

Regulatory Impact Statement

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

August 2022



Published by

Better Regulation Division
NSW Department of Customer Service
www.customerservice.nsw.gov.au

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**APPENDIX 1: INDEX TO DRAFT ENVIRONMENTAL PLANNING AND ASSESSMENT
(DEVELOPMENT CERTIFICATION AND FIRE SAFETY) AMENDMENT (FIRE SAFETY)
REGULATION 2022**

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Commissioner's message

I am proud to present this Regulatory Impact Statement (RIS) and proposed Environmental Planning and Assessment (Development Certification and Fire Safety) Amendment (Fire Safety) Regulation 2022 (the draft **Regulation**).

The NSW Government's Construct NSW reform agenda is transforming the residential building and construction industry. This statement and draft regulation form part of the Construct NSW transformation strategy to establish a more trustworthy residential building and construction industry by 2023.

Building owners and occupants must be able to rely on the safety and amenity of their buildings. Fire safety is crucial to safe and trustworthy buildings. Fire safety systems are there to protect occupants and the public. We must be able to have confidence in these systems.

To achieve safe and trustworthy buildings, requirements for fire safety systems in residential and other buildings must be robust; people involved in this work must be capable and the regulatory system governing must support the best standards.

In line with the Construct NSW reform agenda, the Department of Customer Service (the **Department**) is increasing focus on compliance work for residential buildings. Recent compliance inspections indicate fire safety defects are too common. The reforms outlined in this statement will significantly contribute to addressing these problems and progressing the next stage of reform. The NSW Government is committed to supporting the building and construction sector and providing NSW with a built environment that puts safety and quality first.

I encourage you to take part in this consultation and have your say on the proposed reforms. Your feedback will help us to strengthen building laws in NSW.

Natasha Mann

Commissioner for Fair Trading

Glossary of terms

The following is a list of terms and acronyms used in this document.

Term	Description
Annual Fire Safety Statement (AFSS)	An annual fire safety statement is a declaration by or on behalf of a building owner that an accredited practitioner (fire safety) has assessed, inspected and verified the performance of each existing essential fire safety measure that applies to the building. The statement also confirms that the building has been inspected by an accredited practitioner (fire safety) and all Fire Safety Notices are displayed; all fire exits, doors relating to fire exits, and paths of travel to fire exits, are not obstructed or impeded.
Australian Building Codes Board (ABCB)	The Australian Building Codes Board (ABCB) is a standards writing body responsible for the National Construction Code, WaterMark and CodeMark Certification Schemes.
AS1851	Australian Standard 1851-2012: Routine Service of Fire Protection Systems and Equipment.
Building Classes 1b to 9	<p>Building classifications are labelled Class 1 through to Class 10. Some classifications also have sub-classifications, referred to by a letter after the number.</p> <p>A building may have parts that have different uses. In most cases, each of these parts are classified separately. A building (or part of a building) may also have more than one use and may be assigned more than one classification.</p> <p>Access more information about each class of building on the ABCB website www.abcb.gov.au/resource/understanding-ncc/understanding-ncc-building-classifications</p>

	<p>Classes often mentioned in this document include:</p> <p>Class 1 (house), Class 1b (smaller boarding house, guest house or hostel), Class 2 (includes residential apartment buildings), Class 3 (residential building other than Class 1 or 2), Class 5 (office building), Class 9 (public buildings), Class 10 (non-habitable buildings or structures).</p>
Construction Certificate (CC)	A certificate to the effect that works completed under specified plans and specifications will comply with the requirements of the Environmental Planning and Assessment Act and Regulations.
Deemed-to-satisfy solution (DTS)	<p>A DTS solution follows a set procedures of what, when and how to do something from the National Construction Code, which includes materials, components, design factors and construction methods that, if used, are deemed to meet the Performance Requirements.</p> <p>A DTS solution is a compliance pathway under the National Construction Code (a performance-based code).</p>
Department	The NSW Department of Customer Service
EP&A	Environmental Planning and Assessment Act or Regulation.
Essential fire safety measure	<p>Essential fire safety measures are often identified in the building's Fire Safety Schedule (where a schedule was required to be issued) or they could be included in the essential services list attached to an approval or order issued under the <i>Local Government Act 1919</i> or the <i>Local Government Act 1993</i>.</p> <p>Essential fire safety measures are the fire safety measures that form part of an annual fire safety statement. They may include smoke detectors, sprinklers, emergency lights, exit signs, fire hose reels, fire doors, etc.</p>
FRNSW	Fire and Rescue NSW
Fire Safety Certificate (FSC)	A fire safety certificate is a document issued by, or on behalf of, the building owner(s) on completion of new building work. The certificate

	<p>confirms that each of the fire safety measures that apply to a building (as listed in the Fire Safety Schedule) have been installed and checked by a properly qualified person. This process helps verify that the required fire safety measures can perform to a minimum standard.</p>
<p>Fire Safety Schedule (FSS)</p>	<p>A Fire Safety Schedule specifies each of the fire safety measures that apply to the building premises. The fire safety measures specified in the Fire Safety Schedule will vary for each building and can be both essential fire safety measures and critical fire safety measures.</p> <p>The schedule also specifies the minimum standard of performance for each of the measures. This standard reflects the standard to which each measure is designed, installed and capable of operating. Critical fire safety measures are the fire safety measures that are of a nature or installed in a way that requires periodic assessment and inspection at intervals of less than 12 months. These measures are specifically identified on the Fire Safety Schedule and form part of a supplementary fire safety statement. A critical fire safety measure is also an essential fire safety measure.</p>
<p>IPART</p>	<p>Independent Pricing and Regulatory Tribunal NSW</p>
<p>National Construction Code (NCC)</p>	<p>The NCC is Australia’s primary set of technical design and construction provisions for buildings. As a performance-based code, it sets the minimum required level for the safety, health, amenity, accessibility and sustainability of certain buildings.</p> <p>The Australian Building Codes Board, on behalf of, and in conjunction with, the Australian Government and each State and Territory government, produces and maintains the National Construction Code.</p>
<p>Occupation certificates (OC)</p>	<p>An OC is issued by the Principal Certifier (local council or private certifier). It authorises the occupation and use of a new building, or a change of building use for an existing building.</p>

<p>Performance-based design brief</p>	<p>This document is developed in collaboration with key stakeholders as part of a proposed performance-based design and approval process. When completed, the brief becomes the platform upon which the proposed design is constructed.</p> <p>The purpose of the brief is to record fundamental activities and outcomes of the performance-based design process agreed during key stakeholder negotiations. When the brief is finalised, all critical activities and outcomes would have been identified. Consequently, the design process can be commenced with a high degree of confidence that, provided the requirements of the brief are achieved, the proposed design is likely to be approved. The process of developing a brief is typically initiated by the designer through round table discussions amongst key stakeholders. A need for ongoing discussion is usually determined by the success of initial negotiations and/or complexity of the proposal solution(s).</p>
<p>Performance solution</p>	<p>A performance solution is unique for an individual situation. These solutions are often flexible in achieving the performance outcomes and encourage the use of innovative design and technology.</p> <p>A performance solution directly addresses the performance requirements of the NCC by using one or more of the assessment methods available within the NCC. A performance solution is a compliance pathway under the NCC, which is a performance-based code.</p>
<p>RIS</p>	<p>Regulatory Impact Statement.</p>

1. Executive summary

This Regulatory Impact Statement explains proposed reforms from the NSW Government to improve fire safety in buildings. The reforms aim to reduce life safety risks, damage to property and the incidence and cost of fire safety defects in buildings.

The proposed reforms will improve compliance with requirements for the design, certification and maintenance of fire safety measures by:

- increasing oversight of performance-based design solutions through enhanced involvement of Fire and Rescue NSW (**FRNSW**)
- establishing a new category of independent certifiers to assess and verify the performance of installed fire safety measures before buildings can be occupied
- mandating improved documentation of the fire safety measures relied on for certification, inspection and maintenance
- mandating standards for the maintenance of fire safety measures.

The proposed changes will introduce more independent oversight of key events in incorporating and maintaining fire safety measures in buildings. They will integrate with existing processes that apply to passive (for example, fire-rated walls) and active measures (for example, fire sprinkler systems). A reform is also proposed to ensure that broader building compliance declarations integrate with existing processes for fire safety certification.

A broad range of buildings (ie. Class 1b-9 buildings) will be affected by the reforms as they are the building types that typically contain more complex fire safety measures. The changes impact some of the responsibilities of building owners, developers, fire safety practitioners and regulators (including councils and accredited certifiers).

The proposals were developed following consultation with a working group of industry experts commissioned in 2021 by the Office of the Building Commissioner and led by Michael Lambert, to consider fire safety.

Numerous Australian studies have shown that fire safety defects are one of the most common building defects. According to a 2021 study fire safety was reported as one of the two most commonly occurring serious defects in residential strata buildings in NSW. Life safety risks and

cost impacts, including of defect rectification, can be significant. Quantitative data on these risks is cited in this document.

Three options are presented to achieve the policy aims – doing nothing, providing guidelines or making the proposed regulatory amendments. Based on assessing both costs and benefits, this statement concludes that the greatest net benefit to the community is achieved by making the regulatory changes.

A draft Regulation accompanies this Regulatory Impact Statement. Most of the proposed regulatory amendments are to the Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021. It is proposed as a longer-term strategy, to relocate these amendments into a supporting Regulation for another Act that deals with occupational licensing, as a more appropriate home for the scheme with other mandatory occupational licenses.

Submissions are invited on any of the matters raised in this RIS or in the draft Regulation. All submissions will be considered and any necessary changes will be made to address the issues identified before the draft Regulation is finalised. The following section explains how to make a submission.

2. Consultation process

Making a submission

Interested organisations and individuals are invited to provide a submission on any matter relevant to the draft Regulation, whether or not it is addressed in this RIS. You may wish to comment on only one or two matters of particular interest, or all the issues raised.

