for the design, installation and construction of the relevant fire safety system, and
 - (ii) identify the provisions of the *Building Code of Australia* on which the design of the system is based, and
 - (c) the plans and specifications—
 - (i) are certified by a compliance certificate as complying with the relevant provisions of the *Building Code of Australia*, or
 - (ii) are endorsed by an accredited practitioner (fire safety) as complying with the relevant provisions of the *Building Code of Australia*, and
 - (d) if the plans and specifications were submitted before the construction certificate was issued—they are endorsed by a certifier with a statement that the certifier is satisfied they correctly identify the relevant performance requirements and deemed-to-satisfy provisions, and
 - (e) if the plans and specifications were not submitted before the construction certificate was issued—they are endorsed by the principal certifier with a statement that the principal certifier is satisfied they correctly identify the relevant performance requirements and deemed-to-satisfy provisions.
- (2) Subsection (1)(c)(ii) does not apply to the extent of an exemption under section 74(4).

23 Information to be included in construction certificate—the Act, s 6.33(1)

- (1) A certifier must not issue a construction certificate unless the certificate contains the following information—
- (a) the name of the certifier,
 - (b) if the certifier is a registered body corporate—the name of the individual who issued the certificate,
 - (c) if the certifier is a registered certifier—
 - (i) the registration number of the certifier, and
 - (ii) if the certifier is a registered body corporate—the registration number of the individual who issued the certificate,
 - (d) the signature of the individual who issued the certificate,
 - (e) the registered number and date of issue of the relevant development consent,
 - (f) the date of the certificate,
 - (g) a statement to the effect that building work completed in accordance with the documents accompanying the application for the certificate, including modifications verified by the certifier shown on the documents, will comply with the requirements referred to in the Act, section 6.12,
 - (h) the *Building Code of Australia* classification of the building to which the certificate relates,
 - (i) if a performance solution report about the building work is required under section 18—the following details of the report—
 - (i) the title of the report,
 - (ii) the date on which the report was made,
 - (iii) the reference number and version number of the report,

- (iv) the name of the person who prepared the report or on whose behalf the report was prepared,
- (v) if the person referred to in subparagraph (iv) is an accredited practitioner (fire safety) and a registered certifier—the certifier’s registration number,
- (j) if the building work is exempt from compliance with the *Building Code of Australia* under section 74(4)—the details of the exemption.

Maximum penalty (subsection (1))—

- (a) for a corporation—300 penalty units, or
 - (b) for an individual—150 penalty units.
- (2) A construction certificate may indicate different *Building Code of Australia* classifications for different parts of the same building.
- (3) A certifier must not issue a construction certificate for a building for which a fire safety schedule is required under Part 10 unless—
- (a) the certificate is accompanied by the fire safety schedule, and
 - (b) if the building work is exempt from compliance with the *Building Code of Australia* under section 74(4)—the fire safety schedule includes details of the exemption.

Maximum penalty (subsection (3))—

- (a) for a corporation—600 penalty units, or
- (b) for an individual—300 penalty units.

24 Modification of construction certificate—the Act, s 6.33(1)

- (1) The following persons may apply to modify the development the subject of a construction certificate or an application for a construction certificate—
- (a) a person who made the application for the construction certificate,
 - (b) a person who has the benefit of the construction certificate.
- (2) This Part applies to an application to modify development in the same way as it applies to the original application.
- (3) A certifier who grants an application for a construction certificate that relates to the modification of referred development must, as soon as practicable, notify the Fire Commissioner if the building to which the construction certificate relates is no longer a building to which Division 3 applies because of the modification.
- (4) In this section—
referred development means development in relation to which an application for a construction certificate was previously referred to the Fire Commissioner under Division 3.

Division 3 Referral to Fire and Rescue NSW—the Act, s 6.8

25 Interpretation

- (1) In this Division—
document receipt date—see section 27(2)(a).
early childhood centre has the same meaning as in the *Building Code of Australia*.
initial fire safety report means a written report specifying whether, on the basis of the documents referred to in section 27(1), the Fire Commissioner is satisfied that—

- (a) the performance solution will meet the performance requirements it is intended to meet, and
- (b) the fire hydrants in the proposed fire hydrant system will be accessible for use by Fire and Rescue NSW, and
- (c) the couplings in the fire hydrant system will be compatible with the fire appliances and equipment used by Fire and Rescue NSW.

relevant building work means building work specified in section 26.

- (2) A certifier or the Fire Commissioner must use the NSW planning portal to provide a document, information or notice required under this Division.
- (3) An application for a construction certificate to which this Division applies made but not finally determined before 11 December 2020 must be dealt with under the *Environmental Planning and Assessment Regulation 2000* as in force immediately before that date.

26 Building work to which Division applies

- (1) Building work involving the erection of the following is **relevant building work** if the relevant building work plans and specifications provide for a performance solution for a Category 2 fire safety provision—
 - (a) a class 9a building that is proposed to have a floor area of 2,000 square metres or more,
 - (b) a building, other than a class 9a building, that is proposed to have a fire compartment with a floor area of more than 2,000 square metres,
 - (c) a building, other than a class 9a building, that is proposed to have a floor area of more than 6,000 square metres.
- (2) Building work involving the erection of a class 2, 3 or 9 building of 2 or more storeys, or the class 4 part of a class 9 building of 2 or more storeys, is **relevant building work** if—
 - (a) the relevant building work plans and specifications provide for a performance solution to meet the performance requirement set out in CP2 in Volume 1 of the *Building Code of Australia*, to the extent that it relates to external combustible cladding, and
 - (b) the performance solution does not apply the verification method CV3 in Volume 1 of the *Building Code of Australia* completely.
- (3) Building work involving the erection of a class 5, 6, 7 or 8 building of 3 or more storeys, or the class 4 part of a class 5, 6, 7 or 8 building of 3 or more storeys, is **relevant building work** if—
 - (a) the relevant building work plans and specifications provide for a performance solution to meet the performance requirement set out in CP2 in Volume 1 of the *Building Code of Australia*, to the extent that it relates to external combustible cladding, and
 - (b) the performance solution does not apply the verification method CV3 in Volume 1 of the *Building Code of Australia* completely.
- (4) Building work involving the erection of a class 2 or 3 building of 4 or more storeys is **relevant building work** if the relevant building work plans and specifications provide for a performance solution to meet the performance requirement set out in EP1.4 in Volume 1 of the *Building Code of Australia*.
- (5) Building work involving the erection of a class 9b early childhood centre is **relevant building work** if the relevant building work plans and specifications do not meet the requirement set out in D1.18(a) in Volume 1 of the *Building Code of Australia*.

27 Certifier to forward plans and specifications to Fire and Rescue NSW

- (1) Within 7 days after receiving an application for a construction certificate for relevant building work, a certifier must give the following to the Fire Commissioner—
 - (a) a copy of the application,
 - (b) a copy of the relevant building work plans and specifications,
 - (c) details of the performance requirements that the performance solution is intended to meet,
 - (d) details of the assessment methods to be used to establish compliance with the relevant performance requirements under the *Building Code of Australia*.

Maximum penalty (subsection (1))—

- (a) for a corporation—600 penalty units, or
 - (b) for an individual—300 penalty units.
- (2) The Fire Commissioner must—
 - (a) within 2 days after receiving the documents, notify the certifier of the date of receipt of the documents (the *document receipt date*), and
 - (b) within 10 days after the document receipt date, notify the certifier whether or not the Fire Commissioner will prepare an initial fire safety report for the building.
 - (3) The Fire Commissioner may give the certifier an initial fire safety report for the building only if notice has been given to the certifier under subsection (2)(b).
 - (4) An initial fire safety report may recommend conditions to be imposed on the erection or alteration of the building.

28 Consideration of initial fire safety report

- (1) A certifier must not issue a construction certificate for relevant building work unless the certifier has considered an initial fire safety report for the building.
- (2) However, a certifier may issue a construction certificate for relevant building work without considering an initial fire safety report if—
 - (a) the Fire Commissioner has notified the certifier under section 27(2)(b) that an initial fire safety report will not be prepared, or
 - (b) the Fire Commissioner has failed to notify the certifier within 10 days after the document receipt date whether or not an initial fire safety report will be prepared, or
 - (c) the Fire Commissioner has notified the certifier that an initial fire safety report will be prepared, but the report is not given within 28 days after the document receipt date.
- (3) If a certifier does not adopt a condition recommended in an initial fire safety report that the certifier is required to consider because the certifier does not agree with the recommendation, the certifier must give written notice to the Fire Commissioner.
- (4) The written notice must include the reasons for not adopting the recommended condition.
- (5) If the Fire Commissioner notifies a certifier within 10 days after the document receipt date that an initial fire safety report will be prepared but fails to give the report within 28 days after the document receipt date, the certifier must give the Fire Commissioner written notice if a construction certificate is issued.

Maximum penalty (subsections (1), (3) and (5))—

- (a) for a corporation—600 penalty units, or

- (b) for an individual—300 penalty units.

29 Adoption of conditions recommended by initial fire safety report

If a certifier adopts a condition recommended in a initial fire safety report, the certifier must—

- (a) if the condition can be given effect to by being included in the relevant building work plans and specifications—ensure the condition is included by—
 - (i) redrawing the plans and specifications, or
 - (ii) annotating the relevant part of the plans and specifications, including by inserting, deleting or altering matter, or
- (b) otherwise—issue the construction certificate subject to the condition.

Maximum penalty—

- (a) for a corporation—600 penalty units, or
- (b) for an individual—300 penalty units.

Part 4 Subdivision works certificates

Division 1 Applications for subdivision work certificates—the Act, s 6.33(1)

30 Application for subdivision works certificate

- (1) An application for a subdivision works certificate must—
 - (a) be in the approved form, and
 - (b) include all the information and documents specified in the approved form or required by the Act or this Regulation, and
 - (c) be lodged on the NSW planning portal.
- (2) The application must also be accompanied by the following—
 - (a) details of the existing and proposed subdivision pattern, including the number of lots and the location of roads,
 - (b) details about the public authorities that have been consulted about the provision of utility services to the land,
 - (c) detailed engineering plans about earthworks, roadworks, road pavement, road furnishings, stormwater drainage, water supply works, sewerage works, landscaping works and erosion control works,
 - (d) a copy of any compliance certificates to be relied on.
- (3) The application may only be made by a person who is eligible to appoint a principal certifier for the development.
- (4) The certifier for the development must notify the applicant through the NSW planning portal that the application has been lodged.
Maximum penalty (subsection (4))—
 - (a) for a corporation—150 penalty units, or
 - (b) for an individual—75 penalty units.

31 Withdrawal of application for subdivision works certificate

- (1) An applicant may use the NSW planning portal to withdraw an application for a subdivision works certificate at any time before the application is determined.
- (2) The certifier may, but is not required to, refund to the applicant the whole or part of the application fee paid in relation to a withdrawn application.

32 Certifier may require additional information

- (1) A certifier may require the applicant for a subdivision works certificate to give the certifier information about the subdivision work or a planning agreement that the certifier considers necessary to properly consider the application.
- (2) If the applicant requests information from a planning authority that is a party to the planning agreement for the purposes of complying with the certifier's request under this section, the planning authority may certify that specified requirements of the agreement have been complied with.
- (3) This section does not affect the certifier's duty to determine the application.

Division 2 Issue of subdivision works certificates—the Act, s 6.14

33 Determination of application for subdivision works certificate

- (1) A certifier must ensure the certifier's determination of an application for a subdivision works certificate contains the following information—
 - (a) the date on which the application was determined,
 - (b) whether the application is approved or refused,
 - (c) if the application is refused—
 - (i) the reasons for the refusal, and
 - (ii) if the certifier is a consent authority—the applicant's right of appeal under the Act.
- (2) Within 2 days after determining the application, the certifier must use the NSW planning portal to—
 - (a) give the determination to the applicant, and
 - (b) give a copy of the following to the consent authority and council—
 - (i) the determination and the application to which it relates,
 - (ii) a subdivision works certificate issued as a result of the determination,
 - (iii) the plans and specifications in relation to which the subdivision works certificate is issued,
 - (iv) other documents that were lodged with the application for the certificate or given to the certifier under section 32.
- (3) In this Part, a reference to issuing a subdivision works certificate includes a reference to endorsing the subdivision work on the relevant plans and specifications.
Maximum penalty (subsections (1) and (2))—
 - (a) for a corporation—300 penalty units, or
 - (b) for an individual—150 penalty units.

34 Compliance with development consent and planning agreement

- (1) A certifier must not issue a subdivision works certificate unless the design and construction of the subdivision work is consistent with the development consent.
- (2) A certifier must not issue a subdivision works certificate under a development consent unless the following have been complied with—
 - (a) a condition of the development consent or an agreement referred to in the Act, section 4.17(6) requiring the provision of security before work is carried out,
 - (b) a condition of the development consent, referred to in the Act, section 7.11 or 7.12, requiring the payment of a monetary contribution or levy before work is carried out,
 - (c) a condition of the development consent that must be complied with before the subdivision works certificate may be issued,
 - (d) a condition of a planning agreement that must be complied with before the subdivision works certificate may be issued.
- (3) In this section—
design and construction of subdivision work means the design and construction of the work described in the plans and specifications and other information given to the certifier under section 32.
Maximum penalty (subsections (1) and (2))—

- (a) for a corporation—300 penalty units, or
- (b) for an individual—150 penalty units.

35 Information to be included in subdivision works certificate—the Act, s 6.33(1)

A certifier must not issue a subdivision works certificate unless the certificate contains the following information—

- (a) the name of the certifier,
- (b) if the certifier is a registered body corporate—the name of the individual who issued the certificate,
- (c) if the certifier is a registered certifier—
 - (i) the registration number of the certifier, and
 - (ii) if the certifier is a registered body corporate—the registration number of the individual who issued the certificate,
- (d) the signature of the individual who issued the certificate,
- (e) the registered number and date of issue of a relevant development consent,
- (f) the date of the certificate,
- (g) a statement to the effect that work completed in accordance with documents accompanying the application for the certificate, including modifications to the documents verified by the certifier, will comply with the requirements referred to in the Act, section 6.12.

Maximum penalty—

- (a) for a corporation—300 penalty units, or
- (b) for an individual—150 penalty units.

36 Modification of subdivision works certificate—the Act, s 6.33(1)

- (1) The following persons may apply to modify the development to which an application for a subdivision works certificate or a subdivision works certificate applies—
 - (a) a person who made the application for the subdivision works certificate,
 - (b) a person who has the benefit of the subdivision works certificate.
- (2) This Part applies to an application to modify development to which an application for a subdivision works certificate or a subdivision works certificate applies in the same way as it applies to the original application.

Part 5 Occupation certificates

Division 1 Applications for occupation certificates—the Act, s 6.33(1)

37 Application for occupation certificate

- (1) An application for an occupation certificate must—
 - (a) be in the approved form, and
 - (b) include all the information and documents specified in the approved form or required by the Act or this Regulation, and
 - (c) be lodged on the NSW planning portal.
- (2) An application for an occupation certificate must be accompanied by a copy of the following documents that are relevant—
 - (a) a development consent,
 - (b) a construction certificate,
 - (c) a fire safety certificate,
 - (d) a compliance certificate.
- (3) An application that relates to development with a proposed cost of \$10 million or more, as specified in the development application, must also be accompanied by a copy of the following documents—
 - (a) if the certifier determining the application is a registered certifier—a document from the relevant council certifying that a monetary contribution or levy under the Act, section 7.11 or 7.12—
 - (i) is not required to be paid before an occupation certificate is issued, or
 - (ii) is required and has been paid,
 - (b) if the building resulting from the development is on land in a special contributions area under the Act, Division 7.1—a document from the Planning Secretary certifying that a development contribution under the Act, section 7.24—
 - (i) is not required to be made before an occupation certificate is issued, or
 - (ii) is required and has been made.
- (4) An application that relates to a development consent that was granted with a condition requiring a commitment listed in a BASIX certificate to be fulfilled must also be accompanied by a copy of each relevant BASIX certificate.
- (5) An application for an occupation certificate may only be made by a person who is eligible to appoint a principal certifier for the development.
- (6) The principal certifier for the development must notify the applicant through the NSW planning portal that the application has been lodged.
Maximum penalty (subsection (6))—
 - (a) for a corporation—150 penalty units, or
 - (b) for an individual—75 penalty units.

