

Monday 19 July 2021

Dear Industry Stakeholder,

RE: Planned changes to Fire Rescue Victoria processes and policies relating to Building Regulation matters.

Over the coming months Fire Rescue Victoria (FRV) will implement a number of process and policy changes that will alter a number of aspects of how we work with the building industry. More specifically, these changes relate to matters involving regulation 129 and regulation 187 of the Building Regulations 2018.

We encourage you to share this document with your colleagues and discuss how these changes may affect any new or existing projects you are working on.

1. Alterations and updates to designs and Fire Engineering Reports (FERs)

Over the past few years FRV has seen a significant increase in the number of building designs that are altered after FRV has issued a report and consent to the issue of a building permit under regulation 129.

FRV understands that these design alterations typically occur due to client-driven building design changes, regulatory compliance oversight or through the attempted accommodation of construction errors in a project's construction phase.

In some instances, alterations to the building design result in amendments having to be made to an existing performance solution that is detailed in the relevant FER. In other cases, the building design changes result in new National Construction Code (NCC) Deemed-to-Satisfy (DTS) departures, which require a new performance solution to be developed, or an existing performance solution to be amended to accommodate the new departure.

FRV and practitioners have experienced many challenges in dealing with these building design changes and the accommodation of construction errors. To date, the process has often involved the submission of an amended FER to FRV. FRV then reviews the amended FER and subsequently indicates if the building design changes or the construction error materially impacts the decisions made in the previously issued regulation 129 report and consent or will impact on future applications made to FRV for report and consent to the issue of an occupancy permit under regulation 187.

This process has presented significant legal and practical difficulties for both industry stakeholders and FRV. This is due to:

- FRV's Fire Rescue Commissioner being constrained by the Regulations from providing a statutory report and consent under regulation 187 for a constructed building which is different to the design that was reported and consented to by FRV pursuant to regulation 129, where those differences are material to the departures reported on at the regulation 129 stage.
- A lack of consultation and transparency regarding the development of an amended FER. It is common for FRV to be made aware of design amendments and the amended FER only at the occupation phase of a project, just prior to a regulation 187 report and consent being sought, rather than at the time that the design alterations occur.

- Insufficient time allowed to FRV to review an amended FER relating to an existing regulation 129 report and consent. Frequently, practitioners submit an amended FER in the week prior to a related regulation 187 application being submitted.
- The need for FRV to give priority to regulation 129 and 187 applications, rather than to amended FERs due to their legislated timeframes.
- In some instances, the design alterations or construction errors may negatively impact FRV's view on whether a satisfactory degree of fire safety is achieved, resulting in FRV revoking its original regulation 129 report and consent. In these instances, many project stakeholders will be impacted, particularly if the associated building work has already been undertaken or is nearing completion.

Changes from 1 July 2021

FRV has consulted with the Department of Environment, Land, Water and Planning (DELWP), the Victorian Building Authority (VBA) and the Building Regulations Advisory Committee (BRAC) in respect of this matter and has resolved to implement the following procedural changes.

1.1 Amended FERs pertaining to regulation 129 reports issued prior to 1 July 2021.

Where design changes or construction errors have occurred for building work for which FRV issued a report and consent prior to 1 July 2021 and the applicant wishes to submit an amended FER to FRV, FRV will continue its current practice and review the amended FER to consider what further action is required. For these matters:

- a. An “*Application for an amended Report and Consent pursuant to Building Regulation 129 (1)*” form must be completed and accompany the amended FER.

Note: This application form is currently under development and will be made available on FRV's website.

- b. Fees will be charged in line with FRV's Fees and Charges Schedule (available on FRV's website).

1.2 Amended FERs pertaining to regulation 129 reports issued after 30 June 2021.

Where design changes or construction errors have occurred for building work for which FRV issued a report and consent after 30 June 2021 and the applicant wishes to submit to FRV an amended FER containing substantive amendments, FRV will require a new application under regulation 129 for report and consent to be submitted.

In some instances FRV receives amended FERs which have been updated solely to correct minor errors. Where these alterations are of a very minor nature (this includes corrections to spelling, grammar, names, etc.) then FRV will continue to accept and review these amended FER's. In all other circumstances, a new application under regulation 129 must be submitted.

In some instances, this process may be complicated by the fact that a building permit for the stage of building work that includes the prescribed fire safety matter may already have been issued by the relevant building surveyor (RBS). If this has occurred, the Fire Rescue Commissioner will be precluded from issuing a new report and consent under regulation 129.

In these circumstances, an alternative approval pathway will need to be explored by the building practitioner.

FRV notes that one possible approach may be for a building owner to seek a modification from the Building Appeals Board pursuant to section 160 of the *Building Act 1993*. The process of seeking a modification from the Building Appeals Board may involve a variation to Regulation 129 (and other associated regulations) that results in the Chief Officer (FRV Fire Rescue Commissioner) been given the ability to provide report and consent where a building permit has already been issued in relation to the associated works.

Consistent with the expectations of clause 1.3 of the [Victorian Building Authority's Code of Conduct for Building Surveyors](#), FERs that are developed in relation to the correction or justification of non-compliant building work will not be accepted by FRV. This is because FERs in these circumstances may potentially bring both the building surveying profession and the construction industry into disrepute, in that it could be argued that FERs of that type have been developed to avoid the need to rectify non-compliant building work.

Further to the information provided above, practitioners should also make themselves familiar with the Victorian Building Authorities Building Practice Note BP-11. This newly published Practice Note discusses Report and Consent matters. The Practice Note is available on the VBA website.

2. Pre-Application Advice pertaining to regulation 129 matters and Fire Engineering Brief (FEB) reviews.

FRV currently provides a "Regulation 129 Pre-Application Process" consultation service to industry in regards to proposed regulation 129 variations.

It will now be a requirement of this process, that when a FEB applies to a building, then the FEB must be submitted with an application for "Regulation 129 Pre-Application Advice."

FRV will review the FEB and the proposed regulation 129 variations and provide a written response to both matters.

The Pre-Application Advice application form will be updated shortly to reflect this new requirement.

Fees will be charged for this service in line with FRV's Fees and Charges Schedule (available on FRV website).

If you have any questions about these processes, I encourage you to address your questions in writing to BCAAdmin@frv.vic.gov.au

Yours sincerely

Built Environment

Fire Safety Directorate, Fire Rescue Victoria