



Fire Protection
Association Australia
Life. Property. Environment.

ABN 30 005 366 576

Building 2, 31-47 Joseph Street
Blackburn North Victoria 3130
PO Box 1049, Box Hill VIC 3128

T +61 3 8892 3131 F +61 3 8892 3132 E fpaa@fpaa.com.au

www.fpaa.com.au

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Design and Building Practitioners Regulation 2020
Policy and Strategy, Better Regulation Division
Department of Customer Service
Locked Bag 2906
LISAROW NSW 2252

e-mail: BCR@customerservice.nsw.gov.au

Design and Building Practitioners Regulation 2020

Thank you for the opportunity to comment on the draft *Design and Building Practitioners Regulation 2020* (the 'Regulation') and the associated Regulatory Impact Statement.

Fire Protection Association Australia's (FPA Australia) has long supported the Government's stated desire to make practitioners within the building and construction sector accountable for their work, particularly following the failures at Opal Tower and Mascot Towers.

We worked closely with the Department of Customer Service to gain [approval as an accrediting authority by the Secretary](#), under the co-regulatory arrangements laid out in the *Building and Development Certifiers Act 2018*.

In order for the Fire Protection Accreditation Scheme (FPAS) classes for Fire Systems Design (FSD) recognised, we had to deliver on all of the conditions set by the Secretary, including the development of restricted design categories¹.

So, given that FPAS accreditation is mandatory for certain practitioners in New South Wales, we have a direct interest in the outcomes of the current Regulation.

We have provided a detailed response to the RIS and the draft Regulation in following pages, but wish to highlight some key points below that are causing us considerable concern.

Failure to recognise FPAS in the Regulation

As noted above, the FPAS FSD accreditation class has been recognised under the *Building and Development Certifiers Act 2018*, following the formal approval of FPA Australia – for a five year period – as an accreditation authority under that Act.

We naturally assumed, therefore, that the scheme would be adopted under the current Regulation, given that s.54(2)(a)(ii) and (iii) of the *Design and Building Practitioners Act 2020* stated that they 'may provide for ... the recognition of persons as registered practitioners who':

- 'are registered or recognised as practitioners by a professional body or a professional body belonging to a class of professional bodies', or
- 'are registered or recognised as practitioners under a law of this State'

FPAS FSD is covered by both of those clauses.

Yet the Regulation appears to have ignored those provisions and appear to create a parallel approach where someone will be able to apply for registration without having first gained accreditation, instead relying purely on their qualifications.

¹¹ Condition 6: "FPA Australia must develop restricted categories for the Fire Sprinkler Systems and the Fire Hydrant and Hose Reel Systems of the Fire Systems Design Class and submit a revised Scheme including these new categories within four months of the date of the approval of this Scheme to the Secretary for approval before the relevant order will be published in the Gazette recognising persons accredited under the Scheme as CFSPs."

This creates uncertainty and inconsistency, and undermines FPAS, as it is unclear when a circumstance may arise where someone is:

- [able to endorse plans and specifications](#) for fire safety systems as complying the relevant provisions of the *Building Code of Australia*, but
- not able to provide a design declaration.

By not referencing the *Building and Development Certifiers Act 2018* or the recognition of FPAS in the draft Regulation, and by stating that a practitioner can apply for registration 'by way of a qualifications pathway' it would appear from that the Department, by default, is ignoring its own legislative requirements.

Restrictive experience requirements

FPAS FSD included restricted categories to allow designers, with lower levels of experience – at the then Secretary's request – to deliver simpler designs, and ensure that the industry could cater to the demand for such services.

Practitioners have been applying for restricted recognition in the assumption that they would be able to endorse their plans and specification.

However, the draft Regulation suggests that the Department will:

- accept people who are not recognised under FPAS for registration under the *Design and Building Practitioners Act 2020*; and
- not to accept practitioners who are registered under restricted categories, despite explicitly requiring FPA Australia to create those categories as a condition of approval of the scheme.

In other words, compliance with the *Building and Development Certifiers Act 2018* appears to play no role in the decision as to whether a practitioner will be deemed a registered design practitioner.

This is despite the Department requiring all relevant fire systems designers to be accredited under FPAS just six months ago.

This puts FPA Australia in a difficult position, as practitioners who have been told – by the Department – that they need to be accredited to do this work will now be told that they can no longer do it, less than a year after accreditation became mandatory.

There is a grave risk for FPA Australia, with existing practitioners potentially seeking legal compensation to demand the return of application fees and lost income.

This would potentially pose an existential threat to our organisation, and we would have no other option but to form our own legal position, considering the significant investment the Association has made.

We are greatly disappointed that the Department has chosen to depart so markedly from its own requirements in such a short period of time, without any consideration of the potential ramifications.

We humbly request that the Department overturn this proposal and resolve the inconsistency by recognising FPAS as automatic compliance with the *Design and Building Practitioners Act 2020*.

The need for fire systems certification

In the *Environmental Planning and Assessment Regulation 2000*, there are no restrictions on who can certify that a fire system has been installed in line with the original design.

Under the *Design and Building Practitioners Act 2020*, this role is the effectively the responsibility of the principal building practitioner.

FPA Australia believes that this will not ensure better outcomes, because most builders are not trained in fire systems and will be unable to confirm whether or not they comply with the designs.

We have proposed on several occasions to the Department that an accredited Fire Systems Certifier role be recognised in the regulations – such a role would be independent and insured, and would be tasked with confirming that practitioners have installed what was originally designed.

The lack of a formal role means that certification is being provided by the installers themselves, which results in Fire Safety Schedules for buildings not reflecting what actually exists.

While not directly part of this draft Regulation, we encourage the Department to consider formally identifying this certification role, as qualified practitioners certifying fire safety systems will reduce the risks borne by other participants in the system.

FPA Australia would be willing to work with the Department on the details of such a role.

The need for additional design categories

The list of design practitioners in the Regulation is fairly limited and many fire systems design roles are not addressed, including:

- passive fire design;
- special hazards design;
- bushfire design; and
- design and selection of portable fire extinguishers.

We believe that additional categories should be created for the first three areas and that fire extinguisher design be incorporated into the hydrant and hose reel category, given that those designers are considering issues such as coverage of fire safety systems.

FPA Australia would be very willing to work with the Department to develop these new classes and to identify the relevant qualifications underpinning them.

The creation of guidance materials

FPA Australia has been concerned about some of the guidance materials released by the Department to date.

Frequently we have found such documents to contain inaccuracies or misinterpretations of the law, and have had to provide corrections accordingly.

A case in point is a series of fact sheets developed by the Office of the Building Commissioner which suggested that:

- (formerly C8, C9, and C14) building certifiers could approve performance solutions (they cannot); and
- principal certifying authorities are responsible for selecting accredited practitioners for fire safety assessment work, which is actually the role of the building owner.

These erroneous views also found their way into the guidelines for building certifiers and onto the Department's own website.

Given these issues, we suggest that it would be more appropriate and accurate for industry to be commissioned to develop guidance materials that address the questions their practitioners are asking.

Once again, thank you for the opportunity to make a submission about the draft Regulation, and please consider the feedback in the following pages.

If you have any questions about our response, or require more detail, do not hesitate to contact us.

Kind regards,

Nathan Semos
Chief Operating Officer

Response to the Regulatory Impact Statement

Page	Section	Question/part	Response
4	Glossary	Building Compliance Declaration	Builders shouldn't be required to second guess whether a design is compliant with the BCA.
16	Scope of the reforms	<i>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?</i>	<p>No. The Government needs time to work out the issues, and it is questionable whether these proposed reforms will achieve what it hopes to do.</p> <p>For these provisions to be extended to other areas, the Government would need to demonstrate that there has been clear regulatory failure that justifies the expansion, and that the solution is proportionate to the problem.</p> <p>At present no such arguments have been put forward for non-Class 2 buildings.</p> <p>The proposed changes require further extensive research to evaluate their impact, and it would be better to address existing concerns before expanding the reach of the Regulation.</p>
16	Scope of the reforms	<i>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?</i>	Yes. In line with existing planning and development policy, there should be no retrospectivity for this Regulation, as this will unnecessarily complicate existing approvals.
18	Regulated design	Building work	<p>We believe that interior design work would be included in the definition of building work.</p> <p>Under the definition, 'renovation' is specifically mentioned – interior design would fall within renovation, and has not been specifically excluded in the Regulation.</p> <p>Interior design can involve the relocation of structural walls or doors, fire rated linings, waterproofing, or acoustic assemblies; not just painting and decorating.</p> <p>Such work may impact upon other systems within a building, so it would be unwise to exclude such work automatically.</p>
19	Regulated design	Excluded building work	<p>All waterproofing should be 'building work', given that it is broadly recognised as a significant issue for residential properties.</p> <p>The proposal to exclude it if it is only within a single SOU does not appear to align with concerns expressed either by the Government or the community.</p> <p>We recommend that all waterproofing be captured under the draft Regulation.</p>
19	Regulated design	Excluded building work	<p>There appears to be confusion about Cl.164B exemptions or decisions by consent authorities or certifiers (cl.187 EPA Reg) or the Fire Commissioner (cl.188 EPA Reg).</p> <p>These are situations that would require properly developed designs – the only difference is that they would not necessarily be required to comply with the Building Code of Australia.</p> <p>It is not sensible to exclude these from the declaration process, as you want designers to be held accountable for their work, but you can obviously not expect compliance with the BCA.</p> <p>The Regulation should be flexible enough to allow practitioners to address this, and to provide reasons for non-compliance, rather than seeking to exempt such design completely.</p>

