



New South Wales

# Design and Building Practitioners Amendment (Miscellaneous) Regulation 2021

under the

Design and Building Practitioners Act 2020

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Design and Building Practitioners Act 2020*.

KEVIN ANDERSON, MP  
Minister for Better Regulation and Innovation

## Explanatory note

The object of this Regulation is to amend the *Design and Building Practitioners Regulation 2021* as follows—

- (a) to exempt a building practitioner who has already provided the Secretary with regulated designs and other documents in relation to building work from the requirement to provide the Secretary with the same designs and documents after the occupation certificate is issued for the building to which the building work relates,
- (b) to provide that the placement of a condition on a relevant authorisation of a person may be a ground on which the Secretary may form the opinion that the person is not a suitable person to carry out work for which registration is required under the *Design and Building Practitioners Act 2020 (the Act)*,
- (c) to shorten by 1 year, to 30 June 2022, the duration of the exemption for registered practitioners from the requirement to hold a certain level of insurance in relation to work carried out as a registered practitioner,
- (d) to clarify the operation of the alternative pathways to satisfy the minimum qualifications, experience, knowledge and skills required to be granted registration as a professional engineer,
- (e) to clarify the minimum qualifications, experience, knowledge and skills required to be granted registration as a design practitioner—fire systems (mechanical smoke control) or a professional engineer—fire safety,
- (f) to prescribe the fees payable for an application to be registered as a registered practitioner under the Act,
- (g) to provide for the waiver, reduction or refund of fees in certain circumstances,
- (h) to provide transitional arrangements in relation to Crown building work,
- (i) to make other minor and consequential amendments.

## **Design and Building Practitioners Amendment (Miscellaneous) Regulation 2021**

under the

Design and Building Practitioners Act 2020

### **1 Name of Regulation**

This Regulation is the *Design and Building Practitioners Amendment (Miscellaneous) Regulation 2021*.

### **2 Commencement**

This Regulation commences on 1 July 2021 and is required to be published on the NSW legislation website.

## **Schedule 1      Amendment of Design and Building Practitioners Regulation 2021**

### **[1]    Clause 19 Lodgment on NSW planning portal after issue of occupation certificate**

Insert at the end of the clause—

- (2) For the purposes of the Act, section 107(5), a building practitioner is exempt from the requirement referred to in the Act, section 15(1) to ensure that a relevant document is provided to the Secretary if—
  - (a) the relevant document has already been provided to the Secretary in accordance with clauses 16–18 and the document—
    - (i) has not been modified since it was last provided to the Secretary, and
    - (ii) is not required to be modified from when it was last provided to the Secretary, and
  - (b) the building practitioner gives written notice to the Secretary of the matters set out in paragraph (a).

### **[2]    Clause 31A**

Insert before clause 31—

#### **31A    Fees for application for registration**

- (1) For the purposes of the Act, section 43(3), the fees payable for an application to be registered as a practitioner are set out in Schedule 7, Part 1, Column 2.
- (2) If a person applies for two or more classes of registration in relation to the same type of practitioner, in the same application, the fee payable is the fee for the class with the highest fee amount.
- (3) In this clause, each of the following is a *type of practitioner*—
  - (a) design practitioner,
  - (b) principal design practitioner,
  - (c) professional engineer,
  - (d) building practitioner.

### **[3]    Clause 33 Grounds for finding that person is not suitable person to carry out work**

Insert after clause 33(1)(f)—

- (f1) there is a condition on a relevant authorisation of the person,

### **[4]    Clause 43 Grounds for variation, suspension or cancellation of registration**

Insert after clause 43(1)—

- (1A) An application for the variation of a practitioner's registration or a condition of a practitioner's registration must—
  - (a) be in a form approved by the Secretary, and
  - (b) include or be accompanied by information or evidence required by the Secretary to assess the application.

### **[5]    Clause 46 Registered practitioners to notify Secretary of certain events**

Insert after clause 46(b)—

- (b1) a condition is placed on a relevant authorisation of the practitioner,

**[6] Clause 89 Register of registered practitioners**

Omit “or had a penalty notice paid” from clause 89(k).

**[7] Clauses 93A–93C**

Insert after clause 93—

**93A Secretary’s power to waive, reduce or refund fees**

The Secretary may waive, reduce or refund, in whole or part, a fee payable or paid under the Act or this Regulation if the Secretary is satisfied it is appropriate because—

- (a) the person who is to pay or has paid the fee is suffering financial hardship, or
- (b) special circumstances exist.

