

Department of Planning and Environment

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Window safety in homes

Discussion paper

July 2023





Acknowledgement of Country

The Department of Planning and Environment acknowledges that it stands on Aboriginal land. We acknowledge the Traditional Custodians of the land and we show our respect for Elders past, present and emerging through thoughtful and collaborative approaches to our work, seeking to demonstrate our ongoing commitment to providing places in which Aboriginal people are included socially, culturally and economically.

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Introduction

All people have the right to feel safe and secure in their home, however unsecured windows are potentially lethal to young children who often play unsupervised within dwellings and climb onto beds or other furniture in bedrooms, living rooms and other spaces within dwelling that are near windows. When children fall out of windows that are located above ground level, they often suffer serious or fatal injuries. Every death or serious injury resulting from a fall from a window is not only a tragedy for the family and friends of that child, but also the broader community.

The responsibility for ensuring that are our homes are safe for children is shared between property owners and the NSW Government. Whilst nothing can replace vigilant adult supervision of children, property owners can cheaply and easily install window safety devices to those windows posing the highest risk to children to help prevent further tragic deaths. The role of the NSW Government as legislator is to introduce mandatory requirements for the installation of those safety devices to reinforce the serious nature of this risk.

This discussion paper outlines proposed reforms to legislation applying to some residential dwellings which will make it mandatory for property owners to install window safety devices in NSW homes. Certain window safety requirements in legislation only apply to newer residential dwellings built from 1 May 2013 onwards and residential apartments that are within strata schemes. The proposed reform aims to make older homes and non-strata apartment buildings safer through application of these requirements.

A **window safety device** is a security screen, lock or any other device capable of restricting a window from opening.

Statistics cannot show how many children have been saved from death or serious injury in the last 20 years since the requirements for window safety devices were introduced for new homes and strata buildings. However, a NSW Deputy State Coroner's report for a tragic incident in 2019 that resulted in the death of a 15 month old child who fell through a window from her family's third floor apartment found that a window in her dwelling that did not have a safety lock¹ contributed to her death. Accordingly, the Deputy State Coroner made recommendations that relevant laws be amended to improve safety.

In response to the coronial findings, the Department of Planning and Environment now proposes changes to help prevent future instances of falls from windows. In the past, the NSW Government has acted to implement coronial recommendations such as making it mandatory to install smoke alarms and swimming pool fences where statistics show that safety devices can mean the difference between life and death. The Government is now considering changes to make windows in homes safer as recommended by the Deputy State Coroner.

¹ NSW Deputy State Coroner (2022) *Inquest into the death of Chatchaya ITTIVITHCHAI*

The department has prepared this discussion paper to help you understand the following key aspects of the proposal:

- mandatory installation of window safety devices in all Class 1a (which includes houses and townhouses) and Class 2 (apartment buildings) residential buildings, as defined in the Building Code of Australia (BCA)
- new window safety requirements for buildings built before May 2013, including houses, terraces, town houses and non-strata apartment buildings
- exclusions to the requirements, such as for certain window types
- implementation, compliance and penalties.

The need for action

Parents and guardians may think that incidences of children falling from windows in houses and apartments are freak accidents that are unlikely to occur in their home, however, there have been many tragic instances of this occurring in NSW. In September 2021, a six-year-old boy fell from a third-floor apartment window in Marrickville and suffered serious head and chest injuries. In August 2021, a two-year-old boy fell from a second storey window in a Baulkham Hills house onto concrete below and suffered serious head injuries. In January 2021, a four-year-old boy fell from a second storey apartment window in Mortdale and also suffered serious head injuries. In February 2019 a fifteen-month-old girl died after falling from a third storey window in an apartment building in Glebe. Current measures are not enough to address this public safety risk, so we must act to help prevent future incidents.

According to Westmead Children's Hospital data², child behaviour (such as climbing or jumping) or parental behaviour (such as not enough supervision or placing furniture near windows) contributed to most incidents. Specific building features were also a factor, such as low windowsills, windows that were fully open or could be opened, and lightweight insect screens that may have created a false sense of security.

Deputy coroner's report and recommendations

The NSW Deputy State Coroner recently released a [report](#) highlighting that requirements for window safety devices vary depending on building age and type of ownership (for example, Torrens title or strata title). The report investigated the death of a fifteen-month-old toddler who fell from the bedroom window of her family's home in Glebe. The window was in an apartment located on the third floor of a building where the report stated the requirements for window safety devices in the BCA 2013 and the *Strata Schemes Management Act 2015* (SSM Act) did not apply because it was an older building under company title arrangements.