Page	Section	Question/part	Response
19	Regulated design	Excluded building work	<p>There should be a pre-determined benchmark as to how much replacement work can be carried out before requiring a design.</p> <p>Capturing like-for-like replacements, and consequently requiring design declarations to be provided, will simply increase costs without providing any additional protection.</p> <p>Repair and replacement work has long been exempt from being considered 'building work' in most states and territories.</p> <p>For example, if you are replacing a pump, but not otherwise changing the system, there is no need to make a design declaration.</p> <p>The same goes for replacing some fire doors.</p> <p>Without clarifying the Department's intent, it is likely that a builder will demand a design and a declaration even if no design work is actually required, simply to protect themselves.</p> <p>The unrestricted inclusion of 'repair' and 'renovation' in the definition of building work in the Act, has expanded this concept significantly beyond its usage in the <i>Environmental Planning and Assessment Act 1979</i>, as advised at the time.</p> <p>This creates a lot of uncertainty about when a declaration will be required and what purpose it will serve.</p> <p>Practitioners will err on the side of caution when making decisions, in order to avoid penalties, thus capturing many situations where no design would be needed.</p> <p>The Regulation has not helped resolve this.</p>
20	Regulated design	Excluded building work	<p>The blanket exemption of 'exempt development' from compliance would allow a designer or builder not to submit design and building declarations for:</p> <ul style="list-style-type: none"> • balconies, decks, patios, pergolas, terraces, and verandahs (subdivision 6 of the table in Appendix 2), despite serious injuries having previously been caused by balcony collapses; • barbecues and other cooking structures (subdivision 7), when they are significant potential causes of fires; • changes of use of premises (subdivision 10A), when these may require building work, almost certainly included alterations to the sprinkler system; • earthworks, retaining walls, and structural supports (subdivision 15), when their failure could impact upon the structural integrity of a Class 2 building; and • the design and location of fuel tanks or gas storage (subdivision 21AA), when they could pose a substantial fire risk to a property. <p>While we recognise the difficulties that including certain exempt development may pose for regulators, it would appear that there are gaps in coverage that do not serve class 2 building residents well, and may require some rethinking.</p>
21	Regulated design	Excluded building work – Diagram 1	This flowchart is not very informative.
22	Regulated design	Excluded building work – Diagram 2	This diagram is not very informative.

Page	Section	Question/part	Response
23	Regulated design	3. Are the proposed exclusions from 'building work' appropriate? Why/Why not?	<p>No. As noted above, there are several inconsistencies that will need further discussion and resolution, as outlined above.</p> <p>For example, while it is not highlighted in the RIS, the Regulation states that the replacement of a component of a fire safety system that is an 'entire system' in itself would not be exempt.</p> <p>Thus, if the building work was to be a like-for-like replacement (i.e. no actual design work is required, beyond mapping out where the system is currently located), it may have to have design and building declarations, depending on how the Department chooses to define an 'entire system'.</p> <p>For example, if a pump was being replaced for a sprinkler system, but nothing else (pipes, sprinkler heads, etc.) changed, would the contractor have to hire a designer to issue a declaration?</p> <p>We would see this as a subcomponent and do not think a design declaration is necessary.</p> <p>Similarly, look at the example provided in the Regulation under clause 13(2)(c):</p> <p><i>If a fire safety system is comprised of components, including a mechanical ducted smoke control system and fire rated doors, the replacement of the mechanical ducted system component is not excluded from being building work because that work would constitute the replacement of a component that is an entire system.</i></p> <p>While the example looked at the smoke control system, it is usually not likely that the whole system would be replaced, but parts of it (ducts, fans, etc.) may be.</p> <p>But the example suggests that a design declaration would be needed anyway.</p> <p>What it doesn't explain is that designs would also be required for each of the fire-rated doors, because each of these too may individually be an entire system, depending on interpretation.</p> <p>Another example might be the replacement of a portable fire extinguisher (an 'entire system' in itself) – would this require a design declaration?</p> <p>This clause could see lots of fire systems captured due to a lack of clarity from the Regulation, even when practitioners are advising that they are not 'entire systems'.</p> <p>The term 'entire system' needs to be defined to remove this uncertainty.</p> <p>As discussed above, we also have concerns about the use of 'exempt development' as a benchmark, given that some elements pose safety risks.</p> <p>Risk should not be overlooked in the interests of regulatory simplicity.</p>
23	Regulated design	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).	<p>More flexibility is needed for replacement and repair work, given that designs otherwise may not be needed.</p> <p>The Regulations should not compel the use of designers for work that is simply repair or rectification and that do not lead to significant changes to the functioning of the system.</p> <p>Conversely, how does the Department propose to capture non-regulated workers (e.g. plumbers) who punch holes into passive walls in order to put piping through?</p> <p>Such work would require proper fire collars or sealants, and should be supported by design work, but under the categories of design practitioner plumbers are curiously absent.</p> <p>More consistency is needed to ensure that 'exempt' work or roles are not able to undermine the efficacy of those captured by the Regulation.</p>

Page	Section	Question/part	Response
24	Registration of Compliance Declaration Practitioners	List of design practitioners	<p>The list of design practitioners appears to be very limited. As noted below, plumbing is a significant oversight.</p> <p>More importantly, however, is how these roles are to be demarcated.</p> <p>The list (and the Regulation) implies that there is cross over between the different categories, which is problematic, as the qualifications for each category do not necessarily match the work being carried out.</p> <p>In addition, there are several 'fire systems' (as defined in the BCA), which are not covered by this list, including:</p> <ul style="list-style-type: none"> passive fire protection systems including fire compartment design, fire and smoke doors and penetrations; fire hazard properties of floors, walls, ceilings, ducts, and lift cars; portable fire extinguishers; the design of fire control centres; the design of fire precautions during construction; provision for special hazards the design and construction of fire protection requirements of atria; the design of fire safety requirements for construction in alpine areas; construction in bushfire prone areas; and special use features, such as proscenium curtains (less likely to be relevant for class 2). <p>These are not covered by the existing categories, and at a minimum, we would recommend including:</p> <ul style="list-style-type: none"> Design Practitioner – Fire Systems (Passive Fire Systems); Design Practitioner – Fire Systems (Special Hazards); and Design Practitioner – Bushfires. <p>Portable fire extinguishers should be included within one of the existing categories, for example Design Practitioner – Fire Systems (Hydrants and Hose Reels).</p> <p>FPA Australia would be happy to work with the Department to develop the details behind these three proposed categories, and can provide a follow up submission with some of the relevant information, if desired.</p>
24 – 25	Registration of Compliance Declaration Practitioners	List of design practitioners	<p>It makes no sense for plumbing designers not to be included in the requirements, although the justification appears to be the requirement for 'Building Code of Australia' compliance.</p> <p>This is a weakness in the original legislation and should be amended to state 'National Construction Code', so that plumbing can be included.</p> <p>Plumbing failures cause significant problems for occupants of residential buildings, so this appears to be a significant oversight on the part of the Department.</p> <p>Plumbing work is captured under the definition of 'residential building work' in the Home Building Act, so there is no reason why it should not be captured under the <i>Design and Building Practitioners Regulation 2020</i>.</p>

