

# Code of conduct for building certifiers

Effective 1 October 2020



Queensland  
Government

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## Introduction

The code of conduct (the code) sets out standards of conduct and professionalism expected from building certifiers when performing building certifying functions in Queensland.

Section 129(2) of the *Building Act 1975*, provides that the chief executive of the Department of Housing and Public Works may make or amend the code of conduct for building certifiers. The code of conduct must be complied with and the performance of building certifiers may be measured against it.

A breach of the code may constitute unsatisfactory conduct or professional misconduct under the *Building Act 1975*.

## Purpose

The purpose of the code is to:

- set standards of conduct and professionalism expected from building certifiers in the performance of building certifying functions
- inform the community of the standards of conduct and professionalism expected from a building certifier
- provide consumer, regulatory, employing and professional bodies with a basis for making decisions regarding standards of conduct and professionalism expected from building certifiers.

## Standards of conduct and professionalism

A building certifier must:

- perform building certifying functions in the public interest
- maintain satisfactory levels of competence
- comply with legislative requirements
- not perform building certifying functions where there is the potential for a conflict of interest
- only perform building certifying functions permitted within the scope of their building certifier licence level
- maintain confidentiality
- abide by moral and ethical standards expected by the community
- take all reasonable steps to obtain all relevant facts when performing building certifying functions
- clearly document reasons for building certifying decisions
- ensure inspections are carried out to ensure building work complies with the *Building Act 1975* and the development permit.

## Explanatory statements

Although the code does not give detailed professional advice on specific issues and areas of practice, the explanatory statements may be used to clarify the meaning and scope of the code. The explanatory statements do not in any way limit the extent of the standards of conduct and professionalism.

### 1. A building certifier must perform building certifying functions in the public interest.

A building certifier must perform building certifying functions in the public interest and must not take action that would compromise the health and safety of any person, or the amenity of any person's property, or significantly conflict with a local planning scheme.

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The duty to act in the public interest when performing a building certifying function or a private building certifying function, prevails to the extent of any inconsistency with any other obligation under the *Building Act 1975* or to another person. The duty to act in the public interest is taken not to create a conflict of interest (a conflict of interest as defined in section 128 of the *Building Act 1975*).

Examples of when a building certifier must perform building certifying functions in the public interest include:

- Enforcement action—a building certifier must, where appropriate, take suitable enforcement action as an enforcement authority in respect of building work that does not comply with legislative requirements. See the *Queensland building work enforcement guidelines*.
- Discretion—a building certifier when exercising any discretion in performing building certifying functions must ensure the health and safety of any person, or the amenity of any person's property is not compromised.

## **2. A building certifier must maintain a satisfactory level of competence.**

A building certifier must undertake continuing professional development in accordance with an approved scheme to ensure they constantly keep informed of developments in building design and practice, business management principles, and the law relevant to performing building certifying functions.

## **3. A building certifier must comply with legislative requirements.**

A building certifier must comply with the legislative requirements that regulate or govern building certifiers in the performance of building certifying functions.

## **4. A building certifier must not perform building certifying functions where there is the potential for a conflict of interest.**

A building certifier must not perform building certifying functions where there is the potential for a conflict of interest between their duties to their clients, profession, peers and the public and their personal and/or business interests. When undertaking building certifying functions, the overriding obligation of a building certifier is to act in the public interest. The duty to act in the public interest can not be taken to create a conflict of interest.

## **5. A building certifier must not perform building certifying functions beyond their level of competence or outside their area of expertise.**

A building certifier, when performing building certifying functions, must have:

- the appropriate level of accreditation and level of licensing—limitations are placed on the number of storeys and the floor area of buildings that may be assessed according to the level of accreditation and licensing of the building certifier. These limitations also apply to existing buildings where building work is being carried out.

For example, a building certifier licensed at the level of building certifier level 2 cannot decide a development application for a minor addition to an existing building with a rise of over three storeys or a floor area greater than 2000m<sup>2</sup>.

- the appropriate level of competence, and expertise for the building certifying functions performed.

For example, an application before a building certifier may require assessment of a complex performance solution, or interpretation of requirements of a transitional planning scheme. If a building certifier is not experienced in the particular area then written advice from a suitably

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qualified or experienced person must be obtained before deciding the application.

**6. A building certifier must maintain confidentiality.**

A building certifier must not divulge confidential or commercially sensitive information in the performance of their building certifying functions unless directed to do so in writing by the appropriate authority following Australian Privacy Principles under the *Privacy Act 1988* (Cwlth).

**7. A building certifier must abide by moral and ethical standards expected by the community.**

A building certifier, must when performing building certifying functions:

- apply all relevant building laws, regulations, safety standards and guidelines reasonably and without favour
- perform the functions with honesty, integrity and impartially
- not knowingly enter into any conduct that could bring, or tend to bring, the profession of building certifiers into disrepute.

