



New South Wales

# Environmental Planning and Assessment Amendment (Quality of Construction) Act 2003 No 95

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New South Wales

# **Environmental Planning and Assessment Amendment (Quality of Construction) Act 2003 No 95**

Act No 95, 2003

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An Act to amend the *Environmental Planning and Assessment Act 1979* and certain regulations with respect to the quality of building construction; and for other purposes. [Assented to 10 December 2003]

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**The Legislature of New South Wales enacts:**

**1 Name of Act**

This Act is the *Environmental Planning and Assessment Amendment (Quality of Construction) Act 2003*.

**2 Commencement**

- (1) Except as provided by subsection (2), this Act commences on a day or days to be appointed by proclamation.
- (2) Sections 3 and 5 and Schedule 1 [27], [32], [39] and [42]–[44] commence on the date of assent to this Act.

**3 Amendment of Environmental Planning and Assessment Act 1979 No 203**

The *Environmental Planning and Assessment Act 1979* is amended as set out in Schedule 1.

**4 Amendment of environmental planning and assessment regulations**

The *Environmental Planning and Assessment Regulation 2000* and the *Environmental Planning and Assessment (Savings and Transitional) Regulation 1998* are amended as set out in Schedule 2.

**5 Repeal of certain uncommenced amendments**

Schedule 1.1 [6]–[13], [15]–[30], [32], [33], [36] and [41], 1.2 [1]–[24] and 1.3 to the *Building Legislation Amendment (Quality of Construction) Act 2002* are repealed.

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## Schedule 1 Amendment of Environmental Planning and Assessment Act 1979

(Section 3)

### [1] Section 4 Definitions

Omit “of that name published on behalf of the Australian Building Codes Board in October 1996” from the definition of *Building Code of Australia* in section 4 (1).

Insert instead “, published by or on behalf of the Australian Building Codes Board, that is prescribed for purposes of this definition by the regulations”.

### [2] Section 4

Insert in alphabetical order in section 4 (1):

*critical stage inspections* means the inspections prescribed by the regulations for the purposes of section 109E (3) (d).

*principal contractor* for building work means the person responsible for the overall co-ordination and control of the carrying out of the building work.

**Note.** If any residential building work is involved, the principal contractor must be the holder of a contractor licence under the *Home Building Act 1989*.

*owner-builder* has the same meaning as in the *Home Building Act 1989*.

*residential building work* has the same meaning as in the *Home Building Act 1989*.

### [3] Section 22 Establishment of other committees

Insert “Minister or” before “Director-General” in section 22 (1).

### [4] Section 22 (3)

Omit the subsection. Insert instead:

- (3) The person who establishes a committee under this section may appoint one of the members as Chairperson of the committee.

**[5] Section 80 Determination**

Insert “, together with any variations to the construction certificate or plans and specifications that are effected in accordance with this Act or the regulations,” before “are taken” in section 80 (12).

**[6] Section 80 (13) and (14)**

Omit the subsections, including the note appearing after subsection (14).

**[7] Section 81A Effects of development consents and commencement of development**

Omit section 81A (2) (a) and (b). Insert instead:

- (a) a construction certificate for the building work has been issued by the consent authority, the council (if the council is not the consent authority) or an accredited certifier, and
- (b) the person having the benefit of the development consent has:
  - (i) appointed a principal certifying authority for the building work, and
  - (ii) notified the principal certifying authority that the person will carry out the building work as an owner-builder, if that is the case, and
- (b1) the principal certifying authority has, no later than 2 days before the building work commences:
  - (i) notified the consent authority and the council (if the council is not the consent authority) of his or her appointment, and
  - (ii) notified the person having the benefit of the development consent of any critical stage inspections and other inspections that are to be carried out in respect of the building work, and
- (b2) the person having the benefit of the development consent, if not carrying out the work as an owner-builder, has:
  - (i) appointed a principal contractor for the building work who must be the holder of a contractor licence if any residential building work is involved, and

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- (ii) notified the principal certifying authority of any such appointment, and
  - (iii) unless that person is the principal contractor, notified the principal contractor of any critical stage inspections and other inspections that are to be carried out in respect of the building work, and

**[8] Section 81A (4) (a), (b) and (b1)**

Omit section 81A (4) (a) and (b). Insert instead:

- (a) a construction certificate for the subdivision work has been issued by the consent authority, the council (if the council is not the consent authority) or an accredited certifier, and
- (b) the person having the benefit of the development consent has appointed a principal certifying authority for the subdivision work, and
- (b1) the principal certifying authority has, no later than 2 days before the subdivision work commences:
  - (i) notified the consent authority and the council (if the council is not the consent authority) of his or her appointment, and
  - (ii) notified the person having the benefit of the development consent of any critical stage inspections and other inspections that are to be carried out in respect of the subdivision work, and

**[9] Section 81A (6) and (7)**

Insert after section 81A (5):

**(6) Crown building work**

Subsections (2) and (4) do not apply in relation to Crown building work that is certified, in accordance with section 116G, to comply with the technical provisions of the State's building laws.

