

POLICY AND PRINCIPLES FOR AUDITS PURSUANT TO THE *BUILDING ACT*

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1. PURPOSE

- To establish an audit system pursuant to Part 3 Division 3 of the *Building Act (the 'Act')* which:
- (1) Facilitates the auditing of registered building practitioners (hereafter referred to as 'practitioner' or 'practitioners') in accordance with Part 3 Division 3 of the Act ;
 - (2) Expresses an opinion regarding the compliance of practitioners work or conduct or both according to the obligations in accordance with the Act and/or *Building Regulations (the 'Regulations')*;
 - (3) Appraises and improves operational methods and performance through appropriate recommendations relating to exercising of functions in accordance with the Act and/or Regulations; and
 - (4) Develops and implements educational programmes directed at non-compliant conduct in the relevant industry.

2. BACKGROUND

Section 34A of the Act provides that the "*Director may audit a building practitioner's work or conduct or both –*

- (a) *Whenever the Director considers it appropriate to do so; or*
- (b) *As a consequence of a complaint made under Division 2 –*
 - (i) *Whether or not the complaint is about the building practitioner or another building practitioner; and*
 - (ii) *Whether or not the complaint is investigated under that Division".*

The Director must audit a practitioner's work or conduct or both if directed to do so by the Practitioners Board under section 34U of the Act. The Director may authorise another person to conduct an audit or class of audits on the Director's behalf.

The Director of Building Control must, pursuant to section 34A (4) of the Act, determine the nature and class of audits to be conducted. That is, the Director must determine the structure and characteristics of any audit and the category of practitioner to be audited.

3. RESPONSIBILITIES

3.1 The Director of Building Control

The Director has responsibility for the implementation, direction, and overall management of the audit programme in accordance with the Act including:

- (1) Approval of the programme's objectives, policies and procedures pursuant to s.34A;
- (2) Provision of resources for the audit programme; and
- (3) Determination of an audit pursuant to section 34F of the Act.

3.2 Manager of Audits & Investigations

The Director delegates, in accordance with section 20 of the Act to the Manager of Audits and Investigations the supervision of the day-to-day operation of the audit system including:

- (1) The management of auditors appointed pursuant to the Act including relevant and appropriate training;
- (2) The conduct of audits in accordance with the Act, policies and procedures;
- (3) The requirement to ensure that proper records of audits undertaken in accordance with the Act are kept; and
- (4) The monitoring, review and improvement of the audit programme.

3.3 Auditor

An auditor appointed pursuant to section 34A has the following responsibilities:

- (1) To apply audit principles, agency policy and procedures;
- (2) To plan and organise their work effectively;
- (3) To conduct the audit within the agreed time schedule;
- (4) To prioritize and focus on matters required by legislation and the Director;
- (5) To be familiar with general business processes and related terminology;
- (6) To be familiar with the cultural and social customs of the building practitioner; and
- (7) To have an in-depth understanding of the relevant laws, regulations and other requirements relevant to the practitioner.

3.4 Registered Building Practitioners

During an audit a practitioner must be aware of their obligations in accordance with section 34E of the Act. It is important to understand that in the course of the audit, the practitioner must not –

- (a) refuse or fail to comply with any reasonable request from the auditor to answer a question, provide information or produce a document; or
- (b) in a response to a request from the auditor, give an answer, provide information or produce a document that is false or misleading.

If the practitioner fails to comply the Director may refer the matter to the Practitioners Board for inquiry.

Further the practitioner must not, without reasonable excuse: –

- (a) Refuse or fail to comply with a notice to produce documents issued by an auditor under section 34D(1); or
- (b) Obstruct or hinder an auditor in the exercise of a power under section 34D.

4. PRINCIPLES OF AUDITING

4.1 Due care

The standard for due care requires an auditor to:

- (1) Take steps to obtain any readily available knowledge about unreasonable risk or the likelihood of harm to others;
- (2) Pay close attention to any unusual risk associated with the audit;
- (3) Consider any unusual circumstances or relationships in planning and performing the audit;
- (4) Recognise unusual situations and adjust the audit program accordingly;
- (5) Take all appropriate steps to remove doubts concerning all items which are material in relation to the audit opinion; and
- (6) Stay informed regarding developments in auditing principles or best practice.

4.2 Acting in Good Faith

'Good faith' requires and signifies an actual belief by an auditor that all is being "*regularly and properly done*".