38 Certifier may require additional information

- (1) A certifier may require the applicant for an occupation certificate to give the certifier information about the following that the certifier considers necessary to properly consider the application—
 - (a) the building to which the application relates, including work that may have been carried out on the building,

- (b) a planning agreement.
- (2) If an applicant requests information from a planning authority that is a party to a planning agreement for the purposes of complying with a certifier's request under this section, the planning authority may certify that specified requirements of the agreement have been complied with.
- (3) This section does not affect a certifier's duty to determine an application for an occupation certificate.

Division 2 Issue of occupation certificates—the Act, s 6.10

39 Determination of application for occupation certificate

- (1) A certifier must ensure the certifier's determination of an application for an occupation certificate contains the following information—
 - (a) the date on which the application was determined,
 - (b) whether the application is approved or refused,
 - (c) if the application is refused—
 - (i) the reasons for the refusal, and
 - (ii) if the certifier is a council—the applicant's right of appeal under the Act.
- (2) Within 2 days after determining the application, the certifier must use the NSW planning portal to—
 - (a) give the determination to the applicant, and
 - (b) give a copy of the following to the consent authority and council—
 - (i) the determination,
 - (ii) the documents that were lodged with the application for the occupation certificate,
 - (iii) if an occupation certificate was issued—the certificate,
 - (iv) the records required to be made of critical stage inspections or other inspections required under this Regulation and any missed inspections,
 - (v) a compliance certificate and other documentary evidence, whether or not of a kind referred to in A5.2 in the *Building Code of Australia*, relied on to issue the occupation certificate.

Maximum penalty (subsections (1) and (2))—

- (a) for a corporation—300 penalty units, or
- (b) for an individual—150 penalty units.

40 Consideration of performance solution report

- (1) This section applies to the issue of an occupation certificate for a building if building work that involves a performance solution was carried out.
- (2) A certifier must not issue an occupation certificate unless—
 - (a) the certifier is satisfied the building work was carried out in accordance with the performance solution report that accompanied the construction certificate or complying development certificate, and
 - (b) if the performance solution report was required to be prepared by a person who is both an accredited practitioner (fire safety) and a fire safety engineer under section 18 or the *Environmental Planning and Assessment Regulation 2000*, section 130—the certifier has obtained a compliance certificate or written

report prepared by the person who prepared the performance solution report that states that the building work involving a performance solution—

- (i) is completed, and
- (ii) is consistent with the performance solution.

Maximum penalty (subsection (2))—

- (a) for a corporation—300 penalty units, or
- (b) for an individual—150 penalty units.

41 Fire safety certificates

- (1) A certifier must not issue an occupation certificate authorising a person to commence the following unless a final fire safety certificate has been issued for the building—
 - (a) occupation or use of a new building,
 - (b) a change of building use for an existing building.
- (2) A certifier must not issue an occupation certificate authorising a person to commence the following unless a fire safety certificate has been issued for the relevant part of the building—
 - (a) occupation or use of a partially completed new building,
 - (b) a change of building use for part of an existing building.
- (3) This section does not apply to—
 - (a) a class 1a or 10 building, or
 - (b) a temporary structure.

Maximum penalty (subsections (1) and (2))—

- (a) for a corporation—600 penalty units, or
- (b) for an individual—300 penalty units.

42 Health and safety, compliance with development consent and other issues

- (1) A certifier must not issue an occupation certificate authorising a person to commence the following if the building is a hazard to the health or safety of the occupants of the building—
 - (a) occupation or use of a partially completed new building,
 - (b) a new use of a part of an existing building.
- (2) A certifier must not issue an occupation certificate authorising a person to commence occupation or use of a temporary structure as an entertainment venue unless—
 - (a) the certifier has inspected the temporary structure, and
 - (b) the temporary structure is suitable for its proposed occupation or use as an entertainment venue, including for the number of persons proposed to occupy or use the temporary structure.
- (3) A certifier must not issue an occupation certificate authorising a person to commence occupation or use of a new building, or a partially completed new building, unless the design and construction of the new building, or the part of the new building that is completed, is consistent with the development consent in force for the new building.
- (4) Subsection (3) applies only if the development consent, not including a construction certificate forming part of the consent, was issued on or after 1 March 2013.

Maximum penalty (subsections (1)–(3))—

- (a) for a corporation—300 penalty units, or

- (b) for an individual—150 penalty units.

43 Design requirements for residential apartment development

- (1) This section applies to an occupation certificate for residential apartment development if the development application was required to be accompanied by a statement by a qualified designer under the *Environmental Planning and Assessment Regulation 2000*, clause 50.
- (2) A certifier must not issue an occupation certificate unless the certifier has received a design statement.
- Maximum penalty (subsection (2))—
- (a) for a corporation—300 penalty units, or
- (b) for an individual—150 penalty units.
- (3) If the development application was also required to be accompanied by a BASIX certificate for a building, the design statement does not need to address the design quality principles to the extent to which they aim—
- (a) to reduce consumption of mains-supplied potable water or greenhouse gas emissions in the use of—
- (i) the building, or
- (ii) the land on which the building is located, or
- (b) to improve the thermal performance of the building.
- (4) In this section—

design statement means a statement by a qualified designer verifying that the development achieves the design quality shown in the plans and specifications for which the construction certificate was issued, having regard to the design quality principles.

44 Fulfilment of BASIX commitments

- (1) This section applies to an occupation certificate if a relevant BASIX certificate requires a certifier to monitor fulfilment of a commitment listed in the certificate in relation to a building.
- (2) The certifier must not issue an occupation certificate for the building unless the commitment has been fulfilled.
- Maximum penalty (subsection (2))—
- (a) for a corporation—300 penalty units, or
- (b) for an individual—150 penalty units.
- (3) In determining whether a commitment has been fulfilled, the certifier may rely on the advice of a properly qualified person.

45 BASIX completion receipt

- (1) This section applies to an occupation certificate for BASIX development if a relevant BASIX certificate requires a certifier to monitor fulfilment of a commitment listed in the certificate in relation to a building.
- (2) A certifier must not issue an occupation certificate for the building unless the certifier has a receipt from the Planning Secretary (a ***BASIX completion receipt***) for the building.
- Maximum penalty (subsection (2))—
- (a) for a corporation—100 penalty units, or

- (b) for an individual—50 penalty units.
- (3) An application for a BASIX completion receipt must—
 - (a) be made in the approved form, and
 - (b) contain the following information—
 - (i) the number of each relevant BASIX certificate for the building or part of the building,
 - (ii) the postcode of the address of the building,
 - (iii) the date of the final inspection.
- (4) The Planning Secretary may issue a BASIX completion receipt—
 - (a) by an approved BASIX system, or
 - (b) in another way approved by the Planning Secretary from time to time.
- (5) A BASIX completion receipt must—
 - (a) be in the approved form, and
 - (b) confirm that the information required under subsection (3)(b) has been received.
- (6) This section does not apply to an occupation certificate to commence occupation or use of a partially completed building.

46 Payment of development contributions

- (1) This section applies to development with a proposed cost of \$10 million or more, as specified in the development application.
- (2) A registered certifier must not issue an occupation certificate for a building resulting from the development unless the certifier has—
 - (a) received a copy of a document from the relevant council required under section 37(3)(a), and
 - (b) confirmed with the relevant council that—
 - (i) the council issued the document referred to in paragraph (a), and
 - (ii) no contributions or levies have been required since the document was issued.
- (3) If the development is on land within a special contributions area under the Act, Division 7.1, the certifier must not issue an occupation certificate for a building resulting from the development unless the certifier has—
 - (a) received a copy of a document from the Planning Secretary required under section 37(3)(b), and
 - (b) confirmed with the Planning Secretary that—
 - (i) the Planning Secretary issued the document referred to in paragraph (a), and
 - (ii) no contributions have been required since the document was issued.
- (4) This section does not limit the restrictions on the issue of occupation certificates referred to in the Act, section 6.10.
Maximum penalty (subsections (2) and (3))—
 - (a) for a corporation—300 penalty units, or
 - (b) for an individual—150 penalty units.

47 Lighting affecting Siding Spring Observatory

- (1) This section applies to complying development involving a dwelling house, dual occupancy or secondary dwelling in the Coonamble, Gilgandra, Warrumbungle Shire and Dubbo Regional local government areas.
- (2) The principal certifier must not issue an occupation certificate for a dwelling house, dual occupancy or secondary dwelling on land in the Coonamble, Gilgandra or Warrumbungle Shire local government areas if any dwelling in the dwelling house, dual occupancy or secondary dwelling has—
 - (a) an outside light fitting that is not shielded, or
 - (b) more than 7 shielded outside light fittings, or
 - (c) more than 5 shielded outside light fittings that are not automatic.
- (3) The principal certifier must not issue an occupation certificate for a dwelling house, dual occupancy or secondary dwelling on land in the Dubbo Regional local government area if a dwelling in the dwelling house, dual occupancy or secondary dwelling has an outside light fitting that is not shielded.
- (4) In this section—

automatic, in relation to a light fitting, means a light fitting that—

 - (a) is activated by a sensor, and
 - (b) switches off automatically after a period of time.

outside light fitting means a light fitting that is attached or fixed outside a building, including on the exterior of a building.

shielded, in relation to a light fitting, means a light fitting that does not permit light to shine above the horizontal plane.

Maximum penalty (subsections (2) and (3))—

 - (a) for a corporation—300 penalty units, or
 - (b) for an individual—150 penalty units.

48 Compliance with planning agreement

If a planning agreement specifies requirements of the agreement that must be complied with before an occupation certificate for a building may be issued, a certifier must not issue an occupation certificate for the building unless the certifier is satisfied the requirements have been complied with.

Maximum penalty—

- (a) for a corporation—300 penalty units, or
- (b) for an individual—150 penalty units.

49 Information to be included in occupation certificate

- (1) A certifier must not issue an occupation certificate unless the certificate contains the following information—
 - (a) the name of the certifier,
 - (b) if the certifier is a registered body corporate—the name of the individual who issued the certificate,
 - (c) if the certifier is a registered certifier—
 - (i) the registration number of the certifier, and
 - (ii) if the certifier is a registered body corporate—the registration number of the individual who issued the certificate,
 - (d) the signature of the individual who issued the certificate,

- (e) the date of the certificate,
- (f) whether the certificate relates to—
 - (i) the occupation or use of a new building, or
 - (ii) a change of building use for an existing building,
- (g) whether the certificate applies to—
 - (i) the whole building or part of the building, or
 - (ii) a partially completed building,
- (h) a statement to the effect that—
 - (i) if the certificate is for a part of a new building or partially completed building—the health and safety of the occupants of the building have been considered, and
 - (ii) a current development consent is in force for the building, and
 - (iii) if building work has been carried out—a current construction certificate has been issued in relation to the building work plans and specifications,
 - (iv) the building is suitable for occupation or use in accordance with its classification under the *Building Code of Australia*, and
 - (v) a fire safety certificate has been issued, if a fire safety schedule was required under Part 10, and
 - (vi) a report from the Fire Commissioner has been considered, if required,
- (i) the following details of a performance solution report about the building work—
 - (i) the title of the report,
 - (ii) the date on which the report was made,
 - (iii) the reference number and version number of the report,
 - (iv) the name of the person who prepared the report or on whose behalf the report was prepared,
 - (v) if the person referred to in subparagraph (iv) is an accredited practitioner (fire safety) and a registered certifier—the certifier’s registration number.

Maximum penalty (subsection (1))—

- (a) for a corporation—300 penalty units, or
 - (b) for an individual—150 penalty units.
- (2) A certifier must not issue an occupation certificate in relation to which a fire safety schedule was required under Part 10 unless the certificate is accompanied by—
- (a) a fire safety certificate, and
 - (b) a fire safety schedule.

Maximum penalty (subsection (2))—

- (a) for a corporation—600 penalty units, or
- (b) for an individual—300 penalty units.

Division 3 Fire Commissioner reports—the Act, s 6.10

50 Reports of Fire Commissioner

- (1) This section applies to an application for an occupation certificate for a building to which Part 3, Division 3 applies.

- (2) As soon as practicable after receiving the application, the certifier must request a final fire safety report for the building from the Fire Commissioner.
- (3) The certifier is not required to request a final fire safety report under subsection (2) if the certifier has already refused the application for the occupation certificate.
- (4) If the certifier refuses the application for an occupation certificate after making the request but before receiving a final fire safety report, the certifier must notify the Fire Commissioner.
- (5) The certifier must not issue an occupation certificate for the building unless the certifier has considered a final fire safety report for the building that is provided to the certifier within 10 days after the Fire Commissioner received the request for the report.
- (6) If the Fire Commissioner provided the certifier with a fire safety system report for a building under section 51, the Fire Commissioner is not required to also prepare a final fire safety report under this section.
- (7) A certifier or the Fire Commissioner must use the NSW planning portal to make a request, or provide a notice or report, under this section.
- (8) In this section—
final fire safety report, for a building, means a written report specifying whether the Fire Commissioner is satisfied that—
 - (a) the building work complies with a performance solution for a Category 2 fire safety provision that was the subject of the construction certificate, and
 - (b) the fire hydrants in the fire hydrant system will be accessible for use by Fire and Rescue NSW, and
 - (c) the couplings in the fire hydrant system will be compatible with the fire appliances and equipment used by Fire and Rescue NSW.

Maximum penalty (subsections (2), (4) and (5))—

 - (a) for a corporation—300 penalty units, or
 - (b) for an individual—150 penalty units.

51 Reports of Fire Commissioner for class 2 or 3 buildings

- (1) This section applies to an application for an occupation certificate for development that involved installing, extending or modifying a relevant fire safety system in a class 2 or 3 building.
- (2) As soon as practicable after receiving the application, the certifier must request a fire safety system report from the Fire Commissioner.
- (3) The certifier is not required to request a fire safety system report under subsection (2) if—
 - (a) the certifier has already refused the application for the occupation certificate, or
 - (b) the Fire Commissioner has provided a final fire safety report for the building under section 50.
- (4) If the certifier refuses the application for an occupation certificate after making the request but before receiving a fire safety system report, the certifier must notify the Fire Commissioner.
- (5) The certifier must not issue an occupation certificate for the building unless the certifier has considered a fire safety system report for the building that is provided to

the certifier within 10 days after the Fire Commissioner received the request for the report.

- (6) A certifier or the Fire Commissioner must use the NSW planning portal to make a request, or provide a notice or report, under this section.
- (7) In this section—
fire safety system report, for a building, means a written report that specifies whether the Fire Commissioner is satisfied the relevant fire safety system is capable of performing to at least the standard in the current fire safety schedule for the building.
Maximum penalty (subsections (2), (4) and (5))—
 - (a) for a corporation—300 penalty units, or
 - (b) for an individual—150 penalty units.

Division 4 Miscellaneous

52 Circumstances in which occupation certificate not required

- (1) For the purposes of the Act, section 6.9(2)(a)(iii) and (b)(ii), the following circumstances are prescribed—
 - (a) the building is a temporary structure, other than a temporary structure that is an entertainment venue,
 - (b) the building is a structure resulting from building work to which section 62 applies.
- (2) A person who is prescribed to be the Crown for the purposes of the Act, Division 4.6 is also prescribed for the purposes of the Act, section 6.9(2)(a)(iv) and (b)(iii), in relation to Crown building work involving the erection of a new building.

