

## Article Information

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## Design and Building Practitioners Regulation 2021: Insurance and CPD Requirements

This piece is Part 5 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, being an overview of the new Regulation [click here](#).

For Part 2, concerning the transitional provisions [click here](#).

For Part 3, being the classes of registration for design and building practitioners [click here](#).

For Part 4, concerning Engineers registration and eligibility requirements [click here](#).

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The Act introduces compulsory minimum standards of insurance cover for practitioners and CPD requirements for all classes of practitioner. The key points are:

- there is a two-year transitional period for insurance requirements - while adequate insurance is recommended, from 1 July 2021 to 30 June 2023 - until 1 July 2023 there are no additional, mandatory insurance requirements for practitioners;<sup>[1]</sup> and
- once practitioners become registered, they are subject to the CPD requirements detailed in Schedule 3 of Regulation.

As detailed in Part 3 of this series, [click here](#), the Act separates practitioners into the following high-level categories:

- design practitioners,
- principal design practitioners,
- building practitioners, and
- professional engineers.

Under the Act, a practitioner must not:

- (a) provide a compliance declaration or do related work;
- (b) hold out that they are adequately insured with respect to the provision of the declaration or that work,

unless they are **adequately insured** with respect to the declaration and work.<sup>[2]</sup>

For the purposes of the Act, a practitioner is **adequately insured** with respect to a declaration and work if they are:

- (a) indemnified by insurance that complies with the Regulation against any liability as a result of providing the declaration or doing the work, or
- (b) part of some other arrangement approved by the Regulation that provides indemnity against the liability.<sup>[3]</sup>

The Regulation defines **liability** of a practitioner to mean liability to pay compensatory damages for breach of professional duty arising from:

- an act or omission of the practitioner, or
- conduct of the practitioner that would constitute a breach, or failure to comply with a guarantee in Australian Consumer Law or similar legislation in States and Territories.[\[4\]](#)

It is a condition of registration that the practitioner provide information to the Secretary of the Department of Customer Services (**Secretary**) to satisfy it that they are **adequately insured**.[\[5\]](#)

Notably, the Regulation may make provision for a building practitioner to be exempt from the indemnity requirements.[\[6\]](#) However, that potential exemption does not apply to design, principal design and professional engineers.

### **Insurance for design and principal design practitioners**

A registered design practitioner and registered principal design practitioner must ensure that all design or principal design work is indemnified under a professional indemnity policy.[\[7\]](#)

The indemnity under the professional indemnity policy have a retroactive date of the not later than the date they first became a registered practitioner.[\[8\]](#)

A professional indemnity policy issued to a body corporate, must extend the indemnity to:

- the body corporate, if it is a registered design practitioner or registered principal design practitioner, and
- each registered design and principal design practitioner.[\[9\]](#)

both since first becoming registered.

### **Insurance for professional engineers**

A registered professional engineer must:

- be indemnified under a professional indemnity policy, or
- be part of an approved arrangement that provides indemnity against liability to which the professional engineer may become subject as a result of carrying out the work.[\[10\]](#)

An approved arrangement is:

- a professional engineer who is a member of a professional body of engineers which has a professional standards scheme and the professional engineer satisfies the insurance requirements imposed by that body, or
- a professional engineer registered by a recognised engineering body and the professional engineer satisfies the insurance requirements imposed by that body.[\[11\]](#)

### **Insurance for building practitioners**

In contrast to design, principal design practitioners and professional engineers, a building practitioner does not have to hold a professional indemnity policy, rather they must be indemnified under an insurance policy which in the reasonable opinion of the building practitioner provides for an adequate level of indemnity for the liability incurred by the practitioner in the course of doing work. In determining whether a policy provides an adequate level of indemnity, the practitioner must take into account:

- (a) the nature and risks associated with the work,
- (b) the volume of the work,
- (c) the length of time that the practitioner has been registered,
- (d) a reasonable estimate of claims that could be brought on the basis of paragraphs (a)-(c) above,
- (e) the financial capacity of the practitioner,
- (f) any limits, exceptions, exclusions, terms or conditions of the policy.[\[12\]](#)

Further, a registered building practitioner may be exempt from the requirement to be adequately insured in relation to the provision of a building compliance declaration, if the Secretary is satisfied that:

- the practitioner is unable to obtain an insurance policy as a result of providing the compliance declaration, and
- the practitioner is adequately insured, in relation to the doing of building work relating to the compliance

declaration.

Given that no private insurer will go near home warranty insurance, the secretary will be busy with these exemption applications.

### **Adequacy of cover: registered design practitioners, principal design practitioners and professional engineers**

Like registered building practitioners; registered design practitioners, principal design practitioners and professional engineers are to determine an adequate level of indemnity for their professional indemnity policy.<sup>[13]</sup> In determining whether a policy provides an adequate level of indemnity, the practitioner must take into account the same factors as those of a building practitioner detailed in (a) – (f) above.

