

## Article Information

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## Design and Building Practitioners Regulation 2021: Transitional Arrangements

**This piece is Part 2 of our series on the recently gazetted *Design and Building Practitioners Regulation 2021 (NSW) (Regulation)*, made under the *Design and Building Practitioners Act 2020 (NSW) (Act)*, which comes into force on 1 July 2021. For Part 1, [click here](#).**

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The changes brought about by the Act and the Regulation are substantial, requiring quite elaborate transitional arrangements.

At a high level:

- The new declaration, registration and insurance requirements apply only to class 2 buildings (i.e. residential apartments) under the *Building Code of Australia (Building Code)*, including buildings that are partly class 2. It may be expanded to include other classes of buildings, in time, but there is currently little sign of that;
- It is imperative for those carrying out regulated work between 30 June 2021 to 7 July 2021 to lodge an application for registration by 7 July 2021;
- Applications may otherwise be made for “deemed registration” before 31 December 2021, but before any work regulated by the Act is performed or any prescribed declaration is made;
- Such “deemed registration” will protect the practitioner from prosecution provided they have a reasonably based view that they are an eligible person to be registered in a particular class;
- Special arrangements might apply for existing projects; and
- Professional indemnity (and other) insurance requirements are postponed until 1 July 2023.

Now for the detail:

### Getting registered

From 1 July 2021, it will be necessary for design and building practitioners to become registered to make compliance declarations or to perform professional engineering or other work for which registration is required under the Act.

### Transitional registration

The Regulation provides for a transitional registration period between 1 July 2021 and 31 December 2021 in which practitioners who apply (within time) to be registered in a particular class of registration will enjoy the protection and entitlements of “deemed registration” in their applicable class. Practitioners who are deemed to be registered can legally perform work regulated by the Act and make prescribed declarations as if they were registered.

“Deemed registration” takes effect from the date a practitioner applies, so practitioners must ensure they apply before performing any regulated design work or giving a compliance declaration. There is a limited exception to this rule for practitioners who perform regulated work or make declarations while unregistered between 1 July 2021 and 7 July 2021. Such practitioners will be protected from prosecution for work carried out in that first week, but only if they apply by 7 July 2021.

Practitioners do not enjoy the protection of “deemed registration” unless, in making their application, they have a

reasonably based view that they are an eligible person to be registered in a particular class. Practitioners who apply after 31 December 2021 cannot rely on deemed registration and will have to wait until the Secretary (i.e. the Department of Customer Service) approves their application before doing any action for which registration is required under the Act.

Unlike applications made after 31 December 2021, applications made during the transitional period will not be taken to have been refused by the Secretary if no notice has been given to the applicant after 28 days. Hence, pursuant to reg 102, deemed registration continues to have effect until either the applicant's registration is cancelled or the period for which registration is sought (i.e. 1, 3 or 5 years) expires.

### **Existing projects**

From 1 July 2021, designs regulated by the Act must be declared for compliance with the Building Code or other applicable standards by a registered design practitioner<sup>[1]</sup> before building work can commence. However, existing projects may be excused from certain of these requirements depending on the circumstances.

### **Where work commences before 1 July 2021**

If the regulated building work is authorised to be carried out by a construction certificate or complying development certificate and some of the work commences before 1 July 2021:

- the design practitioners are not required to give a design compliance declaration with respect to the designs;
- no-one is required to be registered under the Act before carrying out the regulated building work; and
- there is no need for a building compliance declaration to be prepared for the regulated building work.

However, the building practitioner on such a project must still provide the Secretary with a copy of all designs relied on to carry out the regulated building work before applying for an occupation certificate and a principal certifier must not issue an occupation certificate unless this has been done.

Moreover, if additional regulated building work is to be carried out as part of the project under a new construction certificate or complying development certificate,<sup>[2]</sup> then that other work **will not** be covered by the transitional arrangement discussed under this sub-heading.

### **Where design prepared before 1 July 2021 and work commences between 1 July 2021 and 30 June 2022**

Where regulated building work commences between 1 July 2021 and 30 June 2022 and the regulated design for that work was prepared before 1 July 2021 by a person who is not eligible to be registered such as to enable them to give a design compliance declaration for that design, the design will nonetheless be taken to be a validly declared design if it is assessed and certified as compliant with the Building Code by a registered design practitioner.

The registered building practitioner must not commence building work in reliance on the design until copies of the design and the accompanying certificate have been provided to the Secretary.

Note that if a design prepared before 1 July 2021 is varied on or after 1 July 2021, then it is no longer taken to be a valid design by reason of this transitional arrangement and a registered design practitioner will need to prepare the varied design.

### **The future for engineers**

In future, certain professional applicants such as engineers will be recognised as being registered under the Act by reason of their membership of a recognised professional engineering body or professional standards scheme. However, these avenues are not yet available.

Such professional engineering bodies or professional standards schemes first need to apply for recognition. Such applications open 1 July 2021. The Secretary must approve the application before the body is recognised for the purpose of qualifying engineers as persons entitled to legally perform work regulated by the Act and make prescribed declarations.

### **Alternative pathways**

The Regulation provides alternative pathways to registration for applicants in certain classes who do not meet the formal eligibility requirements and who apply by 30 June 2022 (or in some cases by 30 June 2023).

### **Professional indemnity (and other) insurance**

The Act introduces compulsory minimum standards of insurance cover for practitioners, but these changes will not come

into force until 1 July 2023, according to reg 106.

**Ask if you have questions**

The regulatory changes brought about by the Act are complex and the penalties for non-compliance can be severe. It is important that practitioners register promptly from 1 July 2021 to enjoy the benefit of deemed registration. We encourage practitioners who may be anxious about the changes to seek legal advice to ensure they meet their obligations under the Act and Regulation.

[1] And the designs must be lodged online via the NSW Planning Portal

[2] i.e. different to that in the designs already lodged.