



New South Wales

# Building Legislation Amendment Act 2021 No 21

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New South Wales

# **Building Legislation Amendment Act 2021 No 21**

Act No 21, 2021

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An Act to make miscellaneous amendments to certain building and design legislation; to amend electricity legislation to transfer provisions relating to electricity metering; and for other purposes.  
[Assented to 5 July 2021]

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**The Legislature of New South Wales enacts—**

**1 Name of Act**

This Act is the *Building Legislation Amendment Act 2021*.

**2 Commencement**

- (1) This Act commences on the date of assent to this Act, except as provided by this section.
- (2) Schedule 1[3]–[5] commence on a day or days to be appointed by proclamation.
- (3) Schedule 1[1], [2], [6] and [7] commence on 1 July 2021.

## **Schedule 1      Amendment of Design and Building Practitioners Act 2020 No 7**

**[1] Section 20 Variations after building work commences**

Omit “is varied after commencement of the work from a regulated design for the building element or performance solution” from section 20(2).

Insert instead “is to be varied from a regulated design for the building element or performance solution, before the varied building work commences”.

**[2] Section 20(3)**

Omit “if after commencement of the work the work is varied so as to require a new building element or performance solution for which a regulated design is required”.

Insert instead “if the work is to be varied so as to require a new building element or performance solution for which a regulated design is required, before the varied building work commences”.

**[3] Section 55 Recognition of professional bodies for engineers**

Insert after section 55(2)(a)(v)—

- (vi) complies with guidelines, if any, adopted and published by the Secretary, and

**[4] Section 55(3)**

Insert after section 55(2)—

- (3) Subject to subsection (2), the regulations may make further provision for or with respect to the recognition by the Secretary of a professional body of engineers for the purposes of this Act, including—
  - (a) applications for, or for renewal of, recognition, including recognition by the Secretary for reasons the Secretary considers relevant,
  - (b) refusal of recognition, including refusal of recognition by the Secretary for reasons the Secretary considers relevant,
  - (c) conditions of recognition, including conditions relating to the keeping of records, disclosure of information, the investigation or auditing of professional bodies of engineers or other conditions imposed by the Secretary, including conditions the Secretary considers relevant,
  - (d) variation of conditions of recognition,
  - (e) fees for applications for, renewal of or variation of conditions of recognition,
  - (f) the duration of recognition, including a duration set by the Secretary,
  - (g) the suspension or cancellation of recognition, including suspension or cancellation by the Secretary for reasons the Secretary considers relevant,
  - (h) the functions of recognised professional bodies of engineers relating to registering or recognising practitioners.

**[5] Section 55A**

Insert after section 55—

**55A Review by Civil and Administrative Tribunal**

A person aggrieved by any of the following decisions may apply to the Tribunal for an administrative review under the *Administrative Decisions Review Act 1997* of—

- (a) a decision of the Secretary to refuse to recognise a professional body of engineers,
- (b) a decision of the Secretary to suspend or cancel recognition of a professional body of engineers,
- (c) a decision of the Secretary to impose or vary a condition on a recognition of a professional body of engineers, or on the suspension or cancellation of a recognition,
- (d) a decision prescribed by the regulations for the purposes of this section.

**[6] Section 107 Regulations**

Insert after section 107(2)(g)—

- (h) the waiver, reduction, postponement or refund by the Secretary of fees payable or paid under this Act or the regulations,
- (i) fees for the lodgment of documents on the NSW planning portal.

**[7] Section 107(5)**

Omit section 107(5). Insert instead—

- (5) The regulations may exempt all persons or bodies, specified persons or bodies or classes of persons or bodies, or all work, specified work or classes of work, or all or specified registrations, from any specified provision of this Act, other than the insurance requirements under this Act.

**[8] Section 107(5A)**

Insert after section 107(5)—

- (5A) The regulations may exempt all persons or bodies, specified persons or bodies or classes of persons or bodies, or all work, specified work or classes of work, or all or specified registrations—
  - (a) from the insurance requirements under this Act, and
  - (b) for a maximum period of 12 months.

