



New South Wales

Building Professionals Amendment (Accredited Bodies Corporate) Regulation 2008

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*.

KRISTINA KENEALLY, M.P.,
Minister for Planning

Explanatory note

The object of this Regulation is to amend the *Building Professionals Regulation 2007* as a consequence of amendments made by the *Building Professionals Amendment Act 2008* that enable the accreditation of bodies corporate as accredited certifiers. The Regulation deals with the following matters:

- (a) prescribing additional circumstances in which the Building Professionals Board may refuse to issue or renew a certificate of corporate accreditation,
- (b) prescribing conditions of accreditation of accredited bodies corporate,
- (c) the keeping of records by accredited bodies corporate,
- (d) insurance requirements in relation to accredited bodies corporate,
- (e) prescribing information in relation to accredited bodies corporate that is to be included in the Register kept by the Board,
- (f) specifying certain events that are to be notified to that Board by accredited bodies corporate,
- (g) prescribing application fees for accreditation and renewal of accreditation of bodies corporate,
- (h) the removal of a fee in relation to certain notifications that will no longer be required,
- (i) matters of a savings or transitional nature.

This Regulation is made under the *Building Professionals Act 2005*, including sections 5, 7, 9, 11, 60, 61, 63 and 94 (the general regulation-making power) and clause 1 of Schedule 2.

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Building Professionals Amendment (Accredited Bodies Corporate)
Clause 1 Regulation 2008

Building Professionals Amendment (Accredited Bodies Corporate) Regulation 2008

under the

Building Professionals Act 2005

1 Name of Regulation

This Regulation is the *Building Professionals Amendment (Accredited Bodies Corporate) Regulation 2008*.

2 Commencement

This Regulation commences on 3 November 2008.

3 Amendment of Building Professionals Regulation 2007

The *Building Professionals Regulation 2007* is amended as set out in Schedule 1.

Schedule 1 Amendments

(Clause 3)

[1] Clause 5A

Insert after clause 5:

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.

[2] Clause 7 Prescribed conditions of certificates of accreditation

Insert at the end of clause 7 before the note:

- (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] Clause 8 Record keeping by accredited certifiers

Insert after clause 8 (2):

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

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Schedule 1 Amendments

[4] Clause 8A

Insert after clause 8:

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.

[5] Clause 10

Omit the clause. Insert instead:

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.

[6] Clause 12 Company contracts

Omit clause 12 (2) and (3). Insert instead:

- (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.

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- (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.

[7] Clauses 20A and 20B

Insert after clause 20:

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,

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- (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.

[8] Schedule 2 Fees

Omit items 1 and 2. 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 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
- 2 Application for certificate of corporate accreditation or renewal of certificate of corporate accreditation \$1,500

[9] Schedule 2

Omit “or the giving of a notification under that section in relation to such a change” from item 5.

[10] Schedule 4 Savings and transitional provisions

Insert before clause 1:

Part 1 Provisions consequent on enactment of Building Professionals Act 2005

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Schedule 1 Amendments

[11] Schedule 4, Part 2

Insert at the end of the Schedule:

**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.

BY AUTHORITY