53 Occupation certificates for partially completed buildings—the Act, s 6.33(1)

It is a condition of an occupation certificate issued for the first completed stage of a partially completed building (the ***partial occupation certificate***) that an occupation certificate must be obtained for the whole building within 5 years after the partial occupation certificate is issued.

Part 6 Subdivision certificates

54 Application for subdivision certificate—the Act, s 6.33(1)

- (1) An application for a subdivision certificate must—
 - (a) be in the approved form, and
 - (b) include all the information and documents specified in the approved form or required by the Act or this Regulation, and
 - (c) be lodged on the NSW planning portal.
- (2) The application must be accompanied by the following documents—
 - (a) a plan of subdivision,
 - (b) a copy of the relevant development consent,
 - (c) a copy of a relevant subdivision works certificate,
 - (d) a copy of detailed subdivision engineering plans,
 - (e) for a deferred commencement consent—evidence the applicant has satisfied the consent authority of all matters of which the consent authority must be satisfied before the consent can operate,
 - (f) evidence the applicant has complied with all conditions of consent that it must comply with before a subdivision certificate can be issued, if relevant,
 - (g) a copy of a certificate of compliance from the relevant water supply authority, if relevant,
 - (h) for subdivision of land to which water or sewerage services will be provided under the *Water Industry Competition Act 2006*—a copy of a certificate of compliance under that Act for the development,
 - (i) for subdivision that is subject to an order of the Court under the *Land and Environment Court Act 1979*, section 40—evidence the required drainage easements have been acquired by the relevant council,
 - (j) for subdivision involving subdivision work— evidence of the matters specified in the Act, section 6.15(2).
- (3) The application may only be made by—
 - (a) the owner of the land to which the application relates, or
 - (b) another person, with the consent of the owner of that land.
- (4) The consent of the owner under subsection (3)(b) is not required to be written.
- (5) The plan of subdivision to which the application relates must be accompanied by a survey certificate on the plan in the form required under the *Surveying and Spatial Information Act 2002*.
- (6) The certifier for the development must notify the applicant through the NSW planning portal that the application has been lodged.
Maximum penalty (subsection (6))—
 - (a) for a corporation—100 penalty units, or
 - (b) for an individual—50 penalty units.
- (7) In this section—
water supply authority means—
 - (a) the Sydney Water Corporation, the Hunter Water Corporation or a water supply authority within the meaning of the *Water Management Act 2000*, or

- (b) a council or county council exercising water supply, sewerage or stormwater drainage functions under the *Local Government Act 1993*, Chapter 6, Part 3, Division 2.

55 Certifier may require additional information—the Act, s 6.33(1)

- (1) A certifier may require the applicant for a subdivision certificate to give the certifier information about the subdivision or a planning agreement that the certifier considers necessary to properly consider the application.
- (2) If an applicant requests information from a planning authority that is a party to a planning agreement for the purposes of complying with a certifier's request under this section, the planning authority may certify that specified requirements of the agreement have been complied with.
- (3) This section does not affect the certifier's duty to determine an application for a subdivision certificate.

56 Determination of application for subdivision certificate—the Act, s 6.33(1)

- (1) A certifier must ensure the certifier's determination of an application for a subdivision certificate contains the following information—
 - (a) the date on which the application was determined,
 - (b) whether the application is approved or refused,
 - (c) if the application is refused—
 - (i) the reasons for the refusal, and
 - (ii) if the certifier is a consent authority—the applicant's right of appeal under the Act,
 - (d) the name of the certifier,
 - (e) if the certifier is a registered body corporate—the name of the individual who dealt with the application,
 - (f) if the certifier is a registered certifier—
 - (i) the registration number of the certifier, and
 - (ii) if the certifier is a registered body corporate—the registration number of the individual who dealt with the application,
 - (g) the signature of the individual who determined the application.
- (2) Within 2 days after determining the application, the certifier must use the NSW planning portal to—
 - (a) give the determination to the applicant, and
 - (b) give a copy of the following to the consent authority and council—
 - (i) the determination,
 - (ii) the documents that were lodged with the application for the certificate,
 - (iii) if a subdivision certificate was issued—the endorsed plan of subdivision.

Maximum penalty (subsections (1) and (2))—

- (a) for a corporation—300 penalty units, or
- (b) for an individual—150 penalty units.

Note— The form of a subdivision certificate is regulated under the *Conveyancing Act 1919*.

Part 7 Notification requirements for building and subdivision work and fire safety—the Act, s 6.33(1)

57 Notice of appointment of principal certifier

- (1) The principal certifier for building work or subdivision work must ensure a notice given under the Act, section 6.6(2)(a) or 6.12(2)(a) contains the following information—
 - (a) a description of the work to be carried out,
 - (b) the address of the land on which the work will be carried out,
 - (c) the registered number and date of issue of the relevant development consent,
 - (d) the name and address of the principal certifier and the person who appointed the principal certifier,
 - (e) if the principal certifier is a registered certifier—
 - (i) the certifier’s registration number, and
 - (ii) a statement signed by the registered certifier to the effect that the certifier consents to being appointed as principal certifier, and
 - (iii) a telephone number on which the certifier may be contacted for business purposes.
- (2) The notice must be lodged on the NSW planning portal.

58 Notice of critical stage inspections

- (1) The principal certifier for building work must ensure a notice given under the Act, section 6.6(2)(b) contains the following information—
 - (a) the name and registration number of the principal certifier,
 - (b) a telephone number on which the principal certifier may be contacted for business purposes,
 - (c) a description of the work to be carried out,
 - (d) the address of the land on which the work will be carried out,
 - (e) the registered numbers of the development consent and the construction certificate,
 - (f) a list of the critical stage inspections and other inspections that must be carried out in relation to the work.
- (2) The notice must be lodged on the NSW planning portal.

59 Notice of intention to commence erection of building or subdivision work

- (1) A person required to give a notice under the Act, section 6.6(2)(e) or 6.12(2)(c) must ensure the notice contains the following information—
 - (a) the name and address of the person,
 - (b) a description of the work to be carried out,
 - (c) the address of the land on which the work will be carried out,
 - (d) the registered numbers and date of issue of the development consent and construction certificate,
 - (e) a statement signed by or on behalf of the principal certifier that all conditions of the consent that must be satisfied before the work commences have been satisfied,
 - (f) the date on which the work is intended commence.

- (2) The notice must be lodged on the NSW planning portal.

60 Council to be notified of significant fire safety issues—the Act, s 10.13(1)(d)

- (1) A certifier must give written notice to the council if—
- (a) an application is made to the certifier for a certificate under the Act, Part 6 affecting an existing building, and
 - (b) the building is a class 1b, 2, 3, 4, 5, 6, 7, 8 or 9 building, and
 - (c) after receiving the application but before issuing the certificate, the certifier becomes aware, when carrying out an inspection or otherwise, of a significant fire safety issue with a part of the building.
- (2) A principal certifier must give written notice to the council if—
- (a) the principal certifier is appointed for building work affecting an existing building, and
 - (b) the building is a class 1b, 2, 3, 4, 5, 6, 7, 8 or 9 building, and
 - (c) after being appointed but before issuing an occupation certificate for the building work, the principal certifier becomes aware, when carrying out an inspection or otherwise, of a significant fire safety issue with the building.
- (3) The notice under subsection (1) or (2) must—
- (a) describe the fire safety issue and the parts of the building affected by the issue, and
 - (b) be made within 2 days after the certifier or principal certifier becomes aware of the fire safety issue, and
 - (c) be lodged on the NSW planning portal.
- (4) A certifier or principal certifier is not required to give notice if the fire safety issue is being addressed—
- (a) by a fire safety order, or
 - (b) by development that affects the building that is the subject of—
 - (i) a development consent, or
 - (ii) a construction certificate.
- (5) To avoid doubt, this section extends to a council that is a certifier or principal certifier.
- Maximum penalty (subsections (1) and (2))—
- (a) for a corporation—300 penalty units, or
 - (b) for an individual—150 penalty units.

Part 8 Inspections of building work—the Act, s 6.33(1)(g)

61 Critical stage inspections for building work

- (1) The person having the benefit of a development consent must ensure that building work to which the development consent relates is inspected as required by this section (the *critical stage inspections*).
Maximum penalty (subsection (1))—
 - (a) for a corporation—300 penalty units, or
 - (b) for an individual—150 penalty units.
- (2) The building work for a class 1 or 10 building must be inspected on the following occasions—
 - (a) after excavation for, and before the placement of, a footing,
 - (b) before pouring an in-situ reinforced concrete building element,
 - (c) before covering the framework for a floor, wall, roof or other building element,
 - (d) before covering waterproofing in a wet area,
 - (e) before covering stormwater drainage connections,
 - (f) after the building work is completed and before an occupation certificate is issued for the building (the *final critical stage inspection*).
- (3) The building work for a class 2, 3 or 4 building must be inspected on the following occasions—
 - (a) after excavation for, and before the placement of, the first footing,
 - (b) before covering fire protection at service penetrations to building elements that are required to resist internal fire or smoke spread,
 - (c) before covering the junction of an internal fire-resisting construction bounding a sole-occupancy unit and another building element that is required to resist internal fire spread,
 - (d) before covering waterproofing in a wet area, for at least 10% of rooms with a wet area in the building,
 - (e) before covering stormwater drainage connections,
 - (f) after the building work is completed and before an occupation certificate is issued for the building (the *final critical stage inspection*).
- (4) The building work for a class 5, 6, 7, 8 or 9 building must be inspected on the following occasions—
 - (a) after excavation for, and before placement of, the first footing,
 - (b) for a class 9a or 9c building—before covering fire protection at service penetrations to building elements that are required to resist internal fire or smoke spread,
 - (c) before covering stormwater drainage connections,
 - (d) after the building work is completed and before an occupation certificate is issued for the building (the *final critical stage inspection*).
- (5) The critical stage inspections must be carried out by—
 - (a) the principal certifier, or
 - (b) another certifier, as agreed with the principal certifier.

- (6) Despite subsection (5), a final critical stage inspection must be carried out by the principal certifier.
- (7) Building work comprising a swimming pool must also be inspected as soon as practicable after a barrier, if required under the *Swimming Pools Act 1992*, is erected.
- (8) The inspection required under subsection (3)(b) or (4)(b) is an inspection of at least 1 of each type of protection method for each type of service, on each storey of the building comprising the building work.
- (9) The inspection required under subsection (3)(c) is an inspection of at least 30% of sole-occupancy units, on each storey of the building containing sole-occupancy units.
- (10) This section does not apply in relation to an inspection required when a building or dwelling is built off the site in sections and transported to the site for assembly.

62 Critical stage inspections for building work at ports

- (1) This section applies to building work that—
 - (a) is on land to which *State Environmental Planning Policy (Three Ports) 2013* applies, and
 - (b) results in a structure that—
 - (i) does not have a classification under the *Building Code of Australia*, or
 - (ii) is, or is of a kind, declared by the Planning Secretary, by notice published in the Gazette, to be a structure to which this section applies.
- (2) The person having the benefit of the development consent must ensure that building work to which the development consent relates is inspected before the use of the structure commences—
 - (a) on the occasions specified in subsection (3) (the ***critical stage inspections***), and
 - (b) on other occasions required by the principal certifier.Maximum penalty (subsection (2))—
 - (a) for a corporation—300 penalty units, or
 - (b) for an individual—150 penalty units.
- (3) The building work must be inspected on the following occasions—
 - (a) after excavation for, and before the placement of, a footing,
 - (b) before pouring an in-situ reinforced concrete building element,
 - (c) on completion of the building work (the ***final critical stage inspection***).
- (4) The critical stage inspections and other inspections required under subsection (2)(b) must be carried out by—
 - (a) the principal certifier, or
 - (b) another certifier, as agreed with the principal certifier.
- (5) Despite subsection (4), the final critical stage inspection must be carried out by the principal certifier.
- (6) Before carrying out the final critical stage inspection, the principal certifier must be satisfied the principal certifier has been given all certificates that the principal certifier must be given as a condition, under *State Environmental Planning Policy (Three Ports) 2013*, of a complying development certificate authorising the building work.

63 Records of critical stage and other inspections

- (1) A certifier, whether or not a principal certifier, must make a record of each critical stage inspection, and other inspections required by a principal certifier under this Regulation, carried out by the certifier.
Maximum penalty (subsection (1))—
 - (a) for a corporation—300 penalty units, or
 - (b) for an individual—150 penalty units.
- (2) A certifier who is required to make a record, and who is not the principal certifier for the work, must, within 2 days after the record is made, give a copy of the record to the principal certifier for the work.
Maximum penalty (subsection (2))—
 - (a) for a corporation—100 penalty units, or
 - (b) for an individual—50 penalty units.
- (3) A record of an inspection must be made as soon as practicable after the inspection is carried out.
- (4) A record must include the following information—
 - (a) the registered number of the development application,
 - (b) the registered number of the construction certificate or complying development certificate,
 - (c) the address of the site of the inspection,
 - (d) the type of inspection,
 - (e) the date on which it was carried out,
 - (f) the name of the certifier who carried out the inspection,
 - (g) if the certifier is a registered body corporate—the name of the individual who carried out the inspection,
 - (h) if the certifier who carried out the inspection is a registered certifier—
 - (i) the registration number of the certifier, and
 - (ii) if the certifier is a registered body corporate—the registration number of the individual who carried out the inspection,
 - (i) whether the inspection was satisfactory in the opinion of the certifier who carried it out.

64 Missed progress inspections

- (1) Within 2 days after a person who is not the principal certifier becomes aware that an inspection that the person was required to carry out has been missed, the person must notify the principal certifier of the circumstances of the missed inspection.
- (2) Within 2 days after becoming aware that an inspection has been missed, the principal certifier must—
 - (a) notify the following—
 - (i) the person who appointed the principal certifier,
 - (ii) the principal contractor, if a principal contractor was required to be appointed for the work,
 - (iii) the owner-builder, if the work is being done by an owner-builder, and
 - (b) if satisfied of the following matters, make a record of the relevant information and give a copy of the record to the person who appointed the principal certifier—

- (i) the inspection was missed because of unavoidable circumstances,
 - (ii) the work that would have been the subject of the missed inspection is satisfactory.
- (3) If the principal certifier is satisfied of the matters specified in subsection (2)(b) and complies with subsection (2), the missed inspection is taken to not be required to have been carried out for the purposes of section 61(1) or 62(2).
- (4) This section does not apply if a final critical stage inspection referred to in section 61 or 62 is missed.
- (5) In this section—
required information means the following—
 - (a) a description of the development and the class of the building,
 - (b) the address and folio identifier of the land,
 - (c) the registered numbers of the development consent and the construction certificate,
 - (d) the name and registration number of the principal certifier,
 - (e) the name, address and telephone number of the principal contractor or owner-builder and, if that person is required to hold a licence or permit, the number of the licence or permit,
 - (f) details of the inspection that was missed and the unavoidable circumstances,
 - (g) a statement that the principal certifier is satisfied the work that would have been the subject of the missed inspection is satisfactory,
 - (h) the documentary evidence relied on to satisfy the principal certifier that the work that would have been the subject of the missed inspection is satisfactory, including evidence of a kind referred to in A5.2 of the *Building Code of Australia*.

Maximum penalty (subsections (1) and (2))—

- (a) for a corporation—300 penalty units, or
- (b) for an individual—150 penalty units.

