



Regulatory Impact Statement

Design and Building Practitioners Regulation 2020
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Minister's Message

I am proud to present this Regulatory Impact Statement and proposed Design and Building Practitioners Regulation 2020.

Recent building incidents have emphasised the devastating impacts that building defects have on residential owners and occupants. The NSW Government is committed to supporting the building and construction sector and providing NSW with a built environment that puts safety and quality at the top of the list.

This was achieved through the passage of the *Design and Building Practitioners Act 2020* in June 2020. This regulatory scheme ensures those who control the risks – Design and Building Practitioners as well as Professional Engineers – are held responsible for their work. This complements the existing and new obligations on developers and builders.

The development of supporting regulations is the important next step in delivering on this commitment before the scheme commences on 1 July 2021. This Regulation includes all necessary features for a robust scheme, including the registration of practitioners, compliance and enforcement powers, and provisions to address the requirements for practitioners issuing declarations that a design complies with the *Building Code of Australia*.

This paper delivers on the NSW Government's commitment to consult with industry and community stakeholders on the implementation of the reforms. The Regulatory Impact Statement asks targeted questions about the proposals within the Regulation to balance the complexity and clarity required. We recognise that these reforms will impact a range of building and construction professionals, as well as owners and tenants. It will be important to work in partnership with industry and the NSW community to get the balance right.

Government, of course, has a role to play in protecting homeowners, to promote confidence in the NSW property sector and to contribute to strengthening an industry which is a major employer in NSW.

Owners and consumers deserve to feel safe and have confidence that the buildings they purchase are fit-for-purpose, as a place to live, or work, or as a form of investment.

I encourage you to take part in this consultation process and have your say on the design and implementation of the biggest overhaul of NSW building laws in the State's history.

Kevin Anderson MP

Minister for Better Regulation and Innovation



Glossary

The following is a list of terms and acronyms used in this document.

Term	Description
2019 Government Response	NSW Government Response to the <i>Building Confidence Report</i> released on 19 February 2019.
ABCB	Australian Building Codes Board – a Council of Australian Government standards writing body that is responsible for the development of the <i>National Construction Code</i> .
BCA	<i>Building Code of Australia</i> – contained within the <i>National Construction Code</i> and provides the minimum necessary requirements for safety, health, amenity and sustainability in the design and construction of new buildings (and new building work in existing buildings).
BMF	Building Ministers’ Forum – made up of Australian Government and state and territory government ministers with responsibility for building and construction.
Building Compliance Declaration	The declaration a Building Practitioner is required to make declaring matters such as whether the building works comply with the <i>Building Code of Australia</i> , whether building work was built in accordance with the regulated design for that work and whether a registered Principal Design Practitioner was appointed (s 8(3) of the Act sets out the matters to be declared in full).
Building Confidence Report	‘ <i>Building Confidence: Improving the effectiveness of compliance and enforcement systems for the building and construction industry across Australia</i> ’ report by Professor Peter Shergold AC and Ms Bronwyn Weir, commissioned by the Building Ministers’ Forum in 2017.
Class 2 building	Class 2 buildings are apartment buildings. They are typically multi-unit residential buildings where people live above and below each other. Class 2 buildings may also be single storey attached dwellings where there is a common space below. For example, two dwellings above a common basement or carpark.

	A building with a class 2 part is a building of multiple classifications that has a class 2 as well as another class, making it a “mixed class” (for example, a class 2 with a class 5 which are office buildings used for professional or commercial purposes or a class 6, which are typically shops, restaurants and cafés).
Compliance Declaration Practitioners	Design Practitioners, Principal Design Practitioners and Building Practitioners who are registered under the Compliance Declaration Scheme.
Compliance Declaration Scheme	The registration of Design Practitioners, Principal Design Practitioners and Building Practitioners to provide compliance declarations.
Construction issued regulated design	A regulated design which has been declared and contains the detail needed for the Building Practitioner to carry out the work and build in compliance with the <i>Building Code of Australia</i> (the Dictionary at the end of the Regulation sets out the definition in full).
Contractor document	A document setting out a list of persons who have agreed under a contract or arrangement with the registered Building Practitioner to do any of the building work and the work done by each of the persons.
Design Compliance Declaration	The declaration a Design Practitioner is required to make declaring matters such as whether the design complies with the <i>Building Code of Australia</i> , whether the design integrates other relevant designs, whether other standards, codes or requirements have been applied in preparing the design (s 8(1) of the Act and cl 9 of the Regulation sets out the matters to be declared in full).
EP&A Act	<i>Environmental Planning and Assessment Act 1979.</i>
EP&A Reg	Environmental Planning & Assessment Regulation 2000.
Low rise building	A class 2 building or a building containing a class 2 part, limited to: <ul style="list-style-type: none"> • a maximum gross floor area of no more than 2,000m², but not including Type A construction or Type B construction.

Medium rise building	<p>A class 2 building or a building containing a class 2 part, limited to:</p> <ul style="list-style-type: none"> • a maximum of 3 storeys (not including 1 storey classified as 7a building (carpark)) but not including Type A construction (for class 4, 5, 6, 7 and 8). <p>The Dictionary at the end of the Regulation sets out the definition in full.</p>
NCC	<i>National Construction Code</i> – a performance-based code containing all performance requirements for the construction of buildings.
NRF	Draft ‘National Registration Framework for Building Practitioners’ – discussion paper released by the Australian Building Codes Board on 26 June 2020.
NSW Planning Portal	The digital portal where documents such as regulated designs and compliance declarations will be lodged.
OBC	Office of the NSW Building Commissioner sitting within the Department of Customer Service.
OC	Occupation Certificate – authorises the occupation and use of a new building or building section.
Pathway 1	NSW Fair Trading regulates all aspects of the registration process for Professional Engineers, including eligibility requirements, and ongoing registration requirements, including continuing professional development (CPD) and insurance.
Pathway 2	NSW Fair Trading approves suitable professional engineering bodies to be responsible for assessing eligibility and ongoing registration requirements for Professional Engineers.
Pathway 3	NSW Fair Trading recognises professional engineering bodies to be responsible for assessing eligibility and ongoing registration requirements for Professional Engineers in accordance with the requirements of a Professional Standards Scheme.

Principal Compliance Declaration	<p>A declaration made by a Principal Design Practitioner, if one is appointed, as to:</p> <ul style="list-style-type: none"> • whether or not a Design Compliance Declaration has been provided in the required manner for each regulated design prepared for building work • whether or not the Design Compliance Declarations were prepared by a registered Design Practitioner who is authorised to do so.
Professional Engineers Scheme	The registration of engineers to carry out professional engineering work.
PSS	Professional Standards Scheme – a scheme approved by the Professional Standards Council within the meaning of the <i>Professional Standards Act 1994</i> .
Recognised engineering body	Professional body of engineers that has been assessed by the Secretary to recognise or register Professional Engineers.
Regulated design	A design that is prepared for a building element for building work, or a performance solution for building work (including a building element).
RIS	Regulatory Impact Statement.
The Act	<i>Design and Building Practitioners Act 2020</i> .
The Regulation	Proposed Design and Building Practitioners Regulation 2020.
The Regulator	NSW Fair Trading/Office of the NSW Building Commissioner.
Variation statement	A record of building work that is varied from a regulated design for the work after the commencement of the work but does not involve a building element or performance solution (see cl 26 of the Regulation for complete requirements).
Washington Accord	The Washington Accord is an international agreement between engineering bodies responsible for the recognition of engineering qualifications. For Australia, these qualifications are listed in the 'Accredited Engineering Program Directory.' Please see website link at:

	https://www.engineersaustralia.org.au/About-Us/Accreditation/Accredited-Engineering-Program-Directory
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Executive summary

The Design and Building Practitioners Regulation 2020 (**Regulation**) is intended to provide the legislative support for the operation of the *Design and Building Practitioners Act 2020* (**Act**) to facilitate its commencement on 1 July 2021.

The Act is part of the NSW Government's reform agenda to improve the effectiveness of compliance and enforcement systems for the building and construction industry in NSW.

The Act requires the registration of practitioners involved in design and building work and imposes new obligations on these practitioners to declare their work complies with the *Building Code of Australia* (**BCA**). The Act also introduces important protections for property owners by clarifying that a legal duty of care is owed to them by people who carry out construction work. Finally, the Act provides for the registration of engineers carrying out professional engineering work.

The Act and Regulation deliver on the reforms committed to by the 2019 Government Response to the *Building Confidence Report*, commissioned by the national Building Ministers' Forum and authored by Professor Peter Shergold AC and Ms Bronwyn Weir.

Key features of the Regulation include:

- Setting the scope of 'building work' to be work on a class 2 building, or a building that contains a class 2 part, and additionally exempting specific building work. This scope of building work serves to trigger requirements for registration and certain obligations for practitioners under the Act.
- Setting the scope of 'professional engineering work' to be work carried out for the purposes of designing or constructing a class 2 building or a building that contains a class 2 part. The scope of professional engineering work serves to trigger requirements for registration.
- Classes of registration for Design Practitioners, Principal Design Practitioners, Building Practitioners and Professional Engineers, including the relevant qualification, skills, knowledge and experience requirements for registration in each class.
- Insurance requirements that apply to Design Practitioners, Principal Design Practitioners, Building Practitioners and Professional Engineers to maintain registration.
- Establishing Codes of Practice that Design Practitioners, Principal Design Practitioners, Building Practitioners and Professional Engineers must comply with in order to maintain registration.
- Continuing Professional Development (**CPD**) requirements that apply to Design Practitioners, Principal Design Practitioners, Building Practitioners and Professional Engineers to maintain registration.
- Time and manner for lodging regulated designs and compliance declarations.

- Processes for registering Design Practitioners, Principal Design Practitioners, Building Practitioners and Professional Engineers, including the recognition of professional bodies of engineers to assess and monitor compliance of engineers they register or recognise.
- Prescribed penalty notice offences.

This Regulatory Impact Statement (**RIS**) has been prepared as part of the making of the Regulation to:

- identify and assess direct and indirect costs and benefits, to ensure that the Regulation is necessary, appropriate and proportionate to risk;
- demonstrate, when compared to alternative options, that the Regulation provides the greatest net benefit or the least net cost to the community; and
- demonstrates that any regulatory burden or impact on government, industry or the community is justified.

The RIS sets out the rationale and objectives of the Regulation and the various options for achieving the objectives. It also provides a discussion on important aspects of the Regulation and seeks feedback from stakeholders and the community. This RIS should be read in conjunction with the Regulation.

There will be a seven-week public consultation period on the Regulation.

Submissions are invited on any of the matters raised in the discussion in the RIS or anything else contained in the Regulation. All submissions will be considered and evaluated, and any necessary changes will be made to address the issues identified before the Regulation is finalised. The process for submitting comments is explained in the following section.

Consultation process

Making a submission

Interested organisations and individuals are invited to provide a submission on any matter relevant to the Regulation, whether or not it is addressed in this RIS. You may wish to comment on only one or two matters of particular interest, or all of the issues raised. Matters covered by the principal Act – *Design and Building Practitioners Act 2020* – are not the subject of the consultation process.

To assist you in making a submission, an optional online survey will be available on our website at www.nsw.gov.au/have-your-say.

However, this survey is not compulsory, and submissions can be in any written format.

A template has been developed to assist you in making a submission on the RIS, Regulation and CPD guidelines. The template is available on the [NSW Fair Trading website](#). You can upload your response or email them to the address below. The Department requests that any documents provided to us are produced in an 'accessible' format. Accessibility is about making documents more easily available to those members of the public who have some form of impairment (visual, physical, cognitive).

More information on how you can make your submission accessible is contained at <http://webaim.org/techniques/word/>.

Please forward submissions by:

Email to: BCR@customerservice.nsw.gov.au

Mail to: Design and Building Practitioners Regulation 2020

Policy and Strategy, Better Regulation Division

NSW Department of Customer Service

Locked Bag 2906

LISAROW NSW 2252

The closing date for submissions is 5:00pm Monday 11 January 2021.

We invite you to read this paper and provide comments. You can download the RIS, Regulation and CPD guidelines from www.nsw.gov.au/have-your-say. Printed copies can be requested from NSW Fair Trading by phoning on 13 32 20.

Important note: release of submissions

All submissions will remain anonymous unless you agree otherwise. Submissions may be referred to in a report on the outcome of the consultation, however any anonymous submissions will be referred to as

such. Please note, there may be circumstances where the Government is required by law to release the information in your submission.

For example, in accordance with the requirements of the *Government Information (Public Access) Act 2009*. It is also a statutory requirement that all submissions are provided to the Legislation Review Committee of Parliament.

Identified stakeholders

The RIS has been provided directly to some stakeholder organisations.

Evaluation of submissions

All submissions will be considered and assessed. The Regulation will be amended, if necessary, to address issues identified in the consultation process. If further information is required, targeted consultation will be held before the Regulation is finalised.

Commencement of the Regulation

After the Minister for Better Regulation and Innovation has finalised the Regulation, it will be submitted to the Governor for approval.

Once approved by the Governor, the Regulation will be published on the official NSW Government website for online publication of legislation at www.legislation.nsw.gov.au and in the NSW Government Gazette. Information on how to access the Gazette is available on the NSW Parliamentary Counsel's website.

It is proposed the Act and Regulation will commence on **1 July 2021**.

Objective and rationale of the Regulation

Need for government action

The Act was passed by Parliament on 3 June 2020 and received assent from the Governor on 10 June 2020. Government action is deemed necessary at this point in time to lift standards within the building and construction industry. The *Building Confidence Report* found that the accountabilities of different parties were unclear and there were insufficient controls on the accuracy of documentation. It identified that, particularly for Design Practitioners, there was a systemic failure to expressly require documentation to show compliance with the *Building Code of Australia (BCA)*.

Modern buildings are no longer just four walls and a roof. Construction is complex, integrated and evolving. Future homeowners deserve to know they are buying a quality design and expert construction that is protected by strong building laws. The Government's response to the *Building Confidence Report* committed to critical reforms to improve the quality and quantity of plans prepared to be relied upon for building work. This Act delivers on that commitment by introducing a number of new requirements, which will ensure that key practitioners are held accountable for their work across the planning, design and construction stages. The Regulation is a necessary and detailed component of the building and construction industry framework in NSW and forms a critical link between the Act and monitoring compliance. The Act cannot function as intended without the supporting Regulation.

