



New South Wales

Building Professionals Amendment (Exemptions) Regulation 2013

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*.

BRAD HAZZARD, MP
Minister for Planning and Infrastructure

Explanatory note

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

- (a) to limit certain existing exemptions from the operation of conflict of interest provisions in the *Building Professionals Act 2005* that apply to an accredited certifier engaged or employed by a local council to do certification work on behalf of the council (a *council certifier*) to certification work relating to a development that has a capital investment value not exceeding \$5 million, and
- (b) to provide for an additional exemption for a council certifier where the conflict of interest arises from the certifier being related to a person who was involved in the design or construction of that aspect of the development concerned if the certification is provided to the council or a council employee and the capital investment value of the development does not exceed \$5 million.

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

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Clause 1 Building Professionals Amendment (Exemptions) Regulation 2013

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1 Name of Regulation

This Regulation is the *Building Professionals Amendment (Exemptions) Regulation 2013*.

2 Commencement

This Regulation commences on the day on which it is published on the NSW legislation website.

Schedule 1 Amendment of Building Professionals Regulation 2007

[1] Clause 18A Exemptions relating to accredited certifiers employed or engaged by councils

Insert “if the capital investment value of the development concerned does not exceed \$5 million” after “employee of the council” in clause 18A (2).

[2] Clause 18A (4)

Insert “if the capital investment value of the development concerned does not exceed \$5 million” after “to the council”.

[3] Clause 18A (5)

Insert after clause 18A (4):

- (5) An accredited certifier is exempt from section 66 (1) (e) of the Act in relation to the issue of a Part 4A certificate or complying development certificate if:
- (a) the certificate is issued, on behalf of a council, to either the council or another person who is an employee of the council, and
 - (b) the capital investment value of the development concerned does not exceed \$5 million.

Note. The term *capital investment value* has the same meaning as in the *Environmental Planning and Assessment Act 1979*. See clause 3 (2).

[4] Schedule 4 Savings and transitional provisions

Omit “**enactment**” wherever occurring in the headings of Parts 3, 4, 5 and 6.
Insert instead “**making**”.

[5] Schedule 4

Insert at the end of Schedule 4 (with appropriate Part and clause numbering):

Part Provisions consequent on making of Building Professionals Amendment (Exemptions) Regulation 2013

Application of amendments to clause 18A

- (1) The amendments made to clause 18A by the *Building Professionals Amendment (Exemptions) Regulation 2013* (the *amending Regulation*) apply in relation to applications for a

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Part 4A certificate or complying development certificate made after the commencement of that Regulation.

- (2) However, those amendments do not apply to an application for a Part 4A certificate made after the commencement of the amending Regulation in respect of work that was authorised to be carried out by:
 - (a) a complying development certificate or construction certificate issued before the commencement of the amending Regulation, or
 - (b) a complying development certificate or construction certificate issued after the commencement of the amending Regulation where the application for the complying development certificate or construction certificate was made before that commencement.
- (3) Clause 18A (as in force before the commencement of the amending Regulation) continues to apply in relation to:
 - (a) an application for a Part 4A certificate or complying development certificate made before the commencement of that Regulation, and
 - (b) an application for a Part 4A certificate of a kind referred to in subclause (2).