

**2001**

**THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY**

**CONSTRUCTION PRACTITIONERS REGISTRATION ACT 1998  
CONSTRUCTION PRACTITIONERS REGISTRATION  
REGULATIONS AMENDMENT 2001**

**SUBORDINATE LAW NO. 4 OF 2001**

**EXPLANATORY STATEMENT**

Circulated by authority of  
Brendan Smyth MLA  
Minister for Urban Services

## **Construction Practitioners Registration Regulations Amendment 2001**

### **OUTLINE**

These are amending Regulations. They amend the Construction Practitioners Registration Regulations (the "Principal Regulations").

The Principal Regulations contain details of the insurance to be held by registered construction practitioners. The amending Regulations make changes sought by the Insurance Council of Australia to ensure that the type of insurance required was able to be offered.

Construction practitioners registered as principal building surveyors or building surveyors ("building certifiers") may act as certifiers as provided in the *Building Act 1972* and the Building Regulation. Those registered as plumbing plan certifiers may do so as provided in the Canberra Sewerage and Water Supply Regulations made under the *Energy and Water Act 1988*.

Building certifiers are expected, under the ACT legislation and the corresponding legislation in other parts of Australia, to hold insurance that protects them against liability. The type of insurance is normally professional indemnity insurance. Standard professional indemnity insurance is for claims made during the current period of insurance or arising from something that the holder of the insurance learns of during the current period of insurance and must report to the insurer during that period as likely to lead to a claim, even if the claim is then made after the end of that period. However building certifiers' professional indemnity insurance includes, as an exception, a provision that it automatically covers retired certifiers for claims arising out of their earlier activity ("run-off cover"). Building actions may arise some years after the work is complete and run-off cover provides construction practitioners who are no longer in practice with the resources to meet their potential liabilities for negligence.

Plumbing plan certifiers are not expected to have automatic run-off cover. Standard professional indemnity insurance may make run-off cover available but only in return for additional payments.

Insurers place strict conditions on their provision of the automatic run-off cover and it is a new and exceptional insurance. To meet the concerns of the insurers, the amending regulations described the insurance more closely.

### **Financial Implications**

There are no financial implications.

## REGULATION NOTES

### Formal regulations

**Regulations 1 and 2** are formal regulations that deal with the date of commencement of the amending regulations and the name of the Principal Regulations.

### Substitute

#### *Name of Regulations*

**Regulation 3** replaces Regulation 1 of the Principal Regulations so that the short title of the Principal Regulations includes the year in which they were made. This is in accordance with current drafting style.

### Substitute

**Regulation 4** replaces Regulation 5 of the Principal Regulations. Regulation 5 sets out what insurance is acceptable as part of the eligibility of construction practitioners to be registered. New Regulation 5 does this for building certifiers and new Regulation 5A for plumbing plan certifiers.

In particular the changes to Regulation 5 are intended to remove any implication that the insurance covers every negligent action by a building certifier or plumbing plan certifier. They clearly allow an insurer, who begins to provide building certifiers with insurance, to stop doing so. They also make it clear that a building certifier who has been insured by more than one certifier can only make a claim for an event under one insurance, despite the requirement for run-off cover. Run-off cover is triggered when the certifier ceases to be registered. If the certifier does not cease to practice but merely changes insurer, the run-off cover does not come into effect at the end of the period of cover. If a certifier ceases to be registered for a period and then is registered again, the run-off cover from the earlier period of cover ceases to apply. Accordingly, it should never be possible for an ex-certifier to have run-off cover from two insurances.

#### *Insurance for practitioners registered as building surveyors*

The new Regulations are made under new section 3A of the Principal Act. The Construction Practitioners Registration Amendment Act 2000 replaced subsection 3(2) with this section and removed details that now appear in **new subregulation 5 (2)**. This subregulation states that the insurance for building certifiers must be provided by an approved insurer and the kind of insurance must be professional indemnity insurance and cover the certifier for breach of the certifier's statutory duty.

**New subregulation 5 (3)** replaces subregulation 5 (1). It requires the amount of insurance to be at least a million dollars and cover an individual claim up to that amount. There must be one automatic reinstatement of cover. A reinstatement

restores the limit of cover that has been exceeded. The effect is to make the limit of total claims two million dollars but the limit of an individual claim one million. Run-off cover must apply for ten years after the building certifier ceases to be covered by insurance. **New paragraph 5 (3) (d)** adds legal expenses to the things that the cover for building certifiers must apply to but limits the amount payable to the same figure as the basic cover.

**New subregulation 5 (4)** allows the insurance to include an excess up to \$5,000.

**New subregulation 5 (5)** sets out conditions in which an insurer may cease to provide the required insurance. It allows an insurance provider, whether an individual insurer or a broker providing insurance with the backing of one or more insurers, who withdraws from providing professional indemnity insurance, to stop providing the statutory insurance to a building certifier at the end of the certifier's current period of insurance, if they give the certifier three months' notice. Insurers retain their rights to cancel the insurance for reasons outside the scope of the Principal Act and do not have to continue to provide the required insurance if they go out of business as insurers.

A building certifier who goes out of business and then is registered again has no claim against run-off cover from the insurance required during the building certifier's earlier period of insurance.

**New subregulation 5 (6)** states that the run-off cover is part of the basic insurance and does not require a special application or payment.

### ***Insurance for practitioners registered as plumbing plan certifiers***

The Regulations currently require plumbing plan certifiers to have either a standard professional indemnity insurance or public liability insurance, according to the nature of their qualifications. **New Regulation 5A** now requires them all to have standard professional indemnity insurance. This change is made as a result of revised advice about the eligibility for professional indemnity insurance of persons with trade qualifications but acting in a professional capacity. The insurance must cover the certifier for breach of the certifier's statutory duty and the amount must be at least a million dollars.