



January/ February 2016

## **New office and phone number**

The Building Professionals Board has moved to a new office in The Barrington building at 10 Smith Street, Parramatta.

Our telephone numbers have changed and our main number is now (02) 8522 7800.

Our [email address and postal details](#) remain the same.

## **In this issue**

---

**[Board member moves on](#)**

---

**[Accreditation: direct email](#)**

---

**[E1 renewal form](#)**

---

**[New E1 course provider](#)**

---

**[Swimming pool advice](#)**

---

**[Practice advice from the DC](#)**

---

**[Check LSL payment](#)**

---

**[External cladding update](#)**

---

**[Fire sprinkler advice](#)**

---

**[Legislative updates](#)**

---

**[Events, training & resources](#)**

---

## **Sarah Hill takes up exciting new opportunity**

After two and a half years as a member of the Building Professionals Board, Sarah Hill has left to commence a full-time position as Chief Executive of

the Greater Sydney Commission.

"We thank Sarah for all her hard work and dedication to the work of the Board," says President George Maltabarow.

"We wish her all the best and have every confidence that she'll succeed in her new and exciting role.

"The seven remaining Board members, including myself, will keep progressing our current reforms intended to improve the certification system and assist certifiers, councils and communities."

› [Read more](#)

---

## Accreditation: direct email for faster processing

Need to email the Board about accreditation matters? Send it direct to [bpb-accreditation@bpb.nsw.gov.au](mailto:bpb-accreditation@bpb.nsw.gov.au) so it gets to the right person quickly.

You can use this email address to send your accreditation application or renewal forms and documents or ask questions about accreditation.

Please note that we no longer accept cheque payments. Accreditation fees can be paid by EFT or credit card.

› [Read more](#)

---

## E1 accreditation renewal form available

An [E1 accreditation renewal form](#) is now available to renew your E1 accreditation in 2016.

Category E1 – Swimming Pool Certification commenced in March 2015 and some E1 certifiers will shortly need to renew their annual accreditation to continue to practise.

› [E1 accreditation renewal form](#)

---

## **New E1 course provider**

[Traxion Training](#) is the third organisation approved by the Board to deliver the E1 swimming pool certification course.

If you enrol in a course that is not listed on the [Board's website](#), you will not be able to become accredited on the basis of completing that course.

› [Read more](#)

---

## **Practice advice for swimming pool certifiers**

### **Swimming pool legislation in NSW and Qld uses different terms**

Are you an E1 certifier who also works in Queensland as a pool inspector?

NSW and Queensland legislation sometimes refer to the same thing using different terms. Correct terminology ensures the notices and certificates you issue are legally valid, and helps pool owners know exactly what services you're offering.

[Terms to use - and not use - in NSW](#)

**Older swimming pools: which Australian Standard applies?**

In NSW, pool barriers are assessed against one of three versions of Australian Standard 1926.1 *Swimming pool safety - Safety barriers for swimming pools*. The applicable version depends on when a pool was built and whether the barrier has been substantially altered or rebuilt.

A flowchart is now available to help certifiers determine the applicable Standard and differentiate between minor and major works.

[Flowchart to determine applicable pool barrier Australian Standard](#)

### **Australian Standard clarification: clause 2.3.1 applies to boundary fences**

The 500mm 'exclusion zone' for objects around swimming pool barriers applies to any fence, including boundary fences that also act as a pool barrier.

Although some practitioners have taken a different view, the following approach is agreed by NSW regulatory authorities, including the Board, and is considered best practice.

In relation to clause 2.3.1 of Australian Standard 1926.1 *Swimming pool safety - Safety barriers for swimming pools*:

- Retaining walls, objects or level changes that would otherwise reduce the height of a barrier within a property must be located at least 500mm from the barrier.
- Clause 2.3.1 applies in addition to clause 2.2.4, which requires any relevant boundary fence/barrier to be at least 1800mm high on the inside of the property in which the pool is located.

› [Read more](#)

---

## Practice advice from the Disciplinary Committee

Based on recent complaints considered by our Disciplinary Committee, the Board has the following advice for certifiers....

### **Fire safety schedule can't rectify omissions in CC or CDC application**

A certifier was recently disciplined by the Board for issuing a construction certificate (CC) which didn't satisfy clause 145(1)(b) of the [Environmental Planning and Assessment \(EP&A\) Regulation 2000](#).

This clause requires the proposed work to comply with the Building Code of Australia (BCA).

The Board rejected the certifier's view that, in effect, the fire safety schedule rectified the BCA omissions and non-compliances in the CC application.

Under clause 168(1) of the EP&A Regulation, a certifier must issue a fire safety schedule **at the same time** as issuing a CC or a complying development certificate.

This means the schedule can't be used as a means to determine an application should be approved. Preparing the schedule is a separate, subsequent task.

### **A development consent doesn't certify BCA classification**

The Committee recently considered a case where a certifier issued a CC that relied on the BCA classification given by the development consent.

The consent gave the entire building a single class, but if the certifier had assessed the proposal appropriately, he would have applied the three BCA classes that actually related to various parts of the building.

BCA classification is clearly a CC matter - see clauses 139(1)(a), 145(1)(b) and 147(1)(f) of the EP&A Regulation. A development consent must only state the BCA class if no CC is required [clause 100(1)(g)].

### **Don't forget the small things - notification, site sign...**

Sometimes, a complaint isn't about a building itself, but about procedural matters which can cause difficulties if you're not careful.

A couple of tips to avoid common issues:

- keep a copy of all complying development notification letters sent to neighbours
- take a photo on your mobile phone of the PCA sign when installed on site, in case it's removed without your knowledge.

› [Read more](#)

---

## **Long service levy: ensure appropriate payment**

Certifiers must ensure that appropriate payment of any required long service levy has been made before a CC or CDC is issued to the applicant.

The levy must be either paid in full or, if payable by instalments, the first instalment must be paid.

Certifiers:

- Obtain a copy of the levy receipt - don't rely on verbal assurance that payment has been made.
- Check the levy was properly calculated - refer to the estimated cost of development in the CC/ CDC application.

› [Read more](#)

---

## Non-compliant external cladding: update

Non-compliant aluminium composite panelling is considered to have contributed to the rapid spread of a fire at Melbourne's Lacrosse apartment building in November 2014.

In response, the Victorian Building Authority audited the cladding of 170 high rise buildings in Melbourne and has released a [report on the audit](#).

**Certifiers are encouraged to re-read the [circular about construction of external walls systems](#)** issued by the Department of Planning and Environment. Also, refer to A2.2 of the BCA for more about acceptable forms of evidence to demonstrate compliance.

› [Read more](#)

---

## Fire sprinklers in aged care facilities: advice

The Department of Planning and Environment has provided advice to help certifiers avoid mistakes when certifying the installation of fire sprinklers in aged care facilities:

- Installing a fire sprinkler system in an existing class 3 or 9a building doesn't make it class 9c under the BCA.
- A fire safety schedule must include everything required by the EP&A Regulation; correctly reference the relevant Australian Standard and the Fire Sprinkler Standard; and list building works required by the Fire Sprinkler Standard with their location and standard of performance.

› [Read more](#)

---

## Legislative proposals & recent changes

### Complying development - medium-density housing - exhibition extended

You now have until 1 March 2016 to [comment on proposals to expand complying development to medium-density housing](#).

### Reminder: complying development notification in rural areas

[Changes to neighbour notification in most rural and regional areas](#) include removal of pre-determination notification for residential complying development, and reduced pre-construction notification (now two days) for new buildings and additions.

---

## Events, training and resources

### CDC course - don't miss out on regional offerings

Certifiers, if you haven't yet enrolled in the mandatory complying development course, contact a [provider approved by the Board](#).

Regional certifiers take note: the face-to-face course is only being offered once in many areas, so don't miss out!

### Job opportunity: Senior Building Codes Officer - closes 2 March

Applications close on 2 March 2016 to join the Department of Planning and Environment as a Senior Building Codes Officer. The role may suit an

experienced certifier seeking an opportunity to contribute to ongoing development and reform of the NSW building control system.

[Vacancy and application information](#)

### **NCC 2016 now available**

[The 2016 National Construction Code](#) is now available for free download and will commence from 1 May 2016.

### **Upcoming conferences: registrations open**

- [Environmental Development and Allied Professionals](#): annual conference 27-29 April 2016, Dubbo.
- [Association of Accredited Certifiers](#): annual conference 27 May 2016, Sydney.

### **2016 training calendars for certifiers**

Certifiers can plan their CPD using the following training calendars:

- [Association of Accredited Certifiers new 2016 training calendar](#) (featuring the complying development course)
- [Australian Institute of Building Surveyors 2015-16 training calendar](#)
- [Institute of Access Training Australia 2015-16 training calendar](#).

---

#### **Important note**

This e-news 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 e-news.

#### **Disclaimer**

While every reasonable effort has been made to ensure that this document is correct at the time of publication, the State

#### **Building Professionals Board**

PO Box 3720  
Parramatta NSW 2124  
(02) 8522 7800  
[bpb@bpb.nsw.gov.au](mailto:bpb@bpb.nsw.gov.au)  
[www.bpb.nsw.gov.au](http://www.bpb.nsw.gov.au)



March 2016

## Council certifiers: save 20% on renewals

### Limited time offer for 2016 only

Councils can save \$50 off the regular \$250 fee for each council-accredited certifier by submitting a renewal at least four months before expiry.

Getting your renewal in early also gives you the confidence that you'll remain accredited until your application is determined.

For a faster turnaround, use the [updated renewal form](#) which lets you provide credit card details/ EFT remittance advice.

## In this issue

---

**Appointment for hand-deliveries**

---

**DC update & practice advice**

---

**E1 swimming pool advice**

---

**External cladding updates**

---

**Legislative proposals**

---

**Events, training & resources**

---



---

## Happy Easter from the Board

Members and staff of the Building Professionals Board wish you a safe and happy Easter. Our office will reopen on Tuesday 29 March.



---

## Appointment needed for hand-deliveries

Remember, you need to make an appointment to hand-deliver documents to our office at 10 Smith Street Parramatta.

Call (02) 8522 7800 or email [bpb@bpb.nsw.gov.au](mailto:bpb@bpb.nsw.gov.au) to make an appointment. Our friendly staff will meet you in the ground floor foyer.

---

## Disciplinary Committee update & practice advice

The following practice advice for certifiers is based on recent complaints considered by the Board's Disciplinary Committee, and correspondence received.

### Enforcing conditions of consent: site management

Critical stage inspections are an opportunity for the principal certifying authority (PCA) to check that a development site is being managed in accordance with conditions of consent and to take action if required.

The PCA must take appropriate action if a development breaches a relevant condition of consent. This includes 'site management conditions' – which should be reviewed at **each** critical stage inspection – not just conditions that relate to the building's design or materials.

Some common site management concerns relate to:

- permitted hours of construction
- measures to control erosion and run-off

- stormwater management
- tree protection
- waste disposal
- noise and dust control
- PCA and builder signs, and other site signage.

A certifier who carries out an inspection at the PCA's request should also check compliance with relevant site management conditions.

*Complaints about site management can be avoided if the site is properly managed by all parties.*

### **Don't carry out certification work beyond your expertise**

Under the [Code of Conduct](#) acting within your competence is more than just acting within the terms and conditions of accreditation. It also means working within the limits of qualifications, experience and expertise.

It's important to recognise when you need to call on others' expertise or decline an application that may be beyond your level of competence.

### **No OC needed for work approved before March 2004**

An occupation certificate isn't needed for class 1a or 10 developments where the construction certificate or CDC was issued before 1 March 2004.

Refer to the [Environmental Planning and Assessment \(EP&A\) Act 1979](#) section 109M(2)(c) and the [EP&A Regulation clause 156\(1\)\(a\)](#).

› [Read more](#)

---

## **Advice for swimming pool certifiers**

## Don't be an April fool – understand the regulatory changes

The Minister for Local Government has announced amendments to the regulatory changes for residential swimming pools to take effect from 29 April 2016.

1) To **sell** a property from 29 April 2016, a vendor may have a 'certificate of non-compliance', which will give the purchaser 90 days from settlement to make the pool compliant. This is a third option in addition to a certificate of compliance or relevant occupation certificate.

The term 'certificate of non-compliance' will be introduced into the swimming pool legislation (which doesn't yet contain this term).

2) The new sale and lease provisions don't apply to:

- a lot that is part of a strata or community scheme of more than two lots
- off-the-plan purchase of a lot that hadn't yet been created when the contract is entered into (i.e. a lot within the meaning of section 66ZL of the [Conveyancing Act 1919](#)).

Read the [media release](#) and [advice from the Office of Local Government](#).

### Reminder: you can't just 'inspect and advise'

In the [September 2015 e-news](#) E1 certifiers were reminded of their regulatory role when inspecting swimming pools.

Certifiers can't 'inspect and advise' – if a pool barrier is non-compliant, the certifier is *required* to issue a notice under the Swimming Pools Act.

The owner then has six weeks to make the pool compliant. If the barrier still doesn't comply, the certifier must notify the council.

› [Read more](#)

---

## External cladding updates

### Survey coming soon

The Board will soon survey certifiers about their awareness of non-compliant external wall cladding, so it can develop more targeted practice advice

Certifiers have responsibilities to determine that proposed building materials and methods will comply with the Building Code of Australia (BCA) and Australian Standards, and that materials being installed are the same as those specified in approved documentation.

The Department of Planning and Environment's [circular on external wall systems](#) has more advice.

### Ministers unite to address risk

At the latest Building Ministers' Forum on 19 February 2016, Ministers agreed to work together to address risks associated with non-compliant building products.

- [Building Ministers' Forum communique 19 February 2016](#)
- [Actions by the ABCB in relation to high-risk building products](#)

### Senate inquiry to deliver report in May 2016

The [Commonwealth Senate inquiry into non-conforming building products](#) has been granted an extension to deliver its final report by 10 May 2016.

### Victoria issues industry alert

The Victorian Building Authority (VBA) has issued an [industry alert about external wall cladding and BCA compliance](#) following its audit of 170 high-rise buildings in Melbourne.

Although the alert refers to Victorian legislation and BCA variations, much of its content may be useful to certifiers in NSW. It covers:

- common errors which can lead to non-compliance
- evidence of suitability under clause A2.2 of the BCA (with some reference to Victorian legislation)
- BCA compliance pathways, relevant clauses and definitions (with some reference to Victorian BCA variations).

#### **More information**

- [Circular: construction of external walls systems](#) – Department of Planning and Environment
  - [Industry alert: external wall cladding and BCA compliance](#) – VBA
  - [Audit report: cladding of high rise buildings in Melbourne](#) – VBA
  - Final report March 2016: Commonwealth Senate inquiry into non-compliant building products
  - [Fire hazards of exterior wall assemblies containing combustible components](#) – Fire Protection Research Foundation (USA)
- 

## **Your say: legislative proposals**

### **Accreditation Scheme amendments**

The Board is exhibiting amendments to the Accreditation Scheme to recognise nationally-accredited qualifications.

[Have your say by 5pm on Monday 2 May 2016](#)

## Complying development proposals for regional NSW

The Department of Planning and Environment invites your comment on proposals to streamline exempt and complying development in regional and rural NSW.

Among other proposals are a new 'Inland Code' for complying development, and expanded provisions for exempt development provisions for certain farm structures.

› [Read more](#)

---

## Events, training and resources

### CDC course only offered once in many regional areas

The face-to-face version of the mandatory complying development course is only being offered once in many regional areas. Don't miss out: contact a [provider approved by the Board](#).

### NCC 2016 available

[The 2016 National Construction Code](#) is available for free download and will commence from 1 May 2016.

### Upcoming conferences

- [Environmental Development and Allied Professionals](#) annual conference 27-29 April, Dubbo.
- [Housing Industry Association](#) annual conference 19-21 May, Hamilton Island.

- [Association of Accredited Certifiers](#) annual conference 27 May, Sydney.

### 2016 training calendars for certifiers to plan CPD

- [Association of Accredited Certifiers 2016 training calendar](#) (featuring the online complying development course)
- [Australian Institute of Building Surveyors 2015-16 training calendar](#)
- [Institute of Access Training Australia 2015-16 training calendar](#).

---

#### Important note

This e-news 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 e-news.

#### Disclaimer

While every reasonable effort has been made to ensure that this document is correct at the time of publication, the State of NSW, its agencies and employees, disclaim any and all liability to any person in respect of anything or the consequences of anything done or omitted to be done in reliance upon the whole or any part of this document. © State of NSW through the Building Professionals Board.

#### Building Professionals Board

PO Box 3720  
Parramatta NSW 2124  
(02) 8522 7800  
[bpb@bpb.nsw.gov.au](mailto:bpb@bpb.nsw.gov.au)  
[www.bpb.nsw.gov.au](http://www.bpb.nsw.gov.au)

Unsubscribe



April 2016

## Contacting BPB? Email is best

We're having [issues with our telephony system](#) following our recent office move. Issues include call receipt, transfer, and voicemail.

We apologise for any inconvenience and appreciate your patience as we resolve the issues as quickly as possible.

You're still welcome to call, but until further notice is published on our website, email is the best way to [contact the Board](#).

## In this issue

---

[CPD points for CDC course](#)

---

[Pool reforms imminent](#)

---

[DC update & practice advice](#)

---

[LEC decision & insurance](#)

---

[BPB website updates](#)

---

[External cladding update](#)

---

[Have your say](#)

---

[Events, training & resources](#)

---

## CPD points for complying development course

The Board's approved complying development course will now attract **eight CPD points** from the Association of Accredited Certifiers and the Australian Institute of Building Surveyors.

Enrol now with an approved provider:

- [AAC](#) (online) – \$660 GST inclusive

- [CPD Training](#) (face-to-face) – \$660 GST inclusive.

All A1, A2 and A3 certifiers must successfully complete the course within 12 months of renewing their accreditation.

› [Read more](#)

---

## Swimming pool reforms from 29 April

### Compliance, sale and lease provisions

Changes to the *Swimming Pools Act 1992* will take full effect from 29 April 2016, affecting [swimming pool compliance and property transactions](#).

### New 'certificate of non-compliance'

From 29 April 2016, properties sold with a pool must have a relevant occupation certificate, certificate of compliance, or a certificate of non-compliance.

The certificate of non-compliance is a new option for vendors, and will give the new owner 90 days to make the pool compliant. Like a certificate of compliance, it will be generated from the Swimming Pools Register.

If a pool fails inspection, certifiers must issue **both** a notice under s22E of the Swimming Pools Act (on the day of inspection where possible) **and** a certificate of non-compliance within seven days.

Relevant provisions in the [Swimming Pools Regulation 2008](#):

- certificates of non-compliance: clause 18BA
- 90-day timeframe for purchaser: clause 18BB.

Certain exemptions apply for off-the-plan purchases and strata properties with three or more lots.

› [Read more](#)

---

## Disciplinary Committee update & practice advice

The following practice advice for certifiers is based on recent complaints considered by the Board's Disciplinary Committee.

### **Section 94EC requires developer contributions as a CDC condition**

A complying development certificate (CDC) must include a condition requiring payment of a section 94 contribution or 94A levy, unless the council's contributions plan specifies otherwise.

Under section 94EC of the [EP&A Act](#), a council contributions plan:

- must specify whether or not a certifier must impose a s94/ 94A condition on a CDC
- can only authorise certifiers to impose a condition requiring a monetary contribution
- must specify the amount or the precise method to determine it.

Clause 136K of the [EP&A Regulation](#) is triggered if the plan requires monetary contributions for development for a particular purpose (whether or not complying development).

Clauses 136K and 136L (payment required before work commences) apply, despite any contrary provision in the contributions plan. PCAs need to check this as part of their obligation to ensure preconditions to the issue of a certificate are met (clause 136N).

## **Avoid complaints: let neighbours know you took action**

Many complaints investigated by the Board arise when a certifier takes appropriate action in response to a neighbour's concerns, but doesn't tell the neighbour, who then assumes the matter is being ignored.

Here's one recent example involving a residential complying development:

1. A neighbour complained to the certifier about the development.
2. The certifier issued a 'notice of intention to issue an order' and sent a copy to the council, but didn't update the neighbour.
3. The neighbour contacted the council, which referred the matter back to the certifier even though the certifier had acted appropriately and only the council could enforce the notice of intention.
4. Being unaware of the certifier's actions, the neighbour assumed the matter was being ignored and complained to the Board.
5. Although the Board investigated and then dismissed the complaint, the certifier could have saved the time needed to respond to the allegation simply by keeping the neighbour informed.

