



Cert Alert

Fair Trading – News for certifiers

August–September 2023

In this issue

- New requirements
- Investigations
- Reminders of existing obligations
- Training
- Have your say
- Other NSW Government news

New requirements

New requirements for fire safety schedules and performance solutions

From 1 August 2023, councils and certifiers must issue a fire safety schedule using the [approved template](#), including where there are proposed class 1b, and class 2 to 9 building works.



This is part of the expanded requirements to consult with Fire and Rescue NSW (FRNSW) for non-standard fire safety design proposals from 1 August:

- Fire safety practitioners who develop a design brief for a performance solution for a fire safety requirement in a class 2 to 9 building need to consult FRNSW if a construction certificate is required for the building work.

- A certifier must refer all fire safety-related performance solutions for class 2 to 9 buildings to FRNSW after receiving an application for a construction certificate or occupation certificate.

These new requirements are part of broader reforms introduced in December 2022 to improve compliance with the design, certification and maintenance for fire safety measures in buildings.

More information:

- Visit NSW Fair Trading's [Reforms to fire safety regulation web page](#)
- Access the [fact sheet](#).

Certifier professional indemnity cladding exclusion extended

Clause 19 of the Building and Development Certifiers Regulation permits a certifier's professional indemnity policy to have an exclusion for claims related to cladding.

This clause has been amended so that it now applies to a policy commencing on or before 30 June 2024 and providing indemnity for up to 12 months.

[Access the Building and Development Certifiers Regulation 2020.](#)



Standard determinations and conditions of consent

In line with changes to the Environmental Planning and Assessment Regulation 2021, councils need to prepare development consents on the NSW Planning Portal using the standard forms for notices of determination. Introducing a standard format will provide greater consistency and make development consents easier to navigate.

These requirements started on 30 June 2023.

You can access a webinar, toolkit and other resources about conditions of consent on the NSW Department of Planning website.

[Access resources](#)



An update from NSW Planning

The Housing and Productivity Contribution is a new, fairer state-based development charge for infrastructure contributions. Funds will contribute to infrastructure projects such as roads, schools,

hospitals and parks in high growth areas to support housing and productivity.

The new contribution will apply to applications made on or after 1 October 2023 for certain development types in the Greater Sydney, Illawarra-Shoalhaven, Lower Hunter and Central Coast regions.

The new contribution will impact the work of certifiers with the following registrations:

- building surveyor—unrestricted
- building surveyor—restricted (all classes of building)
- certifier—subdivision.

To learn more about the new contribution and the associated changes to the NSW Planning Portal, you can join NSW Planning's upcoming training for certifiers.

Book a training session

You can also find out more by

- emailing hpc.enquiry@planning.nsw.gov.au
- visiting the [NSW Planning website](#)
- reading the [Housing and Productivity Contribution implementation guideline](#).

Investigations

Registration cancelled for building certifier

NSW Fair Trading recently cancelled the registration of certifier Glenn Levick, and permanently disqualified him from being registered under the *Building and Development Certifiers Act 2018*.

It was determined that Mr Levick provided false information and false documents to a public authority, in breach of the *Crimes Act 1900*. The disciplinary decision also involved multiple breaches regarding certificates issued under the Environmental Planning and Assessment legislation, and a breach of a condition of certifier registration.

The disciplinary decision is published on the [NSW Fair Trading Certifier disciplinary register web page](#).

Reminders of existing obligations

Design and Building Practitioners legislation obligations

Certifiers have functions under the Design and Building Practitioners (DBP) legislation with issuing construction certificates, complying development certificates and occupation certificates.

Before issuing a construction certificate or complying development certificate

A certifier is prohibited from issuing a construction certificate or a complying development certificate for a class 2, 3 or 9c building unless:

- each regulated design has a design compliance declaration
- each design compliance declaration for the building work is provided to the certifier.

Certifiers have a legislated code of conduct

NSW Fair Trading recently investigated a certifier who claimed their conduct in a matter was satisfactory because it met requirements under the *Environmental Planning and Assessment Act 1979* (EP&A Act).

The law governing certifiers, however, extends beyond the EP&A Act.

