



**BUILDING DESIGNERS**  
ASSOCIATION OF AUSTRALIA

# **Design and Building Practitioners Regulation 2020**

## **Stakeholder Feedback**

**Organisation Name:** BUILDING DESIGNERS ASSOCIATION OF AUSTRALIA (BDAA)

**Respondents Names:** Ian Bassett (Policy Director), John Hatch (Nat. Senior V. President),  
Brendan Creed (Advocacy Director), Chris Knierim (CEO)

**Contact:** Name: Chris Knierim

**Date:** 5<sup>th</sup> January 2021

## ABOUT BUILDING DESIGNERS ASSOCIATION OF AUSTRALIA

The Building Designers Association of Australia (BDAA), is a national member-based association which, for 60 years has, represented, advocated and promoted the Australian built environment. The BDAA membership includes residential, commercial and industrial building designers, architects, landscape architects, engineers, planners, specifiers, thermal performance assessors and design students.

## EXECUTIVE SUMMARY

The BDAA is concerned with the referencing to all Class 2 buildings in the Draft Regulations. If the Draft Regulations are specifically referencing all Class 2 buildings, and not just State Environmental Planning Policy No 65 (SEPP65), it would be seen by the BDAA as an extension of SEPP65 into the medium density housing market which will affect the entire residential building industry. If these proposed draft regulations were passed in their current form, the result would be detrimental to building designers, their businesses and staff who have been working successfully and competently in the profession for many years. The BDAA believes that such proposed introduction and change to construction category restricts competition in the market to the detriment of the consumers and it goes against the principles of the Competition and Consumer Act (Cth) 2010 (**CC Act**) which are to promote competition and avoid actions which would result in substantial lessening of competition in the market. Under the section 2 of the CC Act, it states that “the object of this Act is to enhance the welfare of Australians through the ***promotion of competition*** and fair trading and provision for consumer protection. The same principles are carried in the Fair Trading Act (NSW) 1987 and the proposed introduction of the construction categories will restrict competition in the market in NSW and be in conflict with current NSW legislation. Furthermore, the BDAA believes the restriction imposed on building designers due to the introduction of the Draft Regulation would be within the scope of the Australian Competition and Consumer Commission’s (ACCC) concern. The ACCC’s website states that they focus on “taking action that most promotes the proper functioning of Australian markets, protects competition, improves consumer welfare and stops conduct that is anti-competitive or harmful to consumers.”

## RECOMMENDATIONS

The BDAA would like to stress that the following information within this response is to the current NSW Government’s Draft Regulation only; being for Class 2 Buildings. As a result, the BDAA is providing feedback of our concerns pertaining to Part 4; Part 6; Schedule 1; Schedule 2 and Schedule 3 of the draft regulations.

## Part 4 REGISTRATION OF PRACTITIONERS

### Division 1: Applications for registration

Although the Draft does not cover the processes of registration, the BDAA notes that there is a provision for engineers to be assessed for registration under a recognised engineering body’s registration scheme (Part 5 – Recognition of professional bodies of engineers). The BDAA urges the government to include recognition of the BDAA’s accreditation scheme for the assessment of competence, skills and experience for the registration of building designers. As this accreditation scheme is already recognised within the Environmental Planning and Assessment Amendment (Low Rise Medium Diversity Housing) Regulation 2017: (Low Rise Medium Diversity Housing Code) of NSW Government legislation, its inclusion would provide consistency and continuity in legislation.

*Part 2 Complying development certificate 4 (1) (n)*

*(n) if the development involves the erection or alteration of, or an addition to, a dual occupancy, manor house or multi dwelling housing (terraces)—a statement (in the form approved by the Secretary) by a qualified designer **or a person accredited as a building designer by the Building Designers Association of Australia that:***

*(i) verifies that he or she designed, or directed the design of, the development, and*

*(ii) addresses how the design is consistent with the relevant design criteria set out in the Medium Density Design Guide (within the meaning of State Environmental Planning Policy (Exempt and Complying Development Codes) 2008).*

All building designers accredited by the BDAA have been recognised as having the demonstratable skill sets to design and document buildings as recognised by the above regulation which includes Class 2 buildings.