65 Advance notice of inspections

The principal contractor for a building site or the owner-builder must notify the principal certifier at least 48 hours before a critical stage inspection or other inspection required by a principal certifier under this Regulation must be carried out, to allow the principal certifier or another certifier time to carry out the inspection.

Maximum penalty—

- (a) for a corporation—300 penalty units, or
- (b) for an individual—150 penalty units.

Part 9 Other provisions about certification

Division 1 Functions of principal certifiers—the Act, s 6.33(1)

66 Directions by principal certifiers about non-compliance—the Act, s 6.31

- (1) The Act, section 6.31 applies in relation to the carrying out of works otherwise than in compliance with a development consent, including approved plans and development consent conditions.
- (2) The Act, section 6.31 does not apply in relation to non-compliance identified during—
 - (a) a critical stage inspection, or
 - (b) an inspection under this section.
- (3) A notice containing a direction by a principal certifier under the Act, section 6.31 must—
 - (a) be in the approved form, and
 - (b) be issued within 2 business days after the certifier becomes aware of the non-compliance.
- (4) At the end of the period specified in a notice for compliance, the principal certifier must inspect the site to assess whether the direction has been complied with.
- (5) The principal certifier must—
 - (a) make a record of the inspection, and
 - (b) give a copy of the record to the person responsible for carrying out the part of the development to which the non-compliance relates.
- (6) The inspection record must include the following information—
 - (a) the address of the site of the inspection,
 - (b) the date of the inspection,
 - (c) if the inspection was carried out by a council—
 - (i) the name of the council, and
 - (ii) the name and signature of the individual who carried out the inspection,
 - (d) if the inspection was carried out by a registered certifier—
 - (i) the name and registration number of the registered certifier, and
 - (ii) if the registered certifier is a registered body corporate—the name and registration number of the individual who carried out the inspection,
 - (e) details about whether the direction has been complied with.
- (7) For the purposes of the Act, section 6.31(2), the prescribed period is 2 days after the inspection is carried out.
- (8) A copy of a notice under the Act, section 6.31(2) that a direction has not been complied with must be given to the owner of the land, including an owners corporation, to which the direction relates.

67 General duties of principal certifiers

- (1) If building work or subdivision work requires development consent, the principal certifier who has control over the work must, before the work commences, be satisfied a construction certificate, subdivision works certificate or complying development certificate has been issued.

- (2) A principal certifier for building work or subdivision work must, before residential building work over which the principal certifier has control commences, be satisfied the principal contractor for the work—
 - (a) holds an appropriate licence, if required under the *Home Building Act 1989*, and
 - (b) is covered by the appropriate insurance, if required under the *Home Building Act 1989*.
 - (3) Subsection (2)(b) does not apply to work carried out by an owner-builder.
 - (4) A principal certifier for building work or subdivision work must, before an owner-builder commences residential building work over which the principal certifier has control, be satisfied the owner-builder holds an owner-builder permit required under the *Home Building Act 1989*.
 - (5) A principal certifier for building work or subdivision work must, before the principal certifier issues an occupation certificate or subdivision certificate, be satisfied that—
 - (a) the building work or subdivision work has been inspected by the principal certifier or another certifier on the occasions required by this Regulation and the principal certifier, and
 - (b) the preconditions required by a development consent to be met before the issue of the occupation certificate or subdivision certificate have been met.
- Maximum penalty (subsections (1), (2), (4) and (5))—
- (a) for a corporation—300 penalty units, or
 - (b) for an individual—150 penalty units.

68 Replacement of principal certifiers

- (1) A person may be appointed to replace another person as the principal certifier for building work or subdivision work only if—
 - (a) the Registration Secretary gives written approval and the relevant council and consent authority are notified before the replacement occurs, or
 - (b) the current principal certifier, the proposed principal certifier and a person who is eligible to appoint a principal certifier for the work agree.
- (2) An application to the Registration Secretary for approval, and a notification to the council and consent authority, under subsection (1)(a) must be—
 - (a) accompanied by the fee, if any, prescribed by the regulations under the *Building and Development Certifiers Act 2018*, and
 - (b) in a form approved by the Registration Secretary.
- (3) A person appointed to replace another person as the principal certifier may exercise the functions of a principal certifier only if subsection (1) has been complied with.
- (4) If the Registration Secretary approves the appointment of the relevant council to replace another person as the principal certifier under subsection (1)(a), the council must accept the appointment.
- (5) A principal certifier appointed to replace another certifier under subsection (1)(b) must ensure that notice of the appointment is, within 2 days after the appointment, given to—
 - (a) the consent authority, and
 - (b) if the consent authority is not the council—the council.
- (6) A notice given under subsection (5) must—

- (a) contain the following information—
 - (i) the information required under section 57(1),
 - (ii) the name of the current principal certifier who has been replaced,
 - (iii) a statement that the current principal certifier agreed to be replaced, and
 - (b) be lodged on the NSW planning portal.
- (7) A person is not required to give a notice under subsection (5) to a person who has agreed to, or been notified of, the proposed appointment.
- Maximum penalty (subsections (3) and (5))—
- (a) for a corporation—300 penalty units, or
 - (b) for an individual—150 penalty units.

69 Provision of information to replacement principal certifiers

- (1) This section applies if—
- (a) a principal certifier (the *new principal certifier*) has been appointed to replace another principal certifier (the *old principal certifier*), and
 - (b) the new principal certifier is unable to obtain the prescribed information about a matter from the old principal certifier.
- (2) The new principal certifier may, by written notice, request that the Registration Secretary give a direction in relation to the matter.
- (3) The Registration Secretary may give a written direction to the following persons to give the prescribed information to the new principal certifier within the period specified in the notice—
- (a) the old principal certifier,
 - (b) a person who the Registration Secretary reasonably believes has the information.
- (4) A person must not, without reasonable excuse, fail to comply with a direction given to the person by the Registration Secretary.
- Maximum penalty (subsection (4))—20 penalty units.
- (5) It is not a reasonable excuse for the purposes of subsection (4) that a person has—
- (a) a claim to a lien over a document or record that is prescribed information, or
 - (b) a right to keep the document or record as security for payment.
- (6) In this section—
- prescribed information* means the following information, or a copy of the information, in relation to a matter—
- (a) if the old principal certifier is not a council—the documents and records required to be kept under the *Building and Development Certifiers Act 2018* by a registration holder, and
 - (b) if the old principal certifier is a council—
 - (i) the information required to be given to the Registration Secretary under the *Building and Development Certifiers Act 2018* in relation to the person who performed the certification work on behalf of the council, and
 - (ii) the records required to be kept by the council under the *Building and Development Certifiers Act 2018*.

70 Principal certifiers must keep records of complaints

A principal certifier for development must—

- (a) keep a written record of—
 - (i) each complaint received by the certifier in relation to the development, and
 - (ii) any action taken by, or response given by, the certifier in relation to the complaint, and
- (b) keep the record for a period of 10 years from the date on which the principal certifier received the complaint.

Maximum penalty—

- (a) for a corporation—300 penalty units, or
- (b) for an individual—150 penalty units.

Division 2 BASIX certificates

71 BASIX certificates

- (1) The Planning Secretary may issue a certificate (a ***BASIX certificate***) in relation to the sustainability of BASIX development and BASIX optional development.
- (2) A BASIX certificate may be issued by an approved BASIX system.
- (3) A BASIX certificate must contain the following—
 - (a) a description of the development that corresponds to the description contained in—
 - (i) the application, and
 - (ii) the documents required to accompany the application for a construction certificate for the development under this Regulation,
 - (b) a detailed list of the commitments by the applicant about the carrying out of the development, including commitments about measures, such as design and fit-out, to promote the sustainability of the development,
 - (c) a statement to the effect that the development will meet the Government's requirements for sustainability if the commitments are fulfilled.
- (4) If the development involves the erection of a building for both residential and non-residential purposes, or the change of building use to both residential and non-residential purposes, the description referred to in subsection (3)(a) is required only in relation to the part of the development intended to be used for residential purposes.
- (5) In this section—

application means—

 - (a) a development application, application for a complying development certificate or application for a construction certificate, or
 - (b) an application for modification of a development consent, complying development certificate or construction certificate.

sustainability, in relation to BASIX development, means the capacity of the development—

 - (a) to reduce consumption of mains-supplied potable water, and
 - (b) to reduce greenhouse gas emissions, and
 - (c) to perform in a thermally efficient way.

72 Fee for BASIX certificates—the Act, s 7.44

- (1) If a BASIX certificate is issued using an approved BASIX system, the fee for the issue of the certificate is—
 - (a) the fee specified for the development in the Table to this section, or
 - (b) if the development is not specified in the Table—\$50.
- (2) If the BASIX certificate is not issued using an approved BASIX system, the fee for the issue of the certificate is—
 - (a) the fee specified for the development in the Table plus the lesser of—
 - (i) 50% of the fee specified in the Table, or
 - (ii) \$250, or
 - (b) if the development is not specified in the Table—\$50.
- (3) An additional fee of \$5 is payable for the use of the NSW planning portal to lodge an application for a BASIX certificate.
- (4) The Planning Secretary may approve circumstances in which the amount payable under this section is reduced or waived.

Table

Type of development	Fee
New BASIX buildings	
Single detached dwellings	\$50
Dual occupancies, attached dwellings and multi dwelling housing—	
(a) for the first 2 dwellings, and	\$80
(b) for each additional dwelling	\$35
Residential flat buildings—	
(a) for the first 3 dwellings, and	\$120
(b) for each additional dwelling	\$20
Alterations and additions to BASIX buildings	
For each dwelling	\$25

Division 3 Miscellaneous—the Act, s 6.33(1)

73 Certifiers may be satisfied of certain matters

- (1) If a condition of a development consent requires a consent authority or council to be satisfied about a relevant matter, the condition is taken to have been complied with if a certifier is satisfied about the matter.
- (2) In this section—

relevant matter means—

 - (a) a matter that relates to the form or content of the plans and specifications for the following kind of work that will be carried out in connection with the erection of a building or the subdivision of land—
 - (i) earthworks,
 - (ii) roadworks, including road pavement and road finishing,
 - (iii) stormwater drainage work,

- (iv) landscaping work,
 - (v) erosion and sedimentation control works,
 - (vi) excavation work,
 - (vii) mechanical work,
 - (viii) structural work,
 - (ix) hydraulic work,
 - (x) work associated with driveways and parking bays, including road pavement and road finishing, and
- (b) a matter that relates to the external finish of a building.

74 Exemption from BCA standards for fire safety building work

- (1) A person may lodge an objection with a certifier that compliance with a specified provision of the *Building Code of Australia* relating to the operational performance of a relevant fire safety system is unreasonable or unnecessary in the circumstances.
- (2) A person may lodge an objection under this section only if the person has, or will have, the benefit of—
 - (a) a construction certificate subject to a condition under section 22 in relation to building work involving the minor modification or extension of a relevant fire safety system, or
 - (b) a complying development certificate subject to a condition imposed by the *Environmental Planning and Assessment Regulation 2000*, section 136AA in relation to building work involving the minor modification or extension of a relevant fire safety system.
- (3) The objection must—
 - (a) specify the grounds of the objection, and
 - (b) be accompanied by a copy of the building work plans and specifications.
- (4) The certifier may, if satisfied an objection is well-founded, exempt the building work, either conditionally or unconditionally, from a specified provision of the *Building Code of Australia*.
- (5) A certifier may exempt the building work only if—
 - (a) the non-compliance with the *Building Code of Australia* relates only to the operational performance of the relevant fire safety system, and
 - (b) the certifier is satisfied the non-compliance will not reduce the operational performance of the relevant fire safety system, and
 - (c) an accredited practitioner (fire safety), other than the accredited practitioner who prepared the building work plans and specifications, has endorsed the non-compliance, and
 - (d) a fire safety certificate or fire safety statement that relates to or includes the fire safety system being modified or extended was issued for the building no longer than 6 months before the objection was made.
- (6) This section does not apply to building work required by a fire safety order.

75 Signs on development sites

- (1) The principal certifier and the principal contractor for building work, subdivision work or demolition work authorised to be carried out on a site by a development consent must ensure a sign that complies with this section is—

- (a) erected in a prominent position on the site before the commencement of the work, and
- (b) maintained at all times while the work is being carried out and while the person remains the principal certifier or principal contractor, and
- (c) removed when the work has been completed.

Maximum penalty (subsection (1))—55 penalty units.

- (2) The sign must be rigid and durable and show the following information—
 - (a) the name, address and telephone number of the principal certifier, and
 - (b) if there is a principal contractor—the principal contractor’s name and address and a telephone number on which the principal contractor may be contacted outside working hours.
- (3) The information required under subsection (2) must be able to be read easily by a person on a public road or in another public place adjacent to the site.
- (4) This section does not—
 - (a) require the erection of more than one sign on a site, or
 - (b) prevent the use of an appropriate sign that has already been erected on a site.

76 Certification for temporary structures

- (1) The Act, sections 6.6(2) and 6.10(2)(b) do not apply to the erection of a temporary structure in accordance with a development consent.
- (2) However, the Act, section 6.6(2)(a) and (e) applies to the erection of a temporary structure that is an entertainment venue.

Part 10 Fire safety—the Act, s 10.13(1)(d)

77 Application of Part

This Part applies to all buildings, other than—

- (a) a class 1a or 10 building, or
- (b) a temporary structure.

78 Fire safety schedules

- (1) This section applies to a person who—
 - (a) grants a development consent for a change of building use, other than by a complying development certificate, if building work is not—
 - (i) proposed by the applicant for the consent, or
 - (ii) required by the consent authority, or
 - (b) issues a complying development certificate for the erection of a building or a change of building use, or
 - (c) issues a construction certificate for building work, or
 - (d) gives a fire safety order in relation to premises.
 - (2) A person must—
 - (a) issue a schedule (a *fire safety schedule*) containing the matters specified in section 79, and
 - (b) ensure the requirements of this section relating to the fire safety schedule are complied with.
- Maximum penalty (subsection (2))—
- (a) for a corporation—300 penalty units, or
 - (b) for an individual—150 penalty units.
- (3) For a fire safety order in relation to which a further order is made under the Act, Schedule 5, clause 1, the fire safety schedule must be issued when the further order is made.
 - (4) A fire safety schedule is not required to be issued if—
 - (a) the work for which a complying development certificate or construction certificate will be issued relates only to—
 - (i) an alteration to a hydraulic fire safety system, or
 - (ii) the installation of a fixed on-site pumpset and the construction of a new external pumphouse to accommodate the pumpset, and
 - (b) the carrying out of the work will not result in a permanent reduction of the fire protection provided by the existing hydraulic fire safety system that will be the subject of the work, and
 - (c) there is notice of past, current or proposed action by or on behalf of a water utility to—
 - (i) install mains pressure reduction capability, or
 - (ii) implement mains pressure reduction.
 - (5) A copy of the fire safety schedule must be attached to the relevant development consent, construction certificate or fire safety order.
 - (6) The attached fire safety schedule is taken to form part of the development consent, construction certificate or fire safety order.

- (7) An earlier fire safety schedule is superseded by a later fire safety schedule and ceases to have effect when the later fire safety schedule is issued.