The role and work of a certifier is mainly regulated by two statutory schemes. Certifiers must:

- follow the statutory requirements set by the EP&A Act and
- carry out certification work and exercise their functions as a certifier under the Building and Development Certifiers Regulation.

Schedule 5 of the Building and Development Certifiers Regulation sets a code of conduct for certifiers. It is an offence to fail to comply with this code.

Building work cannot have multiple principal certifiers

A council issued development consent for the construction of a new dwelling and pool. Two certifiers each issued a construction certificate – one for the dwelling and the other for the pool.



However, each certifier then accepted appointment as the principal certifier for only the work covered by the construction certificate they issued.

Under the *Environmental Planning and Assessment Act 1979* (EP&A Act), only one certifier can be principal certifier for building works under one development consent (or one complying development certificate).

While multiple certifiers can issue separate construction certificates related to one consent, only one principal certifier can be appointed and issue the occupation certificate/s.

Refer to section 6.6(1-2) of the EP&A Act and sections 57-58 of the EP&A (Development Certification and Fire Safety) Regulation.

Certificates need to list each classification

The Environmental Planning and Assessment legislation requires construction certificate or complying development certificate to nominate each classification under the Building Code of Australia (BCA) that applies to the development.

A certifier recently issued a complying development certificate that only indicated class 1a for the proposed development, despite the proposal including not just a dwelling, but:

- a garage larger than 10 percent of the floor area
- a swimming pool
- retaining walls.

Failure to nominate all classifications may be considered a breach of the code of conduct, such as of the requirement to exercise reasonable care and attention. It can also cause issues later for future owners and occupants, as well as with council enforcement.

Access the [Australian Building Codes Board website](#) for information about BCA classifications.

Principal contractors cannot apply for construction certificates

NSW Fair Trading has received complaints that principal contractors are applying for construction certificates in the NSW Planning Portal.

The Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021 sets out who may apply for construction certificates.

The Regulation allows only the person eligible to appoint a principal certifier for the development to apply for a construction certificate.

Please [refer to the Regulation](#) for more information.

Check for insurance when certifying residential building work

The principal certifier for residential building work must be satisfied that the principal contractor has compulsory home building compensation insurance before work commences.

It is an offence if the contractor takes even a deposit or starts work without insurance. You can report uninsured work to the State Insurance Regulatory Authority (SIRA) at hbcenforcement@sira.nsw.gov.au.

[Read more](#)

Certifier mistakes found during audits

After recent audits by NSW Fair Trading officers, we remind certifiers that they must comply with the [code of conduct](#) when carrying out certification work.

Audits found some instances of non-compliance with the code of conduct which requires certifiers to:

- act in the public interest and not adversely affect the health or safety of a person, or the safety of a person's property.
- apply all relevant building laws, regulations, safety standards and guidelines reasonably and without favour and exercise reasonable care and attention.

- take all reasonable steps to obtain and document all available relevant facts, and ensure their decisions and actions are based on those facts.
- document reasons for decisions, setting out the decision, the reasons why, the facts the reasons are based upon and the evidence for those findings.

Remember to record your reasons and check the facts

A certifier issued a construction certificate for a class 3, 6 and 9b building. The building was subject to an objection under section 74 of the Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation, regarding compliance with the Building Code of Australia (BCA) standards for the operational performance of a fire safety system.

If an objection is well-founded, section 74 permits a certifier to exempt building work from a specified BCA provision. Certain criteria apply, including:

- the fire safety statement must be issued no more than six months before the objection is made
- the certifier must be satisfied the non-compliance will not reduce the operational performance of the fire safety system.

Our audit revealed the certifier did not adequately document their decision. The certifier's records failed to demonstrate how the requirements of section 74 were met to permit the exemption, and the fire safety statement was issued more than six months before the objection was made. The certifier also accepted, without qualification, a report advising the non-compliance was 'unlikely to reduce the operational performance of the relevant fire safety systems'.

Remember to use building specifications only for their intended purpose

Certifiers must ensure building specifications and documentary evidence relied upon is to the standard required by Part A5 of the [National Construction Code](#) (NCC).

