



Government Gazette

OF THE STATE OF
NEW SOUTH WALES

Number 137

Wednesday, 29 October 2008

Published under authority by Government Advertising

SPECIAL SUPPLEMENT



New South Wales

Commencement Proclamation

under the

Building Professionals Amendment Act 2008 No 37

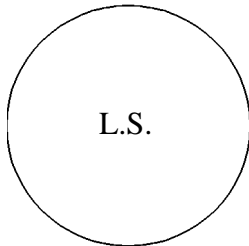
MARIE BASHIR, Governor

I, Professor Marie Bashir AC, CVO, Governor of the State of New South Wales, with the advice of the Executive Council, and in pursuance of section 2 of the *Building Professionals Amendment Act 2008*, do, by this my Proclamation, appoint 3 November 2008 as the day on which the following provisions of that Act commence:

- (a) Schedule 1 [4], [6], [8] (except to the extent that it inserts section 5A (1) (c)), [9], [12], [13], [15], [16], [19], [21], [33], [34], [36], [37], [39], [42], [47] and [48],
- (b) Schedule 2 [8] (to the extent to which it amends sections 46 and 65), [9] (except to the extent that it inserts the definition of *unsatisfactory professional conduct* of a building professional in section 19), [12], [15] and [16].

Signed and sealed at Sydney, this 29th day of October 2008.

By Her Excellency's Command,



L.S.

KRISTINA KENEALLY, M.P.,
Minister for Planning

GOD SAVE THE QUEEN!

Explanatory note

The object of this Proclamation is to commence certain provisions of the *Building Professionals Amendment Act 2008* that deal with the following matters:

- (a) the accreditation of bodies corporate as accredited certifiers and the requirements applying to accredited bodies corporate,

Commencement Proclamation

Explanatory note

- (b) the responsibilities of accredited certifier directors of accredited bodies corporate,
- (c) the responsibilities of accredited certifiers acting on behalf of councils and on behalf of accredited bodies corporate,
- (d) the procedures for the investigation of the work and activities of a council in its capacity as a certifying authority,
- (e) enabling the investigation of accredited certifiers carrying out certification work on behalf of an accredited body corporate or a council, and of accredited certifier directors.



New South Wales

Commencement Proclamation

under the

Environmental Planning and Assessment Amendment Act 2008
No 36

MARIE BASHIR, Governor

I, Professor Marie Bashir AC, CVO, Governor of the State of New South Wales, with the advice of the Executive Council, and in pursuance of section 2 of the *Environmental Planning and Assessment Amendment Act 2008*, do, by this my Proclamation, appoint 3 November 2008 as the day on which the following provisions of that Act commence:

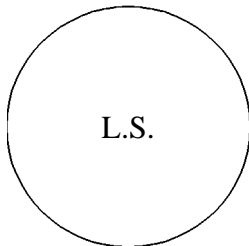
- (a) Schedule 1.2 [21],
- (b) Schedule 2.1 [1], [2], [6], [7], [10]–[12], [39], [40], [42]–[44], [46]–[50], [52], [53] and [55],
- (c) Schedule 2.1 [3] (but only to the extent that it inserts the definitions of *independent hearing and assessment panel*, *Planning Assessment Commission* and *planning assessment panel*),
- (d) Schedule 2.1 [8] (but not to the extent that it inserts section 23 (1) (g)),
- (e) Schedule 2.1 [9] (but only to the extent that it inserts section 23 (1A)),
- (f) Schedule 2.1 [13] (but only to the extent that it inserts Divisions 1, 2 (other than sections 23D (1) (d) and 23F (3)), 4 and 6 (other than sections 230 (2) and (4) and 23P) of Part 2A,
- (g) Schedule 2.1 [45] (but only to the extent that it inserts section 118 (7B) and (7C)),
- (h) Schedule 2.1 [51] (but only to the extent that it inserts section 118 (12) (d)),
- (i) Schedule 2.1 [54],
- (j) Schedule 2.1 [56] (but only to the extent that it inserts Schedule 3),
- (k) Schedule 2.2 [1]–[9], [11]–[15], [27], [47]–[54] and [59]–[74],
- (l) Schedule 2.2 [16] (but not to the extent that it omits section 80 (8)),
- (m) Schedule 2.2 [75] (but only to the extent that it inserts the heading to Division 3 of Part 21 of Schedule 6 and clause 124),

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Explanatory note

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- (n) Schedule 2.3 [1]–[4] and [6]–[10],
 - (o) Schedule 2.4,
 - (p) Schedule 2.6,
 - (q) Schedule 2.7,
 - (r) Schedule 2.8,
 - (s) Schedule 2.9,
 - (t) Schedule 4.1 [1],
 - (u) Schedule 4.1 [2] (but only to the extent that it inserts the definition of *accredited certifier*),
 - (v) Schedule 4.1 [6], [9], [15] and [23].
- Signed and sealed at Sydney, this 29th day of October 2008.

