

Remedial actions, suspensions and revocations

Last updated: 26 February 2019

This section of the website details the actions that may be taken where an accredited organisation or building consent authority fails to comply with accreditation requirements. Ongoing compliance is essential to maintaining accreditation. This section also details what happens when registration is suspended or lost, and the process for regaining accreditation and registration.

There are a range of actions that may be undertaken where an accredited organisation or building consent authority (BCA) fails to comply with the accreditation requirements set out in the Building Act 2004 (the Act) and Building (Accreditation of Building Consent Authorities) Regulations 2006 (the Regulations). They include:

- a request for support by the Chief Executive of a BCA
- use of remedial powers by the Chief Executive of the Ministry of Business, Innovation and Employment (MBIE)
- in the future, the ability for the accreditation body to suspend accreditation
- revocation of accreditation
- suspension and revocation of registration for a private BCA
- ministerial intervention.



You can read the following on the Legislation website:

- [The Building Act 2004 \(http://www.legislation.govt.nz/act/public/2004/0072/latest/DLM306036.html\)](http://www.legislation.govt.nz/act/public/2004/0072/latest/DLM306036.html)
- [The Building \(Accreditation of Building Consent Authorities\) Regulations 2006 \(http://www.legislation.govt.nz/regulation/public/2006/0399/latest/DLM424665.html\)](http://www.legislation.govt.nz/regulation/public/2006/0399/latest/DLM424665.html)

Requesting support

Proposals will be made for the inclusion of a provision in the Act to enhance section 203 to specifically enable a BCA's Chief Executive to request intervention and support to meet accreditation requirements.

It is MBIE's view that regardless of the lack of specific legislative powers in the Act right now, requests for intervention and support can be made by a BCA at any time, and should be made where support is needed.

MBIE has a team that is dedicated to supporting continuous improvement in regulatory building control. Their role includes supporting territorial authorities, regional authorities and BCAs, and ensuring that BCAs maintain compliance with the Act and associated regulations.

A request for support can be made to MBIE at any time. The request should be addressed to:

Manager, Building System Assurance
Consumer Protection and Standards
Market Services
PO Box 1473, Wellington

The request can also be emailed to consentsystem@mbie.govt.nz (<https://www.building.govt.nz/mailto:consentsystem@mbie.govt.nz>)

Where a request for support is made, MBIE may work with a BCA to put in place:

- a plan to address any issues resulting in non-compliance with accreditation requirements
- additional building control officials or technical experts to support the BCA
- any other arrangements that may be appropriate and agreed with the BCA.

An accredited organisation may also make a request for assistance from MBIE. Any such requests will be considered on a case-by-case basis.

Remedial powers

Where there are ongoing concerns about a BCA's compliance with accreditation requirements, the accreditation body may recommend that remedial actions are initiated by MBIE's Chief Executive. The Chief Executive may also initiate action of their own accord under section 201 of the Act. The Act requires them to:

- give notice to the BCA of a decision to investigate its performance
- proceed to investigate the BCA's performance.

In the notice, MBIE's Chief Executive must comply with the requirements of section 202(2) of the Act. This includes providing the BCA with a reasonable opportunity to make written submissions.

For the purposes of the BCA accreditation scheme, a 20-working-day timeframe will generally be considered to provide a reasonable opportunity to make written submissions as the accredited organisation or BCA:

- will already be aware of its non-compliance with accreditation requirements
- will already have had the opportunity to address the non-compliance
- should have established reasons for any failure to address the non-compliance.

After the consideration of any submission by the BCA, MBIE's Chief Executive may do one or more of the following things detailed in section 203 of the Act that may include requiring the BCA to take action to address any non-compliance with accreditation requirements:

- within a specified time
- subject to any conditions that the Chief Executive thinks fit (if any).

MBIE's Chief Executive may also choose to limit the building control functions that the BCA may perform, and record a limited scope of accreditation and registration on the Register of Building Consent Authorities. Where this is the case, the BCA will be required to enter into an arrangement or transfer the functions it is not accredited to undertake. MBIE's Chief Executive may also choose to:

- suspend or revoke a private BCA's registration
- recommend that the Minister for Building and Construction intervene in a BCA that is part of a territorial or regional authority.

