

Understanding the legal obligations for fire servicing and maintenance

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Overview

1. The Regulatory Landscape
2. Key Obligations – Legal and Insurance implications
3. What are Essential Fire Safety Measures (EFSM)?
4. Parties' Legal Responsibilities
5. Non-Compliance Risks
6. Best Practice for Compliance

Fire Servicing and Maintenance. A National Framework.

The Regulatory Landscape

The regulatory landscape in Australia



- The NCC is given legal effect in each State or Territory by the relevant Building Act and Regulations
- The same is true for the AS 1851-2012, where state or territory acts and regulations mandate compliance with the applicable standards.
 - e.g Part 15 *Building Regulations 2018* (VIC)

Fire Protection Systems

What are Fire Protection Systems?

Typical Systems include:

- Fire detection and alarm systems
- Sprinkler systems
- Fire hydrants and hose reels
- Fire extinguishers
- Emergency and exit lighting
- Smoke control systems

In Victoria, these are referred to as *Essential Safety Measures*, and they are defined in Part 15 of the *Building Regulations 2018*.

Jurisdiction	Equivalent of Vic Schedule A
NSW	EP&A (Development Certification and Fire Safety) Reg 2021 – Clause 79 (Statutory fire safety measures)
QLD	Building Fire Safety Regulations (fire safety installations) -Onus on owner do ensure maintenance of FSI's per r 54 -Onus on owner to keep a record of maintenance per r 55 Building Act 1975 defines 'Fire Safety Installation' pp 375
SA	Development Regs 2008 + Minister's Specification SA 76 (Essential Safety Provisions)
WA	Building Regs 2012 – Reg 48A (Safety measures) -Onus on owner to maintain safety measures r 48A(2)(a)
TAS	Building Regs 2016 – Reg 72 (Essential building services) -Onus on 'responsible owner' to maintain essential building services r 73(1)
ACT	Building Reg: Emergencies Act 2004 + prescribed fire safety installations, (Fire Safety Systems) Proper Maintenance
NT	Fire and Emergency Regulations 2017 – (Safety measures) -No current requirement for Annual Service Statement
VIC	Building Act 1993, Building Reg 2018 - Schedule A (Essential Fire Safety Measures)

Who is ultimately responsible for Fire Protection Systems?

Fire Protection Systems must be maintained to ensure the safety of occupants and the broader community.

Ultimate responsibility lies with the Building Owner and Business Owner Occupier to ensure that:

- Maintenance is conducted by suitably qualified contractors
- Safety logs are kept on site and available for inspection

Your Responsibilities

Your scope of responsibilities

Fire contractors are engaged by building owners/occupiers to carry out routine maintenance, testing and servicing of fire systems in accordance with AS1851.

You need to

Verify and demonstrate your staff is competent to carry out its contracted responsibilities

“a competent person is someone that has ‘acquired through training, qualification, experience, or a combination of these, the knowledge and skill enabling them to correctly perform the required task.’”

- AS 1851-2021

Ensure your workers properly fulfil all contractual and statutory obligations when carrying out maintenance and testing.

Eg. Maintain accurate site logbooks, recording all inspections, testing and maintenance of fire systems.

So ...

**what is the scope of
liability for contractors?**

Pain Points

01

**Contractual
Liability**

02

**Tort
(Negligence)
Liability**

03

**Australian Consumer
Law
(Misrepresentation)
Liability**

Law in action: Tanah Merah Vic Pty Ltd v Owners Corporation No 1 and Ors [2021] VSCA 72

“Lacrosse Tower Fire”

- a fire started on the balcony of apartment 805 in the lacrosse tower, docklands
- it was caused by a discarded cigarette and spread rapidly because of combustible ACP cladding
- the incident resulted in more than \$12 million in damage
- the owners corporation sued the builder, and the court held the builder liable for the full cost
- the builder then pursued its contractors (building surveyor, architect and fire engineer)

the court found the building surveyor, architect and fire engineer responsible for the loss incurred and apportioned cost between the parties to reimburse the builder

KEY TAKEAWAYS

The Lacrosse decision makes it clear: high professional standards at the top flow down to everyone in the fire-safety chain.

If you fail to meet your responsibilities, you will end up paying for it

**Law in action:
Tanah Merah Vic
Pty Ltd v Owners
Corporation No 1
and Ors [2021]
VSCA 72**

**“Lacrosse Tower
Fire”**

Best Practice for Risk Mitigation

Negligence Best Practice –

- **Performance**
 - Perform all maintenance services in accordance with your contract
- **Reasonable standard and care to fulfil your obligations, including ensuring:**
 - Fire Systems are operational
 - Fire Systems are maintained to standards required (including AS 1851-2012)
 - Owners are warned of defections, degradations, or unsafe equipment.
- **LIMITS !**
 - Stay within the limits of your contractual retainer

Contract Best Practice –

- **Review your contracts !**
 - With the owner
 - With your sub-contractors
- **What are your terms of engagement?**
 - Risk allocation?
 - Responsibilities?
- **Have any contractual warranties or indemnities been made?**
- Consider proportionate reduction or liability cap provisions in contracts
- Consider the kind o scenarios and process that you would like to be covered under indemnities

Misrepresentation Best Practice –

- **Be comprehensive:** Tell the property owner everything relevant – more information is better than less.
- **Check understanding:** Ask the owner to explain their understanding back to you.
- **Invite questions:** Always ask if they have any questions or concerns.
- **Clarify misunderstandings:** If you suspect they've misunderstood anything you've said, stop and clarify.
- **Be proactive in communication:** Don't wait to be asked – volunteer important information and updates.
- **Positive obligation to be truthful:** Your intention doesn't matter; you must always be accurate, honest and not misleading.

Reporting Discipline –

Record all:

- Inspections;
- Non-compliances,
- Degraded performance,
- Access limitations,
- Assumptions made;
- Reports/Warnings to Owners as to fire safety systems;
- Rectifications.

These are critical to defending post-incident claims

Insurance

Speak with your insurance provider and confirm your policy won't exclude:

- Fire system performance failures
- Regulatory breach consequences
- Fire related defects

Penalties for Non-Compliance

Non-Compliance under VIC Building Act

Breached Regs	Description	Penalty
R 216	Must comply with maintenance determinations, including ensuring: each ESM subject to a maintenance determination is performing at the required level, and is inspected, tested and maintained in the manner specified.	PENALTY: 20 Penalty Units (\$4,070.20)
R 223(1)	Preparation of an Annual ESM prepared in accorded with r 224	PENALTY: 20 Penalty Units (\$4,070.20)
R 225	Relevant documents (all annual ESM reports for the last ten years, all maintenance schedule, maintenance determinations, records of inspections, testing and maintenance) to be made available for inspection within 24hours of an inspection request	PENALTY: 20 Penalty Units (\$4,070.20)
R 226	ESMs must be maintained in a state that enables them to fulfil their purpose	PENALTY: 20 Penalty Units (\$4,070.20)

Conclusion

Compliance

+

Accountability

+

Understanding of State Specific Requirements



Q & A

Use this portion of your presentation to answer audience questions.