**8. A building certifier must take all reasonable steps to obtain all relevant facts when performing building certifying functions.**

A building certifier must:

- keep themselves informed and to consider all relevant and available information when performing building certifying functions
- demonstrate that all reasonable steps have been taken to obtain and record all available facts relevant to performing building certifying functions.

For example, a building certifier should undertake a site investigation where possible to make themselves aware of any site conditions that may influence a decision on the development application (e.g. the contours of a site which may influence site drainage).

**9. A building certifier must clearly record reasons for decisions.**

A building certifier must maintain properly documented reasons for building certifying decisions.

Documented reasons must include:

- the findings of fact, for example, reliance on results of tests carried out
- a reference to evidence or other material on which the finding was based, for example, reliance on Standards published by Standards Australia
- the reasons for the decision.

Examples of decisions requiring documented reasons to be maintained by building certifiers include:

- when building certifiers are required to provide records of discretionary decisions, the certifier must retain documents supporting the discretionary decision
- when building certifiers obtain expert advice on building matters outside the scope of their qualifications or expertise, the certifier must retain the documented advice, for example, a performance solution involving fire engineering analysis
- when building certifiers obtain advice and decide no other approvals are required under the planning scheme and the *Planning Act 2016*, the certifier must retain the documented advice, including the source of the advice
- when building certifiers accept a certificate from a competent person the certifier must document the reasons for considering the person giving the certificate as competent, and retain the documents or information relied on in deciding the person as competent
- when building certifiers inspect building work, the certifier must document the results of the inspection.

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**10. A building certifier must ensure inspections are carried out to ensure building work complies with the *Building Act 1975* and the development permit.**

A building certifier must ensure that sufficient inspections are carried out during the construction of building work to ensure the work complies with the *Building Act 1975* and the development permit for the work. These inspections are to be carried out in accordance with best industry practice for the inspection of building work by building certifiers. However, the role of a building certifier is not intended to be one of a supervisor.

A building certifier, when performing building certifying functions, must ensure any building work that does not comply with the *Building Act 1975* is promptly notified to the builder of the work. The certifier must ensure the builder brings the building work into compliance with the *Building Act 1975* and the development permit for the work.

## Breaches of the code of conduct

A breach of the code may constitute unsatisfactory conduct or professional misconduct under the *Building Act 1975*.

There is a distinction between breaches constituting ‘unsatisfactory conduct’, and more serious breaches or offences that may compromise the safety of people in buildings. These more serious breaches or offences constitute ‘professional misconduct’.

Examples of breaches of the code that may constitute professional misconduct include:

- incompetence, or a lack of adequate knowledge, skill, judgement, integrity, diligence or care in performing building certifying functions
- compromising the health or safety or a person or the amenity of a person’s property
- seeking, accepting or agreeing to accept a benefit, whether for the benefit of the building certifier or another person, as a reward or inducement to act in contravention of the legislation
- failing to comply with an order of the Queensland Building and Construction Commission (QBCC) or the Queensland Civil and Administrative Tribunal (QCAT)
- assessing building work as complying with the legislation which significantly conflicts with a local planning scheme or any relevant planning instrument.
- Fraudulent or dishonest behaviour in performing building certifying functions
- Improper or unethical conduct
- repeated unsatisfactory conduct.

Repeated unsatisfactory conduct that may result in professional misconduct includes:

- repeated conduct that shows incompetence, or a lack of adequate knowledge, skill, judgment, integrity, diligence or care in performing building certifying functions
- repeated conduct that is contrary to a function under the *Building Act 1975* or another Act regulating building certifiers (including private certifiers for building work), including, for example, disregarding relevant and appropriate matters, acting outside the scope of the building certifier’s powers, acting beyond the scope of the building certifier’s competence or building certifier licence and contravening the code of conduct
- repeated conduct that is of a lesser standard than the standard that might reasonably be expected of the building certifier by the public or the building certifier’s professional peers.

A person may make a complaint to the QBCC if the person believes a building certifier has engaged in unsatisfactory conduct or professional misconduct. The QBCC must investigate the complaint and take appropriate action based on the outcomes of the investigation.

After investigating a complaint about a building certifier, the QBCC must decide whether or not the building certifier has engaged in unsatisfactory conduct or professional

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misconduct.

If the QBCC decides the building certifier has engaged in unsatisfactory conduct, the QBCC must decide what further action to take against the building certifier.

If the QBCC decides the building certifier has engaged in professional misconduct, the QBCC must apply to QCAT to start a disciplinary proceeding against the building certifier.

