

DESIGN AND BUILDING PRACTITIONERS BILL 2019

Schedule of the amendments referred to in the Legislative Council's message of 2 June 2020.

No. 1 **GOVT No. 1 [c2020-077A]**

Page 2, clause 2, line 6. Omit all words on that line. Insert instead—

- (1) This Act commences on the date of assent to this Act, except as provided by subsections (2) and (3).
- (2) Part 2, Division 1 of Part 2A and Parts 4–8 and clauses 2–4 of Schedule 1 commence on 1 July 2021.
- (3) Division 2 of Part 2A commences on a day or days to be appointed by proclamation.

No. 2 **OPP No. 1 [c2020-079]**

Page 2, clause 3(1), definition of *practitioner*, line 29. Insert “, professional engineer, specialist practitioner” after “principal design practitioner”.

No. 3 **SFF No 1 [c2020-072]**

Page 2, clause 3(1). Insert after line 30—

preparing or *varying* a regulated design or other design means—

- (a) actually preparing or varying the design, or
- (b) coordinating or supervising the preparation or variation of the design.

No. 4 **OPP No. 2 [c2020-079]**

Page 2, clause 3(1). Insert after line 35—

professional engineer means a person who carries out professional engineering work in a prescribed area of engineering within the meaning of section 29B.

professional engineering work—see section 29A.

No. 5 **OPP No. 3 [c2020-079]**

Page 2, clause 3(1), definition of *register*, line 36. Omit “design practitioner, principal design practitioner or building practitioner”. Insert instead “registered practitioner”.

No. 6 **OPP No. 4 [c2020-079]**

Page 2, clause 3(1), definition of *registered practitioner*, line 44. Insert “, registered professional engineer, registered specialist practitioner” after “design practitioner”.

No. 7 **OPP No. 5 [c2020-079]**

Page 3, clause 3(1). Insert after line 3—

registered professional engineer means a person who is registered as a professional engineer under this Act or recognised as a professional engineer under this Act.

registered specialist practitioner means a person who is registered as a specialist practitioner under this Act or recognised as a specialist practitioner under this Act.

No. 8 **OPP No. 6 [c2020-079]**

Page 3, clause 3(1), lines 4 and 5. Omit “registered design practitioner, principal design practitioner or building practitioner”. Insert instead “registered practitioner”.

No. 9 **OPP No. 7 [c2020-079]**

Page 3, clause 3(1). Insert after line 8—

specialist practitioner means a person who carries out specialist work.

specialist work—see section 29D.

No. 10 **SFF No 2 [c2020-072]**

Page 3, clause 3(2), lines 13–15. Omit all words on those lines.

No. 11 **SFF No. 3 [c2020-072]**

Page 3, clause 5. Insert after line 36—

- (2) The regulations may prescribe the form and content of regulated designs or regulated designs belonging to a particular class.
- (3) The Minister may, by order published in the Gazette, specify particulars that are additional to those (if any) prescribed by the regulations for regulated designs or regulated designs belonging to a particular class.
- (4) An order under subsection (3) is to be made available on the website of the Department as soon as practicable after it is published in the Gazette.

No. 12 **SFF No. 4 [c2020-072]**

Page 3, clause 6(1)(a), line 39. Omit “, as prescribed by the regulations”. Insert instead “within the meaning of the *Building Code of Australia*”.

- No. 13 **SFF No. 5 [c2020-072]**
Page 3, clause 6(1)(c), line 43. Insert “in-ground and other” before “foundations”.
- No. 14 **SFF No. 6 [c2020-072]**
Page 4, clause 6(1)(e), line 1. Omit all words on that line. Insert instead—
(e) those aspects of the mechanical, plumbing and electrical services for a building that are required to achieve compliance with the *Building Code of Australia*,
- No. 15 **SFF No. 7 [c2020-072]**
Page 6, clause 9(1)(a), line 6. Insert “prepared by the practitioner” after “regulated design”.
- No. 16 **SFF No. 8 [c2020-072]**
Page 6, clause 9(2)(a), line 14. Insert “prepared by either practitioner” after “regulated design”.
- No. 17 **SFF No. 9 [c2020-072]**
Page 6, clause 9(2)(b), line 16. Omit “a further varied design”. Insert instead “the regulated design as varied by the practitioner”.
- No. 18 **SFF No. 10 [c2020-072]**
Page 6, clause 9(3)(a), line 24. Insert “prepared by either practitioner” after “regulated design”.
- No. 19 **SFF No. 11 [c2020-072]**
Page 6, clause 9(3)(b), line 26. Omit “a further varied design”. Insert instead “the regulated design as varied by the practitioner”.
- No. 20 **GOVT No. 2 [c2020-077A]**
Page 8. Insert after line 39—