In *Part 5 – Division 2 Applications for Registration* of the Draft Regulations there is provision under 40 - *Application for recognition* for a body corporate to apply to the Secretary for a grant of recognition as a recognised engineering body. The BDAA believes that this provision should also apply to the BDAA as a recognised professional body representing building designers.

The BDAA proposes an alternative pathway to registration should be made available through the BDAA accreditation scheme to align with the existing Low-Rise Medium Diversity Housing Code.

## **Part 6 INSURANCE**

BDAA is concerned with design practitioners setting their own level of Professional Indemnity Insurance (PI) which could lead to under insurance.

The BDAA believes that the Draft Regulation should set a minimum level of PI be set for each class of registration rather than leaving it up to each individual registered designer to set their own level of insurance, which could lead to the under-insurance of design practitioners.

The BDAA accreditation scheme sets the following minimum limits of PI for each level of accreditation

- Low Rise - \$2 million
- Medium Rise - \$5 million
- Open - \$10 million

These minimum levels have been readily accepted by accredited building designers.

An alternative could be to set a base PI level for each class and allow additional PI to be taken for those projects which value exceeds the base level of PI. Insurance bodies would need to be party to such a scheme, but it would allow better consumer protection overburdening smaller design practices.

## Schedule 1. CLASSES OF REGISTRATION

### Part 1 Preliminary

The BDAA sees no need for changes to the classes of works currently available to all Building Designers. The BDAA is in full support and adoption of the Australian Building Codes Board National Regulation Framework criteria for the registration of building design practitioners. This action would be in line with other state bodies addressing the registration of building designers.

The BDAA is proposing to align the registration classes with the Australian Building Codes Board's (ABCB) National Registration Framework (NRF).

BDAA opposes the use of the term 'Restricted' for building designers. We find this term derogatory and carries connotations of stigma attached to it as being 'of low quality'. The use of the word 'Restricted' for Building Designers could have adverse impacts on building designer's business on what consumers may see the term restricted meaning. The definition of the varying classifications already provides restrictions on what you can and can't do, therefore all Classes are restricted per se. There is no need to use the term 'restricted' for Building Designers.

The BDAA requests that the term "Restricted" be eliminated and replaced with individual levels of registration.

BDAA proposes that Regulations should include the 3 distinct levels of registration:

- I. Building Practitioner – Building Designer Low Rise
- II. Building Practitioner – Building Designer Medium Rise
- III. Building Practitioner – Building Designer Open

BDAA has concerns with the proposal by the AIA to downgrade the Medium Rise criteria to only 2 storeys. This would be detrimental to a large portion of Building Designers who have carried out work for up to 3 stories for many decades. The definition should align with the proposed NRF.

The BDAA recognises that the NSW Government is conscious of the ABCB's National Regulation Framework (NRF) and proposes that the Draft Regulation's Classes of Registration should ideally reflect the same levels and criteria of the NRF.

The NRF is based on the qualifications, skills and experience that are contained within the National Building Design Training Package, and with a few minor differences – which the BDAA is in discussion with the ABCB about – is acceptable to the BDAA as being the basis on which the registration of building designers in NSW should be placed.

The main issue the BDAA has is the exclusion of Type B construction in the Low-Rise category. In a Class 2 project that is two storeys high – such as a residence above a ground floor shop – it automatically becomes Type B construction and to exclude this from the Low-Rise criteria would be a major impediment to building designers undertaking this type of work.

There are many other examples of a two storey, Class 2 buildings that also come under this scenario as most Class 2 building would be of at least a Type B construction.

The BDAA believes that such proposed introduction and change to construction category restricts competition in the market to the detriment of the consumers and it goes against the principles of the Competition and Consumer Act (Cth) 2010 (**CC Act**) which are to promote competition and avoid actions which would result in substantial lessening of competition in the market. Under the section 2 of the CC Act, it states that "the object of this Act is to enhance the welfare of Australians through the ***promotion of competition*** and fair trading and provision for consumer protection. The same principles are carried in the

Fair Trading Act (NSW) 1987 and the proposed introduction of the construction categories will restrict competition in the market in NSW and be in conflict with current NSW legislation.

