



New South Wales

# Building Professionals Amendment Regulation 2010

under the

Building Professionals Act 2005

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Building Professionals Act 2005*.

TONY KELLY, MLC  
Minister for Planning

## Explanatory note

The object of this Regulation is to amend the *Building Professionals Regulation 2007*:

- (a) to alter a prescribed condition of a certificate of accreditation obtained on the recommendation of a council to reflect that such certificates may be granted to persons who are engaged by the council as contractors as well as persons who are employed by the council and to make consequential amendments, and
- (b) to provide exemptions from certain conflict of interest provisions in the *Building Professionals Act 2005* for an accredited certifier who is engaged or employed by a council to do certification work on behalf of the council, and
- (c) to provide exemptions for an accredited certifier employed by the council from certain penalties that may be imposed for unsatisfactory professional conduct or professional misconduct, and
- (d) to provide an exemption on a transitional basis from the requirement in section 74A of that Act for a council to ensure that certification work done on its behalf is done by an appropriately qualified accredited certifier or accredited body corporate.

This Regulation is made as a consequence of the enactment of the *Building Professionals Amendment Act 2008*.

This Regulation is made under the *Building Professionals Act 2005*, including section 94 (the general regulation-making power) and, in particular, section 94 (2) (i).

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Clause 1            Building Professionals Amendment Regulation 2010

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# **Building Professionals Amendment Regulation 2010**

under the

Building Professionals Act 2005

### **1 Name of Regulation**

This Regulation is the *Building Professionals Amendment Regulation 2010*.

### **2 Commencement**

This Regulation commences on 1 September 2010 and is required to be published on the NSW legislation website.

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## Schedule 1      Amendment of Building Professionals Regulation 2007

**[1] Clause 3 Definitions**

Omit the definition of *council accredited certifier* in clause 3 (1).

Insert instead:

*council accredited certifier* means an accredited certifier who is employed by a council and whose certificate of accreditation is subject to a condition that the certifier may carry out certification work only on behalf of a council.

**[2] Clause 7 Prescribed conditions of certificates of accreditation**

Omit “as an employee of” from clause 7 (3).

Insert instead “on behalf of”.

**[3] Clause 18 Prescribed circumstances in which accredited certifier taken not to be involved in design aspect of development**

Omit “in the case of a council accredited certifier” from clause 18 (1) (g).

Insert instead “in a case where the accredited certifier is issuing the certificate on behalf of a council”.

**[4] Clause 18A**

Insert after clause 18:

**18A Exemptions relating to accredited certifiers employed or engaged by councils**

- (1) This clause applies only to a council accredited certifier or any other accredited certifier who is employed or engaged by a council to perform certification work on behalf of the council.
- (2) An accredited certifier is exempt from section 66 (1) (c) of the Act in relation to the issue of a Part 4A certificate or complying development certificate on behalf of a council to another person who is an employee of the council.
- (3) An accredited certifier is exempt from section 66 (1) (c) of the Act in relation to the issue of a Part 4A certificate or complying development certificate on behalf of a council to a person who is

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related to the accredited certifier as referred to in section 68 (e) of the Act, but only if:

- (a) the council was appointed before 1 September 2010 as the principal certifying authority for development to which the certificate relates, or
  - (b) an application for the certificate was made to the council before 1 September 2010 (whether or not the council was appointed as the principal certifying authority for development to which the certificate relates), or
  - (c) an application for a construction certificate or complying development certificate in respect of the relevant development was made to the council before 1 September 2010 and the council was appointed on or after 1 September 2010 as the principal certifying authority for the development.
- (4) An accredited certifier is exempt from section 66 (1) (c) of the Act in relation to the issue of a Part 4A certificate or complying development certificate on behalf of a council to the council.

### [5] Clauses 20E and 20F

Insert after clause 20D:

#### **20E Exemptions for accredited certifiers employed by councils from fines and orders for compensation**

A council accredited certifier is exempt from sections 31 (4) (f) and (g) and 34 (2) (f) and (g) of the Act.

#### **20F Exemptions for councils relating to section 74A of the Act**

- (1) A council is exempt from section 74A of the Act in relation to certification work done on behalf of the council if:
  - (a) the council was appointed before 1 September 2010 as the principal certifying authority for development to which the certification work relates, and
  - (b) the certification work was done by an accredited certifier employed or engaged by the council whose certificate of accreditation did not authorise the doing of that work, and
  - (c) at the time the work was done the council did not employ or have engaged any accredited certifier whose certificate of accreditation authorised the doing of that work.

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- (2) A council is exempt from section 74A of the Act in relation to certification work done on behalf of the council if:
- (a) an application for a construction certificate or complying development certificate in relation to the relevant development was made to the council before 1 September 2010, and
  - (b) the council was appointed as the principal certifying authority for the development on or after 1 September 2010, and
  - (c) the certification work was done by an accredited certifier employed or engaged by the council whose certificate of accreditation did not authorise the doing of that work, and
  - (d) at the time the work was done the council did not employ or have engaged any accredited certifier whose certificate of accreditation authorised the doing of that work.
- (3) A council is exempt from section 74A of the Act in relation to the issue of a Part 4A certificate or complying development certificate on behalf of the council if:
- (a) the application for the certificate was made to the council before 1 September 2010, and
  - (b) the certificate was issued by an accredited certifier employed or engaged by the council whose certificate of accreditation did not authorise the issue of the Part 4A certificate or complying development certificate, and
  - (c) at the time the Part 4A certificate or complying development certificate was issued the council did not employ or have engaged any accredited certifier who held a certificate of accreditation that authorised the issuing of the Part 4A certificate or complying development certificate.

**[6] Schedule 2 Fees**

Omit “as a council accredited certifier if” from item 1A.

Insert instead “if the certificate is subject to a condition referred to in clause 7 (3) and the application is”.