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Design and Building Practitioners Regulation 2020
Policy and Strategy, Better Regulation Division
NSW Department of Customer Service

By email: BCR@customerservice.nsw.gov.au

Thank-you for the opportunity to comment on the proposed regulation and RIS for the Design and Building Practitioners Regulation 2020. We commend the NSW Government for taking positive steps to restore the community's confidence in high rise buildings constructed in NSW. We also appreciate the extensive consultation that has been undertaken to date with industry.

In general we support the thrust of the regulations that cover:

- *Setting the scope of 'building work' to be work on a class 2 building, or a building that contains a class 2 part, and additionally exempting specific building work.*
- *Setting the scope of 'professional engineering work' to be work carried out for the purposes of designing or constructing a class 2 building or a building that contains a class 2 part.*
- *Classes of registration for Design Practitioners, Principal Design Practitioners, Building Practitioners and Professional Engineers, including the relevant qualification, skills, knowledge and experience requirements for registration in each class.*
- *Insurance requirements that apply to Design Practitioners, Principal Design Practitioners, Building Practitioners and Professional Engineers to maintain registration.*
- *Establishing Codes of Practice that Design Practitioners, Principal Design Practitioners, Building Practitioners and Professional Engineers must comply with in order to maintain registration.*
- *Continuing Professional Development (CPD) requirements that apply to Design Practitioners, Principal Design Practitioners, Building Practitioners and Professional Engineers to maintain registration.*
- *Time and manner for lodging regulated designs and compliance declarations.*
- *Processes for registering Design Practitioners, Principal Design Practitioners, Building*

- *Practitioners and Professional Engineers, including the recognition of professional bodies of engineers to assess and monitor compliance of engineers they register or recognise.*
- *Prescribed penalty notice offences.*

Ai Group's members are primarily interested in requirements relating to the registration of professional engineers to ensure that design and documentation associated with generic products are not caught up in "regulated designs" under the draft regulation.

Ai Group's support only extends to the current draft regulation and not to future changes as we understand that

"The Act allows the Regulation to extend the meaning of 'regulated design' to other kinds of designs."

noting that

"Following consultation with key industry stakeholders, the Government does not propose to include additional designs as part of the initial reforms."

Specific issues

The following are issues raised by members that we would appreciate that are considered by the NSW Government.

1. Generic products

In expressing our support for the Act and draft regulations we understand that the concepts of "regulated designs" and "building work" (that require preparation of compliance declaration(s) by a relevant Design Practitioner or Principal Design Practitioner) apply only to regulated designs for specific/actual class 2 construction projects and not to

- i. the design of generic products that will be installed as part of a building element or
- ii. information produced by manufacturers about their generic products and/or about their products use in general

Members advise that product manufacturers often provide installation guidance and product performance details to help designers understand how the relevant generic products can be incorporated in a specific project design. It is our understanding that such guidance and product details provided by a manufacturer will not constitute a regulated design. This contrasts to a specific project design prepared by the project specific registered designer, which relies upon the manufacturer's guidance when deciding whether, and if so how, to incorporate the building product within the project design, which will constitute a regulated design.

We consider it would be helpful to assist manufacturers, design practitioners and the market generally if this guidance could be expressly set out:

- by including such generic product information published by manufacturers as an addition to the currently proposed exclusions from Building Work; or
- by clarifying that such product information does not fall within the scope of regulated designs in the guidance material to be published by the Government on the specific types of designs that are captured by the reforms.

Consideration could also be given to defining generic product in the draft regulation or associated guidance material to reduce the risk of confusion.

2. Services

In terms of "building elements" The Act (s 6(1)) defines building elements to mean any of the following:

- a) the fire safety systems for a building within the meaning of the Building Code of Australia,*
- b) waterproofing,*
- c) an internal or external load-bearing component of a building that is essential to the stability of the building, or a part of it (including but not limited to in-ground and other foundations and footings, floors, walls, roofs, columns and beams),*
- d) a component of a building that is part of the building enclosure,*
- e) those aspects of the mechanical, plumbing and electrical services for a building that are required to achieve compliance with the Building Code of Australia.*

Members have raised concern with point "e)" as it can be read as suggesting one of two things:

- a. aspects of those services that the building must have for the building to comply with the BCA, or
- b. aspects of those services that the BCA has compliance requirements for.

For example, a building does not have to have a chiller for it to comply with the BCA, but the building must meet certain human comfort requirements, so any HVAC system that results in the building being compliant to those requirements, is included in the scope. However, as the HVAC system has a chiller, it must meet the efficiency requirements of the BCA. Members believe that because the BCA has a compliance requirement that a chiller must meet, the chiller may be argued as being in scope of the Design and Practitioners Act. Ai Group opposes this interpretation and recommends that the draft regulation be altered accordingly.

3. Single national database

That compliance with the QLD, NSW and Victorian Acts, in terms of either the registration of Design Practitioners, Principal Design Practitioners and Building

Practitioners and the registration of Professional Engineers to perform professional engineering work on, are facilitated on a single national database.

4. Scheme alignment

That the specific requirements of the QLD, NSW and Vic registration schemes are aligned/harmonised to prevent conflicting requirements and unnecessary regulatory burden.

If you have any questions, please contact the undersigned.

Yours sincerely

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