



New South Wales

Design and Building Practitioners Amendment (Miscellaneous) Regulation (No 2) 2022

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*.

VICTOR DOMINELLO, MP
Minister for Fair Trading

Explanatory note

The object of this Regulation is to—

- (a) amend the *Design and Building Practitioners Regulation 2021* to do the following—
 - (i) insert a definition of **construction issued regulated design**,
 - (ii) exclude certain work from being building work,
 - (iii) provide for documents to be lodged on the NSW planning portal if more than 1 construction certificate is to be issued for building work or only a portion of building work is to be completed,
 - (iv) make provision for work relating to Sydney Metro, including exemptions relating to Sydney Metro,
 - (v) amend the qualifications, experience, knowledge and skills required for certain classes of registration, and update CPD requirements for a particular pathway to registration, and
 - (b) make minor amendments to the *Design and Building Practitioners Act 2020*.
- Amendments made by this Regulation, Schedule 2 are made under a Henry VIII provision.

Design and Building Practitioners Amendment (Miscellaneous) Regulation (No 2) 2022

under the

Design and Building Practitioners Act 2020

1 Name of Regulation

This Regulation is the *Design and Building Practitioners Amendment (Miscellaneous) Regulation (No 2) 2022*.

2 Commencement

This Regulation commences as follows—

- (a) for Schedule 1[1], [4]–[8] and [18] and Schedule 2—1 July 2023,
- (b) for Schedule 1[10]–[12]—3 July 2023,
- (c) otherwise—the day on which it is published on the NSW legislation website.

Schedule 1 Amendment of Design and Building Practitioners Regulation 2021

[1] Clause 3A

Insert after clause 3—

3A Meaning of “construction issued regulated design”

- (1) In this Regulation, *construction issued regulated design* means a regulated design for which a design compliance declaration is provided that—
 - (a) contains the necessary detail to produce building work that would achieve compliance with the *Building Code of Australia*, and
 - (b) can be used by a building practitioner to carry out the work in accordance with the regulated design and the *Building Code of Australia*.
- (2) In subclause (1)(a), the necessary detail includes—
 - (a) the proposed dimensions of the completed building, and
 - (b) the characteristics and materials comprising the proposed building, and
 - (c) the location of the building elements and systems proposed to be built.
- (3) However, a reference in subclause (2)(a) or (b) to a building is, in relation to a construction issued regulated design for building work carried out under more than 1 construction certificate, a reference to a part of the building to which the construction certificate relates.

Note— See the Act, section 4(3), which provides that a reference to a building includes a reference to part of a building.
- (4) In addition to subclauses (1)(a) and (2), a construction issued regulated design for building work carried out under more than 1 construction certificate must, as far as reasonably practicable, integrate details of other aspects of the building work to which the design relates.

[2] Clause 13 Certain work excluded from being building work

Omit “5 or 6” wherever occurring in clause 13(1)(k)(i). Insert instead “5, 6, 9a or 9b”.

[3] Clause 13(1)(l) and (m)

Insert after clause 13(1)(k)—

- (l) work to install the following, but only if the work is the subject of a development consent that primarily relates to the installation—
 - (i) an awning, blind or canopy over a window or door,
 - (ii) a roofed structure over a balcony, deck, patio or terrace, whether open or enclosed, unless the roofed structure is installed above the existing topmost roof of the building,
- (m) work that—
 - (i) is the subject of a development consent that primarily relates to the work, and
 - (ii) is not—
 - (A) work for a building element for building work, or
 - (B) work for a performance solution for building work, including a building element.

[4] Clause 16 Lodgment on NSW planning portal before building work commences

Omit clause 16(1). Insert instead—

- (1) For the Act, section 107(2)(e), a building practitioner must do the following—
 - (a) if more than 1 construction certificate is to be issued for building work—before commencing building work relating to a construction certificate, provide the required documents for the building work to which the construction certificate relates to the Secretary in the approved way,
 - (b) otherwise—provide the required documents to the Secretary in the approved way before commencing building work.

Maximum penalty—

- (a) for a body corporate—200 penalty units, or
- (b) for an individual—100 penalty units.

[5] Clause 16(2)

Omit “documents under this clause”. Insert instead “the required documents”.

[6] Clause 16(2)(a) and (b)

Insert “required” before “documents”.

[7] Clause 16(3)

Insert in alphabetical order—

required documents means the following—

- (a) copies of the construction issued regulated designs for the building work,
- (b) copies of the design compliance declarations, made by a suitably authorised registered design practitioner, for each of the construction issued regulated designs,
- (c) if a registered principal design practitioner is appointed for the building work—a principal compliance declaration, made by a suitably authorised registered principal design practitioner, for the construction issued regulated designs.

[8] Clause 19A Lodgment on NSW planning portal for other building work—the Act, s 17(2)

Insert after clause 19A(1)—

- (1A) A building practitioner is taken to comply with clause 16 if, before commencing the building work—
 - (a) the building practitioner provides regulated designs and compliance declarations relating to a portion of the work (*building work increment*) to the Secretary, and
 - (b) the regulated designs and compliance declarations otherwise comply with clause 16, and
 - (c) the only building work carried out relates to the building work increment.