Objective of government intervention

The objects of the Act are to:

- regulate the preparation and provision of key building designs,
- strengthen regulations on compliance with building designs, and construction based on those designs, by requiring the making and provision of compliance declarations,
- establish a new registration scheme for practitioners who prepare and provide those designs and declarations,
- introduce a process for documenting any variations to declared designs,
- establish a new registration scheme for Professional Engineers,
- provide the Secretary and authorised officers with investigative, compliance and enforcement powers to monitor and assess compliance with the requirements of the Act; and
- establish a duty of care owed by persons who carry out construction work.

The primary objective of the Regulation is to provide the legislative support and administrative detail for the operation of the Act. Regulations are integral to the effective operation of the Act.

The objectives of the Regulation are to:

- set out the form and content of regulated designs and compliance declarations,
- establish the classes of registration available for Design Practitioners, Principal Design Practitioners, Building Practitioners and Professional Engineers, including what each class is authorised to do,
- prescribe the qualification, experience, skills, knowledge, insurance and fees required for each class of practitioner and the continuing professional development requirements,
- provide for the requirements for lodging designs and compliance declarations,
- set out the requirements for the recognition of professional engineering bodies,
- provide for a Code of Practice which sets out required professional and ethical standards, and
- strengthen compliance and enforcement by prescribing penalty notice amounts for offence provisions in the Act and Regulation.

Discussion and assessment of options

Submissions are welcome on any aspect of the Regulation or any other relevant issue, whether or not raised in this RIS. However, the following discussion points provide greater context for some provisions in the Regulation and explore some regulatory options, costs and benefits for these provisions.

Scope of the reforms

This section will explain the types of buildings and work that will be captured under the reforms.

The focus of the *Building Confidence Report*, and the NSW Government's reforms in response to it, is the building and construction sector and achieving improved compliance with the *National Construction Code (NCC)*. Under the NCC, buildings are grouped by their function and use. These groups are assigned a classification which is then how buildings are referred to throughout the NCC.

The first priority set by Government is to introduce the reforms in the residential construction sector with an initial focus on residential apartment buildings and related mixed-use buildings. Accordingly, the Regulation applies the reforms to class 2 buildings and buildings that contains a class 2 part (mixed-use buildings), with effect from 1 July 2021. These building types have more complex construction patterns and require more controls to manage potential safety risks from defective or non-compliant design and construction.

Class 2 buildings are residential apartment buildings. They are typically multi-unit residential buildings where people live above and below each other. Mixed-use buildings, containing a class 2 part, are also captured, with the reforms applying to all parts of the building, not just the class 2 part. This means that buildings that contain commercial office spaces (class 5) or shops and restaurants (class 6) are subject to the reforms if they also contain residential apartments.

While a significant proportion of class 2 buildings are multi-storey buildings, there are also a variety of low-rise buildings (for example, buildings with only 2 or 3 storeys) which are classified as class 2. Some common examples of low-rise class 2 buildings are:

- 2 storey building consisting of a principal dwelling and a secondary dwelling (for example, granny flat) – where the secondary dwelling is built above or below the principal dwelling.
- 2 storey building consisting of two or more dwellings – a typical example would be dual occupancy, where one dwelling is located above another, and manor houses (2 storey building containing four dwellings) determined under the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*, as complying development.
- 1 or 2 storey building consisting of two or more attached/detached dwellings (for example, dual occupancy, townhouse, villas, etc) located above a common basement carpark – this would be a class 2 and 7a (carpark) building where the dwellings are located above the common basement

carpark. This type of development is only considered a class 2 building because of the common basement carpark, otherwise this would be a class 1a building.

- 2 storey mixed use building with a class 2 component, such as a building consisting of two or more dwellings and an office/shop, which would be a class 2 and 5 (office)/6(shop) building.

The Regulation proposes to capture these types of buildings because Government has committed to raising the standards of multi-unit residential developments as a priority. Because class 2 dwelling units are not independent of each other, they have different requirements that are specially designed to protect the health, safety and welfare of all occupants. For example, the joining of units by wall, roof or floor can affect each resident's risks in the event of fire and therefore require special rules to reduce the effects of heat, smoke and fire throughout the building.

The Government is committed to implementing the reforms across other NCC classes of construction in future years after this program is established. This will include consideration of expanding the reforms to additional classes of buildings, such as hospitals and schools.

Application of reforms to existing arrangements

The Regulation provides that the reforms will apply to the preparation of designs, building work or other work done in respect of a building under an existing arrangement if the first application for the issue of a Complying Development Certificate (**CDC**) or Construction Certificate (**CC**) for the building is made on or after 1 July 2021. This means that not all building work that is carried out after 1 July 2021 will be subject to the new obligations. Given the nature of the new obligations, it was considered impractical and unreasonable to impose the obligations on practitioners involved in work that has progressed past a CDC or CC stage prior to the commencement of the Act.

Questions

- 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?**
- 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?**

Regulated design

It is important to highlight that the reforms establish two registration schemes:

1. the registration of Design Practitioners, Principal Design Practitioners and Building Practitioners to provide compliance declarations – will be referred to in this RIS as the ‘Compliance Declaration Scheme’; and
2. the registration of Professional Engineers to perform professional engineering work – will be referred to in this RIS as the ‘Professional Engineers Scheme’.

Under the Compliance Declaration Scheme, the obligations for Design Practitioners to provide compliance declarations will only apply for ‘regulated designs’. A ‘regulated design’ is a design, including a plan, specification or a report detailing a design, that is prepared for a building element, or for a performance solution, for building work.

The Act (s 6(1)) defines building element to mean any of the following:

- a) the fire safety systems for a building within the meaning of the *Building Code of Australia*,
- b) waterproofing,
- c) an internal or external load-bearing component of a building that is essential to the stability of the building, or a part of it (including but not limited to in-ground and other foundations and footings, floors, walls, roofs, columns and beams),
- d) a component of a building that is part of the building enclosure,
- e) those aspects of the mechanical, plumbing and electrical services for a building that are required to achieve compliance with the *Building Code of Australia*.

Designs for building elements are considered important as they are likely to have a greater impact on the safety and quality of construction in a building.

A performance solution is one of two pathways of achieving compliance with the *Building Code of Australia (BCA)*. While the bespoke nature of a performance solution enables flexibility and innovation, it also requires careful and detailed assessment so that the building solution can meet the performance requirements of the BCA. Extending the operation of the reforms to designs for performance solutions will ensure that they are properly documented and are a reliable method of compliance.

The Act allows the Regulation to extend the meaning of ‘regulated design’ to other kinds of designs. Following consultation with key industry stakeholders, the Government does not propose to include additional designs as part of the initial reforms. This approach has been adopted as the existing scope of ‘regulated design’ is extensive and captures the critical types of designs necessary to lift building quality standards in NSW.

To assist the public and industry to understand the specific types of designs that are captured by the reforms, the Government intends to publish accompanying guidance material outside the Regulation.

The guidance material will set out the types of designs that are 'regulated designs'. NSW Fair Trading will work with industry to develop the guidance material and to ensure there is common understanding of the specific designs which fall within the scope of the obligations under the Act.

The Act allows the Regulations to prescribe the form and content of regulated designs. In response to targeted consultation with the fire safety industry, the Regulation proposes that a regulated design that involves a fire-resisting building element must include specifications as to how a penetration to that building element will be managed to ensure the fire performance of the element is not affected. This has been included to maintain the integrity of passive fire elements such as fire-rated walls, which are often subject to penetrations to allow for services such as plumbing and electrical.

Building work

To be a regulated design, the design must be for 'building work'.

The Act (s 4(1)) sets out that building work means work involved in:

- a) the construction of a building (class 2 or related mixed use),
- b) the making of alterations or additions to a building (class 2 or related mixed use),
- c) the repair, renovation or protective treatment of a building (class 2 or related mixed use).

This means that other kinds of work that are involved in the delivery of a class 2 or related mixed-use building, for example, interior design, surveying, painting, landscaping, are not captured by the scheme. Those involved only in this kind of work will not be required to satisfy obligations under the Act.

The Act allows the Regulation to include and exclude work from being considered 'building work' (s 4(2)). This would have the effect of either extending or narrowing the designs that are 'regulated designs' and therefore require a compliance declaration. It was thought that the critical designs for a building are already captured as 'regulated designs' so the Regulation did not need to extend to 'building work'.

The work that is deemed to be 'building work' is important, as a design is only a 'regulated design' if it is for 'building work'. However, the definition of 'building work' also affects the responsibilities of a Building Practitioner under the Act. For example, a Building Practitioner must take all reasonable steps to ensure that building work complies with the requirements of the BCA (s 22). This obligation is for all building work, not only building work for a building element or performance solution.

Some obligations of a Building Practitioner are only for designs which are 'regulated designs', including:

- ensuring compliance with declaration obligations (s 18),
- obtaining designs and design compliance declarations before carrying out building work (s 19),
- variations after building work commences (s 20),
- carrying out building work in accordance with designs (s 21), and
- providing designs to the Secretary no later than 90 days after Occupation Certificate (s 15).

Excluded building work

As the definition of 'building work' creates obligations, exclusions to 'building work' within the Regulations limits these obligations.

The Regulation proposes the following exclusions from 'building work':

- work that comprises exempt development within the meaning of the *Environmental Planning and Assessment Act 1979 (EP&A Act)* including waterproofing but only if the waterproofing is carried out on a sole-occupancy unit,
- work that is carried out in compliance with a development control order under Division 9.3 of the EP&A Act.
- work that is exempt from a specified provision of the BCA by
 - a registered certifier in accordance with cl 164B of the Environmental Planning and Assessment Regulation 2000 (**EP&A Reg**),
 - a consent authority or a registered certifier in accordance with cl 187 of the EP&A Reg,
 - the Fire Commissioner in accordance with cl 188 of the EP&A Reg,
- the repair, renovation or protective treatment of an active or passive fire safety system for the purposes of ongoing maintenance of a component of the fire safety system, except a load bearing component that is essential to the stability of a building,
- the repair, renovation or protective treatment of a building but only if it involves a mechanical, plumbing or electrical service and is carried out for the purposes of maintaining a component of a system in the building,
- work that is excluded from being residential building work in Schedule 1, cl 2(3)(a) of the *Home Building Act 1989* as if a reference to residential building work in that Act is a reference to building work under this Act.

Stakeholders raised concerns that minor works could be included in the definition of 'building work' as it includes the repair, renovation or protective treatment and the making of alterations or additions to a class 2 building or building that contains a class 2 part. This could increase costs for practitioners by requiring them to have designs prepared, declared to be consistent with the BCA, and for any building work to comply with that design. Minor works that fall into this category could include works undertaken by property owners around the repair, maintenance and renovation of their properties.

Consideration was given to excluding building work that was under a specified value. However, it is difficult to link values to the importance and risks of those works. For a monetary threshold to be effective, the likely cost of the various types of repair work, which would be significantly different depending on the type of building elements, would need to be calculated. It was considered that having multiple values connected to particular work, especially if those works involved multiple contracts, due to the number of trades or number of residences, would prove complex for both industry and owners. Setting a monetary value is likely to have the unintended results of capturing low impact work and

excluding significant work due to the range of building work and different types of buildings captured under the reforms. A system that is complex is likely to cause confusion which may result in non-compliance.

Therefore, the Regulation has excluded 'exempt development' instead of adopting the monetary value approach. Development that is exempt has been determined to be low impact and therefore involves less risk to safety and structure. By using existing criteria that is known and familiar, it will be easier for industry and property owners to know when the responsibilities under the legislation need to be met for particular building work.

Work that is 'exempt development' relies on the meaning under the EP&A Act. A list of the types of exempt development within the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* is provided in **Appendix 2**.

The Regulation also excludes building work under a development control order issued under the EP&A Act. A Development Control Order (**DCO**) includes Compliance Orders and Fire Safety Orders issued by Council or Fire and Rescue NSW to carry out works, often to improve the safety of the building. When issuing a DCO, the issuing authority has discretion as to the level of compliance of that work in relation to the BCA. This may be necessary when a DCO is issued in relation to upgrading safety requirements of an older building. The DCO may contemplate that compliance with the BCA is impossible or impractical but it is still appropriate for the works to be carried out. As a DCO does not require compliance with the BCA and noting the prescriptive circumstances when it is used under planning legislation, it is not proposed to capture this kind of work under the Act or Regulation. It is considered that existing controls through the planning system are sufficient to regulate this work.

Likewise, an exemption will operate for works that have been exempt from complying with the BCA under the EP&A Regulation by a certifying authority or the Fire Commissioner. Such works have necessarily been excluded from the reforms as Design Practitioners and Building Practitioners will not be able to declare that the works comply with the BCA. The planning legislation includes measures to assess whether work should be excluded from compliance with the BCA.

Other work that is exempted, is work that involves the repair, renovation or protective treatment of a component of a fire safety system (except a load bearing component) or repair, renovation or protective treatment involving the maintenance of a component of the mechanical, plumbing or electrical system. These exemptions allow for systems to be repaired and maintained without being subject to the requirements. This exemption also acknowledges that the BCA is updated regularly. Therefore, existing fire safety, mechanical, plumbing and electrical systems in buildings that may have been compliant with the BCA when they were built, may not be compliant with current versions of the BCA when they require building work for their repair and maintenance. Two diagrams depicting the operation of the Act are provided below.

