

This practice note updates the previous practice note 2016-23 issued February 2016.

Purpose

An essential safety measure includes an item required to be specified by the Relevant Building Surveyor (RBS) under Regulation 194 and Part 15 that is provided in a building or place of public entertainment for the health and safety of occupants.

The term 'essential safety measure' is defined in Regulation 214 and provides that an essential safety measure (ESM) includes a safety measure as specified in Schedule 8, together with any other item required by the Act or the Regulations to be provided for the safety of people in the event of fire that the RBS has designated as an ESM. (For example, a requirement of an Emergency or Building Order.)

The definition includes those ESMs provided for in the revoked Building Interim Regulations 2017 and all other measures for people safety in the Act or previous Acts before 1 July 1994.

Scope of the maintenance regulations

Where an Occupancy Permit is required, Regulations 194, 195 and 196 set out the provisions to specify all ESMs with performance, frequency and type of inspection, testing and maintenance for Class 1b, 2, 3, 5, 6, 7, 8 or 9 buildings and a class 4 part of a building and a place of public entertainment.

The maintenance provisions of Part 15 of the Regulations are divided into two Divisions. Division 1 Sets out the requirements for maintenance of ESMs and Division 2 Sets out the requirements for maintenance of exits and paths of travel relating to buildings or places of public entertainment which applies to all building Classes except Class 1a, 4 (parts) and 10 buildings.

Application and definitions

Subdivision 1 – Outlines that the maintenance provisions apply to Class 1b, 2, 3, 5, 6, 7, 8 and 9 buildings and a class 4 part of a building and a place of public entertainment. Division 1 does not apply to smoke alarms installed in sole-occupancy units in a Class 1b, 2, or Class 4 part of a building.

Subdivision 3 – Outlines the requirements for the RBS to prepare or update the maintenance schedule for an existing building or place of public entertainment.

The regulation applies to a building or place where an ESM is required to be provided or altered by –

- (a) a condition on an occupancy permit; or
- (b) a maintenance or a maintenance determination.

Note- The Regulations do not apply to Federal Government land such as airports and telephone exchanges.

Subdivision 2 – Maintenance determinations in building and places of public entertainment

Regulation 194 requires the RBS issuing an Occupancy Permit (OP) to include a condition which:

- lists all the essential safety measures pertaining to that building or place of public entertainment; and
- specifies for each essential safety measure listed, the level of performance determined by the RBS to enable the essential safety measure to fulfil its purpose.

In determining the level of performance for each essential safety measure, regulation 194 (2) also requires the RBS to specify the provision of the Regulations with which the installation and

operation of the ESM is to comply and the frequency and type of maintenance required.

Regulation 215 states that where an ESM is provided as a result of:

- an emergency order or a building order; or
- the carrying out of building work where an OP is not required to be issued (i.e. when a Certificate of Final Inspection [CFI] is issued);
- the RBS must decide, and provide in writing the level of performance required to enable the ESM to fulfil its purpose and the frequency and type of maintenance required.

This decision by the RBS must be documented and given to the owner of the building or place of public entertainment and is known as a maintenance determination.

Reg 216 requires the owner to comply with maintenance determination.

Regulation 217 allows the option of compliance with AS 1851-2012 in lieu of the specified maintenance standard.

The owner may comply with AS 1851—2012 in relation to ESMs that must be maintained in accordance with 'AS 1851—2005 Maintenance of Fire Protection Systems and Equipment' or an equivalent standard published before 5 September 2005, instead of the frequency and type of maintenance specified in the relevant OP or maintenance determination.

Note: The specified nature of test or inspection is not to be automatically substituted with AS 1851–2012 in accordance with regulation 216 where an earlier maintenance standard or unique methodology specified, forms part of a performance solution (or alternative solution) relating to a fire performance requirement as defined in regulation 5 of the Building Regulations 2018.

Regulation 224 (e) allows owners to utilise this option provided such a statement is included on the Annual ESMs Report. The owner must continue to comply with AS 1851-2012 for future frequency, type of inspection, testing and maintenance.

Maintenance schedules

Under subdivision 3, the RBS is required to prepare or update a maintenance schedule that identifies the specific ESMs provided for the building or place of public entertainment that are required to be maintained.

The owner is required to provide to the RBS all documents that relate to the ESMs in the building or place within 7 days of the RBS request.

The ESMs Schedule 8 must list all ESM's required to be provided in a building or place.

