

Occupation Certificates (OCs)

Changes were made to OC framework as part of the reforms made to the NSW Planning System in 2017.

Some of the key changes include the removal of the:

1. distinction between interim and final OCs in favour of one certificate; and
2. the provisions which permit the occupation and use of premises which do not have an OC if those premises were occupied for more than 12 months (former s109M(2)(b)).

The new streamlined OC provisions now sit in Part 6 of the *Environmental Planning and Assessment Act 1979 (EP&A Act)*, which relates to building and subdivision works.

When are the changes commencing?

Part 6 of the EP&A Act will commence on 1 December 2019. To support its commencement, changes have been made to OC provisions in the *Environmental Planning and Assessment Regulation 2000 (EP&A Reg)*. These changes operationalise the new framework.

When is an OC required?

Generally, a building cannot be occupied or used (or the use changed) without an OC.

Section 6.9 of the EPA&A Act sets out the circumstances in which an OC is required, it includes:

- the occupancy of a whole new building
- the occupancy of a new part of an existing building (such as an alteration) where the existing building already has a final or whole OC
- the occupancy of a partially completed new building (such as staged occupation)
- changing the use of a whole building or part of an existing building which has been reclassified under the Building Code of Australia
- changing the use of a part of a partially completed new building which has been reclassified under the Building Code of Australia (such as for shop fit outs in a staged release building).

When is an OC not required?

You do not need an OC if your proposed development is exempt development, development that does not require consent, or development that is erected by or on behalf of the Crown.

Can I obtain an OC to use part of a building while the remainder is still under construction?

Yes, staged occupation of a building is still permitted. As a new development is constructed, parts may be completed and become suitable for occupancy before the overall development is finished.

To accommodate this, the EP&A Act allows for an OC to be issued for part of a partially completed building.

An OC for part of a partially completed building will only be issued for occupiable parts of a building or development. For this OC to be issued, the incomplete building works must not pose a health and safety risk to the occupants and any preconditions to the issue of an OC for that part specified in the development consent must be met.

Multiple OCs may be issued for different parts of a building as they are completed. This will enable the staged release and occupation of multi-stage projects. An OC for part of the partially completed building only authorises the occupation and use of the portion of the building to which the certificate relates. The certifier must clearly identify in the partial OC the portion of the development which is covered by the partial OC.

Do I need another OC when the whole building is complete?

Yes. Once the development and all associated building work is complete, an OC for the remaining parts of the building must be obtained. This OC is required to demonstrate that the building and/or change of use complies with the associated development consent, and the remaining conditions of that consent have been met. The completed development must also be suitable for the approved occupation or use and comply with the Building Code of Australia. Whether this OC certifies a whole building or part of a building will depend on what was approved under the respective development consent.

Under the new framework, an OC issued for the first completed stage of a partially completed building will now be subject to a condition that a further OC must be obtained for the whole building within 5 years after the issue of that partial occupation certificate. This is to ensure that a building is not occupied indefinitely under a partial OC and all conditions of the relevant development consent are satisfied in a timely manner.

Are there any transitional arrangements proposed for OCs and development consents issued before 1 December 2019?

Part 6 of the EP&A Act will only apply to OCs for development consents issued after 1 December 2019. This means that development consents and OCs issued before this date remain subject to the former arrangements. As a result, from 1 December 2019, councils will need to draft the conditions in new development consents with the new OC terminology in mind.

Are the terms 'Interim' and 'Final' OCs still used?

The terms 'interim' and 'final' occupation certificates are only relevant for development consents or OCs issued before 1 December 2019.

Do I need an Owners Building Manual to get an OC?

Not at this stage. Until further changes are made to the EP&A Regulation to accommodate this, you do not need an owners building manual.

Where can I find out more?

To find out more please click on the following links:

- [Environmental Planning and Assessment Act 1979](#)
- [Environmental Planning and Assessment Regulation 2000](#)
- [View the Planning Circular](#)

To contact us:

- via email please click on the following link legislativeupdates@planning.nsw.gov.au or
- by telephone please ring us on 1300 305 695.

knowledge, users are reminded of the need to ensure that the information upon which they rely is up to date and to check the currency of the information with the appropriate officer of the Department of Planning, Industry and Environment or the user's independent adviser.