[9] Part 7A

Insert after Part 7—

Part 7A Sydney Metro work

88A Definitions

In this Part—

over station enabling work means building work, other than Sydney Metro work, that is—

- (a) approved to be carried out in compliance with an approval granted to Sydney Metro under the *Environmental Planning and Assessment Act 1979*, Division 5.2, and
- (b) over, beside or near a train station.

rail infrastructure has the same meaning as in the *Rail Safety National Law (NSW)*.

Sydney Metro means the corporation constituted under the *Transport Administration Act 1988*, section 38.

Sydney Metro work means building work that is—

- (a) approved to be carried out in compliance with an approval granted to Sydney Metro under the *Environmental Planning and Assessment Act 1979*, Division 5.2, and
- (b) for a train station, depot, stabling yard or other rail infrastructure.

88B Work excluded from being building work relating to Sydney Metro

- (1) For the Act, section 4(2)(b), the following work is excluded from being building work—
 - (a) Sydney Metro work,
 - (b) over station enabling work if—
 - (i) the approval under the *Environmental Planning and Assessment Act 1979*, Division 5.2 was granted to Sydney Metro before 1 April 2022, and
 - (ii) the work does not exceed—
 - (A) the highest level containing fixed systems, plant or equipment used in connection with the operation or maintenance of the train station, depot, stabling yard or other rail infrastructure (the **highest level**), or
 - (B) if the work carried out is for the purpose of protecting the train station, depot, stabling yard or other rail infrastructure from the impact of building work—1 level above the highest level,
 - (c) work on a building, or part of a building, that—
 - (i) is not, or part of which is not, a class 2 building, and
 - (ii) is otherwise considered to form a united building for the purposes of the *National Construction Code*, Part A7 by being connected or joined by a metro tunnel to an adjacent building that is, or part of which is, a class 2 building.
- (2) In this clause—

metro tunnel does not include a tunnel used by pedestrians.

88C Regulated designs for over station enabling work not required to be lodged with compliance declarations

- (1) This clause applies if Sydney Metro or a building practitioner in relation to building work that is over station enabling work provides a copy of a relevant document to the design practitioner for building work above the station enabled by the over station enabling work.
- (2) Despite Part 3, Division 1, a copy of a relevant document is not required to be provided to the Secretary with a compliance declaration.
- (3) In this clause, a reference to a building practitioner is taken to include a person who is exempt from registration under clause 88D.
- (4) In this clause—
relevant document means a copy of the following, in relation to building work that is over station enabling work—
 - (a) the construction issued regulated designs for the building work,
 - (b) a varied regulated design,
 - (c) a regulated design for a new building element or performance solution,
 - (d) a document referred to in clause 18(2)(b).**Note—** See clauses 16(3), definition of **required documents**, paragraph (a), 17(1)(b) and (d), 18(2)(b) and 19A(2)(c) and (4).

88D Special Sydney Metro-related exemption

- (1) This clause applies in relation to the following classes of registration as a building practitioner—
 - (a) building practitioner—body corporate,
 - (b) building practitioner—general,
 - (c) building practitioner—body corporate nominee.
- (2) For the Act, section 107(5), a person who does not have the qualifications and experience required under Schedule 2 for a building practitioner of a class to which this clause applies is exempt from the Act, section 23 and this Regulation, clause 20 if the following apply—
 - (a) for a body corporate—the body corporate is a technically assured organisation under the Technically Assured Organisation Scheme operated by Transport for NSW (a **technically assured organisation**),
 - (b) for an individual—the individual is nominated by a technically assured organisation,
 - (c) the person—
 - (i) does not do building work other than carry out over station enabling work, and
 - (ii) complies with the requirements relating to lodgment under Part 3, Division 1 applicable to a building practitioner of a class to which this clause applies in relation to the work, and
Note— See clause 88C in relation to the application of Part 3, Division 1.
 - (iii) complies with the Act, sections 18–22 and this Regulation, clauses 27, 28, 85 and 88 in relation to a building practitioner of a class to which this clause applies, and
 - (iv) for a body corporate—remains a technically assured organisation, and

- (v) for an individual—remains a nominee of a technically assured organisation.

[10] Clause 88C Regulated designs for over station enabling work not required to be lodged with compliance declarations

Omit clause 88C(3).

