



New South Wales

# Environmental Planning and Assessment Amendment (Identification of Buildings with External Combustible Cladding) Regulation 2018

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*.

ANTHONY ROBERTS, MP

Minister for Planning

## Explanatory note

The object of this Regulation is to make provision for the identification of, and collection of information about, buildings to which external combustible cladding has been applied. The proposed scheme applies only to class 2, class 3 and class 9 buildings of 2 or more storeys and to any class 4 part of a class 9 building of 2 or more storeys.

The proposed scheme:

- (a) requires the owner of a building to which external combustible cladding has been applied to provide to the Secretary of the Department of Planning and Environment details of the building and the external combustible cladding, and
- (b) authorises the Secretary to maintain a register of buildings to which external combustible cladding has been applied.

This Regulation also provides for the referral of certain plans and specifications to Fire and Rescue NSW in certain cases where an alternative solution is proposed involving external combustible cladding and the alternative solution does not apply the verification method in the *Building Code of Australia* in its entirety.

This Regulation is made under the *Environmental Planning and Assessment Act 1979*, including section 10.13 (1) (d) (which provides for the making of regulations for or with respect to obligations on persons regarding fire and building safety) and clause 3 of Schedule 3 (which provides for the making of regulations relating to the NSW planning portal and the online delivery of planning services and information).

## **Environmental Planning and Assessment Amendment (Identification of Buildings with External Combustible Cladding) Regulation 2018**

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### **1 Name of Regulation**

This Regulation is the *Environmental Planning and Assessment Amendment (Identification of Buildings with External Combustible Cladding) Regulation 2018*.

### **2 Commencement**

This Regulation commences on 22 October 2018 and is required to be published on the NSW legislation website.

## Schedule 1 Amendment of Environmental Planning and Assessment Regulation 2000

### [1] Clause 3 Definitions

Insert in alphabetical order in clause 3 (1):

*authorised fire officer* means a person who is authorised by section 9.35 (1) (d) of the Act to give fire safety orders.

*external combustible cladding*, in relation to a building, means:

- (a) any cladding or cladding system comprising metal composite panels, including aluminium, zinc and copper, that is applied to any of the building's external walls or to any other external area of the building, or
- (b) any insulated cladding system, including a system comprising polystyrene, polyurethane or polyisocyanurate, that is applied to any of the building's external walls or to any other external area of the building.

### [2] Clause 144 Referral of certain plans and specifications to New South Wales Fire Brigades

Omit clause 144 (1). Insert instead:

- (1) This clause applies to the following buildings, or parts of buildings, that are the subject of an application for erection, rebuilding, alteration, enlargement or extension:
  - (a) a class 9a building that is proposed to have a total floor area of 2,000 square metres or more, where the plans and specifications for the work provide for an alternative solution to meet the performance requirements contained in any one or more of the Category 2 fire safety provisions,
  - (b) a building (other than a class 9a building) that is proposed to have a fire compartment with a total floor area of more than 2,000 square metres, where the plans and specifications for the work provide for an alternative solution to meet the performance requirements contained in any one or more of the Category 2 fire safety provisions,
  - (c) a building (other than a class 9a building) that is proposed to have a total floor area of more than 6,000 square metres, where the plans and specifications for the work provide for an alternative solution to meet the performance requirements contained in any one or more of the Category 2 fire safety provisions,
  - (d) a class 2, class 3 or class 9 building of 2 or more storeys, or the class 4 part of any class 9 building of 2 or more storeys, where:
    - (i) the plans and specifications for the work provide for an alternative solution to meet performance requirement CP2 in Volume 1 of the *Building Code of Australia*, to the extent that it relates to external combustible cladding, and
    - (ii) the alternative solution does not apply the verification method CV3 in Volume 1 of the *Building Code of Australia* in its entirety,
  - (e) a class 5, class 6, class 7 or class 8 building of 3 or more storeys, or the class 4 part of any class 5, class 6, class 7 or class 8 building of 3 or more storeys, where:
    - (i) the plans and specifications for the work provide for an alternative solution to meet performance requirement CP2 in

Volume 1 of the *Building Code of Australia*, to the extent that it relates to external combustible cladding, and

- (ii) the alternative solution does not apply the verification method CV3 in Volume 1 of the *Building Code of Australia* in its entirety.

