



New South Wales

Building and Development Certifiers Amendment (Miscellaneous) Regulation 2020

under the

Building and Development Certifiers Act 2018

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Building and Development Certifiers Act 2018*.

KEVIN ANDERSON, MP
Minister for Better Regulation and Innovation

Explanatory note

The object of this Regulation is to amend the *Building and Development Certifiers Regulation 2020* for the following purposes—

- (a) to make it a condition of registration of a registered certifier that the certifier must carry out certification work in accordance with the whole or part of a certain practice standard,
- (b) to enable the Secretary to suspend the registration of a certifier who is subject to disciplinary action where it is necessary to protect property or the safety of a person,
- (c) to insert a transitional provision in relation to existing conflicts of interest,
- (d) to make the requirement for applicants for swimming pool inspector registration to take an exam discretionary,
- (e) to prescribe additional penalty notice offences.

This Regulation is made under the *Building and Development Certifiers Act 2018*, including sections 13(1)(a), 16(g), 28(2), 55, 118 and 120 (the general regulation-making power).

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1 Name of Regulation

This Regulation is the *Building and Development Certifiers Amendment (Miscellaneous) Regulation 2020*.

2 Commencement

This Regulation commences on the day on which it is published on the NSW legislation website.

Schedule 1 Amendment of Building and Development Certifiers Regulation 2020

[1] Clause 9 Prescribed conditions of registration

Insert after clause 9(3A)—

- (3B) For the purposes of section 13(1)(a) of the Act, it is a condition of registration of a registered certifier that the certifier must carry out certification work in accordance with the following parts or part of *Practice standard for registered certifiers – 1 – new residential apartment buildings* prepared by the Secretary and published by the Department, as in force from time to time—
- (a) for a registered certifier who holds registration in building surveyor—unrestricted or building surveyor—restricted (all classes of building)—the whole practice standard,
 - (b) otherwise—chapters 1 and 2 of the practice standard.

[2] Clause 9A

Insert after clause 9—

9A Prescribed grounds for suspension of registration

For the purposes of section 16(g) of the Act, the following circumstances constitute grounds for suspension of registration—

- (a) the Secretary has commenced, but not finally determined, disciplinary action under Part 4 of the Act, and
- (b) the Secretary is satisfied the suspension is necessary to protect property or the safety of a person.

[3] Clause 49 Records generally

Omit “surely” from clause 49(3). Insert instead “securely”.

[4] Clause 64 Certain registered certifiers may carry out certain regulated work

Insert at the end of clause 64(1)(c)—

- , and
- (d) a registered certifier who holds a certifier—fire safety class of registration may carry out regulated work comprising the preparation of a performance solution report under clause 130 or 144A of the *Environmental Planning and Assessment Regulation 2000*.

[5] Clause 71

Insert after clause 70—

71 Savings and transitional—exemption for certain existing conflicts of interest

- (1) For the purposes of section 28(2) of the Act, a conflict of interest set out in subclause (2) or (3) is exempt from section 28(1) of the Act if, for the development to which the certification work relates—
 - (a) the certifier was appointed before 1 July 2020, and
 - (b) the development is completed before 1 July 2022.
- (2) A registered certifier issuing a relevant certificate, for development with a capital investment value of between \$2,000,000 and \$5,000,000, on behalf of a council to—

- (a) the council, or
 - (b) an employee of the council.
- (3) A registered certifier carrying out certification work in relation to an aspect of development if the certifier has provided advice as to how to amend a plan or specification to ensure the aspect will comply with a deemed-to-satisfy provision of the *Building Code of Australia*.

[6] Schedule 2 Qualifications and experience

Omit clause 2(7).

[7] Schedule 2, clause 22(1)(a)

Omit the paragraph. Insert instead—

(a) **Qualifications**

Registration as a building inspector not subject to a condition limiting the certification work the holder can carry out and satisfactory completion of training approved by the Secretary within 12 months before the application for registration is made.

[8] Schedule 2, clause 22(2)(a)

Omit the paragraph. Insert instead—

(a) **Qualifications**

Endorsed contractor licence or a supervisor certificate under the *Home Building Act 1989* enabling the holder to construct a swimming pool or to construct structural landscaping and satisfactory completion of training approved by the Secretary within 12 months before the application for registration is made.

[9] Schedule 7 Penalty notice offences

Insert in appropriate order in the table under the heading **Offences under this Regulation**—

Schedule 5, clause 1(5) for a failure to comply with	\$1,500	\$5,000
Schedule 5, clause 4(1), 6(3), 9, 10(1) or 11(a)		