



BUILDING PROFESSIONALS BOARD

Act and regulations

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Related	

Transitional arrangements for existing accredited certifiers

The purpose of this circular is to provide accredited certifiers, former accreditation bodies, councils and the community with an overview of the savings and transitional arrangements for existing accredited certifiers under the *Building Professionals Act 2005* and Building Professionals Regulation 2007.

Introduction

A number of changes to the certification system have occurred with the recent introduction of the *Building Professionals Act 2005* (the Act), the Building Professionals Regulation 2007 (the Regulation) and the accreditation scheme (the scheme) made under the Act.

It is important for certifying authorities to familiarise themselves with the savings and transitional provisions of the Act and Regulation relating to the accreditation of accredited certifiers and complaint and audit investigations. Below is a summary of the key provisions of these provisions.

Transitional period of accreditation

The main provisions of the Act, and the Regulation and scheme, commenced on 1 March 2007. From that date, the authorisation of accreditation bodies under the *Environmental Planning and Assessment Act 1979* (EP&A Act) (the Department of Planning, Engineers Australia, the Planning Institute of Australia and the Professional Surveyors' Occupational Association) ceased. The Building Professionals Board (the Board) is now the only accreditation body in NSW for accredited certifiers.

On 1 March 2007, a transitional period of accreditation commenced for certifiers who held an accreditation from one of the former accreditation bodies.

The transitional period of accreditation runs until the third time a certifier's accreditation is renewed by the Board.

The transitional period enables the Board to convert the accreditation of existing certifiers to the categories of accreditation under the Regulation and allows existing certifiers to work towards becoming accredited in accordance with the requirements of the new scheme, while continuing to carry out their existing functions.

By the end of the transitional period, all certifiers must have been assessed against the requirements of the scheme. These requirements include requiring the certifier to complete a certification short course or the Board's accreditation exam, and to provide evidence that they have the specialty skills, knowledge, qualification and experience required for their category of accreditation (see below).

Transitional process of accreditation

A transitional process of accreditation applies to certifiers who held a current accreditation from one of the former accreditation bodies on 1 March 2007.

Since 1 March 2007, a certifier who held such an accreditation is taken to hold a certificate of accreditation under the new Act.

Undetermined accreditation applications [Schedule 2 clause 4 of the Act and Schedule 4 clause 3(5) of the Regulation]

The former accreditation bodies are likely to have received applications for accreditation and renewals of accreditation that they did not determine by 1 March 2007. These applications lapsed on that date.

For an application for a new accreditation that lapsed on 1 March 2007, the applicant will need to make a fresh application to the Board for accreditation under the new accreditation scheme.

For an application for renewal of accreditation that lapsed on 1 March 2007, the applicant will need to make a fresh application to the Board for a renewal of their accreditation:

- If the accreditation lapsed before 1 March 2007, the applicant will have a gap in their accreditation and will need to make an application against the new requirements of the scheme.
- If the accreditation lapses from 1 March to 28 March 2007, inclusive, the applicant needs to apply for a renewal of accreditation on or before 28 March 2007 and their accreditation will continue until the renewal application is determined by the Board.
- If the accreditation lapses after 28 March 2007, the applicant needs to apply for a renewal of accreditation before their accreditation is due to expire and their accreditation will continue until the renewal application is determined by the Board.

If it considers it appropriate, the Board may waive part or the whole of the fee for an application in these circumstances.

Accreditations granted before 1 March 2007 [Schedule 2 clause 2 of the Act]

As indicated above, the Act 'saves' any accreditation or renewal of accreditation that was granted by an accreditation body under the EP&A Act before 1 March 2007. That is, these accreditations continue to operate.

Conversion of these existing accreditations [Schedule 4 clause 2 of the Regulation]

The Regulation allows the Board to issue existing certifiers with a certificate of accreditation under the new Act.

The Board has recently issued existing certifiers with a new certificate of accreditation which contains a new accreditation number. Each of these certificates of accreditation is of a category of accreditation as set out in Schedule 1 of the Regulation that, either with or without conditions attached, most closely equates to the previous accreditation of the certifier (that is, the previous levels and grades of accreditation set out in the four former accreditation schemes).

Standard conditions have been imposed on a certifier's accreditation to ensure they can continue to carry out the work they were authorised to do before the Act commenced

In addition, where a former accreditation body placed specific conditions on an individual's accreditation, equivalent conditions have been applied to the individual's converted accreditation.

How long the converted accreditations last [Schedule 4 clause 2 of the Regulation]

The converted accreditations can last up to 12 months from the date the Act commences. That is, a certifier's converted accreditation will be due to expire on the date the accreditation granted by their former accreditation body is due to expire.

During the first 12 months, each existing certifier will need to seek renewal of their accreditation with the Board for the first time if their accreditation is to continue.

For example, if John Smith renewed his accreditation with the Planning Institute of Australia on 15 January 2007, his accreditation was taken to be a certificate of accreditation under the Act on 1 March 2007 (a conversion of the accreditation). The new certificate of accreditation issued to the certifier by the Board in March 2007 will be due to expire on 14 January 2008. An application seeking renewal of his accreditation must be made to the Board before that date for it to continue.

