

Building Professionals Regulation 2007

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New South Wales

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New South Wales

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Building Professionals Regulation 2007



New South Wales

Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Building Professionals Regulation 2007*.

2 Commencement

- (1) Except as provided by subclause (2), this Regulation commences on 1 March 2007.
- (2) Part 1 and clause 5 commence on 25 January 2007.

3 Definitions

- (1) In this Regulation:

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

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

category of accreditation means a category of accreditation set out in Column 1 of the Table in Part 1 of Schedule 1.

council accredited certifier means an accredited certifier who is employed by a council and whose certificate of accreditation is subject to a condition that the certifier may carry out certification work only on behalf of a council.

strata certificate means a strata certificate within the meaning of the *Strata Schemes (Freehold Development) Act 1973* or the *Strata Schemes (Leasehold Development) Act 1986*.

the Act means the *Building Professionals Act 2005*.

- (2) Terms used in this Regulation that are defined in the *Environmental Planning and Assessment Act 1979* have the same meanings as they have in that Act.
- (3) Notes included in this Regulation (other than Schedule 1) do not form part of this Regulation.

Part 2 Accreditation of certifiers

4 Categories of certificates of accreditation

- (1) The categories of certificates of accreditation that may be issued by the Board are set out in Column 1 of the Table in Part 1 of Schedule 1.
- (2) A certificate of accreditation of a category set out in Column 1 of the Table in Part 1 of Schedule 1 authorises the holder to do anything set out in Column 2 of that Table opposite the category of certificate of accreditation.

5 Additional matters that may be included in accreditation scheme: section 4 (2) (d) of the Act

An accreditation scheme may make provision for or with respect to the method of assessing whether a person possesses the qualifications, skills, knowledge and experience required for the issue of a certificate of accreditation for each category of accreditation.

5A Additional grounds for refusal to issue or renew certificate of corporate accreditation

For the purposes of section 7 (1A) (l) of the Act, the following reasons are prescribed as reasons why the Board may refuse to issue or renew a certificate of corporate accreditation:

- (a) if the Board is of the opinion that 2 or more persons who are either proposed accredited certifier directors of the body corporate concerned, or employees who are accredited certifiers of the body corporate, have together held positions in or been employed in another body corporate that has previously had its application for the issue or renewal of a certificate of corporate accreditation refused or had its certificate of corporate accreditation cancelled,
- (b) if a person who is concerned in the management of the body corporate has had a disciplinary finding made against him or her (whether under the Act or the [Environmental Planning and Assessment Act 1979](#)) that resulted in the suspension or cancellation of his or her certificate of accreditation.

6 Applications for renewal of accreditation: section 10 (2) of the Act

An application for renewal of a certificate of accreditation is to be made by lodging, before the expiration of the certificate:

- (a) the form approved by the Board for the application, and
- (b) the fee prescribed under section 5 (2) of the Act for the application, and
- (c) any documents and information required under that subsection to accompany the application.

7 Prescribed conditions of certificates of accreditation

- (1) It is a condition of every certificate of accreditation that the holder of the certificate must surrender it to the Board within 14 days after receiving written notice from the Board that the conditions of the certificate have been varied or new conditions have been imposed on the certificate.
- (2) It is a condition of every certificate of corporate accreditation that the body corporate concerned ensure that:
 - (a) each accredited certifier director of the body corporate undertakes a course relating to the responsibilities of accredited certifier directors that is arranged by the Board and notified to the body corporate, and
 - (b) the course is undertaken within the time required by the Board.
- (3) It is a condition of every certificate of accreditation that is issued on an application referred to in section 5 (1A) of the Act that the holder of the certificate may carry out the certification work authorised by the certificate only on behalf of a council.

Note—

A contravention of, or failure to comply with, a condition of a certificate of accreditation is an offence under section 73 of the Act.

7A Council recommendations for accreditation

- (1) This clause applies to a recommendation made by a council for the purposes of section 5 (1A) of the Act.

Note—

Section 5 (1A) of the Act provides that an application for accreditation to carry out certification work only on behalf of councils may not be made except on the recommendation of a council.

- (2) In making a recommendation to which this clause applies, a council must take into account the following:
 - (a) the requirements of the accreditation scheme that are relevant to the category of accreditation sought by the applicant for accreditation,
 - (b) any assessment guidelines for the making of such recommendations issued by the Board and in force at the time the recommendation is made,
 - (c) the qualifications of the applicant,
 - (d) the experience of the applicant as known to the council and as documented by the applicant and, in particular, the type of certification work undertaken by the applicant as indicated in the application,
 - (e) whether the council is of the opinion that the applicant is a fit and proper person.

Part 3 Record keeping

8 Record keeping by accredited certifiers

- (1) For the purposes of section 60 (1) of the Act, an accredited certifier must cause copies of the following to be kept at his or her business premises, or in another secure place, at all times:
- (a) any application for a certificate that has been made to the accredited certifier under the *Environmental Planning and Assessment Act 1979*,
 - (b) any written determination that has been made by the accredited certifier in relation to an application for a certificate under the *Environmental Planning and Assessment Act 1979*,
 - (c) any certificate or other document that the accredited certifier has relied on for the purpose of issuing a certificate under the *Environmental Planning and Assessment Act 1979*,
 - (d) each certificate issued by the accredited certifier under the *Environmental Planning and Assessment Act 1979*,
 - (e) any plans and specifications in respect of which the accredited certifier has issued a certificate under the *Environmental Planning and Assessment Act 1979*,
 - (f) for each year to which the accredited certifier's certificate of accreditation relates, a list of the projects in connection with which the accredited certifier has issued Part 4A certificates or complying development certificates,
 - (g) for each of the projects referred to in paragraph (f), records of the following:
 - (i) the types of certificates issued,
 - (ii) the classification of the building involved,
 - (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),
 - (iv) except in the case of a subdivision certificate, the estimated cost of the project,
 - (v) in the case of a subdivision certificate, the number of lots that will be created by the subdivision,
 - (vi) the name of the applicant for the certificate,
 - (vii) the owner of the land or premises concerned,

- (viii) the name of the principal contractor,
 - (h) any record required to be made by the accredited certifier under clause 129C, 143C or 162B (1) of the *Environmental Planning and Assessment Regulation 2000* of an inspection,
 - (i) any record required to be made by the accredited certifier under clause 162C (2) (c) of the *Environmental Planning and Assessment Regulation 2000* of a missed inspection,
 - (j) if the accredited certifier is a principal certifying authority, any record of inspection provided to the accredited certifier by another certifying authority under clause 162B (2) of the *Environmental Planning and Assessment Regulation 2000*,
 - (j1) any written report made by the accredited certifier under clause 130 (2A) (b), 144A (1) (b) or 153A (1) (b) of the *Environmental Planning and Assessment Regulation 2000*,
 - (k) for each year to which the accredited certifier's certificate of accreditation relates, a list of the projects in connection with which the accredited certifier has issued strata certificates,
 - (l) for each of the projects referred to in paragraph (k), 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 owner of the land or premises concerned,
 - (v) the number of lots created by, or the subject of, the strata plan, strata plan of subdivision or notice of conversion to which the strata certificate relates,
 - (m) if the accredited certifier was previously accredited under the *Environmental Planning and Assessment Act 1979*, the documents that the accredited certifier was required to keep while accredited under that Act.
- (2) This clause does not require an accredited certifier to keep copies of:
- (a) any certificate, or of any ancillary application, determination, plan, specification or other document for more than 10 years after the date on which the certificate was issued, or
 - (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.

