

Accreditation of bodies corporate

Introduction

- From 3 November 2008, the Building Professionals Board can issue certificates of corporate accreditation to bodies corporate under the *Building Professionals Act 2005* (BP Act). Before this date, only individuals could be accredited to carry out certification work under the *Environmental Planning and Assessment Act 1979* (EP&A Act), the Strata Schemes (Freehold Development) Act 1973 and the *Strata Schemes (Leasehold Development) Act 1986* (strata schemes legislation).
- For an outline of the changes to the BP Act and Building Professionals Regulation 2007 (BP Regulation) to enable the accreditation of bodies corporate, see Circular PS 08-011 *Commencement of provisions on 3 November 2008 – accredited bodies corporate*, available at www.bpb.nsw.gov.au.

Why would a body corporate seek accreditation?

- Accreditation as a body corporate allows the body corporate to be appointed as the certifying authority for development. That is, the accredited body corporate can, in certain circumstances, issue complying development certificates, construction certificates and compliance certificates under the EP&A Act and strata certificates under the strata schemes legislation.
- The accredited body corporate can also, in certain circumstances, be appointed as the principal certifying authority (PCA) for development, issue occupation and subdivision certificates and carry out inspections under the EP&A Act.
- These activities are carried out in the name of the accredited body corporate by accredited certifier employees and directors, as required by the EP&A Act and BP Act. The responsible accredited certifier employee or director must also sign the relevant Part 4A, complying development or strata certificate and must be authorised, by their individual certificate of accreditation, to issue the relevant type of certificate and do the relevant type of work.
- Appointment of an accredited body corporate as the PCA will enable the body corporate to decide which accredited certifier in the organisation will carry out inspections and issue the occupation certificate / subdivision certificate (subject to the individual holding the required category of accreditation).
- Where an accredited body corporate is appointed as a PCA, the need for the PCA to be changed when an accredited certifier takes leave, becomes ill or no longer wishes to practise as a certifier will be overcome. It will be simply up to the body corporate to ensure that a suitable accredited certifier carries out the duties of the PCA on behalf of the body corporate.

What are the advantages of accreditation for a body corporate?

- Allowing companies to be appointed as a certifying authority or PCA provides the following benefits:
 - facilitates a commitment by a company to long term development projects,
 - lessens disruptions if an appointed individual certifier cannot complete the work where an accredited body corporate was appointed as the PCA or acts as the certifying authority,
 - removes any need to transfer files when individuals resign from a company,
 - overcomes any need to apply to the Building Professionals Board to change the principal certifying authority when a certifier takes leave, becomes ill or leaves the company where the body corporate was appointed as the principal certifying authority,
 - allows a range of experts to facilitate the work involved in a development, including where the PCA is unable to do the work on a project when a matter outside his/her accreditation arises after appointment, and
 - enables easy transfer of work between company employees.

How does a body corporate become accredited?

- Similar to the accreditation of individual accredited certifiers, bodies corporate must apply to the Board for accreditation and must meet the requirements to be accredited (see below).
- The application form is available at www.bpb.nsw.gov.au.
- The fee for accreditation of a body corporate is set out in Schedule 2 of the BP Regulation (currently \$1500).

What are the requirements to be accredited?

- The requirements for accreditation are set out in the BP Act and BP Regulation. In summary, the requirements are:
 - the body corporate has at least one accredited certifier director,
 - the body corporate employs at least two other accredited certifiers (note: these two accredited certifiers could also be accredited certifier directors), and
 - the body corporate has the required professional indemnity insurance.
- An accredited certifier director is a person who is an accredited certifier and also a director of an accredited body corporate.
- Where a body corporate meets all of the requirements to be accredited and there are no circumstances in relation to which the Board may refuse an accreditation (see below), the Board will issue a certificate of corporate accreditation to the body corporate. The certificate will set out any conditions to which the body corporate's accreditation is subject.

