

South Australia

## **Development (Regulation of Building Work) Variation Regulations 2003**

under the *Development Act 1993*

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### **Part 1—Preliminary**

#### **1—Short title**

These regulations may be cited as the *Development (Regulation of Building Work) Variation Regulations 2003*.

#### **2—Commencement**

These regulations will come into operation on 1 October 2003.

#### **3—Variation provisions**

In these regulations, a provision under a heading referring to the variation of specified regulations varies the regulations so specified.

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## **Part 2—Variation of *Development Regulations 1993* (Gazette 27.10.1993 p 1954) as varied**

### **4—Variation of regulation 42—Notification of decision to an applicant (including conditions)**

Regulation 42—after subregulation (5) insert:

- (6) If the decision is or includes a consent with respect to proposed building work for which a Statement of Compliance will be required under regulation 83AB, the notice must be accompanied by—
  - (a) a written notice—
    - (i) indicating that the statement will need to be completed in accordance with the requirements of regulation 83AB(8); and
    - (ii) indicating what (if any) certificates, reports or other document will need to be furnished at the time of the provision of the statement; and
  - (b) a blank copy of a Statement of Compliance for use under these regulations.

### **5—Variation of regulation 74—Notifications during building work**

Regulation 74(2)—delete subregulation (2) and substitute:

- (2) A notice under subregulation (1)(a) must include the name, address and telephone number of the persons who are proposed to sign Parts A and B of the Statement of Compliance under Schedule 19A (if relevant).

### **6—Variation of regulation 83—Certificates of occupancy**

- (1) Regulation 83(2), (3) and (3a)—delete subregulations (2), (3) and (3a) and substitute:
  - (2) Pursuant to section 67(3)(b) of the Act, the following documentation is required:
    - (a) a copy of a Statement of Compliance, duly completed in accordance with the requirements of Schedule 19A, that relates to any relevant building work, together with any documentation required under regulation 42(6)(a)(ii); and
    - (b) unless already provided—a copy of any certificate of compliance under regulation 76(3a) (if relevant); and
    - (c) if the development has been approved subject to conditions, such evidence as the council may reasonably require to show that the conditions have been satisfied; and
    - (d) if the application relates to the construction or alteration of part of a building and further building work is envisaged in respect of the remainder of the building, such evidence as the council may reasonably require to show—

- (i) in the case of a building more than one storey—that the requirements of Minister's Specification SA 83 have been complied with; or
    - (ii) in any other case—that the building is suitable for occupation.
  - (3) A council may dispense with the requirement to provide a Statement of Compliance under subregulation (2)(a) if—
    - (a) the council is satisfied that a person required to complete one or both parts of the statement has refused or failed to complete that part and that the person seeking the issuing of the certificate of occupancy has taken reasonable steps to obtain the relevant certification or certifications; and
    - (b) it appears to the council that the relevant building is suitable for occupation.
- (2) Regulation 83(10) and (11)—delete subregulations (10) and (11) and substitute:
  - (10) Pursuant to section 67(13) of the Act, a council may revoke a certificate of occupancy—
    - (a) if—
      - (i) there is a change in the use of the building; or
      - (ii) the classification of the building changes; or
      - (iii) building work involving an alteration or extension to the building that will increase the floor area of the building by more than 300 square metres is about to commence, or is being or has been carried out; or
      - (iv) the building is about to undergo, or is undergoing or has undergone, major refurbishment,  
and the council considers that in the circumstances the certificate should be revoked and a new certificate sought;  
or
    - (b) if the Council considers that the building is no longer suitable for occupation because of building work undertaken, or being undertaken, on the building, or because of some other circumstance; or
    - (c) if a schedule of essential safety provisions has been issued in relation to the building and the owner of the building has failed to comply with the requirements of regulation 76(5);  
or
    - (d) if the council considers—
      - (i) that a condition attached to a relevant development authorisation has not been met, or has been contravened, and that, in the circumstances, the certificate should be revoked; or

- (ii) that a condition attached to the certificate of occupancy has not been met, or has been contravened, or is no longer appropriate.

(3) Regulation 83(13)—delete subregulation (13) and substitute:

- (13) Subregulations (3) and (10) only apply to councils.