Furthermore, the BDAA believes the restriction imposed on the building designers due to introduction of the Draft Regulation would be within the scope of Australian Competition and Consumer Commission's ("ACCC") concern. The ACCC's website states that they focus on "taking action that most promotes the proper functioning of Australian markets, protects competition, improves consumer welfare and stops conduct that is anti-competitive or harmful to consumers."

The BDAA request that both the Low Rise and Medium Rise Classes of registration be included in the Regulations as distinct Classes and that in addition to the qualifications listed, that an alternative pathway to registration be available through the BDAA accreditation scheme as mentioned previously and as listed in the Low-Rise Medium Diversity Housing Code.

## **Schedule 2. QUALIFICATIONS, EXPERIENCE, KNOWLEDGE AND SKILLS**

### **PART 3 DESIGN PRACTITIONERS**

The Draft Regulations include:

#### **4 Experience—all classes of design practitioner**

*Must have 5 years recent relevant practical experience.*

The BDAA considers that this statement does not clearly define how that experience is attained.

- From the date of graduation?
- From the date of qualification?
- From the years working in the profession?

The BDAA requests that this statement be clarified.

#### **6 Design practitioner—building design (restricted)**

##### **a. Qualifications**

Must have—

- (a) for a design practitioner in the class of design practitioner—building design (restricted) who carries out work, or proposes to carry out work, on a low-rise building—an NVR approved diploma in building design or architectural drafting, or
- (b) for a design practitioner in the class of design practitioner—building design (restricted) who carries out work, or proposes to carry out work, on a low-rise building or medium rise building—an NVR approved associate degree or advanced diploma in building design or architectural design.

The BDAA questions the term '**must have**' in relation to the following qualifications:

- I. Low Rise – Diploma of Building Design
- II. Medium Rise – Advanced Diploma of Building Design

The BDAA agrees with the basic requirement of these qualifications for registration, but considers that an alternative pathway for registration must also be provided to cater for those who do not hold a formal

qualification, but have many years of experience and the skill sets and competence to undertake this level of design work.

It should also be considered in the Draft Regulations that the Mutual Recognition of Qualifications between other States and Territories be recognised, and those building design practitioners who are registered in their own jurisdiction, be allowed to practice in NSW under the same licensing criteria.

## **PART 4      PRINCIPAL DESIGN PRACTITIONERS**

The BDAA strongly disagrees with building designers being restricted from registration as a Principal Design Practitioner as indicated in the following:

### **20 Principal design practitioner—general**

#### **(1) Qualification**

Must be registered as a design practitioner under the Act, other than as a design practitioner in the following classes—

- (a) design practitioner—building design (restricted),
- (b) design practitioner—drainage design,
- (c) design practitioner—electrical design (restricted).

#### **(2) Knowledge, experience and skills**

No additional experience, knowledge and skills other than the experience, knowledge and skills required for obtaining a registration as a design practitioner under the Act in a class referred to in subclause (1).

This restriction on building designers is clearly, and totally, impractical, as it would mean that a building designer would have to engage the services of a principal design practitioner – and in the building design theatre this would normally mean a *‘registered design practitioner – architect’* - to manage the processes and functions required of the principal design practitioner.

Architects, in general, would be against entering into such arrangements with building designers, especially considering that the projects that they would be managing, are not of their own design.

As it is proposed to register building designers to undertake Class 2 buildings, then you must also allow them to undertake the full range of functions associated with those designs. To do otherwise would be a clear restraint of trade and lessens competition of the current market.

## **Schedule 3. CONTINUING PROFESSIONAL DEVELOPMENT**

The BDAA believes that continuing professional development (CPD) is of key importance to practitioners in the construction industry and lowering the requirement of mandatory hours will be detrimental to the industry.

In relation to CPD for building design practitioners, the BDAA expresses concern at the low level of requirement – 3 hours - of CPD required viz:

#### 4. Requirements for prescribed practitioners

- (1) A prescribed practitioner must each year successfully complete at least 3 hours of relevant education and training that is approved by the Secretary in the Guidelines.

The BDAA believes that the requirements of 3 hours of CPD is substantially too low for all design practitioners and compares this to the minimum hours required for registration as an architect which is 10 hours formal and 10 hours informal and the current BDAA membership and accreditation requires 25 points that is equivalent to 20 hours of CPD.

