

Building Amendment Regulation 2022

Explanatory notes for Subordinate Legislation 2022 No.57

made under the

Building Act 1975

General Outline

Short title

Building Amendment Regulation 2022

Authorising law

Section 163 and 261 of the *Building Act 1975* (Building Act).

Policy objectives and the reasons for them

The policy objectives of the *Building Amendment Regulation 2022* (Amendment Regulation) are to:

- clarify the documentation requirements for an inspection of the excavation, footings and slab stages of assessable building work
- clarify when a building certifier may sign the certificate of inspection, for the excavation, footings and slab stages of inspection, without personally inspecting these stages
- extend the exemption period for licensing private building certifiers who may hold Professional Indemnity Insurance (PII) with certain cladding exclusions (from 30 June 2022 until 30 June 2023)
- 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.

The Building Act, among other things, establishes the inspection and documentation requirements relevant to the assessment and certification of building work as well as regulation of building certifiers. Section 10 and Chapter 4, Part 2, Division 2 of the Building Act prescribes the functions of building certifiers and private building certifiers, which includes carrying out building assessment work at prescribed stages, which are prescribed under the *Building Regulation 2021*.

The *Building Regulation 2021* support the objectives of the Building Act and prescribes, among other things, matters relating to the performance of building and private certifying functions and the licensing of building certifiers. The *Building Regulation 2021* commenced on 1 September 2021 and generally preserved the matters prescribed in the expired *Building Regulation 2006*.

Building Inspections – documentation

Section 44 of the *Building Regulation 2021* defines the stages of assessable building work, for a single detached class 1a building and class 10 building or structure, that must be inspected. Section 44(1)(b) provides for a single detached class 1a building the mandatory stages of inspection include:

- i) after excavation of foundation material and before the concrete for the footings, or slab, for the building are poured (excavation stage)
- ii) if the building is to have footings—after the placement of formwork and reinforcement for the footings but before the concrete for the footings is poured (footing stage)
- iii) if the building is to have a slab—after the placement of formwork and reinforcement for the slab but before the concrete for the slab is poured (slab stage) and
- vii) the final stage (after all aspects of the work are completed).

When the *Building Regulation 2021* was made, modernised drafting has unintentionally led to ambiguity about the documentation requirements for the excavation stage under section 44(1)(b)(i).

Section 46 of the *Building Regulation 2021* prescribes that a certifier can sign a certificate of inspection for a single detached class 1a building and class 10 building or structure. Consistent with the stages of assessable building work in section 44(1)(b)(i), (ii) and (iii), section 46 is intended to require a building certifier to sign the certificate of inspection for the excavation, footings and/or slab stages.

Currently, section 46 of the *Building Regulation 2021* is unclear about whether a building certifier can sign a certificate of inspection for the excavation stage. The Amendment Regulation clarifies a building certifier may sign a certificate of inspection for the excavation stage, footing stage and/or slab stage.

Building Inspections –building certifier personal inspection requirements

Section 51 of the *Building Regulation 2021* prescribes who can inspect stage of assessable building work, which includes a certifier or a competent person.

Section 52 of the *Building Regulation 2021* prescribes the inspection procedure if a person inspects a stage of assessable building work. It is intended that section 52(4) enables the certifier to sign a certificate of inspection for certain stages of assessable building work, without personally inspecting the stage, if they rely on aspect inspection certificates for all aspects of the stage. Section 52(5) is intended to require the certifier to personally inspect the final stage of work, by preventing them from solely relying on aspect inspection certificate for all aspects of this stage of work.

Representatives of the building industry have identified that the current drafting is ambiguous, and it is arguable that a certifier may be required to personally inspect the excavation, footing and/or slab stages as well as the final stage of work. The Amendment Regulation aims to clarify the policy intent by amending section 52 subsections (4) and (5) to clarify that multiple aspect certificates can be relied upon for all stages of assessable building work, other than the final stage of work, for a

detached class 1a building and relevant class 10 buildings and structures. It should be noted, the building certifier's obligation to sign the certificate of inspection for the excavation, footings, slab stages as well as the final stage of work under section 46(2) will be retained.