14A Provision of relevant documents to Secretary

- (1) A building practitioner who does building work must ensure that the relevant documents for the building work are provided to the Secretary no later than 90 days after the occupation certificate is issued for the building or part of the building to which the building work relates.

Maximum penalty—300 penalty units (in the case of a body corporate) or 100 penalty units (in any other case).

- (2) The regulations may make provision with respect to the manner and form in which a relevant document is to be provided to the Secretary.

(3) Without limiting subsection (2), a regulation made under that subsection may require relevant documents to be lodged electronically through an internet site or an application established by or on behalf of the Department.

(4) In this section—

relevant document means—

- (a) each regulated design for which a design compliance declaration has been provided that reflects the building work that was carried out, and
- (b) any other documents (including designs) that relate to the building work and are prescribed by the regulations.

No. 21 **GOVT No. 3 [c2020-077A]**

Page 8, clause 15. Insert after line 44—

(1A) A person must, after making an application for an occupation certificate for a building to which building work relates, give written notice to each registered building practitioner who did the building work of the making of the application.

No. 22 **GOVT No. 4 [c2020-077A]**

Page 9, clause 15(2), line 1. Omit “The notice must be given within the period”. Insert instead “The notices under subsections (1) and (1A) must be given within the periods”.

No. 23 **OPP No. 8 [c2020-079]**

Page 10, clause 19(2). Insert after line 40—

- (a1) the registered design practitioner is given (or otherwise has access to in the manner prescribed by the regulations) any of the following that are relevant to the provision, by the registered design practitioner, of a design compliance declaration for the varied design—
 - (i) regulated designs,
 - (ii) design compliance declarations,
 - (iii) principal compliance declarations, and

No. 24 **OPP No. 9 [c2020-079]**

Page 11, clause 19(3). Insert after line 6—

- (a1) the registered design practitioner is given (or otherwise has access to in the manner prescribed by the regulations) any of the following that are relevant to the provision, by the

registered design practitioner, of a design compliance declaration for the design—

- (i) regulated designs,
- (ii) design compliance declarations,
- (iii) principal compliance declarations, and

No. 25 **OPP No. 10 [c2020-079]**

Page 13, clause 24. Insert after line 12—

- (3A) In determining whether a variation to a regulated design or building work complies with the *Building Code of Australia* for the purposes of this Act, the variation must not be considered in isolation but consideration must also be given to the effect of the variation on other aspects of the building work or other regulated designs for the building work.

No. 26 **GOVT No. 5 [c2020-077A]**

Page 13, clause 26, line 26. Omit “**certificates**”. Insert instead “**declarations**”.

No. 27 **OPP No. 11 [c2020-079]**

Page 14. Insert after line 40—

Part 2A Engineering work and specialist work

Division 1 Professional engineering work

29A Professional engineering work

- (1) For the purposes of this Act, *professional engineering work* means engineering work that requires, or is based on, the application of engineering principles and data to—
 - (a) a design, or
 - (b) a construction, production, operation or maintenance activity, relating to engineering.
- (2) However, engineering work is not *professional engineering work* if—
 - (a) the work is only provided in accordance with a document that states the procedure or criteria for carrying out the work and the work does not require the application of advanced scientifically based calculations, or
 - (b) the engineering work is prescribed by the regulations as not being professional engineering work.

- (3) For the purposes of this section, *engineering work* includes engineering services provided by a person.

29B Professional engineering work only carried out by professional engineers

- (1) A person must not carry out professional engineering work in a prescribed area of engineering unless—
- (a) the person is a registered professional engineer and the person's registration authorises the person to carry out the professional engineering work, or
 - (b) the person carries out the professional engineering work under the direct supervision of a person referred to in paragraph (a), or
 - (c) the person is authorised by the regulations to carry out the professional engineering work.

Maximum penalty—1,500 penalty units (in the case of a body corporate) or 500 penalty units (in any other case).