## 7—Substitution of regulation 83AB

Regulation 83AB—delete the regulation and substitute:

### 83AB—Statement of Compliance

- (1) In this regulation—

*notice of completion* means a notice of completion of building work under regulation 74(1)(d).

- (2) Subject to subregulation (3), this regulation applies to all classes of building under the Building Code constructed<sup>1</sup> pursuant to a provisional building rules consent granted on or after 1 October 2003.

**Note—**

1 See definition of *construct* under the Act.

- (3) This regulation does not apply to a Class 10 building under the Building Code.
- (4) Subject to subregulation (5), if building work is carried out in a case where this regulation applies, a duly completed *Statement of Compliance* under Schedule 19A must be provided to the relevant authority under subregulation (6) within 10 business days after a notice of completion with respect to the building work is given.
- (5) If a Class 1a building under the Building Code (or part of such a building) has not been previously occupied and the building (or part) is occupied before a notice of completion with respect to the building work has been given, a duly completed Statement of Compliance must be provided to the relevant authority under subregulation (6) within 10 business days after the building (or part) is occupied.
- (6) For the purposes of subregulation (4) or (5), the relevant authority is—
  - (a) if a private certifier was the relevant authority for the purposes of the assessment of the building work against the provisions of the Building Rules—that private certifier;
  - (b) in any other case—the council.
- (7) A Statement of Compliance provided under this regulation must be accompanied by any certificates, reports or other documents that the relevant authority, by written notice issued at the time that the relevant provisional building rules consent was given, indicated would need to be furnished at the time of the provision of the statement under this regulation.

- (8) A Statement of Compliance must be completed as follows:
  - (a) Part A of the statement must be signed by the licensed building work contractor responsible for carrying out the relevant building work or, if there is no such person, by a registered building work supervisor or a private certifier;
  - (b) Part B must be signed by the owner of the relevant land, or by someone acting on his or her behalf.
- (9) For the purposes of subregulation (8)(a), a licensed building work contractor (the *contractor*) will be taken to be responsible for carrying out building work if the contractor has responsibility for—
  - (a) performing the work; or
  - (b) engaging another person to perform the work in a situation where the contractor retains overall responsibility for the work.
- (10) For the purposes of Part A of the Statement of Compliance, *service connections* are connections to any of the following:
  - (a) a public electricity source;
  - (b) a public water supply;
  - (c) a public sewer;
  - (d) a septic tank drainage system;
  - (e) a public telecommunications system;
  - (f) any other public service or facility provided by an authority or utility.
- (11) If a requirement of this regulation is not complied with, the owner of the relevant land is guilty of an offence unless he or she establishes that the failure to comply with the relevant requirement is due to the act or omission of another person.

Maximum penalty: \$4 000.

### **8—Variation of regulation 89—Private certification—authorised functions**

Regulation 89(1)(f)—after "provisional building rules consent" insert:

or otherwise undertakes an assessment of building work against the Building Rules

### **9—Variation of regulation 90—Engagement of private certifier**

Regulation 90—after subregulation (2) insert:

- (3) If a case to which subregulation (2) applies involves a Class 1a building under the Building Code, the person proposing to engage a private certifier must, before engaging the private certifier, obtain the written consent of the owner of the land to the use of a private certifier.

## **10—Variation of regulation 92—Provision of information**

- (1) Regulation 92(3)—delete "information on the address or location of the building and, if relevant, the maximum number of persons who may occupy the building" and substitute:
- information on—
- (c) the address or location of the building; and
  - (d) if relevant—
    - (i) the maximum number of persons who may occupy the building; and
    - (ii) if the building has more than one classification—the part of the building to which the classification relates and the classifications currently assigned to the other parts of the building.
- (2) Regulation 92(4)—delete subregulation (4) and substitute:
- (4) If a private certifier issues a certificate of occupancy for a building, the private certifier must, within 5 business days after issuing the certificate, provide to the council a copy of the certificate of occupancy together with a copy of any documentation provided under regulation 83(2).
  - (4a) If a private certifier receives a Statement of Compliance under regulation 83AB and a certificate of occupancy is not to be issued, the private certifier must, with 5 business days after receiving the statement, provide to the council a copy of the statement together with a copy of any documentation provided for the purposes of that regulation.