Is there any skills or experience assessment for accreditation?

- No. A body corporate is not assessed in the same way as natural persons wishing to become individual accredited certifiers. As long as the body corporate meets the requirements for accreditation (listed above), the body corporate can be accredited by the Board.
- Where a body corporate does not provide sufficient information to support its application, however, the Board can ask for further documents or information.

Can the Board refuse to accredit a body corporate?

- Yes. Section 7(1A) of the BP Act and clause 5A of the BP Regulation set out the circumstances in which the Board may refuse to issue (or renew) a certificate of corporate accreditation. These include, in summary:
 - if the body corporate does not have at least one accredited certifier director and at least two other accredited certifier directors or employees,
 - if the body corporate does not provide the documents and information the Board requires to determine the application,
 - if the Board is not satisfied the body corporate has or can obtain the required insurance,
 - if the Board is not satisfied a director of, or person concerned in the management of, the body corporate is a fit and proper person,
 - if the body corporate's equivalent authorisation (in another jurisdiction) has been suspended or cancelled (otherwise that at its request),
 - if the body corporate or a director of, or a person concerned in the management of, the body corporate has contravened a law that relates to the functions or obligations of a person as an accredited certifier or that involves fraud or dishonesty,
 - if the body corporate or a director of, or a person concerned in the management of, the body corporate has failed to comply with a statutory or other duty, or a contractual obligation, imposed on the body corporate, director or person by or in accordance with a law that relates to the functions or obligations of a person as an accredited certifier or equivalent,
 - if a director, or person concerned in the management, of the body corporate is an undischarged bankrupt,
 - if the body corporate is the subject of a winding up order or a controller or administrator has been appointed,
 - if the body corporate has represented itself as being an accredited certifier when it was not an accredited certifier,
 - if the body corporate has contravened any code of conduct in the accreditation scheme,
 - if the Board is of the opinion that two or more of the proposed accredited certifier directors of the body corporate, or employees who are accredited certifiers, have together held positions in or been employed in another body corporate that has previously had its application for accreditation refused or certificate cancelled, or
 - if a person who is concerned in the management of the body corporate has had a disciplinary finding made against him or her that resulted in the suspension or cancellation of his or her accreditation.

Can a body corporate's accreditation be conditioned?

- Yes. Similar to certificates issued to individual accredited certifiers, certificates of corporate accreditation issued to bodies corporate can be granted subject to conditions.
- In particular, clause 7(2) of the BP Regulation provides a condition to which all certificates of corporate accreditation are subject, namely that each accredited certifier director of the body corporate must undertake a course in relation to their responsibilities as an accredited certifier director as prescribed by the Board. Accredited certifier directors will need to undertake a course to ensure they have knowledge of their obligations and responsibilities in relation to being an accredited certifier director under the BP Act and the Board will specify the time within which the course is to be completed. This is a one-off requirement for each accredited certifier director.
- If a body corporate does not comply with any condition of its certificate of accreditation, it may be found guilty of unsatisfactory professional conduct or professional misconduct and subsequent disciplinary orders under section 31 of

the BP Act can be made or the body corporate can be found guilty of an offence under section 73 of the BP Act.

What insurance must an accredited body corporate have?

- An accredited body corporate must hold professional indemnity insurance that complies with the requirements of the BP Regulation. The Regulation provides that an accredited body corporate must be covered by:
 - a company contract that provides indemnity to the company in its role as a certifying authority and to the directors and employees of the company that are accredited certifiers, and
 - indemnity against the accredited body corporate's statutory liability for the whole of the period during which it has been accredited and against 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.

- The indemnity must extend to:
 - (a) the company
 - (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.

- The indemnity must also extend to all acts and omissions of the company in its capacity as an accredited body corporate and 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.

