

PLANNING SYSTEM

Act and regulation changes

Circular	PS 10 - 003
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Related	

Commencement of provisions – accreditation of council employees

The purpose of this circular is to advise councils, accredited certifiers and the community of changes to the *Building Professionals Act 2005*, the *Building Professionals Regulation 2007* and the Accreditation Scheme that introduce a framework for the accreditation of council employees who undertake building certification work on behalf of a council.

Introduction

Provisions of the *Building Professionals Amendment Act 2008* (“the BP Amendment Act”) together with amendments made by the *Building Professionals Amendment (Accreditation of Council Employees) Regulation 2010* (“the Amending Regulation”) commence on 1 March 2010.

These provisions, together with amendments to the Building Professionals Board’s Accreditation Scheme, will establish a framework for the accreditation of council employees as “council accredited certifiers”. These changes are summarised below.

Council employees and accredited certifiers should familiarise themselves with the requirements of the Amendment Act, the new Regulation and amended Accreditation Scheme.

Amendments to the BP Act and BP Regulation

From 1 March 2010, the Building Professionals Board (“the Board”) will be able to issue certificates of accreditation to employees of council who are engaged in carrying out building certification work.

Changes to the *Building Professionals Act 2005* (“the BP Act”) and *Building Professionals Regulation 2007* (“the BP Regulation”) are as follows:

Applications for accreditation

The BP Act has been amended to enable employees of a council to apply to the Board for accreditation. Council employees, once accredited, will be known as “council accredited certifiers”, defined in the BP Regulation as 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.

The BP Act also provides that an application for accreditation to carry out certification work on behalf of councils may only be made on the recommendation of a council. The BP Regulation is amended to prescribe the matters that a council is to take into account when considering whether to recommend an application for accreditation.

Amendments to the BP Act require that when determining an application for accreditation, or renewal of accreditation, the Board must not refuse to issue or renew the accreditation on certain grounds unless the Board has information that gives it reason to believe that it should refuse the application on that ground.

Suspension or cancellation of accreditation

The BP Act is amended to provide that the Board may suspend or cancel a person’s accreditation to carry out certification work on behalf of a council if the person has ceased to be employed by a council.

Categories of certificates of accreditation

The authorisations conferred in Schedule 1 of the BP Regulation have been amended for category A3 to expand the types of certification work that may be carried out by persons accredited in that category, to align the category with categories of accreditation in other states.

A new category, A4 – Building Inspector, has also been introduced. Council employees as well as persons not employed by councils are able to apply for accreditation under category A4.

Prescribed condition of accreditation

The BP Regulation has been amended to make it a condition of accreditation for a council employee that the holder of accreditation may carry out certification work only as an employee of a council.

Record keeping requirements

Amendments to the BP Regulation 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:

- The date and accreditation number of the certifier,
- The date on which the certifier commenced employment or was engaged by council,
- The date on which the certifier ceased employment or to be engaged by council, and
- A brief description of each project in respect to which the certifier carried out certification work on behalf of a council.

Notice to be given by council of certain matters

Amendments to the BP Regulation require councils to give notice to the Board of the date on which a council accredited certifier commences or ceases 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. Such notice is to be provided in writing to the Board within 7 days.

Conflicts of interest

Amendments to the BP Act provide that it is not an offence for an accredited certifier employed or engaged by a council to issue a Part4A certificate or complying development certificate on behalf of the council in relation to development that is to be carried out in the area of the council.

Amendments to the BP Regulation 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 BP Act. Clause 17 of the BP Regulation has been amended to omit the reference to Class 1 and Class 10 buildings. This has the effect of allowing all accredited certifiers to provide advice on how to amend plans and specifications relating to an aspect of development for all classes of buildings under the Building Code of Australia so that they will comply with legislative requirements, not just Class 1 and Class 10 buildings.

Exemptions

The BP Act is amended to provide the Board, with the approval of the Minister, the power to exempt a council from ensuring certification work done on behalf of the council is done by an accredited certifier who has the relevant certificate of

accreditation, and the power to exempt a council from the requirement to accept appointment as the Principal Certifying Authority (PCA) for development.

