

# Residential Apartment Buildings (Compliance and Enforcement Powers) Regulation 2020

[2020-475]



New South Wales

## Status Information

### Currency of version

Current version for 19 January 2024 to date (accessed 5 May 2024 at 13:38)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Staged repeal status**

This legislation is currently due to be automatically repealed under the [Subordinate Legislation Act 1989](#) on 1 September 2025

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

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# Residential Apartment Buildings (Compliance and Enforcement Powers) Regulation 2020



New South Wales

## Part 1 Preliminary

### 1 Name of Regulation

This Regulation is the *Residential Apartment Buildings (Compliance and Enforcement Powers) Regulation 2020*.

### 2 Commencement

This Regulation commences on 1 September 2020 and is required to be published on the NSW legislation website.

### 3 Definitions

(1) In this Regulation—

**building work levy**, for Part 2—see clause 5(1).

**monetary unit**—see Schedule 2, clause 2.

**the Act** means the *Residential Apartment Buildings (Compliance and Enforcement Powers) Act 2020*.

#### Note—

The Act and the *Interpretation Act 1987* contain definitions and other provisions that affect the interpretation and application of this Regulation.

(2) Notes included in this Regulation do not form part of this Regulation.

### 3A (Renumbered as clause 15)

### 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#### **4A (Repealed)**

## **Part 2 Building work levy—the Act, s 6A(1) and (3)**

### **5 Imposition and payment of building work levy**

- (1) The Secretary may impose a levy on a developer in relation to building work (a **building work levy**) by giving the developer written notice, using the NSW planning portal, of the requirement to pay the levy.
- (2) A developer on whom a building work levy is imposed must, using the NSW planning portal, pay the levy within 14 days of the written notice being given.

### **6 Building work for which levy may be imposed**

- (1) The Secretary may impose a levy on a developer only at the rate of levy prescribed by this Part in relation to the building work.
- (2) The Secretary may not impose a building work levy in relation to the following—
  - (a) building work for which a registered building practitioner is not required to provide a building compliance declaration,
  - (b) building work that results in, or is in relation to, a building with fewer than 5 residential premises,
  - (c) building work carried out by or on behalf of the New South Wales Land and Housing Corporation,
  - (d) building work for the purposes of repairing, rectifying or replacing the external cladding of a building,
  - (e) building work in relation to which no rate of levy is prescribed by this Part.
- (3) If building work will result in additional storeys to an existing building and involves the repair, renovation or protective treatment of the building or part of the building, the Secretary may impose a levy only at the greater of the rates prescribed by clauses 7 and 8.
- (4) In this clause—

**building compliance declaration** has the same meaning as in the [Design and Building Practitioners Act 2020](#).

**New South Wales Land and Housing Corporation** means the New South Wales Land and Housing Corporation constituted by the [Housing Act 2001](#).

**registered building practitioner** has the same meaning as in the [Design and](#)

*Building Practitioners Act 2020.*

**residential premises** has the same meaning as in the *Residential Tenancies Act 2010*.

**7 Rate of building work levy—building work that results in new buildings or additional storeys**

- (1) This clause applies to building work to which an expected completion notice relates that results in—
  - (a) a new building or part of a new building, or
  - (b) the addition of storeys to an existing building.
- (2) For building work to which an expected completion notice relates that results in a number of storeys within 1 of the following ranges, the rate of the building work levy is the number of monetary units specified for the range—
  - (a) 1–3 storeys—
    - (i) if the resulting storeys have a gross floor area that is less than 6,000m<sup>2</sup>—70 monetary units, or
    - (ii) if the resulting storeys have a gross floor area equal to or greater than 6,000m<sup>2</sup>—84 monetary units,
  - (b) 4–8 storeys—84 monetary units,
  - (c) 9–19 storeys—110 monetary units,
  - (d) 20–30 storeys—155 monetary units,
  - (e) 31 storeys or more—212 monetary units.

**8 Rate of building work levy—repair, renovation or protective treatment of buildings**

- (1) This clause applies to building work if—
  - (a) it involves the repair, renovation or protective treatment of a building, or part of a building, and
  - (b) an expected completion notice has been given in relation to the building work.
- (2) For building work with a projected cost within 1 of the following ranges, the rate of the building work levy is the number of monetary units specified for the range—
  - (a) more than \$150,000 but not more than \$500,000—7 monetary units,
  - (b) more than \$500,000 but not more than \$1,000,000—13 monetary units,

- (c) more than \$1,000,000 but not more than \$5,000,000—20 monetary units,
- (d) more than \$5,000,000 but not more than \$10,000,000—27 monetary units,
- (e) more than \$10,000,000—40 monetary units.

## **9 Annual adjustment of rate of building work levy**

The rate of a building work levy is to be adjusted for inflation in accordance with Schedule 2.

## **10 Provision of information**

A developer in relation to building work must ensure that, at the same time at which an expected completion notice for the building work is given to the Secretary, the following information about the building work is also given to the Secretary—

- (a) whether the work to which the expected completion notice relates—
  - (i) will result in a new building or part of a new building, or
  - (ii) will result in the addition of storeys to an existing building, or
  - (iii) involves the repair, renovation or protective treatment of a building or part of a building,
- (b) if the work will result in a new building, part of a new building or the addition of storeys to an existing building—
  - (i) the number of storeys or additional storeys that will result from the work to which the expected completion notice relates, and
  - (ii) the gross floor area of the building, part of the building or additional storeys that will result from the work to which the expected completion notice relates,
- (c) if the work involves the repair, renovation or protective treatment of a building or part of a building—the projected cost of the work at the time the information is given.

Maximum penalty—

- (a) for a corporation—200 penalty units, or
- (b) otherwise—100 penalty units.

