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## PLANNING SYSTEM

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Act and regulation changes

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<b>Circular</b>	PS 08-010
<b>Issued</b>	3 November 2008
<b>Related</b>	PS 08-006; PS 08-008; PS 08-011

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# Commencement of provisions on 3 November 2008 – certain certification matters

The purpose of this circular is to advise councils, accredited certifiers and the community of provisions of the *Environmental Planning and Assessment Amendment Act 2008*, *Environmental Planning and Assessment Further Amendment Regulation 2008* (the Amendment Regulation) and *Building Professionals Amendment Act 2008* that commenced on 3 November 2008 relating to certain certification matters.

## Introduction

The *Environmental Planning and Assessment Amendment Act 2008* and the *Building Professionals Amendment Act 2008* (the Amendment Acts) were assented to on 25 June 2008. Along with other matters, the Amendment Acts introduce significant changes to the planning and certification systems in NSW and were the subject of significant community consultation prior to their passage through Parliament. The provisions in the Amendment Acts will be commenced in stages—as the necessary regulations and guidelines are prepared, and following consultation with stakeholders on aspects of the reforms.

A number of provisions of the Amendment Acts commenced on 1 August 2008 and 1 September 2008 as outlined in Circulars PS 08-006 and PS 08-008, respectively.

The next group of provisions, together with supporting regulations, **commenced on 3 November 2008.**

Some of these changes relate to certification matters, including further requirements in relation to the information to be included in records relating to mandatory critical stage inspections; and changes to the notification requirements in relation to a change of principal certifying authority (PCA) for development. These changes are part of a series of reforms to the certification system

that will place clearer requirements on certifying authorities and consumers.

These changes are summarised below.

In addition, the following also commenced on 3 November 2008:

- provisions enabling the accreditation of bodies corporate as accredited certifiers. These provisions are summarised in Circular PS 08-011
- provisions relate to the establishment of the Planning Assessment Commission, independent hearing and assessment panels and the appointment of planning administrators and assessment panels.

Councils and accredited certifiers should familiarise themselves with the requirements of the Amendment Acts and Amendment Regulation.

## Amendments to the EP&A Act and EP&A Regulation

Changes to the *Environmental Planning and Assessment Act 1979* (EP&A Act) and the *Environmental Planning and Assessment Regulation 2000* (EP&A Regulation) that commenced on 3 November 2008 are as follows.

### Definition of accredited certifier

The definition of 'accredited certifier' has been repealed from section 4 of the EP&A Act and replaced with a new definition as a consequence of amendments made to the *Building Professionals Act 2005* (BP Act). The definition now recognises both individuals who, and corporate bodies that, hold a certificate of accreditation under the BP Act. Previously, only individuals could be accredited by the Building Professionals Board (the Board).

### Notice of commencement of work

Sections 81A and 86 of the EP&A Act require the person having the benefit of a development consent or complying development certificate to give the principal certifying authority and the local council at least two days' notice before the commencement of building work or subdivision work. The person having the benefit of the development consent or complying development certificate is usually the land owner.

Under savings and transitional provisions, these amended sections do not apply to the erection of a building or subdivision work if notice has been given to the council before the 3 November 2008.

### Changing the principal certifying authority

Previously under the EP&A Act, where the person who appointed the original PCA wanted to change PCAs, one way they could do so was to reach agreement with the original PCA and the new PCA. The Board, the council and the consent authority had to be notified of the change for it to occur.

Section 109EA(1)(b) has now been amended to remove the need for the Board to be notified where the PCA is going to be changed in this way, however the council and the consent authority must still be notified (if they have not already agreed to the change).

The requirements for a notice of replacement of a PCA (clause 162 of the EP&A Regulation) have been amended to also insert new notification requirements in this situation. The replacement PCA is required to notify the consent authority and the council of their appointment within two days after the appointment occurred, but only where the consent authority or council has not already agreed to or been notified of the proposed appointment under section 109EA.

This notice of replacement is to be in the same form as required by clause 103 of the EP&A Regulation (a notice under section 81A of the EP&A Act of appointment of principal certifying authority).

