



New South Wales

# **Environmental Planning and Assessment (Development Certification and Fire Safety) Amendment (Fire Safety) Regulation 2022**

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*.

VICTOR DOMINELLO, MP  
Minister for Fair Trading

## **Explanatory note**

The objects of this Regulation are to amend the *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021* to—

- (a) clarify powers and responsibilities of the Fire Commissioner, and
- (b) make provision for essential fire safety measures for a building to be addressed by a performance solution, and
- (c) make provision for the reissue of fire safety schedules, and
- (d) make provision for the Commissioner for Fair Trading to approve certain forms.

## **Environmental Planning and Assessment (Development Certification and Fire Safety) Amendment (Fire Safety) Regulation 2022**

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### **1 Name of Regulation**

This Regulation is the *Environmental Planning and Assessment (Development Certification and Fire Safety) Amendment (Fire Safety) Regulation 2022*.

### **2 Commencement**

This Regulation commences as follows—

- (a) Schedule 1[21], [30]–[33] and Schedule 2—on 13 February 2023,
- (b) Schedule 1[1], [4]–[10], [13]–[19], [35], [36], [41], [44], [45] and [46]—on 1 August 2023,
- (c) Schedule 1[22] and [42]—on 13 February 2025,
- (d) otherwise—on the day the Regulation is published on the NSW legislation website.

## **Schedule 1      Amendment of Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021**

### **[1] Section 18 Requirement for performance solution report**

Insert at the end of section 18(1)(b)(ii)—

, and

- (iii) if the performance-based design brief for the proposed performance solution relates to a fire safety requirement for a class 2, 3, 4, 5, 6, 7, 8 or 9 building—the brief was developed following consultation with the Fire Commissioner as required by section 26.

### **[2] Section 18(2)(a)**

Omit “person who is both an accredited practitioner (fire safety) and a fire safety engineer”.  
Insert instead “recognised person”.

### **[3] Section 23 Information to be included in construction certificate—the Act, s 6.33(1)**

Omit “section 6.12” from section 23(1)(g). Insert instead “section 6.6”.

### **[4] Section 25 Interpretation**

Omit the definitions of *early childhood centre* and *relevant building work* from section 25(1).

Insert in alphabetical order—

*relevant building work* means building work that involves a performance solution for a fire safety requirement in a building other than—

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

### **[5] Section 26**

Omit the section. Insert instead—

#### **26 Performance-based design brief—consultation with Fire Commissioner**

- (1) The owner of a building must ensure that the person who develops a performance-based design brief for a performance solution for a fire safety requirement in the building requests the Fire Commissioner’s comments on the brief if—
  - (a) the building is a class 2, 3, 4, 5, 6, 7, 8 or 9 building, and
  - (b) a construction certificate is required for the building work comprising the performance solution.
- (2) A request must be made—
  - (a) during the development of the performance-based design brief, and
  - (b) in the way required by the Fire Commissioner.
- (3) The Fire Commissioner must, within 10 working days after a request is made, give notice of whether or not the Fire Commissioner will provide comments on the performance-based design brief to—
  - (a) the person who developed the performance-based design brief, and

- (b) the building owner.
- (4) The building owner must not implement the performance solution unless the building owner has received and considered the Fire Commissioner's written comments on the performance-based design brief.  
Maximum penalty—
  - (a) for a corporation—600 penalty units, or
  - (b) for an individual—300 penalty units.
- (5) However, a building owner may implement the performance solution if—
  - (a) the Fire Commissioner has failed to notify the building owner within 10 working days after a request was made whether or not the Fire Commissioner will provide comments on the performance-based design brief, or
  - (b) the Fire Commissioner has notified the building owner that the Fire Commissioner will not provide comments on the performance-based design brief, or
  - (c) the Fire Commissioner has not provided written comments within 20 working days after the request was made.

**[6] Section 27 Certifier to forward plans and specifications to Fire and Rescue NSW**

Omit “days” wherever occurring in section 27(1) and (2). Insert instead “working days”.

**[7] Section 28 Consideration of initial fire safety report**

Omit “days” from section 28(2)(b). Insert instead “working days”.

**[8] Section 28(2)(c)**

Omit “28 days”. Insert instead “25 working days”.

**[9] Section 28(5)**

Omit “10 days”. Insert instead “10 working days”.

**[10] Section 28(5)**

Omit “28 days”. Insert instead “25 working days”.

**[11] Section 40 Consideration of performance solution report**

Omit section 40(2)(b). Insert instead—

- (b) if the performance solution report was required to be prepared by a recognised person—
  - (i) the certifier has obtained a compliance certificate or written report, prepared by a recognised person, and
  - (ii) the certificate or report contains a statement that the building work the performance solution report relates to—
    - (A) has been completed, and
    - (B) is consistent with the performance solution.

**[12] Section 49 Information to be included in occupation certificate**

Insert “, or a current complying development certificate,” after “construction certificate” in section 49(1)(h)(iii).