Capturing requirements of Performance Solutions

Where a performance solution or determination is used which requires measures other than those contained within Table 1 or which requires a varied methodology of maintenance than recommended by this schedule, or otherwise accepted, then the RBS must ensure the requirements for maintenance are listed as OP conditions or in a maintenance determination to reflect such requirements. It is recommended in this case that the RBS consult with the designer to determine the appropriate maintenance requirements and frequency. In these instances, the adoption of AS 1851—2012 can only be applied where the RBS amends the maintenance determination or OP accordingly.

Maintenance requirements of essential safety measures

For each ESM listed in the OP conditions, maintenance determination the RBS must also specify and document the standard of performance the ESM must provide in order to fulfil its purpose.

To ensure that ESMs fulfil their purpose consistently over time, the RBS must also specify and document the way in which each ESM needs to be inspected, tested and maintained. The RBS should specify the edition of any documents referred to when determining the required level of performance for each ESM including specifying the provision of the Regulations with which the installation and operation of the ESM is to

comply and the frequency and type of maintenance required.

The Regulations provide the RBS with discretion as to determining the maintenance methodology that should be applied to ESMs. Table 1 below provides an example of the maintenance that could be required by the RBS for each listed ESM. However, this is a decision for the RBS.

Documentation of the RBS determination

The RBS documents their determination as a condition of the OP or a maintenance determination under a CFI or Emergency/Building Order.

Where an ESM is provided as a consequence of an Emergency Order or a Building Order, regulation 215 requires a copy of a maintenance determination to be provided to the owner of the building or place of public entertainment without delay after it is made.

The RBS pursuant to regulation 197 must specify the approved location for the display of the OP and its conditions. The location should be in an approved and prominent location, accessible to the public within the building or place of public entertainment. These provisions do not apply to Maintenance Determinations.

Consolidation of maintenance determination

Over time some buildings and places of public entertainment will have multiple OP's and maintenance determinations making it difficult for building owners to manage maintenance requirements. Regulation 219 permits a Municipal Building Surveyor (MBS) or a Private Building Surveyor (PBS) on the application of the owner, to create a consolidated list of ESMs and their maintenance requirements from existing OP's or maintenance determinations. Regulation 219 does not allow the building surveyor to delete or alter the maintenance provisions specified on OP's or maintenance determinations. In addition, the frequency and type of maintenance should not be changed other than those permitted in regulations 196 and 217. This consolidated document is known as a maintenance schedule.

Where the MBS or RBS agrees to prepare the maintenance schedule the owner must provide all documents relating to ESMs to the MBS or RBS.

In creating a maintenance schedule, the MBS or PBS must ensure that any safety measure that exists for the building or place of public entertainment at the time of making the schedule is listed in the schedule along with the maintenance requirements that relates to the safety measure.

When creating the schedule, the building surveyor must list the ESMs in chronological order according to the date on which each ESM was required to be provided under the Act or Regulations or any previous corresponding Act or Regulations.

Updating maintenance schedules

Enforcement provisions

The enforcement provisions of Part 8 of the Act provide for an MBS or PBS where appointed, to review any risk to the life, safety, or health of any occupant in a building. As part of the enforcement process consideration could be given to upgrading the ESMs to current standards and practices were necessary, informed by a risk management approach following an assessment of the current use, hazards and adequacy of the installed ESMs to treat this risk.

If ESMs are upgraded building permit approval will be required for these works unless this is specifically waived in an Emergency Order or Building Order. Accordingly, a new OP or maintenance determination will need to be issued at the completion of works confirming the new installation performance and maintenance requirements.

Division 2 – Maintenance of exists and paths of travel for building and places of public entertainment

In addition to the requirements for building owners in Part 15 of the Regulations, Division 2 establishes additional requirements for the building occupier relating to egress. Regulation 228 requires that the occupier of a Class 1b, 2, 3, 5, 6, 7, 8, 9 building or place of public

entertainment must ensure exits and paths of travel are kept readily accessible, functional and clear of obstruction so that egress from the building or place is maintained. This regulation does not remove the responsibility of the owner under division 2.

Inspections and enforcement

The Victorian Building Authority (VBA), MBS or Chief Officer of the fire brigade may issue building infringement notices (on-the-spot-fines). This applies under Division 5 of Part 13 of the Act and Part 20 of the Regulations for an offence against:

- Division 1 regulations; 216(2), 218, 223(1) 223(2), 225, 226 and 227, and
- Division 2 regulation 228.

