

## Article Information

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## Design and Building Practitioners Regulation 2021: The classes of registration for design and building practitioners

This piece is Part 3 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) (the 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](#).

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The Act aims to provide greater regulation of practitioners involved in building and construction, following a spate of highly publicised residential apartments defects.

Under the Act, a “registered building practitioner” cannot start building work unless it has obtained all “regulated designs” from the “registered design practitioners”, who has lodged the necessary “compliance declarations” on the NSW Planning Portal. The “registered building practitioner” must then construct according to those declared designs.

Design compliance declarations and regulated designs are also required to be lodged on the NSW Planning Portal:

- within one day of work on a varied design commencing; and
- before and after issue of the occupation certificate.[\[1\]](#)

If you intend on making a compliance declaration you must be a registered practitioner under the Act. This begs the question, who is a registered practitioner?

The Regulation fleshes out the detail of the classes of registration, amongst other things. There are two distinct high-level categories of registration, one for Professional Engineers and one for designers and builders. Professional Engineers should refer to the schedules of the Regulation for information relating to eligibility requirements, the classes of registration and CPD requirements, amongst others. However before doing so we recommend they consider the transitional provisions for engineers, set out in Part 2 of this series. For Part 2 [click here](#).

This piece will now focus the classes of registration for designers and builders.

### Design and Building Practitioners

If you perform design or construction work on class 2 buildings (i.e. residential apartments) and intend on making a compliance declaration, you fall within the scope of the Act and you must get registered. The Act separates the building and design practitioners into the following categories:

- **design practitioner** means a person who prepares regulated designs.[\[2\]](#)

A **regulated design** is defined as:

- (a) a design that is prepared for a building element for building work, or
- (b) a design that is prepared for a performance solution for building work (including a building element), or
- (c) any other design of a class prescribed by the regulations that is prepared for building work.[\[3\]](#)

- **principal design practitioner** means a person who coordinates the provision of design compliance declarations for the purposes of building work done by a building practitioner.<sup>[4]</sup>
- **building practitioner** means—
  - (a) a person who agrees under a contract or other arrangement to do building work, or
  - (b) if more than one person agrees to do building work, a person who is the principal contractor for the work.<sup>[5]</sup>

Registration under the Act is not automatic; practitioners must apply for it.

From 1 July 2021, both individuals and organisations can apply for registration as “Design Practitioner”, “Principal Design Practitioner” or “Building Practitioner” through the Service NSW website. However, only the person declaring or lodging documents on the NSW Planning Portal needs to be registered.

For example, an architecture firm can apply for registration as a “Design Practitioner” or “Principal Design Practitioner”, but an employee of that firm must be a registered “Design Practitioner” to make the compliance declarations on behalf of the firm.<sup>[6]</sup> Likewise, only the head “Building Practitioner” or principal contractor needs to register to make a building compliance declaration, not every subcontractor and tradesperson.<sup>[7]</sup>

Schedule 1 of the Regulation sets out the specific classes of registration within the high-level categories of practitioner.<sup>[8]</sup> Each class of registration contains eligibility requirements, qualification, knowledge, skills and experience requirements,<sup>[9]</sup> as well as specific parameters on the “type of work” that class of registration is authorised to carry out.<sup>[10]</sup>

There are 18 classes of registration for Design Practitioner, including architectural, civil engineering and façade, amongst others. There are 2 classes for Principal Design Practitioners, being body corporate and general and there are 3 classes for Building Practitioner, being body corporate, body corporate nominee and general.

We now provide a brief overview of the Building Practitioner classes.

### **Building Practitioners**

#### *“Body Corporate”*

A body corporate can choose this class to be authorised to make a “Building Compliance Declaration”, but only by way of an individual who is nominated by the body corporate and who holds a either a “Building Practitioner-General” or “Building Practitioner -Body Corporate” nominee class of registration.

#### *“Body Corporate Nominee”*

Under this class, the nominee can make a “Building Compliance Declaration” on behalf of a registered body corporate that holds a “Building Practitioner - Body Corporate” class of registration. To be eligible for this class the nominee must meet the eligibility, qualification, knowledge, skills and experience requirements contained in Schedule 2 of the Regulation, which includes holding a supervisor certificate authorising general building work under the *Home Building Act 1989*.<sup>[11]</sup>

#### *“Building Practitioner - General”*

The general class appears to make provision for those practitioners that are not working through a body corporate. To be eligible for this class, the practitioner must meet the qualification, knowledge, skills and experience requirements outlined in Schedule 2 of the Regulation, which includes holding a contractor licence authorising the holder to do general building work under the *Home Building Act 1989*.

### **Registration Scheme**

Once an application for registration is lodged, it is determined by the Secretary of the Department of Customer Services (**Secretary**) who may grant or refuse the application.<sup>[12]</sup>

The Secretary may refuse to register a person if they are of the opinion that the applicant does not have the appropriate qualifications, skills, knowledge or experience, or where the person is not a fit and proper person to carry out the

work.<sup>[13]</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 encourage practitioners who may have questions about the Act and the Regulation.

[1] The detail of precisely what is to be lodged and by when is set out in the Regulation.

[2] s3 of the Act.

[3] s5 of the Act.

[4] s3 of the Act.

[5] s7(1) of the Act.

[6] <https://www.fairtrading.nsw.gov.au/housing-and-property/changes-to-class-2-buildings>

[7] <https://www.fairtrading.nsw.gov.au/trades-and-businesses/construction-and-trade-essentials/design-and-building-practitioners/becoming-registered-to-work-on-class-2-buildings>

[8] <https://legislation.nsw.gov.au/view/html/inforce/current/sl-2021-0152>.

[9] Part 2 of Schedule 2 of the Regulation.

[10] Part 2 of Schedule 1 of the Regulation.

[11] Schedule 2 of the Regulation.

[12] S43 of the Act.

[13] *Design and Building Practitioners Regulation 2021* (NSW) Pt 4, Div 1, s33.