To assist you in making a submission, an optional online survey is available on the Have Your Say website at <https://www.nsw.gov.au/have-your-say>.

However, this survey is not compulsory, and submissions can be in any written format.

An electronic form has been developed to assist you in making a submission on the RIS and the Regulation. The electronic form is available on the Have Your Say website and is the Department's preferred method of receiving submissions. Alternatively, you can email your submission to the address below. The Department requests that any documents provided to us are produced in an 'accessible' format. Accessibility is about making documents more easily available to those members of the public who have some form of impairment (visual, physical, cognitive).

More information on how you can make your submission accessible is contained at <http://webaim.org/techniques/word/>.

Please forward submissions by:

Email to: HBAreview@customerservice.nsw.gov.au

Mail to: Policy and Strategy, Better Regulation Division

Locked Bag 2906

LISAROW NSW 2252

The closing date for submissions is 07 October 2022.

We invite you to read this paper and provide comments. You can download a copy of this RIS and the Regulation from the <https://www.nsw.gov.au/have-your-say>. Printed copies can be requested from NSW Fair Trading by phone on 13 32 20.

Important note: release of submissions

All submissions may be made publicly available. If you do not want your personal details or any part of your submission published, please indicate this clearly in your submission together with your reasons. Automatically generated confidentiality statements in emails are not sufficient. You should also be aware that, even if you state that you do not wish certain information to be published, there may be circumstances where the government is required by law to release that information (for example, in accordance with the requirements of the *Government Information (Public Access) Act 2009*). It is also a statutory requirement that all submissions are provided to the Legislation Review Committee of Parliament.

Identified stakeholders

This RIS has been provided directly to some stakeholder organisations.

Evaluation of submissions

All submissions will be considered and assessed. The Regulation will be amended, if necessary, to address issues identified in the consultation process. If further information is required, targeted consultation will be held before the Regulation is finalised.

Finalising the Regulation

After reviewing comments, the Minister for Fair Trading will forward the final regulation to the Governor. After the Governor, with the advice of the Executive Council, approves the regulation it will be published on the official NSW Government website at www.legislation.nsw.gov.au.

Details about the proposed commencement of each reform is detailed in the RIS.

3. Background

Current regulatory system

The current process for regulating fire safety features of buildings in NSW largely dates back to the late 1980s and the 1990s and has been amended several times since then.

The most recent reforms of significance were in 2017 and 2020. In 2017, laws relating to requirements for performance solutions involving fire safety, the inspection of passive fire safety measures during construction and processes for annual fire safety statements were changed.

In 2020, new requirements for declarations of compliance of designs and construction were introduced for Class 2 apartment buildings. This included some fire safety elements of buildings. The Department was given new powers of investigation and enforcement for certain types of residential apartment building work.

No evidence has been presented to the government that the current system for fire safety of buildings is fundamentally flawed. Indeed, feedback from stakeholders is supportive.

However, there have been calls for further improvements. A recent national review of building regulation, endorsed by Australian Building Ministers and focusing on compliance and enforcement, includes recommendations to improve fire safety.¹

Construct NSW – Industry review of fire safety

In response to the feedback, the Office of the NSW Building Commissioner (**OBC**) established a working group of industry experts to identify ways to improve fire safety in Class 2 residential buildings. The review focused on the Environmental Planning and Assessment (**EP&A**) Regulation as most laws on fire safety for buildings fall under this legislation. The review was extended to include Class 1b to 9 buildings as the regulatory framework and fire safety issues are equally relevant to these building types.

The working group established in December 2020 had representatives from 16 organisations – including fire practitioners, certifiers, strata and building managers, engineers, educators,

¹ The review was in response to the *Building Confidence Report*. More information at Australian Building Codes Board website www.abcb.gov.au/news/2021/best-practice-model-guidance-responds-building-confidence-report

councils and state government regulators. The working group published a report of key findings to improve fire safety in December 2021.²

The reforms presented in the draft regulation that accompanies this Regulatory Impact Statement are drawn from this Construct NSW–Industry review. They do not cover all the matters canvassed by that review. The proposed reforms are based on the most ready-to-implement proposals. The NSW Government continues to engage with industry regarding other recommendations from the Construct NSW industry review.

The proposed reforms also consider the national best practice guidance on fire safety regulation developed by the ACBC in response to the Building Confidence Report.

Incidence of fire safety defects

Fire safety is a common defect in buildings across NSW and Australia.

A recent study³ from the Strata Community Association and the OBC found fire safety was one of the two most commonly occurring serious defects in residential strata buildings in 2021. Waterproofing defects affected 23% of surveyed buildings, followed by fire safety (14%).⁴ Most of these defects (51%) were identified through independent expert advice commissioned by the owners corporation.

Around half of the defective buildings surveyed had been rectified. Of the rectified buildings, 27% of rectifications were achieved through an agreement with the developer or builder. Only around 3% of building defects were resolved by legal action via tribunal or courts.

An estimated \$331,829 per building was spent by owners corporations to resolve serious defects. Very few owners corporations reported being able to recover their costs. The time taken to resolve defects varied greatly across the sample, with around 38% of buildings taking over 12 months and 25% taking less than six months.

² Office of the Building Commissioner, NSW Government, 2022. www.nsw.gov.au/building-commissioner/building-and-construction-resources/research-on-fire-safety-reforms

³ Research report on serious defects in recently completed strata buildings across New South Wales. 1,450 strata managers were surveyed with valid data for 492 buildings in NSW. Included buildings of four storeys or more above ground which were completed after July 2014 www.nsw.gov.au/sites/default/files/2021-10/Serious_defects_in_residential_apartments_research_report.pdf

The Department has reported a high number of fire safety defects while auditing apartment buildings before the issue of an occupation certificate or registration of a strata scheme. These audits have occurred since 2021. Three of the seven stop work orders issued by the Department as of March 2022 included fire safety matters. Nine out of 15 building rectification orders included fire safety matters.

Based on various recent studies the common types of fire safety defects, especially in NSW, Queensland and Victoria for residential multi-unit buildings, are cladding and defective or missing fire safety measures, especially for passive systems.⁵

Data on defects in non-residential building types is more difficult to obtain. However, a study for the Australian Building Codes Board (**ABCB**) in 2021 found that fire safety defects were the fourth most common major building defect in Class 3 to 9 buildings.⁶ Defects included missing fire barriers, incomplete fire door/seal/signage and non-functional emergency lighting.

The rate of fire safety defects continues to be unacceptable, causing significant stress and cost for owners and occupiers. The impact of cost is covered in more detail in chapter five.

⁶ The Centre for International Economic (CIE), Building Confidence Report: A case for intervention, 2021, Pages 40-41.

4. Objectives

The proposed reforms aim to reduce life safety risks, damage to property and the incidence and cost of fire safety defects through more independent oversight of key events associated with incorporating fire safety measures in buildings. The reforms apply to Class 1b to 9 buildings.

Increased oversight should increase compliance with requirements for design, certification and maintenance of these fire safety measures. This would form part of the Construct NSW agenda to transform the building industry in NSW.

Further oversight is warranted for fire safety. As stated by the ABCB:

The Building Confidence Report (BCR) notes that while fire safety is one of the most important elements of a building's design, fire safety can present the highest risk to occupants when subject to non-compliance.⁷ Fire safety design, installation, certification and maintenance are often specialist disciplines that create extra challenges for review and supervision. This challenge can be compounded by the complexity of many modern buildings that involve multiple fire safety measures each needing the input of different specialists. The common use of performance-based designs also increases this complexity.

The objective of **more independent oversight of fire safety measures** would be achieved through by focusing on four key areas:

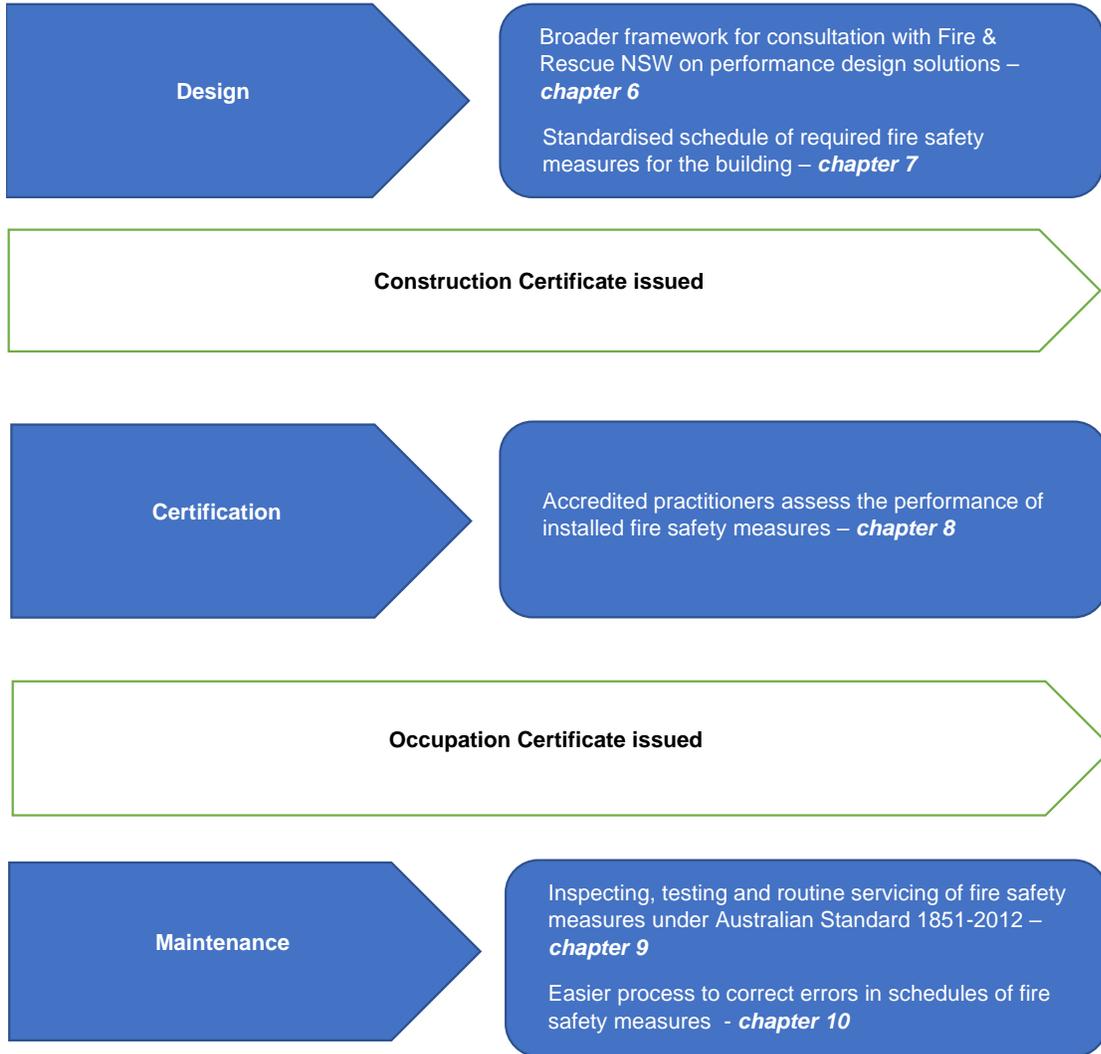
- **Fire safety design:** increasing the independent review of non-standard designs (ie performance solutions) by broadening FRNSW call-in powers.
- **Certification of fire safety measures:** creating an independent accredited practitioner role. Currently, owners of Class 1b to 9 buildings must engage a 'properly qualified person(s)' to assess whether each completed essential fire safety measure performs to required standards. If the draft Regulation is made, the owner must appoint practitioners accredited by a scheme authorised by the Department. The practitioner cannot assess and certify a measure they installed. The accreditation scheme would create minimum training and experience requirements, impose a code of conduct, introduce a complaints management system and auditing of accredited practitioners.

