

## Responsibilities of accredited bodies corporate

### Introduction

- The *Building Professionals Act 2005* (BP Act) and Building Professionals Regulation 2007 (BP Regulation) impose a number of obligations directly on bodies corporate once they are accredited by the Board. These obligations are summarised in this information sheet.
- For information on the responsibilities of accredited certifier directors, employees and other persons concerned in the management of an accredited body corporate, see Info Sheet 14, *Responsibilities of employees of accredited bodies corporate*, available at [www.bpb.nsw.gov.au](http://www.bpb.nsw.gov.au).
- For advice on how a body corporate can become accredited, see Info Sheet 12, *Accreditation of bodies corporate*, available at [www.bpb.nsw.gov.au](http://www.bpb.nsw.gov.au).
- For an outline of the changes to the BP Act and 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](http://www.bpb.nsw.gov.au).

### What are the requirements for an accredited body corporate?

- As an accredited certifier, an accredited body corporate is required to comply with all of the provisions of the BP Act that impose requirements on accredited certifiers as well as the provisions of the *Environmental Planning and Assessment Act 1979* (EP&A Act) and the strata schemes legislation that set out the obligations of accredited certifiers when carrying out certification work.
- Section 72C of the BP Act sets out three specific requirements, and there are a number of other requirements in the BP Act.  
**Carrying out certification work by an accredited person** [section 72C(1)]
- An accredited body corporate is required to ensure that any certification work that is carried out in the name of the body corporate, or done on behalf of the body corporate, is carried out by a director or employee of the body corporate who holds the relevant accreditation.
- It is incumbent upon individual accredited certifiers to always act in accordance with the terms of their authorisation. The amendments to the BP Act now also put a direct obligation on the body corporate to ensure that work for which the body corporate is the certifying authority or principal certifying authority (PCA) is carried out by an appropriately accredited director or employee.

**Employment of at least one accredited certifier director** [section 72C(3)]

- Where an accredited body corporate does not, for any reason, have at least one director who is an accredited certifier, the body corporate cannot carry out certification work. A body corporate that does so can be subject to a maximum penalty of \$110,000.
- A body corporate must notify the Board in writing, within seven days, when the body corporate ceases to have at least one director who is an accredited certifier (see below).
- The BP Act places significant responsibilities on accredited certifier directors (see Info Sheet 14, *Responsibilities of employees of accredited bodies corporate*, October 2008) and it is essential to the system for the accreditation of bodies corporate that an accredited body corporate has at least one accredited certifier director at all times.
- Where an accredited body corporate does not have an accredited certifier director, it cannot operate as a certifying authority or PCA and any work the accredited body corporate has been contracted to carry out must be transferred to another appropriately qualified accredited certifier or other certifying authority. That may be an accredited certifier employee of the body corporate, another accredited body corporate, another accredited certifier or the relevant council or consent authority.

**Having at least three individual accredited certifiers** [section 72C(4)]

- To be accredited and to renew its accreditation each year, a body corporate must employ, or have as directors, at least three persons who are accredited certifiers. These persons must include at least one accredited certifier director as indicated above.
- Where an accredited body corporate loses one or more of its accredited certifier employees so that it no longer employs or has as directors at least three accredited certifiers, it has a period of three months within which to make arrangements to comply with the requirement that it have at least three accredited certifiers as either directors or employees. It can continue to operate during this three month period.
- Where a body corporate continues to operate after three months without employing or having as directors at least three accredited certifiers, or without having notified the Board that it now has as employees and directors at least three accredited certifiers, it commits an offence under the Act (with a maximum penalty of \$110,000).

**Matters to be notified to the Board**

- The BP Act (section 61(4)) and BP Regulation (clause 20B) place a number of reporting obligations on an accredited body corporate.
- In summary, an accredited body corporate must report the following to the Board in writing within seven days of becoming aware of the event:
  - where the body corporate ceases to have at least one accredited certifier director,
  - where the body corporate ceases to have as directors or employ at least three persons who are accredited certifiers,
  - where an accredited certifier employee or director ceases employment with, or commences employment with, the body corporate, and
  - when a person who is concerned in the management of the body corporate commences or ceases employment with the body corporate.
- These requirements are in addition to the matters that must be reported to the Board under section 61(1), (2) and (3) of the BP Act.