79 Content of fire safety schedules

- (1) A fire safety schedule must specify the current and proposed fire safety measures that must be implemented for the building, including statutory fire safety measures and other fire measures.
- (2) A fire safety schedule must deal with the whole of the building and not only the part of the building to which the development consent, construction certificate or fire safety order relates.
- (3) A fire safety schedule must—
- (a) specify and distinguish between the statutory fire safety measures that are—
 - (i) currently implemented for the building, and
 - (ii) proposed or required to be implemented for the building, and
 - (b) specify each critical fire safety measure and the intervals, of less than 12 months, at which a supplementary fire safety statement must be given to the council for each measure, and
 - (c) specify the minimum standard of performance for each fire safety measure in the schedule.
- (4) In this section—
statutory fire safety measures means the measures specified in the following Table—

Table

Access panels, doors and hoppers to fire-resisting shafts	Fire windows
Automatic fail-safe devices	Lightweight construction
Automatic fire detection and alarm systems	Mechanical air handling systems
Automatic fire suppression systems	Perimeter vehicle access for emergency vehicles
Emergency lifts	Portable fire extinguishers
Emergency lighting	Safety curtains in proscenium openings
Emergency warning and intercommunication systems	Smoke alarms and heat alarms
Exit signs	Smoke and heat vents
Fire control centres and rooms	Smoke dampers
Fire dampers	Smoke detectors and heat detectors
Fire doors	Smoke doors
Fire hose reel systems	Solid core doors
Fire hydrant systems	Standby power systems
Fire seals protecting openings in fire-resisting components of the building	Wall-wetting sprinkler and drencher systems
Fire shutters	Warning and operational signs

80 Providing fire safety schedules and fire safety certificates after fire safety order is given

- (1) As soon as practicable after giving a fire safety order in relation to a building, the person who gives the order must give a copy of the fire safety schedule for the building to—
- (a) the council, and

- (b) the Fire Commissioner.
- (2) A person to whom a fire safety order is given in relation to a building must, within the time specified in the order, give a copy of the final fire safety certificate for the building to—
 - (a) the person who gave the fire safety order, and
 - (b) if the person who gave the fire safety order was not the council—the council.Maximum penalty (subsection (2))—
 - (a) for a corporation—600 penalty units, or
 - (b) for an individual—300 penalty units.
- (3) The final fire safety certificate must be issued after the requirements of the fire safety order have been complied with.

81 Essential fire safety measures to be maintained

- (1) The owner of a building must maintain each essential fire safety measure for the building—
 - (a) for an essential fire safety measure specified in a fire safety schedule—to a standard no less than that specified in the schedule, or
 - (b) for an essential fire safety measure applicable to the building but not specified in the fire safety schedule (an *original measure*)—to a standard no less than that to which the measure was originally designed and implemented.

Note— Some pre-1997 buildings may not have a fire safety schedule but essential fire safety measures still apply.

Maximum penalty (subsection (1))—
 - (a) for a corporation—600 penalty units, or
 - (b) for an individual—300 penalty units.
- (2) The owner of a building to which an original measure applies may request from the council a schedule of the original measures for the building.
- (3) The council must provide the schedule to the owner as soon as practicable after receiving the request.

Part 11 Fire safety certificates—the Act, s 10.13(1)(d)

82 Application of Part

This Part applies to all buildings, other than—

- (a) a class 1a or 10 building, or
- (b) a temporary structure.

83 Final fire safety certificates and interim fire safety certificates

- (1) A *final fire safety certificate* means a certificate that—
 - (a) is issued for the whole of a building by or on behalf of the owner of the building, and
 - (b) certifies that each essential fire safety measure specified in the current fire safety schedule for the whole building has been assessed by a properly qualified person as capable of performing to at least the standard required by the current fire safety schedule.
- (2) An *interim fire safety certificate* means a certificate that—
 - (a) is issued for part of a building by or on behalf of the owner of the building, and
 - (b) certifies that each essential fire safety measure specified in the current fire safety schedule for the part of the building has been assessed by a properly qualified person as capable of performing to at least the standard required by the current fire safety schedule.

84 Issue of fire safety certificates

- (1) A person must not issue a fire safety certificate unless the assessment by a properly qualified person required for the certificate has been carried out within the previous 3 months.
- (2) The owner of the building may choose a person to carry out the assessment.
- (3) The person who carries out the assessment must—
 - (a) inspect and verify the performance of each essential fire safety measure being assessed, and
 - (b) test the operation of equipment that—
 - (i) is specified in the current fire safety schedule for the building, and
 - (ii) has not previously been tested in an assessment because it is newly installed.
- (4) A fire safety certificate is not required to address an essential fire safety measure if—
 - (a) the certificate is issued in relation to work that has been authorised or required by a development consent, construction certificate or fire safety order, and
 - (b) the measure is addressed in another fire safety certificate or fire safety statement issued within the previous 6 months.
- (5) Subsection (4) does not apply if the person who issued the development consent, construction certificate or fire safety order determines it should not apply.
- (6) A person may make a determination under subsection (5) only if the person—
 - (a) considers that the essential fire safety measure will be affected by the work, and
 - (b) has specified in the fire safety schedule attached to the development consent, construction certificate or fire safety order that the fire safety certificate issued in relation to the work must address the essential fire safety measure.

Maximum penalty (subsections (1) and (3))—

- (a) for a corporation—300 penalty units, or
- (b) for an individual—150 penalty units.

85 Fire safety certificate to be given to Fire Commissioner and displayed in building

- (1) As soon as practicable after a fire safety certificate is issued for a building, the owner of the building must—
 - (a) give a copy of the certificate and a copy of the current fire safety schedule to the Fire Commissioner, and
 - (b) ensure a copy of the certificate and a copy of the current fire safety schedule are prominently displayed in the building.

Maximum penalty (subsection (1)(b))—

- (a) for a corporation—300 penalty units, or
- (b) for an individual—150 penalty units.

- (2) Subsection (1)(b) ceases to apply to a fire safety certificate only when each essential fire safety measure listed in the certificate has become the subject of a later fire safety certificate or fire safety statement.

86 Information to be included in fire safety certificates

- (1) A person must not issue a fire safety certificate for a building or part of a building unless the certificate—
 - (a) is in the approved form, and
 - (b) contains the following information—
 - (i) the name and address of the owner of the building,
 - (ii) a description of the building, including the address,
 - (iii) a list of each essential fire safety measure in the building and the minimum standard of performance specified in the relevant fire safety schedule for each measure,
 - (iv) the date on which the essential fire safety measures were assessed,
 - (v) whether the certificate is a final or interim fire safety certificate,
 - (vi) a statement to the effect referred to in section 83(1)(b) for a final fire safety certificate or section 83(2)(b) for an interim fire safety certificate,
 - (vii) the date on which the certificate is issued.
- (2) Subsection (1)(b)(iii) and (iv) applies only to the essential fire safety measures required to be addressed in the fire safety certificate.
- (3) A person must not issue a fire safety certificate for a building or part of a building unless the certificate is accompanied by a fire safety schedule for the building or part of the building.

Maximum penalty (subsections (1) and (3))—

- (a) for a corporation—300 penalty units, or
- (b) for an individual—150 penalty units.

Part 12 Fire safety statements—the Act, s 10.13(1)(d)

87 Application of Part

This Part applies to all buildings, other than—

- (a) a class 1a or 10 building, or
- (b) a temporary structure.

88 Annual fire safety statement

- (1) An *annual fire safety statement* is a statement issued by or on behalf of the owner of a building to the effect that—
 - (a) each essential fire safety measure specified in the statement has been assessed by an accredited practitioner (fire safety) as capable of performing—
 - (i) for an essential fire safety measure specified in the fire safety schedule—to a standard no less than that specified in the schedule, or
 - (ii) for an original measure within the meaning of section 81—to a standard no less than that to which the measure was originally designed and implemented, and
 - (b) the building has been inspected by an accredited practitioner (fire safety) and was found, when it was inspected, to be in a condition that did not disclose grounds for a prosecution under Part 15.
- (2) A person must not issue an annual fire safety statement unless the assessment and inspection have been carried out within the previous 3 months.
- (3) The owner of the building may choose a person to carry out the assessment or inspection.
- (4) The person who carries out the assessment referred to in subsection (1)(a) must inspect and verify the performance of each essential fire safety measure being assessed.

Maximum penalty (subsection (4))—

 - (a) for a corporation—300 penalty units, or
 - (b) for an individual—150 penalty units.

89 Duties of building owners in relation to annual fire safety statements

- (1) The owner of a building to which an essential fire safety measure applies must give the council an annual fire safety statement for the building.

Maximum penalty (subsection (1))—

 - (a) for a corporation—800 penalty units, or
 - (b) for an individual—400 penalty units.
- (2) The owner must give the annual fire safety statement to the council within the later of—
 - (a) 12 months after an annual fire safety statement was previously given to the council, or
 - (b) if a fire safety certificate has been issued within the previous 12 months—12 months after the certificate was issued.
- (3) Failure to give an annual fire safety statement to the council within the time required by subsection (2) is a separate offence for each week that the failure continues after the expiry of the required time.

- (4) As soon as practicable after an annual fire safety statement is issued for a building, the owner of the building must—
- (a) give a copy of the statement and a copy of the current fire safety schedule to the Fire Commissioner, and
 - (b) ensure a copy of the statement and a copy of the current fire safety schedule are prominently displayed in the building.

Maximum penalty (subsection (4)(b))—55 penalty units.

- (5) Subsection (4)(b) ceases to apply to an annual fire safety statement only when each essential fire safety measure specified in the statement has become the subject of a later fire safety certificate or fire safety statement.
- (6) A requirement in this section to give a fire safety statement to a council is a requirement to give the statement to the Minister, if the statement relates to premises in a ski resort area to which *State Environmental Planning Policy (Kosciuszko National Park—Alpine Resorts) 2007* applies.

90 Supplementary fire safety statement

- (1) A **supplementary fire safety statement** is a statement issued by the owner of a building to the effect that each critical fire safety measure specified in the statement has been assessed by an accredited practitioner (fire safety) as capable of performing to at least the standard required by the current fire safety schedule for the building.
- (2) The owner must not issue a supplementary fire safety statement unless the assessment has been carried out within the previous month.
- (3) The owner may choose a person to carry out the assessment.
- (4) The person who carries out the assessment must inspect and verify the performance of each fire safety measure being assessed.
- Maximum penalty (subsection (4))—
- (a) for a corporation—300 penalty units, or
 - (b) for an individual—150 penalty units.

91 Duties of building owners in relation to supplementary fire safety statements

- (1) If a critical fire safety measure is specified in the fire safety schedule for a building, the owner of the building must ensure the council is given a supplementary fire safety statement for the measure in accordance with this section.
- Maximum penalty (subsection (1))—
- (a) for a corporation—800 penalty units, or
 - (b) for an individual—400 penalty units.
- (2) A supplementary fire safety statement must be provided at the intervals, of less than 12 months, specified for the measure in the current fire safety schedule for the building.
- (3) Failure to provide the statement within the time specified is a separate offence for each week that the failure continues after the expiry of the specified time.
- (4) As soon as practicable after issuing a supplementary fire safety statement, the owner of the building must—
- (a) give a copy of the statement and a copy of the current fire safety schedule to the Fire Commissioner, and
 - (b) ensure a copy of the statement and a copy of the current fire safety schedule are prominently displayed in the building.

Maximum penalty (subsection (4)(b))—55 penalty units.

- (5) Subsection (4)(b) ceases to apply to a supplementary fire safety statement only when each critical fire safety measure specified in the statement has become the subject of a later fire safety certificate or fire safety statement.

92 Information to be included in fire safety statements

- (1) A person must not issue an annual or supplementary fire safety statement for a building unless the statement—
- (a) is in the approved form, and
 - (b) contains the following information—
 - (i) the name and address of the owner of the building,
 - (ii) a description of the building, including the address,
 - (iii) for an annual fire safety statement—a list of each essential fire safety measure for the building and the minimum standard of performance for each measure,
 - (iv) for a supplementary fire safety statement—a list of each critical fire safety measure for the building and the minimum standard of performance specified in the relevant fire safety schedule for each measure,
 - (v) the date on which the essential and critical fire safety measures were assessed,
 - (vi) the date on which the building was inspected,
 - (vii) whether the statement is an annual or supplementary statement,
 - (viii) a statement to the effect referred to in section 88(1) for an annual statement or section 90(1) for a supplementary statement,
 - (ix) the date on which the statement is issued,
 - (x) the name, address and telephone number of the person who issued the statement,
 - (xi) the name, address and telephone number of the accredited practitioner (fire safety) who assessed the fire safety measures for the statement.
- (2) A person must not issue a fire safety statement for a building unless the statement is accompanied by a fire safety schedule for the building.
- Maximum penalty (subsections (1) and (2))—
- (a) for a corporation—300 penalty units, or
 - (b) for an individual—150 penalty units.

Part 13 Smoke alarms—the Act, s 6.34

Division 1 Preliminary

93 Application of Part

- (1) This Part applies to all buildings, other than a temporary structure.
- (2) In this Part—

building includes a manufactured home, moveable dwelling or associated structure within the meaning of the *Local Government Act 1993*.

Note— Manufactured homes, moveable dwellings and associated structures are not included in the definition of **building** in the Act. However, the Act, section 6.34 provides that they are considered buildings for the purposes of regulations under that section about smoke alarms.

class 1a building, in relation to a building that forms part of a strata scheme, means a lot containing a dwelling in the building.

Division 2 Requirements for smoke alarms

94 Application of Division

- (1) This Division does not apply to the following—
 - (a) a building or part of a building in which smoke alarms or smoke detection and alarm systems are installed, or are required to be installed, under the Act or another Act or law, including under—
 - (i) an order, or
 - (ii) a condition of an approval or another authorisation required for development to be carried out,
 - (b) a building or part of a building occupied by a public authority, if the Minister responsible for the public authority has determined, by order published in the Gazette, that the building or the part of the building is not subject to this section,
 - (c) a building in which persons do not sleep.
- (2) An order referred to in subsection (1)(b) may specify—
 - (a) a particular building or part of a building, or
 - (b) a class of buildings or parts of buildings.

95 Smoke alarms in class 1a and 1b buildings and manufactured homes

- (1) The owner of a class 1a building or a manufactured home must ensure the building or home is equipped with smoke alarms located on or near the ceiling—
 - (a) in a storey containing a bedroom—
 - (i) in each corridor or hallway associated with a bedroom, or
 - (ii) if there is no corridor or hallway associated with a bedroom—between each part of the building or home containing the bedroom and the remainder of the building or home, and
 - (b) in a storey not containing a bedroom.

Maximum penalty (subsection (1))—20 penalty units.
- (2) The owner of a class 1b building must ensure the building is equipped with smoke alarms located on or near the ceiling—
 - (a) in each bedroom, and
 - (b) in a storey containing a bedroom—

- (i) in each corridor or hallway associated with a bedroom, or
 - (ii) if there is no corridor or hallway associated with a bedroom—between each part of the building containing the bedroom and the remainder of the building, and
 - (c) in a storey not containing a bedroom.
- Maximum penalty (subsection (2))—
- (a) for a corporation—300 penalty units, or
 - (b) for an individual—150 penalty units.
- (3) The owner of a dwelling or sole-occupancy unit that consists substantially of a single room, which contains sleeping facilities and other facilities, satisfies the requirements of subsection (1) if the owner ensures that the dwelling or unit is equipped with a smoke alarm located on or near the ceiling between the sleeping facilities and the rest of the dwelling or unit.
- (4) In this section—
manufactured home has the same meaning as in the *Local Government Act 1993*.

