

Wednesday, 13 January 2021

Office of Building Commissioner
Department of Customer Service

Via email: BCR@customerservice.nsw.gov.au.

Attachments: **Q&A Stakeholder Feedback Form**

RE: Design and Building Practitioners Regulation 2020

Urban Development Institute of Australia – NSW (UDIA) members are responsible for the design, building, and delivery of residential buildings across NSW. Our members have been involved in all major urban renewal projects in Sydney and include developers, builders, strata managers, and engineers.

The UDIA has been at the forefront of development sector advocacy on the reforms addressed in the Shergold-Weir *Building Confidence* report. Over time, we have been highlighting to government that the objective for reform should be:

1. Ensure buildings are safe for occupation.
2. Provide a clear avenue to resolve and manage defects as they occur.

UDIA welcomes the opportunity to provide a submission on the draft Design and Building Practitioners Regulation (hereafter, the Regulation). Our submission has been informed by UDIA Building Regulation Industry Advisory Panel, which consists of fifteen development industry leaders who advise the UDIA on building regulation matters – independently Chaired by the former CEO of NSW UrbanGrowth Barry Mann.

We have responded, as directed, in the form of the Q&A Stakeholder Feedback Form provided by NSW Government for this Regulation.

UDIA wishes to be part of the ongoing conversation to improve building regulations in the State to ensure that buildings are safe and secure for occupation, and to restore confidence in the building industry.

Yours sincerely,

Steve Mann
Chief Executive

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: Kit Hale

Organisation Name: Urban Development Institute of Australia NSW (UDIA)

Date: Wednesday 13th January 2021

About you

The Urban Development Institute of Australia (UDIA) NSW is the leading industry body representing the interests of the urban development sector and has over 550 member companies in NSW. UDIA NSW advocates for the creation of liveable, affordable and connected smart cities.

UDIA provide a submission in October 2019 to the Design and Building Practitioners Bill 2019, as well as appearing twice as a witness to the NSW Parliament's Legislative Council Public Accountability Committee's Inquiry into Regulation of building standards, building quality and building disputes.

In response to the RIS for the Design and Building Practitioners Regulation 2020, UDIA draws on our previous submission, witness testimony to the inquiry and Building Regulation Industry Advisory Panel, which consists of fifteen development industry leaders who advise the UDIA on building regulation matters.

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?

UDIA notes that concerns in confidence in relation to building quality emerged within and has been restricted to Class 2 buildings.

Commercial and industrial buildings usually involve more sophisticated owners and tenants, who are better able to represent their interests in the legal system, so require fewer consumer protections.

Class 1 buildings and homes are much simpler, so do not require the design certification process that is envisaged in the Act. It is also possible that many homeowners would be inappropriately captured through these provisions.

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, UDIA noted in its 2019 submission on the *Design and Building Practitioners Bill* that there were appropriate savings and transitional measures that:

1. Provide time for the regulations to be consulted with industry and community through an iterative and collaborative process.
2. Provide enough time for registration regimes to be developed and consulted on with relevant industry bodies and practitioners once the regulations are completed.
3. Provide enough time for practitioners to secure appropriate registration under the new regime.

Delineating the new regime to start on a specific date is in line with those three recommendations. UDIA has extensively engaged with the NSW Building Commissioner over the past 12 months and is confident in the communication and messaging that the industry is well informed of the 1 July 2021 date and the new requirements that will take effect from that date.

Regulated design (page 17)

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

We are supportive of the Scope provided in the Regulations for Building Work, as the Scope of Regulated Designs is significant and will address the issues that we believe cause the greatest number of concerns for Occupants of Class 2 Buildings.

UDIA noted in its original submission that the draft definition of building work included such work as decoration, which is not an appropriate activity to be regulated under these Regulations. UDIA is pleased to see the introduction of the 'regulated design' and 'building work' definitions and that interior design, surveying, painting, landscaping, are not captured by the scheme. UDIA is pleased to note the rationale behind the adoption of the approach as detailed in the RIS.

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, not to our knowledge.

Registration of Compliance Declaration practitioners (page 23)

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

Yes, UDIA has long advocated for a chain of responsibility for these certificates and these Regulations must help create a chain of responsibility. The chain of responsibility must extend to suppliers, sub-contractors and specialist installers who are best placed to certify their work is in accordance with the standards and whose certifications are relied upon by the registered practitioners.

The proposed classes of Design Practitioners capture the key influences and agents involved in design and construct of Class 2 Buildings, however we believe further consideration needs to be given to waterproofing.

