



New South Wales

Planning Legislation Amendment (National Construction Code) Regulation 2023

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the following Acts—

- (a) the *Building and Development Certifiers Act 2018*,
- (b) the *Design and Building Practitioners Act 2020*,
- (c) the *Environmental Planning and Assessment Act 1979*,
- (d) the *Local Government Act 1993*,
- (e) the *Plantations and Reafforestation Act 1999*,
- (f) the *Plumbing and Drainage Act 2011*,
- (g) the *Rural Fires Act 1997*,
- (h) the *Strata Schemes Development Act 2015*,
- (i) the *Strata Schemes Management Act 2015*.

ANTHONY ROBERTS, MP
Minister for Planning

Explanatory note

The object of this Regulation is to make minor amendments to the following regulations consequent on changes to the *National Construction Code* and the publication of an associated addendum to *Planning for Bush Fire Protection*, prepared by the NSW Rural Fire Service in cooperation with the Department of Planning and Environment—

- (a) the *Building and Development Certifiers Regulation 2020*,
- (b) the *Design and Building Practitioners Regulation 2021*,
- (c) the *Environmental Planning and Assessment Regulation 2021*,
- (d) the *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021*,
- (e) the *Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2021*,
- (f) the *Plantations and Reafforestation (Code) Regulation 2001*,
- (g) the *Plumbing and Drainage Regulation 2017*,
- (h) the *Rural Fires Regulation 2022*,

- (i) the *Strata Schemes Development Regulation 2016*,
- (j) the *Strata Schemes Management Regulation 2016*.

Planning Legislation Amendment (National Construction Code) Regulation 2023

1 Name of Regulation

This Regulation is the *Planning Legislation Amendment (National Construction Code) Regulation 2023*.

2 Commencement

This Regulation commences on 1 May 2023.

Schedule 1 Amendments

1.1 Building and Development Certifiers Regulation 2020

[1] Schedule 1 Classes of registration

Omit “P2.2.4 of that code” from clause 8(1)(f). Insert instead “the code, Volume 2, H2P4”.

[2] Schedule 3 Knowledge and skills

Omit “*International Fire Engineering Guidelines*” from clause 9(1)(c) and (2)(d) wherever occurring.

Insert instead “*Australian Fire Engineering Guidelines*”.

[3] Schedule 3, clause 9(3)

Insert after clause 9(2)—

(3) In this clause—

Australian Fire Engineering Guidelines means the *Australian Fire Engineering Guidelines* published by the Australian Building Codes Board from time to time.

1.2 Design and Building Practitioners Regulation 2021

[1] Clause 5 Form and content of regulated designs involving performance solutions

Omit “Part A2.2” from clause 5(2). Insert instead “A2G2”.

[2] Schedule 2 Qualifications, experience, knowledge and skills

Omit “*International Fire Engineering Guidelines*” from clause 13(3)(d).

Insert instead “*Australian Fire Engineering Guidelines*”.

[3] Schedule 2, clause 13(4)

Insert after clause 13(3)—

(4) In this clause—

Australian Fire Engineering Guidelines means the *Australian Fire Engineering Guidelines* published by the Australian Building Codes Board from time to time.

1.3 Environmental Planning and Assessment Regulation 2021

[1] Section 4 Building Code of Australia

Omit section 4(4).

[2] Sections 69(3) and 146(2)

Omit “Part B1 and NSW Part H102 in Volume 1 of the *Building Code of Australia*” wherever occurring.

Insert instead “the *Building Code of Australia*, Volume 1, Part B1 and NSW Part I5”.

[3] Sections 122(5)(a), 130(3)(c) and 137(3)(b)(i)

Omit “A2.2(4) of the *Building Code of Australia*” wherever occurring.

Insert instead “the *Building Code of Australia*, A2G2(4)”.

[4] Section 130 Other documents to accompany complying development certificate application

Omit “Part B1 or NSW Part H102 in Volume 1 of the *Building Code of Australia*” from section 130(3)(c).

Insert instead “the *Building Code of Australia*, Volume 1, Part B1 or NSW Part I5”.

[5] Section 137 Compliance with Building Code of Australia

Omit “Volume 1, or section 3 of Volume 2, of the *Building Code of Australia*,” from section 137(2).

Insert instead “the *Building Code of Australia*, Volume 1 or 2”.

[6] Section 137(6), definition of “prescribed report”

Omit “EP1.4, EP2.1, EP2.2, DP4 and DP5 in Volume 1 of the *Building Code of Australia*”.

Insert instead “the *Building Code of Australia*, Volume 1, E1P4, E2P1, E2P2, D1P4 or D1P5”.

