



New South Wales

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

under the

Environmental Planning and Assessment Act 1979

[*The following enacting formula will be included if this Regulation is made—*]
Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Environmental Planning and Assessment Act 1979*.

Minister for Fair Trading

Explanatory note

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

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

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

under the

Environmental Planning and Assessment Act 1979

1 Name of Regulation

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

2 Commencement

This Regulation commences as follows—

- (a) except as provided for in paragraphs (b) and (c)—on the day this Regulation is published on the NSW legislation website,
- (b) Schedule 1[16] and [17]—on the day that is 6 months after the day this Regulation is published on the NSW legislation website,
- (c) Schedule 1[20] and [27]—on the day that is 12 months after the day this Regulation is published on the NSW legislation website.

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Environmental Planning and Assessment (Development Certification and Fire Safety) Amendment (Fire Safety) Regulation 2022 [NSW]
Schedule 1 Amendment of Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021

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

[1] Section 18 Requirement for performance solution report

Insert “for a fire safety requirement” after “performance solution” in section 18(1).

[2] Section 18(1)(b)(iii)

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

, and

- (iii) if the performance based design brief for the proposed performance solution relates to a class 2, 3, 4, 5, 6, 7, 8 or 9 building—the brief was developed following consultation with the Fire Commissioner as required by section 81B.

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

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

[4] Section 25 Interpretation

Omit the definition of *relevant building work* from section 25(1).

[5] Section 26 Building work to which Division applies

Omit the section.

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

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

[7] Section 28 Consideration of initial fire safety report

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

[8] Section 28(2)(c)

Omit “28 days”. Insert instead “30 working days”.

[9] Section 28(5)

Omit “10 days” and “28 days”.

Insert instead “10 working days” and “30 working days” respectively.

[10] Section 49 Information to be included in occupation certificate

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

[11] Section 50 Reports of Fire Commissioner

Omit “a building to which Part 3, Division 3 applies” from section 50(1).

Insert instead “development that involved relevant building work”.

[12] Section 50(5)

Omit the subsection. Insert instead—

- (5) The certifier must not issue an occupation certificate for the building unless—

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- (a) the certifier has considered a final fire safety report for the building that is provided to the certifier within 10 working days after the Fire Commissioner received the request for the report, and
- (b) if the final fire safety report for the building includes recommendations for remediation—the certifier has given the Fire Commissioner written notice of the reasons for not adopting any recommendation that is not adopted.

[13] Section 50(8)

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

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

- (a) whether the Fire Commissioner is satisfied of the following—
 - (i) the building work complies with a performance solution for a Category 2 fire safety provision that was the subject of the construction certificate,
 - (ii) the fire hydrants in the fire hydrant system will be accessible for use by Fire and Rescue NSW,
 - (iii) the couplings in the fire hydrant system will be compatible with the fire appliances and equipment used by Fire and Rescue NSW, and
- (b) if the Commissioner not satisfied of a matter in paragraph (a)(i)–(iii)—the Commissioner’s recommendations for remediation.

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

Omit section 51(5). Insert instead—

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

[15] Section 51(7)

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

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

- (a) whether the Fire Commissioner is satisfied the relevant fire safety system is capable of performing to at least the standard in the current fire safety schedule for the building, and
- (b) if not—the Commissioner’s recommendations for modification of the system.

[16] Section 78 Fire safety schedules

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

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

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[17] Section 78(8)

Insert after section 78(7)—

(8) In this section—

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

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

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

Insert after section 80(1)—

(1A) If a fire safety order in relation to a building is given by the Fire Commissioner or an authorised fire officer, subsection (1) does not apply.

[19] Section 80A

Insert after section 80—

80A Reissue of fire safety schedule

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

[20] Section 81A

Insert after section 81—

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

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

Maximum penalty (subsection (1))—

 - (a) for a corporation—600 penalty units, or
 - (b) for an individual—300 penalty units.
- (2) The owner of a building must—
 - (a) keep the records required by AS 1851—2012, or the approved performance solution, on site at the building for at least 7 years, and
 - (b) make the records available for inspection by the Fire Commissioner or the relevant council.

