

Building Practice Note BP-15: Certificates of Compliance

This Practice Note provides guidance for a relevant building surveyor (RBS) when accepting and relying on a certificate of compliance under the Building Act 1993 (the Act) and the Building Regulations 2018 (the Regulations).

The context below provides guidance on:

- Issuing certificates of compliance
- Reliance on a certificate of compliance
- When certificates of compliance are not provided
- Independent reviews

Abbreviations & Definitions

The abbreviations and definitions set out below are for guidance only. They are not intended to vary those set out in the Building Act 1993 (the Act) or the Building Regulations 2018 (the Regulations).

- **Act** – The Building Act 1993
- **Certificate** – Certificate of compliance
- **RBS** – Relevant Building Surveyor
- **Regulations** – Victorian Building Authority

Overview

Section 24 of the Act requires that the relevant building surveyor (RBS) must not issue a building permit unless they are satisfied the building work and the building permit will comply with the Act and the Regulations. One means of being satisfied is the acceptance and reliance on a certificate of compliance (certificate) issued by a registered building practitioner, pursuant to section 238 of the Act.

Where a certificate is provided to the RBS as evidence of compliance by a registered building practitioner, section 128 of the Act removes liability from the RBS for anything done or omitted to be done in good faith in reliance on the certificate.

Issuing certificates of compliance

A certificate of compliance may be issued and relied upon in relation to a design of building work of any Class, the inspection of domestic building work, or the erection of prescribed temporary structures. The certificate must state the proposed building work, or as constructed building work, complies with provisions of the Act and the Regulations.

Regulations 122 and 123 set out the prescribed building work and the registered building practitioners who may issue a certificate under section 238 of the Act.

Regulation 126 requires the certificate to be issued in a form approved by the VBA (available from the VBA website). The certificate must be addressed to the RBS, a municipal building surveyor or a private building surveyor. Where the certificate is for proposed building work, it must relate to the final design.

Certificates relating to **design** may be issued by a prescribed engineer in the relevant class of engineer, or a building surveyor registered under Part 11 of the Act.

Certificates relating to the **inspection of domestic building work** may only be issued by a prescribed engineer, building surveyor, or building inspector registered under Part 11 of the Act. The certificate must be signed by the person who carried out the inspection.

Registered building practitioners must only issue a certificate if the proposed building work being certified as compliant falls within their area of competence and the limits of their expertise. Issuing certificates inappropriately is regarded as a conduct issue which may lead to disciplinary action.

Reliance on certificates of compliance

Section 128 of the Act provides immunity for the RBS who relies on a certificate in good faith. Building practitioners permitted to issue a certificate must be registered and carry the required insurance.

It is up to the RBS having regard to the circumstances of a project and relevant competencies, to decide whether to rely on a certificate from a registered building practitioner set out in regulations 122 or 123. The RBS should not blindly accept a certificate as removing their liability. The 'good faith' test requires that the person accepting the certificate has made a proper enquiry about, and has no reason to doubt, the competence of the person issuing the certificate.

This will require the RBS to have regard to the qualifications and experience of the person issuing the certificate. If the provider of a certificate was acting outside their field of expertise, the RBS will not be able to rely on good faith as a defence. It would, for example, be inappropriate for the RBS to accept a certificate from a building practitioner who did not have suitable qualifications or experience. Furthermore, when relying on a certificate, the RBS is required to have regard to the details noted on the certificate including checking the site address, referenced documents and any conditions or assumptions provided.

Where the RBS relies on a certificate certifying a performance solution, they should request the building practitioner give them a copy of the written record prepared under regulation 124(1). The record is required to include the relevant performance requirements and details of the assessment methods used in determining that the performance solution complies.

It is open to an RBS to accept reports from experienced persons other than those set out in regulations 122 and 123. Such a report will not constitute a certificate under section 238 of the Act or remove liability as set out in section 128 of the Act. The 'good faith' test should also be applied to acceptance of these reports.

It is not appropriate to routinely rely on certificates or inspection reports issued throughout the construction process by engineers engaged by the builder or developer. These inspection reports may relate to contractual obligations of the builder to the developer and are not appropriate for mandatory notification inspections. If practitioners are to carry out an inspection of building work for a mandatory stage of building work on behalf of the RBS, the RBS must cause the inspection to occur.

When certificates of compliance are not provided

To issue a building permit, the RBS must be satisfied the design complies with the Act and Regulations. However, many buildings can be designed without the use of computations prepared by an engineer. Also, there may be cases where a certificate is not provided in relation to a design prepared by an engineer.

If an RBS does not have the skills to ensure a design is compliant or a certificate is not provided to the RBS who is responsible for checking the design for compliance, the RBS should arrange for independent checking and certification to be satisfied that compliance is achieved. For instance, the RBS should not determine that an engineering design is compliant unless the proposed work falls within their expertise and they have relevant experience in relation to the proposed design.

Independent reviews

After having regarded the complexity of a design, the RBS may determine that an independent review of the design is needed. To be regarded as independent, a registered building practitioner who is to undertake an independent review should not be employed by the same person or organisation, or be related to, the person who prepared the design.

Related Documentation

- Building Act 1993 (VIC)
- Building Regulations 2018
- Building Practice Note BP-01: When is a building permit required?

Version History

- Version 2.0, published 28 June 2021, supersedes Practice Note 03: Certificates of Compliance

Contact Us

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