



New South Wales

Building Legislation Amendment Regulation 2023

His Excellency the Lieutenant-Governor, with the advice of the Executive Council, has made the following regulation under the following Acts—

- (a) the *Building and Development Certifiers Act 2018*,
- (b) the *Design and Building Practitioners Act 2020*,
- (c) the *Residential Apartment Buildings (Compliance and Enforcement Powers) Act 2020*.

ANOULACK CHANTHIVONG, MP
Minister for Better Regulation and Fair Trading

Explanatory note

The objects of this regulation are as follows—

- (a) to amend the *Building and Development Certifiers Regulation 2020* to extend, to 30 June 2024, the period in which a professional indemnity insurance policy may exclude claims relating to building cladding,
- (b) to amend the *Design and Building Practitioners Regulation 2021* to provide that—
 - (i) registration as a building practitioner—body corporate may be granted to a body corporate that does not have a contractor licence under the *Home Building Act 1989*, subject to the restriction that no work is carried out for a class 2 building, and
 - (ii) the registration of a building practitioner—body corporate may be varied, suspended or cancelled if the body corporate’s contractor licence under the *Home Building Act 1989* is suspended or cancelled,
- (c) to make minor and transitional amendments to the *Building Legislation Amendment (Building Classes) Regulation 2023* to address a number of minor policy clarifications and drafting errors.

Building Legislation Amendment Regulation 2023

1 Name of regulation

This regulation is the *Building Legislation Amendment Regulation 2023*.

2 Commencement

This regulation commences as follows—

- (a) for Schedule 2—on 3 July 2023,
- (b) otherwise—on the day the regulation is published on the NSW legislation website.

Schedule 1 Amendment of Building and Development Certifiers Regulation 2020

Clause 19 Exclusion for claims made in relation to cladding

Omit “30 June 2023” from clause 19(2). Insert instead “30 June 2024”.

Schedule 2 Amendment of Design and Building Practitioners Regulation 2021

[1] Clause 43, heading

Insert “or cancellation” after “suspension”.

[2] Clause 43(1)

Insert before clause 43(2)—

- (1) For the Act, section 52(1)(h), the registration of a body corporate that holds a building practitioner—body corporate class of registration may be varied, suspended or cancelled if the body corporate’s contractor licence authorising the holder to do general building work under the *Home Building Act 1989* is suspended or cancelled.

[3] Schedule 1 Classes of registration

Omit clause 26(1). Insert instead—

- (1) A registered body corporate that holds a building practitioner—body corporate class of registration is authorised to make a building compliance declaration for the following building work—
 - (a) if the registered body corporate holds a contractor licence authorising the holder to do general building work under the *Home Building Act 1989*—all building work,
 - (b) otherwise—building work other than building work that is, or part of which is, a class 2 building.
- (1A) A declaration may only be made under subclause (1)—
 - (a) by way of a nominated individual, and
 - (b) if it is consistent with conditions or restrictions on the nominated individual’s registration.

Schedule 3 Amendment of Building Legislation Amendment (Building Classes) Regulation 2023

[1] Schedule 1 Amendment of Design and Building Practitioners Regulation 2021

Omit Schedule 1[6], proposed Part 3, Division 3B, clause 28H(2). Insert instead—

- (2) The design is taken to be a regulated design for which a design compliance declaration has been given if—
 - (a) a registered design practitioner—
 - (i) assesses whether or not the design complies with the requirements of the *Building Code of Australia*, and
 - (ii) issues a certificate in an approved form that the design does comply with the requirements, and
 - (b) a building practitioner does not carry out building work under the construction certificate or complying development certificate until copies of the design and certificate are provided to the Secretary, and
 - (c) the design is not varied on or after 3 July 2023.

[2] Schedule 1[6], proposed Part 3, Division 3B, clause 28I(3)(b)

Omit “other”. Insert instead “relevant”.

[3] Schedule 1[6], proposed Part 3, Division 3B, clause 28J(1)(c)

Omit the paragraph. Insert instead—

- (c) the relevant building work to which the design relates is commenced after 2 July 2023 but before 3 July 2024.

[4] Schedule 1[6], proposed Part 3, Division 3B, clause 28J(2)

Omit the subclause. Insert instead—

- (2) The design is taken to be a regulated design for which a design compliance declaration has been given if—
 - (a) a registered design practitioner—
 - (i) assesses whether or not the design complies with the requirements of the *Building Code of Australia*, and
 - (ii) issues a certificate in an approved form that the design does comply with the requirements, and
 - (b) a building practitioner does not carry out relevant building work to which the design relates until copies of the design and certificate are provided to the Secretary, and
 - (c) the design is not varied on or after 3 July 2023.

[5] Schedule 1[28]

Omit the item. Insert instead—

[28] Schedule 2, clause 23

Omit the clause. Insert instead—

23 Building practitioner—body corporate

Qualifications, experience, knowledge and skills Must be a body corporate.

[6] Schedule 1[55], proposed Schedule 7, Part 1

Insert “design practitioner—building design,” after “The fees set out below apply to registration as a” in proposed Part 1, table, matter relating to **Design practitioner—other classes**.

[7] Schedule 2 Amendment of Residential Apartment Buildings (Compliance and Enforcement Powers) Regulation 2020

Omit proposed clause 4. Insert instead—

4 Application of Act to specified building classes

For the Act, section 6(2), all of the provisions of the Act extend to the following buildings as if they were residential apartment buildings—

- (a) class 3 buildings, including buildings containing a class 3 part,
- (b) class 9c buildings, including buildings containing a class 9c part.

4A Transitional provision for class 3 and 9c buildings

- (1) This clause applies to a class 3 or class 9c building if the developer gives the Secretary an expected completion notice within 14 days after the commencement of this clause.
- (2) During the transition period, the Act, sections 7–9 apply to a developer making an application for an occupation certificate—
 - (a) as if a reference to notice under the Act, section 7 were a reference to notice given under subclause (1), and
 - (b) as if a reference to the notice being given less than 6 months before the application for the occupation certificate was made were a reference to the notice being given more than 14 days after the commencement of this clause, and
 - (c) with all other necessary modifications.
- (3) In this clause—

transition period means the period—

 - (a) commencing on 3 July 2023, and
 - (b) ending on 3 January 2024.
- (4) This clause is repealed on 4 January 2024.