⁷ Australian Building Codes Board, Fire safety systems: Model guidance on BCR recommendation 19, 2021, page 3.

- **Maintenance:** mandating an independent standard for the frequency, method and documentation of testing fire safety measures.
- **Certification, maintenance and any subsequent building works:** ensuring that Fire Safety Schedules are correct and list all the approved fire safety measures for the building and their required performance standard. The schedule forms part of the development consent. The reforms would allow certifiers or councils to amend incorrect schedules in specific circumstances. The reforms would also enable the NSW Government to mandate a standard schedule format.

Figure 1 summarises the reforms and shows the actions in the design and certification stages of construction work that precede or follow the issue of a construction certificate (approval to build), or maintenance actions that follow an occupation certificate (approval to occupy the building). The associated chapters in the RIS cover the proposed changes referenced in Figure 1.

Figure 1: Proposed reforms for construction and maintenance (and relevant RIS chapters)



5. Options for achieving the objectives

Options

Three options are considered in determining how best to achieve the objective of more independent oversight of fire safety design, certification and maintenance of fire safety measures in Class 1b to 9 buildings.

The options are:

Option 1 – Do nothing – status quo

Option 2 – Provide non-regulatory guidelines

Option 3 – Make the proposed amendments.

Option 1 – Do nothing

The 'do nothing' option is unlikely to achieve the objective of introducing greater independence of oversight and reducing life safety risks, damage to property and the incidence and cost of fire safety defects in Class 1b to 9 buildings.

Doing nothing would rely on existing stakeholders to act voluntarily. For example, this includes:

- voluntary introduction of independent reviews of performance solutions by building owners or developers where they do not currently apply
 - continuing with building owners or developers engaging people they deem to be properly qualified to certify fire safety systems in the absence of minimum standards
 - maintenance contractors applying AS1851 on a voluntary basis.
- Taking no action means each council would determine their own format for Fire Safety Schedules and corrections to schedules would be through Fire Safety Orders or development consents. Individual decisions on schedule formats are unlikely to help address the current high level of errors in schedules. The Fire Safety Orders and development consents involve are cumbersome processes for correcting errors that can be costly for councils and building owners. This is the status quo.

Fire safety defects remain one of the most common defects, as demonstrated by recent studies, surveys and government audits of residential buildings. Part of the complexity of fire safety is its specialist nature and the range of specialists involved.

Doing nothing is likely to lead to continued non-compliance. The proposed reforms would increase expertise applied to fire safety in the review of design proposals; in verifying whether installed fire safety measures are compliant and perform; in setting minimum standards on the frequency of routine maintenance of systems and documenting required fire safety measures.

For these reasons, option 1 is not supported.

Option 2 – Provide guidelines

Providing guidelines is similar to option 1 because the decision to act remains with the relevant party. Where reviews do not already apply, the owner or developer would choose whether to obtain an independent review by Fire and Rescue NSW of the performance solution proposal, potentially supported by a guideline explaining the benefits of this action.

A standard Fire Safety Schedule template could be shared with certifiers and councils for their use.

AS1851-2012 could be introduced as the recommended standard for routine maintenance without being a requirement.

Under option 2, a voluntary register of qualified properly qualified people could be established. It would be up to practitioners to register and meet the minimum experience, qualification and code of practice pre-requisites. This could be an extension of the current Fire Protection Association of Australia voluntary register for practitioners assessing fire sprinkler systems, fire hydrant and hose reel systems and fire detection and alarm systems. Current take-up of this register is limited, with just 15 practitioners registered.

A guideline could be issued on how to correct errors in schedules however the only means under law to change them would be a Fire Safety Order or a development consent.

For these reasons, option 2 is not supported.

Option 3 – Make amendments to the Regulation

Making the amendments is considered the best option for supporting the objectives of the reforms.

Making the amendments overcomes the problems raised with options 1 and 2 due to a reliance on voluntary action from stakeholders. For this reason, options 1 and 2 are unlikely to see significant or consistent take up of independent oversight processes.

Relying on voluntary action risks fire safety improvements due to various disincentives to act. Disincentives include that obtaining independent review by FRNSW, where they do not already apply, adds costs to developers. Though many fire safety engineers seek FRNSW input upfront, rather than risk that FRNSW will object to the proposal later on, take up is inconsistent.

As discussed in option 2, a voluntary register of fire safety system certifiers relies on practitioners volunteering to meet specific minimum standards of training, experience or a code of conduct that may apply to a scheme. A voluntary register is less likely to have the same auditing and complaints process that would apply to a mandatory scheme because of the difficulties of encouraging people to list themselves on such a register. In addition, these 'certifiers' would need to voluntarily ensure they are not also the installer of the fire safety system they certify. While many practitioners apply AS1851-2012, this is not universally the case.

And processes for Fire Safety Schedules are inconsistent – both regarding correcting errors and format and content. For these reasons, option 3 best supports the reform's objectives.

Benefits

The key benefits of the proposed reforms are to minimise:

- the costs of defects
- injuries and loss of life
- property damage
- building insurance costs.

Current research (refer to chapter 3) clearly indicates that fire safety is one of the most prevalent building defects. The Strata Community Association's survey of 1,450 strata

managers for 492 Class 2 buildings estimated the cost for owners corporations to rectify serious defects was \$331,829 per building.

Information on costs per building or apartment unit to rectify fire safety defects is difficult to access. However, a 2019 study by Equity Economics estimated a cost of \$4,000 to \$14,000 per unit for apartment buildings substantially affected by fire safety defects (excluding combustible cladding defects), with the most likely cost being \$9,000 per unit.⁸ These estimates exclude other costs building owners could bear including legal costs, costs of alternative accommodation during rectification works and increased insurance premiums.

A 2015 study estimated that around 5% of all fire fatalities (25 in total) in NSW between 2004 and 2014 were due to design, installation and/or construction issues (implying non-compliance with the NCC).⁹ Based on this, a CIE report for the ABCB in 2021 estimates that the number of preventable fatalities due to building defects related to fire in NSW could be 14.3 per year.¹⁰

According to the CIE report, the estimated cost of property damage due to fire safety defects (nationally) is around \$35.8 million per year.¹¹

The CIE report also notes evacuation costs and costs of alternative accommodation if the premises are uninhabitable, loss in property value, insurance costs both potentially increased premiums for building practitioners and increased building and contents insurance. Limited quantitative data is available on these costs.

Costs

The proposed reforms regarding fire safety certifiers, mandating AS1851 and consultation with FRNSW are likely to add some costs to some building owners and/or developers. The proposed reforms to Fire Safety Schedules are unlikely to add significant costs to building owners, although some councils may have to pay minor administrative costs due to these changes.

The fire safety certifier reform will add accreditation fees and training costs to the affected fire safety practitioners. These costs are difficult to estimate at this stage. The accreditation costs would be set by the accreditation body which is not yet formed. The costs could be authorised

⁸ Equity Economics, The cost of apartment building defects: Economic modelling of the cost of building defects in apartments across Australia, 2019.

⁹ ACIL-Allen study quoted in CIE report, Building Confidence Report: A case for intervention, 2021, page 43.

¹⁰ Ibid, page 44.

¹¹ Ibid, page 45.

by a body corporate as the accreditation authority, or by the state government. Annual accreditation fees and continuing professional development requirements will likely apply. Upfront training costs may be paid by practitioners to meet accreditation entry requirements. The accreditation requirements would be established by an approved accreditation scheme either written or approved by government.

There would be some costs to administer the accreditation scheme for government and, if a body corporate such as an industry body was involved, the body corporate. Some of these costs would be offset by accreditation fees.

Some of these costs may be passed on to developers or building owners. The costs of enforcement of the requirement to be accredited are not expected to be on an user-pay basis.

The costs of engaging people to maintain essential fire safety measures would be borne by building owners where AS1851 is not already being used. If AS1851 is already in use, no extra costs would be incurred.