### **Continuing Professional Development (CPD)**

The Regulation outlines the professional standards and qualifications that must be met by Practitioners in NSW from 1 July 2021. Clauses 2 and 4 of Schedule 3 of the Regulation require practitioners to complete CPD each year. CPD aims to:

- help practitioners stay informed, up-to-date, skilled and knowledgeable;
- improve professionalism and performance in the building and construction industry (**Industry**) through relevant learning; and
- enhance consumer protection and public confidence in the Industry.<sup>[14]</sup>

The Secretary has released a guideline for some modest CPD requirements (**Guidelines**) which details the approved education and training that practitioners must complete to remain registered. Although modest now, they represent the thin edge of the wedge.

### **Maintaining registration - Design and Building Practitioners**

Design and Building Practitioners will need to complete at least three hours of approved and relevant education and training detailed in the Guidelines.<sup>[15]</sup> These CPD hours must be earned by undertaking courses available from the Construct NSW Digital Learning Platform,<sup>[16]</sup> and/or the Australian Building Codes Board National Construction Code CPD System.<sup>[17]</sup>

Further, the CPD must be relevant to the practitioners class of registration and practice area. The Guidelines detail that technical skills, such as understanding the National Construction Code and Building Code of Australia are to be prioritised over other courses, such as improving business practices.<sup>[18]</sup>

Principal Design Practitioners are not required to complete any additional CPD if they have completed the required CPD in their capacity as Design Practitioner.<sup>[19]</sup>

The Secretary may take disciplinary action if the registered practitioner does not meet CPD requirements, unless an exemption has been granted.<sup>[20]</sup> Exemptions are to be applied for; examples include: sickness, natural disaster maternity/paternity leave etc.

### **Maintaining registration - Professional Engineers**

As detailed in part 4 of our series, [click here](#), there are eligibility requirements required to be met, before professional engineers can become registered.

Under the Regulations, there are three pathways for registration as a Professional Engineer, however currently only Pathway 1 is available as there are no bodies able to register Professional Engineers under the new scheme. It is expected that the other options will become available as industry associations adapt to the reforms.<sup>[21]</sup>

The CPD requirements for each pathway are:

<b>Category</b>	<b>Status of registration</b>	<b>CPD requirement</b>
<b>Pathway 1</b>	Registered by NSW Fair Trading	50 hours of relevant education and training per CPD year
<b>Pathway 2</b>	Registered by NSW Fair Trading as being recognised or registered by an approved Professional Engineering body	Satisfy the CPD requirements imposed by the body

**Pathway 3**

Registered by NSW Fair Trading as being a member of a professional body of engineers that operates with a Professional Standards Scheme

Satisfy the CPD requirements that are imposed by the professional body of engineers in accordance with the Professional Standards Scheme

For Professional Engineers, once the other pathways are available, existing CPD obligations as a member of professional bodies can also count towards CPD obligations under the scheme, so long as they meet the requirements in the Guidelines.

**Practitioners must keep records**

It is a condition of registration that Practitioners must:

- keep written records specifying the how the practitioner satisfied the CPD requirements each year,
- maintain the records for at least 5 years, and
- if requested by the Secretary, provide copies to them.<sup>[22]</sup>

**Ask if you have questions**

The regulatory changes brought about by the Act and the Regulation are complex and the penalties for non-compliance can be severe. We recommend if you are unsure of any of your new-found obligations that you contact us.

[1] cl 106 of the Regulation.

[2] For design practitioners see section 11 of the Act; for principal design practitioners see section 14 of the Act; for building practitioners see section 24; for professional engineers see section 33.

[3] Ibid.

[4] cl 63 of the Regulation.

[5] Ibid.

[6] s 24(4) of the Act.

[7] cl 64 of the Regulation for design practitioners and cl 65 for principal design practitioners.

[8] cl 66 of the Regulation for individuals; cl 67 of the Regulation for partnership policies.

[9] cl 68 of the Regulation.

[10] cl 69 of the Regulation.

[11] cl 70 of the Regulation.

[12] cl 75 of the Regulation.

[13] cl 77 of the Regulation.

[14] [https://www.fairtrading.nsw.gov.au/\\_data/assets/pdf\\_file/0010/979372/CPD\\_Guidelines\\_Practitioners.pdf](https://www.fairtrading.nsw.gov.au/_data/assets/pdf_file/0010/979372/CPD_Guidelines_Practitioners.pdf)

[15] cl 4(1) of Schedule 3 of the Regulation.

[16] <https://training.tafensw.edu.au/constructnsw/>

[17] <https://cpd.abcb.gov.au/abcbncc/welcome>

[18] 4.3 of the Guidelines.

[19] Schedule 3, cl 4 of the Regulation.

[20] s 64 & 66 of the Act.

[21]

<https://www.fairtrading.nsw.gov.au/trades-and-businesses/construction-and-trade-essentials/professional-engineers/becoming-registered-to-work-on-class-2-buildings>

[22] Schedule 3, cl 3 of the Regulation.