Rules that apply to a converted accreditation

While holding a converted accreditation, existing accredited certifiers will:

- be able to carry out the work allowed by their converted category(s) of accreditation, which is the category(s) that most closely equates to the grade/level of accreditation they had before the Act started
- need to maintain current insurance as required by the Act and Regulation (see below)
- be subject to the new Code of Conduct contained in Schedule 4 of the scheme
- need to carry out continuing professional development (CPD) as required by Schedule 5 of the scheme and the Regulation.

The CPD a certifier needs to demonstrate they have satisfactorily undertaken to renew their accreditation with the Board in the first 12 months is the requirements of the CPD program conducted by the former accreditation body that issued the accreditation to the certifier before 1 March 2007.

Renewals of converted accreditations [Schedule 4 clause 3 of the Regulation]

Accreditations expiring between 1 and 28 March 2007

Some certifiers whose accreditation expires between 1 and 28 March, inclusive, will have received a renewal of their accreditation from their former accreditation body before 1 March. As indicated above, these accreditations continue when the Act commences.

A certifier, whose accreditation expires between 1 and 28 March, inclusive, and who did not have their accreditation renewed by their former accreditation body before 1 March 2007, needs to apply to the Board to renew their accreditation and

must do so before 29 March 2007 for it to continue.

Provided the certifier lodges an application with the Board to renew their accreditation before 29 March 2007, the savings and transitional provisions in the Regulation allow the accreditation to continue until the application for the renewal is determined (unless the accreditation is suspended or cancelled for some other reason).

For example, if Peter Brown's accreditation is due to expire on 15 March 2007 and he did not receive a re-accreditation from his former accreditation body before 1 March 2007, he needs to apply for a renewal of his accreditation to the Board before 29 March 2007. If he does so, his accreditation is taken to continue from 15 March 2007 until the Board determines the renewal application (which may occur after 28 March 2007), and he can continue to work under the terms of his former accreditation.

Accreditations expiring after 28 March 2007

Existing certifiers whose accreditation is due to expire after 28 March 2007 (and has not been renewed by their former accreditation body), must lodge an application to renew their accreditation with the Board before their accreditation is due to expire.

If an existing certifier's accreditation expires after 28 March 2007 and the certifier has not lodged an application to renew their accreditation before the date of expiry of the accreditation, the certifier will need to lodge an application for accreditation as a new applicant. A certifier whose accreditation expires in this situation will not be able to continue to work as a certifier unless and until a new accreditation is granted by the Board.

How to apply to renew an accreditation

To seek renewal of accreditation with the Board for the first time, accredited certifiers need to complete a renewal of accreditation application form, provide evidence that they have satisfied the requirements of the CPD program conducted by their former accreditation body, provide evidence of continuing professional indemnity insurance as required by the Regulation and pay the renewal of accreditation fee.

At the **second** renewal of accreditation, the certifier will need to complete a renewal of accreditation application form, provide evidence that they have satisfied the requirements of the CPD program set out in Schedule 5 of the accreditation scheme, provide evidence of their continuing insurance and pay the renewal of accreditation fee.

When seeking their first or second renewal with the Board, an existing accredited certifier may, alternatively, elect to be assessed by the Board against the requirements of the accreditation

scheme (which also apply to all new applicants for accreditation).

Where a certifier does not take up this election on seeking their first or second renewal, the certifier will be assessed by the Board against the skills, knowledge, qualifications and experience requirements of the accreditation scheme on their third renewal of accreditation.

To be assessed against the requirements of the scheme, like an applicant for a new accreditation, the certifier must provide evidence that they have the core performance criteria, relevant specialty performance criteria, specialty qualification and experience required for the category(s) of accreditation they seek.

To satisfy the core performance criteria, the certifier must successfully complete the Certification Short Course offered by the University of Technology, Sydney or its equivalent (as approved by the Board), or the accreditation exam set by the Board. To satisfy the specialty performance criteria, specialty qualification and relevant experience for the category(s) of accreditation sought, the evidence applicants may provide can consist of a practical experience report, work samples, references, previous assessments by an accreditation body and/or recognised registration / membership with an industry body. The evidence requirements will be set out in the application form.

Under the Act, in response to an application to issue or renew a certificate of accreditation, the Board can issue/renew a certificate unconditionally or subject to conditions, issue a certificate in a different category to that applied for, or refuse to issue or renew the certificate.

A guide to applying for accreditation will soon be available to assist applicants as to how they can satisfy the requirements of the scheme. The requirements of the scheme are outlined in Planning Circular BS07-002 *New scheme for accredited certifiers in New South Wales*, available at www.bpb.nsw.gov.au.

Disciplinary transitional provisions

A number of transitional provisions in relation to disciplinary matters are specified in the Act (Schedule 2) and Regulation (Schedule 4).

