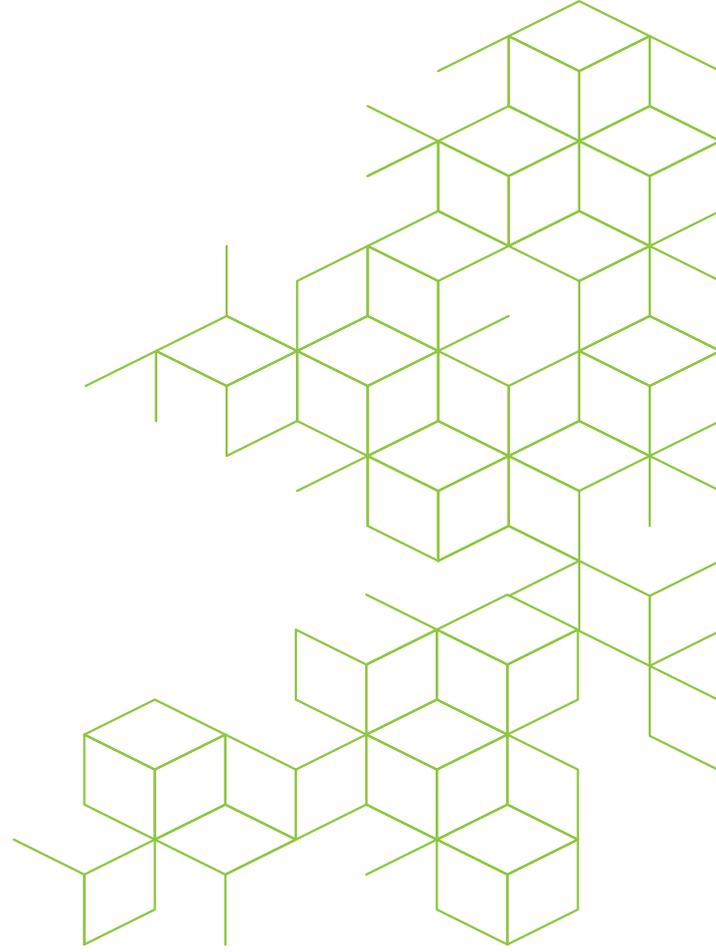




**BUILDING DESIGNERS
ASSOCIATION OF AUSTRALIA**



Design & Building Practitioners Bill & Regulations 2020



Information for BDAA Members and BDAA Accredited building designers

The NSW Government recently released the Draft Regulations pertaining to the Design and Building Practitioners Bill 2020 for public comment.

The BDAA has prepared submissions on the Draft Regulations and Regulatory Impact Statement and these can be found in the Members area of the BDAA website.

There are many reporting, lodging and compliance requirements within the Draft Regulations, however this briefing is to highlight the pertinent content of the Draft Regulations that will have an impact on the registration of building designers. Once the final Regulations are issued (hopefully in March/April) BDAA will arrange for instructive webinars to be provided to bring you up to date with the formal implementation of the Regulations.

In the meantime, we provide the following summary.

What type of building works do the regulations apply to?

The first round of regulations will apply only to Class 2 buildings and other Classes that incorporate a Class 2 element within the design.

Under the NCC definitions, a Class 2 building is a building containing 2 or more sole-occupancy units each being a separate dwelling.

Classes 1 & 10 and 3 – 9 are not covered by these Regulations (except for those that have a Class 2 element in the design). We believe that these classes will be added later into the regulations, but initially, the Government is concentrating all of its efforts into the Class 2 realm.

Building designers need to be aware however, that buildings covered by the Low Rise Medium Diversity Complying Development Code may be Class 2 structures.

This would require registration as a building designer or architect to work on these types of developments.

Registration

The Draft regulations propose that there will be two classes of registration for building designers:

1. Design Practitioner – Building Design Restricted – Low Rise

May design a Class 2 building or a building containing a Class 2 part that has a maximum gross floor area of no more than 2000m², but does not include a building that is Type A or Type B construction.

Note: The BDAA has opposed the exclusion of Type B construction as many Class 2 buildings are Type B construction – manor houses for example.

2. Design Practitioner – Building Design Restricted– Medium Rise

May design the following classes of building, but does not include a building that is Type A for the purposes of a Class 4, 5, 6, 7a and 8 building –

- a. Class 2 building or a building containing a Class 2 part that has a rise in storeys of no more than 3,
- b. For a building that has 1 storey classified as a 7a building – a Class 2 building or a building containing a Class 2 part that has rise in storeys of no more than 4.

