



## BUILDING SYSTEM

Act and regulation changes

<b>Circular</b>	BS 06–005
<b>Issued</b>	23 May 2006
<b>Related</b>	<a href="#">Advisory note (13 March 2006)</a>

# Implementation of the EP&A Amendment (Smoke Alarms) Regulation 2006

The purpose of this circular is to provide further information for councils regarding the implementation of the Environmental Planning and Assessment Amendment (Smoke Alarms) Regulation 2006, which commenced on 1 May 2006.

## Introduction

In a bid to reduce further loss of life from building fires the NSW Government recently introduced the Environmental Planning and Assessment Amendment (Smoke Alarms) Regulation 2006 (the Regulation amendment).

The Regulation amendment commenced on 1 May 2006, and requires property owners to ensure smoke alarms are installed in existing premises where people sleep.

Property owners have six months to adjust to the new alarm installation requirements. As of 1 May 2006, however, it is an offence to remove or interfere with any smoke alarm or heat alarm that is already installed unless it is to repair, maintain or replace the alarm.

The following responds to some frequently asked questions on the role and responsibilities of councils in relation to the Regulation amendment.

The Department also seeks local government's assistance in spreading the message and encouraging action as soon as possible.

## Community awareness

It is important that property owners are made aware of their responsibilities and act as soon as possible to ensure smoke alarms are installed.

The Department of Planning, in conjunction with the NSW Fire Brigades, has been actively involved in disseminating information to the community with respect to the Regulation amendment.

This includes:

- emailing councils and key stakeholders of the gazettal of the Regulation amendment on 10 March 2006 and issuing an advisory note

- publishing information on both the Department's and the NSW Fire Brigades' web sites. See [www.planning.nsw.gov.au/smokealarms](http://www.planning.nsw.gov.au/smokealarms) and [www.fire.nsw.gov.au/community/athome/smokalarms](http://www.fire.nsw.gov.au/community/athome/smokalarms)
- setting up a Smoke Alarms Help Line (1300 858 812) for enquiries and email address ([smoke.alarms@planning.nsw.gov.au](mailto:smoke.alarms@planning.nsw.gov.au))
- writing to a range of industry and community organisations seeking their assistance in disseminating information
- providing councils with information to include in local newspaper mayoral columns
- printing and distributing copies of a flyer and smoke alarms poster for display in public areas. (Councils should receive their copies in the post shortly to display in public libraries, foyers and other appropriate places.)

## Compliance checking

Education and community support are being relied upon to implement the Regulation amendment rather than penalties.

The Regulation amendment does not contain any additional powers for council officers to investigate whether a building complies with the Regulation. Authorised officers, for example, do not have authority to conduct random inspections of private homes for the sole reason to look for smoke alarm compliance—nor is this expected.

Under current legislation (refer to section 118J of the *Environmental Planning and Assessment Act 1979*) (EP&A Act) inspections of homes by authorised officers can only be carried out with the permission of the occupier, by search warrant, to inspect works being carried out under a development consent or a complying development certificate; and, when inspecting buildings for the

purpose of determining whether to issue a building certificate.

In these circumstances, enforcement action will be able to be taken if a breach of the requirements of the Regulation amendment is observed. The issuing of fines or prosecution however, should be a last resort. As previously stated, the Regulation amendment relies on education and community support for implementing this important initiative rather than penalties.

Note: The penalties for breaches of the Regulation amendment can be found in section 146A of the EP&A Act and Schedule 5 of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation). From 1 May 2006, an on-the-spot fine of \$200 is provided for in relation to any person removing or interfering with an installed smoke alarm (except to repair, maintain or replace the alarm). From 1 November 2006, an on-the-spot fine of \$200 for a private dwelling and \$300 for shared accommodation is provided for if the property owner has not installed smoke alarms. Where offences are dealt with by a court, the maximum penalty that can be imposed is \$550 (ie 5 penalty points).

## Building certificates

The Department has received several enquiries regarding the impact of the Regulation amendment on the issuing of building certificates under section 149A of the EP&A Act.

Non-compliance with the Regulation amendment does not prevent the issue of a building certificate. The issue of a building certificate does not release an owner from the obligation to comply with the Regulation amendment, and does not prevent a council from taking action to require smoke alarms to be installed.

## Approvals

If an existing building to which the Regulation amendment applies already has smoke alarms or a smoke detection and alarm system required by an approval, then clause 186A of the Regulation amendment (which requires owners to ensure smoke alarms are installed as specified in the Regulation) does not apply.