(3) This clause is subject to clause 8A.

(4) Section 60 of the Act does not apply to an accredited certifier in relation to any certification work carried out by the certifier on behalf of a council.

8A Records relating to accredited bodies corporate

(1) This clause applies to any document or record referred to in clause 8 (1) that is obtained or created by:

(a) an accredited body corporate, or

(b) an accredited certifier director of an accredited body corporate, or an accredited certifier who is an employee of an accredited 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 clause 8 by the accredited body corporate concerned.

(3) If the body corporate ceases to be an accredited body corporate, the person who last held the position of accredited certifier director of the body corporate before it ceased to be accredited and who is an accredited certifier must cause the documents and records to which this clause applies to be kept in accordance with clause 8.

(4) If there is more than one accredited certifier who must cause documents and records to be kept as referred to in subclause (3), it is not necessary for each of those accredited certifiers to keep a separate set of those records and documents and those accredited certifiers may arrange between them the secure place in which the documents and records are to be kept for the purposes of clause 8.

(5) 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.

8B Records to be kept by councils

(1) A council must keep the following records in relation to each accredited certifier who is employed or engaged by the council to carry out certification work on the council's behalf:

(a) the name and accreditation number of the certifier,

(b) the date on which the certifier commenced that employment or was engaged by

the council,

- (c) the date on which the certifier ceased to be so employed or engaged,
- (d) a brief description of each project (including an address and file identifier, if available, and particulars of any certificate issued) in respect of which the certifier carried out certification work on behalf of the council.

(2) A council must cause copies of the following to be kept at the office of the council, or in another secure place, at all times:

- (a) any application for a Part 4A certificate or complying development certificate that has been made to the council under the *Environmental Planning and Assessment Act 1979*,
- (b) any written determination that has been made by the council in relation to an application for a Part 4A certificate or complying development certificate under the *Environmental Planning and Assessment Act 1979*,
- (c) any certificate or other document that the council has relied on for the purpose of issuing a Part 4A certificate or complying development certificate under the *Environmental Planning and Assessment Act 1979*,
- (d) each Part 4A certificate or complying development certificate issued by the council under the *Environmental Planning and Assessment Act 1979*,
- (e) any plans and specifications in respect of which the council has issued a Part 4A certificate or complying development certificate under the *Environmental Planning and Assessment Act 1979*,
- (f) a list of the projects in connection with which the council has issued Part 4A certificates or complying development certificates,
- (g) for each of the projects referred to in paragraph (f), records of the following:
 - (i) the types of certificates issued,
 - (ii) the classification of the building involved,
 - (iii) the address of the land or premises concerned (including the lot and deposited plan number),
 - (iv) except in the case of a subdivision certificate, the estimated cost of the project,
 - (v) in the case of a subdivision certificate, the number of lots that will be created by the subdivision,
 - (vi) the name of the applicant for the certificate,

- (vii) the owner of the land or premises concerned,
 - (viii) the name of the principal contractor,
 - (h) any record required to be made under clause 129C, 143C or 162B (1) of the *Environmental Planning and Assessment Regulation 2000* of an inspection,
 - (i) any record required to be made under clause 162C (2) (c) of the *Environmental Planning and Assessment Regulation 2000* of a missed inspection,
 - (j) if the council is a principal certifying authority, any record of inspection provided to the council by another certifying authority under clause 162B (2) of the *Environmental Planning and Assessment Regulation 2000*,
 - (k) any written report made under clause 130 (2A) (b), 144A (1) (b) or 153A (1) (b) of the *Environmental Planning and Assessment Regulation 2000* in relation to certification work carried out on behalf of the council and provided to the council,
 - (l) a list of the projects in connection with which the council has issued strata certificates,
 - (m) for each of the projects referred to in paragraph (l), records of the following:
 - (i) the classification of the building involved,
 - (ii) 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 owner of the land or premises concerned,
 - (v) the number of lots created by, or the subject of, the strata plan, strata plan of subdivision or notice of conversion to which the strata certificate relates.
- (3) Any document or record required to be kept by a council under this clause is to be kept:
- (a) for a period of 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.

Part 4 Insurance

Division 1 Preliminary

9 Definitions

In this Part:

associate has the same meaning as it has in the *Corporations Act 2001* of the Commonwealth.

company contract means a professional indemnity contract issued to a company.

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

individual contract means a professional indemnity contract issued to an individual.

partnership contract means a professional indemnity contract issued to a partnership.

person covered by the contract, in relation to a company contract or partnership contract, means an accredited certifier to whom the indemnity provided by the contract extends.

professional indemnity contract means an insurance contract that indemnifies an individual, a company or a partnership against an accredited certifier's statutory liability and that complies with the provisions of this Part.

statutory liability means a person's liability to pay compensatory damages for breach of professional duty as an accredited certifier arising from any of the following occurring while the person is acting in the capacity of an accredited certifier, whether as an individual, as a director or employee of a company or as a partner or employee of a partnership:

- (a) any act or omission of the person,
- (b) any conduct of the person that would constitute a breach of any of the following provisions or any failure by the person 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 section referred to in subparagraph (i).

Division 2 Professional indemnity contracts

10 Required insurance: section 63 of the Act

- (1) For the purposes of section 63 (2) of the Act:
 - (a) an insurance contract that an accredited certifier who is an individual is required to be indemnified by is a professional indemnity contract, and
 - (b) the liability against which an accredited certifier is required to be indemnified by such a contract is the accredited certifier's statutory liability for the whole of the period during which he or she has been an accredited certifier.
- (2) For the purposes of section 63 (2) of the Act:
 - (a) an insurance contract that an accredited body corporate is required to be indemnified by is a company contract, and
 - (b) the liability against which an accredited body corporate is required to be indemnified by such a contract is the statutory liability of the accredited body corporate for the whole of the period during which it has been an accredited body corporate and the statutory liability of each person who is or was a director or employee of the accredited body corporate for the whole of the period during which he or she carried out work as an accredited certifier on behalf of the accredited body corporate.

11 Individual contracts

- (1) A professional indemnity contract may provide indemnity to an individual accredited certifier.
- (2) The indemnity provided by an individual contract must extend to all acts and omissions of the person covered by the contract that have occurred at any time since the insured first became an accredited certifier.
- (3) The indemnity provided by an individual contract may be limited to those acts and omissions in respect of which a claim is made against the insured, and notified to the insurer, before the contract's expiry date.
- (4) Nothing in this clause requires an individual contract to provide indemnity for acts or omissions that occur after the contract's expiry date.
- (5) The requirements of this clause are subject to the exceptions and exclusions allowed by the other provisions of this Part.

12 Company contracts

- (1) A professional indemnity contract may provide indemnity to a company, including such of the directors or employees of the company as are accredited certifiers.

- (2) The indemnity provided by a company contract must extend to:
- (a) in the case of a company that is an accredited body corporate, the body corporate, and
 - (b) all persons who, at any time during the term of the contract, are or become:
 - (i) accredited certifiers, and
 - (ii) directors or employees of the company,whether or not they cease to be accredited certifiers, or cease to be directors or employees of the company, during the term of the contract, and
 - (c) all persons who, at any time before the beginning of the term of the contract, had been:
 - (i) accredited certifiers, and
 - (ii) directors or employees of the company,but who had ceased to be accredited certifiers, or had ceased to be directors or employees of the company, before the beginning of that term.
- (3) The indemnity provided by a company contract must extend to:
- (a) in the case of a company that is an accredited body corporate, all acts and omissions of the company in its capacity as an accredited body corporate, and
 - (b) all acts and omissions of the persons covered by the contract that have occurred, while those persons were directors or employees of the company, in the course of work carried out on behalf of the company.