**[13] Section 50 Reports of Fire Commissioner**

Omit section 50(1). Insert instead—

- (1) This section applies to an application for an occupation certificate for development involving building work with a performance solution for a fire safety requirement in a class 2, 3, 4, 5, 6, 7, 8 or 9 building.

**[14] Section 50(5)**

Omit the subsection. Insert instead—

- (5) If the Fire Commissioner has provided the certifier with a final fire safety report within 10 working days after receiving the request for the report, the certifier must not issue an occupation certificate for the building unless the certifier has—
  - (a) considered the report, and
  - (b) given the Fire Commissioner written notice of the reasons for not adopting a recommendation for remediation that is not adopted.

**[15] Section 50(8)**

Omit the definition of *final fire safety report*. Insert instead—

*final fire safety report*, for a building, means a written report specifying—

- (a) whether the Fire Commissioner is satisfied of the following—
  - (i) the building work complies with a performance solution for a fire safety requirement that was the subject of the construction certificate,
  - (ii) the fire hydrants in the fire hydrant system will be accessible for use by Fire and Rescue NSW,
  - (iii) the couplings in the fire hydrant system will be compatible with the fire appliances and equipment used by Fire and Rescue NSW, and
- (b) if the Fire Commissioner is not satisfied of a matter in paragraph (a)(i)–(iii)—the Fire Commissioner’s recommendations for remediation.

**[16] Section 51 Reports of Fire Commissioner for class 2 or 3 buildings**

Omit section 51(5). Insert instead—

- (5) If the Fire Commissioner has provided the certifier with a fire safety report within 10 working days after receiving the request for the report, the certifier must not issue an occupation certificate for the building unless the certifier has—
  - (a) considered the report, and
  - (b) given the Fire Commissioner written notice of the reasons for not adopting a recommendation for remediation that is not adopted.

**[17] Section 51(7)**

Omit the definition of *fire system safety report*. Insert instead—

*fire system safety report*, for a building, means a written report specifying—

- (a) 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, and

- (b) if not—the Fire Commissioner’s recommendations for modification of the system.

**[18] Section 78 Fire safety schedules**

Omit section 78(2)(a). Insert instead—

- (a) issue a schedule (a ***fire safety schedule***)—
  - (i) in the approved form, and
  - (ii) containing the matters specified in section 79, and

**[19] Section 78(8)**

Insert after section 78(7)—

- (8) In this section—  
***approved form*** includes a form approved by the Commissioner for Fair Trading, Department of Customer Service.

**Note—** This definition of ***approved form*** supplements the definition in the Dictionary.

**[20] Section 80 Providing fire safety schedules and fire safety certificates after fire safety order is given**

Insert after section 80(3)—

- (4) Subsections (1) and (3) do not apply to a fire safety order given by the Fire Commissioner or an authorised fire officer.

**[21] Section 80A**

Insert after section 80—

**80A Reissue of fire safety schedule**

- (1) The owner of a building may request the reissue of a fire safety schedule in accordance with this section.
- (2) A fire safety schedule may be reissued by—
  - (a) a council, if the council is satisfied—
    - (i) the schedule has been lost or destroyed, or
    - (ii) there are errors or omissions in the schedule that require correction, or
  - (b) a principal certifier, if the certifier—
    - (i) has not yet issued an occupation certificate, and
    - (ii) is satisfied there are errors or omissions in the schedule that require correction.
- (3) A request to reissue a fire safety schedule must not be made under this section if errors or omissions in the schedule have occurred due to—
  - (a) building work, or
  - (b) a change in plans or specifications for the fire safety measures of the building.
- (4) Despite section 78(2)(a), a council that reissues a fire safety schedule under this section may reissue the schedule in the same form as the schedule being replaced.
- (5) A principal certifier who reissues a fire safety schedule under this section must give the council—

- (a) a copy of the reissued schedule, and
- (b) evidence of the errors or omissions that required correction.

**[22] Section 81A**

Insert after section 81—

**81A Essential fire safety measures to be inspected, tested and serviced**

- (1) The owner of a building must ensure that the maintenance activities for each essential fire safety measure for the building are undertaken in accordance with—
  - (a) if a performance solution approved for building work addresses the maintenance activity—the performance solution, or
  - (b) AS 1851—2012, if the maintenance activity—
    - (i) is not addressed by a performance solution approved for building work, and
    - (ii) is addressed by AS 1851—2012.

Maximum penalty—

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

- (2) The owner of a building must—
  - (a) keep the records required by AS 1851—2012, or the approved performance solution, on site at the building for at least 7 years, and
  - (b) make the records available for inspection by the Fire Commissioner or the relevant council.

Maximum penalty—

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

- (3) In this section—

*AS 1851—2012* means AS 1851—2012, *Routine service of fire protection systems and equipment* as in force from time to time.

*maintenance activities* means the following—

- (a) inspection,
- (b) testing,
- (c) servicing.

