



New South Wales

Building and Development Certifiers Regulation 2020

under the

Building and Development Certifiers Act 2018

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Building and Development Certifiers Act 2018*.

KEVIN ANDERSON, MP
Minister for Better Regulation and Innovation

Explanatory note

The object of this Regulation is to make provision for the following—

- (a) the registration of certifiers,
- (b) the insurance required to indemnify registered certifiers,
- (c) conflicts of interest relating to registered certifiers,
- (d) the contracts required for certification work,
- (e) accreditation authorities,
- (f) record keeping,
- (g) the carrying out of certification work by or on behalf of a council,
- (h) permitting certain registered certifiers and other persons to carry out certain regulated work,
- (i) matters to be included on the register of registrations and approvals,
- (j) providing that supervision is certification work,
- (k) the classes of registration for certifiers and the qualifications, experience, skills and knowledge required for registration in a class,
- (l) the code of conduct for registered certifiers,
- (m) continuing professional development requirements for registered certifiers,
- (n) the fees payable,
- (o) the offences under the Act and this Regulation for which penalty notices may be issued.

This Regulation is made under the *Building and Development Certifiers Act 2018*, including sections 4(1) (definition of **certification work**), 6(4), 7(2)(h), 10(5), 12(3), 13(1)(a), 26(2)(a), 28(2), 29(1)(b), 31(2), 32(1), 35(1)(i), 55, 61(2)(d), 63(3)(f), (4)(a) and (6), 65(3), 66(1)(a), 70(3), 73(3), 74(1), 75(2)(b), 79(2)(c), 102(3), 109(1)(f), 112(1), 118 and 120 (the general regulation-making power) and clauses 1(1) and 3(1)(a) of Schedule 1.

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Building and Development Certifiers Regulation 2020

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Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Building and Development Certifiers Regulation 2020*.

2 Commencement

This Regulation commences on the commencement of the *Building and Development Certifiers Act 2018* and is required to be published on the NSW legislation website.

3 Definitions

(1) In this Regulation—

Building Code of Australia has the same meaning as in the *Environmental Planning and Assessment Act 1979*.

business day means a day that is not a Saturday, a Sunday or a public holiday throughout New South Wales.

class 1 building means a class 1a building or a class 1b building within the meaning of the *Building Code of Australia*.

class 10 building means a class 10a building, a class 10b building or a class 10c building within the meaning of the *Building Code of Australia*.

fee unit—see Part 2 of Schedule 6.

Planning Regulation means the *Environmental Planning and Assessment Regulation 2000*.

relevant certificate means the following certificates under the *Environmental Planning and Assessment Act 1979*—

- (a) a complying development certificate,
- (b) a certificate referred to in section 6.4 of that Act.

strata certificate has the same meaning as in the *Strata Schemes Development Act 2015*.

the Act means the *Building and Development Certifiers Act 2018*.

Note. The Act and the *Interpretation Act 1987* contain definitions and other provisions that affect the interpretation and application of this Regulation.

(2) Notes included in this Regulation do not form part of this Regulation.

Part 2 Registration of certifiers

4 Recognised training

- (1) For the purposes of section 120(2)(a) of the Act, the Secretary may require an applicant for registration to have successfully completed recognised training.
- (2) Training is *recognised training* for the purposes of this clause if the training is recognised by the Secretary and is conducted in accordance with any conditions to which that recognition may be subject.
- (3) A person may apply in writing to the Secretary for training to be recognised by the Secretary.
- (4) The Secretary may, by notice in writing to the person, recognise the training or refuse to recognise the training.
- (5) The recognition may be unconditional or subject to conditions.
- (6) The Secretary may vary, suspend or revoke a recognition by notice in writing to the person.
- (7) Completion of recognised training under this clause does not replace the need for the applicant to have the qualifications, skills, knowledge and experience required by Schedules 2 and 3.

5 Grounds for finding that a person is not a suitable person to carry out certification work

- (1) For the purposes of section 7(2)(h) of the Act, the Secretary may form an opinion that a person is not a suitable person to carry out certification work if—
 - (a) the person is disqualified from holding a relevant authorisation, or
 - (b) a relevant authorisation held by the person has been cancelled or suspended, or
 - (c) the person has been convicted of an offence, or disciplinary action has been taken against the person, in the person's capacity as the holder (or former holder) of a relevant authorisation.
- (2) In this clause—

relevant authorisation means—

 - (a) accreditation to carry out regulated work, or
 - (b) registration as an architect under the *Architects Act 2003*, or
 - (c) a contractor licence, supervisor certificate, tradesperson certificate or owner-builder permit under the *Home Building Act 1989*, or
 - (d) a licence, certificate, accreditation, registration or other authorisation or qualification that is issued or conferred under the laws of another jurisdiction and that authorises the holder to carry out work that is similar to the work authorised by an authorisation specified in paragraph (a) or (b).

6 Time within which notice of decision must be provided

- (1) For the purposes of section 10(5) of the Act, the Secretary is taken to have refused to grant registration to an applicant if the Secretary fails to give the applicant notice of the Secretary's decision within 28 days after the application is made.
- (2) In calculating a period for the purposes of subclause (1), any period from the day on which the Secretary makes a written request for further information from the applicant until the day on which the information is provided or the applicant refuses to provide the information is not to be included.

- (3) Subclause (1) does not prevent the Secretary from continuing to deal with an application after the expiry of that period.

7 Variation of registration

- (1) For the purposes of section 12(3) of the Act, an application for variation of registration must—
- (a) be in a form approved by the Secretary, and
 - (b) include or be accompanied by information or evidence that the Secretary reasonably requires to assess the application, and
 - (c) be accompanied by the fee payable as if the application were an application for the grant of registration.
- (2) If the Secretary considers it necessary to do so, the Secretary may require either or both of the following—
- (a) further documents or information to be provided by the applicant,
 - (b) in the case of an applicant who is an individual, that the applicant attend an interview, undertake an oral or written examination or provide a demonstration of the applicant's skills.
- (3) Section 9 of the Act is taken to apply to an application for variation of registration in the same way as it applies to an application for the grant of registration.
- (4) A variation of registration takes effect—
- (a) at the time specified by the Secretary in the written notice under section 12 of the Act, or
 - (b) if no time is specified or if the notice is served on the registered certifier after that time, when the notice is served on the registered certifier.
- (5) The Secretary is taken to have refused to grant a variation of registration to an applicant if the Secretary fails to give the applicant notice of the Secretary's decision within 28 days after the application is made.
- (6) In calculating a period for the purposes of subclause (5), any period from the day on which the Secretary makes a written request for further information from the applicant until the day on which the information is provided or the applicant refuses to provide the information is not to be included.
- (7) Subclause (5) does not prevent the Secretary from continuing to deal with an application after the expiry of that period.

8 Registered certifier to notify Secretary of certain events

For the purposes of section 35(1)(i) of the Act, a registered certifier must notify the Secretary in writing of the following events within 7 days after becoming aware of the event—

- (a) an equivalent authorisation held by the registered certifier being varied,
- (b) legal or disciplinary proceedings being commenced against the registered certifier in the person's capacity as the holder (or former holder) of a relevant authorisation within the meaning of clause 5,
- (c) if the registered certifier is a registered body corporate—
 - (i) a registered certifier becoming an employee or registered director of the body corporate, or
 - (ii) a registered certifier ceasing to be an employee or registered director of the body corporate, or

- (iii) a person becoming a director, or person involved in the management, of the body corporate, or
- (iv) a person ceasing to be a director, or person involved in the management, of the body corporate.

9 Prescribed conditions of registration

- (1) For the purposes of section 13(1)(a) of the Act, it is a condition of registration that a registered certifier must surrender the registered certifier's certificate of registration to the Secretary within 14 days after receiving written notice from the Secretary that the conditions of registration of the registered certifier have been varied or new conditions have been imposed on the registered certifier's registration.
- (2) For the purposes of section 13(1)(a) of the Act, it is a condition of registration that a registered individual must carry the registered certifier's certificate of registration whenever the registered certifier is carrying out certification work and must produce the certificate for inspection if requested to do so by an authorised officer.
- (3) For the purposes of section 13(1)(a) of the Act, it is a condition of registration that a registered body corporate must ensure that—
 - (a) a registered director of the body corporate undertakes a course relating to the responsibilities of registered directors arranged by the Secretary if required to do so by the Secretary in writing, and
 - (b) the registered director undertakes the course within the time (if any) required by the Secretary.
- (4) For the purposes of section 80 of the Act, the maximum penalty for breaching the condition set out in subclause (2) is 20 penalty units.

10 Replacement certificate of registration

- (1) The Secretary may issue a replacement certificate of registration to a registered certifier on the application of the registered certifier if the Secretary is satisfied that it is reasonable in the circumstances to issue a replacement certificate.
- (2) An application under this clause must be accompanied by the fee prescribed by Schedule 6.

Part 3 Insurance

Division 1 Preliminary

11 Definitions

In this Part—

expiry date, for a professional indemnity policy, means the date specified in the policy as the policy's expiry date.

insured person means the individual or body corporate to whom the professional indemnity policy is issued.

liability of a registered certifier means liability to pay compensatory damages for breach of professional duty as a registered certifier arising from—

- (a) any act or omission of the registered certifier, or
- (b) any conduct of the registered certifier that would constitute a breach of any of the following provisions or any failure by the registered certifier to comply with a guarantee that applies because of any of the following provisions—
 - (i) section 18, 29 or 30 or Subdivision B of Division 1 of Part 3–2 of the *Australian Consumer Law* of the Commonwealth,
 - (ii) any provision of the legislation of this or any other State or Territory that corresponds to a provision referred to in subparagraph (i).

professional indemnity policy means an insurance policy that complies with the provisions of this Part and that indemnifies an individual, body corporate or partnership against the liability of registered certifiers covered by the policy.

registered employee of a body corporate or partnership means an employee of the body corporate or partnership who is a registered individual.

registered partner of a partnership means a partner in the partnership who is a registered individual.

12 Former accredited certifiers

- (1) A reference in this Part to—
 - (a) a registered certifier includes a reference to an accredited certifier, and
 - (b) a registered individual includes a reference to an individual who was an accredited certifier, and
 - (c) a registered body corporate includes a reference to a body corporate that was an accredited certifier, and
 - (d) a registered director includes a reference to a director who was an accredited certifier.
- (2) A registered certifier who was previously an accredited certifier is taken, for the purposes of this Part, to have first become a registered certifier when the registered certifier was first accredited.
- (3) In this clause—

accredited certifier means a person who was accredited under the *Building Professionals Act 2005* or the *Environmental Planning and Assessment Act 1979* (or both).

Division 2 Professional indemnity policies

13 Professional indemnity policy required

- (1) For the purposes of section 26(2)(a) of the Act, a registered certifier must be indemnified under a professional indemnity policy that complies with this Part.
- (2) A registered individual must ensure that all certification work carried out by the individual is indemnified under a professional indemnity policy that complies with this Part.

14 Individual policies

If a professional indemnity policy is issued to a registered individual, the indemnity provided must extend to all liability of the registered individual incurred at any time since the registered individual first became a registered certifier.

15 Corporate policies

- (1) If a professional indemnity policy is issued to a body corporate, the indemnity provided must extend to—
 - (a) if the body corporate is a registered body corporate, all liability of the registered body corporate incurred at any time since the registered body corporate first became a registered certifier, and
 - (b) for each registered certifier who, at any time before or during the term of the policy, is a registered director or registered employee of the body corporate, all liability of the registered certifier incurred—
 - (i) while the registered certifier was a registered director or registered employee of the body corporate, and
 - (ii) in the course of the registered certifier carrying out work on behalf of the body corporate.
- (2) The indemnity must extend to a person who has been a registered director or registered employee of the body corporate regardless of whether the person ceased to be a registered director or registered employee before the policy commenced.

16 Partnership policies

- (1) If a professional indemnity policy is issued to a partnership, the indemnity provided must extend to all liability of each registered certifier who, at any time before or during the term of the policy, is a registered partner or registered employee of the partnership incurred—
 - (a) while the registered certifier was a registered partner or registered employee of the partnership, and
 - (b) in the course of the registered certifier carrying out work on behalf of the partnership.
- (2) The indemnity must extend to a person who has been a registered partner or registered employee of the partnership regardless of whether the person ceased to be a registered partner or registered employee before the policy commenced.

Division 3 Limits, exceptions and exclusions

17 Matters occurring after expiry date for policy

- (1) The indemnity provided by a professional indemnity policy may be limited to liability in respect of which a claim is made against an insured person and notified to the insurer before the policy's expiry date.

- (2) Nothing in this clause requires a professional indemnity policy to provide indemnity for liability incurred after the policy's expiry date.

18 Limit of indemnity as to compensation

- (1) A professional indemnity policy may be subject to a maximum claim limit and a maximum yearly limit.
- (2) The maximum claim limit for a professional indemnity policy must not be less than \$1,000,000 plus an additional 20% of that limit for relevant expenses.
- (3) The maximum yearly limit for a professional indemnity policy issued to an individual must not be less than—
- (a) \$1,000,000 excluding relevant expenses, or
 - (b) \$2,000,000 including relevant expenses.
- (4) The maximum yearly limit for a professional indemnity policy issued to a body corporate must not be less than whichever of the following is the lesser—
- (a) \$20,000,000,
 - (b) the maximum yearly limit for a professional indemnity policy issued to an individual multiplied by—
 - (i) the number of registered directors and registered employees of the body corporate on the date on which the policy is issued, or
 - (ii) if the policy is the fourth or subsequent policy issued to the body corporate, whether by the same or another insurer, the average number of registered directors and registered employees of the body corporate during the previous 3 years.
- (5) The maximum yearly limit for a professional indemnity policy issued to a partnership must not be less than whichever of the following is the lesser—
- (a) \$20,000,000,
 - (b) the maximum yearly limit for a professional indemnity policy issued to an individual multiplied by—
 - (i) the number of registered partners and registered employees of the partnership on the date on which the policy is issued, or
 - (ii) if the policy is the fourth or subsequent policy issued to the partnership, whether by the same or another insurer, the average number of registered partners and registered employees of the partnership during the previous 3 years.
- (6) For the purposes of this clause—

maximum claim limit means the limit of indemnity for any one claim.

maximum yearly limit means the limit of indemnity for all claims occurring in any one year.

relevant expenses means any amount in respect of the expenses of investigating a claim or the legal expenses of defending or settling a claim, if those expenses are incurred by or on behalf of the insured person.

