



New South Wales

Residential Apartment Buildings (Compliance and Enforcement Powers) Amendment (Building Work Levy) Regulation 2022

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the following Acts—

- (a) the *Residential Apartment Buildings (Compliance and Enforcement Powers) Act 2020*,
- (b) the *Home Building Act 1989*.

ELENI PETINOS, MP
Minister for Fair Trading

Explanatory note

The objects of this Regulation are as follows—

- (a) to provide that the Secretary may impose a levy on a developer in relation to building work (a **building work levy**) by giving the developer written notice,
- (b) to require developers to pay a building work levy, by using the NSW Planning Portal, within 14 days of the written notice being given,
- (c) to provide that the Secretary may only impose a building work levy on a developer at the prescribed rate, and only if the building work is not of a specified type,
- (d) to prescribe the rate of a building work levy imposed in relation to each of the following types of building work to which an expected completion notice relates—
 - (i) building work that results in a new building, part of a new building, or the addition of storeys to an existing building,
 - (ii) the repair, renovation or protective treatment of a building,
- (e) to provide for the annual adjustment of the rate of a building work levy,
- (f) to enable interest to be charged on unpaid levies,
- (g) to provide that the Secretary may waive, reduce, postpone or refund a building work levy on certain grounds, either on the Secretary's own initiative or on the application of a person,
- (h) to prescribe failure to pay a building work levy as a circumstance in which the Secretary may make an order prohibiting the issue of an occupation certificate and, if relevant, the registration of a strata plan for a strata scheme in relation to a residential apartment building,
- (i) to enable money in the Home Building Administration Fund to be applied for meeting the costs of administering the *Design and Building Practitioners Act 2020* and the *Residential Apartment Buildings (Compliance and Enforcement Powers) Act 2020*.

Residential Apartment Buildings (Compliance and Enforcement Powers) Amendment (Building Work Levy) Regulation 2022

1 Name of Regulation

This Regulation is the *Residential Apartment Buildings (Compliance and Enforcement Powers) Amendment (Building Work Levy) Regulation 2022*.

2 Commencement

This Regulation commences on 4 July 2022 and is required to be published on the NSW legislation website.

3 Amendment of Home Building Regulation 2014

Insert after clause 69B—

69C Application of money in Home Building Administration Fund

For the Act, section 114(3)(b), the following Acts are prescribed—

- (a) the *Design and Building Practitioners Act 2020*,
- (b) the *Residential Apartment Buildings (Compliance and Enforcement Powers) Act 2020*.

Schedule 1 Amendment of Residential Apartment Buildings (Compliance and Enforcement Powers) Regulation 2020

[1] Part 1, heading

Insert before clause 1—

Part 1 Preliminary

[2] Clause 3, heading

Omit “**Definition**”. Insert instead “**Definitions**”.

[3] Clause 3(1)

Insert in alphabetical order—

building work levy, for Part 2—see clause 5(1).

monetary unit—see Schedule 2, clause 2.

[4] Parts 2 and 3

Insert after clause 4—

Part 2 Building work levy—the Act, s 6A(1) and (3)

5 Imposition and payment of building work levy

- (1) The Secretary may impose a levy on a developer in relation to building work (a *building work levy*) by giving the developer written notice, using the NSW planning portal, of the requirement to pay the levy.
- (2) A developer on whom a building work levy is imposed must, using the NSW planning portal, pay the levy within 14 days of the written notice being given.

6 Building work for which levy may be imposed

- (1) The Secretary may impose a levy on a developer only at the rate of levy prescribed by this Part in relation to the building work.
- (2) The Secretary may not impose a building work levy in relation to the following—
 - (a) building work for which a registered building practitioner is not required to provide a building compliance declaration,
 - (b) building work that results in, or is in relation to, a building with fewer than 5 residential premises,
 - (c) building work carried out by or on behalf of the New South Wales Land and Housing Corporation,
 - (d) building work for the purposes of repairing, rectifying or replacing the external cladding of a building,
 - (e) building work in relation to which no rate of levy is prescribed by this Part.
- (3) If building work will result in additional storeys to an existing building and involves the repair, renovation or protective treatment of the building or part of the building, the Secretary may impose a levy only at the greater of the rates prescribed by clauses 7 and 8.

- (4) In this clause—
- building compliance declaration** has the same meaning as in the *Design and Building Practitioners Act 2020*.
- New South Wales Land and Housing Corporation** means the New South Wales Land and Housing Corporation constituted by the *Housing Act 2001*.
- registered building practitioner** has the same meaning as in the *Design and Building Practitioners Act 2020*.
- residential premises** has the same meaning as in the *Residential Tenancies Act 2010*.

7 Rate of building work levy—building work that results in new buildings or additional storeys

- (1) This clause applies to building work to which an expected completion notice relates that results in—
- (a) a new building or part of a new building, or
 - (b) the addition of storeys to an existing building.
- (2) For building work to which an expected completion notice relates that results in a number of storeys within 1 of the following ranges, the rate of the building work levy is the number of monetary units specified for the range—
- (a) 1–3 storeys—
 - (i) if the resulting storeys have a gross floor area that is less than 6,000m²—70 monetary units, or
 - (ii) if the resulting storeys have a gross floor area equal to or greater than 6,000m²—84 monetary units,
 - (b) 4–8 storeys—84 monetary units,
 - (c) 9–19 storeys—110 monetary units,
 - (d) 20–30 storeys—155 monetary units,
 - (e) 31 storeys or more—212 monetary units.

