

Building Practice Note **ESM-02: Maintenance of Essential Safety Measures**

This Practice Note provides guidance on maintenance of essential safety measures.

The context below provides guidance for:

- What are essential safety measures
- Maintenance Determinations
- Maintenance Schedules
- Reporting and records



Essential safety measures (ESM) are vital to ensuring a safe and healthy built environment in Victoria, and their maintenance is vital for the life, safety, and health of occupants over a building's lifetime.

Abbreviations & Definitions

The abbreviations and definitions set out below are for guidance only. They are not intended to vary those set out in the Building Act 1993 (the Act), Building Regulations 2018 or the National Construction Code (NCC).

- **Act** – The Building Act 1993
- **AESMR** – Annual essential safety measures report
- **AS** – Australian Standard
- **BAB** – Building Appeals Board
- **BCA** – Building Code of Australia (Vol 1 and Vol 2)
- **Chief officer** – Fire Rescue Victoria or Country Fire Authority
- **ESM** – Essential safety measure pursuant to Regulation 214
- **MBS** – Municipal Building Surveyor
- **MD** - Maintenance Determination
- **MS** – Maintenance Schedule
- **PBS** – Private Building Surveyor
- **RBS** – Relevant Building Surveyor
- **Regulations** – The Building Regulations 2018
- **OP** – Occupancy permit

Essential Safety Measures

Essential safety measures (ESM) are the safety features designed and installed in a building to protect occupants in the event of a fire.

The term ‘essential safety measure’ is defined in Part 15 of the Regulations and includes items listed in Schedule 8 of the Regulations:

- a) a safety measure specified in column 2 of the table in each Part of Schedule 8 that is required by or under the Act or these Regulations to be provided in relation to a building or place of public entertainment; or
- b) any other item that is required by or under the Act or these Regulations to be provided in relation to a building or place of public entertainment for the safety of persons in the event of fire and that is designated by the RBS as an ESM; or
- c) any other item that is an ESM within the meaning of regulation 1202 of the Building Interim Regulations 2017 as in force immediately before its revocation; or
- d) any other measure (including an item of equipment, form of construction or safety strategy) required for the safety of persons using a building or place of public entertainment required to be provided in relation to that building or place by or under the Act, or any previous corresponding Act, before 1 July 1994

Scope of the maintenance regulations

As prescribed within regulation 194, 195 and 196, the occupancy permit must include a condition which lists all ESMs, the level of performance it needs to fulfil and the frequency and type of inspection 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.

Alterations and upgrades are likely to be carried out over the life of a building which may impact on the building's existing ESMs.

To ensure a building's safety is maintained as a result of those works, Part 15 of the regulations contains 3 mechanisms to maintain the building's safety over time.

- **Maintenance determinations (MD)** – to capture new or altered ESMs to be maintained
- **Maintenance schedules (MS)** – to consolidate ESMs from occupancy permits and MD issued over the life of the building
- **Reporting and records including AESMR** – to record and report on ESM maintenance obligations

While a building is being occupied, ensuring that the building's exits and path of travel to exits is maintained is a critical fire and life safety item. Therefore, regulation 228 requires that the occupier of a Class 1b, 2, 3, 5, 6, 7, 8 or 9 buildings or place of public entertainment must ensure that the following are accessible, functional, and clear of obstructions:

- all exits of the building or place of public entertainment; and
- any paths of travel to exits in the building or place of public entertainment; and
- any paths of travel on the allotment from exits in the building or place of public entertainment to a road.

Maintenance Determination (MD)

A MD ensures that building works that do not require an occupancy permit, however, result in new ESMs or alters existing ESMs, to be captured within a MD to require the owner to maintain the new or altered ESMs.

A MD under regulation 215, is document that is required to be prepared by the RBS when an ESM is provided or altered by:

- a) a building permit which does not require an occupancy permit; or
- b) an emergency order or building order under Part 8 of the Act.