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26	Registration of Compliance Declaration Practitioners	Experience	<p>The Regulation takes a position that the length of a practitioner's experience is the only consideration for ensuring good design.</p> <p>This is simplistic and misguided.</p> <p>The five year threshold is arbitrary and unscientific and ignores the need for less experienced designers to be able to carry out minor work or simple system designs.</p> <p>In reality, designers should be registered for the work they do, not for an ideal.</p> <p>The selection of a designer should be fit-for-purpose – you don't need a structural engineer to design a non-loadbearing internal partition within a SOU, for example, nor would five years' experience be necessary to be able to perform such a task effectively.</p> <p>The problem with the proposed benchmark is that it automatically increases the cost of design for clients without providing any additional protection.</p> <p>In the fire protection sector, for example, a designer with only a couple of years' experience is perfectly capable of designing minor refurbishments within an existing tenancy (moving a handful of sprinkler heads, for example) – to require such a practitioner to have five years' experience would be unnecessary.</p> <p>Including less experienced practitioners to do more limited design work creates a development pathway for design practitioners that allows them to take responsibility for their existing designs while they increase their experience.</p> <p>The Government already puts conditions on the registrations of building certifiers under the <i>Building and Development Certifiers Act 2018</i>, and there is no reason why such an approach would not work here.</p> <p>Similarly, the creation of restricted categories under the FPAS FSD accreditation class – a condition of the Secretary's approval – was recognition of the need to have a diverse array of designers, not just those who are the most experienced.</p>
26	Registration of Compliance Declaration Practitioners	Experience	<p>A further issue with the five year limit is that it appears to be selective.</p> <p>The RIS notes that a fully registered architect, who '<i>must demonstrate at least 3,300 hours of practical experience (approximately two years)</i>', will be registered, but a fire systems designer with four years' experience will not be.</p> <p>This is creating a two-tiered system of design practitioner and creates conflicts with the <i>Building and Development Certifiers Act 2018</i>.</p> <p>For example, some practitioners who are accredited under that Act through the FPAS Fire Systems Design class may no longer be able to endorse plans and specifications because of the proposed regulation.</p> <p>This requirement to gain accreditation, but restricting the ability of the practitioner to use it, could lead to litigation against FPA Australia through no fault of ours.</p> <p>Such an outcome would be a breach of the Secretary's recognition of FPA Australia as an accrediting authority under the <i>Building and Development Certifiers Act 2018</i>, exposing us and the Government to financial risks and undermining confidence in the Fire Protection Accreditation Scheme.</p>

Page	Section	Question/part	Response
26 – 27	Registration of Compliance Declaration Practitioners	Qualifications	<p>There is an inherent inequity in the proposal outlined in the RIS to recognise architects, building practitioners, and engineers automatically under the Regulation, but for fire systems designers to have to apply for recognition.</p> <p>Our questions to the Department are:</p> <ul style="list-style-type: none"> Will fire systems designers for sprinklers, hydrants and hose reels, and fire detection and alarm systems still require accreditation under the <i>Building and Development Certifiers Act 2018</i>, or can anyone who has the Diploma apply for registration? Why has the Department chosen not to recognise an accreditation scheme that has been approved by the Secretary under a coregulatory arrangement, and for which we have to comply with all requirements put to us by the Secretary? Will design practitioners not eligible for registration under the <i>Design and Building Practitioners Act 2020</i> still be required to gain accreditation under the <i>Building and Development Certifiers Act 2018</i>? What compensation does the Department propose to provide to practitioners who have applied for FPAS Fire Systems Design accreditation, but who do not meet the proposed five year threshold for registration, given that the direction from the Secretary under the <i>Building and Development Certifiers Act 2018</i> is that all such designers will have to be accredited?
27	Registration of Compliance Declaration Practitioners	Transitional arrangements – fire systems classes	<p>As part of her approval of FPA Australia as an accreditation authority, under s.59 of the <i>Building and Development Certifiers Act 2018</i>, the Secretary set a condition that all practitioners granted transitional accreditation under the FPAS FSD accreditation class must be fully qualified within four years of being granted accreditation.</p> <p>However, the draft Regulation says three years, which undercuts that timeframe.</p> <p>This means that anyone accredited after 1 July, 2020, will have less time to complete their qualifications than originally required by the Department if they wish to be registered.</p> <p>How is this discrepancy going to be explained by the Department to the affected practitioners, given that this is a departure from the Secretary's own requirements?</p> <p>This could cause serious legal implications.</p>
29	Registration of Compliance Declaration Practitioners	5. Do you support the proposed classes of Design Practitioner? Why or why not?	<p>While we support the current list, it is not sufficiently broad to cover the industry's needs.</p> <p>As noted above, the categories of Design Practitioner are too limited and ignore certain types of design practitioner (plumbers, passive fire designers, special hazard designers, bushfire prevention designers).</p> <p>We recommend that they be expanded.</p>
29	Registration of Compliance Declaration Practitioners	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?	<p>As noted above, more categories should be added.</p> <p>In addition, there should be better demarcation in the Regulation to ensure that people not trained in certain systems are not able to design them.</p> <p>For example, there is no content in mechanical engineering degrees for smoke extraction or stairwell pressurisation – so these activities should not be included automatically in the Design Practitioner – Mechanical Engineering category, as additional training will be needed.</p>

Page	Section	Question/part	Response
29	Registration of Compliance Declaration Practitioners	<i>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.</i>	<p>The proposal to recognise accredited architects, building professionals, and engineers automatically, but to require accredited fire system designers to apply for registration creates an inequitable two-tier system.</p> <p>FPA Australia has been formally recognised by the Secretary of the Department of Customer Service as an accreditation authority under the <i>Building and Development Certifiers Act 2018</i>, and the Fire Protection Accreditation Scheme (FPAS) has been accepted for Fire Systems Design.</p> <p>The proposal not to include FPAS automatically places it in legal limbo and could result in FPA Australia facing litigation from designers who are unsuccessful in gaining registration, despite being accredited under the <i>Building and Development Certifiers Act 2018</i>.</p> <p>We suggest that the Department reconsider this proposed approach.</p>
29	Registration of Compliance Declaration Practitioners	<i>8. Other than qualifications, skills, knowledge and experience, are there any other eligibility criteria that applicants should meet to be eligible for registration?</i>	As noted above, given that FPAS has been recognised for five years by the Secretary under the <i>Building and Development Certifiers Act 2018</i> , accreditation under the Scheme should constitute automatic acceptance under the Regulation.
29	Registration of Compliance Declaration Practitioners	<i>9. Do you agree that practitioners should be required to have 5 years of recent and relevant practical experience?</i>	No. Experience should be relevant to the complexity of the design being created, and tiers of designer (with appropriate limitations on their registration) should be allowed, as occurs both with FPAS and with the Department's own registration of building certifiers.
29	Registration of Compliance Declaration Practitioners	<i>10. Some classes of practitioner have been proposed with authority to work on low and medium rise buildings? Do you support this approach?</i>	<p>In the fire protection sector designers need to be appropriately experienced to work on differing levels of system complexity, which do not align with building size.</p> <p>For example, a fire system in a warehouse may need to be quite sophisticated to cater for the fire risk of the materials it contains, even if it is a low rise building.</p> <p>The criteria for fire systems should therefore not be based on building size, but on complexity.</p>
38	Registration of Professional Engineers	<i>12. Do you support a co-regulatory approach for the registration of engineers?</i>	Yes, but only if the current co-regulatory approach already in place for fire systems designers is also recognised.
38	Compliance Declaration Scheme: practitioner requirements	National Construction Code	<p>Given that the <i>Building Confidence Report</i> recommended that designers should demonstrate that their building complies with the National Construction Code, why do the Act and Regulation refer to the Building Code of Australia?</p> <p>This appears to undermine the need for plumbing designers to be captured.</p> <p>A Regulation that does not include plumbing ignores a considerable area of risk within a Class 2 building, to the detriment of the building occupants.</p>
41	Compliance Declaration Scheme: practitioner requirements	Design Compliance Declaration	<p>The text in paragraph 3 states that the designer only needs to include standards, codes, or requirements that are not referenced in the Building Code when completing the form.</p> <p>However, this is not clear in the form provided in Schedule 6, which asks about the building code (q.2) and then asks separately about codes and standards (q.4).</p> <p>There is a completely unrelated question about material choices between the two, so it does not make it clear that standards referenced in the BCA should not be recorded.</p>
49	Compliance Declaration Scheme: practitioner requirements	Stage 4: 90 days after issue of Occupation Certificate	Remove the requirement for the practitioner required to lodge paperwork 90 days after the OC is granted, because all documentation should be submitted beforehand so that the PCA can check it.

