

COMMENCEMENT OF THE LOCAL GOVERNMENT AND OTHER LEGISLATION AMENDMENT ACT 2000 (LGOLA)

The *Local Government and Other Legislation Amendment Act 2000* (LGOLA) amends the *Building Act 1975* (BA), the *Integrated Planning Act 1997* (IPA) and other local government legislation. The purpose of the amendments is to remove anomalies and minor textural errors in those Acts and to improve the workability of building certification and IDAS. This newsflash summarises those amendments most relevant to building certifiers and the building industry. Unless noted otherwise below, these provisions became operational on the assent of the LGOLA Act on the 16 March 2000.

Building certifiers are urged to make themselves familiar with these amendments by obtaining a copy of the LGOLA Act from GOPRINT or downloading a copy from the IPA homepage (www.dcilgp.qld.gov.au/index_ipa.html).

Professional misconduct reinforced

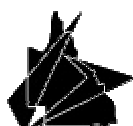
The provisions concerning “professional misconduct” of building certifiers are reinforced to include:

- acting contrary to a duty stated in the IPA, Building Act 1975 or another Act for building certifiers (IPA 5.3.8 & BA 3); and
- conduct where a certifier undertakes professional work which they are not competent to perform (BA 3). This emphasises the need for certifiers to act within their competencies.

SBR to prescribe when a private certifier may give an approval

The private certification provisions of the IPA are amended to:

- transfer to the *Standard Building Regulation 1993* (SBR) provisions prescribing when a private certifier can give an approval (new IPA 5.3.5(2)). This will enable the SBR to prescribe in finer detail the various preliminary approvals or development permits, as appropriate, which must be given by a Council before a permit for building work can be issued. Along with the transfer of existing subsections (5), (6), & (7) to the SBR, this amendment will improve the legibility of the legislation by consolidating in the SBR provisions specifically regulating the approval of building work.
- delay the commencement of the decision stage for applications being assessed by private certifiers to when the private certifier is entitled under subsection (2) to make a decision (new IPA 5.3.5(3)).
- clarify that in addition to deciding a development application, a private certifier may also decide subsequent changes to an approval (new IPA 5.3.5(4)).



These amendments will not become operational until the necessary amendments to the SBR are finalised specifying those aspects of development that must be approved before building work can be approved.

Referral agencies to receive plans

The decision notice provisions are amended to require assessment managers and private certifiers when giving a copy of the decision notice to referral agencies to also give the agencies a copy of approved plans and specifications (IPA 3.5.15(5)).

This amendment is not operational until 1 July 2000.

Transitional planning scheme development approvals

Previously, planning approvals were given as a “package” encompassing a range of development including changes of use, building work, and other works. Many applicants and assessment managers have confused the term “material change of use” under the IPA with the package style approvals given before the IPA commenced. A new provision has been inserted to overcome these difficulties (new IPA 6.1.30A).

If it can be inferred from the plans included with a material change of use application under a transitional planning scheme that other development was intended to be included in the application, then any approval for the material change of use is now deemed a preliminary approval for the other development as well. The effect of this is if the approval is deemed a preliminary approval for building work, no further approval is required under the planning scheme.

This amendment has been deemed operational from the commencement of the IPA and validates existing approvals of this type.

Operation of enforcement provisions improved

The enforcement provisions of the *Building Act 1975* are amended to enable an enforcement notice to be given:

- to not only an owner, but any person who does not comply with a particular matter in the Act (BA 22(2)).
- not only regarding buildings and structures, but also regarding the carrying out of building work (BA 22(1)). This will allow building works associated with the construction of buildings and structures, such as siteworks, to be subject to an enforcement notice.

The enforcement provisions of the IPA are amended to:

- require an assessing authority to give local government written notice of the withdrawal of an enforcement notice (IPA 4.3.11(2A)). This will enable local governments to accurately maintain the register of enforcement notices.
- require private certifiers acting as an assessing authority to consult with the assessment manager about the giving of an enforcement notice prior to giving the notice (IPA 4.3.11(3A)).

- allow an assessing authority to issue an enforcement notice, without prior consultation with a private certifier or local government, if it believes work is dangerous (IPA 4.3.11(4)).
- clarify that only if an assessing authority is a private certifier or a local government, is the assessing authority prohibited from delegating its power to give an enforcement notice about the demolition of a building (IPA 4.3.11(5)). This carries forward the provisions of previous section 64A of the Building Act 1975 in force prior to the commencement of the Building and Integrated Planning Amendment Act 1998.

The amendments to IPA 4.3.11 are not operational until 1 July 2000.

The definition of “assessing authority” (IPA Schedule 10) is amended to

- deem the chief executive of the public sector entity on whose behalf the building work is being carried out as the assessing authority for the work;
- deem the local government as the assessing authority for self assessable building and plumbing work; and
- clarify that for development for which a private certifier is engaged, either the private certifier or local government may give an enforcement notice. Contrary to intention, the effect of the current provision is that local government is the only assessing authority and certifiers would not be able to issue an enforcement notice.

Requirements to sight levy payment clarified

The *Building and Construction Industry (Portable Long Service Leave) Act 1991* (s. 77) is amended to clarify that it is an offence for a private certifier to issue a development permit for building works if the private certifier has not seen an approved form issued by the Authority signifying payment of the Portable Long Service Leave levy.

Further Information

In the coming weeks, the following publications will be available on the Internet at site address: www.dcilgp.qld.gov.au/index_ipa.html:

LGOLA Act 2000 Explanatory Notes
 LGOLA Act 2000 Implementation Note.