



New South Wales

Building Legislation Amendment Bill 2021

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend building, design and electricity legislation as follows—

- (a) to amend the *Design and Building Practitioners Act 2020* to—
 - (i) clarify obligations relating to the variation of building work, and
 - (ii) enable regulations to be made in relation to the recognition of professional bodies of engineers by the Secretary of the Department of Customer Service (the **Secretary**), and
 - (iii) enable administrative review of a decision of the Secretary relating to the recognition of a professional body of engineers, and
 - (iv) enable regulations to be made to provide for the waiver, reduction, postponement or refund of fees, and
 - (v) enable regulations to be made to exempt persons from the operation of the Act,
- (b) to amend the *Residential Apartment Buildings (Compliance and Enforcement Powers) Act 2020* to—
 - (i) enable the Secretary to impose a levy on developers, and
 - (ii) increase certain penalties, provide that certain offences under the Act are continuing offences and set out the penalties for each day the offences continue, and
 - (iii) enable the Secretary to prohibit the issue of an occupation certificate or strata plan registration if a direction has not been complied with under the Act, or if other circumstances exist as prescribed by the regulations, and

- (iv) enable the Local Court or Land and Environment Court, if a person is convicted of failing to comply with an order or direction under the Act, to order the person to comply with the order or direction,
- (c) to transfer provisions relating to electricity metering from the *Electricity Supply Act 1995* to the *Gas and Electricity (Consumer Safety) Act 2017*,
- (d) to amend the *Home Building Act 1989* to enable the Secretary to specify, by notice published in the Gazette, the qualifications and experience required to be held by an applicant for a contractor licence, supervisor or tradesperson certificate.

Outline of provisions

Clause 1 sets out the name, also called the short title, of the proposed Act.

Clause 2 provides for the commencement of the proposed Act.

Schedule 1 Amendment of Design and Building Practitioners Act 2020 No 7

Schedule 1[1] and [2] clarify offences in the Act, section 20(2) and (3) to require building practitioners to take all reasonable steps to ensure the requirements of those subsections are complied with before varied building work commences.

Schedule 1[3] and [4] enable regulations to be made in relation to the recognition by the Secretary of professional bodies of engineers with the function of registering or recognising practitioners.

Schedule 1[5] enables the administrative review of decisions made by the Secretary in relation to the recognition of professional bodies of engineers.

Schedule 1[6] enables regulations to be made in relation to fees for the lodgment of documents on the NSW planning portal and for the waiver, reduction, postponement or refund of fees.

Schedule 1[7] enables regulations to be made to exempt all persons or bodies, specified persons or bodies or classes of persons or bodies, or all work, specified work or classes of work, or all or specified registrations, from any specified provision of the Act.

Schedule 2 Amendment of Residential Apartment Buildings (Compliance and Enforcement Powers) Act 2020 No 9

Schedule 2[1] enables the Secretary to impose, in accordance with regulations, a levy on developers to be paid into the Home Building Administration Fund.

Schedule 2[2], [3] and [5] amends certain offences to be continuing offences and sets out the penalties for each day the offences continue. **Schedule 2[5]** also increases the current maximum penalty for an offence relating to a person failing to comply with a direction of an authorised officer without reasonable excuse.

Schedule 2[4] enables the Secretary to make an order prohibiting the issue of an occupation certificate in relation to a residential apartment building and, if relevant, the registration of a strata plan for a strata scheme in relation to a residential apartment building if a developer, in relation to building work of the residential apartment building, fails to comply with a direction of an authorised officer, or if other circumstances exist as prescribed by the regulations.

Schedule 2[6] enables the Local Court or Land and Environment Court, if a person is convicted of failing to comply with an order or direction under the Act, to order the person to comply with the order or direction.

Schedule 3 Amendment of Home Building Act 1989 No 147

Schedule 3 amends the *Home Building Act 1989* to enable the Secretary to specify, by notice published in the Gazette, the qualifications and experience required to be held by an applicant for a contractor licence or supervisor or tradesperson certificate. A notice published in the Gazette before the commencement of the proposed Act is taken to have been validly made.