## 11—Substitution of Schedule 19

Schedule 19—delete the Schedule and substitute:

### **Schedule 19—Certificates of occupancy**

*Development Act 1993*  
*Development Regulations 1993—regulation 83(9)*

#### **Certificate of occupancy**

This certificate relates to the building located at the following address or location: .....

Description of building: .....

Date of approval of building work: ..... Development number: .....

Date of previous certificate of occupancy issued: ..... Date revoked: .....

The maximum number of occupants, and the building classification of class/classes: .....  
under the Building Code were notified on .....

**This is to certify that the building as located and described above is suitable for occupation.**

In considering the application for issue of this certificate the .....

..... (*insert name of council or relevant authority*)

has received a *Statement of Compliance*. Part A of that certificate has been signed by .....

..... (*insert name*)

of .....

..... (*insert address*), who is a \*licensed

building work contractor/registered building work supervisor/private certifier.

**The following conditions/limitations are relevant in respect of the use or occupation of the building:**

\*Variance/Alternative Solution

\* Condition applicable

.....

.....

*[\*Performance based alternative solutions under the Building Code and building work at variance with the Building Rules under section 36 of the Act must be recorded]*

**This certificate does not constitute a certificate of compliance with the Building Rules.**

This certificate is provided by .....

for, and acting upon the written authority of, .....

..... (*insert name of relevant authority*)

Date:        /        /

*\*Delete as appropriate*

## Schedule 19A—Statement of compliance

*Development Act 1993*

*Development Regulations 1993—regulation 83AB*

Note—Pursuant to section 45(1) of the *Development Act 1993*, a person must not perform building work, or cause it to be performed, except in accordance with technical details, particulars, plans, drawings and specifications approved under the Act.

- 1 This statement relates to the building located at the following address or location: .....  
.....  
.....
- 2 Description of building work to which this statement relates: .....  
.....  
.....  
.....  
.....
- 3 Date of approval of building work to which the statement relates: ..... / ..... / .....
- 4 Development number: .....

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**This statement must be accompanied by any certificates, reports or other documents specified by the relevant authority for the purposes of regulation 83AB of the *Development Regulations 1993***

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### Part A—Builder's statement

*This part of the statement must be signed by the building work contractor responsible for carrying out the relevant building work or, if there is no such person, by a registered building work supervisor or a private certifier.*

I certify the following:

- 1 The building work described above (disregarding any variation of a minor nature that has no adverse effect on the structural soundness or safety of the building, or on the health of the occupants of the building, or any variation undertaken with the consent of the relevant authority) has been performed in accordance with the documents referred to in Part B.
- 2 All service connections have been made in accordance with the requirements of the relevant supply authority.\*
- 3 All requirements under regulation 76(3) of the *Development Regulations 1993* relating to essential safety provisions have been satisfied.\*
- 4 All notifications required under section 59 of the *Development Act 1993* have been given in accordance with that Act and the requirements of the *Development Regulations 1993*.\*

\*Strike out any item that is not relevant

.....  
*Date*

.....  
*Signed*

Name: .....

Status: .....

Address and contact telephone number: .....

.....

.....

Licence Number: .....

**Part B—Owner's statement**

*This part of the statement must be signed by the owner of the relevant land, or by someone acting on his or her behalf.*

I certify the following:

- 1 The documents (including all contract documents, amendments, attachments, instructions, annotations, variations and clarifying correspondence) issued for the purposes of the building work described above (disregarding any variation of a minor nature that has no adverse effect on the structural soundness or safety of the building, or on the health of the occupants of the building, or any variation undertaken with the written consent of the relevant authority) are consistent with the relevant development approval issued on ..... (*date to be inserted*).
- 2 Any conditions of approval relating to the building work have been satisfied.

.....  
*Date*

.....  
*Signed*

.....  
*Name*

Address and contact telephone number: .....  
.....  
.....

**Note—**

As required by section 10AA(2) of the *Subordinate Legislation Act 1978*, the Minister has certified that, in the Minister's opinion, it is necessary or appropriate that these regulations come into operation as set out in these regulations.

**Made by the Governor's Deputy**

with the advice and consent of the Executive Council  
on 31 July 2003

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