

**Robert Bird Group**  
**Design and Building Practitioners Act 2020 (NSW)**  
**Commentary on Current Draft Proposed Regulations**  
**21 December 2020**

**General Comments**

G1 Implementation Timing

Clarification is required on how the new regulations will be imposed and how they will relate to projects and designs that have commenced and are in progress at 1 July 2021.

Is it proposed that it will relate to projects for which the construction certificate is issued after a certain date?

**G2**

**Part 2**

**Division 2**

**7 compliance declaration**

Form 1 Part 2 Clause 6

This item in the proposed compliance declaration refers to “building products”. The definition of this term is then provided as “ material or other thing that is, or could be, used in a building”.

There are many “building products” both in terms of materials, and proprietary and non proprietary items that are used in constructing a building. The intent of this clause should be clarified.

The stated requirement to attach information to confirm how each of these would achieve compliance to the BCA appears overly onerous, and unwarranted.

Form 1 Part 2 Clause 7

This relates to specialist advice. The intent of this clause needs to be clarified as we believe that as written this is overly onerous and unwarranted. In the course of designing large buildings, specialist advice is often sought in many areas. For example, it would not be unusual that specialist advice would be gained in the following areas of design

- Pile installation methods and equipment
- Use and application of concrete anchors and fixings
- Concrete mix design and additives
- Concrete performance in terms of durability and shrinkage
- Protective coatings for steelwork
- Proprietary concrete joint reinforcing products
- Waterproof membranes
- Concrete waterproofing joint details
- Vibration isolation materials, performance and details

- Proprietary retaining wall systems
- Proprietary internal wall systems
- Proprietary precast concrete systems
- Mass timber products and fixings

## **Part 2**

### **Division 4**

It does seem to make sense to class professional engineering services provided for all buildings that are not class 2 as not being professional engineering work. rather than the works being excluded as professional engineering work, it would be more appropriate to simply state that the provision of the Act and the regulations do not apply to building classes other than class 2.

## **Part 3**

### **Division 1**

Clarification is required as to how this section is intended to work for fast track projects where design is not complete for the building at the time that construction has commenced. Presumably the submission of documents can be staged to suit the construction staging.

### **Division 3**

#### Clauses 26 and 27

Clarification is required as to how the issue of variations in design are to be managed and the documentation required. It is normal on projects that a significant number of site instructions are issued by the designer that confirm variations to the documented design. This process occurs and is documented at a project level. We do not believe that this process should occur via documents issued via the planning portal.

## **Part 4**

### **Division 3**

34(c) Clarification is required as to the intent of this clause. We note that there are often circumstances where compliance certificates or declarations are provided in part for works for numerous reasons including:-

- The works may be staged and partially complete.
- The works may have been designed by numerous parties and thus compliance declarations will be required from each designer for each part of the works

## **Part 6**

### **Insurance**

Clause 37      'Extension of duty of care'

The parties should be able to reduce the requirement for the works to contractual terms, rather than it being prescribed in Statute;

Clauses 38 & 41      'Economic Loss'

What briefing and consultation has occurred with the insurance industry to ensure adequate coverage?

Clause 105      'Insurance Policies'.

Insurance policies are 'commercial in confidence', what safeguards are available in this respect to ensure confidentiality is maintained?

Division 2, Clause 56

This clause does not seem to be consistent with how PI insurance works. Clarification is required of what is intended here.

We operate with a corporate PI policy that indemnifies our professional engineers. This indemnity relates to all works that they perform whilst employed by the company and remains in place and valid for the works they performed for the company even in the event that the person leaves the company.

Thus the indemnity that is provided to an individual employed by a company will be on the back of the PI insurance held by the companies that the individual has worked for.

Clause 58

Clarification required similar to clause 56 above. As a company we purchase insurance that covers us for a period of time which is typically 12 to 18 months. This insurance provides coverage for the company and our employed professional engineers for any claims that may be made in the insurance period.