8 Rate of building work levy—repair, renovation or protective treatment of buildings

- (1) This clause applies to building work if—
- (a) it involves the repair, renovation or protective treatment of a building, or part of a building, and
 - (b) an expected completion notice has been given in relation to the building work.
- (2) For building work with a projected cost within 1 of the following ranges, the rate of the building work levy is the number of monetary units specified for the range—
- (a) more than \$150,000 but not more than \$500,000—7 monetary units,
 - (b) more than \$500,000 but not more than \$1,000,000—13 monetary units,
 - (c) more than \$1,000,000 but not more than \$5,000,000—20 monetary units,
 - (d) more than \$5,000,000 but not more than \$10,000,000—27 monetary units,
 - (e) more than \$10,000,000—40 monetary units.

9 Annual adjustment of rate of building work levy

The rate of a building work levy is to be adjusted for inflation in accordance with Schedule 2.

10 Provision of information

A developer in relation to building work must ensure that, at the same time at which an expected completion notice for the building work is given to the Secretary, the following information about the building work is also given to the Secretary—

- (a) whether the work to which the expected completion notice relates—
 - (i) will result in a new building or part of a new building, or
 - (ii) will result in the addition of storeys to an existing building, or
 - (iii) involves the repair, renovation or protective treatment of a building or part of a building,
- (b) if the work will result in a new building, part of a new building or the addition of storeys to an existing building—
 - (i) the number of storeys or additional storeys that will result from the work to which the expected completion notice relates, and
 - (ii) the gross floor area of the building, part of the building or additional storeys that will result from the work to which the expected completion notice relates,
- (c) if the work involves the repair, renovation or protective treatment of a building or part of a building—the projected cost of the work at the time the information is given.

Maximum penalty—

- (a) for a corporation—200 penalty units, or
- (b) otherwise—100 penalty units.

11 Charging of interest on unpaid building work levies

Interest may be charged on an unpaid building work levy at the rate of 6% per annum from—

- (a) the day that is 15 days after the Secretary gives the developer written notice of the requirement to pay the levy, or
- (b) if the Secretary has postponed the levy—the day that is 1 day after the day on which the postponed levy is due.

12 Waiver, reduction, postponement or refund of building work levy

- (1) A person may, by written notice to the Secretary, apply for the waiver, reduction, postponement or refund of a building work levy.
- (2) The Secretary may, on the Secretary's own initiative or on the application of a person, waive, reduce, postpone or refund a building work levy, in whole or in part, on 1 or more of the following grounds—
 - (a) if the person required to pay the levy is an individual—the person is suffering financial hardship,
 - (b) the building work is for a charitable purpose,
 - (c) the levy was paid in error,
 - (d) special circumstances exist.

Example— a natural disaster or recovery from a natural disaster

- (3) In this clause—
charitable purpose includes a benevolent, philanthropic or patriotic purpose.

13 Building work levy—transitional provision

- (1) This Part extends to building work—
- (a) for which the Secretary has been given an expected completion notice before the commencement of this Part, and
 - (b) for which an occupation certificate has not been issued in relation to the building or part of the building to which the expected completion notice relates.
- (2) In clause 10, for an expected completion notice given before the commencement of this Part, a reference to giving information at the same time as the notice is given is taken to be a reference to giving information at a time specified by the Secretary by written notice.

Part 3 Miscellaneous

14 Issue of occupation certificates and registration of strata plans if building work levy unpaid—the Act, s 9

For the Act, section 9(1)(f), the failure of a developer to pay a building work levy is prescribed.

[5] Clauses 15 and 16

Re-number clauses 3A and 4 as clauses 15 and 16, respectively, and relocate to after clause 14, as inserted by Schedule 1[4].

[6] Schedule 2

Insert after Schedule 1—

Schedule 2 Adjustment of building work levy for inflation

clause 9

1 Definitions

In this Schedule—

CPI number means the Consumer Price Index (All Groups Index) for Sydney published by the Australian Bureau of Statistics in the latest published series of that index.

financial year means a period of 12 months commencing on 1 July.

2 Calculation of monetary unit for purposes of Regulation

- (1) For this Regulation, a *monetary unit* is—
- (a) in the financial year 2022–23—\$100, and
 - (b) in each subsequent financial year—the amount calculated as follows—

$$\$100 \times \frac{A}{B}$$

where—

A is the CPI number for the March quarter in the financial year immediately preceding the financial year for which the amount is calculated.

B is the CPI number for the March quarter of 2022.

- (2) The amount of a monetary unit is to be rounded to the nearest cent and an amount of 0.5 cent is to be rounded down.
- (3) However, if the amount of a monetary unit calculated for any financial year is less than the amount that applied for the previous financial year, then the amount for the previous financial year applies instead.

3 Rounding of levy amounts

The amount of a levy calculated by reference to a monetary unit is to be rounded to the nearest dollar and an amount of 50 cents is to be rounded down.

4 Notice of indexed levies

- (1) As soon as practicable after the CPI number for the March quarter is first published by the Australian Statistician, the Secretary is required to—
 - (a) notify the Parliamentary Counsel of the amount of the monetary unit for the next financial year so that notice of the amount can be published on the NSW legislation website, and
 - (b) give public notice on an appropriate government website of the actual amounts of the levies applying in each financial year resulting from the application of the amount of a monetary unit calculated under this Schedule.
- (2) This Schedule operates to change an amount of a building work levy calculated by reference to a monetary unit and the change is not dependent on the notification or other notice required by this clause.