



**National Secretariat**  
Ground Floor, 180 Phillip Street  
SYDNEY NSW 2000

Telephone: 61 2 9230 3292  
Facsimile : 61 2 9232 8435  
Website : [www.scl.org.au](http://www.scl.org.au)  
Email: [secretary@scl.org.au](mailto:secretary@scl.org.au)

## **Design and Building Practitioners Regulation 2020**

### **Stakeholder Feedback**

11 January 2021

### **About Us**

The Society of Construction Law Australia is a not for profit organisation and the key objective of Society is to promote the education, study and research (and publication of the useful results of such research) in the field of construction law and related subjects both in Australia and overseas for the benefit of the public and the construction industry.

From time to time, the Society makes submissions to Government in relation to legislative matters that impact upon their members.

### **Design and Building Practitioners Regulations**

#### **14. General Feedback**

The Society of Construction Law Australia is grateful for the opportunity to provide submissions on the proposed regulations for the Design and Building Practitioners Act (**Act**). The Society is supportive of both the Act and the proposed regulations. The registration of design and building practitioners with the attendant requirements for minimum education and continuing education should lead to an increase in the quality and competence of design and building practitioners.

#### **The retrospective duty of care and the *Environmental Planning and Assessment Act 1979 (NSW)***

In addition to the proposed draft regulations, the Society believes that the profession would be grateful for guidance in relation to operation of the limitation period in respect of the retrospective duty of care contained in s 37 of the Act. Pursuant to:

Chair: Laina Chan  
Secretary: Michael Gibson

Patron: Hon Peter Vickery QC

Vice Chair: Ben Davidson  
Treasurer: Kate Bower

1. Schedule 1 clause 5 of the Act the duty of care has a 10 year retrospective effect; and
2. Clause 6.20(1) of the *Environmental Planning and Assessment Act 1979 (NSW)*,

“6.20 Limitation on time when action for defective building or subdivision work may be brought

- (1) A civil action for loss or damage arising out of or in connection with defective building work or defective subdivision work cannot be brought more than 10 years after the date of completion of the work.”

3. S 14 of the *Limitation Act 1969 (NSW)* prescribes a 6 year limitation period for actions in tort.

At present it is unclear as to whether the limitation period in subparagraph 1 above is intended to override the limitation period in subparagraph 2 above.<sup>1</sup> A typical analysis does not lead to a conclusive determination either way and it would be ideal for the proposed regulations to put this issue to bed. If not, it is inevitable that litigation will ensue in relation to this issue.

Please let us know if we can provide further input on this issue of limitation periods. In the meantime, we commend this initiative of the government.

Yours sincerely

**Laina Chan**  
**Chair**  
**Society of Construction Law Australia**

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<sup>1</sup> In relation to the operation of the *Limitation Act 1969 (NSW)* and the precursor to s 6.20 of the *Environmental Planning and Assessment Act 1979 (NSW)*, see Chan, The enforceability of extended contractual warranties - can the hurdle of applicable limitation periods be overcome? (2016) 32(3) BCL 170.