Acting in good faith means that the audit is performed:

- Honestly;
- For the proper purpose;
- On relevant grounds; and
- Within defined legislative power.

Auditors should also familiarise themselves with the provisions of the *Public Sector Employment Management Act*, particularly Employment Instructions No.3 (Natural Justice) and No.13 (Code of Conduct) which can be found at http://www.nt.gov.au/ocpe/public_sector/employment_instructions/.

4.3 Independence

Auditors should be independent of the activity being audited and free from bias or conflict of interest. Auditors must maintain an objective state of mind throughout the audit process to ensure that findings and conclusions are purely based on evidence obtained during an audit.

Independence in auditing can be said to involve three principles:

- The approach and attitude of an auditor;
- The independence required when performing the function of review and verification; and
- The appreciation that stakeholder recognition and acceptance of the auditor's status, is central to the conduct of an effective audit.

Further auditors, when considering the issues of independence, should familiarise themselves with the provisions of the *Public Sector Employment Management Act*, particularly Employment Instructions No.3 (Natural Justice) and No.13 (Code of Conduct) – located at http://www.nt.gov.au/ocpe/public_sector/employment_instructions/.

4.4 Ethical Conduct

Trust, integrity, confidentiality, and discretion are essential characteristics required by an auditor. These characteristics are also prescribed in *Public Sector Employment Management Act*, particularly Employment Instructions No.3 (Natural Justice) and No.13 (Code of Conduct) – located at http://www.nt.gov.au/ocpe/public_sector/employment_instructions/.

Unethical conduct by an auditor may involve:

- The exercise of a power for an improper purpose; and/or
- exercise such a power for a purpose other than for which it was conferred; and/or
- make a decision not authorised by or under the power (i.e. ultra vires); and/or
- take into account irrelevant considerations or fail to take into account relevant considerations when exercising the power; and/or

- exercise such a power in accordance with a rule or policy without regard to the merits of the particular case; and/or
- exercise such a power at the direction of another person or body (i.e. act under ‘dictation’).

4.5 Functions

An auditor appointed pursuant to section 34A (3) of the *Building Act* shall:

- (1) Collect information through effective interviewing, listening, observing and reviewing documents, records and data;
- (2) Understand the appropriateness and consequences of using sampling techniques for auditing;
- (3) Verify the accuracy of collected information;
- (4) Confirm the sufficiency and appropriateness of audit evidence to support audit findings and conclusions;
- (5) Assess those factors that can affect the reliability of the audit findings and conclusions;
- (6) Utilise work documents to record audit activities;
- (7) Prepare audit reports;
- (8) Maintain the confidentiality and security of information;
- (9) Communicate effectively, either through personal linguistic skills or through an interpreter;
- (10) Use and interrogate building practitioner information systems and technology for authorization, security, distribution and control of documents, data and records; and
- (11) Understand the building practitioners’ organisational structure, functions and relationships.

5. FRAMEWORK FOR AUDITS

5.1. Types of Audits & Exclusions

There are 3 occasions when an audit in accordance with s.34A of the Act may be undertaken:-

- (1) Whenever the Director considers it appropriate to do so (s.34A(1)(a)); or
- (2) As a consequence of a complaint (s.34A(1)(b)); or
- (3) At the request of the Practitioners Board (s.34A (2)).

Part 5 of this policy only applies to audits conducted in accordance with point “1”. Audits conducted in accordance with the provisions of point “2” & “3” are conducted in accordance with specific complaints and as such are excluded from Part 5 of this policy.

5.2. Frequency of Audits

The frequency of audits undertaken shall be determined by the Director on an annual basis. However this will be monitored and reviewed where necessary to ensure that this policy meets the Directors and Industry requirements.

5.3. Scope of Audits

The audit may comprise the following:-

- (1) A review, analysis and assessment of relevant documentation provided by, and associated with, the practitioners obligations in accordance with the Act including interrelated business functions of the practitioner; and/or
- (2) Assessment of current and/or completed building works in accordance with valid permits according to the requirements of the Act, *Building Regulations* and the *Building Code of Australia*; and/or
- (3) Such other functions of the practitioner as determined and notified by the Director of Building Control

5.4. Sample Size

For the purposes of audits conducted in accordance with section 34A of the Act and this policy a sample size shall be determined by the Director of Building Control in accordance with relevant Australian Standards and taking into account the following:

- (1) The number of practitioners within the relevant category; and/or
- (2) The number of permits issued by the relevant practitioner; and/or
- (3) The number of building works commenced or completed by the relevant practitioner; and/or
- (4) As otherwise approved by the Director of Building Control.

