

Building (Private Certification Endorsement) Amendment Regulation 2023

Explanatory notes for Subordinate Legislation 2023 No.46

made under the

Building Act 1975

General Outline

Short title

Building (Private Certification Endorsement) Amendment Regulation 2023

Authorising law

Sections 163 and 261 of the *Building Act 1975*

Policy objectives and the reasons for them

The policy objectives of the *Building (Private Certification Endorsement) Amendment Regulation 2023* (Amendment Regulation) are to:

- extend the period in which a building certifier will be eligible to apply for a Private Certification endorsement, even if they hold professional indemnity insurance (PII) with cladding-related exclusions, until 30 June 2025
- ensure that if the PII exemption applies for a private certifier and their licence is in force on 30 June 2025, the exemption will continue to apply for the certifier after that date until the end of the 1-year period after the licence was granted or last renewed, unless the licence is earlier cancelled, suspended, amended or surrendered
- ensure that if the PII exemption applies in relation to a private certifier during the extended period, the private certifier may perform all private certifying functions, despite holding PII with cladding-related exclusions, while the PII exemption continues to apply in relation to the certifier
- allow a building certifier (including a private certifier) who has not yet satisfactorily completed a prescribed course on issuing building development approvals to undertake such a course, and if they satisfactorily complete it, to be eligible to apply for a development approval endorsement allowing them to issue building development approvals
- allow a building certifier (including a private certifier) who has already satisfactorily completed a prescribed course on issuing building development approvals to be eligible to apply for a development approval endorsement allowing them to issue Building development approvals.

Professional Indemnity Insurance

The licensing framework for building certifiers is established under Part 3 of the *Building Act 1975* (Building Act). To lawfully perform private certifying functions and issue building development approvals, individuals must hold a building certifier licence with the DA endorsement. To be eligible for a building certifier licence and endorsement issued under the Building Act, individuals must satisfy the Queensland Building and Construction Commission they meet the eligibility requirements under the Building Act and 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 be professional indemnity insurance.

Further, under the Building Act, a private certification endorsement may be continued for a building certifier's licence that is renewed only if the certifier has the insurance for private certification prescribed under a regulation.

In 2019, globally the certification profession experienced difficulties in obtaining affordable exclusion-free professional indemnity insurance, partially attributed to the use of combustible external cladding. In August 2019, amendments to the Building Regulation enabled a building certifier to be licensed or for their licence to be endorsed if they held PII with certain cladding exclusions.

The challenges in acquiring affordable exclusion-free PII have continued resulting in the exemption period being extended until 30 June 2023.

A PriceWaterhouseCoopers Australia report prepared for the Department of Energy and Public Works suggests that exclusion-free policies are unlikely to be readily attainable and affordable after the current extended exemption period expires on 30 June 2023.

Given it is unlikely that the PII market will improve in the short term, it is proposed to further extend the exemption period for a further 2 years to 30 June 2025. Building certifiers continue to work in an uncertain market partly due to the ongoing impacts of the COVID-19 pandemic. If the exemption period is not extended, the risk of certifiers leaving the industry will increase.

The Queensland Government is continuing to work with industry and other jurisdictions, including the Australian Government, to consider market constraints impacting building industry professionals. The proposed extension will provide certainty and stability for industry while governments investigate other options to respond to the PII market challenges.

Whether a private certifier chooses to perform private certifying functions directly related to non-compliant cladding, while holding PII with cladding-related exclusions, is a business decision. Currently, only a small number of private certifiers perform private certifying functions directly related to non-compliant cladding. Most, if not all, of those certifiers hold PII that does not include cladding-related exclusions. The PII they hold has been obtained in challenging circumstances at significant expense.

The proposed amendments are also intended to ensure that if the PII exemption for cladding applies for a private certifier and their licence is in force when the exemption period ends (30 June 2025), the exemption will continue to apply for the certifier after that date until the end of the 1-year period after the licence was granted or last renewed, unless the licence is earlier cancelled, suspended, amended or surrendered. So, for example, if the licence was renewed on 8 September 2024, the exemption will apply for the certifier until 8 September 2025, unless the licence is earlier cancelled, suspended, amended or surrendered even though the exemption period will end on 30 June 2025.

New course on issuing building development approvals

Under the Building Act, the Queensland Building and Construction Commission may make a development approval endorsement on a private certifier's licence, allowing the certifier to issue a building development approval as a private certifier, only if the certifier has, among other things, satisfactorily completed a course about issuing building development approvals prescribed under a regulation. The *Building Regulation 2021* currently prescribes a course on issuing building development approvals.

However, the provider of the course currently prescribed has deregistered as a registered training organisation and has not delivered the course since February 2022. Since then, there has been no pathway for a private certifier to obtain a development approval endorsement for their licence. A new course on issuing building development approvals offered by a new course provider has been selected following a tender process.

Proposed amendments of the *Building Regulation 2021* are intended to prescribe the details of the new course and its provider to ensure a private certifier will have the option to enrol in the course. If the certifier satisfactorily completes the course, they will be eligible to apply for a development approval endorsement allowing them to issue building development approvals as a private certifier.

The proposed amendments are also intended to ensure that even though the course on issuing building development approvals currently prescribed under the *Building Regulation 2021* (the old course) is no longer offered, the Queensland Building and Construction Commission will be allowed to make a development approval endorsement on a private certifier's licence if, among other things, the certifier satisfactorily completed the old course when it was offered, rather than the new course after it has been prescribed.

Achievement of policy objectives

The Amendment Regulation achieves the key policy objectives by:

- amending provisions in the *Building Regulation 2021* dealing with the PII exemption to extend the current PII exemption period until 30 June 2025
- amending transitional provisions in the *Building Regulation 2021* to ensure that if the PII exemption applies for a private certifier and their licence is in force on 30 June 2025, the exemption will continue to apply for the certifier after that date until the end of the 1-year period after the licence was granted or last

renewed, unless the licence is earlier cancelled, suspended, amended or surrendered

- amending provisions in the *Building Regulation 2021* to replace the reference to the course prescribed for section 163(2) of the Building Act (being the course called 'Issuing development permits for building work', conducted by Mackee and Associates Pty Ltd, trading as AssentTECS) with a reference to a new course called 'Queensland Private Building Certifier Course', conducted by CPD Training Pty Ltd, trading as College of Professional Development
- inserting in the *Building Regulation 2021* a transitional provision that will allow a building certifier (including a private certifier) who has already satisfactorily completed the course that was offered by AssentTECS to be eligible for a development approval endorsement even though that course will no longer be the prescribed course for section 163(2). Consequently, such a certifier will not be required to complete the new course on Building Development Approvals offered by the College of Professional Development to be eligible for a development approval endorsement.

Consistency with policy objectives of authorising law

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

Inconsistency with policy objectives of other legislation

No inconsistencies between the policy objectives of the Amendment Regulation and 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, 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 will be 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*.

In particular, 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.

The amendments for PII reduce the regulatory burden on the building and construction industry.

Consultation

The Ministerial Construction Council, comprising peak industry bodies such as the Australian Institute of Building Surveyors and the Royal Institute of Chartered Surveyors, unions, the Queensland Building and Construction Commission and government agencies have been consulted and support the proposed amendment.

The Office of Best Practice Regulation was also consulted on the proposed amendments. The Office of Best Practice Regulation advised that the amendments will not add to the burden of regulation and are unlikely to result in significant adverse impacts and that no further regulatory analysis is required.