19 Exclusion for claims made in relation to cladding

- (1) A professional indemnity policy may provide that the indemnity provided by the policy does not apply to any claim made against the insured person in relation to—
- (a) cladding that does not comply with the requirements of the *Building Code of Australia*, an Australian Standard or an Act or other law of the

Commonwealth, this State or any other State or Territory to the extent that it applies to cladding, or

- (b) cladding that is used, installed or applied to a building in a manner that does not comply with the requirements of the *Building Code of Australia*, an Australian Standard or an Act or other law of the Commonwealth, this State or any other State or Territory to the extent that it applies to the use, installation or application of cladding, or
 - (c) cladding that is used, installed or applied to a building in a manner that does not comply with the manufacturer's conditions of use of the cladding.
- (2) This clause applies only in respect of a professional indemnity policy providing indemnity for a period, not exceeding 12 months, commencing on or before 30 June 2021.
- (3) In this clause—

Australian Standard means a standard published by Standards Australia.

cladding means cladding or a cladding system (including, but not limited to, the panels, lining, attachment or finishes of the facade of any cladding or cladding system), whether or not insulated or made of composite materials, that is applied to any of a building's external walls or to another external area of a building.

20 Buildings for which no occupation certificate issued

A professional indemnity policy may provide that the indemnity provided by the policy does not apply to any claim made against the insured person in relation to building work on a building in respect of which no occupation certificate within the meaning of the *Environmental Planning and Assessment Act 1979* has been issued unless the claim is made against the insured person, and notified to the insurer, before the expiration of 10 years from—

- (a) the last date on which the building work was inspected by a registered certifier, or
- (b) if no such inspection has been conducted, the date on which that part of the building in relation to which the building work was carried out is first occupied or used.

21 Other exceptions and exclusions

Nothing in this Part prevents a professional indemnity policy from containing other exceptions and exclusions that are not inconsistent with the requirements of this Part.

Division 4 Miscellaneous

22 Information about insurance policies

For the purposes of section 109(1)(f) of the Act, the following information is prescribed—

- (a) information about the policy schedule and any endorsements,
- (b) details of applications made and any disclosures,
- (c) details of completed claims,
- (d) details of legal proceedings that relate to a claim,
- (e) details of any amounts paid out in relation to a claim.

23 Existing policies

- (1) During the transition period, an insurance policy that was taken out before the commencement of this Regulation and that complied with the requirements of

section 63 of the *Building Professionals Act 2005* immediately before the repeal of that section is taken to satisfy the requirements of section 26(2)(a) of the *Building and Development Certifiers Act 2018*.

- (2) The fact that an accredited certifier becomes a registered certifier does not affect the validity of an insurance policy.
- (3) In this clause—
transition period means the period of 12 months following the commencement of this Regulation.

Part 4 Conflicts of interest

24 Prescribed conflicts

For the purposes of section 29(1)(b) of the Act, the following are circumstances in which a registered certifier has a conflict of interest in certification work—

- (a) the registered certifier issuing a strata certificate for a strata plan, strata plan of subdivision or a notice of conversion if the plan or notice has been prepared by the registered certifier or a person who has a relationship (whether family, personal, employment or business) with the registered certifier,
- (b) the registered certifier carrying out certification work in relation to an aspect of development if the registered certifier has done any of the following in relation to that aspect—
 - (i) provided advice as to how to amend a plan or specification to ensure that the aspect will comply with the *Building Code of Australia* or a legislative requirement (but not if the advice was merely advice as to how the plan or specification could be amended to comply with a deemed-to-satisfy provision of the *Building Code of Australia* and the development relates only to a class 1 building or a class 10 building),
 - (ii) proposed a design option for the aspect of development, including proposing a performance solution to achieve compliance with a performance requirement of the *Building Code of Australia*.

25 Circumstances in which a conflict does not arise

- (1) For the purposes of section 28(2) of the Act, a registered certifier does not have a conflict of interest in certification work for doing anything specified in subclauses (2)–(9).
- (2) The registered certifier issuing a relevant certificate on behalf of a council to the council or an employee of the council, but only if the development to which the certificate relates has a capital investment value of less than \$2,000,000.
- (3) The registered certifier carrying out an inspection of a swimming pool under Division 5 of Part 2 of the *Swimming Pools Act 1992*, carrying out work on the swimming pool and then issuing a certificate of compliance for the pool under that Division, but only if—
 - (a) the work—
 - (i) is carried out for the purposes of the issuing of the certificate of compliance, and
 - (ii) is carried out as expeditiously as possible after the inspection, and
 - (iii) has a total cost (including any materials and labour) of less than \$1,000, and
 - (b) the registered certifier—
 - (i) holds a supervisor certificate or endorsed contractor licence under the *Home Building Act 1989*, and
 - (ii) is authorised under that certificate or licence to build a swimming pool or carry out structural landscaping.
- (4) The registered certifier carrying out certification work on behalf of a council under a contract (***council certification work***) and carrying out other certification work in the area of the council (***private certification work***), but not if the council certification work and private certification work relate to the same development.

- (5) The registered certifier providing advice as to whether something complies with the *Building Code of Australia* or a legislative requirement or whether building work or subdivision work complies with approved plans or specifications.
- (6) The registered certifier doing any of the following in relation to the issue of a relevant certificate—
 - (a) identifying the matters to be satisfied before a relevant certificate can be issued in relation to an aspect of development,
 - (b) indicating that a performance solution is required to satisfy the applicable requirements of the *Building Code of Australia* in relation to an aspect of development but without giving advice about the performance solution,
 - (c) identifying the relevant requirements of the *Building Code of Australia* in relation to an aspect of development without giving advice about potential performance solutions,
 - (d) in a case where the registered certifier is issuing the relevant certificate on behalf of a council, being involved in the assessment of an aspect of development during the course of the determination of the development application or application for a complying development certificate.
- (7) The registered certifier doing any of the following in relation to the issue of a strata certificate—
 - (a) providing advice on whether plans and specifications for an aspect of development comply with applicable legislative requirements,
 - (b) providing advice on how the relevant strata plan is not in accordance with the plans and specifications in respect of which the relevant construction certificate was issued,
 - (c) identifying the matters to be satisfied before a strata certificate can be issued in relation to the aspect of the development.
- (8) The registered certifier (if the registered certifier is not the principal certifier for development) issuing a compliance certificate under the *Environmental Planning and Assessment Act 1979* in relation to an aspect of the development where the registered certifier or a person who has a relationship (whether family, personal, employment or business) with the registered certifier has been involved in the design of, or carried out work on, that aspect.
- (9) The registered certifier participating in a fire engineering brief for the purpose only of determining the scope of work for a fire engineering analysis and the basis for that analysis.

Part 5 Contracts for certification work

26 Definition

In this Part—

development certificate means the following—

- (a) a complying development certificate under the *Environmental Planning and Assessment Act 1979*,
- (b) a certificate referred to in section 6.4 of that Act,
- (c) a strata certificate.

27 Requirements relating to contracts for certification work

For the purposes of section 31(2) of the Act, a contract for the carrying out of certification work entered into between a person and a registered certifier or the employer of the registered certifier must comply with the requirements specified in this Part.

28 Particulars to be included in contract

A contract must contain the following particulars—

- (a) in the case of a contract between a person and a registered certifier—
 - (i) the registered certifier's name, registration number and the address of the registered certifier's place of business, and
 - (ii) a telephone number and email address for contacting the registered certifier,
- (b) in the case of a contract between a person and the employer of a registered certifier—
 - (i) the name, registration number (if applicable) and address of the employer's place of business, and
 - (ii) the name and registration number (if applicable) of any employee who it is proposed, at the date of the contract, will carry out certification work under the contract, and
 - (iii) a telephone number and email address for contacting the employer,
- (c) the name, address and contact details of the person for whom the certification work is to be carried out,
- (d) if any registered certifier named in the contract is required to be covered by insurance for the purposes of Division 1 of Part 3 of the Act,—
 - (i) the name of each insurer by whom that registered certifier is currently covered, and
 - (ii) the identifying number of the insurance contract, and
 - (iii) the dates between which the indemnity provided by the insurance contract has effect,
- (e) particulars of the certification work to be carried out under the contract,
- (f) in a case where the certification work that is the subject of the contract involves the carrying out of functions under the *Environmental Planning and Assessment Act 1979* and relates to particular development—
 - (i) a description of the development, and
 - (ii) the address, and formal particulars of title, of the site of the development, and

- (iii) identifying particulars for any related development consent granted under the *Environmental Planning and Assessment Act 1979* or any related certificate issued under Part 6 of that Act (including the name of the applicable consent authority or registered certifier, the date on which the consent or certificate was granted or issued and any registered number of the consent or certificate), and
Note. A complying development certificate is a form of development consent.
- (iv) identifying particulars of any plans, specifications or other documents relating to the subject of any related development consent or any related certificate issued under Part 6 of the *Environmental Planning and Assessment Act 1979*, and
- (v) identifying particulars of any individuals who it is proposed, at the date of the contract, will undertake any inspections required to be carried out under the *Environmental Planning and Assessment Act 1979* in connection with the certification work (including any applicable registration numbers of those individuals),
- (g) the fees and charges to be paid for certification work under the contract and, in the case of fees and charges that may be payable for work arising as a result of unforeseen contingencies, the basis on which those fees and charges are to be calculated,
- (h) the date on which the contract is made.

29 Details of fees and charges

A contract must—

- (a) if the certification work involves the determination of an application for a development certificate—require the fees and charges payable for the determination (excluding any fees and charges for work arising as a result of unforeseen contingencies) to be paid on or before the lodgment of the application, and
- (b) if the certification work involves the carrying out of functions of a principal certifier—require the fees and charges payable for carrying out those functions in respect of particular development (excluding any fees and charges for work arising as a result of unforeseen contingencies) to be paid before the functions are carried out in respect of that development, and
- (c) if the contract provides for payment of fees and charges for carrying out work arising as a result of unforeseen contingencies—provide for invoices to be issued within 21 days after the completion of that work.

30 Must be signed, executed and contain declaration

A contract must—

- (a) be signed, or otherwise appropriately executed, by the parties to the contract, and
- (b) include a declaration by the person for whom the certification work is to be carried out confirming that the person—
 - (i) has freely chosen to engage the particular certifier, and
 - (ii) has read the contract and any document accompanying the contract and understands the roles and responsibilities of the person and the registered certifier.

31 Must be accompanied by information sheet

A contract must be accompanied by any applicable document that the Secretary makes available on the website of the Department for the purposes of this clause addressing—

- (a) the role and statutory obligations of registered certifiers, and
- (b) the role of the person for whom the certification work is carried out, and
- (c) the types of information that can be found on the register of registrations and approvals maintained under section 102 of the Act.

Part 6 Accreditation authorities

Division 1 Approvals

32 Accreditation authority approval guidelines

For the purposes of section 61(2)(d) of the Act, the guidelines may make provision for or with respect to the following—

- (a) the complaint handling for making a complaint about an accreditation authority or a person exercising the functions of an accreditation authority,
- (b) how the Secretary will exercise any of the Secretary's functions under Part 6 of the Act,
- (c) the publication of information about an accreditation scheme.

33 Additional ground for refusing approval

For the purposes of section 63(3)(f) of the Act, the Secretary may refuse an approval to exercise the functions of an accreditation authority if—

- (a) the Secretary has requested the applicant for the approval to provide additional information necessary for the Secretary to determine the application, and
- (b) the applicant fails to provide the information within the reasonable time specified by the Secretary.

34 Suitability of person for approval

- (1) For the purposes of sections 63(4)(a) and 75(2)(b) of the Act, the following matters are prescribed as matters that the Secretary may have regard to—
 - (a) the person (including, if the person is a body corporate, a director of the body corporate) has, within the previous 10 years, been convicted of a relevant offence,
 - (b) the Independent Commission Against Corruption, within the previous 10 years, has made a finding or has been of the opinion that the person (including, if the person is a body corporate, a director of the body corporate) has engaged in corrupt conduct,
 - (c) the person (including, if the person is a body corporate, a director of the body corporate) is an undischarged bankrupt,
 - (d) the person is disqualified (other than on the grounds of not residing in that jurisdiction or on the grounds that the person is a body corporate) from holding an equivalent authorisation under the law of another Australian jurisdiction,
 - (e) a close associate of the person who would not be a fit and proper person to be approved exercises a significant influence over the person or the operation and management of the person's business.
- (2) For the purposes of section 75(2)(b) of the Act, the Secretary may have regard to the fact that the Secretary is of the opinion that the accreditation scheme of the accreditation authority does not comply with the requirements of the Act, the regulations or the accreditation authority approval guidelines.

