

Draft

**Submission on the Proposed Fire Safety
changes to the Environmental Planning and
Assessment Regulation 2000**

January 2017

Opening

Local Government NSW (LGNSW) is the peak body for local government in NSW, representing NSW general-purpose councils, associate members including special-purpose county councils, and the NSW Aboriginal Land Council. LGNSW facilitates the development of an effective community based system of local government in the State.

LGNSW thanks the Department of Planning and Environment (DP&E) for the opportunity to make a submission on the NSW Government's proposed fire safety changes to the Environmental Planning and Assessment Regulation 2000.

Introductory Comments

This draft regulation is the first of a number of reform priorities announced by the NSW Government in September 2016 in response to the independent review of the *Building Professionals Act 2005* conducted by Michael Lambert (the Lambert Report). The Lambert Report included findings about the problems with building regulation which have been identified in a number of related reviews dating back to 2002. The issues and findings accorded with those consistently raised by LGNSW over many years.

LGNSW therefore welcomed the Government's response, as a sign it is taking tangible steps to strengthen building regulation. LGNSW also welcomes the priority being given to the critical issue of fire safety regulation. LGNSW has participated in initial stakeholder discussions held by the then Minister for Innovation and Better Regulation, and expects the Government to continue to work with local government and industry to see these important reforms delivered.

LGNSW also recognises the DP&E's recent consultation with experienced local government fire safety and building professionals as part of this review process. These practitioners are best placed to comment on the detailed technical aspects and practical implications of the draft regulation.

General Comments

Councils are generally supportive of the changes being proposed to improve the fire safety framework. The changes are also supported by LGNSW in so far as they seek to achieve improvements to certifier regulation foreshadowed in the Government's response to the Lambert Report. LGNSW welcomes this first action by the NSW Government to address longstanding issues with building regulation and certification.

LGNSW offers the following comments on proposed changes in the draft regulation:

Regulation area of change	LGNSW Comment
1) Involvement of 'competent fire safety practitioners'	<ul style="list-style-type: none"> • The principle of requiring the use of 'competent fire safety practitioners' to perform specific functions is supported. Provided the accreditation framework has sufficient integrity, it will go a long way to increasing confidence with the design, installation and operation of fire safety systems. • LGNSW acknowledges that the Government is concurrently developing a co-regulatory accreditation framework for 'competent fire safety practitioners' and we encourage the Government to progress this framework, in consultation with local government and other stakeholders, as quickly as possible. • Councils must be consulted on the transition and commencement periods, and in the development of interim guidelines.

Regulation area of change	LGNSW Comment
	<ul style="list-style-type: none"> Once the industry accreditation framework is in place, there may be an auditing function which could be provided by Fire and Rescue NSW (FRNSW) to ensure that industry accreditation associations retain integrity within the co-regulatory accreditation framework. There is a need to clarify criteria for practitioner competencies, and a need to clarify interim arrangements pending development of new criteria.
2) Submission of fire safety system plans and specifications and their retention on site	<ul style="list-style-type: none"> The proposal to require plans and specifications for relevant fire safety work to be endorsed by a competent fire safety practitioner is supported. However, there may be a need to clarify or provide further guidance on some of the terms used (for example, 'endorsement', 'key components' and 'minor' modification'). Councils should be further consulted to discuss definitions of concern.
3) Limited exemptions from compliance with some Building Code of Australia standards	<ul style="list-style-type: none"> The provision allowing some flexibility for certain <i>minor</i> fire safety system works runs a risk of being exploited unless there are clear guidelines around the meaning of the term 'minor' in this context. It may be also beneficial if applicants had a standard form to use when making a request for an exemption under clause 164B.
4) New critical stage inspections (on commonly identified defect areas especially penetrations and junctions between fire resistant parts of buildings)	<ul style="list-style-type: none"> Councils have had concerns about critical stage inspections for many years, particularly with the rapid rate of multi-unit development, where the risks are higher. This proposal is therefore a promising improvement and is supported. However, further discussion is needed about the practical application of these critical stage inspections, and council technical experts must be consulted. This inspection regime relies on a sufficient number of competent fire safety practitioners to undertake these inspections. As mentioned earlier in this submission, priority must be given by Government and industry to facilitating increased numbers of practitioners. A system of rationing by prioritising higher risk buildings is inadequate and poses unacceptable risks.
5) Additional checks by Fire and Rescue NSW	<ul style="list-style-type: none"> Supported, however, FRNSW will need to be sufficiently resourced to undertake additional checks.
6) Assessment by competent fire safety practitioners before issue of fire safety certificate and standardised certificates	<ul style="list-style-type: none"> See comments in 1) above.
7) Documenting, checking and endorsing of fire safety Alternative Solutions (non-standard fire safety designs)	<ul style="list-style-type: none"> The principle of improving the process for documenting and checking fire safety Alternative Solutions is supported.
8) Assessment for fire safety statements by competent fire safety practitioners and standardised statements	<ul style="list-style-type: none"> See comments in 1) above.

Co-regulatory accreditation framework

A number of the proposed changes rely on the use of newly accredited 'competent fire safety practitioners'. LGNSW acknowledges that the Government is concurrently developing a co-regulatory accreditation framework and LGNSW would encourage the government to progress this framework in consultation with stakeholders as quickly as possible.

LGNSW is aware of concerns about insufficient numbers of certifiers and the time it will take to accredit 'competent fire safety practitioners'. The industry will need time for more practitioners to become accredited and the NSW Government needs to support/facilitate interim arrangements.

Next steps: Further comment by LGNSW and councils

Local government and other stakeholders must be consulted extensively as the Government's fire safety regulations are developed, including the development of guidelines, practice notes and transitional arrangements.

LGNSW thanks the then Minister for Innovation and Better Regulation for the opportunity to participate in stakeholder forums in the early development of these initial fire safety reforms. LGNSW understands the DP&E has sought detailed comments of the draft regulation from a number of council practitioners, and LGNSW encourages DP&E to continue this dialogue during the consultation period and pay careful attention to the feedback provided in councils' formal submissions.

LGNSW requests similar consultation with local government in the development of other documents (for example, the interim guide to be developed pending the accreditation framework coming into effect, and the work to standardise the form for fire safety certificates). The DP&E intends to develop guidelines, practice notes and criteria for industry associations to accredit fire safety practitioners in due course. Any such material needs to be sufficiently rigorous to ensure the quality and integrity of the accreditation process. Criteria need to include qualifications, performance record, professional indemnity insurance, complaints handling and experience.

LGNSW requests that the Ministers for Planning and Innovation and Better Regulation remain committed and deliver the promised reforms as early as possible.

Conclusion

LGNSW hopes its comments are of assistance and looks forward to continuing to contribute to achieving a robust and trusted building regulatory framework in NSW. We encourage the NSW Government to further engage and consult with local government professionals who are well placed to provide more detailed technical input on this issue. We look forward to on-going involvement with the NSW Government on this and other reform priorities within the response to the recommendations of the review of the *Building Professionals Act 2005*.

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