**(7) Penalty for contravention of subsection (2) or (4)**

The maximum penalty that may be imposed for a contravention of subsection (2) or (4) is 300 penalty units.

**[10] Section 86 Commencement of complying development**

Omit section 86 (1) (a). Insert instead:

- (a) the person having the benefit of the complying development certificate has:
  - (i) appointed a principal certifying authority for the building work, and
  - (ii) notified the principal certifying authority that the person will carry out the building work as an owner-builder, if that is the case, and
- (a1) the principal certifying authority has, no later than 2 days before the building work commences:
  - (i) notified the council of his or her appointment, and
  - (ii) notified the person having the benefit of the complying development certificate of any critical stage inspections and other inspections that are to be carried out in respect of the building work, and
- (a2) the person having the benefit of the complying development certificate, if not carrying out the work as an owner-builder, has:
  - (i) appointed a principal contractor for the building work who must be the holder of a contractor licence if any residential building work is involved, and
  - (ii) notified the principal certifying authority of any such appointment, and
  - (iii) unless that person is the principal contractor, notified the principal contractor of any critical stage inspections and other inspections that are to be carried out in respect of the building work, and

**[11] Section 86 (2) (a) and (a1)**

Omit section 86 (2) (a). Insert instead:

- (a) the person having the benefit of the complying development certificate has appointed a principal certifying authority for the subdivision work, and
- (a1) the principal certifying authority has, no later than 2 days before the subdivision work commences, notified the council of his or her appointment, and

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**[12] Section 86 (3) and (4)**

Insert after section 86 (2):

**(3) Crown development**

Subsections (1) and (2) do not apply in relation to development carried out by the Crown.

**(4) Penalty for contravention of subsection (1) or (2)**

The maximum penalty that may be imposed for a contravention of subsection (1) or (2) is 300 penalty units.

**[13] Section 105 Regulations—Part 4**

Insert after section 105 (1) (n):

- (n1) authorising a consent authority or council to impose a fee with respect to the lodging of any complying development certificate with it, whether pursuant to a requirement made by or under this Act or otherwise,

**[14] Section 109C Part 4A certificates**

Insert after section 109C (1):

- (1A) A single compliance certificate may deal with any number of matters, whether of the same or of a different kind.

**[15] Section 109D Certifying authorities**

Omit “or accredited” wherever occurring in section 109D (1) (a), (b) and (c).

Insert instead “, the council or an accredited”.

**[16] Section 109D (1) (d) (i)**

Insert “or the council” after “authority”.

**[17] Section 109D (3)**

Insert “work” after “the subdivision”.



**[18] Section 109E Principal certifying authorities**

Omit section 109E (1). Insert instead:

- (1) The person having the benefit of a development consent or complying development certificate for development involving building work or subdivision work may appoint the consent authority, the council or an accredited certifier as the principal certifying authority for the development.
- (1A) Despite subsection (1), such an appointment may not be made by any contractor or other person who will carry out the building work or subdivision work unless the contractor or other person is the owner of the land on which the work is to be carried out.

**[19] Section 109E (3) and (4)**

Omit the subsections (but not the note appearing after subsection (4)).

Insert instead:

- (3) A principal certifying authority for building work or subdivision work to be carried out on a site is required to be satisfied:
  - (a) that a construction certificate or complying development certificate has been issued for such of the building work or subdivision work as requires development consent and over which the principal certifying authority has control, before the work commences on the site, and
  - (b) that the principal contractor for the work is the holder of the appropriate licence and is covered by the appropriate insurance, in each case if required by the *Home Building Act 1989*, before any residential building work over which the principal certifying authority has control commences on the site, unless the work is to be carried out by an owner-builder, and
  - (c) that the owner-builder is the holder of any owner-builder permit required under the *Home Building Act 1989*, before an owner-builder commences on the site any residential building work over which the principal certifying authority has control, and

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- (d) that building work or subdivision work on the site has been inspected by the principal certifying authority or another certifying authority on such occasions (if any) as are prescribed by the regulations and on such other occasions as may be required by the principal certifying authority, before the principal certifying authority issues an occupation certificate or subdivision certificate for the building or work, and
  - (e) that any preconditions required by a development consent or complying development certificate to be met for the work before the issue of an occupation certificate or subdivision certificate have been met, before the principal certifying authority issues the occupation certificate or subdivision certificate.
- (4) A principal certifying authority must also comply with such other requirements of a like or different nature as may be imposed on principal certifying authorities by the regulations.

**[20] Section 109EA**

Insert after section 109E:

**109EA Replacement of principal certifying authorities**

- (1) Unless the relevant authority so approves in writing, a person may not be appointed to replace another person as the principal certifying authority for development.
- (2) For the purposes of this section, the *relevant authority* is:
  - (a) if the person previously appointed is an accredited certifier, the accreditation body by which the person is accredited, or
  - (b) if the person previously appointed is the consent authority or the council, the consent authority or the council.

