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If you are involved in a building project, it's important you know who is responsible for each aspect.

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Specified systems and compliance schedules

If you own a building that contains a specified system such as a cable car, you must ensure they are effectively operated for the life of the building and in keeping with the council-issued compliance schedule.

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A determination is a binding decision made by MBIE providing a way of solving disputes or questions about the rules that apply to buildings, how buildings are used, building accessibility, and health and safety.

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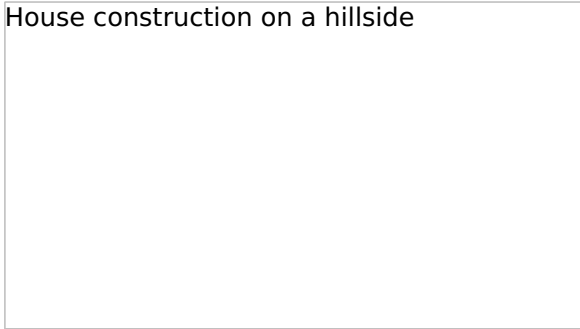
Recording and reporting of non-compliance

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Last updated: 14 March 2018

House construction on a hillside



This section of the website defines non-compliance with the accreditation requirements. It then details how non-compliance is recorded and reported to the Ministry of Business, Innovation and Employment, an applicant, accredited organisation or building consent authority.

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Definitions of non-compliance

The accreditation body assesses if an applicant, accredited organisation or building consent authority's (BCA) policies, procedures and systems are:

- appropriate for purpose. This may include a technical expert assessing if they can use a policy, procedure or system to come to a decision. Where a policy, procedure or system, or other accreditation requirement is not 'appropriate for purpose' it will be recorded as a serious non-compliance with the accreditation requirements.
- consistently and effectively implemented. This may include a technical expert reviewing a sample of the decisions made within a BCA. Where a policy, procedure or system, or other accreditation requirement is not consistently and effectively implemented it will be recorded as a general non-compliance with the accreditation requirements.

Where the accreditation body finds non-compliance it will:

- provide the applicant, accredited organisation or BCA with evidence to support the finding
- classify it as serious or general non-compliance
- systematically record it
- report it to the applicant, accredited organisation or BCA
- report it to the Ministry of Business, Innovation and Employment (MBIE)
- state the requirement that the non-compliance must be addressed to gain or maintain accreditation
- require evidence that the non-compliance has been addressed before recommending continuation of accreditation.

Process for determining compliance with accreditation requirements



Serious non-compliance defined

Serious non-compliance is where one or more of the minimum policies, procedures and systems required by the Building (Accreditation of Building Consent Authorities) Regulations 2006 (the Regulations) is absent (and the function that requires it has not been formally transferred) or not appropriate for purpose. Serious non-compliance may also include where an applicant, accredited organisation or BCA has failed completely to implement one or more of the required policies, procedures or systems.

Absent means something is missing from the suite of required policies, procedures and systems.

'Appropriate for purpose' defined

Appropriate for purpose means a policy, procedure or system required by the regulations:

- enables, for consenting decisions, an accredited organisation or BCA to be satisfied on reasonable grounds that the provisions of the Building Code would be met if the building work were properly completed in accordance with the plans and specifications that accompanied the application
- OR
- enables, for code compliance decisions, an accredited organisation or BCA to be satisfied on reasonable grounds that the building work complies with the building consent and any required compliance schedules are fit-for-purpose
- OR
- sets out a systematic approach for an accreditation organisation or BCA that enables the delivery of an outcome; performance of a task; or recording and reporting of a matter that meets the minimum standards for accreditation.

Appropriate for purpose means that an employee of an accredited organisation or BCA, or a contractor, can use the applicable policy, procedure or system to come to a decision about whether to grant a building consent, pass an inspection, or issue a code compliance certificate, compliance schedule or notice to fix. It can also mean that the policy, procedure or system required by the regulations meets the minimum standards for accreditation clarified in MBIE's regulatory guidance.

The accreditation body will not make a finding of serious non-compliance where a policy, procedure or system is 'appropriate for purpose' regardless of the view of the assessor or technical expert on the adequacy or accuracy of any technical decision they may have reviewed.

The outcome of the use of a policy, procedure or system is not a determining factor on whether it is appropriate for purpose. (It may be a determining factor on whether the system has been effectively or consistently implemented).

A decision may be adequate even where it is a different decision to one that an assessor or technical expert may have made. In considering the adequacy of a decision, the accreditation body will take into account:

- whether the appropriate policy, procedure or system was followed correctly
- the reasons for the decision recorded by the employee or contractor.

If the relevant policy, procedure or system was followed correctly and the reasons for a decision were adequate and adequately recorded (consistent with regulation 6 of the Regulations) the accreditation body will not make a finding of non-compliance.

General non-compliance defined

General non-compliance is where an accredited organisation or BCA has failed to consistently and effectively implement a policy, procedure or system (or part thereof) required by the regulations.

'Inconsistent or ineffective implementation' defined

Inconsistent or ineffective implementation means that there are multiple instances of non-compliance with accreditation requirements that show a pattern of failure to follow:

- a policy, procedure or system by a single employee or contractor
- all or part of a policy, procedure or system by multiple employees or contractors.