- (2) If a person carries out professional engineering work in contravention of subsection (1)—
- (a) no monetary or other consideration is payable for the carrying out of the professional engineering work, regardless of any contract or arrangement, and
 - (b) an amount paid for the carrying out of the professional engineering work is recoverable as a debt in a court of competent jurisdiction.

- (3) In this section—

prescribed area of engineering means the following—

- (a) structural engineering,
- (b) civil engineering,
- (c) mechanical engineering,
- (d) fire safety engineering,
- (e) electrical engineering,
- (f) an area of engineering prescribed by the regulations.

29C Registered professional engineers to be indemnified

- (1) A registered professional engineer must not—
- (a) carry out professional engineering work, or

- (b) hold out that the engineer is adequately insured with respect to the work,

unless the engineer is adequately insured with respect to the work.

Maximum penalty—300 penalty units (in the case of a body corporate) or 100 penalty units (in any other case).

- (2) For the purposes of this section, a registered professional engineer is *adequately insured* with respect to work if the engineer—
 - (a) is indemnified by insurance that complies with the regulations against any liability to which the engineer may become subject as a result of carrying out the work, or
 - (b) is part of some other arrangement approved by the regulations that provides indemnity against the liability.
- (3) It is a condition of registration that a registered professional engineer must provide to the Secretary, in the time specified by the Secretary, information that the Secretary may require to satisfy the Secretary that the engineer is adequately insured in accordance with this section.

Division 2 Specialist work

29D Specialist work

For the purposes of this Act, *specialist work* means—

- (a) the design, construction, installation or maintenance of a building element, or
- (b) other work, involving a building element, that is prescribed by the regulations,

but does not include work prescribed by the regulations as not being specialist work.

29E Specialist work only carried out by registered specialist practitioner

A person must not carry out specialist work unless—

- (a) the person is a registered specialist practitioner and the person's registration authorises the person to carry out the specialist work, or
- (b) the person is authorised by the regulations to carry out the specialist work.

Maximum penalty—1,500 penalty units (in the case of a body corporate) or 500 penalty units (in any other case).

Page 15, clause 30(1), lines 6–9. Omit all words on those lines. Insert instead—

building has the same meaning as it has in the Environmental Planning and Assessment Act 1979.

No. 29 **GRNS No. 2 [c2020-080]**

Page 15, clause 30(1). Insert after line 11—

building work includes residential building work within the meaning of the *Home Building Act 1989*.

No. 30 **GRNS No. 3 [c2020-080]**

Page 15, clause 30(1), definition of *construction work*. Insert after line 15—

- (d) supervising, coordinating, project managing or otherwise having substantive control over the carrying out of any work referred to in paragraph (a), (b) or (c).

No. 31 **GRNS No. 4 [c2020-080]**

Page 15, clause 30(1), lines 17 and 19. Omit “individual” wherever occurring. Insert instead “person”.

No. 32 **GRNS No. 5 [c2020-080]**

Page 15, clause 30(1), definition of *owner*, line 18. Omit “possession”.

No. 33 **GRNS No. 6 [c2020-080]**

Page 15, clause 30(1), definition of *owner*. Insert after line 18—

- (a1) for a lot within a strata scheme, the owner of a lot within the meaning of the *Strata Schemes Management Act 2015*,
- (a2) for a development lot or neighbourhood lot within a community scheme, the proprietor in relation to the lot within the meaning of the *Community Land Management Act 1989*,

No. 34 **GRNS No. 7 [c2020-080]**

Page 16, clause 31(4), lines 7–9. Omit all words on those lines. Insert instead—

- (4) The duty of care is owed to an owner whether or not the construction work was carried out—
 - (a) under a contract or other arrangement entered into with the owner or another person, or
 - (b) otherwise than under a contract or arrangement.

No. 35 **GRNS No. 8 [c2020-080]**

Page 16, clause 32. Insert after line 14—

(1A) The economic loss suffered by an owners corporation or association for the purposes of subsection (1) includes the reasonable costs of providing alternative accommodation where necessary.

No. 36 **GRNS No. 9 [c2020-080]**

Page 16, clause 32(3), line 17. Omit “Subsection (1) does not”. Insert instead “Subsections (1) and (1A) do not”.

