

Design and Building Practitioners Regulation 2020

Stakeholder Feedback Template Form

This template has been designed to help you make a written submission as part of the public consultation on the Design and Building Practitioners Regulation 2020.

The template contains three sections to guide stakeholders to providing feedback on:

- [Regulatory Impact Statement](#)
- [Draft Design and Building Practitioners Regulation 2020](#)
- [Draft Continuing Professional Development Guidelines for Prescribed Practitioners](#)
- [Draft Continuing Professional Development Guidelines for Professional Engineers](#).

You don't have to give feedback on all sections and can feel free to choose which questions or fields that would like to fill in.

Submissions close 5:00pm 11 January 2021

Your Name: Edmund Ang

Organisation Name: Personal submission

Date: 11 Jan 2021

About you

Thank you to the NSW Government for inviting public consultation on this key change.

I am a practicing Chartered Professional Engineer (Mechanical and Fire Safety) residing in Sydney NSW, the place I call home. I have been practicing in the UK, Asia and Australia for the last 14 years, with experience in major buildings to major civil infrastructure including transport and utilities.

I have made this submission as an interested NSW resident, and my love for the engineering profession. I love to see continuous improvement and growth in our engineering sector that touches the lives of many NSW residents and Australians.

Declaration: This is a personal submission and all views presented are my own. I have contributed to the submissions by various organisations and therefore there may be similarities in some points raised.

Thank you.

Regulatory Impact Statement (RIS)

Please use this section to provide feedback on the RIS. The questions from the RIS have been reproduced here for convenience. Page numbers in brackets refer to the section in the RIS.

Scope of reforms (page 15)

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?

Comment: I agree and suggest the reforms be expanded to all types of buildings to emphasise on the importance of public safety and compliance with NCC requirements. Further, this will also help harmonise the gap between this regulation and EP&A and B&DC Acts and Regulations. A progressive application based on the criticality / safety of the buildings should be considered including public buildings (hospitals, stadiums, assembly buildings, schools) to buildings housing the more vulnerable population (aged care).

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?

Comment: N/A

Regulated design (page 17)

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

Comment: Generally agree. However, additional consideration is needed to 'renovation' related work for active or passive fire safety systems.

For those systems, the whole system needs to be recertified to be functional, as partial renovation or replacement of a system can impact on a system that is interfaced. For example, a partial renovation of an automatic smoke detection system where a stair pressurisation or fire curtain deployment could be compromised if the combined interfaced system is not certified. Inappropriate minor building alterations can impact the existing fire safety systems. A sprinkler can be obstructed by a change in walls, ceilings etc or building in fixtures, shelving/racking, or the likes.

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).

Comment: N/A

Registration of Compliance Declaration practitioners (page 23)

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

Comment: Support.

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?

Comment: There should be consideration for passive fire protection system, i.e. the installation of fire rated walls, fire rated doors and protection to penetrations. The last item (penetrations) are currently dealt with sporadically by various subcontractors responsible for their own elements, e.g. electrical subcontractors deal with electrical penetrations only, and communications systems, mechanical, gas etc similarly deal with their installation only. This can result in an inconsistent outcome.

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.

Comment: Generally support. There is a potential discrepancy between a mechanical or electrical to fire systems, which is confusing. This is because for mechanical and electrical, these design practitioners need to be registered as a professional engineer, however, the fire systems designers carrying out work including design of fire alarm systems and smoke control systems do not need to be professional engineers. Both mechanical or electrical and fire systems designers are allowed to 'vary' a regulated design, yet the required qualifications level do not align.

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

Comment: A mandatory training course on code of conduct similar to those undertaken by current Certifiers (BDC) administered by NSW Fair Trading should be considered.

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

Comment: Yes, the requirement should be 5 years of full-time-equivalent relevant experience in the last 10 years.

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

Comment: No. I do not believe a lower level of safety should be provided to buildings based on height. A low rise building can be just as complex, e.g. deep basement, or those adjacent to critical infrastructure / utilities / flood zone / contaminated zone / reclaimed land.

Registration of Professional Engineers (page 29)

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?

Comment: N/A

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

Comment: Support.

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?

Comment: An additional eligibility criterion for registration should be that the engineer has undertaken training in code of ethics, including dealing with ethical issues and conflict of interest management.

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

Comment: N/A

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

Comment: N/A

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

Comment: Yes. However the commercial realities of how contracts are structured and how projects can be procured with a PSS should be considered. There is often an imbalance of risk transfers between a developer and subcontractors or designers.

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

Comment: Support.

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.

Comment: Support.

Compliance Declaration Scheme: practitioner requirements (page 38)

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?

Comment: Generally support. This should be further clarified as the construction could be staged for some major projects to recognise the programme pressure. For example, building works below ground may commence prior to the completion of all construction issued designs if designs in relation to below ground or directly above ground building works are completed for construction purpose. Another example is a mixed use office tower, where the fit-out design may run in parallel with the base building construction.

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.

Comment: Support.

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

Comment: Support.

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

Comment: Yes. If specialist advice was sought and considered in preparing the regulated design, confirmation by the specialist who provides the response should be included to ensure the advice is properly interpreted and implemented in the design

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

Comment: N/A.