By Her Excellency's Command,



KRISTINA KENEALLY, M.P.,
Minister for Planning

GOD SAVE THE QUEEN!

Explanatory note

The object of this Proclamation is to commence certain provisions of the *Environmental Planning and Assessment Amendment Act 2008* that provide for the following:

- (a) the establishment and functions of the Planning Assessment Commission and independent hearing and assessment panels,
- (b) the repeal of provisions relating to Commissions of Inquiry,
- (c) protection from challenge of Ministerial decisions relating to the appointment of planning assessment panels to exercise councils' planning powers,
- (d) requiring the person having the benefit of a development consent or complying development certificate to notify the principal certifying authority before the commencement of certain building work or subdivision work,
- (e) changes to the procedures for replacing principal certifying authorities,
- (f) enabling the Minister for Planning to suspend, in certain circumstances, a council's authority to exercise some or all of its functions as a certifying authority,
- (g) amendments consequential on those changes.



New South Wales

Building Professionals Amendment (Accredited Bodies Corporate) Regulation 2008

under the

Building Professionals Act 2005

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Building Professionals Act 2005*.

KRISTINA KENEALLY, M.P.,
Minister for Planning

Explanatory note

The object of this Regulation is to amend the *Building Professionals Regulation 2007* as a consequence of amendments made by the *Building Professionals Amendment Act 2008* that enable the accreditation of bodies corporate as accredited certifiers. The Regulation deals with the following matters:

- (a) prescribing additional circumstances in which the Building Professionals Board may refuse to issue or renew a certificate of corporate accreditation,
- (b) prescribing conditions of accreditation of accredited bodies corporate,
- (c) the keeping of records by accredited bodies corporate,
- (d) insurance requirements in relation to accredited bodies corporate,
- (e) prescribing information in relation to accredited bodies corporate that is to be included in the Register kept by the Board,
- (f) specifying certain events that are to be notified to that Board by accredited bodies corporate,
- (g) prescribing application fees for accreditation and renewal of accreditation of bodies corporate,
- (h) the removal of a fee in relation to certain notifications that will no longer be required,
- (i) matters of a savings or transitional nature.

This Regulation is made under the *Building Professionals Act 2005*, including sections 5, 7, 9, 11, 60, 61, 63 and 94 (the general regulation-making power) and clause 1 of Schedule 2.

Clause 1 Building Professionals Amendment (Accredited Bodies Corporate)
Regulation 2008

Building Professionals Amendment (Accredited Bodies Corporate) Regulation 2008

under the

Building Professionals Act 2005

1 Name of Regulation

This Regulation is the *Building Professionals Amendment (Accredited Bodies Corporate) Regulation 2008*.

2 Commencement

This Regulation commences on 3 November 2008.

3 Amendment of Building Professionals Regulation 2007

The *Building Professionals Regulation 2007* is amended as set out in Schedule 1.

Building Professionals Amendment (Accredited Bodies Corporate)
Regulation 2008

Amendments

Schedule 1

Schedule 1 Amendments

(Clause 3)

[1] Clause 5A

Insert after clause 5:

5A Additional grounds for refusal to issue or renew certificate of corporate accreditation

For the purposes of section 7 (1A) (l) of the Act, the following reasons are prescribed as reasons why the Board may refuse to issue or renew a certificate of corporate accreditation:

- (a) if the Board is of the opinion that 2 or more persons who are either proposed accredited certifier directors of the body corporate concerned, or employees who are accredited certifiers of the body corporate, have together held positions in or been employed in another body corporate that has previously had its application for the issue or renewal of a certificate of corporate accreditation refused or had its certificate of corporate accreditation cancelled,
- (b) if a person who is concerned in the management of the body corporate has had a disciplinary finding made against him or her (whether under the Act or the *Environmental Planning and Assessment Act 1979*) that resulted in the suspension or cancellation of his or her certificate of accreditation.

[2] Clause 7 Prescribed conditions of certificates of accreditation

Insert at the end of clause 7 before the note:

- (2) It is a condition of every certificate of corporate accreditation that the body corporate concerned ensure that:
 - (a) each accredited certifier director of the body corporate undertakes a course relating to the responsibilities of accredited certifier directors that is arranged by the Board and notified to the body corporate, and
 - (b) the course is undertaken within the time required by the Board.