No. 37 **OPP No. 12 [c2020-079]**

Page 19, clause 41(2), line 1. Insert “registration or recognition by professional bodies,” after “qualifications,”.

No. 38 **OPP No. 13 [c2020-079]**

Page 19, clause 44(1), line 17. Insert “, professional engineering work or specialist work” after “building work”.

No. 39 **OPP No. 14 [c2020-079]**

Page 19, clause 44. Insert after line 19—

(1A) The regulations may impose a condition of registration that a registered practitioner must comply with a code of practice prescribed by the regulations.

No. 40 **OPP No. 15 [c2020-079]**

Page 19, clause 44. Insert before line 20—

(1B) The regulations may impose a condition of registration that a registered practitioner must be registered or recognised by a professional body or a professional body belonging to a class of professional bodies.

No. 41 **OPP No. 16 [c2020-079]**

Page 20, clause 48(2)(a), lines 29–31. Omit all words on those lines. Insert instead—

- (a) the recognition of persons as registered practitioners who—
 - (i) hold designated qualifications, or
 - (ii) are registered or recognised as practitioners by a professional body or a professional body belonging to a class of professional bodies, or
 - (iii) are registered or recognised as practitioners under a law of this State or another State or a Territory or the Commonwealth,
- (a1) the requirements relating to the registration or recognition processes of professional bodies that register or recognise practitioners including the following—

- (i) how qualifications and competencies are to be assessed,
 - (ii) the time in which a decision on registration or recognition must be made,
 - (iii) the procedures to be used to monitor and improve the registration or recognition processes,
 - (iv) the maximum fees that may be charged,
 - (v) the requirements relating to continuing professional development,
 - (vi) audit requirements,
- (a2) the financial and other facilities that a professional body must have and other requirements that must be met before a professional body is able to register or recognise practitioners,

No. 42 **OPP No. 17 [c2020-079]**

Page 20, Part 4, Division 3. Insert after line 37—

48A Recognition of professional bodies for engineers

- (1) The recognition of a person as a registered professional engineer because the person is registered or recognised as a practitioner by a professional body of engineers may occur only if the professional body of engineers is recognised by the Secretary.
- (2) The Secretary may recognise a professional body of engineers only if the Secretary is satisfied that—
 - (a) the professional body's recognition or registration scheme—
 - (i) adequately provides for the assessment of qualifications and competencies of professional engineers in an area of engineering, and
 - (ii) is consistent with national and international standards for the recognition of professional engineers, and
 - (iii) has fees that are reasonable having regard to the scope of the services being offered, and
 - (iv) includes adequate continuing professional development requirements for professional engineers and an effective audit program to ensure continuing registration requirements are met, and
 - (v) meets the requirements, if any, prescribed by the regulations, and
 - (b) the professional body has—

- (i) adequate procedures for monitoring and improving the assessment process carried out under the scheme, and
- (ii) the financial capacity and facilities to conduct assessments of qualifications and competencies, and
- (iii) a proven capacity to undertake independent and authoritative assessments in a timely manner.

No. 43 **GOVT No. 6 [c2020-077A]**

Page 21, clause 51, lines 12–19. Omit all words on those lines. Insert instead—

A person must not falsely represent that the person or any other person—

- (a) can do anything that is only able to be done by a person who is registered under this Act, or
- (b) is a registered practitioner or is registered in a particular class as a registered practitioner.

No. 44 **OPP No. 18 [c2020-079]**

Page 24, clause 57(a), line 6. Insert “, professional engineering work or specialist work” after “building work”.

No. 45 **OPP No. 19 [c2020-079]**

Page 24, clause 57(c)(i), line 17. Insert “, professional engineering work or specialist work” after “building work”.

No. 46 **OPP No. 20 [c2020-079]**

Page 24, clause 57(d), line 25. Insert “, professional engineering work or specialist work” after “building work”.

No. 47 **OPP No. 21 [c2020-079]**

Page 24, clause 57(f), line 31. Insert “, professional engineering work or specialist work” after “building work”.

No. 48 **OPP No. 22 [c2020-079]**

Page 25, clause 60(b), line 41. Insert “, professional engineering work or specialist work” after “building work”.

No. 49 **GOVT No. 7 [c2020-077A]**

Page 30, clause 77(2)(k), line 37. Omit “building work”. Insert instead “a building or structure or part of a building or structure”.