## **Schedule 2      Amendment of Residential Apartment Buildings (Compliance and Enforcement Powers) Act 2020 No 9**

### **[1]      Section 6 Act applies only to residential apartment building work**

Insert “, or is required to be authorised by a construction certificate or complying development certificate” after “1979” in section 6(1)(a).

### **[2]      Section 6A**

Insert after section 6—

#### **6A      Levy may be imposed by Secretary**

- (1) The Secretary may, in accordance with the regulations, impose a levy on a developer in relation to building work.
- (2) The levy is to be paid into the Fund.
- (3) The regulations may deal with the imposition of levies, including in relation to the following—
  - (a) the determination of rate of levies, including the charging of interest on unpaid levies,
  - (b) providing for the period within which a levy is payable,
  - (c) describing the grounds on which any particular type of levy may be imposed,
  - (d) the developers or class of developers on which a levy may be imposed,
  - (e) the recovery of levies,
  - (f) the waiver, reduction, postponement or refund of a levy by the Secretary.
- (4) A levy under this section may be recovered by the Secretary as a debt due to the Crown in a court of competent jurisdiction and must be paid into the Fund.
- (5) In this section—

***Fund*** means the Home Building Administration Fund, established under the *Home Building Act 1989*, Part 7.

### **[3]      Section 7 Notification to Secretary of intended completion of building work**

Omit the penalty. Insert instead—

Maximum penalty—

- (a) for a body corporate—1,000 penalty units and in addition, in the case of a continuing offence, 100 penalty units for each day the offence continues, or
- (b) otherwise—200 penalty units and in addition, in the case of a continuing offence, 20 penalty units for each day the offence continues.

### **[4]      Section 8 Notification of change to expected date**

Omit the penalty. Insert instead—

Maximum penalty—

- (a) for a body corporate—500 penalty units and in addition, in the case of a continuing offence, 50 penalty units for each day the offence continues, or

- (b) otherwise—100 penalty units and in addition, in the case of a continuing offence, 10 penalty units for each day the offence continues.

**[5] Section 9 Occupation certificates and strata plan registrations not to occur in certain circumstances**

Insert after section 9(1)(d)—

- (e) a developer, in relation to building work of the residential apartment building, fails to comply with a direction of an authorised officer under section 17 or 18,
- (f) other circumstances prescribed by the regulations for the purposes of this section exist.

**[6] Section 27 Failure to comply with direction**

Omit the penalty. Insert instead—

Maximum penalty—

- (a) for a body corporate—10,000 penalty units and in addition, in the case of a continuing offence, 1,000 penalty units for each day the offence continues, or
- (b) otherwise—2,000 penalty units and in addition, in the case of a continuing offence, 200 penalty units for each day the offence continues.

**[7] Section 56B**

Insert before section 57—

**56B Additional orders**

- (1) If a person is convicted by a court of failing to comply with an order or direction under this Act or the regulations, the court may order the person to comply with the order or direction.
- (2) The court may, in the order, fix a period for compliance and impose other requirements the court considers necessary or expedient for enforcement of the order.
- (3) A person who fails to comply with an order under this section is guilty of an offence.  
Maximum penalty—
  - (a) for a body corporate—3,000 penalty units and in addition, in the case of a continuing offence, 300 penalty units for each day the offence continues, or
  - (b) otherwise—1,000 penalty units and in addition, in the case of a continuing offence, 100 penalty units for each day the offence continues.
- (4) If an order is made under this section, conduct to which the order relates is only to be prosecuted under this section and not by way of a continuing offence under another section of this Act.

**[8] Section 63 Delegation**

Insert at the end of the section—

- (2) Without limiting subsection (1), the Secretary must delegate the functions of the Secretary under section 9 to the Building Commissioner.

**[9] Schedule 1 Savings, transitional and other provisions**

Insert at the end of the Schedule with appropriate Part and clause numbering—

**Part Provision consequent on enactment of the Building  
Legislation Amendment Act 2021**

**Application of Act to building work**

Section 6, as amended by the *Building Legislation Amendment Act 2021*, extends to a function exercised under the Act before the commencement of the amendment.