Schedule 4 Amendment of electricity legislation

Schedule 4 transfers provisions relating to electricity metering from the *Electricity Supply Act 1995* to the *Gas and Electricity (Consumer Safety) Act 2017*.



New South Wales

Building Legislation Amendment Bill 2021

Contents

		Page
	1 Name of Act	2
	2 Commencement	2
Schedule 1	Amendment of Design and Building Practitioners Act 2020 No 7	3
Schedule 2	Amendment of Residential Apartment Buildings (Compliance and Enforcement Powers) Act 2020 No 9	5
Schedule 3	Amendment of Home Building Act 1989 No 147	7
Schedule 4	Amendment of electricity legislation	8



New South Wales

Building Legislation Amendment Bill 2021

No. , 2021

A Bill for

An Act to make miscellaneous amendments to certain building and design legislation; to amend electricity legislation to transfer provisions relating to electricity metering; and for other purposes.

The Legislature of New South Wales enacts—	1
1 Name of Act	2
This Act is the <i>Building Legislation Amendment Act 2021</i> .	3
2 Commencement	4
(1) This Act commences on the date of assent to this Act, except as provided by this section.	5 6
(2) Schedule 1[3]–[5] commence on a day or days to be appointed by proclamation.	7
(3) Schedule 1[1], [2], [6] and [7] commence on 1 July 2021.	8

Schedule 1	Amendment of Design and Building Practitioners Act 2020 No 7	1
		2
[1] Section 20 Variations after building work commences		3
Omit “is varied after commencement of the work from a regulated design for the building element or performance solution” from section 20(2).		4
		5
Insert instead “is to be varied from a regulated design for the building element or performance solution, before the varied building work commences”.		6
		7
[2] Section 20(3)		8
Omit “if after commencement of the work the work is varied so as to require a new building element or performance solution for which a regulated design is required”.		9
		10
Insert instead “if the work is to be varied so as to require a new building element or performance solution for which a regulated design is required, before the varied building work commences”.		11
		12
		13
[3] Section 55 Recognition of professional bodies for engineers		14
Insert after section 55(2)(a)(v)—		15
(vi) complies with guidelines, if any, adopted and published by the Secretary, and		16
		17
[4] Section 55(3)		18
Insert after section 55(2)—		19
(3) Subject to subsection (2), the regulations may make further provision for or with respect to the recognition by the Secretary of a professional body of engineers for the purposes of this Act, including—		20
		21
		22
(a) applications for, or for renewal of, recognition, including recognition by the Secretary for reasons the Secretary considers relevant,		23
		24
(b) refusal of recognition, including refusal of recognition by the Secretary for reasons the Secretary considers relevant,		25
		26
(c) conditions of recognition, including conditions relating to the keeping of records, disclosure of information, the investigation or auditing of professional bodies of engineers or other conditions imposed by the Secretary, including conditions the Secretary considers relevant,		27
		28
		29
		30
(d) variation of conditions of recognition,		31
(e) fees for applications for, renewal of or variation of conditions of recognition,		32
		33
(f) the duration of recognition, including a duration set by the Secretary,		34
(g) the suspension or cancellation of recognition, including suspension or cancellation by the Secretary for reasons the Secretary considers relevant,		35
		36
		37
(h) the functions of recognised professional bodies of engineers relating to registering or recognising practitioners.		38
		39
[5] Section 55A		40
Insert after section 55—		41

55A	Review by Civil and Administrative Tribunal	1
	A person aggrieved by any of the following decisions may apply to the Tribunal for an administrative review under the <i>Administrative Decisions Review Act 1997</i> of—	2
		3
		4
	(a) a decision of the Secretary to refuse to recognise a professional body of engineers,	5
		6
	(b) a decision of the Secretary to suspend or cancel recognition of a professional body of engineers,	7
		8
	(c) a decision of the Secretary to impose or vary a condition on a recognition of a professional body of engineers, or on the suspension or cancellation of a recognition,	9
		10
		11
	(d) a decision prescribed by the regulations for the purposes of this section.	12
[6]	Section 107 Regulations	13
	Insert after section 107(2)(g)—	14
	(h) the waiver, reduction, postponement or refund by the Secretary of fees payable or paid under this Act or the regulations,	15
		16
	(i) fees for the lodgment of documents on the NSW planning portal.	17
[7]	Section 107(5)	18
	Omit section 107(5). Insert instead—	19
	(5) The regulations may exempt all persons or bodies, specified persons or bodies or classes of persons or bodies, or all work, specified work or classes of work, or all or specified registrations, from any specified provision of this Act.	20
		21
		22