**Example—** Special circumstances include a natural disaster or recovery from a natural disaster.

**93B Partial refund of certain fees before registration**

- (1) The refundable component of a fee paid for an application for registration must be refunded if—

- (a) the Secretary refuses the application, or
- (b) the applicant withdraws the application before the Secretary determines the application.

- (2) In this clause—

*refundable component*, of a fee, is the amount set out in Schedule 7, Part 1, Column 3.

**93C Partial refund of certain fees after registration**

- (1) This clause applies to a fee for an application for registration for a period of 3 or 5 years, paid by or on behalf of a person who—

- (a) has applied for, and received written notice from the Secretary of, the cancellation of the registration, or
- (b) if the fee was paid by or on behalf of an individual—has died.

- (2) The following persons may apply for a refund of the fee—

- (a) the person who paid the fee,
- (b) a person on behalf of the person who paid the fee,
- (c) the legal representative of a deceased individual who paid the fee.

- (3) A person may not apply for a refund if the registration was cancelled as a result of disciplinary action.

- (4) The amount of the refund is—

- (a) for a registration with a period of 3 years—one-third of the fee paid for each complete year remaining of the registration, or
- (b) for a registration with a period of 5 years—one-fifth of the fee paid for each complete year remaining of the registration.

**[8] Clause 96 Alternative pathway 3 for design practitioners—fire systems classes**

Insert “or a qualification that the Secretary is satisfied is at least equivalent to a diploma of that kind” after “hydraulic services design” in clause 96(2)(b)(i).

- [9] Clause 106 Insurance for registered practitioners**  
Omit “30 June 2023”. Insert instead “30 June 2022”.
- [10] Schedule 1 Classes of registration**  
Insert “to” after “is not authorised” in clause 9(2).
- [11] Schedule 1, clause 26(2), definition of “nominated individual”**  
Omit “by giving written notice to the Secretary” from paragraph (a).
- [12] Schedule 2 Qualifications, experience, knowledge and skills**  
Omit “, principal design practitioner—body corporate or building practitioner—body corporate” from clause 2(3).  
Insert instead “or principal design practitioner—body corporate”.
- [13] Schedule 2, clause 2(2A)**  
Insert after clause 2(2)—
- (2A) The minimum qualifications, knowledge and skills required to be granted registration in a particular class of registration as a professional engineer are—
    - (a) the knowledge and skills specified in pathway 1, pathway 2 or pathway 3 in this Schedule, clause 27, and
    - (b) the qualifications specified in the corresponding pathway shown for the particular class of registration.
- [14] Schedule 2, clause 17(2) and (3)**  
Omit the provisions. Insert instead—
- (2) **Knowledge**  
Must know and understand the following—
    - (a) the Act and this Regulation,
    - (b) the *Environmental Planning and Assessment Act 1979*, including regulations made under that Act, to the extent the legislation is relevant to this class of registration,
    - (c) the *Building Code of Australia*, Volumes 1 and 2, including documents adopted by reference in the *Building Code of Australia*, to the extent the documents are relevant to this class of registration,
    - (d) fire systems technology and components,
    - (e) building design, including methods, materials and planning, to the extent this knowledge is relevant to this class of registration.
  - (3) **Skills**  
Must be able to do the following—
    - (a) interpret, apply and assess compliance with the relevant requirements of the *Building Code of Australia*,
    - (b) apply and assess compliance with relevant standards relating to the design of a building, including materials, finishes, fittings, components and systems of a building, to the extent the standards are relevant to this class of registration,
    - (c) design fire safety systems to protect people and their environment from the consequences of fire,

- (d) anticipate the behaviour of materials, structures, machines, apparatus and processes when exposed to fire.

**[15] Schedule 2, clause 23(c)**

Omit the paragraph.