96 Smoke alarms in class 2 and 3 buildings and class 4 parts of buildings

- (1) The owner of a dwelling in a class 2 building or a dwelling that is a class 4 building must ensure the dwelling is equipped with smoke alarms located on or near the ceiling—
- (a) in a storey containing a bedroom—
 - (i) in each corridor or hallway associated with a bedroom, or
 - (ii) if there is no corridor or hallway associated with a bedroom—between each part of the dwelling containing the bedroom and the remainder of the dwelling, and
 - (b) in a storey not containing a bedroom.
- Maximum penalty (subsection (1))—20 penalty units.
- (2) The owner of a class 3 building must ensure each sole-occupancy unit is equipped with smoke alarms located on or near the ceiling—
- (a) in a storey of the unit containing a bedroom—
 - (i) in each corridor or hallway associated with a bedroom, or
 - (ii) if there is no corridor or hallway associated with a bedroom—between each part of the unit containing the bedroom and the remainder of the unit, and
 - (b) in a storey of the unit not containing a bedroom.
- Maximum penalty (subsection (2))—
- (a) for a corporation—300 penalty units, or
 - (b) for an individual—150 penalty units.
- (3) The owner of a class 3 building that does not have a functioning fire sprinkler system must ensure the following are equipped with smoke alarms located where AS 1670.1 requires smoke detectors to be located—
- (a) each habitable room not within a sole-occupancy unit,
 - (b) each public corridor,
 - (c) any other internal public spaces.
- Maximum penalty (subsection (3))—
- (a) for a corporation—300 penalty units, or

- (b) for an individual—150 penalty units.
- (4) The owner of a dwelling or sole-occupancy unit that consists substantially of a single room, which contains sleeping facilities and other facilities, satisfies the requirements of subsections (1) and (2) if the owner ensures that the dwelling or unit is equipped with a smoke alarm located on or near the ceiling between the sleeping facilities and the rest of the dwelling or unit.

97 Smoke alarms in health care buildings

- (1) This section applies to a class 9a building that is occupied by persons receiving full-time care or patients undergoing medical treatment, who generally require physical assistance to evacuate the building in an emergency (a **health care building**) and includes the following—
 - (a) a nursing home,
 - (b) a facility under the control of a public health organisation within the meaning of the *Health Services Act 1997*,
 - (c) a private health facility within the meaning of the *Private Health Facilities Act 2007*.
- (2) This section does not apply to a building that is a clinic, day surgery, day procedure unit or medical centre.
- (3) The owner of a health care building must ensure the following are equipped with smoke alarms located where AS 1670.1 requires smoke detectors to be located—
 - (a) each patient care area,
 - (b) each public corridor,
 - (c) any other internal public spaces associated with a patient care area.

Maximum penalty (subsection (3))—

- (a) for a corporation—300 penalty units, or
- (b) for an individual—150 penalty units.
- (4) In this section—
 - nursing home** means a facility at which residential care, within the meaning of the *Aged Care Act 1997* of the Commonwealth, is provided.
 - patient care area** has the same meaning as in the *Building Code of Australia* but does not include a bathroom, ensuite bathing area or toilet area.

98 Smoke alarms in moveable dwellings

- (1) The owner of a moveable dwelling must ensure that—
 - (a) the dwelling is equipped with a smoke alarm located on or near the ceiling between the part of the dwelling in which persons sleep and the remainder of the dwelling, and
 - (b) the smoke alarm installed in the dwelling is repaired or replaced as soon as reasonably practicable after the owner becomes aware that the smoke alarm is not functioning properly.

Maximum penalty (subsection (1))—20 penalty units.

- (2) This section applies whether or not the moveable dwelling is a vehicle of a kind that can be registered under the *Road Transport Act 2013*.
- (3) This section does not apply to a moveable dwelling in which persons do not sleep.
- (4) In this section—

moveable dwelling means a caravan, van or other portable device, whether on wheels or not, used for human habitation and includes an associated structure, within the meaning of the *Local Government Act 1993*, but does not include a manufactured home, within the meaning of the *Local Government Act 1993*.

Division 3 Miscellaneous

99 Specifications for smoke alarms

- (1) A person who installs a smoke alarm under this Part must ensure the smoke alarm—
 - (a) is functioning, and
 - (b) complies with the requirements of AS 3786.Maximum penalty (subsection (1))—
 - (a) for a corporation—300 penalty units, or
 - (b) for an individual—150 penalty units.
- (2) Despite the requirements of AS 3786, a person who installs a smoke alarm in a class 1b, 3 or 9a building, as required under section 95 or 97, must ensure the alarm is powered—
 - (a) from the mains electricity supply, or
 - (b) by a non-removable battery with a minimum life expectancy of 10 years.Maximum penalty (subsection (2))—
 - (a) for a corporation—300 penalty units, or
 - (b) for an individual—150 penalty units.
- (3) A heat alarm may be used in the place of a smoke alarm in a kitchen or other area where the smoke alarm is likely to be inappropriately activated.
- (4) Subsection (3) does not apply to a moveable dwelling to which section 98 applies.
- (5) A person who installs a smoke alarm in a moveable dwelling under section 98 must ensure the smoke alarm is fitted with a hush button designed to silence a false alarm.
Maximum penalty (subsection (5))—
 - (a) for a corporation—100 penalty units, or
 - (b) for an individual—50 penalty units.
- (6) In this section—
AS 3786 means AS 3786 *Smoke alarms using scattered light, transmitted light or ionization* as in force from time to time.

100 Person must not remove or interfere with smoke alarm

- (1) A person must not, without reasonable excuse, remove or interfere with the operation of a smoke alarm or heat alarm installed in a building in which persons sleep.
Maximum penalty (subsection (1))—20 penalty units.
- (2) A person does not commit an offence under this section if the person removes or interferes with the operation of a smoke alarm or heat alarm to repair, maintain or replace the smoke alarm or heat alarm.

101 Development consent or consent of owners corporation not required to install smoke alarms

- (1) Development consent and the consent of an owners corporation are not required to install a smoke alarm or heat alarm.

- (2) If the installation of a smoke alarm or heat alarm causes damage to part of common property, the person who installed the alarm must repair the damage.
- (3) In this section—
common property has the same meaning as in the *Strata Schemes Development Act 2015*.

102 Special provision for pre-2006 fire safety schedules

- (1) This section applies to a building for which a fire safety schedule was issued before 1 May 2006.
- (2) A smoke alarm or heat alarm installed under this Part is taken to be an essential fire safety measure that is specified in the fire safety schedule for the building for the purposes of this Regulation, other than sections 81(1)(a) and 88(1)(a)(i).
- (3) Sections 81(1)(b) and 88(1)(a)(ii) apply to a smoke alarm or heat alarm taken to be an essential fire safety measure under this section.

Part 14 Buildings with external combustible cladding—the Act, s 10.13(1)(d)

103 Application of Part

- (1) This Part applies to the following buildings, if the building has external combustible cladding—
 - (a) a class 2, 3 or 9 building of 2 or more storeys,
 - (b) a class 4 part of a class 9 building of 2 or more storeys.
- (2) In this Part—

required information, for a building that has external combustible cladding, means the following—

 - (a) the name and address of the owner of the building,
 - (b) the address of the building,
 - (c) the classification of the building under the *Building Code of Australia*,
 - (d) the number of storeys in the building, above and below ground,
 - (e) a description of the cladding, including the materials comprising the cladding,
 - (f) a description of the parts of the building to which the cladding is applied.

104 Owners to give information about buildings with external combustible cladding

- (1) The owner of a building must give the Planning Secretary the required information for the building within 4 months after the building is first occupied.
Maximum penalty (subsection (1))—
 - (a) for a corporation—300 penalty units, or
 - (b) for an individual—150 penalty units.
- (2) The owner must use the NSW planning portal to provide the required information, unless the Planning Secretary gives written approval for the information to be provided in another way.
- (3) The owner of a building is not required to comply with this section if the owner has been given a direction under section 105 to give the required information.

105 Direction to give information about buildings with external combustible cladding

- (1) An authorised person may give a written direction to the owner of a building requiring the owner to give the required information for the building to the Planning Secretary—
 - (a) within 14 days, or
 - (b) by a later date specified in the direction.
- (2) The owner must give the Planning Secretary the required information within the time specified in subsection (1).
Maximum penalty (subsection (2))—
 - (a) for a corporation—600 penalty units, or
 - (b) for an individual—300 penalty units.
- (3) The owner must use the NSW planning portal to provide the required information, unless the Planning Secretary gives written approval for the information to be provided in another way.

- (4) An authorised fire officer or council must notify the Planning Secretary of a direction given by the officer or council under this section.
- (5) In this section—
authorised person means—
 - (a) the Minister or the Planning Secretary for—
 - (i) a building the erection of which was State significant development or State significant infrastructure, or
 - (ii) other development relating to a building for which the Minister, the Planning Secretary or the Independent Planning Commission is or was the consent authority, or
 - (b) an authorised fire officer, or
 - (c) the council for the area in which the building is located.

106 Register of buildings with external combustible cladding

- (1) The Planning Secretary must establish and maintain a register of buildings that have external combustible cladding.
- (2) The register must contain—
 - (a) the required information given to the Planning Secretary by the owner of a building under this Part, and
 - (b) other information the Planning Secretary considers appropriate.
- (3) The Planning Secretary may—
 - (a) make the register, or part of it, available to the following—
 - (i) Fire and Rescue NSW,
 - (ii) a council or other person,
 - (iii) the public, and
 - (b) publish the register, or part of it, on the NSW planning portal.

Part 15 Fire safety offences—the Act, s 10.13(1)(d)

107 Application of Part

This Part applies to all buildings, other than—

- (a) a class 1a or 10 building, or
- (b) a temporary structure.

108 Fire safety notices

- (1) This section applies if a fire exit for a building includes a fire-isolated stairway, fire-isolated passageway or fire-isolated ramp.
- (2) The owner of the building must ensure a fire safety notice is displayed in a prominent position adjacent to each doorway in the building that provides access to, but is not within, the fire-isolated stairway, fire-isolated passageway or fire-isolated ramp.
- (3) The occupier of part of a building that is adjacent to a fire-isolated stairway, fire-isolated passageway or fire-isolated ramp must ensure a fire safety notice is displayed in a prominent position adjacent to each doorway in that part of the building that provides access to, but is not within, the fire-isolated stairway, fire-isolated passageway or fire-isolated ramp.
- (4) A person must not remove, damage or otherwise interfere with a fire safety notice.
- (5) In this section—

fire-isolated passageway, *fire-isolated ramp* and *fire-isolated stairway* have the same meaning as in the *Building Code of Australia*.

fire safety notice means—

- (a) a notice in a form previously prescribed under the *Local Government Act 1919* or the *Local Government Act 1993* for the purposes of a provision corresponding to this section, or
- (b) a notice in the following form, in which the words “OFFENCE RELATING TO FIRE EXITS” are in letters at least 8 millimetres high and the other words are in letters at least 2.5 millimetres high—

OFFENCE RELATING TO FIRE EXITS

It is an offence under the *Environmental Planning and Assessment Act 1979*—

- (a) to place anything in or near this fire exit that may obstruct persons moving to and from the exit, or
- (b) to interfere with or obstruct the operation of any fire doors, or
- (c) to remove, damage or otherwise interfere with this notice.

Maximum penalty (subsections (1)–(4))—

- (a) for a corporation—150 penalty units, or
- (b) for an individual—75 penalty units.

109 Fire exits and fire exit doors

- (1) A person must not place anything that may obstruct the free passage of persons in a fire exit area for a building.
- (2) A person must not, without lawful excuse, interfere with or obstruct the following—
 - (a) a fire exit door or the operation of a fire exit door for a building,
 - (b) the operation of a fire door providing access to a building’s fire exit.

- (3) The owner of a building must ensure that—
- (a) each fire exit area for the building is kept clear of anything that may obstruct the free passage of persons, and
 - (b) the operation of a fire exit door is not interfered with or obstructed, except with lawful excuse.
- (4) In this section—
- fire exit area***, for a building, means the following—
- (a) a fire exit for the building,
 - (b) a path of travel leading to a fire exit for the building.
- fire exit door***, for a building, means a doorway or door that—
- (a) serves as or forms part of a fire exit for the building, or
 - (b) is located in a path of travel leading to a fire exit for the building.
- Maximum penalty (subsections (1)–(3))—
- (a) for a corporation—150 penalty units, or
 - (b) for an individual—75 penalty units.

Part 16 Other fire safety provisions—the Act, s 10.13(1)(d)

110 Application of Part

This Part applies to all buildings, including a temporary structure.

111 Exemption from fire safety standards

- (1) This section applies to development the subject of—
 - (a) a development application or an application for a complying development certificate for a change of building use for an existing building, if the application does not seek an alteration of the building, or
 - (b) an application for a construction certificate for building work, other than building work associated with a change of building use referred to in paragraph (a).
- (2) The applicant may lodge an objection with the Fire Commissioner that compliance with a specified Category 3 fire safety provision, as applied by a relevant provision, is unreasonable or unnecessary in the circumstances.
- (3) The objection must—
 - (a) specify the grounds of the objection, and
 - (b) for proposed building work—include a copy of the building work plans and specifications.
- (4) If the Fire Commissioner is satisfied the objection is well-founded, the Fire Commissioner may exempt the development, either conditionally or unconditionally, from a specified Category 3 fire safety provision, as applied by a relevant provision.
- (5) If the Fire Commissioner grants an exemption subject to a condition, the applicant must include the condition in the building work plans and specifications by—
 - (a) redrawing the plans and specifications, or
 - (b) annotating the relevant part of the plans and specifications, including by inserting, deleting or altering matter.
- (6) Subsection (5) applies only if the condition can be given effect to by being included in the building work plans and specifications.
- (7) If the condition cannot be included in the building work plans and specifications—
 - (a) the consent authority or certifier must, if granting development consent for development referred to in subsection (1)(a), grant development consent subject to the condition, or
 - (b) the certifier must, if issuing a construction certificate for development referred to in subsection (1)(b), issue the construction certificate subject to the condition.
- (8) In this section—

relevant provision means the *Environmental Planning and Assessment Regulation 2000*, clause 98 or 136A.

Maximum penalty (subsections (5) and (7)(b))—

 - (a) for a corporation—150 penalty units, or
 - (b) for an individual—75 penalty units.

112 Fire brigades inspection powers

For the purposes of the Act, section 9.32(1)(b), the following provisions are prescribed as fire safety provisions—

- (a) the Act, Schedule 5, Part 2,
- (b) this Regulation, sections 81(3), 85(1)(b), 89(4)(b) and 91(4)(b) to the extent they relate to the implementation, maintenance or certification of essential fire safety measures for a building,
- (c) this Regulation, Part 15.

113 Fire sprinkler systems in residential care facilities for seniors

- (1) A certifier must not issue a complying development certificate or construction certificate for building work that involves the installation of a fire sprinkler system in a residential care facility for seniors unless the certifier is satisfied the system complies with the *Building Code of Australia*.

Maximum penalty (subsection (1))—

- (a) for a corporation—300 penalty units, or
- (b) for an individual—150 penalty units.

- (2) In this section—

residential care facility and *seniors* have the same meaning as in *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004*.

114 Plans and specifications for fire safety systems must be kept on site

- (1) The principal contractor for building work must ensure the fire safety plans and specifications for the building are—

- (a) kept on the site of the building work, and
- (b) made available for inspection on request by any of the following at the times during which the building work is carried out—
 - (i) the certifier,
 - (ii) the consent authority,
 - (iii) the council,
 - (iv) Fire and Rescue NSW.

Maximum penalty—

- (a) for a corporation—300 penalty units, or
- (b) for an individual—150 penalty units.

- (2) In this section—

fire safety plans and specifications, for a building, means the most recently endorsed copy of the plans and specifications for a relevant fire safety system for the building that were required by regulations under the Act to be submitted to the principal certifier.

Part 17 Modification of Building Code of Australia standards—the Act, s 6.33(1)

115 Application of Part

- (1) This Part applies to a person who makes one of the following applications—
 - (a) a development application or an application for a complying development certificate for a change of building use for an existing building that does not involve an alteration of the building,
 - (b) a development application or an application for a complying development certificate for the use of a building as an entertainment venue,
 - (c) an application for a construction certificate for building work, other than building work associated with a change of building use referred to in paragraph (a).
- (2) In this Part—

applicant means a person who makes an application specified in subsection (1).

relevant provision means the *Environmental Planning and Assessment Regulation 2000*, clause 98 or 136A.