Diagram 1 – Scope of Act

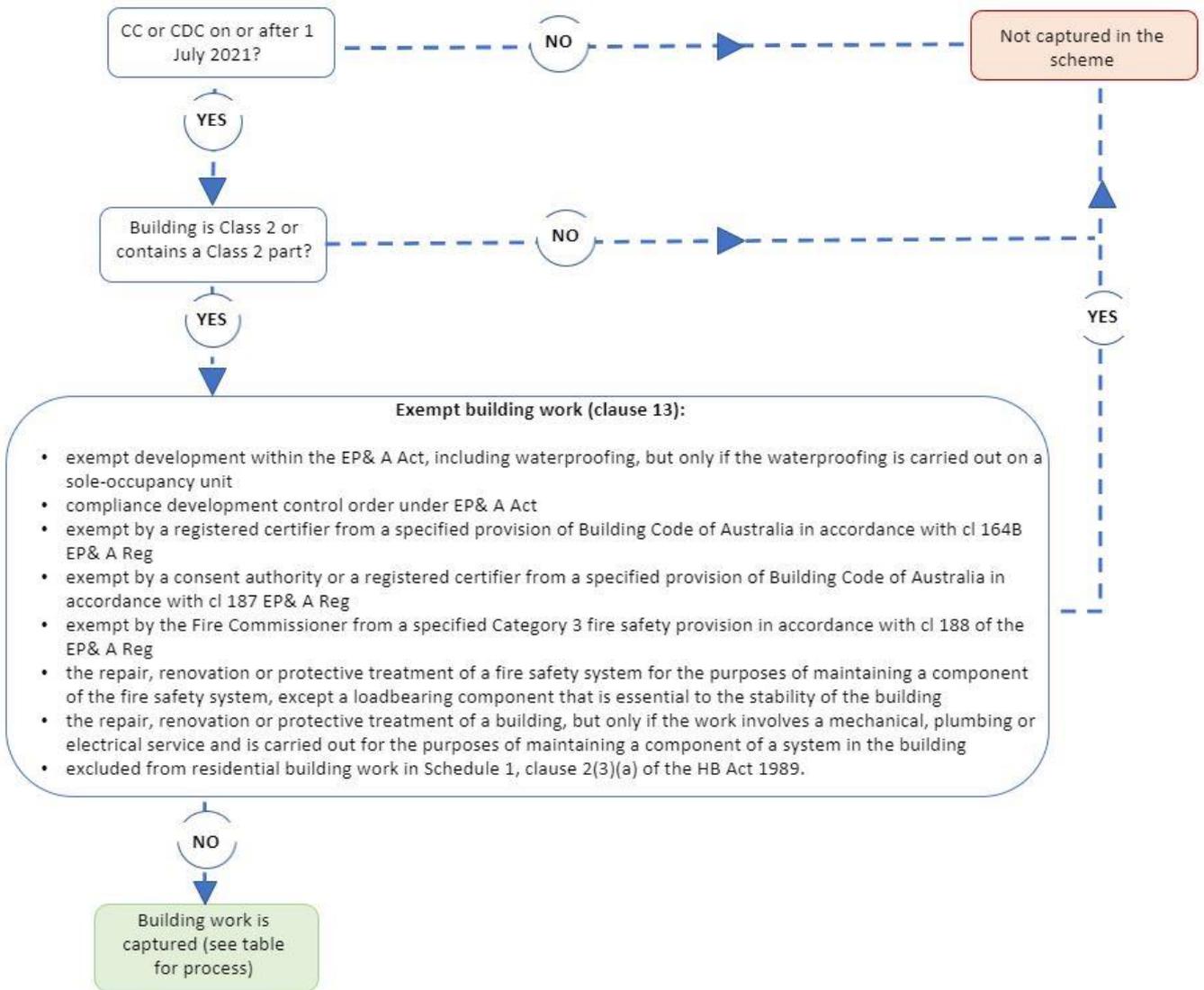
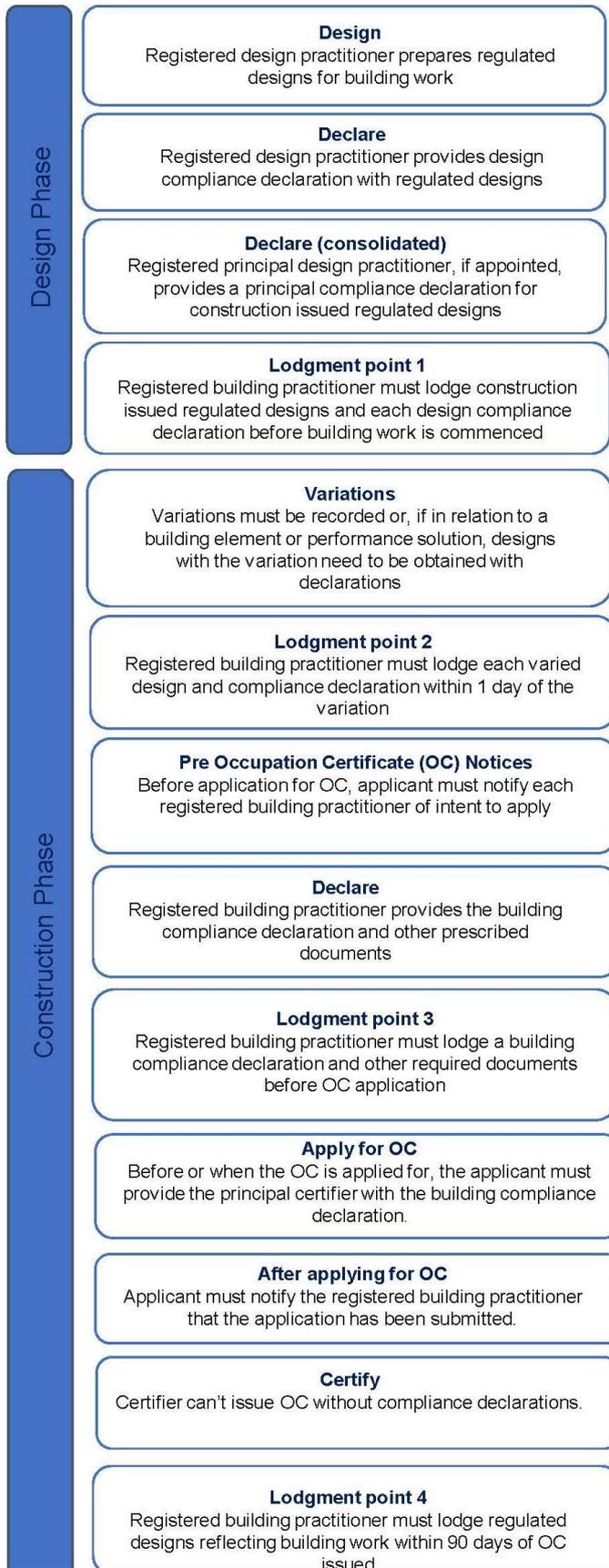


Diagram 2 – Design and construction process



Questions

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

Registration of Compliance Declaration Practitioners

This section will cover the registration of Design Practitioners, Principal Design Practitioners and Building Practitioners. The registration of Professional Engineers will be covered in the next section of the RIS under the heading 'Registration of Professional Engineers'.

The Regulation proposes the criteria that must be met before a person is eligible for registration as a Design Practitioner, Principal Design Practitioner and Building Practitioner. The intention is to lift standards within the building industry without imposing significant burden.

The registration scheme for people involved in the design and construction of buildings was a key recommendation of the *Building Confidence Report* and was committed to by the Government in its response to the Report.

Registration seeks to have a positive effect on the building and construction sector by ensuring critical work is completed by competent, qualified, skilled and experienced people. The Report criticised jurisdictions where the scope of work was not limited to the type of design or construction work that a registered practitioner had the capability to perform. Where a person designs a building element or performance solution that they are not sufficiently qualified or experienced to do, there is a significant risk that issues will arise for the builder in constructing the building and for the end customer in using the building.

Recent building incidents have emphasised that residential homeowners are particularly vulnerable to building defects. Examples of this in Sydney include Opal Tower in December 2018 and Mascot Towers in April 2019. Building failures result in costs to homeowners in remedying defects and an increased risk to safety for people living in non-compliant buildings.

The scheme created by the Act, and detailed in the Regulation, relies on registration to ensure that only suitably qualified, competent and insured practitioners can make the relevant declarations. Registration also provides a mechanism to discipline or refuse applications of practitioners who are not meeting the

requisite standards. Registration of practitioners can reduce the risk of building failures as well as improve public confidence in the building industry.

In determining which practitioners will be required to be registered under the new scheme, the Government has looked at the kinds of practitioners that will be working on regulated designs in class 2 buildings. While the Government remains committed to coverage of all Design Practitioners working on regulated designs in NSW, the Regulation will only cover those working on class 2 buildings to address the acute risks in the residential apartment building sector.

In determining the classes of practitioners that will be covered by the new scheme from 1 July 2021, the Government has considered the work undertaken by the Australian Building Codes Board (**ABCB**) to develop the 'National Registration Framework' (**NRF**). The *Building Confidence Report* emphasises the importance of nationally consistent requirements for practitioners, which is underpinned by the work of states and territories with the ABCB to identify opportunities for mutual recognition and consistent registration requirements.

The Regulation proposes the following classes of Design Practitioners for inclusion in the scheme under the Act and Regulation:

- Design Practitioner – Architectural,
- Design Practitioner – Building Design (Restricted),
- Design Practitioner – Civil Engineering,
- Design Practitioner – Drainage Design,
- Design Practitioner – Electrical Engineering,
- Design Practitioner – Electrical Design (Restricted)
- Design Practitioner – Façade Engineering,
- Design Practitioner – Fire Safety Engineering,
- Design Practitioner – Fire Systems (Detection and Alarm Systems),
- Design Practitioner – Fire Systems (Fire Sprinkler),
- Design Practitioner – Fire Systems (Fire Hydrant and Fire Hose Reel),
- Design Practitioner – Fire Systems (Mechanical Smoke Control),
- Design Practitioner – Geotechnical Engineering,
- Design Practitioner – Mechanical Engineering, and
- Design Practitioner – Structural Engineering.

The next section explains the reasoning behind some of the proposed classes of Design Practitioner. Please note that feedback on all classes is welcome, and not just those described below.

Certain classes of registration have been created to recognise the work of building professionals and designers that have the expertise to work on class 2 buildings, or buildings that contain a class 2 part, who are not necessarily architects or engineers, for example, fire systems technicians. These classes recognise different types of qualifications; however, their role has been restricted according to the scope of designs they are able to produce independently. This is also intended to reflect the levels of classes proposed in the NRF.

Given the initial focus is only on regulated designs as currently defined, those designs for building elements and performance solutions, it is not considered necessary to include a class of design practitioner outside of this scope. Examples of professions currently outside of scope may include landscape architects, land surveyors or environmental engineers. In addition, we do not intend to capture classes for certain specialty consultants. This is because we consider their advice is usually fed into the designs prepared by the classes of Design Practitioner listed above. It is important to note that there is a mechanism in the compliance declaration for Design Practitioners to acknowledge the advice they have relied on in their designs. The obligation is on the Design Practitioner to do due-diligence in reasonably relying on the advice of other professionals in the building and construction sector.

It has been determined that it is not necessary to create a broader class of hydraulic design practitioner. A building element includes those aspects of plumbing services that are required to achieve compliance with the BCA. However, the vast majority of compliance obligations for plumbing services are in the Plumbing Code, not the BCA. Therefore, the plumbing aspects that need to be captured are limited to drainage and those that relate to fire safety systems. This work will be addressed through the drainage and fire systems design classes.

The Regulation provides that practitioners who are registered in the class of a Design Practitioner – Civil Engineering are not able to prepare or vary designs that are within the scope of the classes of Façade, Geotechnical and Structural Design Practitioner. This limitation has been included as the class Design Practitioner – Civil Engineering is particularly broad, and the scope of work permitted overlaps with these other classes of Design Practitioner. A Design Practitioner who has the qualifications of a civil engineer but intends to prepare designs relating to a specialised area, such as façade, structural and geotechnical will need to be registered under the specific class to ensure that their practical experience relates to that specialised area. Feedback is sought on whether there are any ‘regulated designs’ that civil engineers would be responsible for that are outside of the scope of the other classes that civil engineers can be registered in.

Experience

It is proposed that only experienced practitioners will be suitable for registration as a Design Practitioner. This is to ensure that the declaration function is only allocated to practitioners with longer term experience in the industry.

It is proposed that all classes of Design Practitioner will be required to demonstrate at least 5 years' relevant practical experience in their class. Experience will be considered relevant if it is in the area of expertise that the person is seeking to be registered. For example, applicants for the class of Design Practitioner – Façade Engineering must be registered as a Professional Engineer under the class of structural or civil engineering. However, only those structural or civil engineers with experience specific to façade engineering will be eligible for registration.

A five-year experience level has been set to lift standards within the building industry and promote consumer confidence. The five-year level is consistent with the proposed national experience requirements under the NRF by the ABCB and with other comparable schemes. For example, a registered architect must demonstrate at least 3,300 hours of practical experience (approximately two years). Likewise, an Advanced Accredited Practitioner (Fire Safety) must demonstrate at least four years practical experience within the last ten years. It is intended that experience levels for Design Practitioners be set at a more advanced level than registration in other professional schemes to ensure that more experienced practitioners are signing to confirm a regulated design complies with the BCA.

Qualifications

Applicants for registration will be required to demonstrate, together with the relevant skills, knowledge and experience, the completion of a relevant qualification.

Qualifications provide a largely uniform way of assessing a person's capability to understand fundamental issues relevant to their area of expertise. While qualifications cannot be assessed in isolation, it is considered appropriate to set a minimum benchmark that all applicants will be assessed against.

The qualifications prescribed in the Regulation have been determined based on the type and complexity of work of each class of practitioner. In certain circumstances, this means recognising the qualifications of existing professions for consistency. For some classes of practitioners, this also means lifting standards of qualification within the building and construction industry. Consideration is also given to nationally consistent qualification requirements in accordance with the *Building Confidence Report* and the NRF by the ABCB. These are provided in Schedule 2 of the Regulation.

The Regulation will also allow for people to be registered in certain categories where they are recognised under existing schemes, including:

- a 'Design Practitioner – Architectural' holding full registration as an architect under the *Architects Act 2003*,

- a Building Practitioner holding an endorsed contractor licence to do general building work under the *Home Building Act 1989*, and
- a Design Practitioner registered under a class of engineering holding registration under the proposed Professional Engineers Scheme (see below). For example, a 'Design Practitioner – Structural Engineering' must be registered as a Professional Engineer in the class of structural engineering under the Professional Engineers Scheme to satisfy their qualification requirements.

As part of the Government's commitment to lift standards, some practitioners currently working without relevant qualifications, will need to meet minimum qualification requirements before they are able to be registered under the new scheme. The Government recognises that there will be some practitioners who do not meet the qualification requirements. It is hoped that the transitional provisions, as well the ongoing work by Government to support increased access to relevant qualifications, will offset some of the impact on these practitioners.

Transitional arrangements – fire systems classes

The Regulation proposes transitional arrangements for Design Practitioners who design fire safety systems, including sprinklers, fire hose and reel, and smoke detection and alarm systems. The Diploma of Fire Systems Design (**Diploma**) includes units covering the design of these fire safety systems and is considered an appropriate qualification by the industry, however, our enquiries suggest few within the industry have completed it.