A quick phone call can do more than just save you the hassle of a formal complaint. Being prompt and responsive maintains community confidence in the certification system, which benefits all certifiers and councils.

## **PCAs arranging inspections by other certifiers**

Have a written agreement in place if you allow another certifier to carry out a critical stage inspection – while not legally required (a verbal agreement is sufficient), thorough record-keeping is always in your best interests.

It's not acceptable for a PCA to just collect the inspection records at the end – the EP&A Regulation (clause 129C) requires the delegate certifier to submit a record within two days of carrying out an inspection.

PCAs, keep a record of each request as proof you made *and followed up* on requests, in case you don't receive the records in time. You'll be relying on the inspection records when issuing an occupation certificate, so you need complete records to determine whether the development proceeded in accordance with the consent.

[Read more in a previous newsletter](#) (see page 13)

### **Certifiers should check BASIX items at each inspection**

At each inspection, check BASIX items that are readily visible. For such items, it's unacceptable for a certifier to rely solely on a builder's certificate at the final inspection. [BASIX: the certifier's role](#)

▸ [Read more](#)

---

## **Not maintaining insurance is a risky business**

A [recent case in the Land and Environment Court](#) shows just how important it is for certifiers to maintain their professional indemnity insurance for their whole period of accreditation.

The court ordered the certifier to pay the legal costs of the council and property owners. This decision is the culmination of a lengthy process involving a number of court appearances. During this, three complying development certificates issued by the certifier were declared invalid and as a result, much of the work will be required to be demolished.

The Board regularly gives advice to ensure certifiers' insurance meets regulatory requirements. Despite this, we often need to confirm details in certificates of currency when certifiers renew their accreditation.

## PI insurance advice for certifiers

- [Insurance requirements for certifiers](#)
- [What's required on a certificate of currency](#)
- [Insurance FAQ](#)
- [Managing insurance during a voluntary suspension of accreditation](#)
- [Before signing a contract that waives Part 4, Civil Liability Act....](#)

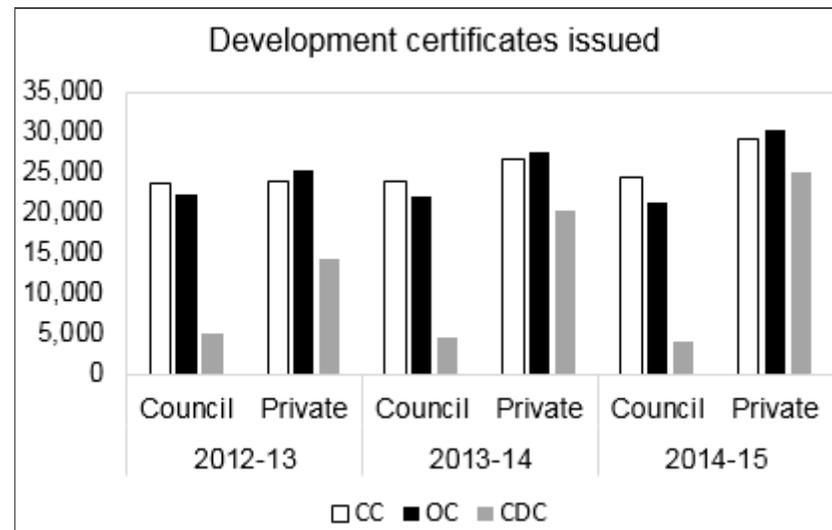
▸ [LEC decision](#)

---

## BPB website updates

### Increasing reliance on private certification

[Local Development Performance Monitoring](#) data for 2014-15 again shows the important economic contribution made by private certifiers in NSW, and their growing role in building and construction approvals.



[Certification in NSW: 2014-15 highlights](#)

## **BPB website: two years on**

Visitor numbers have grown by 50% in the two years since the Board's website was relaunched with new information, a user-friendly style and a dedicated mobile/ tablet version.

The website is constantly being updated and there's always room for further improvement, so your suggestions are welcome at any time. The better our website is, the better it can serve you.

› [Send your ideas to the Board](#)

---

## **External cladding updates**

### **Lacrosse building surveyor to face disciplinary action**

The Victorian Building Authority has concluded its investigation into the conduct of the building surveyor involved in Melbourne's Lacrosse building, which caught fire in November 2014.

The building surveyor is alleged to have breached his legislative obligations and the matter has been referred to the Victorian Building Practitioners Board for disciplinary action. [Read more on the VBA's website](#)

---

## **Legislative proposals & updates**

### **Accreditation Scheme amendments**

The Board is exhibiting amendments to the Accreditation Scheme to recognise nationally-accredited qualifications. [Have your say by 5pm on Monday 2 May 2016.](#)

## More time to comment on complying development proposals for regional NSW

The Department of Planning and Environment has extended the public consultation period for proposals to streamline exempt and complying development in regional NSW. [Have your say by 13 May 2016](#).

---

## Events, training and resources

### NCC 2016 starts next month

- [The 2016 National Construction Code](#) will commence from **1 May 2016** and is available for free online.
- [An online NCC resource library](#) has been launched by the Australian Building Codes Board, including tools, calculators, publications, training videos, form templates and more.
- [Australian Building Regulation issue 17](#) outlines the main changes to the NCC in 2016. Page 18 has a diagram of how the new three-yearly amendment cycle will work from 2017.

### Technical bulletin: fire safety of kitchen exhaust ventilation systems

The Australian Institute of Refrigeration, Air Conditioning and Heating has a new [technical bulletin about fire safety of kitchen exhaust ventilation systems](#), following updates to Australian Standards.

### Upcoming conferences

- [Australian Society of Building Consultants](#) annual seminar 2 May 2016, Baulkham Hills: topics include waterproofing and major defects.
- [Housing Industry Association](#) annual conference 19-21 May, Hamilton Island.

- [Association of Accredited Certifiers](#) annual conference 27 May, Sydney.

### 2016 training calendars for certifiers to plan CPD

- [Association of Accredited Certifiers 2016 training calendar](#) featuring the online complying development course
- [Australian Institute of Building Surveyors 2015-16 training calendar](#)
- [Institute of Access Training Australia 2015-16 training calendar](#)

---

#### Important note

This e-news 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 e-news.

#### Disclaimer

While every reasonable effort has been made to ensure that this document is correct at the time of publication, the State of NSW, its agencies and employees, disclaim any and all liability to any person in respect of anything or the consequences of anything done or omitted to be done in reliance upon the whole or any part of this document. © State of NSW through the Building Professionals Board.

#### Building Professionals Board

PO Box 3720  
Parramatta NSW 2124  
(02) 8522 7800  
[bpb@bpb.nsw.gov.au](mailto:bpb@bpb.nsw.gov.au)  
[www.bpb.nsw.gov.au](http://www.bpb.nsw.gov.au)

[Unsubscribe](#)



May 2016

## Pool certifiers can now do minor works

The Building Professionals Regulation 2007 has been amended to allow E1, A1, A2 and A3 certifiers to carry out minor repairs to make a swimming pool comply with the Swimming Pools Act.

To carry out minor repairs, the certifier must be authorised under the Home Building Act to carry out swimming pool building or structural landscaping.

› [Read more](#)

## In this issue

---

**Council accreditation not affected by mergers**

---

**Board visits Tweed Shire**

---

**DC issues \$300K in fines**

---

**Practice advice**

---

**E1 certifier, not 'consultant'**

---

**Upfront payment required**

---

**Renewing? Check insurance**

---

**External cladding update**

---

**Register for the EHC**

---

**Events, training & resources**

---

## Council accreditation not affected by mergers

Accreditation as a council certifier allows you to work as a certifier at any council in NSW, including more than one council simultaneously.

Your accreditation remains valid whether or not the council you work for is amalgamated – just remember to [renew](#) in time.

Visit the [Stronger Councils](#) website for more information on council mergers.

---

## Board visits Tweed Shire for local feedback on certification system

On 16 May, Board members and staff travelled to the Tweed Shire to meet local certifiers and council officers and hear their views on the certification system.



Vince Connell, Director Planning and Regulation at Tweed Shire Council, summed up the day by saying 'it was a great boost for local practitioners for the Board to attend our region'.

Some issues raised by attendees were:

- ensuring the area has enough certifiers into the future
- increasing community awareness of a certifier's role
- accountability of all those involved in construction
- providing guidance on enforcement activities and how councils and certifiers can work together to achieve compliance
- providing more detailed practice advice for swimming pool certifiers.

The Board's top priorities for 2016 address these issues for which we have responsibility. We look forward to your input to a better certification system and will announce consultations via the e-news and website.

*Photo supplied by Tweed Shire Council*

---

## **Disciplinary Committee issues \$300,000 in fines**

In its first year of operation, the Board's Disciplinary Committee has imposed over \$300,000 in fines, cancelled a certifier's accreditation and set conditions on accreditation to change behaviour and improve practice.

There were two \$50,000 fines; one of \$27,000; one of \$25,000 and two at \$20,000.

Chaired by former District Court judge Stephen Walmsley, committee members are drawn from an expert panel of certifiers.

Determinations commonly relate to:

- complying development certificates (CDCs) issued for work that doesn't meet prescribed standards
- construction certificates issued after work has started on site
- construction and occupation certificates issued when relevant conditions of consent are outstanding
- principal certifying authorities who don't appropriately respond to complaints.

The substantial penalties imposed clearly show that the Board will not tolerate poor conduct in the minority of certifiers who don't meet the standard of performance and integrity expected of public officials.

---

## Practice advice

### Two new investigation case studies

We've published two new case studies based on recent complaints determined by the Disciplinary Committee.

- [Case study 1](#): a certifier used a fire safety schedule to supply detail that was missing in an application for a construction certificate, rather than ask the applicant to supply the required information.
- [Case study 2](#): a certifier issued an interim occupation certificate despite being aware of numerous BCA non-compliances.

### LEC decision again shows need for diligence and insurance

A [recent decision of the Land and Environment Court](#) (LEC) reinforces the message for certifiers to carefully assess proposed complying development against the relevant State Environmental Planning Policy (SEPP).

The council sought orders to reduce the height (to 3.8m) of a secondary dwelling approved under the Affordable Rental Housing SEPP, and demolish its attached garage which didn't meet setback requirements.

Three complying development certificates (CDCs) and two interim occupation certificates issued by the certifier were declared invalid, and the certifier and property owner were ordered to pay the council's legal costs.

Certifiers, take care when checking if proposed complying development meets the standards in the relevant SEPP. Use the SEPP itself – clause by clause – as your checklist. If unsure, seek advice from another certifier and/or more detail from the applicant before issuing a CDC.

This LEC decision comes soon after another recent case (see our [April e-news](#)) where a certifier issued CDCs for proposals that didn't meet the

prescribed standards for complying development.

In both cases, the certifier was ordered to pay costs. This shows the value of maintaining your insurance to reduce your exposure to liability and meet the insurance requirements in the Building Professionals Regulation.

- [LEC decision](#)
- [Professional indemnity insurance requirements for certifiers](#)

› [Read more](#)

---

## E1 certifiers aren't 'pool consultants'

Certifiers are **required** to issue a notice of non-compliance and a certificate of non-compliance if a swimming pool fails inspection. They can't just give the owner advice on how to fix the fence.

By advertising and providing consultancy services, certifiers may breach their statutory obligations to act as public officials with a regulatory role.

The Board has already issued [advice on this matter](#) and may take action against certifiers who provide consultancy services.

› [Read more](#)

---

## Upfront payment: a legislative requirement

For certifiers, being paid upfront helps ensure you can carry out your important regulatory role in a fair and impartial manner.

Certifiers, particularly newcomers, are reminded of the requirement for a written contract and payment **before** carrying out **any** certification work.

## Time to renew? Check your insurance

We'll only accept your renewal if you submit a complete certificate of currency. Make sure that you're covered for all your past work, including for other companies – there must be no insurance gap in your employment history.

Remember: **your insurer must provide a certificate of currency** on the insurance company's letterhead. Don't fill out the certificate yourself.

Download an updated renewal form for [council certifiers](#), [private certifiers](#) or [E1 certifiers](#).

---

## External cladding update

Curious about which Melbourne buildings were identified as having non-compliant cladding? The Victorian Building Authority has published a [list of audited buildings and the assessment of each one's external cladding](#).

There were a mix of complete and incomplete buildings. Each instance of non-compliance was referred to the Metropolitan Fire Brigade (or the building surveyor, for buildings still being completed) for further assessment and appropriate action.

---

## Receive CDC applications online via the EHC

With 122 councils participating, there's never been a better time for certifiers to [register for the Electronic Housing Code](#) to receive complying development applications online.

You'll receive training on how to use the system and can choose which council areas to be listed under. CDC applicants then select from a list of certifiers in their area when applying.

[Register now](#) or contact [Anna Spierewka](#) (02 8289 6015) at the Department of Planning and Environment for more information.

---

## Events, training and resources

### NCC 2016 commenced

- [The 2016 National Construction Code](#) has commenced and is available for free online.
- [An online NCC resource library](#) has been launched by the Australian Building Codes Board, with tools, calculators, publications, training videos, form templates and more.
- [Australian Building Regulation issue 17](#) outlines the main changes to the NCC in 2016. Page 18 has a diagram of how the new three-yearly amendment cycle will work from 2017.

### Pool safety: CPR sign updates

[Guideline 8 – cardiopulmonary resuscitation](#), which is referenced in the 2008 Swimming Pools Regulation [cl. 10(1)(b) and cl. 21], has been updated by the Australian Resuscitation Council.

### Industry alert: window safety and fall prevention

The Australian Window Association has issued [advice about fall prevention and the protection of openable windows](#) in accordance with NCC requirements.

## **New AS: fire propagation testing for external walls**

A new Australian Standard [5113 Fire propagation testing and classification of external walls of buildings](#) is now available.

AS 5113 has procedures to test and classify external walls (surfaces and systems) by their tendency to limit fire spread. It is **not** currently referred to in the NCC but may be used in alternative solutions.

## **Nationwide House Energy Rating Scheme (NatHERS) updates**

- NatHERS certificates now clearly show whether the NatHERS assessor is credited.
- The [NatHERS](#) website has been overhauled with new content.

## **Upcoming conferences**

- [Australian Institute of Building Surveyors NSW/ACT chapter conference](#), 25-26 July, Sydney.

## **2016 training calendars for certifiers to plan CPD**

- [Association of Accredited Certifiers 2016 training calendar](#) featuring the online complying development course
- [Australian Institute of Building Surveyors 2015-16 training calendar](#)
- [Institute of Access Training Australia 2015-16 training calendar](#)

---

### **Important note**

This e-news 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 e-news.

### **Disclaimer**

While every reasonable effort has been made to ensure that this document is correct at the time of publication, the State

### **Building Professionals Board**

PO Box 3720  
Parramatta NSW 2124  
(02) 8522 7800  
[bpb@bpb.nsw.gov.au](mailto:bpb@bpb.nsw.gov.au)  
[www.bpb.nsw.gov.au](http://www.bpb.nsw.gov.au)



June/ July 2016

## Email best way to contact BPB

Thank you for your patience as we continue to address [issues with our telephony system](#). In the meantime, email is the best way to contact the Board:

- accreditation: [bpb-accreditation@bpb.nsw.gov.au](mailto:bpb-accreditation@bpb.nsw.gov.au)
- investigations: [bpb-investigations@bpb.nsw.gov.au](mailto:bpb-investigations@bpb.nsw.gov.au)
- all other enquiries: [bpb@bpb.nsw.gov.au](mailto:bpb@bpb.nsw.gov.au)

## In this issue

---

**Record number complaints determined**

---

**More qualifications lead to accreditation**

---

**New case studies**

---

**Practice advice**

---

**Swimming pool/ E1 advice**

---

**Report interstate disciplinary action**

---

**Council mergers: lodging documents**

---

**Sydney Water Tap In advice**

---

**External cladding update**

---

**Legislative changes**

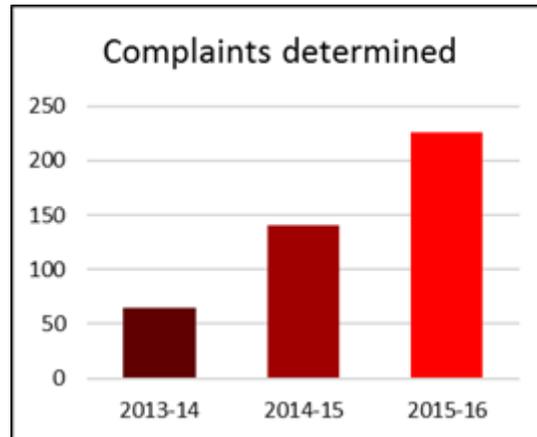
---

**Events, training & resources**

---

## A record 226 complaints determined in 2015-16

The Board determined a **record 226 complaint investigations** into the professional conduct of certifiers during 2015-16. These included some serious cases and correspondingly significant penalties such as cancellation of accreditation and fines of \$50,000.



"A reformed Disciplinary Committee, more efficient processes and a real team effort have enabled us to surpass the former record of 206 determinations in 2008-09," says Dr Gabrielle Wallace, Manager of the Board's secretariat.

"This significant outcome doesn't just reflect the Board's intentions to hold certifiers to account for their responsibilities as public officials and protect the community. The poor conduct of relatively few certifiers also acts as a stark contrast to the majority who apply skill, diligence and impartiality to their certification functions."

Dr Wallace adds, "I'd like to acknowledge this majority and look forward to supporting you as we head into a new financial year".

› [Read more](#)

---

## More qualifications recognised for accreditation

The Board's Accreditation Scheme now recognises:

- bachelor and master degrees and graduate diplomas in building surveying from approved providers, for A1, A2 or A3 accreditation
- the new [Advanced Diploma of Building Surveying \(CPC60115\)](#) from approved providers, for A2 or A3 accreditation
- the new [Skill Set \(CPCSS00004\)](#) from approved providers, for A3 accreditation
- associate degrees in building surveying from approved providers, for A3 accreditation.

Courses and providers are approved by the Tertiary Education Quality Standards Agency or Australian Skills Quality Authority.

› [Read more](#)

---

## New disciplinary case studies

The Board publishes case studies of disciplinary matters to assist certifiers in carrying out their responsibilities and promote a high standard of professionalism in certification.

- [Case study 1](#): a certifier wasn't formally appointed the principal certifying authority (PCA) but gave the owner this impression by inspecting the site, issuing an inspection report and giving detailed advice on how to obtain an occupation certificate (OC).
- [Case study 2](#): when issuing a final occupation certificate, a replacement PCA relied on an interim OC issued four years previously, without reinspecting the site.

› [Read more](#)

---

## Practice advice

### Assessing new pools: check for climbable objects

When assessing applications to build a new pool, check the plans to ensure there are no climbable objects within 500mm of the barrier. This applies whether the application is for a construction certificate or complying development certificate.

The Codes SEPP doesn't expressly prohibit objects like filter boxes within 500mm, but the Australian Standard and Building Code of Australia do prohibit such objects.

### New pools need OC: certificate of compliance not acceptable

Upon completion, a new swimming pool requires an OC which can only be issued by an A1, A2 or A3 certifier.

A certificate of compliance issued under the Swimming Pools Act is **not** an acceptable substitute to an OC for a new pool.

The OC will be valid for three years, meaning the pool won't need to be inspected and certified under the Swimming Pools Act for three years.

### Issue OC as soon as you can after inspection

Certifiers are advised to issue a final OC as soon as practicable after the final inspection, where the inspection is satisfactory and relevant legislative requirements are met.

The date of the 'relevant final occupation certificate' starts the 10-year liability period for certifiers under [section 109ZK of the \*Environmental Planning and Assessment Act 1979\*](#).

If you delay issuing the final OC, this risks some aspect of the development changing which may affect its compliance.

A [recent Supreme Court case](#) reiterated the purpose of section 109ZK as providing a 'drop dead' date after which actions might not be brought if they fell within the definition of 'building action'.

### **Reminder about waterproofing certification**

A licensed builder is authorised to carry out waterproofing, but that doesn't mean builders should always certify their own waterproofing work.

The principal certifying authority can, if deemed necessary, require the work to be certified by a person with **experience** in waterproofing, not just someone with a builder's licence.

› [Read more practice advice](#)

---

## **Swimming pool certification advice**

### **Certifiers cannot use Swimming Pool Register for telemarketing**

The Board has been advised that some E1 certifiers are using the Swimming Pool Register to find properties in their area and contact the owners to offer their certification services.