[3] Clause 8 Record keeping by accredited certifiers

Insert after clause 8 (2):

- (3) This clause is subject to clause 8A.

Building Professionals Amendment (Accredited Bodies Corporate)
Regulation 2008

Schedule 1 Amendments

[4] Clause 8A

Insert after clause 8:

8A Records relating to accredited bodies corporate

- (1) This clause applies to any document or record referred to in clause 8 (1) that is obtained or created by:
 - (a) an accredited body corporate, or
 - (b) an accredited certifier director of an accredited body corporate, or an accredited certifier who is an employee of an accredited body corporate, in the course of carrying out certification work on behalf of the body corporate.
- (2) The documents and records to which this clause applies are to be kept in accordance with clause 8 by the accredited body corporate concerned.
- (3) If the body corporate ceases to be an accredited body corporate, the person who last held the position of accredited certifier director of the body corporate before it ceased to be accredited and who is an accredited certifier must cause the documents and records to which this clause applies to be kept in accordance with clause 8.
- (4) If there is more than one accredited certifier who must cause documents and records to be kept as referred to in subclause (3), it is not necessary for each of those accredited certifiers to keep a separate set of those records and documents and those accredited certifiers may arrange between them the secure place in which the documents and records are to be kept for the purposes of clause 8.
- (5) Any document or record to which this clause applies is to be kept so as to enable it to be made available for inspection and copying on request by any person who obtained or created it in the course of carrying out certification work on behalf of the body corporate.

[5] Clause 10

Omit the clause. Insert instead:

10 Required insurance: section 63 of the Act

- (1) For the purposes of section 63 (2) of the Act:
 - (a) an insurance contract that an accredited certifier who is an individual is required to be indemnified by is a professional indemnity contract, and

Building Professionals Amendment (Accredited Bodies Corporate)
Regulation 2008

Amendments

Schedule 1

-
- (b) the liability against which an accredited certifier is required to be indemnified by such a contract is the accredited certifier's statutory liability for the whole of the period during which he or she has been an accredited certifier.
 - (2) For the purposes of section 63 (2) of the Act:
 - (a) an insurance contract that an accredited body corporate is required to be indemnified by is a company contract, and
 - (b) the liability against which an accredited body corporate is required to be indemnified by such a contract is the statutory liability of the accredited body corporate for the whole of the period during which it has been an accredited body corporate and the statutory liability of each person who is or was a director or employee of the accredited body corporate for the whole of the period during which he or she carried out work as an accredited certifier on behalf of the accredited body corporate.

[6] Clause 12 Company contracts

Omit clause 12 (2) and (3). Insert instead:

- (2) The indemnity provided by a company contract must extend to:
 - (a) in the case of a company that is an accredited body corporate, the body corporate, and
 - (b) all persons who, at any time during the term of the contract, are or become:
 - (i) accredited certifiers, and
 - (ii) directors or employees of the company, whether or not they cease to be accredited certifiers, or cease to be directors or employees of the company, during the term of the contract, and
 - (c) all persons who, at any time before the beginning of the term of the contract, had been:
 - (i) accredited certifiers, and
 - (ii) directors or employees of the company, but who had ceased to be accredited certifiers, or had ceased to be directors or employees of the company, before the beginning of that term.

Building Professionals Amendment (Accredited Bodies Corporate)
Regulation 2008

Schedule 1 Amendments

- (3) The indemnity provided by a company contract must extend to:
- (a) in the case of a company that is an accredited body corporate, all acts and omissions of the company in its capacity as an accredited body corporate, and
 - (b) all acts and omissions of the persons covered by the contract that have occurred, while those persons were directors or employees of the company, in the course of work carried out on behalf of the company.

Note. A company contract does not cover an accredited certifier for any period before he or she became a director or employee of the company. Consequently the person will need to obtain separate indemnity for that period in order to comply with the requirements of section 63 of the Act unless the person is indemnified by a current company contract that complies with this Part and the person was formerly a director or employee of the company that holds the contract.

[7] Clauses 20A and 20B

Insert after clause 20:

20A Additional particulars to be included on Register

For the purposes of section 11 (2) (k) of the Act, the following particulars are prescribed as particulars that the Register must contain in relation to an accredited body corporate if those particulars are available to the Board:

- (a) the name of each accredited certifier director of the body corporate and the date when his or her appointment as an accredited certifier director commenced and ceased,
- (b) the name of each employee of the body corporate who is an accredited certifier and the date when his or her employment commenced and ceased,
- (c) the category of accreditation held by each person referred to in paragraph (a) or (b).