Schedule 2 **Amendment of Residential Apartment Buildings (Compliance and Enforcement Powers) Act 2020 No 9**

[1] **Section 6A**

Insert after section 6—

6A Levy may be imposed by Secretary

- (1) The Secretary may, in accordance with the regulations, impose a levy on a developer in relation to building work.
- (2) The levy is to be paid into the Fund.
- (3) The regulations may deal with the imposition of levies, including in relation to the following—
 - (a) the determination of rate of levies, including the charging of interest on unpaid levies,
 - (b) providing for the period within which a levy is payable,
 - (c) describing the grounds on which any particular type of levy may be imposed,
 - (d) the developers or class of developers on which a levy may be imposed,
 - (e) the recovery of levies,
 - (f) the waiver, reduction, postponement or refund of a levy by the Secretary.
- (4) A levy under this section may be recovered by the Secretary as a debt due to the Crown in a court of competent jurisdiction and must be paid into the Fund.
- (5) In this section—
Fund means the Home Building Administration Fund, established under the *Home Building Act 1989*, Part 7.

[2] **Section 7 Notification to Secretary of intended completion of building work**

Omit the penalty. Insert instead—

Maximum penalty—

- (a) for a body corporate—1,000 penalty units and in addition, in the case of a continuing offence, 100 penalty units for each day the offence continues, or
- (b) otherwise—200 penalty units and in addition, in the case of a continuing offence, 20 penalty units for each day the offence continues.

[3] **Section 8 Notification of change to expected date**

Omit the penalty. Insert instead—

Maximum penalty—

- (a) for a body corporate—500 penalty units and in addition, in the case of a continuing offence, 50 penalty units for each day the offence continues, or
- (b) otherwise—100 penalty units and in addition, in the case of a continuing offence, 10 penalty units for each day the offence continues.

[4] Section 9 Occupation certificates and strata plan registrations not to occur in certain circumstances	1
Insert after section 9(1)(d)—	2
(e) a developer, in relation to building work of the residential apartment building, fails to comply with a direction of an authorised officer under section 17 or 18,	3
(f) other circumstances prescribed by the regulations for the purposes of this section exist.	4
[5] Section 27 Failure to comply with direction	5
Omit the penalty. Insert instead—	6
Maximum penalty—	7
(a) for a body corporate—10,000 penalty units and in addition, in the case of a continuing offence, 1,000 penalty units for each day the offence continues, or	8
(b) otherwise—2,000 penalty units and in addition, in the case of a continuing offence, 200 penalty units for each day the offence continues.	9
[6] Section 56B	10
Insert before section 57—	11
56B Additional orders	12
(1) If a person is convicted by a court of failing to comply with an order or direction under this Act or the regulations, the court may order the person to comply with the order or direction.	13
(2) The court may, in the order, fix a period for compliance and impose other requirements the court considers necessary or expedient for enforcement of the order.	14
(3) A person who fails to comply with an order under this section is guilty of an offence.	15
Maximum penalty—	16
(a) for a body corporate—3,000 penalty units and in addition, in the case of a continuing offence, 300 penalty units for each day the offence continues, or	17
(b) otherwise—1,000 penalty units and in addition, in the case of a continuing offence, 100 penalty units for each day the offence continues.	18
(4) If an order is made under this section, conduct to which the order relates is only to be prosecuted under this section and not by way of a continuing offence under another section of this Act.	19

