



New South Wales

Building Professionals Amendment (Accreditation of Council Employees) Regulation 2010

under the

Building Professionals Act 2005

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

BARBARA PERRY, MP
Minister Assisting the Minister for Planning

Explanatory note

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

- (a) to amend the authorisations conferred by categories A1, A2 and A3 accreditation and to include a category A4 accreditation, and
- (b) to provide for the matters that a council is to take into account when it recommends the making of an application for accreditation by a person who proposes to carry out certification work only as an employee of a council, and
- (c) to make it a condition of accreditation that is issued on such an application that the holder of the accreditation may carry out certification work only as an employee of a council, and
- (d) to require certain records to be kept by councils in relation to persons who carry out certification work on their behalf and in relation to the carrying out of such work, and
- (e) to vary the circumstances in which certain design work carried out by an accredited certifier is taken to create a conflict of interest for the purposes of section 66 of the *Building Professionals Act 2005*, and
- (f) to prescribe the certification work carried out by a council that the council is required to ensure is undertaken by an appropriately qualified accredited certifier, and
- (g) to prescribe the applicable application fees for accredited certifiers who carry out certification work as employees of councils.

This Regulation is consequent on amendments made by the *Building Professionals Amendment Act 2008* in relation to certification work carried out on behalf of councils.

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Explanatory note

This Regulation is made under the *Building Professionals Act 2005*, including sections 5 (4), 5A, 67, 74B and 94 (the general regulation-making power) and clause 1 of Schedule 2.

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under the

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1 Name of Regulation

This Regulation is the *Building Professionals Amendment (Accreditation of Council Employees) Regulation 2010*.

2 Commencement

This Regulation commences on 1 March 2010 and is required to be published on the NSW legislation website.

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Schedule 1 Amendment of Building Professionals Regulation 2007

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[1] **Clause 3 Definitions**

Insert in clause 3 (1) in alphabetical order:

council accredited certifier means an accredited certifier whose certificate of accreditation is subject to a condition that the certifier may carry out certification work only as an employee of a council.

[2] **Clause 7 Prescribed conditions of certificates of accreditation**

Insert after clause 7 (2):

- (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 as an employee of a council.

[3] **Clause 7A**

Insert after clause 7:

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.

[4] Clause 8 Record keeping by accredited certifiers

Insert after clause 8 (3):

- (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.

[5] Clause 8B

Insert after clause 8A:

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*,

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- (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,

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- (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.

[6] Clause 17 Prescribed circumstances in which accredited certifier taken to be involved in design aspect of development

Omit “class 1 and class 10” from clause 17 (a).

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

Insert after clause 18 (1) (f):

- (g) in the case of a council accredited certifier, 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.

[8] Clauses 20C and 20D

Insert after clause 20B:

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.

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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.

[9] Schedule 1 Categories of certificates of accreditation

Omit the matter in Columns 1 and 2 of Part 1 relating to Category A1, Category A2 and Category A3.

Insert instead:

Category A1—Accredited
certifier—building surveying
grade 1

Issue of complying development certificates for building work 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.

Carrying out of any inspections under section 109E (3) (d) of the *Environmental Planning and Assessment Act 1979*.

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

Category A2—Accredited
certifier—building surveying
grade 2

Issue of complying development certificates for building work 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.

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

Issue of complying development certificates for building work or change of use, construction certificates and compliance certificates for building work and occupation certificates involving:

- (a) class 1 and class 10 buildings, or
- (b) class 2–9 buildings with a maximum rise in storeys of 2 storeys and a maximum floor area of 500m²,

that achieve compliance with the performance requirements of the BCA by complying with the deemed-to-satisfy provisions of the BCA.

However, does not include the issue of any of the above certificates where compliance with the performance requirements of the BCA is achieved by formulating an alternative solution.

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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) and (b). In addition, carrying out of any inspections required under section 109E (3) (d) of the *Environmental Planning and Assessment Act 1979* 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.

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 A4—Building Inspector

Carrying out of inspections required by the principal certifying authority under section 109 (3) (d) of the *Environmental Planning and Assessment Act 1979*, 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) and inspections required under clauses 129B and 143B of that Regulation in relation to:

- (a) class 1 and class 10 buildings under the BCA, and
- (b) class 2—9 buildings with a maximum rise of 2 storeys and a maximum floor area of 500m² under the BCA.

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 proposed new building work.

[10] Schedule 2 Fees

Omit item 1. Insert instead:

- 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, or renewal of certificate of individual accreditation, as a council accredited certifier if made before 1 March 2013 \$250

[11] Schedule 4 Savings and transitional provisions

Insert after Part 4:

**Part 5 Provisions consequent on enactment of
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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.