To determine whether ESMs are performing and being maintained, and records of maintenance are being kept in accordance with the Act or the Regulations, an inspection may be carried out under section 227E of the Act by the chief officer and MBS either jointly or separately. The chief officer must report to the MBS within 5 business days and the MBS must report to the building owner within 10 business days regarding the inspection.

A building infringement notice may be issued as a consequence of this inspection. A building infringement notice must be issued in accordance with the Infringements Act 2006.

Following inspection, the MBS may also determine it is appropriate take further enforcement action under Part 8 of the Act to enforce building standards. Such action may include the serving of an Emergency Order if appropriate or serving a Building Notice and Building Order as necessary.

Enforcement action can be taken by the MBS if they determine there is a danger to life or property, or the use contravenes the Act or Regulations. Enforcement action may be taken against the owner or occupier (exits and path of travel to and from exits) and could include, evacuation and prohibiting the use of the building, or may require certain improvement work to be undertaken to satisfy safety expectations. If the owner fails to carry out work

as ordered by the MBS, the MBS can cause work to be carried out and recover costs from the owner in court.

Also, the MBS can waive or enforce the requirement to obtain a building permit for works subject to an order. However, whether a building permit is obtained or not a maintenance determination is required under regulation 215 to capture ESMs and maintenance requirements.

Offences under Division 1

Failure to maintain an ESM to the required standard is an offence under Section 40 of the Building Act 1993 and or regulation 216 as applicable and Part 15 of the Regulations.

Failing to complete the required documentation constitutes an offence under regulations 216, 223, 225, 226 and 227. This may include:

- comply with a maintenance determination;
- complete an annual ESM report (in accordance with regulation 224) within 28 days before each anniversary of the OP or RBS's determination
- ensure that an annual ESM report is prepared for a building or place of public entertainment constructed before 1 July 1994 within 28 days before 13 June 2018
- make all annual ESM reports, maintenance schedules, maintenance determinations and the records of all inspections, testing and maintenance (including repairs) available for inspection within 24 hours after a request from the MBS or Chief Officer;
- maintain any required ESM in a state that allows it to fulfill its purpose;
- it is also an offence to remove any required ESM from its approved location (unless for inspection, testing or maintenance).

These offences relate to the building owner.

Offences under Division 2

Failure to ensure that exits and paths of travel to exits, including paths of travel from the building or place to a road are maintained and kept readily accessible, functional and clear of obstruction so that egress from the building or place is maintained constitutes an offence under Regulation 228. An infringement notice issued

under this division is issued to the occupier, however does not prevent infringement notices being issued on the owner for similar issues under division 1.

Owners responsibility

Part 15 of the regulations places direct responsibility on the owner to ensure that the maintenance of ESMs required for their building or place is carried out, and that appropriate records of maintenance, service and repair work are kept. These records provide the necessary information to allow the annual ESM report to be completed, as required by Division 1.

Regulation 224 stipulates the content requirements of the annual ESMs report including:

- the approved form of the report;
- be signed by the owner
- the address of the building or place of public entertainment it relates to;
- details of any inspection report made under section 227E of the Act in respect of each ESM; and

The owner needs to ensure that:

- there have been no penetrations to required fire-resisting construction, smoke curtains and the like in the building or place, other than those for which a building permit has been issued, and
- that there have been no changes to materials or assemblies that must comply with particular fire hazard properties, other than those for which a building permit has been issued, and
- that the information contained in the report is correct

Refer to pages 2 & 6 of this Practice Note for the requirements to adopt AS 1851-2012 in lieu of the standard nominated on the maintenance determination.

Some owners engage an agent to organise the carrying out inspections and testing by competent persons or to complete the annual ESM report on the owner's behalf. Owner agents are typically building or facility managers. However, the owner can appoint an agent. In this case the law dealing with 'agency' applies, and it is prudent that the correct written

authority is provided by the owner, including any limitations of that authority, when providing documentation.

Regulation 225 requires that owners must make the annual report and maintenance records available within 24 hours' notice from the MBS or the Chief Officer. Note that this does not affect the requirement to display an OP in accordance with regulation 197.

Engaging competent persons

It is important that the owner of the building/place or their appointed agent can demonstrate that the individuals engaged to undertake maintenance activities are competent to perform the functions they have been contracted to complete.

A competent person can be defined as:

“A person who has acquired through training, qualification, experience, or a combination of these, the knowledge and skill enabling them to correctly perform the required task.”