20B Additional events to be notified to Board

For the purposes of section 61 (1) (f) of the Act, the following events are prescribed as events that are to be notified to the Board in accordance with section 61F (1) by an accredited body corporate:

- (a) the appointment of a person as an accredited certifier director of the body corporate,
- (b) the employment by the body corporate of a person who is an accredited certifier,

Building Professionals Amendment (Accredited Bodies Corporate)
Regulation 2008

Amendments

Schedule 1

-
- (c) the termination of the appointment of a person as an accredited certifier director of the body corporate or of the employment by the body corporate of a person who is an accredited certifier,
 - (d) when a person becomes concerned in the management of the body corporate,
 - (e) when a person ceases to be concerned in the management of the body corporate.

[8] Schedule 2 Fees

Omit items 1 and 2. Insert instead:

- | | | |
|-----|---|---------|
| 1 | Application for certificate of individual accreditation, or renewal of certificate of individual accreditation, as an accredited certifier: | |
| (a) | for all categories applied for in one application if those categories are A1, A2, A3 or B1 or any combination of them | \$1,500 |
| (b) | for all categories applied for in one application if those categories are C1–C16 or D1 or any combination of them | \$750 |
| 2 | Application for certificate of corporate accreditation or renewal of certificate of corporate accreditation | \$1,500 |

[9] Schedule 2

Omit “or the giving of a notification under that section in relation to such a change” from item 5.

[10] Schedule 4 Savings and transitional provisions

Insert before clause 1:

Part 1 Provisions consequent on enactment of Building Professionals Act 2005

Building Professionals Amendment (Accredited Bodies Corporate)
Regulation 2008

Schedule 1 Amendments

[11] **Schedule 4, Part 2**

Insert at the end of the Schedule:

**Part 2 Provisions consequent on enactment of
Building Professionals Amendment Act
2008**

6 Certificates of individual accreditation

A certificate of accreditation in force immediately before 3 November 2008 is taken to be a certificate of individual accreditation as an accredited certifier.

7 Pending investigations

Section 45 of the Act (as in force before 3 November 2008) continues to apply to an investigation commenced under that section before 3 November 2008 but not completed before that date. Accordingly, section 45 of the Act as substituted by the *Building Professionals Amendment Act 2008* does not apply to any such investigation.



New South Wales

Environmental Planning and Assessment Further Amendment Regulation 2008

under the

Environmental Planning and Assessment Act 1979

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Environmental Planning and Assessment Act 1979*.

KRISTINA KENEALLY, M.P.,
Minister for Planning

Explanatory note

The objects of this Regulation are to amend the *Environmental Planning and Assessment Regulation 2000* as follows:

- (a) to make amendments consequential on the establishment of the Planning Assessment Commission and the exercise by it of powers to assess aspects of projects under Part 3A of the *Environmental Planning and Assessment Act 1979*,
- (b) to provide for matters relating to the procedure of the Planning Assessment Commission, including the appointment by the chairperson of persons to preside at meetings, the constitution of the Commission, conferring powers on the Commission to require evidence to be given or documents produced, the matters for which public hearings must be held, special procedures where water approvals are needed in relation to a matter, notice of reviews and the provision of information by the Commission to the Minister for Planning,
- (c) to provide for matters relating to the procedure of independent hearing and assessment panels established by councils, including the provision of information by councils to the Director-General of the Department of Planning relating to independent hearing and assessment panels,
- (d) to prescribe further requirements in relation to the information to be contained in certain certificates under Part 4A of that Act, complying development certificates and determinations of applications for subdivision certificates,
- (e) to prescribe further requirements in relation to the information to be included in records relating to mandatory critical stage inspections,

Environmental Planning and Assessment Further Amendment Regulation 2008

Explanatory note

- (f) to change the notification requirements in relation to a change of principal certifying authority for development,
- (g) to prescribe provisions of a savings and transitional nature consequent on the enactment of the *Environmental Planning and Assessment Amendment Act 2008*.

This Regulation is made under the *Environmental Planning and Assessment Act 1979*, including sections 23E, 23J, 75Z, 79 (1) (b), 81 (1), 82 (1), 109E, 109Q and 157 (the general regulation-making power) and clause 1 of Schedule 6.

Environmental Planning and Assessment Further Amendment Regulation
2008

Clause 1

Environmental Planning and Assessment Further Amendment Regulation 2008

under the

Environmental Planning and Assessment Act 1979

1 Name of Regulation

This Regulation is the *Environmental Planning and Assessment Further Amendment Regulation 2008*.

2 Commencement

This Regulation commences on 3 November 2008.

3 Amendment of Environmental Planning and Assessment Regulation 2000

The *Environmental Planning and Assessment Regulation 2000* is amended as set out in Schedule 1.

