

# Existing Construction Projects: Do they need to comply with the Design and Building Practitioners Act 2020?

Assuming you have read our article [A Comprehensive Guide to the Design and Building Practitioners Act 2020 – Regulation Update](#) and [Urgent Building Works - Do you need to comply with the Design and Building Practitioners Act](#), a question we are often then asked is, do existing projects need to comply with the Design and Building Practitioners Act 2020 (NSW) (**D&BPA**).

The answer to that questions traverses the transitional period of the D&BPA for both of the:

1. Registration, design and certificate requirements; and
2. Mandatory Insurance requirements

## **Registration, design and certificate requirements**

The transitional provisions under sections 3 & 4 of the D&BPA provide that:

1. If you **have not** started any building works before 1 July 2021, the transitional periods do not apply and you will need to observe the D&BPA requirements.
2. If you **have** started building works before 1 July 2021, this is an existing project which the transitional provisions apply, but there are certain requirements that need to be met as follows:
  - A. The construction certificate or complying development certificate that the works are being performed under must have been issued before 1 July 2021;
  - B. Between 1 July 2021 and 30 June 2023, any new construction certificate required for an existing project will require regulated designs and declarations to be lodged for that particular construction or complying development certificate, rather than the entire building.<sup>1</sup>

## **Practical effect in relation to rectification of defects**

In circumstances where building defects are discovered and the original builder wishes to return to rectify those building defects under the original contract to build the works (provided the works started before 1 July 2021), the transitional provisions apply, and will allow such rectifications to occur without the requirement that new plans be uploaded.

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<sup>1</sup> If any of the designs for a newly required construction certificate on an existing project were prepared before 1 July 2021 by a practitioner who is not eligible for registration, those designs will need to be reviewed by a registered Design Practitioner who is able to certify those design.

## **Mandatory Insurance requirements**

On 1 July 2021, the D&BPA introduced mandatory insurance requirements for registered design practitioners, principal design practitioners, professional engineers and building practitioners.

However, section 107 (5A) of the D&BPA allowed Design and Building Practitioners Regulation 2021 (NSW) (**the Regulations**) to prescribe exemptions to the insurance requirements that the D&BPA imposed.

The Regulations state:

1. Under section 105(1), unregistered Professional Engineers and Design and Building Practitioners will not be prosecuted for giving a compliance declarations during the grace period between 1 July 2021 and 7 July 2021.
2. Under section 105(2), a person carrying out professional engineering work in a prescribed area of engineering would not be penalized for not being registered under the D&BPA during the grace period between 1 July 2021 and 1 August 2021.
3. Under section 99, a person who applied to be registered as a practitioner in a particular class of registration between 1 July 2021 and 28 February 2022 was 'deemed' to be registered in that particular class from the date of their application and therefore were able to immediately perform duties of a registered practitioner such as preparing registered designs or carrying out building work while their application was being processed, without being penalized.
4. Under section 106 of the Regulations, registered building practitioners are exempt from the insurance requirements under the D&BPA until 30 June 2023.

Don't get caught out, let Bannermans Lawyers assist you if you are in a situation like this. Our lawyers are up to date on the latest information regarding the D&BPA as it comes.

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