**[23] Section 83 Final fire safety certificates and interim fire safety certificates**

Omit “the whole of” from section 83(1)(a).

**[24] Section 83(1)(b)**

Omit “whole”.

**[25] Section 83, note**

Insert after section 83(2)—

**Notes—**

- 1 A final fire safety certificate must be provided before an occupation certificate is issued under section 41(1) for—
  - (a) a new building, or

- (b) a change of use for a building or part of a building.
- 2 A final fire safety certificate or an interim fire safety certificate must be provided before an occupation certificate is issued under section 41(2) for—
  - (a) a partially completed new building, or
  - (b) a change of use for a building or part of a building.

**[26] Section 84 Issue of fire safety certificates**

Omit section 84(1) and (2). Insert instead—

- (1) A person must not issue a fire safety certificate unless the assessments required for the certificate have been carried out within the previous 3 months.
- (2) The individual carrying out an assessment—
  - (a) must be an accredited practitioner (fire safety), and
  - (b) must not have installed a fire safety measure being assessed, and
  - (c) may be chosen by the building owner.

**[27] Section 84(3)**

Omit “the assessment”. Insert instead “an assessment”.

**[28] Section 84(3)(b)**

Insert “relevant to the essential fire safety measure being assessed” after “equipment”.

**[29] Section 84(4)(b)**

Insert “final” after “another”.

**[30] Section 85, heading**

Insert “and building practitioner” after “Commissioner”.

**[31] Section 85(1)**

Insert after paragraph (a)—

- (a1) give a copy of the certificate to a building practitioner to whom the owner is required to give notice, under the *Design and Building Practitioners Act 2020*, section 16, of the owner’s intention to apply for an occupation certificate, and

**[32] Section 85(1)**

Omit the penalty. Insert instead—

Maximum penalty—

- (a) subsection (1)(a1)—
  - (i) for a corporation—200 penalty units, or
  - (ii) for an individual—100 penalty units,
- (b) subsection (1)(b)—
  - (i) for a corporation—300 penalty units, or
  - (ii) for an individual—150 penalty units.

**[33] Section 85(3)**

Insert after subsection 85(2)—

- (3) In this section—



*building practitioner* has the same meaning as in the *Design and Building Practitioners Act 2020*.

**[34] Section 86 Information to be included in fire safety certificates**

Insert after section 86(1)(b)(vii)—

- (viii) the full name, business address, telephone number and accreditation number of each accredited practitioner (fire safety) who carried out an assessment under section 84(1).

**[35] Section 86(4)**

Insert after section 86(3)—

- (4) In this section—

*approved form* includes a form approved by the Commissioner for Fair Trading, Department of Customer Service.

**Note—** This definition of *approved form* supplements the definition in the Dictionary.

**[36] Section 92 Information to be included in fire safety statements**

Insert after section 92(2)—

- (3) In this section—

*approved form* includes a form approved by the Commissioner for Fair Trading, Department of Customer Service.

**Note—** This definition of *approved form* supplements the definition in the Dictionary.

**[37] Section 99 Specifications for smoke alarms**

Insert “, 96” after “section 95” in section 99(2).

**[38] Section 117 Determination of objections**

Omit “Planning” wherever occurring in sections 117(5)–(9).

**[39] Section 117(10)**

Insert after section 117(9)—

- (10) In this section—

*Secretary* has the same meaning as in the *Building and Development Certifiers Act 2018*.

**[40] Schedule 1 Penalty notice offences**

Omit Schedule 1, section 2(2)(b). Insert instead—

- (b) an offence under this Regulation, Part 13, section 102B, 104, 105 or Part 15.

**[41] Schedule 1 Penalty notice offences**

Insert in the table to Schedule 1 in appropriate order under the heading **Offences under this Regulation**—

Section 26	\$1,500	\$3,000
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**[42] Schedule 1**

Insert in the table to Schedule 1 in appropriate order under the heading **Offences under this Regulation**—



## 5 Application for construction certificate

This Regulation, as in force immediately before 1 August 2023, continues to apply to an application for a construction certificate made, but not finally decided, before 1 August 2023.

### [45] Dictionary

Omit the definition of *Category 2 fire safety provision*.

### [46] Dictionary

Insert in alphabetical order—

*performance-based design brief* has the same meaning as in the *Building Code of Australia*.

*working day* means a day that is not—

- (a) a Saturday or Sunday, or
- (b) a public holiday or bank holiday throughout the State.

### [47] Dictionary

Insert in alphabetical order—

*recognised person* means a person who is both an accredited practitioner (fire safety) and a fire safety engineer.

## **Schedule 2      Amendment of Design and Building Practitioners Regulation 2021**

### **Clause 18 Lodgement on NSW planning portal before issue of occupation certificate**

Insert after clause 18(2)(c)—

- (d) a copy of the fire safety certificate given to the building practitioner under the *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021*, section 85.