Schedule 3	Amendment of Home Building Act 1989 No 147	1
[1]	Section 20 Issue of contractor licences	2
	Omit section 20(2). Insert instead—	3
	(2) The Secretary may, by notice published in the Gazette, specify qualifications and experience, or additional standards or other requirements, required to be held or met by an applicant for a contractor licence.	4 5 6
[2]	Section 20(5)	7
	Omit “determining”.	8
	Insert instead “the specification of qualifications and experience, or additional”.	9
[3]	Section 25 Issue of certificates	10
	Omit section 25(2). Insert instead—	11
	(2) The Secretary may, by notice published in the Gazette, specify qualifications and experience, or additional standards or other requirements, required to be held or met by an applicant for a supervisor or tradesperson certificate.	12 13 14
[4]	Section 25(4)(a)	15
	Omit “determining of qualifications”.	16
	Insert instead “specification of qualifications and experience, or additional standards”.	17
[5]	Schedule 4 Savings and transitional provisions	18
	Insert at the end of the Schedule, with appropriate Part and clause numbering—	19
Part	Provisions consequent on enactment of Building Legislation Amendment Act 2021	20 21
	Qualifications and experience required by licence and certificate applicants	22
	(1) For the purposes of section 20(2), a notice published in the Gazette before the commencement of the amending Act, specifying the qualifications and experience required to be held by an applicant for a contractor licence, is taken to have been validly made and to be valid on and from the date the notice was published.	23 24 25 26 27
	(2) For the purposes of section 25(2), a notice published in the Gazette before the commencement of the amending Act, specifying the qualifications and experience required to be held by an applicant for a supervisor or tradesperson certificate, is taken to have been validly made and to be valid on and from the date the notice was published.	28 29 30 31 32
	(3) In this clause—	33
	<i>amending Act</i> means the <i>Building Legislation Amendment Act 2021</i> .	34

Schedule 4 Amendment of electricity legislation

4.1 Electricity Supply Act 1995 No 94

Schedule 6 Savings, transitional and other provisions

Omit “at the beginning of 1 June 2021” wherever occurring in clauses 71(5) and 71A(7).

Insert instead “on the commencement of the *Building Legislation Amendment Act 2021*”.

4.2 Gas and Electricity (Consumer Safety) Act 2017 No 15

[1] Part 5, Division 3

Insert after Part 5, Division 2—

Division 3 Electrical meter installations

38AA Definitions

In this Division—

advanced meter means a meter that is a type 4 metering installation referred to in the *National Electricity Rules*, Chapter 7.

Australian/New Zealand Wiring Rules means the Australian and New Zealand Standard, entitled AS/NZS 3000:2018, *Electrical installations*, (known as the Australian/New Zealand Wiring Rules), as in force from time to time, published jointly by Standards Australia and Standards New Zealand.

metering co-ordinator has the same meaning as it has in the *National Electricity Rules*.

retailer has the same meaning as it has in the *National Energy Retail Law (NSW)*.

38AB Installation of advanced meters by retailers and metering co-ordinators

- (1) A retailer or metering co-ordinator who provides, installs, maintains or replaces an advanced meter must ensure that—
 - (a) a person engaged to install an advanced meter—
 - (i) is a qualified person, and
 - (ii) has undertaken appropriate training in the installation of advanced meters, including de-energisation and re-energisation of electrical installations, and
 - (b) safety and compliance testing is carried out in relation to each installation as required by the *Gas and Electricity (Consumer Safety) Regulation 2018*, Parts 8 and 9.
- (2) A retailer or metering co-ordinator must not install an advanced meter in relation to premises at which 1 or more persons require life support equipment unless the occupier of the premises is given—
 - (a) at least 4 business days’ notice of the proposed installation, or
 - (b) a shorter period as may be agreed, in writing, between the occupier and retailer or metering co-ordinator.
- (3) The *Electricity Supply Act 1995*, Schedule 2, clauses 8—except for clause 8(1)(d)—and 9 apply to a retailer or metering co-ordinator who contravenes this section or section 38AC in the same way as they apply to a licensee who contravenes a requirement of the *Electricity Supply Act 1995*.