35 Deemed refusal of application for approval

- (1) For the purposes of section 63(6) of the Act, the Secretary is taken to have refused approval if the Secretary fails to give the applicant for approval notice of a decision to grant or refuse approval within a period of 60 business days after the application is made or any longer period that the applicant consents to in writing.

- (2) In calculating a period for the purposes of subclause (1), any period from the day on which the Secretary makes a written request for further information from the applicant until the day on which the information is provided or the applicant refuses to provide the information is not to be included.
- (3) Subclause (1) does not prevent the Secretary from continuing to deal with an application after the expiry of that period.

36 Condition that evidence of insurance be provided to Secretary

- (1) For the purposes of section 66(1)(a) of the Act, it is a condition of an approval of an accreditation authority that the accreditation authority provide the Secretary with a copy of the certificate of currency for each insurance policy held by the accreditation authority.
- (2) If the accreditation authority takes out a new policy of insurance or renews a policy of insurance, the certificate of currency must be provided under subclause (1) within 5 business days.

37 Variation of approval of accreditation authority

- (1) For the purposes of section 65(3) of the Act, an application for variation of approval must—
 - (a) be in a form approved by the Secretary, and
 - (b) include or be accompanied by information or evidence that the Secretary reasonably requires to assess the application, and
 - (c) be accompanied by the fee payable as if the application were an application for the grant of approval.
- (2) If the Secretary considers it necessary to do so, the Secretary may require further documents or information to be provided by the applicant.
- (3) A variation of approval takes effect—
 - (a) at the time specified by the Secretary in the written notice under section 65 of the Act, or
 - (b) if no time is specified or if the notice is served on the accreditation authority after that time, when the notice is served on the accreditation authority.
- (4) The Secretary is taken to have refused to grant a variation of approval to an applicant if the Secretary fails to give the applicant notice of the Secretary's decision within 28 days after the application is made.
- (5) In calculating a period for the purposes of subclause (4), any period from the day on which the Secretary makes a written request for further information from the applicant until the day on which the information is provided or the applicant refuses to provide the information is not to be included.
- (6) Subclause (4) does not prevent the Secretary from continuing to deal with an application after the expiry of that period.

38 Provision of information to the Secretary

For the purposes of section 70(3) of the Act, the Secretary may request information be provided periodically or within a specified time after specified occurrences.

39 Publication of information

For the purposes of section 73(3) of the Act, the Secretary may request information be made publicly available periodically or within a specified time after specified occurrences.

Division 2 Accreditation scheme requirements

40 Matters that an accreditation scheme must provide for

The matters set out in this Division are the matters that an accreditation scheme must provide for under section 79(2)(c) of the Act.

41 Process for avoiding conflicts of interest

An accreditation scheme must provide for a process for recognising and managing any conflict of interest between the functions of the accreditation authority under the accreditation scheme and the other functions of the body corporate that is the accreditation authority.

42 Accreditation

An accreditation scheme must provide for the following—

- (a) a process for the accreditation of persons that is fair, impartial, transparent and timely,
- (b) the period for which accreditation is granted, being at least 1 year and no more than 5 years,
- (c) the ability for a person to apply for accreditation regardless of whether the person is a member of the accreditation authority.

43 Record keeping

An accreditation scheme must provide for the keeping of records by accreditation holders in relation to the carrying out of regulated work for a minimum of 10 years.

44 Code of conduct

An accreditation scheme must include a code of conduct for accreditation holders that imposes requirements on accreditation holders that are not less than the requirements imposed on registered certifiers by the code of conduct for registered certifiers.

45 Duties of accreditation authority

An accreditation scheme must provide for the accreditation authority—

- (a) to act in the public interest in the exercise of its functions, and
- (b) to exercise its functions independently, fairly and with honesty and integrity, and
- (c) to avoid and manage conflicts of interest, and
- (d) to ensure the accreditation scheme keeps up with changes in industry practice and legal requirements, and
- (e) to ensure that its staff are appropriately trained and act in accordance with the accreditation scheme.

46 Public website

- (1) An accreditation scheme must provide for a public website to be maintained that includes the following—
 - (a) clear information about the accreditation scheme, including—
 - (i) the application and renewal process, and
 - (ii) the standard conditions imposed on accreditation holders, and
 - (iii) the code of conduct, and

- (iv) the process for monitoring and investigating accreditation holders and the disciplinary action that may be taken, and
 - (v) the complaint handling and dispute resolution process,
 - (b) a searchable register of persons who are currently (or were formerly) accredited under the scheme,
 - (c) information about how a person may make a complaint about an accreditation holder,
 - (d) any information required to be included on the website by the Secretary (either by notice in writing to the accreditation authority or by including the requirement in the relevant accreditation authority approval guidelines).
- (2) Information required to be included on the website must—
- (a) be included in a prominent location, and
 - (b) be up to date, and
 - (c) be freely available to members of the public.

47 Transition strategy if accreditation authority no longer grants accreditation

- (1) An accreditation scheme must provide for a strategy as to what is to occur to accreditation holders if the accreditation authority no longer provides for the accreditation of those persons.
- (2) The strategy must address the following—
 - (a) how accreditation holders and members of the public will be notified,
 - (b) details of any transition period to be provided to accreditation holders,
 - (c) how fees will be reimbursed to accreditation holders, if applicable,
 - (d) what is to happen to records and information held by the accreditation authority that relate to accreditation holders.

Division 3 Miscellaneous

48 Body corporate no longer able to exercise accreditation authority functions

- (1) The Secretary must publish a notice in the Gazette if a body corporate is no longer able to exercise the functions of an accreditation authority because its approval as an accreditation authority is suspended or cancelled.
- (2) The notice is to be published as soon as practicable after the suspension or cancellation.
- (3) The Secretary may also publish the notice in any other manner that the Secretary sees fit.

Part 7 Record keeping

Division 1 Registered certifiers

49 Records generally

- (1) This Division sets out the records that a registered certifier must keep for the purposes of section 120(2)(c) of the Act.
- (2) A record required to be kept by a registered certifier under this Division is required to be kept—
 - (a) at the registered certifier's business premises or in another secure place, or
 - (b) in any other location or manner approved by the Secretary.
- (3) A record must be kept surely and must be in a form that can be readily inspected.
- (4) This Division does not require a registered certifier to keep records in relation to any certification work carried out by the registered certifier on behalf of a council.
- (5) This Division does not require a registered certifier to keep copies of—
 - (a) any certificate, or any ancillary application, determination, plan, specification or other document, for more than 10 years after the date on which the certificate was issued, or
Note. While this Division may not require a document to be kept for more than 10 years other legislation may impose a requirement that the document be kept longer.
 - (b) a record of an inspection or missed inspection for more than 10 years after the time the inspection was conducted or missed, or
 - (c) any list of projects (together with details of those projects) for more than 10 years after the list was required to be prepared.
- (6) A registered certifier who fails to comply with a requirement of this Division is guilty of an offence.
Maximum penalty—
 - (a) in the case of an individual—40 penalty units, or
 - (b) in the case of a body corporate—100 penalty units.

50 Planning Act records

A registered certifier must keep copies of the following—

- (a) any application for a relevant certificate that has been made to the registered certifier,
- (b) any written determination that has been made by the registered certifier in relation to an application for a relevant certificate,
- (c) any certificate or other document that the registered certifier has relied on for the purpose of issuing a relevant certificate,
- (d) each relevant certificate issued by the registered certifier (including any documents forming part of the certificate),
- (e) any plan or specification in respect of which the registered certifier has issued a relevant certificate,
- (f) for each year to which the registered certifier's registration relates, a list of the projects in connection with which the registered certifier has issued a relevant certificate, and for each project—
 - (i) the types of certificates issued, and
 - (ii) the classification of the building involved, and

- (iii) the name of the local government area in which the project is located and the address of the land or premises concerned (including the lot and deposited plan number), and
 - (iv) except in the case of a subdivision certificate, the estimated cost of the project, and
 - (v) in the case of a subdivision certificate, the number of lots created by the subdivision, and
 - (vi) the name of the applicant for the certificate, and
 - (vii) the name of the owner of the land or premises concerned, and
 - (viii) the name of the principal contractor,
- (g) any record required to be made under the Planning Regulation of a site inspection,
 - (h) if the registered certifier is a principal certifier, any record of inspection provided to the registered certifier by another certifier under clause 162B(2) of the Planning Regulation,
 - (i) any performance solution report obtained by, or provided to, the registered certifier under clause 130(2A) or 144A(1) of the Planning Regulation.

51 Strata Act records

A registered certifier must, for each year to which the registered certifier's registration relates, keep—

- (a) a list of the projects in connection with which the registered certifier has issued a strata certificate, and
- (b) for each of those projects, records of the following—
 - (i) the classification of the building involved,
 - (ii) the name of the local government area in which the project is located and the address of the land or premises concerned (including the lot and deposited plan number),
 - (iii) the name of the applicant for the certificate,
 - (iv) the name of the owner of the land or premises concerned,
 - (v) the number of lots created by, or that are the subject of, the strata plan, strata plan of subdivision or notice of conversion to which the strata certificate relates.

52 Swimming Pools Act records

A registered certifier must, for each year to which the registered certifier's registration relates, keep—

- (a) a list of the premises at which the registered certifier has carried out inspections under the *Swimming Pools Act 1992*, and
- (b) for each of those premises, records of the following—
 - (i) the name of the local government area in which the premises are located and the address of the premises (including the lot and deposited plan number),
 - (ii) the date on which the inspection was carried out,
 - (iii) if the inspection was carried out under section 22C of that Act, 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 that Act issued by the registered certifier in relation to the swimming pool or barrier,
- (vi) details (including copies) of any notice under section 22E of that Act issued by the registered certifier in relation to the swimming pool or barrier and the date on which any such notice was forwarded to the relevant local authority.

53 Former records

A registered certifier who was previously accredited under the *Building Professionals Act 2005* must cause copies to be kept of any documents the registered certifier was required to keep under that Act.

54 Records relating to registered bodies corporate

- (1) This clause applies to any document or record referred to in clause 50 that is obtained or created by—
 - (a) a registered body corporate, or
 - (b) a registered director of a body corporate, or
 - (c) a registered certifier who is an employee of a registered body corporate, in the course of carrying out certification work on behalf of the body corporate.
- (2) The documents and records to which this clause applies are to be kept in accordance with this Division by—
 - (a) the registered body corporate concerned, or
 - (b) if the body corporate ceases to be a registered body corporate, the registered certifier who was a registered director of the body corporate most recently before it ceased to be a registered body corporate, or
 - (c) if there is more than 1 registered certifier under paragraph (b) and those registered certifiers have come to an arrangement that only 1 of them will keep the required records, that registered certifier.
- (3) Any document or record to which this clause applies is to be kept so as to enable it to be made available for inspection and copying on request by any person who obtained or created it in the course of carrying out certification work on behalf of the body corporate.

Division 2 Local councils

55 Records generally

- (1) This Division sets out the records a local council must keep for the purposes of section 120(2)(c) of the Act.
- (2) A record required to be kept by a council under this Division is required to be kept at the office of the council or in another secure place.
- (3) A record required to be kept by a council under this Division is to be kept—
 - (a) for a period of at least 10 years, and
 - (b) in a way that will enable it to be made available for inspection and copying on request by any person who obtained or created it in the course of carrying out certification work on behalf of the council.

56 Records of certifiers employed or engaged by council

A council must keep the following records in relation to each registered certifier who is employed or engaged by the council to carry out certification work on behalf of the council—

- (a) the name and registration number of the registered certifier,
- (b) the date on which the registered certifier commenced that employment or was engaged by the council,
- (c) the date on which the registered certifier ceased to be so employed or engaged,
- (d) a description of each project (including an address and file identifier, if available, and particulars of any certificate issued) in respect of which the registered certifier carried out certification work on behalf of the council, being a description that enables the certification work to be adequately identified.

57 Planning Act records

A council must keep copies of the following—

- (a) any application for a relevant certificate made to the council,
- (b) any written determination that has been made by the council in relation to an application for a relevant certificate,
- (c) any certificate or other document that the council has relied on for the purpose of issuing a relevant certificate,
- (d) each relevant certificate issued by the council (including any documents forming part of the certificate),
- (e) any plans and specifications in respect of which the council has issued a relevant certificate,
- (f) a list of the projects in connection with which the council has issued a relevant certificate and for each project—
 - (i) the types of certificates issued, and
 - (ii) the classification of the building involved, and
 - (iii) the name of the local government area in which the project is located and the address of the land or premises concerned (including the lot and deposited plan number), and
 - (iv) except in the case of a subdivision certificate, the estimated cost of the project, and
 - (v) in the case of a subdivision certificate, the number of lots created by the subdivision, and
 - (vi) the name of the applicant for the certificate, and
 - (vii) the name of the owner of the land or premises concerned, and
 - (viii) the name of the principal contractor,
- (g) any record required to be made under the Planning Regulation of a site inspection,
- (h) if the council is a principal certifier, any record of an inspection provided to the council by another certifier under clause 162B(2) of the Planning Regulation,
- (i) any performance solution report obtained by, or provided to, the council under clause 130(2A) or 144A(1) of the Planning Regulation.

58 Swimming Pools Act records

A council must keep copies of the following—

- (a) a list of the premises at which a registered certifier 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 that Act, 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 that Act issued by the registered certifier in relation to the swimming pool or barrier,
 - (vi) details (including copies) of any notice under section 22E of that Act issued by the registered certifier in relation to the swimming pool or barrier.

Division 3 Accreditation authorities

59 Records generally

- (1) This Division sets out the records an accreditation authority must keep for the purposes of section 74(1) of the Act.
- (2) A record required to be kept by an accreditation authority under this Division is required to be kept at the office of the accreditation authority or in another secure place.
- (3) A record required to be kept by an accreditation authority under this Division is to be kept for a period of at least 10 years.