Traditionally waterproofing products are selected by the Builder/Waterproofing sub-contractor, and a waterproofing specification is provided by the waterproofing manufacturer once products are selected. These details are then provided to the Architect by the Builder. The Architect does not verify, nor are they qualified to verify that the selected products are fit for purpose. The Principal Certifier then inspects various stages of the wet area membranes.

We believe the design and inspections should be completed by a competent waterproofing specialist / or as a minimum the waterproofing manufacturer. A Principal Design Practitioner should not be able to provide a compliance certificate for waterproofing as they are not qualified. i.e. Geotech engineer should not be able to provide a compliance declaration for internal waterproofing. Under the proposed arrangement it appears this is possible.

With the above in mind, when amending the Regulations, consideration needs to be given to the fact that there are very few people qualified to certify waterproofing and we need to be careful that the Regulation does not overload the small number of people that have the qualifications to certify waterproofing.

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?

Yes. Please refer to our comments in the previous question.

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.

We are supportive of the requirements with reference to the response to Q5.

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 response provided.

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

Yes.

10. Some classes of practitioner have been proposed with authority to work on low and medium rise buildings? Do you support this approach?

We share the concerns expressed in the RIS, in relation to delays in the Registration process, and are supportive of the transitional arrangements to manage this issue.

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. We believe the defined Classes of Registration will ensure the issues that cause the greatest number of concerns for Occupants of Class 2 Buildings are addressed by these Classes of Engineers.

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

Yes. The Pathways 2 and 3 are sensible, and enable the Organisations representing Engineers to adopt similar standards to their counterparts in other States of Australia.

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 response provided.

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

UDIA suggests the adoption of an internationally recognised benchmark for the assessment of qualifications, which allows flexibility and acknowledgement for Engineers with International Qualifications to be recognised in Australia, and has been adopted by/ will be adopted by other States in Australia, is appropriate.

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

No response provided.

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

Yes

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

Yes, for the reasons stated in the RIS, we are supportive of this requirement.

- 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.

No response provided.

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. This would delay the commencement of most projects by at least 12 months and have a negative effect on the industry. Additional holding costs would be incurred, which would affect the financial viability of the vast majority of projects, and ultimately lead to increased house prices and decreased housing affordability.

We agree that the regulated design documentation be lodged prior to commencing the building work related to the regulated design for which the Construction Certificate relates to. This will allow for staged Construction Certificates to be issued.

- 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, all lodgements should be completed by the appointed Building Practitioner. This requirement will ensure that the Building Practitioner is fully aware, and comprehensively understands their responsibilities associated with constructing and successfully handing over Class 2 buildings.

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

Yes. However, Part 2, Number 2 should allow the declarant to specify the specific Part/Clause that the regulated design complies with, rather than the BCA in its entirety. This will ensure that the declarant understands the BCA and the specific requirements for specific elements.

- 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, we support the title block convention, however designers of High-Rise Buildings may require further sections.

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

Yes, drawings should be available in .dwg format, however drawings submitted to the portal should be in .pdf format. The standard for Building Practitioners to view drawings is in .pdf 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?

No, UDIA noted in its original submission that this can be challenging with value engineering and ongoing variations through the design and construction process and as such we suggest a minimum of 30 business days from the commencement of building work.

In support of this request, we considered the practicalities around a concrete pour, where a structural engineer has documented a reinforcing configuration for a complicated beam, that the steel fixer simply cannot make work i.e. the bars cannot be installed in the configuration, due to spatial requirements. The process in this instance would be for the builder to contact the structural engineer, whereby a revised structural detail would be provided in a hand sketch via email from the structural engineer. The builder would install the reinforcing to the engineers detail, and the structural engineer would then inspect the installation of the reinforcing, as part of their structural inspection prior to the concrete being poured.

By providing 30 days notice after commencement of the building work, the documentation can then be amended and uploaded.

- 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?

No, UDIA noted in its original submission that the industry regularly uses partial construction certificates because some designs may not have been finalised prior to construction, and it is not always feasible to design all elements of a building prior to construction, this does not mean that the construction is unsafe, nor that the building is likely to be unsafe.

UDIA is pleased to see reference in the RIS to an interim OC being issued for staged works.

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

No, not at this time.

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

No, not at this time.

Insurance (page 51)

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

Yes.

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

No response provided.

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

We understand the difficulties of this matter, however we are concerned that the requirement is quite arbitrary, and relies on a number of unresolved matters. Further consultation with the UDIA and insurers would be preferred, prior to finalisation of the Regulation.