² NSW Fair Trading (2013) *Children and Window Safety Consultation Paper*, p.5.

In the report, the Deputy State Coroner described how tragic deaths that are sudden and unexpected affect not only those known to the deceased but also the wider community. Accordingly, the coronial inquest considered whether any action could be taken to prevent other similar deaths from occurring in the future. The Deputy State Coroner made 2 recommendations to the former NSW Minister for Planning and Minister for Homes to prevent this type of tragedy occurring again. These recommendations are summarised below:

1. Legislative changes ‘to ensure that child window safety devices (as defined in cl. 30 of the Strata Schemes Management Regulation 2016 (NSW)) are required to be installed in all Class 2 buildings (as defined in the Building Code of Australia)’.
2. Consult with the property industry and broader community on expanding this requirement to ‘all residential dwellings such as houses, townhouses or terraces (Class 1a buildings as defined in the National Construction Code)’.

Current window safety requirements in homes

Window safety requirements currently apply to all NSW residential buildings that are in strata schemes under the SSM Act and Strata Schemes Management Regulation 2016 (SSM Regulation). These requirements do not apply to residential buildings that are not within a strata scheme, such as individually owned buildings or company titled buildings.

Requirements also apply under the BCA for all residential buildings with additional, stricter requirements introduced in the 2013 version of the BCA. The BCA makes up Volume 1 and 2 of the National Construction Code. These requirements do not apply to residential buildings constructed before 2013.

Existing requirements for residential strata buildings

The SSM Act requires owners corporations to ensure **specified windows** in a strata scheme are fitted with complying window safety devices. Clause 30 of the SSM Regulation specifies that the requirement applies to windows (defined by the BCA) in a strata scheme that can be opened and are located as illustrated in Figure 1.

This window needs a safety device

This window does not need a safety device

If an openable window is less than 1.7m above the floor and the floor is more than 2m above the outside ground, a safety device must be installed

An openable window higher than 1.7m above the floor does not require a window safety device

