



PLANNING circular

BUILDING SYSTEM

Act and Regulation changes

Circular BS 06-002

Issued 16 March 2006

Related

Implementation of the Building Professionals Act 2005

The purpose of this circular is to provide councils, private certifiers, developers and the community with an overview of changes to the certification system with the introduction of the *Building Professionals Act 2005*.

Introduction

The *Building Professionals Act 2005* (BP Act) introduces a new framework for accrediting and auditing and investigating private certifiers in NSW, and the auditing of local councils acting as certifying authorities. Once fully implemented, it will replace all current arrangements for accrediting private certifiers under the *Environmental Planning and Assessment Act 1979*.

The BP Act introduces:

- a single body, the Building Professionals Board, to accredit private certifiers, investigate complaints and audit private and local council certifying authorities
- new requirements for accreditation, investigation of complaints, and auditing of private certifiers and local council certifying authorities
- new obligations for and rights of private certifiers.

The Building Professionals Board will accredit private certifiers to issue construction, compliance, occupation, subdivision, complying development and strata certificates. These certificates are issued under the *Environmental Planning and Assessment Act 1979* (EP&A Act) and the *Strata Schemes (Freehold Development) Act 1973* and the *Strata Schemes (Leasehold Development) Act 1986*.

Since the introduction of private certification in 1998, there have been four accreditation bodies for private certifiers—the Department of Planning (which took over the administration of the Building Surveyors Allied Professions Accreditation Scheme in 2002), Engineers Australia, Planning Institute of Australia, and the Professional Surveyors Occupational Association.

These accreditation bodies will be replaced by the Building Professionals Board. The accreditation schemes run by these bodies will be replaced by the NSW Government's accreditation scheme in 2006. (See 'Timetable for implementation' below.)

The creation of the Building Professionals Board is in response to the Joint Parliamentary Inquiry into the Quality of Buildings, chaired by David Campbell MP, which was established by the Government in March 2002. The Campbell Inquiry followed public debate on problems in residential building, planning and construction.

Timetable for implementation

The changes to the accreditation system will be phased in so that the transition from existing accreditation bodies and schemes to the administration of all accreditation, complaints-handling and auditing by the Building Professionals Board is introduced in a manageable way.

The provisions to allow the Board to operate will not come into effect until approximately mid-2006—after Board members are appointed and the Government's accreditation scheme under the BP Act and the Building Professionals Regulation are drafted, publicly exhibited and made.

Authorised accreditation bodies (Engineers Australia, Planning Institute of Australia, Professional Surveyors Occupational Association and the Department of Planning) will continue to administer their accreditation schemes under the EP&A Act until that time. Accreditation, complaints-handling and auditing processes under the EP&A Act will also operate until that time.

A summary of the proposed implementation steps is as follows.

Proposed implementation timeline

7 Dec 2005	BP Act received royal assent.
Feb 2006	Expressions of interest for Building Professionals Board membership invited.
First part 2006	Public exhibition of Draft BP Regulation, regulatory impact statement and Government's draft accreditation scheme for public comment. (The Regulation will contain more detailed provisions to allow the Act to operate. The scheme will include qualification, experience, code of conduct and continuing professional development requirements for accredited certifiers.)
Mid-2006	BP Act comes into effect and authorisations of other accreditation bodies cease.
Second half 2006	Building Professionals Board commences accrediting and investigating and auditing private certifiers and certifying authorities.

Key features of the BP Act

It is important for private certifiers and council certifying authorities to familiarise themselves with the BP Act and the changes that it will bring about. Below is a summary of key elements.

1. Set up of a new government agency to run the accreditation system

The Building Professionals Board will be an independent statutory body and will be responsible to the Minister for Planning. Apart from accreditation and investigation, the role of the Board will be to review the accreditation scheme, advise the Minister on matters connected to the administration of the BP Act, and to promote and maintain standards of building and subdivision certification in New South Wales.

Once the changes to the accreditation system come into effect, the Board will process all applications for accreditation; all complaints against private certifiers will also be processed by the Board. The Board will also be responsible for auditing private certifiers and local councils in their certification roles to ensure that they carry out certification as required by legislation.

