



## Important changes to NSW building legislation

11 June 2020 | The NSW Parliament has recently passed two significant pieces of legislation that affect architects practicing in New South Wales.

We strongly encourage members to take the time to familiarise themselves with these important changes and we will continue to provide you with information and resources in the lead up to their implementation.

NSW Chapter President Kathlyn Loseby will provide an update on Friday 12 June at 9.00am. A recording will be [available here](#) following the event.

### Key features of the new legislation

The [Design and Building Practitioners Bill 2019](#) will become law from 1 July 2021 however, the new statutory duty of care it introduces is retrospective and immediately applicable.

The Bill establishes a registration scheme for design practitioners, requires new compliance declarations and imposes enhanced compliance obligations on building practitioners.

Currently, the Bill only impacts Class 2 (multi-residential) and mixed-use buildings however, it will be rolled out to other building classes in subsequent years.

The [Residential Apartment Buildings \(Compliance and Enforcement Powers\) Bill 2020 \(RAB\)](#) confers new powers on the NSW Building Commissioner and introduces new penalties for non-compliance.

The RAB aims to prevent developers from carrying out building work that may result in serious defects to building work or result in significant harm or loss to the public or current or future occupiers of the building.

From 1 September the RAB becomes law and allows the NSW Building Commissioner to enter building sites and demand to see documents, inspect and check that construction is appropriate. The Building Commissioner will also have the ability to issue a stop work order, a building work rectification order and prohibit the Occupation Certificate from being issued.

These new powers apply both to the construction of buildings going forward, but also to existing buildings built in the last ten years.

Together, these two Bills support the NSW Government's six-pillar Building Reform package, constituting its response to the national Shergold-Weir *Building Confidence* Report (2017) and the NSW Lambert Report (2015), into the construction industry.

## Major wins for architects

The Institute has played a leading role throughout the reform process including numerous detailed engagements with the NSW Government, regulators, the opposition, crossbenchers, other building practitioners and the Owners Corporation Network as part of our advocacy for higher standards of safety and quality in the building process.

We have provided expert input to inform the drafting process, advocated for improvements in the proposed legislation and remain closely engaged with the NSW Government and Building Commissioner in the process to develop supporting regulations, which is currently underway.

This has resulted in several major wins for the profession, including:

- Documents to be declared by designers will be at the Issued For Construction, rather than the Construction Certificate stage
- Variations will be assessed holistically and retrospectively; and
- Any developer or builder who tries to force a designer to sign a declaration will face significant penalties, including up to 2 years' imprisonment.

## Ongoing advocacy

The details of the legislation will be developed in the regulations over the next few months and the Institute will use this opportunity to address a number of our residual concerns. These relate to:

- The retrospective application of the statutory duty of care. We have sought advice on this from Planned Cover.
- Better defining the role of the Principal Design Practitioner to elevate their functions above simply being a collection point for declarations (as the case currently in the legislation).
- The contracting out of proportionate liability permitted under the Bill is something we are seeking to overturn as all building practitioners should be held accountable for their actions in equal part. We are leading a joint collaboration with Engineers Australia, MBA, Consult Australia, ACA and the Fire Protection Association on this aspect.
- Ensuring a level playing field for building designers and practitioners under the Bill. Through the development of the regulations we are continuing our advocacy to remove the current discrepancy which provides that builders must 'take reasonable steps' while designers are held to a higher standard of 'ensuring' without access to the same 'reasonable steps' provision.

As part of our ongoing actions, we are also compiling detailed architectural and engineering case studies to demonstrate to policymakers the adverse outcomes that will eventuate if the above concerns are not adequately addressed.