Professional Indemnity Insurance

The licensing framework for building certifiers is established under the Building Act. To meet the requirements for performing private certifying functions, individuals must hold an appropriate endorsement under the Building Act and meet the eligibility requirements under the *Building Regulation 2021*.

Under section 163 of the Building Act, insurance prescribed under the *Building Regulation 2021* is a condition of private certification endorsement. Section 84(1) of the *Building Regulation 2021* requires that the insurance held for section 163 of the Building Act must be PII.

Under the *Building Regulation 2006*, PII for private building certifiers has historically been required to be exclusion free. Since 2018, private building certifiers have faced challenges acquiring compliant and affordable PII. The global PII market had hardened which was compounded by the combustible cladding crisis in the building sector.

In August 2019, the *Building Regulation 2006* was amended to permit private building certifiers, for a limited time, to be licensed while holding PII with certain cladding exclusions. Since initial implementation of the exclusion provisions, the Queensland Government has continued to liaise with industry and other jurisdictions to develop a national response to PII issues facing building industry professionals. This work is not yet finalised.

On 17 September 2020, the now expired *Building Regulation 2006* was amended to extend the period in which PII could be acquired with cladding exclusions from 30 June 2021 to 30 June 2022.

In 2021, measures, such as the accreditation of professional standard schemes and reintroduction of exclusion free PII by one organisation, were implemented to address the PII issues. However, there has been insufficient time to assess the effectiveness of these measures and until this occurs industry faces uncertainty about being able to acquire compliant and affordable PII.

The exemption period in which PII can be acquired with cladding exclusions is currently due to expire on 30 June 2022.

Achievement of policy objectives

To achieve the policy objectives, the Amendment Regulation includes new wording of requirements for inspections and updates private certification endorsement requirements.

Section 3 of Amendment Regulation clarifies only the building certifier can sign a certificate of inspection for the excavation stage, footing stage and slab stage of assessable building work for a single detached class 1a or class 10 buildings or structures.

Section 4 of the Amendment Regulation clarifies that where a building certifier relies on aspect inspection certificates from relevant competent persons, to sign a certificate of inspection for a stage they are not required to personally inspecting the work. Although they must personally inspect the work for the final stage.

Section 5 of the Amendment Regulation extends the current PII exemption period for another twelve months from 30 June 2022 to 30 June 2023. This is intended to provide certainty for certifiers and provide time for the Queensland Government to assess the effectiveness of existing measures and potentially new options to address the provision of fair and appropriate PII.

Section 6 of the Amendment Regulation provides transitional arrangements to clarify that the proposed exemption will apply to licences with the exemption until the licence expires, providing the licence is current when the exemption period ends. For example, where an exempt and current licence was due to expire on 8 September 2022, the PII cladding exemption would apply beyond the 30 June 2023 deadline until the licence expires on 8 September 2023.

Consistency with policy objectives of authorising law

The *Building Amendment Regulation 2022* is consistent with the policy objectives of the authorising Act.

Inconsistency with policy objectives of other legislation

The *Building Amendment Regulation 2022* 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 *Building Amendment Regulation 2022* will provide greater clarity and certainty about the inspection and documentation requirements for certain assessable building work.

The Amendment Regulation also extends the period that a private certifier may perform certification functions while holding PII with certain cladding exclusions, which benefits the building industry and consumers by enabling private building certifiers to continue to consider and assess building development applications.

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

Consistency with fundamental legislative principles

The Amendment Regulation is consistent with the fundamental legislative principles as defined in section 4 of the *Legislative Standards Act 1992*. The amendments lift regulatory burden on the building and construction industry.

It is considered that the Amendment Regulation:

- has sufficient regard to the institution of parliament and only contains matters appropriate to subordinate legislation and
- is consistent with fundamental legislative principles.

Consultation

Members of the Ministerial Construction Council support the proposed Amendment Regulation.

The Office of Best Practice Regulation (OBPR) assessed the proposed amendments and determined that they will not add to the burden of regulation and are unlikely to result in significant adverse impacts. OBPR advised that no further regulatory impact analysis was required.