

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: Jodie Sutherland

Organisation Name: Mirvac

Date: 11 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.

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?

The catalyst for the reforms introduced through the Design and Building Practitioners Act 2020 (**the Act**)

Comprehensive stakeholder engagement should be undertaken before any decisions is made to extend the application of the Act beyond class 2.

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.

There should also be clarity that where the first of a series of staged Construction Certificates is lodged in respect of the same project prior to 1 July 2021, the existing arrangements apply to the entire project (and the Act does not apply). If not, there will be some projects for which parts of the project will be exempted, and other parts not, and there will also be design and building practitioners who must comply with the requirements for some parts of a project and not others, even though they are performing services or works under a single contract for the whole project. This will create confusion and complexity.

It should also be clarified that agreements entered into prior to 1 July 2021, which are then novated after 1 July 2021 continue to be 'existing arrangements'.

Regulated design (page 17)

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

Yes.

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).

The following class 2 buildings should also be excluded from the definition of *building work*:

- (a) manor homes
- (b) single low-rise homes above small shops or offices
- (c) fit-out of tenancies in mixed use developments (reasons below)

Whilst it is clear that non-class 2 buildings that contain a class 2 element are *building work* in the draft Regulation, this creates some practical problems. For example, large or medium size mixed use residential developments include non-residential components, which are often delivered by the developer to a tenant as a 'cold shell' for future fit out by the tenant (eg the retailer, local council, restaurateur, childcare operator etc). Where the developer is not responsible for the fit out of part of a class 2 building which is captured as *building work*, it should be made clear that the fit out works are themselves excluded from being *building work*.

Registration of Compliance Declaration practitioners (page 23)

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

Yes, subject to inclusion of those classes proposed below.

The title 'Design Practitioner – Drainage Design' does not seem intuitive. A more intuitive name would be 'Design Practitioner – Hydraulic/Plumbing'.

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?

The following classes should be recognised:

- Design Practitioner - Acoustic Engineering (who would prepare regulated design and provide compliance declarations, or input to other design practitioners who are preparing regulated design and compliance declarations, in respect of the performance of acoustic solutions related to façade performance, structural borne noise, services and plant, noise transfer in walls, ceilings and floors); and
- Design Practitioner – Building Codes Consulting (who would prepare regulated design and compliance declarations in respect of performance solutions, and provide input to other design practitioners who are preparing regulated design and compliance declarations in respect of building elements)

It is unclear from the list as to which class of design practitioner will provide compliance declarations in respect of waterproofing, and what qualifications would be required so that the design practitioner could satisfy the requirement that matters being certified (ie waterproofing) are within the regulated design practitioner's expertise (as required by cl 9(1)(a) of the draft Regulation). Presumably, it is anticipated that a waterproofing specialist will be consulted, and noted on the design compliance declaration.

Bearing in mind the requirement in clause 9(1)(b) of the draft Regulation (design compliance declaration to include whether the design practitioner is registered in a class that authorises the design practitioner to prepare the class of design for which the declaration is being made),

recognition that there are multiple classes of design practitioners that are able to provide declarations with regards to particular building elements would be helpful. For example, there could be several classes of design practitioner that are able to provide compliance declarations for facades and some services.

A table that identifies which classes of registered design practitioners are authorised to prepare regulated design and compliance declarations for building elements should be included.

This would be particularly helpful in the context of a design and construct project, where there can be multiple practitioners with expertise in different areas of design.

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

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

No

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

7 years would be a more appropriate minimum requirement for 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?

Yes

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?

No (see comments above in relation to additional classes of design practitioners).

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

Yes

- 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, although Mirvac generally defers to the recommendations of the relevant existing professional bodies.

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

Washington Accord is acceptable OR a degree recognised as equivalent by the professional bodies under Pathway 2 and 3 should be considered acceptable

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

Mirvac generally defers to the recommendations of the relevant existing professional bodies.

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

Mirvac supports the 3 pathways operating together, each as a separate option. Mirvac does not support Pathway 3 (for example) being the only option available for registration as a professional engineer in a particular class. Pathway 3 should be optional, not mandatory.

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

7 years would be a more appropriate minimum requirement for 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.

Yes.

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?

No. We support the notion that regulated design should be lodged prior to the commencement of the building work to which that regulated design relates.

Clause 16(2) of the draft Regulation appears to provide that the documents that are required to be submitted by a building practitioner before commencing building work relate only to the building work to which those documents relate. This is consistent with section 19 of the Act, under which a building practitioner must not commence building work for which a regulated design is to be used without a design compliance declaration in respect of *that* building work only (ie not the *whole* of the works).