This is clearly prohibited under the terms of the Register's [privacy statement](#) which only allows certifiers to access records for **properties where the**

**certifier has been engaged by the owner.**

Using the Register for telemarketing may also breach the [Code of Conduct for certifiers](#) and constitute unsatisfactory professional conduct under the Building Professionals Act. The Code requires certifiers to protect confidential information and not use it for their advantage. The Board will investigate alleged breaches and has power to impose a fine or take other action.

## **Documents to give the owner if a pool fails inspection**

If a swimming pool barrier fails inspection, the certifier must issue **both**:

- a certificate of non-compliance, generated using the second 'non-compliance' option in the Swimming Pool Register
- a written notice of non-compliance, issued 'by hand' (i.e. you can't create the notice on the Register).

You must issue both documents (not just one), even if the owner has no intention to sell or lease the property.

A notice of non-compliance must include all the details required under [section 22E\(3\) of the Swimming Pools Act 1992](#).

## **When to issue and forward documents**

- Certificate of non-compliance: issue to the owner within **seven days** of the inspection. You don't have to forward this certificate to the council.
- Notice of non-compliance: issue to the owner **as soon as possible** after the inspection. If, six weeks from the inspection date, the pool barrier is still not certified as compliant, you must forward the notice to the council (within five days of the end of the six-week period).

If the pool is a significant risk to the public, you must forward the notice of non-compliance to the council immediately - don't wait six weeks.

### **AS 1926-1986 clause 2.3 - 'clear span' requirements for barriers that are dividing fences**

A pool barrier that's also a dividing fence with a neighbouring property does not have to comply with clause 2.3 of AS 1926-1986 insofar as it requires a 'clear span' of 1.2m to finished ground level within the 'outside quadrant' referred to in that clause.

Refer to clause 5(3) of the [Swimming Pools Regulation 1998](#) and clause 4(3) of the [Swimming Pools Regulation 1992](#), as well as figure 2.1 of the 1986 Standard which shows how the 1.2m quadrant radius is measured.

The dividing fence must still meet the other provisions of clause 2.3 of AS 1926-1986, including the need for it to be at least 1.2m in 'effective perpendicular' height at any point along the fence.

› [Read more practice advice](#)

---

## **Certifiers must report disciplinary action in other jurisdictions**

[Section 61 of the Building Professionals Act 2005](#) lists the circumstances that certifiers must report to the Board, such as when disciplinary action is taken in relation to a certifier's equivalent authorisation in another jurisdiction.

When applying for, or renewing, your accreditation, you must complete a series of questions related to whether you are a 'fit and proper person'. This

legal document requires you to disclose information about your conduct as a certifier in NSW and other jurisdictions.

› [Read more](#)

---

## Council boundary changes: where to send certification documents

Are you certifying a property affected by a council boundary change or merger? The Office of Local Government advises:

- all applications and certification documents are lodged with the new (combined) council
- include a note to alert the council that previous documents for the development are held by the former council.

Use the [Stronger Councils website map](#) to find the relevant council by entering the property address (scroll about halfway down the page to see the map).

› [Stronger Councils](#)

---

## Sydney Water Tap In: who's liable for incorrect information?

A certifier has asked, since the introduction of [Sydney Water Tap In™](#):

- Is a certifier responsible for checking that information entered into Tap In by the applicant is correct (such as building setbacks)? **Or** can a certifier rely on the approval letter given to the applicant/ Tap In user?

- What if a certifier issues a development certificate whilst relying on the approval letter, but the applicant entered incorrect information?

#### **Sydney Water advises:**

- the applicant/ Tap In user must upload the site plans (at the very minimum) so Sydney Water can review the plans and ensure they match the placed structures if needed
- if the application is approved the applicant will receive a letter with the location of the proposed structure (including setbacks)
- if a certifier is concerned that the setbacks in the letter are incorrect, he/she may ask the applicant to seek an amendment from Sydney Water
- liability for incorrect information is solely on the applicant, who must read and acknowledge a disclaimer when using Tap In.

#### **The Board's view**

The applicant's liability doesn't remove the certifier's duty to adequately scrutinise documents provided and question anything that seems incorrect. This is standard practice expected of certifiers for any type of document they rely on for a determination.

› [Read more advice from Sydney Water](#)

---

## **External cladding update**

### **Identifying NSW buildings at risk**

The [NSW Data Analytics Centre](#) has started a project to identify buildings at risk from non-compliant external cladding. This is one of many data projects

recently announced by Minister for Innovation and Better Regulation, Victor Dominello.

## **Lacrosse builder and engineer to be disciplined**

The Victorian Building Authority has referred a builder and a fire safety engineer, both involved in the Lacrosse building in Melbourne's Docklands, for disciplinary action by the Building Practitioners Board.

The building surveyor and the architect have previously been referred to the relevant disciplinary authorities.

› [Read more \(VBA media release\)](#)

---

## **Legislative updates and proposals**

### **Strata defects bond starts next July**

The [new strata building defects bond](#) will start on 1 July 2017, and a new Australian Standard will be introduced for inspecting group title buildings.

Other reforms to strata management will start from 30 November 2016.

### **Comment on Plumbing Code proposals by 29 July**

The Australian Building Codes Board has released a discussion paper on how the performance requirements of the Plumbing Code of Australia could be more user-friendly and quantifiable.

[Comments on the discussion paper](#) close on 29 July 2016 and can be emailed to [ncc@abcb.gov.au](mailto:ncc@abcb.gov.au)

### **Comment on new Housing Code by 12 August**

You're invited to comment on simplified complying development controls for building or renovating a house.

The [proposed Housing Code is on exhibit until 12 August](#) and will form part of *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*.

## **Guide to Standards and Tolerances**

Fair Trading is updating the *NSW Guide to Standards and Tolerances 2007* for release later this year.

You can help shape the updated guide by completing a two-minute [survey on how you use the current guide](#).

---

## **Events, training and resources**

### **New guideline: fire safety for external walls**

The CSIRO's [fire safety guideline for external walls of buildings](#) clarifies what needs to be tested to assess fire safety when constructing external walls of class 2-9 buildings.

The guideline explains testing methods, requirements and evidence for external walls, attachments, insulation and sarking. It focuses on aluminium composite panels and other combustible materials.

### **WaterMark relaunched**

On 1 July 2016 the [improved WaterMark scheme](#) was launched. A product database is expected to be published later this year and the industry will transition to the updated scheme from July 2017.

## NCC 2016 seminar series videos now available

- [Building Code of Australia update](#)
- [Australian Standards update](#)

## Conferences

- [Australian Institute of Building Surveyors NSW/ACT chapter conference](#), 25-26 July, Sydney.
- [Bushfire Building Conference and Expo](#), 9-10 September, Springwood.

## 2016 training calendars for certifiers

Certifiers can plan their CPD using the following training calendars:

- [Association of Accredited Certifiers 2016 training calendar](#) (featuring the complying development course)
- [Australian Institute of Building Surveyors 2015-16 training calendar](#)
- [Institute of Access Training Australia 2015-16 training calendar](#).

---

### Important note

This e-news 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 e-news.

### Disclaimer

While every reasonable effort has been made to ensure that this document is correct at the time of publication, the State of New South Wales, its agencies and employees, disclaim any and all liability to any person in respect of anything or the consequences of anything done or omitted to be done in reliance upon the whole or any part of the document. State of New South Wales through the Building Professionals Board.

### Building Professionals Board

PO Box 3720  
Parramatta NSW 2124  
(02) 8522 7800  
[bpb@bpb.nsw.gov.au](mailto:bpb@bpb.nsw.gov.au)  
[www.bpb.nsw.gov.au](http://www.bpb.nsw.gov.au)



August 2016

## **PINs for minor offences**

The Board will start issuing penalty infringement notices (PINs) to certifiers for minor offences that warrant a penalty but don't significantly affect the public.

PINs can help resolve minor complaints quickly, promote professionalism among certifiers and deter repeat offences. PINs are not published on the disciplinary register.

The Board can issue PINs of up to \$3,000 for individuals or \$6,000 for corporations.

[Read more](#)

## **In this issue**

---

[PINs without warning](#)

---

[E1 CPD coming soon](#)

---

[Seeking E1 CPD providers and reviewers](#)

---

[RICS CPD recognised](#)

---

[Reduce risk of complaints](#)

---

[General practice advice](#)

---

[CDC practice advice](#)

---

[Swimming pool/ E1 advice](#)

---

[External cladding update](#)

---

[Planning roadshow](#)

---

[Events, training & resources](#)

---

## **PINs may be issued without warning**

Included in the Board's notification to certifiers of a complaint is an invitation to make submissions and/or to discuss the matter. Unfortunately, many

certifiers do not avail themselves of this opportunity to clarify with the Board their conduct and their perspective on the matters raised by the complainant.

As a result of the Board now having a [PINs process](#) in place, certifiers are strongly encouraged to act on the invitation to make submissions when receiving notification of a complaint.

In regard to PINs, the Board isn't obliged to provide the certifier the opportunity to respond to allegations. If the evidence supports the offence, **a certifier may be issued with a PIN without notice.**

This makes it vital to respond promptly and professionally if you receive a complaint about a development.

---

## **CPD coming soon for swimming pool certifiers**

E1 swimming pool certifiers will soon be required to complete six hours of continuing professional development (CPD) activities each year, from their second year of accreditation.

We're currently implementing a CPD program (see next article) and will provide updates in future issues of the e-news and on our website.

**Already in your second year of accreditation?** CPD options will be available so you can complete six hours well before your E1 renewal is due.

## **Swimming pool certification roadshow**

Swimming pool certifiers are reminded to register for an information session or webinar as part of the roadshow being held by the Office of Local Government. Building Professionals Board staff will also attend.

Refer to your email from the OLG for registration details.

› [CPD for E1 certifiers: FAQ](#)

---

## **E1 CPD: applications open for providers and reviewers**

### **Interested in delivering CPD to swimming pool certifiers or reviewing proposed CPD activities?**

The Board is developing a CPD program for E1 swimming pool certifiers and invites applications from:

- 'subject matter experts' to independently review proposed CPD activities – [applications close 25 September](#).
  - registered training organisations, universities and professional associations to develop and deliver CPD activities – [applications close 2 October](#).
- 

## **RICS recognised as CPD provider for A1-A4**

The [Royal Institution of Chartered Surveyors' continuing professional development scheme for NSW](#) is now recognised in the Accreditation Scheme for category A1-A4 certifiers.

› [Read more](#)

---

## **Reduce risk of complaints against you**

Have you ever wondered how the Board chooses practice advice topics for

each e-news?

Most suggestions come from our senior investigators and directly reflect the allegations against certifiers they're currently investigating – this means applying the advice can help certifiers reduce their risk of complaints.

### **Acknowledge, investigate and respond to complaints**

Principal certifying authorities (PCAs) are responsible for assessing complaints made to them, not just acting as the go-between for messages.

If you receive a complaint about a development, don't just forward it to the builder or owner for response, and don't just forward their reply to the complainant. Ensure the complaint is handled professionally.

**Acknowledge and assess the complaint**, investigate further if needed, and communicate with the builder or owner. Then assess their response and communicate with the complainant.

**Keep the complainant updated** – many complaints and enquiries made to the Board about certifiers arise when complainants feel a certifier is ignoring their concerns.

If as PCA you can't take action, or don't consider it warranted, you still need to inform the complainant and possibly the council.

**Note:** if you forward an email as part of your response, make sure not to forward sensitive personal information that may be further down the email trail, or where the complainant asks their details be kept confidential.

[More on avoiding and managing complaints](#)

**Photos can reduce complaint and insurance risk**

We've previously recommended certifiers take photos as evidence to reduce the risk of a complaint or a successful claim against their insurance.

A online article offers useful [tips for photographing construction work](#). It's written with tradespeople in mind but may also benefit certifiers.

You, or a colleague with you, should take the photos. Also, as [advised previously](#), photos from a builder (or other non-accredited person) must never be used to replace a critical stage inspection, which must be carried out by an accredited certifier.

---

## General practice advice

For advice on the Building Code of Australia, [contact the Department of Planning and Environment](#) or view [building systems circulars](#).

### 1. Issuing an OC without recent final inspection may be unsatisfactory professional conduct

The Board is receiving increasing complaints about developments where unauthorised building work was carried out after the final inspection, but before the occupation certificate (OC) was issued.

On several occasions we have advised certifiers and councils to issue an OC as soon as practicable after the final inspection or, where this is not possible, to reinspect the work before issuing the OC.

**The Board will now handle such complaints about certifier conduct more rigorously**, particularly if the final inspection:

- only covered part of the work covered by the OC, and/or
- didn't closely predate the OC, and the subsequent unauthorised work would have been readily discernible during inspection.

An OC is a certifier's statement of satisfaction that, on the date of issue:

- the building is suitable for occupation or use in accordance with its classification under the Building Code of Australia [[s.109H, EP&A Act](#)]
- the building's design and construction are not inconsistent with the development consent or complying development certificate [[cl.154\(1B\), EP&A Regulation](#)].

### **When a reinspection may be needed**

Delays in issuing an OC usually happen if the certifier or council is waiting for outstanding certificates or completion of minor work. A reinspection may be needed in such cases; if satisfactory, issue the OC immediately.

Certifiers and councils have the right to require, and charge for, a reinspection if the applicant doesn't address outstanding matters promptly.

### **Relying on old inspection may breach code of conduct**

The [code of conduct](#) requires certifiers to act in the public interest and not mislead or misinform. Issuing an OC based on an old inspection may inadvertently breach the code by:

- misinforming or misleading the applicant as to what was built
- certifying unauthorised work completed after the final inspection.

## **2. E1 certifiers can't do critical stage inspections**

Category E1 certifiers are only authorised to inspect swimming pools for compliance with the *Swimming Pools Act 1992*. They are not authorised to carry out critical stage inspections under the EP&A Regulation.

If you're the PCA for work involving a swimming pool, you can refer to the expertise of an E1 certifier just like any other appropriately qualified

professional – but **as PCA you still need to inspect the pool barrier** before issuing an occupation certificate.

### **3. BCA Volume 2 – don't forget Appendix A**

We've received recent correspondence suggesting some certifiers are forgetting to apply Appendix A to Volume 2 of the Building Code of Australia.

Appendix A has particular importance, as it includes:

- NSW variations applying to garage top dwellings
- NSW variations applying to energy efficiency
- a list of other legislation that might apply to a development.

▸ [More practice advice](#)

---

## **Practice advice – CDCs**

For advice on complying development, [contact the Department of Planning and Environment](#) or view [planning system circulars](#).

### **1. Certifiers can't add their own conditions to CDCs**

A complying development certificate (CDC) must be issued subject to conditions to the extent required by the legislation and other applicable planning instruments.

For most developments, CDC conditions are set out in [Division 2A of the EP&A Regulation](#) and the [Codes SEPP](#) schedules.

The certifying authority must determine which conditions are applicable to a particular development and then draft suitable conditions, noting that:

- the Codes SEPP offers no discretion to exclude any condition from those in the relevant schedule
- conditions in the EP&A Regulation may or may not be applicable.

Even if an extra condition seems a good idea, certifiers and councils have no legal authority to add a condition not legislated as applicable to CDCs.

## 2. CDCs can only be issued for proposed development

A CDC can only be issued for proposed development, not work that is already built. This is clear under the EP&A Act:

- Section 76A subsections 1 and 2b – development that needs consent
- Section 84A(1)(a) – carrying out complying development
- Section 85(1)(a) – terms of a CDC
- Section 85A(7) – determination of a CDC.

The EP&A Regulation also refers to proposed development:

- Clause 129C subclauses (3)(h) and (j) – fire safety measures/ site features that will be affected by the proposed development.

Sections 86(1) and 109E(3) of the EP&A Act also set certain requirements for the developer and PCA to meet before work under a CDC commences.

Further, a [recent determination in the Land and Environment Court](#) affirms that CDCs are only valid if issued for *proposed*, not *commenced*, development.

› [More practice advice](#)

---

## Swimming pool certification advice

## 1.2m barrier height is the minimum

Certifiers are reminded there is no tolerance level for the height of a swimming pool barrier – 1.2m is the absolute minimum allowed unless a specific pool is exempt.

## Out-of-ground pools require a separate barrier

The Office of Local Government has issued [advice on out-of-ground pool walls](#) and the application in NSW of clause 2.5.3 of AS 1926.1 2012.

The 2012 version of this Australian Standard introduced a clause relating to out-of-ground walls being acceptable as child-resistant barriers.

**This clause does NOT apply in NSW**, meaning out-of-ground pools in NSW require a separate child-resistant barrier.

› [More E1 practice advice](#)

---

## External cladding updates and advice

### RIS on exhibit and advisory note available

The Australian Building Codes Board has released:

- a [regulation impact statement \*Non-compliant use of External Cladding Products on Buildings\*](#) for comment by 30 September 2016
- an [advisory note on applying the deemed-to-satisfy provisions for fire performance of external walls](#) (including cladding) of Type A and Type B buildings.

### Senate inquiry to report in September

The [Commonwealth Senate inquiry into non-conforming building products](#) has been granted a further extension and is now expected to hand down its final report by 30 September 2016.

---

## Development assessment roadshow

The Department of Planning and Environment invites private certifiers to [register to attend an upcoming information session](#) about the NSW Planning Portal.

Topics include:

- amendments to planning legislation: simplified Housing Code, Inland Code and other proposals to improve and expand complying development
  - NSW Planning Portal: lodgement of DAs and CDCs, concurrences and referrals, fee payments, and the role of certifiers.
- 

## Events, training and resources

### National Construction Code

The Australian Building Codes Board (ABCB) is surveying practitioners on the NCC's fire safety provisions for class 2 and 3 buildings and use of performance solutions.

[The online survey closes 20 September 2016 and takes 10-15 minutes.](#)

The ABCB recently held workshops to inform development of energy efficiency provisions for the 2019 NCC. Two communiques summarise the discussions:

- [Communique for commercial energy efficiency workshop](#)
- [Communique for residential energy efficiency workshop](#)

NCC 2016 seminar series videos are also available:

- [Building Code of Australia update](#)
- [Australian Standards update](#)

## Continuing professional development for certifiers

- [Association of Accredited Certifiers 2016 training calendar](#) (featuring the complying development course)
- [Australian Institute of Building Surveyors 2015-16 training calendar](#)
- [Institute of Access Training Australia 2015-16 training calendar](#)
- [Royal Institution of Chartered Surveyors CPD](#)

---

### Important note

This e-news 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 e-news.

### Disclaimer

While every reasonable effort has been made to ensure that this document is correct at the time of publication, the State of New South Wales, its agencies and employees, disclaim any and all liability to any person in respect of anything or the consequences of anything done or omitted to be done in reliance upon the while or any part of the document. State of New South Wales through the Building Professionals Board.

### Building Professionals Board

PO Box 3720  
Parramatta NSW 2124  
(02) 8522 7800  
[bpb@bpb.nsw.gov.au](mailto:bpb@bpb.nsw.gov.au)  
[www.bpb.nsw.gov.au](http://www.bpb.nsw.gov.au)

Unsubscribe



October 2016

## Consolidating certification data

On 18 October 2016, the *Building Professionals (BP) Act 2005* was amended to:

- enable the Board to enter into data-sharing arrangements with councils and relevant agencies ([new s.82A](#))
- provide for regulations to be made for the Board to request relevant data from certifying authorities [[new s.94\(2\)\(j\)](#)].

▸ [Read more](#)

## In this issue

---

[New Board appointed](#)

---

[Insurance tip](#)

---

[Respond early to complaints](#)

---

[PINs apply to all certifiers](#)

---

[Calling E1 CPD providers](#)

---

[AAC & AIBS recognise pool CPD](#)

---

[Disciplinary case studies](#)

---

[General practice advice](#)

---

[Advice: principal & secondary dwellings](#)

---

[Swimming pools/ E1 advice](#)

---

[All past advice on website](#)

---

[Non-conforming products](#)

---

[Events, training & resources](#)

---

## New Board appointed

As part of the Government's response to the BP Act Review a new Board has been appointed. This does not affect the Board's secretariat, which continues to administer the BP Act.

› [Read more](#)

---

## This issue's insurance tip for certifiers

Certifiers must have professional indemnity insurance covering their **whole history of accreditation**. This is from the very first day you were accredited, even if more than 10 years ago.

› [Read more](#)

---

## Improving complaint processing – make submissions early

The Board's complaints management process is being improved to more efficiently deal with complaints.