- The contract may limit the indemnity provided to the accredited body corporate in respect of any one claim to not less than \$1,000,000 (excluding investigation and legal expenses of the company in relation to a claim) subject to an overall limit of not less than \$2,000,000 (excluding those expenses), or not less than \$4,000,000 (including relevant expenses) multiplied by the number of accredited certifiers who are directors or employees of the company in respect of all claims made in any one year against the company in relation to liability covered by the contract.

- A company contract does not have to cover an accredited certifier for any period before he or she became a director or employee of the company. Consequently the person is likely to 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 and the person was formerly a director or employee of the company that holds the contract.

- If a company already has this type of contract to cover itself and its accredited certifier employees when it becomes accredited, that insurance can continue to operate. If the company has held four or more contracts in the above terms, the relevant overall limit of the required indemnity is multiplied by the average number of accredited certifiers who have been directors or employees of the company during the previous three years.

- As an accredited body corporate must hold insurance to cover the work and activities carried out by its accredited certifier employees, the employees do not need to hold their own insurance.
- If an accredited certifier who is employed or contracted by an accredited body corporate to carry out certification work on behalf of the body corporate, also carries out certification work on their own behalf, however, the certifier must hold professional indemnity insurance, that complies with the BP Act and BP Regulation, to cover this work.

Does an accredited body corporate need to renew its accreditation each year?

- Yes. Like the accreditation of individual accredited certifiers, an accredited body corporate must apply to the Board each year for its accreditation to be renewed.
- The body corporate may have its renewal application refused on any of the grounds set out in section 7(1A) of the BP Act or clause 5A of the BP Regulation (listed above).
- The fee for the renewal of accreditation is currently \$1500.

Can a body corporate have its accreditation suspended or cancelled?

- Yes. Section 8(2A) of the BP Act provides a list of circumstances in which the Board may suspend or cancel a certificate of corporate accreditation.
- In summary, they are:
 - the body corporate was issued with a certificate of accreditation based on a misrepresentation by the body corporate or by a person concerned in the management of the body corporate,
 - the body corporate does not have at least one director who is an accredited certifier or does not have as directors or employ at least two other persons who are accredited certifiers,
 - the Board is not satisfied that the body corporate is covered by the required insurance,
 - the body corporate's equivalent authorisation from another state / territory has been suspended or cancelled other than at its request,
 - the Board is of the opinion that a person concerned in the management of the body corporate is not a fit and proper person,
 - a director, or person concerned in the management, of the body corporate is an undischarged bankrupt,
 - a disciplinary finding has been made against an accredited certifier director of the body corporate,
 - the body corporate is the subject of a winding up order or a controller or administrator has been appointed, or
 - the body corporate, or an accredited certifier director or employee, has failed to comply with an order of the Board following a disciplinary action.
- Section 8 of the BP Act sets out the process the Board must follow before suspending or cancelling a body corporate's certificate of accreditation under section 8(2A).

What are the obligations of a body corporate once accredited?

- The BP Act and BP Regulation place a number of obligations on the accredited body corporate, on accredited certifier directors and on other persons concerned in the management of the body corporate once the body corporate is accredited.

- For an explanation of the responsibilities of accredited bodies corporate, see Info Sheet 13, *Responsibilities of accredited bodies corporate*, available at www.bpb.nsw.gov.au.
- For an explanation of the responsibilities of employees of accredited bodies corporate, including accredited certifier directors and others, see Info Sheet 14, *Responsibilities of employees of accredited bodies corporate*, available at www.bpb.nsw.gov.au.

Changing the PCA to an accredited body corporate

- Before 3 November 2008, only individual accredited certifiers could act as a certifying authority or be appointed as a PCA (other than a council).
- From 3 November 2008, appointments of individual accredited certifiers as the PCA may be changed to a body corporate. The process for changing the PCA is the same as for changing between individuals or changing from an individual to a council or a council to an individual.
- Information on the process for changing the PCA is available at www.bpb.nsw.gov.au.

(c) State of New South Wales through the Building Professionals Board
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