**[21] Section 109H Restrictions on issue of occupation certificates**

Insert before subsection (1):

- (1A) There are two kinds of occupation certificates, as follows:
- (a) an *interim occupation certificate* that authorises a person to commence occupation or use of a partially completed new building, or to commence a new use of part of a building resulting from a change of building use for an existing building,
  - (b) a *final occupation certificate* that authorises a person to commence occupation or use of a new building, or to commence a new use of a building resulting from a change of building use for an existing building.

It is not necessary for an interim occupation certificate to be issued before a final occupation certificate is issued with respect to the same building.

- (1B) An occupation certificate must not be issued unless any preconditions to the issue of the certificate that are specified in a development consent or complying development certificate have been met.
- (1C) An interim occupation certificate must not be issued to authorise a person to commence to occupy or use a partially completed new building unless the certifying authority is satisfied:
- (a) that a development consent or complying development certificate is in force with respect to the building, and
  - (b) in the case of a building erected pursuant to a development consent but not a complying development certificate, that a construction certificate has been issued with respect to the plans and specifications for the building, and
  - (c) that the partially completed building is suitable for occupation or use in accordance with its classification under the *Building Code of Australia*, and
  - (d) that such other requirements as are required by the regulations to be complied with before such a certificate may be issued have been complied with.

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- (1D) An interim occupation certificate must not be issued to authorise a person to commence a new use in part of a building resulting from a change of building use of an existing building unless the certifying authority is satisfied:
- (a) that a development consent or complying development certificate is in force with respect to the change of building use, and
  - (b) that the part of the building is suitable for occupation or use in accordance with its classification under the *Building Code of Australia*, and
  - (c) that such other requirements as are required by the regulations to be complied with before such a certificate may be issued have been complied with.

**[22] Section 109H (2)**

Insert “a new use of a building resulting from” after “commence”.

**[23] Section 109H (3)**

Omit the subsection.

**[24] Section 109M Occupation and use of new building requires occupation certificate**

Omit “Maximum penalty: 25 penalty units.” from section 109M (1).

Insert instead:

Maximum penalty:

- (a) in the case of a class 1a or class 10 building, as referred to in the *Building Code of Australia*—5 penalty units, or
- (b) in the case of any other building—1,000 penalty units.

**[25] Section 109N Change of building use of existing building requires occupation certificate**

Omit “commence” from section 109N (1). Insert instead “effect”.

**[26] Section 109Q Regulations under Part 4A**

Insert at the end of the section:

- (2) In particular, the regulations may authorise a consent authority or council to impose a fee with respect to any Part 4A certificate that is lodged with it, whether pursuant to a requirement of this Act or the regulations or otherwise.

**[27] Section 109T Accreditation of accredited certifiers**

Insert “, and may impose conditions on their accreditation,” after “certifiers” in section 109T (1).

**[28] Section 109T (2A)**

Insert after section 109T (2):

- (2A) For the purposes of subsection (2) (b), an accreditation body may rely on a certificate of currency or an appropriate current insurance policy that has been issued by an insurer and that states that, in respect of a specified period, a specified accredited certifier is covered by the required insurance (within the meaning of section 109ZN).

**[29] Section 109U Auditing of accredited certifiers**

Omit the section.

**[30] Section 109ZA Tribunal may make certain disciplinary findings**

Omit “section 109U or 109Z” from section 109ZA (1).

Insert instead “section 109Z or 118Q”.

**[31] Section 109ZA (2) (e)**

Omit “300”. Insert instead “1,000”.

**[32] Section 109ZF General provisions concerning disciplinary proceedings**

Omit section 109ZF (2). Insert instead:

- (2) A complaint against an accredited certifier may be made and dealt with even though the person’s right to practise as an accredited certifier has been suspended or his or her accreditation has been withdrawn or lapsed. For that purpose,

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a reference in this Division to an accredited certifier includes a reference to a person whose right to practise as such has been suspended or whose accreditation has been withdrawn or lapsed.

**[33] Section 109ZG Conflicts of interest**

Insert after section 109ZG (1):

- (1AA) Subsection (1) (a) does not make it an offence for an accredited certifier (otherwise than as a principal certifying authority) to issue a compliance certificate of the kind referred to in section 109C (1) (a) (i) for any aspect of development in respect of which he or she has been involved in the preparation of plans and specifications.

**[34] Section 109ZN Accredited certifiers**

Insert after section 109ZN (2):

- (3) For the purposes of this section, an accredited certifier who is employed by a council to exercise the functions of a certifying authority on its behalf, whether within or beyond its area, is covered by the required insurance if the council is indemnified by its general insurance policy against any liability to which it may become subject as a result of the exercise of those functions by the accredited certifier.

**[35] Section 116G Building, demolition and incidental work**

Omit section 116G (6).

**[36] Section 118A Power of entry**

Insert “under this Act and the regulations” after “functions” in section 118A (2B).

**[37] Part 6, Division 1B**

Insert after Division 1A:

**Division 1B Investigation of certifying authorities**

**118O Definitions**

In this Division:

*Departmental auditor* means a Departmental auditor appointed under section 118P or 118Q.

