

25 March 2020

Hon Kevin Anderson MP
Minister for Better Regulation and Innovation
Member for Tamworth
GPO Box 5341
SYDNEY NSW 2001

Via email: Office@Anderson.minister.nsw.gov.au

Dear Minister

Re: Impact of COVID-19 on the regulatory obligations of Accredited Certifiers in NSW

I am writing regarding the serious concerns the Association of Accredited Certifiers (AAC) has about the impact of COVID-19 on the ability of Accredited Certifiers to carry out their regulatory obligations.

The Association is aware of existing advice on Fair Trading's [website](#), that states:

“Current legislative requirements remain in force however if you are unable to meet your regulatory obligations because of COVID-19 then we will take a reasonable and proportionate response.”

The AAC welcomes this and will work to ensure the Government follows through and does take a reasonable and proportionate response during this difficult period.

As well as this, the AAC joined with officials from the Department of Customer Service on Thursday, 19 March 2020, on this matter, but was not provided with any significantly new information to provide to our Members.

Concerningly, Accredited Certifiers are being told by the Fair Trading that they must seek their own legal advice on these matters.

The Association views this as an entirely unreasonable approach and clearer guidance must be provided to the industry during this period.

As a result, the Association formally requests further information regarding the following key items, which relate to Accredited Certifiers regulatory obligations and ongoing operational concerns:

- **Mandatory two-day notification period** - Clause 130 & 142 of Environmental and Planning Assessment (EPA) Regulation:
 - It is requested that guidance be provided from Government on the potential impact of COVID-19 on the mandatory two-day period to notify council of issue of a Construction Certificate (CC) or Complying Development Certificate (CDC).
- **Missed inspections** - Clause 162C of EPA Regulation:
 - It is requested that Government provide guidance on the potential impact of COVID-19 on missed inspections - specifically clause 3 (f) of this clause and what evidence would be expected if this occurred.

- **Final inspections** - not covered by Clause 162C of the EPA Regulation:
 - It is requested that Government provide written advice to state that Accredited Certifiers need to inspect and can hold up issue of Occupation Certificate (OC), and that if COVID-19 impacts this then the project/development will need to wait until it can be done and may delay the issuing of the OC.
 - There is a real risk that if Government does not provide official guidance, Accredited Certifiers will face complaints made via the BPB and legal action due to delays.
- **Accreditation and renewal processes:**
 - It is requested that the Government provide an update as to how this process will work over the coming period, including what the Building Professionals Board (BPB) is doing to process these applications and communicate with applicants. This is particularly important as the BPB has not processed some reaccreditations for the past six to nine months.
- **Continuing Professional Development (CPD) requirements:**
 - It is requested that Government provides guidance on the impact of COVID-19 on Accredited Certifiers not meeting their continuing professional development (CPD) obligations. This could potentially involve the ability to require additional CPD points in the subsequent year if it is not possible to achieve them this year because of the impact on CPD seminars.
- **Professional Indemnity Insurance:**
 - It is requested that Government provides guidance on the possibility that some Accredited Certifiers will be unable to secure professional indemnity insurance (PII) cover over the coming period. There are many Accredited Certifiers who will need cover within the next few months and it is uncertain whether insurance will be available, and affordable, due to the overstressing of the whole insurance industry.
 - It is imperative that advice on this issue is provided given the regulatory obligations of Accredited Certifiers cannot be carried out without PII cover.
 - Our members need direction as to how this will be managed, i.e. will the Government allow Accredited Certifiers to continue to operate even if they do not formally have cover, on the basis that once the situation improves the appropriate insurance can be reinstated to cover members for this period of hiatus?
 - There is precedent for this approach. Insurers can procure the certificates of currency in many cases after the insurance due date. In this situation it means that this time lapse may be longer than normal.

As the situation continues to evolve at a rapid rate, it would be greatly appreciated by the Association and our Members if these matters could be addressed as a matter of urgency.

These are issues that do not just impact Accredited Certifiers, but the broader construction industry and the community.

If you would like to discuss this further, please do not hesitate to contact me on 0431 082 259.

Yours sincerely



Jill Brookfield
Chief Executive Officer