**[16] Schedule 2, clause 30**

Omit the clause. Insert instead—

**30 Professional engineer—fire safety**

**(1) Pathway 1—qualifications**

Must have a qualification referred to in paragraph (a), (b) or (c) as follows—

- (a) at least 1 of the following—
  - (i) an accredited 4 year full-time or equivalent part-time undergraduate bachelor degree in fire safety engineering or engineering with a major in fire safety engineering,
  - (ii) an accredited postgraduate masters degree in fire safety engineering or engineering with a major in fire safety engineering,
  - (iii) a non-accredited qualification that has been assessed as being equivalent to an accredited qualification in subparagraph (i) or (ii)—
    - (A) for a qualification that was conferred by an Australian university or tertiary institution—by an Australian signatory to the Washington Accord, or
    - (B) for a qualification that was conferred by a foreign university or tertiary institution—by an assessing authority for the skilled occupation of fire safety engineer, if any,
- (b) all of the following—
  - (i) an accredited 4 year full-time or equivalent part-time undergraduate bachelor degree in—
    - (A) civil engineering, mechanical engineering, chemical engineering or electrical engineering, or
    - (B) engineering with a major in civil engineering, mechanical engineering, chemical engineering or electrical engineering,
  - (ii) an accredited postgraduate diploma in engineering in fire safety engineering or an NVR approved graduate diploma in fire safety engineering,
- (c) all of the following—
  - (i) a non-accredited qualification that has been assessed as being equivalent to an accredited qualification in paragraph (b)(i)—
    - (A) for a qualification that was conferred by an Australian university or tertiary institution—by an Australian signatory to the Washington Accord, or
    - (B) for a qualification that was conferred by a foreign university or tertiary institution—by an assessing authority for the skilled occupation of fire safety engineer, if any,
  - (ii) a non-accredited qualification that has been assessed as being equivalent to an accredited qualification in paragraph (b)(ii)—

- (A) for a qualification that was conferred by an Australian university or tertiary institution—by an Australian signatory to the Washington Accord, or
- (B) for a qualification that was conferred by a foreign university or tertiary institution—by an assessing authority for the skilled occupation of fire safety engineer, if any.

(2) **Pathway 2—qualifications**

Recognition or registration as a professional engineer in an area of fire safety engineering by a recognised engineering body.

(3) **Pathway 3—qualifications**

Recognition or registration as a professional engineer in an area of fire safety engineering by a professional body of engineers that—

- (a) operates with a professional standards scheme, and
- (b) requires the successful completion of a qualification relevant to carrying out professional engineering work in accordance with the professional standards scheme.

**[17] Schedule 6 Amendment of Design and Building Practitioners Act 2020 No 7**

Omit the heading to proposed clause 2. Insert instead—

**2 Definitions**

**[18] Schedule 6, proposed clause 2**

Insert in alphabetical order—

***approved form*** means a form approved by the Secretary and made available—

- (a) on the NSW planning portal, or
- (b) on a website of the Department.

***approved way*** means—

- (a) lodgment on the NSW planning portal, or
- (b) if a building practitioner is unable to access the NSW planning portal to lodge a copy of a design for technical or other reasons—provision of the design to the Secretary.

***Crown building project*** means a project involving Crown building work that comprises one or more of the following—

- (a) the construction of a building,
- (b) the making of alterations or additions to a building,
- (c) the repair, renovation or protective treatment of a building.

***Crown building work*** means regulated building work that is Crown building work within the meaning of the *Environmental Planning and Assessment Act 1979*, Part 6.

**[19] Schedule 6, proposed clause 4(1)(c)**

Insert “be” after “eligible to”.

**[20] Schedule 6, proposed clause 4(5)**

Omit the subclause.

**[21] Schedule 6, proposed clauses 4B–4D**

Insert after proposed clause 4A—

**4B Crown building work—commenced**

- (1) This clause applies to Crown building work if—
  - (a) it is carried out before 1 August 2021, and
  - (b) the Crown building project to which it relates has not been completed by that day.
- (2) The following requirements of the Act do not apply to the Crown building work, or a design in relation to the Crown building work, to which this clause applies—
  - (a) provisions requiring regulated designs to be prepared for the Crown building work, including requirements for compliance declarations,
  - (b) provisions requiring a person to be registered to carry out the Crown building work,
  - (c) provisions requiring a building compliance declaration to be prepared for the Crown building work.
- (3) The building practitioner for the Crown building work must provide copies of all designs relied on to carry out the Crown building work—
  - (a) to the Secretary in the approved way, and
  - (b) before the completion of the Crown building project to which the Crown building work relates.

Maximum penalty—1,500 penalty units for a body corporate or 500 penalty units for an individual.