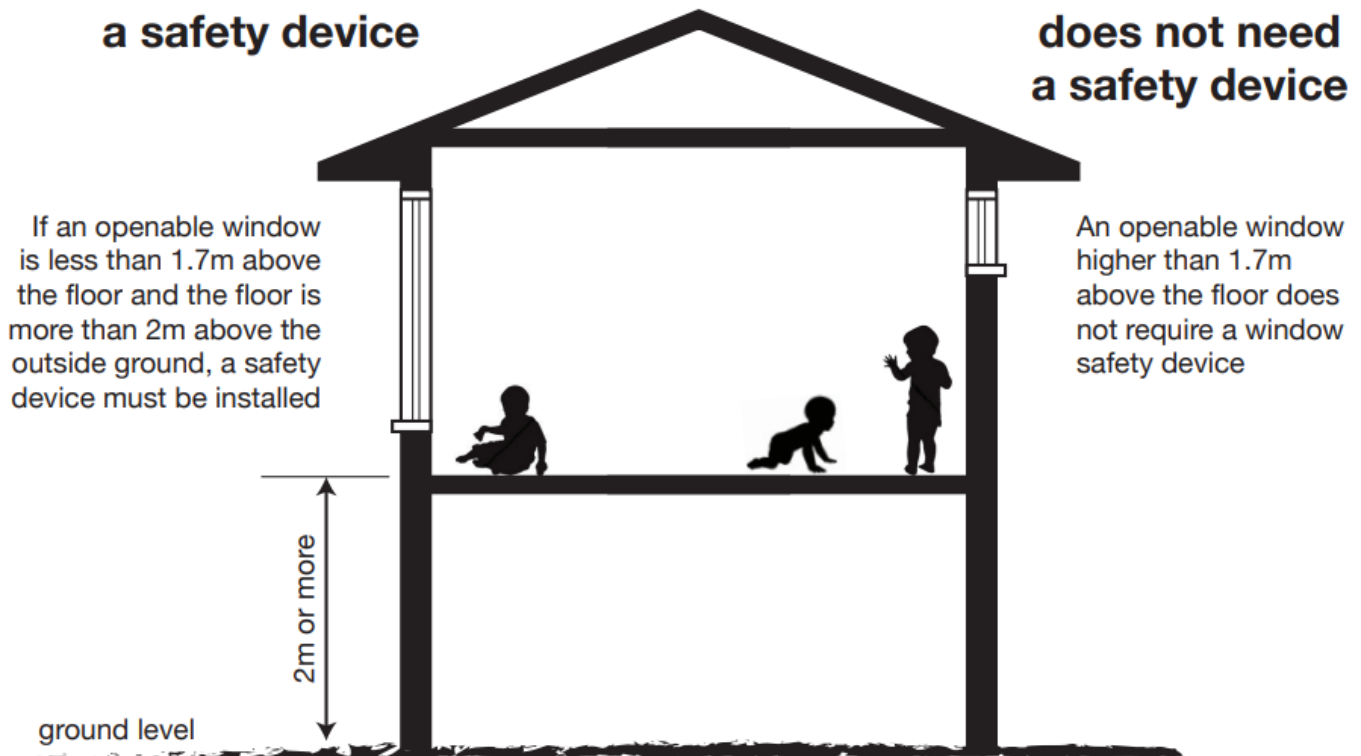


Figure 1 Illustration of windows where safety devices are required for residential strata buildings (Source: NSW Fair Trading)

Clause 30(3) identifies complying **window safety devices** as being screens, locks or any other devices that:

- can restrict the window opening to less than 125 mm
- resist forceful opening of windows (up to 250 newtons – equivalent to 25 kg)
- have child-resistant release mechanisms – if the safety device can be removed, overridden or unlocked.

Existing BCA requirements for residential buildings

In NSW, provisions in the BCA are given effect through the *Environmental Planning and Assessment Act 1979* (EP&A Act). All development in NSW, whether approved through a development application or a complying development certificate must comply with the BCA.

In May 2013, the BCA introduced requirements for window safety. The current requirements (in the 2022 edition of the code) apply to openable windows in new early childhood centres and bedrooms of new residential buildings (including Class 1, 2 and 3 buildings, and Class 4 parts of buildings). Requirements apply where the floor below the window is 2 m or more above the surface beneath and where the lowest level of the window opening is less than 1.7 m above the floor level (see Appendix B for more detail). The BCA requirements are similar to the SSM Act requirements. However, the SSM Act requires window safety devices for all specified windows of residential buildings in a strata scheme, not just bedrooms.

Note: The BCA also has barrier requirements for windows not covered by the above requirements where the floor below the window is 4 m or more above the surface beneath.

