



New South Wales

# Environmental Planning and Assessment Amendment (Reports) Regulation 2008

under the

Environmental Planning and Assessment Act 1979

His Excellency the Lieutenant-Governor, with the advice of the Executive Council, has made the following Regulation under the *Environmental Planning and Assessment Act 1979*.

KRISTINA KENEALLY, M.P.,  
Minister for Planning

## Explanatory note

Currently under the *Environmental Planning and Assessment Regulation 2000*, a certifying authority is required to obtain a compliance certificate from a person holding Category C10 accreditation under the *Building Professionals Act 2005* (a **fire safety engineer**) before issuing a complying development certificate, construction certificate or occupation certificate for a building or building work involving an alternative solution under the *Building Code of Australia* in respect of fire safety requirements.

The object of this Regulation is to provide that, as an alternative to obtaining a compliance certificate, a certifying authority may instead obtain a written report from a fire safety engineer that includes a statement that:

- (a) the alternative solution complies with the relevant performance requirements of the *Building Code of Australia* (if the report relates to the issuing of a complying development certificate or construction certificate), or
- (b) the building work relating to the alternative solution has been completed and is consistent with that alternative solution (if the report relates to the issuing of an occupation certificate).

A fire safety engineer may issue any such written report in respect of an alternative solution prepared by the engineer and may issue a report that relates to the issuing of an occupation certificate even if the engineer also issued a report relating to the issuing of a complying development certificate or construction certificate in respect of the work.

This Regulation also makes amendments by way of law revision.

This Regulation is made under the *Environmental Planning and Assessment Act 1979*, including sections 81A, 85, 109H and 157 (the general regulation-making power).

**2008 No 506**

Clause 1

Environmental Planning and Assessment Amendment (Reports) Regulation  
2008

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**Environmental Planning and Assessment Amendment  
(Reports) Regulation 2008**

under the

Environmental Planning and Assessment Act 1979

**1 Name of Regulation**

This Regulation is the *Environmental Planning and Assessment Amendment (Reports) Regulation 2008*.

**2 Amendment of Environmental Planning and Assessment Regulation  
2000**

The *Environmental Planning and Assessment Regulation 2000* is amended as set out in Schedule 1.

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## Schedule 1 Amendments

(Clause 2)

**[1] Clause 3 Definitions**

Insert in alphabetical order in clause 3 (1):

*fire safety engineer* means a person holding Category C10 accreditation under the *Building Professionals Act 2005*.

**[2] Clause 130 Procedure for determining application for complying development certificate**

Omit clause 130 (2A). Insert instead:

(2A) A certifying authority must not issue a complying development certificate for building work that involves an alternative solution under the *Building Code of Australia* in respect of a fire safety requirement unless the certifying authority has obtained or been provided with either or both of the following issued by a fire safety engineer:

(a) a compliance certificate referred to in section 109C (1) (a) (v) of the Act that certifies that the alternative solution complies with the relevant performance requirements of the *Building Code of Australia*,

(b) a written report that includes a statement that the alternative solution complies with the relevant performance requirements of the *Building Code of Australia*.

**[3] Clauses 130 (2B) (a) and 144A (2) (a)**

Insert “or more” after “2,000 square metres” wherever occurring.

**[4] Clauses 130 (2B) (b) (i) and 144A (2) (b) (i)**

Insert “more than” after “floor area of” wherever occurring.

**[5] Clause 130 (2D)**

Insert after clause 130 (2C):

(2D) A fire safety engineer may issue a written report under subclause (2A) (b) in respect of an alternative solution prepared by the engineer.

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Schedule 1 Amendments

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### [6] Clause 144A (1)

Omit the subclause. Insert instead:

- (1) A certifying authority must not issue a construction certificate for building work that involves an alternative solution under the *Building Code of Australia* in respect of a fire safety requirement unless the certifying authority has obtained or been provided with either or both of the following issued by a fire safety engineer:
  - (a) a compliance certificate referred to in section 109C (1) (a) (v) of the Act that certifies that the alternative solution complies with the relevant performance requirements of the *Building Code of Australia*,
  - (b) a written report that includes a statement that the alternative solution complies with the relevant performance requirements of the *Building Code of Australia*.

### [7] Clause 144A (4)

Insert after clause 144A (3):

- (4) A fire safety engineer may issue a written report under subclause (1) (b) in respect of an alternative solution prepared by the engineer.

### [8] Clause 153A

Omit the clause. Insert instead:

#### **153A Compliance certificate required for certain fire safety aspects of building work**

- (1) A certifying authority must not issue an occupation certificate for a building in respect of which a compliance certificate or report is required under clause 130 (2A) or 144A (1) (the ***first certificate or report***) unless the certifying authority has obtained or been provided with either or both of the following issued by a fire safety engineer:
  - (a) a compliance certificate referred to in section 109C (1) (a) (i) of the Act that certifies that the building work relating to the alternative solution that was the subject of the first certificate or report has been completed and complies with that alternative solution,
  - (b) a written report that includes a statement that the building work relating to the alternative solution that was the subject of the first certificate or report has been completed and is consistent with that alternative solution.

- (2) A fire safety engineer may issue a written report under subclause (1) (b), even if the engineer also issued a report under clause 130 (2A) (b) or 144A (1) (b) in respect of the work.