MBIE's Chief Executive's powers are not applicable to private organisations that are only accredited, and not registered. This is because these organisations are not BCAs.

[Building Consent Authorities Register \(https://www.building.govt.nz/building-officials/find-a-bca/\)](https://www.building.govt.nz/building-officials/find-a-bca/)

Suspension of accreditation

Proposals will be made for the inclusion of a section in the Act to enable a BCA's accreditation to be suspended while any of the powers in section 203 are being used. There is no current legal ability to suspend accreditation.

Impact of suspension of accreditation

When introduced, a suspension of accreditation will effectively place a BCA's accreditation on hold. The BCA will not be able to claim to be accredited and the accreditation body will not be required to:

- issue a Certificate of Accreditation to the BCA
- make any statement of assurance that the BCA's accreditation requirements have been met.

Of note, suspension of accreditation will not, of itself, affect a BCA's ability to deliver building consent functions which are linked to its registration (not its accreditation).

Revocation of accreditation

The accreditation body may decide to revoke accreditation where an accredited organisation or BCA fails to provide evidence that:

- its policies, procedures and systems are appropriate for purpose, and consistently and effectively implemented at the time of an accreditation assessment

Or

- it has addressed all identified non-compliance with accreditation requirements and will maintain compliance with those requirements into the future.

Revocation proceedings may be initiated where:

- MBIE's Chief Executive chooses not to use the remedial powers in the Act, or the use of the powers does not result in the correction of all identified non-compliance

And

- an accredited organisation or BCA is unable to carry out its building control functions to the minimum standard required by the Act and Regulations due to its sustained non-compliance with accreditation requirements.

There are a number of steps in the revocation process including:

- initial notice that sustained non-compliance may lead to revocation
- second notice that revocation is to be recommended
- a formal, final decision that accreditation will be revoked
- final notice that revocation is in effect.

Initial notice that non-compliance may lead to revocation

The accreditation body's assessment report to MBIE and an accredited organisation or BCA will identify any non-compliance with accreditation requirements and notify the organisation or BCA that:

- all non-compliance with accreditation requirements must be corrected
- sustained non-compliance with accreditation requirements may lead to revocation.

This is the initial notice that sustained non-compliance may lead to revocation of accreditation.

The accreditation body's lead assessor will monitor the organisation or BCA's progress in addressing any non-compliance. This may be under the auspices of an action plan notified to the accreditation body or a plan agreed between the BCA and MBIE's Chief Executive where the Chief Executive has initiated remedial actions.

Second notice that revocation is to be recommended

Where there is sustained non-compliance with accreditation requirements, the lead assessor will make a decision to recommend revocation.

The accreditation body then will formally notify:

- MBIE
- the Chief Executive of the accredited organisation or BCA
- the organisation or BCA's authorised representative.

The notice will specify the:

- non-compliance that has been identified, and not addressed
- timeframe during which the accreditation body has been aware of the non-compliance
- action undertaken to support the organisation or BCA to achieve compliance
- date that the formal, final revocation decision will be made
- date of final revocation (if it were to proceed)
- right of the accredited organisation or BCA to a 'reasonable opportunity to be heard'.

A 20-working-day timeframe will generally be considered as a reasonable opportunity to be heard as the accredited organisation or BCA, as a result of earlier engagement with the accreditation body:

- will already be aware of the non-compliance
- will already have had the opportunity to address the non-compliance
- should have established reasons for any failure to address the non-compliance

An accredited organisation will also need a reasonable time to make plans for the delivery of any building control functions it is performing as an agent of an accredited and registered BCA.&

There is nothing in the Act that requires the accreditation body to specify any information in its notice recommending revocation. The failure to specify any of the information listed above will not affect the recommendation or period in which the accredited organisation or BCA has a reasonable opportunity to be heard. The information detailed above is intended to highlight the seriousness of the matters leading to the notice of revocation.

Formal decision that accreditation will be revoked

A final decision regarding revocation of accreditation will be made by the accreditation body and formally notified at the conclusion of the reasonable opportunity to be heard period. It will be notified to:

- MBIE
- the Chief Executive of the accredited organisation or BCA
- the organisation or BCA's authorised representatives.

