

These news updates are issued as and when necessary, to keep the Tasmanian Building Industry informed of developments occurring within the Industry, the Building Code of Australia (BCA) and its referenced documents.

Building Act 2000

Regulations Errata - *Building Regulations 2004*

9 (1) - Effect of order in B landslip areas

9. (1) For the purposes of section 151 of the Act, a person –

(a) May only erect, alter or add to a building in a B landslip area if the total floor area will **(not)** exceed 200 square metres, when the building work is completed;

Explanation: The wording of regulation 9(1) is fundamentally wrong and does not reflect the intention of the regulation, nor its predecessor. Between drafts 5 and 6 of the Building Regulations the wording appears to have changed and the intent of the regulation was lost. This will need a future amendment. The regulation should be read with the word “not” inserted as shown above.

29 (1), (2) & (3) - Starting Building Work

(1) The notification required under section 87(3) of the Act is to be –

(a) within the specified period; and

(b) in an approved form.

(2) A building surveyor is to forward to the Director within the specified period a copy of a notification received under section 87(3) of the Act.

(3) A notification required under section ~~87(3)~~ (**87(4)**) of the Act is to be made in writing.

Explanation: This regulation refers to notifications under section 87(3), however it is a typographical error and refers to the wrong sub-section. It should refer to 87(4) of the Act as it relates to notifications of starting work by owner-builders. It is not intended that the Director should receive every notification of starting work.

Transitional – responsibilities for work by building surveyors

Q: Who has the responsibility for issuing Occupancy Permits for applications that were lodged prior to 1 July 2004?

A: The responsibility for issuing Occupancy Permits for applications which had Regulation 8A certifications prior to 1 July 2004, is with the Council's Building Surveyor. This is the advice given by Building Standards and Regulation at the Regional Forums in June.

Prior to 1 July 2004 the Council appointed Building Surveyor was required to consent to the issue of a building permit if satisfied that the proposed work was likely to comply with the Building Regulations.

Where the (council) building surveyor was satisfied that the building was suitable for occupation the council was to issue a certificate of occupancy. The *Local Government (Building and Miscellaneous Provisions) Act 1993* defined a Building Surveyor as a person appointed under section 24 of that Act. As previously advised to all Councils the introduction of the Regulation 8A Building Surveying Certificate from a private Building Surveyor did not remove or transfer the Council's Building Surveyor's duties and discretions. Many Councils entered into private arrangements with private Building Surveyors in relation to inspection of work for which a private Building Surveyor's certificate was provided. That was a private matter but did not remove or delegate statutory responsibilities. However a Council Building Surveyor may have relied on a report from that surveyor.

With the introduction of the *Building Act 2000* on July 1, and the requirement that all existing building permits be dealt with under the new legislation from that date, the question arose as to who should now issue the occupancy permit. In the context of the new Act, the Building Surveyor who issues the Certificate of Likely Compliance also issues the Occupancy Permit. In the absence of specific direction in the Act, BSR advises that although the Regulation 8A certificate could be considered similar to the Certificate of Likely Compliance, the statutory equivalent was the Council Building Surveyor's consent. Hence it is the Council Building Surveyor who should issue the Occupancy Permit under the new Act. This is consistent in both legal and administrative terms. The above comments do not preclude private arrangements or Certificates of Others under the new Act. The responsibility however lies with the Council Building Surveyor.

“Referral” of work by an Assistant Building Surveyor

Q: If Council employs an Assistant Building Surveyor (who can provide certification services for Class 1 and 10 buildings), can Council accept an application for a Certificate of likely Compliance and refer an entire assessment for Class 2-9 buildings to another Building Surveyor with their agreement?

A: No. If Council has an Assistant Building Surveyor who is accredited to undertake work on Class 1 & 10 buildings etc, then they should not be engaged by an owner or applicant for assessments outside that scope of work. Instead that owner or applicant should directly engage a Building Surveyor with the appropriate scope of work. That Building Surveyor will then provide the Certificate of Likely Compliance etc. An Assistant Building Surveyor cannot be engaged to do work that they are neither competent nor accredited to do. Please refer to the Building Act section 15 – (duty of building surveyor to act only within their area of competence), and s.51 (scope of work of Assistant Building Surveyor).

See also the *Building Regulations 2004*, regulation 7:

Prescribed circumstances where assistant building surveyor may act as building surveyor

7. For the purpose of section 51(1) of the Act, an assistant building surveyor may only exercise the powers of a building surveyor in respect of a building with –

- (a) no more than 3 storeys; and
- (b) a maximum floor area that does not exceed 2 000 square metres.