However, the RIS proposes a different approach, saying (at p 43):

“... designs for *all* the building works that require a regulated design must be lodged prior to *any* building work commencing.” [emphasis added]

The approach contemplated by the Act and the draft Regulation will satisfy the objectives of promoting compliance with the Act, improving quality of design documentation, promoting a change in behaviour amongst building practitioners and raising the standard of quality of building work. It will do so without significantly disrupting the manner projects are managed, whilst at the same time improving quality and planning by ensuring that regulated design is prepared and compliance declarations are issued in a timely manner – ie before the relevant building work commences.

An alternative would be to clearly align requirements for lodgement of regulated design and compliance declarations, for example in a manner similar to that applied in the construction certificate application process.

Requiring all construction issued regulated design to be lodged before commencing *any* building is impracticable. As projects progress, the level and detail of design of different building elements and performance solutions also progresses. For example, when civil works are being undertaken at the commencement of a project, there will be construction issued regulated designs prepared in respect of the structural building elements as well as typically some building services, and there will be concept designs that have already been prepared for fire safety systems, waterproofing, façade and performance solutions. Construction issued regulated designs for fire safety systems, waterproofing, façade and performance solutions will be developed afterwards in the usual design refinement and development process. In each case, the construction issued regulated designs will be prepared (and compliance declarations issued) prior to commencement of the work on the fire safety systems, waterproofing, façade or performance solutions (as the case may be).

This is not “designing on the run”, as concept designs will have been prepared, however the level of detailed design required in order to be “construction issued regulated design” is prepared at a later point in time, as other design elements are resolved. The construction issued regulated

design and design compliance declarations are prepared and provided before the relevant building work is undertaken.

For experienced builders, the proposal outlined in the RIS will result in a loss of efficiency, without an appreciable improvement in quality (given otherwise, regulated design and design compliance declarations will be issued prior to commencing only the relevant building work). It will mean more variations, as construction issued regulated design (rather than concept design) is prepared prematurely for some building elements, and will subsequently have to be amended as design is refined and resolved. This will particularly be the case for design and construct models, which make up a very large portion of procurement.

Projects will need to prematurely prepare AFC documentation for regulated design before commencing any work. On complex and large-scale projects, this will add a significant amount of time to the project programs and design practitioners. Subcontractors that are engaged to perform on a design and construct basis will be required to re-declare regulated design, as there will be variations (and no materiality threshold applied). Additional novation of consultants may be required. Design and construct subcontractors may be required to be engaged at a far earlier stage of projects in order to prepare regulated design, and then not have any work to do for significant periods of time. Competitive tension in tendering processes with subcontractors will be lost, as subcontractors will be engaged far earlier in order to prepare design. If that AFC design is tendered competitively, the subcontractor who prepared the design will have an advantage over other participants.

All these changes will involve significant re-work, and significantly extend project programs. Some projects will no longer be feasible given the extended timeframes required to complete.

There will be increased costs, as these processes have to be followed and administered, because of re-work, loss of competition amongst subcontractors (including design and construct subcontractors), and the additional timeframes added to programs.

The costs will be passed on to the consumers.

Much of this could be avoided, whilst still achieving the objectives of the Act to improve quality in construction, if the alternative approach outlined above is applied, whereby regulated design is required to be lodged prior to the commencement of the building work to which that regulated design relates.

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, particularly given the draft Regulation allows the building practitioner to delegate responsibility for lodgement.

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

Yes.

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?

The content of the title block is acceptable. However, the template should be able to be modified to suit the particular project, the sheet size and project related information etc, provided a modified title block contains the same information as the template.

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

Yes (subject to the response to Q23).

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.

The lodgement requirement should be no less than 10 business days after commencement of the varied building work (the commencement of the construction of the variation).

Requiring lodgement of varied regulated design within 1 day of the building work commencing (ie 1 day following the commencement of the construction) will be challenging to administer (particularly on large scale and complex projects), and will require dedicated administrative resources (increasing cost).

The potential penalties of missing the 1 day lodgement deadline are serious (it is a penalty notice offence), and a 10 business day period is more appropriate.

This approach would achieve the objective of ensuring considered design, without creating an undue administrative burden with serious penalties attached to the administrative process.

There should also either be a definition or a materiality threshold as to what is a 'variation', particularly given the level of detail required in construction issued regulated design and if *all* regulated design is required before *any* building work can commence (refer to Q19 above). Without a definition or materiality threshold, the variation documentation that will be required will be excessive, creating an administrative burden for all stakeholders and ultimately increasing cost for consumers.

Significant costs will flow from an approach which requires lodgement within 1 day. If works have to stop whilst awaiting for documents to be lodged, there will be knock on effects to all parts of the works on site. Consultants will need to be on call. Subcontractors will be required to suspend works (at a cost). Programs will be extended. All these additional costs will be passed on to consumers.

- 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

- 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?

Yes, provided the approach is consistently applied, and subject to the comments in this submission.