## CONCLUSION

The BDAA primary concern is that the current draft regulations are effectively a restraint of trade. The implications of improper referencing of Class 2 buildings only effects the current position of building designers. Building designers in several other States and Territories in Australia can design Class 2 buildings over 3 storeys where building designer registration already exists. The BDAA's urges the NSW Government to address the referencing of all Class 2 buildings in the Draft Regulations. If the Draft Regulations are specifically referencing all Class 2 buildings, and not just State Environmental Planning Policy No 65 (SEPP65), it would be seen by the BDAA as an extension of SEPP65 into the medium density housing market which will affect the entire residential building industry. If these proposed draft regulations were passed in their current form, the result would be detrimental to building designers, their businesses and staff who have been working successfully and competently in the profession for many years.

The BDAA believes that such proposed introduction and change to construction category restricts competition in the market to the detriment of the consumers and it goes against the principles of the Competition and Consumer Act (Cth) 2010 (**CC Act**) which are to promote competition and avoid actions which would result in substantial lessening of competition in the market. Under the section 2 of the CC Act, it states that "the object of this Act is to enhance the welfare of Australians through the ***promotion of competition*** and fair trading and provision for consumer protection. The same principles are carried in the Fair Trading Act (NSW) 1987 and the proposed introduction of the construction categories will restrict competition in the market in NSW and be in conflict with current NSW legislation. Furthermore, the BDAA believes the restriction imposed on building designers due to the introduction of the Draft Regulation would be within the scope of the Australian Competition and Consumer Commission's (ACCC) concern. The ACCC's website states that they focus on "taking action that most promotes the proper functioning of Australian markets, protects competition, improves consumer welfare and stops conduct that is anti-competitive or harmful to consumers."



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# Regulatory Impact Statement Response

**Organisation Name:** BUILDING DESIGNERS ASSOCIATION OF AUSTRALIA (BDAA)

**Respondents Names:** Ian Bassett (Policy Director), John Hatch (Nat. Senior V. President),  
Brendan Creed (Advocacy Director), Chris Knierim (CEO)

**Contact:** Name: Chris Knierim

**Date:** 7<sup>th</sup> January 2021



## ABOUT BUILDING DESIGNERS ASSOCIATION OF AUSTRALIA

The Building Designers Association of Australia (BDAA), is a national member-based association which, for 60 years has, represented, advocated and promoted the Australian built environment. The BDAA membership includes residential, commercial and industrial building designers, architects, landscape architects, engineers, planners, specifiers, thermal performance assessors and design students.

## EXECUTIVE SUMMARY

The BDAA urges that reforms should be expanded to include other types of buildings to prevent further negative impacts on the construction industry, build consumer confidence and invigorate the NSW economy. In addition, the use of the word 'Restricted' in defining the role of building designers will have negative impact on how consumers perceive them. There is no necessity to use the term 'restricted' for building designers as the definitions of the varying classifications already provide restrictions within their guidelines. The BDAA strongly disagrees to the restriction of building designers from registration as Principal Design Practitioners. The BDAA believes that such proposed introduction and change to construction category restricts competition in the market to the detriment of the consumers and it goes against the principles of the Competition and Consumer Act (Cth) 2010 (**CC Act**) which are to promote competition and avoid actions which would result in substantial lessening of competition in the market. Under the section 2 of the CC Act, it states that "the object of this Act is to enhance the welfare of Australians through the ***promotion of competition*** and fair trading and provision for consumer protection.

## RESPONSES

- 1. Do you think the reforms should be expanded to other types of buildings over time?  
Why/Why not? If so, which types of buildings do you think should be next?**

The BDAA believes that the reforms must be extended to all classes of building and all types of construction. This need is evidenced by the recent consumers concerns raised by the media regarding the subsidence of the "Jordan Springs East" housing estate development in Western Sydney. As a result, property owners have been displaced due to subsidence issues causing major structural damage to the extent that the houses are not habitable. The majority of these houses would be Class 1 type buildings.

- 2. Do you agree that the reforms should only apply to existing arrangements where the  
Complying Development Certificate or Construction Certificate has been applied for on or  
after 1 July 2021? Why/Why not?**

The BDAA believes that to include developments that are approved before the 1<sup>st</sup> July 2021 would be problematic in that most of the design work has already been instigated under existing conditions. To 'move the goalposts' in mid-term would be impractical, costly and unmanageable in the extreme.

