

# CERTIFIER DEMERIT POINTS AND DISQUALIFICATION

A demerit point and disqualification system has been introduced for building certification offences.

## WHAT ARE CERTIFIER DEMERIT POINTS ALLOCATED FOR?

Certifier demerit points are allocated when a person has a 'conviction' for a demerit offence under the *Building Act 1975* committed on or after 1 October 2020.

**Conviction** of a person for a demerit offence includes:

- the person paying an infringement notice fine, either in full or a first instalment
- a court finding the person guilty or accepting the person's plea of guilty (whether or not a conviction is recorded)
- registration of a default certificate with the State Penalties Enforcement Registry (SPER) for an unpaid infringement notice fine.

Demerit offences include, but are not limited to:

- offences such as carrying out certifier functions without the appropriate licence
- contravening certain restrictions or requirements about granting building approvals
- failure to give or keep required documents in the prescribed timeframes
- failure to perform required certifying functions, not acting in the public interest
- failing to give required notices
- providing false or misleading information.

A full list of demerit offences and corresponding demerit points are detailed in the **Attachment**.

## WHEN ARE CERTIFIER DEMERIT POINTS ALLOCATED?

When a person has a conviction for a demerit offence, the QBCC must allocate the prescribed number of demerit points for the offence to them as soon as practicable after the demerit points take effect.

**Demerit points take effect:**

- the day after the period for appealing a guilty finding has ended
- the day a court accepts a plea of guilty
- the day an infringement notice fine is paid (in full or first instalment)
- The day a default certificate is registered with SPER for an unpaid infringement notice fine.

If a conviction for a demerit offence is appealed, demerit points for the conviction will not be allocated until the appeal is finally dealt with or withdrawn. If, after appeal, there is no conviction, then the demerit points stop having effect.

## WHAT HAPPENS AS CERTIFIER DEMERIT POINTS ACCUMULATE?

If a person accumulates 30 certifier demerit points over a 3 year period, they will be disqualified from holding a building certifier licence for a period of time detailed in a disqualification notice.

## WHAT IS THE EFFECT OF BEING DISQUALIFIED?

If the person holds a building certifier licence at the time they receive a disqualification notice, the notice will cancel their licence. It will not automatically reactivate after the disqualification period – the person is responsible for reapplying.

When deciding a licence application, the QBCC can only grant a licence if satisfied the applicant is a suitable person to hold a licence. *The Building Act 1975* stipulates that a disqualified individual is not a suitable person to hold a building certifier licence.

## HOW LONG DOES A CERTIFIER DISQUALIFICATION LAST?

For a first certifier disqualification – disqualification is for a maximum of 1 year.

For a second or subsequent certifier disqualification within the past 10 years – disqualification is for a maximum of 3 years.

## WHAT IS THE PROCESS FOR DISQUALIFICATION?

Prior to making a decision to disqualify a person from holding a building certifier licence, a notice of proposed disqualification is given to the person. This notice provides the person with an opportunity to challenge the disqualification by making written submissions within the response period, which will be a minimum of 28 days. The QBCC must consider any submissions made within the response period.

If the QBCC's decision is that the person is a disqualified individual, a disqualification notice is given.

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## **CAN A PERSON WHO RECEIVES A DISQUALIFICATION NOTICE REQUEST A REVIEW OF THE DECISION?**

Yes, a disqualification notice is a reviewable decision. This includes the cancellation of the disqualified individual's building certifier licence (if applicable).

A decision may be externally reviewed in the Queensland Civil and Administrative Tribunal (QCAT). An external review application must be lodged with QCAT within 28 days of the decision.

Alternatively, the decision may be internally reviewed by a QBCC officer independent of the original decision. An internal review application must be lodged with the QBCC within 28 days of the decision. An internal review decision may also be externally reviewed by QCAT.

## **WHO CAN SEE A PERSON'S DEMERIT POINT BALANCE AND DISQUALIFICATION HISTORY?**

The QBCC's Register of Building Certifiers will record and publish the details of a certifier's (and former certifier's) demerit offences, demerit points and disqualification history. This can be viewed by clients before engaging a building certifier.

However, a person's demerit point and disqualification history will not be published if they are not (or were not) a building certifier.

## **WHEN DOES A DEMERIT POINT BALANCE RESTART?**

The demerit point balance restarts if a person is disqualified. However, the history of demerit point allocation remains on record and, for current and former building certifiers, on a public register. Previous disqualifications will affect the length of a subsequent disqualification.