Note: These classifications follow closely those of the National Regulation Framework being promulgated by the Australian Building Codes Board.

No 'Open' classification has not been proposed at this stage due to the fact that multi storey Class 2 buildings generally fall under the provisions of SEPP65 and these types of buildings must be designed under the direction of an architect.

The BDAA is confident that an 'Open' category will be introduced once the other Classes of building types are included in the Regulations.

The other classification is for a **Principal Design Practitioner – general**.

Principal Design Practitioners are authorised to do the following-

- a. coordinate the provision of design compliance declarations by suitably authorised registered design practitioners for regulated designs prepared for building work.
- b. make a principal compliance declaration in relation to the matters referred to in paragraph (a) and the design compliance declarations for those matters.

The issue the BDAA has with this classification is that the Draft Regulations precludes building designers being registered for this classification. The BDAA has made submissions to the Government to have this anomaly rectified as to put this restriction on building designers is clearly, and totally, impractical, as it would mean that a building designer would have to engage the services of a principal design practitioner – and in the building design theatre this would normally mean a *'registered design practitioner – architect'* - to manage the processes and functions required of the principal design practitioner.

Architects, in general, would be against entering into such arrangements with building designers, especially considering that the projects that they would be managing, are not of their own design.

If building designers are being registered to undertake Class 2 buildings, then they must be allowed to undertake the full range of functions associated with those designs. To do otherwise would be a clear restraint of trade and lessens competition of the current market.

Qualifications, experience, knowledge and skills.

The Draft Regulations list the following for the Building Design classifications –

1. Qualifications

Must have—

- a. for a design practitioner in the class of design practitioner—building design (restricted) who carries out work, or proposes to carry out work, on a low rise building—an NVR approved diploma in building design or architectural drafting, or
- b. for a design practitioner in the class of design practitioner—building design (restricted) who carries out work, or proposes to carry out work, on a low rise building or medium rise building—an NVR approved associate degree or advanced diploma in building design or architectural design.

2. Knowledge

Must know and understand the following—

- a. the Act and this Regulation,
- b. the *Environmental Planning and Assessment Act 1979*, including regulations made under that Act, to the extent that the legislation is relevant to this class of registration,
- c. the *Building Code of Australia* (volumes 1 and 2), including documents adopted by reference in the Building Code of Australia, to the extent that the documents are relevant to this class of registration,
- d. building design, including methods, materials and planning, to the extent that this knowledge is relevant to this class of registration.

3. Skills

Must be able to do the following—

- a. interpret, apply and assess compliance with the relevant requirements of the *Building Code of Australia*,
- b. apply and assess compliance with relevant standards relating to the design of a building, including materials, finishes, fittings, components and systems of a building, to the extent that the standards are relevant to this class of registration.

The BDAA has questioned the Government on the term **'must have'** in relation to the following qualifications:

- I. Low Rise – Diploma of Building Design
- II. Medium Rise – Advanced Diploma of Building Design

The BDAA agrees with the basic requirement of these qualifications but considers that an *'alternative pathway'* for registration must also be provided to cater for those who do not hold a formal qualification but have many years of experience, the skill sets and competence to undertake this level of design work.

Also, given that the Advanced Diploma of Building Design has only just been approved for introduction into the VET training system for 2021, it is highly unlikely that anyone would actually have this qualification, thus making an *'alternative pathway'* even more relevant.

It should also be considered in the Draft Regulations that the Mutual Recognition of Qualifications between other States and Territories be recognised, and those building design practitioners who are registered in their own jurisdiction, be allowed to practice in NSW under the same licensing criteria.

Experience

The Draft Regulations prescribe that all Classes of Design Practitioners must have 5 years recent practical experience.

BDAA Accreditation Program

Many of you have undergone the BDAA Accreditation Program, which of course, is required to undertake projects that come under the NSW Low Rise Medium Diversity Complying Development Code. The BDAA is currently working closely with the NSW Government in having the program accepted as a pathway to registration under the new Regulations.

The BDAA Accreditation Program is based on the National Building Design Training Package endorsed under the VET training scheme and the Australian Industry Skills Council. The ABCB is also using the National Training Package for its National Regulation Framework criteria.

The BDAA Accreditation Program already has endorsement by State Planning, and we are confident that it will also be endorsed under the Design and Building Practitioners Regulations.

The BDAA has proposed to the Government that our Accreditation Program be recognised as a registration scheme similar to that being granted to the engineering bodies. At this point of time we are still in negotiations with the Government on this matter and will keep you informed as the situation evolves.