Note—

A company contract does not cover an accredited certifier for any period before he or she became a director or employee of the company. Consequently the person will need to obtain separate indemnity for that period in order to comply with the requirements of section 63 of the Act unless the person is indemnified by a current company contract that complies with this Part and the person was formerly a director or employee of the company that holds the contract.

- (4) The indemnity provided by a company contract may be limited to those acts and omissions in respect of which a claim is made against the insured, and notified to the insurer, before the contract's expiry date.
- (5) Nothing in this clause requires a company contract to provide indemnity for acts or omissions that occur after the contract's expiry date.
- (6) The requirements of this clause are subject to the exceptions and exclusions allowed by the other provisions of this Part.

13 Partnership contracts

- (1) A professional indemnity contract may provide indemnity to a partnership, including such of the partners or employees of the partnership as are accredited certifiers.
- (2) The indemnity provided by a partnership contract must extend to:
 - (a) all persons who, at any time during the term of the contract, are or become:
 - (i) accredited certifiers, and
 - (ii) partners or employees of the partnership,whether or not they cease to be accredited certifiers, or cease to be partners or employees of the partnership, during the term of the contract, and
 - (b) all persons who, at any time before the beginning of the term of the contract, had been:
 - (i) accredited certifiers, and
 - (ii) partners or employees of the partnership,but who had ceased to be accredited certifiers, or had ceased to be partners or employees of the partnership, before the beginning of that term.
- (3) The indemnity provided by a partnership contract must extend to all acts and omissions of the persons covered by the contract that have occurred, since those persons first became partners or employees of the partnership, in the course of work carried out on behalf of the partnership.

Note—

A partnership contract does not cover an accredited certifier for any period before he or she became a partner or employee of the partnership. Consequently, the person will need to obtain separate indemnity for that period in order to comply with the requirements of section 63 of the Act unless the person is indemnified by a current partnership contract that complies with this Part and the person was formerly a partner or employee of the partnership that that holds the contract.

- (4) The indemnity provided by a partnership contract may be limited to those acts and omissions in respect of which a claim is made against the insured, and notified to the insurer, before the contract's expiry date.
- (5) Nothing in this clause requires a partnership contract to provide indemnity for acts or omissions that occur after the contract's expiry date.
- (6) The requirements of this clause are subject to the exceptions and exclusions allowed by the other provisions of this Part.

14 Limit of indemnity as to compensation

- (1) A professional indemnity contract may limit the indemnity provided to an insured

(being an individual) in respect of any one claim to not less than the relevant amount, subject to an overall limit of not less than the relevant overall limit in respect of all claims made in any one year against the insured in relation to any liability covered by the contract.

- (2) Subclause (1) applies to an insured that is a company in the same way that it applies to an insured who is an individual, except that the relevant overall limit is to be multiplied by:
 - (a) the number of accredited certifiers who are directors or employees of the company as at the date on which the contract is issued, or
 - (b) if the contract is the fourth or subsequent contract issued to the company, whether by the same or by another insurer, the average number of accredited certifiers who have been directors or employees of the company during the previous 3 years.
- (3) Subclause (1) applies to an insured that is a partnership in the same way that it applies to an insured who is an individual, except that the relevant overall limit is to be multiplied by:
 - (a) the number of accredited certifiers who are partners or employees of the partnership as at the date on which the contract is issued, or
 - (b) if the contract is the fourth or subsequent contract issued to the partnership, whether by the same or by another insurer, the average number of accredited certifiers who have been partners or employees of the partnership during the previous 3 years.
- (4) Nothing in subclause (2) or (3) requires the indemnity provided by a professional indemnity contract, with respect to all claims made against a company or partnership in any one year in relation to any liability covered by the contract, to be for an amount greater than \$20,000,000 in total including relevant expenses.
- (5) For the purposes of this clause:
 - (a) the **relevant amount** means an amount of not less than \$1,000,000 excluding relevant expenses or an amount of not less than \$2,000,000 including relevant expenses, and
 - (b) the **relevant overall limit** means an amount of not less than \$2,000,000 excluding relevant expenses or an amount of not less than \$4,000,000 including relevant expenses, and
 - (c) **relevant expenses** means any amount in respect of the expenses of the investigation of a claim or the legal expenses of defending a claim, if those expenses were incurred by or on behalf of the insured.

Division 3 Exceptions and exclusions

15 Buildings for which no occupation certificate issued

A professional indemnity contract may provide that the indemnity provided by the contract does not apply to any claim made against the insured in relation to building work in respect of which no occupation certificate has been issued unless the claim is made against the insured, 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 certifying authority, 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.

Note—

Section 109M (2) of the *Environmental Planning and Assessment Act 1979* provides that, in certain circumstances, a building in respect of which building work has been carried out may be occupied and used without an occupation certificate having been issued in relation to that work. In these circumstances, section 109ZK of that Act does not bar the taking of legal action in relation to that work in the way it bars the taking of legal action in relation to other building work.

16 Other exceptions and exclusions

Nothing in this Part prevents a professional indemnity contract from containing exceptions and exclusions so long as the exceptions or exclusions are not inconsistent with the requirements for such contracts contained in this Part.

Part 5 Conflicts of interest

17 Prescribed circumstances in which accredited certifier taken to be involved in design of aspect of development

For the purposes of section 67 (1) (b) of the Act, the following circumstances are prescribed as circumstances in which an accredited certifier is taken to be involved in the design of an aspect of development:

- (a) if the accredited certifier provides advice on how to amend plans and specifications relating to the aspect of development so that they will comply with applicable legislative requirements (including applicable requirements of the *Building Code of Australia*) other than advice on how to amend plans and specifications relating to buildings under that Code so that they will comply with the deemed to satisfy provisions of that Code,
- (b) if the accredited certifier proposes design options for the aspect of development, including alternative solutions for compliance with the applicable requirements of the *Building Code of Australia*,
- (c) if the accredited certifier issues a strata certificate in respect of a strata plan, strata

plan of subdivision or notice of conversion that has been prepared by the accredited certifier or by a person related to the accredited certifier (within the meaning of section 68 of the Act).

18 Prescribed circumstances in which accredited certifier taken not to be involved in design aspect of development

- (1) For the purposes of section 67 (2) of the Act, the following circumstances are prescribed as circumstances in which an accredited certifier is taken not to be involved in the design of an aspect of development in the case of the issue of a Part 4A certificate or complying development certificate:
 - (a) if the accredited certifier provides advice on whether plans and specifications for that aspect of the development comply with applicable legislative requirements (including applicable requirements of the *Building Code of Australia*),
 - (b) if the accredited certifier provides advice on whether building work or subdivision work does or will comply with the approved plans and specifications for that aspect of the development or with the applicable requirements of the *Building Code of Australia*,
 - (c) if the accredited certifier identifies the matters to be satisfied before a Part 4A certificate or complying development certificate can be issued in relation to the aspect of the development,
 - (d) if the accredited certifier indicates that an alternative solution is required to satisfy the applicable requirements of the *Building Code of Australia* in relation to the aspect of development,
 - (e) if the accredited certifier identifies the relevant requirements of the *Building Code of Australia* in relation to the aspect of the development without giving advice about the potential alternative solutions,
 - (f) if the accredited certifier participates in a Fire Engineering Brief for the purpose only of determining the scope of work for the fire engineering analysis and the basis for analysis as defined in the International Fire Engineering Guidelines,
 - (g) in a case where the accredited certifier is issuing the certificate on behalf of a council, the certifier was involved in the assessment of that aspect of the development during the course of the determination of the development application or application for a complying development certificate.
- (2) For the purposes of section 67 (2) of the Act, the following circumstances are prescribed as circumstances in which an accredited certifier is taken not to be involved in the design of an aspect of development in the case of the issue of a strata certificate:

- (a) if the accredited certifier provides advice on whether plans and specifications for that aspect of the development comply with applicable legislative requirements,
- (b) if the accredited certifier provides 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) if the accredited certifier identifies the matters to be satisfied before a strata certificate can be issued in relation to the aspect of the development.