*Tribunal* means the Administrative Decisions Tribunal.

**118P Investigation of councils acting as certifying authorities**

- (1) The Director-General may appoint a member of staff of the Department as a Departmental auditor to investigate the work and activities of a council in its capacity as a certifying authority.
- (2) The Departmental auditor must report to the Director-General on the results of the investigation.
- (3) The Director-General must send a copy of the report to the Director-General of the Department of Local Government and to the council.
- (4) A report furnished to the council under this section must be presented at the next meeting of the council after the report is received.
- (5) Within 40 days after it receives a report under this section, a council must give written notice to the Director-General of the things done or proposed to be done to give effect to any recommendations contained in the report.

**118Q Investigation of accredited certifiers acting as certifying authorities**

- (1) The Director-General may appoint a member of staff of the Department as a Departmental auditor to investigate the work and activities of an accredited certifier in his or her capacity as a certifying authority.
- (2) The Departmental auditor must report to the Director-General on the results of the investigation.

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- (3) The Director-General must send a copy of the report to the accredited certifier.
  - (4) If satisfied, as a result of any such investigation, that the accredited certifier is or may be guilty of unsatisfactory professional conduct or professional misconduct within the meaning of Part 4B, the Director-General:
    - (a) may also furnish a copy of the report to the relevant accreditation body and any person prescribed by the regulations, and
    - (b) may apply to the Tribunal for a disciplinary finding against an accredited certifier with respect to any matter arising from the report.
  - (5) If the Director-General applies to the Tribunal as referred to in subsection (4) (b), the Director-General may, by order in writing served on the accredited certifier, suspend the accredited certifier's authority to exercise the functions of an accredited certifier pending the Tribunal's decision on the application.
  - (6) An order under subsection (5) may be varied or revoked by the Tribunal at any time before or during proceedings on an application referred to in subsection (4) (b).

**118R Powers of Departmental auditor**

- (1) A Departmental auditor may direct a person to do any one or more of the following:
  - (a) to appear personally before the Departmental auditor at a time and place specified in the direction,
  - (b) to give evidence (including evidence on oath),
  - (c) to produce to the Departmental auditor any document that is in that person's custody or under that person's control,
  - (d) to grant to the Departmental auditor such authorities as may be necessary to enable the Departmental auditor to gain access to any document that is in the custody or under the control of any other person.
- (2) A person to whom such a direction is given must not fail to comply with the direction.



- (3) For the purposes of this section, a Departmental auditor may administer an oath.
- (4) A Departmental auditor may take copies of or extracts from any document to which the Departmental auditor gains access under this section.
- (5) For the purposes of this section, a Departmental auditor is taken to have been authorised by the Director-General to enter premises under Division 1A, and, subject to the regulations, may exercise the functions conferred on a person so authorised by or under that Division.

**[38] Section 121H Notice to be given of proposed order**

Insert after section 121H (4):

**(5) Notice to principal certifying authority**

If a council proposes to give an order in relation to building work or subdivision work for which the council is not the principal certifying authority, the council must give the principal certifying authority notice of its intention to give the order.

**[39] Section 127 Proceedings for offences**

Omit section 127 (5) and (6). Insert instead:

- (5) Proceedings for an offence against this Act or the regulations may be commenced not later than 2 years after the offence was alleged to be committed.

**[40] Section 148A**

Insert after section 148:

**148A Improper influence with respect to conduct of accredited certifier acting as certifying authority**

- (1) An accredited certifier must not, on an understanding that he or she will act otherwise than impartially in the exercise of his or her functions as a certifying authority, seek or accept, or offer or agree to accept, any benefit of any kind, whether on his or her own behalf or on behalf of any other person.

Maximum penalty: 10,000 penalty units or imprisonment for 2 years, or both.

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- (2) A person must not, on an understanding that an accredited certifier will act otherwise than impartially in the exercise of his or her functions as a certifying authority, give, or offer or agree to give, any benefit of any kind, whether to the accredited certifier or to any other person.

Maximum penalty: 10,000 penalty units or imprisonment for 2 years, or both.

- (3) In this section, a reference to the functions of a certifying authority includes a reference to the functions of a principal certifying authority under section 109E.

**[41] Section 157 Regulations**

Insert after section 157 (1) (c):

- (c1) the content, form, erection, maintenance and removal of signs relating to the carrying out of development or persons involved with the carrying out of development, or

**[42] Schedule 6 Savings, transitional and other provisions**

Insert at the end of clause 1 (1):

*Environmental Planning and Assessment Amendment (Quality of Construction) Act 2003*

**[43] Schedule 6, Part 12**

Omit clauses 46–56 and 58–60.

**[44] Schedule 6**

Insert at the end of the Schedule, with appropriate Part and clause numbers:

**Part Environmental Planning and Assessment Amendment (Quality of Construction) Act 2003**

**Definition**

In this Part, *the 2003 amending Act* means the *Environmental Planning and Assessment Amendment (Quality of Construction) Act 2003*.

