

Proposed Fees for *Design and Building Practitioners Act*

Explanatory Note

Overview

The Design and Building Practitioners Amendment (Fees) Regulation 2021 (**Amendment Regulation**) will insert the fees payable for registration under the *Design and Building Practitioners Act 2020 (Act)* into the Design and Building Practitioners Regulation 2020 (**Regulation**).

The Regulation, published on 9 April 2021, provides legislative support for the operation of the Act to facilitate its commencement on 1 July 2021.

The Act and Regulation deliver on the reforms committed to by the 2019 Government Response to the Building Confidence Report, commissioned by the national Building Ministers' Forum and authored by Professor Peter Shergold AC and Ms Bronwyn Weir. The Act and Regulation aim to improve compliance and enforcement systems for the building and construction industry in NSW. More information on the reforms are available at - <https://www.fairtrading.nsw.gov.au/housing-and-property/changes-to-class-2-buildings>.

Objective and rationale of the Amendment Regulation

Prescribe the fees to give support to the registration schemes

Section 107(2)(g) of the Act allows the Regulation to make provision with respect to the fees payable under the Act. This includes the refund, reduction, postponement or waiver of any fees.

Fees under the Amendment Regulation comprise of two components: the fixed fee unit, and the processing fee unit.

The **fixed fee unit** refers to the part of the fee that reflects the cost of obtaining the benefit of registration. This part of the fee enables application fees to be partially refunded in certain circumstances, recognising that the intended outcome of the application (being registered under the Act) has not been achieved.

The **processing fee unit** refers to the part of the fee that reflects the administrative and resourcing costs that are necessary to process an application. This portion of the fee is not refundable, as the Department bears the administrative and resourcing costs regardless of the outcome of the application.

In addition to the refund of fees, the Amendment Regulation also includes provisions to facilitate the waiver, reduction or postponement of fees in certain circumstances.

Discussion of development of fees

The following discussion points provide context for the process that was used to develop the fees contained in the Amendment Regulation. Fee amounts have been determined by weighing up a number of variables, such as the number of people likely to require registration, the time and costs it would take to process an application, and the number of staff required to process applications within those time and costing limits. Different licence types and fee structures were also considered to ensure that each fee accurately reflects the administrative effort and resources required to process each application.

Key elements and data

To develop the fees for applications for registration under the Act, several key factors were weighed up.

Firstly, it was important to determine the **volume of applications** that would need to be processed when the reforms commence from 1 July 2021. This information would provide insight into the administrative workload that would need to be reflected in the fees.

This information was obtained using data from key industry organisations, such as the NSW Architects Registration Board, Building Designers Association of Australia, Hydraulic Consultants Association Australasia, Fire Protection Accreditation Scheme, Whitfield Rose Elevator Consultations, and NSW Fair Trading. Engineers Australia also provided data relating to the numbers of engineers who were registered on the National Engineering Register in the relevant classes of engineer.

This data was then used to estimate the total number of practitioners that currently hold relevant licenses who would likely require registration under either the Compliance Declaration Registration Scheme, and/or the Professional Engineers Registration Scheme. This number came to approximately 40,000 practitioners.

Secondly, it was important to consider the proportion of those practitioners who would be likely to **work on class 2 buildings**, or mixed-use class 2 buildings. The CertAbility report was used to obtain this data, as it records the total sum and percentage of building works conducted in NSW, listed by building class. This report indicated that approximately 724 relevant buildings were recorded each year in NSW.

Data relating to both the number of relevant practitioners and the proportion of class 2 buildings being built in NSW was used alongside consultation with key industry groups to determine the total number of applications expected from 1 July 2021. This information was then used to determine staffing and other administrative requirements to implement the schemes.

Proposed fees

Explanation of key terms

With the exception of fees for registration as a Principal Design Practitioner or recognition as a Professional Engineering Body, all classes of registration contain separate fees for new applications, the restoration of registration, the renewal of an application, or the variation of a registration.

Renewal of an application refers to applications that are renewed before an existing expires. **Restoration** of an application refers to instances where a person's registration has expired and needs to be restored, provided an application is made within 3 months of the expiry date. Fees for restoration of a registration are slightly higher than that of a renewal, as they require more detailed checks to be conducted to ensure that an applicant is still eligible for registration. In instances where a person's registration has been expired for more than 3 months, they will be required to submit a new application.