**[3] Clause 144 (8A)**

Insert after clause 144 (8):

- (8A) An application for a construction certificate made, but not finally determined, before the substitution of subclause (1) by the *Environmental Planning and Assessment Amendment (Identification of Buildings with External Combustible Cladding) Regulation 2018* is to be dealt with as if that subclause had not been substituted.

**[4] Clause 167 Application of Part**

Insert after clause 167 (1) (b):

- (c) Division 7C applies only to:
  - (i) class 2, class 3 and class 9 buildings of 2 or more storeys, and
  - (ii) any class 4 part of a class 9 building of 2 or more storeys.

**[5] Part 9, Division 7C**

Insert after Division 7B:

**Division 7C Identification of certain buildings with external combustible cladding**

**Note.** Clause 167 (1) (c) provides that this Division applies only to class 2, class 3 and class 9 buildings of 2 or more storeys and to any class 4 part of a class 9 building of 2 or more storeys.

**186S Certain building owners must provide registration details of building and its cladding**

- (1) The owner of a building that has external combustible cladding must provide the Planning Secretary with details about the building and its cladding.
- (2) The following details are required to be provided under this clause:
  - (a) the name and address of the owner of the building,
  - (b) the address of the building,
  - (c) the classification of the building under the *Building Code of Australia*,
  - (d) the number of storeys in the building, above and below ground,
  - (e) a description of any external combustible cladding applied to the building, including the materials comprising the cladding,
  - (f) a description of the extent of application of external combustible cladding to the building and the parts of the building to which it is applied.
- (3) Those details must be provided:
  - (a) in the case of a building that was or had been occupied before this clause commenced—on or before 22 February 2019, or
  - (b) in any other case—within 4 months after the building is first occupied.
- (4) Those details must be provided through the NSW planning portal, unless the Planning Secretary agrees in writing that they may be provided in another manner.

- (5) Despite subclause (1), if the owner of the building has been given a direction under clause 186T that requires details to be provided, the owner is not required to comply with this clause.

**186T Building owner may be directed to provide registration details of building and its cladding**

- (1) The owner of a building may be directed in writing to provide the Planning Secretary with details about the building and any external combustible cladding that has been applied to it.
- (2) Such a direction may be given only by:
- (a) the Minister or the Planning Secretary, but only in connection with a building the erection of which was State significant development, State significant infrastructure or any other development for which the Minister, the Planning Secretary or the Independent Planning Commission is or was the consent authority, or
  - (b) an authorised fire officer, or
  - (c) the council for the area in which the building is located.
- (3) The following details are required to be provided under this clause:
- (a) the name and address of the owner of the building,
  - (b) the address of the building,
  - (c) the classification of the building under the *Building Code of Australia*,
  - (d) the number of storeys in the building, above and below ground,
  - (e) a description of the external combustible cladding applied to the building, including the materials comprising the cladding,
  - (f) a description of the extent of application of external combustible cladding to the building and the parts of the building to which it is applied.
- (4) A person who has been directed to provide details under this clause must ensure that the details are provided before the date specified in the direction, which must be at least 14 days after the direction is given.
- (5) Those details must be provided through the NSW planning portal, unless the Planning Secretary agrees in writing that they may be provided in another manner.
- (6) An authorised fire officer or council must notify the Planning Secretary of any direction given by the officer or council under this clause.

**186U Register of buildings that have external combustible cladding**

- (1) The Planning Secretary may establish and maintain a register of buildings that have external combustible cladding.
- (2) The register may contain:
- (a) any details provided to the Planning Secretary by the owner of a building under this Division, and
  - (b) any other information that the Planning Secretary considers appropriate.
- (3) The Planning Secretary may do any or all of the following:
- (a) make the register, or any part of it, available to Fire and Rescue NSW, any council, or any other person,
  - (b) make the register, or any part of it, available to the public,

- (c) publish the register, or any part of it, on a website maintained by the Department.

**[6] Clause 284 Penalty notice offences**

Omit clause 284 (5) (b). Insert instead:

- (b) an offence under clause 283A in relation to a contravention of clause 183 (1), 184 (a), (b) or (c), 185 (b), 186 (a), (b) or (c), 186S or 186T,

**[7] Schedule 5 Penalty notice offences**

Insert in appropriate order under the heading “**Clause 283A of this Regulation in relation to contravention of the following provisions of this Regulation**”:

clause 186S	1,500	3,000
clause 186T	3,000	6,000