**4C Crown building project—staged provision of designs**

- (1) This clause applies to a Crown building project if Crown building work under the project is carried out after 31 July 2021 and before 1 July 2022.
- (2) A building practitioner is taken to comply with a provision of the regulations made under the Act, section 107(2)(e) requiring a building practitioner to provide specified regulated designs and compliance declarations to the Secretary before commencing building work if, before commencing Crown building work under a Crown building project to which this clause applies—
  - (a) the building practitioner provides regulated designs and compliance declarations relating to a portion of the Crown building project (*building work increment*) to the Secretary, and
  - (b) the regulated designs and compliance declarations otherwise comply with the requirements of the provision, and
  - (c) the only Crown building work carried out relates to the building work increment.

**4D Crown building work—designs prepared**

- (1) This clause applies to a design for Crown building work if—
  - (a) the design was prepared before 1 July 2021, and
  - (b) the person who prepared the design is not eligible to be registered after 30 June 2021 in a class that would permit the person to provide a design compliance declaration for the design, and



- (c) the Crown building work to which it relates is commenced after 31 July 2021 and before 1 July 2022.
- (2) The design is taken to be a regulated design for which a design compliance declaration has been given if a registered design practitioner—
  - (a) assesses whether or not the design complies with the requirements of the *Building Code of Australia*, and
  - (b) issues a certificate in an approved form that the design does comply with the requirements.
- (3) The registered building practitioner must not carry out Crown building work to which the design relates until copies of the design and certificate are provided to the Secretary.  
 Maximum penalty—200 penalty units for a body corporate or 100 penalty units for an individual.
- (4) If a design that is taken to be a regulated design is varied on or after 1 July 2021, this clause no longer applies to the design.

**Note—** A registered design practitioner will be required to prepare the varied design.

**[22] Schedule 7**

Insert after Schedule 6—

**Schedule 7 Fees**

clauses 31A and 93B(2)

**Part 1 Fees payable**

Column 1	Column 2	Column 3
Type of application	Fee (in fee units)	Refundable component (in fee units)
<b>Design practitioner—architectural and engineering classes</b>		
The fees set out below apply to registration as a design practitioner—architectural, design practitioner—civil engineering, design practitioner—electrical engineering, design practitioner—fire safety engineering, design practitioner—geotechnical engineering, design practitioner—mechanical engineering and design practitioner—structural engineering.		
(a) Application for a new registration—		
(i) for 1 year	3.81	2.39
(ii) for 3 years	8.56	7.14
(iii) for 5 years	14.28	12.86
(b) Application for renewal of a registration—		
(i) for 1 year	2.86	2.1
(ii) for 3 years	6.42	5.66
(iii) for 5 years	10.7	9.94
(c) Application for restoration of a registration—		

<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Type of application</b>	<b>Fee (in fee units)</b>	<b>Refundable component (in fee units)</b>
(i) for 1 year	3.38	2.62
(ii) for 3 years	6.94	6.18
(iii) for 5 years	11.22	10.46
<b>Design practitioner—body corporate</b>		
(a) Application for a new registration—		
(i) for 1 year	12.84	8.23
(ii) for 3 years	28.89	24.28
(iii) for 5 years	48.14	43.53
(b) Application for renewal of a registration—		
(i) for 1 year	9.62	7.32
(ii) for 3 years	21.66	19.36
(iii) for 5 years	36.11	33.81
(c) Application for restoration of a registration—		
(i) for 1 year	10.14	7.84
(ii) for 3 years	22.18	19.88
(iii) for 5 years	36.63	34.33
<b>Design practitioner—other classes</b>		
The fees set out below apply to registration as a design practitioner—building design (low rise), design practitioner—building design (medium rise), design practitioner—drainage, design practitioner—drainage (restricted), design practitioner—facade, design practitioner—fire systems (detection and alarm systems), design practitioner—fire systems (fire hydrant and fire hose reel), design practitioner—fire systems (fire sprinkler), design practitioner—fire systems (mechanical smoke control) and design practitioner—vertical transportation.		
(a) Application for a new registration—		
(i) for 1 year	4.14	2.39
(ii) for 3 years	9.3	7.55
(iii) for 5 years	15.51	13.76
(b) Application for renewal of a registration—		
(i) for 1 year	3.1	2.1
(ii) for 3 years	6.97	5.97
(iii) for 5 years	11.63	10.63
(c) Application for restoration of a registration—		
(i) for 1 year	3.62	2.62