The Regulation has allowed transitional arrangements for those fire systems classes that require completion of the Diploma or units from it. The transitional arrangements allow a person seeking registration as a Design Practitioner in certain fire systems classes to apply for registration provided they have the necessary, skills, knowledge and experience and are enrolled in the Diploma. Transitional registration will only be accepted for the first year of the scheme. Transitional registrations cannot be for more than three years and the practitioner must complete the required qualifications in those three years in order to gain full registration. A practitioner subject to these transitional arrangements will not be able to be registered as a Principal Design Practitioner or be designated to lodge documents on the NSW Planning Portal by the Building Practitioner. These transitional requirements will ensure there are designers who are able to prepare and declare designs as of 1 July 2021.

Knowledge and skills

The new scheme established by the Act relies on Design Practitioners' and Building Practitioners' ability to design and build in accordance with the BCA. The *Building Confidence Report* identified gaps in key Building Practitioners' knowledge of the BCA and accountability. Design Practitioner applicants will be required to meet a minimum level of knowledge and skills. These requirements are mandated in recognition that registered practitioners must be suitably educated and have relevant experience in the BCA, relevant legislation, standards and building design in order to be able to competently issue a

compliance declaration. Practitioners are required to have sound knowledge of the BCA given the function they have in making and providing compliance declarations about the BCA.

As the regulator, NSW Fair Trading will assess the knowledge and skills of applicants. It is likely that applicants will need to specify their skills and experience relevant to the class of practitioner for which they seek registration through a written statement or form. To verify knowledge and skills, it is proposed that applicants will need to provide two contactable referees to confirm the information provided. This is similar to other schemes, such as the National Engineering Register.

Transitional arrangements – deeming registration proposal

The impact on industry of prescribed qualifications, knowledge, skills and experience requirements will be carefully considered. The effect of COVID-19 on the national and state economy and on industry is actively being considered in the development of policy solutions.

The new Compliance Declaration and Professional Engineer Schemes will require a large number of practitioners and engineers to either be registered with NSW Fair Trading for the first time, or to apply for an additional authorisation. The Government expects that from 1 July 2021, more than 100,000 design and buildings practitioners and engineers may be eligible for registration under the schemes. However, only those who work on class 2 buildings, or buildings with a class 2 part, will need to be registered.

With existing resources, it will not be feasible to process the anticipated number of applications for registration in a reasonable timeframe. Without appropriate transitional arrangements, the new scheme could cause significant delays for industry by not having practitioners registered and able to work.

The proposed transitional provisions will allow a person who has fulfilled all of the requirements for registration (qualifications, knowledge, experience etc), and who has lodged an application for registration with NSW Fair Trading, to operate under a deemed registration.

It is proposed that between 1 July and 31 December 2021, a person is deemed to be registered as a Professional Engineer to do professional engineering work or a Design Practitioner, Principal Design Practitioner or Building Practitioner and is able to issue compliance declarations, where the person:

- makes an application for registration,
- is a suitable person to carry out the work, and
- satisfies the registration requirements prescribed by the Act and Regulation.

A person will be deemed to be registered, until the Secretary makes a decision to permit them to continue to be registered or cancel their registration.

It is proposed that a person deemed to be registered is subject to any conditions or requirements under the Act, including:

- responding to notices for further information in relation to their application for registration, and

- cancellation or suspension of deemed registration by the Secretary for non-compliance with a notice for further information, or other breaches of the Act or Regulation.

Once an application has been submitted to NSW Fair Trading, applicants will receive an application number as evidence of their deemed registration. Applicants can use this number to make compliance declarations or carry out professional engineering work unless advised by the Secretary in writing that their registration has been cancelled.

If the Secretary decides to not permit continued registration, the applicant is no longer entitled to do work under the new scheme; this includes issuing compliance declarations and professional engineering work.

A compliance declaration issued by a person whose registration has been cancelled but was at the time working lawfully under deemed registration is still valid. However, where the declaration does not satisfy requirements under the Act or Regulation, for example by falsely declaring that the building was built in accordance with the regulated design, then the person will be subject to an offence.

Questions

- 5. Do you support the proposed classes of Design Practitioner? Why or why not?**
- 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?**
- 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.**
- 8. Other than qualifications, skills, knowledge and experience, are there any other eligibility criteria that applicants should meet to be eligible for registration?**
- 9. Do you agree that practitioners should be required to have 5 years of 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?**

Registration of Professional Engineers

The NSW Government is committed to enhancing public trust in the building and construction industry by registering Professional Engineers. The appropriate regulation of engineers will provide greater consumer confidence in the end construction result, increase standards and ensure professionals are competent.

Under the new Professional Engineers Scheme, a person must not carry out professional engineering work in a prescribed area of engineering unless the person is a registered Professional Engineer and the person's registration authorises them to carry out that work. However, a person is able to carry out professional engineering work without being registered if they work under the direct supervision of a registered Professional Engineer or are specifically authorised by the Regulation to do so.

Professional engineering work

The Act (s 31(1)) sets out that professional engineering work means engineering work, including engineering services, that requires, or is based on, the application of engineering principles and data to a design or a construction, production, operation or maintenance activity relating to engineering. The Act excludes engineering work if the work is only provided in accordance with a document that states the procedure or criteria for carrying out the work, and the work does not require the application of advanced scientifically-based calculations.

Consistent with the scope of the reforms indicated earlier in the RIS, the Regulation proposes to only register engineers carrying out engineering work for the purposes of designing or constructing a class 2 building or a building that contains a class 2 part. This will ensure that engineers involved in the scope of work covered by the Compliance Declaration Scheme are appropriately registered for carrying out the work.

In order to provide a nationally consistent approach, the engineering powers set out in the Act and supporting Regulation have been designed to align as much as possible with existing registration schemes in Queensland and Victoria.

We acknowledge the definition of professional engineering work provided in the Act is broad. Feedback is sought on the type of work likely to be captured within the definition within the scope of the reforms. Consideration is being given to types of work that may need to be excluded from the scheme.

Prescribed areas of engineering

The Act prescribes the following areas of engineering:

- a) structural engineering,
- b) civil engineering,
- c) mechanical engineering,
- d) fire safety engineering,
- e) electrical engineering.

The Regulation proposes adding geotechnical engineering as a prescribed area to ensure that the areas of engineering that are essential to designing and constructing a class 2 and related mixed-use building are captured in the scheme.

Classes of registration

The Regulation proposes the following classes of engineers:

- a) Professional Engineer – Civil Engineering
- b) Professional Engineer – Electrical Engineering
- c) Professional Engineer – Fire Safety Engineering
- d) Professional Engineer – Geotechnical Engineering
- e) Professional Engineer – Mechanical Engineering
- f) Professional Engineer – Structural Engineering

Pathways

Three options are proposed for the registration of Professional Engineers.

These include:

Pathway 1: NSW Fair Trading regulates all aspects of the registration process, including eligibility and ongoing registration requirements, e.g. continuing professional development (**CPD**) and insurance.

Pathway 2: NSW Fair Trading approves suitable professional engineering bodies to be responsible for assessing eligibility and ongoing registration requirements.

Pathway 3: NSW Fair Trading recognises professional engineering bodies to be responsible for assessing eligibility and ongoing registration requirements in accordance with the requirements of a Professional Standards Scheme (**PSS**).

These three pathways are depicted in the diagram below.

Diagram 3 – Pathways for registration of Professional Engineers.

Pathway 1: Government only	Pathway 2: Co-Reg: Government approved Schemes	Pathway 3: Co-Reg: Professional Standards Council approved Schemes
<ul style="list-style-type: none"> • The Regulation prescribes the: <ul style="list-style-type: none"> ➢ Qualifications, skills, knowledge and experience ➢ CPD requirements ➢ Insurance requirements • Fair Trading is responsible for assessing, registering, monitoring and compliance of all engineers. 	<ul style="list-style-type: none"> • Fair Trading will assess and approve professional bodies and their schemes for registration. • Professional bodies will impose: <ul style="list-style-type: none"> ➢ Qualifications, skills, knowledge and experience ➢ CPD requirements ➢ Insurance requirements • Professional bodies are responsible for assessing, registering, monitoring, auditing and compliance of engineers they register. • Fair Trading is responsible for registering engineers that are registered by professional bodies and monitoring and compliance. 	<ul style="list-style-type: none"> • Professional Standards Council assess and approve a professional body's Professional Standards Scheme (PSS). • Professional bodies will impose the following in accordance with PSS: <ul style="list-style-type: none"> ➢ Qualifications, skills, knowledge and experience ➢ CPD requirements ➢ Insurance requirements • Professional bodies are responsible for assessing, registering, monitoring, auditing and compliance of engineers they register. • Fair Trading is responsible for registering engineers that are registered by professional bodies and monitoring and compliance.

Pathway 1

Under Pathway 1, NSW Fair Trading would be solely responsible for the licensing of Professional Engineers. An applicant will be required to satisfy NSW Fair Trading that they meet the minimum qualification, experience, skills and knowledge requirements set out in the Regulation. And to maintain registration, engineers will also need to satisfy NSW Fair Trading that they comply with the CPD and insurance requirements set out in the Regulation.

Under this pathway, professional engineering bodies would not be involved in the registration of Professional Engineers under the Act but can continue to provide support to their members.

Pathway 1 provides a one-stop shop that will be ready from the first day of the scheme. It will operate in a similar way to the registration of Design Practitioners, with NSW Fair Trading assessing an applicant's competence against the minimum standards in the Regulation. Pathway 1 will ensure that all applicants go through the same process and ensure that only competent Professional Engineers are authorised to do professional engineering work in NSW.

As Pathway 1 creates a new process, there will be a cost to Government to set up and maintain the registration scheme, including developing systems to receive and process applications, teams to assess applications, and procedures to track registration and ongoing obligations, such as CPD.

If Pathway 1 is adopted, applicants will be charged a fee for registration commensurate with the cost to Government for administering the scheme.

While there will be a cost to Government, and to Professional Engineers to access the scheme, Pathway 1 provides a registration system capable of determining whether a person should be able to practise under the Act from 1 July 2021.

The Regulation also allows for other registration options to be brought online at a later date. This will give time for professional engineering bodies to be recognised by NSW Fair Trading to operate under Pathway 2 or 3.

The following sections outline the proposed eligibility requirements provided in the Regulation that applicants will need to satisfy to register under Pathway 1

Experience

To ensure that only experienced engineers are able to design or construct a class 2 building, or a building that contains a class 2 part, Professional Engineers will only be able to apply for recognition if they are able to demonstrate at least five years' practical experience in their area of engineering. Existing registered engineers in NSW or across other jurisdictions will not be able to be recognised as a Professional Engineer without the requisite experience. To be registered, engineers will be required to show five years' experience in the kind of work that they are seeking to be registered in.

The Government considers that five years is an appropriate minimum amount of time that a person should be required to satisfy before they are able to carry out professional engineering work on buildings under the scheme without supervision.

The Government considered accepting less experience, including the four years recognised under the National Engineering Register and in Queensland. This approach would allow more practitioners to be eligible to do engineering work without supervision. However, while the proposed experience requirement is new, and will result in some practitioners not being immediately eligible to work unsupervised under the scheme, the Government considers that the regulatory burden is justified.

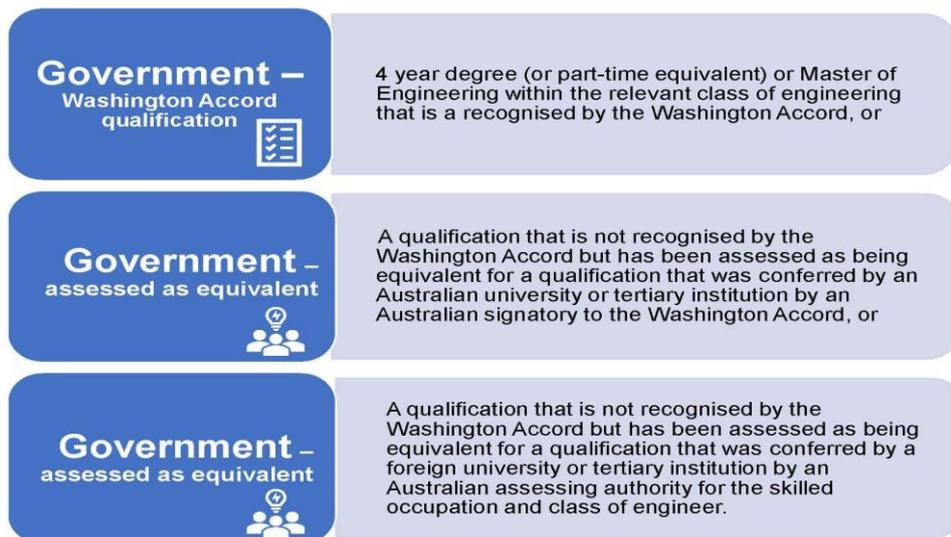
NSW has adopted the same experience requirements as Victoria, in order to promote consistency across jurisdictions to reduce compliance costs for industry. The proposed approach recognises the importance of allowing only practitioners with certain levels of expertise and experience to sign off on designs before they are built. Following consultation with industry stakeholders and considering the work of NSW Fair Trading and Office of the Building Commissioner compliance officers, five years' experience was settled as the appropriate level under the scheme.

Those practitioners with less experience who are otherwise qualified will still be able to undertake engineering work but will need to do so under the supervision of a registered Professional Engineer. This approach ensures that engineers can build their experience working on class 2 buildings within their area of expertise.

Qualifications

Applicants for registration as a Professional Engineer must demonstrate the completion of a relevant qualification. These are provided in Schedule 2 of the Regulation. The diagram below details how qualifications are assessed under Pathway 1.

Diagram 4 – Assessment of qualifications under Pathway 1.



The proposed approach is intended to provide a mechanism for qualifications to be recognised. The Washington Accord has been set as it is an internationally recognised benchmark for the assessment of qualifications. The approach is also intended to allow flexibility for those with international qualifications to be recognised in Australia whilst ensuring their qualification meets an appropriately high standard.

The Washington Accord is also set as the standard in Queensland and the proposed Victorian registration scheme. Consistency between jurisdictions is a recommendation of both the *Building Confidence Report* and proposed NRF by the ABCB.