Note. Section 74(4) of the Act imposes a maximum penalty of 100 penalty units for a failure to keep the records required under this Division.

60 Accreditation records

An accreditation authority must keep copies of the following—

- (a) the assessments undertaken by that accreditation authority of all applications made to it for a grant of accreditation,
- (b) a register showing all persons for whom the accreditation authority is, or has been, the regulating accreditation authority,
- (c) for each of those persons, records of the following—
 - (i) conditions imposed by the accreditation authority on the person's accreditation,
 - (ii) investigations conducted by the accreditation authority into the person,
 - (iii) complaints made or referred to the accreditation authority about the person,
 - (iv) disciplinary action taken by the accreditation authority against the person,
 - (v) audits conducted by the accreditation authority against the person,
- (d) the following documents (and all previous versions of those documents)—

- (i) a document setting out the procedures adopted by the accreditation authority for dealing with applications made for a grant of accreditation,
- (ii) a document setting out the standard conditions that the accreditation authority imposes on accreditations granted by the accreditation authority,
- (iii) a document setting out the accreditation authority's code of conduct for accreditation holders,
- (iv) a document setting out how the accreditation authority deals with complaints and disputes involving accreditation holders,
- (v) a document setting out the procedures adopted by the accreditation authority for taking disciplinary action against accreditation holders,
- (vi) a document setting out how the accreditation authority monitors and investigates accreditation holders.

Part 8 Councils

61 Responsibilities of councils carrying out certain certification work

For the purposes of section 112(1) of the Act, the prescribed class of certification work is all certification work other than—

- (a) certification work under the *Strata Schemes Development Act 2015*, or
- (b) certification work under the *Swimming Pools Act 1992*, or
- (c) certification work under the *Environmental Planning and Assessment Act 1979* for subdivision work or for a structure that does not have a classification under the *Building Code of Australia*.

62 Notice to be given by council of certain matters

- (1) For the purposes of section 120(2)(c) of the Act, a council must provide the following information to the Secretary—
 - (a) the date on which a registered certifier is employed or engaged by the council in a position that involves the carrying out of certification work on behalf of the council and the registration number of the registered certifier,
 - (b) the date on which a registered certifier ceases to be employed or engaged by the council in a position that involves the carrying out of certification work on behalf of the council.
- (2) The information must be provided in writing within 7 days after the date of the relevant event.

63 Exemptions for registered certifiers employed by councils from civil penalty

A registered certifier who is employed by a council is exempt from section 48(1)(c) of the Act.

Part 9 Miscellaneous

64 Certain registered certifiers may carry out certain regulated work

- (1) For the purposes of section 55 of the Act—
 - (a) a registered certifier who holds an engineer—electrical class of registration may carry out regulated work comprising the endorsing of plans and specifications for relevant fire safety systems comprising a fire detection and alarm system, and
 - (b) a registered certifier who holds an engineer—mechanical class of registration may carry out regulated work comprising the endorsing of plans and specifications for relevant fire safety systems comprising a mechanically ducted smoke control system, and
 - (c) a registered certifier who holds a certifier—hydraulic (building) class of registration may carry out regulated work comprising the endorsing of plans and specifications for relevant fire safety systems comprising a hydraulic fire safety system.

Note. Section 55 of the Act provides that when this regulated work is carried out by a registered certifier it is certification work. The registered certifier must comply with all the requirements of the registered certifier's registration when carrying out this regulated work.

- (2) In this clause—
relevant fire safety system has the same meaning as in clause 136AA of the Planning Regulation.

65 Regulated work may be carried out if no accredited person is available

- (1) For the purposes of section 120(4) of the Act, regulated work referred to in paragraph (a) or (b) may be carried out by a person other than a person who holds an accreditation that authorises the person to carry out the regulated work, if—
 - (a) in the case of the exercise of a function of an accredited practitioner (fire safety) under clause 130, 136AA, 144A, 146B or 164B of the Planning Regulation, the relevant registered certifier or principal certifier certifies in writing (a *competency certificate*) that in the reasonable opinion of the certifier the person is competent to carry out the regulated work, or
 - (b) in the case of the exercise of a function of an accredited practitioner (fire safety) under Divisions 4 and 5 of Part 9 of the Planning Regulation, the relevant building owner certifies in writing that in the reasonable opinion of the owner the person is competent to carry out the regulated work.
- (2) The making of a competency certificate by a registered certifier is certification work and the competency certificate is required to be retained as a record by the registered certifier in accordance with Division 1 of Part 7.
- (3) For the purposes of section 120(4) of the Act, regulated work may be carried out by a particular appropriate person if—
 - (a) the Secretary is satisfied that there is no person reasonably available who holds an accreditation that authorises the person to carry out the regulated work, and
 - (b) the Secretary—
 - (i) in writing, authorises a particular building owner, registered certifier or principal certifier to appoint an appropriate person to carry out the regulated work, or
 - (ii) by notice in the Gazette, authorises a class of building owners, registered certifiers or principal certifiers to appoint an appropriate person to carry out regulated work of that kind, and

- (c) a building owner or certifier who is so authorised, appoints the particular appropriate person in accordance with the authorisation.
- (4) A reference in this clause to accreditation is taken to include a reference to registration when used in relation to regulated work that may be carried out by a registered certifier.
- (5) In this clause—
appropriate person means a person other than an accredited person who, in the reasonable opinion of the relevant building owner, principal certifier or registered certifier, is competent to carry out the regulated work.

66 Register of registrations and approvals

- (1) For the purposes of section 102(3) of the Act, the following particulars (to the extent that the particulars are relevant) are to be included in the register in respect of each person who is (or has been) a registered certifier or accreditation authority—
 - (a) the person's name,
 - (b) the address of the person's place of business,
 - (c) a contact telephone number or an email address (or both) for the person,
 - (d) the registration number of the person,
 - (e) the class and current status of the person's registration or approval,
 - (f) the date on which the person was first registered or approved,
 - (g) each date on which the person's registration or approval has been renewed,
 - (h) the date on which any current registration held by the person is due to expire,
 - (i) details of the insurance indemnifying the person against liability with respect to certification work or the exercise of the functions of an accreditation authority, including the insurance policy number, the name of the insurer and the dates during which the indemnification is in force,
 - (j) details of each condition that has been imposed on the person's registration or approval (other than a condition that is imposed on every registration or approval) including the nature of the condition, the date on which it was imposed and, if the condition has been removed, the date on which that occurred,
 - (k) each date on which the person's registration or approval has been suspended and each date on which a suspension ended,
 - (l) the date on which the person's registration or approval was cancelled or otherwise ceased to have effect,
 - (m) details of any grounds for taking disciplinary action against the person under Part 4 of the Act and details of the disciplinary action taken,
 - (n) details of any offence against the certification legislation for which the person has been prosecuted, convicted or had a penalty notice issued,
 - (o) details of any failure by the person to comply with an order of the Tribunal or a court to carry out certification work or pay money in relation to certification work,
 - (p) details of any warning notice published under section 103 of the Act warning persons about particular risks involved in dealing with the person,
 - (q) details of any undertakings made under section 104 of the Act by the person,
 - (r) for a registered body corporate, the name, registration number and class of registration of each registered individual who is (or has been)—

- (i) a registered director of the body corporate and the dates on which the registered individual became a registered director and ceased to be a registered director, or
 - (ii) an employee of the registered body corporate and the dates on which the registered individual became an employee and ceased to be an employee.
- (2) A reference to registration or registered in subclause (1) extends, in the case of a registered certifier who has been accredited as a certifier under the *Building Professionals Act 2005* or the *Environmental Planning and Assessment Act 1979*, to include a reference to that accreditation.
- (3) A reference to the certification legislation in subclause (1) is taken to include a reference to the *Building Professionals Act 2005* and any regulation made under that Act.
- (4) If a registered certifier was accredited as a certifier under the *Building Professionals Act 2005* and was first accredited before 1 March 2007, particulars of the accreditation body by which the person was originally accredited are also to be included in the register.

67 Waiver, refund or reduction of fees

The Secretary may waive, refund or reduce the payment of a fee under the Act or this Regulation if the Secretary considers it is appropriate to do so.

68 Savings and transitional—existing arrangements for exchange of information

An arrangement entered into by the Building Professionals Board with a relevant agency under section 82A of the *Building Professionals Act 2005* that is in force immediately before the repeal of that section is taken to be an arrangement entered into by the Secretary with the relevant agency under section 108 of the *Building and Development Certifiers Act 2018*.

69 Savings and transitional—existing exemption

- (1) An exemption granted to a certifier by the Building Professionals Board in relation to a conflict of interest under section 71(2) of the *Building Professionals Act 2005* that is in force immediately before the repeal of that section is taken to continue in force in respect of the certifier for 12 months after that repeal as if it were granted by the Secretary under section 28(2) of the *Building and Development Certifiers Act 2018*.
- (2) Despite subclause (1), the Secretary may, by notice in writing to a certifier, revoke an exemption that applies to the certifier because of this clause.

70 Savings and transitional—exemption for certain existing conflicts of interest

- (1) For the purposes of section 28(2) of the Act, the conflict of interest set out in subclause (2) is exempt from section 28(1) of the Act.
- (2) A registered certifier issuing a relevant certificate on behalf of a council to a person who has a relationship (whether family, personal, employment or business) with the registered certifier, but only if—
 - (a) the council was appointed before 1 September 2010 as the principal certifying authority for development to which the certificate relates, or
 - (b) an application for the certificate was made to the council before 1 September 2010 (whether or not the council was appointed as the principal certifying authority for development to which the certificate relates), or

- (c) an application for a construction certificate or complying development certificate in respect of the relevant development was made to the council before 1 September 2010 and the council was appointed on or after 1 September 2010 as the principal certifying authority for the development.

Schedule 1 Classes of registration

Part 1 Preliminary

1 Definitions

In this Schedule—

class of building, means a class of building under the *Building Code of Australia*.

performance solution has the same meaning as in the *Building Code of Australia*.

Planning Act means the *Environmental Planning and Assessment Act 1979*.

rise in storeys has the same meaning as in the *Building Code of Australia* and relates to the whole building and not to a new part of a building.

Strata Act means the *Strata Schemes Development Act 2015*.

unclassified building means a building that does not have a class.

2 Classes of registration

- (1) For the purposes of section 6(4) of the Act, the following classes of registration are prescribed—
 - (a) building inspector,
 - (b) building surveyor—unrestricted,
 - (c) building surveyor—restricted (all classes of building),
 - (d) building surveyor—restricted (class 1 and 10 buildings),
 - (e) certifier—acoustic,
 - (f) certifier—energy management,
 - (g) certifier—fire safety,
 - (h) certifier—hydraulic (building),
 - (i) certifier—hydraulic (speciality),
 - (j) certifier—hydraulic (stormwater),
 - (k) certifier—location of works,
 - (l) certifier—road and drainage,
 - (m) certifier—stormwater,
 - (n) certifier—strata,
 - (o) certifier—subdivision,
 - (p) engineer—electrical,
 - (q) engineer—geotechnical,
 - (r) engineer—mechanical,
 - (s) engineer—structural,
 - (t) swimming pool inspector.
- (2) The certification work that is authorised to be carried out by a person holding a particular class of registration is the certification work specified in this Schedule in relation to that class of registration.
- (3) Despite subclause (2), a registered certifier is authorised to carry out certification work only where that is otherwise consistent with any conditions or restrictions on the registered certifier's registration.

Note. For example, the registered certifier's registration may contain a condition that the registered certifier only carry out certification work under supervision.

3 Supervision is certification work

- (1) For the purposes of paragraph (e) of the definition of *certification work* in section 4(1) of the Act, supervision of certification work carried out by a registered certifier (the *supervised certifier*) is certification work if—
 - (a) it is a condition of the supervised certifier’s registration that the certification work be carried out only under the supervision of a registered certifier (the *supervisor*) holding a particular class of registration, and
 - (b) the supervisor holds that class of registration.
- (2) The supervised certifier is authorised to carry out that certification work under that supervision and in accordance with the terms (if any) of the condition of registration.
- (3) The supervisor is authorised to carry out that supervision.

4 Corresponding categories of accreditation

For the purposes of clause 3(1)(a) of Schedule 1 to the Act, the corresponding category of accreditation for each class of registration is as follows—

Class of registration	Category of accreditation
building inspector	A4
building surveyor—unrestricted	A1 or A5
building surveyor—restricted (all classes of building)	A2
building surveyor—restricted (class 1 and 10 buildings)	A3
certifier—acoustic	C13
certifier—energy management	C11
certifier—fire safety	C10
certifier—hydraulic (building)	C14
certifier—hydraulic (speciality)	C16
certifier—hydraulic (stormwater)	C15
certifier—location of works	C5
certifier—road and drainage	C1, C2 or C6
certifier—stormwater	C3 or C4
certifier—strata	D1
certifier—subdivision	B1
engineer—electrical	C8
engineer—geotechnical	C12
engineer—mechanical	C9
engineer—structural	C7
swimming pool inspector	E1

Part 2 Certification work

5 Building inspector

A registered certifier who holds a building inspector class of registration is authorised to carry out the following inspections under the Planning Act but not in relation to a building other than a class 1 or 10 building—

- (a) an inspection required by a principal certifier under section 6.5 of the Planning Act,
- (b) a critical stage inspection prescribed by clause 162A of the Planning Regulation but not—
 - (i) the last critical stage inspection after the building work has been completed and prior to any occupation certificate being issued, or
 - (ii) if the class 1 or 10 building achieves compliance with the performance requirements of the *Building Code of Australia* by means of a performance solution—unless the inspection is carried out under the supervision of the principal certifier.