## **Schedule 3 Amendment of Home Building Act 1989 No 147**

### **[1] Section 20 Issue of contractor licences**

Omit section 20(2). Insert instead—

- (2) The Secretary may, by notice published in the Gazette, specify qualifications and experience, or additional standards or other requirements, required to be held or met by an applicant for a contractor licence.

### **[2] Section 20(5)**

Omit “determining”.

Insert instead “the specification of qualifications and experience, or additional”.

### **[3] Section 25 Issue of certificates**

Omit section 25(2). Insert instead—

- (2) The Secretary may, by notice published in the Gazette, specify qualifications and experience, or additional standards or other requirements, required to be held or met by an applicant for a supervisor or tradesperson certificate.

### **[4] Section 25(4)(a)**

Omit “determining of qualifications”.

Insert instead “specification of qualifications and experience, or additional standards”.

### **[5] Schedule 4 Savings and transitional provisions**

Insert at the end of the Schedule, with appropriate Part and clause numbering—

## **Part Provisions consequent on enactment of Building Legislation Amendment Act 2021**

### **Qualifications and experience required by licence and certificate applicants**

- (1) For the purposes of section 20(2), a notice published in the Gazette before the commencement of the amending Act, specifying the qualifications and experience required to be held by an applicant for a contractor licence, is taken to have been validly made and to be valid on and from the date the notice was published.
- (2) For the purposes of section 25(2), a notice published in the Gazette before the commencement of the amending Act, specifying the qualifications and experience required to be held by an applicant for a supervisor or tradesperson certificate, is taken to have been validly made and to be valid on and from the date the notice was published.
- (3) In this clause—  
*amending Act* means the *Building Legislation Amendment Act 2021*.

## Schedule 4 Amendment of electricity legislation

### 4.1 Electricity Supply Act 1995 No 94

#### Schedule 6 Savings, transitional and other provisions

Omit “at the beginning of 1 June 2021” wherever occurring in clauses 71(5) and 71A(7).

Insert instead “on the commencement of the *Building Legislation Amendment Act 2021*”.

### 4.2 Gas and Electricity (Consumer Safety) Act 2017 No 15

#### [1] Part 5, Division 3

Insert after Part 5, Division 2—

#### Division 3 Electrical meter installations

##### 38AA Definitions

In this Division—

*advanced meter* means a meter that is a type 4 metering installation referred to in the *National Electricity Rules*, Chapter 7.

*Australian/New Zealand Wiring Rules* means the Australian and New Zealand Standard, entitled AS/NZS 3000:2018, *Electrical installations*, (known as the Australian/New Zealand Wiring Rules), as in force from time to time, published jointly by Standards Australia and Standards New Zealand.

*metering co-ordinator* has the same meaning as it has in the *National Electricity Rules*.

*retailer* has the same meaning as it has in the *National Energy Retail Law (NSW)*.

##### 38AB Installation of advanced meters by retailers and metering co-ordinators

- (1) A retailer or metering co-ordinator who provides, installs, maintains or replaces an advanced meter must ensure that—
  - (a) a person engaged to install an advanced meter—
    - (i) is a qualified person, and
    - (ii) has undertaken appropriate training in the installation of advanced meters, including de-energisation and re-energisation of electrical installations, and
  - (b) safety and compliance testing is carried out in relation to each installation as required by the *Gas and Electricity (Consumer Safety) Regulation 2018*, Parts 8 and 9.
- (2) A retailer or metering co-ordinator must not install an advanced meter in relation to premises at which 1 or more persons require life support equipment unless the occupier of the premises is given—
  - (a) at least 4 business days’ notice of the proposed installation, or
  - (b) a shorter period as may be agreed, in writing, between the occupier and retailer or metering co-ordinator.
- (3) The *Electricity Supply Act 1995*, Schedule 2, clauses 8—except for clause 8(1)(d)—and 9 apply to a retailer or metering co-ordinator who contravenes this section or section 38AC in the same way as they apply to a licensee who contravenes a requirement of the *Electricity Supply Act 1995*.