In addition, the proposed approach allows for any other qualification to be assessed by the Australian signatory to the Washington Accord, or an assessing authority as equivalent, to allow for registration as a Professional Engineer under this pathway.

Knowledge and skills

Applicants for registration as a Professional Engineer will be required to meet a minimum level of knowledge and skills. These are provided for in the Regulation in Schedule 2. These are proposed to reflect current industry standards for the relevant knowledge and skills required for a Professional Engineer. The knowledge and skills required of all classes of Professional Engineer are:

Knowledge

Must know and understand the following, as relevant to the prescribed area of engineering and class of registration:

1. engineering principles for natural and physical science and sustainable engineering,
2. mathematics, numerical analysis, statistics and computer and information sciences,
3. specialist knowledge,
4. engineering design and construction, and the physical, natural and environmental factors that may impact the design and construction,
5. for a class of Professional Engineer – Fire Safety Engineering:
 - a) the science of fire, and
 - b) the principles of fire engineering, including fire engineering processes and methodologies, and
 - c) relevant fire engineering guidelines, including the *International Fire Engineering Guidelines*.

Skills

Must be able to do the following, as relevant to the prescribed area of engineering and the class of registration:

1. apply established engineering methods to engineering issues,
2. apply engineering techniques, tools and resources,
3. apply systematic engineering synthesis and design processes,
4. apply systematic approaches to the management of engineering projects,
5. for a class of Professional Engineer – Fire Safety Engineering:
 - a. apply scientific and engineering principles to evaluate strategies to protect people and the environment from the consequences of fire, and
 - b. anticipate the behaviour of materials, structures, machines, apparatus and processes when exposed to fire, and
 - c. develop a fire engineering design and determine whether the design complies with the relevant performance requirements of the *Building Code of Australia*, and
 - d. apply relevant fire engineering guidelines, including the *International Fire Engineering Guidelines*, and
 - e. apply fire engineering models and tools, and
 - f. assess the holistic performance of the fire safety strategy.

Feedback is sought on whether each class of engineer should have separate knowledge and skills requirements or whether the above standard set of knowledge and skills requirements for Professional Engineers should be adopted.

Pathway 2

Under Pathway 2, NSW Fair Trading would be responsible for registering engineers who are able to satisfy that they have already been registered or recognised by a 'recognised engineering body'. A recognised engineering body is one that has been approved by NSW Fair Trading to operate a scheme for assessing an engineer's qualifications, experience, skills, and knowledge for suitability for registration. The body would also be responsible for setting CPD and insurance requirements for these engineers in order to maintain their registration.

The Government recognises that there are a number of existing professional engineering bodies that are well-placed to not only support members, but to also assess an individual practitioner's technical competencies. Where a professional body can satisfy the Secretary that it has the relevant expertise to impartially and appropriately assess an individual practitioner's competency against minimum standards, that body will be provided with relevant functions in accordance with that expertise.

Pathway 2 will provide the Secretary the power to authorise approved professional bodies to set and assess certain minimum standards across experience, knowledge, skills and qualifications. While the body will be empowered to set minimum standards for knowledge, skills and qualification requirements, the Regulation will continue to prescribe five years of recent relevant experience in the area the person is seeking registration for.

A professional body must adhere to certain minimum requirements before it is eligible to become a recognised engineering body. The Regulation provides for the following:

- requirements a professional body must meet before being able to register or recognise engineers (cl 39),
- an application process (cl 40 and 41),
- duration and revocation of recognition (cl 42 and 43),
- requirements for recognition or registration scheme (cl 44-47), and
- duties of a professional engineering body under the scheme (cl 48).

Pathway 2 replicates existing services offered by professional bodies but allows them to take on new regulatory responsibilities at standards set by the Secretary. This approach has been adopted in Queensland, with Victoria and Western Australia considering utilising this approach under their proposed registration schemes.

While professional bodies will be able to set their own knowledge, skills, qualification, insurance and CPD requirements, before a professional body is approved to be a recognised engineering body by the Secretary it must provide clear evidence that the standards are the same or higher than the requirements under the Regulation. While the Government welcomes the work of industry to take on additional regulatory responsibilities, the Regulation will ensure that the minimum capability standards are consistent for all engineers under the scheme.

It is intended that Pathway 2 would, at least initially, work alongside Pathway 1, allowing practitioners to - select which body to approach to have their capabilities assessed as part of the application process.

Pathway 3

Under Pathway 3, NSW Fair Trading would be responsible for registering engineers who are able to satisfy that they have already been registered or recognised by a professional body of engineers that operates with a Professional Standards Scheme (**PSS**). The body will be responsible for operating a scheme for assessing an engineer's suitability for registration, and setting CPD and insurance requirements to maintain registration, in accordance with the requirements of the PSS. NSW Fair Trading will play no role in assessing the suitability of the body's scheme, acknowledging that these bodies have already undertaken a rigorous assessment process by the Professional Standards Council in order to have a PSS. Under that process, these bodies are required to have strategies, systems and resources in place to ensure ongoing responsibilities are met under the PSS.

A PSS attracts numerous benefits for the registration scheme. It is a legal instrument that binds associations to monitor, enforce and improve the professional standards of their members, and improves consumer protection. A PSS distinguishes an association and its members as a recognised profession and demonstrates the association's commitment to be regulated under professional standards legislation, and to upholding higher standards and consumer protection within the sector. It also encourages associations and their members to implement a range of measures to improve professional standards and practice, such as risk management strategies and codes of ethics.

However, organisations that operate a PSS can distinguish the organisation and its members from others as a body that requires all members to maintain best practice standards. For members of a PSS, a key benefit is that members are provided monetary ceilings/caps on civil liability on the amount of damages that can be awarded in court on any proceeding. This occurs because there are additional requirements imposed on members that encourage higher quality work – resulting in fewer breaches of obligations.

There are no existing PSS operating for Professional Engineers. Applying for a PSS is an intensive process. For most associations, being recognised with a PSS requires a significant step-up in their professional standards systems and self-regulatory capacity. Accordingly, it is acknowledged that Pathway 3 will not be operational from 1 July 2021. However, by enabling it as a pathway in the Regulation, Government is keen to encourage engineering bodies to commence developing a PSS as a way of streamlining the registration process and improve professional standards and practices across the sector to deliver increased consumer confidence.

Questions

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?
12. Do you support a co-regulatory approach for the registration of engineers?
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?
14. The Regulation proposes recognition of Washington Accord accredited qualifications. Do you think this is appropriate? If not, what alternative approach do you suggest?
15. Under Pathway 2 what criteria do you think the professional engineering body should satisfy to be eligible to perform their function?
16. Would you be supportive of professional bodies developing a PSS for Pathway 3 to be available?
17. Do you agree that Professional Engineers should be required to have 5 years of recent and relevant 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.

Compliance Declaration Scheme: practitioner requirements

The *Building Confidence Report* identified a systemic failure of laws that specifically set out “that the duty of the designer is to prepare documentation that demonstrates the proposed building will comply with the *National Construction Code*”. The Report found that this issue, and the lack of compliant design and documentation, led to defects in buildings. It observed that practitioners were improvising or making poor decisions in absence of specialist advice provided at the right point in the design-and-construct process. It identified “water ingress leading to mould and structural compromise, structurally unsound roof construction and poorly constructed fire resisting elements” as common defects across construction. The Report also referenced similar shortcomings in relation to the use of combustible cladding.

The NSW Office of the Building Commissioner has been carrying out inspections of class 2 buildings since the commencement of the *NSW Residential Apartment Buildings (Compliance and Enforcement*

Powers) Act 2020 on 1 September 2020. In that short time, the inspections have exposed significant shortcomings such as ‘issued for construction’ drawings not being available on-site, insufficient detail in design documentation, inadequate certification records, builders not constructing in accordance with ‘issued for construction’ drawings as well as product substitution without sign-off by the engineer responsible for the design. The inspections also exposed poor quality and defective building works relating to building elements. Repeated failures such as these necessitate reforms to hold practitioners accountable for their work.

The *Building Confidence Report* noted:

Poor quality documentation leads to builders improvising or making decisions which may not be compliant with the NCC. Performance solutions can, in some instances, be post facto (after-the-fact) rationalisations intended to address design that is not in accordance with NCC requirements. Inadequate documentation can also result in hidden costs or allow builders to cut costs without owners being aware of it.

The integrity of documentation for future use is also compromised when the approval documents do not reflect the as-built building, or when they contain insufficient detail to properly inform building risk and maintenance requirements.

Compliance declarations

In response to these issues, the Act imposes obligations on practitioners to take responsibility for their work through making compliance declarations.

Under the Act, there are three types of compliance declarations:

1. Design Compliance Declarations – provided by registered Design Practitioners,
2. Principal Compliance Declarations – provided by registered Principal Design Practitioners if appointed in relation to building work, and
3. Building Compliance Declarations – provided by registered Building Practitioners.

Design Compliance Declaration

The Act requires a registered Design Practitioner to provide a ‘Design Compliance Declaration’ to a person where they provide that person with a regulated design in a form suitable for use in connection with building work.

The Act provides that this declaration must cover:

- a) whether or not a regulated design prepared for building work complies with the requirements of the *Building Code of Australia (BCA)*,

- b) whether or not the design complies with other applicable requirements prescribed by the Regulations for the purposes of this subsection,
- c) whether or not other standards, codes or requirements have been applied in preparing the design,
- d) any other matter prescribed by the Regulations.

The Regulation proposes to additionally require the declaration to cover:

- a) whether or not the matters to which the declaration relates, including the design, are within the registered Design Practitioner's competence and expertise,
- b) whether or not the class of registration authorises the registered Design Practitioner to prepare the class of design for which the declaration is being made,
- c) whether or not the design integrates details of:
 - (i) other aspects of building work to which the design relates, and
 - (ii) other regulated designs for the work, including designs prepared by other registered Design Practitioners,
- d) whether or not any building product referred to in the design would, if used in a manner consistent with the design, achieve compliance with the BCA,
- e) whether or not specialist advice was sought and considered in preparing the design.

Design Practitioners must declare that their registration allows them to prepare the particular design and that they have the knowledge and competence to make the design and the declaration. This is an important requirement to ensure the Design Practitioner who is making the design and Design Compliance Declaration has the authority and capability to do so.

The person who makes the Design Compliance Declaration won't necessarily be the person who actually prepared the design they are declaring. This is because the Act states that preparing or varying a design, can mean actually preparing or varying the design or coordinating or supervising the preparation or variation of the design. This allows firms and partnerships of designers to choose whether they register all their designers under the scheme or have designated designers registered to make the Design Compliance Declarations. If a registered Design Practitioner makes a Design Compliance Declaration for a regulated design they have coordinated or supervised, they must have a registration that allows them to prepare that design and the Design Practitioner must take responsibility for the design.

The Design Practitioner must declare whether their regulated design integrates details of other aspects of building work to which the design relates, as well as other regulated designs for the work. If a Design Practitioner has integrated other designs, they are then required to provide details about the other regulated designs that have been integrated into the regulated design for which this Design Compliance Declaration is being made. The requirement to consider other designs is to reflect that in practise, the numerous designs required to construct a building need to be harmonised and integrate with related

designs. The intention is to eliminate the preparation of siloed designs which should reduce the need for variations after building commences. If a Design Practitioner declares that their design has not considered another relevant design, the Building Practitioner will be alerted to this and can then provide the Design Practitioner with the relevant designs to integrate.

The declaration covers whether a building product referred to in the regulated design would, if used in a manner consistent with the design, achieve compliance with the BCA.

This has been included to ensure that all materials are suitable for their designated purpose and to cover the emergence of new products and materials that may not have been considered by the BCA.

The declaration also covers whether or not other standards, codes or requirements have been applied in preparing the design. This only requires the designer to include standards, codes or requirements that are not referenced as the applicable standard for that work in the BCA. For example, if a fire sprinkler system has been designed in accordance with Australian Standard 2118 as referenced in the BCA, the Design Practitioner would not need to reference this standard in the declaration.

A class 2 high rise development will involve a large number of designs from particular Design Practitioners, especially architects. The definition of a design is not limited to a drawing but includes a plan, specification or report detailing a design. To avoid Design Practitioners having to make separate declarations for each separate design, the Regulation provides that a declaration may cover numerous designs.

It is proposed that each regulated design must have a title block on the design. A title block is a table of information containing details about the design and the development the design is for. The title block will be used by the NSW Planning Portal to extract data relating to the design. The requirement for a title block and relevant information to be incorporated onto each regulated design will not be in the Regulation but in a Ministerial Order made in accordance with the Act. A Ministerial Order is a legislative instrument that reflects decisions made by an authorised Minister. Publishing the requirement in a Ministerial Order, compared to the Regulation, will not diminish the obligations of practitioners to comply.

The title block will be available to practitioners on a Government website in a .dwg format so that it can be included in AutoCAD systems. An example of the proposed Title Block and the information required can be found below:

Design Practitioner Title Block

						Project Title	Drawing status	
						Diamond Apartments	Construction Issued - variation	
						Project Address	Scale	Sheet size
						1223, Smith St, Sydney	1:100	A1
						Drawing Title	Drawing Number	Revision No
2	Unit 3 revised	Joanne Smith	123456	AA Design	30.07.21	Reflected ceiling	RC 152	1
1	Preliminary issue	Joanne Smith	123456	AA Design	01.07.21	Job No.	DA Reference	Date
No	Description	Practitioner Name	Reg No	Company	Date	XXXXXXXX	XXXXXXXX	30.07.2021

Guidelines for Design Practitioners setting out their obligations and providing useful guidance on what they need to do will also be made available. The guidelines will include important information such as how to complete the title block, where it is to be positioned and naming conventions. Guidelines will also cover the Design Compliance Declarations and the circumstances when a designer may use a declaration to declare multiple designs. For example, where designers are producing sets of designs a declaration can be made for each set so long as the information entered into the declaration relates to the entire set.

The Regulation does not propose to provide for additional matters to be included in the Principal Compliance Declaration or Building Compliance Declaration. This was determined as matters currently provided for in the Act for these declarations were considered comprehensive. Building Compliance Declarations will be discussed in further detail in the next section of the RIS outlining lodgement obligations.