Part of the efficiencies is the issue of [penalty infringement notices \(PINs\)](#) for minor offences, as announced in the [August e-news](#). This means there will not be an investigation report for certifiers to make submission on – just a fine to pay or court elect.

When the Board receives a complaint against a certifier it sends a copy of the complaint to the certifier within 48 hours of receipt, with an invitation to respond to the complaint.

Certifiers should respond to the complaint within the timeframe specified, as a professional responsibility and to afford the Board the benefit of the certifier's submissions in its assessment of the complaint.

The Board will deal with a complaint via a triage process to determine if:

- the matter warrants investigation under Part 3 or Part 4 of the BP Act
- the evidence supports issue of a PIN under section 92 of the BP Act
- the complaint should be dismissed for one or more reasons under section 23 of the BP Act.

If a complaint is investigated, certifiers are given an opportunity to make submissions to the investigation report.

**Certifiers are responsible for responding within the timeframe specified.** If there is no response to a complaint, the Board will proceed to assess the complaint without the certifier's submissions.

Disciplinary decisions routinely consider whether the certifier cooperated during the investigation, so it's clear that **responding as soon as possible and taking steps to resolve the matter** is the professional (and most beneficial) action for the certifier to take.

› [Read more](#)

---

## Can council certifiers receive a PIN?

**Yes.** Although certifiers who work for a council issue certificates on the council's behalf, all certifiers have individual responsibilities and are subject to penalty infringement notices (PINs) under the Board's new [PINs policy](#).

**PIN offences are listed in the schedule to the PINs policy.**

Most offences apply to both council and private certifiers, but there are exceptions.

For example, offences related to recordkeeping and insurance have little or no application to council certifiers. Also, for offences such as a certifier working beyond his/her accreditation authority, it may be appropriate to issue and PIN and/or investigate the council's certification function as a whole.

Note: clause 20E of the BP Regulation exempts council accredited certifiers from being fined or having to pay compensation after a disciplinary decision under section 31 or 34 of the BP Act. This exemption doesn't apply to PINs which are issued under section 92 of the BP Act.

› [Read more](#)

---

## Calling E1 CPD providers

The Board is developing a continuing professional development (CPD) program for swimming pool certifiers and invites expressions of interest at any time from potential providers of proposed CPD activities.

As announced in our last e-news, all E1 certifiers must complete six hours of CPD each year from their second year of accreditation.

› [Read more](#)

---

## AAC and AIBS recognise swimming pool CPD

Members of the AAC and the AIBS will be able to earn CPD points by completing approved activities relating to swimming pool certification.

The AAC and AIBS will grant CPD points for swimming pool CPD activities that are listed on the Board's website.

› [Read more](#)

---

## New disciplinary case studies

The Board publishes case studies of disciplinary matters to help certifiers avoid errors and to maintain the overall high standard of professionalism in certification.

- [Case study 1](#): a certifier knowingly made misleading statements when issuing a construction certificate, and issued it after substantial building work had already taken place.
- [Case study 2](#): a certifier issued a complying development certificate (CDC) relying on a consultant's advice that the work was permissible as complying development, but the local environmental plan provided otherwise.
- [Case study 3](#): a certifier failed to advise the client that a proposal to vary a building's design needed a modified development consent and construction certificate, even though it related to a specific condition of consent imposed by the Land and Environment Court.

› [Read more](#)

---

## General practice advice

For advice on the Building Code of Australia or complying development, [contact the Department of Planning and Environment](#) or view [building circulars](#) or [planning circulars](#).

## 1. Certifiers can't ignore obvious errors in certificates

[Section 109P of the \*Environmental Planning and Assessment \(EP&A\) Act 1979\*](#) allows a certifier to assume a Part 4A or complying development certificate, issued by another certifying authority, was duly issued with all preconditions met.

**Section 109P doesn't authorise certifiers to overlook obvious errors in a certificate.** Its purpose is to indemnify certifiers from loss or damage in relation to the certificate.

If there are obvious errors, certifiers should advise their client that an amended certificate may be necessary to ensure an occupation certificate (OC) can be issued.

If building work follows construction certificate plans that don't comply with the Building Code of Australia (BCA), the outcome may fail the 'BCA suitability test', preventing issue of an OC.

Ignoring obvious errors may also breach the [code of conduct](#), given a certifier's primary duty is to the public, which expects built outcomes to be not inconsistent with the consent.

## 2. 'Unavoidably missed' inspection?

The principal certifying authority (PCA), builder and applicant for a development should each do all they can to ensure each critical stage inspection is completed.

If an inspection is missed, an OC can only be issued if the inspection was 'unavoidably missed' and the work is otherwise satisfactory. This decision is made by the PCA and needs to be justified.

PCAs:

- make sure your client understands that a missed inspection may have serious consequences if it prevents issue of an OC
- ask the builder and/or owner for all the information you need to be satisfied as to whether an inspection was unavoidably missed
- arrange for another certifier to inspect the site if illness, holidays or other circumstances prevent your attendance.

'Unavoidable' isn't defined by legislation, but:

- circumstances should be such that alternative arrangements can't be made at very short notice
- it's not unavoidable if you can't agree on an inspection date or time, or a builder forgets to call
- the fact that work is satisfactory doesn't make it acceptable to miss an inspection.

› [Read more](#)

### 3. Who certifies OSD? Depends on scope of development

If a consent is just for a building and doesn't involve subdivision, then the on-site stormwater detention (OSD) system is building work and the construction certificate (CC) can **only** be issued by an A-category certifier.

If a consent includes subdivision and identifies the OSD as subdivision works, the CC can **only** be issued by a B1 certifier (or a council officer, who doesn't have to be accredited to issue CCs for subdivision works).

C3 certifiers (stormwater management facilities design) can't issue CCs.

### 4. OC references in consent conditions and CDC conditions

A condition of development consent or a CDC condition that refers to an OC is a reference to both types of OC, interim or final, unless the condition

explicitly refers to an interim OC or a final OC.

For example, a condition may require a driveway access point to be completed before an OC is issued. This condition would need to be met before either an interim or final OC could be issued.

Also refer to [our previous advice](#) (under 'OCs and conditions of consent').

## 5. Record evidence of CDC pre-commencement notification

Before building work approved via a CDC starts, the PCA must be satisfied that all preconditions are met, such as pre-commencement notification by the applicant.

Satisfactory evidence could be a copy of the letter sent to neighbours, and a list of properties notified. Keep these for your records.

Note: For most complying developments, the person intending to carry out the work must notify neighbours within 20m of the property at least seven days before work starts (or two days in certain areas).

- Relevant legislative clauses: [136AB](#) and [136N](#) of the EP&A Regulation
- [More about notifying neighbours of complying development](#)

› [More practice advice](#)

---

## New single dwellings with secondary dwelling

This practice advice relates to proposals to build a new principal dwelling (single detached dwelling) and a secondary dwelling **at the same time**.

### 1. BCA classification depends on configuration of dwellings

The proposed dwellings may be either class 1a or class 2 under the BCA, depending on the location of the secondary dwelling in relation to the principal dwelling.

A class 1a building can only be located above or below a private garage. If the secondary dwelling is directly above or below the principal dwelling (i.e. the habitable areas), the buildings are class 2.

Whether issuing a CDC or CC, you must state the BCA classification on the certificate [EP&A Regulation clause 134(1)(g) for a CDC or 147(1)(f) for a CC].

Note: when determining the classification, the BCA '10% rule' may apply to the garage (refer to the BCA Volume 2 part 1.3.3).

## **2. If a CDC: Codes SEPP and AH SEPP both apply**

If a proposal for a principal and secondary dwelling is to be assessed as complying development, both the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* (Codes SEPP) and the *State Environmental Planning Policy (Affordable Rental Housing) 2009* (AH SEPP) will apply.

The principal dwelling is assessed under the Codes SEPP, and the secondary dwelling under the AH SEPP, noting the different development standards of these SEPPs.

The CDC application must name both SEPPs (plus any other applicable environmental planning instruments), in accordance with clause 126(1)(a) of the EP&A Regulation.

## **3. Clause 23 of the AH SEPP doesn't affect BCA class**

Clause 23(4) of the AH SEPP requires the principal dwelling to be assessed as though the secondary dwelling wasn't part of the proposal.

Some certifiers have incorrectly interpreted this as meaning a class 1a BCA classification always applies, regardless of how the buildings are configured.

However, clause 23(4) of the AH SEPP only relates to assessing whether the principal dwelling meets the development standards of the Codes SEPP. It should not be used to determine BCA classification.

A note under clause 23(5) confirms this: 'principal and secondary dwellings will be classified as class 1a or class 2 under the BCA depending on the configuration of those dwellings'.

### **More information**

- [Granny flat information and fact sheets](#)
  - [AH SEPP information and fact sheets](#)
- 

## **Swimming pool certification advice**

### **Written notice is for owner's benefit**

If a pool fails inspection, the written notice of non-compliance issued to the owner should:

- be written with the owner in mind – use everyday language, without needless technical jargon or legalese
- describe, in precise detail, what needs to be fixed ('fix boundary fence' is *not* enough detail).

A well-written notice helps the owner make the pool compliant and increases the likelihood that the certifier can issue a certificate of

compliance at the follow-up inspection.

› [More E1 practice advice](#)

---

## Reminder: past practice advice fully accessible

The easiest way to find specific practice advice from the Board is to [search our website](#) – all past e-news and BPBulletins are searchable.

Or, for a more powerful search that also reaches PDF files, try an [advanced Google search](#) and type bpb.nsw.gov.au into the 'site or domain' field under 'narrow your results'.

› [Search the Board's website](#)

---

## Non-conforming building products update

### Comment by 1 Dec on illegal importation of asbestos

The Commonwealth Senate inquiry into non-conforming building products has been expanded to consider the **illegal importation of products containing asbestos**, how these affect product supply chains and worker health and safety, and preventative and counter-measures.

Submissions are invited by 1 December 2016. The inquiry has also been extended and is due to report by 25 May 2017.

[Visit the inquiry website](#) for submission information and the interim report of 18 October 2016.

---

## Events, training and resources

## **CDC course only offered once in many regional areas**

Hundreds of certifiers have already completed the complying development course. Remember, the course is mandatory for A1-A3 certifiers and the face-to-face version is only offered once in many regional areas.

[Complying development course providers approved by the Board.](#)

## **Medium density housing as complying development**

You're invited to comment by 12 December 2016 on a draft Design Guide and Explanation of Intended Effect for the [proposed Medium Density Housing Code](#).

## **Australian Building Codes Board updates**

- [Advisory note on applying the deemed-to-satisfy provisions for fire performance of external walls](#) (including cladding) of Type A and Type B buildings.
- [Detail on the ABCB's energy efficiency initiative](#) leading up to the 2019 National Construction Code.

## **Fire & Rescue updates**

Fire & Rescue NSW has released updates to its [fire engineering brief questionnaire and the form to declare an updated fire engineering report](#).

## **Be asbestos aware: conference**

The [International Conference on Asbestos Awareness and Management](#) will take place in Adelaide from 13-15 November as part of National Asbestos Awareness Month.

## **NCAT videos include building dispute resolution**

A [video on home building dispute resolution](#) is one of a series of education videos recently launched by the NSW Attorney General on common matters brought to the NSW Civil and Administrative Tribunal.

## Continuing professional development for certifiers

- [Association of Accredited Certifiers](#)
  - [Australian Institute of Building Surveyors](#)
  - [Royal Institution of Chartered Surveyors](#)
  - [Institute of Access Training Australia](#)
- 

### Important note

This e-news 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 e-news.

### Disclaimer

While every reasonable effort has been made to ensure that this document is correct at the time of publication, the State of New South Wales, its agencies and employees, disclaim any and all liability to any person in respect of anything or the consequences of anything done or omitted to be done in reliance upon the whole or any part of the document. State of New South Wales through the Building Professionals Board.

### Building Professionals Board

PO Box 3720  
Parramatta NSW 2124  
(02) 8522 7800  
[bpb@bpb.nsw.gov.au](mailto:bpb@bpb.nsw.gov.au)  
[www.bpb.nsw.gov.au](http://www.bpb.nsw.gov.au)

[Unsubscribe](#)



November 2016

## **A careful approach avoids a penalty notice**

The Board has started issuing penalty infringement notices (PINs) for minor offences by certifiers.

PINs are analogous to parking fines, meaning they may be issued without advance notice, provided there's sufficient evidence.

A good way to avoid a penalty notice is to use the legislation to develop checklists that sequence certification work logically and ensure nothing's missed – always refer to the current version of the legislation.

The Board's [PINs policy](#) lists offences that may result in a PIN – most are easily avoidable.

The [Disciplinary Penalty Guidelines](#) also have important information about PINs.

» [Read more](#)

## **In this issue**

---

### **News snippets**

---

#### **E1 CPD reviewers ready**

---

#### **Insurance tip**

---

#### **Disciplinary case study**

---

#### **General practice advice**

---

#### **Swimming pools/ E1 advice**

---

#### **BOSSI advice: land surveys**

---

#### **Missing middle competition**

---

#### **Legislative updates**

---

#### **Non-conforming products**

---

#### **Events, training & resources**

## News snippets

### Christmas closedown

The Building Professionals Board's office will close from 24 December 2016 and will reopen on 9 January 2017.

### New E1 course provider

[Building UpSkills is approved by the Board](#) to deliver the E1 swimming pool certification training course.

---

## E1 CPD: independent reviewers ready to work

The Board has appointed independent reviewers of proposed continuing professional development (CPD) activities for swimming pool (E1) certifiers.



Above: independent reviewers attended an induction session earlier this month. [See the full list.](#)

**Training providers are invited to submit proposed CPD activities to the Board.** Each activity must then be independently reviewed and approved before being listed on our website.

› [Read more](#)

---

## **This issue's insurance tip for certifiers**

If you're planning a break from certification, avoid a future gap in your insurance by [applying to the Board for a voluntary suspension](#). It's free to apply – just send in the application form at least seven days in advance.

› [Read more](#)

---

## **New disciplinary case study**

The Board publishes disciplinary case studies to help certifiers avoid errors and to maintain the overall high standard of professionalism in certification.

In our latest case study, a certifier issued a complying development certificate (CDC) for work that wasn't complying development due to the site's zoning. The certifier used an old planning (s149) certificate, but a new LEP was gazetted which changed the site zone before the CDC was issued.

› [Read more](#)

---

## **General practice advice**

For advice on the Building Code of Australia (BCA) or complying development, [contact the Department of Planning and Environment](#) or view

[building circulars](#) or [planning circulars](#).

## **1. Asbestos aware: prescribed conditions on CDCs**

Any CDC for building or demolition work must be issued with prescribed conditions, such as the condition for removal of bonded asbestos (if more than 10m<sup>2</sup>) or friable asbestos to be carried out only by a licensed asbestos removalist.

If you're the PCA it's a good idea to remind your client of the requirement for safe asbestos removal.

Relevant clause: [136E, \*Environmental Planning and Assessment \(EP&A\) Regulation 2000\*](#).

## **2. Avoid a \$1,500 PIN: endorse applications and plans**

Certifiers must endorse applications for CDCs and construction certificates with the date of receipt, and must endorse the approved plans and any other documents lodged with the application.

These may seem like small details but they're important – the application date determines which version of the BCA applies, and stamping the plans makes it clear to everyone which version of the plans is approved. This helps avoid later confusion.

The Board has started issuing \$1,500 [penalty notices](#) to certifiers who don't endorse applications/ plans.

Relevant clauses: [126\(2\)](#) and [130\(3\)](#) EP&A Regulation.

## **3. Multiple CCs/ CDCs: apply BCA in force when each application is made**

Many developments have multiple construction certificates or CDCs, especially if the work is staged.

Each application for a certificate must be assessed against the BCA in force when the application is made. Only apply the BCA that related to the first certificate if that BCA version still applies.

Relevant clause: [145\(1\)\(b\) EP&A Regulation](#).

#### **4. Modified CC requires application form**

A certifier may only issue a modified construction certificate if the person with benefit of the development consent has applied for it.

In a [recent case study](#), a certifier was disciplined for, among other things, issuing a modified construction certificate based on updated construction plans with no accompanying application.

Relevant clause: [148 EP&A Regulation](#).

#### **5. Template and guidance for drafting a notice of intent**

If a development is non-compliant, the certifier can issue a notice under [section 109L of the EP&A Act](#) stating an intention to serve an order, the proposed terms of the order, the proposed period of compliance and the person's right to make representations to the local council.

Our [template notice of intention to serve an order](#) is a useful start point, and our [practice advice explains how to complete the template](#).

Clarity and detail are important. A notice requiring 'compliance with consent conditions' is far too vague.

Making sure any notice you issue is well-written and complete doesn't just help the recipient and the council understand what is required, but reflects

well on your professionalism.

› [More practice advice](#)

---

## Swimming pool certification advice

### 1. Notice of non-compliance (s22E)

If a pool fails inspection, the certifier must issue a written notice to the owner under the [Swimming Pools Act 1992 section 22E](#), with all of the following details:

- the date of the notice
- the address of the swimming pool
- the inspection date
- the reason why you're not satisfied that a certificate of compliance can be issued, and the steps needed to meet the requirements for a certificate of compliance
- whether the pool poses a significant risk to the public
- a warning that a copy of the notice will be sent to the council:
  - a. immediately, if the pool is a significant risk, or
  - b. six weeks after the inspection date, if a certificate of compliance isn't issued before that time

such other matters as prescribed by the regulations (note: at the time of writing, there are no prescribed matters).

**Most pool owners aren't technical experts, so keep the notice non-technical**, yet accurate and with enough detail to be useful. After reading the notice, the owner should know what's wrong with the pool barrier and a few possible ways to fix it.

**Tip:** if you have children aged 10-15 (or thereabouts) ask them to read one of your notices to see if they can understand it (remove the address and other private information first).

**Sending a notice to council:** after six weeks, if the pool barrier isn't fixed, you're **required by legislation** to forward the notice to the council. In your covering email/ letter, briefly explain the situation so the council can make an informed decision on further action.

## 2. Tips for using the swimming pool register

- **Every** inspection must be entered into the register.
- 'External reference number' is your file number – if you don't have one just leave it blank.
- A certificate of non-compliance can **only** be generated by choosing the option 'non-compliant: inspection at owner's request'.
- Summarise your inspection under 'comments'.
- For every box you tick in 'reasons for non-compliance', add a brief comment to describe the issue.
- Do **not** refer to reports that only you can access.

**Being thorough today helps you and other certifiers tomorrow.** When a pool needs to be reinspected, the certifier or council will rely on what you enter into the register today.

## 3. CPD requirements from second year of accreditation

E1 certifiers must complete six hours of CPD each year from their second year of accreditation onwards.

Approved CPD activities will soon be published on the Board's website and promoted via our e-news.

If you're already in your second year, you must complete six hours of CPD **before your renewal is due**. We understand some certifiers have limited time before their renewal is due, and we're working closely with training providers to have activities approved as soon as possible.

Many E1 certifiers attended the recent **swimming pool roadshow** run by the Office of Local Government. We're awaiting confirmation that this will count as two hours of CPD, and will advise certifiers as soon as possible.

### Further information

- [Questions and answers about CPD for E1 certifiers](#)
- [Contact Melissa Savage](#), Senior Education Officer (02 8522 7467).

› [More E1 practice advice](#)

---

## Advice from BOSSI: who can supply land survey information

The Board of Surveying and Spatial Information (BOSSI) has issued advice to councils and certifiers about who is authorised to provide land survey information.

Only land surveyors registered with BOSSI are authorised to carry out surveys of property boundaries or which relate to property boundaries.

BOSSI's recent communique has more advice, including how to check a surveyor's registration.

› [Read more](#)

---

## Missing Middle Design Competition

## **Enter by 16 December 2016 to shape the future of housing**

The Office of the Government Architect and the Department of Planning and Environment invite building professionals to help shape the future of housing in NSW.

The [Missing Middle Design Competition](#) closes on 16 December 2016 and will reward innovative designers of terraces, dual occupancies and manor homes.

Designs must align with the draft Medium Density Design Guide (on exhibit until 12 December) which aims to provide consistent standards to support proposals to expand complying development to these types of housing.

› [Read more](#)

---

## **Legislative updates**

### **Swimming pool barrier review**

On 24 November 2016 the NSW Government released its response to the independent review of swimming pool barrier legislation by Mr Michael Lambert.

