



NSW BUILDING REFORMS

Response to Draft Building Bill 2022



NSW CHAPTER

Submission issued 25 November 2022

ABOUT THE INSTITUTE

The Australian Institute of Architects (the Institute) is the peak body for the Architectural profession in Australia. It is an independent, national member organisation with around 13,500 members across Australia and overseas including almost 4,000 members in the NSW Chapter.

The Institute exists to advance the interests of members, their professional standards and contemporary practice, and expand and advocate the value of Architects and Architecture to the sustainable growth of our communities, economy and culture.

The Institute actively works to maintain and improve the quality of our built environment by promoting better, responsible and environmental design.

PURPOSE

- This submission is made by the Australian Institute of Architects (the Institute) to provide comment on the Draft Building Bill 2022.
- At the time of this submission the National President is Shannon Battisson and the NSW Chapter President is Laura Cockburn.

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1 INTRODUCTION

The Australian Institute of Architects (the Institute) and its members are dedicated to raising the quality of the built environment for people and to the advancement of architecture. We seek to improve the enduring health and wellbeing of all Australians and our diverse communities. We are grateful for the opportunity of reviewing the Draft Building Bill and providing our feedback.

Architecture influences all aspects of the built environment and brings together the arts, environmental awareness, the sciences and technology. By combining creative design with technical knowledge, architects create the physical environment in which people live, work and play, which in turn, strongly influences our quality of life. Through its members, the Institute plays a major role in shaping Australia's future.

The Institute has continued to call on all Australian governments to take action and urgently improve how building and construction is regulated in response to the recommendations of the Shergold-Weir 'Building Confidence' report. We are strongly encouraged by the quality and the nation-leading volume of work which has been undertaken by the NSW government in this area and will continue to engage with government to assist these important reforms continue into the future.

2 DRAFT BUILDING BILL - DEFINITIONS

The Institute strongly advocates that where possible definitions are specific, concise and are based on widely understood terminology already in use within the construction industry.

building includes a class 10 building recognised by the National Construction Code. (Chapter 2 Licensing for regulated work, Part 1 Preliminary, 8 Definitions)

The Institute believes the definition of **building** should be further considered and be defined with specific reference to all the classes of building referenced by the NCC.

Commercial building work

Commercial building work is used to identify buildings and building work that is outside the current definition of residential building work in the HB Act. It broadly includes class 3 to 9 buildings under the NCC, as outlined in Appendix 1.

While single building classifications have been used for ease of reference, the reference to commercial buildings is intended to be broad to reflect the fact that most, if not all, modern buildings are mixed-use and have several NCC classifications, such as an office building (class 5) with a carpark (class 7a).

The Institute encourages the use of alternative terminology for the identification of Class 3 to 9 buildings. Commercial building work is understood within the construction industry as predominantly Class 5 buildings and using it to describe buildings such as Class 3 would lead to confusion. We recommend where possible that the specific building classes are referred to directly even if buildings are mixed use and therefore require more complex definitions. This will ensure complete clarity in the industry.

Home

Home means a building designed, constructed or adapted for use as a residence, but does not include the following:

- premises not intended to be used for permanent habitation
- a hostel or backpackers' accommodation
- a hospital or nursing home
- a correctional complex, including a correctional centre
- hotel or motel accommodation or serviced apartments
- a registered club or a residence within premises licensed under the Liquor Act 2007
- a residence associated with, or provided by, a hospital or educational establishment
- a building or premises excluded by the regulations. In this definition a nursing home has the same meaning as in the Public Health Act 2010.

The Institute highly recommends the definition of **home** be specifically linked to the class of building being referred to which will ensure complete clarity of definition.

Home building work

Home building work is regulated work carried out in, on, or for a home.

The Institute, as previously stated, asks that the specific building class or classes be nominated in definitions.

We are happy to further engage with the policy team to assist in developing these definitions if required.

3 DRAFT BUILDING BILL - LICENSING

*Building Designers are currently restricted to work on medium and low-rise buildings for Class 2 work under the DBP registration. This is consistent with limitations imposed under the State Environmental Planning Policy 65 (SEPP 65). SEPP 65 does not apply to Class 3 or 9c buildings. Therefore, upon the expansion to Classes 3 and 9c, **an unrestricted class of building designer may be necessary**, in which the restrictions consistent with SEPP 65 will only apply to Class 2 design work.*

It is proposed that the current knowledge, skills and experience are adequate, however, the qualification for the unrestricted class is proposed to be a master's degree in architecture or equivalent.

Practitioners who need to be registered to work in Class 3 and 9c may already be registered to work on Class 2 and mixed-use buildings. The DBP Regulation offered temporary pathways for registration for certain practitioner classes to enable applicants who didn't satisfy the registration criteria. These temporary pathways have now closed but the DBP Regulation could provide that for a limited time, once the legislation expands to Classes 3 and 9c, these temporary pathways are reopened, such as allowing competency assessments for practitioners who don't hold particular qualifications.

Questions

Should practitioners registered under existing classes in DBP for Class 2 work be automatically eligible to work on Class 3 and 9c buildings?

The Institute supports the transferral of registration for Design Practitioner – Architectural to all other building classes given the Class 2 registration process is required in addition to the stringent registration processes already in place under the Architects' Act, which include education, supervised experience, examination and demonstration of expertise. This may not be the case for other Design Practitioner classes.