The maintenance determination must be in the VBA approved form and include the following information:

- the ESM that is subject of the determination
- the level of performance that the ESM must achieve to fulfil its purpose
- the frequency and type of inspection, testing and maintenance required for the ESM.

The maintenance determination must be given to the owner of the building or place of public entertainment:

- a) with the certificate of final inspection if the ESM is required under a building permit; or
- b) without delay after it is made if the ESM is required under an emergency order or a building order.

If the ESM was required under an emergency order or a building work, the maintenance determination must also be given to the relevant council with a report under section 120(2)(a).

Complying with AS 1851-2012 in lieu of earlier Standards

Owners are required to meet their ESM maintenance obligations under the building's occupancy permit conditions and MD pursuant to regulation 195 and 216. This includes the frequency and type of inspection, testing and maintenance requirements which may include AS 1851.

Where an occupancy permit or maintenance determination specifies that the ESM must be maintained in accordance with the superseded 'AS 1851-2005 Maintenance of Fire Protection Systems and Equipment', regulation 196 and 217 allows the owner to instead choose to comply with the current 'AS 1851-2012 Routine Service of Fire Protection Systems and Equipment'. However, where this occurs, the owner must continue to comply with AS 1851-2012 in relation to the ESM.

For example:

- if the condition on the OP specifies that the ESM must be maintained in accordance with AS 1851 and no date of publication is specified, then the AS 1851 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.

Performance Solutions and ESMs

Particular attention needs to be given to the maintenance aspects of a performance solution so that it can be clearly incorporated into the occupancy permit or MD.

Where a performance solution gives rise to an ESM or affects an ESM, the maintenance aspects of the performance solution such as the level of performance, the frequency and type of inspection, testing and maintenance required should be clearly identified.

Where it is unclear, the RBS should request information to determine the appropriate maintenance requirements.

Engaging Competent Persons

It is important that the owner 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' is defined within AS 1851-2012 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." Certain routine servicing ESMs such as for water based fire protection equipment (e.g. fire hose reels, hydrants and valves and fire sprinkler systems) is required to be carried out by an appropriate registered or licensed plumber.

Maintenance Schedule (MS)

A MS is a consolidation document that lists all ESMs contained in previously issued occupancy permits and MDs and the requirements for those ESMs. Essentially the MS allows the owner to refer to a single point of reference rather than numerous occupancy permits or MDs to fully understand their building's ESM requirements.

Regulation 218 requires that a MS must be prepared or updated by the RBS if they issue an occupancy permit for an existing building which contain a ESM requirement (regulation 194) or a MD (regulation 215). Where a MS is required to be prepared or updated, the owner of a building or a place of public entertainment must provide the RBS with all ESM reporting and record keeping documents, referred to in regulation 225, within 7 days after requested by the RBS.

Regulation 219 allows the owner of a building or place of public entertainment to voluntary apply to the MBS or a PBS to prepare a maintenance schedule. If they agree to prepare the maintenance schedule, the owner must provide the MBS and the PBS with all documents referred to in regulation 225.

Documents under regulation 225 to prepare a maintenance schedule include:

- all AESMR within the last 10 years
- all maintenance schedules
- all maintenance determinations
- the records of all inspections, testing, maintenance, and repairs of any ESMs.

The MBS or a PBS preparing a MS must ensure the MS contains information in accordance with regulation 222.

What must Maintenance Schedules contain?

Where a MS is required to be prepared by the RBS due to issuing an occupancy permit or a MD pursuant to regulation 218, regulation 222(1) requires a MS to include all ESMs specified in an occupancy permit and MD relating to a building or a place of public entertainment and the maintenance requirements for those ESMs.

Where the owner has applied to an MBS or a PBS to prepare a MS pursuant to regulation 219, the MS must include:

- a. all ESMs required to be provided for a building or place of public entertainment constructed before 1 July 1994; and
- b. all ESMs specified in an occupancy permit and MD relating to a building or a place of public entertainment and the maintenance requirements for those ESMs.

