

11 January 2021

Design and Building Practitioners Regulation 2020  
Policy and Strategy, Better Regulation Division  
Department of Customer Service

Our Ref: 2021/010273

By Email: [BCR@customerservice.nsw.gov.au](mailto:BCR@customerservice.nsw.gov.au)

Dear Sir/Madam

**Submission to Draft Design and Building Practitioners Regulation 2020**

Thank you for the opportunity for Northern Beaches Council to make submissions towards the Draft Design and Building Practitioners Regulation 2020.

Please find enclosed a completed submission template for your consideration. We would welcome the opportunity to discuss these comments with you or provide any further information if necessary.

Yours faithfully

Peter Robinson  
Acting Director Planning and Place

Encl.

# 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:

Organisation Name: [Northern Beaches Council \(contact Darren Greenow\)](#)

Date: [8 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.

[The work of Northern Beaches Council may be directly affected by the reforms in the following activities:](#)

- [Assessment of development applications](#)

- Assessment of applications for complying development, construction certificates and strata proposals
- Acting as a Principal Certifier for building and subdivision works
- As an employer of professional staff involved in design and engineering tasks

## 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. As noted in the contents of the Impact Statement the basis of the legislation is to introduce important protection for property owners by clarifying that a legal duty of care is owed to them, by people who carry out construction work. This will ensure that key practitioners are accountable for planning design and construction stages for all classes of buildings.

The reforms should be expanded to public type buildings such as shopping centres, theatres, halls, hospitals, hotels etc. where there are large gatherings of people and the need to ensure proper planning, design and construction is critical to the safety of the large numbers of occupants.

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, as it may be unreasonable to retrospectively apply the reforms after a CDC or CC has been applied for as all planning, structural and architectural documents would have been prepared beforehand. This approach is consistent with the introduction of changes to the NCC where they are not retrospectively applied prior to the amendment date.

## Regulated design (page 17)

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

Yes. The exclusions cover minor works which should not be included as they would otherwise unnecessarily increase costs for property owners and could be readily undertaken as ongoing repairs, renovations and main tenancy by these property owners. Furthermore, there is adequate existing legislation such as Exempt Development and powers available to local authorities that allow these works to be undertaken under the heading of minor work.

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.

## Registration of Compliance Declaration practitioners (page 23)

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

Yes, the broad classes of design practitioner cover the required backbone skills for Class 2 building design and allows advice to be obtained from professionals in the building and construction sector.

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?

No removal from those Design Practitioners currently identified. Although consideration should be given to including surveyors whom provide critical information with regards empirical data required for the design of building works. Design Practitioners are reliant on accurate information/data to develop the design and it is not necessarily the skill of the architect or building designer to confirm surveys are accurately recorded in the compliance declaration

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, a minimum of five years' experience, provided it is relevant experience and appropriate. Qualifications should be recognised within the industry and preferably equivalent to or higher than Australian recognised qualifications.

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

A good knowledge of the Building Code of Australia and relevant Australian Standards. Complete an Advanced Course Short Course in NCC.

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

Yes, a minimum of five years 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, provided they have the qualifications, experience and knowledge required.

## **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?

The areas of engineering identified are sufficient, together with the inclusion of Geotechnical engineering.

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

Yes, the three options are acceptable.

**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?

A demonstrated understanding of the NCC and relevant Australian Standards.

**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 Washington Accord is an internationally recognised benchmark for assessment of qualifications and is appropriate to ensure we have consistency in Engineering Principles.

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

The professional engineering body would need to provide evidence its requirements and standards are the same or higher than the Regulations.

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

Yes, the PSS has been in place for some time and has been found to be an acceptable scheme for recognising professional engineers.

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

Yes, as a minimum five years of recent and relevant practical experience is necessary having regard to the major responsibility of the engineer's role in the building works.

**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?

Yes. Ensures compliant design and documentation and reduce the need for variations after building work commences.

**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 design practitioner is responsible to ensure the design is compliant and is required to make a compliance declaration for the designs under the Act. He or she therefore must take responsibility for the lodgement.

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

Yes, the design compliance declaration provides a coordinated and control body approach whereby the design practitioner becomes the focal point for the design and documentation which takes away the previous concerns of lack of compliant design, lack of documentation which ultimately led to defects in the buildings.

**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?

Yes, however it would have been preferable to have included in the Regulation rather than having it published in a Ministerial Order.

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

Yes.

**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. This is an impractical timeframe within the building industry. Furthermore, it should indicate whether it is working days or calendar days.

**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, it is essential that all documents are provided to the Principal Certifier and subsequently be considered prior to the issue of an OC.

**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, it ensures that adequate insurance is provided for protection of the building owner/s and the practitioners.

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



No, provided adequate professional indemnity insurance is maintained by the design practitioner or professional engineer. Any requirement for additional insurance will lead to increased costs within the building industry.

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

No. The transitional arrangements defeat the purpose of maintaining adequate insurance during the period of building work.

## **Continuing professional development (CPD) (page 54)**

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

Yes, it allows for relevant and effective learning, also providing for compulsory CPD courses which involve relevant areas of knowledge and improves competence.

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

Training in use of NCC, use of Australian Standards, and topics which are ancillary to the practitioner's core areas of expertise.

**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. It appears to cover all relevant areas for the competence of practitioners.

## **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, the penalty notice offences act as a deterrent against non-compliance and provide a mechanism to enforce compliance. The penalty amounts shown in Appendix 1 are appropriate.

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

Yes, the penalty notice offences and amounts are relevant to the type of offence and are like amounts for offences under other Acts.

## **Fees (page 59)**

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

Yes, fees are required in particular for NSW Fair Trading to meet their legislative and regulatory functions. This is typical of most Government bodies in order to cover costs and engage staff.

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

The fees should be based on an hourly rate for staff and indexed annually to inflation. They should not be excessive as these will be passed down to the end consumer.

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

No.

End of submission