116 Objections to Building Code of Australia standards

- (1) An applicant may lodge an objection with the consent authority or certifier that—
 - (a) the *Building Code of Australia*, as applied by a relevant provision, does not make appropriate provision for—
 - (i) the building in relation to which the change of building use is sought, or
 - (ii) the building to be used as an entertainment venue, or
 - (iii) the building work, or
 - (b) compliance with a specified provision of the *Building Code of Australia*, as applied by a relevant provision, is unreasonable or unnecessary in the circumstances.
- (2) The objection must—
 - (a) specify the grounds of the objection, and
 - (b) for proposed building work—include a copy of the building work plans and specifications.
- (3) An objection relating to a Category 3 fire safety provision, as applied by a relevant provision, must—
 - (a) indicate if a similar objection has been made to the Fire Commissioner under section 111, and
 - (b) be accompanied by a copy of the Fire Commissioner’s determination of the objection.
- (4) An applicant for an application referred to in section 115(1)(a) or (b) cannot lodge an objection to a Category 1 fire safety provision, as applied by a relevant provision, if the application has already been determined by the granting of development consent.

117 Determination of objections

- (1) If the consent authority or certifier is satisfied an objection lodged under section 116 is well-founded, it may—

- (a) exempt the development, either conditionally or unconditionally, from a specified provision of the *Building Code of Australia*, as applied by a relevant provision, and
 - (b) direct that specified requirements apply to the building work.
 - (2) If a consent authority or certifier grants an exemption subject to a condition, the consent authority or certifier must ensure the condition is included in the building work plans and specifications by—
 - (a) redrawing the plans and specifications, or
 - (b) annotating the relevant part of the plans and specifications, including by inserting, deleting or altering matter.
 - (3) Subsection (2) applies only if the condition can be given effect to by being included in the building work plans and specifications.
 - (4) If the condition cannot be included in the building work plans and specifications—
 - (a) the consent authority or certifier must, if granting development consent for development referred to in section 115(1)(a) or (b), grant development consent subject to the condition, or
 - (b) the certifier must, if issuing a construction certificate for development referred to in section 115(1)(c), issue the construction certificate subject to the condition.
- Maximum penalty (subsection (4)(b))—
- (a) for a corporation—150 penalty units, or
 - (b) for an individual—75 penalty units.
- (5) A consent authority or certifier may take action under this section only with the concurrence of the Planning Secretary.
 - (6) Concurrence is to be assumed if at least 40 days have passed since concurrence was sought and the Planning Secretary has not, within that period, expressly refused concurrence.
 - (7) The Planning Secretary may—
 - (a) give notice to the consent authority or certifier that concurrence may be assumed, in relation to a class of objections, subject to the conditions specified in the notice, and
 - (b) amend the notice by a further notice given to the consent authority or certifier.
 - (8) Action taken in accordance with a notice under subsection (7) is as valid as it would be if the consent authority or certifier had obtained the concurrence of the Planning Secretary.
 - (9) An exemption or direction given by the consent authority or certifier under this section must be given subject to, and must not be inconsistent with, a condition to which the concurrence of the Planning Secretary is subject.

Part 18 Miscellaneous

118 Duplication of notices not required

This Regulation does not require a certifier to—

- (a) give a copy of a document to itself if the certifier is also a consent authority or council, or
- (b) to give more than one copy of a document to a person if the person is both a consent authority and a council.

119 Deemed refusal periods for appeals—the Act, s 8.17(1)

- (1) This section specifies the period after which a council is taken to have refused to issue a construction certificate, subdivision works certificate, occupation certificate or subdivision certificate.
- (2) The period for a construction certificate or subdivision works certificate ends—
 - (a) for an application made on or before the day on which the council determines the associated development application—at the end of the deemed refusal period, or
 - (b) otherwise—28 days after the application for the certificate is made.
- (3) The period for an occupation certificate ends 14 days after the application for the occupation certificate is made.
- (4) The period for a subdivision certificate ends—
 - (a) for an application relating to subdivision that is State significant development or designated development, 14 days after the later of—
 - (i) the application for the subdivision certificate is made, or
 - (ii) the end of the period within which an appeal against the granting of the associated development consent may be made under the Act, section 8.8, or
 - (iii) the determination of an appeal against the granting of the associated development consent, or
 - (b) otherwise —
 - (i) if the subdivision requires development consent—14 days after the application for the subdivision certificate is made, or
 - (ii) if the subdivision does not require development consent—7 days after the application for the subdivision certificate is made.
- (5) In this section—

associated development application, in relation to an application for a construction certificate or subdivision works certificate, means the development application for the development to which the application for the construction certificate or subdivision works certificate relates.

associated development consent, in relation to an application for a subdivision certificate, means the development consent for the subdivision to which the application relates.

deemed refusal period means the period after which the council is taken to have refused an associated development application for the purposes of the Act, section 8.11(1).

120 Building products and systems certified under CodeMark scheme

For the purposes of the Act, sections 4.15(4) and 4.28(4), a building product or system is accredited if—

- (a) a certificate of conformity issued in accordance with the CodeMark scheme is in force in relation to the building product or system, and
- (b) use of the building product or system is not prohibited under the *Building Products (Safety) Act 2017*.

121 Crown development

- (1) For the purposes of the Act, section 6.1, definition of **Crown**, the following are prescribed—
 - (a) a public authority, other than a council,
 - (b) an Australian university, within the meaning of the *Higher Education Act 2001*,
 - (c) a TAFE establishment, within the meaning of the *Technical and Further Education Commission Act 1990*,
 - (d) without limiting paragraph (a), a Crown cemetery operator, within the meaning of the *Cemeteries and Crematoria Act 2013*.
- (2) For the purposes of the Act, section 4.32(2)(a), the following persons are prescribed in relation to Crown building work under the Act, section 6.28—
 - (a) if development consent is required under the Act—the Luna Park Reserve Trust,
 - (b) if the work is an activity within the meaning of the Act, Part 5—
 - (i) a determining authority that is a proponent, within the meaning of the Act, Part 5, of the activity, and
 - (ii) a company SOC, within the meaning of the *State Owned Corporations Act 1989*, that is the subject of a certificate under that Act, section 37A for the activity.

122 Use of NSW planning portal—the Act, Sch 3, cl 3

- (1) A relevant authority may use the NSW planning portal to give a document or information to an applicant, or to request a document or information from an applicant, even if this Regulation requires or permits the document or information to be given in another way.
- (2) For the purposes of this Regulation—
 - (a) the time at which a document or information is given by a relevant authority through the NSW planning portal is the time when the document or information is shown on the NSW planning portal to have been given by the relevant authority, and
 - (b) the time at which a document or information is received by an applicant or relevant authority is the time when the document or information becomes capable of being retrieved by the applicant or relevant authority through the NSW planning portal.
- (3) In this section—

approval body has the same meaning as in the Act, section 4.45.

concurrence authority means a person whose concurrence under 1 or more of the following is required by the consent authority before determining a development application—

- (a) the Act,
- (b) an environmental planning instrument,
- (c) the *Biodiversity Conservation Act 2016*, Part 7.

document or information includes an application, notification, advice or request.

relevant authority means a consent authority, concurrence authority, approval body, council, registered certifier or the Planning Secretary.

123 Savings and transitional provisions

- (1) An act, matter or thing that, immediately before the repeal of certain provisions of the 2000 Regulation by this Regulation, Schedule 3[1], [3] and [11], had effect under the 2000 Regulation continues to have effect under this Regulation.
- (2) The 2000 Regulation, clauses 144A, 147, 152B and 155, as in force immediately before 1 January 2022, continue to apply instead of this Regulation, sections 18, 23, 40 and 49 to—
 - (a) a construction certificate issued on or after 1 January 2022, if the application for the construction certificate was made but not finally determined before 1 January 2022, and
 - (b) an occupation certificate issued on or after 1 January 2022, if the application for the related complying development certificate or construction certificate was made but not finally determined before 1 January 2022.
- (3) In this section—

2000 Regulation means the *Environmental Planning and Assessment Regulation 2000*.

Schedule 1 Penalty notice offences

1 Application of Schedule

- (1) For the purposes of the Act, section 9.58—
 - (a) each offence created by a provision specified in this Schedule is an offence for which a penalty notice may be issued, and
 - (b) the amount payable for the penalty notice is the amount specified opposite the provision.
- (2) If the provision is qualified by words that restrict its operation to limited kinds of offences or to offences committed in limited circumstances, the penalty notice may be issued only for—
 - (a) that limited kind of offence, or
 - (b) an offence committed in those limited circumstances.

2 Authorised persons who may serve penalty notices

- (1) The following persons are declared to be authorised persons for the purposes of the Act, section 9.58—
 - (a) a person generally or specially authorised by the Minister,
 - (b) a person, including a person employed in the Department, generally or specifically authorised by the Planning Secretary,
 - (c) a person, including an employee of a council, generally or specifically authorised by a council,
 - (d) a police officer.
- (2) An authorised fire officer is declared to be an authorised person for the purposes of the Act, section 9.58 for the following offences only—
 - (a) an offence under the Act, section 9.37 for a failure to comply with an order under the Act, Schedule 5, Part 2 given by an authorised fire officer,
 - (b) an offence under this Regulation, section 104 or 105 or Part 15.
- (3) Despite subsection (1), only the persons referred to in subsection (1)(a) and (b) are declared to be authorised persons for the following offences—
 - (a) an offence under the Act, section 6.5(5),
 - (b) an offence under this Regulation, section 4, 5, 13, 15, 20, 23, 27, 28, 29, 39, 41, 43, 44, 45, 49, 50, 54, 56, 63, 64, 68 or 75.

Column 1	Column 2	Column 3
Provision	Penalty for an individual	Penalty for a corporation
Offences under this Act		
Section 6.3		
(a) for a work or activity involving a class 1a or 10 building	\$1,500	\$3,000
(b) otherwise	\$3,000	\$6,000
Section 6.5(5)	\$3,000	\$6,000
Section 6.6(3)		

Column 1	Column 2	Column 3
Provision	Penalty for an individual	Penalty for a corporation
(a) for building work involving a class 1a or 10 building	\$1,500	\$3,000
(b) otherwise	\$3,000	\$6,000
Section 6.12(3)	\$3,000	\$6,000
Offences under this Regulation		
Section 4(1) and (2)	\$1,500	\$3,000
Section 5	\$1,500	\$3,000
Section 6	\$1,500	\$3,000
Section 7(3)	\$750	\$1,500
Section 13(1) and (2)	\$1,500	\$3,000
Section 14(1) and (3)	\$1,500	\$3,000
Section 15(2)	\$3,000	\$6,000
Section 16(1)	\$1,500	\$3,000
Section 17(1) and (2)	\$1,500	\$3,000
Section 18(1)	\$1,500	\$3,000
Section 19(1)	\$1,500	\$3,000
Section 20	\$1,500	\$3,000
Section 21	\$1,500	\$3,000
Section 23(1)	\$1,500	\$3,000
Section 23(3)	\$3,000	\$6,000
Section 27(1)	\$3,000	\$6,000
Section 28(1), (3) and (5)	\$3,000	\$6,000
Section 29	\$3,000	\$6,000
Section 30(4)	\$750	\$1,500
Section 33(1) and (2)	\$1,500	\$3,000
Section 34(1) and (2)	\$1,500	\$3,000
Section 35	\$1,500	\$3,000
Section 37(6)	\$750	\$1,500
Section 39(1) and (2)	\$1,500	\$3,000
Section 40(2)	\$1,500	\$3,000
Section 41(1) and (2)	\$3,000	\$6,000
Section 42(1)–(3)	\$1,500	\$3,000
Section 43(2)	\$1,500	\$3,000
Section 44(2)	\$1,500	\$3,000
Section 45(2)	\$500	\$1,000
Section 46(2) and (3)	\$1,500	\$3,000

Column 1	Column 2	Column 3
Provision	Penalty for an individual	Penalty for a corporation
Section 47(2) and (3)	\$1,500	\$3,000
Section 48	\$1,500	\$3,000
Section 49(1)	\$1,500	\$3,000
Section 49(2)	\$3,000	\$6,000
Section 50(2), (4) and (5)	\$1,500	\$3,000
Section 51(2), (4) and (5)	\$1,500	\$3,000
Section 54(6)	\$500	\$1,000
Section 56(1) and (2)	\$1,500	\$3,000
Section 60(1) and (2)	\$1,500	\$3,000
Section 61(1)	\$1,500	\$3,000
Section 62(2)	\$1,500	\$3,000
Section 63(1)	\$1,500	\$3,000
Section 63(2)	\$500	\$1,000
Section 64(1) and (2)	\$1,500	\$3,000
Section 65	\$1,500	\$3,000
Section 67(1), (2), (4) and (5)	\$1,500	\$3,000
Section 68(3) and (5)	\$1,500	\$3,000
Section 69(4)	\$200	\$200
Section 70	\$1,500	\$3,000
Section 75(1)	\$580	\$580
Section 78(2)	\$1,500	\$3,000
Section 80(2)	\$3,000	\$6,000
Section 81(1)	\$3,000	\$6,000
Section 84(1) and (3)	\$1,500	\$3,000
Section 85(1)(b)	\$1,500	\$3,000
Section 86(1) and (3)	\$1,500	\$3,000
Section 88(4)	\$1,500	\$3,000
Section 89(1) for the offence of failing to give an annual fire safety statement that occurs during—		
(a) the first week after the time for giving statement ends	\$1,000	\$1,000
(b) the second week after the time for giving statement ends	\$2,000	\$2,000
(c) the third week after the time for giving statement ends	\$3,000	\$3,000

Column 1	Column 2	Column 3
Provision	Penalty for an individual	Penalty for a corporation
(d) the fourth or subsequent week after the time for giving statement ends	\$4,000	\$4,000
Section 89(4)(b)	\$580	\$580
Section 90(4)	\$1,500	\$3,000
Section 91(1) for the offence of failing to give a supplementary fire safety statement that occurs during—		
(a) the first week after time for giving statement ends	\$1,000	\$1,000
(b) the second week after time for giving statement ends	\$2,000	\$2,000
(c) the third week after time for giving statement ends	\$3,000	\$3,000
(d) the fourth or subsequent week after time for giving statement ends	\$4,000	\$4,000
Section 91(4)(b)	\$580	\$580
Section 92(1) and (2)	\$1,500	\$3,000
Section 95(1)	\$200	\$200
Section 95(2)	\$300	\$300
Section 96(1)	\$200	\$200
Section 96(2) and (3)	\$300	\$300
Section 97(3)	\$300	\$300
Section 98(1)	\$200	\$200
Section 99(1) and (2)	\$1,500	\$3,000
Section 99(5)	\$500	\$1,000
Section 100(1)	\$200	\$200
Section 104(1)	\$1,500	\$3,000
Section 105(2)	\$3,000	\$6,000
Section 108(1)–(4)	\$1,500	\$1,500
Section 109(1)–(3)	\$1,500	\$1,500
Section 111(5) and (7)(b)	\$750	\$1,500
Section 113(1)	\$1,500	\$3,000
Section 114(1)	\$1,500	\$3,000
Section 117(4)(b)	\$750	\$1,500

Schedule 2 Dictionary

section 3

accredited practitioner (fire safety) means the holder of an accreditation under the *Building and Development Certifiers Act 2018* that authorises the holder to exercise the functions of an accredited practitioner (fire safety) who is acting in relation to matters to which the accreditation relates.

alteration of a building, in relation to development, includes the enlargement or extension of a building.

alteration to a hydraulic fire safety system means a permanent alteration to a hydraulic fire safety system that—

- (a) modifies, or enables the modification of, the pressure or flow characteristics of the hydraulic fire safety system, and
- (b) is not associated with—
 - (i) an alteration of an existing building, unless the alteration relates solely and directly to the alteration to the hydraulic fire safety system, or
 - (ii) a change of building use.

annual fire safety statement—see section 88.

applicant, for Part 17—see section 115.

approved BASIX system means a computerised system, approved from time to time by the Planning Secretary, to which certifiers or members of the public are given online access, for the purposes of issuing BASIX certificates and BASIX completion receipts.

approved form means a form approved by the Planning Secretary and available on the NSW planning portal.