Section 53(2) of the Act provides for a building surveyor who has been engaged to do the work, and is competent to do that work, to refer a matter to another building surveyor, for reasons such as they are unable to act due to illness, leave, etc. The same applies to an Assistant Building Surveyor in private practice.

Accreditation and the design of plumbing work

Do plumbers need to be accredited as a building practitioner?

No - registered plumbers (under the *Plumbers and Gasfitters Registration Act 1951*) carrying out plumbing work and plumbing design are exempted from the requirement for accreditation. The Act also excludes a registered plumber who does roof plumbing, and where any "building work" associated with the plumbing work is valued at less than \$5,000.

The design of plumbing work that only requires a plumbing permit falls outside the scope of the accreditation requirements under the Building Act. The accreditation of building practitioner only applies to work that requires a building permit and the cost of which exceeds \$5,000.

What class of practitioners who design plumbing work, need to be accredited as Building Services Designers?

The requirement to be accredited as a **Building Services Designer** applies to the design of plumbing work that requires a building permit. This category of work includes:

- Heating
- Air conditioning and ventilation
- Fire Services

A guide to these types of work would be any references to piping or ducting in the BCA 2004. Note also that there is "Prescribed Building Work" in the *Building Regulations 2004*, regulation 5 (b) and (c) which was specifically included to remove doubt about this matter:

Prescribed building work

5. For the purpose of the definition of "building work" in section 3(1) of the Act, the following work is prescribed as building work:

- (b) the installation, or alteration, of a fire safety system or any part of a fire safety system;
- (c) the installation of a ducted heating, cooling, ventilation or air-conditioning system in a building that is not a Class 1 building or sole occupancy units within a Class 2 building or Class 4 building.

Note that under 5 (c) there is an exemption from the requirement for accreditation for HVAC design work on Class 1 buildings or sole occupancy units in Class 2 and 4 buildings.

Note also the Duties of Owners who engage persons to design plumbing work, in section 12 (3) of the *Building Act 2000*:

PART 3 - DUTIES OF PERSONS

Duties of owners

12 (3) An owner who engages a person to design plumbing work is to ensure, so far as is reasonably practicable, that the person is –

- (a) an accredited building practitioner; or
- (b) a plumber.

How should the Permit Authority maintain its Registers?

The Permit Authority must maintain Registers of specific information, pursuant to section 278 of the *Building Act 2000* and Approved Form No. 36. This information, as required by the Act, must be searchable or extractable from the records that the Permit Authority maintains (either electronically or a paper based system). This is to allow audits of the information that is maintained, so the ready accessibility of this information is an important factor in deciding how to set up a

system. While the register(s) may not necessarily need to be a physically separate records system, the Permit Authority should not just rely on using the property files, as these may be too difficult to search for the relevant information. A register is an official list.

Consideration of Temporary Occupancy Permit applications

The Building Act requires that any building work worth more than \$5,000 and which requires a Building Permit, must be designed, surveyed and constructed by an Accredited Building Practitioner. However, temporary structures do not require a building permit, they require a Temporary Occupancy Permit. See sections 105 to 111 of the Act. The *Building Regulations 2004*, Regulation 39 indicate the matters a General Manager is to take into account when considering a Temporary Occupancy Permit application:

Temporary occupancy permit considerations

39. (1) A general manager is to take into account the following documents and matters when considering an application for a temporary occupancy permit for a building or temporary structure:

- (a) a certificate of suitability for temporary occupation of the building provided by a building surveyor;
- (b) the construction of the building;
- (c) a certificate of likely compliance of the temporary structure with the requirements of the Building Code of Australia;
- (d) the distance of the building or temporary structure from any adjoining fire source feature;
- (e) the intended temporary occupancy use of the building or temporary structure;
- (f) any access to waste water management systems in place or provided;
- (g) any plumbing permit or special plumbing permit granted;
- (h) any access to a temporary water supply;
- (i) the suitability of the electrical installation in and around the building or temporary structure.

(2) A certificate of suitability provided by a building surveyor under sub regulation (1)(a) is to be in an approved form [*Building Regulations 2004* – Form 45]

(3) In considering a document or matter under sub regulation (1), a general manager may rely on any manufacturer's documents submitted in support of the document or matter.

Tasmania does not accredit erectors of temporary structures. However a Certificate of Likely Compliance for any structure from an Accredited Building Surveyor and an indication that erection will be supervised by an accredited building practitioner should be sufficient for any General Manager in relation to the structure.

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