

Role of registered certifiers – *Home Building Act 1989*

Important: this is a summary document only.

This is the form of information about the role of a registered certifier, approved by the Secretary for the holder of a contractor licence to give to the other party to a contract. It is an offence under section 11B of the *Home Building Act 1989* if the licence holder does not provide this document to the other party before entering into a contract.

This requirement applies to a contract under which the licence holder undertakes:

- to do, in person, or by others, any residential building work or any specialist work, or
 - to vary any such undertaking to do residential building work or any specialist work or the way in which any such work is to be done,
- but only if a registered certifier will be required with respect to some/all of the work.

This requirement does not apply to:

- a contract to do residential building work entered into between the holder of a contractor licence and a developer with respect to the work,
- a contract for which the contract price does not exceed \$5,000 or (if the contract price is not known) the reasonable market cost of the labour and materials involved does not exceed \$5,000,

A registered certifier is a public official, independent of the contractor

Registered certifiers are public officials who do not work for builders, contractors, developers or property owners. A certifier can be from the private sector or your local council.

A certifier's role is to make an independent assessment to determine if relevant requirements of the *Environmental Planning and Assessment Act 1979* have been met to warrant the issuing of a construction certificate, complying development certificate or occupation certificate.

Certifiers do not supervise or manage builders, contractors or building sites.

Obligations of registered certifiers

The general obligations of registered certifiers include compliance with their conditions of registration, to hold professional indemnity insurance, comply with a code of conduct and avoid conflicts of interest.

Certifiers must carry out work in a manner that is impartial and in the public interest, even if this is not in the interests of the applicant, developer, or builder. Receiving a certificate is not guaranteed – the applicant is paying for the certifier to assess the application and determine *whether or not* a certificate can be issued.

What are a certifier's responsibilities at each stage?

Before construction starts, a certifier's responsibilities include to:

- check whether the proposed work will meet legislative requirements if built in accordance with the approved plans and specifications
- advise which inspections will be mandatory as the work progresses
- notify the council of their appointment as the principal certifier
- check your builder or contractor is licensed and insured under the *Home Building Act 1989*
- check whether any applicable conditions of your consent or approval are met
- check whether any applicable fees are paid, such as the long service levy
- install a sign on the building site, showing the certifier's details
- inspect the building site (if required).

During construction, a certifier's responsibilities include to:

- inspect the work in person, at each required stage
- if a non-compliance is identified, issue a direction to you and/or the builder requiring certain action to be taken, and notify the council if the required action isn't taken
- respond appropriately to any complaints about the development, including informing the council if needed.

After construction is finished, a certifier may issue an occupation certificate if:

- all relevant conditions of your consent are met, and you have applied for the occupation certificate, and
- all inspections have been carried out and the work is found to be satisfactory, unless an inspection (other than the final inspection) was missed under circumstances deemed unavoidable by the certifier (and evidence of suitability of the work is provided), and
- the work is 'suitable for occupation' in accordance with the Building Code of Australia. Important: this is a minimum standard of compliance that must be met. It does not guarantee that all the work has been completed. For example, a house or apartment may be suitable for occupation while painting or landscaping is still being completed.

An occupation certificate does not certify that the conditions of your contract with the builder have been met. The contract with your builder is a different contract to the contract with your certifier and must be considered separately.

Obligations of the applicant

An applicant is the person seeking a certificate, or engaging a certifier for other certification work, under the *Environmental Planning and Assessment Act 1979*.

As an applicant, you have the following obligations:

- Appoint, and enter into a contract with, your chosen certifier.
- Pay the certifier's fees before any certification work is carried out.
- Communicate with your builder to ensure the certifier is notified when work reaches each stage. If a mandatory inspection is missed, the certifier may have to refuse to issue an occupation certificate.
- Follow any written direction issued by the certifier and provide any requested additional information to assess an application.
- Meet the conditions of any development consent and ensure the development is carried out in accordance with the approved plans.

It is a serious offence to attempt to bribe or influence a certifier, attracting a maximum penalty of \$110,000 and/or two years imprisonment.

Finding more information on certifiers

Details of the class of registration each certifier holds, their period of registration, professional indemnity insurance and disciplinary history can be found at www.fairtrading.nsw.gov.au:

- [Details of registered certifiers](#) (or search 'appointing a certifier' from the homepage)
- [Disciplinary actions against certifiers](#) (or search 'certifier disciplinary register' from the homepage).

Questions?

The Fair Trading website www.fairtrading.nsw.gov.au has information about certifiers, enforcement powers, how to replace a certifier and resolving concerns about a certifier:

- Search '[what certifiers do](#)' for information about a certifier's role and responsibilities.
- Search '[concerns with development](#)' for information about enforcement powers of certifiers, councils and Fair Trading, and how to resolve concerns about a certifier.