NSW Fair Trading auditors found evidence of building specifications being used for unintended purposes. Examples include:

- using generic contract specifications not specific to the site
- issuing certificates with plans and specifications that do not meet the requirements of evidence of suitability as per part A5 of the NCC, such as 'assumed soil classifications'.

One certifier had accepted a building specification that did not identify the property, and it included statements that it was intended to be read in conjunction with contract documents and was for 'tender only'.

The document, and similarly generic specifications intended for contracts or preliminary works agreements, lack the detail required to issue a construction certificate.

[Check that your practice complies with the code of conduct.](#)

Certifier data reporting update

From 5 June 2023, the NSW Planning Portal can record all critical stage inspections and written direction notices issued by certifiers. Further upgrades will help ensure the Portal is the single reporting point for all certifiers. From 1 July 2024, certifiers who use the Portal will not have to report data direct to NSW Fair Trading.

CertAbility users: You should continue to use NSW Fair Trading's CertAbility web portal and app to report existing building works to completion. Any new works should be recorded directly into the [NSW Planning Portal](#).

API users: If you use the existing Application Programming Interface (API) to report data to NSW

Training

Mandatory training reminder

Certifiers, if you attended a face-to-face session for NSW Fair Trading mandatory continuing professional development, you do not have to also complete the online version or the quiz.

If you completed the training on corruption prevention, or the Building and Development Certifiers legislation, in person or online, you will have received an email from certifierstrategy@customerservice.nsw.gov.au.

Check your emails to see if you have already completed the training. You can also email us at that address if you need us to check your record.



Have your say

Better protection against apartment building defects: Have your say

The NSW Government is seeking feedback on an insurance scheme offering better protection against apartment building defects. The proposed options aim to improve consumer protections and confidence in the construction of apartment buildings in NSW.

Have your say on a 10-year insurance scheme for new apartment buildings, called decennial liability insurance (DLI).

- DLI is a strict liability insurance product of first resort that covers critical building elements, such as structure, waterproofing and fire safety systems.
- It allows building owners to make a claim at any point in the first 10 years post occupation – even if the developer or builder are no longer trading.
- An option is proposed to make DLI permanent and replace the Strata Building Bond Inspection Scheme (SBBIS) after a transition period.

We want to hear from developers, builders, insurers, apartment owners and people looking to buy.

Have your say by Monday 2 October 2023

Visit haveyoursay.nsw.gov.au/protection-apartment-defects to complete a survey, do a quick poll, or make a formal submission. Your feedback will help ensure we consider industry and owners' needs and interests.

[Have your say](https://haveyoursay.nsw.gov.au/protection-apartment-defects)

Have your say on women in construction

The NSW Government is seeking feedback to understand how gender influences people's experiences and views on working in the construction industry.

Only 13 percent of people working in the NSW construction industry are women.

Making the construction industry open to everyone can help bring more people into jobs that need filling. A diverse and inclusive construction industry can bring more innovation, productivity and a better economy for NSW.



To take a quick survey, share your ideas and find out other ways you can take part visit haveyoursay.nsw.gov.au/women-in-construction

Have your say by 5pm (AEST), Sunday 8 October 2023.

Have your say

Your feedback will help us to understand and address the issues that prevent women joining and staying in construction and how to make the construction industry a better place to work.

Other NSW Government news

In this section, we include updates in brief and list resources and links from other areas of NSW Government that may be relevant to you.

Workplace Wellbeing Assessment

The Workplace Wellbeing Assessment: improve your workplace wellbeing with these [free resources](#).

Stay safe around moving plant and vehicles

Moving vehicles can pose a serious risk to workers and others. [Learn how to stay safe on site](#).

SeasonalSAFE plan

You can't control the weather, heat, bushfires, or smoke but you can plan where, how, and when your workers perform their duties. Access SafeWork NSW's easy 4-step guide to help you develop your [SeasonalSAFE plan](#).

Tell us what you think

Which of the following best describes you?

I am a building surveyor

I am an engineer

I am a builder

I am a developer

I am a tradesperson

I am an architect

I am a building designer

If your profession is not listed, please let us know.

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