- (4) A retailer or metering co-ordinator must ensure the Asbestos Management Code of Practice is complied with in the installation, maintenance and replacement of an advanced meter.
- (5) For the avoidance of doubt, a person may only enter premises under section 55A for purposes relating to advanced meters if the requirements of this section are met.
- (6) In this section—

*Asbestos Management Code of Practice* means the *Code of Practice: How to Manage and Control Asbestos in the Workplace*, published by SafeWork NSW in August 2019.

*life support equipment* has the same meaning as it has in the *National Energy Retail Rules*.

*qualified person*—

  - (a) means a person authorised under the *Home Building Act 1989* to do electrical wiring work without supervision, and
  - (b) in relation to the testing of a consumer’s aerial wiring system, within the meaning of the Australian/New Zealand Wiring Rules—includes a person who is authorised to test a distributor’s overhead lines.

### **38AC Metering safety management system requirements**

- (1) Without limiting section 38AB, a metering co-ordinator who provides, installs, maintains or replaces an advanced meter must have a safety management system in place that—
  - (a) ensures compliance with section 38AB(1), and
  - (b) satisfies the requirements of the Code for Safe Meter Installation.Maximum penalty—
  - (a) for a corporation—500 penalty units, or
  - (b) for an individual—250 penalty units.
- (2) A retailer must ensure that a metering co-ordinator engaged by the retailer to install, maintain or replace an advanced meter has a safety management system in place that complies with this section.
- (3) The Secretary may, by written notice, direct a metering co-ordinator to amend a safety management system if, in the opinion of the Secretary, the safety management system does not comply with this section.
- (4) The metering co-ordinator must comply with the direction.  
Maximum penalty—
  - (a) for a corporation—500 penalty units, or
  - (b) for an individual—250 penalty units.
- (5) Before providing, installing, maintaining or replacing an advanced meter, a metering co-ordinator must—
  - (a) have provided documentation relating to the co-ordinator’s safety management system to the Secretary, and
  - (b) ensure—
    - (i) the safety management system is brought to the attention of the persons engaged by the metering co-ordinator to install, replace or maintain an advanced meter, and

- (ii) a copy of the documents relating to the system are made readily available to those persons.

Maximum penalty—

- (a) for a corporation—500 penalty units, or
- (b) for an individual—250 penalty units.

- (6) In this section—

*Code for Safe Meter Installation* means the *Code for safe installation of direct-connected whole current electricity metering in NSW—Minimum requirements for safety management systems*, published in the Gazette by the Department of Planning, Industry and Environment, as in force from time to time.

**[2] Section 47 Restrictions on power of entry to residential premises**

Insert at the end of section 47(b)—

, or

- (c) for the sole purpose of reading an electricity meter.

**[3] Section 55A**

Insert after section 55—

**55A Powers of entry—electricity works and meters**

- (1) An authorised officer of a network operator may enter premises for the purpose of exercising the following functions—
  - (a) carrying out preliminary investigations in connection with the proposed installation or extension of electricity works,
  - (b) reading electricity meters.
- (2) An authorised officer of a retailer may enter the premises of a customer for the following purposes—
  - (a) reading, testing, maintaining, inspecting or altering any meter installed at the premises,
  - (b) calculating or measuring energy supplied or taken at the premises,
  - (c) checking the accuracy of metered consumption at the premises,
  - (d) replacing meters,
  - (e) any other purpose prescribed by the regulations relating to metering.
- (3) A power of entry to premises under this section may be exercised—
  - (a) if there is a problem with a meter on the premises that poses a risk to safety, by an authorised officer of a retailer—at any time, or
  - (b) otherwise—only during daylight hours.
- (4) In exercising a power under this section, an authorised officer must do as little damage as possible.
- (5) Without limiting subsection (4) and as far as practicable, entry onto fenced land—
  - (a) is to be made through an existing opening in the fence, or
  - (b) if entry through an existing opening is not practicable—
    - (i) through a new opening, and

- (ii) the new opening is to be properly closed when the need for entry ends.
- (6) In this section—  
*authorised officer* of a network operator or retailer has the meaning given by the *Electricity Supply Act 1995*, section 94.

[Second reading speech made in—  
Legislative Assembly on 12 May 2021  
Legislative Council on 10 June 2021]