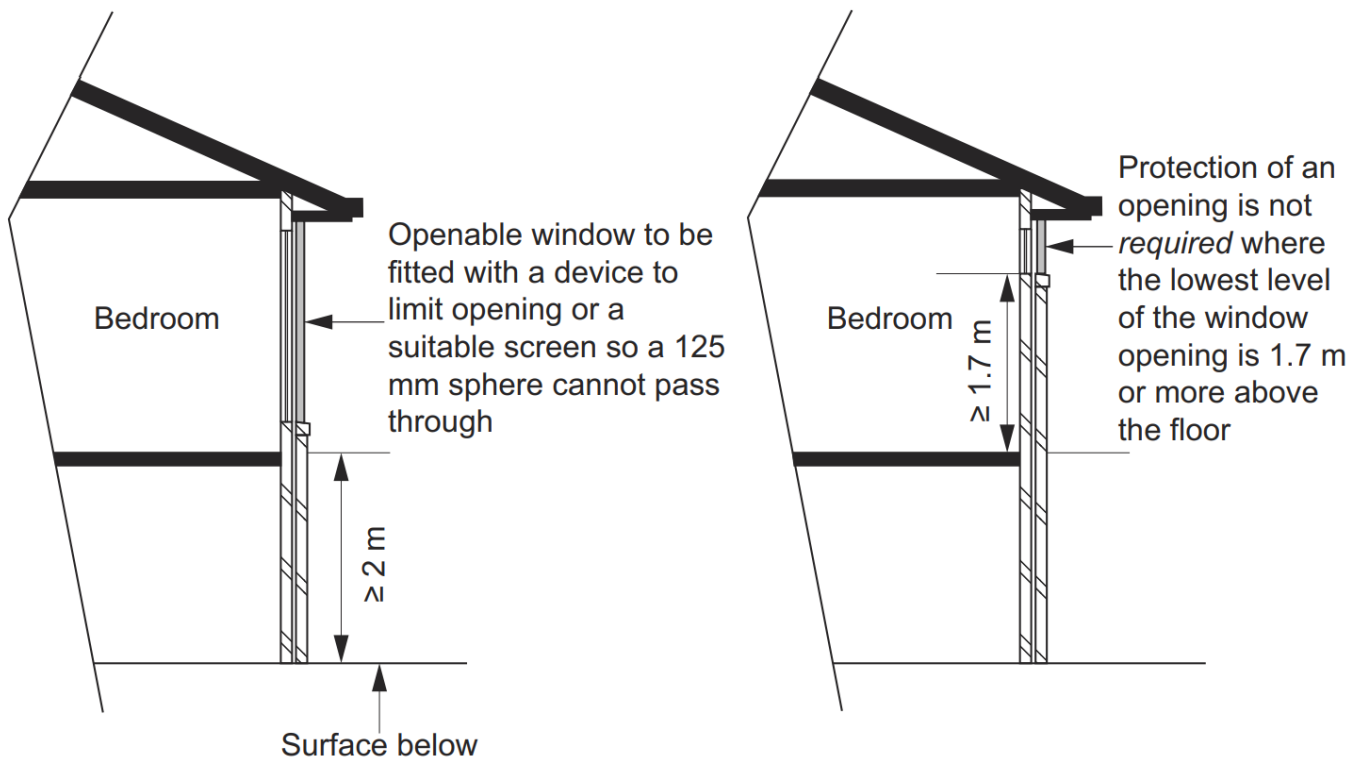


Figure 2 Illustration of BCA requirements for the protection of openable windows (Source: ABCB Housing Provisions Standard)

Existing NSW residential tenancies legislation

Clause 22 of the Residential Tenancies Regulation 2019 specifies the kinds of fixtures or alterations, additions or renovations of a minor nature that a landlord must not be unreasonably prevent. These include window safety devices for child safety but doesn't apply to strata residential buildings.

While this regulation removes a potential barrier to installation of safety devices in some circumstances, the Deputy Coroner's report questions if all tenants would request such modifications. Not all tenants may be aware of the potential risk, and the tenant must pay to install the devices.

Proposed improvements to window safety in homes

Children continue to suffer injuries and death from falling out of residential building windows in NSW because the current requirements do not apply to older homes, non-strata apartment buildings and windows other than bedrooms in newer dwellings. Addressing this regulatory gap is a significant and urgent matter. It will help prevent safety risks to children, regardless of building age or ownership type.

Current requirements mean safety devices are not mandated for certain windows which may represent a safety risk in **non-strata residential buildings**:

- built before the introduction of new window safety requirements in the 2013 BCA
- built after the BCA 2013 applied, for rooms other than bedrooms

Non-strata residential buildings include those with other forms of title (ownership) such as Torrens title (typically houses) and company title.

To close this legislative gap and apply child safety measures for windows in all forms of houses and apartment buildings, the department proposes changes to the NSW planning legislation.

Proposal

In response to the Deputy Coroner's recommendations, the department proposes to change the *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021* (DC&FS Regulation). The DC&FS Regulation is the building regulation under the EP&A Act, which is the principal Act regulating planning in NSW. It is proposed to make changes under EP&A Act section 10.13(1)(d), which allows for regulations to be made for fire and building safety.

The DC&FS Regulation deals with building matters, so it is an appropriate location for legal requirements for new window safety provisions.

The Department proposes making it mandatory to install **window safety devices** on **specified windows** of most residential dwellings.

The proposal would apply to houses, townhouses, terraces, apartments and any other dwellings which are classified as 1a or 2 under the BCA.

The terms **specified windows** and **window safety devices** would be as defined in clause 30 of the Strata Schemes Management Regulation 2016 (see summary under 'Requirements for residential strata buildings' above). Using the clause 30 definition would exclude less dangerous windows such

as those close to ground level or with a high sill height from the proposal, minimising costs for homeowners.

The property owner would be responsible for paying for and installing the window safety devices. A simple solution is a window safety lock that can be purchased cheaply from hardware stores and does not necessarily require installation by tradespeople or other professionals.

Property owners would not need development consent or the consent of an owners corporation / management body of an apartment building to install window safety devices. This is consistent with how smoke alarms are installed.

Approval under the *Heritage Act 1977* may be required for window safety devices that require alterations to a State heritage listed building. Currently, some alterations to non-significant heritage fabric and interiors of non-significant heritage buildings are exempt from approval under the Standard Exemptions. The department proposes to work with the Heritage Council of NSW on a review of the current Standard Exemptions to allow installation on significant heritage fabric and buildings without approval.