The approval of the Minister may be given in relation to a particular case or class of cases, may be subject to conditions and may be amended from time to time. Any exemption may be limited in time or revoked by the Board by notice in writing.

Fees

Schedule 2 of the BP Regulation sets the fee for an application for a certificate of individual accreditation as a council accredited certifier, or the annual renewal of accreditation if made before 1 March 2013, at \$250.

Savings and transitional provisions provide that no application fee will be payable in relation to an application for a certificate of accreditation as a council accredited certifier in the period from 1 March 2010 up to and including 28 February 2013.

Amendments to the Accreditation Scheme

Changes to the Board's Accreditation Scheme ("the Scheme") to introduce a framework for the accreditation of council employees are as follows:

Accreditation criteria

Schedule 2 of the Scheme sets out the qualifications and experience that are required for council employees to become council accredited certifiers until 1 March 2013.

Applicants for accreditation as a council accredited certifier in categories A1, A2, A3 or A4 must demonstrate:

- they either hold the qualifications and experience required for the category of accreditation in which they seek to be accredited, or
- if applying for category A2, A3 or A4, have the experience specified in Schedule 2 (for applicants who do not hold a relevant qualification).

Recommendation by the council

As outlined above, an application for accreditation to carry out certification work on behalf of councils may only be made on the recommendation of a council.

In making a recommendation, council must take into account the following:

- the requirements of the scheme that are relevant to the category of accreditation that is sought by the applicant,
- any assessment guidelines issued by the Board for the making of a recommendation,

- the qualifications of the applicant,
- 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, and
- whether the council is of the opinion that the applicant is a fit and proper person.

Application for accreditation

Applicants must complete and lodge an application in the approved form with the Board, together with any required supporting documents and information. The Board may require further documents or information to be provided if the Board considers it necessary in order to determine the application.

Applications can only be made for accreditation for the category, and if applicable, the condition, recommended by the council. The application must include a recommendation by the council that is the current employer of the applicant, in the form approved by the Board as part of the Application Form.

Applications for the renewal of accreditation are not required to be accompanied by a recommendation by council, but are required to be made in the form approved by the Board.

The Board's approved Application Forms for accreditation as a council accredited certifier are available at www.bpb.nsw.gov.au.

Assessment for accreditation

When applying for accreditation, applicants for accreditation must provide evidence to the Board that they satisfy the qualification and experience requirements set out in Schedule 2 for the category of accreditation in which the applicant seeks to be accredited.

The Board has prepared a number of documents to assist councils and their staff in applying for accreditation.

Assessment Guidelines are available which guide applicants through the requirements of the Application Form relevant for each category. The Guidelines provide further information on the following:

- requirements for accreditation
- fit and proper person declaration
- resume
- application checklist
- applicant declaration, and
- council recommendation.

These Guidelines, together with the Application Forms for each category are available at www.bpb.nsw.gov.au.

The Board may refuse to issue a certificate of accreditation if the Board is not satisfied that the

applicant has the qualifications and/or experience required or does not otherwise satisfy the requirements of the BP Act or Regulation.

The Board may issue a certificate of accreditation for a different category to that which is applied for. The Board may issue a certificate of accreditation unconditionally or subject to conditions.

Certificates of accreditation

All certificates of accreditation issued to council accredited certifiers in the three (3) year transitional period from 1 March 2013 will be subject to a prescribed condition that the certifier may only carry out certification work as an employee of council. Accreditation awarded in the three (3) year transitional period is valid for work as a council officer in any council.

Through the Board's approved Application Forms, an applicant, in conjunction with the recommendation of a council, can elect to apply for a category of accreditation unconditionally or choose one or more conditions.

Upgrading accreditation

Council accredited certifiers who hold certificates of accreditation issued by the Board under Division 2 of the Scheme may apply to be accredited in a different category of accreditation, or for the removal or variation of any condition attaching to their certificate of accreditation at any time before 1 March 2013.

