

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: James Turner

Organisation Name: Personal views. Member of Professionals Australia and Engineers Australia

Date: 10 January 2021

About you

Please share information about yourself or the organisation that you are responding on behalf of. This information helps us work out what various groups think about the changes and how they will be affected.

If the reforms will affect the work you or your organisation does, please tell us what that work is.

If you think you will need to be registered as a Design Practitioner, Principal Design Practitioner, Building Practitioner or a Professional Engineer, please share details of your qualifications and experience.

If you are a member of the public, please share the reason you are interested in these reforms and how you learnt about them.

Please feel free to share any other details you think will help us develop these reforms.

I am a member of The Association of Professional Engineers Australia which is a division of Professionals Australia and also a member of Engineers Australia.

Professionals Australia and Engineers Australia are well placed to provide constructive information for New South Wales legislation concerning Engineering including associated with the building industry.

I am a qualified Civil Engineer working in Local Government for many years. My role includes the assessing of designs and checking construction of alterations of and connections to Council's infrastructure covered by the Roads Act 1993. This includes trunk stormwater drainage and works in the public roadway, including nature strip area, related to developments. The sites covered are not restricted to Class 2 buildings and associated buildings with a Class 2 part included in the draft regulation.

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?

Yes, now, it should cover Professional Engineering, not just be limited to some engineering in buildings that are or include Class 2. The registration scheme should be similar to long term scheme existing in Queensland and new scheme in Victoria, so that harmonisation of the schemes can reduce administration costs. We have NCC and BCA, have national registration.

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?

Yes, the problem shouldn't have been created in the beginning, but if it doesn't start with CC or CDC from 1 July, and is to be applied to existing construction, what stage of construction is included and how is that stage determined for existing constructions. Specific problems in existing work underway or complete, such as flammable cladding, can be covered in same way as flammable cladding. Hopefully there is no additional problems before the new legislation is in force.

Regulated design (page 17)

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

Yes, they cover maintenance that doesn't affect the structural capacity or cover things that have been exempted by someone independent such as Fire Commissioner.

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).

No, and value of the works should not be a determining factor, a little here and little there adds up to unsupervised total. The aim is to maintain the integrity of the building, not reduce it, fast or slow. Painting is maintenance, but what sort of paint is used, does it match the designer's requirements or the price the contractor hopes will get the job? As

standards change, repairs should be in line with current practice, however not involve wholesale upgrades. If a ACM spandrel panel is broken, replace that panel with current materials, but not a reason to remove other ACM spandrel panels.

Registration of Compliance Declaration practitioners (page 23)

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

Yes, with additions below to cover related basics. Also in line with the registration should cover Engineering, not just limited to Class 2 buildings, other classes may be needed such as Acoustic Engineers for performance or shopping spaces.

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?

Yes, additional types

Subsurface Utility Engineering should be included, either as a Design Practitioner or a compulsory part of design components that involve changes in ground levels, such as excavation or filling. Surrounding subsurface utilities are frequently ignored at design stage or covered with a requirement that the constructor is to avoid damaging services, yet the designer has done little to locate the services to ensure their design does not clash with the services. If this is to be included in existing types, then it is to be in both the Ground Engineering type and the Civil Engineering type, as well as any others involved in excavation, such as Drainage and later Landscaping

Geotechnical component to include Engineering Geologists, not just Geotechnical Engineers. Both are needed to ensure the foundations are suitable for the site conditions. If the foundations are not adequate, the rest of the structural design only determines if the building falls over in one or many pieces.

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.

Yes, the skills part is more important than the qualifications, some higher qualifications go beyond the practical and are not suitable for design work, rather restrict the holder to research.

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

Yes, demonstrate that they are capable and willing to provide appropriate proposals for design to clients. I regularly receive poor, substandard designs, generally from certain designers, that can only be raised to constructable level with additional design work, I do not know if this is because the design is less than the proposal to the client or if the proposal was limited with a matching price, which is then followed by increased fees as the initial design was not approved or if they are looking for design by approval. Sometimes the client doesn't want to do part of the works required in the approval, despite the recommendations from the designer, but not always. The designer is supposed to be the knowledgeable adviser, sometimes the client is knowledgeable, sometimes not, either way, the designer is responsible for proper design.

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

Yes, including the experiences should be b years in recent c years, while the knowledge gained many years ago can help find solutions, the methods from then may no longer be current. CPD and frequent practice help keep skills up to current levels.

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

Yes, there are some types of building that are suitable for low or medium rise and not suitable for high rise. Practitioners with skills for the types of work limited to low rise should be approved for that, just as practitioners for high rise may not be approved for some types of low rise buildings. This is in line with the aim of working within areas of skill and competence.

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?

Yes, clarify the proposed geotechnical engineer registration class includes engineering geologists. Main problem is limitation to Class 2 building or building including Class 2 construction.

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

Yes, the professional bodies such as Professionals Australia and Engineers Australia have much closer knowledge of the Engineering profession and field and can make any regulation and registration much more appropriate to the community than a government only approach.

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?