Maximum penalty (subsection (2))—

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

maintenance activities means the following—

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

[21] Section 81B

Insert after section 81A—

81B Performance based design brief—consultation with Fire Commissioner

- (1) The owner of a building must consult with the Fire Commissioner if—
 - (a) a performance based design brief is developed for a performance solution for the building, and
 - (b) the performance solution is for a fire safety requirement.
- (2) The consultation must occur—
 - (a) during the development of the performance based design brief, and
 - (b) in the way required by the Commissioner.
- (3) If, within 10 working days of being consulted under subsection (1), the Fire Commissioner informs the owner of the building that the Commissioner will provide comments on the performance based design brief, the building owner must not implement the performance solution until the first of the following—
 - (a) the building owner has received and considered the Commissioner's written comments,
 - (b) 30 working days have passed since the Commissioner was consulted.

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Maximum penalty (subsection (3))—

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

[22] Section 83 Final fire safety certificates and interim fire safety certificates

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

[23] Section 83(1)(b)

Omit “whole”.

[24] Section 83, note

Insert after section 83(2)—

Notes—

- 1 A final fire safety certificate must be provided before an occupation certificate is issued, under section 41(1), for a new building.
- 2 A final fire safety certificate or an interim fire safety certificate must be provided before an occupation certificate is issued, under section 41(2), for—
 - (a) a partially completed new building, or
 - (b) a change in use for a building or part of a building.

[25] Section 84 Issue of fire safety certificates

Insert “, who must not be the person who installed 1 or more of the essential fire safety measures being assessed,” after “person” in section 84(2).

[26] Section 84(4)(b)

Insert “final” after “another”.

[27] Section 84(7)

Insert after section 84(6)—

- (7) In this section—

properly qualified person means a person accredited by an accreditation authority approved under the *Building and Development Certifiers Act 2018*, section 56, to issue fire safety certificates.

[28] Section 85, heading

Insert “and building practitioner” after “Commissioner”.

[29] Section 85(1)

Insert after paragraph (a)—

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

[30] Section 85(1)

Omit the penalty.

[31] Section 85(3)

Insert after subsection 85(2)—

- (3) In this section—

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

[32] Section 85, penalty

Insert at the end of section 85—

Maximum penalty—

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

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

Insert after section 86(1)(b)(vii)—

- (viii) the full name, business address, telephone number and accreditation number of each properly qualified person who carried out an assessment under section 84(1).

[34] Section 86(4)

Insert after section 86(3)—

- (4) In this section—
approved form includes a form approved by the Commissioner for Fair Trading, Department of Customer Service.
Note— This definition of *approved form* supplements the definition in the Dictionary.

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

Insert after section 92(2)—

- (3) In this section—
approved form includes a form approved by the Commissioner for Fair Trading, Department of Customer Service.
Note— This definition of *approved form* supplements the definition in the Dictionary.

[36] Section 99 Specifications for smoke alarms

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

[37] Section 117 Determination of objections

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

[38] Section 117(10)

Insert after section 117(9)—

- (10) In this section—
Secretary has the same meaning as in the *Building and Development Certifiers Act 2018*.

[39] Section 123 Savings and transitional provisions

Insert after section 123(2)—

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- (2A) Section 18(1)(a), as inserted by the 2022 Regulation, does not apply to a construction certificate if the application for the construction certificate was made before the 2022 commencement date.
- (2B) This Regulation, as in force immediately before the 2022 commencement date, continues to apply to an application for a construction certificate made, but not finally determined, before the 2022 commencement date.
- (2C) Section 50, as in force immediately before the 2022 commencement date, continues to apply to an application for an occupation certificate made, but not finally determined, before the 2022 commencement date.

[40] Section 123(3)

Insert in alphabetical order—

2022 commencement date means the date the 2022 Regulation, Schedule 1[1] and [4] commenced.

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

[41] Schedule 1 Penalty notice offences

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

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

[42] Schedule 1 Penalty notice offences

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

Section 81A	\$1,500	\$3,000
Section 81B	\$1,500	\$3,000

[43] Dictionary

Insert in alphabetical order—

AS 1851—2012 means Australian Standard 1851—2012 *Routine Service of Fire Protection Systems and Equipment* as in force from time to time.

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

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

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

working day means a day that is not a Saturday, a Sunday or a public holiday.

Schedule 2 Amendment of Design and Building Practitioners Regulation 2021

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

Insert after clause 18(2)(c)—

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