6 Building surveyor—unrestricted

- (1) A registered certifier who holds a building surveyor—unrestricted class of registration is authorised to carry out all certification work other than the following—
 - (a) certification work under the Strata Act,
 - (b) certification work under the Planning Act in relation to subdivision work.
- (2) Despite subclause (1), a registered certifier who holds a building surveyor—unrestricted class of registration is authorised to carry out the following certification work only if the registered certifier's certificate of registration specifically authorises the registered certifier to carry out that type of certification work—
 - (a) certification work in relation to—
 - (i) building work to which clause 162AB of the Planning Regulation applies, or
 - (ii) demolition that is complying development under *State Environmental Planning Policy (Three Ports) 2013*,
 - (b) certification work involving an unclassified building (other than certification work referred to in paragraph (a)).

7 Building surveyor—restricted (all classes of building)

- (1) A registered certifier who holds a building surveyor—restricted (all classes of building) class of registration is authorised to carry out all certification work other than the following—
 - (a) certification work under the Strata Act,
 - (b) certification work under the Planning Act in relation to subdivision work or an excluded building,
 - (c) certification work referred to in clause 6(2) of this Schedule.
- (2) In this clause—

excluded building means—

 - (a) an unclassified building, or
 - (b) a class 2, 3, 4, 5, 6, 7a, 7b, 8, 9a, 9b or 9c building having—
 - (i) a floor area of more than 2,000 square metres, or
 - (ii) a rise in storeys of more than—

- (A) 3 storeys, or
- (B) 4 storeys but only if the ground floor or basement level is a class 7a building and the other 3 storeys are a class 2 building.

floor area has the same meaning as in the *Building Code of Australia*.

8 Building surveyor—restricted (class 1 and 10 buildings)

- (1) A registered certifier who holds a building surveyor—restricted (class 1 and 10 buildings) class of registration is authorised to carry out all certification work other than the following—
 - (a) certification work under the Strata Act,
 - (b) certification work under the Planning Act in relation to subdivision work,
 - (c) the exercise of a function of a certifier specified in section 6.5 of the Planning Act for an excluded building,
 - (d) the exercise of a function of a principal certifier for an excluded building,
 - (e) the issue of a complying development certificate or a certificate referred to in section 6.4 of the Planning Act in respect of an excluded building,
 - (f) certification work under the *Swimming Pools Act 1992* if the swimming pool achieves compliance with the performance requirements of the *Building Code of Australia* (other than those in P2.2.4 of that code) by means of a performance solution,
 - (g) certification work referred to in clause 6(2) of this Schedule.
- (2) In this clause—
excluded building means a building other than a class 1 or 10 building.

9 Certifier—acoustic

- (1) A registered certifier who holds a certifier—acoustic class of registration is authorised to issue a compliance certificate under the Planning Act for the following—
 - (a) the design of acoustics components and systems of building work,
 - (b) constructed acoustics components and systems of building work.
- (2) The registered certifier is also authorised to carry out any related assessment, measurement, analysis and modelling of noise and vibration sources and receptors.

10 Certifier—energy management

- (1) A registered certifier who holds a certifier—energy management class of registration is authorised to issue a compliance certificate under the Planning Act for the following for a class 3, 5, 6, 7a, 7b, 8, 9a, 9b or 9c building—
 - (a) the design of energy management components of building work,
 - (b) constructed energy management components of building work.
- (2) Despite subclause (1), the registered certifier is not authorised to issue a compliance certificate in relation to the energy efficiency of a mechanical system.
- (3) In this clause—
mechanical system includes the heating, ventilation, air-conditioning and air distribution, smoke control and exhaust, stairwell pressurisation systems and vertical transport systems to facilitate the safe occupation and use of a building.

11 Certifier—fire safety

- (1) A registered certifier who holds a certifier—fire safety class of registration is authorised to issue a compliance certificate under the Planning Act for performance solutions for the following to the extent that fire safety is involved—
 - (a) the design of building work,
 - (b) constructed building work.
- (2) Building work involves fire safety for the purposes of subclause (1) if it relates to—
 - (a) fire safety systems and components of fire safety systems, or
 - (b) the safety of persons in the event of fire, or
 - (c) the prevention, detection and suppression of fire.
- (3) In this clause—
fire safety system has the same meaning as in the *Building Code of Australia*.

12 Certifier—hydraulic (building)

- (1) A registered certifier who holds a certifier—hydraulic (building) class of registration is authorised to issue a compliance certificate under the Planning Act for the following—
 - (a) the design of building hydraulics,
 - (b) constructed building hydraulics.
- (2) In this clause—
building hydraulics includes sanitary services, sewerage, hot and cold water services, recycled water services, gas services, fire hydrants, fire hose reel services, fire sprinkler services, trade waste plumbing and special services.

13 Certifier—hydraulic (speciality)

- (1) A registered certifier who holds a certifier—hydraulic (speciality) class of registration is authorised to issue a compliance certificate under the Planning Act for the following—
 - (a) the design of speciality hydraulics for buildings,
 - (b) constructed speciality hydraulics for buildings.
- (2) In this clause—
speciality hydraulics includes sewerage pumping stations, sewerage treatment plants and ponds and trade waste treatment services.
trade waste treatment services includes grease arresters, dilution systems and heavy metals extraction systems.

14 Certifier—hydraulic (stormwater)

- (1) A registered certifier who holds a certifier—hydraulic (stormwater) class of registration is authorised to issue a compliance certificate under the Planning Act for the following—
 - (a) the design of stormwater hydraulics for buildings,
 - (b) constructed stormwater hydraulics for buildings.
- (2) In this clause—
stormwater hydraulics includes roof and stormwater drainage, gutters, sumps and downpipes, in-ground drainage, surface drainage, water quality controls and sub-soil drainage.

15 Certifier—location of works

A registered certifier who holds a certifier—location of works class of registration is authorised to issue a compliance certificate under the Planning Act to verify the location of subdivision work and building work as constructed, including the location of roads, services, drainage, detention basins and structures, finished building floor levels and finished ground levels.

16 Certifier—road and drainage

- (1) A registered certifier who holds a certifier—road and drainage class of registration is authorised to issue a compliance certificate under the Planning Act for the following—
- (a) the design of private road and drainage works associated with a building site,
 - (b) constructed private road and drainage works associated with a building site,
 - (c) constructed subdivision road and drainage works.
- (2) In this clause—
private means will not be dedicated to a local council or the State or Commonwealth government.
road and drainage works includes related earthworks.

17 Certifier—stormwater

- (1) A registered certifier who holds a certifier—stormwater class of registration is authorised to issue a compliance certificate under the Planning Act for the following—
- (a) the design of stormwater management facilities,
 - (b) constructed stormwater management facilities.
- (2) In this clause—
stormwater management facilities includes surface and sub-surface stormwater drainage systems within the lot boundaries of the site of proposed development, stormwater quantity controls, stormwater quality controls and similar elements of water sensitive urban design.

18 Certifier—strata

A registered certifier who holds a certifier—strata class of registration is authorised to carry out all certification work under the Strata Act.

19 Certifier—subdivision

A registered certifier who holds a certifier—subdivision class of registration is authorised to carry out the following certification work under the Planning Act—

- (a) issue a complying development certificate—
 - (i) for a proposed subdivision, or
 - (ii) for complying development under clause 130 of *State Environmental Planning Policy (Infrastructure) 2007*,
- (b) issuing certificates and carrying out inspections under section 6.5(2) or (3) of the Planning Act,
- (c) carry out an inspection under clause 129B of the Planning Regulation but only in relation to subdivision work.

20 Engineer—electrical

A registered certifier who holds an engineer—electrical class of registration is authorised to issue a compliance certificate under the Planning Act for the following—

- (a) the design of electrical components and systems of building work,
- (b) constructed electrical components and systems of building work.

21 Engineer—geotechnical

A registered certifier who holds an engineer—geotechnical class of registration is authorised to issue a compliance certificate under the Planning Act for the following if related to subdivision work or buildings with a maximum rise in storeys of 3 storeys—

- (a) the design of foundations, earthworks, earth retaining structures and pavements,
- (b) constructed foundations, earthworks, earth retaining structures and pavements.

22 Engineer—mechanical

- (1) A registered certifier who holds an engineer—mechanical class of registration is authorised to issue a compliance certificate under the Planning Act for the following—

- (a) the design of mechanical systems of building work,
- (b) constructed mechanical systems of building work,
- (c) relevant energy efficiency provisions of the *Building Code of Australia* that relate to mechanical systems.

- (2) In this clause—

mechanical system includes heating, ventilation, air-conditioning and air distribution, smoke control and exhaust, stairwell pressurisation systems and vertical transport systems to facilitate the safe occupation and use of a building.

23 Engineer—structural

A registered certifier who holds an engineer—structural class of registration is authorised to issue a compliance certificate under the Planning Act for the following—

- (a) the design of structural components of building work,
- (b) constructed structural components of building work.

24 Swimming pool inspector

A registered certifier who holds a swimming pool inspector class of registration is authorised to carry out all certification work under the *Swimming Pools Act 1992* but not if the swimming pool achieves compliance with the performance requirements of the *Building Code of Australia* by means of a performance solution.

Schedule 2 Qualifications and experience

1 Definitions

- (1) In this Schedule—

Australian university, degree and *post-graduate qualification* have the same meanings as in the *Higher Education Act 2001*.

NVR approved in relation to a qualification means a qualification from an NVR registered training organisation within the meaning of the *National Vocational Education and Training Regulator Act 2011* of the Commonwealth that has the qualification listed on its scope of registration on the National Register under that Act.

relevant means relevant to the certification work that can be carried out by a holder of the particular class of registration.

TEQSA National Register means the National Register of Higher Education Providers established under section 198 of the *Tertiary Education Quality and Standards Agency Act 2011* of the Commonwealth.

- (2) A reference in this Schedule to an NVR approved qualification is taken to include a reference to a qualification that supersedes that qualification.

2 Qualifications and experience required for grant of registration

- (1) For the purposes of section 120(2)(a) of the Act, the provisions of this Schedule specify the minimum qualifications and experience required to be granted registration in the classes set out in this Schedule.
- (2) If more than 1 pathway is shown, the minimum qualifications and experience required to be granted registration are the qualifications and experience specified in any one of those pathways.
- (3) Despite subclause (2), if the Secretary has, under clause 4 of this Regulation, required an applicant to undergo recognised training, successful completion of that training is also taken to be part of the minimum qualifications and experience required to be granted registration.
- (4) The Secretary may also grant registration in a class to a person if the Secretary is satisfied that the person's qualifications and experience are at least equivalent to the qualifications and experience specified for that class.
- (5) To be granted registration for the first time, in addition to any other qualifications and experience set out in this Schedule, a person must, if required by the Secretary to do so, also successfully complete a registration exam conducted by the Secretary within 6 months before the application for the grant of registration is made.
- (6) The Secretary may approve a longer period for the purposes of subclause (5) in a particular case if the Secretary is of the opinion that it is reasonable to do so.
- (7) Subclause (5) does not apply to a grant of registration in the class of swimming pool inspector.

3 Building inspector

(1) Pathway 1

(a) Qualifications

Any of the following—

- (i) a qualification referred to in clause 6(1) of this Schedule,

- (ii) degree or post-graduate qualification in building surveying, building, construction, construction management or civil engineering from an Australian university,
 - (iii) degree in architecture from an Australian university,
 - (iv) Bachelor of Science (Environmental Health) from Western Sydney University,
 - (v) post-graduate qualification in building, construction or construction management from an Australian university,
 - (vi) Diploma of Local Government (Environmental Health and Building Assessment) including successful completion of the CPCCSV5011A (Apply building codes and standards to residential buildings) competency or the CPCCSV5001A (Assess the construction of domestic scale buildings) competency from the Local Government Training Institute.
 - (vii) NVR approved Advanced Diploma of Building Surveying (CPC60115).
- (b) **Experience**
None required.
- (2) **Pathway 2**
- (a) **Qualifications**
Enrolled in a course leading towards a qualification referred to in clause 6(1) of this Schedule.
- (b) **Experience**
None required.
- (3) **Pathway 3**
- (a) **Qualifications**
Satisfactory completion of an NVR approved certificate IV in building and construction (building).
- (b) **Experience**
6 months recent relevant practical experience.

4 Building surveyor—unrestricted

- (1) **Qualifications**
Any of the following—
- (a) Bachelor of Building Surveying and Certification (Honours) from Central Queensland University,
 - (b) Bachelor of Construction Management (Building) (Honours) from the University of Newcastle commenced on or after 1 January 2011,
 - (c) Bachelor of Construction Management (building surveying option) from University of South Australia,
 - (d) Graduate Diploma in Building Surveying from Western Sydney University, Bond University or the University of South Australia,
 - (e) Graduate Diploma of Building Surveying from Holmesglen Institute awarded before 31 December 2018,
 - (f) Master of Building Surveying from Bond University or Western Sydney University,

- (g) masters degree, bachelor degree or graduate diploma in building surveying from a university or higher education provider identified on the TEQSA National Register as a self-accrediting authority,
- (h) masters degree, bachelor degree or graduate diploma in building surveying listed as an approved course on the TEQSA National Register.

(2) **Experience**

3 years recent relevant practical experience.