Lodgement obligations

The Act sets out clear requirements for Design Practitioners, Principal Design Practitioners and Building Practitioners about when they are required to make and provide regulated designs, compliance declarations and other associated documents. The Act further allows Regulations to specify when these documents need to be additionally lodged electronically on the NSW Planning Portal.

The Regulation (Part 3) proposes to require the lodgement of certain documents on the NSW planning portal at four key points throughout the life of the building work:

- Stage 1 – before building work commences,
- Stage 2 – as variations arise after building work commences,
- Stage 3 – before the issue of an Occupation Certificate (**OC**), and
- Stage 4 – 90 days after an OC is issued.

The lodgement points are designed to promote compliance with the Act, as a Building Practitioner must not only be in possession of the regulated design for the building work but must lodge the designs before building commences. It is considered that the requirement to lodge on the NSW Planning Portal is likely to promote a change of behaviour amongst Building Practitioners. The timing of lodgement has also been designed to assist in detecting non-compliance of building works that are subject to an audit.

Stage 1: before building work commences

Stage 1

A registered Building Practitioner must lodge the following documents on the NSW Planning Portal before building work commences:

- a) a copy of each construction issued regulated design for building work,
- b) a copy of each Design Compliance Declaration for those regulated designs made by a registered Design Practitioner, and
- c) a Principal Compliance Declaration for the construction issued regulated designs, if one is appointed.

A construction issued regulated design is a regulated design that:

- a) contains the necessary detail to produce building work that would achieve compliance with the BCA, and
- b) can be used by a Building Practitioner to carry out the work in accordance with the design and the BCA (the Dictionary at the end of the Regulation sets out the definition in full).

The first lodgement point is aimed at ensuring that the Building Practitioner cannot carry out building work until they have the complete set of declared designs for the critical elements of the building that would enable them to start building. **This means that designs for all the building works that require a regulated design must be lodged prior to any building work commencing.**

This is consistent with the existing obligation on a Building Practitioner under the Act (s 19) to not carry out any building work for which a regulated design is to be used unless they have obtained a design from a registered Design Practitioner and a declaration which states compliance with the BCA.

The *Building Confidence Report* recognised that improving the quality of design documentation and requiring designers to ensure their design complies with the BCA would provide protection to Building Practitioners who build to approved documentation. It follows that where a design is unclear or not practical, the Building Practitioner is to require variations to be documented before proceeding with work.

While a Design Practitioner is likely to produce multiple versions of a regulated design prior to work commencing, the requirement to lodge only applies to the version that meets the requirements of a *construction issued regulated design*.

These are the designs that contain the necessary detail to produce building work that would achieve compliance with the BCA, including detail specifying:

- a) the proposed dimensions of the completed building, and
- b) the characteristic and materials comprising the proposed building, and
- c) the location of the building elements and systems proposed to be built be in a form that they are sufficiently detailed to enable the Building Practitioner to build based on the design.

and can be used by a Building Practitioner to carry out the work in accordance with the regulated design and the BCA.

It is acknowledged that this lodgement point will be a significant departure from how some parts of the building industry currently operate, particularly those involved in design-and-construct contracts. This reform recognises the integrated nature of various designs, and therefore the need to have the set of construction issued regulated designs settled before building commences on any element. To illustrate, before work on excavation and footings can commence, the designs for the building that will be above it must also exist, or in the case of mixed-use buildings, designs for all parts must be prepared so the residential part isn't built without knowing the full extent of the commercial build.

This feature of the reform is designed as a check point to ensure Building Practitioners are complying with the requirements of the Act but is also intended to create a change of behaviour in the building industry.

Requiring the designs to be lodged before building commences serves several purposes. Firstly, it means that consideration has been given to the holistic design of the development and Design Practitioners have had the opportunity to consider and integrate relevant designs. It also means that the Building Practitioner has had the opportunity to consider the construction issued regulated designs before building work begins. As building work must adhere to the regulated designs, this aspect is essential.

Once the construction issued set of regulated designs are lodged, it signals to the Regulator that building work is pending which may inform the timing of potential audits. If the entire set of construction issued regulated designs had not be lodged and a site audit revealed that building work had commenced, the responsible practitioner would be in breach.

Given the importance of this obligation, it is considered appropriate to attach an offence to it. Failing to adhere to the requirement is an offence and carries a maximum penalty of 200 penalty units for a body corporate or 100 penalty units for an individual. Disciplinary action is also available for breaches of a practitioner's requirements, including the cancellation of registration.

Consideration was given to requiring lodgement to occur at a set period of time before building works can commence, for example seven days. However, it was considered there was no practical need to do this. Provided a Building Practitioner has been given the relevant designs that are sufficiently detailed to

enable all building elements of the development to be built, and these designs have been declared, building work can commence as soon as they have been lodged.

Who is responsible for lodgement?

Primary responsibility for lodgement of the required documents belongs to the Building Practitioner. However, the Regulation proposes to allow the Building Practitioner to authorise a registered Principal Design Practitioner to lodge on their behalf where one is appointed. Alternatively, where a registered Principal Design Practitioner is not appointed, the Regulation allows the Building Practitioner to authorise one of the registered Design Practitioners involved in the project to lodge.

In determining who should be responsible for lodging the set of construction issued regulated designs, consideration was given to the roles and responsibilities of the other practitioners under the Compliance Declaration Scheme. It was determined that the Building Practitioner was the most appropriate person to have sole responsibility for this function but allowing them the discretion to delegate where appropriate. It is central to the reforms that the Building Practitioner is provided with the regulated designs prior to commencing building work and that building work for building elements must be in accordance with the regulated designs. The responsibility for lodging the regulated designs aligns with the other responsibilities on the Building Practitioner.

It is acknowledged that some registered Design Practitioners may prefer to have been given responsibility for lodging their regulated designs on the NSW Planning Portal. However, in some respects, this has been built into the declaration process as a Design Practitioner is only to provide a Design Compliance Declaration for a design that is in a form suitable for use in connection with building work. A Design Practitioner will still be able to provide early concept designs to clients and others, and these designs will not require a declaration. A Design Practitioner must assume when they declare a design, that it may be lodged and built in accordance with. If Design Practitioners want to know when their regulated designs are lodged, the NSW Planning Portal may be able to support a function to notify the Design Practitioner that their design has been lodged.

Stage 2: As variations arise after building work commences

Stage 2

After building work commences, if building work is varied (in relation to a building element or performance solution) or is varied so as to require a new building element or performance solution, the variation must be prepared and declared by a registered Design Practitioner who is authorised to prepare the relevant design.

A registered Building Practitioner must lodge the following documents no later than one day after commencing the relevant variation to building work to which the documents relate:

- a) a copy of each varied regulated design,
- b) a copy of the regulated design for a new building element or performance solution,
- c) a copy of each Design Compliance Declaration for the above designs.

This means building work relating to the regulated design may need to stop so that the varied design can be prepared and declared in time to meet this timeframe.

Requiring designers to contemplate other designs and requiring Building Practitioners to hold a set of construction issued regulated designs prior to building work commences, is intended to reduce the amount of variations that are necessary during building work. However, it is acknowledged that variations may still be necessary for complex building work. Allowing for variations during the construction process accommodates innovation and flexibility but the second lodgement point is designed to impose necessary safeguards.

The *Building Confidence Report* noted that in practice, variations from approved plans were common and the certification process was not well equipped to respond to them. The Report highlights the risks associated with variations, such as substitution of specified products without consulting the architect or engineer responsible for the design. While the overall objective of the reforms is to reduce the need for variations after building work commences, the second lodgement point ensures that when a variation is necessary, there is a process to capture the designs which will replace the construction issued regulated design it varies or add to those originally issued.

The second lodgement point will focus on the obligation of registered Building Practitioners to ensure that new designs and declarations are prepared where building work relating to a building element or performance solution is varied after building work has commenced (s 20(2), (3)).

The requirement for the designs and declaration to be lodged within a day of the variation to building work being commenced is to signify the importance of designs relating to building elements and performance solutions. Although the Building Practitioner is allowed to lodge the designs after the building work on the variation commences, the short time period for lodgement anticipates that the

Building Practitioner will be building to the varied design but allows the Building Practitioner to lodge it the day after. This recognises the demands on the Building Practitioner once building work has commenced. To reflect the significance of this requirement, non-compliance is deemed an offence and attracts a penalty of either 200 penalty units for a body corporate or 100 penalty units for an individual.

As with the first point of lodgement, a registered Building Practitioner can authorise a registered Principal Design Practitioner, if one is appointed, or otherwise a registered Design Practitioner, to lodge the documents on their behalf.

This lodgement stage may potentially flag compliance issues that may warrant further investigation from the Regulator. For example, if no varied designs are lodged for complex buildings, this may signal that the Building Practitioner is not abiding by their requirements and may require further investigation from the Regulator.

There are likely to be costs associated with re-engaging the designer to make variations and potentially slowing down building work while the Design Practitioner works on the variation. It is expected that such costs will likely be passed onto consumers in the short term. However, as behaviours change and industry adapts to the reforms, it is hoped that the other reforms result in better quality and detailed designs at the start of a project. This should reduce the need for, and volume of, variations during construction and may ultimately result in efficiencies which will serve to minimise costs, including the costs of delays. It is also acknowledged that such reforms, and their associated cost, are necessary to restore consumer confidence in the industry, which it is expected will then motivate greater custom once faith is renewed.

Stage 3: prior to issue of Occupation Certificate

Stage 3

A registered Building Practitioner is required to lodge the following documents on the NSW Planning Portal before an application is made for an Occupation Certificate (OC):

- a) a Building Compliance Declaration,
- b) contractor document,
- c) a copy of each variation statement required for building work,
- d) a copy of each regulated design that contains additional details not reflected in the construction issued regulated design, but only if the additional details do not cause the building work to which the design relates to be varied, and
- e) a Principal Compliance Declaration, if any.

The regulated designs lodged at this point, combined with designs previously lodged, should reflect the building in its 'as-built' form at the time the Occupation Certificate is applied for. Any variations to building work made after this stage will continue to need to be lodged.

The third lodgement point is intended to ensure that the Building Practitioner lodges critical documentation before an application is made for an OC.

The OC is issued by the principal certifying authority (PCA) and authorises the occupation and use of a new building or building section. For staged works, an Interim OC may be issued which allows the occupation of the completed part of the building.

In order to issue an OC, the PCA must be satisfied the development meets various regulatory standards. These depend on the particular OC but generally include a requirement that the building is suitable for occupation in accordance with its BCA classification.

The issue of the final OC is the last step in the formal development application process. Once issued, an OC cannot be withdrawn.

The importance of an OC also relates to its use in contracts for the sale of property, including the sale of off-the-plan apartments. In such contracts, it is usual that settlement or completion of the contract is contingent on an OC being issued.

Before making an application for an OC, the Building Practitioner is required to give at least 14 days written notice to any registered Principal Design Practitioner who has been appointed. This allows the Principal Design Practitioner, who will be responsible for making a Principal Compliance Declaration to have compiled the necessary documents and provide their declaration to the Building Practitioner.

Requiring the Building Practitioner to lodge documents at this point serves several purposes. Firstly, it aligns with requirements under the Act that the Building Compliance Declaration is to be provided to the principal certifier and the principal certifier is not to issue an OC unless satisfied that all compliance declarations have been lodged. The compliance declarations contain important information likely to be of interest to the principal certifier when determining whether an OC should be issued.

This lodgement point also ensures that variation statements and other documentation are in order and lodged prior to the OC being issued. The issue of the OC is essential and will therefore motivate compliance. This will minimise the amount of work that the Building Practitioner is required to undertake to comply with the final lodgement stage, when the Building Practitioner may otherwise be less driven to comply with their obligations.

The timing of this lodgement is also useful from a compliance perspective as it makes documentation available to the Regulator through the NSW Planning Portal prior to an OC audit.

Stage 4: 90 days after issue of Occupation Certificate

The Act (s 15) requires a Building Practitioner to provide each regulated design that reflects the building work that was carried out to the Secretary no later than 90 days after the OC is issued for the work.

The Regulation proposes to require these designs to be provided to the Secretary by lodging them on the NSW Planning Portal. In addition, the Regulation proposes that the following additional documents be re-lodged if they have changed after being lodged at stage 3:

- a) a Building Compliance Declaration,
- b) contractor document
- c) a copy of each variation statement that is required for building work,
- d) a copy of each regulated design that contains additional details not reflected in the original design, but only if the additional details do not cause the building work to which the design relates to be varied,
- e) if a Principal Design Practitioner is appointed for building work, the Principal Compliance Declaration for all regulated designs from a registered Principal Design Practitioner whose registration authorises the practitioner to provide a declaration as to the matters to which the declaration relates.

Questions

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?
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.
21. Do you support the matters covered in the Design Compliance Declaration? Why or why not?
22. Do you consider any other matters should be included in the Design Compliance Declaration?
23. Do you support the proposed title block? Are there any other matters that should be included in the title block?
24. Do you support the title block being available in a .dwg format?
25. Do you support the proposal that varied regulated designs be lodged within 1 day of the varied building work being commenced? Why or why not?
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?
27. Are there further matters that should be included in the Building Compliance Declaration? If so, what are they?
28. Are there further matters that should be included in the Principal Compliance Declaration? If so, what are they?

Insurance

Setting standards around the accountability, knowledge and integrity of practitioners who work in the building industry will increase consumer confidence. So too, will requiring those individuals to be adequately insured for the work they are doing.

Insurance provides consumers with the confidence that if a practitioner is responsible for a defect, their chances of being compensated is not dependent on the individual practitioner's personal finances. This is particularly important given that remedying or compensating defects in a class 2 building, or a building with a class 2 part, may very well exceed an individual practitioner's personal wealth.

Insurance requirements under the Act complement other measures to ensure ongoing consumer confidence in the quality of buildings in NSW, including:

- new obligations to prepare and build in accordance with plans that are consistent with the *Building Code of Australia*,
- duty of care obligations under Part 4 of the Act, and
- ongoing obligation to remedy defects.

Design Practitioner, Principal Design Practitioner and Professional Engineer

The Act requires registered Design Practitioners, Principal Design Practitioners and Professional Engineers, registered under Pathway 1, to be adequately insured in compliance with the Regulation against any liability they may become subject to as a result of carrying out their work.

