



JUNE 2021

IMPORTANT CHANGES FOR THE DESIGN AND BUILDING PRACTITIONERS EFFECTIVE 1 JULY 2021

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In December 2020, the Government introduced for discussion the ***Design and Building Practitioners Regulation 2020***. This will become effective from 1 July 2021 and applies to Class 2 residential/mixed-use buildings only.

We set out below the key features of the Regulation:

REGISTRATION

Practitioners must be registered. This applies to all principal design practitioners, design practitioners and professional engineers.

The Regulations set out different classes of registration for design, building, practitioners and engineers and the different types of work authorised by registration.

DESIGN COMPLIANCE DECLARATIONS

Increased requirements apply covering design compliance declarations and the content of those declarations to be issued for regulated designs (i.e. designs for fire safety systems, waterproofing, internal/external load-bearing components of a building essential for its stability) or declarations concerning compliance with the Building Code of Australia (BCA).

These compliance declarations are to provide details about the design, including whether it integrates other aspects of building work to which the design relates, or whether the design to which the compliance declaration relates involves a performance solution.

INSURANCE

Design practitioners and professional engineers must be insured. They must hold a professional indemnity insurance policy that provides an adequate level of indemnity for any liability that could be incurred by the practitioner.

These insurance requirements provide a two-year window for compliance and commence on 1 July 2023.

All design and building work must be carried out by a registered design and building practitioner and professional engineer who is indemnified under a professional indemnity policy.

INSURANCE FOR CORPORATE ENTITIES & PARTNERSHIPS

For a registered design and building practitioner and professional engineer carrying out work under a corporate entity and a partnership, they must ensure they have a professional indemnity policy which covers all liability of the registered corporation/partnership since it first became a design practitioner or principal design practitioner.

The Regulation recognises the current registration of professional bodies of engineers.

Professional indemnity policies must provide an adequate level of indemnity for liability that could be incurred by the practitioner or professional engineer in the course of their work. They should keep records supporting the adequacy of the policy and to cover the risk of loss that may arise in the course of their professional duties.

Those records should be retained for at least 5 years and must be provided to the Department of Customer Service if required.

WHAT IS AN ADEQUATE LEVEL OF INDEMNITY?

To determine whether an adequate level of indemnity is provided, the policy must cover or take into account the following matters:

- nature of risks associated with the work typically carried out by the practitioner or professional engineer;
- the volume of work typically carried out by them;
- the length of time that the practitioner or registered engineer has been registered;
- a reasonable estimate of claims that could be brought against the practitioner/professional engineer;
- the financial capacity of the practitioner/professional engineer; and
- any limits, exceptions, exclusions or terms and conditions of the policy.

Watch out for our **NEW** e-Book dealing with these changes in detail to be released in **July 2021!**

For our previous publications on the DBPA and recent reforms refer to the ***following*** Kreisson Insights links:

1. [Construction Law Reform](#) by Anish Wilson
2. [Recent Building and Construction Reform](#) by Anthony Herron
3. [Podcast in relation to the DPB Act 26 June 2020](#) by Anthony Herron
4. [Certifiers and Building Professionals NSW](#) by Anthony Herron
5. ["Game Changer for Developers: The Residential Apartment Buildings \(Compliance and Enforcement Powers Act 2020\)"](#) by Matthew Singh
6. [E-Book: Major Changes to the NSW Building Industry - August 2020](#) by Anthony Herron



CONTACT US

If you would like assistance or further information, please do not hesitate to contact Special Counsel **Anthony Herron** at Kreisson on (02) 82396500 or at excellence@kreisson.com.au.

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