No. 50 **OPP No. 23 [c2020-079]**

Page 32, clause 81, line 6. Insert “, professional engineering work or specialist work” after “building work”.

No. 51 **OPP No. 24 [c2020-079]**

Page 32, clause 82(1) and (2), lines 11–21. Omit all words on those lines. Insert instead—

- (1) The Secretary may, by order (a *stop work order*) in writing given to either or both of the following persons, order the person to ensure that building work, professional engineering work or specialist work stops—
 - (a) a person carrying out the work,
 - (b) the owner of the land on which the work is being carried out.
 - (2) The Secretary may give a stop work order only if the Secretary is of the opinion that—
 - (a) the work is, or is likely to be, carried out in contravention of this Act, and
 - (b) the contravention could result in significant harm or loss to the public or occupiers or potential occupiers of the building to which the work relates or significant damage to property.
- (2A) A stop work order takes effect on the day it is given to the person who is the subject of the order or on a later day specified in the order.

No. 52 **OPP No. 25 [c2020-079]**

Page 32, clause 82(4), lines 23 and 24. Omit “a building practitioner or the owner of land”. Insert instead “the person”.

No. 53 **OPP No. 26 [c2020-079]**

Page 33, clause 85(1)(b), line 17. Insert “, professional engineering work or specialist work” after “building work”.

No. 54 **OPP No. 27 [c2020-079]**

Page 36, clause 91(1), lines 3–6. Omit all words on those lines. Insert instead—

- (1) The Secretary is to maintain a register of registered practitioners that contains the information prescribed by the regulations.
- (1A) Different registers may be maintained under this section for different types of registered practitioners.

No. 55 **OPP No. 28 [c2020-079]**

Page 36, clause 91(3), line 9. Omit “particulars”. Insert instead “information”.

No. 56 **OPP No. 29 [c2020-079]**

Page 38, clause 97(1)(b), line 23. Insert “, professional engineering work or specialist work” after “building work”.

No. 57 **OPP No. 30 [c2020-079]**

Page 40, clause 100(2)(d), line 11. Insert “, professional engineering work or specialist work” after “building work”.

No. 58 **GRNS No. 1 [c2020-069B]**

Page 40. Insert after line 31—

102 Review of Act

- (1) The Public Accountability Committee of the Legislative Council is to review this Act—
 - (a) to consider the functions exercised or delegated by the Secretary, and
 - (b) to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain effective for securing those objectives, and
 - (c) to consider the desirability of establishing an independent NSW Building Commission to instead exercise the regulatory and oversight functions under this Act and other Acts relating to the construction of buildings.
- (2) The review is to be undertaken as soon as possible after 30 March 2022.
- (3) A report on the outcome of the review is to be tabled in the Legislative Council by 30 June 2022 (or by a later day determined by the Committee).
- (4) The Minister is to table in the Legislative Council a written response to the report within 3 months after the tabling of the report.

No. 59 **GRNS No. 10 [c2020-080]**

Page 41, lines 41 and 42 and page 42, lines 1–29, Schedule 1, clause 5. Omit all words on those lines. Insert instead—

- (1) Part 3 of this Act extends to construction work carried out before the commencement of section 31 as if the duty of care under that Part was owed by the person who carried out the construction work to the owner of the land and to subsequent owners when the construction work was carried out.
- (2) Subclause (1) only applies to economic loss caused by a breach of the duty of care extended under that subclause if—
 - (a) the loss first became apparent within the 10 years immediately before the commencement of section 31, or
 - (b) the loss first becomes apparent on or after the commencement of that section.
- (3) Part 3 of the Act as extended by subclause (1) applies regardless of whether an action for breach of a common law duty of care has commenced before the commencement of section 31 and may be taken into account in those

proceedings unless the court considers that it would not be in the interests of justice to do so.

- (4) Section 34 extends to a contract, agreement or stipulation relating to the construction work whenever made.
- (5) For the purposes of this clause, a loss becomes apparent when an owner entitled to the benefit of the duty of care under Part 3 of this Act first becomes aware (or ought reasonably to have become aware) of the loss.
- (6) Words and expressions used in this clause have the same meaning as in Part 3 of this Act.

No. 60 **OPP No. 31 [c2020-079]**

Long title. Insert “, professional engineers, specialist practitioners” after “principal design practitioners”.