No, the aim is to have a scheme that is compatible with the existing schemes in Queensland and new scheme in Victoria. Having a scheme that works with other schemes will allow a national scheme, thus reducing costs for large projects where interstate staff will be involved at different parts of a project over the design and construction phases. The reduced costs on large projects should allow the engineering companies to offer lower prices to local small projects if overall costs are lower.

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

Yes, the aim of Washington Accord is to recognise equivalent qualifications, maybe with a local twist such as BCA, but that is the standards to design to rather than the method or engineering knowledge needed to carry out the designs. The Accord allows our engineers to work overseas and pick up skills that can improve Australia, as well as overseas qualified engineers bringing improved methods and recent developments to Australia.

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

Again, why not have something compatible with schemes in other states, so that crossing borders doesn't require repeating showing that they meet qualifications, skills,

knowledge and experience requirements for registration. This will also make it easier for someone barred in one state to be blocked in other states, rather than use a difference to practice elsewhere until cleared in the state that disciplined them.

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

Yes, again, why not have something compatible with schemes in other states, so that crossing borders doesn't require repeating showing that they meet qualifications, skills, knowledge and experience requirements for registration.

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

Yes, including the experiences should be b years in recent c years, while the knowledge gained many years ago can help find solutions, the methods from then may no longer be current. CPD and frequent practice help keep skills up to current levels.

- 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.

Yes, at present, it will depend how well the broad descriptions are implemented during registration and how the areas of competence are defined and checked. A civil engineer working in road pavements will have better knowledge of asphalt than a civil engineer working in excavation of basements, where piled walls are the main element. Both involve excavation but with different aims, plant, monitoring and processes.

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?

Yes, it means that the design for the whole structure is gone through before work at the start cuts out options for later design. Having the whole design approved also prevents

existing work being used as an excuse for not being able to meet standards on later parts of the project. This also may mean that external works that are usually left to the end are considered in time for initial works to allow for the requirements of external works.

- 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.

Yes, the Building Practitioner is the one responsible for constructing the design and will have constructability knowledge that the designer may not and also knowledge of their own resources and methods, so they should be involved with the finalisation of the design, both so options can be adjusted to provide a compliant outcome and better work method and also so the builder is aware of the design intent and requirements, not make up their own decisions on the way. It also allows the builder to ensure the designer has provided all the information they want for the build, and may require the designer to get more information so their design can be constructed, not just approved. Actual depth of rock, haulage routes, underground services are some of the details that can be skipped at design stage but not at build stage. Designers keep making the same mistakes unless they have to then construct their design, this way the builders can help the designers and also can't avoid gaps in the design by filling with their own methods. This doesn't just apply to Class 2 or part Class 2 buildings that the draft is limiting itself to, but to broader engineering.

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

Yes, the additional requirements in the draft regulation reduce the excuses a designer has for skipping the details needed for the particulars of the project, including other parts of the same project, as well as surrounds. It also reduces the opportunity for clauses in designs that claim the builder is responsible for everything the designer skipped over. Hopefully this will result in better designs and less design correction by the builder during construction when one part of the design prevents another part of the design.

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

Not yet, see how the draft regulation works, as loopholes are found, close them.

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

Yes, thought there may be opportunity to include a record number for the particular document in a records system and maybe more space for longer numbers used in some project systems, especially if BIM is being used

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

Yes, but why not in .dgn format as well, is the government mandating AutoDesk projects or letting MicroStation products import the .dwg to test their importing?

- 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?

No more than 1 day, why not before the varied regulated design is commenced, so there is more opportunity for the changes to be checked and more incentive for the original designer to complete the design. Also means that design details are available if the builder has to leave the site or if there is a failure in the construction, such as temporary shoring, so quicker to design rectification works.

- 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, so the certifier has to have all the information from the designer and builder before being asked to allow occupancy, this is to include interim occupancy if applicable. Also allows the builder to have all their records up to date, not just a painted and carpeted unit.

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

Not yet, see how it is implemented and then add parts if needed

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

Not at present, though some may be required as the system is implemented

Insurance (page 51)

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

Yes, including reviews to see what is improving the industry and if there is a move out of Class 2 buildings to other parts of engineering to bypass the intent of registration process. There is also opportunity for government to improve regulation to reduce the risks and therefore to reduce the insurance costs or even make insurance available on the commercial market.

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

No, but subject to review over next few years, it is getting a balance between what government regulation covers and what the industry does and what the industry can get insurance for. Insurance should not be the answer for poor regulation, availability of insurance will probably result in regulation reform.

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, it gives the insurance industry time to see what is happening and who is doing what, including on projects that get CC or CDC prior to 1 July 21, they are unlikely to instantly change culture when commencing the first project under the new requirements, those that aren't there now will have to shape up or get out. 2 year limit, if companies can't get insurance then either regulation needs to be improved or other industry reform, which may increase construction costs for the lower ranked contractors, as they improve. The consumer won't like the increase in cost, but that is the way to reduce the risk they currently have.

Continuing professional development (CPD) (page 54)

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

Yes, this is typical of requirements of most professions, not unusual or unexpected, and required to keep up with current practices, rather than using standard drawings taken from university assignments and used thereafter.

