



Accredited practitioner Co-regulatory accreditation framework

Guideline for the approval of bodies corporate as accreditation authorities under section 61 of the *Building and Development Certifiers Act 2018*

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Introduction

The *Building and Development Certifiers Act 2018* (BDC Act) allows the Commissioner for Fair Trading (the Commissioner) to approve an industry organisation as an accreditation authority of 'accredited practitioners' who carry out certain 'regulated work' under the Environmental Planning and Assessment Regulation (EP&A Regulation).

The BDC Act and Regulation set the requirements that an organisation must meet for approval to accredit accredited practitioners. Approval comes into effect when the Commissioner publishes an order in the NSW Government Gazette. Accredited individuals may then perform their accredited practitioner functions.

An organisation with an approved accreditation scheme has the following functions:

- to accredit people as accredited practitioners in accordance with the approved accreditation scheme
- to ensure accreditation holders comply with the requirements of their accreditation
- to investigate possible failures by accreditation holders to comply with requirements, and impose disciplinary action
- any other function imposed by legislation.

Important note: This guideline does not repeat the requirements for accreditation authorities as set out in the Building and Development Certifiers legislation. Organisations applying for approval are expected to read this guideline in conjunction with the legislation to ensure their application meets requirements.

Accreditation scheme approval process

Submitting an application

An organisation seeking approval of its accreditation scheme must apply to the Commissioner. The application must address all requirements of the BDC Act, BDC Regulation and this guideline.

The scheme must relate to a specific function or functions of accredited practitioners.

Assessment and determination

The Commissioner will assess the application and may request, in writing, additional information to properly assess the application. If the organisation does not provide the information the application may be refused.

An accreditation scheme will not be approved if the Commissioner is not satisfied that the application meets the requirements of the BDC Act, BDC Regulation and this guideline, or if approval is not in the public interest. The Commissioner may also take into consideration any other matter, such as how the scheme compares to other schemes.

The Commissioner may seek the view of the Commissioner of Fire and Rescue NSW, or other agency heads as appropriate, in relation to any application.

The organisation will be notified of the Commissioner's decision. If refused, written reasons will be provided.

The organisation may apply for an **internal review of a decision** to refuse an application for approval of an accreditation scheme (or to impose specific conditions of approval or suspend or cancel approval). The review will be done by someone independent of, and not less senior than, the person who made the original decision. Appeals for review may also be made to the NSW Civil and Administrative Tribunal.

Authority conferred on organisation with an approved accreditation scheme

The Commissioner will publish an order in the Gazette recognising persons who are accredited by the organisation as accredited practitioners. The organisation will then be allowed to:

- accredit individuals under the scheme as accredited practitioners for a specific function
- represent that its scheme has been approved to accredit accredited practitioners for a specific function.

Ongoing requirements of approval

The organisation must comply with the standard conditions of approval in [sections 67-74 of the BDC Act](#), the duties imposed by [clause 45 of the BDC Regulation](#), and any specific conditions imposed by the Commissioner.

Suspension or cancellation of approval

The Commissioner may suspend or cancel an accreditation scheme approval in certain circumstances. Grounds for suspension or cancellation, and the accompanying process, are set out in [sections 75-77 of the BDC Act](#).

The organisation must not accept any further applications or renewals from the suspension/cancellation date, and must implement its strategy for managing current accreditation holders. Any accreditation granted before the suspension/cancellation date will continue to have effect unless the Commissioner determines that this is not in the public interest.

An organisation may also **voluntarily suspend or cancel its accreditation scheme approval** by written notice to the Commissioner 180 days in advance.

Commissioner's powers

The Commissioner has the power to:

- require an application to be accompanied by a fee (fees are set out in the BDC Regulation)
- impose conditions on an approval, whether at the time of approval or later by varying the approval
- request information from an organisation
- suspend or cancel an approval
- appoint another organisation to exercise the functions of an organisation that is no longer approved
- audit or investigate an organisation, whether or not in response to a complaint
- refer matters to the Commissioner for Fire and Rescue NSW and/or other agency head for investigation
- impose penalties on an organisation and/or relevant person
- publish warning notices regarding an organisation in its role as an accreditation authority
- delegate any of the Commissioner's functions under this guideline, except the power of delegation.

Requirements for accreditation scheme approval

In its application, an organisation must demonstrate that it meets the following requirements and attach relevant documentation for each requirement.

Accreditation scheme

The application must include the information about its accreditation scheme required by [section 79 of the BDC Act](#) and [clauses 40-47 of the Regulation](#).