A survey by the Fire Protection Association of Australia estimates that over 60 to 70% of practitioners are already applying AS1851 for a range of buildings (refer to Chapter 9 for more details). Even where AS1851 is not applied, some routine maintenance must occur to comply with the legal obligation to maintain systems. In the National Fire Protection Association of Australia's view, AS1851 documents the minimum number of tests, inspections and maintenance regimes to be confident that the relevant fire services can perform to the nominated standard at all times.

It is unknown whether the full costs outlined below would come into effect due to limits on information about buildings that do not use AS1851 and the difference between their existing maintenance regularity and process. However, it is assumed that the full costs below would not come into effect as some maintenance should already be happening beyond the annual fire safety statement inspection.

Costs of inspection, testing and routine servicing of fire safety measures based on applying AS1851 depend on the size and type of building and the number of essential fire safety measures in the building.

Indicative estimated costs per year:

- For a small building with non-complex measures and no hydrant (and no fire panel, sprinklers, or pumps) could range from \$850 per annum (Class 2 building) to \$1,500 for a Class 5 building (small office).
- A medium sized building could be \$3,000 to \$12,500 for a Class 2 or 3 building with some complex measures, hydrants and fire safety panel, sprinklers and pumps; or \$3,500 to \$8,500 for a medium Class 5 (office building) or Class 6 (shop).
- Costs of \$6,500 per annum and more are estimated for medium to large Class 9 buildings but according to the industry survey, there is already a high take up of AS1851 for these buildings.
- For large buildings, Class 2 buildings over 25 metres in height with the full range of measures and which may be large complexes involving multiple strata buildings the cost could be \$12,500 to \$55,000 per annum. This could increase for Class 3 buildings to up to \$95,000 where multiple buildings are involved. For large Class 5 buildings (could cover multiple buildings), the range is estimated at \$15,000 to \$65,000 per annum, increasing to up to \$75,000 for a large Class 6.

There could be some enforcement costs for councils and FRNSW to enforce AS1851 ie. for any site visits and consequent actions that included inspection of AS1851 records on site. However, these visits are likely to be part of existing compliance inspections covering other fire safety matters.

For consultation with FRNSW, the draft regulation changes some aspects of existing functions of FRNSW. These existing functions are already subject to fees and charges paid by development proponents. Some developments that were not impacted by the current regulation may be impacted because FRNSW would have wider discretion under this proposal on the matters it reviews. This broader discretion would only apply where a construction certificate is to be issued for building work that involves a performance solution regarding fire safety. Time limits would apply to FRNSW where they decide to comment on a matter. If FRNSW does not provide comments within time, the matter can proceed without delay.

FRNSW proposes to change their fee structure as a result of a NSW Independent Pricing and Regulatory Tribunal's (**IPART**) review of FRNSW fees and charges. The IPART draft recommendations include moving to cost recovery for fire safety services in the built environment.

Some of the new charges will result in reduced costs for some services and increases for others. A flat application fee is proposed for applications referred to FRNSW (see IPART recommended fees below). This would help to cover costs for administration and risk assessment of each project. After this fee, hourly rates or fixed costs would apply if FRNSW undertakes an assessment of the project. FRNSW would undertake separate consultation before finalising revised fees for fire safety activities.

This RIS does not go over the ground covered by IPART's inquiry. IPART's recommendations are based on its public inquiry and submission process. IPART's view regarding non-fire fighting services such as built environment services is that user charges and cost recovery should apply and that the impactor or risk creator should pay the cost of providing the service.

The fees recommended by IPART are:

- for FRNSW's initial fire safety report (before a construction certificate is issued) is \$270 application fee and \$160 per hour of labour
- for fire engineering brief on a proposed fire safety performance solution the recommended application fee is \$270 and a fixed service charge of \$1,260
- for final fire safety reports (before the issue of an occupation certificate), the application fee would be \$270 and a fixed service charge (including 2 hours of travel time for 2 people) of \$2,140
- For a fire safety system report (Class 2 or 3 building), the application fee of \$270 and a fixed service charge (including 2 hours of travel time for 2 people) \$2,140.¹²

The costs of creating and publishing the new Fire Safety Schedule template and associated guidelines will not require additional government staffing or resources. The template will be available on an existing government website. There may be some minor administrative costs for the certifiers and councils to change from existing processes and any existing templates they use. However, these costs should be offset in the longer term by the benefits of a standard template such as certainty, consistency and accuracy.

¹² A Fire System Report is relevant for an occupation certificate for development that involved installing, extending or modifying a relevant fire safety system in a Class 2 or 3 building. A 'relevant fire safety system' is a hydraulic fire safety system, a fire detection and alarm system, a mechanical ducted smoke control system.

The draft Regulation could lead to administrative costs for the certifiers and councils in correcting or replacing a Fire Safety Schedule. These costs could potentially be passed to building owners through higher fees or cost recovery mechanisms. For example, local councils charging a fee for a replacement schedule.

Building owners may also need to pay to obtain or get copies of documentary evidence to supply to local councils to amend a schedule. However, these costs should not be substantial where the change is only a correction where there is documentary evidence of missing information (such as the relevant year for the version of the NCC that applied to the design of the fire safety measure). The building owner may incur higher costs where a Fire Safety Schedule has been lost or destroyed and the owner is requesting a replacement schedule.

Though the request cannot be approved if there were new building works or plans or specifications that lead to the need for a new schedule, the owner may incur costs such as engaging an expert to provide information to the council on the fire safety measures in the building.

The reforms would also involve some financial penalties where there are specific and clear breaches of law as specified in the draft regulation.

Conclusion

In conclusion, option 3, making the regulatory amendments, presents the greatest net benefit and best supports the reform's objectives.

This is due to the very high costs that could be borne mostly by building owners and occupants due to fire safety defects – particularly in terms of life safety risks, defect rectification, property damage and reduced property value – compared to the costs incurred to avoid such defects.

The incidence of fire safety defects is unfortunately relatively high. These reforms would make a significant contribution to minimising the risk of these defects from occurring at all.

6. Consultation with Fire and Rescue NSW

Current requirements

FRNSW are part of the review and have long been involved in reviewing development proposals involving fire safety. It is common practice across Australian jurisdictions to involve fire brigades, in some form, as an independent review before some building works occur. This is not just on fire-fighting matters but on fire safety generally as FRNSW has a broad remit including staff with expertise in building surveying and fire safety engineering.

Consultation before construction and occupation certificates

The Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021 has explicit provisions for referrals to FRNSW. This means that the certifier for the building project must refer specific building proposals to FRNSW after receiving an application for a construction certificate (to permit construction work to proceed) and after receiving an application for an occupation certificate (before the final building approval is issued).

FRNSW can choose which of these applications it comments on. Certifiers must refer applications to FRNSW within minimum timeframes after receiving applications; maximum timeframes apply for FRNSW to provide comments to the certifier.

If FRNSW comments at the construction certificate stage, it may or may not comment at the occupation certificate stage.

FRNSW's written comments at the construction certificate stage covers whether the performance solution will meet the performance requirements it is intended to meet; whether the fire hydrants in the proposed fire hydrant system will be accessible for use by FRNSW; and whether the couplings in the fire hydrant system will be compatible with the fire appliances and equipment used by FRNSW.

FRNSW's written comments at the occupation certificate stage covers whether FRNSW is satisfied the building work complies with a performance solution for a Category 2 fire safety provision that was the subject of the construction certificate; the fire hydrants in the fire hydrant system will be accessible for use by FRNSW; and the couplings in the fire hydrant system will be compatible with the fire appliances and equipment used by FRNSW.

The certifier must take FRNSW's comments into account before issuing the certificates. If the certifier does not agree with a FRNSW recommendation on a construction certificate application, the certifier must write to FRNSW with their reasons.

The building proposals that certifiers must refer to FRNSW are specific types involving fire safety performance solutions. Performance solutions are bespoke design solutions that must meet the performance outcomes in the National Construction Code (NCC). Deemed-to-satisfy provisions of the NCC, in contrast, have strict prescriptive standards to meet. The need for greater oversight of performance solutions has been recognised, including by the Building Confidence Report commissioned by Australian Building Ministers.¹³ Section 26 of the current Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021 specifies the following for referral, summarised below:

- Performance solutions to meet the performance requirement set out in EP1.4 in Volume 1 of the Building Code of Australia for a Class 2 or 3 building of 4 or more storeys
- Performance solutions involving the erection of a Class 9b early childhood centre that do not meet the requirements of the deemed-to-satisfy provisions set out in D1.18(a) in Volume 1 of the *Building Code of Australia* for egress
- Performance solutions for a Category 2 fire safety provision:¹⁴
 - in a Class 9a building that is proposed to have a floor area of 2,000 square meters or more
 - other than a Class 9a building, that is proposed to have a fire compartment with a floor area of more than 2,000 square meters
 - in a building other than a Class 9a building, that is proposed to have a floor area of more than 6,000 square meters
- Relating to external combustible cladding:
 - For 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, performance solutions to meet the performance

¹³ The 'Shergold-Weir report': *Building Confidence: Improving the effectiveness of compliance and enforcement systems for the building and construction industry across Australia*, 2018.

¹⁴ Category 2 fire safety provisions include performance requirements CP9, EP1.3, EP1.4, EP1.6, EP2.2 and EP3.2 of the NCC.

requirement set out in CP2 in Volume 1 of the *Building Code of Australia* where the performance solution does not apply the verification method CV3 in Volume 1 of the *Building Code of Australia* completely

- For 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, performance solutions to meet the performance requirement set out in CP2 in Volume 1 of the *Building Code of Australia* and the performance solution does not apply the verification method CV3 in Volume 1 of the *Building Code of Australia* completely

Opt-in consultation on performance-based design briefs

FRNSW also gets involved in fire engineering briefs for performance solutions (performance-based design briefs). These briefs are prepared before a construction certificate application is lodged.