Environmental Planning and Assessment Further Amendment Regulation
2008

Schedule 1 Amendments

Schedule 1 Amendments

(Clause 3)

[1] Clause 3 Definitions

Insert in alphabetical order in clause 3 (1):

accredited body corporate has the same meaning as in the
Building Professionals Act 2005.

[2] Clause 8A Definitions

Omit “, 75G” from clause 8A (3).

[3] Clause 8G Public information about documents relating to projects

Omit clause 8G (4) (e). Insert instead:

- (e) reports of panels under section 75G of the Act (as in force before its repeal) or of reviews by the Planning Assessment Commission,

[4] Clause 78 What information must a written notice of designated development contain?

Omit “for which a Commission of Inquiry has been held” from clause 78 (1) (i).

Insert instead “about which the Planning Assessment Commission has conducted a review”.

[5] Clause 78 (1) (j)

Omit “a Commission of Inquiry is held”.

Insert instead “the Planning Assessment Commission conducts a review”.

[6] Clause 83 What must a written notice under section 79 (1) (b) of the Act contain?

Omit clause 83 (1) (h). Insert instead:

- (h) a statement that the Minister will determine the application,

[7] Part 6, Division 9

Omit the Division.

Environmental Planning and Assessment Further Amendment Regulation
2008

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Schedule 1

[8] Clause 100 Notice of determination

Omit clause 100 (1) (h). Insert instead:

- (h) whether the Planning Assessment Commission has conducted a review of the application,

[9] Clause 103 Notice under section 81A of the Act of appointment of principal certifying authority

Omit “his or her” from clause 103 (f) (i). Insert instead “his, her or its”.

[10] Clause 103 (f) (iii) and (iv)

Omit “he or she” wherever occurring. Insert instead “he, she or it”.

[11] Clause 113 When is an application taken to be refused?

Omit clause 113 (2) (b). Insert instead:

- (b) the date the Commission complies with clause 268V (3), if a review has been conducted by the Planning Assessment Commission into development that is not designated development, or part of any such development.

[12] Clause 122 Notice of determination of application to modify development consent

Omit clause 122 (2) (b). Insert instead:

- (b) must state that the Act gives a right of appeal against the determination, unless the development consent was granted by the Court.

[13] Clause 134 Form of complying development certificate

Omit “information” from clause 134 (1).

[14] Clause 134 (1) (a)–(b2)

Omit clause 134 (1) (a) and (b). Insert instead:

- (a) the identity of the certifying authority that issued it, including, in a case where the certifying authority is an accredited body corporate, the identity of the individual who issued the certificate on behalf of the body corporate,
- (b) if the certifying authority is an accredited certifier, the accreditation number of the certifying authority, including, in a case where the certifying authority is an accredited body corporate, the accreditation number of the individual who issued the certificate on behalf of the body corporate,

Environmental Planning and Assessment Further Amendment Regulation
2008

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- (b1) if the certifying authority is an accredited certifier who is an individual, the signature of the accredited certifier,
- (b2) if an individual issued the certificate on behalf of the certifying authority, the signature of the individual who issued the certificate,

[15] Clause 138 Compliance certificate

Omit “information” from clause 138 (1).

[16] Clause 138 (1) (a)–(b2)

Omit clause 138 (1) (a) and (b). Insert instead:

- (a) the identity of the certifying authority that issued it, including, in a case where the certifying authority is an accredited body corporate, the identity of the individual who issued the certificate on behalf of the body corporate,
- (b) if the certifying authority is an accredited certifier, the accreditation number of the certifying authority, including, in a case where the certifying authority is an accredited body corporate, the accreditation number of the individual who issued the certificate on behalf of the body corporate,
- (b1) if the certifying authority is an accredited certifier who is an individual, the signature of the accredited certifier,
- (b2) if an individual issued the certificate on behalf of the certifying authority, the signature of the individual who issued the certificate,

[17] Clause 138 (1) (h)

Omit “, signed by or on behalf of the certifying authority,”.

[18] Clause 147 Form of construction certificate

Omit “information” from clause 147 (1).

[19] Clause 147 (1) (a)–(b2)

Omit clause 147 (1) (a) and (b). Insert instead:

- (a) the identity of the certifying authority that issued it, including, in a case where the certifying authority is an accredited body corporate, the identity of the individual who issued the certificate on behalf of the body corporate,
- (b) if the certifying authority is an accredited certifier, the accreditation number of the certifying authority, including, in a case where the certifying authority is an accredited

Environmental Planning and Assessment Further Amendment Regulation
2008

Amendments

Schedule 1

body corporate, the accreditation number of the individual who issued the certificate on behalf of the body corporate,

- (b1) if the certifying authority is an accredited certifier who is an individual, the signature of the accredited certifier,
- (b2) if an individual issued the certificate on behalf of the certifying authority, the signature of the individual who issued the certificate,

[20] Clause 155 Form of occupation certificate

Omit “information” from clause 155 (1).