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50	Compliance Declaration Scheme: practitioner requirements	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?	There needs to be some flexibility in the process to allow for staged construction. For example, some building work could commence with only part of the design completed, because it's laying the groundwork for that later work. A hard and fast rule that 'all designs must be final before work starts' sounds appealing, but is often impractical and self-defeating.
50	Compliance Declaration Scheme: practitioner requirements	21. Do you support the matters covered in the Design Compliance Declaration? Why or why not?	Yes, but the checkbox approach doesn't make much sense. It should be a straight declaration, with extra space for the practitioner to provide relevant details.
50	Compliance Declaration Scheme: practitioner requirements	22. Do you consider any other matters should be included in the Design Compliance Declaration?	Perhaps include space for accreditation numbers to be listed?
50	Compliance Declaration Scheme: practitioner requirements	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?	Yes, but shouldn't it be provided <u>before</u> the work is carried out?
50	Compliance Declaration Scheme: practitioner requirements	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?	Yes. The OC should be decided based on all relevant information.
53	Insurance	29. Do you support the approach proposed for insurance requirements for Design Practitioners and Professional Engineers? Why or why not?	Yes, as it aligns with existing arrangements.
53	Insurance	30. Do you think additional insurance requirements should be prescribed for Design Practitioners and Professional Engineers? If so, what?	Yes, public liability insurance should also be obtained to provide additional protection to members of the public.
53	Insurance	31. Do you support the proposed transitional arrangements that exempt Building Practitioners from being insured for issuing Building Compliance Declarations? Why or why not?	Yes, but only if there are structural reasons that insurance cannot be obtained (i.e. insurers are not providing PI). Not if the inability is a result of the building practitioner's own past performance.

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54	Continuing Professional Development (CPD)	Approved CPD activities	<p>The proposal that there be approved or pre-identified CPD courses risks undermining industry-run CPD schemes and taking opportunities away from the private sector.</p> <p>The approach appears more to be an effort to create a revenue stream at the expense of private operators (for example, the inclusion of the ABCB's CPD training) than it is to solve problems within an industry.</p> <p>It is highly unlikely that Government will know from a distance where training shortfalls might exist.</p>
54	Continuing Professional Development (CPD)	Costs	The quoted costs of CPD sound very low in the example. Webinars alone tend to cost more than \$70 per hour and don't usually have assessments attached – if the latter become a requirement, then the cost per year will be higher and a goal of \$210-280 per annum is therefore fanciful.
57	Continuing Professional Development (CPD)	32. Do you support the proposed CPD requirements for Design and Building Practitioners? Why or why not?	<p>No. The Government should support industry-run CPD schemes.</p> <p>If the Secretary desires particular issues to be addressed, this could be done by providing guidance to associations, rather than dictating what needs to be presented.</p>
57	Continuing Professional Development (CPD)	33. What types of training, education or topics would be relevant for the functions carried out by Design and Building Practitioners?	This should be a decision by industry groups, which are closer to the practitioners and better able to understand their needs.
57	Continuing Professional Development (CPD)	35. Do you support the mandatory CPD topic areas? Why/why not? Please make any suggestions for amendments and explain why they are necessary.	<p>No. Guidance is useful, but the Government is not close enough to the coalface to determine appropriate topic areas.</p> <p>CPD should be run by industry for practitioners because they are more aware of the gaps that may exist and how best to address them.</p>
59	Penalty notice offences	36. Do you support the proposed penalty notice offences and amounts in Appendix 1? Why or why not?	<p>It is not clear why the penalty notices are so low – they range between 2% and 27% of the legislated/regulated penalties.</p> <p>Why can't penalty notices be for higher amounts? How are they to be determined?</p> <p>If the intent is to avoid court time, couldn't higher fines be managed the same way?</p>
59	Penalty notice offences	37. Do you think the proposed penalty notice offences and amounts are fair and reasonable?	Seems like the amounts are a significant reduction on what the maxima are, which may cause offences to be treated more softly in order to reduce administrative costs.
60	Fees	39. What do you think NSW Fair Trading should consider in determining the fees?	<p>Fees should not be excessive, particularly if practitioners are already required to gain accreditation or registration elsewhere.</p> <p>Where appropriate, administration can be carried out by those associations whose accreditation/registration schemes have been adopted.</p>
60	Fees	40. Are you interested in being involved in targeted stakeholder consultation on fees?	Yes.
61 – 64	Appendix 1 – Penalty notice offences		See below for an analysis of the percentages of the maxima represented by penalty notices.

Offences under the Act				
Section	Description	Maximum penalty unit	Proposed penalty notice amount	Percentage
9(1)	Design Practitioner fails to provide Design Compliance Declaration	1,500 (corporation)	\$16,500 (corporation)	10%
		500 (individual)	\$5,500 (individual)	10%
9(2)	Design Practitioner fails to provide further Design Compliance Declaration before building work	1,500 (corporation)	\$16,500 (corporation)	10%
		500 (individual)	\$5,500 (individual)	10%
9(3)	Design Practitioner fails to provide further Design Compliance Declaration after building work	1,500 (corporation)	\$16,500 (corporation)	10%
		500 (individual)	\$5,500 (individual)	10%
9(4)	Design Practitioner fails to provide copy of Design Compliance Declaration to registered Principal Design Practitioner, if appointed	1,500 (corporation)	\$16,500 (corporation)	10%
		500 (individual)	\$5,500 (individual)	10%
9(5)	Design Practitioner fails to provide Design Compliance Declaration in circumstances prescribed in Regulation, if any	1,500 (corporation)	\$16,500 (corporation)	10%
		500 (individual)	\$5,500 (individual)	10%
10	Design Practitioner makes Design Compliance Declaration without registration or authority	1,500 (corporation)	\$16,500 (corporation)	10%
		500 (individual)	\$5,500 (individual)	10%
11(1)	Design Practitioner provides declaration, or holds out adequately insured, without being adequately insured	300 (corporation)	\$5,000 (corporation)	15%
		100 (individual)	\$1,500 (individual)	14%
12(1)	Principal Design Practitioner fails to ensure Design Compliance Declarations provided by registered and authorised Design Practitioners	1,500 (corporation)	\$16,500 (corporation)	10%
		500 (individual)	\$5,500 (individual)	10%
12(2)	Principal Design Practitioner fails to provide Principal Compliance Declaration	1,500 (corporation)	\$16,500 (corporation)	10%
		500 (individual)	\$5,500 (individual)	10%
13	Principal Design Practitioner makes Principal Compliance Declaration without registration or authority	1,500 (corporation)	\$16,500 (corporation)	10%
		500 (individual)	\$5,500 (individual)	10%
14(1)	Principal Design Practitioner provides principal design declaration, or holds out adequately insured, without being adequately insured	300 (corporation)	\$5,000 (corporation)	15%
		100 (individual)	\$1,500 (individual)	14%
15(1)	Building Practitioner fails to provide relevant documents within 90 days after Occupation Certificate issued	300 (corporation)	\$5,000 (corporation)	15%
		100 (individual)	\$1,500 (individual)	14%
16(4)	Person fails to give notice of application for Occupation Certificate	200	\$3,000 (corporation)	14%
			\$1,500 (individual)	7%
17(1)	Building Practitioner fails to provide Building Compliance Declaration and other documents before application for Occupation Certificate	1,500 (corporation)	\$16,500 (corporation)	10%
		500 (individual)	\$5,500 (individual)	10%
17(2)	Building Practitioner fails to provide Building Compliance Declaration and other required documents in circumstances prescribed under the Regulation	1,500 (corporation)	\$16,500 (corporation)	10%
		500 (individual)	\$5,500 (individual)	10%
17(5)	Person fails to provide Building Compliance Declaration to principal certifier before or when application for Occupation Certificate is made	300 (corporation)	\$5,000 (corporation)	15%
		100 (individual)	\$1,500 (individual)	14%