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

Comment: Yes. In addition, a .pdf format should be made available for those who produce PDF drawings. A format which can be imported into 3D models (BIM) should be considered.

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

Comment: No. I appreciate the rationale behind this requirement. However, I do not believe the 1-day turnaround is practical.

Firstly and fundamentally, the regulation does not define what is deemed as a variation / varied regulated design. Without a definition, there could either be many minor/immaterial variations lodged, which could result in extra project costs with no real benefits, and discrepancies in the types of variations that are lodged by different practitioners. This is a significant issue to be resolved.

Secondly, this may not be realistic under some circumstances. For example, the team may need to resolve a varied regulated design issue based on progressive investigations carried out during building work for the variation. In this case, the design may be varied a few times depending on findings on site.

Additional time, for example 7-14 working days should be considered, and importantly, 'variation' needs to be clearly defined, e.g. related to compliance with building codes linked to matters which the Principal Certifiers or Authorities Having Jurisdiction consider to impact sustainability, health and safety.

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?

Comment: N/A.

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

Comment: N/A.

28. Are there further matters that should be included in the Principal Compliance Declaration? If so, what are they?

Comment: N/A.

Insurance (page 51)

29. Do you support the approach proposed for insurance requirements for Design Practitioners and Professional Engineers? Why or why not?

Comment: Yes with the approach. However, I strongly suggest the government fully investigate the impact of the insurance requirement from the Act on the industry. There appears to be misalignment between the expectations of the Act / Regulation against the commercial realities in the market.

As a practitioner, I am concerned with the extended duty of care and uncapped liability as no policy can cover any or all liabilities a practitioner may be subject to.

The insurance requirements could have significant impact on many companies in particular SMEs. In many cases, these companies do not have the choice to choose their

insurance products and even large companies may be unable to disclose its coverage terms without insurer approval as such action may potentially prejudice an insured's coverage position in the future.

In short, there has been significant insurance pressure on practitioners to obtain a suitable insurance cover, alongside with the onerous contracts which the industry need to deal with.

The government is well placed to help set the minimum standard expected. Further the government should take a more active role in enabling companies to obtain an insurance from the market.

In addition, it may be beneficial to set up a minimum benchmark amount for insurance cover which is suitable for small business to have minimum coverage. As applicants will determine the adequacy of coverage by themselves, without a minimum coverage, some may simply go with the absolute minimum on the market.

Lastly, the government should also consider an insurance requirement that is placed on a project, in addition to the practitioners. This means all developments should have an insurance taken out specifically for the project / building over a period, e.g. 10 years to cover major defects. Practitioners can continue to operate by taking PI insurance to protect the work carried out by the practitioners. The cost for the project insurance can be shared by all involved, including the consumers.

Other than enabling a more vibrant insurance market, this also gives insurers more involvement because they will then also be interested and have influence over the quality of the project. This is already a practice in the warehouse / industrial sector, i.e. coverage provided by FM Global where the insurer has best practice guidelines that would help produce a better or safer outcome, and also reduce the premiums and their own risk.

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

Comment: Comment as per Q29.

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

Comment: No. All practitioners must be insured in the event of an error, as the whole project delivery team delivers the final product to the customers. Very frequently, designers are asked to sign onerous contracts with the builders and developers. If the building practitioners are exempted from holding an act or regulation compliance insurance product, it could be very onerous for registered design practitioners. In addition, it is ambiguous in the Regulation on 'exempt from being insured for issuing Building Compliance Declaration' and hence hard to assess the impact.

Continuing professional development (CPD) (page 54)

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

Comment: Support.

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

Comment: N/A.

34. Do you support the proposed CPD requirements for engineers under pathway 1?

Comment: Many engineers will be required to be registered in more than one State and so CPD requirements for registration in all States would ideally be consistent. QLD and VIC already effectively have a 50 hours per year CPD requirement, and that would be preferable to the proposed requirement for completion of 60 points annually. The requirement for 30 points annually to be undertaken in formal CPD may also be a financial imposition on SMEs, and this should be re-evaluated to a lower requirement.

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

Comment: Support.

Penalty notice offences (page 57)

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

Comment: N/A.

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

Comment: N/A.

Fees (page 59)

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

Comment: Depending on the registration pathway, e.g. co-regulatory model, the fee needs to be revised to reflect the reduced workload for Fair Trading, and recognised that practitioners will need to manage two fees (one with Fair Trading one with a Professional Body). Further, residents of MSW benefit from the registration of Practitioners, and hence under a user pays approach, those who benefit from a system would be responsible for paying at least some of the cost of operating the system from which they benefit. The NSW Government, on behalf of the people of NSW, should therefore fund some of the cost of operating these registration systems. The regulatory functions listed in the RIS are valid and do need to be funded, so a shared cost arrangement between Practitioners and the NSW Government should be investigated.

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

Comment: A registration fee for one class only should be payable even if the Practitioner or Engineer is registered in more than one class. Those Practitioners and Engineers who are registered in more than one class of registration should only pay a single fee. Fees levied on registered Practitioners and Engineers should be set on a cost-recovery basis. Additionally, any fees set should be commensurate with fees set for similar registrations in other jurisdictions.

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

Comment: No. Professional bodies and other organisations are better placed.