(3) In this clause:

Fire Engineering Brief has the same meaning as in the International Fire Engineering Guidelines.

International Fire Engineering Guidelines means the document entitled *International Fire Engineering Guidelines*, Edition 2005, published by the Australian Building Code Board.

18A Exemptions relating to accredited certifiers employed or engaged by councils

- (1) This clause applies only to a council accredited certifier or any other accredited certifier who is employed or engaged by a council to perform certification work on behalf of the council.
- (2) An accredited certifier is exempt from section 66 (1) (c) of the Act in relation to the issue of a Part 4A certificate or complying development certificate on behalf of a council to another person who is an employee of the council.
- (3) An accredited certifier is exempt from section 66 (1) (c) of the Act in relation to the issue of a Part 4A certificate or complying development certificate on behalf of a council to a person who is related to the accredited certifier as referred to in section 68 (e) of the Act, 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.
- (4) An accredited certifier is exempt from section 66 (1) (c) of the Act in relation to the issue of a Part 4A certificate or complying development certificate on behalf of a

council to the council.

Part 6 Miscellaneous

19 Replacements certificates of accreditation

On application by an accredited certifier, the Board may issue a replacement certificate of accreditation if satisfied that a certificate of accreditation held by the accredited certifier has been lost, stolen or damaged.

19A Requirements relating to contracts for certification work

- (1) For the purposes of section 73A of the Act, the contract of an accredited certifier, or the employer of an accredited certifier, must comply with the requirements specified in this clause.
- (2) The contract must contain the following particulars:
 - (a) in the case of a contract of an accredited certifier:
 - (i) the accredited certifier's name, accreditation number and the address of the accredited certifier's place of business, and
 - (ii) a telephone number and an email address for contacting the accredited certifier,
 - (b) in the case of a contract of the employer of an accredited certifier:
 - (i) the name, accreditation number (if applicable) and address of the employer's place of business, and
 - (ii) the name and accreditation 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 an 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 accredited certifier named in the contract is required to be covered by insurance for the purposes of Division 2 of Part 6 of the Act—the name of each insurer by whom that accredited certifier is currently covered, the identifying number of the insurance contract and 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 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 in respect of any related development consent granted under the *Environmental Planning and Assessment Act 1979* or of any related certificate issued under Part 4A of that Act (including the name of the applicable consent authority or certifying authority, 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 the subject of any related development consent or of any related certificate issued under Part 4A 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 accreditation 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.
- (3) The contract must be signed, or otherwise appropriately executed, by the parties to the contract.
- (4) The 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 certifying authority—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 they commence to be 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.

(5) The contract must be accompanied by any applicable document containing information about the statutory obligations of accredited certifiers that is published by the Board for the purposes of this clause and available on its website.

20 Application for issue of certificate under section 91 of Act

A person may apply to the Board for the issue of a certificate under section 91 of the Act.

20A Additional particulars to be included on Register

For the purposes of section 11 (2) (k) of the Act, the following particulars are prescribed as particulars that the Register must contain in relation to an accredited body corporate if those particulars are available to the Board:

- (a) the name of each accredited certifier director of the body corporate and the date when his or her appointment as an accredited certifier director commenced and ceased,
- (b) the name of each employee of the body corporate who is an accredited certifier and the date when his or her employment commenced and ceased,
- (c) the category of accreditation held by each person referred to in paragraph (a) or (b).

20B Additional events to be notified to Board

For the purposes of section 61 (1) (f) of the Act, the following events are prescribed as events that are to be notified to the Board in accordance with section 61F (1) by an accredited body corporate:

- (a) the appointment of a person as an accredited certifier director of the body corporate,
- (b) the employment by the body corporate of a person who is an accredited certifier,
- (c) the termination of the appointment of a person as an accredited certifier director of the body corporate or of the employment by the body corporate of a person who is an accredited certifier,
- (d) when a person becomes concerned in the management of the body corporate,
- (e) when a person ceases to be concerned in the management of the body corporate.

20C Council certification work requiring accredited certifier

- (1) For the purposes of section 74A of the Act, the prescribed certification work is work specified in Column 2 of Schedule 1 in relation to category A1, category A2, category A3 or category A4 accreditation.
- (2) This clause has no effect until the commencement of section 74A of the Act.

20D Notice to be given by council of certain matters

- (1) A council must give notice to the Board, in accordance with this clause, of the following matters:
 - (a) the date on which a council accredited certifier commences employment with the council in a position that involves the carrying out of certification work on behalf of the council and the accreditation number of the certifier,
 - (b) the date on which a council accredited certifier ceases to be employed by the council in a position that involves the carrying out of certification work on behalf of the council.
- (2) Notice under this clause must be given in writing within 7 days after the date of the event to which the notice relates.

20E Exemptions for accredited certifiers employed by councils from fines and orders for compensation

A council accredited certifier is exempt from sections 31 (4) (f) and (g) and 34 (2) (f) and (g) of the Act.

20F Exemptions for councils relating to section 74A of the Act

- (1) A council is exempt from section 74A of the Act in relation to certification work done on behalf of the council if:
 - (a) the council was appointed before 1 September 2010 as the principal certifying authority for development to which the certification work relates, and
 - (b) the certification work was done by an accredited certifier employed or engaged by the council whose certificate of accreditation did not authorise the doing of that work, and
 - (c) at the time the work was done the council did not employ or have engaged any accredited certifier whose certificate of accreditation authorised the doing of that work.
- (2) A council is exempt from section 74A of the Act in relation to certification work done on behalf of the council if:

- (a) an application for a construction certificate or complying development certificate in relation to the relevant development was made to the council before 1 September 2010, and
 - (b) the council was appointed as the principal certifying authority for the development on or after 1 September 2010, and
 - (c) the certification work was done by an accredited certifier employed or engaged by the council whose certificate of accreditation did not authorise the doing of that work, and
 - (d) at the time the work was done the council did not employ or have engaged any accredited certifier whose certificate of accreditation authorised the doing of that work.
- (3) A council is exempt from section 74A of the Act in relation to the issue of a Part 4A certificate or complying development certificate on behalf of the council if:
- (a) the application for the certificate was made to the council before 1 September 2010, and
 - (b) the certificate was issued by an accredited certifier employed or engaged by the council whose certificate of accreditation did not authorise the issue of the Part 4A certificate or complying development certificate, and
 - (c) at the time the Part 4A certificate or complying development certificate was issued the council did not employ or have engaged any accredited certifier who held a certificate of accreditation that authorised the issuing of the Part 4A certificate or complying development certificate.