### **3. Are the proposed exclusions from 'building work' appropriate? Why/Why not?**

The BDAA agrees with the proposed exclusions from 'building work' especially as it consists mainly of renovation and/or repair work to existing structures of minor works.

### **4. Are there other works that should be exempted? Please provide the basis for the exemption and when the exemption should be effective (for example, a description of the works or threshold of the value including the reason for that value).**

The BDAA has no additional example of works that need to be exempted. The value of works should not be a consideration.

### **5 Do you support the proposed classes of Design Practitioner? Why or why not?**

BDAA does not support the proposed term '*Restricted*' for building designers. We find this term derogatory and carries connotations of stigma attached to it as being 'of low quality'. The use of the word 'Restricted' for Building Designers could have adverse impacts on a building designer's business, on what consumers may see the term 'restricted' meaning. The definition of the varying classifications already provides restrictions on what you can and cannot do, therefore all Classes are '*restricted*' per se. There is no need to use the term 'restricted' for building designers.

The BDAA requests that the term "Restricted" be eliminated and replaced with individual levels of registration.

BDAA proposes that Regulations should include the 3 distinct levels of registration:

- I. Building Practitioner – Building Designer Low Rise
- II. Building Practitioner – Building Designer Medium Rise
- III. Building Practitioner – Building Designer Open

The BDAA recognises that the NSW Government is conscious of the ABCB's National Regulation Framework (NRF) and proposes that the Draft Regulation's Classes of Registration should ideally reflect the same levels and criteria of the NRF.

The NRF is based on the qualifications, skills and experience that are contained within the National Building Design Training Package, and with a few minor differences – which the BDAA is in discussion with the ABCB about – is acceptable to the BDAA as being the basis on which the registration of building designers in NSW should be placed.

The BDAA Accreditation Scheme is also based on the competencies of the National Building Design Training Package

### **6 Are there other types of Design Practitioners that should be included or any that should be removed? If so, what are they and why?**

The BDAA would support the inclusion of all classes of engineers, not just those who are involved in the design of Class 2 buildings. This would include civil, structural, hydraulic, geotechnical, mechanical, electrical, acoustic, etc.

**7 Do you support the proposed qualification, skills, knowledge and experience requirements for each class of practitioner? Why or why not? Please make suggestions for additional or alternative requirements.**

In the transition period between a non-regulated environment and a regulated environment, consideration must be given to those design practitioners who have been practicing for many years but do not hold qualifications and who must now 'fit' into a prescribed set of qualification and experience criteria. In future years this will not be an issue as new designers entering the profession from secondary school will undertake appropriate training in either TAFE or University courses.

The BDAA questions the term '**must have**' in relation to the following qualifications:

- I. Low Rise – Diploma of Building Design
- II. Medium Rise – Advanced Diploma of Building Design

The BDAA agrees with the basic requirement of these qualifications for registration but considers that an alternative pathway for registration must also be provided to cater for those who do not hold a formal qualification but have many years of experience and the skill sets and competence to undertake this level of design work.

Although the Draft does not cover the processes of registration, the BDAA notes that there is a provision for engineers to be assessed for registration under a recognised engineering body's registration scheme (Part 5 – Recognition of professional bodies of engineers). The BDAA requests that recognition of the BDAA's own accreditation scheme be given for the assessment of competence, skills and experience for the registration of building designers.

The BDAA accreditation scheme already has recognition within the NSW Government legislation. As seen from the Environmental Planning and Assessment Amendment (Low Rise Medium Diversity Housing) Regulation 2017: ("Low Rise Medium Diversity Housing Code")

The building designers accredited by the BDAA have been recognised as having the demonstrable skill sets to design and document buildings as recognised by the above Code which includes Class 2 buildings.

In *Part 5 – Division 2 Applications for Registration* of the Draft Regulations there is provision under 40 - *Application for recognition* for a body corporate to apply to the Secretary for a grant of recognition as a recognised engineering body. The BDAA believes that this provision should also apply to the BDAA as a recognised professional body representing building designers.

The BDAA proposes that an alternative pathway to registration be available through the BDAA accreditation scheme as exists within the Low-Rise Medium Diversity Housing Code.

