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**From:** Kerry Hunter  
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**To:** Building Confidence Response  
**Subject:** Better buildings through greater accountability - have your say

**Follow Up Flag:** Follow up  
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Apologies for not using the formal template, I currently don't have computer access.

Please see the following comments and queries regarding the draft Design and Building Practitioners Regulations.

Cl 13 (1)(a) reads as if waterproofing could be exempt?

(b) can 'development control orders' (EP&A Act) be used as a loophole to exempt building works from being 'building works' under the DBP Act & Regulation? (- eg DA conditions describing a required performance outcome &/or rectification work?)

Cl 16 (3) & (4) and cl 17 (3) & (4) if a builder can give permission for a design practitioner or principle design practitioner to issue a compliance declaration on their behalf, does this have the effect of further transferring the builders liability onto the architect?

Cl 24 says only need 14 days notice of intent to apply for an OC. The NSW Building Commissioner had stated previously that it was to be 6 months prior notice?

Cl 26 (2) is this a loophole that exempts alternative/performance solutions from the documentation requirements for demonstrating BCA compliance regards variations after building works have commenced?

Cl 32 (3) does this provide a loophole for engineers to be exempt if there's no provision for registration or no professional standards scheme consistent with the DBP Regulations? (- architects are subject to enforceable independent legislation under the Architects Act & ARB registration)

Cl 37 (1) is this a potential extension of cl 32 under the transition provisions?

(2) Does the DBP Act have the effect of the building commission becoming the professional registration body for engineers & potentially lesser requirements than architects under the Architects Act & independent registration?

Cl 38, 39 relies on the Institute of Engineers (or its nominated professional body) to have in place by [1.07.21](#) the policy & procedures for registration under the DBP Act, & the Regulations. However, the Secretary can separately 'recognise' the professional body &/or professional registration. Is this a lesser requirement than architects who already have an established independent professional body, separate regulatory body, & registration process in place. Does the DBP Act/Regulations potentially risk engineers professional standards being open to future political interference depending on future building commission Secretary appointments?)

CLs 40-50 essentially lays out what the engineers professional body has to do. If the Secretary can recognise the requirements separately anyway, what is the purpose of there being a separate Engineers professional registration body?

Cl 66 appears to provide an insurance loophole exempting builders from being covered by the liabilities intended and the whole purpose of the Act & Regulations regarding declared design requirements. Architects will be left with all the liabilities & potentially the only people able to be sued via PI insurance (currently not yet certain).

Cl 67 NOTE: The same insurance exemption provision is NOT extended to design practitioners. NOTE implications of the combination where the builders can also transfer their obligations for the declared design to the principle design

practitioner.

#### OTHER COMMENTS

- Boarding houses (class 3) must be captured under the Act and Regulations.
- BCA consultants & certifiers must be subject to this legislation. BCA consultants are relied upon for compliance (in particular for alternative/performance solutions). However, the role of PCAs appears unclear going forward if compliance is already captured under the DBP Act and Regulations?
- Nothing prevents developers & builders special purpose vehicles being phoenixed.
- Nothing requires any registration of developers as individual persons identifiable & accountable for every special purpose vehicle.
- My understanding is the Civil Liability Act still enables contracting out of the duty of care - effect is that developers have none &/or this dilutes future ability for pursuing damages particularly where builders can be exempted from the PI liabilities of this Regulation?
- Does this legislation weaken the ARB & Architects Act as essentially duplicating existing registration. Surely better to tighten up that existing legislation &/or registration competencies & leave the DBP Regulations to the engineers & builders (+ BCA consultants & certifiers)?
- PI insurance remains a big unresolved issue for architects.

Regards,  
Kerry

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