**Saving of appointment of Chairperson by Director-General**

The substitution of section 22 (3) by the 2003 amending Act does not affect any appointment of a Chairperson under that provision as in force before the substitution.

**Nature of construction certificate**

Section 80 (12), as amended by the 2003 amending Act, extends to any variation to a construction certificate, plan or specification that lawfully occurred before the commencement of that amendment.

**Commencement of development under development consents**

Section 81A, as amended by the 2003 amending Act, extends to building work or subdivision work the subject of a development consent granted before the commencement of those amendments unless the work had begun before that commencement.

**Commencement of development under complying development certificates**

Section 86, as amended by the 2003 amending Act, extends to building work or subdivision work the subject of a complying development certificate issued before the commencement of those amendments unless the work had begun before that commencement.

**Part 4A certificates**

Section 109C (1A), as inserted by the 2003 amending Act, extends to matters arising before the commencement of that subsection.

**Appointment of principal certifying authorities**

Section 109E, as amended by the 2003 amending Act, extends to any development consent or complying development certificate issued before the commencement of those amendments for which a principal certifying authority needs to be appointed after that commencement.

**Replacement of principal certifying authorities**

Section 109EA, as inserted by the 2003 amending Act, extends to the replacement of a principal certifying authority who had been appointed before the commencement of that section.

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**Restriction on issue of occupation certificates**

Section 109H (1B), as inserted by the 2003 amending Act, does not apply to any building work that commenced before that amendment.

**Saving of occupation certificates**

An occupation certificate issued in accordance with section 109H, as in force before it was amended by the 2003 amending Act, is taken to have been issued in accordance with that section, as so amended.

**Previously suspended, withdrawn or lapsed accreditation**

Section 109ZF (2), as inserted by the 2003 amending Act, extends to complaints that were made but not finally dealt with before the date of assent to that Act and to a person whose right to practise as an accredited certifier was suspended, or whose accreditation was withdrawn or lapsed, before that date.

**Conflicts of interest**

Section 109ZG (1AA), as inserted by the 2003 amending Act, extends to matters arising before the commencement of that subsection.

**Investigation of certifying authorities**

- (1) Subject to subclause (2), Division 1B of Part 6, as inserted by the 2003 amending Act, extends to matters arising before the commencement of that Division.
- (2) Section 109U, as in force immediately before its repeal by the 2003 amending Act, continues to apply to any investigation that had commenced before the repeal of that section as if that Act had not been enacted.

**Proceedings for offences**

Section 127 (5), as substituted by the 2003 amending Act, does not apply to offences arising before the commencement of that amendment.

**Improper influence with respect to conduct of accredited certifier**

Section 148A, as inserted by the 2003 amending Act, does not apply to conduct occurring before the commencement of that section.

**Conditions of development consent**

Clauses 98A and 98B of the *Environmental Planning and Assessment Regulation 2000*, as inserted by the 2003 amending Act, do not apply to work that had been commenced before the commencement of those clauses.

**Conditions of complying development certificate**

Clauses 136B and 136C of the *Environmental Planning and Assessment Regulation 2000*, as inserted by the 2003 amending Act, do not apply to work that had been commenced before the commencement of those clauses.

**Time limits for accredited certifiers**

The amendments to clauses 130, 138, 142, 151 and 160 of the *Environmental Planning and Assessment Regulation 2000* made by the 2003 amending Act do not apply to any determination made under any of those clauses, or any certificate issued under any of those clauses, before the commencement of those amendments.

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## **Schedule 2 Amendment of regulations**

(Section 4)

### **2.1 Environmental Planning and Assessment Regulation 2000**

#### **[1] Clause 51 Rejection of development applications**

Omit clause 51 (1). Insert instead:

- (1) A consent authority may reject a development application within 7 days after receiving it if:
  - (a) the application is illegible or unclear as to the development consent sought, or
  - (b) the application does not contain any information, or is not accompanied by any document, specified in Part 1 of Schedule 1.

#### **[2] Part 6, Division 8A, heading**

Insert before clause 98:

#### **Division 8A Prescribed conditions of development consent**

#### **[3] Clause 98 Compliance with Building Code of Australia and insurance requirements under the Home Building Act 1989**

Insert “before any building work authorised to be carried out by the consent commences” after “is in force” in clause 98 (1) (b).

#### **[4] Clauses 98A and 98B**

Insert after clause 98:

#### **98A Erection of signs**

- (1) For the purposes of section 80A (11) of the Act, the requirements of subclauses (2) and (3) are prescribed as conditions of a development consent for development that involves any building work, subdivision work or demolition work.
- (2) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:

- (a) showing the name, address and telephone number of the principal certifying authority for the work, and
  - (b) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
  - (c) stating that unauthorised entry to the work site is prohibited.
- (3) Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
- (4) This clause does not apply in relation to building work, subdivision work or demolition work that is carried out inside an existing building that does not affect the external walls of the building.
- (5) This clause does not apply in relation to Crown building work that is certified, in accordance with section 116G of the Act, to comply with the technical provisions of the State's building laws.