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

Yes. There should be a requirement for design practitioners and professional engineers to hold "run-off" PI policies which should be in place for a minimum of say 6 or 7 years following cessation

of registration of the design practitioner or professional engineer. This is because PI policies operate on a claims made basis.

Regulation of other mandatory insurances for design practitioners and professional engineers is not recommended, as this could artificially alter the insurance market and impact premiums and coverage, and will not take into account the particular circumstances of each practitioner or engineer, the services provided, the services performed and the relevant projects.

- 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

Continuing professional development (CPD) (page 54)

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

Yes

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

All classes of design practitioner should have mandatory training requirements relating to fire ratings and waterproofing compliance with NCC and relevant Australian Standards.

For other classes, relevant topics will depend on the nature of the services provided by the class of practitioner.

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

Yes.

- 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.

Penalty notice offences (page 57)

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

There should be a 6 month freeze on penalty notices until industry adapts to the new obligations.

The enforcement approach to breaches of the penalty notice offences should be staged, with an initial warning, followed by training and last resort issuing a penalty notice.

Penalty notices should be weighted more towards breaches related to improper registration and issuance of false design compliance declarations compared to breaches for submission timelines. For example, failure to lodge documentation related to variations of regulated design under cl17(1) and (2) is a penalty notice offence. As set out above in Q25, a 1 day lodgement requirement could be easily missed through an administrative oversight. This penalty should be lower than a penalty for say, providing misinformation when seeking registration or providing incorrect declarations.

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

Fees (page 59)

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

Yes, provided stakeholder engagement with industry is completed to determine a fair and reasonable fee amount.

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

The level of annual fee/registration the practitioner is already paying under their professional scheme or professional body should be considered in the calculation of registration to NSW Fair Trading (avoiding duplication of fee payments).

- 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

[Refer to responses above \(particularly Q4\).](#)

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

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

[Refer to responses above \(particularly Q19\)](#)

[Clarity as to requirements for variation statements would be useful:](#)

- [CI 26\(1\) of the draft Regulation defines what a variation statement is. It relates to building work that is varied from a regulated design.](#)
- [CI 26\(2\) says that variation statements do not apply to building work that relates to a building element or performance solution.](#)
- [S 5 of the Act says that regulated design is design prepared for a building element or for a performance solution.](#)
- [If variation statements are required for regulated designs other than for building elements or performance solutions, what is intended to be covered \(given that regulated designs are designs of building elements and performance solutions\)?](#)

[This will impact on how records are kept for the purposes of s20\(1\) of the Act.](#)

[Is the requirement for a variation statement in cl 18\(3\) of the draft Regulation intended to be a reference to a variation statement defined in cl 26?](#)

3. **Part 4 – Registration of practitioners**

Applications and conditions of registration and registration obligations

[Refer to responses above.](#)

4. **Part 5 – Recognition of professional bodies of engineers**

Applications and requirements for recognition or registration scheme

[Refer to responses above.](#)

5. Part 6 – Insurance

Insurance for design and principal design practitioners, professional engineers, building practitioners and adequacy of cover

Refer to Q29 – 31 above.

It should be made clear that any information that is required to be provided pursuant to the obligations in s 105 of the Act and cl 72 of the draft Regulation is to be provided to the Secretary only. The Secretary must hold all information provided to it in confidence.

Wide consultation with insurance groups is recommended, particularly regarding the requirement for an 'adequate' level of indemnity. The insurance market is tightening, and insurance groups (and other stakeholders) will be able to share experiences regarding the availability and costs of PI policies, and the levels of cover that practitioners are typically able to procure.

The approach of outlining the factors that are considered when determining whether the level of indemnity is adequate is supported.

The exemption from the requirement to hold insurance in cl 66 of the draft Regulation should be removed. This will ensure that provisions are uniformly applied, and support the objective of improving the standard of building practitioners.

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

Refer to responses above.

9. Schedule 2 – Qualifications, experience, knowledge and skills

For building practitioners, design practitioners, principal design practitioners and professional engineers

Refer to responses above.

10. Schedule 3 – Continuing professional development

CPD for prescribed practitioners and CPD for professional engineers

Refer to responses above.

11. Schedule 4 – Code of practice

Code for prescribed practitioners and code for professional engineers

[Refer to responses above.](#)

12. Schedule 5 – Penalty notice offences

[Refer to responses above.](#)

13. Schedule 6 – Forms

Design Compliance Declaration

[Refer to responses above.](#)

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.

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

Yes.

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.

We defer to recommendations from the relevant professional bodies.

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.

Yes.

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

Yes.

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?

Yes.

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.

We defer to recommendations from the relevant professional bodies.

6. Are there any other general comments you would like to make on the Continuing Professional Development Guidelines for Professional Engineers?