Performance-based design brief is a process ‘that defines the scope of work for the fire engineering analysis. Its purpose is to set down the basis on which the fire safety analysis will be undertaken.’¹⁵

FRNSW’s involvement with performance-design brief involves discussions with the fire safety engineers engaged by developers and comments on what should be included in the fire engineering analysis.

FRNSW’s role in performance-based design briefs is not explicit under the current regulation. However, since changes to the NCC from 1 July 2021 to improve the rigour of performance solutions, it has been mandatory to consult with ‘relevant stakeholders’ to develop these briefs.

In practice, many performance solutions proposals are sent to FRNSW for comment by fire safety engineers in line with best practice as stated by the Australian Fire Engineering Guidelines.

In 2020-2021, FRNSW received requests to review 688 performance-based design briefs and provided reports on 668. This compared with receiving 466 referrals for initial fire safety reports (construction certificate stage) and providing reports on 25 of these. In the same year, FRNSW

¹⁵ See Section 2.2 *Australian Fire Engineering Guidelines 2021*.

received 390 referrals for final fire safety reports (occupation certificate stage) and provided reports on 294 of these.

According to FRNSW, the uptake of industry in undertaking a performance-based design brief process and consulting with FRNSW has varied, often depending on the individual practitioners.

Consultation on installing, extending or modifying a relevant fire safety system in a Class 2 or 3

FRNSW may also comment on a proposal to install, extend or modify a 'relevant fire safety system' in a Class 2 or 3 building before the occupation certificate is issued. A relevant fire safety system is a hydraulic fire safety system, a fire detection and alarm system, or a mechanical ducted smoke control system.

Certifiers must refer such proposals to FRNSW after receiving an application for an occupation certificate.

FRNSW may provide written comments to the certifier on whether they are satisfied that the relevant fire safety system is capable of performing to at least the standard in the current Fire Safety Schedule for the building.

Proposal

Mandatory referral of all fire safety related performance-based matters for Class 2-9 buildings at all stages

The draft regulation creates flexibility for FRNSW to review performance-based fire safety matters for Class 2-9 buildings either at the design brief stage, the construction certificate or occupation certificate stages. FRNSW could decide to be involved in one or more of these stages for the same building. It could also decide not to be involved in any of these stages for a building.

FRNSW will no longer be limited to reviewing only specific building types for buildings at plan and specification stage (prior to construction certificate) or before final sign off (prior to occupation certificate).

The proposed changes would allow FRNSW to determine which buildings it is best involved in and at which stage(s) based on risk. Statutory deadlines would apply to FRNSW to ensure this

does not delay development. This includes introducing statutory deadlines for FRNSW to notify the owner or developer (or their representative) whether or not FRNSW will be commenting on a performance-based solution design brief (within 10 working days of receiving notification from the owner / developer).

The current regulation already provides maximum timeframes for FRNSW to comment with an initial fire safety report. However, these will be changed from the current calendar days to working days.

The time limits for certifiers to refer matters, for FRNSW to notify receipt and for FRNSW to notify whether they are providing a report or provide the report, would be in working days rather than in the current calendar days. The intent of this change is to ensure that public holidays and weekends do not reduce the time allowed for these actions. FRNSW have experienced some certifiers referring matters prior to public holidays, reducing FRNSW's time to consider the matter. The same change is proposed for referrals on 'relevant fire safety measures' for Class 2 or 3 buildings.

These timelines reflect current FRNSW policy. There are no statutory deadlines for FRNSW's involvement in the performance-based design brief stage currently.

FRNSW is also increasing its staffing for this additional work. FRNSW have already recruited four additional staff – three fire safety engineers and an administrative staff member.

These changes will allow FRNSW to adopt a more risk-based and strategic approach to its involvement. It will also remove the current anomaly where despite increased rigour, mandated in the NCC, on developing performance-based designs, FRNSW may not be consulted on fire safety performance solutions at this critical stage. This creates the potential for FRNSW not to be involved at the design brief stage and only learning about the proposal when plans and specifications have been drawn up at the construction certificate application stage. In some cases, this may not be the best use of FRNSW's expertise.

It is FRNSW's view, that legislating for referrals to FRNSW at the performance-based design brief stage removes uncertainty and gaps where potentially some practitioners may choose to not undertake the performance-based design brief consultation with stakeholders such as FRNSW.

The proposal draws on FRNSW's experience in reviewing matters at all stages – design brief, construction certificate and occupation certificate stages. It is based on FRNSW's view that the current referral triggers relating to referrals are not entirely reflective of risk.

The proposal will also allow FRNSW to shift policy on risk matters in line with the environment without requiring legislative amendments.

The proposal also includes addressing the anomaly where certifiers must advise FRNSW of the reasons for not adopting FRNSW's recommendation on an initial fire safety report but there is no equivalent requirement for final fire safety reports or fire safety system reports. In final fire safety reports or fire safety system reports, FRNSW may cite issues or defects that should be rectified, and which lead to FRNSW providing a report to the certifier stating it is not satisfied (for the final fire safety report) with the performance solution, hydrants, couplings, or (for the fire safety system report) the performance of the relevant fire safety system. The proposal is that certifiers will have to provide written reasons to FRNSW for not addressing any issues or defects cited by FRNSW.

It should be noted that FRNSW provides comments on development and building proposals, but they do not veto developments. The decision on issuing construction approvals remains with the certification authority (council or an accredited certifier).

The proposed changes would be achieved by:

- Requiring FRNSW to be consulted by the author of a proposed performance solution report (usually a fire safety engineer) for a fire safety performance solution for Class 2-9 buildings where a construction certificate is to be issued.
- removing all specific building criteria for performance solutions at plan and specification stage or occupation certificate application stage that would trigger a referral to FRNSW (section 26 in the current regulation). Instead, all performance solutions involving fire safety for Class 2-9 buildings would be referred at both the construction certificate and occupation certificate stages to FRNSW. However, it will be up to FRNSW to decide which proposals to review based on risk.
- Allowing the certifier to proceed with determining the construction certificate or occupation certificate after either FRNSW advises that it will not provide comments (required within 10 working days of FRNSW receiving the application) or after FRNSW provides its comments

through an initial fire safety report (within 30 working days of FRNSW receiving the documents) or through a final fire safety report or fire safety system report (within 10 working days after FRNSW received a request for the report).

- Requiring certifiers to provide FRNSW with reasons for not addressing the defects cited by FRNSW on a final fire safety report and a report for relevant fire safety systems in Class 2 or 3 buildings.

The criteria and process for referring matters to FRNSW for a fire safety system report for Class 2 or 3 buildings would not change except that statutory deadlines for owners to refer matters and for FRNSW to provide comments would be in working days, not calendar days (see explanation above).

Who is affected when the reforms start?

At the time the regulation comes into effect, the proposal on referring performance-based design proposals and plans or specifications (preconstruction certificate issuance) would only apply where the construction certificate has not been lodged. The other changes regarding referrals to FRNSW would apply if the construction certificate has been lodged but not been determined. None of these changes would apply where the construction certificate has been issued.

7. Mandatory Fire Safety Template

Current requirements

Under the Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021, a Fire Safety Schedule is created on behalf of the owner or developer of a building. The schedule specifies the Fire Safety Measures (both current and proposed) that must be implemented in a building and the minimum standard of performance for each measure. These measures can include statutory fire safety measures and other measures (for example, those required through a performance-based design solution specific to that building). Refer to the statutory fire safety measures in Table 1.

This schedule will form the basis of the Fire Safety Certificate and the Annual Fire Safety Statement.

Table 1: Statutory fire safety measures

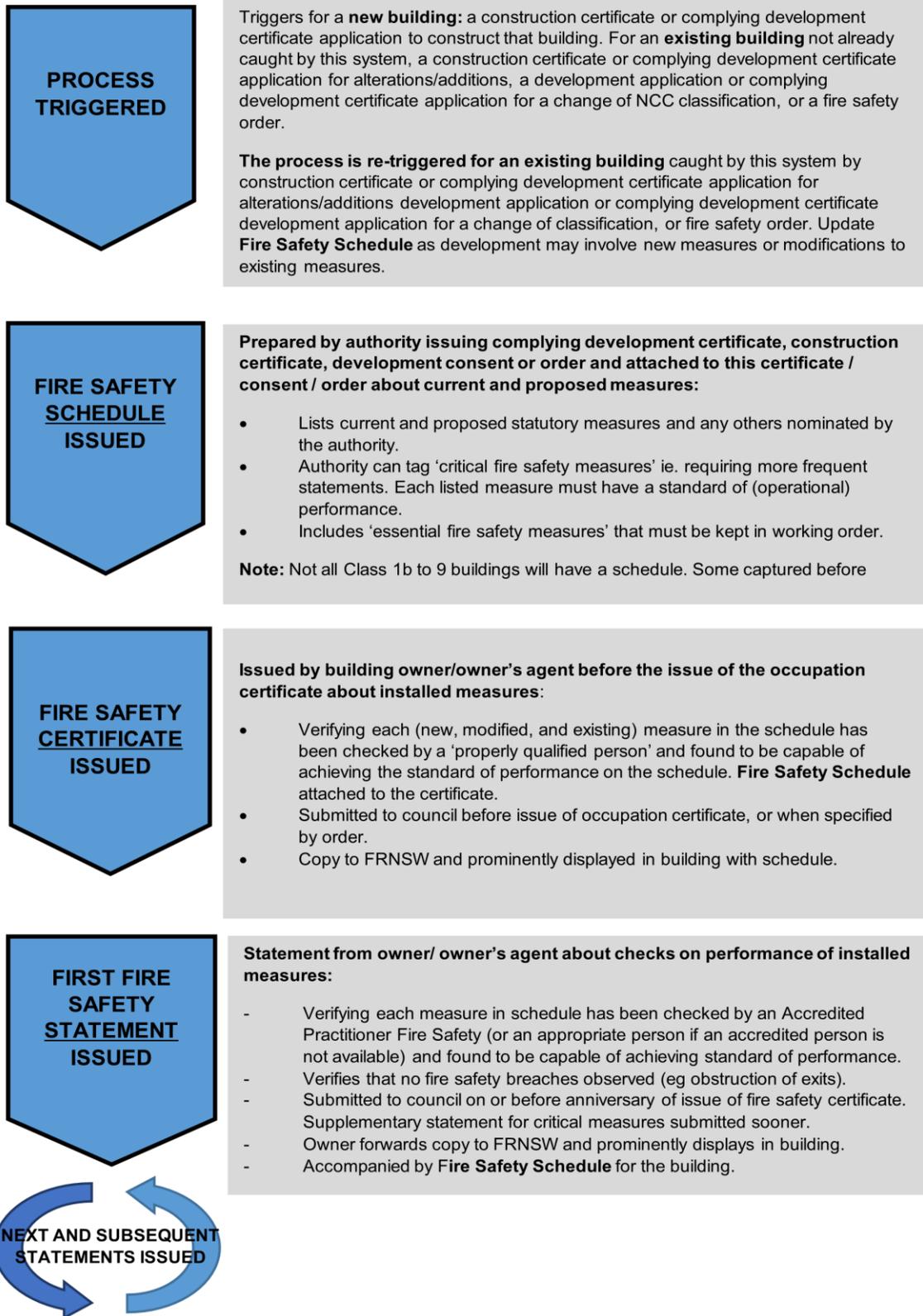
Access panels, doors and hoppers to fire-resisting shafts	Fire windows
Automatic fail-safe devices	Lightweight construction
Automatic fire detection and alarm systems	Mechanical air handling systems
Automatic fire suppression systems	Perimeter vehicle access for emergency vehicles
Emergency lifts	Portable 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

