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LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

CONSTRUCTION PRACTITIONERS REGISTRATION ACT 1998
CONSTRUCTION PRACTITIONERS REGISTRATION AMENDMENT REGULATIONS 2002 (No 1)

EXPLANATORY STATEMENT

Circulated by authority of

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AUSTRALIAN CAPITAL TERRITORY

CONSTRUCTION PRACTITIONERS REGISTRATION AMENDMENT REGULATIONS 2002 (No 1)

SUBORDINATE LAW No. SL 2002-25

EXPLANATORY STATEMENT

Overview

These are amending Regulations. They amend the Construction Practitioners Registration Regulations 1998 (the "Principal Regulations").

The building industry is currently facing a crisis because of the inability of building certifiers to obtain professional indemnity insurance with a ten year run-off period.

The *Construction Practitioners Registration Act 1998* and Regulations require building certifiers to hold professional indemnity insurance that includes automatic run-of cover for ten years. They cannot be registered without this insurance. This applies not only in the ACT but also in New South Wales, Victoria and Queensland. Standard professional indemnity insurance covers claims during the current period of insurance. Run-off cover applies to claims against former holders of professional indemnity insurance and is normally available only at additional cost.

All insurers who previously provided this coverage around Australia have advised that within the next three months they will no longer be offering this form of insurance. They argue that it is not profitable and at odds with all other professional indemnity insurance products. Additionally, new APRA requirements for insurers make the level of reserves required for the ten year duration of the policy untenable.At a national forum on 24 July 2002, it was made clear by the insurers that while they were all prepared to provide a standard professional indemnity insurance policy for certifiers, Governments across Australia needed to take immediate action to remove the 10 year run off requirement.

While there is an impact on consumer protection, in practice the response is dictated by the actions of the insurers. Failure to act now would mean that the building industry would progressively come to a standstill over the next 6 months.

The statistics on claims against certifiers indicate that the impact would be limited. The certifier is not usually the person mainly at fault when there are defects in buildings – this is normally the builder or the structural engineer. Over the last 15 years the Government has made one major payment in a personal injuries case. This was at a time when the Government was responsible for building inspections. The Government also made an

ex-gratia payment of about $15,000 for damage to the footings that provide structural support for a house. The Government is not aware of any claims that have been made against a private building certifier since certifiers became responsible for building inspections in 1999.

Details

Name of Regulations

Regulation 1 is a formal regulation that gives the name of the amending regulations.

Commencement

Regulation 2 is a formal regulation that links the commencement of the amending Regulations to its notification on the legislation register.

Regulations amended

Regulation 3 provides that the regulations amend the Construction Practitioners Registration Regulations 1998.

Regulation 5(2) to 5(6)

Regulation 4 omits from Regulation 5 of the Principal Regulations the provisions that define the run-off cover (5(3) (e),5(5) and 5(6)), a provision that limits the excess (5(4) and one that requires approval of the insurer (5(2)(a)). The cap on the excess was criticised by some insurers. The amount is the standard excess under present professional indemnity policies. Once the insurance is standard professional indemnity insurance, a special requirement for approval by the government is unnecessary.

Regulation 10(m)

Regulation 5 makes a cross-reference in Regulation 10 of the Principal Regulations consistent with the *Construction Practitioners Registration Act 1998* as amended in 2001.

Financial Implications

Nil.