

**Building Amendment (Private Bushfire Shelter
Construction) Interim Regulations 2009**

S.R. No. 139/2009

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STATUTORY RULES 2009

S.R. No. 139/2009

Building Act 1993

**Building Amendment (Private Bushfire Shelter
Construction) Interim Regulations 2009**

The Governor in Council makes the following Regulations:

Dated: 10 November 2009

Responsible Minister:

JUSTIN MADDEN
Minister for Planning

TOBY HALLIGAN
Clerk of the Executive Council

1 Objective

The objective of these Regulations is to amend the Building Regulations 2006 in relation to the construction of private bushfire shelters that may, as a last resort, be used for protection in the event of a bushfire.

2 Authorising provisions

These Regulations are made under sections 7, 9 and 262 of, and Part 1 of Schedule 1 to, the **Building Act 1993**.

3 Commencement

- (1) These Regulations (except regulations 9 and 10) come into operation on 11 November 2009.
- (2) Regulations 9 and 10 come into operation on 9 November 2010.

4 Principal Regulations

In these Regulations, the Building Regulations 2006 are called the Principal Regulations¹.

5 Definition of bushfire performance requirement inserted

Insert the following definition in regulation 105 of the Principal Regulations—

"bushfire performance requirement means—
performance requirement P2.3.4A of
Volume Two of the BCA to the extent that it
relates to fire safety for a Class 10c building
associated with a Class 1 building;"

6 New Regulation 113A inserted

After regulation 113 of the Principal Regulations
insert—

"113A Bushfire performance requirements— alternative solutions

Despite anything to the contrary in the BCA,
a relevant building surveyor must not
determine that an alternative solution
complies with a bushfire performance
requirement unless the relevant building
surveyor—

- (a) relies on a certificate under section 238
of the Act by a fire safety engineer,
who did not design the building work,
which states that the alternative
solution complies with that
performance requirement; or
 - (b) relies on a determination of the
Building Appeals Board under
section 160A of the Act that the
alternative solution complies with that
performance requirement; or
-

- (c) relies on a certificate of accreditation issued by the Building Regulations Advisory Committee, which states that the alternative solution complies with that performance requirement; or
- (d) relies on a Certificate of Conformity issued by the Australian Building Codes Board which states that the alternative solution complies with that performance requirement."

7 New regulation 115 inserted

After regulation 114 of the Principal Regulations
insert—

'115 Private bushfire shelter construction requirements

- (1) Volume One of the BCA applies as if—
 - (a) in clause A1.1, after the definition of "**Primary building element**" there were inserted—

"Private bushfire shelter means a building or part of a building that may, as a last resort, provide shelter for people from the immediate life threatening effects of a bushfire.";
 - (b) in clause A3.2, after the paragraph relating to Class 10b, there were inserted—

"(c) Class 10c — a building being a private bushfire shelter."

- (2) Volume Two of the BCA applies as if—
- (a) in clause 1.0.10—
- (i) in paragraph (a), after "*Alternative Solution*" there were inserted
", except in the case of
Performance Requirement
P2.3.4A";
- (ii) in paragraph (b), after "*Deemed-to-Satisfy Provisions*" there were inserted
", except in the case of a
Class 10c building, in which case
the *Performance Requirement* to
be identified is *Performance*
Requirement P2.3.4A";
- (b) in clause 1.1.1.2—
- (i) after the definition of "**Fabric**" the following definition were inserted—
- "**Fire intensity** has the same meaning as it has in clause A1.1 of Volume One of the BCA.";
- (ii) after the definition of "**Performance Requirement**" the following definition were inserted—
- "**Private bushfire shelter** means a building or part of a building that may, as a last resort, provide shelter for people from the immediate life threatening effects of a bushfire.";
-

(c) in clause 1.3.2, after the paragraph relating to Class 10b, there were inserted—

"(c) **Class 10c** — a building being a private bushfire shelter.";

(d) in clause 1.3.3—

(i) in paragraphs (a) and (b), for "10a and 10b" there were substituted "10a, 10b and 10c";

(ii) after paragraph (c) there were inserted—

"(d) paragraph (c) does not apply if the minor use relates to a Class 10c part of a Class 1 building or a Class 10a building.";

(e) after clause F2.3.4 there were inserted—

"F2.3.4A Bushfire areas

A Class 10c building is to provide resistance to bushfires in order to reduce the danger to life and reduce the risk of the loss of the building.";

(f) after performance requirement P2.3.4 there were inserted—

"P2.3.4A Private bushfire shelter

(a) The design and construction of a Class 10c building associated with a Class 1 building provided for use during the event of a bushfire must take into account the requirements necessary to make reasonable provision for the

amenity of the Class 10c building and the safety and health of people using that building during the period of a bushfire event.