Obligations on certifiers once accredited

The scheme makes clear that council accredited certifiers are subject to the following obligations:

- they can only carry out the functions and issue the certificates set out in the Regulation for their category of accreditation
- they must at all times comply with any restrictions set out in the Regulation for their category of accreditation, and
- they must comply with any conditions imposed on their accreditation by the Board or by the Administrative Decisions Tribunal.

Code of conduct

Schedule 4 of the scheme sets out the code of conduct that applies to all accredited certifiers.

The code contains 13 requirements and certifiers must comply with each of those requirements. The requirements cover such matters as acting in the public interest, protecting and using information, acting within the certifier's competence, gifts and benefits and bias.

The Board may refuse to issue or renew a certifier's accreditation if they have contravened the code.

Continuing professional development

Once they are accredited, council accredited certifiers are required to keep their skills and knowledge up-to-date by complying with the Board's continuing professional development (CPD) program set out in Schedule 5 of the scheme.

The CPD program consists of two elements. Certifiers must:

- complete up to two courses each year that are approved by the Board, and
- undertake CPD relevant to building surveying as specified by the Board.

The first requirement is designed specifically to keep council accredited certifiers' knowledge of legislative requirements and their professional practice skills current. The second requirement is designed for council accredited certifiers to keep their underlying building surveying skills current.

The Board can refuse to renew a council accredited certifier's accreditation if they have not satisfied the requirements of the program.

Further details about the CPD program for council accredited certifiers are available at www.bpb.nsw.gov.au.

Additional training

The scheme also allows the Board to require council accredited certifiers to undertake further education or training courses. The Board can require all certifiers or only a group or groups of certifiers to undertake a course. For example, where changes are made to the Building Code of Australia that are relevant only to some certifiers, the Board can require only those relevant certifiers to undertake training on those changes. The changes would not be covered in the Board's CPD courses as they do not apply to all certifiers.

The Board must give written notice to the certifiers to require them to undertake such additional training.

Transitional arrangements

In the three (3) year transition period commencing on 1 March 2010 the Scheme will have a specific set of requirements applicable to council employees applying for accreditation. All certificates of accreditation issued to council accredited certifiers in the three (3) year transitional period will be subject to a prescribed condition that the certifier may only carry out certification work as an employee of council. Accreditation awarded in the three (3) year transitional period is valid for work as a council accredited certifier in any council.

1 March 2010 – 1 September 2010

The relevant provision of the BP Amendment Act requiring councils to ensure that certification work is done by accredited persons will be proclaimed to commence on 1 September 2010.

Councils must have sufficient accredited persons either employed or contracted to undertake council's certification work by this date.

1 March 2010 – 28 February 2013

At the end of a three (3) year transition period on 28 February 2013, the specific set of requirements in the Scheme applicable to council employees applying for accreditation will be removed. There will be only one set of requirements in the Scheme applicable to all persons applying for accreditation.

Council accredited certifiers accredited in the three (3) year transitional period will not be required to be assessed against the requirements of the Scheme at the end of the three (3) year transitional period. They can continue to work under their certificate of accreditation subject to the prescribed condition that they only carry out certification work on behalf of council provided they renew their certificate each year.

Council accredited certifiers who want to have the abovementioned prescribed condition removed or to obtain a higher Category of accreditation are advised to obtain a qualification listed in Part 2 of Schedule 3 of the Accreditation Scheme. These qualifications are recognised as satisfying the skills and knowledge requirements of the Accreditation Scheme.

Further information

A copy of the *Building Professionals Amendment (Accreditation of Council Employees) Regulation 2010* is available on the NSW Government's legislation website:

<http://www.legislation.nsw.gov.au>

The application forms, assessment guidelines and other explanatory materials are available at www.bpb.nsw.gov.au.

If you have further enquiries, please contact:

The Building Professionals Board on (02) 9895 5950 or email bpb@bpb.nsw.gov.au.

Note: This and other Department of Planning circulars are published on the web at <http://www.planning.nsw.gov.au/PlanningSystem/Circularsandguidelines/PlanningSystemCirculars/tabid/81/Default.aspx>.

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Important note: This circular does not constitute legal advice. Users are advised to seek professional advice and refer to the relevant legislation, as necessary, before taking action in relation to any matters covered by this circular.

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