5 Building surveyor—restricted (all classes of building)

(1) **Qualifications**

Any of the following—

- (a) a qualification referred to in clause 4(1) of this Schedule,
- (b) Bachelor of Applied Science (Construction Management) from Curtin University,
- (c) Bachelor of Construction Management from the University of South Australia,
- (d) Bachelor of Construction Management (Honours) with a major in Building Surveying from Western Sydney University,
- (e) NVR approved Advanced Diploma of Building Surveying (CPC60115),
- (f) graduate diploma or graduate certificate in building surveying from a university or higher education provider identified on the TEQSA National Register as a self-accrediting authority,
- (g) graduate diploma or graduate certificate in building surveying listed as an approved course on the TEQSA National Register.

(2) **Experience**

2 years recent relevant practical experience.

6 Building surveyor—restricted (class 1 and 10 buildings)

(1) **Qualifications**

Any of the following—

- (a) a qualification referred to in clause 5(1) of this Schedule,
- (b) NVR approved skill set CPCSS00004 of the Advanced Diploma in Building Surveying,
- (c) associate degree, graduate diploma or graduate certificate in building surveying from a university or higher education provider identified on the TEQSA National Register as a self-accrediting authority,
- (d) associate degree, graduate diploma or graduate certificate in building surveying listed as an approved course on the TEQSA National Register.

(2) **Experience**

1 year recent relevant practical experience.

7 Certifier—acoustic

(1) **Pathway 1**

(a) **Qualifications**

Must be registered on the National Engineering Register as a professional engineer with building services engineering listed as an area of practice.

(b) **Experience**

No additional experience other than that required for registration in accordance with paragraph (a).

(2) **Pathway 2**

(a) **Qualifications**

Degree in engineering, science or architecture from an Australian university that includes subjects relating to acoustics and acoustics design.

(b) **Experience**

3 years recent relevant practical experience.

8 Certifier—energy management

(1) **Pathway 1**

(a) **Qualifications**

Must be registered on the National Engineering Register as a professional engineer with building services engineering listed as an area of practice.

(b) **Experience**

No additional experience other than that required for registration in accordance with paragraph (a).

(2) **Pathway 2**

(a) **Qualifications**

Degree in mechanical engineering from an Australian university.

(b) **Experience**

3 years recent relevant practical experience.

9 Certifier—fire safety

(1) **Pathway 1**

(a) **Qualifications**

Must be registered on the National Engineering Register as a professional engineer with fire safety engineering listed as an area of practice.

(b) **Experience**

No additional experience other than that required for registration in accordance with paragraph (a).

(2) **Pathway 2**

(a) **Qualifications**

Any of the following—

- (i) degree (other than an associate degree) in engineering from an Australian university that includes subjects relating to fire safety,
- (ii) NVR approved Diploma of Fire Systems Design (CPC50509).

(b) **Experience**

3 years recent relevant practical experience.

10 Certifier—hydraulic (building)

(1) **Pathway 1**

(a) **Qualifications**

Must be registered on the National Engineering Register as a professional engineer with building services engineering, civil engineering or mechanical engineering listed as an area of practice.

(b) **Experience**

No additional experience other than that required for registration in accordance with paragraph (a).

(2) **Pathway 2**

(a) **Qualifications**

Any of the following—

- (i) degree in civil engineering, mechanical engineering or structural engineering from an Australian university that includes subjects relating to building hydraulics,
- (ii) NVR approved Diploma of Hydraulic Services Design (Release 2) (CPC50612) and since completing the diploma has—
 - (A) continued to work as a hydraulic consultant, and
 - (B) completed continuing professional development, and
 - (C) been employed by a hydraulic services consultancy business.

(b) **Experience**

3 years recent relevant practical experience.

11 Certifier—hydraulic (speciality)

(1) **Pathway 1**

(a) **Qualifications**

Must be registered on the National Engineering Register as a professional engineer with civil engineering or mechanical engineering listed as an area of practice.

(b) **Experience**

No additional experience other than that required for registration in accordance with paragraph (a).

(2) **Pathway 2**

(a) **Qualifications**

Any of the following—

- (i) degree in civil engineering or mechanical engineering from an Australian university that includes subjects relating to building hydraulics,
- (ii) NVR approved Diploma of Hydraulic Services Design (Release 2) (CPC50612) and since completing the diploma has—
 - (A) continued to work as a hydraulic consultant, and
 - (B) completed continuing professional development, and
 - (C) been employed by a hydraulic services consultancy business.

(b) **Experience**

3 years recent relevant practical experience.

12 Certifier—hydraulic (stormwater)

(1) **Pathway 1**

(a) **Qualifications**

Must be registered on the National Engineering Register as a professional engineer with civil engineering or mechanical engineering listed as an area of practice.

(b) **Experience**

No additional experience other than that required for registration in accordance with paragraph (a).

(2) **Pathway 2**

(a) **Qualifications**

Any of the following—

- (i) degree in civil engineering or mechanical engineering from an Australian university that includes subjects relating to building hydraulics,
- (ii) NVR approved Diploma of Hydraulic Services Design (Release 2) (CPC50612) and since completing the diploma has—
 - (A) continued to work as a hydraulic consultant, and
 - (B) completed continuing professional development, and
 - (C) been employed by a hydraulic services consultancy business.

(b) **Experience**

3 years recent relevant practical experience.

13 Certifier—location of works

(1) **Qualifications**

Registration as a land surveyor under the *Surveying and Spatial Information Act 2002*.

(2) **Experience**

None required.

14 Certifier—road and drainage

(1) **Pathway 1**

(a) **Qualifications**

Must be registered on the National Engineering Register as a professional engineer with civil engineering listed as an area of practice.

(b) **Experience**

No additional experience other than that required for registration in accordance with paragraph (a).

(2) **Pathway 2**

(a) **Qualifications**

Any of the following—

- (i) degree in civil engineering from an Australian university,
- (ii) registration as a land surveyor under the *Surveying and Spatial Information Act 2002* or a qualification that would enable a person to be registered as a land surveyor under that Act.

(b) **Experience**

3 years recent relevant practical experience.

15 Certifier—stormwater

(1) **Pathway 1**

(a) **Qualifications**

Must be registered on the National Engineering Register as a professional engineer with civil engineering listed as an area of practice.

(b) **Experience**

No additional experience other than that required for registration in accordance with paragraph (a).

(2) **Pathway 2**

(a) **Qualifications**

Any of the following—

- (i) degree in civil engineering from an Australian university,
- (ii) registration as a land surveyor under the *Surveying and Spatial Information Act 2002* or a qualification that would enable a person to be registered as a land surveyor under that Act,
- (iii) NVR approved Diploma of Hydraulic Services Design (Release 2) (CPC50612).

(b) **Experience**

3 years recent relevant practical experience.

16 Certifier—strata

(1) **Qualifications**

Any of the following—

- (a) degree in civil engineering from an Australian university,
- (b) registration as a land surveyor under the *Surveying and Spatial Information Act 2002* or a qualification that would enable a person to be registered as a land surveyor under that Act.

(2) **Experience**

3 years recent relevant practical experience.

17 Certifier—subdivision

(1) **Qualifications**

Any of the following—

- (a) degree in civil engineering from an Australian university,
- (b) registration as a land surveyor under the *Surveying and Spatial Information Act 2002* or a qualification that would enable a person to be registered as a land surveyor under that Act.

(2) **Experience**

5 years recent relevant practical experience.

18 Engineer—electrical

(1) **Pathway 1**

(a) **Qualifications**

Must be registered on the National Engineering Register as a professional engineer with electrical engineering listed as an area of practice.

(b) **Experience**

No additional experience other than that required for registration in accordance with paragraph (a).

(2) **Pathway 2**

(a) **Qualifications**

Degree in electrical engineering from an Australian university.

(b) **Experience**

3 years recent relevant practical experience.

19 Engineer—geotechnical

(1) **Pathway 1**

(a) **Qualifications**

Must be registered on the National Engineering Register as a professional engineer with geotechnical engineering listed as an area of practice.

(b) **Experience**

No additional experience other than that required for registration in accordance with paragraph (a).

(2) **Pathway 2**

(a) **Qualifications**

Degree in civil engineering or a degree in engineering with a major in geotechnical engineering from an Australian university.

(b) **Experience**

3 years recent relevant practical experience.

20 Engineer—mechanical

(1) **Pathway 1**

(a) **Qualifications**

Must be registered on the National Engineering Register as a professional engineer with mechanical engineering listed as an area of practice.

(b) **Experience**

No additional experience other than that required for registration in accordance with paragraph (a).

(2) **Pathway 2**

(a) **Qualifications**

Degree in mechanical engineering from an Australian university.

(b) **Experience**

3 years recent relevant practical experience.

21 Engineer—structural

(1) **Pathway 1**

(a) **Qualifications**

Must be registered on the National Engineering Register as a professional engineer with structural engineering listed as an area of practice.

(b) **Experience**

No additional experience other than that required for registration in accordance with paragraph (a).

(2) **Pathway 2**

(a) **Qualifications**

Degree in civil engineering or structural engineering from an Australian university.

(b) **Experience**

3 years recent relevant practical experience.

22 Swimming pool inspector

(1) **Pathway 1**

(a) **Qualifications**

Registration as a building inspector that is not subject to a condition that limits the certification work the holder can carry out and satisfactory completion of—

- (i) training approved by the Secretary within 12 months before the application for registration is made, and
- (ii) an exam conducted by the Secretary within 6 months before the application for registration is made.

(b) **Experience**

None required.

(2) **Pathway 2**

(a) **Qualifications**

Endorsed contractor licence or a supervisor certificate under the *Home Building Act 1989* that enables the holder to construct a swimming pool or to construct structural landscaping and satisfactory completion of—

- (i) training approved by the Secretary within 12 months before the application for registration is made, and
- (ii) an exam conducted by the Secretary within 6 months before the application for registration is made,

(b) **Experience**

None required.

(3) **Pathway 3**

(a) **Qualifications**

Satisfactory completion of Category E1-Accredited Certifier-Swimming Pool Certification provided by Building UpSkills or the College of Professional Development.

(b) **Experience**

2 years recent experience working for a local council carrying out certification work under the *Swimming Pools Act 1992* on behalf of the local council and have carried out that certification work on not less than 20 swimming pools.

23 Additional pathway—all classes of registration

- (1) In addition to any other pathway set out in this Schedule, a person has the qualifications and experience required to be granted registration in a particular class if—

- (a) immediately before the repeal of the *Building Professionals Act 2005*, the person held a certificate of accreditation in a category that corresponds to that class of registration, and
 - (b) the person has held a certificate of registration in that class continuously since that repeal with no period since the repeal during which the person was not registered that is longer than 3 months or such longer period as the Secretary may allow in a particular case.
- (2) For the purposes of this clause, clause 4 of Schedule 1 specifies which class of registration corresponds with a category of accreditation.

Schedule 3 Knowledge and skills

1 Definitions

In this Schedule—

document includes a certificate or report.

performance solution has the same meaning as in the *Building Code of Australia*.

Planning legislation means the *Environmental Planning and Assessment Act 1979* and includes the regulations made under that Act.

2 Knowledge and skills required for grant of registration

For the purposes of section 120(2)(a) of the Act, the provisions of this Schedule specify the minimum knowledge and skills required to be granted registration in the classes set out in this Schedule.

3 Building inspector

(1) Knowledge

Must know and understand the following—

- (a) the Planning legislation,
- (b) the *Building Code of Australia* (volumes 1 and 2), including documents adopted by reference in the *Building Code of Australia*, to the extent they are relevant to this class of registration,
- (c) building fire safety, including fire engineering,
- (d) the legislative requirements relating to swimming pool safety,
- (e) the role and responsibilities of a registered certifier, including a principal certifier,
- (f) building surveying practices and procedures,
- (g) building construction, including methods, materials, planning and design.

(2) Skills

Must be able to do the following—

- (a) identify, interpret and determine compliance with all provisions of the Planning legislation relevant to the processing of applications for complying development certificates, construction certificates, compliance certificates and occupation certificates,
- (b) interpret, apply and assess compliance with the relevant requirements of the *Building Code of Australia*,
- (c) interpret and review relevant documents used as evidence to demonstrate compliance, including reports in relation to performance solutions,
- (d) assess the fire protection and structural capacity of an existing building,
- (e) prepare a fire safety schedule under the Planning legislation,
- (f) interpret, apply and assess compliance with the legislative requirements relating to swimming pool safety,
- (g) evaluate building construction including methods, materials, planning and design.

4 Building surveyor—unrestricted

(1) Knowledge

Same as that for building inspector.

- (2) **Skills**
Same as that for building inspector.

5 Building surveyor—restricted (all classes of building)

- (1) **Knowledge**
Same as that for building inspector.
- (2) **Skills**
Same as that for building inspector.

6 Building surveyor—restricted (class 1 and 10 buildings)

- (1) **Knowledge**
Same as that for building inspector.
- (2) **Skills**
Same as that for building inspector, other than prepare a fire safety schedule under the Planning legislation.

7 Certifier—acoustic

- (1) **Knowledge**
Must know and understand the following—
- (a) the design, planning and construction requirements relevant to this class of registration and appropriate techniques used for construction,
 - (b) the *Building Code of Australia* (volumes 1 and 2), including documents adopted by reference in the *Building Code of Australia*, to the extent they are relevant to this class of registration,
 - (c) inspection requirements relevant to this class of registration.
- (2) **Skills**
Must be able to do the following—
- (a) determine the extent of proposed and constructed building work to be certified,
 - (b) plan and conduct inspections of building work relevant to this class of registration to assess compliance,
 - (c) take appropriate action prior to the issue of a compliance certificate,
 - (d) apply appropriate engineering principles and relevant *Building Code of Australia*, legislative and other requirements when assessing acoustic components of building work for compliance,
 - (e) recognise inconsistencies and contradictions between regulatory instruments and engineering principles or the relevant requirements (as relevant to this class of registration) and determine the appropriate solution,
 - (f) verify design assumptions during construction,
 - (g) develop testing programs, including interpreting and auditing test results, relevant to this class of registration,
 - (h) critically review research data to assess its limitations and application,
 - (i) interpret, apply and assess compliance with the *Building Code of Australia*.

