

## Article Information

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## Design and Building Practitioners Regulation 2021 (NSW) - Requirements Specific to Engineers

This piece is Part 4 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 of our series, being an overview of the new Regulation, [click here](#). For Part 2, concerning transitional arrangements, [click here](#). For Part 3, concerning the classes of registration for design and building practitioners, [click here](#).

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The new regulatory requirements for engineers are complicated and the consequences of non-compliance are serious. Engineers who intend to carry out professional engineering work in a prescribed area of engineering or give design compliance declarations for class 2 buildings must register promptly from 1 July 2021 or risk prosecution.

The Act and Regulation feature a number of requirements specific to engineers. The key points are as follows:

- The Act makes it an offence to carry out professional engineering work in a prescribed area of engineering directly in relation to the design or construction<sup>[1]</sup> of a class 2 building,<sup>[2]</sup> including buildings that are partly class 2, while unregistered;
- Registered professional engineers who intend to make design compliance declarations under the Act, must separately register as a design practitioner;
- To be registered as a professional engineer or as a design practitioner in a prescribed area of engineering, applicants must meet eligibility requirements relating to minimum levels of education and experience; and
- Registered engineers will be subject to insurance, CPD and record keeping requirements and will operate under a code of practice.

### Definition of Engineering

Section 32(1) of the Act makes it an offence for a person to carry out professional engineering work in a prescribed area of engineering while unregistered. The prescribed areas of engineering are:

- Civil;
- Mechanical;
- Electrical;
- Structural;
- Geotechnical; and
- Fire safety.

For purposes of the Act, “professional engineering work” means engineering work that is based on the application of engineering principles and data to a design, or a construction, production, operation or maintenance activity relating to engineering. However, work is not “professional engineering work” if it is only provided in accordance with a document that states the procedure or criteria for carrying out the work and the work does not require the application of advanced scientifically based calculations.

### Requirement to be registered

From 1 July 2021, a person who carries out professional engineering work must register in their applicable class through the Service NSW website or face the risk of prosecution for carrying out professional engineering work while unregistered. A person who carries out such work while unregistered is not entitled to be paid for their work and any payment they have already received can be recovered from them as a debt. Note that it is not an offence for an unregistered person to carry out professional engineering work if that person is being directly supervised by someone who is registered in the applicable class.

Applications for registration are to be made through the Service NSW website from 1 July 2021.<sup>[3]</sup> There are six classes of registration for professional engineers, reflecting the six prescribed areas of engineering, namely: civil, mechanical, electrical, structural, geotechnical and fire safety. Schedule 1 of the Regulation stipulates the kind of work engineers in each class of registration are permitted to carry out.

If an engineer intends not only to carry out engineering work but also to give design compliance declarations, then they must separately register as a design practitioner in addition to registering as a professional engineer. There are 18 classes of registration for design practitioners, six of which relate to the prescribed areas of engineering. Note that only the engineer who gives the design compliance declaration and lodges the design (typically the senior engineer supervising the work) is required to be registered as a design practitioner, so it may not be necessary for other registered professional engineers involved in carrying out the work to be separately registered as design practitioners.

A corporation cannot register as a professional engineer under the Act or in any of the six classes of design practitioner that relate to prescribed areas of engineering.

In future, most engineers will be recognised as being registered professional engineers by reason of their membership of a recognised professional engineering body or professional standards scheme. However, this avenue is not yet available, as the Secretary (i.e. the Department of Customer Service) must first recognise each of these bodies for the purpose of qualifying engineers as persons entitled to legally perform work regulated by the Act.

### **Eligibility requirements for registration**

The Regulation sets out formal eligibility requirements that applicants must meet to be registered as a professional engineer.

The eligibility requirements are mostly identical across the various classes of engineering, with the applicant being required to have either an accredited four year bachelor's degree or a postgraduate master's degree in the relevant field of engineering. For fire safety engineering, it is acceptable to have completed a bachelor's degree in certain other fields of engineering, provided the applicant subsequently completed a post-graduate diploma in fire safety engineering. For applicants with a qualification that is not accredited, it may be possible to have the qualification assessed as being equivalent.

Applicants for all classes of engineering must have at least five years recent relevant experience and must know and understand the engineering principles and techniques relevant to their field.

To be registered as a design practitioner in any of the six classes of design practitioner that relate to engineering, an applicant must simultaneously be registered as a professional engineer in the same area and must therefore meet the same eligibility requirements. In addition, the applicant must have knowledge of the Building Code and the *Environmental Planning and Assessment Act 1979* (NSW) and have the skills needed to assess compliance with these and other applicable standards.

The Regulation provides an alternative pathway to registration for engineers who do not meet the formal eligibility requirements. Such applicants must have at least 10 years experience and must prove that their knowledge and skills are of an equivalent standard by, among other things, passing a competency assessment. Applicants must apply by 30 June 2022 to avail themselves of this alternative pathway.

### **Insurance, CPD, code of practice and record keeping requirements**

The Act and Regulation impose minimum standards of insurance cover for professional engineers and minimum CPD requirements, although the new insurance requirements do not come into force until 1 July 2023. The Regulation also introduces record keeping requirements and a code of practice under which professional engineers are required to operate.

In the future, when most engineers are likely to be recognised as registered under the Act by reason of their membership of a recognised professional engineering body or professional standards scheme, the insurance and CPD requirements for such engineers will be in line with the existing obligations imposed by the recognised body or scheme of which they are a

member.

The topics under this sub-heading will be dealt with in more depth in Part 5 of our series, which will be published soon.

### **Approach us for advice**

The new regulatory requirements for engineers are complicated and the consequences of non-compliance are serious. Engineers who intend to carry out professional engineering work in a prescribed area of engineering or give design compliance declarations for class 2 buildings must register promptly from 1 July 2021 or risk prosecution.

If you are unclear as to the changes or how they affect you we encourage you to contact us.

[1] “Construction” in this context includes the making of alterations or additions to a building, and the repair, renovation or protective treatment of a building.

[2] The Act’s application may be expanded to other classes of building work in the future.

[3] See [Part 2](#) of our series for details on the transitional arrangements for registration.