Schedules apply to all buildings, excluding Classes 1a and 10.¹⁶ If a building has essential fire safety measures, they are nominated on the schedule and must be maintained to a standard no less than the one specified in the schedule. Annual statements or more frequent statements (for 'critical fire safety measures') provide certification that the measure(s) continue to perform.

Figure 2 summarises the Fire Safety Schedule process and how it relates to Fire Safety Certificates and Statements. The schedule is a complete document. Whenever a building modification or other change triggers a change to the schedule, the replacement schedule must be completed, reflecting not only the building modification but all existing fire safety measures for the building as it will replace all previous schedules.

¹⁶ Class 1a are usually separate houses and Class 10 are outbuildings.

Figure 2: Summary of current process – Fire Safety Schedule, certificate and statement



There is currently no State Government standard template for completing a schedule and there are no requirements under the regulation that requires the use of a standard template.

Mandatory standard templates are provided by State Government for Annual Fire Safety Statements and Fire Safety Certificates. Feedback from stakeholders is that standard forms are welcome and help improve the accuracy of statutory documents.

The schedule forms part of the consent and is an important statutory document. It is important not only for the initial consent process, but it sets the performance standards for regular performance inspections (annual fire safety statements and critical fire safety statements) and must accompany these statements when they are lodged. The schedule also helps inform any future development on the building that may affect fire safety.

It is often relied upon for operational compliance work by regulators (local government and State Government) as the ready-to-hand summary of fire safety features in the building.

Proposal

Standardised mandatory template

The draft Regulation will require the use of a mandatory schedule template for Class 1b to 9 buildings where fire safety measures are proposed.

The draft Regulation will also authorise the template to be issued by the state government. It does not introduce any changes to the current processes for certifiers or councils to create or issue a schedule (apart from new provisions regarding corrections – refer to chapter 10).

The reform intends to improve the quality and accuracy of schedules. A mandatory and standard template removes the risk of significant differences in the format of schedule information. It also minimises any opportunity for schedules to be inconsistent with the statutory requirements.

These issues and risk were identified in the feedback from councils and fire protection industry members as part of the Construct NSW–Industry Report on reforms to improve fire safety in new and existing buildings. The Construct NSW–industry working group noted that schedules are an important facet of the regulatory system for fire safety in NSW and their existence is fundamentally sound policy. However, they noted that there is a high rate of errors, often minor, in schedules, some of which could be overcome through a standard template.

The standard template will be developed after the draft Regulation is made and published on a government website.

Who is affected when the reforms start?

The draft Regulation will require new Class 1b to 9 buildings to use the standard schedule template where fire safety measures are proposed or existing ones are changed.

Existing buildings will not have to use the standard template unless a new schedule is required due to new building work affecting fire safety measures. Local councils will not have to apply the standard template when corrections are needed or for missing schedules unless the new form already applies.

Fire and Rescue NSW will not be required to issue a Fire Safety Schedule

The draft Regulation will remove the need for FRNSW to issue a schedule when they issue a Fire Safety Order. FRNSW has not been issuing orders for building works that require an updated schedule as FRNSW cannot require structural works in an order. Removing the power will better align with FRNSW's role and functions.

FRNSW still has the power under the *Environmental Planning and Assessment Act 1979* to require a joint FRNSW–council inspection of the building works regarding fire safety which could assist councils in issuing an order and a new schedule. If a council issues an order and a schedule, a copy of the order and schedule must be sent to FRNSW.

8. Fire Safety System Certifier

Current requirements

Building owners (or someone on their behalf) must issue a Fire Safety Certificate for buildings with essential fire safety measures. This is one of the steps to authorise building works that involve essential fire safety measures.

Essential fire safety measures include active measures (for example, fire sprinkler systems) and passive measures (for example, fire seals protecting openings in fire-rated walls).

After installation, the final or interim certificate must certify each essential fire safety measure required in the building (ie. listed on the Fire Safety Schedule) has been assessed as capable of performing to at least the standard required by that schedule. The assessment process includes inspection and testing.

Currently, a properly qualified person must do this assessment. A properly qualified person is someone the owner regards as qualified. There are likely to be different people for different fire safety measures.

Owners are not responsible for assessing the measures. The owner is responsible for organising the assessments by the properly qualified people. Owners must also complete the certificate using the government's standard template.

The certificate is issued after the installation of essential fire safety measures to verify that they work as intended. This is sometimes referred to as commissioning the system. The certificate is issued before the final sign off on the building works (the occupation certificate). It must accompany the application for the occupation certificate. Certifiers are prohibited from issuing occupation certificates unless a fire safety certificate has been issued.

These requirements come under the Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021. They apply to Class 1b to 9 buildings.

Proposal

New requirements for building owners to use an accredited person

The draft Regulation requires owners to ensure that an *accredited* person assesses each essential fire safety measure before issuing the fire safety certificate. Different accredited specialists will be needed for different systems.

The owner will need to include the details of the accredited practitioners who assessed each measure on the certificate – including the practitioner’s name and accreditation number.

Other requirements for certificates will remain the same.

The proposal intends to improve fire safety compliance. Fire safety defects continue to be one of the most common building defects. Anecdotal evidence shows that despite the requirement for certificates, practitioners are assessing fire safety systems months after installation (for the annual fire safety statement) and finding that systems were not installed correctly in the first place. This is costly and risky for building owners and occupiers.

The best time to fix any defects is before issuing the occupation certificate, when the responsibility for rectification is with the owner/developer initiating the building works and the builder and other relevant building practitioners. This reinforces the importance of the fire safety certificate because it should accurately certify the installation of required fire safety measures and that they perform as intended by the approved design *before* the final sign-off on the building.

People who assess essential fire safety measures for the annual or supplementary fire safety statement are already required to be accredited (due to legislation introduced in 2017). These assessments happen after issuing the occupation certificate (refer to chronology in **Figure 2**) and generally involve different skillsets to the assessment done prior to the issue of the Fire Safety Certificate. The assessment before the certificate will be the first statutory verification of the performance of the system on which later assessments should be able to rely and includes verification of the compliance of a system to the nominated standard of performance.

This proposed reform will strengthen *upfront* requirements for fire safety systems with flow on effects for improving checks and balances for the whole life cycle of these systems – from design, installation/performance check, ongoing maintenance and annual performance check.

An accreditation system will increase accountability. Practitioners will not only have to meet minimum accreditation requirements, but they will also be subject to audits and complaints investigation. Currently, there is no auditing or complaints mechanism for owners about properly qualified people. Generally, the only option is the certifier (responsible for issuing the occupation certificate) rejecting the practitioner's advice.

It will be easier for owners to know who to engage for the work because only accredited individuals can be hired once these requirements start.

Strengthening the requirements for fire safety certificates will positively impact safety because the development cannot be completed without this certificate (the occupation certificate cannot be issued). This will incentivise developers and other parties to 'get it right' and help to prevent the on-selling of buildings with fire safety defects.

Certifiers will still need to complete basic checks before issuing the occupation certificate. For example, checking that a fire safety certificate has been provided.¹⁷

New requirements for fire safety assessors

An accredited assessor will be someone accredited by an accreditation authority approved by the Secretary of the Department under the *Building and Development Certifiers Act 2018*. As there are several specialist roles (for example, for different fire safety systems), it is expected that there would be different competency requirements for the roles.

Accredited people will have to meet code of conduct, training and experience requirements under their accreditation scheme. The accreditation body will complete audits of practitioners to provide further checks and balances over and above those in place now.

Accreditation will be introduced in a phased approach.

The accreditation body needs will be established once an accreditation scheme is drafted and consulted on. Accreditation applicants will need adequate notice on the experience, training and qualification requirements in the scheme. After this, the accreditation process can start. The accreditation body will be expected to audit accredited people and investigate complaints.

¹⁷ Construct NSW, *Practice standard for registered certifiers, 1 – new residential apartment buildings*, 2020.

The draft Regulation does not include the details of accreditation as powers to establish an accreditation body and scheme are already in place under the existing *Building and Development Certifiers Act 2018* and Regulation.

Existing practitioners will be allowed to practice in the meantime ie. owners should continue to appoint someone they regard as properly qualified until the government determines otherwise. These important details will not be fully determined until an accreditation body is created and an accreditation scheme is developed.

