

From 1 July 2018 the NSW Government has made it mandatory for Principal Certifiers (PC's) to report data on building certification to the NSW Government to *"help improve public policy by giving the Government real-time, centralised information on building activity across NSW."*

Schedule 8 of the *Building and Development Certifiers Regulation 2020* requires the PC to provide the Department of Fair Trading with information relating to, amongst other things, inspection results, missed inspections and occupation certificates. This information includes details relating to;

- The type of inspection,
- The date of any inspection,
- The result of inspections,
- The Registered Certifier that undertook the inspection,
- Any missed inspections and
- The issue of any Occupation Certificate.

and it must be provided within 2 days.

The Government has made it very clear that this data will be used to *"improve the evidence base for more effective regulation"* and to *"assist Councils in monitoring development in their local area."* This means that those activities relating to projects will be subject to more scrutiny by Government agency's than ever before by virtue of a process that will have a level of transparency like one that the building industry has never experienced before.

With the introduction of "more effective regulation" builders will far more accountable for their actions and their staff and contractors. That includes any failure to call for a critical stage inspection required by Section 61 of the *Environmental Planning & Assessment (Development Certification and Fire Safety) Regulation 2021*.

IF YOU ARE AN OWNER OR BUILDER WHAT SHOULD YOU DO ?

- When you receive your Development Certificate determine what inspections are required by your Principal Certifier (PC). If it is not included in your documentation, ask the question !
- There are at least six (6) critical stage inspections that must be completed for the construction of a dwelling. You need to ensure that you know what these inspections are and that they are all requested at the right time.
- You need to know if the PC requires any additional inspections (e.g. Fire walls).
- You must ensure that the agreement your Owner has with the PC includes all of these critical stage inspections.
- Remember that you are paying for these inspections but also remember that it is your responsibility to book them in, make sure they are done and that you get an inspection result for each one of them.
- Don't proceed with work until you get evidence in writing that your inspection has been completed.
- Ensure that re-inspections are completed. They are equally as important because records held at the Office of Fair Trading will also show defective results that will appear as a 'loose end'.
- Missed inspections must be reported. This will trigger the requirement for the PC to advise both Fair Trading and the Owner of the property that they have been missed in accordance with the procedures outlined in *Section 64 of the EP&A (Development Certification & Fire Safety) Regulation 2021*.
- The issue of an Occupation Certificate may be delayed or an application may be refused depending on the outcome of how the Regulations will be enforced by Government agencies.

If you are in doubt about the status of your project you need to call your PC without delay as the reporting of results and missed inspections is now mandatory. Any failure to report this information to the Board will potentially expose the PC to audit and review by the Board with a fine of up to \$5500 and/or a Penalty Infringement Notice of \$1500 for individuals and \$3000 for Corporations. Similarly, Builders are subject to enforcement of the regulations by the Department of Fair Trading.

WHAT DO YOU DO IF YOU MISS AN INSPECTION

It is a statutory requirement to report a missed inspection. *Section 64 of the EP&A (Development Certification & Fire Safety) Regulation 2021* outlines the procedures for what needs to be done. At the very least that includes;

- Stopping work on the project until it has been sorted out.
- Providing an explanation as to the circumstances of why the inspection was unavoidably missed [*EP&A (Development Certification & Fire Safety) Regulation 2021 – Section 64(2)(b)(i)*].
- Providing documentary evidence of a kind referred to in *Part A2, clause A2.2 of the Building Code of Australia*. That is;
 - a Compliance Certificate issued by a Registered Certifier – Engineer under *Part 6 of the EP&A Act, 1979* that certifies, unconditionally, that the work that is the subject of the missed inspection complies with the requirements of the relevant *Australian Standard, any Condition of Development Consent and the National Construction Code*.
- Provide a Statutory Declaration from the 'Licenced Builder' stating that the work that is the subject of the missed inspection complies with the requirements of the relevant *Australian Standard, any Condition of Development Consent and the National Construction Code*.
- Understanding that the Owners of the premises will be formally notified, by the Principal Certifier, of the missed inspection in accordance with the provisions of *Section 64(2)(a)(i) of the EP&A (Development Certification & Fire Safety) Regulation 2021*. As the Builder, you may choose to undertake this notification direct and prior to the Principal Certifier.

WHAT IS THE TAKE-AWAY MESSAGE

- The NSW Government has made it very clear that it is collecting certification data to;
 - "improve the evidence base for more effective regulation," and
 - to "assist Councils in monitoring development in their local area."
- Do not miss a critical stage inspection.
- Ensure that all critical stage inspections or any additional inspection requested by the PC are completed.
- Get your results !!!!
- Defective results do not look good on a public portal.
- Your PC is only required to report the data. You as the Builder are responsible for the result and ultimately for being accountable to the Owner.
- Transparency rests with the PC, accountability rests with the Builder.

More information

- <https://www.fairtrading.nsw.gov.au/trades-and-businesses/business-essentials/building-certifiers/certification-data-reporting>
- Local Certification Services Pty Ltd Ph: 1300 368 534 info@localgroup.com.au

yours locally