<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Type of application</b>	<b>Fee (in fee units)</b>	<b>Refundable component (in fee units)</b>
(ii) for 3 years	7.49	6.49
(iii) for 5 years	12.15	11.15
<b>Principal design practitioner—body corporate</b>		
Application for the following— 2.3		—
(a) a new registration		
(b) renewal of a registration		
(c) restoration of a registration		
<b>Principal design practitioner—general</b>		
Application for the following— 1.0		—
(a) a new registration		
(b) renewal of a registration		
(c) restoration of a registration		
<b>Building practitioner—body corporate</b>		
(a) Application for a new registration—		
(i) for 1 year	12.84	8.23
(ii) for 3 years	28.89	24.28
(iii) for 5 years	48.14	43.53
(b) Application for renewal of a registration—		
(i) for 1 year	9.62	7.32
(ii) for 3 years	21.66	19.36
(iii) for 5 years	36.11	33.81
(c) Application for restoration of a registration—		
(i) for 1 year	10.14	7.84
(ii) for 3 years	22.18	19.88
(iii) for 5 years	36.63	34.33
<b>Building practitioner—other classes</b>		
The fees set out below apply to registration as a building practitioner—body corporate nominee and building practitioner—general.		
(a) Application for a new registration—		
(i) for 1 year	3.81	2.39
(ii) for 3 years	8.56	7.14
(iii) for 5 years	14.28	12.86

Column 1	Column 2	Column 3
Type of application	Fee (in fee units)	Refundable component (in fee units)
(b) Application for renewal of a registration—		
(i) for 1 year	2.86	2.1
(ii) for 3 years	6.42	5.66
(iii) for 5 years	10.7	9.94
(c) Application for restoration of a registration—		
(i) for 1 year	3.38	2.62
(ii) for 3 years	6.94	6.18
(iii) for 5 years	11.22	10.46
<b>Professional engineer</b>		
(a) Application for a new registration—		
(i) for 1 year	5.56	3.81
(ii) for 3 years	12.52	10.77
(iii) for 5 years	20.86	19.11
(b) Application for renewal of a registration—		
(i) for 1 year	4.17	2.97
(ii) for 3 years	9.39	8.19
(iii) for 5 years	15.65	14.45
(c) Application for restoration of a registration—		
(i) for 1 year	4.69	3.49
(ii) for 3 years	9.91	8.71
(iii) for 5 years	15.95	14.75

## Part 2 Adjustment of fees for inflation

### 1 Definitions

In this Part—

***CPI number*** means the Consumer Price Index (All Groups Index) for Sydney published by the Australian Bureau of Statistics in the latest published series of that index.

***financial year*** means a period of 12 months commencing on 1 July.

### 2 Calculation of fee unit for purposes of Regulation

- (1) For the purposes of this Regulation, a ***fee unit*** is—
- (a) in the financial year 2021–22—\$106.40, and

- (b) in each subsequent financial year—the amount calculated as follows—

$$\$100 \times \frac{A}{B}$$

where—

*A* is the CPI number for the March quarter in the financial year immediately preceding the financial year for which the amount is calculated.

*B* is the CPI number for the March quarter of 2017.

- (2) The amount of a fee unit is to be rounded to the nearest cent and an amount of 0.5 cent is to be rounded down.
- (3) However, if the amount of a fee unit calculated for a financial year is less than the amount that applied for the previous financial year, the amount for the previous financial year applies instead.

### 3 Rounding of fee amounts

The amount of a fee calculated by reference to a fee unit, including the amount of a refundable component of a fee, is to be rounded to the nearest dollar and an amount of 50 cents is to be rounded down.

### 4 Notice of indexed fees

- (1) As soon as practicable after the CPI number for the March quarter is first published by the Australian Statistician, the Secretary is required to—
- (a) notify the Parliamentary Counsel of the amount of the fee unit for the next financial year so notice of the amount can be published on the NSW legislation website, and
- (b) give public notice on an appropriate government website of the actual amounts of the fees applying in each financial year resulting from the application of the amount of a fee unit calculated under this Part.
- (2) This Part operates to change an amount of a fee that is calculated by reference to a fee unit and the change is not dependent on the notification or other notice required by this clause.

### [23] Dictionary

Insert in alphabetical order—

*fee unit*—see Schedule 7, Part 2.