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

Part should be on the changes to BCA and NCC but part could also be on what could be improved in BCA & NCC. A split similar to engineers on topics covering your particular work area and covering other industry related topics, but also include risk or WHS reminders. Project reviews are also useful, especially more unusual projects. Not all sales pitches, but new technology is also useful. BIM could be used more, so there is opportunity there.

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

Yes, it is similar to current requirements for engineers

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

Yes, it requires you to keep up to date with your area, covers risk, so you don't forget to include that, business skills help, even as an employee, you are representing the business and there are points that can be pulled from other areas to use in your work or life. A new sort of lighting control may mean that light pole can be further apart, changing how the road is laid out by the civil engineers

Penalty notice offences (page 57)

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

Yes, they aren't enough to close the business down but give them warning that time to improve, also opportunity to be included in list people not up to standard, without having to resort to courts to have any penalty applied.

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

Good start, gives several opportunities to issue penalties before needing the big stick of court and closing for those who can be lifted to reasonable standard, and leave court for serious offenders. Amounts, see how many repeat, if they repeat, the penalty isn't enough and they are making enough money cutting corners to cover the penalties. Include in reviews over next few years.

Fees (page 59)

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

Yes, the service is there for those who use it, the end customer pays their part, the general taxpayer is being charged at present for fixing the gaps in the current system. No problem with the people who benefit from the improved scheme, the owners and users of buildings, pay for the improved and better buildings this is aimed at providing.

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

As well as relating to their administration costs, also the costs of industry bodies, or professional bodies, to be members and what services are included in that membership, such as CPD, registration schemes, group insurance. Also what are other states charging and why NSW can't be more efficient than other states. Again we should be aiming to a system that can be part of a national scheme, not having to start again when a national scheme is developed.

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

No, my role is too far from fee determinations, would be better talking to Professionals Australia, Engineers Australia and related professional and industry bodies who have good industry knowledge.

Proposed Design and Building Practitioners Regulation 2020

Please use this section to provide feedback on the proposed Regulation. Headings have been included to assist you in providing feedback on particular topics covered in the Regulation.

- 1. Part 2 – Regulated designs and types of work**
Requirements for regulated designs and compliance declarations, building work and professional engineering work
- 2. Part 3 – Requirements for designs and building work**
Lodgement of designs and compliance declarations, requirements of principal design practitioners and building practitioners
- 3. Part 4 – Registration of practitioners**
Applications and conditions of registration and registration obligations
- 4. Part 5 – Recognition of professional bodies of engineers**
Applications and requirements for recognition or registration scheme
- 5. Part 6 – Insurance**
Insurance for design and principal design practitioners, professional engineers, building practitioners and adequacy of cover
- 6. Part 7 – Record keeping**
Record keeping for design and principal design practitioners, professional engineers, building practitioners
- 7. Part 8 – Miscellaneous**
Authorised and penalty notice officers, exchange of information, transitional arrangements for insurance for building practitioners and qualifications for fire system designers and work done under existing arrangements.

- 8. Schedule 1 – Classes of registration**
Classes of registration for practitioners and scope of work
- 9. Schedule 2 – Qualifications, experience, knowledge and skills**
For building practitioners, design practitioners, principal design practitioners and professional engineers
- 10. Schedule 3 – Continuing professional development**
CPD for prescribed practitioners and CPD for professional engineers
- 11. Schedule 4 – Code of practice**
Code for prescribed practitioners and code for professional engineers
- 12. Schedule 5 – Penalty notice offences**
- 13. Schedule 6 – Forms**
Design Compliance Declaration
- 14. General feedback**
Any other comments you would like to make on the proposed Regulation.

Proposed Continuing Professional Development Guidelines (CPD Guidelines)

Please use this section to provide feedback on the proposed CPD Guidelines. There are two Guidelines we are seeking feedback on:

- 1. CPD Guidelines for prescribed practitioners (design practitioners, principal design practitioners and building practitioners) and,*
- 2. CPD Guidelines for professional engineers.*

Questions have been included to assist you in providing feedback.

CPD Guideline for prescribed practitioners

1. Do you consider that requiring practitioners to undertake three hours of CPD activity is appropriate? Why or why not?
2. Do you support that CPD activities must be from the approved platforms? If not, please explain why.
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? If not, please explain why.
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.
5. Are there any other general comments you would like to make on the Continuing Professional Development Guidelines for prescribed practitioners?

CPD Guidelines for professional engineers

1. Do you support the proposed CPD structure and allocation of points? Why/why not?
Please make any suggestions for amendments and explain why they are necessary.
2. Do you support the mandatory CPD topic areas? Why/why not? Please make any suggestions for amendments and explain why they are necessary.
3. Are there any activities that should be included/not included as:
 - a) Formal education and training activities?
 - b) Informal education and training activities?
4. Structured training courses available from Construct NSW Learning System and from the Australian Building Codes Board are proposed to count for 2 CPD points. Do you support this approach?
5. The Department is working with industry to develop courses that would assist professional engineers. 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.
6. Are there any other general comments you would like to make on the Continuing Professional Development Guidelines for Professional Engineers?