

Important changes to NSW Building Legislation

What is the impact for you and your practice?:

1. [NSW Design and Building Practitioners Bill](#), and the
2. [Residential Apartment Building \(Compliance and Enforcement\) Bill](#)

ARCHITECTS:

Currently REGISTERED in NSW in accordance with:

- The NSW Architects Act 2003, and the
- The NSW Architects Regulation 2019

DESIGN & CONSTRUCTION BUILDING PROFESSIONALS

Design & Construction Building Professionals are not covered by an Act or Legislation and will need to be registered under a New Act of Parliament based on The Design and Building Practitioners Bill 2019.

We Expect Relevant Parties will include:

- Architects & Designers
- Building Consultants / Engineers
- BCA & DDA Consultants
- Project Managers
- Builders

[NSW Design and Building Practitioners Bill](#)

The Design and Building Practitioners Bill 2019 was passed in both Houses of NSW Parliament June 2020, it will be law from 1st July 2021.

1. Registered Designers:

All 'designers' (we expect this to include engineers, BCA and DDA consultants etc) will be regulated and **registered**, just like Architects are now. The regulations will be drafted in 2020 to detail this.

Architects are the only registered and regulated building consultants in NSW, since 1921, ours is therefore a good model to emulate.

2. NOT MANDATORY: Registered Principal Designers:

Are responsible for collecting the declarations of the Designers. The role is presently a post-box service that simply collects the Design Practitioners Declarations.

The Institute is advocating for the Principal Design Practitioner **to be** a person with a prescribed level of qualification who:

- coordinates prescribed building work, and/or
- coordinates the provision of design compliance declarations for the purposes of building work done by a building practitioner.

3. Registered Builders:

All 'builders' (being the main contractor) will now need to be regulated and **registered**. For large scale residential and commercial builders this has not previously been required.

What it involves:

- A. Compliance Declaration
- Lodged by the **Registered Design Practitioner** stating the design meets the BCA, all relevant standards, codes and anything else to be stipulated in the regulations
 - NOT MANDATORY: Lodged by the **Registered Principal Design Practitioner** stating whether or not each Design compliance meets the BCA, all relevant standards, codes and anything else to be stipulated in the regulations
 - Lodged by the **Registered Building Practitioner** stating the building and the “As-Built” documents meet the BCA, all relevant standards, codes and anything else to be stipulated in the regulations and whether or not the design was prepared by a **Registered Design Practitioner / Registered Principal Design Practitioner**
- B. The Registered Design and Declarations will be lodged electronically, at each compliance declaration with the authorities (e-Planning).
- C. These documents will be made available to the end consumer.
- D. Duty of Care and Warranties will be owed to the purchaser, and to subsequent purchasers. (note: the defence is not provided to a defendant who is a developer).

When will it be enforced:

1. Now and Retrospectively for **Duty of Care to Class 2 buildings (including Class 2 with Mixed Use)**
2. Effective 1st July 2021 **For the Compliance** process for any developments in approval process (CDC, CC, S4.55) and any Variations during construction that affect the approvals. It is still to be determined what will happen for developments in construction.

Which Class of buildings will be affected?

Initially the DUTY OF CARE is for Class 2 (Note: if there is a mixed use building, **the whole development will need to conform**) . The other classes will be brought on in a step process.

Classes of Building

Class 2	A building containing 2 or more sole-occupancy units each being a separate dwelling.
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The NSW public expect to see action, the Federal Government expect action, and it will make a significant difference to consumer confidence in the construction industry.

Residential Apartment Building (Compliance and Enforcement) Bill

The Residential Apartment Building Bill (RAB) gives the NSW Building Commissioner powers from 1st September 2020 to enter building sites and demand to see documents, inspect, and order to open up construction to check construction is appropriate. It also gives him the ability to STOP WORK and STOP the Occupation Certificate.

This Bill will be in effect until the DBP Act is law on the 1st July 2021.

EXPECTED TIMELINE

1. June 2020:

Approval by both Houses of NSW Parliament

2. Late June 2020 tbc

Commencement of the DBP (Design and Building Practitioner) ACT, *potentially. DUTY of CARE provisions active at that time only*

Duty of Care for the Design Practitioner and Building Practitioner will be retrospective

- Where the loss first becomes apparent within 10 years of the commencement of the Act.
- In the case of construction work other than the manufacture or supply of a building product used for building work, the date of completion of the construction work is no more than 10 years before the commencement of the ACT.

Drafting of the *DBP Regulations* continues

3. 1 September 2020:

RAB (Residential Apartment Buildings (Compliance and Enforcement Powers) becomes law.

The NSW Building Commissioner has powers to enter building sites, demand to see documents, open up construction and the ability to enforce stop work orders.

4. 1 July 2021:

Expected date for the DBP (Design and Building Practitioner) REGULATIONS and ACT to become LAW

The RAB (Residential Apartment Buildings (Compliance and Enforcement Powers) ceases to exist.