An example of a registration being **varied** is where an applicant is seeking (or is required) to add or remove certain classes of practice from their registration, or adding or removing conditions from their registration. This process does not involve any new administrative checks to be conducted, so there is no fixed component of the fee.

Fees for the restoration, renewal or variation of a registration are all less expensive than the original application fee, as they require fewer assessments to be conducted.

Applicants have the option to apply for a registration period of one, three or five years. To reflect the reduced administrative burden that occurs when practitioners lodge applications less frequently, fees for three and five year registration have been discounted by 25 per cent.

Assessment levels

Under the Regulation, some licence types are expected to be more time and resource intensive to process than others. This is a result of the varying complexity of the eligibility assessments for each licence. To reflect this, two categories of licence types were developed: Level 1 licences and Level 2 licences.

Level 1 applications are expected to be the simplest applications to process. For example, for some classes of Design Practitioner, such as Architectural, and for Building Practitioners, registration under the Act is dependent on an applicant already being registered under another recognised scheme.

A Design Practitioner – Architectural is required to hold registration under the *Architects Act 2003*, and a Building Practitioner is required to be licensed under the *Home Building Act 1989*. Further, as design practitioner classes relating to engineering require a person to also be registered as a professional engineer in that class of engineering, the additional assessment is focused only on their additional competency as a design practitioner.

It is deemed that applicants would have been appropriately vetted to achieve those registrations, so apart from confirming a person's pre-existing registration/licence and their recent and relevant experience, the application process under the Act is fairly straightforward.

By contrast, **Level 2** applications are expected to be more challenging to process. This is because they require qualifications to be validated, and will therefore be more time and resource intensive. For example, qualifications may need to be assessed against detailed requirements contained in the Regulation, or may need to be assessed to determine whether they can be considered equivalent to recognised Washington Accord qualifications.

Consultation with the Compliance and Licensing teams within the Department was used to understand the end-to-end journey involved in processing registration applications that are comparable to those under the Act. This information was used to estimate the time it would take to process the average Level 1 or Level 2 application.

Registration fees for Design Practitioners – Level 1

The following fees are the proposed registration, renewal, restoration and variation fees for a Design Practitioner in the following classes only:

- Design Practitioner – Architectural
- Design Practitioner – Civil Engineering
- Design Practitioner – Electrical Engineering
- Design Practitioner – Fire Safety Engineering
- Design Practitioner – Geotechnical Engineering
- Design Practitioner – Mechanical Engineering
- Design Practitioner – Structural Engineering

Design Practitioner – Level 1		
Fee Type		Proposed Fee (\$)
Application	1 year	405
	3 years	911
	5 years	1,519
Renewal	1 year	304
	3 years	683
	5 years	1,138
Restoration	1 year	360
	3 years	738
	5 years	1,194
Variation		151

Registration fees for Design Practitioners – Level 2

The following fees are the proposed registration, renewal, restoration and variation fees for a Design Practitioner in the following classes only:

- Design Practitioner – Building Design (Low Rise)
- Design Practitioner – Building Design (Medium Rise)
- Design Practitioner – Drainage
- Design Practitioner – Drainage (Restricted)
- Design Practitioner – Façade
- Design Practitioner – Fire Systems (Detection and Alarm Systems)
- Design Practitioner – Fire Systems (Fire Sprinkler)
- Design Practitioner – Fire Systems (Fire Hydrant and Fire Hose Reel)
- Design Practitioner – Fire Systems (Mechanical Smoke Control)
- Design Practitioner – Vertical Transportation

Design Practitioner – Level 2		
Fee Type		Proposed Fee (\$)
Application	1 year	440
	3 years	990
	5 years	1,650
Renewal	1 year	330
	3 years	742
	5 years	1,237
Restoration	1 year	385
	3 years	797
	5 years	1,293
Variation		186

Registration fees for Principal Design Practitioners

Registration as a Principal Design Practitioner – General and Principal Design Practitioner – Body Corporate rely only on an applicant already holding full registration in an approved class of Design Practitioner. No additional qualifications, skills, knowledge or experience needs to be demonstrated. As such, these applications are graded at ‘Level 1’ due to the simplicity of their assessment process.

The fees for registration in either of these classes remain the same, regardless of whether a practitioner applies for a one, three or five year registration period. This is because the exact same resourcing and administrative costs are incurred by the Department to process these applications, regardless of the length of the registration period. The fees also do not include a fixed component, recognising that this is already covered through the required registration as a Design Practitioner.