**8 Other than qualifications, skills, knowledge and experience, are there any other eligibility criteria that applicants should meet to be eligible for registration?**

The BDAA believes that the applicants must be of good character, have no adverse legal findings pertaining to their business and abide by a set Code of Ethics.

**9 Do you agree that practitioners should be required to have 5 years of recent and relevant practical experience?**

The BDAA believes that for the Low-Rise category for building designers should have a minimum of 3 years' experience and the Medium Rise Category 5 years' experience.

**10 Some classes of practitioner have been proposed with authority to work on low and medium rise buildings? Do you support this approach?**

The BDAA supports this approach as there are many examples of Class 2 buildings that fit the criteria.

The existing *Low Rise Medium Density Complying Development Code* – which contains many examples of Class 2 buildings - requires that design practitioners for these types of development be either a registered architect or a building designer accredited by the BDAA.

**11 Are there any other areas of engineering that should be captured for the purposes of designing or constructing a class 2 building, or a building containing a class 2 part?**

The BDAA defers to the engineering fraternity for comments on this question

**12 Do you support a co-regulatory approach for the registration of engineers?**

The BDAA defers to the engineering fraternity for comments on this question.

**13 Pathway 1 will require an engineer to satisfy certain qualifications, skills, knowledge and experience requirements. Are there any other eligibility criteria that engineers should meet before being registered?**

The BDAA defers to the engineering fraternity for comments on this question, however, the BDAA believes that a similar pathway be provided for the registration of building designers.

**14 The Regulation proposes recognition of Washington Accord accredited qualifications. Do you think this is appropriate? If not, what alternative approach do you suggest?**

The BDAA supports the principle of the 'Washington Accord' in that it allows qualifications gained in another jurisdiction can be assessed for currency with any NSW recognised qualification.

Mutual Recognition of Qualifications between other States and Territories must be recognised, and those building design practitioners who are registered in their own jurisdiction, be allowed to practice in NSW under the same licensing criteria.

**15 Under Pathway 2 what criteria do you think the professional engineering body should satisfy to be eligible to perform their function?**

The BDAA considers that the professional engineering body should be representative of a large group of engineers and has been in existence for many years. The body should also have industry and Government acceptance of its accreditation assessment processes.

The BDAA's accreditation program - which the BDAA proposes should be adopted for building designers also satisfies this criterion and should be an alternative pathway for the registration of building designers.

**16 Would you be supportive of professional bodies developing a PSS for Pathway 3 to be available?**

The BDAA is supportive if all professional design bodies developing a PSS for their discipline.

**17 Do you agree that Professional Engineers should be required to have 5 years of recent and relevant practical experience?**

The BDAA defers to the engineering fraternity for comments on this question.

**18 Do you support the proposed generic list of skills and knowledge requirements for all classes of engineering (excluding fire safety)? If not, please outline what you think the specific skills and knowledge for each class of engineer should be**

The BDAA defers to the engineering fraternity for comments on this question.

**19 Do you support the proposal that all construction issued regulated designs must be lodged before any building work can commence? Why or why not?**

The BDAA supports the notion that all relevant construction design should be lodged prior to any building work commencing. This is to ensure that all relevant details and specified information is available to the builder before construction commences.

**20 Do you support the Building Practitioner being primarily responsible for lodging regulated designs on the NSW Planning Portal? Why or why not? If not, who do you think should be responsible at the different lodgement points? Please explain your answer.**

The BDAA does not support the notion that the builder alone makes the lodgement. The lodgement should include all relevant parties to the design process – architect/building designer, engineer and other consultants that are providing construction level documentation. This would ensure that all parties are aware of the scope and currency of the documentation that is being submitted at each level.

**21 Do you support the matters covered in the Design Compliance Declaration? Why or why not?**

The BDAA supports the matters covered in the Design Compliance Declaration as it requires the design practitioners to ensure that the documentation is valid for the development and acts as a 'built-in review process'.

**22 Do you consider any other matters should be included in the Design Compliance Declaration?**

The BDAA considers that the listed components of the Design Compliance Declaration are relevant, and no further requirements are required.