22(2)	Building Practitioner fails to give written notice to principal certifier of steps required for compliance with Building Code of Australia, if any	3,000 (corporation) 1,000 (individual)	\$25,000 (corporation) \$11,000 (individual)	8% 10%
23	Building Practitioner makes a Building Compliance Declaration without registration or authority	1,500 (corporation) 500 (individual)	\$16,500 (corporation) \$5,500 (individual)	10% 10%
24(1)	Building Practitioner provides declaration, or holds out adequately insured, without being adequately insured	300 (corporation) 100 (individual)	\$5,000 (corporation) \$1,500 (individual)	15% 14%
28(1)	Director of registered body corporate fails to comply with requirements for provision of compliance declarations and other obligations	300 (individual)	\$3,000 (individual)	9%
28(2)	Registered body corporate fails to ensure only registered and authorised practitioners provide compliance declarations	1,000 (corporation)	\$11,000 (corporation)	10%
32(1)	Person carries out professional engineering work unless registered and authorised, or working under direct supervision of registered engineer, or otherwise authorised to do so by the Regulation	1,500 (corporation) 500 (individual)	\$16,500 (corporation) \$5,500 (individual)	10% 10%
33(1)	Professional Engineer carries out professional engineering work, or holds out adequately insured, without being adequately insured	300 (corporation) 100 (individual)	\$5,000 (corporation) \$1,500 (individual)	15% 14%
51(4)	Registered practitioner fails to provide information to Secretary on request	300 (corporation) 100 (individual)	\$5,000 (corporation) \$1,500 (individual)	15% 14%
56	Current or former registered practitioner contravenes a condition of their registration (including parts of the code of practice in Schedule 4 of the Regulation), or a condition of a suspension or cancellation of registration	600 (corporation) 300 (individual)	\$5,000 (corporation) \$1,500 (individual)	8% 5%
57(1)	Registered practitioner lets out, hires, lends, or provides a certificate of registration to another person	600 (corporation) 300 (individual)	\$5,000 (corporation) \$1,500 (individual)	8% 5%
58(b)	Person falsely represents to be registered practitioner	600 (corporation) 300 (individual)	\$5,000 (corporation) \$1,500 (individual)	8% 5%
59(1)	Person fails to return registration certificate if Secretary suspends, varies or cancels their registration	300	\$1,500 (corporation) \$750 (individual)	5% 2%
60	Registered practitioner fails to notify Secretary within 7 days in writing about certain matters	250 (corporation) 50 (individual)	\$3,000 (corporation) \$1,500 (individual)	11% 27%
67	Director of registered body corporate fails to notify Secretary within 7 days of certain conduct	300 (individual)	\$3,000 (individual)	9%
105(4)	Person fails to comply with direction to provide information about insurance policies	500	\$5,000 (corporation) \$1,500 (individual)	9% 3%

Offences under the Regulation				
Clause	Description	Maximum penalty unit	Proposed penalty notice amount	Percentage
16(2)	Building Practitioner fails to provide construction issued regulated designs and associated compliance declarations before building work commences	200 (corporation) 100 (individual)	\$3,000 (corporation) \$1,500 (individual)	14% 14%
17(2)	Building Practitioner fails to provide varied designs and associated compliance declarations within 1 day of the variation work commencing	200 (corporation) 100 (individual)	\$3,000 (corporation) \$1,500 (individual)	14% 14%
22	Building Practitioner fails to give notice to Principal Design Practitioner of building work commencing	200 (corporation) 100 (individual)	\$3,000 (corporation) \$1,500 (individual)	14% 14%
23	Building Practitioner fails to give notice to Principal Design Practitioner of Building Compliance Declaration	200 (corporation) 100 (individual)	\$3,000 (corporation) \$1,500 (individual)	14% 14%
73(6)	Prescribed practitioner fails to comply with record keeping requirements	200 (corporation) 100 (individual)	\$3,000 (corporation) \$1,500 (individual)	14% 14%

Response to the CPD Guidelines

Page	Section	Question/part	Response
4	4.1	CPD requirement	<p>3 hours of 'approved relevant education and training each CPD year' raises concerns, given that Government is not better placed than industry to know where the deficiencies are in stakeholder knowledge.</p> <p>By standardising the type and format of training, the proposal does not recognise the requirements of practitioners.</p> <p>Industry run CPD schemes, with guidance from the Secretary for specific topics that might be covered, are more appropriate and need to be maintained.</p> <p>Giving additional points for formal training is a better way to incentivise this type of learning and many CPD schemes already apply this principle.</p>
4	4.2	Approved education and training	<p>Government-run systems should not take precedence over industry-run forums.</p> <p>The process of having 'approved' training presupposes that the Department knows better than industry or practitioners themselves what types of training they need.</p> <p>The structure of these guidelines appear to be attempting to create revenue streams for the ABCB and the Department, rather than addressing the need for appropriate training of practitioners.</p> <p>Associations can monitor the performance of their industries and, through discussion and consultation, identify any shortfalls that need to be addressed.</p> <p>Training should be tailored to the relevant industry sector in order to get the best outcome.</p>
4	4.3	Relevant CPD	<p>While we recognise the intent behind this proposal – that technical learning will help practitioners in the application of their roles – we believe that this proposal does not acknowledge individual circumstances.</p> <p>If you have someone with years of experience, there may not be sufficient technical courses available for them to do without just rehashing what they already know.</p> <p>Rather than saying 'the practitioner <u>is to</u> prioritise that learning', the clause might be better written as 'the practitioner <u>should</u> prioritise that learning' – ultimately the practitioner should be able to determine where they need support, rather than having to respond to government prescriptions.</p>
4 – 5	4.4	Calculating CPD	<p>We believe the examples need further consideration:</p> <ul style="list-style-type: none"> • if the provider states that a course will take 2 hours, but it goes for longer, it could be that the initial estimate is erroneous. In such a circumstance, the practitioner could miss out on the additional time simply because of the estimate; • if Jill completes a course in 2 hours and 30 minutes, when the estimate is 3, how will anyone know? And if she is able to complete the course quickly, when others require the full three hours, why should she be penalised for that? • If an activity takes 20 minutes and the practitioner can't claim anything, people will be encouraged to overstate how long it took. <p>The point is that the examples are written as an 'honour system'-type approach, but in reality people will estimate up, not estimate down.</p> <p>If someone has done something in 20 minutes, they will say it took half an hour. If that activity is being timed by a third party, the practitioner will waste time to flesh out the activity in order to get the CPD points.</p> <p>These are all considerations that industry-run CPD schemes take into account, and Government direction is not needed.</p>

Page	Section	Question/part	Response
5	4.4	Assessments	<p>As discussed previously, most CPD programs allow practitioners to select what works for them.</p> <p>Dictating the requirement that all CPD activities require assessment significantly curtails existing programs, and will lead to game-playing, where 'assessments' are given that do not actually assess knowledge.</p> <p>It would be more sensible to give weightings to assessment-based training (say 2½ points per hour) as this is more likely to encourage practitioners to choose such an option.</p>
7	6.1	Exemptions	<p>As noted in our submission on the Regulation, the role of the principal design practitioner does not require any actual design knowledge – it is administrative.</p> <p>It should be open to project managers.</p> <p>CPD may, therefore, be necessary for such practitioners.</p>
10	Appendix 2 – Consultation Questions	<i>1. Do you consider that requiring practitioners to undertake three hours of CPD activity is appropriate? Why or why not?</i>	<p>Where it exists, we believe that practitioners should be required to do 20 hours of CPD, within their existing accreditation frameworks.</p> <p>The composition of this CPD should be the choice of the practitioners, within the rules of the relevant CPD scheme.</p>
10	Appendix 2 – Consultation Questions	<i>2. Do you support that CPD activities must be from the approved platforms?</i>	<p>No. CPD needs to be flexible, and not restricted to approved government platforms or entities.</p> <p>The proposal to make the Department's LMS and the ABCB the only approved platforms puts them in direct competition with industry run CPD schemes.</p>
10	Appendix 2 – Consultation Questions	<i>3. Do you support the guidelines prioritising technical CPD activity (i.e. improving knowledge and understanding of the National Construction Code and Building Code of Australia) over other CPD activities?</i>	<p>While we recognise that it is useful for the Government to encourage certain topics to be undertaken, the ultimate choice should be up to the practitioner.</p> <p>Industry-run CPD schemes can monitor their choices and place restrictions on certain areas, but at the end of the day the practitioner should be allowed to determine where they most need support.</p>
10	Appendix 2 – Consultation Questions	<i>4. The Department is working with industry to develop courses that would assist practitioners. What courses or topic areas should be developed and available on the Construct NSW Learning Management System? We are particularly interested in providing courses that cover gaps in current learning content.</i>	<p>It would be more beneficial if the Department put its focus and assistance into improving qualifications.</p> <p>There are many gaps in national qualifications that are difficult for industry to address alone, and Government preference for such qualifications exposes industry to knowledge shortfalls.</p> <p>If national qualifications are the goal, then financial, logistical, and regulatory support for the development and improvement of appropriate national qualifications would be far more beneficial than simply promoting the LMS.</p>
10	Appendix 2 – Consultation Questions	<i>5. Are there any other general comments you would like to make on the Continuing Professional Development Guidelines for prescribed practitioners?</i>	<p>The Government should look to industry to run CPD.</p> <p>While it may, from time-to-time, wish to propose areas for emphasis, industry run CPD schemes and RTOs should be supported to deliver the training and support needed by practitioners.</p> <p>The proposals on the table will undermine industry schemes by emphasising only certain types of training and devaluing others, which will not lead to better learning outcomes, but will create more bureaucracy and game-playing.</p> <p>We advise that the Department play a more supportive role and not direct industry CPD schemes down counter-productive pathways.</p>