[Visit the Office of Local Government's website](#) for the Government response, Mr Lambert's final report and supporting documents.

### **Home Building Compensation Fund**

[An overhaul of the Home Building Compensation Fund](#) has been announced to enable private insurers to enter the market and improve protections for consumers against incomplete and defective work.

## Strata law changes

[New strata laws](#) began on 30 November 2016. The new building defect bond scheme will start on 1 July 2017.

---

## Non-conforming building products update

### Comment by 18 January on illegal importation of asbestos

The Commonwealth Senate inquiry into non-conforming building products has been expanded to consider the **illegal importation of products containing asbestos**, how these affect product supply chains and worker health and safety, and preventative and counter-measures.

The inquiry released an interim report on 18 October 2016 and its final report is now due by 25 May 2017.

You're invited to [make a submission by 18 January 2017](#).

---

## Events, training and resources

### Consultations

- [Australian Standard 2419.1:2016 Fire hydrant installations - System design, installation and commissioning: comment by 8 December 2016](#).
- [Draft Medium Density Design Guide](#): comment by 12 December 2016.
- [Missing Middle design competition](#): enter by 16 December 2016.
- [A Draft Plan to Save NSW Energy and Money](#): comment by 16 December 2016.
- [Revised technical information sheet on Fire & Rescue NSW compatible hose connections](#): comment by 16 December 2016.

- [Proposals to change the NCC for 2019](#): submissions close 1 September 2017.

## National Construction Code updates and resources

- [2017 NCC seminar registration](#): in Sydney on 8-9 March 2017.
- Updated non-mandatory NCC handbooks: [upgrades to existing buildings](#) and [indoor air quality](#).
- [Applying the deemed-to-satisfy provisions for fire performance of external walls](#): advisory note for Type A and Type B buildings.
- [Mid-rise timber buildings](#): guidance on BCA requirements.

## New fire safety resources

Fire & Rescue NSW has released a new [building and fire safety industry portal](#) with content specifically for certifiers and other industry practitioners.

## National Asbestos Awareness Month

November is National Asbestos Awareness Month, so make sure you're asbestos aware by checking out some [useful online resources](#).

## Continuing professional development for certifiers

- [Association of Accredited Certifiers](#)
- [Australian Institute of Building Surveyors](#)
- [Royal Institution of Chartered Surveyors](#)
- [Institute of Access Training Australia](#)

---

### Important note

This e-news 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 e-news.

### Building Professionals Board

PO Box 3720  
Parramatta NSW 2124  
(02) 8522 7800

**Disclaimer**

While every reasonable effort has been made to ensure that this document is correct at the time of publication, the State of New South Wales, its agencies and employees, disclaim any and all liability to any person in respect of anything or the consequences of anything done or omitted to be done in reliance upon the whole or any part of the document.

© State of New South Wales through the Building Professionals Board.

[bpb@bpb.nsw.gov.au](mailto:bpb@bpb.nsw.gov.au)

[www.bpb.nsw.gov.au](http://www.bpb.nsw.gov.au)

[Unsubscribe](#)

[Unsubscribe](#)





December 2016

## Get set for a big year in 2017

2017 will be an important year for certifiers and the Building Professionals Board, with the rewrite of the *Building Professionals (BP) Act 2005* and strengthening of the certification system.

The BPB is also being transformed with enhanced policy, education and audit functions and improved processing of accreditation applications and complaints to support industry and the wider community.

We look forward to these challenges and improvements in 2017 but first, see the next article for highlights from what's been a productive 2016.

**Christmas closedown:** Our office will close from 24 December 2016 and will reopen on Monday 9 January 2017.

## In this issue

### 2016 highlights

---

**OLG roadshow = 3 CPD hours for E1s**

---

**Insurance tip**

---

**Disciplinary case studies**

---

**Practice advice**

---

**Fire safety reform proposals**

---

**Non-conforming products**

---

**Events, training & resources**



The Building Professionals Board wishes  
you a Merry Christmas and happy New Year.

---

## 2016 highlights

- **BP Act review:** The NSW Government [responded to the BP Act Review](#), announcing its intention to strengthen certification through significant reforms. Reforms have commenced.
  - **Support for certifiers:** The Board delivered relevant, quality practice advice with numerous [disciplinary case studies](#) and [e-news](#) packed with advice (all [searchable using our website](#)).
  - **Investigations:** The Board introduced [penalty infringement notices](#), to more effectively deal with minor offences and enable investigative resources to focus on more serious matters.
  - **Record complaints determined:** The number of outstanding complaints was dramatically reduced, with a record 239 complaints determined so far in 2016, and complaints being more effectively determined.
  - **Improved times for accreditation determinations:** Record numbers of accreditation applications were received and determined in 2016, with the outstanding number also at a near record low.
  - **Swimming pool safety:** [Continuing professional development \(CPD\) requirements for E1 swimming pool certifiers](#) were introduced to improve skills and knowledge, and [appropriately licensed E1 certifiers were authorised to make minor repairs to pool barriers](#).
  - **Increased choice:** The Accreditation Scheme was amended to recognise [nationally-recognised qualifications](#) and [an additional CPD program \(RICS\) for A1-A4 certifiers](#).
  - **Data:** [Changes to the BP Regulation](#) were made to allow for certification data collection to improve industry performance and regulation.
-

## Good news for E1 certifiers

### OLG swimming pool roadshow worth three CPD hours

E1 certifiers who attended the recent swimming pool roadshow (face-to-face sessions) run by the Office of Local Government have earned three CPD hours - half the total required each year from their second year of accreditation.

The three CPD hours will be automatically credited to those certifiers who attended when they renew their accreditation (no need to submit a record of attendance).

[Read more](#)

---

## This issue's insurance tip for certifiers

Remember to renew your insurance if it's due to expire while you're on holiday.

If you need to send your certificate of currency to the Board, keep in mind that our office will close from 24 December 2016 and will reopen on 9 January 2017.

› [Read more](#)

---

## New disciplinary case studies

The Board publishes disciplinary case studies to help certifiers avoid errors and maintain the overall high standard of professionalism in certification.

In 2016 we published more case studies than in any other year of the Board's history. Here are two more for your holiday reading:

- [Case study 1](#): A certifier issued a complying development certificate but failed to determine the proposal would result in more than one dwelling on the site, in breach of the General Housing Code.
- [Case study 2](#): A certifier was alleged to have responded improperly to a complaint about unauthorised building work. In fact, the certifier had responded professionally. The complaint was dismissed and is a good example of a certifier's appropriate management of a complaint.

› [Read more](#)

---

## Practice advice

For advice on the Building Code of Australia (BCA) or complying development, [contact the Department of Planning and Environment](#) or view [building circulars](#) or [planning circulars](#).

### 1. Approved plans: Check the scale

Approved plans accompanying a complying development certificate (CDC) or CC should be at an appropriate scale.

Sometimes, plans aren't drawn to scale or are at a slightly reduced scale rather than the scale indicated. This may be a deliberate attempt by the applicant to make the certifier approve a proposed building that is, for example, larger than permitted on the site.

**Certifiers, check the plans are at an appropriate scale and match the scale indicated on the plan.**

The EP&A Regulation specifies what documents must accompany an application for a CDC or CC, and what details they need to show.

Relevant clauses: [Schedule 1 EP&A Regulation](#) (cll.3-4 for CDCs; cll.5-6 for CCs).

## **2. PCA site sign must name individual certifier**

A development site must display a sign with the name, address and phone number of the principal certifying authority (PCA).

If the PCA is an individual certifier rather than an accredited company, the sign must show the individual's name, not just the company he/she works for.

Non-compliant site signs may attract a \$580 penalty infringement notice.

Relevant clauses: [98A](#), [136B](#) and [227A](#) EP&A Regulation.

## **3. Electronic signatures ok, just keep in mind...**

Recently, certifiers have enquired about the Board's position on electronic signature/ endorsement of certificates and accompanying plans.

Electronic signatures are acceptable under the [Electronic Transactions Act 2000](#). There are however some points to keep in mind, such as:

- The certifier issuing a certificate must be the same person who signs it (e.g. a receptionist mustn't sign certificates on a certifier's behalf).
- A variety of digital signature software packages are available that use password-protected, user-specific signatures for document security and integrity.
- Recordkeeping requirements of the EP&A and BP legislation apply whether a document is signed electronically or by hand.

- Certifiers are individually responsible and accountable for documents containing their signature.

› [More practice advice](#)

---

## Have your say on improving fire safety in NSW

The NSW Government is seeking to improve fire safety in new and existing buildings and is asking for your feedback on changes to relevant legislation and certification.

Improving fire safety has been given special priority by the Government in its response to the final report on the statutory review of the *Building Professionals Act 2005*, released in September 2016.

### Proposed reforms include:

- additional critical stage inspections in class 2-9 buildings
- new requirements for submitting and checking plans and specifications for fire safety systems in class 2-9 buildings
- reports required for all alternative fire safety solutions in class 1b-9 buildings
- authority for certifiers, in certain circumstances, to give exemption from BCA compliance for existing fire safety systems.

View the draft Environmental Planning and Assessment Amendment (Fire Safety and Building Certification) Regulation 2017 and have your say by visiting the [Department of Planning and Environment's consultation page](#).

Submissions can be made until **31 January 2017**.

› [Read more](#)

---

## **Non-conforming building products update**

### **Comment by 18 January on illegal importation of asbestos**

The Commonwealth Senate inquiry into non-conforming building products is considering the illegal importation of products containing asbestos, how these affect product supply chains and worker health and safety, and preventative and counter-measures.

The inquiry released an interim report on 18 October 2016 and its final report is now due by 25 May 2017.

You're invited to [make a submission by 18 January 2017](#).

---

## **Events, training and resources**

### **Contract changes for small business owners**

New protections for small businesses against unfair contract terms commenced on 12 November 2016.

To help small business owners understand the impact that this may have on their business, the Australian Competition and Consumer Commission has published [a report to help owners understand how the laws around unfair contract terms apply to them](#).

### **Supreme Court decision: S109K EP&A Act**

[An online article by Justin Cotton](#) discusses the implications of a recent Supreme Court decision which helps clarify how long certifiers (and others) are exposed to proceedings for building defects.

The decision highlights the need for plaintiffs to fully investigate all aspects of their claim before the 10-year liability period (s109K EP&A Act) expires.

## **See how new strata laws affect you**

Strata laws have been modernised in NSW. The new laws, other than those relating to the strata defects bond scheme, commenced on 30 November 2016. The changes make it simpler for renovations to be approved, require strata schemes to review their by-laws by 30 November 2017, and enable owners to collectively sell their strata block if 75 per cent of the owners agree and certain conditions are met.

**Changes relating to the defect bond scheme for new strata buildings will commence from 1 July 2017.** These will require developers to lodge a bond equal to two per cent of the contract price for residential and mixed use high rise strata buildings. For any defective work identified within the required timeframes, the bond can pay for repairing the work or be held until the work is fixed.

More details about the defect bond requirements will be available on the [Fair Trading website](#) from 1 July and the [new strata laws website](#) explains how the changes affect owners, tenants and industry.

## **National Construction Code updates and resources**

- [2017 NCC seminar registration](#): In Sydney on 8-9 March 2017.
- Updated non-mandatory NCC handbooks: [Upgrades to existing buildings](#) and [Indoor air quality](#).
- [Applying the deemed-to-satisfy provisions for fire performance of external walls](#): Advisory note for Type A and Type B buildings.
- [Mid-rise timber buildings](#): Guidance on BCA requirements.

## **Continuing professional development for certifiers**

- [Association of Accredited Certifiers](#): 2017 training calendar now available.
  - [Australian Institute of Building Surveyors](#)
  - [Royal Institution of Chartered Surveyors](#)
  - [Institute of Access Training Australia](#): 2017 training calendar now available.
- 

**Important note**

This e-news 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 e-news.

**Disclaimer**

While every reasonable effort has been made to ensure that this document is correct at the time of publication, the State of New South Wales, its agencies and employees, disclaim any and all liability to any person in respect of anything or the consequences of anything done or omitted to be done in reliance upon the whole or any part of the document.

© State of New South Wales through the Building Professionals Board.

**Building Professionals Board**

PO Box 3720  
Parramatta NSW 2124  
(02) 8522 7800  
[bppb@bppb.nsw.gov.au](mailto:bppb@bppb.nsw.gov.au)  
[www.bppb.nsw.gov.au](http://www.bppb.nsw.gov.au)

[Unsubscribe](#)



March 2017

## Certification reforms the priority for 2017

The *Building Professionals (BP) Act 2005* is now administered by the Hon Matt Kean, MP, the new Minister for Innovation and Better Regulation.

Minister Kean will oversee the [rewrite of the BP Act this year](#). There will be consultation on reforms to streamline regulation, clarify roles and enhance accountability.

Education and auditing are also priorities. The Board is establishing an audit team to start this year, and will continue to provide timely, relevant practice advice to certifiers.

Also, comments are invited on proposed changes to the *Environmental Planning and Assessment (EP&A) Act 1979*. [An article in this e-news summarises the main proposals affecting certifiers](#).

## In this issue

---

**Subdivision certification**

---

**Practice advice**

---

**Swimming pool/ E1 advice**

---

**Premises Standards advice**

---

**Insurance advice**

---

**Aspiring certifiers**

---

**Council certifiers save 20% on renewal**

---

**BPB logo reminder**

---

**EP&A Act proposals**

---

**Non-conforming products**

---

**Events, training & resources**

## Private certification of subdivision permitted by legislation

Following concerns raised by certifiers, the Board has written to local councils to clarify the role of private certifiers in subdivision.

There is evidence of some councils advising applicants that certificates issued by private certifiers for subdivision work will not be accepted by the council in determining the subdivision certificate, or that the council will reinspect the work at the applicant's expense. There is also evidence of some councils setting conditions of consent that have this effect.

The Board has advised councils that:

- the EP&A Act allows a private certifier to issue a construction certificate for subdivision work under section 81A and also to issue, under Part 4A, a compliance certificate for subdivision work
- section 109P of the EP&A Act allows a council to assume a certificate, once issued, was duly issued in accordance with the legislation, and indemnifies the council from liability in relying on the certificate
- section 80A of the EP&A Act defines the conditions a council may impose on a development consent. These do not limit the applicant's entitlement to engage a private certifier for part of the process.

There is no legislative basis for a council to refuse to issue a subdivision certificate because a private certifier was involved in the development.

---

## Practice advice

### 1. Be firm with builders to avoid missed inspections

It's important to make sure builders and property owners understand their obligations regarding critical stage inspections. **It is unacceptable to miss a critical stage inspection without good reason.**

If an inspection is missed, evidence must be submitted to the principal certifying authority (PCA) to demonstrate that:

- the circumstances for the missed inspection were unavoidable, and
- the work to have been inspected is satisfactory.

If the PCA isn't satisfied on these points, the inspection cannot be considered 'unavoidably missed' and an OC cannot be issued. This may have significant implications for the owner.

**Certifiers should consider the following to reduce the chance of a missed inspection:**

- Ensure the owner, to whom a certifier has both a statutory and contractual obligation, is fully aware of the inspection stages.
- Advise the builder of your PCA obligations and expectations, and his/her statutory duty to notify you at least 48 hours before an inspection is required.
- Make it clear that written, verbal or photographic evidence of building work does not set aside the requirement for a certifier to carry out a critical stage inspection.
- Provide a convenient way for the builder to contact you.
- Notify the builder in advance of dates when you will be unavailable or make alternative arrangements to facilitate an inspection.

› [Read more](#)

**2. PCA appointment where a property is sold before an OC is issued**

## **Scenario**

A certifier is appointed as PCA for a new house. The property owner pays the certifier's fees upfront but sells the property before the house, and therefore the certifier's role, is completed.

### **PCA appointment continues (linked to consent)**

The certifier's appointment as PCA will continue unless the new owner seeks to change the PCA (see [replacing a PCA](#)). The certifier's appointment is linked to the development consent and 'runs with the land'.

### **New written contract required with new owner**

Before carrying out any further certification work on the development, the certifier must enter into a written contract with the new owner.

### **Previous owner entitled to partial refund?**

Some property sales may include the cost of the certifier's fees being passed on to the new owner. If so, certification fees under the new written contract for the remaining certification work should be \$0.

Alternatively, the previous owner may ask the certifier to refund fees for certification work not yet carried out (any remaining inspections and issue of the occupation certificate). This may constitute early termination of the contract depending on the contract provisions.

Certifiers should keep in mind Australian Consumer Law requirements when including termination and refund clauses in their contracts.

### **More information**

- [FAQ about written contracts for certification work](#)
- [ACCC: cancelling a service](#)

- [ACCC: unfair contract terms](#)

› [More practice advice](#)

---

## Swimming pool certification advice

### 1. Home building contract can't be used for pool certification

A contract for swimming pool certification work must include different, and in some respects more, information than a building contract made under the Home Building Act.

E1 certifiers should not use the same contract template for certification work that they use for building work.

The Board's [contract template for swimming pool certification](#) is the easiest way to ensure your contract includes all the information required by the Building Professionals Regulation (clause 19A).

› [Read more](#)

### 2. Check Register before inspection

Before inspecting a swimming pool, certifiers should check it is registered on the [NSW Swimming Pool Register](#).

Certifiers must use the Register to record inspections and issue certificates. This can only be done if the pool is registered.

Pool owners can register their pool online for free, in just a few minutes.

### 3. Swimming pool barrier review: summary of response

The [Government's response to the swimming pool barrier review](#) by Michael Lambert reinforces the need for responsible, vigilant adult supervision as the best way to ensure child safety.

As requested by E1 certifiers, the Board has summarised the main points in the response:

- **Guidance for certifiers:** The Government will consider developing practice guidance on swimming pool certification consistent with the BP Act rewrite.
- **Certification framework:** The Government indicated support for a review of the pool barrier certification framework, consistent with the recommendations arising from the BP Act review.
- **Three AS versions still apply:** Older pools may continue to meet the 1986 or 2007 version of Australian Standard 1926.1. A barrier only has to be upgraded to the 2012 version if it doesn't meet the version that applied when it was built (or substantially modified or rebuilt).
- **Councils can charge for each inspection:** Councils may charge \$150 for the first pool inspection and may now charge \$100 for each subsequent inspection.
- **S.22 automatic exemptions still apply:** Existing automatic exemptions to barrier requirements under section 22 of the *Swimming Pools Act 1992* continue to apply to pools built before 1 July 2010 on large, very small and waterfront properties.
- **Education focus for portable pools:** A consumer awareness campaign will reinforce the importance of supervision around portable pools, the need for barriers and emptying the pool when not in use.
- **Guidance for owners:** The Government will aim to provide better guidance to help owners understand and meet their responsibilities.

The [Office of Local Government's website](#) has the full report and response.

› [More E1 practice advice](#)

---

## Premises Standards advice

The Board's Access Advisory Committee has been disbanded following the transfer of the Board's statutory functions to the Department of Finance, Services and Innovation.

Enquiries about the Disability (Access to Premises — Buildings) Standards 2010 should be directed to the [Department of Planning and Environment](#).

The former committee considered applications, referred to it by certifiers, for a development to be exempt from one or more provisions of the Premises Standards on the grounds of 'unjustifiable hardship'.

The Board's [practice advice on the Premises Standards](#) is still available.

› [Read more](#)

---

## Insurance advice for certifiers

**Check your past employers' insurance status each time you renew your accreditation and insurance.**

If a company you worked for goes out of business or stops renewing its company professional indemnity insurance, you will need to obtain insurance for your period of employment with that company.

The best way to find out if the company is still insured is to contact it directly. If this is not possible, [contact the Board](#) for help.

› [Certifier insurance FAQ](#)

---

## Today's students – tomorrow's certifiers

Promising young students of the University of Newcastle's Bachelor of Construction Management glimpsed what it's like to be a certifier during a career day on 1 December 2016.



Following the [positive feedback from students who attended the 2015 event](#), private certifier Robert Ball again opened his office to the students. Young certifiers Rianda Barnes and Tom Rocher shared what inspired them to become accredited, and staff from the Board explained the accreditation process and encouraged students to apply for accreditation after they graduate.



You may recall young A4 certifier, Ripp Stewart, who presented at the 2015 career day. We're pleased to report Ripp is now an A3 certifier and keen on reaching A1 in time. We look forward to his continued success and that of others starting their certification career.

New certifiers will be important to replace those expected to retire over the next 15 years. Certifiers who share their experiences with students are encouraging the next generation, while the Board's work is also ensuring NSW has enough certifiers to meet future demand for housing and other development.