ADDITIONAL TIMELINE

The Minister (Hon Kevin Anderson MP) has set up

1. A steering committee: Made up of representatives of MBA, RAIA, PCA etc
2. The Building Commissioner's 6 pillars, 2 year time frame, Industry to drive these:

Pillar 1: Regulation and Legislation –

Pillar 2: Finance, Insurance and Standards – this includes risk allocation

Pillar 3: Education and Training –

Pillar 4: Contracts and Procurement –

Pillar 5: Digital transformation –

Pillar 6: Research and Development –

The Australian Institute of Architects are advocating that all *Design Practitioners* should be under the DBP and include:

- Registered, Regulated, Insured and are tested on annual CPD
- They will get a unique number and will be listed on the Fair trading website
- Architects already conform as we have the NSW Architects Act
- The list of Designers who should be covered under this Bill will include (but not limited to):
 - *Project Manager*
 - *Architect*
 - *Planner*
 - *Quantity Surveyor*
 - *Structural Engineer*
 - *Civil Engineer*
 - *Mechanical Engineer*
 - *Electrical Engineer*
 - *Geo-tech Engineer*
 - *Hydraulic Engineer*
 - *Fire Services Engineer (Wet/hydraulic and dry/electrical)*
 - *Fire Engineer (Fire safety: modelling/evacuation of fire solutions, and performance of all materials in the modelling)*
 - *Acoustic Consultant*
 - *Facade Engineer*
 - *Vertical Transport Engineer*
 - *Traffic Engineer*
 - *Environmentally Sustainable Design / Sustainable Consultant / Engineer*
 - *BCA Consultant*
 - *Disability Discrimination Act Consultant*
 - *Access Consultant*
 - *Landscape Architect*
- *For Residential (BCA Class 1, 10), all of the above plus:*
 - *Building Designer*
 - *Draftsperson*
 - *Residential Project Manager*
- *Registered Design Practitioners* will need to sign a Compliance Declaration at nominated times, advising the design meets the BCA and all relevant Standards, and/or other items if listed on the Regulations:
 - Issued For Construction documents as required to document the BCA and relevant Aust Stds
 - Variations thereafter that are a change to the declared documents
 - Etc
- *NOT MANDATORY: Registered Principal Design Practitioners* will be required to collect the Compliance Declarations of the *Registered Design Practitioners* and sign a Principal Compliance Declaration for all the above
 - The Architect would be the logical *Registered Principal Design Practitioner*
- *Registered Principal Building Practitioners* will need to submit a Building Compliance Declaration at the nominated time, e.g., Occupation Certificate.

- (3) In this Act, *building compliance declaration* means a declaration made in the form and manner prescribed by the regulations as to the following—
- (a) whether or not the building work complies with the requirements of the *Building Code of Australia*,
 - (b) whether or not the building work complies with other applicable requirements prescribed by the regulations for the purposes of this subsection,
 - (c) if the building work does not comply with the requirements referred to in paragraph (a) or (b), the steps required to be taken to ensure compliance,
 - (d) for a regulated design used for the building work, whether or not the design was prepared by a registered design practitioner and the building work was built in accordance with the design,
 - (e) whether or not a design compliance declaration has been obtained in relation to regulated designs used for the building work,
 - (f) whether or not a registered principal design practitioner was appointed in relation to the building work,
 - (g) whether or not a principal compliance declaration was obtained in relation to the regulated designs and design compliance declarations relating to the building work,
 - (h) any other matter prescribed by the regulations.

The Institute is presently advocating for an increased level of documentation for the 'DECLARATION OF DOCUMENTS' This is our working list, we invite your input.

Appendix 1: MINIMUM Issue For Construction (IFC) for DECLARATION

Scale	Title	BCA Vol 1 reference	Regulated
			HOLD POINTS
	Architectural		<i>advice from Spec writer please</i>
1:100	Floor plans	D, E, F, G	
1:100	Elevations	F3, G	
1:100	Sections	F3, G	
1:100	RCP showing light, mech, fire sprinklers meet BCA	E, F, F3, F4, J	
1:100	Fire rated construction /Fire compartmentation plans	C, D, E	
1:100	Door schedules	C, D, G	
1:100, 1:50	Window Schedules / Detail Elevation	C, D2.24, F1.4, F4, G	
1:100, 1:50	Room Layout Sheets / Schedules	E, F	
1:20, 1:10, 1:5	Wet Area details	F	
1:20, 1:10, 1:5	Stair and ramp details with tolerances	C, D	
1:20, 1:10, 1:5	Balustrade details	D	
1:20, 1:10, 1:5	Internal Wall details incl fire stopping	B, C, F5	
1:20, 1:10, 1:5	External wall / Façade details	C, F	
1:20, 1:10, 1:5	Balconies and External Floor to Wall details	C, F	
1:20, 1:10, 1:5	Roof details	C, F	
1:20, 1:10, 1:5	Expansion and Construction joint details	C, D3, F	
1:20, 1:10, 1:5	Membrane Systems, junctions and bond breaker compatibility	F	
1:20, 1:10, 1:5	Parapet details	C, F	
1:20, 1:10, 1:5	Interstitial condensation management details	F6, J	
1:20, 1:10, 1:5	Slab set downs	FP1.7, F1.7	
1:20, 1:10, 1:5	Insulation Schedule / Detail (for Section J compliance non-resi Mixed Use)	J	
	BASIX (for Residential)	J(A) NSW	
	Specifications	ALL	

Appendix 1 (cont.) : MINIMUM Issue For Construction (IFC) for DECLARATION

Scale	Title	BCA Vol 1 reference	Regulated HOLD POINTS
	Structural		
	- Key Structural plans and details	B	
	- Fire rated structural elements		
	Mechanical	J	
	- Smoke Control Mechanical Plans		
	- Ventilation plans		
	- Fire/smoke damper locations		
	Fire Services		
	- Fire hydrant system		
	- Fire hose reels		
	- Sprinkler System		
	- Smoke detection and alarm plans		
	Hydraulics		
	- Drainage		
	- Water supply		
	- Sewer		
	Services Penetrations – Fire Protection plans		
	- Mechanical Fire / Smoke Dampers -Hydraulic		
	- Data		
	- Electrical		
	Electrical		
	Landscape		
	BCA Report	C	
	DDA Report	D	
	Fire Engineering Report	C	
	Section J Report (for non resi mixed use)	J	
	AcousticReport	F5	
	Façade Engineers Report	FP1.4	