

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: Alex Henebery

Organisation Name: Master Builders Association NSW

Date: 09/12/2020

About you

The Master Builders Association of NSW is the leading building and construction industry association in NSW. A not for profit organisation, it is chartered with representing and furthering the interests of the building and construction industry in NSW.

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?

Possibly.

Firstly, the reforms applied to Class 2 should be assessed before any consideration is given to expanding them to other types of buildings, which should then be done one class at a time.

Secondly, the appropriateness of the reforms should be separately assessed as to their applicability to each class, such as suitability to Class 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?

Yes. To include projects already commenced would add considerable confusion.

Regulated design (page 17)

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

Yes. It is not needed or cost-effective to require regulated design for the proposed excluded works. However, Master Builders NSW has reservations with regard to the "renovation of a fire system as it may leave the door open for the new works to be less than or substantially different to what was originally in place.

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).

Registration of Compliance Declaration practitioners (page 23)

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

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?

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.
8. Other than qualifications, skills, knowledge and experience requirements, are there any other eligibility criteria that applicants should meet to be eligible for registration? **The eligibility criteria appears to be sufficient, however it should be noted that national consistency should be considered to ensure a competitive playing field for NSW compared to other states.**
9. Do you agree that practitioners should be required to have 5 years of recent and relevant practical experience?
10. Some classes of practitioner have been proposed with authority to work on low and medium rise buildings? Do you support this approach?

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?
12. Do you support a co-regulatory approach for the registration of engineers?
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?
14. The Regulation proposes recognition of Washington Accord accredited qualifications. Do you think this is appropriate? If not, what alternative approach do you suggest?

15. Under Pathway 2 what criteria do you think the professional engineering body should satisfy to be eligible to perform their function?
16. Would you be supportive of professional bodies developing a PSS for Pathway 3 to be available?
17. Do you agree that Professional Engineers should be required to have 5 years of recent and relevant practical experience?
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.

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?

We partially support this proposal as it will ensure the builder has a full and proper set of drawings that comply with the Code giving the builder some assurance from the designers. However, on larger more complex buildings, consideration should be given to stage the submission of designs as these projects roll out over a long period (roof design is unlikely to be finalised at the stage or breaking ground). Generally the costs of any start delays are borne by the builder and could add considerable cost to a project. Staged plan lodgement would reduce the necessity for variation designs being submitted.

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.

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

Yes, the matters covered are the critical issues.

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

No

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

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

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?

One day is arbitrarily too short. The variation works will require a regulated design prior to the work and the requirement to lodge the design within one day is unnecessarily short. Within one week would be sufficient.

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 Occupational Certificate can be properly assessed. We echo our thoughts to Question 19 that there should be staging of design and approval for large and complex buildings.

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

No.

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

No

Insurance (page 51)

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

Supported, however reservations continue to be expressed as to the availability and viability of policies.

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

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

Supported, clarification is needed as to exactly what “adequately insured” means. It is noted that the Impact Statement states “The intention is for Building Practitioner to be excluded at the introduction of the reforms...” which indicates there is no need for the Building Practitioner to obtain insurance at all as opposed to a requirement to obtain it as best as possible without it needing to be “adequate”.

Continuing professional development (CPD) (page 54)

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

Yes. Many of the defects leading to the reform requirements could be dealt with by appropriate education.

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

For Building Practitioners, any CPD should focus on those issues already identified as problematic, such as waterproofing.

Also relevant would be the Practitioners obligations under the Act.

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

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, as indicated in the answer to question 33, areas such as waterproofing should be mandatory as they have already been identified as problematic.

Penalty notice offences (page 57)

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

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

Fees (page 59)

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

The reasons for fees are supported in principle,

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

It should be kept in mind that all building practitioners are already required to be licensed and pay substantial fees. Much will depend on the actual amount of the fee.

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

Yes.

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

Reg 9(1)(c) – some concern expressed that designers will not specify particular products but simply refer to generic products e.g. specify a waterproof membrane that has a 20 year warranty rather than specify a particular membrane that will comply with the code.

2. **Part 3 – Requirements for designs and building work**

Lodgement of designs and compliance declarations, requirements of principal design practitioners and building practitioners

Regs 22 & 23 – Suggested that 14 day period be reduced to 7 days otherwise could delay commencement.

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

Clauses 3(3)(c) & 3(4) - Concern among builders as to knowledge of the BCA as some aspects of the Code which are beyond the expertise of a builder and for which the builder relies on engineers (eg BCA Volume 1 Section B)

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?

Yes, see responses to questions 32 and 33.

2. Do you support that CPD activities must be from the approved platforms? If not, please explain why.

Yes. Expansion of the courses, and perhaps the number of hours required will further benefit.

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.

Yes.

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.

MBANSW has particularly encouraged greater emphasis on waterproofing as this is a major cause of defects.

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?