**Note.** Principal certifying authorities and principal contractors must also ensure that signs required by this clause are erected and maintained (see clause 227A which currently imposes a maximum penalty of \$1,100).

#### **98B Notification of Home Building Act 1989 requirements**

- (1) For the purposes of section 80A (11) of the Act, the requirements of this clause are prescribed as conditions of a development consent for development that involves any residential building work within the meaning of the *Home Building Act 1989*.
- (2) Residential building work within the meaning of the *Home Building Act 1989* must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the following information:
- (a) in the case of work for which a principal contractor is required to be appointed:
    - (i) the name and licence number of the principal contractor, and

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- (ii) the name of the insurer by which the work is insured under Part 6 of that Act,
  - (b) in the case of work to be done by an owner-builder:
    - (i) the name of the owner-builder, and
    - (ii) if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.
  - (3) If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under subclause (2) becomes out of date, further work must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the updated information.
  - (4) This clause does not apply in relation to Crown building work that is certified, in accordance with section 116G of the Act, to comply with the technical provisions of the State's building laws.

**[5] Clause 100 Notice of determination—what is the form of the notice?**

Omit clause 100 (1) (g). Insert instead:

- (g) if the development involves a building but does not require a construction certificate for the development to be carried out, the class of the building under the *Building Code of Australia*,

**[6] Clause 100 (3)**

Insert after clause 100 (2):

- (3) A notice of determination of a grant of development consent must include a copy of any relevant plans endorsed by the consent authority.

**[7] Clause 103 Notice under section 81A of the Act of appointment of principal certifying authority**

Omit "(2) (b) (ii) or (4) (b) (ii)". Insert instead "(2) (b1) (i) or (4) (b1) (i)".

**[8] Clause 103 (a)**

Omit the paragraph.



**[9] Clause 103 (e)**

Insert “, and of the person by whom the principal certifying authority was appointed” after “authority”.

**[10] Clause 103 (f) (iv)**

Insert at the end of clause 103 (f) (iii):

and

- (iv) a telephone number on which he or she may be contacted for business purposes,

**[11] Clause 103A**

Insert after clause 103:

**103A Notice under section 81A of the Act of critical stage inspections**

A notice given under section 81A (2) (b1) (ii) of the Act must contain the following information:

- (a) the name and accreditation number of the principal certifying authority by whom the notice is given,
- (b) a telephone number on which the principal certifying authority can be contacted for business purposes,
- (c) the registered numbers of the development consent and of the construction certificate,
- (d) a description of the work to be carried out,
- (e) the address of the land at which the work is to be carried out,
- (f) a list of the critical stage inspections and other inspections required to be carried out in respect of the work.

**[12] Clause 122 Notice of determination of application to modify development consent**

Insert after clause 122 (1):

- (1A) A notice of determination of an application granted for the modification of a development consent must include a copy of any relevant plans endorsed by the consent authority.

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- [13] Clause 130 Procedure for determining application for complying development certificate**  
Omit “7 days” from clause 130 (4). Insert instead “2 days”.
- [14] Clause 134 Form of complying development certificate**  
Insert after clause 134 (2):  
(2A) A complying development certificate for any development must include a copy of any relevant plans endorsed by the consent authority.
- [15] Clause 135 Notice under section 86 of the Act of appointment of principal certifying authority**  
Omit “(1) (a) (ii) or (2) (a) (ii)”. Insert instead “(1) (a1) (i) or (2) (a1)”.
- [16] Clause 135 (a)**  
Omit the paragraph.
- [17] Clause 135 (e)**  
Insert “, and of the person by whom the principal certifying authority was appointed” after “authority”.
- [18] Clause 135 (f) (iv)**  
Insert at the end of clause 135 (f) (iii):  
and  
(iv) a telephone number on which he or she may be contacted for business purposes,
- [19] Clause 135A**  
Insert after clause 135:  
**135A Notice under section 86 of the Act of critical stage inspections**  
A notice given under section 86 (1) (a1) (ii) of the Act must contain the following information:  
(a) the name and address of the principal certifying authority by whom the notice is given,  
(b) a telephone number on which the principal certifying authority can be contacted for business purposes,

- (c) the registered number of the complying development certificate,
- (d) a description of the work to be carried out,
- (e) the address of the land at which the work is to be carried out,
- (f) a list of the critical stage inspections and other inspections required to be carried out in respect of the work.

**[20] Part 7, Division 2A, heading**

Insert after clause 136:

**Division 2A Conditions of complying development certificate**

**[21] Clause 136A**

Renumber existing clause 133 as clause 136A, and transfer to Division 2A of Part 7 after the heading to that Division (as inserted by item [20]).

**[22] Clause 136A (as renumbered) Compliance with Building Code of Australia and insurance requirements under the Home Building Act 1989**

Insert “and be in force before any building work authorised to be carried out by the certificate commences” after “be entered into” in clause 136A (1) (b).

