

When a private building surveyor may not act

This fact sheet explains what's different about section 79 of the *Building Act 1993* (the Act) from 4 July 2016.

PENALTY FOR BREACHING SECTIONS 79(1) OR 79(2A) (The value of a penalty unit is \$151.67 as at 16 June 2016)

500 penalty units

THE CHANGE

From 4 July 2016, the requirement that a private building surveyor (PBS) must not act in certain circumstances, is extended to include:

- any and all functions of the PBS in relation to building work, and
- a general requirement not to act where there is a conflict of interest.

In addition, if a related person would be unable to act if they were the PBS, then the PBS may not act.

WHAT THE CHANGE MEANS

Building surveyors

It is still an offence to carry out any function of a PBS where the PBS:

- prepared the design of the building or building work
- is an employee, contractor or financial beneficiary of the person or body that prepared the design of the building or building work, or
- is a financial beneficiary of a person or body carrying out the building work.

From 4 July 2016, it is also an offence for the PBS to act if any of the circumstances above apply to a "related person" as defined in the Act.

A person can be related to a PBS if they are:

- a member of a partnership (that is, another partner in partnership with the PBS)
- a director of a body corporate of which the PBS is a director
- a part of any related body corporate of a body corporate of which the PBS is a director, or
- an employer or employee of the PBS.

There is also a general requirement not to act where the PBS or a related person has a conflict of interest. The provision only applies to a conflict that arises on or after 4 July 2016.

A conflict of interest can be anything that could prevent the PBS from carrying out their functions in an independent way. For example, if the outcome of the PBS's decision could result in financial gain for the PBS, or an immediate family member, a conflict of interest may exist.

Read the revised section 79

- (1) Subject to subsection (2), a private building surveyor must not carry out any functions set out in section 76 or 77 in relation to a building or building work if the private building surveyor or a related person —
- (a) prepared the design of the building or building work; or
 - (b) is, or within the prescribed period was, employed or engaged by the person or body which prepared the design of the building or building work other than an appointment to carry out a function set out in section 76; or
 - (c) has a direct or indirect pecuniary interest in the body which prepared the design of the building or building work; or
 - (d) has a direct or indirect pecuniary interest in the building or building work or in any body carrying out the building work.

Penalty: 500 penalty units

- (1A) A private building surveyor must not carry out any function as a private building surveyor in relation to which the private building surveyor or a related person has a conflict of interest.
- (2) The Authority, on the application of a private building surveyor, may exempt the private building surveyor from all or any of the requirements of subsection (1) or (1A) in respect of any particular building or building work. An exemption must be in writing.
- (2A) A private building surveyor must not carry out any functions set out in section 76 or 77 in relation to a building or building work if the private building surveyor—
- (a) is also an officer or employee of a council and the building is situated in or the building work is to be carried out in the municipal district of that council; or

- (b) is engaged by a council under section 215 to carry out the functions of municipal building surveyor and the building is situated in or the building work is to be carried out in that municipal district.

Penalty: 500 penalty units

- (3) Except as provided in this Part, a private building surveyor must not accept an appointment to complete any functions set out in section 76 in respect of a building or building work if another private building surveyor or a municipal building surveyor has already commenced to carry out functions set out in that section in respect of that building or building work.
- (4) In this section—
- related person**, in relation to a private building surveyor, means—
- (a) if the private building surveyor is a member of a partnership, another partner in the partnership; or
 - (b) if the private building surveyor is a director of a body corporate, the body corporate or another director of the body corporate; or
 - (c) any related body corporate of a body corporate of which the private building surveyor is a director; or
 - (d) any employer or employee of the private building surveyor.

Want to know more?

Please [submit an enquiry](#) or call us on 1300 815 127.

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