Revocation will come into effect five working days from the date of the formal, final notification. This timeframe is intended to enable MBIE to:

- provide additional information to the accreditation body
- initiate any contingencies necessary as a result of accreditation being revoked.

MBIE has no right to unduly influence accreditation decisions, including revocation decisions.

Final notice that revocation is in effect

Five working days after the formal, final notification that accreditation will be revoked, MBIE and the accredited organisation or BCA will be formally notified that accreditation has been revoked.

Suspension and revocation of registration for a private BCA

MBIE's Chief Executive may consider suspending and revoking the registration of a private BCA under:

- section 197 of the Act as the result of an assessment against registration requirements
- section 203 of the Act as the result of a complaint or investigation.

The Act places no specific requirements on MBIE's Chief Executive where they decide to suspend registration as the result of an assessment under section 196. However, the principles of natural justice will be observed. MBIE's Chief Executive will:

- notify the BCA of their intention to suspend registration
- state the reasons for the suspension
- provide the BCA a reasonable opportunity to make written submissions on the matter.

In the case of a suspension resulting from the use of the remedial powers under section 203 of the Act, the required notification procedures will be followed.

Ministerial intervention

Section 196 of the Act requires MBIE's Chief Executive to assess a BCA's compliance with registration requirements at least once every three years, or at any other time. An assessment may take place as a result of a BCA that is part of a territorial or regional authority losing accreditation. MBIE's Chief Executive is then required by section 197 of the Act to recommend that the Minister for Building and Construction appoint someone to act in place of the territorial or regional authority. MBIE's Chief Executive may also make such a recommendation under section 203 of the Act, as a result of an investigation.

If the Minister for Building and Construction acts on the recommendations of the Chief Executive, sections 277 to 281 of the Act apply. In

summary, the Minister for Building and Construction will consult with the Minister of Local Government on the appropriate next steps for the delivery of the territorial or regional authorities' building control function.

Ministerial intervention is a matter of last resort. MBIE expects that a BCA will take all necessary steps to maintain compliance with accreditation and registration requirements, and will request support where necessary so that the Act's remedial and intervention powers do not need to be used.

Impact of suspension and revocations

Impact of revocation of accreditation

An organisation or BCA that has had its accreditation revoked will be advised by the accreditation body to:

- remove its Certificate of Accreditation from display and destroy it
- discontinue any reference to accreditation in its advertising material and website
- notify its customers and any other parties who may have interest in the BCA's accreditation.

A BCA that is part of a territorial or regional authority that loses accreditation will be in breach of section 212 and 215 of the Act. It should work to regain accreditation or to put in place alternative plans for the performance of its building control functions through arrangements or transfers.

Impact of suspension of registration

Section 198 of the Act details the effect of the suspension of registration. In summary, the BCA:

- is not registered
- may not perform any building control functions unless specifically enabled by MBIE's Chief Executive.

If the BCA does not satisfy the registrations requirements within a 12-month period, its registration will be revoked and it will be removed from the register. MBIE's Chief Executive will formally notify the BCA of the revocation of its registration.

MBIE's Chief Executive may revoke registration under section 203 of the Act where they consider the circumstances warrant revocation. There is no 12-month period in which the BCA may work to satisfy MBIE's Chief Executive that it meets registration requirements.

Impact of revocation of registration

Where registration is revoked, the organisation:

- is no longer a BCA
- may not perform any building control functions.

A BCA must maintain registration to deliver building control functions under the Act. It is otherwise an offence under section 199 of the Act. Any arrangement or transfer of powers for the performance of a BCA's building control functions must be with another registered BCA.

Processes for regaining accreditation and registration

Process for regaining accreditation

An organisation or BCA that wishes to regain accreditation must:

- follow the process for applying to become an accredited organisation for the first time
- make an application to the accreditation body.

Upon achieving accreditation, it may make an application for registration.

Process for regaining registration

An organisation that wishes to regain registration must:

- follow the process for applying to become an accredited organisation for the first time

- make an application to MBIE.



New Zealand Government

This information is published by the Ministry of Business, Innovation and Employment's Chief Executive. It is a general guide only and, if used, does not relieve any person of the obligation to consider any matter to which the information relates according to the circumstances of the particular case. Expert advice may be required in specific circumstances. Where this information relates to assisting people:

- 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.