A wide range of safety devices are currently available that can be fitted to windows. These include locks and latches that restrict opening and reinforced window guards or screens as well as other physical barriers. Window safety devices will be required to meet the performance standards in clause 30(3) of the SSM Regulation – listed above.

Transitional period

The department proposes a transitional period of 18 months after the changes to the DC&FS Regulation begins, to allow sufficient time to install devices. If a residential dwelling is being sold or leased during this transitional period, an option could be to require:

- a) the property owner who is selling the residential dwelling must install the devices if settlement is due to happen within 6 months of the transitional period ending
- b) the property owner who is leasing the residential dwelling must install the devices if the lease is due to begin within 6 months of the transitional period ending.

Exclusions

As illustrated in Figures 1 and 2, the installation of window safety devices only applies to specified windows. These requirements exclude windows that don't open and would typically exclude skylights and windows above doors.

Installation of window safety devices is not intended to impede windows that may be used as escape routes in the event of a fire or other emergency. Devices should also allow for window cleaning where needed. Safety devices that can be overridden by people above an appropriate age could be considered for these circumstances.

In addition, the proposal would not apply to other buildings where people live, such as:

- BCA Class 1b buildings, for example small boarding houses, guest houses or hostels.
- BCA Class 3 buildings, for example boarding houses or other tourist accommodation larger than class 1b buildings and care-type facilities.

- manufactured homes or moveable dwellings within the meaning of the *Local Government Act 1993*.

Owners of these excluded buildings can consider how to achieve adequate window safety to minimise the risk of falls.

Applying changes retrospectively

Building requirements typically only apply to new building work. This is due to the individual nature of existing buildings, the physical constraints of existing structures and the potential impact of continuously upgrading a building.

However, applying building requirements after a home has been built has been done before where it is necessary for health and safety. Examples include requirements for smoke alarms and swimming pool fencing (see Appendix A) after a home has been built. These are a precedent for applying window safety measures after construction in residential buildings.

The Department is aware that the proposed changes will affect a significant number of home owners across NSW. However, the proposal aims to strike the right balance between improving home safety for children and the cost to homeowners. Meeting the proposed requirement can be achieved relatively cheaply and with minimal change to the structure of a home through simply installing window locks, which is a small imposition given the tragic consequences of not addressing this safety risk.

Summary of proposal and exclusions

The department proposes making it mandatory to install child window safety devices in most buildings where children live, sleep or are commonly present. The proposed changes would be in addition to current requirements and are aimed at capturing buildings and windows that are currently excluded from legislative requirements, so that we close the regulatory gap and make homes safe for children.

Table 1 summarises current window safety device (WSD) requirements and where they would now be required under the proposed reforms. Note this table does not include current window safety barrier requirements under the BCA. See Appendix C for a summary of building types mentioned in Table 1.

Table 1 Summary of window safety requirements and proposed new requirements

Current requirements for window safety devices	Proposed reforms
Multi-unit buildings	
<p>Openable windows in any room in a dwelling within a strata building (Class 1a and 2 such as townhouses and apartments) require WSDs, where the floor is 2 m or more above the ground outside and where the lowest sill level is less than 1.7 m above the floor, as illustrated in Figure 2.</p>	<p>No change.</p>
<p>Openable windows in non-strata Class 1a and 2 residential buildings built before 2013 have no WSD requirements. Requirements apply for bedrooms in these buildings built after 2013, as illustrated in Figure 2.</p>	<p>Require WSDs for all openable windows in all rooms of a Class 1a or 2 residential buildings that meet the height criteria, as illustrated in Figure 2.</p>
Dwelling houses	
<p>Openable windows in bedrooms of residential dwellings (Class 1a) built after 2013, where the floor below the window is 2 m or more above the ground outside and where the lowest sill level is less than 1.7 m above the floor, as illustrated in Figure 2, can have WSDs installed to satisfy the requirements.</p>	<p>Require WSDs for all openable windows in all rooms of a Class 1a dwelling that meet the height criteria, as illustrated in Figure 2.</p>
<p>No WSD requirements apply to Class 1a residential buildings (such as houses) built before 2013.</p>	<p>Require WSDs for all openable windows in Class 1a dwellings regardless of when the dwelling was built, where the floor is more than 2 m above the ground outside and where the lowest sill level is less than 1.7 m above the floor, as illustrated in Figure 2.</p>
Multi-occupancy buildings	
<p>Openable windows in bedrooms of multi occupancy buildings such as boarding houses, guest houses or hostels (Class 1b) built after 2013, where the floor below the window is 2 m or more above the ground outside and where the lowest sill level is less than 1.7 m above the floor, as illustrated in Figure 2, can have WSDs installed to satisfy the requirements. No WSD requirements apply to these buildings if built before 2013.</p>	<p>No change.</p>
Early childhood centres	
<p>Openable windows in early childhood centres (Class 9b) built after 2013 where the floor below the window is 2 m or more above the ground outside and where the lowest sill level is less than 1.7 m above the floor, as illustrated in Figure 2, can have WSDs installed to satisfy the requirements. No WSD requirements apply to these buildings built before 2013.</p>	<p>No change.</p>