5.5. Types of Practitioners

5.5.1. Individual Sole Traders

For practitioners who are registered solely as individual practitioners, they shall be audited for all work done in accordance with their relevant registration.

5.5.2. Practitioner Firms or Corporations

Section 24 of the Act provides that where the Practitioners Board is satisfied upon application, it may register a Firm or Corporation as a Practitioner.

The Act further provides that:

- The structure of the firm or corporation must contain 'natural persons' who must be fit and proper persons, and who would have been eligible for individual registration; and
- At least one of those persons must have the relevant qualifications and experience in the category of practitioner applied for.

Section 25 of the Act provides that where the function of a practitioner is carried out by a Firm or Corporation, the Firm or Corporation shall specify a Partner (Firm) or person concerned in the management of the Corporation to carry out the those functions. For a Corporation registered as a building contractor the natural person must be a Director or Nominee (s.25 (3) of the Act).

Accordingly for the purposes of this Policy and any audit conducted pursuant to section 34A of the Act, where a practitioner is a Firm or Corporation pursuant to section 24 of the Act, the auditor shall:

- (1) write to that Firm or Corporation pursuant to section 34B of the Act advising of an audit pursuant to section 34A of the Act;
- (2) request that the Firm or Corporation nominate a natural person, referred to in section 24 & 25 of the Act, with whom the auditor shall deal with; and
- (3) conduct the audit in accordance with the Act and this Policy, on any matter outlined in clause 5.3 of this policy and identified by the Firm or Corporations practitioner registration number issued by the Building Practitioners Board.

5.6. Audit Plan

Before undertaking an audit, a plan should be prepared to provide a framework to facilitate an audit being conducted in accordance the requirements of Part 3 Division 3 of the Act and this policy.

The audit plan may include:

- (1) The audit criteria and any reference documents;
- (2) The audit scope, including identification of the processes to be audited;
- (3) The dates and places where the on-site audit activities are to be conducted;
- (4) The expected time and duration of on-site audit activities, including meetings with the auditee's management and audit team meetings;
- (5) The roles and responsibilities of the audit team members and accompanying persons including appropriate delegation and powers to conduct the audit;
- (6) The allocation of appropriate resources to critical areas of the audit;
- (7) Identification of the auditee's representative for the audit;
- (8) Logistical arrangements (travel, vehicle requirements, on-site facilities, etc.);
- (9) Communication strategy for notification of commencement and completion of audits;

- (10) Appropriate contingency plan addressing risks that may be encountered during the conduct of an audit; and
- (11) Any audit follow-up actions.

5.7. Audit Practices and Procedures

An audit shall be conducted in accordance with the Building Advisory Services 'Practices and Procedures for Audits Manual'

5.8. Completion of an Audit

Upon completion of an audit:

- (1). The auditor shall prepare a report:
 - (a) detailing the audit findings pursuant to the audit scope; and
 - (b) recommending appropriate actions to the Director pursuant to 34F of the Act and in conjunction with 34S of the Act (hereafter referred to as 'non-compliance').
- (2). The Director must then decide pursuant to section 34F (1) of the Act whether or not:
 - (a) there is evidence that a practitioner has committed a breach of the Act and/or regulations; and
 - (b) there is evidence that a practitioner is guilty of professional misconduct pursuant to section 34S of the Act.

Within 21 days after completion of the audit a copy of the draft report with identified areas of non-compliance and proposed recommendations will be provided to the practitioner. The practitioner will then have a period of 21 days on which to provide comments and/or information prior to the report being referred to the Director for formal determination pursuant to section 34F of the Act.

Where the Director makes a decision that there is evidence of non-compliance then the Director may pursuant to section 34F(2) of the Act:

- (a) prosecute the practitioner for the alleged breaches of the Act or Regulations; and/or
- (b) refer the practitioner to the Practitioners Board for professional misconduct; and/or
- (c) develop a remedial plan for the practitioner.

If the auditor has made recommendations which indicate the need for a remedial plan pursuant to section 34F (2)(c) of the Act, the auditor must ensure that any recommendation:

- (1) Has an appropriate timeframe to allow the building practitioner to undertake the required actions; and
- (2) Has a demonstrated monitoring and review system to underpin the integrity of the recommendations and to ensure that those actions are undertaken by the building practitioner.