The draft Regulation proposes a 12 month transition period until the requirement to use accredited people starts. It is difficult to predict how long it will take for all categories of practitioners to be accredited and for there to be a sufficient supply of practitioners in each category to allow owners to only use accredited people. The 12 month transition period is put forward as a proposal for comment.

Independent assessor who is not the installer

The draft Regulation will prohibit the assessor from assessing a fire safety measure they installed.

The proposal is not mandating the current industry practice of relying on installer certificates. These non-statutory certificates are sometimes provided by installers to building certifiers to verify the compliance of their own installation. Installers could continue to provide these non-statutory certificates if they choose.

Instead, the proposal is for independent 'certification' of installation. This is consistent with the ABCB's model guidance on fire safety systems:

As described in the Building Confidence Report, it is important that installed fire safety systems in Class 2-9 buildings are subject to independent assessment and certification. This avoids any conflict of interest between the person who performed the installation and the practitioner undertaking the certification. ...

An independent practitioner must be registered (or their registration recognised) in the jurisdiction where the work is to be undertaken. They must hold the necessary qualifications and experience in accordance with the NRF [national registration framework for building practitioners] to perform independent certification work. The independent

*practitioner must not have been involved in the installation and testing to ensure a non-biased or conflicted assessment.*¹⁸

The assessor can work in the same company as the installer without creating a conflict of interest. Allowing installers and assessors to work in the same company will assist regional areas with fewer practitioners and fire safety businesses while still maintaining independence from the installer.

Building Compliance Declaration to take certificate into account

Proposed amendments are included in the draft Regulation to ensure that the fire safety certificate is taken into account before the issue of a building compliance declaration under the *Design and Building Practitioners Act 2020* and Regulation (currently applicable to Class 2 buildings and buildings with a Class 2 component).

The intent of these provisions is to help ensure that Building Practitioners take into account the fire safety certificate when their declaration declares, amongst other things, whether or not the building work complies with the NCC. Fire Safety Schedules specify the standards of performance for each essential fire safety measure in the building. Often the standard is from the NCC, but not necessarily. It could be a bespoke standard, for instance, created by a performance solution designed specifically for that building.

This will help ensure consistency between the certificate and the building compliance declaration. The work done by practitioners to assess fire safety measures for the certificate should assist the building practitioner in making their declaration.

Under the proposal, owners are required to provide the certificate to the building practitioner and practitioners will need to ensure the certificate accompanies their declaration.

Who is affected when the reforms start?

The requirement to use an accredited assessor will be phased in, as discussed above. They would apply to Class 1b to 9 buildings where a fire safety certificate is required.

¹⁸ Australian Building Codes Board, *Fire safety systems: Model guidance on BCR recommendation 19*, 2021, page 1.

The draft Regulation will not affect developments that already have fire safety certificates unless new building works trigger the need for a fire safety certificate.

For building works still going through the approval process at the time that accredited people are in place, this proposal would not apply where the construction certificate or complying development certificate application was lodged before the Regulation starts. It would not apply where the construction certificate or complying development certificate has been issued. This will ensure the new rules affect as many new building works as possible while still providing substantial notice for owners to engage accredited people.

9. Mandatory routine servicing

Current requirements

Building owners must maintain each essential fire safety measure in their building. This maintenance must ensure that the measures perform to at least the standard specified in the Fire Safety Schedule or, for some pre-1997 buildings, at least to the standard in the original design and implementation.

These requirements apply to Class 1b to 9 buildings with essential fire safety measures.

They come under the Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021.

Maintenance should not be confused with the annual performance assessment, usually known as the Annual Fire Safety Statement.

Routine maintenance is a different function to conducting statement assessments and is generally carried out by technicians or specialist maintenance personnel. Accredited practitioners for annual or supplementary statements carry out a holistic assessment of the performance of a system at a point in time which includes an assessment of the maintenance regime. The annual fire safety statement is a statement about the performance of all the essential fire safety measures in the building. There may also be a supplementary fire safety Statement for measures needing more frequent assessment. Both statements are based on assessments by accredited fire safety practitioners. The statements are made by owners and lodged with the local council and with FRNSW.

Maintenance is ongoing. It involves regular inspections, testing, servicing and recording of inspection and test results. Additionally, testing the interconnection of the systems occurs for example, detection and alarm systems with smoke exhaust and sprinkler systems.

Under the current Regulation, fire safety systems must be maintained for ongoing performance. However, the Regulation does not specify how to maintain the systems (for example, how often to perform testing and what testing to follow).

Proposal

New requirements for building owners

The proposal mandates the processes for routine maintenance. Owners will be required to ensure that inspection, testing and, where applicable, other servicing of essential fire safety measures are done under the Australian Standard 1851-2012 *Routine service of fire protection systems and equipment (AS1851)*. Documentation of the maintenance would also need to comply with the current version of AS1851 (currently Amendment 1). Owners would appoint a properly qualified person(s) for routine servicing work.

AS1851 is a long-standing and commonly used standard for routine maintenance of fire safety systems.

The Fire Protection Association of Australia NSW Branch (**FPAA**) surveyed its members in March 2021 on their use of AS1851. FPAA has 834 corporate members and represents approximately 90% of practitioners dealing with fire safety measures.

Out of 352 respondents on the question on uptake of AS1851, most were using AS1851 for routine maintenance:

- over 60% of respondents were using AS1851 all the time for each building (Class 2 to 9c) – ranging from 61.4% for Class 2 and Class 4 to 71.7% for Class 9c buildings
- 67.3% used AS1851 all the time for Class 5s and 69.8% in Class 9a.

Mandating the use of AS1851 will help enhance fire safety in a range of buildings and ensure that a minimum standard for maintenance (including regularity of inspections and tests) is set. If AS1851 is optional, as is currently the case, some contractors can offer a lower price based on fewer inspections and tests, which can lead to lower standards.

AS1851 is commonly used across Australia, but it is not uniformly mandated. Some Australian jurisdictions at least partially adopt AS1851 as the mandatory standard for routine maintenance. Queensland largely adopts AS1851 with some exceptions. Victoria and Western Australia do not mandate it. In Victoria, the building surveyor issuing the building approval must mandate the maintenance requirements which are likely to call up AS1851 in most cases. AS1851 applies to most essential fire safety measures but may not apply to all fire safety measures in all Fire Safety Schedules. For example, it does not apply to emergency lighting, exit signs, emergency

lifts, standby power systems and fire control centres and rooms. In some cases, a measure may be included in the Fire Safety Schedule by a fire safety engineer involved in the design of the building. These measures may be a bespoke design for that building (known as a performance solution) and not covered by AS1851, or the fire safety engineer may specify a maintenance process different to AS1851. The requirement to use AS1851 will not apply to measures not covered by this standard. Nor will it apply if the Fire Safety Schedule specifies a different maintenance process. However, these measures will still need to be maintained to the standard of performance specified in the schedule though maintenance processes would not be mandated.

Practitioners undertaking routine maintenance will be required to make records of their maintenance and service work as required by AS1851 (**see Figure 3**). Owners will be required to keep these service documents on site.

After amending the Regulation, the Department is also proposing to amend the annual fire safety statement standard template to require the accredited practitioner who assessed the performance of the fire safety measures to state (possibly through ticking a box) whether they cited the AS1851 maintenance records for that measure, where applicable. This will serve as a reminder to practitioners and owners who submit the statement about the AS1851 requirements.

New powers for councils and Fire and Rescue NSW

Local councils and FRNSW will have powers to inspect service documents on site regarding the routine maintenance checks. Councils and FRNSW can apply a penalty of 300 penalty units for a corporation or 150 penalty units for an individual if the records are not kept. It will be optional for councils and FRNSW to apply the penalty even if records are not on site.

Who is affected when the reforms start?

If the proposal becomes law, it is proposed that it would apply to all new and existing buildings with essential fire safety measures in Class 1b to 9 buildings. The requirement would be delayed by 12-months to consider existing contracts that owners may have with practitioners which may not specify maintenance based on AS1851.

Figure 3: Summary of AS1851-2012 amendment 1

Fire safety measures	Routine Service Records (Where is it recorded)	Routine service frequency								Service tags or labels (when activity is completed)					
		Monthly	Quarterly	Six-monthly	Yearly	Five-yearly	Ten-yearly	Twenty-yearly	Thirty-yearly	Quarterly	Six-monthly	Yearly	Three-yearly	Five-yearly	After use
Automatic Fire Sprinkler Systems	Logbooks	Yes		Yes	Yes	Yes	Yes	Yes	Yes						
Fire Pump-Sets	Logbooks	Yes		Yes	Yes	Yes									
Fire Hydrant Systems	Fire Hydrant Systems – Logbooks	Yes X			Yes	Yes									
Fire Hydrant Systems	Hydrant valves- Tags, labels and summary records			Yes	Yes						Yes	Yes		Yes	
Water storage tanks for fire protection systems	Logbooks	Yes		Yes	Yes		Yes								
Fire detection and alarm systems	Logbooks	Yes		Yes	Yes	Yes									
Special Hazard Systems	Logbooks	Yes		Yes	Yes		Yes								
Delivery Lay Flat Fire Hose	Tags, labels and summary records				Yes							Yes			Yes
Fire Hose Reels	Tags, labels and summary records			Yes	Yes						Yes	Yes			
Portable and Wheeled Fire Extinguishers	Tags, labels and summary records			Yes	Yes	Yes					Yes	Yes	Yes Note 1	Yes	Yes

Fire safety measures	Routine Service Records (Where is it recorded)	Routine service frequency								Service tags or labels (when activity is completed)					
		Monthly	Quarterly	Six-monthly	Yearly	Five-yearly	Ten-yearly	Twenty-yearly	Thirty-yearly	Quarterly	Six-monthly	Yearly	Three-yearly	Five-yearly	After use
Fire Blankets	Tags, labels and summary records			Yes	Yes						Yes				Note 2
Passive Fire and Smoke Systems	Logbook, labels and summary records		Yes XX	Yes	Yes					Yes	Yes	Yes			
Fire and Smoke Control Features of Mechanical Services	Logbooks	Yes	Yes	Yes	Yes	Yes									
Emergency Planning in Facilities	Logbooks			Yes	Yes										

X Where pump sets are fitted

XX Where horizontal sliding doors are fitted

Note 1 - Adverse operating environments

Note 2 - Discard blanket after any use

10. Corrections to Fire Safety Schedules

Current requirements

Currently the only pathways for a building owner to correct an incorrect Fire Safety Schedule under the legislation is by:

- issuing a development control order (fire safety order) with an amended schedule, or
- applying for a complying development certificate, or
- applying for a development consent and construction certificate with an amended schedule.