## **NEED MORE INFORMATION?**

Visit our website at [qbcc.qld.gov.au](http://qbcc.qld.gov.au) or visit your local QBCC office.

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## LIST OF CERTIFIER DEMERIT OFFENCES

SECTION	PROVISION	DEMERIT POINTS
s83(1)	A private certifier failing to comply with general restrictions on granting building development approval	8
s84(1) and s84(2)	A private certifier giving approval inconsistent with particular earlier approvals or accepted development	8
s86(1)	A private certifier (who has approved an application) failing to give copies of approval documents (within 5 business days) and the required fee to the local government	2
s88(2)	A private certifier (who has approved an application) giving the applicant approval documents when the certifier has not given the local government copies of approval documents and/or the required fee	3
s88(2B)	A private certifier (who has approved an application) giving the applicant approval documents before the end of 5 business days after giving the local government copies of approval documents and the required fee	8
s88(6)	A private certifier failing to keep written evidence that the required fee was paid to the local government, for at least 5 years after giving the approval documents	1
s99(2)	A building certifier failing to give the building owner inspection documentation on final inspection, within the required period	2
s102(2)	A building certifier failing to give a certificate of classification on inspection after particular events	1
s107(2)	A building certifier failing to give a referral agency copies of a certificate of classification and other documents within 10 days of giving the certificate of classification, if required to under the development approval	2
s108	A private certifier (class A) failing to give the local government for the building development application a copy of a certificate of classification within 5 business days after giving the certificate and/or failing to keep a copy for at least 5 years	2
s122	A building certifier failing to give the building owner copies of inspection documentation within 5 business days if the building development approval lapses	5
s124A(3)	A building certifier failing to give the building owner requested inspection documentation for a certified stage of work (not including the final stage), within 5 business days	1
s125	A person performing a building certifying function without a building certifier licence	8
s126	A building certifier performing a building certifying function without the appropriate licence to perform the function	8
s134	A person who is not a private certifier (class A) performing a function under section 48 (functions of a private certifier (class A))	8
s135(1)	A private certifier performing a private certifying function for a building development application without being appropriately licensed to carry out the type of building assessment work required for the application	8
s135(2)	A private certifier failing to comply with the building assessment provisions and chapters 5 and 6 of the <i>Building Act 1975</i> when performing a private certifying function	8

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SECTION	PROVISION	DEMERIT POINTS
s136(1)	A private certifier failing to act in the public interest when performing a private certifying function	10
s143(2)	A private certifier (owner client) failing to give a notice of engagement to the local government within 5 business days after the engagement starts	2
s143A(3)	A private certifier (other clients) failing to give the owner a notice of the certifier's name and responsibilities within 15 business days after the engagement starts	2
s143A(4)	A private certifier (other clients) failing to give the local government a notice of engagement within 15 business days after the engagement starts	2
s143B(5)	A building certifier failing to perform the certifying function stated in an additional certification notice by the agreed day	2
s143B(6)	A building certifier failing to give the owner and client copies of all documents relevant to the additional certifying function within 5 business days after performing the function	1
s147(2)	A private certifier failing to keep, for an approved development application, a copy of the application and the approval documents for the application for at least 5 years from the relevant day	1
s148(2)	A private certifier (whose engagement is discontinued before giving a final inspection certificate or certificate of classification) failing to give the building owner copies of inspection documentation within 5 business days of discontinuation or specified events	5
s149(1)	A private certifier failing to give the local government a copy of all inspection documentation within 5 business days after certain events	2
s149(3)	A private certifier failing to give the local government a copy of the reminder notice under s95 within 5 business days after a building development approval lapses	2
s150	A private certifier failing to keep all inspection documentation for building work for which they were engaged for at least 5 years after the building work is completed	1
s183(2)	A building certifier failing to give QBCC notice of cancellation or suspension of an interstate or NZ licence or conviction of a relevant offence, within 20 business days after it happened	2
s195(4)	A building certifier failing to comply with a document requirement notice given by the QBCC (for audit or investigation purposes)	3
s202(1)	A person knowingly stating anything that is false or misleading in a material particular to the QBCC, in relation to a certifier investigation or audit	8
s203(1)	A person giving a document containing information they know is false or misleading in a material particular to the QBCC, in relation to a certifier investigation or audit	8

**Note:** A limit of 20 demerit points may be allocated by the QBCC if multiple demerit offences are discovered as a result of a single investigation or audit.