[11] Clause 88D

Omit the clause. Insert instead—

88D Special Sydney Metro-related qualifications and experience

- (1) This clause applies to registration in the following classes of registration as a building practitioner—
 - (a) building practitioner—body corporate,
 - (b) building practitioner—general,
 - (c) building practitioner—body corporate nominee.
- (2) For the Act, section 107(5), the Secretary may, despite the other provisions of this Regulation, grant registration as a building practitioner of a class to which this clause applies to a person who does not have the qualifications and experience required by Schedule 2 if—
 - (a) for a body corporate—the body corporate is a technically assured organisation under the Technically Assured Organisation Scheme operated by Transport for NSW (a *technically assured organisation*), or
 - (b) for an individual—the individual is nominated by a technically assured organisation.
- (3) For the Act, section 49(1)(a), it is a condition of registration for a building practitioner registered under this clause that—
 - (a) the building practitioner must not do anything that relies on the building practitioner's registration other than carry out over station enabling work, and
 - (b) for a body corporate—the body corporate must remain a technically assured organisation, and
 - (c) for an individual—the individual must remain a nominee of a technically assured organisation.

[12] Clause 108

Insert after clause 107—

108 Saving of exemption relating to particular building practitioners for Sydney Metro work until 31 July 2023

- (1) This clause applies to a person exempt under former clause 88D immediately before 3 July 2023.
- (2) If the person applies during the prescribed period for registration as a building practitioner, the person continues to be exempt under former clause 88D until—
 - (a) the person is granted registration under clause 88D(2), or
 - (b) 31 July 2023.
- (3) In this clause—

former clause 88D means clause 88D as in force immediately before 3 July 2023.

prescribed period means from 3 July 2023 to 31 July 2023.

[13] Schedule 2 Qualifications, experience, knowledge and skills

Omit clause 14(2)(a). Insert instead—

(a) **Qualifications**

Must have—

(i) either—

- (A) an engineering degree from an Australian university, or
- (B) a qualification under an accredited program, and

(ii) successful completion of the following units of competency—

- (A) CPCSFS5001A Define scope and hazard level of fire systems design projects,
- (B) CPCSFS5002A Research and interpret detailed fire systems design project requirements,
- (C) CPCSFS5003A Develop plans and methodology for fire systems design projects,
- (D) CPCSFS5005A Research and evaluate fire system technologies and components,
- (E) CPCSFS5008A Create detailed designs for fire detection and warning systems,
- (F) CPCSFS5011A Provide design documentation and review and support fire system installation processes,
- (G) CPCSFS5013A Support commissioning processes and finalise fire systems design projects.

[14] Schedule 2, clause 15(2)(a)

Omit the paragraph. Insert instead—

(a) **Qualifications**

Must have—

(i) either—

- (A) an engineering degree from an Australian university, or
- (B) a qualification under an accredited program, and

(ii) successful completion of the following units of competency—

- (A) CPCSFS5001A Define scope and hazard level of fire systems design projects,
- (B) CPCSFS5002A Research and interpret detailed fire systems design project requirements,
- (C) CPCSFS5003A Develop plans and methodology for fire systems design projects,
- (D) CPCSFS5005A Research and evaluate fire system technologies and components,
- (E) CPCSFS5007A Create detailed designs for hydrant and hose reel systems,
- (F) CPCSFS5009A Create detailed designs for fire systems' water supplies,

- (G) CPCSFS5011A Provide design documentation and review and support fire system installation processes,
- (H) CPCSFS5013A Support commissioning processes and finalise fire systems design projects.

[15] Schedule 2, clause 15(3)(a)(ii)

Omit “(2)(a)(ii)–(viii)”. Insert instead “(2)(a)(ii)(B)–(H)”.

[16] Schedule 2, clause 16(2)(a)

Omit the paragraph. Insert instead—

(a) **Qualifications**

Must have—

(i) either—

- (A) an engineering degree from an Australian university, or
- (B) a qualification under an accredited program, and

(ii) successful completion of the following units of competency—

- (A) CPCSFS5001A Define scope and hazard level of fire systems design projects,
- (B) CPCSFS5002A Research and interpret detailed fire systems design project requirements,
- (C) CPCSFS5003A Develop plans and methodology for fire systems design projects,
- (D) CPCSFS5005A Research and evaluate fire system technologies and components,
- (E) CPCSFS5006A Create detailed designs for fire sprinkler systems,
- (F) CPCSFS5009A Create detailed designs for fire systems’ water supplies,
- (G) CPCSFS5010A Provide documentation and support for fabrication of fire sprinkler systems,
- (H) CPCSFS5011A Provide design documentation and review and support fire system installation processes,
- (I) CPCSFS5013A Support commissioning processes and finalise fire systems design projects.

[17] Schedule 2, clause 16(3)(a)(ii)

Omit “(2)(a)(ii)–(ix)”. Insert instead “(2)(a)(ii)(B)–(I)”.

[18] Dictionary

Omit the definition of *construction issued regulated design*. Insert instead—
construction issued regulated design—see clause 3A.

Schedule 2 Amendment of Design and Building Practitioners Act 2020 No 7

[1] Schedule 1 Savings, transitional and other provisions

Insert after clause 4A(2)—

- (3) The clause ceases to have effect on 1 July 2023.

[2] Schedule 1, clause 4C

Insert after clause 4C(2)—

- (3) The clause ceases to have effect on 1 July 2023.