The Regulation proposes that these practitioners must be covered by an insurance policy against any liability that could arise from their professional duties as a practitioner (i.e., professional indemnity insurance). The insurance policy must, in the reasonable opinion of the practitioner, provide for an adequate level of indemnity for the liability that could be incurred. In determining whether a policy provides for an adequate level of indemnity, the Regulation requires the practitioner to consider the following factors:

- a) the nature and risks associated with the work typically carried out by the practitioner,
- b) the volume of the work typically carried out by the practitioner,
- c) the length of time that the practitioner has been registered,
- d) a reasonable estimate of claims that could be brought against the practitioner based on (a)–(c),
- e) the financial capacity of the practitioner, and
- f) any limits, exceptions, exclusions, terms or conditions of the policy.

The intention is for the practitioner to decide what insurance is 'adequate' in their circumstances. This is designed to recognise that different practitioners will have very different business risks, which will affect what cover is right for them.

The Regulation requires practitioners to assess whether their cover is adequate and to demonstrate this to themselves, and to the Regulator if necessary, particularly whether they have sufficient financial resources. A practitioner has an ongoing obligation to assess that their cover remains adequate and should seek independent advice on the amount and type of cover they should obtain.

Requiring practitioners to be adequately insured will reduce the risk that successful compensation claims by building owners cannot be met due to the practitioner's lack of available resources.

Consideration was also given to requiring professional indemnity insurance and specifying the conditions of the policy (such as minimum cover levels and permitted exemptions). This approach would ensure that practitioners hold a minimum amount of cover. However, given the diverse range of business activity and work conducted by practitioners, quantifying an amount for minimum cover would be difficult and would not guarantee that the insurance cover would adequately resource a practitioner against a successful claim. This option also does not address volatility in insurance markets which may impact the availability of cover.

The option to mandate professional indemnity insurance and require the practitioner to assess its adequacy is preferred on the basis that the practitioner is in the best position to determine adequate cover for their business needs and assess their potential liability. The benefit of this approach is that a person's regulatory burden (for example, the amount of insurance they are required to maintain) is determined by their particular circumstances rather than a general rule across industry.

As this approach relies on self-selection by the practitioner and their insurance providers, there is a risk it may result in a practitioner not being sufficiently insured. However, even if minimum requirements were set, there is no guarantee the minimum requirements would be adequate for all practitioners and businesses. Further, if prescriptive insurance requirements are too expensive, costs will either be passed on to consumers or may impact the kinds of services that can be offered in NSW.

Following consultation with industry stakeholders and insurance providers, the Government considers that industry will take the steps necessary under the Regulation to put in place adequate insurance cover due to the comprehensive obligations imposed on practitioners and remedies available to customers under the new scheme.

Building Practitioners

The Regulation requires registered Building Practitioners to be covered by an insurance policy, whether professional indemnity or other, in the same manner as other practitioners. This means that the insurance policy must, in the reasonable opinion of the Building Practitioner, provide for an adequate level of indemnity based on the criteria outlined above.

However, the Act enables registered Building Practitioners to be exempt from needing to be adequately insured when issuing a Building Compliance Declaration or doing related building work. This provision was inserted into the Act so Government can adjust the obligations for Building Practitioners if behavioural change is not secured through the overall reforms. This allows Government to impose measures such as requiring Building Practitioners to hold specific insurance if determined necessary to protect consumers.

For a two-year period, from commencement of the Regulation, registered Building Practitioners will be exempt from needing to be adequately insured under the requirements in the Regulation.

The intention is for Building Practitioners to be excluded at the introduction of the reforms with the expectation that the collective benefit of the reforms will promote a change of behaviour in the industry which will offer protections to Building Practitioners relying on the regulated designs. The Regulator will monitor whether this is being achieved and if there are indications that the exclusion should be removed.

When the transitional period expires, the Secretary will still have the ability to exempt a Building Practitioner from the requirement to be adequately insured in certain circumstances. The exemption will apply where the practitioner satisfies the Secretary that they are unable to obtain an insurance policy that provides indemnity against liability associated with providing a Building Compliance Declaration, but only where the practitioner is otherwise adequately insured for doing building work.

The Government will continue to work with industry, including insurance providers, to support the development of insurance products that meet the needs of practitioners and their obligations. The Government understands that there are currently not sufficient products available in the market to cover Building Compliance Declarations made by Building Practitioners.

Questions

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

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

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

Continuing Professional Development (CPD)

Compliance Declaration Scheme

Compliance Declaration Practitioners will be required to complete Continuing Professional Development (CPD) annually to maintain their registration.

These practitioners are required to declare that designs and building work are compliant with the *Building Code of Australia* and other relevant technical standards. To achieve this, practitioners must understand the BCA and any amendments to it to ensure that their work continues to comply with any requirements under the BCA.

The Regulation requires these practitioners to complete at least three hours of CPD activities approved by the Secretary in the guidelines. In addition, the Regulation provides that the Secretary may require practitioners to complete additional CPD, including specific courses or courses on a specific topic. This will allow the Secretary to prescribe learning in areas identified as requiring strengthening or that are deemed to be essential to particular practitioners.

The CPD guidelines will be available on the NSW Fair Trading website. The proposed CPD guidelines, which the Department has released for consultation, set out the requirements for the approved CPD activities. The guidelines propose that the CPD activities must be relevant to the practitioners' class of registration. The guidelines include approved education and training from the Construct NSW Learning Management System and the NCC CPD programs developed by the ABCB from 1 July 2021. The guidelines require practitioners to prioritise CPD activities that focus on technical learning, such as knowledge and understanding of the *National Construction Code* and BCA.

The Construct NSW Learning Management System has been developed to specifically address the skills and learning gaps in the construction sector by creating, sponsoring and approving training courses in partnership with TAFE NSW. Over time, the platform will become a virtual marketplace for industry education and host courses from a range of external bodies.

The Office of the Building Commissioner will work with the vocational and higher education sector to produce new learning modules that keep pace with these changes, as well as industry, to identify areas of content gaps, and partner with peak bodies to improve knowledge and understanding of practitioners across the sector. For each course, practitioners will be assessed on their understanding of the learning outcomes to ensure active participation.

The NCC CPD programs are being developed by the ABCB in consultation with industry, government and subject matter experts. The courses are designed to reinforce industry understanding of the NCC. The subject areas will explore industry issues and challenges identified in the *Building Confidence Report*. Experts from relevant disciplines are contributing to developing the course content and supporting materials to ensure NCC CPD courses are practical and relevant to a practitioner's everyday work.

The *Building Confidence Report* listed the need for improved understanding and knowledge of the NCC to improve compliance and noted consultation revealed:

Reservations have been expressed that CPD schemes can leave the content of training up to the discretion of participants which reduces the relevance and effectiveness of learning. Compulsory CPD schemes should provide for targeted learning on topics of genuine relevance to improve the competence of practitioners. Such topics should be focused on improving the understanding of the NCC and ensuring its effective implementation.¹

CPD obligations, which are present in many registration and licensing schemes, impose a cost on practitioners and require them to take time away from their work. The cost of participating in the CPD requirements proposed in the Regulation will be approximately \$210-\$280 per annum based on either two 1.5-hour courses or two two-hour courses. Courses on the Construct NSW Learning Management System and NCC CPD programs are priced at approximately \$70 per hour. It is acknowledged that practitioners may also need to take time away from their work in order to participate in the learning.

The design of the CPD requirements has intentionally sought to minimise cost, with courses available on a digital platform, meaning practitioners can complete their CPD obligations at a time that will least impact their work commitments. Practitioners will be required to prioritise CPD on areas that will promote better understanding of the BCA.

These requirements are focused on securing:

- a safer built environment,
- increased public trust and confidence in the sector,
- decreased costs associated with complaints, rectification work and other non-compliance issues, and
- a decrease in disciplinary measures.

Consideration was given to imposing broader CPD obligations that would require practitioners to complete CPD in other areas, prescribing minimum hours for formal and informal CPD activities. This approach would have sought to lift standards in other areas outside of compliance with the BCA.

Most practitioners will have pre-existing CPD obligations connected to other registrations, licences or memberships. Stakeholders expressed concern about how a further CPD scheme would align with their existing CPD obligations and create unnecessary duplication. The approach adopted in the Regulation is more targeted; focused on raising standards in crucial areas of technical compliance balanced against the regulatory cost of participation by practitioners. It is likely that meeting the CPD obligations under the Regulation will also count toward other CPD obligations.

¹ February 2019, Peter Shergold and Bronwyn Weir, *Building Confidence: Improving the effectiveness of compliance and enforcement systems for the building and construction industry across Australia*, p.19.

Engineers Registration Scheme

The Regulation proposes that Professional Engineers are required to complete CPD annually to maintain their registration. Under Pathways 2 and 3, Professional Engineers must successfully complete CPD requirements imposed on them through their recognition or registration with professional engineering bodies. Professional Engineers registered under Pathway 1, on the other hand, will be required to complete CPD in accordance with requirements under the Regulation.

The Regulation requires these engineers to complete 60 points annually of education and training. The activities must be relevant to their class of registration and comply with requirements outlined by the Secretary in guidelines which will be available on the NSW Fair Trading website.

To meet a Professional Engineer's CPD requirements, of the 60 points a Professional Engineer undertakes each CPD year:

- a) at least 30 points must relate to the Professional Engineer's area of practice (including reinforcing and updating knowledge of the *National Construction Code*),
- b) at least 5 points must cover risk management,
- c) at least 5 points must address business and management skills,
- d) the remainder must address activities relevant to the Professional Engineer's career and interests, provided it is relevant to the engineer's work and class of registration.

The CPD Guideline proposes that CPD activities will consist of informal CPD activities and formal CPD activities that are more structured with deliberate outcomes and assessment.

The Regulation provides for up to 10 surplus CPD points to be able to be carried into the following year as provided for in the guidelines. This is to acknowledge that most Professional Engineers will have CPD obligations for other licences, registrations and association memberships, and registration dates will not always align. This allows Professional Engineers some flexibility in having activities recognised across different registration systems, reducing overall participation costs.

The objective of the CPD scheme is to encourage Professional Engineers to participate in CPD that will promote learning outcomes in essential areas. For some Professional Engineers, the CPD scheme will not mean an increase in their existing CPD obligations, although for some it will. For example, for those completing CPD through Engineers Australia, the requirement is to complete 150 hours over a three-year period. This is the equivalent to 50 hours per annum. As some formal CPD activities are worth more than 1 point per hour, depending on the activities chosen, a Professional Engineer will not need to undertake more than 50 hours per annum of CPD activities to meet their obligations.

Questions

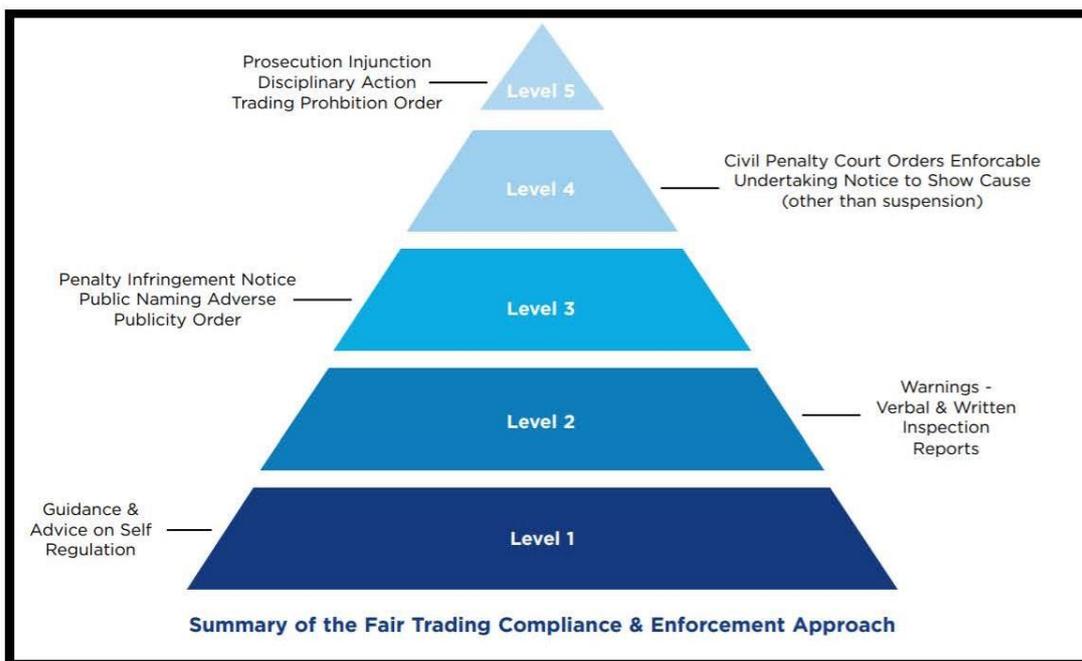
32. Do you support the proposed CPD requirements for Design and Building Practitioners? Why or why not?
33. What types of training, education or topics would be relevant for the functions carried out by Design and Building Practitioners?
34. Do you support the proposed CPD requirements for engineers under Pathway 1?
35. Do you support the mandatory CPD topic areas? Why/why not? Please make any suggestions for amendments and explain why they are necessary.

Penalty notice offences

The Act (s 94) enables offences under the Act and Regulation to be designated as penalty notice offences. This empowers officers to issue a penalty notice for these offences if there is evidence that a person has committed an offence. The Regulation (Schedule 5) identifies which offences are proposed as penalty notice offences and sets out the amount payable for the offence (outlined in **Appendix 1**).

NSW Fair Trading has a range of compliance and enforcement options available to achieve compliance with the law and enhance consumer protection. Upon detection of a breach, compliance officers issue a caution or warning letter to clarify the requirements of the law. They use education programs in preference to immediate prosecution. The next step is to issue a fine or penalty infringement notice where appropriate. The final response is for the matter to be prosecuted in court.

Diagram 5 – Summary of the NSW Fair Trading Compliance & Enforcement Approach



Penalty notices are an important feature of the suite of compliance and enforcement options available to NSW Fair Trading and are relied on as an effective deterrent against non-compliance. In general terms, penalty notices are used to enforce compliance in situations where it is not considered appropriate to take prosecution action against a corporation or individual.

The proposed penalty notice offences in the Regulation have been assessed according to the seriousness of the offence, the elements of the offence, and the appropriateness of providing an on-the-spot remedy to a breach. The penalty notice fine amount has been set to ensure a sufficient deterrent from non-compliance with the legislation. Consideration has also been given to ensuring that the penalties are consistent with existing offences of a similar nature or seriousness in other NSW Fair Trading regulatory schemes.