A MS must be in the VBA's approved form and list the ESMs in chronological order according to the date on which each ESM was required.

Where multiple occupancy permits and MDs exist which list the same ESM and the same requirements for inspection, testing and maintenance, then there is no requirement to include each of these documents as long as each ESM that has been previously specified is included on the MS together with its inspection, testing and maintenance requirements.

Where an ESM is listed on multiple documents with differing requirements for inspection, testing and maintenance (such as specifying a later edition of AS 1851), then the entry with the most current edition of AS 1851 can be referenced on the MS as this should also satisfy all of the documented requirements for that ESM. This could involve copying all of the ESM provisions from an occupancy permit and excluding those where equivalent ESM requirements are specified on a MD, as long as all of the previously documented ESMs are included on the MS (in addition to the inspection, testing and maintenance requirements). The regulations do not allow a building surveyor to change the ESMs or their inspection, testing and maintenance requirements other than the scenario where a later document imposes an equivalent or greater requirement to the same ESM.

Creating a MS under Reg 222(1) , is a matter of consolidating the ESM requirements that have been previously documented. There is no requirement for the building surveyor preparing or updating a MS to check the accuracy of previously documented ESM requirements or check previous fire engineering reports.

Reporting and Records (AESMR)

To provide a report and record of a building's ESM maintenance, regulation 223(1) requires the owner who is required to maintain ESMs as per the building's occupancy permit or a MD to ensure that an AESMR is prepared within 28 days before its anniversary date. The anniversary date being the earlier of the following dates:

- a. the date of the first occupancy permit or amendment to an occupancy permit that required an ESM
- b. the date of the first MD.

Pursuant to regulation 223(2) the owner of a building or a place of public or public entertainment that was constructed before 1 July 1994 with ESMs must prepare an AESMR within 28 days before 13 June each year. However pursuant to regulation 223(3), if building undergoes building work affecting an ESM which results in an occupancy permit or MD being issued, the building's AESMR anniversary date will change in accordance with regulation 223(1).

The AESMR must be in the VBA's approved form and contain the information under regulation 224.

AS 1851-2012 contains requirements relating to routine service records including logbooks, tags, labels, and hardcopy summary records.

Inspection and Enforcement of ESMs

To determine whether ESMs are fulfilling its purpose 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.

Pursuant to regulation 225, the owner must make available within 24 hours upon request by the MBS or chief officer the AESMR within the last 10 years, MS, MDs and records of all inspections, testing, maintenance, and repairs of any ESM. Following inspection, the MBS may also determine it is appropriate to take further enforcement action under Part 8 of the Act to enforce building standards. Such action may include the serving of an emergency order or serving a building notice and building order, as necessary.

Where an emergency or building order is issued to carry out building work which affects the ESMs of the building or place or public entertainment, then a MD is required to be issued by the RBS.

Buildings with Multiple Owners

Buildings such as apartments, offices and retail centres are generally made up of different owners for each sole-occupancy unit who form an owner's corporation. The maintenance responsibilities of the building are commonly contracted to specialist maintenance contractors by the owner's corporation. Where this arrangement occurs, it is prudent that written authority and agency powers are clearly established including any limitations of that authority.

Buildings and places of public entertainment constructed before 1 July 1994

The requirement for the RBS to include ESM conditions on an occupancy permit was first introduced post-1994. Therefore, for buildings built pre-1994 that may have ESMs that is not listed on the OP or MD. In these instances, the subject ESMs 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.

Related Documentation

- AS 1851-2005 Maintenance of Fire Protection Systems and Equipment
- AS 1851 -2012 Routine Service of Fire Protection Systems and Equipment
- Building Act 1993
- Building Regulations 2018

Version History

- Version 2.0, published 28 June 2021, supersedes Practice Note 23: Maintenance of Essential Safety Measures

Contact Us

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

Victorian Building Authority

Goods Shed North
733 Bourke Street
Docklands VIC 3008

www.vba.vic.gov.au

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