The accreditation body must be able to provide evidence to support a finding of inconsistent or ineffective implementation. A pattern of failure may be evidenced through a number of decisions that are inadequate or inaccurate. The number of decisions required to provide evidence of a pattern of failure may vary depending on the number and nature of the building control work the accredited organisation or BCA performs. This should be discussed between the lead assessor and the BCA's authorised representative. It is not evidence of a pattern where it can be seen that an individual employee or contractor had a bad day or made a one-off mistake.

Decisions of concern to the accreditation body

The focus of an accreditation assessment is on an accredited organisation or BCA's policies, procedures and systems, and their implementation. It is not on the technical decisions of a BCA or a building control officer.

If the accreditation body assessment team has a concern about the adequacy or accuracy of a technical decision, it will report the concern to the accredited organisation or BCA's authorised representative to address.

[The Building \(Accreditation of Building Consent Authorities\) Regulations 2006](#) are available on the Legislation website.

Systematic recording and reporting of non-compliance

Reporting of non-compliance

MBIE requires the accreditation body to report non-compliance in a systematic way. The systematic recording of non-compliance will support an applicant, accredited organisation or BCA to monitor its own performance and compliance with accreditation requirements. This should help the BCA to better:

- focus resources to improve the organisation's policies, procedures and systems
- budget for future accreditation assessments and fees, as performance will determine costs.

Systematic recording and reporting is also important to MBIE's ability to understand the performance of BCAs across the sector and should support:

- sector-wide education and advice, and updates to MBIE's regulatory guidance where one or more accreditation requirement appears to be problematic to BCAs
- early intervention and support for individual BCAs that may be struggling to maintain compliance with accreditation requirements.

The recording of non-compliance against regulations 5 and 6

MBIE requires the accreditation body to record and report non-compliance against the relevant regulation 5

and/or 6 sub-clause each time it occurs in relation to non-compliance against regulations 7–18 of the Regulations. For example, the accreditation body finds that:

- a BCA has not written down its policy, procedure and system for giving every consent application its own uniquely identified file. This is a breach of regulation 5(a) and regulation 16 of the Regulations
- an accredited organisation's policy for issuing and refusing to issue code compliance certificates is not appropriate for purpose. This is a breach of regulation 5(b) and regulation 7(2)(f) of the Regulations
- an employee has failed to record the reasons for multiple consent decisions over an extended period. This is a breach of regulation 6(c) and regulation 7(2)(d)(v) of the Regulations.

The recording of non-compliance against regulations 7-18

MBIE requires the accreditation body to record and report non-compliance consistently and specifically against each regulation 7–18 sub-clause where it is found. The expectation is that:

- multiple instances of non-compliance will be recorded against a single regulation if there are non-compliances identified against individual sub-clauses. For example, non-compliance may be recorded against regulation 7(2)(a) if a BCA is found not to be consistently and effectively implementing its policy for providing information to applicants, along with regulation 7(2)(h) if it is not effectively implementing its complaint system.
- only one non-compliance will be recorded against any single sub-clause even where there are multiple issues identified with the relevant policy, procedure or system. The non-compliance will be recorded as 'serious' or 'general' depending on which definition is met. For example, if a BCA's procedures under regulation 7(2)(f) of the Regulations do not appropriately identify when a compliance schedule must be issued and there is a pattern of staff failing to meet the legislative requirements for compliance schedules, a single 'serious' non-compliance will be recorded. However, multiple actions will be required to address the issues.

Reporting of non-compliance

The accreditation body is required to report all non-compliance to:

- the Chief Executive of the applicant, accredited organisation or BCA
- the authorised representative of the applicant, accredited organisation or BCA
- MBIE.

The requirement to report to the Chief Executive is designed to ensure that the organisation's most senior manager is aware of the compliance (or otherwise) with accreditation requirements.

The accreditation body also has the ability to issue:

- **recommendations** where it identifies the future potential for non-compliance with the policies, procedures and systems required by the Regulations
- **advisory notes** where, in its view, there is the potential to improve the required policies, procedures and systems or their implementation.

Recommendations are, essentially, a 'red flag' that a policy, procedure or system may not be working as intended. There may be issues with its implementation across the organisation or within a team.

Taking action to address a recommendation made by the accreditation body may prevent future non-compliance with accreditation requirements.

An applicant, accredited organisation or BCA may choose to address a recommendation in the same way as addressing non-compliance. They may make a request for:

- guidance or clarification of the accreditation requirement
- support from MBIE to prevent future non-compliance.

Addressing non-compliance

Non-compliance identified in an applicant's policies, procedures or systems

An applicant will not be granted accreditation unless all instances of non-compliance identified by the

accreditation body are addressed. The applicant and the accreditation body may agree a reasonable timeframe in which the applicant must provide evidence of the actions undertaken to address the non-compliance. In some circumstances a follow-up, on-site visit by the lead assessor (who may also be accompanied by a technical expert if required) may be undertaken to confirm compliance.

