

## Appointment of a private building surveyor

This fact sheet explains changes to section 78 of the *Building Act 1993* (the Act) that commence on 1 September 2016.

### THE CHANGE

From 1 September 2016:

- a builder must not appoint a private building surveyor on behalf of the owner of land on which domestic building work is to be carried out, and
- a private building surveyor must not accept such an appointment.

The change makes it a ground for disciplinary action for a builder to appoint a private building surveyor (to issue a building permit and carry out mandatory notification inspections).

The change applies in relation to domestic building work only, and does not prevent other practitioners or agents formally acting on behalf of an owner to appoint a private building surveyor.

Transitional arrangements will be made so that contracts entered into prior to 1 September 2016, that authorise a builder to appoint a private building surveyor, are not affected.

### WHAT THE CHANGE MEANS

#### Owners

Under the current law, owners can use a private building surveyor rather than a municipal building surveyor in relation to domestic building work undertaken on their land.

The building surveyor performs important checks on building work and this is necessary for consumer protection. Your builder **must not** appoint a private building surveyor.

The new provision will now require the owner or formally appointed agent to appoint the private building surveyor where the building work is domestic building work.

Note: For the purposes of appointing the private building surveyor, your builder cannot be your formally appointed agent.

The change does not prohibit a builder from recommending a private building surveyor to an owner.

#### Building practitioners

The appointment under section 78 should be undertaken separately from the lodgment of the building permit as the method used to appoint the private building surveyor.

This would still allow the builder to lodge a building permit application as the agent for the owner.

As a builder carrying out domestic building work, it will be a ground for disciplinary action for a builder to appoint a private building surveyor for or on behalf of the owner.

#### Building surveyors

It will be a ground for disciplinary action for a building surveyor to accept an appointment to undertake a function under section 76 for domestic building work when it is offered by the builder.

The change does not affect any appointment that was accepted prior to 1 September 2016 or any domestic building contract entered into prior to 1 September 2016 which authorises the appointment by a builder of a private building surveyor.

## Read the revised section 78

### ***When a private building surveyor may be appointed***

(1) *Subject to this Part, a person who is entitled to apply for a building permit, occupancy permit or temporary approval under this Act in respect of a building or building work, may appoint a private building surveyor to carry out the functions set out in section 76 in respect of that building or building work.*

*(1A) A builder who has entered into a major domestic building contract or who acts or proposes to act as a domestic builder in relation to domestic building work must not appoint a private building surveyor on behalf of the owner of the land on which the domestic building work is to be carried out.*

*(1B) A building surveyor must not accept an appointment referred to in subsection (1A).*

*(1C) Nothing in subsection (1A) or (1B) affects the validity of any action taken by a building surveyor who is appointed in contravention of those subsections.*

(2) *Except as provided in this Part, a person must not appoint a private building surveyor to complete any functions set out in section 76 in respect of a building or building work if another private building surveyor or a municipal building surveyor has already commenced to carry out functions set out in that section in respect of that building or building work.*

#### **Penalty**

- **240 penalty units, in the case of a natural person.**
- **1500 penalty units, in the case of a body corporate.**

- (3) *Subject to this Part, on and from the acceptance of an appointment under this Part in respect of a building or building work, a private building surveyor is responsible for carrying out the function set out in section 76 in respect of that building or building work.*
- (4) *Despite the terms of an appointment under this section, a private building surveyor, in carrying out any functions set out in section 76, must comply with this Act and the regulations.*

### **Want to know more?**

Please [submit an enquiry](#) or call us on 1300 815 127.

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