**Keeping of records** [clause 8A BP Regulation]

- An accredited body corporate is now responsible, under clause 8 of the BP Regulation, for keeping all documents and records in relation to certification work for which it is the certifying authority or PCA.
- The accredited body corporate must maintain the documents and records, at its business premises or in another secure place, for at least 10 years from the date of their creation, similarly to the requirement for individual accredited certifiers.
- The body corporate must also ensure that the individual accredited certifier who created the document or record (eg who signed the Part 4A certificate) can inspect and copy the document or record during that period. This requirement enables the accredited certifier employee to provide any necessary records to relevant authorities, including the Board where required.
- The records that accredited bodies corporate (similarly to individual accredited certifiers) must keep under clause 8 are, in summary, copies of the following:
  - applications for certificates made to the accredited body corporate under the EP&A Act, the decisions on those applications, the certificates issued and any plans and specifications in respect of the certificate issued,
  - any certificate or other document the body corporate has relied on in issuing a certificate,
  - for each year to which the certificate of corporate accreditation relates, a list of projects in relation to which a Part 4A or complying development certificate has been issued by the accredited body corporate, including the types of certificates issued, the classification of the building involved, the name of the local government area, the address of the land/premises, the estimated cost of the project (except for subdivision certificates) or the number of lots to be created (for subdivision certificates), the name of the applicant, the owner of the land/premises and the name of the principal contractor (and similar records in relation to strata certificates),
  - records required to be made by the accredited body corporate in relation to critical stage inspections or missed inspections under clauses 162B and 162C of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation), and
  - records of inspections provided to the accredited body corporate, as the PCA, by another certifying authority.

***What happens to the records if the body corporate is no longer accredited?***

- Where a body corporate ceases to be accredited, the person who last held the position of accredited certifier director of the body corporate before it ceased to be accredited, and who is still an accredited certifier, must keep the documents and records of the accredited body corporate as required by clause 8 of the BP Regulation.
- If there is more than one relevant accredited certifier director, they can make an arrangement between them to secure the documents and records.

**Avoiding conflicts of interest** [section 66(6) BP Act]

- If an accredited certifier director or employee of an accredited body corporate has a conflict of interest under section 66(1) of the BP Act, the body corporate is taken also to have a conflict of interest.
- If the accredited body corporate or another accredited certifier director or employee of the accredited body corporate has a conflict of interest under section 66(1), the other accredited certifier directors and employees of the body corporate are also taken to have a conflict of interest and are prohibited from issuing a Part 4A or complying development certificate under section 66(1).

- Section 66(1) prohibits an accredited certifier from issuing a Part 4A or complying development certificate in relation to an aspect of development if they:
  - have been involved in the design of that aspect of the development,
  - have been involved in the carrying out of work on that aspect of the development,
  - are the applicant for the certificate or related to the applicant,
  - are associated with the council of the relevant area,
  - are related to a person who was involved in the design or construction of that aspect of the development, or
  - have a pecuniary interest in that or any other aspect of the development.
- Sections 67-70 of the BP Act and clauses 17 and 18 of the BP Regulation set out the circumstances in which an accredited certifier is taken to be involved in the design of an aspect of development, is related to a person, is associated with a council, and has a pecuniary interest.

### **Maintaining insurance** [section 63 BP Act]

- Similarly to individual accredited certifiers, accredited bodies corporate must not exercise the functions of a certifying authority, or hold itself out as being covered by the required professional indemnity insurance, unless it is so covered by the required insurance.
- A body corporate can be subject to a maximum penalty of \$11,000 where an accredited certifier employee carries out certification work on its behalf and the company is not insured as required.
- An accredited body corporate must ensure that its professional indemnity insurance is maintained from the commencement of its accreditation and continues during the whole period of its accreditation. An accredited body corporate cannot have a gap in its insurance coverage while it is accredited if it is to maintain that accreditation.
- The insurance an accredited body corporate must hold is summarised in Info Sheet 12, *Accreditation of bodies corporate*, October 2008.

### **Avoiding situations of unprofessional conduct** [sections 19(1) and 31(4) BP Act]

- Similarly to individual accredited certifiers, accredited bodies corporate can have complaints made about their professional conduct to, and audit investigations undertaken in relation to their activities as a certifying authority by, the Building Professionals Board.
- Accredited bodies corporate need to be aware of the definitions of unsatisfactory professional conduct and professional misconduct in section 19(1) of the BP Act, as well as the action the Board can take under section 31(4) where it is satisfied that an accredited body corporate is guilty of unsatisfactory professional conduct or professional misconduct. The Board's powers extend to disqualifying an accredited certifier director of the body corporate from being an accredited certifier director, or otherwise being involved in the management, of the body corporate.