Continuing of complaints [Schedule 2 clause 3(1) of the Act]

A complaint against an accredited certifier that was being dealt with by a former accreditation body immediately before 1 March 2007 will continue to be dealt with by the Board as a complaint.

Complaints against a former accredited certifier [Schedule 2 clause 3(4) of the Act]

A complaint may be made and dealt with under the Act against a person whose accreditation has been suspended or cancelled or has lapsed.

New complaints [Schedule 4 clause 4(1) of the Regulation]

Under the Regulation, a complaint may be made against a person who was an accredited certifier before 1 March 2007 which relates to conduct that occurred before that date. The complaint is to be made under the new Act.

Audit investigations [Schedule 2 clauses 3(2), 3(4) and 3(5) of the Act]

Any audit investigation commenced by the Department of Planning under the EP&A Act that was not completed before 1 March 2007, may be continued by the Board under Part 4 of the new Act.

An audit investigation may be carried out under the Act in relation to an accredited certifier whose certificate of accreditation has been suspended or cancelled or has lapsed.

Any audit investigation that was carried out under the EP&A Act is taken to have been carried out under the new Act.

Disciplinary findings [Schedule 2 clause 3(3) of the Act]

A disciplinary finding made against an accredited certifier under the EP&A Act before 1 March 2007 is taken to be a disciplinary finding under the new Act.

Laws applying to complaint matters [Schedule 4 clause 4(2) and (3) of the Regulation]

Where a complaint is:

- made under the Act against a person who was an accredited certifier before 1 March 2007, which relates to conduct that occurred before that date, or
- continued under the Act where it was started under the EP&A Act before 1 March 2007,

the following provisions apply:

- the definitions of professional misconduct and unsatisfactory professional conduct in section 109R of the EP&A Act (rather than the definitions of those terms in section 19 of the new Act)
- the code of conduct that applied to the person at the time the alleged conduct occurred (rather than the code of conduct under the new accreditation scheme)
- the provisions of the EP&A Act that impose requirements on accredited certifiers and create offences in relation to the conduct of accredited certifiers that were in force at the time the alleged conduct occurred (rather than the provisions of the new Act).

Disciplinary proceedings before the ADT [Schedule 4 clause 4(4) of the Regulation]

Any disciplinary proceedings pending or before the Administrative Decisions Tribunal (ADT) that were not finalised before 1 March 2007 have been taken over by the Board and may be continued if the Board so determines.

Existing insurance policies [Schedule 2 clause 7 of the Act]

Where an existing insurance policy was in force, complied with the previous requirements of the EP&A Act and was held by a person with a current accreditation immediately before 1 March 2007, it is taken to comply with the requirements of the Act for as long as it remains in force.

This means that existing certifiers do not need to ensure their professional indemnity insurance complies with the new Regulation until they need to seek a renewal of their insurance.

Most insurance policies are in place for one year; certifiers will therefore need to ensure they have insurance that complies with the Regulation when they apply for a renewal of their accreditation with the Board for the first time and for all renewals thereafter.

Conflicts of interest [Schedule 2 clause 8 of the Act]

Accredited certifiers will not be found guilty of breaching the new conflicts of interest provisions in the Act solely because they complied with a contract or other binding arrangement where the contract or arrangement was entered into before 1 March 2007. Complying with the terms of the contract or arrangement must not, however, have contravened section 109ZG of the EP&A Act as it was in force immediately before 1 March 2007.

Critical stage inspections [Schedule 4 clause 5 of the Regulation]

Until 1 March 2008, the certificate of accreditation of an existing accredited certifier is taken to allow the certifier to carry out inspections required by section 109E(3)(d) of the EP&A Act (critical stage inspections). Requirement 9 in the Code of Conduct contained in the scheme, however, requires certifiers to carry out certification functions only within their competence, notwithstanding their category of accreditation. This includes carrying out critical stage inspections. Certifiers therefore need to be mindful that they can only carry out such inspections and any other inspections the PCA may require if they have the necessary skills and knowledge (competence) to do so.

After 1 March 2008, only certifiers who are accredited in categories of accreditation A1, A2 or A3 under the Regulation, will be able to carry out

critical stage inspections. Certifiers who are accredited in any other category will not be able to carry out these inspections.

Rights of review

Under the Act and under the Administrative Decisions Tribunal (General) Regulation 2004, certifiers who do not agree with the categories of accreditation they have been granted on conversion to the new scheme, can apply to the Administrative Decisions Tribunal for a review of the decision.

For further information on the rights of review, see Planning Circular BS07-003 *Building Professionals Regulation 2007*, available at www.bpb.nsw.gov.au.

Further information

The *Building Professionals Act 2005*, Building Professionals Regulation 2007 and Administrative Decisions Tribunal (General) Regulation 2004 are available from the Parliamentary Counsel's Office website at www.legislation.nsw.gov.au.

The *Building Professionals Act 2005: a guide*, which provides information particularly aimed at accredited certifiers and local councils about the provisions of the Act, is also available at www.bpb.nsw.gov.au.

Circulars that outline the provisions of the Regulation and the scheme are also available at www.bpb.nsw.gov.au.

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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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