Are further practitioners required for Class 3 and 9c buildings? Why?

No.

Will further practitioner classes be required to cover work on a building part that might be mixed with a Class 3 or 9c building? Why?

No.

Should there be an unrestricted class of building designer? Why or why not?

The Institute believes an unrestricted class of building designer may result in unintended consequences, will reduce consumer protection, and will impair international recognition of our skills base by indicating that an Architect and Building Designer (Level 1) are equivalent

in terms of their education, skills, experience, ongoing professional development, regulation, and expertise when they are clearly not the same.

It is not easy for consumers to understand the difference between a Building Designer and an Architect. By conflating the two professions, the NRF and the Draft Building Bill is signalling to the market that the product delivered by the two will be of the same quality.

The table below sets out the differences between the two professions.

Table 1: Registration requirements

Requirement	Architect	Building Designer Lvl 1
Qualification	Bachelor degree (3 years f/t) plus Masters degree (2 years f/t)	Bachelor degree (3 years f/t) <i>Draft Building Bill proposes Masters degree</i>
Australian Qualifications Framework (AQF)	Level 9	Level 7
National Competency Standards	National Standard of Competency for Architects (NSCA)	None
Experience	3,300 hours of logged, verified, and appraised supervised practice (approx. 3-5 years to achieve)	None <i>NRF propose 3 years</i>
Examination	Architectural Practice Exam (APE), including oral and written examination administered nationally by the Architects Accreditation Council of Australia (AACA)	None
Code of professional Conduct	Yes	None
Ongoing compulsory CPD (audited)	Most States and Territories with specific focus on NCC	None <i>NRF recommends for NCC</i>
International Mutual recognition of registration	Yes with selected countries	None

By State and Territory law, architectural education, accreditation, requisite professional experience, and registration examination are rigorously interconnected across Australia.

Without completing all the registration components, a candidate cannot apply for registration as an Architect or provide architectural services as defined under each State and Territory's relevant Act.

The Institute believes that any new registration process and stated provision of services, as outlined under any new State/Territory legislation, must include the following:

- Competency frameworks that go beyond education qualification and years of experience alone
- Suitable robust independent methods of assessment of education standards against a common set of national competency standards equivalent to the AACA's NSCA
- National regulatory body responsible for accreditation of building designer qualification providers equivalent to AACA
- Suitable robust and independent methods of assessment of practitioners against standards established by the competency framework
- Strong codes of conduct focussed on consumer protection, with appropriate investigatory powers and sanctions
- Mandated professional indemnity insurance of coverage suited to the work being performed
- Ongoing and audited requirement for Continuing Professional Development (CPD)

Should the temporary pathways for registration ('grandfathering provisions') and competency assessments that were available when the legislation first applied to Class 2 be reopened for the expansion to Classes 3 and 9c? Why?

No.

Building designers

The proposed definition of building work will also capture design work which seeks to regulate practitioners doing that work who are otherwise not registered for the work, for example as architects or professional engineers. While a person must be registered under the Architects Act 2003 to be an architect, and under the Bill to be a professional engineer, the Bill proposes to licence other designers who do design work on NSW buildings, including building designers and interior designers.

Under the Bill areas of building design that fall within the definition of 'building work' would require a licence before the practitioner can do work. For designers who are not registered as architects under the Architects Act or as professional engineers under the Bill, this will be the first time they are required to register to practice in NSW.

Questions

25. Do you support licensing building designers and interior designers?

Yes. The Institute strongly supports the licensing of building designers and interior designers and believes this will deliver much need protection for consumers.

26. What scope of work should building designers and interior designers be able to do?

The Institute recommends the scope of work for building designers and interior designers adopt a risk-based approach and be determined by:

- Class, according to the Building Code of Australia
- Building levels and size
- Building typology
- Building complexity
- NCC Construction type
- Building Procurement Model

27. How would this licensing scheme interact with the Architects Act, which restricts “architectural service” to registered architects?

The Institute maintains that:

1. Architects be identified as able to prepare design documentation, provide design, construction, supervisory oversight, and provide relevant certifications, such as design compliance declarations, for all building types, categories, and levels of complexity; and
2. Building Designers be identified as providing a limited scope of work (low rise & medium rise) unless they can demonstrate equivalent qualifications, independent oversight and experience as a registered Architect.

It is critical to note that under the current DBP Act and Regulation, some fully registered and experienced architects are restricted from operating as Design Practitioners-Architectural due to the stringent experience parameters. To endorse Building Designers with less expertise and independent oversight in an unrestricted class appears disproportionate and discordant with the intent of the building reforms to protect the consumers of NSW.

4 CONCLUSION

Thank you for the opportunity to review the Draft Building Bill 2022 and to provide our feedback and recommendations. The Institute is extremely pleased to be able to continue to support reform aimed at rebuilding consumer confidence in the NSW building and construction industry.

Should you require any further information or wish to discuss any of our feedback, please feel free to contact us. We welcome the opportunity for continued consultation as the NSW Building Reforms continue to evolve and we offer the Institute's support in assisting government to achieve high-quality and trustworthy built outcomes for all in NSW.