What do you think?

We are keen to hear your views on this proposal. Please consider the questions below in your answer:

- Is the proposal targeted at the appropriate residential building classifications?
- Do you think retrospective application is reasonable?
- Are there any other window or building types which should be considered for exclusion from the requirement?
- Should the requirements apply to all windows on the upper floors of a dwelling?
- Is 18 months long enough for property owners to meet the proposed requirements?

Please give reasons.

Alternative options

When developing the proposed reforms, the department considered a range of options to ensure that the preferred option strikes the appropriate balance. These other options are as follows:

1) Apply the requirements to all apartments only

It is not the department's preferred option to apply the requirement to only residential apartment buildings. This would not address the risk to children living in other types of homes types such as houses and townhouses. These are likely to have windows with similar risks and past incidents have shown that children falling from the upper levels of two storey homes can suffer serious injury. In addition, the ownership arrangements or titling (such as Torrens title, strata title, community title) of buildings does not influence the risk level, so this shouldn't be a be a factor in applying the requirements.

In comparison, the EP&A Regulation requires owners to install smoke alarms in buildings where people sleep, regardless of the type of home, ownership or titling of the building due to the serious safety risk and health consequences from fire. The risk and consequence of children falling from unsecured windows is considered similar to that of fire.

2) Apply to bedroom windows or windows in specified rooms only

This alternative option would require property owners to install safety devices only on residential bedroom windows. This option would result in lower installation costs as fewer windows would need

safety devices. Some rooms in the home (such as kitchens, laundries and master ensuites) are likely to be lower risk because children are less likely to play unsupervised there.

However, applying this requirement to bedroom windows only is not the department's preferred option because it excludes other rooms in a home that may have windows of unacceptable risk. Children can access those windows in a similar manner to bedrooms, for example by climbing on living room furniture.

The option of applying the requirement to a list of different types of rooms in a home would make the regulation unnecessarily complex and the department would need to update it as new room types emerge.

3) Apply to all buildings where children live, sleep or commonly occupy

This option extends the proposal to apply to buildings such as those listed in 'Exclusions' above, plus any other buildings that a child may commonly occupy.

This option would impose a higher and widespread cost on the community, particularly building owners. The Department considers that its preferred proposal (which applies to specified windows for dwellings that are classified as 1a or 2 under the BCA) ensures most buildings where children live will require window safety devices. These include the most common residential building types: houses, townhouses, terraces, apartments and any other dwellings which are classified as 1a or 2 under the BCA. The regulatory change we propose aims to cover all higher risk windows in most buildings where falls commonly happen.

Other buildings that children commonly occupy (such as schools and child-care centres) are subject to other safety requirements, and children are typically under close supervision. No changes are proposed to the existing requirements applying to these buildings.

Where a building is not subject to the requirement, property owners and occupiers can consider the need to install window safety devices where children are at risk of falls.

Implementation and enforcement

Ensuring homes are safe for children is a joint responsibility between property owners, parents/guardians of children and the NSW Government.

It is the Government's intent to promote compliance through a focus on community education, encouraging property owners to install window safety devices as a means of improving their home safety, rather than through fear of sanction. An extensive community education campaign will be undertaken if the proposed reforms are made to support homeowners in achieving compliance. Additionally, an 18-month compliance period is proposed to enable home owners to install window safety devices, which can be as simple as an easily installed window lock purchased from hardware stores for less than \$20.00. This is a small investment in a basic precaution that could save a child's life and prevent future tragic events.