AS 1670.1 means AS 1670.1 *Fire detection, warning, control and intercom systems—System design, installation and commissioning—Part 1: Fire* as in force from time to time.

BASIX building means a building that contains 1 or more dwellings, but does not include the following—

- (a) hotel or motel accommodation,
- (b) a boarding house that—
 - (i) accommodates more than 12 lodgers, or
 - (ii) has a gross floor area exceeding 300 square metres,
- (c) seniors housing,
- (d) a group home,
- (e) a hostel.

BASIX certificate means a certificate issued by the Planning Secretary under section 71.

BASIX completion receipt—see section 45.

BASIX development means the following development if it is not BASIX excluded development—

- (a) development that involves the erection, but not the relocation, of a BASIX building,
- (b) development that involves a change of building use by which a building becomes a BASIX building,
- (c) development that involves the alteration of a BASIX building, if the estimated construction cost of the development is \$50,000 or more,
- (d) development for the purposes of a swimming pool or spa, or combination of swimming pools and spas, that—
 - (i) services 1 dwelling only, and

- (ii) has a capacity, or combined capacity, of 40,000 litres or more.

BASIX excluded development means the following development—

- (a) development for the purposes of a garage, storeroom, carport, gazebo, verandah or awning,
(b) development that involves the alteration of a building listed on the State Heritage Register under the *Heritage Act 1977*,
(c) development that involves the alteration of a building resulting in a space that cannot be fully enclosed, other than a space that can be fully enclosed but for a vent needed for the safe operation of a gas appliance,

Example— A verandah that is open or enclosed by a screen, mesh or other material that permits the free and uncontrolled flow of air.

- (d) development that involves the alteration of a building declared by the Planning Secretary, by order published in the Gazette, to be BASIX excluded development.

BASIX optional development means the following development if it is not BASIX excluded development—

- (a) development that involves the alteration of a BASIX building, if the estimated construction cost of the development is less than \$50,000,
(b) development for the purposes of a swimming pool or spa, or combination of swimming pools and spas, that—
(i) services 1 dwelling only, and
(ii) has a capacity, or combined capacity, of less than 40,000 litres.

Building Code of Australia means the Building Code of Australia prescribed by the *Environmental Planning and Assessment Regulation 2000*.

Category 1 fire safety provision means the following provisions of the *Building Code of Australia*—

- (a) EP1.3, EP1.4, EP1.6, EP2.1, EP2.2 and EP3.2 in Volume 1,
(b) P2.3.2 in Volume 2.

Category 2 fire safety provision means the provisions CP9, EP1.3, EP1.4, EP1.6, EP2.2 and EP3.2 in Volume 1 of the *Building Code of Australia*.

Category 3 fire safety provision means the provisions EP1.3, EP1.4, EP1.6, EP2.2 and EP3.2 in Volume 1 of the *Building Code of Australia*.

class, in relation to a building or part of a building, means—

- (a) in a provision of this Regulation that imposes requirements in relation to a development consent—the class to which the building belongs, as identified by the development consent, or
(b) otherwise—the class to which the building or part of a building belongs, as ascertained in accordance with the *Building Code of Australia*.

CodeMark scheme means the CodeMark scheme for the certification of building products and systems managed by the Australian Building Codes Board, under which certification bodies are accredited and monitored by the Joint Accreditation System of Australia and New Zealand established on 30 October 1991.

critical fire safety measure, in relation to a building, means a fire safety measure that—

- (a) requires periodic assessment and certification at intervals of less than 12 months, because of its nature, the environment or the circumstances, and
(b) is identified as a critical fire safety measure in a fire safety schedule.

critical stage inspection means a critical stage inspection referred to in section 61 or 62.

deemed-to-satisfy provisions has the same meaning as in the *Building Code of Australia*.

design quality principles has the same meaning as in *State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development*.

dwelling—

- (a) in relation to a BASIX building— means a room or suite of rooms occupied or used, or constructed or adapted to be capable of being occupied or used, as a separate domicile, or
- (b) otherwise—has the same meaning as in the Standard Instrument.

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

essential fire safety measure, in relation to a building, means a fire safety measure that—

- (a) is or was included in the fire safety schedule for the building, or
- (b) was included in 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 that Ordinance, Part 59, being an approval or order that was in force immediately before 1 July 1993, or
- (c) was included in the essential services, within the meaning of the *Local Government (Approvals) Regulation 1993*, attached to an approval referred to in that Regulation, clause 22, being the latest approval granted during the period from 1 July 1993 to 30 June 1997, or
- (d) was included in the essential services, within the meaning of the *Local Government (Orders) Regulation 1993*, attached to an order referred to in that Regulation, clause 6(1), being the latest order given during the period from 1 July 1993 to 30 June 1997.

external combustible cladding, in relation to a building, means the following cladding applied to an external wall or area of the building—

- (a) a cladding or cladding system comprising metal composite panels, including aluminium, zinc and copper,
- (b) an insulated cladding system, including a system comprising polystyrene, polyurethane or polyisocyanurate.

final fire safety certificate—see section 83.

Fire Commissioner means the Commissioner of Fire and Rescue NSW.

fire compartment has the same meaning as in the *Building Code of Australia*.

fire exit, in relation to a building, means an exit, within the meaning of the *Building Code of Australia*, from the building that has been provided in compliance with a requirement imposed by or under the Act, this Regulation or another law, whether or not that law is currently in force.

fire safety certificate means a final fire safety certificate or an interim fire safety certificate.

fire safety engineer means a person registered under the *Building and Development Certifiers Act 2018* whose registration authorises the person to exercise the functions of a fire safety engineer.

fire safety measure means a measure, including an item of equipment, form of construction or fire safety strategy, that is, or is proposed to be, implemented in a building to ensure the safety of persons using the building if there is a fire.

fire safety order means a fire safety order under the Act, Schedule 5, Part 2, and includes an order under the Act, Schedule 5, Part 4, clause 1.

fire safety requirement means a requirement under the *Building Code of Australia* relating to—

- (a) a fire safety system within the meaning of the *Building Code of Australia*, or
- (b) the safety of persons if there is a fire, or
- (c) the prevention, detection or suppression of fire.

fire safety schedule—see section 78.

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

fire sprinkler system means a system designed to automatically control the growth and spread of fire that may include sprinklers, valves, pipework, pumps, boosters and water supplies.

hydraulic fire safety system means any of the following that is installed in accordance with a requirement of the Act or another Act or law, including an order, a condition of an approval or another authorisation—

- (a) a fire hydrant system,
- (b) a fire hose reel system,
- (c) a fire sprinkler system, including a wall-wetting sprinkler or drencher system,
- (d) an automatic fire suppression system of a hydraulic nature.

interim fire safety certificate—see section 83.

owners corporation has the same meaning as in the *Strata Schemes Management Act 2015*.

performance requirement has the same meaning as in the *Building Code of Australia*.

performance solution has the same meaning as in the *Building Code of Australia*.

planning agreement has the same meaning as in the Act, Division 7.1.

qualified designer means a person registered as an architect under the *Architects Act 2003*.

registered body corporate has the same meaning as in the *Building and Development Certifiers Act 2018*.

Registration Secretary means the Secretary within the meaning of the *Building and Development Certifiers Act 2018*.

relevant BASIX certificate, in relation to development, means—

- (a) a BASIX certificate that applies to the development when development consent is granted or modified, or
- (b) if a replacement BASIX certificate accompanies a subsequent application for a construction certificate—the replacement BASIX certificate that applies to the development when the construction certificate is issued or modified.

relevant building work plans and specifications, for Part 3—see section 8.

relevant fire safety system means the following—

- (a) a hydraulic fire safety system,
- (b) a fire detection and alarm system,
- (c) a mechanical ducted smoke control system.

relevant provision, for Part 17—see section 115.

required information, for a building that has external combustible cladding, for Part 14—see section 103.

residential apartment development has the same meaning as in *State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development*.

sole-occupancy unit has the same meaning as in the *Building Code of Australia*.

Standard Instrument means the standard instrument set out in the *Standard Instrument (Local Environmental Plans) Order 2006*.

supplementary fire safety statement—see section 90.

temporary building means—

- (a) a temporary structure, or
- (b) a building specified as a temporary building in a development consent or complying development certificate granted or issued in relation to its erection.

the Act means the *Environmental Planning and Assessment Act 1979*.

Schedule 3 Amendment of Environmental Planning and Assessment Regulation 2000

[1] Clause 3 Definitions

Omit clause 3(1), definitions of *authorised fire officer*, *building premises*, *Category 2 fire safety provision*, *Category 3 fire safety provision*, *external combustible cladding*, *Fire Commissioner* and *required*.

[2] Clause 3(1), definition of “BASIX certificate”

Omit “clause 164A”.

Insert instead “the *Environmental Planning and Assessment (Development Certificate and Fire Safety) Regulation 2021*”.

[3] Clauses 103–104, Parts 8, 9 and 12, clause 226, Part 13A, clauses 262B and 267A, Part 16A and clause 284

Omit the provisions.

[4] Clause 130 Procedure for determining application for complying development certificate and notification requirements

Omit clause 130(2A) and (2B). Insert instead—

- (2A) A certifier must not issue a complying development certificate for development that involves a performance solution under the *Building Code of Australia* for building work unless the certifier—
- (a) has obtained or been given a report about the performance solution, and
 - (b) is satisfied that—
 - (i) the report was prepared in accordance with the requirements set out in A2.2(4) of the *Building Code of Australia*, and
 - (ii) the building work plans and specifications show and describe the physical elements of the performance solution, if possible.

[5] Clause 130(5) and (6)

Omit clause 130(5). Insert instead—

- (5) A report about a performance solution for a fire safety requirement must be prepared by or on behalf of—
- (a) for a prescribed report—a person who is an accredited practitioner (fire safety) and a fire safety engineer, or
 - (b) otherwise—a person who is an accredited practitioner (fire safety).
- (6) In this clause—
- prescribed report** means a report about a performance solution for a requirement set out in EP1.4, EP2.1, EP2.2, DP4 or DP5 in Volume 1 of the *Building Code of Australia* for—
- (a) a class 9a building that is proposed to have a floor area of 2,000 square metres or more, or
 - (b) a building, other than a class 9a building, that is proposed to have a fire compartment with a floor area of more than 2,000 square metres, or
 - (c) a building, other than a class 9a building, that is proposed to have a floor area of more than 6,000 square metres.

[6] Clause 134 Form of complying development certificate

Omit clause 134(1)(f1)(iv) and (v). Insert instead—

- (iv) the name of the person who prepared the report or on whose behalf the report was prepared,
- (vi) if the person referred to in subparagraph (iv) is an accredited practitioner (fire safety) and a registered certifier—the certifier’s registration number,

[7] Clause 263B Additional fees for use of NSW planning portal

Omit “section 4.55” from clause 263B(1)(a). Insert instead “section 4.55(1A) or (2)”.

[8] Clause 280 Application for building information certificate

Insert “that is lodged on or after 1 January 2022” after “application” in clause 280(2A).

[9] Clause 281 Form and issue of building information certificate

Omit “The building information certificate” from clause 281(2).

Insert instead “A building information certificate issued on or after 1 January 2022”.

[10] Part 17 Miscellaneous

Insert at the end of the Part, with appropriate clause numbering—

**Transitional provision for Environmental Planning and Assessment
(Development Certification and Fire Safety) Regulation 2021**

The amendments made to this Regulation, clauses 130 and 134 and Schedule 1, clause 4 by the *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021* do not apply to a complying development certificate issued on or after 1 January 2022, if the application for the certificate was made but not finally determined before 1 January 2022.

[11] Schedule 1 Forms

Omit clause 4(5)(c) and Parts 3 and 3A.

[12] Schedule 5

Omit the Schedule. Insert instead—

Schedule 5 Penalty notice offences

1 Application of Schedule

- (1) For the purposes of the Act, section 9.58—
 - (a) each offence created by a provision specified in this Schedule is an offence for which a penalty notice may be issued, and
 - (b) the amount payable for the penalty notice is the amount specified opposite the provision.
- (2) If the provision is qualified by words that restrict its operation to limited kinds of offences or to offences committed in limited circumstances, the penalty notice may be issued only for—
 - (a) that limited kind of offence, or
 - (b) an offence committed in those limited circumstances.

2 Authorised persons who may serve penalty notices

- (1) The following persons are declared to be authorised persons for the purposes of the Act, section 9.58—
 - (a) a person generally or specially authorised by the Minister,
 - (b) a person, including a person employed in the Department, generally or specially authorised by the Planning Secretary,
 - (c) a person, including an employee of a council, generally or specially authorised by a council,
 - (d) a police officer.
- (2) An authorised fire officer is declared to be an authorised person for the purposes of the Act, section 9.58 for an offence under the Act, section 9.37 in relation to a contravention of a fire safety order under the Act, Schedule 5, Part 2, if the fire safety order was given by an authorised fire officer.
- (3) Despite subclause (1), only the persons referred to in subclause (1)(a) and (b) are declared to be authorised persons for the following offences—
 - (a) an offence under the Act, section 5.14(1) or (2) or 10.4(11),
 - (b) an offence under this Regulation, clause 283A for a contravention of clause 130(3) or (4) or 134(1), (2) or (2A).

Column 1	Column 2	Column 3
Provision	Penalty for individuals	Penalty for corporations
Offences under the Act		
Section 4.2—		
(a) for development involving a class 1a or 10 building	\$1,500	\$3,000
(b) for development that, at the time of the alleged offence, is designated development or State significant development that is not a class 1a or 10 building—		
(i) for a penalty notice served by a person referred to in this Schedule, clause 2(1)(c) or (d), or	\$3,000	\$6,000
(ii) otherwise	\$7,500	\$15,000
(c) for a contravention of <i>State Environmental Planning Policy No 64—Advertising and Signage</i> , clause 27A(2)	\$1,500	\$3,000
(d) otherwise	\$3,000	\$6,000
Section 4.3—		
(a) for a contravention of <i>State Environmental Planning Policy No 64—Advertising and Signage</i> , clause 27A(1)	\$1,500	\$3,000

Column 1	Column 2	Column 3
Provision	Penalty for individuals	Penalty for corporations
(b) otherwise	\$3,000	\$6,000
Section 5.14(1) and (2)	\$7,500	\$15,000
Section 9.25(1)	\$3,000	\$6,000
Section 9.37 for failure to comply with a development control order, except an order referred to in the Act, Schedule 5, Part 1, item 6, 10, 12 or 13	\$3,000	\$6,000
Section 9.42(3)	\$3,000	\$6,000
Section 10.4(11)	\$1,500	\$3,000
Section 10.6(1)	\$1,500	\$3,000
Offences under this Regulation		
Clause 283A(2) for a contravention of—		
Clause 130(3) or (4)	\$1,500	\$3,000
Clause 134(1) or (2A)	\$1,500	\$3,000
Clause 134(2)	\$3,000	\$6,000

Schedule 4 Amendment of Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017

[1] Clauses 18B, 18BA and 18C

Omit “1 December 2021” where occurring. Insert instead “1 December 2022”.

[2] Clause 18D Acceptance by certifiers of accredited building products

Omit the clause.