8 Certifier—energy management

(1) Knowledge

Must know and understand the following—

- (a) the design, planning and construction requirements relevant to this class of registration and appropriate techniques used for construction,
- (b) the *Building Code of Australia* (volumes 1 and 2), including documents adopted by reference in the *Building Code of Australia*, to the extent they are relevant to this class of registration,
- (c) inspection requirements relevant to this class of registration.

(2) Skills

Must be able to do the following—

- (a) determine the extent of proposed and constructed building work to be certified,
- (b) plan and conduct inspections of building work relevant to this class of registration to assess compliance,
- (c) take appropriate action prior to the issue of a compliance certificate,
- (d) apply appropriate engineering principles and relevant *Building Code of Australia*, legislative and other requirements when assessing energy management components of building work for compliance,
- (e) recognise inconsistencies and contradictions between regulatory instruments and engineering principles or the relevant requirements (as relevant to this class of registration) and determine the appropriate solution,
- (f) verify design assumptions during construction,
- (g) develop testing programs, including interpreting and auditing test results, relevant to this class of registration,
- (h) critically review research data to assess its limitations and application,
- (i) interpret, apply and assess compliance with the *Building Code of Australia*.

9 Certifier—fire safety

(1) Knowledge

Must know and understand the following—

- (a) the science of fire,
- (b) the principles of fire engineering, including fire engineering processes and methodologies,
- (c) relevant fire engineering guidelines, including the *International Fire Engineering Guidelines*,
- (d) fire engineering models and tools,
- (e) the design, planning and construction requirements relevant to this class of registration and appropriate techniques used for construction,
- (f) the *Building Code of Australia* (volumes 1 and 2), including documents adopted by reference in the *Building Code of Australia*, to the extent they are relevant to this class of registration,
- (g) inspection requirements relevant to this class of registration.

(2) Skills

Must be able to do the following—

- (a) apply scientific and engineering principles to evaluate strategies to protect people and their environment from the consequences of fire,
- (b) anticipate the behaviour of materials, structures, machines, apparatus and processes when exposed to fire,
- (c) assess a fire engineering design and determine whether a performance solution complies with the relevant performance requirements of the *Building Code of Australia*,
- (d) apply relevant fire engineering guidelines, including the *International Fire Engineering Guidelines*,
- (e) apply fire engineering models and tools,
- (f) participate in the development of a fire engineering brief,
- (g) establish and implement an inspection regime to—
 - (i) monitor compliance and verify design assumption during construction, and
 - (ii) certify compliance of completed building work,
- (h) plan and conduct inspections of building work relevant to this class of registration to assess compliance,
- (i) recognise inconsistencies and contradictions between regulatory instruments and engineering principles or the relevant requirements (relevant to this class of registration) and determine the appropriate solution,
- (j) develop testing programs, including interpreting and auditing test results, relevant to this class of registration,
- (k) critically review research data to assess its limitations and applications,
- (l) interpret, apply and assess compliance with the *Building Code of Australia*.

10 Certifier—hydraulic (building)

(1) Knowledge

Must know and understand the following—

- (a) the design, planning and construction requirements relevant to this class of registration and appropriate techniques used for construction,
- (b) the *Building Code of Australia* (volumes 1 and 2), including documents adopted by reference in the *Building Code of Australia*, to the extent they are relevant to this class of registration,
- (c) inspection requirements relevant to this class of registration.

(2) Skills

Must be able to do the following—

- (a) determine the extent of proposed and constructed building work to be certified,
- (b) plan and conduct inspections of building work relevant to this class of registration to assess compliance,
- (c) take appropriate action prior to the issue of a compliance certificate,
- (d) apply appropriate engineering principles and relevant *Building Code of Australia*, legislative and other requirements when assessing building hydraulics for compliance,
- (e) verify design assumptions during construction,

- (f) develop testing programs, including interpreting and auditing test results, relevant to this class of registration,
- (g) critically review research data to assess its limitations and applications,
- (h) interpret, apply and assess compliance with the *Building Code of Australia*.

11 Certifier—hydraulic (speciality)

(1) Knowledge

Must know and understand the following—

- (a) the design, planning and construction requirements relevant to this class of registration and appropriate techniques used for construction,
- (b) volume 3 of the *Building Code of Australia* to the extent that it is relevant to this class of registration,
- (c) inspection requirements relevant to this class of registration.

(2) Skills

Must be able to do the following—

- (a) determine the extent of proposed and constructed building work to be certified,
- (b) plan and conduct inspections of building work relevant to this class of registration to assess compliance,
- (c) take appropriate action prior to the issue of a compliance certificate,
- (d) apply appropriate engineering principles and relevant *Building Code of Australia*, legislative and other requirements when assessing speciality hydraulic services for compliance,
- (e) verify design assumptions during construction,
- (f) develop testing programs, including interpreting and auditing of test results, relevant to this class of registration,
- (g) critically review research data to assess its limitations and applications.

12 Certifier—hydraulic (stormwater)

(1) Knowledge

Must know and understand the following—

- (a) the design, planning and construction requirements relevant to this class of registration and appropriate techniques used for construction,
- (b) inspection requirements relevant to this class of registration.

(2) Skills

Must be able to do the following—

- (a) determine the extent of proposed and constructed building work to be certified,
- (b) plan and conduct inspections of building work relevant to this class of registration to assess compliance,
- (c) take appropriate action prior to the issue of a compliance certificate,
- (d) apply appropriate engineering principles and relevant *Building Code of Australia*, legislative and other requirements when assessing stormwater hydraulics of building work for compliance,
- (e) verify design assumptions during construction,

- (f) develop testing programs, including interpreting and auditing test results, relevant to this class of registration,
- (g) critically review research data to assess its limitations and applications.

13 Certifier—location of works

(1) Knowledge

Must know and understand the following—

- (a) the procedures, practices and processes of surveying,
- (b) the activities involved in locating building work as constructed,
- (c) the use of computer applications and documentation processes relevant to this class of registration,
- (d) inspection requirements relevant to this class of registration.

(2) Skills

Must be able to do the following—

- (a) determine the extent of constructed building work or subdivision work to be certified,
- (b) plan and conduct appropriate inspections of building work and subdivision work to assess compliance relevant to this class of registration,
- (c) take appropriate action prior to the issue of a compliance certificate.

14 Certifier—road and drainage

(1) Knowledge

Must know and understand the following—

- (a) the design, planning and construction requirements for roads and drainage and appropriate techniques for their construction,
- (b) road construction planning and scheduling techniques relevant to this class of registration,
- (c) inspection requirements relevant to this class of registration.

(2) Skills

Must be able to do the following—

- (a) determine the extent of proposed and constructed subdivision work to be certified,
- (b) plan and conduct inspections of subdivision work relevant to this class of registration to assess compliance,
- (c) take appropriate action prior to the issue of a compliance certificate,
- (d) apply appropriate engineering principles and relevant legislative and other requirements when assessing road and drainage designs for compliance,
- (e) evaluate construction specification requirements and materials for the construction of roads and drainage,
- (f) verify design assumptions during construction,
- (g) develop testing programs, including interpreting and auditing test results, relevant to this class of registration,
- (h) critically review research data to assess its limitations and applications.

15 Certifier—stormwater

(1) **Knowledge**

Must know and understand the following—

- (a) the design, planning and construction requirements for stormwater management facilities design and appropriate techniques for their construction,
- (b) relevant standards and codes related to design and construction of stormwater management facilities including requirements and guidelines for sedimentation and erosion control as may be required by consent conditions,
- (c) inspection requirements relevant to this class of registration.

(2) **Skills**

Must be able to do the following—

- (a) determine the extent of proposed and constructed building work and subdivision work to be certified,
- (b) plan and conduct inspections of building work and subdivision work relevant to this class of registration to assess compliance,
- (c) take appropriate action prior to the issue of a compliance certificate,
- (d) apply appropriate engineering principles and relevant *Building Code of Australia*, legislative and other requirements when assessing stormwater management facilities designs and constructed stormwater management facilities for compliance,
- (e) evaluate construction specification requirements and materials for building work and subdivision work relevant to this class of registration,
- (f) apply relevant standards and codes related to design and construction of stormwater management facilities including requirements and guidelines for sedimentation and erosion control as may be required by consent conditions.

16 Certifier—strata

(1) **Knowledge**

Must know and understand the following—

- (a) cadastral surveying with respect to strata subdivision,
- (b) the format, operation and terminology for instruments under section 88B of the *Conveyancing Act 1919* that may be appended to strata plans,
- (c) inspection requirements relevant to this class of registration.

(2) **Skills**

Must be able to do the following—

- (a) refer applications for strata certificates to relevant authorities (for example, utilities and fire authorities) for determination,
- (b) take appropriate action on complaints, including investigation if required, in relation to this class of registration,
- (c) notify councils of determinations.

17 Certifier—subdivision

(1) **Knowledge**

Must know and understand the following—

- (a) the role and responsibilities of a registered certifier, including those of a principal certifier,
- (b) the design, planning and construction concepts for subdivision work relevant to this class of registration,
- (c) legislation related to subdivision work, including utilities legislation and legislation dealing with encumbrances on property,
- (d) the design, planning and construction requirements relevant to this class of registration and appropriate techniques for construction,
- (e) technical and professional skills related to subdivision work,
- (f) project control arrangements and site organisation for subdivision work relevant to this class of registration.

(2) **Skills**

Must be able to do the following—

- (a) identify, interpret and determine compliance with all provisions of the Planning legislation relevant to the processing of applications for complying development certificates, construction certificates, subdivision certificates and subdivision works certificates,
- (b) interpret and review relevant documents used as evidence to demonstrate that compliance, including but not limited to Australian standards, development standards, conditions of development consent and council policies and specifications.

18 Engineer—electrical

(1) **Knowledge**

Must know and understand the following—

- (a) the design, planning and construction requirements relevant to this class of registration and appropriate techniques used for construction,
- (b) the *Building Code of Australia* (volumes 1 and 2), including documents adopted by reference in the *Building Code of Australia*, to the extent they are relevant to this class of registration,
- (c) inspection requirements relevant to this class of registration.

(2) **Skills**

Must be able to do the following—

- (a) determine the extent of proposed and constructed building work to be certified,
- (b) plan and conduct inspections of building work relevant to this class of registration to assess compliance,
- (c) take appropriate action prior to the issue of a compliance certificate,
- (d) apply appropriate engineering principles and relevant *Building Code of Australia*, legislative and other requirements when assessing electrical components of building work for compliance,
- (e) recognise inconsistencies and contradictions between regulatory instruments and engineering principles or the relevant requirements (as relevant to this class of registration) and determine the appropriate solution,
- (f) verify design assumptions during construction,
- (g) develop testing programs, including interpreting and auditing test results, relevant to this class of registration,

- (h) critically review research data to assess its limitations and application,
- (i) interpret, apply and assess compliance with the *Building Code of Australia*.

19 Engineer—geotechnical

(1) Knowledge

Must know and understand the following—

- (a) the design, planning and construction requirements relevant to this class of registration and appropriate techniques used for construction,
- (b) the *Building Code of Australia* (volumes 1 and 2), including documents adopted by reference in the *Building Code of Australia*, to the extent they are relevant to this class of registration,
- (c) inspection requirements relevant to this class of registration,
- (d) all aspects of soil and rock mechanics and geotechnical engineering.

(2) Skills

Must be able to do the following—

- (a) determine the extent of proposed and constructed building work and subdivision work to be certified,
- (b) plan and conduct inspections of building work and subdivision work relevant to this class of registration to assess compliance,
- (c) take appropriate action prior to the issue of a compliance certificate,
- (d) apply appropriate engineering principles and relevant *Building Code of Australia*, legislative and other requirements when assessing building work and subdivision work for compliance,
- (e) recognise inconsistencies and contradictions between regulatory instruments and engineering principles or the relevant requirements (as relevant to this class of registration) and determine the appropriate solution,
- (f) evaluate construction specification requirements and materials for building work and subdivision work, relevant to this class of registration,
- (g) develop testing programs, including interpreting and auditing test results, relevant to this class of registration,
- (h) critically review research data to assess its limitations and application,
- (i) interpret, apply and assess compliance with the *Building Code of Australia*,
- (j) assess and carry out effective analysis and design for foundations, earth retaining structures and pavements.

20 Engineer—mechanical

(1) Knowledge

Must know and understand the following—

- (a) the design, planning and construction requirements relevant to this class of registration and appropriate techniques used for construction,
- (b) the *Building Code of Australia* (volumes 1 and 2), including documents adopted by reference in the *Building Code of Australia*, to the extent they are relevant to this class of registration,
- (c) inspection requirements relevant to this class of registration.

(2) Skills

Must be able to do the following—

- (a) determine the extent of proposed and constructed building work to be certified,
- (b) plan and conduct inspections of building work relevant to this class of registration to assess compliance,
- (c) take appropriate action prior to the issue of a compliance certificate,
- (d) apply appropriate engineering principles and relevant *Building Code of Australia*, legislative and other requirements when assessing mechanical components of building work for compliance,
- (e) recognise inconsistencies and contradictions between regulatory instruments and engineering principles or the relevant requirements (as relevant to this class of registration) and determine the appropriate solution,
- (f) verify design assumptions during construction,
- (g) develop testing programs, including interpreting and auditing test results, relevant to this class of registration,
- (h) critically review research data to assess its limitations and application,
- (i) interpret, apply and assess compliance with the *Building Code of Australia*.

