

28 April 2022

Mr Angus Abadee  
Director, Building and Construction Policy  
Department of Customer Service

Via email: [angus.abadee@customerservice.nsw.gov.au](mailto:angus.abadee@customerservice.nsw.gov.au)

Dear Angus

**Re: Fire Engineering Competency - Clause 64 of the Building & Development Certifiers Regulation 2020**

AAC members have contacted us regarding the provisions of Clause 18 of the *Environmental Planning & Assessment (Development Certification & Fire Safety) Regulation 2021* and Clause 137 of the *Environmental Planning & Assessment Regulation 2021*, with respect to the issue of reports on performance solutions by fire safety engineers.

The issue arises where the qualifications and the competency assessment of the persons preparing the prescribed reports or "otherwise" reports is contradictory in the different parts of the legislation.

Specifically, we ask for clarification on the following points:

1. Does Clause 64 d) of the *Building and Development Certifiers Regulation 2020* deem that if a Performance Solution report is issued by a "Certifier-Fire Safety" class of registration, then for the purpose of Clause 18 of the *EP&A (Fire Safety) Regulation 2021* and Clause 137 of the *EP&A Reg 2021*, a competency assessment under Clause 65 of the same Regulation is not required for a prescribed report or otherwise report?
2. When will the *Building and Development Certifiers Regulation 2020* be amended to reflect the updated clauses/sections of the *EP&A Reg 2021* and *EP&A (Fire Safety) Regulation 2021*? Certifiers are receiving applications for Construction Certificates and Complying Development Certificates lodged after 1 Jan 2022 using different terminology. For example, changes from terminology such as under section 65 (1)(a) - "clause 130, 136AA, 144A, 146B or 164B of the Planning Regulation", etc.

AAC members have taken Clause 65 d) on face value and also the substance of the "CertAlert" issued 22 December 2020 ([link](#)) which states if the person issuing the Performance Solution has a "Certifier-Fire Safety" class of registration they are deemed acceptable for both a prescribed report and an otherwise report and no competency assessment is required.

We would greatly appreciate clarification on these issues as a matter of urgency.

Yours sincerely



Jill Brookfield  
Chief Executive Officer