A relevant Building Practitioner VBA registration is valid demonstration of competence for some wet fire protection system maintenance activities.

Additionally, evidence of competency can be demonstrated by participation in recognised industry accreditation schemes that have been established to independently assess competence in activities associated with ESMs relating to fire protection.

Using AS1851-2012 for earlier referenced standards

Owners of buildings or places of public entertainment who wish to adopt the latest Standard for fire protection system/equipment maintenance to alter methodology and frequency can do so as a consequence of regulations 196 and 217.

Despite sections 40 and 51 of the Act, and regulation 216, 196 & 217 allows that where a condition on an OP or maintenance determination requires that an ESM must be maintained in accordance with previous editions of AS 1851, compliance with AS 1851-2012 will

satisfy this requirement for frequency and type of maintenance and can be adopted by the owner voluntarily without amending associated OP's or maintenance determinations.

Where AS 1851-2012 is adopted, the owner must continue to comply with AS 1851—2012 in relation to the ESM.

AS 1851-2012 is defined by regulation 5 to mean “AS 1851-2012 Routine service of fire protection systems and equipment, as issued from time to time”. This means even when an amendment is made to the 2012 edition, it is adopted.

An example, if the condition on the OP that applies to the maintenance of ESMs specifies that the ESM must be maintained in accordance with AS 1851 and no date of publication is specified, then the Standard to be used is the version applicable at the date of issue of the OP or the 2012 edition.

If the condition specifies the ESMs must be maintained in accordance with AS 1851 – 2005 or earlier version, this can continue to occur or the 2012 edition can be adopted.

Where an ESM is maintained using AS 1851-2012 in lieu of previous nominated versions of AS 1851, it is considered that the ESM will fulfil its purpose and maintain safety objectives. This applies to a building or place of public of public entertainment which has an OP or maintenance determination that specifies the frequency and type if inspection, testing and maintenance required for an ESM.

Building and places of public entertainment that have ESM's that are not included on the OP or maintenance determination.

Owners of buildings or places of public entertainment constructed (mostly before 1 July 1994), may have ESM's that are not listed on the OP or Maintenance determination. In these instances, the subject ESM's are to be maintained in a state which enables the ESM to fulfil its purpose. Alternatively, the owner can apply to a building surveyor to prepare a maintenance schedule. The maintenance schedule is required to include:

- (a) the level of performance that the essential safety measure must achieve to fulfil its purpose; and
- (b) the frequency and type of inspection, testing and maintenance required for the essential safety measure.

Additional Information

Table 1 contains example information to assist practitioners dealing with places of public entertainment, buildings and building work.

Standards or documentation must be relevant to the building/place and those not relevant must not be listed.

Further Information

Want to know more?

If you have a technical enquiry, please email technicalenquiry@vba.vic.gov.au or call 1300 815 127.

Victorian Building Authority
733 Bourke Street Docklands VIC 3008

www.vba.vic.gov.au

Field

Table 1: Example information – Essential Safety Measures for new building work**Part 1– Building fire integrity**

Essential safety measure required to be provided in the building or place of public entertainment – As described in Schedule 8 of the Regulations where applicable.	Provisions of the Building Regulations 2018 applicable to the installation and operation of essential safety measures. i.e. BCA sections and parts	The level of performance that each essential safety measure must achieve to fulfil its purpose	The frequency and type of maintenance required for each essential safety measure	The frequency and type of testing and inspections required for each essential safety measure
Item 1. Building elements required to satisfy prescribed fire resistance levels	Section C, D1.8, D1.12, D2.8, D2.11, G2.4, G3.4, G3.6, H3.2, 3.7.1.3, 3.7.1.5, 3.7.1.8, 3.7.1.11, 3.7.4.0	CP1 to CP4, CP6 to CP8 DP4 to DP6, GP2.1 & GP2.2 P2.3.1	Yearly	As per AS 1851-2012
Item 2. Materials and assemblies required to satisfy prescribed fire hazard properties	C1.10, 3.7.1.9	CP2 to CP4 & P2.3.3	Yearly	Annual Inspection for damage, deterioration, or unauthorised alteration
Item 8. Solid core doors and associated self-closing, automatic closing and latching mechanisms	C3.11, D1.4, 3.7.1.5	CP2 to CP4, CP8, DP4 & P2.3.1	Yearly	Annual Inspection for damage, deterioration, and check operation of closers, handles and electronic strikes.