

Building (Professional Indemnity Insurance) Amendment Regulation 2020

Explanatory notes for Subordinate Legislation 2020 No. 209

made under the

Building Act 1975

General Outline

Short title

Building (Professional Indemnity Insurance) Amendment Regulation 2020

Authorising law

Sections 163 and 261 of the *Building Act 1975*

Policy objectives and the reasons for them

The *Building Act 1975* (the Act) establishes a licensing framework for building certifiers. If an individual wants to perform private certifying functions, they must hold the appropriate endorsement under the Act and meet the eligibility requirements prescribed in the Building Regulation 2006 (the Regulation).

Section 163 of the Act provides that a private certification endorsement may only be made if the applicant holds the Professional Indemnity Insurance (PII) prescribed under the Regulation. Private building certifiers renewing their licence must also demonstrate that they hold compliant PII.

Since 2018, certifiers had been experiencing increasing difficulties in obtaining compliant PII (exclusion free PII), with insurers no longer offering exclusion free PII. Insurers are offering PII with exclusions for working with combustible cladding. Exclusions identified in the policies being offered include working with external cladding products.

On 9 August 2019, the *Building and Other Legislation Amendment Regulation 2019* was made temporarily modifying the PII requirements to enable private building certifiers to be licensed, if they held PII with an exclusion relating to certain cladding. The current exemption period ends on 30 June 2021.

The issues identified in 2019 resulting in the Regulation being amended continue to be an issue for industry. This issue has become more concerning during the COVID-19 pandemic, with the industry experiencing a decline in activity.

The objectives of the *Building (Professional Indemnity Insurance) Amendment Regulation 2020* (the Amendment Regulation) is to:

- extend the exemption period for licensing private certifiers who may hold PII with a cladding exclusion PII (from 30 June 2021 until 30 June 2022)
- clarify that compliant PII held when a licence is issued will remain valid for the duration of the licence, provided the licence is current when the exemption period ends.

Achievement of policy objectives

To achieve the policy objectives, the Amendment Regulation modifies certain provisions in the Regulation to extend the exemption period that enables a private certifier to continue to perform certification functions while holding PII with certain cladding exclusions.

The Amendment Regulation also includes transitional provisions that clarify compliant PII held when a licence is issued will remain valid for the duration of the licence, provided the licence is current when the exemption period ends (30 June 2022).

Consistency with policy objectives of authorising law

The Regulation is consistent with the policy objectives of the authorising Act.

Inconsistency with policy objectives of other legislation

No inconsistencies with the policy objectives of other legislation have been identified.

Alternative ways of achieving policy objectives

There are no alternative ways of achieving the policy objectives.

Benefits and costs of implementation

The Amendment Regulation extends the period that a private certifier may perform certification functions while holding PII with certain cladding exclusions. The Amendment Regulation will benefit the community by ensuring that private building certifiers can continue to consider and assess building development applications.

Any costs associated with the Amendment Regulation are expected to be minimal and will be met from existing resources.

Consistency with fundamental legislative principles

The Amendment Regulation has been drafted in accordance with fundamental legislative principles as defined in section 4 of the *Legislative Standards Act 1992*.

Consultation

The Queensland Building and Construction Commission supports the Regulation. Targeted consultation occurred with local governments and those who responded support the Regulation.

The Ministerial Construction Council were informed of the amendments and did not identify any issues. The Council comprises representatives from the following peak industry groups:

- Air Conditioning and Mechanical Contractors' Association;
- Association of Wall and Ceiling Industries Queensland;
- Australian Institute of Architects;
- Australian Institute of Building Surveyors;
- Australian Manufacturing Workers' Union;
- Australian Workers Union;
- Board of Architects of Queensland;
- Board of Professional Engineers of Queensland;
- Building Products Industry Council;
- Construction, Forestry, Maritime, Mining and Energy Union;
- Construction Skills Queensland;
- Consult Australia;
- Electrical Trades Union;
- Engineers Australia;
- Housing Industry Association;
- Insurance Council of Australia;
- Landscape Queensland;
- Local Government Association of Queensland;
- Master Builders Queensland;
- Master Concreters Australia;
- Master Electricians Australia;
- Master Painters Queensland;
- Master Plumbers Association of Queensland;
- National Association of Women in Construction;
- National Fire Industry Association;
- Plumbers' Union Queensland;
- Professionals Australia;
- Queensland Building and Construction Commission;
- Queensland Council of Unions;
- Queensland Major Contractors Association; and
- Subcontractors Alliance.

The Queensland Productivity Commission was consulted and advised that no further regulatory impact assessment is required under the Queensland Government Guide to Better Regulation as the amendments appear unlikely to result in significant adverse impacts.