

Submission by Jeremy Ell on the Design & Building Practitioners Regulation

1. Design Compliance Declaration

R.9(1)(c) – a design compliance declaration must include the following.

(c) whether or not any building product referred to in the design would, if used in a manner consistent with the design, achieve compliance with the *Building Code of Australia*,

I understand the motivation, but I believe this will lead to architects and engineers not specifying named products and simply referring to generic products.

As an example, they will refer to a waterproof membrane that has a 20 year warranty rather than specifying a Wolfen membrane. You may end up with a sub-optimal outcome.

2. Class of Buildings

R.12 – the regulations only affect class 2 buildings or buildings that contain a class 2 building. That is multi-unit residential or buildings that contain multi-unit residential.

My comment here is in relation to the scenario where there are multiple buildings in a development such as a retirement village. This may include a pump room which is a separate building and is a class 10a building but it services a class 2 building but not covered. A communal building might be a class 9b building and a RACF is a class 9c building but not covered on the same project/development.

Note this definition also occurs in r.14

I understand we don't want to overreach but believe a project needs some consistency.

3. Certain Work Excluded

R.13 notes that there are certain works excluded. In r.13(1)(e) along with the 'mechanical, plumbing or electrical service', should lifts be included or is there no such thing as a certified lift consultant with professional qualifications?

Is a lift a 'building element' and therefore part of the regulated design?

4. Further Areas of engineering

In R.15 should a lift engineer & acoustic engineer be prescribed. Acoustic engineering for the building element defined as part of the building enclosure as defined in s.6(1)(d) of the Act.

5. Lodgement

R.17(2) requires a varied regulated design to be lodged no later than 1 day after the building practitioner commences the variation. 1 day is very strict and unless they get the design compliance declarations from the consultants engaged by the Principal they cannot commence the variation as they will be in breach of the Act. This will require a change to the model clauses as a potential EOT for construct only contracts.

R.18(3) requires a building practitioner to provide a variation statement as per r.26 for every variation that has occurred as part of their building compliance declaration (required for OC). Presumably this will be compared to the individual R.17(2) variations lodged by the building practitioner earlier. See R.26 this is a substantial document to be submitted by the Building Practitioner and includes;

- (a) the type and purpose of the variation
- (b) the part of the building to which the variation relates
- (c) explanation of how the variation meets the BCA and codes.
- (d) a list of applicable standards applicable.

I would have thought the design practitioner is better placed to provide these details. See below but I'm unsure how R26(2) is supposed to work

6. Requirements relating to building practitioners

R.22 & R.23 – could the 14 days be reduced to 7 days with respect to the prior notice for commencing work as it could delay commencement of work. As a comparison you need to notify Safework 5 calendar days prior to undertaking demolition work.

In R18(1), R.25(1), R.25(2), R77(c) there is a reference to 'contractor document'. What is this? I think it has to get defined.

R.26(2) – is this correct? You only have to record variations that don't apply to building elements or performance solutions.

7. Insurance

R.68(b) – seems unusual to have a 5 year limitation when there is a limitation period of 6 years from a cause of action, 12 years for a deed. See R.73(4) which is 10 years as per EP&A Act.

8. Schedule 2 - Qualifications

Part 2 section 3(1) an endorsed contractor licence as defined in Schedule 1 of the Home Building Act is 'a contractor licence endorsed under this Act to show that it is the equivalent of a supervisor certificate' – see Division 2 of Part 3 of the Home Building Act. These are the individuals who will act as a Building Practitioner signing these documents on behalf of the company.

S.13(1)(b) of the Home Building Act uses, 'under the supervision, ... of the holder of an endorsed contractor licence ...'. As a comparison s.15(b) uses slightly different language, 'under the immediate supervision of the holder of such an endorsed contractor licence ...'

The way I read, s.13(1)(b) is the on-site or immediate supervision on a class 2 building does not need a contractor's licence and the person doing the supervision (say off-site) will sign the building compliance declaration. Is this correct?

9. Schedule 3 – CPD

Given the 3 hours of CPD required by the guidelines and looking at Schedule 4 which is a code of practice should a component of these 3 hours include the code of practice and understanding their obligations under the Act and Regulations?

10. Schedule 6 – Forms

There is only a design compliance declaration. Should there be a;

- (a) Principal Design Declaration
- (b) Building Compliance Declaration
- (c) Design Declarations for varied designs r.17
- (d) Variation Statement r.26