---

## Council certifiers: save 20% on renewals

Councils can save \$50 off the regular \$250 fee for each council-accredited certifier by **submitting a renewal at least four months before expiry**.

To avoid processing delays:

- include payment details in the renewal form, which has a section for credit card details or EFT remittance advice
- if you need an invoice, ask for it *before* the accreditation expiry date.

› [Renewal forms](#)

---

## BPB logo can't be used on non-Government websites

Thank you to those certifiers who link to the Board's website from their site.

**If your website displays the Board logo please replace it immediately with a text link.** Copyright prohibits the NSW Government 'waratah' logo from being used on non-Government websites.

Certifiers are welcome to inform website visitors that they are accredited by the Board, provided the text doesn't imply Board endorsement of their business.

[The Board's copyright statement](#) includes guidelines for linking to our site.

› [Read more](#)

---

## Major changes proposed to EP&A Act

### Reminder: Comments close today on draft bill

Today 31 March 2017 is your last day to comment on the Environmental Planning and Assessment Amendment Bill 2017 being exhibited by the Department of Planning and Environment.

Certifiers should read and understand the proposals, such as those to:

- consolidate construction and certification provisions of the EP&A Act in a new Part 6 of that Act
- replace the 'not inconsistent' test at the construction certificate stage with a test for consistency, accompanied by guidance for certifiers
- require certifiers to issue a written direction if a development is non-compliant, in circumstances specified by regulation
- require certifiers to prepare a building manual, issued with the occupation certificate and including final construction plans and ongoing inspection requirements
- provide for regulations to prevent private certifiers from issuing a complying development certificate (CDC) for specified 'sensitive' developments
- require certifiers to provide copies of complying development plans to neighbours, at both the initial notification and CDC approval stages

- introduce a levy on CDCs to fund compliance action by the council
- enable courts to invalidate a CDC if it doesn't meet complying development provisions
- enable a council to order work on a complying development be suspended for seven days, during which time the council investigates any alleged non-compliance
- limit retrospective 'section 96 modifications' to those required to correct a minor error, misdescription or miscalculation
- introduce a 'completion of work compliance certificate' as an alternative to an occupation certificate for certain development
- change various terms, such as replacing 'principal certifying authority' with 'principal certifier'.

› [Read more](#)

---

## **Update: non-conforming products and fire safety**

### **No alternative solution for Lacrosse cladding**

The Victorian Building Appeals Board has dismissed the appeals of owners and the builder that would have permitted an alternative solution to replacing the non-compliant external cladding of the Lacrosse building in Melbourne.

[Read the media release](#)

### **Ministers agree to fire safety reform package**

At its meeting of 14 December 2016 the Building Ministers' Forum agreed to comprehensive measures to improve fire safety in high rise buildings.

[Read the communique](#)

---

---

## Events, training and resources

### E1 CPD course worth six hours: enrol now

Enrolments are open for CPD Training's 'Interpreting AS 1926.1', a continuing professional development (CPD) activity worth **six hours** for E1 certifiers that has been approved by the Board.

[Visit the CPD Training website](#) and navigate to 'Qualifications & Short Courses', then 'Swimming Pool CPD Activity'.

E1 certifiers must complete six hours of approved CPD each year, from their second year of accreditation onward. Approved activities are listed on the Board's website.

### Complying development course reminder

The [complying development course](#) is mandatory for all A1-A3 certifiers within 12 months of renewing their accreditation. Depending on your renewal date, the **latest** you can complete the course is 16 October 2017.

The two course options include:

- face-to-face with [CPD Training\\_\(check course dates\)](#)
- online with the [Association of Accredited Certifiers](#).

### Complying development course worth eight CPD points

Certifiers will earn eight points towards the requirements of the CPD schemes of the Association of Accredited Certifiers, Australian Institute of Building Surveyors or Royal Institution of Chartered Surveyors.

## Consultations

- [Draft Environmental Planning and Assessment Bill](#): submissions close today 31 March 2017.
- [Proposals to change the NCC for 2019](#): submissions close 1 September 2017.

## National Construction Code updates and resources

- [Documents suitable for consideration as part of a performance solution](#): as agreed by the Building Codes Committee. From the 2019 NCC these documents will also be suitable for referencing in the deemed to satisfy provisions.
- [Results of WaterMark survey](#).

## Continuing professional development for certifiers

- [Association of Accredited Certifiers](#)
- [Australian Institute of Building Surveyors](#)
- [Royal Institution of Chartered Surveyors](#)
- [Institute of Access Training Australia](#)
- [CPD activities for E1 certifiers](#)

---

### Important note

This e-news 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 e-news.

### Disclaimer

While every reasonable effort has been made to ensure that this document is correct at the time of publication, the State of New South Wales, its agencies and employees, disclaim any and all liability to any person in respect of anything or the consequences of anything done or omitted to be done in reliance upon the whole or any part of the document. State of New South Wales through the Building Professionals Board.

### Building Professionals Board

PO Box 3720  
Parramatta NSW 2124  
(02) 8522 7800  
[bpb@bpb.nsw.gov.au](mailto:bpb@bpb.nsw.gov.au)  
[www.bpb.nsw.gov.au](http://www.bpb.nsw.gov.au)



April 2017

## All certifiers are public officials

Accredited certifiers are public officials and independent regulators of compliance with planning and building legislation and codes.

This important role relies on certifiers acting in the public interest, and maintaining impartiality by avoiding any source of influence – whether actual or as perceived by others – that could bias their decisions.

This issue of the e-news discusses what it means to be a public official. As part of a series, it also looks more closely at conflicts of interest, with recent real-life examples.

## In this issue

[Being a public official](#)

[Avoiding conflicts of interest](#)

[Practice advice](#)

[Complying development  
CPD](#)

[E1/pool certification advice](#)

[Other news](#)

[Events, training & resources](#)

---

## What it means to be a public official/authority

**Serving the public interest is an obligation that is accepted by each certifier every time they carry out certification work.**

**All** accredited certifiers – from A1 to E1 – are public officials under the *Independent Commission Against Corruption Act 1988* and public

authorities under the *Ombudsman Act 1974*.

A certifier's first duty is to serve the public interest, regardless of commercial pressures or client expectations. This requires a conscientious effort to fulfil official functions honestly, properly and impartially, in a way that maintains public trust.

## **A certifier's work has long-lasting public implications**

Given the intended lifetime of a building, certification affects not just a certifier's immediate client, but also subsequent owners, tenants, visitors, neighbours and the physical environment.

For a certifier, serving the public interest may lead to difficult decisions. Arguably the hardest decision is to refuse to issue an occupation certificate (OC) if the work is unsatisfactory, and discussing this with the client.

After paying the certifier's fees, a client may feel entitled to an OC, particularly if the builder has given assurances about the quality of the work. Also, someone with little knowledge of a certifier's role may be upset and not understand the reasons for the refusal.

## **NCAT decision reinforces certifiers' public official role**

On 20 April 2017 the NSW Civil and Administrative Tribunal (NCAT) upheld a decision of the Board to discipline a certifier who issued three complying development certificates (CDCs) in error.

One of the proven allegations was that the certifier had classified the buildings incorrectly under the Building Code of Australia (BCA). Since fire safety requirements vary between building classifications, this error had potential safety implications for anyone in or around the buildings.

Issuing CDCs for work that doesn't meet the complying development standards circumvents the merit-based process which should apply to such proposals. It may also result in development that is inappropriate for the site.

In its decision, the NCAT reaffirmed that the *Building Professionals (BP) Act 2005* is designed to "protect the public and accredited certifiers must ensure that their certification work meets acceptable standards. ...Certifiers have a duty of care in relation to the performance of their role."

This duty of care is part of the Code of Conduct for certifiers, requiring them to be aware of the limits of their discretionary powers, and to act accordingly.

### More information

- [20/04/17 NCAT decision on Singh v BPB](#): [2017] NSWCATOD 59.
- [The meaning of public interest](#): NSW Ombudsman factsheet.
- [Bad faith, bias and breach of duty](#): NSW Ombudsman factsheet.
- [Other factsheets](#) published by the NSW Ombudsman.

› [Code of Conduct: ethical standards required of certifiers](#)

---

## Avoiding conflicts of interest vital for public officials

One of the most important roles of a public official/authority is to act, and be seen to act, impartially and fairly. Certifiers must exhibit and be seen to exhibit the highest ethical standards, by avoiding both actual and perceived conflicts of interest.

It is sometimes unclear if a situation presents a conflict of interest. Most actual conflicts (e.g. being related to a client) are fairly obvious. However, to

identify a perceived conflict, a certifier needs to consider if an outside observer might see the certifier's actions as biased or otherwise compromised.

[Section 66 of the BP Act](#) prohibits a certifier from carrying out certification work if they have a conflict of interest. Sections 67-70, and the [Code of Conduct](#), add detail but sometimes more guidance is needed.

## **Recent examples**

### **A certifier was appointed as principal certifying authority (PCA) without knowing his son was a tradesperson for the development**

This was a conflict of interest, because the certifier (or another certifier approved by the certifier) would inspect his son's work, even though the certifier didn't consciously contribute to the arrangement.

Could the PCA have retained the appointment but arranged for another certifier to carry out critical stage inspections? While increasing the level of independence, this would have raised two issues:

- a. The other certifier's independence from the PCA would still have been questionable. Not only did both certifiers work for the same company, the other certifier would still have sent inspection reports to the PCA.
- b. The PCA would still have had to carry out the final inspection and could not have delegated this to another certifier.

The lesson from this example is that, even though it seems unfair, a certifier in this situation should advise the owner to appoint a different PCA.

### **The certifier and builder for a development had offices on the same floor of a commercial building**

A dispute arose between the builder and the certifier's client (i.e. the property owner). Since the builder and certifier shared office space, the owner thought they may be in collusion and felt unable to discuss the builder's actions with the certifier.

It might be hard for certifiers to maintain full independence from people they interact with every day in the office. Certifiers may also be subject to pressure from an owner or builder to act as a peacemaker.

The lesson from this example is to avoid the situation if possible, given the potential for a perceived or actual conflict of interest. If this is not possible, then a certifier should put into place controls that will instil confidence in the public that the certifier is properly performing the role of a public official/authority.

### **A certifier helped a client prepare a development application and later assessed and issued certificates for the development**

The certifier scanned building plans and paid long service levy on the client's behalf. Each helpful action, in itself, was not necessarily a conflict of interest.

Despite this, the lesson from this example is that if a certifier performs many small actions it could result in too close a relationship with the client, or be perceived as such.

Further, applicants can pay the long service levy online if they can't reach the council office during business hours. This convenient option removes any need for a certifier to become involved.

### **More information**

- [Guide to the certifier code of conduct](#): what might be perceived as a conflict of interest.

- [Advice from the Board in 2005\\*](#) in response to the ‘Stapleton case’ (next link).
- [‘Stapleton case’](#): No.2 [2004] NSWADT 70.
- [ICAC website](#): avoiding an actual or perceived conflict of interest.

\*Note: the Board’s advice was issued when certifier conflict of interest provisions were still in the *Environmental Planning and Assessment (EP&A) Act 1979*, rather than the BP Act. The provisions weren’t transferred verbatim, but the advice is still useful for certifiers.

---

## Practice advice

### 1. For certifiers, the public interest comes first

Concerns have been raised with the Board over a small number of certifiers who may be perceived to be putting the interests of builders first, possibly to the detriment of the public interest and/or their clients.

Allegedly, these certifiers may be:

- automatically supporting the builder’s position over that of others where a dispute arises
- ‘protecting’ the builder by delaying or withholding from owners information that reflects poorly on the builder (e.g. where there is an unsatisfactory critical stage inspection)
- sending information about the owner to the builder, without the owner’s knowledge (e.g. emailing the owner with a blind copy to the builder).

These behaviours may compromise a certifier’s independence, especially if the certifier obtains a large proportion of work from just a few builders and is perceived as having a vested interest.

A certifier's client is not the builder; under [section 109E\(1A\) of the EP&A Act](#) a builder may only appoint a PCA if the builder owns the property. This is intended to maintain independence between the builder and certifier.

The [current rewrite of the BP Act](#) is examining the relationships between builders, owners and certifiers in detail. The aim is to support certifier independence and empower certifiers to work in the interest of the public.

## **2. No final OC? S.109ZK has other triggers for 10-year liability period**

The BP Act requires certifiers to keep development records for at least 10 years. This is the timeframe for commencing legal proceedings under [section 109ZK of the EP&A Act](#).

The 10 year period starts from the date the final OC is issued.

However, for some developments, particularly small residential work, the owner may never apply for a final OC.

If there is no final OC, section 109ZK provides two other triggers for the 10-year period:

- the date when the building work was last inspected by a certifying authority, or
- if there was no such inspection, the date when the building or relevant part was first occupied or used.

**A certifier is not liable for an indefinite period** if there is no final OC, and may appropriately dispose of records for a development when the 10-year liability period for the development ends.

Where there is no final OC, some certifiers choose to contact the client before disposing of old records. The client may then ask for a reinspection

of the work and a final OC. In such cases a certifier should ask for appropriate evidence to support the proper issue of an OC.

### 3. Use appropriate terminology to manage risk

To communicate with clients who have limited knowledge of the building industry, it's helpful to use plain English, including colloquialisms, where appropriate.

Some documents, however, require a specific term, especially if referencing legislative provisions that include that term.

Example: 'granny flat' vs 'secondary dwelling':

- For informal emails and phone conversations, using 'granny flat' is fine, provided the client understands what a granny flat is for the purposes of the certification application.
- For a Part 4A certificate, CDC or other formal document, use 'secondary dwelling' since this is the term used in the legislation.

Using terms that match the legislation is a simple risk-management strategy for certifiers to help ensure a certificate is compliant and consistent with the legislation.

› [More practice advice](#)

---

## Complying development CPD course – when must you complete it?

Certifiers may need to complete the course sooner than they think.

In October 2015 the Board announced that all A1, A2 and A3 certifiers must complete the complying development CPD course within 12 months of renewing their accreditation.

Depending on their renewal date, the **latest** certifiers can complete the course is October 2017\*.

**For many certifiers, the cut-off date is likely to be sooner.** Certifiers should check their accreditation renewal date to ensure they complete the course in time.

\*The October 2017 cut-off only applies to certifiers who renewed their accreditation just before our 2015 announcement. The 12-month timeframe to complete the course was then triggered when they renewed in October 2016, giving an October 2017 cut-off.

» [Read more](#)

---

## Swimming pool certification advice

### 1. E1 certifiers cannot issue certificates if their accreditation is expired

The Board has been made aware of some E1 certifiers accessing the Swimming Pool Register and issuing certificates after their accreditation has expired.

Just as a person with an expired driver's licence shouldn't drive a car, a certifier whose accreditation has expired must not issue a certificate.

**Certifiers are responsible for renewing their accreditation on time**

The Board sends certifiers reminders 60 days and 30 days before their renewal is due, and a notice of expiry if no renewal is received in time.

Whilst these are courtesy reminders, certifiers should be aware they are entirely responsible to renew their accreditation before it expires and that a renewal should be supported with the correct insurance and CPD documentation.

Comprehensive and correct documentation will help the Board to quickly renew applications and give practising certifiers peace of mind.

### **The Board does not control access to the Swimming Pool Register**

The Swimming Pool Register is operated by the Office of Local Government. It is separate from the Board's certifier register, so updates to one register aren't immediately reflected in the other.

This means certifiers whose accreditation has expired may still, for a short time, be able to access the Swimming Pool Register. However, such action is illegal as the *Swimming Pools (SP) Act 1992* only authorises currently accredited certifiers to access the Register.

## **2. Determining the age of a pool**

There are a few ways to determine when a swimming pool was constructed and/or when the barrier was substantially modified or rebuilt.

Preferably, the council or owner can provide documents such as an OC or receipts for building work.

If not, another option is an online mapping tool which includes historical satellite imagery:

- [Nearmap](#): a paid subscription is required.

- [Google Earth](#): a free tool. Tip: use the historical imagery option from the 'view' menu (more advice at [Google Earth Help](#)).
- [SIX Maps](#): a free tool offered by the Department of Finance, Services and Innovation. It doesn't have historic imagery but may be used in concert with other mapping tools.

### 3. Tips for written notices of non-compliance

A notice of non-compliance for a swimming pool barrier:

- must be issued within five (5) days of the inspection
- is mainly for the owner's benefit, so shouldn't include unnecessary technical terms
- should identify which version of the Australian Standard applies, and why
- should give enough detail for the owner to fix the barrier, without any irrelevant details ([section 22E of the SP Act](#) sets the minimum requirements)
- may include photographs, which should be clear and have an identifiable point of reference
- may later be read by a council officer who has no knowledge of that particular pool, so the notice should make sense without requiring reference to external documents.

### 4. Notice of non-compliance must be forwarded to council after 6 weeks

If a swimming pool barrier isn't fixed within six weeks of when the certifier issued a notice of non-compliance, the certifier **must** forward the notice to the local council.

The covering email or letter should briefly explain the situation so the council can make an informed decision on further action.

It has come to the Board's attention that some certifiers are not meeting this **legal requirement** under [section 22E of the SP Act](#). These certifiers may be subject to disciplinary action.

## **5. Reinspecting a non-compliant pool barrier that's been reported to council**

If a certifier forwards a notice of non-compliance for a pool barrier to the council, the council is responsible for follow-up action including further inspections.

However, sometimes the pool owner may ask the certifier to reinspect the barrier.

Before agreeing to do a follow-up inspection:

1. Check the [Swimming Pool Register](#) to confirm the council hasn't already inspected the pool.
2. Contact the council to ask if it intends to do a follow-up inspection.

If the council intends to take follow-up action, the certifier should not reinspect the pool.

Alternatively, the council may advise that the certifier is free to reinspect the pool. This will require a new written contract with the owner.

› [More advice for E1 certifiers](#)

---

## **Other news**

**Building site blitz to tackle sediment and erosion control**

During May, local councils and the NSW Environment Protection Authority will patrol construction sites around the Parramatta River for sediment and erosion control compliance.

The area will reach west to Blacktown, north to the Hills Shire and Ryde, south to Bankstown and east to Hunters Hill and the inner west.

Certifiers working in this area are encouraged to discuss the initiative with their clients and builders to help ensure sediment and erosion control measures are installed and maintained on site.

For more information, see the:

- [‘Our Living River’ campaign website](#)
- [Guidelines for sediment and erosion control on building sites](#) (other relevant conditions may apply to individual developments).

## ***NSW Guide to Standards and Tolerances 2017 released***

NSW Fair Trading released a new guide to assist home owners and contractors if building work is in dispute.

The *NSW Guide to Standards and Tolerances 2017* is intended to provide the reader with an understanding of the tolerances that a building professional will consider in determining whether a building element has been installed/constructed to an acceptable standard. It also provides guidance on how these elements should be assessed.

The *2017 NSW Guide to Standards and Tolerances* is not a legal document and is not intended to replace the relevant provisions of the BCA or Australian Standards. The Guide should be regarded as an advisory resource rather than a series of prescriptive definitions.

The Guide deals with such topics as shrinkage around timber window frames, door frames, nail popping in timber floors, paving through to footings and foundations.

The *NSW Guide to Standards and Tolerances 2017* came into effect in March 2017.

[Download the NSW Guide to Standards and Tolerances 2017](#) in PDF format.

## **BASIX energy targets to increase from July 2017**

The NSW Government has announced that the [BASIX energy targets will be increased in July 2017](#).

## **Winning medium-density housing designs unveiled**

[Winning entries for the Missing Middle Design Competition](#) have been announced by the Hon. Anthony Roberts MP, Minister for Planning and Housing.

In time, certifiers may find themselves assessing and certifying these and other innovative designs as complying development.

---

## **Events, training and resources**

### **New E1 CPD course worth three hours**

The Board has approved CPD Training to deliver a three-hour continuing professional development (CPD) activity for E1 certifiers. Enrolments are now open.

[Visit the CPD Training website](#) and navigate to 'Qualifications & Short Courses', then 'Swimming Pool Legislation' (3HRCPD).

## **On exhibit: F&R fire hose connections guideline**

Fire and Rescue NSW has released the draft technical guideline [FRNSW compatible hose connections](#) for comment by 26 May 2017.

## **Premises Standards review: Government response**

The Commonwealth Government has released its [response to the report on the review of the Disability\\_\(Access to Premises – Buildings\) Standards 2010](#) (Premises Standards).