21 Fees

- (1) The fees set out in Schedule 2 are payable to the Board.
- (2) However, the maximum fee payable to the Board for the issue or renewal of any certificate of accreditation for any combination of categories of accreditation referred to in item 1 or 2 of Schedule 2 is \$1,500.
- (3) The Board may, either generally, in a class of cases or in a particular case, waive payment of the whole or any part of a fee referred to in Schedule 2.

22 Penalty notices

For the purposes of section 92 of the Act:

- (a) each offence arising under a provision specified in Column 1 of Schedule 3 is prescribed as a penalty notice offence, and
- (b) the prescribed penalty for such an offence is the amount specified in relation to the

offence in Column 2 of Schedule 3.

23 Savings and transitional provisions

Schedule 4 has effect.

Schedule 1 Categories of certificates of accreditation

(Clause 4)

Part 1 Categories of certificates of accreditation

Column 1	Column 2
Category of accreditation	Authorities conferred by certificate
Category A1—Accredited certifier—building surveying grade 1	<p>Issue of complying development certificates for building work, the demolition or removal of a building or change of use, construction certificates and compliance certificates for building work and occupation certificates for buildings involving all classes and sizes of buildings under the BCA.</p> <p>Carrying out of any inspections under section 109E (3) (d) of the Environmental Planning and Assessment Act 1979.</p> <p>Carrying out of inspections under clauses 129B and 143B of the Environmental Planning and Assessment Regulation 2000.</p>

Issue of complying development certificates for building work, the demolition or removal of a building or change of use, construction certificates and compliance certificates for building work and occupation certificates for buildings involving the following classes of buildings under the BCA:

- (a) class 1 and class 10 buildings,
- (b) class 2 to 9 buildings with a maximum rise in storeys of 3 storeys and a maximum floor area of 2,000m²,
- (c) buildings with a maximum rise in storeys of 4 storeys in the case of a building that comprises only a single storey of class 7a carpark located at the ground floor level or basement level and with 3 storeys of class 2 above and with a maximum floor area of 2000m².

Category A2—Accredited
certifier—building surveying grade 2

Carrying out of any inspections under section 109E (3) (d) of the *Environmental Planning and Assessment Act 1979* of buildings referred to in the preceding paragraphs (a), (b) and (c). In addition, carrying out of any inspections under section 109E (3) (d) of that Act for work authorised by category of accreditation A1 with the consent of, and under the supervision of, an accredited certifier authorised to issue occupation certificates under category A1.

Carrying out of inspections under clauses 129B and 143B of the *Environmental Planning and Assessment Regulation 2000*.

For the purpose of this category of accreditation, the maximum floor area and maximum rise in storeys restrictions relate to the whole building and not part of the building. Accordingly, in the case of alterations, additions and renovations to existing buildings, the maximum rise in storeys and maximum floor area restrictions relate to the whole building, which includes the existing building and the proposed new building work.

Category A3—Accredited certifier—building surveying grade 3	<p>Issue the following certificates involving class 1 and class 10 buildings under the BCA, but only if the building achieves compliance with the performance requirements of the BCA by complying with the deemed-to-satisfy provisions of the BCA (and not by the formulation of any alternative solutions):</p> <ul style="list-style-type: none">(a) complying development certificates for building work, the demolition or removal of a building or change of use,(b) construction certificates and compliance certificates for building work,(c) occupation certificates.
Category A4—Building inspector	<p>Carrying out of any inspections under section 109E (3) (d) of the <i>Environmental Planning and Assessment Act 1979</i> of the buildings referred to above. In addition, carrying out of any inspections required under section 109E (3) (d) of the <i>Environmental Planning and Assessment Act 1979</i> for work authorised by category of accreditation A2 with the consent of, and under the supervision of, an accredited certifier authorised to issue occupation certificates under category A2.</p> <p>Carrying out of inspections under clauses 129B and 143B of the <i>Environmental Planning and Assessment Regulation 2000</i>.</p> <p>Carrying out of inspections required by the principal certifying authority under section 109E (3) (d) of the <i>Environmental Planning and Assessment Act 1979</i>, critical stage inspections prescribed by clause 162A of the <i>Environmental Planning and Assessment Regulation 2000</i> (except for the last critical stage inspection after the building work has been completed and prior to any occupation certificate being issued) and inspections required under clauses 129B and 143B of that Regulation in relation to class 1 and class 10 buildings under the BCA.</p>
Category A5—Accredited certifier—Port Botany and Port Kembla	<p>Issue of complying development certificates and compliance certificates for building work for structures or demolition of structures that are not within a classification of building under the Building Code of Australia and are erected for the purposes of development of a kind specified as complying development under <i>State Environmental Planning Policy (Port Botany and Port Kembla) 2013</i>.</p> <p>Carrying out of inspections under clauses 129B, 143B and 162AB of the <i>Environmental Planning and Assessment Regulation 2000</i>.</p>
Category B1—Accredited certifier—subdivision certification	<p>Issue of complying development certificates for proposed subdivision developments, construction certificates for subdivision work and subdivision certificates.</p> <p>Carrying out of inspections under clause 129B of the <i>Environmental Planning and Assessment Regulation 2000</i>.</p>

Category C1—Accredited certifier—private road and drainage design compliance

Issue of compliance certificates for designs of private road and drainage works including related earthworks associated with a building site.

However, does not include carrying out of any inspections required on such occasions as are prescribed by the regulations under section 109E (3) (d) of the *Environmental Planning and Assessment Act 1979*.

For the purpose of this category of accreditation, private road and drainage and related earthworks means roads and drainage and related earthworks that will not be dedicated to the public (being the local council, State Government or Commonwealth Government) and includes private internal roads and stormwater drainage such as overland flow paths, surface runoff, subsoil and inter-allotment drainage.

Category C2—Accredited certifier—private road and drainage construction compliance

Issue of compliance certificates for constructed private road and drainage works including related earthworks associated with a building site.

However, does not include carrying out of any inspections required on such occasions as are prescribed by the regulations under section 109E (3) (d) of the *Environmental Planning and Assessment Act 1979*.

For the purpose of this category of accreditation, private road and drainage works and related earthworks means roads and drainage and related earthworks that will not be dedicated to the public (being the local council, State Government or Commonwealth Government) and includes private internal roads and stormwater drainage such as overland flow paths, surface runoff, subsoil and inter-allotment drainage.

Category C3—Accredited certifier—stormwater management facilities design compliance

Issue of compliance certificates for designs of stormwater management facilities.

However, does not include carrying out of any inspections required on such occasions as are prescribed by the regulations under section 109E (3) (d) of the *Environmental Planning and Assessment Act 1979*.

Stormwater management facilities includes stormwater quantity controls eg on-site stormwater detention, stormwater quality controls, and similar elements of water sensitive urban design.

Stormwater management facilities designs relate to stormwater management facilities planned for subdivision or building work (where applicable).