In addition to the information required under clause 103, the following information is to be included:

- the name of the former PCA who has been replaced

- a statement that the former PCA agreed to being replaced.

Note: If any of the relevant parties do not agree to the PCA being replaced, the person who is eligible to appoint a PCA (usually the land owner) can still apply to the Board for approval to the change (see [www.bpb.nsw.gov.au](http://www.bpb.nsw.gov.au) for further advice on this process).

### Form of certificates

The information required to be contained in complying development certificates (clause 134(1)(a)–(b2) of the EP&A Regulation), compliance certificates (clause 138(1)(a)–(b2)), construction certificates (clause 147(1)(a)–(b2)), occupation certificates (clause 155(1)(a)–(b2)) and determinations of applications for subdivision certificates (clause 160 (1)(d)–(g)) issued by certifying authorities is amended to include:

- The identity the certifying authority that issued the certificate and:
  - if the certifying authority is an individual accredited certifier, the signature of the certifying authority, or
  - if the certifying authority is an accredited body corporate, the identity and signature of the person who issued the certificate on behalf of the accredited body corporate is also required, or
  - if the certifying authority is a council or consent authority, the signature of the individual who issued the certificate on behalf of the council or consent authority
- if the certifying authority is an accredited certifier, the accreditation number of the certifying authority, including, if the certifying authority is an accredited body corporate, the accreditation number of the individual who issued the certificate on behalf of the body corporate.

### Form of records of critical stage inspections

The information to be contained in a record relating to critical stage inspections, under clause 162B of the EP&A Regulation is amended to require the inclusion of:

- the identity and signature of the certifying authority that carried out the inspection, including, if the certifying authority is a body corporate, the identity and signature of the person who carried out the inspection on behalf of the body corporate
- if the certifying authority is an accredited certifier, the accreditation number of the accredited certifier and if the certifying authority is an accredited body corporate, the accreditation number of the individual who carried out the inspection on behalf of the body corporate.

### **The fee for a building certificate**

Amendments were made to clause 260 of the EP&A Regulation in September 2008 to allow councils to charge an additional fee for a building certificate in certain circumstances (as outlined in Circular PS 08-008).

A further amendment to clause 260 has been made to make it clear that the additional fee may only be charged in relation to a building where the applicant for the certificate or the person on whose behalf the application is made is the person who erected the building or on whose behalf the building was unlawfully erected.

### **Action that may be taken against a council following investigation**

Section 117B is inserted into the EP&A Act to enable the Minister for Planning to suspend, in certain circumstances, a council's authority to exercise some or all of its functions as a certifying authority.

This power is available following an investigation under section 45 of the BP Act, and may be exercised on the recommendation of the Board made under section 117B and in consultation with the Minister for Local Government. When the Minister exercises this power, the Minister may also exempt a council from the requirement set out in section 109E(1AA) (that a council must accept appointment as a PCA).

Section 117B does not apply to an investigation under section 45 of the BP Act commenced before 3 November 2008.

## **Amendments to the BP Act**

### **Investigation of councils as certifying authorities**

Section 45 of the BP Act has been amended to enable an investigation under that section to be initiated by the Board either of its own motion or in response to a complaint.

Disciplinary action can also be taken under Part 3 of the BP Act, following an investigation into the work and activities of that council in its capacity as a certifying authority under section 45, against any accredited certifier carrying out certification work on behalf of a council (including as an employee or a contractor).

The amendment to section 45 does not apply to any investigation commenced before 3 November 2008.

Associated amendments have also been made to section 117B of the EP&A Act to enable the Minister for Planning to take certain action, on the recommendation of the Board and in consultation with the Minister for Local Government, following an investigation into the work and activities of a council in its capacity as a certifying authority under section 45 of the BP Act.

### **Further information**

The Amendment Acts, Amendment Regulation and proclamations are available online at [www.legislation.nsw.gov.au](http://www.legislation.nsw.gov.au).

If you require more information on the certification changes outlined in this circular, please contact the Building Professionals Board on (02) 9895 5950 or email [bpb@bpb.nsw.gov.au](mailto:bpb@bpb.nsw.gov.au).

### **Authorised by:**

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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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