Section 79 of the BDC Act requires the scheme to include, **among other things**, processes for accepting and independently assessing applications for accreditation, complaints handling, investigation and disciplinary processes; and fees.

Clauses 40-47 of the BDC Regulation require the scheme to include, **among other things**, processes for avoiding conflicts of interest; recordkeeping requirements; a code of conduct; and a transition process if the organisation is no longer an accreditation authority.

In addition, the accreditation scheme documentation should flow logically and make it clear to the reader which accredited practitioner functions are covered, and any restrictions of the scheme and the reasons for those restrictions.

The application must also include:

- a brief outline of the nature of the organisation, including its history, organisational structure, core activities and industry sectors represented
- a designated contact person for communication with the Commissioner, including the person's name, position title, email, work phone number and mailing address
- the names and roles of anyone who manages the scheme and its day-to-day operations. These people must be fit and proper to perform these roles
- certificates of currency demonstrating the organisation has sufficient and current public liability insurance and professional indemnity insurance to operate its accreditation scheme.
- evidence, from relevant expert persons independent to the organisation (and with relevant subject matter expertise and expertise in assessment processes), that the accreditation assessment process will ensure that anyone accredited is competent to perform the specific function/s
- a link to the organisation's website or, if the website is yet to be published at the time of application, evidence that the website will meet the requirements of [clause 46 of the BDC Regulation](#) when published.

Accreditation processes

The accreditation scheme's application and renewal processes must:

- be fair, impartial, transparent and timely
- incorporate clear and objective accreditation criteria including:
 - skills, knowledge and experience requirements
 - requirements for applicants to hold nationally recognised qualifications and/or units of competency, accredited by the Australian Skills Quality Authority or from a higher education provider registered as a self-accrediting authority by the Tertiary Education

- Quality and Standards Agency (TEQSA) or a course of study accredited by TEQSA
 - the methods that will be used to evaluate the competence of individuals as they relate to the specific accredited practitioner function
 - the requirement for accreditation holders to have current professional indemnity insurance, specific to their accredited function/s, covering the prior ten years as an accredited practitioner undertaking those functions
 - any other entry and renewal requirements that the organisation considers necessary
- require the applicant to complete an application/renewal detailing the scope of accreditation sought and declaring that they:
 - agree to comply with the accreditation scheme requirements and other relevant laws
 - are not currently suspended from any other approved accreditation scheme
 - have not had their accredited practitioner accreditation revoked under any other approved scheme in the last five years
- provide that anyone who assesses applications/renewals is either independent (and holds relevant knowledge and experience), or reports to an independent panel established by the organisation that has relevant knowledge and experience
- have a method to verify information provided by applicants
- have a method to identify applicants who are or have been accredited under another approved accreditation scheme
- allow for appeals if accreditation or renewal is refused
- have a means to notify the Commissioner of applicants who are refused accreditation or appeal a decision to refuse accreditation
- have an accreditation period of between one and five years.

Conditions for accreditation holders

In addition to the standard conditions and requirements for accreditation holders, as set out in [clauses 43-44 of the BDC Regulation](#)), the standard conditions for accreditation holders must include:

- a condition that accreditation holders must make any restriction/condition on their accreditation known to any person, with failure to do so resulting in suspension or cancellation of accreditation
- a condition that accreditation holders must not represent that they are able to do work requiring a accredited practitioner that is beyond the function they are accredited for, with failure to do so resulting in suspension or cancellation of accreditation.

Complaints handling, investigation, discipline and monitoring

The process for handling complaints must:

- allow anyone to make a complaint about an accreditation holder or the organisation
- clearly separate the process of investigating a complaint from the decision-making process when the investigation is complete
- be conducted by persons who are independent of the matter and are fit and proper to perform the role
- allow appeals by complainants and accreditation holders
- notify the Commissioner of complaints against an accreditation holder.

The process for disciplining accreditation holders must:

- apply procedural fairness, be transparent and timely
- be conducted by persons who are independent of the investigation and fit and proper to perform this role
- set out grounds for disciplinary action, possible actions and how imposed actions will be monitored
- allow appeals by accreditation holders
- notify the Commissioner of actions taken
- include disciplinary decisions being publicly accessible on the organisation's website.

The process for monitoring and investigating accreditation holders must:

- include formal and informal audits of accreditation holders
- be conducted by people who are independent and fit and proper to perform this role
- aim for continual improvement by identifying areas of individual and systemic non-compliance, such as failure of accreditation holders to comply with the code of conduct (note: the code of conduct must impose requirements that are not less than the requirements imposed on certifiers by the [code of conduct for registered certifiers](#)).