**23 Do you support the proposed title block? Are there any other matters that should be included in the title block?**

The only issue the BDAA has with the Title Block is how many design practices will incorporate it into their own, well established, corporate identity? Provided all the relevant information is contained within a title block, is there a need for a 'fixed template'?

**24 Do you support the title block being available in a .dwg format?**

The BDAA believes that this would be acceptable, but again, raised the question of whether this title block will be required to be used by all design practices? There are also a number of other drawing software programs for which title blocks would need to be created.

**25 Do you support the proposal that varied regulated designs be lodged within 1 day of the varied building work being commenced? Why or why not?**

The BDAA has concerns that variations could be commenced before approval is received. If this is meant to be only a registration process, then there is no issue, but all variations that affect the design or structural integrity of the building must be approved prior to work commencing on the particular variation.

Variations in one area can lead to a 'flow-on' effect in other areas.

**26 Do you support the proposal that the Building Compliance Declaration, regulated designs and variation statements be lodged prior to the application for the Occupation Certificate? Why or why not?**

The BDAA supports all regulated designs and variations must be lodged prior to the issue of the Occupation Certificate. This is to ensure the building has been constructed in accordance with the registered documentation and allows the PCA to have a base on which he/she can appraise the building works for compliance to the current regulated designs.

**27 Are there further matters that should be included in the Building Compliance Declaration? If so, what are they?**

The BDAA considers that the listed documents to be included in the Building Compliance Declaration are satisfactory.

## 28 Are there further matters that should be included in the Principal Compliance

### Declaration? If so, what are they?

The BDAA strongly disagrees with building designers being restricted from registration as a Principal Design Practitioner as indicated in the following:

#### 1 Principal design practitioner—general

##### (1) Qualification

Must be registered as a design practitioner under the Act, **other than** as a design practitioner in the following classes—

- (a) design practitioner—building design (restricted),
- (b) design practitioner—drainage design,
- (c) design practitioner—electrical design (restricted).

##### (2) Knowledge, experience and skills

No additional experience, knowledge and skills other than the experience, knowledge and skills required for obtaining a registration as a design practitioner under the Act in a class referred to in subclause (1).

This restriction on building designers is clearly, and totally, impractical, as it would mean that a building designer would have to engage the services of a principal design practitioner – and in the building design theatre this would normally mean a *‘registered design practitioner – architect’* - to manage the processes and functions required of the principal design practitioner.

Architects, in general, would be against entering into such arrangements with building designers, especially considering that the projects that they would be managing, are not of their own design.

If you are going to register building designers to undertake Class 2 buildings, then you must also allow them to undertake the full range of functions associated with those designs.

The BDAA believes that such proposed introduction and change to construction category restricts competition in the market to the detriment of the consumers and it goes against the principles of the Competition and Consumer Act (Cth) 2010 (**CC Act**) which are to promote competition and avoid actions which would result in substantial lessening of competition in the market. Under the section 2 of the CC Act, it states that “the object of this Act is to enhance the welfare of Australians through the ***promotion of competition*** and fair trading and provision for consumer protection. The same principles are carried in the Fair Trading Act (NSW) 1987 and the proposed introduction of the construction categories will restrict competition in the market in NSW and be in conflict with current NSW legislation. Furthermore, the BDAA believes the restriction imposed on building designers due to the introduction of the Draft Regulation would be within the scope of the Australian Competition and Consumer Commission’s (ACCC) concern. The ACCC’s website states that they focus on “taking action that most promotes the proper functioning of Australian markets, protects competition, improves consumer welfare and stops conduct that is anti-competitive or harmful to consumers.”

## 29 Do you support the approach proposed for insurance requirements for Design

### Practitioners and Professional Engineers? Why or why not?

The BDAA is concerned with design practitioners setting their own level of Public Liability Insurance (PII) which could lead to under insurance.

The BDAA believes that the Draft Regulation should set a minimum level of insurance be set for each class of registration rather than leaving it up to each individual registered designer to set their own level of insurance, which could lead to the under-insurance of design practitioners.

The BDAA accreditation scheme sets the following minimum limits of PI for each level of accreditation

- Low Rise - \$2 million
- Medium Rise - \$5 million

- Open - \$10 million

These minimum levels have been readily accepted by accredited building designers. An alternative could be to set a base PII level for each class and allow additional PII to be taken for those projects which value exceeds the base level of PII. Insurance bodies would need to be party to such a scheme, but it would allow better consumer protection overburdening smaller design practices.