21 Engineer—structural

(1) Knowledge

Must know and understand the following—

- (a) the design, planning and construction requirements relevant to this class of registration and appropriate techniques used for construction,
- (b) the *Building Code of Australia* (volumes 1 and 2), including documents adopted by reference in the *Building Code of Australia*, to the extent they are relevant to this class of registration,
- (c) inspection requirements relevant to this class of registration.

(2) Skills

Must be able to do the following—

- (a) determine the extent of proposed and constructed building work to be certified,
- (b) plan and conduct inspections of building work relevant to this class of registration to assess compliance,
- (c) take appropriate action prior to the issue of a compliance certificate,
- (d) apply appropriate engineering principles and relevant *Building Code of Australia*, legislative and other requirements when assessing structural components for compliance,
- (e) recognise inconsistencies and contradictions between regulatory instruments and engineering principles or the relevant requirements (as relevant to this class of registration) and determine the appropriate solution,
- (f) verify design assumptions during construction,
- (g) develop testing programs, including interpreting and auditing test results, relevant to this class of registration,
- (h) critically review research data to assess its limitations and applications,
- (i) interpret, apply and assess compliance with the *Building Code of Australia*.

Schedule 4 Continuing professional development (CPD)

1 Definitions

In this Schedule—

council certifier means a registered certifier who is employed by a council and undertakes certification work only on behalf of the council.

Guidelines means guidelines issued by the Secretary and made publicly available on a website of the Department.

relevant education and training for a registered certifier means education and training that is relevant to the certification work carried out by the registered certifier.

swimming pool inspector means a registered certifier who holds a swimming pool inspector class of registration and no other class of registration.

2 Registered certifiers must complete CPD

- (1) The Secretary may, if the Secretary considers it to be reasonably necessary in the circumstances, by written notice to a registered certifier—
 - (a) exempt the registered certifier from some or all of the continuing professional development requirements specified in this Schedule, or
 - (b) impose additional continuing professional development requirements on the registered certifier.
- (2) A registered certifier must complete the continuing professional development requirements specified in this Schedule and any additional continuing professional development requirements that may be imposed on the registered certifier by the Secretary.

3 Registered certifier must keep records of completed CPD

It is a condition of registration as a registered certifier that the registered certifier must—

- (a) keep written records specifying how the registered certifier has satisfied the registered certifier's continuing professional development requirements for each year, and
- (b) maintain those records for at least 5 years, and
- (c) provide copies of those records to the Secretary if requested by the Secretary in writing to do so.

4 Registered certifiers other than swimming pool inspectors

- (1) A registered certifier (other than a swimming pool inspector) must each year undertake at least 25 points of relevant education and training—
 - (a) approved by the Secretary in the Guidelines and given a points value by the Secretary, or
 - (b) that is part of a program offered by a professional body approved by the Secretary in the Guidelines and given a points value by the professional body.
- (2) Despite subclause (1), a council certifier is required to complete only—
 - (a) 15 points in the first year after the commencement of this Regulation, or
 - (b) 20 points in the second year after the commencement of this Regulation.

5 Swimming pool inspectors

- (1) A swimming pool inspector must each year successfully complete at least 6 points of relevant education and training approved by the Secretary and given a points value by the Secretary.
- (2) This clause does not apply to—
 - (a) a council certifier, or
 - (b) a swimming pool inspector for 1 year after the person is first registered as a registered certifier (but only if the person has not previously been accredited under the *Building Professionals Act 2005*).

Schedule 5 Code of conduct

1 Duties apply to registered certifiers when acting as registered certifiers

- (1) For the purposes of section 32(1) of the Act, this Schedule is the code of conduct for registered certifiers.
- (2) A registered certifier is required to comply with this code of conduct.
- (3) The requirements set out in this Schedule apply to a person only in the person's capacity as a registered certifier.
- (4) Nothing in this Schedule affects the duty of a registered certifier to comply with requirements placed on the registered certifier by or under the Act or any other Act or law.
- (5) A registered certifier who fails to comply with this code of conduct is guilty of an offence.
Maximum penalty—
 - (a) in the case of an individual—100 penalty units, or
 - (b) in the case of a body corporate—200 penalty units.

2 Requirement to act in public interest

- (1) A registered certifier must act in the public interest.
- (2) A registered certifier must take all reasonable steps to ensure that the registered certifier does not adversely affect—
 - (a) the health or safety of a person, or
 - (b) the safety of a person's property.
- (3) A registered certifier must not adversely affect the amenity of a person's property to an unreasonable extent.
- (4) A registered certifier must not act improperly for private benefit to the registered certifier or any other person.

3 Requirement to abide by standards expected by the community

A registered certifier—

- (a) must apply all relevant building laws, regulations, safety standards and guidelines reasonably and without favour, and
- (b) must act with honesty, integrity and impartially, and
- (c) must not unreasonably discriminate against any person or organisation, and
- (d) must not knowingly act or enter into any conduct that could bring, or tend to bring, the profession of certifiers into disrepute, and
- (e) must exercise reasonable care and attention.

4 Requirement to act within level of competence, expertise and area of registration

- (1) A registered certifier must not carry out certification work that is not authorised by the registered certifier's registration or is beyond the registered certifier's competence and expertise.
- (2) A registered certifier must seek and properly consider specialist advice if an aspect of certification work is beyond the registered certifier's competence and expertise.
- (3) A registered certifier must not carry out certification work negligently.

5 Requirement to maintain satisfactory level of competence

A registered certifier must ensure that the registered certifier remains informed of developments in building design and practice, business management principles, and the law relevant to performing the registered certifier's functions.

6 Requirement to avoid conflicts of interest

- (1) A registered certifier must be objective, impartial and free of any conflict of interest.
- (2) A registered certifier must not improperly use their status, position, powers or duties for the purpose of obtaining, either directly or indirectly, any personal benefit or benefit for a relative or close associate.
- (3) A registered certifier must not solicit or accept an improper benefit.
- (4) A registered certifier must take all reasonable steps to ensure that a relative or close associate of the registered certifier does not solicit or accept any improper benefit.
- (5) A registered certifier must take all reasonable steps to manage and avoid conflicts of interest.
- (6) In this clause—
improper benefit means a gift, hospitality or other benefit that could reasonably—
 - (a) be expected to give rise to a conflict of interest, or
 - (b) be perceived as an inducement (or attempted inducement) or reward for—
 - (i) doing or not doing something, or
 - (ii) showing or not showing favour or disfavour to any person.

7 Requirement not to misinform or mislead

- (1) A registered certifier must not misinform or mislead any person or body about any matter relating to the carrying out of certification work.
- (2) A registered certifier must not misrepresent the registered certifier's qualifications, experience or expertise to any person or body.
- (3) A registered certifier must take all reasonable steps to ensure that a person who engages the registered certifier to carry out certification work is made aware of any matter affecting the registered certifier's registration that may impact on the carrying out of the certification work.

8 Requirement to obtain and consider all facts

- (1) A registered certifier must take all reasonable steps to obtain and document all available facts relevant to the carrying out of certification work.
- (2) A registered certifier must take all reasonable steps to ensure that the decisions and actions of the registered certifier are based on the consideration of all relevant facts that are available to the registered certifier.

9 Requirement to document reasons for decisions

A registered certifier must maintain clearly documented reasons for decisions made when carrying out certification work that set out the following—

- (a) the decision made,
- (b) the reasons for making the decision,
- (c) the findings of fact that the reasons were based upon,
- (d) the evidence for those findings.

10 Requirement to maintain confidentiality

- (1) A registered certifier must not disclose confidential information acquired in the course of being a registered certifier except—
 - (a) with the consent of the person to whom the duty of confidentiality is owed, or
 - (b) where the disclosure is otherwise authorised or required by law.
- (2) A registered certifier must not use confidential information acquired in the course of being a registered certifier to secure a benefit for the registered certifier or a relative or close associate of the registered certifier.
- (3) A registered certifier must take all reasonable steps to ensure that confidential information acquired in the course of being a registered certifier is held securely by the registered certifier.

11 Supervision

A registered certifier must ensure that—

- (a) a person does not carry out certification work under the supervision of the registered certifier unless the registered certifier's registration authorises the supervision, and
- (b) any certification work carried out under supervision is carried out competently.

Schedule 6 Fees

Part 1 Fees payable

Item	Type of fee	Fee (in fee units)
1	Application for a grant of registration of an individual—	
	(a) in any one or more classes that includes the building surveyor, certifier—subdivision or building inspector classes—	
	(i) for 1 year	15.2
	(ii) for 3 years	43.31
	(iii) for 5 years	68.39
	(b) despite paragraph (a), if class is only building inspector achieved through pathway 2—	
	(i) for 1 year	2.53
	(ii) for 3 years	7.22
	(iii) for 5 years	11.4
	(c) in any other case—	
	(i) for 1 year	7.6
	(ii) for 3 years	21.66
	(iii) for 5 years	34.2
2	Application for a grant of registration of an individual to carry out certification work only on behalf of councils—	
	(a) for 1 year	2.53
	(b) for 3 years	7.22
	(c) for 5 years	11.4
3	Application for a grant of registration of a body corporate—	
	(a) for 1 year	15.2
	(b) for 3 years	43.31
	(c) for 5 years	68.39
4	Application for a grant of approval as an accreditation authority—	
	(a) for 1 year	15.2
	(b) for 3 years	43.31
	(c) for 5 years	68.39
5	Application for a variation of registration of an individual—	
	(a) in any one or more classes that includes the building surveyor, certifier—subdivision or building inspector classes	15.2
	(b) despite paragraph (a), if class is only building inspector achieved through pathway 2	2.53
	(c) in any other case	7.6

Item	Type of fee	Fee (in fee units)
6	Application for a variation of registration of an individual who carries out certification work only on behalf of councils	2.53
7	Application for a variation of registration of a body corporate	15.2
8	Application for a variation of approval as an accreditation authority	15.2
9	Application for a replacement certificate of registration under clause 10 of this Regulation	1
10	Application for a certificate under section 117 of the Act	0.4
11	Application for an exemption under section 120(4) of the Act	2
12	Application for recognition of training under clause 4(3) of this Regulation	15
13	Conduct of assessment under section 8(5)(b) of the Act	3

Part 2 Adjustment of fees for inflation

1 Definitions

In this Part—

CPI number means the Consumer Price Index (All Groups Index) for Sydney published by the Australian Bureau of Statistics in the latest published series of that index.

financial year means a period of 12 months commencing on 1 July.

2 Calculation of fee unit for purposes of Regulation

(1) For the purposes of this Regulation, a **fee unit** is—

- (a) in the financial year 2019–20—\$100, and
- (b) in each subsequent financial year—the amount calculated as follows—

$$\$100 \times \frac{A}{B}$$

where—

A is the CPI number for the March quarter in the financial year immediately preceding the financial year for which the amount is calculated.

B is the CPI number for the March quarter of 2019.

- (2) The amount of a fee unit is to be rounded to the nearest cent (and an amount of 0.5 cent is to be rounded down).
- (3) However, if the amount of a fee unit calculated for any financial year is less than the amount that applied for the previous financial year, then the amount for that previous financial year applies instead.

3 Rounding of fee amounts

The amount of a fee calculated by reference to a fee unit is to be rounded to the nearest dollar (and an amount of 50 cents is to be rounded down).

4 Notice of indexed fees

- (1) As soon as practicable after the CPI number for the March quarter is first published by the Australian Statistician, the Secretary is required to—

- (a) notify the Parliamentary Counsel of the amount of the fee unit for the next financial year so that notice of that amount can be published on the NSW legislation website, and
 - (b) give public notice on an appropriate government website of the actual amounts of the fees applying in each financial year resulting from the application of the amount of a fee unit calculated under this Part.
- (2) This Part operates to change an amount of a fee that is calculated by reference to a fee unit and that change is not dependent on the notification or other notice required by this clause.

Schedule 7 Penalty notice offences

1 Application of Schedule

- (1) For the purposes of section 118 of the Act—
- (a) each offence created by a provision specified in this Schedule is an offence for which a penalty notice may be issued, and
 - (b) the amount payable for the penalty notice is the amount specified opposite the provision.
- (2) If the provision is qualified by words that restrict its operation to limited kinds of offences or to offences committed in limited circumstances, the penalty notice may be issued only for—
- (a) that limited kind of offence, or
 - (b) an offence committed in those limited circumstances.

Column 1	Column 2	Column 3
Provision	Penalty— individuals	Penalty— corporations
Offences under the Act		
Section 5	\$1,500	\$5,000
Section 20	\$1,500	\$5,000
Section 26(1)	\$1,500	\$5,000
Section 28(1)	\$1,500	\$5,000
Section 33(1)	\$1,500	\$3,000
Section 34(1)	\$1,500	—
Section 35(1)	\$1,500	\$3,000
Section 35(2)	\$250	\$500
Section 36	\$750	\$1,500
Section 38	\$3,000	—
Section 39	\$3,000	—
Section 40(1)	—	\$5,000
Section 41(1)	—	\$5,000
Section 41(2)	—	\$5,000
Section 43	\$1,500	\$3,000
Section 53	\$1,500	\$5,000
Section 58	\$1,500	\$5,000
Section 70(4)	—	\$3,000
Section 73(4)	—	\$3,000
Section 74(4)	—	\$3,000
Section 80	—	\$5,000
Section 81	—	\$5,000
Offences under this Regulation		

Column 1	Column 2	Column 3
Provision	Penalty— individuals	Penalty— corporations
Clause 49(6)	\$1,500	\$3,000