[21] Clause 155 (1) (a)–(b2)

Omit clause 155 (1) (a) and (b). Insert instead:

- (a) the identity of the certifying authority that issued it, including, in a case where the certifying authority is an accredited body corporate, the identity of the individual who issued the certificate on behalf of the body corporate,
- (b) if the certifying authority is an accredited certifier, the accreditation number of the certifying authority, including, in a case where the certifying authority is an accredited body corporate, the accreditation number of the individual who issued the certificate on behalf of the body corporate,
- (b1) if the certifying authority is an accredited certifier who is an individual, the signature of the accredited certifier,
- (b2) if an individual issued the certificate on behalf of the certifying authority, the signature of the individual who issued the certificate,

[22] Clause 160 Procedure for determining application for subdivision certificate

Insert after clause 160 (1) (c):

- (d) the identity of the certifying authority determining the application, including, in a case where the certifying authority is an accredited body corporate, the identity of the individual who dealt with the application on behalf of the body corporate,
- (e) if the certifying authority is an accredited certifier, the accreditation number of the certifying authority, including, in a case where the certifying authority is an accredited body corporate, the accreditation number of the individual who dealt with the application on behalf of the body corporate,

Environmental Planning and Assessment Further Amendment Regulation
2008

Schedule 1 Amendments

- (f) if the certifying authority is an accredited certifier who is an individual, the signature of the accredited certifier,
- (g) if an individual dealt with the application on behalf of the certifying authority, the signature of the individual who dealt with the application.

[23] Clause 162 Notice of replacement of principal certifying authority

Omit “within 2 days of” from clause 162 (1).

Insert instead “within 2 days after”.

[24] Clause 162 (2)–(4)

Omit clause 162 (2). Insert instead:

- (2) Nothing in this clause requires any notice to be given to a person who has agreed to, or been notified of, the proposed appointment under section 109EA of the Act.
- (3) Clause 103 applies to a notice given for the purposes of this clause in the same way as it applies to a notice given under or for the purposes of section 81A (2) (b1) (i) or (4) (b1) (i) of the Act.
- (4) In addition to the information required by subclause (3) to be included in a notice under this clause, the following information is to be included:
 - (a) the name of the former principal certifying authority who has been replaced,
 - (b) a statement that the former principal certifying authority agreed to be replaced.

[25] Clause 162B Record of inspections conducted under section 109E (3)

Omit clause 162B (4) (e). Insert instead:

- (e) the identity of the certifying authority by whom the inspection was carried out, including, in a case where the certifying authority is an accredited body corporate, the identity of the individual who carried out the inspection on behalf of the body corporate, and
- (e1) if the certifying authority by whom the inspection was carried out is an accredited certifier, the accreditation number of the certifying authority, including, in a case where the certifying authority is an accredited body corporate, the accreditation number of the individual who carried out the inspection on behalf of the body corporate, and

Environmental Planning and Assessment Further Amendment Regulation
2008

Amendments

Schedule 1

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- [26] **Clause 243 Report to be prepared for activities to which an environmental impact statement relates**
Omit clause 243 (3) (e) (iii). Insert instead:
(iii) any review by the Planning Assessment Commission,
- [27] **Clause 243 (6) (a)**
Omit “section 120 (5) (b) of the Act”. Insert instead “clause 268U”.
- [28] **Clause 245L Fee for review by Planning Assessment Commission**
Omit clause 245L (1). Insert instead:
(1) The fee payable to the Director-General in respect of the review of any aspect of a project, or a concept plan for a project, by the Planning Assessment Commission pursuant to section 23D (1) (b) (ii) of the Act is to be determined by the Director-General in accordance with this clause. Any such review includes the giving of public notice in connection with a public hearing.
- [29] **Clause 245L (2)**
Omit “constituting the panel”.
Insert instead “the Commission undertaking the review”.
- [30] **Clause 245L (4)**
Omit “panel is constituted and the”.
- [31] **Clause 260 What is the fee for a building certificate?**
Insert “, or the person on whose behalf the application is made,” after “applicant for the certificate” in clause 260 (3A).
- [32] **Part 16B, Division 1, heading**
Insert before clause 268C:
Division 1 General
- [33] **Clause 268C Definitions**
Insert in alphabetical order:
Commission means the Planning Assessment Commission.
- [34] **Clause 268F Presiding member**
Insert “(other than the Commission)” after “planning body” in clause 268F (1).