**30 Do you think additional insurance requirements should be prescribed for Design Practitioners and Professional Engineers? If so, what?**

Refer to Q29 response above

**31 Do you support the proposed transitional arrangements that exempt Building Practitioners from being insured for issuing Building Compliance Declarations? Why or why not?**

The BDAA firmly believes that building practitioners should not be exempt from holding appropriate insurance for the insurance of Building Compliance Declarations. If design practitioners are required to be so insured, then all parties carrying out the same functions should also be similarly insured.

**32 Do you support the proposed CPD requirements for Design and Building Practitioners? Why or why not?**

The BDAA believes that continuing professional development (CPD) is of key importance to practitioners in the construction industry and lowering the requirement of mandatory hours will be detrimental to the industry.

In relation to CPD for building design practitioners, the BDAA expresses concern at the low level of requirement – 3 hours - of CPD required viz:

**Schedule 3 Continuing professional development  
Requirements for prescribed practitioners**

- (1) A prescribed practitioner must each year successfully complete at least 3 hours of relevant education and training that is approved by the Secretary in the Guidelines.

The BDAA believes that the requirements of 3 hours of CPD is substantially too low for all design practitioners and compares this to the minimum hours required for registration as an architect - which is 10 hours formal and 10 hours informal - and the current BDAA membership and accreditation requires 25 points that is equivalent to 20 hours of CPD.

**33 What types of training, education or topics would be relevant for the functions carried out by Design and Building Practitioners?**

The BDAA would propose that topics that relate to the NCC, fire suppression and building materials, construction methodology and techniques – to name a few – would form a good basis for



ngoing development. The list is endless and the BDAA notes that the ABCB is preparing webinars that relate to the understanding of the NCC and that the NSW Government is working closely with TAFE NSW to provide similar webinars on building related topics.

Many industry groups also provide appropriate CPD training opportunities.

**34 Do you support the proposed CPD requirements for engineers under Pathway 1?**

The BDAA defers to the engineering fraternity for comments on this question.

**35 Do you support the mandatory CPD topic areas? Why/why not? Please make any suggestions for amendments and explain why they are necessary.**

The BDAA supports the Construct NSW Learning Management System and the ABCB's NCC CPD programs. Refer Q33.

**36 Do you support the proposed penalty notice offences and amounts in Appendix 1? Why or why not?**

The BDAA has no issue with the penalty notice offences.

**37 Do you think the proposed penalty notice offences and amounts are fair and reasonable?**

The BDAA has no issue with the penalty offence amounts.

**38 Do you support the reasons for the proposed fees? Why or why not?**

The BDAA supports the reasons for the proposed fees as it will make all building and design practitioners take seriously the responsibilities that they are undertaking and reduce the 'cutting of corners' that is prevalent in the building industry.

**39 What do you think NSW Fair Trading should consider in determining the fees?**

The BDAA considers that the fees should be set by NSW Fair Trading following close consultation with all industry stakeholders.

#### 40 Are you interested in being involved in targeted stakeholder consultation on fees?

The BDAA would welcome the opportunity to take part in any stakeholder consultation process.

## CONCLUSION

The BDAA urges that reforms should be expanded to include other types of buildings to prevent further negative impacts on the construction industry, build consumer confidence and invigorate the NSW economy in particular Class 1 type buildings. In addition, the use of the word 'Restricted' in defining the role of building designers will have negative impact on how consumers perceive them. There is no necessity to use the term 'restricted' for building designers as the definitions of the varying classifications already provide restrictions within their guidelines. The BDAA strongly disagrees to the restriction of building designers from registration as Principal Design Practitioners. The BDAA believes that such proposed introduction and change to construction category restricts competition in the market to the detriment of the consumers and it goes against the principles of the Competition and Consumer Act (Cth) 2010 (**CC Act**) which are to promote competition and avoid actions which would result in substantial lessening of competition in the market. Under the section 2 of the CC Act, it states that “the object of this Act is to enhance the welfare of Australians through the ***promotion of competition*** and fair trading and provision for consumer protection.