The Premises Standards will be amended for greater effectiveness and clarity, with new measures to assist in their application and evaluation.

## **National Construction Code news**

Recent announcements from the Australian Building Codes Board:

- [Two NCC referenced documents end their transitional period on 30 April 2017](#): AS 3660.1 Termite Management – New building work (2000 edition) and AS 3786 Smoke alarms (1993 edition) cannot be referenced from 1 May 2017.
- [Final Decision Regulation Impact Statement, Automatic fire suppression systems for covered balconies in residential buildings](#): recommending fire sprinklers **not** be required for covered balconies in new residential buildings over 25 metres in height.
- [New NCC user guides](#): building classifications, roof gutters, and energy efficiency for building services.

## **Continuing professional development for certifiers**

- [Association of Accredited Certifiers](#)
- [Australian Institute of Building Surveyors](#)
- [Royal Institution of Chartered Surveyors](#)
- [Institute of Access Training Australia](#)
- [CPD activities for E1 certifiers](#)

▸ [CPD requirements for certifiers](#)

---

Signup to receive emails >

Send to a friend >

#### **Important note**

This e-news 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 e-news.

#### **Disclaimer**

While every reasonable effort has been made to ensure that this document is correct at the time of publication, the State of New South Wales, its agencies and employees, disclaim any and all liability to any person in respect of anything or the consequences of anything done or omitted to be done in reliance upon the while or any part of the document. State of New South Wales through the Building Professionals Board.

#### **Building Professionals Board**

PO Box 3720  
Parramatta NSW 2124  
(02) 8522 7800  
[bpb@bpb.nsw.gov.au](mailto:bpb@bpb.nsw.gov.au)  
[www.bpb.nsw.gov.au](http://www.bpb.nsw.gov.au)

[Unsubscribe](#)





May/June 2017

## Upholding the public interest

Late last month, Dr Gabrielle Wallace, Director of the Building Professionals Board, presented at the annual conference of the Association of Accredited Certifiers.

Dr Wallace discussed upcoming reforms to the certification system associated with the rewrite of the *Building Professionals (BP) Act 2005*.

She also stressed the role of certifiers as public officials and their overriding duty to uphold the public interest – a theme continued in this e-news.

## In this issue

[The public interest](#)

[Independence from builders](#)

[Communication advice](#)

[Practice advice](#)

[E1/pool certification advice](#)

[Events, training & resources](#)

---

## Defining and upholding the public interest

By law, certifiers must act in the 'public interest', which is generally defined as the wellbeing of the general public, or the common good.

Determining where the public interest lies in a particular situation is a matter of careful judgement and is based on community standards and

expectations, which can change over time (see the [NSW Ombudsman's advice on the public interest](#)).

**For certifiers, certain behaviour is always in the public interest, such as:**

- exercising discretionary powers impartially, in a way that is justified by the available evidence
- issuing a certificate only after receiving all required information and documents, and confirming all applicable requirements are met
- acting promptly, professionally and cooperatively to resolve development non-compliances and complaints
- only accepting a reason for a missed inspection that was truly 'unavoidable'
- storing and sending information and documents as required by legislation, including privacy laws.

## **Conduct guided by public perception, not industry practice**

Given that the role of certifiers is to protect the public, the primary judge of their integrity is not other certifiers, but the community as a whole. As a result, referring to particular conduct as 'industry practice' is not a justifiable basis for a certifier's actions without regard to broader considerations.

The BP Act defines unsatisfactory professional conduct as falling short of the 'standard of competence, diligence and integrity that a member of the public is entitled to expect of a reasonably competent accredited certifier'.

This is in contrast to many other professions where the law considers one's peers as the main judge of conduct.

## **Relevant case law**

- [Director General, Department of Infrastructure, Planning & Natural Resources -v- Stapleton \(No 2\), \[2004\] NSWADT 70](#)
- [Dix v Building Professionals Board \[2010\] NSWADT 160](#)

› [Code of Conduct for certifiers](#)

---

## Certifier independence from builders

Some builders may recommend their clients appoint a particular certifier. This isn't necessarily a conflict of interest for the certifier, but might be perceived as such if an outside observer thinks the certifier's relationship with the builder is too close.

Property owners often do not realise they have a choice in appointing and entering into a contract with a certifier, and that the certifier is a public official who is independent from the builder.

Certifiers who often work on developments with the same builder should take extra care to identify and avoid any perception of bias or influence (see [advice from the NSW Ombudsman](#)), and may need to regularly re-examine their relationship with the builder.

For example, some builders may prepare the building contract to appoint a certifier as the principal certifying authority (PCA), so that all that is needed is the client's signature.

It is a certifier's responsibility, not the builder's, to enter into a contract with a client for certification services. It should be clear to the client this contract is separate from the building contract and has a different purpose (see [section 73A of the BP Act](#)).

## Heavy penalties for anyone who tries to influence a certifier

A builder, homeowner or any other person must not offer or give any benefit to a certifier.

Under [section 84\(2\) of the BP Act](#), trying to influence a certifier attracts a penalty up to \$1.1M and/or two years imprisonment. Certifiers who believe someone is trying to influence them can refer to this provision to defend their actions.

[Section 11 of the \*Independent Commission Against Corruption \(ICAC\) Act 1988\*](#) puts a duty on public authorities, including certifiers, to notify ICAC of possible corrupt conduct. This is generally defined under [section 8](#) of that Act as including conduct that adversely affects the honest and impartial exercise of official functions.

As an example of influence, a builder might promise a certifier future work if the certifier issues an occupation certificate despite not receiving all required documents.

Before building work commences, checking that the builder understands his/her legislated responsibilities may help certifiers avoid pressure from the builder at a later stage.

▸ [Builders' responsibilities under planning law](#)

---

## Communication advice

### 1. Communicate your role to reduce the risk of a complaint

It is important that development applicants, builders and neighbours understand a certifier's statutory role.

Many complaints about certifiers (particularly PCAs) received by the Board are actually about matters outside a certifier's statutory role.

The Board's [Code of Conduct](#) for certifiers requires, among other things, that certifiers act in the public interest and have regard to the interest of clients and others.

Taking a proactive approach to educate stakeholders about a certifier's role, and working with councils to resolve issues that are the responsibility of a PCA, can often be effective in reducing complaints and the time taken to respond to them. It also strengthens community confidence in the certification system and the role of private certifiers as integral to that system.

For example, a certifier's notification letters about proposed complying development are a great opportunity to explain to neighbours what a certifier is and isn't responsible for.

A [template letter on the Department of Planning and Environment's website](#) can be used by certifiers to notify neighbours, and includes answers to common questions about complying development.

Certifiers are welcome to adapt the template and may consider adding more information about their role....

### **Advice for neighbours to complying development**

*Q. What is the role of a certifier in complying development?*

An accredited certifier, whether in private practice or working for a council, is a public official whose role it is to issue certificates that authorise construction and building occupation in accordance with relevant planning and building legislation. They also inspect buildings to issue certificates.

A certifier will only issue a complying development certificate if satisfied a proposed development will meet all applicable legislative requirements. For complying development, State Environmental Planning Policies set out predetermined criteria that a development proposal must meet. If the proposal fails even one of these criteria, a complying development certificate must not be issued.

As complying development requirements are predetermined, the ability for neighbours of a proposed development to object does not apply as it would for a development application before a council.

As construction progresses, the certifier will visit the building site to inspect work at key stages, called critical stage inspections. A certifier is not present on the building site every day – the builder is responsible for day-to-day supervision of the site and the work of tradespeople.

At the end of construction, the certifier may issue an occupation certificate, but only if satisfied the building meets legislative requirements and is suitable for occupation in accordance with the Building Code of Australia. A building must not be occupied or used without an occupation certificate.

*Q. What if I have a complaint about the development?*

First, talk with the owner and/or builder to try and resolve the matter.

If this is not successful, the next step is to contact either the principal certifying authority or the local council.

The council has greater powers of enforcement than private certifiers, and councils can take independent action at any time, even when a private certifier is the principal certifying authority. A private certifier can take limited action but may need to refer the matter to the council, which is then responsible for further enforcement.

For more urgent matters (such as structural damage, stormwater runoff causing property damage or pollution matters) you may consider contacting the council, which has power to take immediate action where warranted.

## 2. Accredited companies: enquiries and complaints

Accredited directors of an accredited body corporate (accredited company) must ensure certification work is allocated to a director or employee with the appropriate accreditation. This includes ensuring enquiries and complaints are responded to by the right person.

An enquiry about the work needed for a certificate to be issued should only be handled by a certifier with the appropriate level of accreditation. This minimises risk to the company and enables the right level of technical consideration to be given to an enquiry.

All responses are to be prompt and professional in line with the [Code of Conduct](#) for certifiers.

**If an individual certifier at the company is the PCA** (i.e. not the company), the client or complainant might still contact the company. If other employees respond, they should clarify who the PCA is and recommend contacting the PCA for more information. This is particularly important if a response is issued under the company's email signature or letterhead.

▶ [Read more](#)

---

## Practice advice

### 1. S.109L notices to issue an order

A notice issued by a private certifier under [section 109L of the Environmental Planning and Assessment \(EP&A\) Act 1979](#) needs to be useful to the recipient (the development applicant or builder), and understandable by the council should it have to enforce the notice at a later date.

A notice that is clear, includes all required information, and is forwarded to the council within two days of issue, is both useful and a positive reflection on the certifier's professionalism.

A notice should identify exactly what work needs to be done, and quote relevant conditions of the development consent or complying development certificate where appropriate.

Issuing a notice with instructions simply to 'comply with the consent' is far too vague to be useful to anyone.

### **A section 109L notice is a statutory document and must be scrutinised before issue**

Local councils have raised concerns with the Board about notices that have the wrong street address (or the right street in the wrong suburb), or even name the wrong council.

The Board's website has more [guidance on s.109L notices and a template to download](#).

### **Councils' responsibilities to keep certifiers informed**

It is good practice, and strengthens public confidence in the certification system, for councils to send the certifier a copy of any order issued for development where the council is not the PCA. A council cannot expect a certifier to assist in resolving non-compliances unless the certifier is kept informed.

## **2. A3 certifiers must not certify performance (alternative) solutions**

A3 certifiers may act as PCA and issue certificates for class 1 and 10 buildings that meet the **deemed-to-satisfy** provisions of the Building Code of Australia (BCA).

They must not act as PCA or certify a proposal for a building/development that has a performance (alternative) solution.

A3 certifiers must refuse any application for a certificate for a building/development or a request for PCA appointment where the development has a performance solution, and should advise the owner to appoint an A1 or A2 certifier.

A proposed performance solution is recognisable by its reference to BCA performance requirement provisions. These include a 'P'; for example, 'P2.3.1' is a performance requirement for fire safety, while '3.7.1.2' is a deemed-to-satisfy provision.

Performance solutions are commonly used for, for example:

- reduced ceiling heights
- passive fire safety measures
- external walling systems.

### **Section 96 modifications with performance solutions**

If the owner applies to modify the approved plans to include a performance solution, the A3 certifier should advise the owner to either comply via the deemed-to-satisfy provisions, or to appoint a replacement (A1 or A2) PCA.

If the development is modified to include a performance solution, the A3 certifier must not continue as PCA and cannot issue an occupation certificate for the development.

## Work under supervision to increase performance solution experience

Under the supervision of an A2 (or A1) certifier, an A3 certifier may inspect buildings with performance solutions, including:

- all class 1 and 10 buildings
- class 2-9 buildings up to three storeys and 2,000m<sup>2</sup> in floor area
- class 2 buildings up to four storeys and 2,000m<sup>2</sup> in floor area, provided the lowest level is a carpark (class 7a).

The August 2007 BP Bulletin has more about [what 'under the supervision of' means](#) (from page 12).

► [More practice advice](#)

---

## Swimming pool certification advice

### 1. Pool barrier reinspections must inspect the whole barrier

Every time a certifier reinspects a swimming pool barrier, it needs to be a complete inspection of the whole barrier.

It is unacceptable to inspect just the items that failed the first inspection. A pool barrier is an integrated system and should be inspected holistically.

If the barrier fails reinspection, the notice of non-compliance issued to the owner needs to include all non-compliant items, not just an update on the items that failed the first time.

The written contract with the owner for the first inspection may have provisions related to reinspections. If not, a new contract will be needed for

the reinspection.

Each reinspection must also be entered into the Swimming Pool Register.

## **2. Reinspecting a pool when a property changes ownership**

When a property is sold that has a certificate of non-compliance for the pool, the new owner may ask the certifier who carried out the original inspection to do a 'reinspection' only covering the items that failed the first time.

The certifier should explain to the new owner that the inspection will be a full inspection, not just a spot check. It may have been months since the first inspection, and conditions on the property may have changed.

The new owner may ask to see the certifier's original inspection report. Keep in mind that the previous owner did not have to give this to the new owner, and only had to provide the certificate of non-compliance.

The certifier's written contract for the first inspection was with the previous owner, so a new contract will be needed with the new owner.

» [More advice for E1 certifiers](#)

---

## **Events, training and resources**

### **On exhibit: complying development in greenfield areas**

The Department of Planning and Environment invites your comments by **16 June 2017** on a [review of complying development in greenfield areas and a proposed Greenfield Housing Code](#) intended to increase housing supply and affordability.

## On exhibit: Planning for Bush Fire Protection 2017

The NSW Rural Fire Service invites your comments by COB **25 June 2017** on [Planning for Bush Fire Protection 2017](#), which provides development standards for building in bush fire prone areas.

## Subscribe to receive news from Fair Trading

[Fair Trading's Foundations e-newsletter](#) provides regular updates on the building and construction industry, including events, practice advice and consultations.

## Department of Planning and Environment news

- [Customer enquiries now managed at Service NSW](#)
- [Have your say on improving housing affordability](#): open forum closes midday 8 June 2017.
- [Nominations of qualified persons to carry out hazard/fire safety studies of complying development under the Three Ports SEPP](#): nominations close 5pm, 21 June 2017.

## National Construction Code news

The Australian Building Codes Board regularly publishes [NCC news and resources](#) on its website. For example:

- [NCC seminar series online videos](#)
- [Revised CodeMark Australia Scheme](#) to be implemented early in the second half of this year
- [Classification of farm buildings](#)
- [Opportunities and barriers associated with performance solutions](#)

## Continuing professional development for certifiers

- [Association of Accredited Certifiers](#)
- [Australian Institute of Building Surveyors](#)
- [Royal Institution of Chartered Surveyors](#)
- [Institute of Access Training Australia](#)
- [CPD activities for E1 certifiers](#)

▸ [CPD requirements for certifiers](#)

---

Signup to receive emails >

Send to a friend >

#### **Important note**

This e-news 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 e-news.

#### **Disclaimer**

While every reasonable effort has been made to ensure that this document is correct at the time of publication, the State of New South Wales, its agencies and employees, disclaim any and all liability to any person in respect of anything or the consequences of anything done or omitted to be done in reliance upon the while or any part of the document. State of New South Wales through the Building Professionals Board.

#### **Building Professionals Board**

PO Box 3720  
Parramatta NSW 2124  
(02) 8522 7800  
[bpb@bpb.nsw.gov.au](mailto:bpb@bpb.nsw.gov.au)  
[www.bpb.nsw.gov.au](http://www.bpb.nsw.gov.au)

[Unsubscribe](#)





July/August 2017

## **Certifiers help ensure safer buildings**

Recent tragic events have focused attention on building fire safety, which can be compromised by the use of inappropriate products, or by incorrectly installing the right product.

The [NSW Government's 10 point plan](#) will expedite a number of fire safety reforms intended to keep families safer in their homes.

Accredited certifiers can help drive industry improvement by carefully scrutinising evidence of product compliance or conformity and refusing to issue certificates if appropriate.

This issue of the e-news reinforces a certifier's role in monitoring compliance, highlights the use of data to improve regulation, and continues our theme of certifiers as public officials.

## **In this issue**

**2016-17 achievements**

**Data for better buildings**

**Non-conforming products**

**Conflicts of interest**

**Responding to complaint investigations**

**Practice advice**

**E1/pool certification advice**

**General reminders**

**BPB part of Fair Trading**

**Legislative updates**

**Asbestos risk: former disposal sites**

**Events, training & resources**

## 2016-17 achievements

The 2016-17 financial year was a great success for the Board.

Most complaints determined by the Board in 2016-17 lacked evidence of wrongdoing by the certifier. As in previous years, this shows that the majority of certifiers meet their legislative obligations, uphold the public interest and take care in their work.

Some of the Board's achievements during 2016-17 include:

- processing accreditation applications 33% faster than in 2015-16
- reducing undetermined complaints by 70% to a record low of 21
- completing significant investigations into the certification activities of some local councils
- implementing continuing professional development (CPD) requirements for swimming pool certifiers
- recognising more building surveying qualifications as meeting the criteria for certifier accreditation.

More about our performance during 2016-17 will be published in the next e-news and, of course, in the upcoming annual report.

---

## Data supports better buildings – new reporting by certifiers

In response to the [Lambert Review](#) the NSW Government recognises that systems to capture, use and share building certification data can be improved.

Robust and detailed data has a vital role in ensuring better buildings, because it can tell us about both the compliance of individual buildings and

potential weaknesses in the regulatory system.

Later this year, local councils and A1, A2 and A3 certifiers will start reporting data to the Government about the buildings they certify.

Among other important details, they'll report whether a building includes performance solutions, such as to its facade or fire safety systems, and if any critical stage inspections were missed.

First there will be a voluntary reporting phase, followed by mandatory reporting from a date to be announced.

▶ [Read more](#)

---

## **Non-conforming and non-complying building products**

Building work must conform and comply with the National Construction Code, relevant technical standards and legislation.

Everyone in the supply chain has responsibility to help ensure the right products and materials are used in the right way. Using substandard ('non-conforming') products or materials, or using them incorrectly ('non-complying') can result in significant costs, safety risks or even building failure.

## **The role of certifiers**

Certifiers must ensure building plans and specifications meet relevant legislative requirements, including applicable conditions of consent, codes and standards. They are also responsible for checking building work (elements that are readily visible at critical stage inspections) meets such

requirements, and for seeking supplementary evidence to verify compliance and conformance.

Before issuing a certificate, certifiers should obtain satisfactory evidence that products and materials are suitable and used correctly.

## Resources

- [External walls and cladding](#): Department of Planning and Environment.
- [Advisory Note - Fire performance of external walls and cladding \(ABCB\)](#): applying the deemed-to-satisfy provisions for buildings of Type A and B construction.
- [Fire safety guidelines for external walls \(CSIRO\)](#): how to ensure compliance for high-rise buildings.

## National action

The national [Building Ministers' Forum](#) is focusing on minimising the risks of non-conforming products by working to, for example, enhance regulators' powers and review relevant Australian Standards.

› [Read more from NSW Fair Trading](#)

---

## Certifiers must avoid both actual and perceived conflicts of interest

Certifiers must demonstrate independence and observe strict compliance with their statutory obligations and the [Code of Conduct](#). This can be achieved with the help of sound business practices.

Even if the legislation (or case law) doesn't expressly make a particular scenario an actual conflict, it may give rise to a perceived conflict and so must be avoided, as per the Code of Conduct.

Unsure if a particular situation could be perceived as a conflict of interest? Consider how an outside observer might see it, and discuss it with your colleagues.

Also, [test your knowledge of conflict of interest provisions](#).

## Resources

- [ICAC advice on conflicts of interest](#) (see the heading 'risk management strategies') and [regulatory functions](#).
- [The 'Stapleton case' \(2004, NSW ADT\)](#): sets out a protocol designed to prevent or manage conflicts of interest.
- [When is there a conflict of interest for an accredited certifier?](#) 2001 practice note.
- [Guide to Auditing for Building Surveyors](#): published by the SA Government but with useful tips for certifiers anywhere (see part 4 on p.7).

Conflict of interest provisions are set out in [sections 66-71 of the \*Building Professionals \(BP\) Act 2005\*](#), and [clause 7AA](#) and [clauses 17-18A](#) of the BP Regulation.

▶ [Read more](#)

---

## Cooperating in investigations benefits certifiers

Public officials such as certifiers are expected to respond to complaints about their professional conduct promptly and appropriately.

When the Board receives a complaint it will give the certifier opportunity to provide, by a set date, submissions on the allegations. A complaint potentially affects a certifier's livelihood and reputation, so the opportunity to provide a response is not something to delay or ignore.

If a complaint is proven, the certifier's cooperation during the investigation will be considered when determining any penalty.