- (b) The design and construction of a Class 10c building referred to in paragraph (a) must provide for—
- (i) safe access to the building; and
 - (ii) appropriate sanitary and other facilities; and
 - (iii) a means of determining the external environmental conditions; and
 - (iv) safe egress from the building; and
 - (v) a means of identification of the location of the building for the purpose of rescue.
- (c) The design and construction of a Class 10c building referred to in paragraph (a) must have regard to—
- (i) the number of occupants likely to use the building; and
 - (ii) actions to which the building may be subjected; and
 - (iii) the effects of nearby permanent features such as topography, vegetation and other buildings; and
 - (iv) the potential external *fire intensity*; and
-

- (v) the prevention of conditions within the building that are untenable.
- (d) For the purposes of paragraph (a), the period of the bushfire event is the reasonably estimated period of time beginning from entry into the building by occupants prior to the fire front arriving and concluding when the fire front has passed and the external environmental conditions are no longer untenable."!

8 New Division 3 of Part 12 inserted

After Division 2 of Part 12 of the Principal Regulations **insert**—

"Division 3—Private bushfire shelter maintenance and operation

1221 Application of this Division

This Division applies to a Class 10c building associated with a Class 1 building.

1222 Private bushfire shelter maintenance and operation

- (1) The occupier of an allotment, or a Class 1 building, containing a Class 10c building must ensure that the Class 10c building is maintained in a state that enables the Class 10c building to fulfil its purpose.

Penalty: 20 penalty units.

- (2) The occupier of an allotment, or a Class 1 building, containing a Class 10c building must ensure that any paths of travel from the Class 1 building to the Class 10c building are maintained in an efficient condition and kept readily accessible, functional and clear of obstruction so that access to the Class 10c building is maintained.

Penalty: 20 penalty units."

9 Revocation of regulations

Regulations 113A and 115 and Division 3 of Part 12 of the Principal Regulations are **revoked**.

10 Revocation of definition

In regulation 105 of the Principal Regulations, the definition of *bushfire performance requirement* is **revoked**.

11 Expiry

These Regulations expire on 10 November 2010.

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Endnotes

ENDNOTES

¹ Reg. 4: S.R. No. 68/2006. Reprint No. 1 incorporating amendments as at 1 September 2009. Reprinted to S.R. No. 105/2009 and subsequently amended by S.R. Nos 25/2009 and 105/2009.

**Table of Applied, Adopted or Incorporated Matter Required by
Subordinate Legislation Regulations 2004**

The following table of applied, adopted or incorporated matter is included in accordance with the requirements of regulation 5 of the Subordinate Legislation Regulations 2004.

In this table—

BCA means the Building Code of Australia published by the Australian Building Codes Board—

- (a) as amended or remade from time to time; and
- (b) as amended by the Victoria Appendix to that Code published by that Board as that Appendix is amended or remade from time to time.

Statutory Rule Provision	Title of applied, adopted or incorporated document	Matter in applied, adopted or incorporated document
Regulation 5 which inserts the definition of <i>bushfire performance requirement</i> into the Building Regulations 2006	Volume Two of the BCA	Performance requirement P2.3.4A

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Statutory Rule Provision	Title of applied, adopted or incorporated document	Matter in applied, adopted or incorporated document
Regulation 7 which inserts regulation 115 into the Building Regulations 2006	Volume One of the BCA Volume Two of the BCA	Clauses A1.1 and A.3.2 Clauses 1.0.10, 1.1.1.2, 1.3.2, 1.3.3 and F2.3.4A Performance requirement P2.3.4A