

PRACTICE NOTE 03-2018

This updates the previous Practice Note-2014-03 issued September 2014

Summary

When assessing building permit applications, section 238 of the Building Act 1993 (the Act) provides that the relevant building surveyor (RBS) may rely on a "Certificate of compliance" from a registered building practitioner, stating that the work complies with provisions of the Act and the Building Regulations 2018 (the Regulations). It is up to the RBS to decide whether or not to rely on a Certificate of compliance.

One may not be supplied, in which case, the RBS will be responsible for checking the design or inspecting the work.

Issuing Certificates

Certificates of compliance may relate to design or inspection. Regulations 122 and 123 set out the prescribed building practitioners who may issue Certificates of compliance under section 238 of the Act.

A certificate of compliance may be in the form approved by the Victorian Building Authority and available at www.vba.vic.gov.au.

Builders, architects and draftspersons cannot issue Certificates of compliance.

Certificates of compliance relating to design may be issued by a registered engineer or building surveyor in their capacity as designer or checker of the design.

Registered building practitioners may only issue a Certificate of compliance if the matter being certified falls within their area of competence and the limits of their expertise.

Reliance on a Certificate

Section 128 of the Act provides immunity for the RBS who in good faith relies on a Certificate of compliance. Building practitioners permitted to provide certificates are required by law to be registered and to carry complying insurance.

It is up to the RBS whether or not to rely on a Certificate of compliance. In the case of Class 1 and 10 buildings up to 2 storeys, a Certificate of compliance from the engineer who also prepared the design for a slab, footing or other part of the structural design may be relied upon.

For high rise buildings, a Certificate of compliance for the structural design should not be relied upon without further checking by the RBS, unless the certificate has been provided by an engineer who did not prepare the design. The RBS would still need to be satisfied that the structural design is consistent with the working drawings.

It is up to the RBS having regard to the circumstances of a particular project, whether to accept a certificate from one of the persons set out in Regulations 122 and 123 if one is offered. The RBS cannot demand production of a certificate and should not attempt to pressure building practitioners into issuing certificates. If the provider of a certificate was acting outside his or her field of expertise the building surveyor may not be able to rely on good faith as a defence. It would, for example, be inappropriate for a building surveyor to accept a certificate from a building practitioner who did not have suitable qualifications or experience.

It is open to building surveyors to continue to accept reports from experienced persons

(such as fire services designers) other than those set out in Regulations 122 and 123. Such a report will provide at least the same level of protection available before the Act came into operation.

If the building surveyor chooses to seek an independent check from a registered building practitioner any requirements which are considered to be unreasonable by an applicant can be made the subject of an appeal to the Building Appeals Board.

When certificates are not supplied

The RBS cannot require the submission of a Certificate of compliance. Many buildings can be designed without the use of computations prepared by an engineer. Also, there may be cases where a design prepared by an engineer is not accompanied by a Certificate of compliance. In both these instances, the relevant building surveyor will be responsible for checking the engineering design, as part of the building permit process.

Further information

Want to know more?

If you have a technical enquiry, please email technicalenquiry@vba.vic.gov.au or call 1300 815 127.

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