It is important to note that the application is void if the applicant does not provide evidence that all non-compliance has been addressed within 12 months, or other time agreed between the applicant and accreditation body.

Where an application is voided, the accreditation body is under no obligation to continue the application process and the applicant remains liable for all fees incurred.

Non-compliance identified in an accredited organisation or BCA

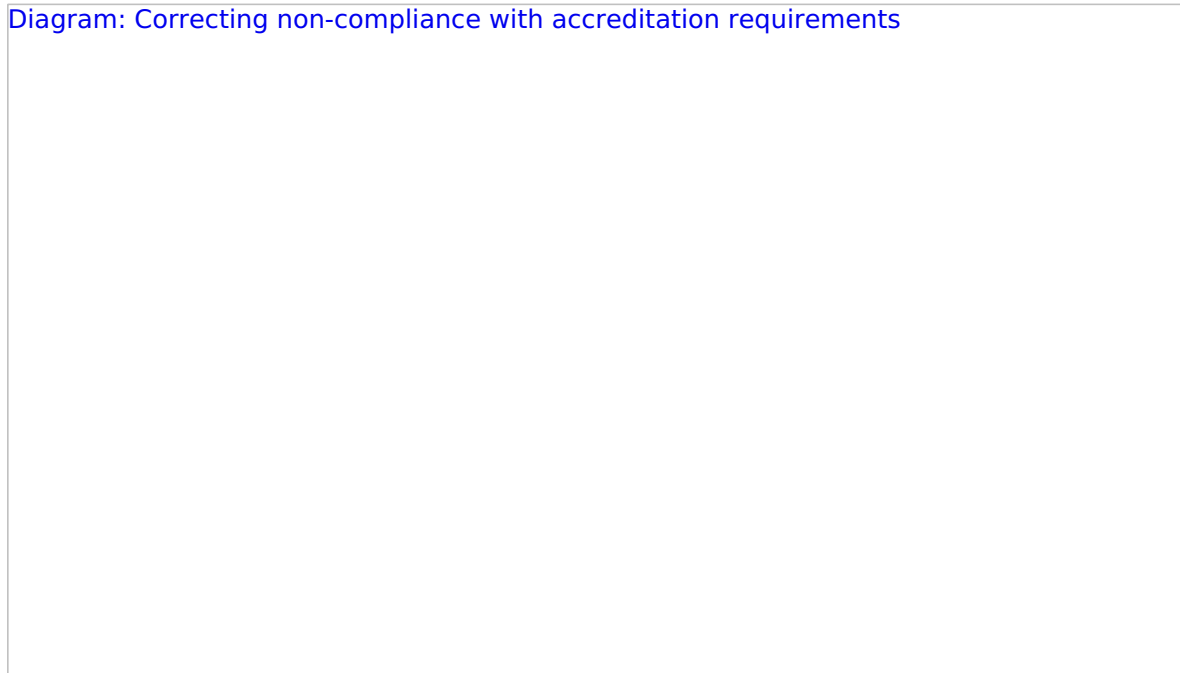
Where non-compliance is identified and reported in an accredited organisation or BCA, it must be addressed as quickly as possible. An organisation or BCA must:

- advise the accreditation body of the action it intends to take to address the non-compliance within 20 working days of receiving the accreditation body report
- provide sufficient evidence to the accreditation body that the cause of the non-compliance has been effectively addressed, within the required timeframe.

The accreditation body's lead assessor will monitor progress in addressing the non-compliance. In some circumstances this may involve a follow-up, on-site visit by the lead assessor (who may also be accompanied by a technical expert if required).

Addressing non-compliance with accreditation requirements

[Diagram: Correcting non-compliance with accreditation requirements](#)



Timeframes for addressing non-compliance

The timeframe for addressing:

- serious non-compliance must be agreed between the accredited organisation or BCA, the accreditation body and MBIE
- general non-compliance may be agreed between the accredited organisation or BCA and the accreditation body. Either party can request MBIE engagement.

Extension of timeframes for addressing non-compliance

The Chief Executive of an accredited organisation or BCA may request an extension of time to address non-

compliance in exceptional circumstances. While 'exceptional circumstances' cannot be defined, these are likely to be circumstances that are unpredictable and unmanageable. Requests for extensions will be individually assessed by the lead assessor on merits.

Where non-compliance is not addressed in the required timeframe, the accreditation body will discuss the matter with MBIE and either:

- recommend that remedial actions are initiated by MBIE's Chief Executive
- suspend the accreditation of the BCA
- initiate revocation proceedings.

Where remedial actions are initiated, the accreditation body will be advised of the actions and will monitor their outcomes in conjunction with MBIE.

[Revocation of accreditation](#) has further information.

Disagreements about non-compliance or the issue of a corrective action

MBIE requires the accreditation body to have a policy and procedure for dealing with disagreements about accreditation requirements, including about a finding of non-compliance. Issues must be raised with the accreditation body in the first instance.

[Disagreements about accreditation requirements and processes](#) has more information.

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- with compliance with the Building Act, it is published under section 175 of the Building Act
- with a Weathertight Services claim, it is published under section 12 of the Weathertight Homes Resolution Services Act 2006.