(4)	In this section—	1
	<i>life support equipment</i> has the same meaning as it has in the <i>National Energy Retail Rules</i> .	2
	<i>qualified person</i> —	3
	(a) means a person authorised under the <i>Home Building Act 1989</i> to do electrical wiring work without supervision, and	4
	(b) in relation to the testing of a consumer’s aerial wiring system, within the meaning of the Australian/New Zealand Wiring Rules—includes a person who is authorised to test a distributor’s overhead lines.	5
		6
		7
		8
		9
38AC	Metering safety management system requirements	10
(1)	Without limiting section 38AB, a metering co-ordinator who provides, installs, maintains or replaces an advanced meter must have a safety management system in place that—	11
	(a) ensures compliance with section 38AB(1), and	12
	(b) satisfies the requirements of the Code for Safe Meter Installation.	13
	Maximum penalty—	14
	(a) for a corporation—500 penalty units, or	15
	(b) for an individual—250 penalty units.	16
(2)	A retailer must ensure that a metering co-ordinator engaged by the retailer to install, maintain or replace an advanced meter has a safety management system in place that complies with this section.	17
		18
(3)	The Secretary may, by written notice, direct a metering co-ordinator to amend a safety management system if, in the opinion of the Secretary, the safety management system does not comply with this section.	19
		20
		21
(4)	The metering co-ordinator must comply with the direction.	22
	Maximum penalty—	23
	(a) for a corporation—500 penalty units, or	24
	(b) for an individual—250 penalty units.	25
(5)	Before providing, installing, maintaining or replacing an advanced meter, a metering co-ordinator must—	26
	(a) have provided documentation relating to the co-ordinator’s safety management system to the Secretary, and	27
	(b) ensure—	28
	(i) the safety management system is brought to the attention of the persons engaged by the metering co-ordinator to install, replace or maintain an advanced meter, and	29
	(ii) a copy of the documents relating to the system are made readily available to those persons.	30
	Maximum penalty—	31
	(a) for a corporation—500 penalty units, or	32
	(b) for an individual—250 penalty units.	33
(6)	In this section—	34
	<i>Code for Safe Meter Installation</i> means the <i>Code for safe installation of direct-connected whole current electricity metering in NSW—Minimum requirements for safety management systems</i> , published in the Gazette by the	35
		36
		37
		38
		39
		40
		41
		42
		43
		44
		45

Department of Planning, Industry and Environment, as in force from time to time.	1 2
[2] Section 47 Restrictions on power of entry to residential premises	3
Insert at the end of section 47(b)—	4
, or	5
(c) for the sole purpose of reading an electricity meter.	6
[3] Section 55A	7
Insert after section 55—	8
55A Powers of entry—electricity works and meters	9
(1) An authorised officer of a network operator may enter premises for the purpose of exercising the following functions—	10 11
(a) carrying out preliminary investigations in connection with the proposed installation or extension of electricity works,	12 13
(b) reading electricity meters.	14
(2) An authorised officer of a retailer may enter the premises of a customer for the following purposes—	15 16
(a) reading, testing, maintaining, inspecting or altering any meter installed at the premises,	17 18
(b) calculating or measuring energy supplied or taken at the premises,	19
(c) checking the accuracy of metered consumption at the premises,	20
(d) replacing meters,	21
(e) any other purpose prescribed by the regulations relating to metering.	22
(3) A power of entry to premises under this section may be exercised—	23
(a) if there is a problem with a meter on the premises that poses a risk to safety, by an authorised officer of a retailer—at any time, or	24 25
(b) otherwise—only during daylight hours.	26
(4) In exercising a power under this section, an authorised officer must do as little damage as possible.	27 28
(5) Without limiting subsection (4) and as far as practicable, entry onto fenced land—	29 30
(a) is to be made through an existing opening in the fence, or	31
(b) if entry through an existing opening is not practicable—	32
(i) through a new opening, and	33
(ii) the new opening is to be properly closed when the need for entry ends.	34 35

- (6)

In this section—
authorised officer of a network operator or retailer has the meaning given by
the *Electricity Supply Act 1995*, section 94.

1
2
3