Environmental Planning and Assessment Further Amendment Regulation
2008

Schedule 1 Amendments

[35] Clause 268F (1A)

Insert after clause 268F (1):

- (1A) The chairperson of the Commission or a person appointed by the chairperson is to preside at a meeting of the Commission. In the absence of the chairperson or a person appointed by the chairperson, a person elected by the members is to preside at a meeting of the Commission.

[36] Part 16B, Division 2, heading

Insert before clause 268K:

Division 2 Planning arbitrators

[37] Part 16B, Division 3, heading

Insert before clause 268L:

Division 3 Committees

[38] Part 16B, Divisions 4 and 5

Insert after clause 268N:

Division 4 Planning Assessment Commission

268O Interpretation

In this Division, a reference to a review of the Commission includes a reference to a public hearing referred to in section 56 (2) (e) of the Act.

268P Constitution of Commission for particular matters

The Commission may be constituted by more than 3 members or less than 3 members if directed to be so constituted by the Minister.

268Q Attendance of witnesses and production of documents

- (1) The chairperson of the Commission may require a person:
- (a) to attend a public hearing of the Commission to give evidence, or
 - (b) to produce to the Commission a document that is relevant to a review conducted by the Commission,
- at a time, date and place specified in a notice given to the person.

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- (2) A person must not, without reasonable excuse, fail to comply with a requirement to attend a public hearing, or to produce a document.
 - (3) The Commission may permit a person appearing as a witness before the Commission to give evidence by tendering a written statement.

268R Public hearings of Commission

- (1) The Commission must conduct a public hearing in the following circumstances:
 - (a) if requested to do so by the Minister,
 - (b) if the review concerns a development under Part 4 of the Act or an activity under Part 5 of the Act that, in the opinion of the Commission, may involve the need for an approval under the *Water Management Act 2000*.
- (2) Subclauses (3)–(5) apply to any public hearing held by the Commission.
- (3) The Commission must give reasonable notice of a public hearing:
 - (a) by advertisement published in such newspapers as the Commission thinks fit, to the public, and
 - (b) by notice in writing to any public authorities that the Commission thinks are likely to have an interest in the subject-matter of the hearing.
- (4) The notice of a public hearing must contain the following matters:
 - (a) the subject-matter of the hearing,
 - (b) the time, date and place of the hearing,
 - (c) a statement that submissions may be made to the Commission in relation to the subject-matter of the hearing not later than the date specified in the notice (being a date not less than 14 days after the notice is given).
- (5) If the Commission is satisfied that it is desirable to do so in the public interest because of the confidential nature of any evidence or matter or for any other reason, the Commission may direct that part of a public hearing is to take place in private and give directions as to the persons who may be present.

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268S Notice of reviews and recommendations relating to development applications

- (1) This clause applies to a review by the Commission of all or any of the environmental aspects of proposed development the subject of a development application or a part of any such proposed development.
- (2) The consent authority for the proposed development must cause to be given to each concurrence authority and approval body for that development:
 - (a) as soon as practicable after the Commission is requested to hold the review, notice of the fact that a review is to be held, and
 - (b) as soon as practicable after the findings and recommendations of the review have been made public, copies of those findings and recommendations and (in the case of development other than designated development) any comments made by the Minister on them.
- (3) At any time within 14 days after receiving a copy of the findings and recommendations arising from the review:
 - (a) a concurrence authority may vary any conditions that it may previously have imposed in relation to its concurrence to the development, and
 - (b) an approval body may vary any general terms of approval that it may previously have given in relation to the development.

268T Special provisions relating to water approvals

- (1) The Commission must cause notice to be given to the Minister for Water if, before or at any time up to the conclusion of a review held by it into:
 - (a) the environmental aspects of any proposed development the subject of a development application, whether or not it is designated development, or
 - (b) the environmental aspects of any activity referred to in section 112 (1) of the Act,it is of the opinion that the development or activity may involve the need for an approval under the *Water Management Act 2000*.
- (2) For the purposes of this clause, a review is concluded when the Commission provides its final report on the inquiry to the Minister under clause 268V.