A local government may also apply to QCAT to start a disciplinary proceeding against a building certifier if it believes the building certifier has engaged in professional misconduct.

## Interpretation of terms

'Enforcement authority' includes:

- for building work under a development permit given by a local government—the person who would have been the enforcement authority had a development approval been given
- for assessable development for which a private certifier has been engaged to perform the functions of a private certifier—the private certifier or the delegated officer of the local government
- for assessable building work not covered by a development permit—the person who would have been the enforcement authority had a development approval been given
- for accepted building work— a delegated officer of the local government or the entity responsible for administering the code for the development.

See also schedule 2 of the *Planning Act 2016*.

*Building Act 1975* includes:

- *Building Act 1975*
- Building Regulation 2006
- Building Code of Australia
- Queensland Development Code
- building provisions in local government planning instruments allowed under section 32 of the *Building Act 1975*.
- any other documents referenced by these statutes.

'Building certifier' includes:

- if a private certifier who is an individual licensed by the QBCC, approves building work—the private certifier
- if a private certifier, who is a person other than an individual or public sector entity, approves building work—any of the person's or entity's private certifiers licensed by the QBCC to perform a building certifying function for the building work
- if the assessment manager approves building work—any of the assessment manager's building certifiers licensed by the QBCC to perform a building certifying function for the building work.

See also section 8 of the *Building Act 1975*.

'Building certifying function' is defined by section 10 of the *Building Act 1975*. A building certifying function includes, but is not limited to, the following:

- assessing and deciding development applications for building work
- inspecting or accepting certification on the building or demolishing of buildings and structures for compliance with the *Building Act 1975*
- issuing, for buildings, certificates of classification or statements of classification

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- taking enforcement action in relation to development approvals issued by a building certifier.

See also section 10 and 48 of the *Building Act 1975*.

'Building work' includes:

- building, repairing, altering, underpinning (whether by vertical or lateral support), moving or demolishing a building or other structure
- excavating, filling or supporting land incidental to other building work or that may affect a building or other structure
- work regulated under the Building Regulation 2006
- see also schedule 2 of the *Planning Act 2016*.

'Competent person' in relation to building work, includes:

- a person who, in the opinion of the building certifier, is competent to practise in the aspect of the design, building or inspection of the building work because the individual has the appropriate experience, qualifications or skills, and, if a law requires an individual to hold a licence or registration to be able to give the help, an appropriately licensed or registered individual.

See also Part 5 of the *Building Regulation 2006*.

'Complies', for the inspection of building work by a building certifier or competent person, means the certifier or competent person is satisfied on an inspection of the work, completed in accordance with best industry practice, that the work complies with the Act and the development approval for the work.

See also schedule 2 of the *Building Act 1975*.

'Conflict of interest' for building work includes the private certifier or building certifier:

- carrying out the building work that is the subject of the building certifying function
- being engaged by the owner of the building or the builder to perform a function other than:
  - a building certifying function
  - to manage a development application
  - give regulatory advice about any matter
- having a direct or indirect pecuniary interest in the building.

See section 128 and 137 of the *Building Act 1975*.

'Professional misconduct' includes:

- conduct that shows incompetence, or a lack of adequate knowledge, skill, judgment, integrity, diligence or care in performing building certifying functions
- seeking, accepting or agreeing to accept a benefit, whether for the benefit of the building certifier or another person, as a reward or inducement to act in contravention of:
  - this Act
  - another Act regulating building certifiers, including private certifiers for building work
- failing to comply with an order of the QBCC or the tribunal
- fraudulent or dishonest behaviour in performing building certifying functions
- other improper or unethical conduct
- repeated unsatisfactory conduct
- conduct that is contrary to a function under the *Building Act 1975* or another Act regulating building certifiers (including private certifiers for building work).

For example, disregarding relevant and appropriate matters including:

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- acting outside the scope of the building certifier's powers
  - acting beyond the scope of the building certifier's competence
  - contravening the code of conduct
  - falsely claiming the building certifier has the qualifications, necessary experience or licence to be engaged as a building certifier.

See also schedule 2 of the *Building Act 1975*.

'Unsatisfactory conduct' includes conduct that:

- shows incompetence, or a lack of adequate knowledge, skill, judgment, integrity, diligence or care in performing building certifying functions
- conduct that is contrary to a function under the *Building Act 1975* or another Act regulating building certifiers (including private certifiers for building work).

For example:

- disregarding relevant and appropriate matters
- acting outside the scope of the building certifier's powers or competence
- contravening the code of conduct
- is of a lesser standard than the standard that might reasonably be expected of the building certifier by the public or the building certifier's professional peers.

See also schedule 2 of the *Building Act 1975*.