[7] Section 270 Definitions

Omit “Table A1.7 of *Planning for Bush Fire Protection* ISBN 978 0 646 99126 9, dated November 2019” wherever occurring in the definitions of ***bush fire attack level–40 (BAL–40)*** and ***flame zone (BAL–FZ)***.

Insert instead “*Planning for Bush Fire Protection*, Table A1.7”.

[8] Section 271

Omit the section. Insert instead—

271 Planning for Bush Fire Protection—the Act, s 4.14(1)(a)

Planning for Bush Fire Protection, prepared by the NSW Rural Fire Service in co-operation with the Department, dated November 2019, as amended by the addendum published in November 2022, is prescribed.

[9] Section 272 Development excluded from bush fire prone land requirements—the Act, s 4.14(1C)

Omit “*Planning for Bush Fire Protection* ISBN 978 0 646 99126 9, dated 9 November 2019” from section 272(6).

Insert instead “*Planning for Bush Fire Protection*”.

[10] Dictionary

Omit the definition of ***Category 1 fire safety provision***, paragraphs (a) and (b).

Insert instead—

- (a) Volume 1, E1P3, E1P4, E1P6, E2P1, E2P2 and E3P2,
- (b) Volume 2, H3P2.

[11] Dictionary

Insert in alphabetical order—

Planning for Bush Fire Protection means the document prescribed by section 271.

[12] Schedule 6 Savings, transitional and other provisions

Insert at the end of the Schedule, with appropriate Part and section numbering—

Part Provisions consequent on Planning Legislation Amendment (National Construction Code) Regulation 2023

Compliance with Building Code of Australia

- (1) A development application lodged before 1 May 2023 must be determined as if the *Planning Legislation Amendment (National Construction Code) Regulation 2023*, Schedule 1.3[1]–[7] and [9]–[11] had not commenced.
- (2) An application for a complying development certificate lodged before 1 May 2023 must be determined as if the *Planning Legislation Amendment (National Construction Code) Regulation 2023* had not commenced.
- (3) For an application specified in subsection (1) or (2), a reference to the *Building Code of Australia* in this Regulation is a reference to the version of the Code as in force when the application was lodged.

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

[1] Section 18 Requirement for performance solution report

Omit “A2.2(4) of the *Building Code of Australia*” from section 18(1)(b)(i).

Insert instead “the *Building Code of Australia*, A2G2(4)”.

[2] Section 18(3), definition of “prescribed report”

Omit “EP1.4, EP2.1, EP2.2, DP4 or DP5 in Volume 1 of the *Building Code of Australia*”.

Insert instead “the *Building Code of Australia*, Volume 1, E1P4, E2P1, E2P2, D1P4 or D1P5”.

[3] Section 26 Building work to which Division applies

Omit “CP2 in Volume 1 of the *Building Code of Australia*” from section 26(2)(a) and (3)(a) wherever occurring.

Insert instead “the *Building Code of Australia*, Volume 1, C1P2”.

[4] Section 26(2)(b) and (3)(b)

Omit “the verification method CV3 in Volume 1 of the *Building Code of Australia*” wherever occurring.

Insert instead “the verification method C1V3 in the *Building Code of Australia*, Volume 1”.

[5] Section 26(4)

Omit “EP1.4 in Volume 1 of the *Building Code of Australia*”.

Insert instead “the *Building Code of Australia*, Volume 1, E1P4”.

[6] Section 26(5)

Omit “requirement set out in D1.18(a) in Volume 1 of the *Building Code of Australia*”.

Insert instead “requirements set out in the *Building Code of Australia*, Volume 1, C3D6, D2D3, NSW D2D3(4), D2D4, D2D16, D3D27, E1D11 and NSW E2D19”.

[7] Section 39 Determination of application for occupation certificate

Omit “A5.2 in the *Building Code of Australia*” from section 39(2)(b)(v).

Insert instead “the *Building Code of Australia*, A5G3”.

[8] Section 64 Missed progress inspections

Omit “A5.2 of the *Building Code of Australia*” from section 64(5), definition of *required information*, paragraph (h).

Insert instead “the *Building Code of Australia*, A5G3”.

[9] Schedule 1A Savings, transitional and other provisions

Insert at the end of the Schedule, with appropriate Part and section numbering—

**Part Provisions consequent on commencement of
Planning Legislation Amendment (National
Construction Code) Regulation 2023**

Compliance with Building Code of Australia—general

- (1) The following applications, lodged before 1 May 2023, must be determined as if the *Planning Legislation Amendment (National Construction Code) Regulation 2023* had not commenced—
 - (a) a development application,
 - (b) an application for a construction certificate,
 - (c) an application for a complying development certificate.
- (2) For an application specified in subsection (1), a reference to the *Building Code of Australia* in this Regulation is a reference to the Code as in force when the application was lodged.