Compliance and penalty options

Whilst the best way to ensure the safety of children in homes is to ensure that property owners take responsibility for window safety, the consequences of non-compliance can be tragic. This is why the Department proposes to introduce a new penalty notice provision into the DC&FS Regulation to encourage property owners to comply. Options for maximum penalty amounts include:

- 5 penalty units (\$550), consistent with window safety device non-compliance in section 118 of the SSM Act
- 20 penalty units (\$2,200), consistent with the smoke alarms non-compliance in sections 95 and 96 of the DC&FS Regulation
- 50 penalty units (\$5,500), consistent with child resistance barriers non-compliance under the *Swimming Pools Act 1992*.

A regulatory authority could issue the proposed penalty notice to a property owner who fails to install window safety devices on specified windows.

The department will decide on the final compliance approach after considering feedback from this discussion paper.

Additional compliance options

Proactive enforcement of the new requirements would be difficult. Council or other regulatory authorities can only enter residential premises in a narrow set of circumstances, set out in section 9.16 of the EP&A Act.

Unlike swimming pools which are located at only a small percentage of residential properties, it would not be economically feasible to conduct an inspection of almost every residential dwelling in NSW. While we could introduce an inspection power, it would be a significant cost burden to councils or other regulatory authority to carry out. The regulatory authority would need to identify affected properties, give notice to those property owners, and then carry out inspections of every affected dwelling.

Options supporting compliance include:

- an education campaign to promote the safety benefits of complying with the requirements
- changes to the planning regulations so that any alterations to existing dwellings would have a development consent condition requiring inspection and certification of compliance for window safety devices
- an added penalty for any person who interferes, tampers with or removes a required window safety device. This is similar to the existing compliance approach for smoke alarms
- a notice on a contract of sale informing purchasers of the requirements for window safety devices, similar to current requirements for notice about smoke alarms under the Conveyancing (Sale of Land) Regulation 2022.



What do you think?

Which penalty amount do you think is adequate to encourage compliance?

Would you support any of the additional compliance options proposed above? Why/why not?

Appendix A: Examples of safety regulations for homes

Smoke alarms in homes

In 2006, NSW planning legislation was changed to require owners of certain classes of existing buildings to install smoke alarms in buildings where people sleep. It had been mandatory in the BCA since the mid-1990s that hard wired smoke alarms be fitted in all new dwellings and new building works where a bedroom formed part of the works. The change to the regulation aimed to make sure all other buildings where people sleep were retrofitted with smoke alarms. There was a 6-month transitional period for installation.

Child-resistant barriers around swimming pools

Inadequate swimming pool fencing has been one of the major contributing factors for the drowning and accidental death of children under age 5. Since 1990, the *Swimming Pools Act 1992* (SP Act) and associated regulation and the Australian Standard 1926 (AS1926) established standards for pools safety requirements in NSW.

Under the SP Act, pool owners in NSW must have a child-resistant barrier around their swimming pools and must ensure the barrier is in good repair and working condition.

In 2014, changes were made to require owners to register their pool ownership. Random assessments for conformity were introduced and a maximum of 50 penalty units (or \$5,500) for non-compliance. These apply to all swimming pools on premises where there is a residential building, a movable dwelling (for example a caravan), a hotel or a motel.

The current requirements for child-resistant barriers vary depending on when the pool was built and where the pool is located.

Appendix B: BCA window safety requirements

The BCA requirements apply to bedroom windows that can be opened in residential buildings where the floor below the window is 2 m or more above the external ground level.

If the window is 2 m or more above the external ground level and less than 1.7m above the floor level, as illustrated in Figure 3, a window safety device can be installed to comply with the BCA.

These must have either a fixed or lockable device or screen with secure fittings so that a window can be restricted to an opening of 125 mm or less. They must have enough strength to resist an outward horizontal force of 250 N (approximately 25.5 kg) against the window to prevent young children falling out of a window. If the screen or device can be removed, unlocked or overridden, a child resistant release mechanism together with a barrier at least 865 mm in height must be provided.

The BCA also has barrier requirements for windows not covered by the above requirements where the floor below the window is 4 m or more above the surface beneath.

