OCs and missed inspections

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<th>Issue</th>
<th>Legislation</th>
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<td>To clarify the OC process when inspections have been missed.</td>
<td>EP&amp;A Act and Regulation</td>
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**Background**

- The EP&A Act specifies that a Principal Certifying Authority (PCA) must be satisfied that building or subdivision work has been inspected satisfactorily, as required by the EP&A Regulation, prior to the issue of an interim or final occupation certificate (OC).

- The EP&A Regulation specifies the occasions when a building must be inspected by the PCA or an accredited certifier (with the agreement of the PCA) and includes any other inspections nominated by the PCA.

- The EP&A Regulation also specifies what is to occur if, in the opinion of the PCA, an inspection has been unavoidably missed and has been certified by way of documentary evidence to the satisfaction of the PCA.

- The Regulation does not make provision for what is to occur if the person carrying out the work is unable to provide documentary evidence to the satisfaction of the PCA or where an inspection has been avoidably missed.

**Issue**

- If the PCA considers an inspection was missed unavoidably, is satisfied with the documentary evidence that the work that would have been inspected is satisfactory, has recorded these details and informed the person who appointed them, they can issue an OC.

- However, there is no requirement for this information to be recorded on the OC, meaning if the person relying upon an OC was not the same person who appointed the PCA, they may not know a required inspection was missed.

- An OC cannot be issued if an inspection has been missed in circumstances that the PCA considers were avoidable, even if appropriate documentary evidence has been provided, or an inspection was unavoidably missed but documentary evidence does not satisfy the PCA that the work is satisfactory.

- This is a particular issue for private PCAs are. The only option available to the applicant is to apply to the local council for a building certificate in relation to the work.

- The PCA may be pressured into accepting inappropriate documentation or unacceptable reasons for missed inspections to permit the issue of an OC. The PCA may be unable to validate the evidence, information or the circumstances.

- The PCA may be subject to extended liability if an OC has not been issued or may be the subject of litigation if an OC is not issued through no fault of the PCA.
The onus is currently on the PCA to be satisfied that work is satisfactory. Whether work is satisfactory or not can be subjective and may be difficult to determine or incapable of being validated. This impacts the credibility of the OC process.

Proposed response
One proposed response would be to legislate so that an OC can be issued after a critical stage inspection has been missed when:
- the inspection has been unavoidably missed and the work is satisfactory
- the inspection has been avoidably missed and the work is satisfactory
- the inspection has been unavoidably or avoidably missed and the PCA is unable to determine whether the work is satisfactory.

However, if an OC is issued under these circumstances, a proposed response must consider:
- whether any information pertaining to any person who permitted, caused or was responsible for the work to be carried out should be recorded
- any penalties or actions that should be taken against such persons
- the conditions or any restrictions that would apply to the issue of an OC for any specified circumstance
- the ability of the PCA to issue an occupation certificate where an inspection has been missed irrespective of the circumstances
- the need to document any information relied upon or lodged with the PCA, whether or not that information validates the satisfactory completion of the work, for the issue of the certificate

Why?
The proposed response would:
- enable PCAs to issue OCs where an inspection has been missed
- specify the circumstances that would apply that would enable the issue of an OC
- enable conditions to be placed on OCs where these circumstances apply.

What do you think?
Click onto the online survey to tell us what you think of the proposed responses.

The Survey will close by 24 July 2012, so let us know your thoughts before then.