[By law](#), the Board can require certifiers to provide evidence if it is not voluntarily provided.

▶ [Read more about the complaints process](#)

---

## Practice advice

### 1. Missed inspections: a builder's error is *not* the certifier's responsibility

The *Environmental Planning and Assessment (EP&A) Act 1979* gives certifiers clear authority to refuse to issue an occupation certificate (OC) if a missed inspection is not 'unavoidably missed'.

It does not permit certifiers to issue an OC if an inspection is missed just because the builder forgot to request it.

Builders are responsible for their own work. However, it is not uncommon for certifiers to be pressured to overlook (or find a solution to) a missed inspection that was not unavoidably missed.

It has been suggested to the Board that certifiers who refuse to issue an OC are seen as obstructive, which lowers the regard held for certifiers by the industry and public.

By contrast, the Board holds that **industry and public perception of private certification will only improve when certifiers are resolute in carrying out their statutory duties as public officials.**

Certifiers need to manage builder and development owner expectations by clearly advising they are a public official. This means:

- a builder who has previously worked with a particular certifier shouldn't assume a missed inspection might be overlooked or a certificate issued
- an owner shouldn't assume that upfront payment of the certifier's fees guarantees a certificate will be issued.

Certifiers can reduce potential pressure by ensuring development owners and builders understand, before work commences that:

- they are appointed by the owner and owners have obligations in the certification process
- the builder needs to request each critical stage inspection
- an OC may be refused if an inspection is missed without good reason
- the certifier is not responsible for 'fixing things' if the owner or builder don't meet their legislative obligations.

## **2. Complying development SEPP standards are mandatory and non-discretionary**

Recent complaints show that a small number of certifiers, while knowledgeable, may lack care when it comes to the details and/or exercise their discretionary powers inappropriately.

These certifiers issued complying development certificates (CDCs) for work that failed to meet prescribed standards in the relevant State Environmental Planning Policy (SEPP). The errors seem to arise when certifiers don't methodically assess a development against each standard.

A CDC application must demonstrate how the proposal will meet prescribed distance, dimension and other applicable SEPP standards, each of which is non-discretionary. Careful assessment is needed because work that fails even one standard cannot be complying development.

### **3. Access matters: Premises Standards advice**

The Board's website has [advice on applying the Disability \(Access to Premises — Buildings\) Standards 2010](#) and considering applications made on the grounds of 'unjustifiable hardship'.

**Quick tip:** 'unjustifiable hardship' exemptions do not apply to non-compliance with the Building Code of Australia, or to non-compliance with a condition of consent related to access or facilities for people with a disability.

Enquiries about the Premises Standards should be directed to the [Department of Planning and Environment](#).

[As advised recently](#), the Board no longer administers any aspect of the Premises Standards.

▶ [More practice advice](#)

---

## **Swimming pool certification advice**

### **1. Pool compliance: near enough is *not* good enough**

An E1 certifier inspecting a swimming pool barrier is just as much a public official as an A1 certifier inspecting a high-rise building. This means an E1 certifier's ultimate client is the NSW public, not the individual pool owner.

AS 1926.1 sets specific requirements for swimming pool barriers. A pool will either comply or not comply – there is no level of acceptable tolerance.

If a pool fails even one requirement of the relevant version of AS 1926.1 and/or the *Swimming Pools (SP) Act 1992* and Regulation, the certifier:

- must **not** issue a certificate of compliance, **and**
- **must** issue a certificate of non-compliance and notice of non-compliance.

Complaints have been received about certifiers issuing compliance certificates for pools that 'just about' meet requirements but have one or two discrepancies that are 'minor' from the certifier's viewpoint.

These certifiers are under investigation by the Board and may be subject to [disciplinary action](#) if found guilty of unsatisfactory professional conduct.

## **2. Contact council first for 'significant risk' pools**

If a swimming pool fails inspection, the owner may engage any appropriately accredited private certifier or the council to reinspect it.

Even if the pool was first inspected by the council, or reported to it as a significant risk, the owner does not have to ask the council for the reinspection.

However, **before inspecting a pool**, it's good practice to:

- check the [NSW Swimming Pool Register](#) to see if a certificate of non-compliance and notice have been issued and, if so,
- contact the council or certifier that issued these, to discuss why, if the reasons aren't clear in the inspection record.

If the pool has been deemed a significant risk, contacting the council is important because the council may be planning follow-up action.

Also, pool owners might assume that a certificate of compliance automatically makes void any previous notice or council direction. Certifiers should explain this is not necessarily the case, because the council still has discretion to take action.

### **3. Councils take note: contract only needed for s.22C pool inspections by certifiers**

A written contract for a pool barrier inspection is needed only if both of the following apply:

- the inspector is an accredited certifier (private or council)
- the inspection is carried out under section 22C of the SP Act (i.e. at the owner's request, not under council's pool inspection program).

A contract is not required for any inspection by a council officer who is not an accredited certifier, or an inspection by a certifier that is part of council's pool inspection program under section 22B of the SP Act.

▶ [More E1 practice advice](#)

---

## **General reminders: CPD and online register**

### **1. Complying development course – last days**

Most certifiers have completed the mandatory complying development course – only a few are yet to do so.

[Find out when you must complete the course.](#)

### **2. E1 CPD: six hours from your second year onwards**

E1 certifiers in their second year of accreditation must complete six hours of Board-approved CPD in order for their accreditation to be renewed.

[Approved activities are listed on the Board's website.](#)

### **3. Are your online certifier register details up to date?**

The register of certifiers is the most popular part of the Board's website and helps homeowners find a certifier for their development.

If your details aren't up to date, you may miss out on work. Also, certifiers must by law notify the Board if their details change.

Certifiers, [check your entry in the online register](#) and [contact the Board](#) if it needs to be updated.

---

## **Building Professionals Board part of Fair Trading**

In mid-2015 the Board announced its transfer to the Department of Finance, Services and Innovation (DFSI). More specifically, we're part of NSW Fair Trading, which is in turn part of DFSI.

The rewrite of the BP Act, now underway, will abolish the Building Professionals Board as a statutory entity and transfer its functions to DFSI.

Our staff are still here and happy to help you but in preparation for the shift you may notice the Board's letterheads and email signatures now match those of Fair Trading. Later this year our website will be integrated with the Fair Trading site and there will be a refreshed newsletter.

[Your suggestions](#) for the future newsletter are welcome.

---

## Legislative updates

### 1. Simplified Housing Code in force, and Electronic Housing Code no more

The [simplified Housing Code](#) replaced the General Housing Code from 17 July 2017, so now is a great time for certifiers to update their CDC checklists.

Simpler planning rules now apply to one and two-storey homes, making it easier for certifying authorities to assess CDC applications.

Other recent, minor changes to the [Exempt and Complying Development Codes SEPP](#) have clarified definitions and simplified the policy.

With the simplified Housing Code and expansion of the Planning Portal, the [Electronic Housing Code has been decommissioned](#).

### 2. Fire safety amendments from 1 October

The improved design, installation and maintenance of building fire safety systems is a NSW Government priority being achieved through [amendments to the EP&A Regulation](#).

From 1 October 2017 there will be stricter requirements for the design, approval, inspection and maintenance of fire safety systems in complex buildings.

The Board intends to publish guidance to help certifiers meet their obligations under the amended legislation.

The [Board's website](#) has more information.

### **3. Strata building bond scheme now commences 1 January 2018**

The new strata building bond and inspection scheme will now commence on 1 January 2018. It was originally scheduled to commence on 1 July 2017.

The scheme will only apply to construction contracts signed (or where there is no contract and building work commences) from 1 January 2018.

The [NSW Fair Trading website](#) has more information.

### **4. Home building compensation to change in 2018**

In early 2018, reforms to the home building compensation scheme will commence and private providers will be invited to apply to join the market.

The reforms mean that builders will still need to:

- obtain home building compensation cover for residential building work costing more than \$20,000
- give a certificate of insurance to the homeowner before starting work or accepting any money, including a deposit.

The [State Insurance Regulatory Authority website](#) has more information.

---

### **Asbestos risk reassessment at James Hardie disposal sites**

The contamination risk at former James Hardie Industries asbestos disposal sites is being reassessed following a recent NSW Ombudsman's report into asbestos management in NSW.

Councils identified as having James Hardie asbestos disposal sites include Parramatta, Cumberland, Fairfield, Liverpool and Wingecarribee.

Relevant NSW Government agencies are working with these councils to ensure appropriate management of the sites.

## More information

- [NSW Environment Protection Authority: James Hardie asbestos waste contamination legacy](#)
- [SafeWork NSW: asbestos information](#)
- [NSW Ombudsman's report on asbestos management in NSW \(April 2017\)](#)

Contact the Environment Protection Authority if you are dealing with a development that is contaminated and require specific advice: 131 555 or [info@environment.nsw.gov.au](mailto:info@environment.nsw.gov.au)

---

## Events, training and resources

### Reminder: NSW Guide to Standards and Tolerances 2017

NSW Fair Trading released a 2017 edition of the [NSW Guide to Standards and Tolerances](#) in March this year.

The Guide is an advisory resource that helps give an understanding of the tolerances that are considered when determining whether a building element has been installed/constructed to an acceptable standard.

### Continuing professional development for certifiers

- [Association of Accredited Certifiers](#)
- [Australian Institute of Building Surveyors](#)
- [Royal Institution of Chartered Surveyors](#)
- [Institute of Access Training Australia](#)
- [CPD activities for E1 certifiers](#)

The [Board's website](#) has more information about CPD requirements.

---

Subscribe to e-news



Send to a friend



**Important note**

This e-news 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 e-news.

**Disclaimer**

While every reasonable effort has been made to ensure that this document is correct at the time of publication, the State of New South Wales, its agencies and employees, disclaim any and all liability to any person in respect of anything or the consequences of anything done or omitted to be done in reliance upon the whole or any part of the document. © State of New South Wales through the Building Professionals Board.

**Building Professionals Board**

PO Box 3720  
Parramatta NSW 2124  
(02) 8522 7800  
[bpb@bpb.nsw.gov.au](mailto:bpb@bpb.nsw.gov.au)  
[www.bpb.nsw.gov.au](http://www.bpb.nsw.gov.au)

[Unsubscribe](#)





September/October 2017

## **2016-17 efforts a precursor of exciting changes**

As reported in the [July/August e-news](#), 2016-17 was a very successful year for the Building Professionals Board.

For example, our regular practice advice to certifiers and focus on raising public awareness of their work helped reduce the number of complaints against certifiers by 23% in 2016-17 compared to 2015-16.

Substantial progress was also made on important certification reforms. So far, a lot of this work has occurred behind the scenes, but some exciting changes are imminent.

For example, the Board will soon commence risk-based audit programs to help certifiers meet their statutory obligations and achieve best practice. Audits are part of the Government response to the [BP Act Review](#).

## **In this issue**

**Griffith Council investigation**

**Accreditation reminders**

**Practice advice**

**Housing Code transition**

**Responsible OC issue**

**Case defines OC scope**

**Mine subsidence changes**

**Job opportunities at BPB**

**Consultations**

**Events, training & resources**

The focus will be on education, but identified offences may lead to the issue of a penalty notice. Where warranted, serious matters may result in a full investigation.

Details will soon be available on our website.

---

## Investigation of Griffith City Council

The Board recently completed an investigation of Griffith City Council in its capacity as a certifying authority.

The [final investigation report](#) made recommendations on how the council manages, operates and delivers certification services. The council must implement the recommendations and report to the Board by late July 2018.

The Board investigates councils as well as private certifiers to ensure consistency and legislative compliance across the certification system.

▶ [Read more](#)

---

## Accreditation reminders and updates

### 1. A4 student accreditation now 80% cheaper

If you're still studying, pay just \$250 to apply for, or renew, your A4 'student pathway' accreditation – an 80% reduction in the accreditation fee.

### 2. Renewal reminders will now be emailed

Reminders to renew your accreditation will now be emailed, not posted. You'll receive a reminder 60 days before your accreditation is due to expire, and another at 30 days.

Check the [online register](#) to ensure your email address is current, so the Board – and potential customers – can contact you. Remember, your accreditation is your responsibility.

› [Renew / change accreditation](#)

---

## Practice advice

### 1. Performance solutions may not be labelled on plans

A BCA performance solution may not be labelled as such on building plans.

Unless the plans and specifications demonstrate that an aspect of work meets **all** applicable DTS provisions, a performance solution may be required. Performance solutions may only be assessed by certifiers authorised to do so.

If a performance solution is proposed, the CC or CDC application must include a statement as to how the BCA performance requirements will be met. If this is not provided, the application does not comply with the EP&A Regulation and the certifier must either refuse it or ask for more information.

#### Relevant legislation

- [Clause 4\(5\)\(c\) of Schedule 1](#) of the EP&A Regulation (for CDCs).
- [Clause 6\(3\)\(c\) of Schedule 1](#) of the EP&A Regulation (for CCs).

### 2. Class 1a houses need smoke alarms, not detectors

Part 3.7.2 of the BCA requires class 1a buildings to have smoke alarms.

'Smoke alarm' cannot be used interchangeably with 'smoke detector' on building plans. They have different roles, and smoke detectors do not have an alarm.

Certifiers of class 1a buildings need to check plans, specifications, electricians' certificates and installed work to ensure the owner and builder refer to, and install, smoke alarms, not smoke detectors.

### **3. Appropriate action if work starts without notifying the council**

**What should a private PCA do if the applicant doesn't notify the council at least two days before building or subdivision work commences?**

As soon as the principal certifying authority (PCA) becomes aware of the matter, he/she should advise the applicant that they must notify the council as a matter of urgency. The PCA should follow up with the applicant to make sure the council was notified.

Depending on how advanced the work is, the PCA may not be in a position to provide a statement that all pre-commencement conditions of consent have been met. This statement is required to accompany the applicant's notice to council.

If the PCA cannot be satisfied that all preconditions are met, he/she may need to issue a s.109L notice of intention to ensure the council, as the enforcement authority, is aware and can decide whether to take action.

**Help make applicants aware of their obligation to notify council before work starts**

Certifiers can help avoid unnecessary regulatory involvement by clearly advising applicants, and by explaining an applicant's obligations in documents such as the contract for PCA work.

After issuing a CC or CDC, certifiers can also contact applicants they haven't heard from in a while and give a friendly reminder.

### **Relevant legislation**

- [Section 81A\(2\)\(b2\)\(iii\) of the EP&A Act](#) requires the person with benefit of development consent to notify the council and PCA at least two days before building or subdivision work commences.
- [Clause 104\(f\) of the EP&A Regulation](#) requires the notice to include a statement signed by or on behalf of the PCA that all pre-commencement conditions of consent have been met.
- [Section 86 of the EP&A Act](#) and [clause 136\(f\) of the Regulation](#) echo the above requirements and apply to complying development.

## **4. A s.109L notice may reduce your complaint risk**

Some recent complaints against certifiers suggest that, had the certifier acted earlier to address a complainant's concern by issuing a s.109L notice of intention, the complaint may not have been made.

The s.109L notice would have formally alerted the council to the issue affecting the development, and may have resulted in the council taking action sooner in its capacity as enforcement authority.

Although issuing a notice is no guarantee against a complaint, if one is made, the fact that a notice was issued is likely to weigh in a certifier's favour.

Certifiers can download our [template notice of intention to serve an order](#) and [advice on how to complete the template](#).

› [More practice advice](#)

---

## Advice on Housing Code transitional arrangements

On 22 September 2017, a two-year transitional period for the Housing Code was introduced under the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (Codes SEPP).

Until 13 July 2019, applicants may choose to have their project approved under either the new simplified Housing Code or the previous General Housing Code.

New subclause 134(1A)(c) of the EP&A Regulation requires a CDC to specify which of the two codes was applied.

### The applicant must nominate the relevant code

Although Schedule 1 of the EP&A Regulation requires the application to name the environmental planning instrument (i.e. Codes SEPP), this won't give the certifier enough detail to satisfy clause 134(1A)(c).

If the applicant hasn't nominated the code, the certifier should seek **written** clarification from the applicant as to which code is to apply. A certifier has no authority to choose a code on the applicant's behalf.

Written clarification gives the certifier confidence in applying the correct code and avoids misunderstanding the applicant's intentions.

› [Read more](#)

---

## Responsible issue of an OC

An occupation certificate (OC) is a statement to current and future occupants and the community that a building is suitable for occupation and meets legislative requirements and relevant conditions of consent.

It means that a person independent of the developer's and builder's interests has inspected and found the building satisfactory.

It is expected of a certifier, as the independent regulator, to issue an OC only if satisfied as to all necessary requirements. The low number of complaints against certifiers, compared to the number of OCs they issue, shows that most certifiers only issue an OC after due consideration.

However, in a recent complaint investigated by the Board, a certifier issued an interim OC with caveats that eroded the very purpose of an OC.

Statements by the certifier on the OC indicated that it specifically excluded:

- all the preconditions that the development consent required to be met before an OC was issued
- unspecified (and unauthorised) works that were the subject of an application to the council for a building certificate.

The certifier failed to ensure the building was suitable for occupation, that all relevant conditions of consent were met, and that it wouldn't pose a health or safety risk. For example, the building did not have all required fire protection measures, and some openings in fire resistant walls weren't protected. The certifier was appropriately disciplined.

A certifier helps regulate the building industry. Deciding whether to issue an OC gives a certifier appreciable power to ensure buildings meet the standards required by law and expected by the public.

› [Read more](#)

---

## **Court helps define OC scope and PCA liability**

A recent case in the NSW Court of Appeal has helped define the scope of an OC and a PCA's liability to subsequent property owners.

In 2015 the Supreme Court in [Chan v. Acres](#) found Ku-ring-gai Council, as PCA, had a duty to take reasonable care when issuing an OC to avoid subsequent owners of a house suffering financial loss due to the owner-builder's defective work. The council had not identified the defects and other non-compliances before issuing an OC.

This decision was recently overturned by the Court of Appeal in [Ku-ring-gai Council v Chan](#).

The Court found that an OC verifies a building can be lawfully and safely occupied, but not that all work complies and was built properly. It also held that owners and builders are responsible for building properly and there are statutory warranties and insurance to cover the work.

› [Read more](#)

---

## **Mine subsidence changes reminder**

A reminder that on 1 July 2017, changes to mine subsidence districts came into effect, with some new districts added and some removed.

All proposed development in a mine subsidence district, including complying development, must first be referred to Subsidence Advisory for approval.

View [maps of the revised districts](#) and use the online mapping system to find out whether a property is in a district.

› [Read more](#)

---

## Job opportunities at BPB

In coming months the Board will advertise a number of positions for investigators, some of whom will work on the exciting new audit program soon to commence. Other roles will also be advertised.

Don't miss this great opportunity – check [I work for NSW](#) (the Government jobs board) regularly, and subscribe to receive job alerts.

› [I work for NSW](#)

---

## Consultations

### NCC fire safety survey

The Australian Building Codes Board is surveying NCC users on the fire safety requirements of the National Construction Code for class 4-9 buildings. [Click here to complete the survey by 29 October 2017.](#)

### EP&A Regulation proposals

The Department of Planning and Environment is exhibiting proposed changes to the EP&A Regulation. [Click here to view and comment on the proposals by 24 November 2017.](#)

---

## Events, training and resources

### Fair Trading Building Business Expos

Chat with staff from the Building Professionals Board at a NSW Fair Trading Building Business Expo – we'll be at Liverpool on 9 November.

Visit the [Fair Trading website to register your attendance](#).

### Continuing professional development for certifiers

- [Association of Accredited Certifiers](#)
- [Australian Institute of Building Surveyors](#)
- [Royal Institution of Chartered Surveyors](#)
- [Institute of Access Training Australia](#)
- [CPD activities for E1 certifiers](#)

The [Board's website](#) has more information about CPD requirements.

---

Subscribe to e-news



Send to a friend



#### Important note

This e-news 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 e-news.

#### Disclaimer

While every reasonable effort has been made to ensure that this document is correct at the time of publication, the State of New South Wales, its agencies and employees, disclaim any and all liability to any person in respect of anything or the consequences of anything done or omitted to be done in reliance upon the whole or any part of the document. © State

#### Building Professionals Board

PO Box 3720  
Parramatta NSW 2124  
(02) 8522 7800  
[bpb@bpb.nsw.gov.au](mailto:bpb@bpb.nsw.gov.au)  
[www.bpb.nsw.gov.au](http://www.bpb.nsw.gov.au)