Continuing professional development (CPD) (page 54)

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

We are wholly supportive of the targeted approach detailed in the RIS.

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

With reference to the Regulated Designs, the areas that should be targeted are those areas that form the basis for the greatest number of complaints to NSW Fair Trading.

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

N/A

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

N/A

Penalty notice offences (page 57)

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

On the notion that the priority of the Department is education programs, we are supportive of Penalty Notice Offences being issued as a last resort.

Regarding the Penalty Units, we feel the 1,500 (Corporation) and 500 (Individual) is too high for a system that is just being implemented. With this in mind, we suggest a stepped Penalty Notice regime for Year 1, which could be one third of these amounts, and then Year 2 as two thirds, with Year 3 incurring the full amount.

Alternatively, and perhaps more appropriately, the Penalty Points applied could relate to the construction cost thresholds, as it seems unfair that a Practitioner designing or constructing three apartments, should be fined the same amount as a Practitioner designing or constructing 300 apartments.

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

Please see the previous answer.

Fees (page 59)

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

Yes. We understand there is a cost associated with what is proposed and that cost must be met by the industry. The cost will be offset by greater community confidence in our industry.

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

N/A

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

Yes, UDIA NSW would welcome the opportunity to assist in this process.

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

The regulation does not appear to make clear the definition of a regulated design or what constitutes a regulated design. The RIS provides further descriptions. It is suggested these descriptions (a – e page 17 of RIS) are included in the regulation.

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

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

Part 3 Division 3 Section 26: Variations after building work commences, appears to conflict with Part 3 Division 1 Section 17: Lodgment on NSW planning portal after building work commences.

There appears to be two different processes required for the same function.

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

Applications and conditions of registration and registration obligations

We are comfortable with what is proposed; however, we are interested in the following:

- Who will maintain the Register of Registered Practitioners, and will Building Practitioners have access to this information?
- How will a Building Practitioner confirm registration of its Design Practitioner?
- How is proof of maintenance of registration managed by a Building Practitioner for its outsourced designers, i.e. registration lapses or is withdrawn for a Design Practitioner by the Commissioner's Office part way through construction for an issue that occurs on another project?

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

Applications and requirements for recognition or registration scheme

N/A

5. Part 6 – Insurance

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

Currently there is no industry standard for calculating adequacy of insurance cover across organisations and professional fields. Further discussion and consideration of this matter with Industry Organisations is required. Noting that currently there is the potential for Consultants to underinsure for Professional Liability.

6. Part 7 – Record keeping

Record keeping for design and principal design practitioners, professional engineers, building practitioners

N/A

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.

Section 81 – It is imperative that a Building Practitioner is able to confirm that a Design Practitioner's Registration is current at all times.

8. Schedule 1 – Classes of registration

Classes of registration for practitioners and scope of work

As noted on Page 2 of this Submission, in relation to our response to 'Registration of Compliance Declaration Practitioner (Page 23) of the RIS - further consideration is required in regard to the Qualifications of a Waterproofing Practitioner.

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

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

As noted on Page 2 of this Submission, in relation to our response to 'Registration of Compliance Declaration Practitioner (Page 23) of the RIS, further consideration is required in regard to the Qualifications of a Waterproofing Practitioner.

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

On the basis that the focus of the Department is firstly based on education programs, we are supportive of Penalty Notice Offences being issued as a last resort.

Regarding the Penalty Units, we feel the 1,500 (Corporation) and 500 (Individual) is too high for a system that is just being implemented. With this in mind, we suggest a stepped Penalty Notice regime for Year 1, which could be 1/3rd of these amounts, and then Year 2 as 2/3rds, with Year 3 incurring the full amount. Alternatively, and perhaps more appropriately, the Penalty Points applied could relate to three construction cost thresholds, as it seems unfair that a Practitioner designing or constructing 3 apartments, should be fined the same amount as a Practitioner designing or constructing 300 apartments.

13. Schedule 6 – Forms

Design Compliance Declaration

Yes. However, Part 2 number 2 should allow the declarant to specify the specific Part/Clause that the regulated design complies with, rather than the BCA in its entirety. This will ensure that the declarant understands the BCA and its specific requirements for specific elements.

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, specifically targeted courses will improve design and building standards.

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, for too long Builders Licenses Courses have not addressed the root cause of issues in our industry or focused on the requirements of the NCC.

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.

With reference to the Regulated Designs, the areas that should be targeted are those areas that form the basis for the greatest number of complaints to NSW Fair Trading.

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

No response provided.