Notes on the Design and Building Practitioners Regulation 2020

Page	Section	Title	Comment
8	5 (1) (c), (e)	Form and content of regulated designs involving performance solutions	What form is this brief meant to take? What constitutes 'justification' and who decides that the performance solution is 'justified'? More guidance will be needed here.
8	5 (1) (f)	Form and content of regulated designs involving performance solutions	This is an incorrect description – performance solutions are not <u>just</u> a 'variation' of the deemed-to-satisfy provisions of the BCA, they are compliance with the performance requirements of the BCA. It would be better to say 'information that demonstrates how the solution meets the performance requirements of the BCA'.
8	6	Content of regulated designs involving fire resisting building elements	How does this proposed statement relate to penetrations made by others? Will the designer be held accountable for holes created by builders, electricians, or plumbers? Alternatively, how will such penetrations be monitored, particularly given that plumbing designers are not being captured under the Regulations? Tradespeople are frequent offenders when it comes to poor sealing of penetrations to passive fire walls, and the Regulations do not appear to address this. There will need to be strong processes in place to monitor work done on these systems so that other practitioners do not continue to undermine the efficacy of passive fire features.
9	7	Form and content of design compliance declarations generally	Unfortunately the form requires a lot of work. See our comments on Schedule 6.
9	8	Further applicable requirements for design compliance declarations	Isn't this already the requirement for designs?
9	9 (1) (a), (b), (c)	Further matters to be included in design compliance declarations	These shouldn't be separate checkboxes for these items on the form – a declaration should not be valid if 'no' is the answer to any of these, so there is no point allowing someone to complete the form in such a way. The use of a checkbox approach makes it appear that there might be some flexibility and that a 'no' answer on any of the questions could still be accepted. Instead, the declaration should list all relevant information, for signing at the bottom, with additional sections provided to allow supporting information to be submitted.
9	9 (1) (d)	Further matters to be included in design compliance declarations	What if the specialist advice was on an incidental matter – does that mean it still needs to be recorded? What if a designer consulted with, or sought a peer review from, a colleague, would that be 'specialist advice'? More guidance is needed on this item.
9	10 (1)	Content of principal compliance declarations provided before commencement of building work	Why would the Principal Design Practitioner (PDP) ever be exempted from declaring that design declarations had been received for each regulated design or whether the registered design practitioner is authorised to provide a declaration for the work? Isn't this the whole point of the PDP's role?
10	13 (1) (a)	Certain work excluded from being building work	Waterproofing is one area where a large proportion of issues occurs within residential properties. The exemption of waterproofing within a SOU makes no sense, if the Government's ultimate intent is to protect apartment owners.

Page	Section	Title	Comment
10	13 (1) (c)	Certain work excluded from being building work	<p>The exemption of these scenarios is unnecessary and inadvisable, as in each case, a design is needed.</p> <p>Although with these situations compliance with the BCA may no longer be relevant, it would still be important to know:</p> <ul style="list-style-type: none"> • how other standards have been applied; • how and why BCA compliance cannot be met; and • what has been done with the system.
10	13 (2)	Certain work excluded from being building work	<p>The issue with this subclause is that terms have not been defined that will lead to difference in interpretation.</p> <p>For example we would consider a pump to be a subcomponent of a hydraulic system, not an entire system in itself, but a certifier might disagree – who decides?</p> <p>The example provided in this clause does not really help, as if you replace separate components of the mechanical smoke control system – the ductwork, the fans, the vents – would that make it exempt, or would each be seen as an 'entire' system?</p> <p>If you reverse the example and replace the fire doors, would each fire door assembly be an entire system or only all of the doors to that smoke compartment? The doors aren't connected to each other, so it would be a stretch to say they were integrated.</p> <p>This would be improved with the definition of 'entire system'.</p> <p>Alternatively, allowing a like-for-like replacement as exempt work would clarify the requirements and take out some of the disagreement.</p> <p>We also suggest that it would be sensible to change the example to a sprinkler system and a pump, because the one you have chosen is not as clear-cut as it appears.</p>
12	16 (3) and (4)	Lodgement on NSW planning portal before building work commences	It is not clear what this means – is this suggesting that a registered design practitioner is providing documents for work they haven't done?
13	19	Lodgement on NSW planning portal after issue of occupation certificate	<p>Why would the building practitioner be lodging documents AFTER the issue of the OC?</p> <p>If the intent is to ensure that there is a full record that the as built building was built in compliance with the approved design, then surely it should be submitted for consideration as part of the OC process?</p>
14	22	Notice of building work commencing must be given	<p>What if a PDP hasn't been appointed? These clauses don't appear to give any other options, which means that a building practitioner working on a job that doesn't have a PDP is technically breaking the law by not notifying one...</p>
14	23	Notice of building compliance declaration must be given	
14	25	Further circumstances in which building compliance declaration must be provided	<p>Why would the building practitioner be lodging documents AFTER the issue of the OC?</p> <p>If the intent is to ensure that there is a full record that the as built building was built in compliance with the approved design, then surely this should be submitted for consideration as part of the OC process?</p>
15	26	Variations after building work commences	Isn't the designer meant to be consulted about variations?
15	27 (1)	Access to documents in relation to varied designs	Why is this 'may' and not 'must'?

Page	Section	Title	Comment
16	28	Time within which notice of decision must be provided	How do these sections apply to the FPAS Fire Systems Design class of accreditation and what are the implications for accredited practitioners and FPA Australia?
16	29	Grounds for finding that person is not suitable person to carry out work	
17	Part 4	Registration of practitioners	<p>This Part has been written in such a way as to suggest that a practitioner can apparently apply for registration without needing to be accredited under the <i>Building and Development Certifiers Act 2018</i>.</p> <p>This would undermine FPA Australia's Fire Protection Accreditation Scheme (FPAS) Fire Systems Design (FSD) accreditation, as it would remove mandatory accreditation.</p> <p>This could result in the Association being sued for accreditation payments to date and potentially for loss of income, placing us in a precarious position.</p> <p>Given that FPA Australia has already been recognised as an accreditation authority under the <i>Building and Development Certifiers Act 2018</i> by the Secretary of the Department of Customer Service, and that most practitioners are required to hold FPAS FSD accreditation to do certain relevant fire systems design work, how is this Part reconciled with that other legislation?</p>
17	Part 4	Registration of practitioners	<p>The RIS commented that architects would automatically be recognised, but there was no mention of the FPAS FSD accreditation.</p> <p>Given that:</p> <ul style="list-style-type: none"> • FPAS FSD is run by a professional body, which is recognised under s.52 (2)(a)(ii); and • s.54 (2)(a)(iii) says that the regulations may provide for the recognition of persons as registered practitioners who are registered or recognised by a professional body or under a NSW law – FPAS has been recognised under the <i>Building and Development Certifiers Act 2018</i>, <p>it would make sense for FPAS FSD accredited practitioners to be similarly recognised as architects.</p> <p>Otherwise there is a two-tiered system for recognising designers which puts fire protection practitioners at a substantial disadvantage.</p>
17	30	Recognised training for registration	<p>Will the FPAS FSD qualified pathway be adopted as 'recognised training' by the Department under this clause?</p> <p>Will FPAS FSD transitional accredited practitioners be recognised, or will they have to attain their qualifications first?</p>
17	31	Prescribed conditions for registered practitioners	Why are there different codes of practice for prescribed practitioners and professional engineers?
17	32	Additional conditions for certain registered or recognised professional engineers	<p>Why are these only conditions for professional engineers and not all accredited/registered practitioners when section 50(3) of the Act is not limited to engineers?</p> <p>This clause should be extended to all relevant accreditation schemes run by professional bodies or industry associations that have been approved by the Government, including FPAS FSD.</p>
18	33	Grounds for variation, suspension or cancellation of registration	How do these sections apply to the FPAS Fire Systems Design class of accreditation and what are the implications for accredited practitioners and FPA Australia?
18	34	Grounds for taking disciplinary action	

