

BUILDING OWNER OPTIONS CERTIFICATION

From 1 October 2020, new laws allow building owners to obtain inspection documentation for all stages and request additional certifying functions.

INSPECTION DOCUMENTATION FOR FINAL STAGE INSPECTIONS (SECTIONS 99 AND 102 BUILDING ACT)

What's changed?

A building owner of any class of building, can now obtain inspection documents for the stages of work prior to the final stage, by making a request to the certifier who certified that stage.

There is no change to an owner's existing rights to obtain documents relating to a final stage inspection.

How does the owner request inspection documents?

The owner needs to give the building certifier a written notice, which requests a copy of the inspection documentation for the inspection performed by the certifier.

To ensure all the necessary information is provided when making the request, the Queensland Government has published [Form 35: Owner Request for a Copy of Inspection Documentation](https://www.business.qld.gov.au/industries/building-property-development/building-construction/forms-guidelines/forms), available on the Business Queensland website: <https://www.business.qld.gov.au/industries/building-property-development/building-construction/forms-guidelines/forms>.

The use of this form is not mandatory, but is recommended to ensure all the required information is provided.

When does the certifier have to provide the documentation?

The building certifier must give the owner the requested inspection documentation within five (5) business days of receiving the notice, unless the certifier has a reasonable excuse.

Are there limits to when a building owner can request inspection documentation?

The building owner can request the inspection documentation at any time, after a certificate is issued for the stage of work.

What is the penalty for not providing the information?

Failure to provide the information may result in a fine of up to 20 penalty units, (\$2,669 as at 1 October 2020).

When does this new requirement apply from?

This new option is only available if the building certifier was engaged to inspect the building work from 1 October 2020 onwards.

INSPECTION DOCUMENTATION FOR FINAL STAGE INSPECTIONS (SECTIONS 99 AND 102 BUILDING ACT)

How can a building owner request copies of the certifier's final inspection documentation?

The building owner cannot request copies of the certifier's final inspection documents under s124A, however the certifier must ensure the owner is given copies of the final inspection certificate and other relevant documentation within the required period.

The required period is:

- for a dwelling (class 1a building) or associated structure (class 10 building) – within 5 business days after: Within 5 business days after—
 - » if the inspection documentation includes any certificates relied on by the building certifier—the certifier accepts the certificates; or
 - » otherwise—all of the building work is inspected.
- for other types of buildings (class 2-9 buildings)—as soon as practicable.

For domestic building work, the building contractor is also obligated (under schedule 1B, section 17 of the *Queensland Building and Construction Commission Act 1991*) to give the building owner a copy of each certificate of inspection issued by the building certifier for the work as soon as practicable after receiving the certificate from the certifier.

What can a building owner do if they do not receive copies of the certifier's final inspection documentation?

If a building owner does not receive copies of the certifier's final inspection documents they can:

- contact both the building certifier and building contractor to request copies
- check their contract for requirements around certification documents
- lodge a complaint with the QBCC:
 - » [Certifier Complaint Form](#)

BUILDING OWNER OPTIONS CERTIFICATION

OWNER REQUESTS FOR PERFORMANCE OF ADDITIONAL CERTIFYING FUNCTIONS (SECTION 143B BUILDING ACT)

What has changed?

In certain circumstances, an owner may now require a building certifier to perform additional certifying functions, such as extra inspections on top of the standard stage inspections routinely conducted by a certifier.

Who can make a request?

An owner of a building is eligible to make the request if the building certifier was engaged by someone else (for example, where the certifier's client is the builder) to perform certifying functions for a building.

How can additional certifying functions be requested?

To request additional certifying functions, the owner must give a written request (an additional certification notice) to the client within 10 business days of receiving notice of the certifier's engagement from the certifier.

The [additional certification notice](#) needs to provide details of the certifying function the owner requests the certifier to perform. Only building certifying functions relating to compliance of a building with the Building Code of Australia (BCA) or the Queensland Development Code (QDC) can be requested (see 'What is a certifying function' below for more information).