Compliance with Building Code of Australia—certain applications lodged on or after 1 May 2023

- (1) This section applies to an application for a construction certificate—
 - (a) lodged on or after 1 May 2023, and
 - (b) relating to a building to which section 19(1A)(b) applies, and
 - (c) for which the application for the construction certificate specified in section 19(1A)(b) was lodged before 1 May 2023.
- (2) In determining an application to which this section applies—
 - (a) a reference to the *Building Code of Australia* in this Regulation is a reference to the Code as in force immediately before 1 May 2023, and
 - (b) section 26(5), as in force immediately before 1 May 2023, continues to apply to the application.
- (3) Section 26(5), as amended by the *Planning Legislation Amendment (National Construction Code) Regulation 2023*, does not apply to an application to which this section applies.
- (4) Subsections (2)(b) and (3) are repealed at the beginning of 1 August 2023.

[10] Dictionary

Omit the definition of *Category 1 fire safety provision*, paragraphs (a) and (b).

Insert instead—

- (a) Volume 1, E1P3, E1P4, E1P6, E2P1, E2P2 and E3P2,
- (b) Volume 2, H3P2.

[11] Dictionary, definitions of “Category 2 fire safety provision” and “Category 3 fire safety provision”

Omit the definitions. Insert in alphabetical order—

Category 2 fire safety provision means the *Building Code of Australia*, Volume 1, C1P9, E1P3, E1P4, E1P6, E2P2 and E3P2.

Category 3 fire safety provision means the *Building Code of Australia*, Volume 1, E1P3, E1P4, E1P6, E2P2 and E3P2.

1.5 Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2021

[1] Section 4 Interpretation

Insert in alphabetical order in section 4(1)—

ABC Housing Provisions Standard means the *Housing Provisions Standard* published by the Australian Building Codes Board from time to time.

[2] Sections 47(2) and 91(2)

Omit “the *Building Code of Australia*, Volume Two, section 3.7.1 and 3.8.6” wherever occurring.

Insert instead “the *ABC Housing Provisions Standard*, Parts 9.3 and 10.7”.

[3] Sections 48(4)(a) and (b) and 139(4)(a) and (b)

Omit “the *Building Code of Australia*, Volume Two, section 3” wherever occurring.

Insert instead “the *ABC Housing Provisions Standard*, Part 9.2”.

[4] Sections 64(1) and 155(1)

Omit “the *Building Code of Australia*, Volume Two, Part 3.7.2” wherever occurring.

Insert instead “the *ABC Housing Provisions Standard*, Part 9.5”.

1.6 Plantations and Reafforestation (Code) Regulation 2001

Appendix Plantations and Reafforestation Code

Omit section 25A(6), definition of *Planning for Bush Fire Protection*. Insert instead—

Planning for Bush Fire Protection means the document prescribed by the *Environmental Planning and Assessment Regulation 2021*, section 271.

1.7 Plumbing and Drainage Regulation 2017

Clause 10 Additional requirements for proposed performance solutions

Omit “Part A2.2 of the *Plumbing Code of Australia*” from clause 10(2)(c).

Insert instead “the *Plumbing Code of Australia*, A2G2”.

1.8 Rural Fires Regulation 2022

[1] Section 3 Definitions

Omit the definition of *Planning for Bush Fire Protection*. Insert instead—

Planning for Bush Fire Protection means the document prescribed by the *Environmental Planning and Assessment Regulation 2021*, section 271.

[2] Section 45 Application for bush fire safety authority—the Act, s 100B

Omit “ISBN 978 0 646 99126 9,” and “, published by the NSW Rural Fire Service in November 2019” from section 45(4), definition of *prescribed information*, note.

1.9 Strata Schemes Development Regulation 2016

Clause 21 Category 1 fire safety provisions

Omit clause 21(a) and (b). Insert instead—

- (a) Volume 1, E1P3, E1P4, E1P6, E2P1, E2P2 and E3P2,
- (b) Volume 2, H3P2.

1.10 Strata Schemes Management Regulation 2016

[1] Clause 46A Documents to be provided to building inspector by developer

Omit “alternative solutions” from clause 46A(1)(b)(ii).

Insert instead “performance solutions”.

[2] Clause 46A(1)(b)(vi)

Omit “an alternative solution”. Insert instead “a performance solution”.

[3] Clause 46A(1)(b)(vi)

Omit “the alternative solution”. Insert instead “the performance solution”.