Continuing Professional Development

The Draft Regulations for CPD are:

1. A prescribed practitioner must each year successfully complete at least 3 hours of relevant education and training that is approved by the Secretary in the Guidelines.

In our submission to the Government, the BDAA deemed that the requirement of 3 hours of CPD is too low for all design practitioners and compares this to the minimum hours required for registration as an architect – 10 hours formal and 10 hours informal - and BDAA membership and accreditation requires 25 points that is equivalent to approx. 20 hours.

We are yet to hear the Governments response to our submission so our current CPD requirements still stand.

Professional Indemnity Insurance (PII)

The Draft Regulations for PII require that each individual design practitioner set their own level of PII. The BDAA is concerned that this could lead to design practitioners being under insured. The AIA has also expressed concerns at this proposal.

In our submission to the Government the BDAA proposes that a minimum level of insurance be set for each class of registration, rather than leaving it up to each individual registered designer to set their own level.

The current BDAA accreditation scheme sets the following minimum limits of PI for each level of accreditation

- Low Rise - \$2 million
- Medium Rise - \$5 million
- Open - \$10 million

These minimum levels have been readily accepted by accredited building designers.

The BDAA has also put forward an alternative that could set a base PII level for each class and allow additional PII to be taken for those projects which value exceeds the base level of PII. Insurance bodies would need to be party to such a scheme, but it would allow better consumer protection overburdening smaller design practices.

Summary

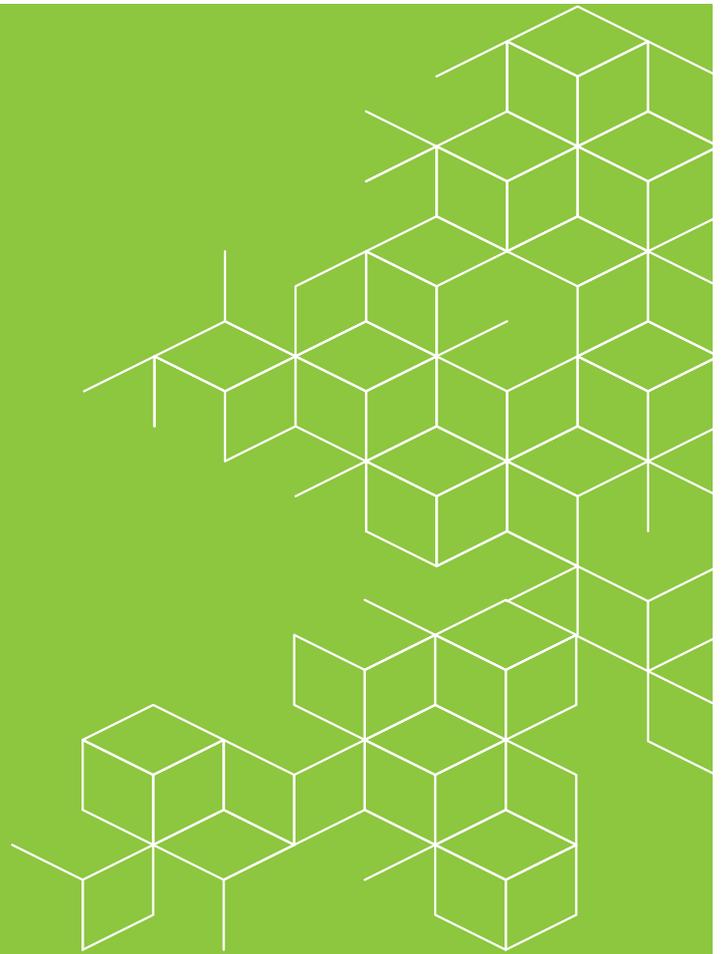
As stated in the introduction, there are many reporting, lodging and compliance requirements within the Draft Regulations and we will endeavour to provide instructive webinars in due course to allow you to make an informed decision on whether or not you need to be registered under the proposed Class 2 registration scheme.

We believe that all building designers will be required to be registered to undertake designs for all Classes of building, but for the moment it is only Class 2 buildings that are under the spotlight, so for the time being, you can continue designing those wonderful Class 1 -10 and commercial/industrial buildings that building designers are renowned for.

Questions?

If you have any questions about the above, and we are sure that many of you will, then please email them to our Policy Director, Ian Bassett, at policy@bdaa.com.au.

We will be setting up a FAQ page on our website with both questions and answers for your convenience.



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