The Regulation amendment does not override the need for a new building or an addition or an alteration to an existing building to comply with the Building Code of Australia (BCA). Construction and complying development certificates for building work cannot be issued unless the proposed works demonstrate compliance with the BCA.

Also, the Regulation amendment does not override council's role under the EP&A Act and EP&A Regulation when considering applications proposing changes to existing buildings.

## Fire safety orders

If an owner of a building to which the Regulation amendment applies has already installed smoke alarms or a smoke detection and alarm system to comply with a fire safety order, then clause 186A of the Regulation amendment does not apply.

The Regulation amendment does not prevent a council from issuing a fire safety order, under section 121B of the EP&A Act, on a building to

which the Regulation amendment applies. Also, if an existing building is subject to a current order, the Regulation amendment does not override that order.

## Fire safety schedules

A fire safety schedule is a document that lists the 'essential fire safety measures' serving a building and, among other things, the standard of performance to which they must be maintained. Essential fire safety measures must be kept in working order, and this must be verified to the relevant council and the NSW Fire Brigades at least annually by way of a fire safety statement.

A fire safety schedule is not required for a class 1a or class 10 building.

If a building has been issued with a fire safety schedule before 1 May 2006, clause 186E of the Regulation amendment states that smoke alarms or heat alarms installed under the Regulation are to be taken to be an essential fire safety measure specified in the fire safety schedule for the building.

Those alarms will then be subject to the ongoing maintenance and certification regimes set out in the EP&A Regulation for essential fire safety measures.

The Regulation amendment does not require that a fire safety schedule be prepared if one does not exist. Not all existing buildings to which the Regulation applies will have a fire safety schedule as the building may not be subject to current (or past) legislative regimes relating to this subject.

## Information on related regulatory amendments

### Retirement Villages Regulation 2000, Residential Parks Regulation 1999, and Residential Tenancies (Residential Premises) Regulation 1995

Changes to the above fair trading regulations have been made to support and complement the changes under the Environmental Planning and Assessment Amendment (Smoke Alarms) Regulation 2006.

These regulations cover residential tenancies (rental properties), residential parks and retirement villages. The changes deal with matters such as the responsibility for installing smoke alarms and replacing smoke alarm batteries in rented premises, and the recording of smoke alarms on inspection records. The Office of Fair Trading web site ([www.fairtrading.nsw.gov.au](http://www.fairtrading.nsw.gov.au)) contains further information regarding the changes, including a fact sheet. The Office of Fair Trading can be contacted on 13 3220.

### Conveyancing (Sale of Land) Regulation 2005

Changes to the above regulation have been made to require the vendor under a contract for the sale of land on which is situated a building that under the Environmental Planning and Assessment Amendment (Smoke Alarms) Regulation 2006 requires smoke alarms to be installed, to attach to the contract a statement that the building complies with the Environmental Planning and Assessment

Amendment (Smoke Alarms) Regulation 2006. More information regarding these changes (including the date they take effect) can be obtained from the Department of Lands ([www.lands.nsw.gov.au](http://www.lands.nsw.gov.au)).

**Local Government (Manufactured Home Estates, Caravan parks, Camping Grounds and Moveable Dwellings) Regulation 2005**

Consequential changes have been made to the current provisions of this regulation regarding smoke alarms in order to avoid any overlap with the Environmental Planning and Assessment Amendment (Smoke Alarms) Regulation 2006.

New manufactured homes and relocatable homes will still have to be provided with smoke alarms that comply with the Local Government (Manufactured Home Estates, Caravan parks, Camping Grounds and Moveable Dwellings) Regulation 2005.

**Further information**

More information on the new requirements for smoke alarms under the Environmental Planning and Assessment Amendment (Smoke Alarms) Regulation 2006 is available from the NSW Department of Planning at [www.planning.nsw.gov.au](http://www.planning.nsw.gov.au) and the NSW Fire Brigades at [www.fire.nsw.gov.au](http://www.fire.nsw.gov.au).

**Enquiries**

Phone the Smoke Alarms Help Line on 1300 858 812 or email [smoke.alarms@planning.nsw.gov.au](mailto:smoke.alarms@planning.nsw.gov.au).

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**Important note**

This circular does not constitute legal advice. Users are advised to seek professional advice and refer to the relevant legislation, as necessary, before taking action in relation to any matters covered by this circular.

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