While penalty notices will result in lower penalties for breaches of the Act and Regulation, NSW Fair Trading will only issue penalty notices where it is appropriate to do so. NSW Fair Trading retains the discretion to prosecute serious breaches of requirements under the Act in court.

People issued a penalty notice who do not consider they have breached the Act or Regulation may elect to attend court. However, for the majority of cases, the payment of a penalty notice will lead to fewer Government resources spent in court and re-directed to ensuring ongoing oversight of industry.

Without the Regulation, penalty infringement notices could not be issued. This option would reduce community confidence in the industry and consumer protection. There would be an increase in costs to industry and government with all breaches proceeding to court, even for minor offences. The increase in complaints and disputes would also substantially impact the government.

Questions

36. Do you support the proposed penalty notice offences and amounts in Appendix 1?

Why or why not?

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

Fees

Design Practitioners, Principal Design Practitioners, Building Practitioners and Professional Engineers will be required to pay fees associated with registration. Under the Act, applicants may apply for one, three or five-year registration. It is proposed that the Regulation will also include fees associated with the recognition of professional bodies of engineers under Pathway 2.

The exact fees the Regulation will prescribe are still being determined. To ensure that fees are fair, justified and proportionate, NSW Fair Trading will consult with key stakeholders. Stakeholders will be invited to take part in a consultation process for fees, which will be held at a later date.

Any fees NSW Fair Trading will charge are intended to support the regulation of the Act. These regulatory functions include:

- NSW Fair Trading staff assessing applications and processing renewals,
- compliance and audit activities to ensure practitioners are working in accordance with their registration,
- investigating complaints,
- disciplinary activities,
- data collection and management,
- processing transactions, including payments, and
- providing information and stakeholder engagement.

These activities are necessary for NSW Fair Trading to meet its legislative functions, and to ensure the objectives of the Act are met in an efficient and effective manner.

These activities, in particular are required to fulfill NSW Fair Trading's statutory role to:

- ensure practitioners are competent and act within their area of expertise,
- prioritise safe and quality construction, and
- support strong consumer confidence.

Adjustments to the NSW Planning Portal are being made to support the legislative requirements for lodging regulated designs, compliance declarations and other associated documents. It is proposed that practitioners registered under the Compliance Declaration Scheme will contribute to the cost of maintaining the portal through fees under the new scheme. This supports a collective responsibility for practitioners to lift standards within the building and construction sector.

It is proposed that the fees will be represented as a number of 'fee units' instead of dollar amounts. The fee unit will change on an annual basis as it is indexed annually for inflation. The fee unit approach will reduce the administrative burden and cost to Government as it will not have to amend the Regulation each year to adjust fees for inflation.

It is acknowledged that practitioners who hold registrations connected with their practice as Compliance Declaration Practitioners, such as builders and architects, may already pay a registration/licence fee. This will be considered when determining the fee units for each class of registration. This consideration will be balanced against the need to support the Government's cost of implementing and enforcing the new registration system under this Act.

Noting that NSW Fair Trading is likely to get a significant number of applications, the transitional provisions outlined earlier in the RIS are intended to not only provide business continuity for industry, but also give licensing staff sufficient time to properly assess and process applications for registration. This will ensure that only appropriately qualified and suitable persons are registered under the Act.

It is proposed that a person who is registered in the transitional period will be required to pay any application or processing fees prescribed by the Regulation.

Questions

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

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

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

Appendix 1 – Penalty notice offences

Offences under the Act			
Section	Description	Maximum penalty unit	Proposed penalty notice amount
9(1)	Design Practitioner fails to provide Design Compliance Declaration	1,500 (corporation) 500 (individual)	\$16,500 (corporation) \$5,500 (individual)
9(2)	Design Practitioner fails to provide further Design Compliance Declaration <u>before</u> building work	1,500 (corporation) 500 (individual)	\$16,500 (corporation) \$5,500 (individual)
9(3)	Design Practitioner fails to provide further Design Compliance Declaration <u>after</u> building work	1,500 (corporation) 500 (individual)	\$16,500 (corporation) \$5,500 (individual)
9(4)	Design Practitioner fails to provide copy of Design Compliance Declaration to registered Principal Design Practitioner, if appointed	1,500 (corporation) 500 (individual)	\$16,500 (corporation) \$5,500 (individual)
9(5)	Design Practitioner fails to provide Design Compliance Declaration in circumstances prescribed in Regulation, if any	1,500 (corporation) 500 (individual)	\$16,500 (corporation) \$5,500 (individual)
10	Design Practitioner makes Design Compliance Declaration without registration or authority	1,500 (corporation) 500 (individual)	\$16,500 (corporation) \$5,500 (individual)
11(1)	Design Practitioner provides declaration, or holds out adequately insured, without being adequately insured	300 (corporation) 100 (individual)	\$5,000 (corporation) \$1,500 (individual)
12(1)	Principal Design Practitioner fails to ensure Design Compliance Declarations provided by registered and authorised Design Practitioners	1,500 (corporation) 500 (individual)	\$16,500 (corporation) \$5,500 (individual)
12(2)	Principal Design Practitioner fails to provide Principal Compliance Declaration	1,500 (corporation) 500 (individual)	\$16,500 (corporation) \$5,500 (individual)
13	Principal Design Practitioner makes Principal Compliance Declaration without registration or authority	1,500 (corporation) 500 (individual)	\$16,500 (corporation) \$5,500 (individual)

14(1)	Principal Design Practitioner provides principal design declaration, or holds out adequately insured, without being adequately insured	300 (corporation) 100 (individual)	\$5,000 (corporation) \$1,500 (individual)
15(1)	Building Practitioner fails to provide relevant documents within 90 days after Occupation Certificate issued	300 (corporation) 100 (individual)	\$5,000 (corporation) \$1,500 (individual)
16(4)	Person fails to give notice of application for Occupation Certificate	200	\$3,000 (corporation) \$1,500 (individual)
17(1)	Building Practitioner fails to provide Building Compliance Declaration and other documents before application for Occupation Certificate	1,500 (corporation) 500 (individual)	\$16,500 (corporation) \$5,500 (individual)
17(2)	Building Practitioner fails to provide Building Compliance Declaration and other required documents in circumstances prescribed under the Regulation	1,500 (corporation) 500 (individual)	\$16,500 (corporation) \$5,500 (individual)
17(5)	Person fails to provide Building Compliance Declaration to principal certifier before or when application for Occupation Certificate is made	300 (corporation) 100 (individual)	\$5,000 (corporation) \$1,500 (individual)
22(2)	Building Practitioner fails to give written notice to principal certifier of steps required for compliance with Building Code of Australia, if any	3,000 (corporation) 1,000 (individual)	\$25,000 (corporation) \$11,000 (individual)
23	Building Practitioner makes a Building Compliance Declaration without registration or authority	1,500 (corporation) 500 (individual)	\$16,500 (corporation) \$5,500 (individual)
24(1)	Building Practitioner provides declaration, or holds out adequately insured, without being adequately insured	300 (corporation) 100 (individual)	\$5,000 (corporation) \$1,500 (individual)
28(1)	Director of registered body corporate fails to comply with requirements for provision of compliance declarations and other obligations	300 (individual)	\$3,000 (individual)
28(2)	Registered body corporate fails to ensure only registered and authorised practitioners provide compliance declarations	1,000 (corporation)	\$11,000 (corporation)

32(1)	Person carries out professional engineering work unless registered and authorised, or working under direct supervision of registered engineer, or otherwise authorised to do so by the Regulation	1,500 (corporation) 500 (individual)	\$16,500 (corporation) \$5,500 (individual)
33(1)	Professional Engineer carries out professional engineering work, or holds out adequately insured, without being adequately insured	300 (corporation) 100 (individual)	\$5,000 (corporation) \$1,500 (individual)
51(4)	Registered practitioner fails to provide information to Secretary on request	300 (corporation) 100 (individual)	\$3,000 (corporation) \$1,500 (individual)
56	Current or former registered practitioner contravenes a condition of their registration (including parts of the code of practice in Schedule 4 of the Regulation), or a condition of a suspension or cancellation of registration	600 (corporation) 300 (individual)	\$5,000 (corporation) \$1,500 (individual)
57(1)	Registered practitioner lets out, hires, lends, or provides a certificate of registration to another person	600 (corporation) 300 (individual)	\$5,000 (corporation) \$1,500 (individual)
58(b)	Person falsely represents to be registered practitioner	600 (corporation) 300 (individual)	\$5,000 (corporation) \$1,500 (individual)
59(1)	Person fails to return registration certificate if Secretary suspends, varies or cancels their registration	300	\$1,500 (corporation) \$750 (individual)
60	Registered practitioner fails to notify Secretary within 7 days in writing about certain matters	250 (corporation) 50 (individual)	\$3,000 (corporation) \$1,500 (individual)
67	Director of registered body corporate fails to notify Secretary within 7 days of certain conduct	300 (individual)	\$3,000 (individual)
105(4)	Person fails to comply with direction to provide information about insurance policies	500	\$5,000 (corporation) \$1,500 (individual)
Offences under the Regulation			
Clause	Description	Maximum penalty unit	Proposed penalty notice amount
16(2)	Building Practitioner fails to provide construction issued regulated designs and associated	200 (corporation) 100 (individual)	\$3,000 (corporation) \$1,500 (individual)

	compliance declarations before building work commences		
17(2)	Building Practitioner fails to provide varied designs and associated compliance declarations within 1 day of the variation work commencing	200 (corporation) 100 (individual)	\$3,000 (corporation) \$1,500 (individual)
22	Building Practitioner fails to give notice to Principal Design Practitioner of building work commencing	200 (corporation) 100 (individual)	\$3,000 (corporation) \$1,500 (individual)
23	Building Practitioner fails to give notice to Principal Design Practitioner of Building Compliance Declaration	200 (corporation) 100 (individual)	\$3,000 (corporation) \$1,500 (individual)
73(6)	Prescribed practitioner fails to comply with record keeping requirements	200 (corporation) 100 (individual)	\$3,000 (corporation) \$1,500 (individual)

Appendix 2 – Examples of exempt development

The following list has been taken from the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*. The intention is to provide examples of work that is considered exempt development. This is not an exhaustive list of all exempt development under the planning legislation. For further information, please see the link to the NSW Department of Planning, Industry and Environment Website: <https://www.planning.nsw.gov.au/exemptdevelopment>

Subdivision	Topic
1	Access Ramps
2	Aerials, antennae and communication dishes
3	Air-conditioning units
3A	Animal shelters
3B	Automatic teller machines
4	Aviaries
5	Awnings, blinds and canopies
6	Balconies, decks, patios, pergolas, terraces and verandahs
7	Barbecues and other outdoor cooking structures
8A	Bollards
9	Cabanas, cubby houses, ferneries, garden sheds, gazebos and greenhouses
10	Carports
10A	Change of use of premises
10B	Change of use of places of public worship
10C	Charity bins and recycling bins
11	Clothes hoists and clothes lines
12	Container recycling equipment
13	Demolition
14	Driveways and hard stand spaces
15	Earthworks, retaining walls and structural support
15AA	Emergency work and repairs
15A	Evaporative cooling units (roof mounted)
16	Farm buildings (other than stock holding yards, grain silos and grain bunkers)
16A	Stock holding yards not used for sale of stock
16B	Grain silos and grain bunkers
17	Fences (certain residential zones and Zone RU5)

17A	Fences for swimming pools (certain residential zones and Zone RU5)
18	Fences (certain rural zones, environment protection zones and Zone R5)
19	Fences (business and industrial zones)
20	Flagpoles
20A	Footpaths—outdoor dining
21	Fowl and poultry houses
21AA	Fuel tanks and gas storage
21A	Garbage bin storage enclosure
22	Home businesses, home industries and home occupations
23A	Hot water systems
24	Landscaping structures
25	Letterboxes
25A	Maintenance of buildings in draft heritage conservation areas
26	<p>Minor building alterations (internal)</p> <p>(1) A minor internal building alteration for the replacement or renovation of -</p> <ul style="list-style-type: none"> (a) a doorway, wall, ceiling or floor lining, or (b) a deteriorated frame member, including stairs and stairwells, or (c) a bathroom or kitchen, or (d) a built-in fixture such as a vanity, a cupboard or a wardrobe, or (e) an existing sanitary fixture, such as a grease trap or the like, or (f) shelving or racking that is not higher than 2.7m, or (g) a workstation or counter, <p>is development specified for this code if it is not constructed or installed on or in a heritage item or a draft heritage item.</p>
27	<p>Minor building alterations (external)</p> <p>A minor external non-structural building alteration, such as the following —</p> <ul style="list-style-type: none"> (a) painting, plastering, cement rendering, cladding, attaching fittings or decorative work, (b) the replacement of an external window, glazing areas or a door (other than those on bush fire prone land), (c) the repair to or replacement of a non-structural wall or roof cladding, (d) the installation of a security screen or grill to a door or window or a security door, (e) the repair to or replacement of a balustrade, (f) restumping or repairing structure foundations without increasing the height of the structure,

	is development specified for this code if it is not constructed or installed on or in a heritage item or a draft heritage item or in a heritage conservation area or a draft heritage conservation area.
27A	Mobile food and drink outlets
28	Pathways and paving
29	Playground equipment
30	Portable swimming pools and spas and child-resistant barriers
31	Privacy screens
32	Rainwater tanks (above ground)
33	Rainwater tanks (below ground)
33A	Roller shutter doors adjoining lanes
35	Screen enclosures (of balconies, decks, patios, pergolas, terraces and verandahs)
36	Shade structures of canvas, fabric, mesh or the like
36A	Shipping containers (temporary installation and use for storage purposes following a bush fire)
36B	Shipping containers and portable offices (temporary installation and use for existing commercial and industrial purposes)
37	Skylights, roof windows and ventilators
37A	Stairway
37B	Street library
38	Subdivision
39	Sculptures and artworks
39B	Tennis courts
39C	Waste storage containers
40	Water features and ponds
40A	Waterways structures - minor alterations
41	Windmills

Division 2 - Advertising and Signage Exempt Development Code

Division 3 - Temporary Uses and Structures Exempt Development Code

Division 4 - Special provisions—COVID-19