Category C4—Accredited certifier—stormwater management facilities construction compliance	<p>Issue of compliance certificates for constructed stormwater management facilities.</p> <p>However, does not include carrying out of any inspections required on such occasions as are prescribed by the regulations under section 109E (3) (d) of the <i>Environmental Planning and Assessment Act 1979</i>.</p> <p>Stormwater management facilities includes stormwater quantity controls eg on-site stormwater detention, stormwater quality controls, and similar elements of water sensitive urban design.</p> <p>Stormwater management facilities works relate to the construction of stormwater management facilities for subdivision or building work (where applicable).</p>
Category C5—Accredited certifier—subdivision & building (location of works as constructed) compliance	<p>Issue of compliance certificates to verify location of subdivision works and building works as constructed, including the location of constructed roads; subdivision works; services; drainage; detention basins and structures; finished building floor levels; and finished ground levels.</p> <p>However, does not include carrying out of any inspections required on such occasions as are prescribed by the regulations under section 109E (3) (d) of the <i>Environmental Planning and Assessment Act 1979</i>.</p>
Category C6—Accredited certifier—subdivision road and drainage construction compliance	<p>Issue of compliance certificates for constructed subdivision road and drainage works.</p> <p>However, does not include carrying out of any inspections required on such occasions as are prescribed by the regulations under section 109E (3) (d) of the <i>Environmental Planning and Assessment Act 1979</i>.</p>
Category C7—Accredited certifier—structural engineering compliance	<p>Issue of compliance certificates for designs of and constructed structural components of building work.</p> <p>However, does not include carrying out of any inspections required on such occasions as are prescribed by the regulations under section 109E (3) (d) of the <i>Environmental Planning and Assessment Act 1979</i>.</p>
Category C8—Accredited certifier—electrical services compliance	<p>Issue of compliance certificates for designs of and constructed electrical components and systems of building work.</p> <p>However, does not include carrying out of any inspections required on such occasions as are prescribed by the regulations under section 109E (3) (d) of the <i>Environmental Planning and Assessment Act 1979</i>.</p>
Category C9—Accredited certifier—mechanical services compliance	<p>Issue of compliance certificates for designs of and constructed mechanical components and systems of building work including certifying compliance with the relevant energy efficiency provisions of the BCA.</p> <p>However, does not include carrying out of any inspections required on such occasions as are prescribed by the regulations under section 109E (3) (d) of the <i>Environmental Planning and Assessment Act 1979</i>.</p>

Category C10—Accredited certifier—fire safety engineering compliance	<p>Issue of compliance certificates for alternative solutions involving fire safety for designs of and constructed building works certifying compliance with the relevant performance requirements of the BCA.</p> <p>However, does not include carrying out of any inspections required on such occasions as are prescribed by the regulations under section 109E (3) (d) of the <i>Environmental Planning and Assessment Act 1979</i>.</p> <p>Alternative solutions involving fire safety includes alternative solutions relevant to:</p> <ul style="list-style-type: none">(a) fire safety systems and components of fire safety systems,(b) the safety of persons in the event of fire,(c) the prevention, detection and suppression of fire.
Category C11—Accredited certifier—energy management compliance (Classes 3, 5 to 9)	<p>Issue of compliance certificates for designs of and constructed energy management components of building work for Classes 3 and 5 to 9 buildings, inclusive, excluding compliance certificates in relation to the energy efficiency of mechanical services.</p> <p>However, does not include the carrying out of any inspections required on such occasions as are prescribed by the regulations under section 109E (3) (d) of the <i>Environmental Planning and Assessment Act 1979</i>.</p>
Category C12—Accredited certifier—geotechnical engineering compliance	<p>Issue of compliance certificates for designs of and constructed foundations, earthworks, earth retaining structures and pavements relevant to subdivision work and buildings with a maximum rise in storeys of 3 storeys.</p> <p>However, does not include the carrying out of any inspections required on such occasions as are prescribed by the regulations under section 109E (3) (d) of the <i>Environmental Planning and Assessment Act 1979</i>.</p>
Category C13—Accredited certifier—acoustics compliance	<p>Issue of compliance certificates for designs of and constructed acoustics components and systems of building work, including in relation to the assessment, measurement, analysis and modelling of noise and vibration sources and receptors.</p> <p>However, does not include the carrying out of any inspections required on such occasions as are prescribed by the regulations under section 109E (3) (d) of the <i>Environmental Planning and Assessment Act 1979</i>.</p>

Category C14—Accredited certifier—building hydraulics compliance	<p>Issue of compliance certificates in relation to designs of and constructed building hydraulics. These include 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 such as medical gases in hospitals.</p> <p>However, does not include the carrying out of any inspections required on such occasions as are prescribed by the regulations under section 109E (3) (d) of the <i>Environmental Planning and Assessment Act 1979</i>.</p>
Category C15—Accredited certifier—stormwater compliance	<p>Issue of compliance certificates in relation to designs of and constructed stormwater hydraulics for buildings. These include roof gutters, sumps and downpipes, in-ground drainage, surface drainage, water quality controls and sub-soil drainage (ie underground car parks, retaining walls, etc).</p> <p>However, does not include the carrying out of any inspections required on such occasions as are prescribed by the regulations under section 109E (3) (d) of the <i>Environmental Planning and Assessment Act 1979</i>.</p>
Category C16—Accredited certifier—specialty hydraulic services compliance	<p>Issue of compliance certificates in relation to designs of and constructed specialty hydraulics services in buildings. These include sewerage pumping stations, sewerage treatment plants and ponds and trade waste treatment services (ie grease arresters, dilution systems, heavy metals extraction systems, etc).</p> <p>However, does not include the carrying out of any inspections required on such occasions as are prescribed by the regulations under section 109E (3) (d) of the <i>Environmental Planning and Assessment Act 1979</i>.</p>
Category D1—Accredited certifier—strata certification	<p>Issue of strata certificates in respect of proposed strata plans, strata plans of subdivision and notices of conversion in accordance with the <i>Strata Schemes (Freehold Development) Act 1973</i> or the <i>Strata Schemes (Leasehold Development) Act 1986</i> and the regulations under those Acts.</p> <p>Carrying out of inspections referred to in section 37AA of the <i>Strata Schemes (Freehold Development) Act 1973</i> and section 66AA of the <i>Strata Schemes (Leasehold Development) Act 1986</i>.</p>

Part 2 Definitions

1 Definitions

(1) In this Schedule:

alternative solution has the same meaning as in the BCA.

building acoustics means the effects and impacts of noise and vibration on a development and properties adjacent to the development during the construction and use of all classes of buildings.

civil engineering means the field of engineering concerned with the design, construction and commissioning of drainage and sewerage systems and structures, earth retaining structures, earthworks and bulk landscaping, road layout, furnishings and traffic systems, embankments and pavements and utility services installations.

deemed-to-satisfy provisions has the same meaning as in the BCA.

electrical fire services means the design of fire detection and early warning and intercommunication systems for all classes of buildings.

electrical services means the planning, design, construction, supervision, monitoring and maintenance of electrical systems in any class of building, including power supply, distribution, protection and earthing, lighting requirements (such as emergency and evacuation and exit lighting), telecommunications and fire detection systems to facilitate the safe occupancy and use of the building.

energy management means the planning, design, monitoring and maintenance of sustainable and efficient energy systems in the built environment through the use of materials, orientation, insulation and window treatments.

fire safety system has the same meaning as in the BCA.

floor area has the same meaning as in the BCA.

geotechnical engineering means the field of engineering concerned with the assessment, evaluation, analysis and geotechnical design in relation to stability and differential movement of natural and excavated slopes, filled sites, expansive and reactive soils, construction over voids as affecting foundations and structures and includes the sampling, testing and analysis of groundwater effects, soil properties and characteristics and soil behaviour.

heritage significance means the heritage significance of a building or part of a building, a work, a relic, a place, an archaeological site, a streetscape, a tree or another landscape element.

hydraulic fire services means the fire main, fire hydrant, fire hose reel, fire sprinkler systems and other fire suppression systems (such as water spray systems, foam systems and gaseous agent systems) for any class of building.

mechanical services means the planning, design, construction, monitoring and maintenance of mechanical systems in any class of building including 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 the building.

performance requirement has the same meaning as in the BCA.

rise in storeys has the same meaning as in the BCA.

storey has the same meaning as in the BCA.

structural engineering means the field of engineering concerned with the planning, design, construction, inspection, monitoring, maintenance, rehabilitation and demolition of buildings, structures and structural systems and their components and the associated technical, economic, environmental, aesthetic and social aspects of their structures.