2. New requirements for accreditation, investigation and professional conduct

The requirements in the current four accreditation schemes and the EP&A Act on accreditation, complaints processing, auditing and the professional conduct of private certifiers will be replaced by the BP Act, the regulations under the BP Act, and the Government's accreditation scheme.

The certificates that certifiers are accredited to issue (i.e. construction, compliance, occupation, subdivision and complying development and strata certificates) will continue to be regulated by the EP&A Act and the *Strata Schemes (Freehold Development) Act 1973* and *Strata Schemes (Leasehold Development) Act 1986*.

3. New obligations for private certifiers

The BP Act makes clearer the standard of professional conduct required of certifiers. New grounds of unsatisfactory professional conduct are created, namely:

- contravening a law relating to the functions or obligations of a private certifier
- failing to comply with a statutory or other duty or contractual obligation relevant to a private certifier's functions
- breaching a condition of accreditation
- failing to comply with an order of the Board or Administrative Decisions Tribunal or with an investigatory requirement without reasonable excuse
- wilfully misleading or obstructing the Board in its disciplinary proceedings
- other improper or unethical conduct relevant to the duties of a private certifier.

New penalties are introduced, including where a private certifier:

- fails to notify the Board of particular events, such as suspension of their accreditation in another jurisdiction
- fails to notify their client of a change to their accreditation that will prevent them from executing their duties as a principal certifying authority.

A new ground of conflict of interest is introduced to prevent private certifiers from certifying the design or construction work of a person in the same or a related company. The maximum penalty for conflict of interest has been increased from \$22,000 to \$33,000.

4. Improved processes to discipline private certifiers for unprofessional conduct

Anyone will be able to make a complaint to the Board regarding the professional conduct of a private certifier. The Board will be able to take the following actions for unsatisfactory professional conduct:

- caution or reprimand the certifier
- place conditions on accreditation
- order the undertaking of specific education courses or order the certifier to report to the Board on their practices
- impose a fine of up to \$11,000.

The BP Act removes the need for the certifier to consent to a sanction for unsatisfactory professional conduct.

Penalty infringement notices (PINs) will be able to be issued by Building Professionals Board officers for offences. The PINs will be included in the regulations made under the Act.

The Board will have emergency powers to suspend or impose conditions on the accreditation of any private certifier if it considers such action necessary to protect the property or safety of any person. The suspension or imposing of conditions must be followed by a full investigation, as if the matter were a complaint. Disciplinary action may follow.

The Administrative Decisions Tribunal will continue to deal with the more serious matter of professional misconduct. The Tribunal will have all the sanctions available to the Board with the addition of imposing fines of up to \$110,000, ordering the certifier to pay compensation of up to \$20,000, suspending or cancelling accreditation or ordering that the certifier can not re-apply for accreditation within a specified period.

5. New procedural fairness measures for private certifiers

The BP Act ensures procedural fairness for applicants for accreditation and the renewal of accreditation and for certifiers against whom a complaint has been made. Requirements include:

- giving the certifier the right to comment on proposed changes to accreditation or the refusal to renew accreditation
- notifying the certifier of any complaint made against him/her within 28 days after receiving the complaint and asking the certifier to comment on the complaint
- giving the certifier a right to comment on an investigation report on any complaint or audit of that certifier.

6. Publicly available accreditation and disciplinary details on every certifier

The Board will be required to keep a public register with accreditation details of all private certifiers and a register of disciplinary action taken against certifiers. These registers will be available free of charge. An online register of all private certifiers will be developed.

Further information

A copy of the *Building Professionals Act 2005* is available from the NSW Parliamentary Counsel Office's website at www.legislation.nsw.gov.au.

The publication, *Building Professionals Act 2005: A guide* (DOP March 2006), particularly aimed at private certifiers and local councils, is available at www.bpb.nsw.gov.au.

More information, including how to apply for accreditation and how to lodge a complaint will be available before the new accreditation and complaints' systems start.

Authorised by:

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Important note

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DOP 06_001

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