

Commences 3 February 2023



New South Wales

Environmental Planning and Assessment (Development Certification and Fire Safety) Amendment (Construction Certificates) Regulation 2023

under the

Environmental Planning and Assessment Act 1979

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 object of this Regulation is to provide that, for multi storey buildings, the *Building Code of Australia* that is in force when an application for a construction certificate for building work involving the entrance floor of the building is made will continue to apply to all subsequent construction certificate applications for the same building.

This Regulation also makes an amendment relating to applications to modify development the subject of a construction certificate or an application for a construction certificate.

This Regulation is made under the *Environmental Planning and Assessment Act 1979*, including sections 4.17(11), 6.8(1)(a), 6.33(1) and 10.13, the general regulation-making power.

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Environmental Planning and Assessment (Development Certification and Fire Safety) Amendment
(Construction Certificates) Regulation 2023 [NSW]

Environmental Planning and Assessment (Development Certification and Fire Safety) Amendment (Construction Certificates) Regulation 2023

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 (Construction Certificates) Regulation 2023*.

2 Commencement

This Regulation commences on the day on which it is published on the NSW legislation website.

Commences 3 February 2023

Environmental Planning and Assessment (Development Certification and Fire Safety) Amendment (Construction Certificates) Regulation 2023 [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 19 Compliance with development consent and Building Code of Australia

Omit “at the time the application for the construction certificate was made” from section 19(1)(c).

Insert instead “on the relevant date”.

[2] Section 19(1A)

Insert after the penalty to section 19(1)—

(1A) The *relevant date* is—

- (a) the day on which the application for the construction certificate was made, or
- (b) if the building is a multi storey building and a construction certificate has been issued under the same development consent for building work involving the entrance floor—the day on which the application for that construction certificate was made.

[3] Section 19(5)

Insert after section 19(4)—

(5) In this section—

entrance floor, of a multi storey building, means the floor of the building containing the principal pedestrian entrance.

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

Insert before section 23(1)(j)—

- (i1) the edition of the *Building Code of Australia* considered by the certifier for section 19(1)(c),

[5] Section 24 Modification of construction certificate—the Act, s 6.33(1)

Insert after section 24(2)—

(2A) For the purposes of subsection (2), a reference in this Part to the *Building Code of Australia* is taken to be a reference to the edition of the *Building Code of Australia* that applied in relation to the original application.

[6] Schedule 1A Savings, transitional and other provisions

Insert at the end of the Schedule, with appropriate Part and section numbering—

Part Provisions consequent on commencement of Environmental Planning and Assessment (Development Certification and Fire Safety) Amendment (Construction Certificates) Regulation 2023

Construction certificates—compliance with Building Code of Australia

- (1) The amendments made to this Regulation, section 19 by the amending Regulation do not apply to the issue of a construction certificate if—

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Environmental Planning and Assessment (Development Certification and Fire Safety) Amendment (Construction Certificates) Regulation 2023 [NSW]
Schedule 1 Amendment of Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021

- (a) the relevant development consent was granted before the commencement of the amendments, and
 - (b) the building to which the development consent relates is a multi storey building, and
 - (c) a construction certificate has been issued under the same development consent for building work involving the entrance floor of the building.
- (2) In this section—
amending Regulation means the *Environmental Planning and Assessment (Development Certification and Fire Safety) Amendment (Construction Certificates) Regulation 2023*.

Schedule 2 Amendment of Environmental Planning and Assessment Regulation 2021

[1] **Section 69 Compliance with Building Code of Australia and insurance requirements under Home Building Act 1989**

Omit “day on which the application for the construction certificate was made” from section 69(4).

Insert instead “relevant date”.

[2] **Section 69(7)**

Insert after section 69(6)—

(7) In this section—

relevant date has the same meaning as in the *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021*, section 19.

[3] **Schedule 6 Savings, transitional and other provisions**

Insert at the end of the Schedule, with appropriate Part and section numbering—

Part Provisions consequent on Environmental Planning and Assessment (Development Certification and Fire Safety) Amendment (Construction Certificates) Regulation 2023

Conditions of development consents

(1) The amendments made to this Regulation, section 69 by the amending Regulation apply to an existing development consent only if a construction certificate has not been issued under the development consent for building work involving the entrance floor of the building.

(2) To avoid doubt, an existing development consent to which the amendments apply is taken, on and from the commencement of the amending Regulation, to be subject to the condition specified in this Regulation, section 69(1), as amended by the amending Regulation.

(3) In this section—

amending Regulation means the *Environmental Planning and Assessment (Development Certification and Fire Safety) Amendment (Construction Certificates) Regulation 2023*.

entrance floor has the same meaning as in the *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021*, section 19.

existing development consent means a development consent that relates to a multi storey building in force immediately before the commencement of the amending Regulation.