



Contact: Carlie Ryan  
Phone: 02 9895 5967  
Fax: 02 9895 5949  
Email: [bpb@bpb.nsw.gov.au](mailto:bpb@bpb.nsw.gov.au)

Mr Alan Lindsay  
Secretary  
Environmental Development and Allied Professionals  
PO Box 440  
COWRA NSW 2794

Dear Mr Lindsay

### **Council Accredited Certifiers**

Thank you for attending the Board's Information Session at Orange on Monday 22 March 2010. We hope you and the other council officers in attendance found the session helpful. I refer to your letter dated 24 March 2010 where you have raised several matters requiring clarification. I will refer to each of these in turn:

#### **1. Liability**

In respect of the issue of liability, the Board has obtained legal advice from the Crown Solicitor's Office to the effect that, once accredited, council employees will not be at a greater risk of personal liability in civil proceedings when carrying out certification work than before they were accredited.

In relation to your request to obtain a copy of this legal advice, it is not usual practice to make advice from the Crown Solicitor's Office publicly available in full. In summary, the advice from the Crown Solicitor's Office is that when Part 6A of the *Building Professionals Act 2005* commences a council employee who holds accreditation as a certifier, will not be at greater risk of personal liability in civil proceedings when doing certification work in the course of his or her employment, than when they weren't accredited. A council will usually be liable for the negligent acts of an employee except possibly in the case of serious or wilful misconduct by an employee. If a situation of serious misconduct arose then the provisions of section 731 of the *Local Government Act 1993* may well not apply. This is the current situation at law and is unlikely to be affected by requiring council employees to undergo a course of accreditation to become certifiers.

If your insurers have specific concerns that they would like raised, the Board is happy to raise these concerns directly with the Crown Solicitor's Office.

#### **2. Disciplinary procedures**

The Board will not issue fines against council accredited certifiers. The Board will be seeking to amend the *Building Professionals Act 2005* to clarify that fines and compensation will not apply to council accredited certifiers. The Board is endeavouring to make these changes before 1 September 2010.

### **3. Exemptions**

The *Building Professionals Amendment Act 2008* allows councils to apply to the Board to obtain two different types of exemption – an exemption from having an accredited person carry out certification work for the council and an exemption from having to carry out the principal certifying authority role. Councils will be able to make application to the Board, but the Minister must approve an exemption.

The Board is most conscious of the possible implications for regional councils in circumstances where those councils do not have staff capable of being accredited under the Board's scheme or where those councils have difficulty in attracting accredited persons, particularly in small "one man band" councils. The Board will be closely monitoring the submission of applications for accreditation in the next few months and contacting councils directly to discuss their particular situation where applications are not forthcoming. The Board is confident that a council's genuine concerns can be accommodated through the legislative framework which has been established.

In respect of inspections being carried out by certifiers with different levels of accreditation, the Building Professionals Regulation 2007 allows for category A2 council accredited certifiers to carry out any inspections required under section 109E(3)(d) of the *Environmental Planning and Assessment Act 1979* where those inspections are required to be carried out by a certifier with a category A1 level of accreditation. These inspections are only permitted to be undertaken with the consent of, and under the supervision of, a certifier authorised to issue occupation certificates with a category A1 level of accreditation.

The legislation also allows a council accredited certifier with a category A3 level of accreditation to carry out inspections required under section 109E(3)(d) of the *Environmental Planning and Assessment Act 1979* where those inspections are required to be undertaken by a certifier with a category A2 level of accreditation. Again these inspections are only permitted with the consent of, and under the supervision of, a certifier authorised to issue occupation certificates with a category A2 level of accreditation.

*Note: In each of these cases the inspections are able to be undertaken either by council accredited certifiers, private accredited certifiers or accredited body corporates.*

### **4. Procedure of engaging private certifiers**

From 1 September 2010, councils are required to engage accredited persons to carry out building certification work on their behalf. Councils have a number of options to comply with these requirements including using their own council accredited certifiers, engaging an external accredited certifier from the private sector, engaging an accredited body corporate, engaging accredited certifiers who are employed officers from another council or obtaining an exemption from the Minister to provide certification services.

At this stage, the Board does not consider that a practice note is required in relation to the engagement of private accredited certifiers as it considered little different to the processes councils would use to engage other contractors.

### **5. Availability of building surveying courses**

TAFE and undergraduate courses are currently being offered by a number of educational institutions. The Board has also been working with a number of educational institutions including Newcastle University, Charles Sturt University and Bond University and is confident that at least some of these institutions will be providing building surveying in NSW courses in the near future.

I look forward to your further assistance during the implementation process.

If you require further information about the implementation process, please check out the Board's website [www.bpb.nsw.gov.au](http://www.bpb.nsw.gov.au) or call the Council Accredited Certifier hotline on 1300 001 619 between 9am - 5pm on weekdays.

Yours sincerely

*Neil Cocks* 23/4/10

Neil Cocks

**Director**

**Building Professionals Board**