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- (3) The Commission must also cause notice to be given to the applicant for the development, or the proponent of the activity, advising that the application for an approval should be made promptly if it has not already been made.
 - (4) The Commission must defer concluding its review for sufficient time to enable:
 - (a) the applicant or proponent to apply for an approval, and
 - (b) any objectors to object to the granting of an approval, under the *Water Management Act 2000*.
 - (5) As soon as practicable after the applicant's or proponent's application for an approval is referred to it under section 94 of the *Water Management Act 2000*, the Commission must give notice of the public hearing in accordance with this Division.
 - (6) In addition to considering any submissions that are made to it in the course of its review, the Commission must consider:
 - (a) the application for an approval, and
 - (b) any objection to the granting of an approval that has been referred to it under section 94 of the *Water Management Act 2000*.
 - (7) In any report prepared by it, the Commission must include findings and recommendations with respect to:
 - (a) the question of whether or not an approval should be granted, and
 - (b) the period, term, limitations and conditions of any such approval.
 - (8) The Commission must cause a copy of any such report to be given to the Minister for Water.

268U Commission may restrict publication of evidence

- (1) If the Commission is satisfied that it is desirable to do so in the public interest because of the confidential nature of any evidence or matter or for any other reason, the Commission may direct that evidence given before the Commission or contained in documents lodged with the Commission not be published or may only be published subject to restrictions.
- (2) A person must not, without reasonable excuse, fail to comply with a direction given by the Commission under this clause.

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268V Reports by Commission

- (1) The Commission must provide a copy of its findings and recommendations on a review conducted by it (a *final report*) to the Minister, or such other person or body as the Minister may direct, and may provide a copy to such other persons as the Commission thinks fit.
- (2) A final report must contain a summary of any submissions received by it in relation to the subject-matter of the review.
- (3) The Commission must also provide a copy of a final report on a review relating wholly or partly to development the subject of a development application to:
 - (a) the consent authority, and
 - (b) any public authority whose concurrence is required to the development.
- (4) A final report is to be made publicly available on the website of the Department within a reasonable time after it has been provided to the Minister.

268W Information to be provided by Commission

- (1) The Commission must provide the following to the Minister:
 - (a) an annual report on its operations and reviews in the preceding year,
 - (b) any other information and reports requested by the Minister.
- (2) An annual report is to be made publicly available on the website of the Department within a reasonable time after it has been provided to the Minister.

Division 5 Independent hearing and assessment panels

268X Information to be provided by councils about independent hearing and assessment panels

A council must provide an annual report to the Director-General as to the following:

- (a) the number of independent hearing and assessment panels appointed by the council in the preceding year,
- (b) the matters referred to the panels in the preceding year,
- (c) the persons appointed to the panels,

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- (d) decisions made by the council relating to matters referred to the panels, including the reasons for any decision not in accordance with an assessment by a panel,
 - (e) any other matters relating to the exercise of functions by panels as directed by the Director-General.

[39] Schedule 7 Savings and transitional provisions

Insert after clause 6:

7 Existing independent hearing and assessment panels

Sections 75G, 75I, 75K, 75L, 75N, 75Q and 75X of the Act, and the provisions of any regulations made under or for the purposes of, or referring to, those provisions, as in force immediately before the repeal of section 75G by the amending Act, continue in force in relation to any panel established under section 75G immediately before that repeal.

8 Existing committees

Section 158 (f) of the Act, as in force before its repeal by the amending Act, continues to apply in respect of a member of a committee established under section 22 of the Act before that repeal.

9 Application of obligation to assist planning assessment panel

Section 118AD (2A) of the Act, as inserted by the amending Act, does not apply in respect of a direction given before the commencement of that provision by a panel established under Division 1AA of Part 6 of the Act.

10 Existing planning assessment panels

Division 1 of Part 16B of this Regulation applies to a panel in existence under Division 1AA of Part 6 of the Act immediately before the commencement of Schedule 2.2 [61] to the amending Act, despite any provision of an order establishing the panel.

11 Notification of commencement of certain building work and subdivision work

- (1) The amendment of section 81A (2) (c) of the Act by the amending Act does not apply to the erection of a building if the notice required by that paragraph in relation to the erection of the building had been given before the commencement of that amendment.

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- (2) The amendment of section 81A (4) (c) of the Act by the amending Act does not apply to subdivision work if the notice required by that paragraph in relation to the subdivision work had been given before the commencement of that amendment.
- (3) The amendment of section 86 (1) (b) of the Act by the amending Act does not apply to the erection of a building if the notice required by that paragraph in relation to the erection of the building had been given before the commencement of that amendment.
- (4) The amendment of section 86 (2) (b) of the Act by the amending Act does not apply to subdivision work if the notice required by that paragraph in relation to the subdivision work had been given before the commencement of that amendment.

12 Action following investigation into council activities

Section 117B of the Act does not apply to an investigation under section 45 of the *Building Professionals Act 2005* commenced before the commencement of section 117B.