## **11 Charging of interest on unpaid building work levies**

Interest may be charged on an unpaid building work levy at the rate of 6% per annum from—

- (a) the day that is 15 days after the Secretary gives the developer written notice of the requirement to pay the levy, or

- (b) if the Secretary has postponed the levy—the day that is 1 day after the day on which the postponed levy is due.

## **12 Waiver, reduction, postponement or refund of building work levy**

- (1) A person may, by written notice to the Secretary, apply for the waiver, reduction, postponement or refund of a building work levy.
- (2) The Secretary may, on the Secretary's own initiative or on the application of a person, waive, reduce, postpone or refund a building work levy, in whole or in part, on 1 or more of the following grounds—
  - (a) if the person required to pay the levy is an individual—the person is suffering financial hardship,
  - (b) the building work is for a charitable purpose,
  - (c) the levy was paid in error,
  - (d) special circumstances exist.

### **Example—**

a natural disaster or recovery from a natural disaster

- (3) In this clause—

**charitable purpose** includes a benevolent, philanthropic or patriotic purpose.

## **13 Building work levy—transitional provision**

- (1) This Part extends to building work—
  - (a) for which the Secretary has been given an expected completion notice before the commencement of this Part, and
  - (b) for which an occupation certificate has not been issued in relation to the building or part of the building to which the expected completion notice relates.
- (2) In clause 10, for an expected completion notice given before the commencement of this Part, a reference to giving information at the same time as the notice is given is taken to be a reference to giving information at a time specified by the Secretary by written notice.

## **Part 3 Miscellaneous**

### **14 Issue of occupation certificates and registration of strata plans if building work levy unpaid—the Act, s 9**

For the Act, section 9(1)(f), the failure of a developer to pay a building work levy is prescribed.



## 15 Secretary may issue prohibition order if rectification bond not provided

- (1) For the purposes of the Act, section 9(1)(f), the Secretary may make a prohibition order in relation to a residential apartment building if—
  - (a) the Secretary has accepted, under the Act, section 28(1), a written undertaking from a developer that the developer will provide the Secretary with a rectification bond in relation to the residential apartment building, and
  - (b) the rectification bond required under the terms of the undertaking has not been provided to the Secretary.

- (2) In this clause—

**rectification bond**, in relation to a residential apartment building, means a bank guarantee, bond or other form of security acceptable to the Secretary, that may be claimed or realised by the Secretary, or another party approved by the Secretary, to meet the costs of eliminating, minimising or remediating a serious defect or a potential serious defect in the residential apartment building.

## 15A Secretary may issue prohibition order for failure in relation to strata scheme decennial insurance

For the Act, section 9(1)(f), a failure of a developer of a strata scheme to comply with the [Strata Schemes Management Regulation 2016](#), clause 55C is prescribed.

## 16 Exchange of information

For the purposes of the Act, section 65(7), definition of **relevant agency**, paragraph (b), the following persons and bodies are prescribed—

- (a) a local council,
- (b) an owner of a residential apartment building that is not subject to a strata scheme,
- (c) an owners corporation for a strata scheme for a residential apartment building,
- (d) a contractor or subcontractor engaged, for and on behalf of the Secretary, to carry out building work in relation to a residential apartment building.

## 17 Serious defects—safety risks

- (1) For the Act, section 3(1), definition of **serious defect**, paragraph (c), the use of a vertical transportation product in a building is a serious defect if the use of the product in the building poses a risk that persons are or will likely be at risk of death or serious injury.
- (2) A risk may be considered to arise from the use of a product in a building even if the risk will only arise in certain circumstances or if some other event occurs.

Example of another event—

fire

(3) In this clause—

**vertical transportation product** means machinery installed in a building and designed to move persons, vehicles or goods and includes a lift, escalator, moving walkway and parking systems and equipment.

Schedule 1 Penalty notice offences

1 Application of Schedule

- (1) For the purposes of section 57 of the Act—
- (a) each offence created by a provision specified in this Schedule is an offence for which a penalty notice may be issued, and
  - (b) the amount payable for the penalty notice is the amount specified opposite the provision.
- (2) If the provision is qualified by words that restrict its operation to limited kinds of offences or to offences committed in limited circumstances, the penalty notice may be issued only for—
- (a) that limited kind of offence, or
  - (b) an offence committed in those limited circumstances.

Column 1	Column 2	Column 3
Provision	Penalty—individuals	Penalty—corporations
Offences under the Act		
Section 7	\$11,000	\$33,000
Section 8	\$1,500	\$5,500
Section 9(7)	\$3,000	\$11,000
Section 27	\$11,000	\$33,000
Section 37(2)	—	\$220
Section 45(2)	—	\$220

Schedule 2 Adjustment of building work levy for inflation

clause 9

1 Definitions

In this Schedule—

**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 monetary unit for purposes of Regulation

- (1) For this Regulation, a **monetary unit** is—
- (a) in the financial year 2022-23—\$100, 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 2022.

- (2) The amount of a monetary 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 monetary unit calculated for any financial year is less than the amount that applied for the previous financial year, then the amount for the previous financial year applies instead.

Editorial note—

Fee unit amount calculated under this clause—

Financial year	Fee unit amount
2023-24	\$107.28

### **3 Rounding of levy amounts**

The amount of a levy calculated by reference to a monetary unit is to be rounded to the nearest dollar and an amount of 50 cents is to be rounded down.

### **4 Notice of indexed levies**

- (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 monetary unit for the next financial year so that 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 levies applying in each financial year resulting from the application of the amount of a monetary unit calculated under this Schedule.
- (2) This Schedule operates to change an amount of a building work levy calculated by reference to a monetary unit and the change is not dependent on the notification or other notice required by this clause.