(2) A reference in this Schedule:

(a) to AS or AS/NZS followed by a number is a reference to the Standard identified in the BCA by AS or AS/NZS followed by that number, and

(b) to a class of building is a reference to a class of building under the BCA.

Schedule 2 Fees

(Clause 21)

		Fee
1	Application for certificate of individual accreditation, or renewal of certificate of individual accreditation, as an accredited certifier:	
	(a) for all categories applied for in one application if those categories are A1, A2, A3, A4 or B1 or any combination of them	\$1,500
	(b) for all categories applied for in one application if those categories are C1-C16 or D1 or any combination of them	\$750
1A	Application for certificate of individual accreditation to carry out certification work only on behalf of councils	Nil
1B	Application for renewal of certificate of individual accreditation to carry out certification work only on behalf of councils	\$250
2	Application for certificate of corporate accreditation or renewal of certificate of corporate accreditation	\$1,500
3	Application for replacement certificate of accreditation (clause 19)	\$35
4	Attendance at a continuing professional development course provided by the Board	Such fee, determined by the Board, as represents the reasonable cost to the Board of providing the course and as is notified to the person at the time the request for attendance at the course is made

5	Application under section 109EA of the <i>Environmental Planning and Assessment Act 1979</i> for approval of change of principal certifying authority	\$40 for each change of principal certifying authority
6	Application under section 71 of the Act for exemption	\$100
7	Application for certificate under section 91 of the Act (clause 20)	\$20
8	An examination or test required under section 5 (3) (b) of the Act or under an accreditation scheme	Such fee, determined by the Board, as represents the reasonable cost to the Board of providing the examination or test and as is notified to the person at the time the examination or test is required

Schedule 3 Penalty notice offences

(Clause 22)

Column 1	Column 2
Offence	Penalty (\$)
<i>Building Professionals Act 2005</i>	
Section 58 (2)	\$1,500 for an individual \$3,000 for a corporation
Section 60 (1)	\$750 for an individual \$1,500 for a corporation
Section 60 (2)	\$1,500 for an individual \$3,000 for a corporation
Section 61 (1)	\$1,500 for an individual \$3,000 for a corporation
Section 61 (2)	\$750 for an individual \$1,500 for a corporation
Section 61 (3)	\$250 for an individual \$500 for a corporation
Section 63 (1)	\$1,500 for an individual \$3,000 for a corporation
Section 64 (2)	\$1,500, for an individual \$3,000, for a corporation
Section 66 (1)	\$1,500, for an individual \$3,000 for a corporation
Section 72	\$1,500, for an individual \$3,000 for a corporation

Section 73	\$1,500, for an individual \$3,000 for a corporation
Section 74 (1)	\$750 for an individual \$1,500 for a corporation
Section 85 (1)	\$1,500, for an individual \$3,000 for a corporation

Schedule 4 Savings and transitional provisions

(Clause 23)

Part 1 Provisions consequent on enactment of **Building Professionals Act 2005**

1 Definitions

In this Schedule:

existing accredited certifier means a person who, by virtue of clause 2 of Schedule 2 to the Act, is taken to hold a certificate of accreditation.

former accreditation body means a professional association that was authorised under section 109S of the *Environmental Planning and Assessment Act 1979* as an accreditation body or any person who was exercising the functions of a defunct accreditation body in accordance with the regulations under that Act.

previous accreditation, in relation to an existing accredited certifier, means the accreditation that the existing accredited certifier had under the *Environmental Planning and Assessment Act 1979* immediately before the commencement of clause 2 of Schedule 2 to the Act.

2 Conversion of existing certificates of accreditation

- (1) The Board may, without the need for an application or payment of an application fee under section 5 of the Act, issue a certificate of accreditation under Part 2 of the Act to an existing accredited certifier.
- (2) Any certificate of accreditation issued to an existing accredited certifier in the circumstances referred to in subclause (1) is to be of a category that, either with or without the imposition of conditions, most closely equates to the previous accreditation of the certifier.
- (3) On the issue of a certificate of accreditation to an existing accredited certifier in the circumstances referred to in subclause (1), clause 2 of Schedule 2 to the Act ceases to apply to the certifier.
- (4) For the avoidance of doubt, the provisions of the Act (other than sections 5 and 7 (1))

(a) and (b) and (2)) apply to a certificate of accreditation issued in the circumstances referred to in subclause (1) in the same way as they apply to a certificate of accreditation issued in other circumstances.

- (5) In applying section 10 of the Act to a certificate of accreditation issued to an existing accredited certifier in the circumstances referred to in subclause (1), the reference in section 10 (1) to one year is to be read as the remainder of the period for which the certifier's previous accreditation had been issued.
- (6) In applying section 18 of the Act to the issue of a certificate of accreditation to an existing accredited certifier in the circumstances referred to in subclause (1), the certifier is taken to have made an application for a certificate of accreditation of a category that, either with or without the imposition of conditions, most closely equates to the previous accreditation of the certifier.

3 Renewals of accreditation

- (1) For the purposes of the first renewal of the certificate of accreditation issued to an existing accredited certifier in the circumstances referred to in clause 2 (1), the existing accredited certifier is taken to have undertaken all the necessary continuing professional development required by the accreditation scheme if the certifier has participated in and satisfied the requirements of the continuing professional development program conducted by the former accreditation body that issued the previous accreditation to the certifier.
- (2) An existing accredited certifier who is issued a certificate of accreditation in the circumstances referred to in clause 2 (1) may notify the Board in writing, when applying for the first, second or third renewal of the certificate of accreditation, that the certifier elects to be assessed for the purposes of section 7 (1) (b) of the Act for that first, second or third renewal.
- (3) If an election is not made by an existing accredited certifier under subclause (2), the Board is not to assess the certifier for the purposes of section 7 (1) (b) of the Act until the certifier applies for the fourth renewal of the certificate of accreditation concerned.
- (3A) On and from the commencement of this subclause, the Board may apply only the core performance criteria specified in the accreditation scheme in assessing an existing accredited certifier for the purposes of section 7 (1) (b) of the Act if:
- (a) the assessment is undertaken on the election of the certifier under subclause (2) when applying for renewal of a certificate of accreditation or on the certifier's application for the fourth renewal of a certificate of accreditation as referred to in subclause (3), and
 - (b) the certifier has notified the Board in writing that the application for renewal is to be taken to be an application for renewal of a certificate of accreditation of the

same category that was issued to the certifier under clause 2 (1) and on the same conditions (if any) imposed by the Board on that certificate of accreditation under clause 2 (2).