Fire safety orders and development consents were not intended to correct typographical and other minor errors in schedules, especially where no new building works are proposed.

However, there is no simple mechanism in the current Regulation that allows amendments to an existing schedule to correct minor errors or replace a lost schedule.

Currently, local councils have limited means to fix or replace a schedule, and anecdotal evidence suggests that some councils accept changes to a schedule to avoid complex processes such as issuing an order or processing development consent applications.

Issuing an order may be a suitable pathway if, for example, the council wants to require third-party testing of the fire safety measures to create or correct the schedule. However, if documentary information is already available to re-create or correct the schedule, then orders or a separate consent may not be suitable and a disincentive to correcting records that will be relied on for maintenance (the schedule will specify the standard of performance to be achieved) and possible future building work.

Industry and the regulators note a high rate of errors in schedules and consequently the annual fire safety statements.

Common errors in schedules include:

- incorrect building details (address, classification, use, description)
- schedule omits fire safety measures that exist in the building
- references to fire safety measures that do not exist in the building and were not required under the consent or order

- references to performance solutions that no longer apply
- typographical errors such as incorrect or incomplete references to codes or standards
- missing Building Code of Australia date or Australian Standard date
- unclear which measures relate to which parts of the building for a complex building with different parts
- incorrect standards of performance, or when a current standard is incorrectly listed as applying to the whole building (for example, when the building was modified and only the new section of the building has new fire safety measures)
- missing references to a Fire Engineering Report relevant to the standard on the schedule.

Errors in a schedule can negatively impact building safety and can lead to ongoing maintenance problems and safety issues for building owners.

While the draft Regulation introduces reforms that would minimise errors, by having a standard template and having accredited practitioners certify fire safety measures before a fire safety certificate is issued, there are still legacy issues in existing schedules.

Proposal

The draft Regulation will provide building owners with the ability to request a replacement schedule and local councils and principal certifiers greater flexibility to make changes to the schedule. The draft Regulation intends to allow schedules to be amended in limited circumstances without a new development consent or a fire safety order.

The allowable corrections in the draft regulation are aimed at resolving obvious minor errors or omissions (typographical, incorrect address, omitted approved and installed measures) or where re-creation of the lost schedule does not require new investigations to occur.

The draft Regulation does not intend to offer an alternative way to authorise illegal building work ie. work that is not authorised by consent or an order. Therefore, the draft Regulation would prohibit the correction or re-issue of a schedule if errors or omissions occurred due to building work, or a change in the plans or specifications for the fire safety measures of the building.

Pathways to correcting and replacing Fire Safety Schedules

The draft Regulation will allow a schedule to be amended in limited circumstances (common minor errors or omissions) without a new consent or a development control order. If corrections

are made before the occupation certificate is issued, the certification authority (principal certifier) overlooks this. If amended after the certificate is issued, council decides whether to approve the change.

In some cases, the errors or omissions may need to be proven through historical documentation to the satisfaction of the council. This is aimed at preventing the proposed errors or omissions path being used to retrospectively approve unauthorised building works. It will be the owner's responsibility to provide documentary evidence that the fire safety measures were approved in a construction certificate, complying development certificate or fire safety order to support the change to the satisfaction of the principal certifier or local council.

The existing pathways to changing schedules would remain (new consent or development control order) for new building works involving changes to fire safety measures, allowing regulators to decide which means is most suitable for the circumstances. The regulator may choose the consent or order process if there is uncertainty about an aspect of the fire safety measure (for example, the performance standard) which may require an expert report to be provided or if the owner cannot provide documentary evidence that readily proves the error that should be corrected, or if the installed fire safety measure is inconsistent with existing development and building approvals.

The draft Regulation will not make it mandatory for the council to use a standard template for schedule for corrections or for missing schedules unless the new template already applies. For example, if the schedule used was before the introduction of a mandatory standard template, then the correction or replacement can be in the original form type and style.

Who is affected when the reforms start?

The proposed reform will commence the day the Regulation is published. It will apply retrospectively to the extent that existing incorrect schedules, or schedules that need replacing can be amended/re-issued under this new law.

Appendix 1: Index to draft Environmental Planning and Assessment (Development Certification and Fire Safety) Amendment (Fire Safety) Regulation 2022

Number in Schedule 1 of draft Regulation	Draft section in proposed existing Regulation	Reform themes
[1]	Section 18 Requirement for performance solution report	Consultation with FRNSW at the building design phase
[2]	Section 18 Requirement for performance solution report	Consultation with FRNSW at the building design phase
[3]	Section 23 Information to be included in construction certificate	Correcting typographical issue in current regulation
[4]	Section 25 Interpretation	Consultation with FRNSW before the issue of a construction certificate
[5]	Section 26 Building work to which Division applies	Consultation with FRNSW before the issue of a construction certificate
[6]	Section 27 Certifier to forward plans and specifications to Fire and Rescue NSW	Consultation with FRNSW before the issue of a construction certificate
[7]	Section 28 Consideration of initial fire safety report	Consultation with FRNSW before the issue of a construction certificate
[8]	Section 28 Consideration of initial fire safety report	Consultation with FRNSW before the issue of a construction certificate
[9]	Section 28 Consideration of initial fire safety report	Consultation with FRNSW before the issue of a construction certificate
[10]	Section 49 Information to be included in occupation certificate	Correcting typographical issue in current regulation

[11]	Section 50 Reports of Fire Commissioner	Consultation with FRNSW before issue of occupation certificate
[12]	Section 50(5)	Consultation with FRNSW before issue of occupation certificate
[13]	Section 50(8)	Consultation with FRNSW before issue of occupation certificate
[14]	Section 51 Reports of Fire Commissioner for Class 2 or 3 buildings	Consultation with FRNSW on relevant fire safety systems before issue of occupation certificate
[15]	Section 51(7)	Consultation with FRNSW on relevant fire safety systems before issue of occupation certificate
[16]	Section 78 Fire Safety Schedules <i>Also refer to section 2 of amendment Regulation regarding delayed commencement</i>	Standard template for schedules
[17]	Section 78(8) <i>Also refer to section 2 of amendment Regulation regarding delayed commencement</i>	Standard template for schedules
[18]	Section 80 Providing Fire Safety Schedules and fire safety certificates after fire safety order is given	Removing the need for FRNSW to issue schedules
[19]	Section 80A Reissue of Fire Safety Schedule	Corrections to Fire Safety Schedules or replacing lost schedule
[20]	Section 81A Essential fire safety measures to be inspected, tested and serviced <i>Also refer to section 2 of amendment Regulation regarding delayed commencement</i>	Routine servicing of essential fire safety measures (AS1851-2012)
[21]	Section 81B Performance based design brief – consultation with Fire Commissioner	Consultation with FRNSW at design stage
[22]	Section 83 Final fire safety certificates and interim fire safety certificates	Correcting typographical issue in current regulation

[23]	Section 83	Correcting typographical issue in current regulation
[24]	Section 83	Correcting typographical issue in current regulation
[25]	Section 84 Issue of fire safety certificates	Accreditation of properly qualified person assessing measures before the issue of the Fire Safety Certificate
[26]	Section 84(4)	Correcting typographical issue in current regulation
[27]	Section 84(7) <i>Also refer to section 2 of amendment Regulation regarding delayed commencement</i>	Accreditation of properly qualified person assessing measures before the issue of the Fire Safety Certificate
[28]	Section 85 <i>Also refer to schedule 2 of amendment Regulation</i>	Consideration of Fire Safety Certificate for Building Compliance Declaration
[29]	Section 85(1) <i>Also refer to schedule 2 of amendment Regulation</i>	Consideration of Fire Safety Certificate for Building Compliance Declaration
[30]	Section 85(1) <i>Also refer to schedule 2 of amendment Regulation</i>	Consideration of Fire Safety Certificate for Building Compliance Declaration
[31]	Section 85(3) <i>Also refer to schedule 2 of amendment Regulation</i>	Consideration of Fire Safety Certificate for Building Compliance Declaration
[32]	Section 85 penalty <i>Also refer to schedule 2 of amendment Regulation</i>	Consideration of Fire Safety Certificate for Building Compliance Declaration
[33]	Section 86 Information to be included in fire safety certificates	Accreditation of properly qualified person assessing measures before the issue of the Fire Safety Certificate
[34]	Section 86(4) Information to be included in fire safety certificates	Standard template for fire safety certificates

[35]	Section 92 Information to be included in fire safety statements	Standard template for fire safety statements (administration)
[36]	Section 99 Specifications for smoke alarms	Correcting typographical error in current regulation
[37]	Section 117 Determination of objections	Updating administration of agencies issue
[38]	Section 117(10)	Correcting typographical error in current regulation
[39]	Section 123 Savings and transitional provisions	Savings and transitionals
[40]	Section 123(3)	Savings and transitionals
[41]	Schedule 1 Penalty notice offences	Correcting typographical error in current regulation
[42]	Schedule 1 Penalty notice offences	Routine servicing of essential fire safety measures Consultation with FRNSW at the building design phase
[43]	Dictionary	Definitions