Approval conditions and duties

Standard conditions and duties of approval

The organisation must comply with the standard conditions set by [sections 66-74 of the BDC Act](#). The Commissioner may impose, vary or revoke conditions as the Commissioner sees fit. If so, the Commissioner will notify organisations and provide a reasonable time period for those conditions to be implemented.

The standard conditions of approval provide for, **among other things**, exercising functions in the public interest, providing information to the Commissioner, independent audits, publishing information and record keeping.

In addition to the standard conditions and the duties imposed by [clause 45 of the BDC Regulation](#), the organisation must also:

- notify the Commissioner **as soon as becoming aware** of any matter that may jeopardise public confidence in the scheme or public safety more broadly
- notify the Commissioner **within two days of becoming aware** that the organisation no longer complies with a requirement of the BDC Act, Regulation or this guideline, or a condition of approval
 - The Commissioner may suspend or cancel an organisation's approval if notification is not provided, and may suspend approval until compliance is achieved.
- comply with the provisions of any relevant statutes, regulations, by-laws and requirements of any Commonwealth, State, Territory or local authority.

Specific conditions of approval

The Commissioner may impose specific conditions of approval where the Commissioner considers it appropriate to do so. Specific conditions may be imposed at or after the time of approval.

The Commissioner will notify the organisation in writing of any proposed condition/s and the reason for it, and invite written representations within 21 days. The Commissioner will consider these representations before finalising its decision and notifying the organisation in writing.

Accredited practitioner functions

The functions covered by this guideline include, but are not limited to:

- 1) **Prepare a fire safety performance solution report** (clause 130 and 144A)
- 2) **Endorse plans and specifications for *relevant fire safety systems*** (clause 136AA and 146B)

Relevant Fire Safety System includes:

- a) *A hydraulic fire safety system* within the meaning of clause 165, being:
 - i) a fire hydrant system, or
 - ii) a fire hose reel system, or
 - iii) a sprinkler system (including a wall wetting sprinkler or drencher system), or
 - iv) any type of automatic fire suppression system of a hydraulic nature,
that is installed in accordance with a requirement of, or under, the Act or any other Act or law (including an order or a condition of an approval or some other sort of authorisation).
 - b) A fire detection and alarm system
 - c) A mechanical ducted smoke control system
- 3) **Endorse non-compliance with Building Code of Australia standards for minor works to existing fire safety systems** (clause 164B)
 - 4) **Undertake:**
 - a) **Assessment of performance capability of existing essential fire safety measures (annual fire safety statement) (Division 5 of Part 9).**
 - b) **Assessment of performance capability of critical fire safety measures (supplementary fire safety statement) (Division 5 of Part 9).**
 - c) **Inspection of the building to determine whether there are grounds for prosecution under Division 7 of Part 9**

The statutory fire safety measures include:

- a) Access panels, doors and hoppers to fire-resisting shafts
- b) Automatic fail-safe devices
- c) Automatic fire detection and alarm systems
- d) Automatic fire suppression systems
- e) Emergency lifts
- f) Emergency lighting
- g) Emergency warning and intercommunication systems
- h) Exit signs
- i) Fire control centres and rooms
- j) Fire dampers

- k) Fire doors
- l) Fire hose reel systems
- m) Fire hydrant systems
- n) Fire seals protecting openings in fire-resisting components of the building
- o) Fire shutters
- p) Fire windows
- q) Lightweight construction
- r) Mechanical air handling systems
- s) Perimeter vehicle access for emergency vehicles
- t) Portable fire extinguishers
- u) Safety curtains in proscenium openings
- v) Smoke alarms and heat alarms
- w) Smoke and heat vents
- x) Smoke dampers
- y) Smoke detectors and heat detectors
- z) Smoke doors
- aa) Solid core doors
- ab) Standby power systems
- ac) Wall-wetting sprinkler and drencher systems
- ad) Warning and operational signs

Glossary

Accreditation holder means a person who holds accreditation under an accreditation scheme.

Accreditation scheme is a document that sets out the requirements an individual must meet for accreditation under that scheme, and is operated by an industry/professional organisation.

Approved accreditation scheme is an accreditation scheme approved by the Commissioner to accredit accredited practitioners to perform a specific function under the EP&A Regulation.

Organisation means a company registered under the *Corporations Act 2001* (Cth) or an incorporated association.

Code of conduct is a set of principles, values and rules of behaviour expected of accreditation holders.

Accredited practitioner means a person that is approved to perform a specific function ('regulated work') under the EP&A Regulation.