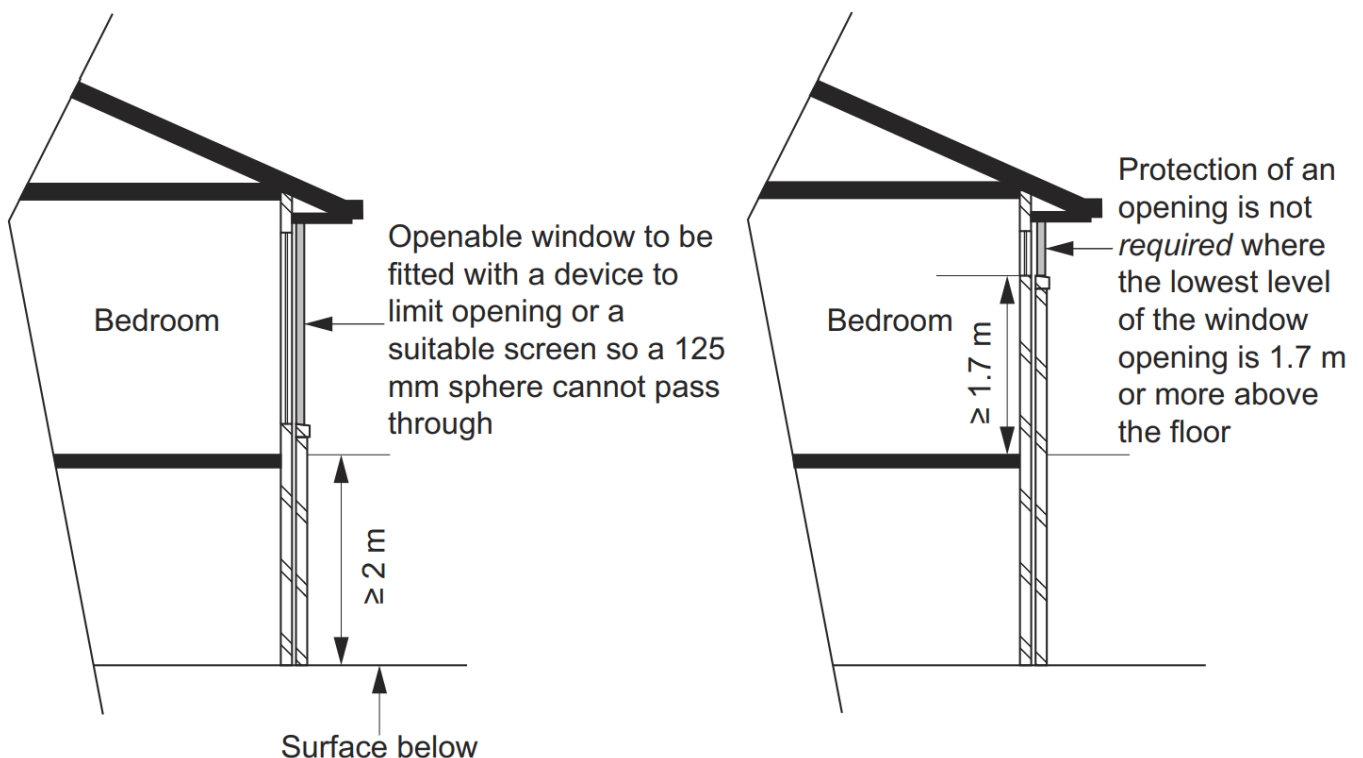


Figure 3 Illustration of BCA requirements for the protection of openable windows (Source: ABCB Housing Provisions Standard)

Appendix C: Building types

Table 2 Building classes where the proposed new safety measures will or will not apply

Building type	Description	Does the proposal apply to this class?
BCA Class 1a	Single dwelling such as a detached house or attached dwellings such as townhouses and terraces.	Yes
BCA Class 1b	Small boarding houses, guest houses or hostels (<300 m ²), or 4 or more single dwellings on an allotment used for short-term rental accommodation.	No
BCA Class 2	Apartment buildings or single storey attached dwellings with a common space below.	Yes
BCA Class 3	Common places of long term or transient living for a number of unrelated people such as boarding houses, guest houses, hostels or other tourist accommodation larger than Class 1b buildings (≥300 m ²), dormitories or care-type facilities.	No
BCA Class 4	Sole dwellings or residences within buildings of a non-residential nature such as a caretaker's residence in a storage facility.	No
BCA Class 9b	Buildings in which people may gather for social, theatrical, political, religious or civil purposes such as childcare centres.	No
Manufactured homes	Self-contained dwellings (has at least one kitchen, bathroom, bedroom, living area and toilet and laundry facilities) with one or more major sections, and are not motor vehicles, trailers or other registrable vehicles. This includes any associated structures.	No
Moveable dwellings	<ul style="list-style-type: none"> Any tent, caravan, other van or other portable device (whether on wheels or not), used for human habitation A manufactured home. 	No