Page	Section	Title	Comment
18	35	Registered practitioners to provide information to Secretary	
18	36	Registered practitioners to notify Secretary of certain events	
20 – 25	38 – 52	Part 5 – Recognition of professional engineering bodies	<p>The Regulations have a whole section on the recognition of registration schemes run by professional engineering bodies, but nothing recognising accreditation schemes that have already been approved by the Secretary of the Department of Customer Service under the <i>Building and Development Certifiers Act 2018</i>.</p> <p>This is inequitable, and raises questions about how FPAS accredited practitioners might expect to be treated under the Regulation.</p> <p>More advice is needed about how FPAS will be handled and what it means for those practitioners who have done what was expected of them under the <i>Building and Development Certifiers Act 2018</i>.</p> <p>The proposals in the Regulation appear to be changing the rules only six months after it became mandatory for fire systems designers to seek accreditation.</p>
27	56	Individual policies extend to all liability	<p>It is doubtful that the regulation can do this. While it can stretch back to the commencement of their registration (up to a maximum of 10 years) any longer than that may not be constitutional.</p> <p>There is NO requirement for a design practitioner to get registered, if they do not intend to issue declarations, and the Government CANNOT apply requirements like this upon someone who has not chosen to participate in registration.</p> <p>Similarly, a company cannot be held liable for the work of a designer <u>before</u> they joined.</p>
27	57	Partnership policies extend to all liability	
27	58	Corporate policies to extend to all liability	
30	68	Practitioners must keep records relating to adequacy of policy	If a claim can be made up to 10 years after work has been carried out, why are records only required for 5 years?
35	79	Appointment of authorised officers	How do these sections apply to the FPAS Fire Systems Design class of accreditation and what are the implications for accredited practitioners and FPA Australia?
35	80	Penalty notice officers	
35	81	Exchange of information	
36	83 (1)	Savings and transitional—qualifications for design practitioners—fire systems classes	Is this supposed to be 'and' or 'or'?

Page	Section	Title	Comment
36	83 (1) (a)	Savings and transitional—qualifications for design practitioners—fire systems classes	<p>The subclause says that fire systems designers seeking registration must satisfy the requirement of:</p> <p><i>enrolment or completion of an NVR approved Diploma of Fire Systems Design (CPC50509) Release 3 or later, including enrolment in, or completion of, the units of competency specified in Schedule 2 for the particular class of design practitioner,</i></p> <p>This is different from the conditions already placed upon FPA Australia for FPAS, which says that practitioners must be fully qualified within four years of gaining accreditation.</p> <p>There are simply not enough RTOs offering this diploma to satisfy the demand as of 1 July, 2021, and the clause will deliver a shortfall on the very first day.</p> <p>It would be more sensible that the Regulation mirror the requirements already placed upon practitioners by the Department, rather than shifting the goalposts and requiring enrolment immediately.</p> <p>Recognition of FPAS in the Regulations (or clauses that point to the fact that it will automatically be recognised) will make this requirement unnecessary, as we are already working to move our transitionally accredited practitioners to qualified.</p> <p>Furthermore, as of 1 July, 2021, any new applicant for accreditation must be qualified already, so this restriction will only make life complicated for those who currently hold transitional accreditation.</p> <p>This will not improve quality, as those practitioners are already complying with the Department's expectations.</p>
36	83 (2)	Savings and transitional—qualifications for design practitioners—fire systems classes	<p>FPA Australia was required by the Secretary to set a four year period within which a transitional accredited practitioner would have to become fully qualified, as one of the conditions of approval.</p> <p>This subclause states 'three years', which is obviously a shorter timeframe.</p> <p>Practitioners who seek accreditation after 1 July, 2021, will have to be qualified, so this requirement only affects those who have already gained transitional accreditation.</p> <p>The subclause is moving the goalposts for these practitioners, which is unfair.</p>
36	83 (3)	Savings and transitional—qualifications for design practitioners—fire systems classes	How do these sections apply to the FPAS Fire Systems Design class of accreditation and what are the implications for accredited practitioners and FPA Australia?
36	83 (6)	Savings and transitional—qualifications for design practitioners—fire systems classes	Relevant class should include mechanical smoke control.
37	85	Definitions	A six month transitional period is very short and very ambitious. It is unlikely to be achieved, and will lead to perverse outcomes.
38	88	Secretary may permit or cancel deemed registration	How do these sections apply to the FPAS Fire Systems Design class of accreditation and what are the implications for accredited practitioners and FPA Australia?
39	Schedule 1	Classes of registration	See below

Page	Section	Title	Comment
	1	Classes of registration as a design practitioner	<p>The list of design practitioners needs to be expanded, because many areas of fire safety are not covered under the existing categories.</p> <p>At a minimum, we would recommend including:</p> <ul style="list-style-type: none"> • Design Practitioner – Fire Systems (Passive Fire Systems); • Design Practitioner – Fire Systems (Special Hazards); and • Design Practitioner – Bushfires. <p>Portable fire extinguishers should be included within one of the existing categories, for example Design Practitioner – Fire Systems (Hydrants and Hose Reels).</p> <p>FPA Australia would be happy to work with the Department to develop the details behind these three proposed categories, and can provide a follow up submission with some of the relevant information, if desired.</p>
	5	Design practitioner—architectural	<p>It would appear from the Regulation that the Department intends for architects or building designers to sign off passive fire systems designs.</p> <p>This would be unwise, given that they are not specifically trained in the detail of these systems.</p> <p>Given that the RIS specifically identified problems with penetrations in passive fire elements as an area of concern, the design of these features should be carried out by a specialist.</p> <p>We therefore recommend that the role of Design Practitioner – Fire Systems (Passive Fire Systems) be created to design and declare the compliance of these systems.</p>
	6	Design practitioner—building design (restricted)	<p>It would appear from the Regulation that the Department intends for architects or building designers to sign off passive fire systems designs.</p> <p>This would be unwise, given that they are not specifically trained in the detail of these systems.</p> <p>Given that the RIS specifically identified problems with penetrations in passive fire elements as an area of concern, the design of these features should be carried out by a specialist.</p> <p>We therefore recommend that the role of Design Practitioner – Fire Systems (Passive Fire Systems) be created to design and declare the compliance of these systems.</p>
	14	Design practitioner—fire systems (fire sprinkler)	<p>The detail in this clause is fine, but there needs to be a separate design category for special hazards, as these are not necessarily within the skill set of a sprinkler designer.</p> <p>We suggest that a new category of Design Practitioner – Fire Systems (Special Hazards) be created.</p>
	18	Design practitioner—mechanical engineering	<p>Why are smoke control and exhaust and stairwell pressurisation included in the mechanical engineering instead of just in Design Practitioner—Fire Systems (Mechanical Smoke Control)?</p> <p>There needs to be a limitation so that only those who have undertaken fire safety training can do mechanical smoke control or stairwell pressurisation.</p>
	22	Professional engineer—civil engineering	<p>The definitions here are very circular: you're a _____ engineer if you are allowed to do _____ engineering work.</p>
	23	Professional engineer—electrical engineering	
	24	Professional engineer—fire safety engineering	
	25	Professional engineer—geotechnical engineering	