**[23] Clauses 136B and 136C**

Insert after clause 136A (as transferred in accordance with item [21]):

**136B Erection of signs**

- (1) A complying development certificate for development that involves any building work, subdivision work or demolition work must be issued subject to a condition that the requirements of subclauses (2) and (3) are complied with.
- (2) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
  - (a) showing the name, address and telephone number of the principal certifying authority for the work, and

- 
- (b) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
  - (c) stating that unauthorised entry to the site is prohibited.
- (3) Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
  - (4) This clause does not apply in relation to building work, subdivision work or demolition work that is carried out inside an existing building, that does not affect the external walls of the building.
  - (5) This clause does not apply in relation to Crown building work that is certified, in accordance with section 116G of the Act, to comply with the technical provisions of the State's building laws.

**Note.** Principal certifying authorities and principal contractors must also ensure that signs required by this clause are erected and maintained (see clause 227A which currently imposes a maximum penalty of \$1,100).

### **136C Notification of Home Building Act 1989 requirements**

- (1) A complying development certificate for development that involves any residential building work within the meaning of the *Home Building Act 1989* must be issued subject to a condition that the work is carried out in accordance with the requirements of this clause.
- (2) Residential building work within the meaning of the *Home Building Act 1989* must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the following information:
  - (a) in the case of work for which a principal contractor is required to be appointed:
    - (i) the name and licence number of the principal contractor, and
    - (ii) the name of the insurer by which the work is insured under Part 6 of that Act,
  - (b) in the case of work to be done by an owner-builder:
    - (i) the name of the owner-builder, and

- (ii) if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.
- (3) If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under subclause (2) becomes out of date, further work must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the updated information.
- (4) This clause does not apply in relation to Crown building work that is certified, in accordance with section 116G of the Act, to comply with the technical provisions of the State's building laws.

**[24] Clause 138 Compliance certificates**

Insert “, and formal particulars of title,” after “address” in clause 138 (1) (e).

**[25] Clause 138 (3)**

Omit “7 days”. Insert instead “2 days”.

**[26] Clause 139A**

Insert after clause 139:

**139A Withdrawal of application for construction certificate**

- (1) An application for a construction certificate may be withdrawn at any time prior to its determination by service on the certifying authority to which it was made of a notice to that effect signed by the applicant.
- (2) The certifying authority may (but is not required to) refund to the applicant the whole or any part of the application fee paid in connection with an application that has been withdrawn.

**[27] Clause 142 Procedure for determining application for construction certificate**

Omit “7 days” from clause 142 (2). Insert instead “2 days”.

**[28] Clause 147 Form of construction certificate**

Insert after clause 147 (1) (e):

- (f) the classification (in accordance with the *Building Code of Australia*) of the building to which the certificate relates.

**[29] Clause 147 (1A)**

Insert after clause 147 (1):

- (1A) A construction certificate may indicate different classifications for different parts of the same building.

**[30] Clause 148 Modification of construction certificate**

Insert after clause 148 (2):

- (3) As soon as practicable after granting an application to modify development in respect of which an application for a construction certificate has previously been referred to the Fire Commissioner under clause 144, but for which (in its modified form) an application for a construction certificate for a building would no longer be required to be so referred, a certifying authority must notify the Fire Commissioner that the building to which the construction certificate relates is no longer a building to which clause 144 applies.

**[31] Clause 151 Procedure for determining application for occupation certificate**

Omit “7 days” from clause 151 (2). Insert instead “2 days”.

**[32] Clause 156 Occupation and use of new buildings: section 109M (2)**

Insert “, the construction certificate or complying development certificate for which was issued before the commencement of Schedule 2.1 [32] to the *Environmental Planning and Assessment Amendment (Quality of Construction) Act 2003*” after “class 10 building” in clause 156 (1).

**[33] Clause 160 Procedure for determining application for subdivision certificate**

Omit “7 days” from clause 160 (2). Insert instead “2 days”.

**[34] Clause 162**

Omit the clause. Insert instead:

**162 Notice of replacement of principal certifying authority**

- (1) A principal certifying authority appointed to replace another principal certifying authority must ensure that notice of the appointment and of the approval of that appointment is given to the consent authority (and, if the consent authority is not the council, to the council) within 2 days of the appointment.
- (2) Nothing in this clause requires any notice to be given to a council that approved the new appointment.

**[35] Clauses 162A and 162B**

Insert after clause 162:

**162A Critical stage inspections required by section 109E (3) (d)**

- (1) For the purposes of section 109E (3) (d) of the Act, the occasions on which building work must be inspected are as set out in this clause.  
**Note.** These inspections are the *critical stage inspections*.
- (2) Except as provided by subclause (3), the critical stage inspections may be carried out by the principal certifying authority or, if the principal certifying authority agrees, by another certifying authority.
- (3) The last critical stage inspection required to be carried out for the class of building concerned must be carried out by the principal certifying authority.
- (4) In the case of a class 1 or 10 building, the development site must be inspected:
  - (a) at the commencement of the building work, and
  - (b) after excavation for, and prior to the placement of, any footings, and
  - (c) prior to pouring any in-situ reinforced concrete building element, and
  - (d) prior to covering of the framework for any floor, wall, roof or other building element, and
  - (e) prior to covering waterproofing in any wet areas, and

