

Article Information

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Micro-managing apartment developments in NSW - Design and Building Practitioners work under the microscope

For works commencing from 1 July 2021, the *Design and Building Practitioners Act 2020* and its regulations will require all “regulated designs” to have been declared, by those who prepared them, as complying with the Building Code of Australia and other relevant standards, before building work can even commence, when works are varied and prior to issue of the occupation certificate.

At the outset it only applies to projects that include class 2[1] building work, but it represents a regime of requirements, checks and reports never before seen in this context.

Only registered building and/or design practitioners will be entitled to make the prescribed declarations. The absence of complying declarations will likely delay a development’s progress.

To be registered, the practitioner must demonstrate they hold the prescribed qualifications, are keeping themselves up to date amongst many other things.

The intention is to ensure that those who undertake design work have the requisite qualifications and capacity, have considered compliance with the Building Code and the integration of their designs with designs from other disciplines, are insured and continue to be educated. It represents a material element of the NSW Government’s push to address the significant issues with poor quality in the design and construction of residential apartments and the reputational damage they have incurred.

The recently released *Design and Building Practitioners Regulation 2021* now provides granularity as to:

1. the classes of registered practitioners
2. what is to be addressed in design compliance declarations
3. what is to be lodged and at what stage in the development
4. notice requirements for building practitioners
5. registration of design and building practitioners
6. recognition of professional bodies of engineers
7. professional indemnity insurance for registered design practitioners (and engineers)
8. a transitional system of deemed registration but only for those applying for registration prior to 1 July 2021
9. continuing professional development
10. a new code of conduct

amongst other things.

Regulated designs are the designs prepared for a building element, or a performance solution, for building work. Building element means any of the following: fire safety systems, waterproofing, building structure, building enclosure and building services. Regulated designs will be required to be lodged before work commences, during the works (for variations) and before the issue of the occupancy certificate.

Regulated designs will be required to be lodged on the NSW Planning Portal and builders will be required to construct according to those plans.

Only designers registered to perform design work (including engineering) will be able to provide the certification. Only the person signing off and declaring the design needs to register. Not every designer needs to register. Companies cannot sign off and declare regulated designs.

The classes of registration for design practitioners are set out in Schedule 1 to the new regulations:

- Architectural
- Body Corporate
- Building Design (low rise)
- Building Design (medium rise)
- Civil Engineering
- Drainage
- Drainage (restricted)
- Electrical Engineering
- Façade
- Fire Safety Engineering
- Fire Systems (detection and alarm systems)
- Fire Systems (fire sprinkler)
- Fire Systems (fire hydrant and fire hose reel)
- Fire Systems (mechanical smoke control)
- Geotechnical Engineering
- Mechanical Engineering
- Structural Engineering
- Vertical Transportation

The design work that registration entitles the practitioner to do is described in detail in Part 2 of Schedule 1.

Some of these classes are already required to be registered or licenced under other legislation, for example residential builders or architects, but the new requirements will apply to them nonetheless.

Schedule 2 sets out considerable detail of the qualifications, experience, knowledge and skills required to qualify for registration in each class of design practitioner.

Building practitioners will be required to be licenced under the Home Building Act, have not less than 5 years' recent relevant practical experience and must know and understand

- the Act and this Regulation
- the *Environmental Planning and Assessment Act 1979*, including regulations made under that Act, to the extent that it is relevant
- the *Building Code of Australia*, Volumes 1 and 2, including documents adopted by reference in the *Building Code of Australia*
- building design and construction, including methods, materials and planning.

The regulations also provide that building practitioners must be able to interpret, apply and assess compliance with the relevant requirements of the *Building Code of Australia*.

All registered practitioners will be required to complete a modest 3 hours of relevant education and training, approved by the secretary of the department each year and registered practitioners will be expected to comply with the new code of practice, set out in schedule 4.

The new requirements are considerable and detailed. Many developers and builders may feel overwhelmed by the tsunami of new regulation hitting them and design and building practitioners will need to understand what it means for them. Over the next few weeks our Projects and Construction Team will issue bite-sized updates, covering off on important issues such as:

- What are classes of registered practitioners? What are they entitled to declare and what must they not?
- Notice requirements, declarations and document wars
- Insurance, continuing education and the code of conduct
- Transitional arrangements: What design and building practitioners need to do and by when.

We hope you will find these helpful in navigating these changes.

[1] i.e. works involving residential apartments