- (3B) Nothing in subclause (3A) prevents the imposition of any other conditions on that certificate of accreditation in accordance with the Act.
- (4) Clause 2 (2) does not apply to:
- (a) a renewal of a certificate of accreditation issued to an existing accredited certifier in the circumstances referred to in clause 2 (1) if:
 - (i) the accredited certifier has made an election under subclause (2) to be assessed in relation to that renewal, or
 - (ii) it is the fourth renewal of that certificate of accreditation and no election has been made by the certifier under subclause (2), and
 - (b) each subsequent renewal of the certificate of accreditation.
- (5) An application for renewal of a person's accreditation under the *Environmental Planning and Assessment Act 1979* that was made before the commencement of this clause and has not been determined at that commencement is taken to have lapsed.
- (6) If an existing accredited certifier's accreditation under the *Environmental Planning and Assessment Act 1979* would expire within 28 days after the commencement of this clause and the certifier applies for renewal of the accreditation to the Board within that 28-day period, the accreditation (unless suspended or sooner cancelled) continues in force until the application is finally determined.
- (7) If an existing accredited certifier's accreditation under the *Environmental Planning and Assessment Act 1979* would expire after the commencement of this clause and the relevant former accreditation body determined an application for renewal of the accreditation before that commencement, that determination is taken to be a determination of the Board under the *Building Professionals Act 2005*.

4 Disciplinary provisions

- (1) A complaint may be made under Part 3 of the Act in relation to a person who was an accredited certifier under the *Environmental Planning and Assessment Act 1979* in relation to conduct occurring before the commencement of this clause.
- (2) Subclause (3) applies in relation to dealing with any of the following complaints:
- (a) complaint that, by virtue of subclause (1), may be made against a person under the Act,
 - (b) a complaint that, by virtue of clause 3 (1) of Schedule 2 to the Act, is to continue

to be dealt with under the Act,

(c) a complaint that, by virtue of clause 3 (4) of Schedule 2 to the Act, may be made against a person under the Act.

(3) Any complaint referred to in subclause (2) is to be dealt with as if:

(a) the definitions of **professional misconduct** and **unsatisfactory professional conduct** in section 109R of the *Environmental Planning and Assessment Act 1979* (as in force immediately before their repeal) applied to the complaint rather than the definitions of those terms in section 19 of the *Building Professionals Act 2005*, and

(b) the applicable code of conduct for the purposes of those definitions is the code of conduct that applied to the person at the time the conduct the subject of the complaint occurred, and

(c) the provisions of the *Environmental Planning and Assessment Act 1979* imposing requirements on accredited certifiers and creating offences in relation to the conduct of accredited certifiers that were in force at the time the conduct concerned occurred were applicable rather than the provisions of the *Building Professionals Act 2005*.

(4) Any application under section 109Z of the *Environmental Planning and Assessment Act 1979* to the Tribunal by a former accreditation body that has not been finally determined before the commencement of this clause may continue to be dealt with, if the Board so determines, as if the Board were the applicant rather than the former accreditation body.

5 Critical stage inspections and other inspections

(1) Despite any other provision of this Regulation (in particular, Schedule 1), the certificate of accreditation of an existing accredited certifier is taken to authorise the certifier to carry out inspections required by section 109E (3) (d) of the *Environmental Planning and Assessment Act 1979*.

(2) This clause extends to inspections carried out, or started, before the commencement of the *Building Professionals Amendment (Inspections) Regulation 2008* of which a record is made, on or after that commencement, in accordance with clause 162B of the *Environmental Planning and Assessment Regulation 2000*.

(3) (Repealed)

Part 2 Provisions consequent on enactment of **Building Professionals**

Amendment Act 2008

6 Certificates of individual accreditation

A certificate of accreditation in force immediately before 3 November 2008 is taken to be a certificate of individual accreditation as an accredited certifier.

7 Pending investigations

Section 45 of the Act (as in force before 3 November 2008) continues to apply to an investigation commenced under that section before 3 November 2008 but not completed before that date. Accordingly, section 45 of the Act as substituted by the *Building Professionals Amendment Act 2008* does not apply to any such investigation.

Part 3 Provisions consequent on enactment of Building Professionals Amendment (Penalty Notices) Regulation 2008

8 New authorisations

For the avoidance of doubt, the amendments made to Schedule 1 by the *Building Professionals Amendment (Inspections and Penalty Notices) Regulation 2009* apply to a person holding a relevant certificate of accreditation whether or not the certificate was issued before, on or after the commencement of those amendments.

Part 4 Provisions consequent on enactment of Building Professionals Amendment (Authorisations) Regulation 2009

9 Pending applications for compliance certificates

An amendment made to Schedule 1 by the *Building Professionals Amendment (Authorisations) Regulation 2009* does not affect the issue of a compliance certificate if the application for the compliance certificate was made before the commencement of the amendment.

Part 5 Provisions consequent on enactment of Building Professionals Amendment (Accreditation of Council Employees) Regulation 2010

10 Fees

No application fee is payable in relation to an application for a certificate of accreditation referred to in section 5 (1A) of the Act that is made on the recommendation of a council in the period from 1 March 2010 up to and including 28 February 2013.

Part 6 Provisions consequent on enactment of Building Professionals

Amendment (Categories of Accreditation) Regulation 2011

11 Existing A3 or A4 accredited certifiers

- (1) This clause applies to class 2–9 buildings with a maximum rise in storeys of 2 storeys and a maximum floor area of 500m².
- (2) A person who, immediately before the commencement of the amending regulation, held a category A3 certificate of accreditation is authorised (while that person continues to hold such a certificate) to do the following in relation to buildings to which this clause applies:
 - (a) to issue the following certificates, but only if the building to which the certificate relates achieves compliance with the performance requirements of the BCA by complying with the deemed-to-satisfy provisions of the BCA (and not by the formulation of any alternative solutions):
 - (i) complying development certificates for building work or change of use,
 - (ii) construction certificates and compliance certificates for building work,
 - (iii) occupation certificates,
 - (b) to carry out any inspections under section 109E (3) (d) of the *Environmental Planning and Assessment Act 1979*.
- (3) A person who, immediately before the commencement of the amending regulation, held a category A4 certificate of accreditation is authorised (while that person continues to hold such a certificate) to carry out the following inspections in relation to buildings to which this clause applies:
 - (a) inspections required by the principal certifying authority under section 109E (3) (d) of the *Environmental Planning and Assessment Act 1979*,
 - (b) critical stage inspections prescribed by clause 162A of the *Environmental Planning and Assessment Regulation 2000* (except for the last critical stage inspection after the building work has been completed and prior to any occupation certificate being issued),
 - (c) inspections required under clauses 129B and 143B of that Regulation.
- (4) Nothing in this clause limits what the holder of a certificate of accreditation is otherwise authorised to do under the Act or this Regulation.
- (5) For the purpose of this clause, the maximum floor area and maximum rise in storeys restrictions relate to the whole building and not part of the building. Accordingly, in the case of alterations, additions and renovations to existing buildings, the maximum rise in storeys and maximum floor area restrictions relate to the whole building, which

includes the existing building and proposed new building work.

(6) In this clause, **amending regulation** means the *Building Professionals Amendment (Categories of Accreditation) Regulation 2011*.

Part 7 Provisions consequent on enactment of Environmental Planning and Assessment Amendment Act 2012

12 Disciplinary proceedings

Sections 31 (5A) and 34 (3A) of the Act, as inserted by the *Environmental Planning and Assessment Amendment Act 2012*, extend to the taking of action on or after 1 March 2013 in relation to any conduct of an accredited certifier, or any other matter, occurring (or alleged to have occurred) before 1 March 2013.

13 Contracts for certification work

Section 73A, as inserted by the *Environmental Planning and Assessment Amendment Act 2012*, does not apply in relation to the carrying out of certification work commenced, or under a contract entered into, before 1 March 2013.