



New South Wales

Building Professionals Amendment (Accredited Certifiers) Regulation 2014

under the

Building Professionals Act 2005

His Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Building Professionals Act 2005*.

ROBERT STOKES, MP
Assistant Minister for Planning

Explanatory note

The object of this Regulation is to amend the *Building Professionals Regulation 2007* as follows:

- (a) to establish a new category of accreditation (E1) that will confer authority to carry out inspections, issue certificates of compliance and issue notices of non-compliance under the *Swimming Pools Act 1992*,
- (b) to prescribe the fee that must be paid by an applicant for a certificate of accreditation of category E1,
- (c) to impose a condition on category A1, A2, A3 and E1 certificates of accreditation which prohibits the issue of a certificate of compliance under the *Swimming Pools Act 1992* where the accredited certifier has a conflict of interest,
- (d) to set out record-keeping requirements for accredited certifiers holding certificates of accreditation of category A1, A2, A3 or E1, and for councils that employ or engage those accredited certifiers, with respect to inspections carried out under the *Swimming Pools Act 1992*.

This Regulation is made under the *Building Professionals Act 2005*, including sections 5 (2) (b), 5A (2), 9 (1), 60 and 94 (the general regulation-making power).

Building Professionals Amendment (Accredited Certifiers) Regulation 2014

under the

Building Professionals Act 2005

1 Name of Regulation

This Regulation is the *Building Professionals Amendment (Accredited Certifiers) Regulation 2014*.

2 Commencement

This Regulation commences on the day on which it is published on the NSW legislation website.

Schedule 1 Amendment of Building Professionals Regulation 2007

[1] Clause 7AA

Insert after clause 7:

7AA Conflict of interest condition of category A1, A2, A3 and E1 certificates of accreditation

- (1) It is a condition of every certificate of accreditation of category A1, A2, A3 or E1 that the accredited certifier must not issue a certificate of compliance under the *Swimming Pools Act 1992* if the accredited certifier:
 - (a) has been involved in the design of the swimming pool, or
 - (b) has been involved in the carrying out of work on the swimming pool, or
 - (c) is the applicant for the certificate of compliance or is related to the applicant for the certificate of compliance, or
 - (d) is related to a person who was involved in the design, construction or installation of the swimming pool, or
 - (e) has a pecuniary interest in the swimming pool.

- (2) **Meaning of being involved in the design of a swimming pool**

For the purposes of this clause, an accredited certifier is involved in the design of a swimming pool if the accredited certifier is involved in the preparation of the plans or specifications for the swimming pool.

- (3) **Meaning of being related to another person**

For the purposes of this clause, an accredited certifier is related to another person if the accredited certifier is related to the other person in any of the ways described in section 68 (a)–(f) of the Act.

- (4) **Meaning of having a pecuniary interest**

For the purposes of this clause, an accredited certifier has a pecuniary interest in a swimming pool if there is a reasonable likelihood or expectation of appreciable financial gain or loss to the accredited certifier, or to a person to whom the accredited certifier is related, if the accredited certifier issues a certificate of compliance under the *Swimming Pools Act 1992*, or a notice under section 22E of that Act, in relation to the swimming pool.

- (5) However, an accredited certifier does not have such a pecuniary interest if the interest is so remote or insignificant that it could not reasonably be regarded as likely to influence any decision the person might make in relation to the swimming pool.

- (6) **Meaning of applicant and swimming pool**

In this clause:

applicant for the certificate of compliance means the owner of premises on which a swimming pool is situated who requests the local authority or an accredited certifier to inspect the swimming pool under section 22C of the *Swimming Pools Act 1992*.

swimming pool has the same meaning it has in the *Swimming Pools Act 1992* but also includes a ***barrier*** within the meaning of that Act and the premises on which the swimming pool is situated.

[2] Clause 8 Record keeping by accredited certifiers

Insert after clause 8 (1):

- (1A) An accredited certifier holding a certificate of accreditation of category A1, A2, A3 or E1 must also cause the following to be kept at his or her business premises, or in another secure place, at all times:
- (a) for each year to which the accredited certifier's certificate of accreditation relates, a list of the premises at which the accredited certifier has carried out inspections under the *Swimming Pools Act 1992*,
 - (b) for each of those premises, records of the following:
 - (i) the lot and deposited plan number of the premises and the name of the local government area in which the premises are located,
 - (ii) the date on which the inspection was carried out,
 - (iii) if the inspection was carried out under section 22C of the *Swimming Pools Act 1992*, the name of the owner of the premises who requested the inspection,
 - (iv) the name (if known) of the principal contractor who constructed or installed the swimming pool or barrier that was the subject of the inspection,
 - (v) details (including copies) of any certificate of compliance under the *Swimming Pools Act 1992* issued by the accredited certifier in relation to the swimming pool or barrier,
 - (vi) details (including copies) of any notice under section 22E of the *Swimming Pools Act 1992* issued by the accredited certifier in relation to the swimming pool or barrier and the date on which any such notice was forwarded to the relevant local authority.

[3] Clause 8B Records to be kept by councils

Insert after clause 8B (2):

- (2A) A council must also cause the following to be kept at the office of the council, or in another secure place, at all times:
- (a) a list of the premises at which an accredited certifier holding a certificate of accreditation of category A1, A2, A3 or E1 who is employed or engaged by the council to carry out certification work on the council's behalf has carried out inspections under the *Swimming Pools Act 1992*,
 - (b) for each of those premises, records of the following:
 - (i) the lot and deposited plan number of the premises,
 - (ii) the date on which the inspection was carried out,
 - (iii) if the inspection was carried out under section 22C of the *Swimming Pools Act 1992*, the name of the owner of the premises who requested the inspection,
 - (iv) the name (if known) of the principal contractor who constructed or installed the swimming pool or barrier that was the subject of the inspection,
 - (v) details (including copies) of any certificate of compliance under the *Swimming Pools Act 1992* issued by the accredited certifier in relation to the swimming pool or barrier,

- (vi) details (including copies) of any notice under section 22E of the *Swimming Pools Act 1992* issued by the accredited certifier in relation to the swimming pool or barrier.

[4] Schedule 1 Categories of certificates of accreditation

Insert in appropriate order in the table in Part 1 in Columns 1 and 2 respectively:

Category E1—Accredited certifier—swimming pool certification	Carrying out of inspections under the <i>Swimming Pools Act 1992</i> . Issue of certificates of compliance under the <i>Swimming Pools Act 1992</i> . Issue of notices under section 22E of the <i>Swimming Pools Act 1992</i> .
--	--

[5] Schedule 2 Fees

Insert after item 1:

1AA	Application for certificate of individual accreditation, or renewal of certificate of individual accreditation, as an accredited certifier for the category E1:	
(a)	if the applicant is an accredited certifier holding a category A4 certificate of accreditation	Nil
(b)	if the applicant is not an accredited certifier holding a category A4 certificate of accreditation	\$1,500