



New South Wales

# Environmental Planning and Assessment Amendment (Smoke Alarms) Regulation 2006

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 Planning

## Explanatory note

The object of this Regulation is to amend the *Environmental Planning and Assessment Regulation 2000* to require the owners of certain existing buildings or parts of buildings to ensure that smoke alarms (or heat alarms in certain circumstances) are installed in those buildings or parts of buildings. It is an offence (maximum penalty \$550) to remove or interfere with a smoke alarm or heat alarm without reasonable cause. Certain contraventions of the proposed provisions may be dealt with by way of penalty notices (on-the-spot fines). A person who installs a smoke alarm is not required to obtain development consent under Part 4 of the *Environmental Planning and Assessment Act 1979* nor to obtain the consent of an owners corporation. The Regulation provides for a 6-month moratorium on liability for offences (other than the offence of removing or interfering with a smoke alarm or heat alarm). This Regulation also makes a minor amendment by way of statute law revision.

The Regulation is made under the *Environmental Planning and Assessment Act 1979*, including sections 127A, 146A and 157 (the general regulation-making power).

## **Environmental Planning and Assessment Amendment (Smoke Alarms) Regulation 2006**

under the

Environmental Planning and Assessment Act 1979

### **1    Name of Regulation**

This Regulation is the *Environmental Planning and Assessment Amendment (Smoke Alarms) Regulation 2006*.

### **2    Commencement**

This Regulation commences on 1 May 2006.

### **3    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 3)

**[1] Clause 3 Definitions**

Omit the definition of *class*. Insert instead:

*class*, in relation to a building or part of a building, means:

- (a) in a provision of this Regulation that imposes requirements with respect to a development consent, the class to which the building belongs, as identified by that consent, or
- (b) in any other provision of this Regulation, the class to which the building or part of a building belongs, as ascertained in accordance with the *Building Code of Australia*.

**[2] Clause 166 Statutory fire safety measures**

Insert in alphabetical order in the Table to the clause:

Smoke alarms and heat alarms

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

Omit “This Part” from clause 167 (1).

Insert instead “Except as provided by Division 7A, this Part”.

**[4] Part 9 Fire safety and matters concerning the Building Code of Australia**

Insert after clause 186:

### **Division 7A Smoke Alarms**

**186A Owners of existing buildings and dwellings must ensure smoke alarms are installed**

- (1) Despite any other provision of this clause, this clause does not apply to any of the following:
  - (a) those buildings or parts of a building in which smoke alarms or smoke detection and alarm systems are installed, or are required to be installed, in accordance with a requirement under the Act or any other Act or law (including an order or a condition of an approval),

**Note.** An example of a requirement under the Act is an order under section 121B of the Act requiring the installation of smoke alarms or smoke detection and alarm systems.

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Schedule 1      Amendments

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- (b) those buildings or parts of buildings occupied by a public authority, but only if the Minister responsible for the public authority has determined, by order published in the Gazette, that those buildings or parts of buildings are not to be subject to this clause,
  - (c) buildings in which no person sleeps.
- (2) The owner of a class 1a building or relocatable home must ensure that the building or home is equipped with smoke alarms that are located, on or near the ceiling:
  - (a) in any storey of the building or home containing bedrooms—in every corridor or hallway associated with a bedroom, and if there is no such corridor or hallway associated with a bedroom, between that part of the building or home containing the bedroom and the remainder of the building or home, and
  - (b) in any other storey of the building not containing bedrooms.
- (3) The owner of a class 1b building must ensure that the building is equipped with smoke alarms that are located, on or near the ceiling:
  - (a) in any storey of the building containing bedrooms:
    - (i) in every bedroom, and
    - (ii) in every corridor or hallway associated with a bedroom, and if there is no such corridor or hallway associated with a bedroom, between each part of the building containing the bedroom and the remainder of the building, and
  - (b) in any other storey of the building not containing bedrooms.
- (4) The owner of a dwelling within a class 2 building or, that is a class 4 part of a building, must ensure that the dwelling is equipped with smoke alarms that are located, on or near the ceiling:
  - (a) in any storey of the dwelling containing bedrooms—in every corridor or hallway associated with a bedroom, and if there is no such corridor or hallway associated with a bedroom, between each part of the dwelling containing the bedroom and the remainder of the dwelling, and
  - (b) in any other storey of the dwelling not containing bedrooms.

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- (5) The owner of a class 3 building must ensure that:
- (a) each sole-occupancy unit, in any storey of the unit containing bedrooms, is equipped with smoke alarms that are located, on or near the ceiling in every corridor or hallway associated with a bedroom, and if there is no such corridor or hallway associated with a bedroom, between each part of the unit containing the bedroom and the remainder of the unit, and
  - (b) each sole-occupancy unit, in any storey of the unit not containing bedrooms, is equipped with smoke alarms that are located on or near the ceiling, and
  - (c) if the building does not have a functioning sprinkler system, each habitable room not within a sole-occupancy room, each public corridor and any other internal public space is equipped with smoke alarms that are located in those places where AS 1670.1 requires smoke detectors to be located.
- (6) The owner of a class 9a building that is a health care building must ensure that each patient care area, each public corridor and any other internal public space associated with a patient care area, are equipped with smoke alarms that are located in those places where AS 1670.1 requires smoke detectors to be located.
- (7) Despite subclauses (2), (4) and (5), the owner of a dwelling or unit that consists substantially of a single room (containing sleeping facilities and other facilities) satisfies the requirements of subclauses (2), (4) and (5) (a) and (b) if he or she ensures that the dwelling or unit is equipped with a smoke alarm that is located on or near the ceiling between the sleeping facilities and the rest of the dwelling or unit.
- (8) An order under subclause (1) (b) may specify a particular building or part of a building or a class of buildings or parts of buildings.
- (9) In this clause:
- approval** means any consent, licence, permit, permission or authorisation that is required, under an Act or law, to be obtained before development may be carried out.
- AS 1670.1** means AS 1670.1—2004, *Fire detection, warning, control and intercom systems—System design, installation and commissioning—Part 1: Fire* as in force from time to time.
- class 1a building** means, in relation to a building that forms part of a strata scheme, the lot containing a dwelling within the building.
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**health care building** means a building (other than a clinic, day surgery, day procedure unit or medical centre) occupied by persons receiving full-time care or patients undergoing medical treatment, being persons of a kind who generally require physical assistance to evacuate the building in an emergency, and includes the following:

- (a) a nursing home,
- (b) a facility under the control of a public health organisation within the meaning of the *Health Services Act 1997*,
- (c) a private hospital licensed under the *Private Hospitals and Day Procedure Centres Act 1988*.

**nursing home** means a facility at which a high level of residential care (within the meaning of the *Aged Care Act 1997* of the Commonwealth) is provided.

**order** means an order made under the Act or any other Act or law.

**patient care area** has the same meaning as it has in the *Building Code of Australia* but does not include any bathroom, ensuite bathing area or toilet area.

**relocatable home** means:

- (a) a manufactured home, or
- (b) any other moveable dwelling (whether or not self-contained) that comprises one or more major sections, including any associated structure that forms part of the dwelling,

but does not include a tent, caravan or campervan or any moveable dwelling that is capable of being registered under the *Road Transport (Vehicle Registration) Act 1997*.

**sole-occupancy unit** has the same meaning as it has in the *Building Code of Australia*.

#### **186B Specifications for smoke alarms**

- (1) A smoke alarm installed under this Division is to be functioning and is to comply with the requirements of AS 3786.
- (2) Despite the requirements of AS 3786, a smoke alarm that is required under clause 186A to be installed in a class 1b, class 3 or class 9a building is to be powered:
  - (a) from the mains electricity supply, or

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- (b) by a non-removable battery with a minimum life expectancy of 10 years that is connected to the smoke alarm.

**Note.** AS 3786 permits smoke alarms to be powered by batteries or mains electricity supply. Smoke alarms in buildings that are relocatable homes or class 1a or class 2 buildings or class 4 parts of buildings will be able to use any of the power sources specified by AS 3786.

- (3) Despite any other provision of this Division, a heat alarm may be used in the place of a smoke alarm in any kitchen or other area where it is likely to be inappropriately activated.
- (4) In this clause:  
*AS 3786* means AS 3786—1993, *Smoke alarms* as in force from time to time.
- (5) A functioning smoke alarm installed in a class 1a or class 2 building, a relocatable home or a class 4 part of a building before the commencement of this clause is taken to comply with the requirements of this clause until such time as the alarm is removed or ceases to function.

**186C Persons must not remove or interfere with smoke alarms**

- (1) A person must not, without reasonable excuse, remove or interfere with the operation of a smoke alarm or heat alarm that has been installed in a building in which persons sleep.
- (2) Without limiting subclause (1), a person does not commit an offence under this clause if the person removes or interferes with the operation of a smoke alarm or heat alarm to repair, maintain or replace the smoke alarm or heat alarm.
- (3) This clause applies to alarms installed before or after the commencement of this Division.

**186D No development consent or consent of owners corporation required to install smoke alarms**

- (1) Development consent under Part 4 of the Act and the consent of an owners corporation is not required to install a smoke alarm or heat alarm.
- (2) Subclause (1) is subject to the condition that, in circumstances where the installation of a smoke alarm or heat alarm causes damage to any part of common property, the person who installs the alarm must repair the damage.

- (3) In this clause:  
*common property* and *owners corporation* have the same meanings that they have in the *Strata Schemes Management Act 1996*.

**186E Smoke alarms and heat alarms in certain existing buildings taken to be essential fire services**

- (1) This clause applies to a building for which a fire safety schedule is issued before the commencement of this clause.
- (2) A smoke alarm or heat alarm installed under this Division is taken to be an essential fire safety measure that is specified in the fire safety schedule for the building for the purposes of this Part (other than clauses 175 (a) (i) and 182 (1) (a)).
- (3) Clauses 175 (a) (ii) and 182 (1) (b) apply to a smoke alarm or heat alarm taken to be an essential fire safety measure under this clause.

**186F Transitional provisions relating to obligations under this Division**

- (1) A legal obligation under clause 186A to install a smoke alarm does not arise until 6 months after the commencement of this Division.
- (2) A person is not liable for an offence under this Division (other than an offence under clause 186C) in respect of any act or omission that occurs within 6 months after the commencement of this Division.
- (3) However, subclause (2) does not apply to any failure to comply with the requirements of this Division that continues after 6 months after that commencement.

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

Omit “(Clauses 284 and 285)”. Insert instead “(Clause 284)”.

**[6] Schedule 5**

Insert in Columns 1 and 2 of the Schedule under the heading “**Offences under this Regulation**” in appropriate order by clause number:

Section 146A (3) of the Act in relation to contravention of clause 186A (2) or (4) or 186C of this Regulation	\$200
Section 146A (3) of the Act in relation to contravention of clause 186A (3), (5) or (6) of this Regulation	\$300