5.9. Audits conducted in accordance with a Remedial Plan

When the auditor prepares the final audit report and it contains a recommendation for implementation of a formal remedial plan pursuant to section 34F(2)(c) of the Act, the remedial plan shall contain a recommendation for a follow-up audit based upon the following criteria:

- (1) 25% or less non-compliance detected during the audit – a follow-up audit is to be conducted not before 12 months but not after 18 months from the date of the report;
- (2) Between 25% - 75% non-compliance detected during the audit – a follow-up audit is to be conducted not less than 6 months but not greater than 12 months after the date of the report; and
- (3) Over 75% non-compliance detected during the audit – a follow-up audit is to be conducted not less than 3 months and not greater than 6 months after the date of the report.

The criteria is determined via the number of permits audited with which there has been identified non-compliance, divided by the total number of permits audited x 100. The above timeframes are a guide only and the Director reserves the right to vary those timeframes on a case by case basis.

5.10. Contingencies for Audits

The table outlines the potential risks to the system and proposed contingencies:

Anticipated Risks	Proposed Contingency
1. Practitioner unavailable prior to proposed audit	Audit rescheduled for convenient time within scope of audit and confirmed in writing via s.34B notice.
2. Practitioner unavailable on day of audit (1 st occasion).	Audit rescheduled for convenient time within scope of audit, confirmed in writing via s.34B notice & warned re: section 34E(1)(a).
3. Practitioner unavailable on day of audit without reasonable excuse (2 or more occasions).	Audit cancelled, practitioner referred to Practitioners Board per s.34E(1).
4. Practitioner uncooperative (i.e. refusal to cooperate or provide information/documents or obstruct or hinder an auditor) (1 st occasion).	Practitioner cautioned re: s.34E and audit rescheduled to convenient date within scope of audit, confirmed in writing via s.34B notice.
5. Practitioner uncooperative (i.e. refusal to cooperate or provide information/documents or obstruct or hinder an auditor) (2 or more occasions).	Audit cancelled, practitioner referred to practitioners board and/or prosecuted per s.34E.
6. Illness or unavailability of auditor(s).	Practitioner immediately notified by phone and audit rescheduled to convenient time within scope of audit and confirmed in writing via s.34B notice.
7. Practitioner engages in or threatens violent conduct during an audit.	<p>Immediately:</p> <ul style="list-style-type: none"> - cease audit; - refer the matter to the NT Police; and - notify the Director of Building Control. <p>Depending on what action may be taken by the NT Police consider referring the matter to the Practitioners Board per s.34E.</p>
8. Practitioner does not have the facilities with which to undertake the audit.	Audit rescheduled for convenient time at BAS within scope of audit and confirmed in writing via s.34B notice.

5.11. Stakeholder Communication

Prior to and during an audit conducted pursuant to section 34A of the Act, and in accordance with this policy, the following communication plan will be used by the Director:

- (1) Upon approval of the class of audit by the Director all relevant practitioners in the category being audited, all other building practitioners, Industry representative bodies and relevant Boards will be advised in writing containing generalised information about the relevant audit; and
- (2) 21 days prior to the relevant audit a practitioner will receive formal notification pursuant to section 34B of the Act.

Within 21 days after completion of the audit:

- (a) A copy of the draft report with identified areas of non-compliance and proposed recommendations will be provided to the practitioner; and
- (b) The practitioner will then have a period of 21 days on which to provide comments and/or information prior to the report being referred to the Director for formal determination pursuant to section 34F of the Act.

5 AUDIT RECORDS

Auditors shall ensure that Agency guidelines with regards to record keeping are followed. Accurate and methodical record keeping promotes confidence in the integrity of the audit process and provides the Director with a reliable basis for reasoned and informed decision-making.

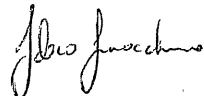
6 REVIEW OF AUDIT SYSTEM

In order to ensure that this policy remains effective to operational and industry requirements, the Director may review the policy every 12 months or whenever considered appropriate.

7 CONFIDENTIALITY

The details and findings of an audit report are confidential and must not be disclosed to any third party unless permitted to do so by law of the Territory or State and Commonwealth or authorisation in writing has been obtained from the building practitioner.

Dated this 27 March 2008



Fabio Finocchiaro
DIRECTOR OF BUILDING CONTROL