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18 August 2020

Mr Matthew Press
Director
Office of the Building Commissioner
Department of Customer Service NSW

Dear Matthew

Thank you for the opportunity to provide further input regarding the *Design and Building Practitioners Act 2020*. The Australian Institute of Architects is committed to working with the Office of the Building Commissioner and the Department of Customer Service to ensure the best built outcomes possible for NSW consumers.

After much review and discussion, we put forward, today, two minor amendments which we believe will strengthen the Act's effectiveness and fairness.

The first of these addresses the role of *principal design practitioner*. The qualifications and experience required of this role in order to effectively administer the co-ordination of all design compliance declarations, understanding the implications of these declarations on the whole of the project, and ensuring the full scope of the project is comprehensively covered by these declarations, will need to be those of a senior, highly experienced and knowledgeable professional. We expect the *principal design practitioner* will, as a result be called on to act as overseer of the project, and believe this should be recognised within the Act. Our proposed amendment acknowledges the full extent of the role of *principal design practitioner* providing the upcoming regulations with the opportunity to consequently define fully the specific qualifications and experience required.

Our second proposed amendment addresses the current capacity in the Act for the contracting out of liability. While the Institute strongly supports reform in this industry, we believe the overriding principle that should be applied is that where there are multiple wrongdoers, the Court should seek to apportion to those wrongdoers a specific percentage of liability rather than joint and several liability for the whole of the loss.

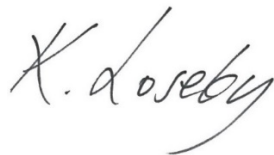
By allowing proportionate liability to remain:

- Contractors will use the provision in contracts with consultants to ensure that there is no proportionate liability, which will exacerbate the "deep pocket syndrome", where those holding PI insurance will be potentially responsible for paying ALL costs, regardless of their professional capabilities, risk minimisation, contribution to the situation and quality management processes to ensure appropriate outcomes.

- The insurance industry will either price for this, making insurance unaffordable, or will not make PI insurance available. Registration and licensing schemes require proof of PI insurance. Although practitioners must be insured, this insurance is becoming increasingly unavailable and insurers are, simply, withdrawing from the space. The Bill assumes that practitioners can find insurers willing to provide insurance on reasonable commercial terms.
- Legislative harmonisation is not possible when Queensland, for example, does not allow contracting out of their *Civil Liabilities Act 2002*.

Please find attached to this letter our proposed amendments as they pertain to the Act. We are very open to meet with you further to discuss these amendments in more detail should you wish. The Institute looks forward to working with you on these very important matters.

Yours faithfully

A handwritten signature in black ink, reading "K. Loseby". The signature is written in a cursive, flowing style with a long, sweeping underline.

Kathlyn Loseby
President NSW Chapter
Australian Institute of Architects

Proposed Amendments

Design and Building Practitioners Act 2020

1. Proposed amendment to Part 1 Preliminary

Section 3 Definitions

(1) In this Act -

principal design practitioner means a person who [has the prescribed qualifications and experience to:](#)

- (a) [coordinates](#) the provision of design compliance declarations for the purposes of building work done by a building practitioner, [and/or](#)
- (b) [coordinate prescribed building work](#)

40. No contracting out of Part

(1) This Part applies despite any contracts or stipulations to the contrary made after the commencement of this Part.

(2) No contract or agreement made or entered into, or amended, after the commencement of this Part operates to annul, vary or exclude a provision of this Part.

(3) [No contract or agreement can be made or entered into or amended to exclude the proportionate liability provisions in Part 4 of the Civil Liability Act 2002.](#)