Page	Section	Title	Comment
45	26	Professional engineer—mechanical engineering	
	27	Professional engineer—structural engineering	
	Schedule 2	Qualifications, experience, knowledge and skills	See below
	4	Experience—all classes of design practitioner	<p>The Regulation takes a position that the length of a practitioner's experience is the only consideration for ensuring good design.</p> <p>This is simplistic and misguided.</p> <p>The five year threshold is arbitrary and unscientific and ignores the need for less experienced designers to be able to carry out minor work or simple system designs.</p> <p>In reality, designers should be registered for the work they do, not for an ideal.</p> <p>The selection of a designer should be fit-for-purpose – you don't need a structural engineer to design a non-loadbearing partition within a SOU, for example, nor would five years' experience be necessary to be able to perform such a task effectively.</p> <p>The problem with the proposed benchmark is that it automatically increases the cost of design for clients without providing any additional protection.</p> <p>In the fire protection sector, for example, a designer with only a couple of years' experience is perfectly capable of designing minor refurbishments within an existing tenancy (moving a handful of sprinkler heads, for example) – to require such a practitioner to have five years' experience would be unnecessary.</p> <p>Including less experienced practitioners to do more limited design work creates a development pathway for design practitioners that allows them to take responsibility for their existing designs while they increase their experience.</p> <p>The Government already puts conditions on the registrations of building certifiers under the <i>Building and Development Certifiers Act 2018</i>, and there is no reason why such an approach would not work here.</p> <p>Similarly, the creation of restricted categories under the FPAS FSD accreditation class – a condition of the Secretary's approval – was recognition of the need to have a diverse array of designers, not just those who are the most experienced.</p>
	5	Design practitioner—architectural	<p>It would appear from the Regulation that the Department intends for architects or building designers to sign off passive fire systems designs.</p> <p>This would be unwise, given that they are not specifically trained in the detail of these systems.</p> <p>Given that the RIS specifically identified problems with penetrations in passive fire elements as an area of concern, the design of these features should be carried out by a specialist.</p> <p>We therefore recommend that the role of Design Practitioner – Fire Systems (Passive Fire Systems) be created to design and declare the compliance of these systems.</p>
	6	Design practitioner—building design (restricted)	<p>It would appear from the Regulation that the Department intends for architects or building designers to sign off passive fire systems designs.</p> <p>This would be unwise, given that they are not specifically trained in the detail of these systems.</p> <p>Given that the RIS specifically identified problems with penetrations in passive fire elements as an area of concern, the design of these features should be carried out by a specialist.</p> <p>We therefore recommend that the role of Design Practitioner – Fire Systems (Passive Fire Systems) be created to design and declare the compliance of these systems.</p>

Page	Section	Title	Comment
	9 (3) (b)	Design practitioner—electrical engineering	<p>Add at the end of the clause, and before the full stop:</p> <p><i>“, but not including fire safety systems”</i></p> <p>Electrical engineers should not be able to do fire detection and alarm work without appropriate fire systems design training.</p>
	10 (3) (b)	Design practitioner—electrical design (restricted)	<p>Add at the end of the clause, and before the full stop:</p> <p><i>“, but not including fire safety systems”</i></p> <p>Electrical designers should not be able to do fire detection and alarm work without appropriate fire systems design training.</p>
	12	Design practitioner—fire safety engineering	<p>The clause should outline the training that a fire safety engineer needs to do above their engineering degree to deliver the knowledge relevant to the task – the description under ‘qualification’ is not adequate.</p> <p>There is no dedicated fire safety engineering degree in Australia – practitioners do postgraduate study in order to be able to do this work, and these qualifications should be listed.</p>
	12 (3) (f)	Design practitioner—fire safety engineering	<p>Add at the end of the clause, and before the full stop:</p> <p><i>“, to the extent that the standards are relevant to this class of registration”</i></p>
	13	Design practitioner—fire systems (detection and alarm systems)	<p>Include a clause similar to that used for the engineers:</p> <p><i>Recognition or accreditation as a fire systems designer in the area of fire detection and alarm systems by a recognised accreditation authority.</i></p> <p>This should be included at the start, not as just one of the pathways.</p>
	14	Design practitioner—fire systems (fire sprinkler)	
	15	Design practitioner—fire systems (fire hydrant and fire hose reel)	
	16	Design practitioner—fire systems (mechanical smoke control)	<p>A clause should be included here allowing the Secretary to recognise relevant qualifications or courses that relate to the practice of mechanical smoke control.</p>
	18	Design practitioner—mechanical engineering	<p>Why are smoke control and exhaust and stairwell pressurisation included in the mechanical engineering instead of just in Design Practitioner—Fire Systems (Mechanical Smoke Control)?</p> <p>There needs to be a limitation so that only those who have undertaken fire safety training can do mechanical smoke control or stairwell pressurisation.</p> <p>If the Department chooses not to separate the two roles, a clause should be included allowing the Secretary to recognise relevant qualifications or courses that relate to the practice of mechanical smoke control.</p>
	18 (3) (b)	Design practitioner—mechanical engineering	<p>Add at the end of the clause, and before the full stop:</p> <p><i>“, but not including fire safety systems”</i></p> <p>Mechanical engineers should not be able to do mechanical smoke control designs without appropriate fire systems design training.</p>
	20	Principal design practitioner—general	<p>The role is essentially one of collecting declarations from other designers and making sure that they are fully completed (and the designers are registered).</p> <p>There is no design input required, nor should there be, as this would overrule the designers and detract from their individual accountability.</p> <p>The role should therefore be open to project managers and not limited to designers, as it is one that the former already effectively perform.</p>
65	Schedule 3	Continuing professional development	See below

Page	Section	Title	Comment
	2	Registered practitioners must complete required continuing professional development	How do these sections apply to the FPAS Fire Systems Design class of accreditation and what are the implications for accredited practitioners and FPA Australia's CPD scheme?
	3	Registered practitioner must keep records of completed continuing professional development	Practitioners should be keeping records for ten years, in line with their other responsibilities.
	4	Requirements for prescribed practitioners	It is unclear just what 'relevant education and training that is approved by the Secretary' might include.
67	Schedule 4	Code of practice	See below How do these sections apply to the FPAS Fire Systems Design class of accreditation and what are the implications for accredited practitioners and FPA Australia?
	8	Duties apply to professional engineers when acting as professional engineers	Why is there a separate code of practice for engineers? Shouldn't all practitioners comply with the same conditions?
	9	Duty to act in professional manner and abide by standards expected by community	
	10	Duty to act within level of competence and expertise	
	11	Duty to maintain satisfactory level of competence	
	12	Duty to act in best interests of client	
	13	Duty to deal and communicate with clients in professional manner	
	14	Duty to provide information to clients	
	15	Duty to avoid conflicts of interest	
	16	Duty to maintain confidentiality	
	17	Duty not to misinform or mislead	
	18	Duty to manage and resolve disputes	
	19	Duties regarding supervision of other persons	
74	Schedule 6	Forms	See below

Page	Section	Title	Comment
	1	Form 1	<p>There is no context to this form, no room for nuance, and no guidance as to what evidence is acceptable.</p> <p>The Checkbox approach doesn't give greater rigour, because all declarations will tick 'yes', otherwise they wouldn't be valid.</p> <p>Signing a declaration after a statement with all of the conditions listed would be a reasonable approach, so long as space was provided to provide additional evidence.</p>
		Part 2 (1)	Why include the 'no' box? Surely if they don't comply, they can't submit the declaration?
		Part 2 (2)	<p>What do you provide if the design DOESN'T comply with the requirements of the BCA?</p> <p>How does a designer record 164B exemptions?</p>
		Part 2 (3)	Aren't all building designs required to integrate other aspects of building work to which they relate?
		Part 2 (4)	Is this other than those that are already called up by the Building Code? What about manufacturing codes/standards?
		Part 2 (5)	If the answer is no, what happens?
		Part 2 (6)	Why is there a 'N/A' box? When would it not be necessary for a product to comply?
		Part 2 (7)	<p>Why is there a 'N/A' box? It's either applicable or not.</p> <p>What constitutes 'specialist advice'? If you ask a peer to give you feedback, is that included? Or is it only an expert who triggers it?</p>
		Part 3 (1)	Why include the 'no' box? Surely if they don't comply, they can't submit the declaration?
		Part 3 (2)	<p>What do you provide if the design DOESN'T comply with the requirements of the BCA?</p> <p>How does a designer record 164B exemptions?</p>
		Part 3 (3)	Aren't all building designs required to integrate other aspects of building work to which they relate?
		Part 3 (4)	Is this other than those that are already called up by the Building Code? What about manufacturing codes/standards?
		Part 3 (5)	If the answer is no, what happens?
		Part 3 (6)	Why is there a 'N/A' box? When would it not be necessary for a product to comply?
		Part 3 (7)	<p>Why is there a 'N/A' box? It's either applicable or not.</p> <p>What constitutes 'specialist advice'? If you ask a peer to give you feedback, is that included? Or is it only an expert who triggers it?</p>
		Part 4	Accreditation details (where available) should be included.

Page	Section	Title	Comment
77	Dictionary	Area of fire safety engineering	<p>Part (d) of this definition – ‘the prevention, detection, and suppression of fire’ appears to place fire systems firmly back within the realm of fire safety engineering.</p> <p>This is not appropriate, and ignores the significant arguments not only by FPA Australia and the NFIA, but the engineers themselves, that this work is <u>not</u> performed by engineers.</p> <p>The subclause should instead be amended to say:</p> <p><i>‘(d) the development of strategies for the prevention, detection, and suppression of fire.’</i></p>