To ensure all the necessary information is provided when making the request, the Queensland Government has published Form 33: Additional Certification Notice, available on the Business Queensland website: <https://www.business.qld.gov.au/industries/building-property-development/building-construction/forms-guidelines/forms>.

The use of this template is not mandatory but is recommended to ensure all the required information is provided. A building contract might specify that a notice requesting additional certifying functions be given in a particular way.

What is the responsibility of the client in relation to the engagement of the certifier for the additional requested certifying functions?

The client's role is to communicate the [additional certification notice](#) to the certifier and indicate a preferred day to do the work. The client is obligated to pass on a copy of the notice to the certifier within five (5) business days after receiving the notice.

In most cases the engagement to perform the additional certifying functions should be between the certifier and the owner.

How is the certifier paid for performing the additional certifying functions? Can the certifier request payment up front for the extra certifying functions?

The owner is liable for the reasonable costs associated with the additional certifying functions.

As it is the owner engaging the certifier for the performance of the additional certifying function, the certifier should discuss payment terms directly with the owner.

If the owner requests an additional certifying function, does the work continue? What if this impacts the timeframes for completion of the works under the building contract?

There are limitations on when additional requests for certifying functions can be requested by the owner – the notice must be given by the owner to the client within 10 business days after they receive notice of the certifier's engagement. Additional certification functions cannot be continually requested throughout the building duration. This reduces the risk of impact on the continuation of work.

All parties have 10 business days to determine an agreed day for performance of the additional certifying function and the builder should consider impacts on the continuation of work when nominating a preferred day. The builder is responsible for notifying the building certifier when building work is ready for inspection.

What if the building owner is not given a notice of engagement providing the certifier's details and responsibilities? What impact does this have on an owner's ability to request additional certifying functions?

An owner can seek these details from the client in order to determine whether to give the certifier an [additional certification notice](#). The 10 business day limit, however, will not be triggered until a notice of engagement is given to the owner by the certifier.

An owner can also report to the QBCC a certifier's failure to give them a notice of engagement, by completing a complaint against a certifier form.

What is a 'certifying function'?

The building certification process generally involves independently checking and approving building work to ensure it complies with the safety, health, amenity and sustainability standards specified in legislation and building codes.

Additional certifying functions can involve building certifying functions relating to the compliance of a building with the Building Code of Australia (BCA) or Queensland Development Code (QDC).

The building development approval states which inspections are required and at what stages of construction. Additional certifying functions include inspections in addition to the standard stage inspections set out below.

BUILDING OWNER OPTIONS CERTIFICATION

Inspections are routinely carried out at the following stages for class 1a (dwellings) and class 10 (associated structures such as sheds):

- footing—inspection of the foundation material and the reinforcing steel before concrete is placed
- slab—a check on the bearing capacity of the soil, and inspection of the moisture-proof barrier and the reinforcing steel before concrete is placed
- frame—inspection of the frame, including timber sizes, fixing, tie-down and bracing before the cladding or wall linings are fixed
- final—a check on any outstanding items and the collection of certificates, such as termite protection, wet area membrane installation, glazing, and certification of engineer designed elements such as roof trusses.

Inspections of class 1a and 10 buildings is addressed in the [Guidelines for inspection of class 1 and 10 buildings and structures \(PDF\)](#).

Guidance is provided on inspection of other building classes (e.g. multi-storey residential buildings, office buildings, shops, public halls, and commercial and industrial buildings) in the [Guidelines for inspection of class 2 to 9 buildings \(PDF, 2.9MB\)](#), which—

- apply a risk-based approach to the inspection of class 2 to 9 buildings
- provide practical and effective methods for meeting statutory duties and obligations
- include a risk matrix, with examples of application for specific buildings.

Can a certifier refuse a request for additional certifying functions?

No, a certifier must comply with a request for additional certifying functions. It is an offence not to perform the certifying function stated in the [additional certification notice](#) on or before the agreed day and penalties may apply. Depending on the circumstances, the certifier may engage other competent persons to help them perform building certifying functions.