- 
- (f) prior to covering any stormwater drainage connections, and
  - (g) after the building work has been completed and prior to any occupation certificate being issued in relation to the building.
- (5) In the case of a class 2, 3 or 4 building, the development site must be inspected:
- (a) at the commencement of the building work, and
  - (b) prior to covering of waterproofing in any wet areas, for a minimum of 10% of rooms with wet areas within a building, and
  - (c) prior to covering any stormwater drainage connections, and
  - (d) after the building work has been completed and prior to any occupation certificate being issued in relation to the building.
- (6) In the case of a class 5, 6, 7, 8 or 9 building, the development site must be inspected:
- (a) at the commencement of the building work, and
  - (b) prior to covering any stormwater drainage connections, and
  - (c) after the building work has been completed and prior to any occupation certificate being issued in relation to the building.

**162B Record of inspections conducted under section 109E (3)**

- (1) A principal certifying authority and each other certifying authority must make a record of each critical stage inspection carried out by the principal certifying authority or other certifying authority.
- (2) Any certifying authority who is required to make such a record but is not the principal certifying authority for the work concerned must forthwith provide a copy of the record to the principal certifying authority for the work.  
**Note.** Copies of these records must be kept for at least 15 years (see clause 205).
- (3) Each record of an inspection required by this clause must be made as soon as practicable after the inspection is carried out.



- (4) The record must include details of:
- (a) the registered number of the development application and of the construction certificate or complying development certificate, and
  - (b) the address of the property at which the inspection was carried out, and
  - (c) the type of inspection, and
  - (d) the date on which it was carried out, and
  - (e) the name and accreditation number of the certifying authority by whom the inspection was carried out, and
  - (f) whether or not the inspection was satisfactory in the opinion of the certifying authority who carried it out.

**[36] Clause 163**

Omit the clause. Insert instead:

**163 Notice to allow inspections**

To allow a principal certifying authority or another certifying authority time to carry out critical stage inspections or any other inspections required by the principal certifying authority, the principal contractor for a building site, or the owner-builder, must notify the principal certifying authority at least 48 hours before building work is commenced at the site if a critical stage inspection is required before the commencement of the work.

**[37] Clause 170 What is a final fire safety certificate?**

Insert “or on behalf of” before “the owner”.

**[38] Clause 175 What is an annual fire safety statement?**

Insert “or on behalf of” before “the owner”.

**[39] Clause 200 Accreditation bodies’ registers**

Insert after clause 200 (2) (a):

- (a1) a telephone number or telephone numbers for contacting the person for business purposes,

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**[40] Clause 201 Other documents to be kept by accreditation bodies**

Omit “clause 205 (3)” from clause 201 (1) (e).

Insert instead “clause 205 (4)”.

**[41] Clause 202 Central register**

Insert after clause 202 (2) (a):

- (a1) a telephone number or telephone numbers for contacting the person for business purposes,

**[42] Clause 205 Record keeping by accredited certifiers**

Insert after clause 205 (1) (f):

- (g) any record of a critical stage inspection required to be made by the accredited certifier,
- (h) if the accredited certifier is a principal certifying authority, any copy of a record of a critical stage inspection provided to the principal certifying authority by another certifying authority.

**[43] Clause 205 (2)**

Insert “or, in the case of a record of a critical stage inspection, from the time of the inspection” after “issued”.

**[44] Part 13A**

Insert after clause 227:

**Part 13A Supplementary provisions for development requiring consent**

**227A Signs on development sites**

- (1) This clause applies if there is a person who is the principal certifying authority or the principal contractor for any building work, subdivision work or demolition work authorised to be carried out on a site by a development consent or complying development certificate.
- (2) Each such person must ensure that a rigid and durable sign showing the person’s identifying particulars so that they can

be read easily by anyone in any public road or other public place adjacent to the site:

- (a) is erected in a prominent position on the site before the commencement of the work, and
- (b) is maintained on the site at all times while this clause applies until the work has been carried out.

Maximum penalty: 10 penalty units.

- (3) In this clause, the *identifying particulars* for a person means:
  - (a) the name, address and telephone number of the person, and
  - (b) in the case of a principal contractor, a telephone number on which the principal contractor may be contacted at any time for business purposes.
- (4) Nothing in this clause requires the erection of more than one sign on a site or prevents the use of an appropriate sign that has already been erected on a site.

**Note.** See clauses 98A and 136B which require such a sign on a site as a condition of development consent or complying development certificate.

#### [45] Schedule 1 Forms

Insert “if consent has already been granted for the proposed development,” at the end of clause 5 (e).

#### 2.2 Environmental Planning and Assessment (Savings and Transitional) Regulation 1998

##### Clause 51 Application of sections 93 and 732 to matters arising under amended EP&A Act 1979

Omit the clause.

[Second reading speech made in—  
Legislative Assembly on 14 November 2003  
Legislative Council on 3 December 2003]

BY AUTHORITY