The following fees are the proposed registration, renewal, restoration and variation fees for a Principal Design Practitioner – General only.

Principal Design Practitioner – General	
Fee Type	Proposed Fee (\$)
Application	106
Renewal	106
Restoration	106
Variation	106

The following fees are the proposed registration, renewal, restoration and variation fees for a Principal Design Practitioner – Body Corporate only.

Principal Design Practitioner – Body Corporate	
Fee Type	Proposed Fee (\$)
Application	245
Renewal	245
Restoration	245
Variation	245

Registration fees for Building Practitioners

Registration as a Building Practitioner – General and Building Practitioner – Body Corporate Nominee relies on an applicant already holding either a supervisor certificate or an endorsed contractor licence under the *Home Building Act 1989*. Holding the relevant type of licence satisfies the qualification criteria for these classes of registration. While there are experience, skills and knowledge requirements that must be demonstrated to be eligible for these classes of registration, assessment of qualifications is the most time and resource intensive aspect of the assessment process. As such, these licence types have been graded at 'Level 1'.

Building Practitioner – General		
Building Practitioner – Body Corporate Nominee		
Fee Type		Proposed Fee (\$)
Application	1 year	405
	3 years	911
	5 years	1,519
Renewal	1 year	304
	3 years	683

	5 years	1,138
Restoration	1 year	360
	3 years	738
	5 years	1,194
Variation		151

Registration fees for Body Corporates

The Regulation provides for the following body corporate registration classes:

- Design Practitioner – Body Corporate
- Principal Design Practitioner – Body Corporate
- Building Practitioner – Body Corporate

The assessment fee for Body Corporates is considerably higher than that for individual registrations due to the size and complexity of the assessment process for this type of registration. This process includes the requirement to screen the directors and close associates of the body corporate to ensure the body corporate is not likely to be unduly influenced, and to ensure it holistically meets the same eligibility standards expected of individual registered practitioners. The fee has been developed by using an average of comparable existing registration fees, and by applying increases proportionate to those for other classes of registration under the Act.

The following fees are the proposed registration, renewal, restoration and variation fees for a Design Practitioner – Body Corporate and Building Practitioner – Body Corporate only. The proposed fees for a Principal Design Practitioner – Body Corporate have been outlined above.

Design Practitioner – Body Corporate		
Building Practitioner – Body Corporate		
Fee Type		Proposed Fee (\$)
Application	1 year	1,366
	3 years	3,074
	5 years	5,122
Renewal	1 year	1,024
	3 years	2,305
	5 years	3,842
Restoration	1 year	1,079
	3 years	2,360
	5 years	3,897
Variation		490

Registration Fees for Professional Engineers

Registration of Professional Engineers is a complex process as applications must be processed in their entirety by the Department. This includes assessing equivalent qualifications and experience where this was obtained overseas. The fees for registration as a Professional Engineer are higher than those for Design and Building Practitioners, and

reflect the additional work that must be undertaken to validate and assess qualifications and experience.

The following fees are the proposed registration, renewal, restoration and variation fees for a Professional Engineer in the following classes:

- Professional Engineer – Civil
- Professional Engineer – Electrical
- Professional Engineer – Fire Safety
- Professional Engineer – Geotechnical
- Professional Engineer – Mechanical
- Professional Engineer – Structural.

Professional Engineers		
Fee Type		Proposed Fee (\$)
Application	1 year	592
	3 years	1,332
	5 years	2,219
Renewal	1 year	444
	3 years	999
	5 years	1,665
Restoration	1 year	499
	3 years	1,054
	5 years	1,697
Variation		254

Registration Fees for Professional Engineering Bodies

Professional Engineering Bodies are able to be recognised by the Department to provide a co-regulatory scheme for the registration of engineers under the Act. Applicants must demonstrate their capacity to assess and verify qualifications, skills, experience and knowledge to at least the same standard as is contained in the Regulation. They must also ensure that appropriate insurance and continuing professional development requirements are expected of Professional Engineers registered under their proposed scheme, and must demonstrate an ability to exercise disciplinary functions and investigate non-compliance of registered Professional Engineers if need be.

The fee prescribed for applications for recognition as a Professional Engineering Body reflects the high level of administrative and resourcing costs that would be incurred by the Department to process an application. This fee was calculated by averaging relevant fees in comparable recognition schemes. Successful applications remain valid for up to five years as determined by the Secretary.

Professional Engineering Bodies	
Fee Type	Proposed Fee (\$)
Application	7,277