The QBCC will not penalise certifiers in circumstances where the certifier has a reasonable excuse.

What is considered to be reasonable excuse?

Instances of a reasonable excuse will be considered on a case by case basis. Without limiting the QBCC's discretion, a reasonable excuse may include, for example, if the certifier is prevented from accessing the property for health and safety reasons or because of illness.

Can a building owner engage a certifier directly, rather than the client engaging the building certifier?

Yes, but the legislative requirements for optional requests for additional certifying functions will not apply.

If the owner gives an additional certification notice to the client, it is the building certifier engaged by the client who must perform the additional certifying function.

Some building owners may choose to engage a building certifier directly. Details regarding certifier engagement may also be included in the building contract between the building owner and client.

What is the penalty if the client does not provide the certifier with a copy of the notice?

If the client does not give the certifier a copy of the notice within 5 business days of receiving the notice the client may incur a fine of up to 20 penalty units (\$2,669 as at 1 October 2020).

Can a client refuse to give a copy of the notice to the certifier?

No, a client must comply with a request for additional certifying functions and provide a copy of the notice to the building certifier within 5 business days of receipt. It is an offence and penalties may apply.

However, the QBCC will not penalise clients in circumstances where the client has a reasonable excuse.

What happens when the building certifier receives the additional certification notice?

The certifier must perform the functions stated in the [additional certification notice](#) on or before the agreed day (see explanation of agreed day below). The certifier then needs to give the owner and client copies of all documentation relevant to the function within five (5) business days.

What is the penalty if the certifier does not perform the functions or provide copies of the relevant documentation?

The certifier may incur fines of:

- up to 40 penalty units (\$5,338 as at 1 October 2020) for not performing the additional certifying functions set out in the notice
- up to 20 penalty units (\$2,669 as at 1 October 2020) for not providing copies of the relevant documents and within the time frames.

BUILDING OWNER OPTIONS CERTIFICATION

What is the 'agreed day'?

Ordinarily, the agreed day for performing an additional certifying function is the day agreed to, or worked out under an agreement between, all of the following parties:

- the client
- the building certifier
- the owner
- plus the builder, if the client is not the builder of the building work subject to the certifying function.

When should the agreed day be decided?

The agreed day is to be decided within 10 business days after the certifier receives a copy of the [additional certification notice](#) from the client.

What happens if the 'agreed day' is not agreed upon?

If the agreed day is not decided between all of the parties, the certifier instead needs to nominate a day – or a way to determine the agreed day – and tell the owner and client.

This nomination needs to be made within 15 business days of the certifier receiving the additional certification notice.

What if there is a delay to when the building certifier is available or able to perform the additional certifying functions?

The certifier should not agree to a day that is not achievable. The certifier is able to nominate a day and tell the owner and client if the agreed day is not decided within 10 business days of receiving a copy of the notice.

When do these changes take effect?

The option to request additional certifying functions is available only if the building certifier is engaged by the client on or after 1 October 2020.

What happens if the owner withdraws the 'additional certification notice'?

If the owner withdraws the '[additional certification notice](#)' before the agreed day is decided or nominated, the certifier does not have to perform the certifying function or provide the copies of related documents.

OWNER

Gives additional inspection notice to client within 10 business days of receiving notice of the certifier's engagement from the certifier

CLIENT

Forwards copy of notice to certifier within 5 business days

! FAILURE TO COMPLY - MAX PENALTY 20 PU

CERTIFIER, CLIENT, BUILDER AND OWNER

Negotiate an agreed day when additional certification functions are due to be performed. Failing agreement, the certifier decides

CERTIFIER

complies with notice by performing the additional building certifying functions

! FAILURE TO COMPLY - MAX PENALTY 40 PU

CERTIFIER

gives owner and client copies of all relevant inspection documents within 5 business days

! FAILURE TO COMPLY - MAX PENALTY 20 PU

OWNER

pays certifier reasonable costs