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17 July 2019

Building Stronger Foundations Consultation  
Regulatory Policy, Better Regulation Division  
Department of Finance Services and Innovation

Email: [BCR@finance.nsw.gov.au](mailto:BCR@finance.nsw.gov.au)

Dear Sir / Madam

**Re: FRNSW SUBMISSION – DISCUSSION PAPER  
BUILDING STRONGER FOUNDATIONS**

I refer to the Building Stronger Foundations Discussion Paper.

Thank you for the opportunity to have input into this major reform project. I wish to advise that FRNSW is very supportive of the reforms proposed.

FRNSW's response to the questions posed in the discussion paper are attached in Appendix A to this letter.

Yours faithfully

Paul Baxter  
**Commissioner**

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# Appendix A

Please find below FRNSW responses to the questions posed in the discussion paper.

## Question 1

### ***What kinds of plans should be signed off and declared by statutory declaration?***

FRNSW is of the view that any professional that is registered/accredited and prepares documentation related to a development should attest to those documents via a statutory declaration.

FRNSW is of the view that the plans required to be signed off by a statutory declaration should include the following:

- The following engineering plans:
  - structural engineering plans
  - mechanical engineering plans
  - hydraulic engineering plans
  - electrical engineering plans, and
  - geotechnical engineering plans.
- Architectural plans
- All fire safety system plans

## Question 2

### ***Could Plans be statutorily declared at the CC/CDC stages? If not, why not?***

FRNSW is of the view that plans should be statutorily declared. This could be done afterwards provided the plans are reviewed by the certifier and endorsed prior to commencing any work that is the subject of the plans.

## Question 3

### ***To what extent should changes to plans be submitted to the regulator?***

FRNSW is of the view that all plans should be submitted to enable an auditing function. FRNSW would want access to these plans.

#### Question 4

***Should a statutory declaration accompany all variations to plans or only major variations?***

FRNSW is of the view that all variations should have a statutory declaration. FRNSW recommends definitions that clarify the difference between a major and minor variation.

#### Question 5

***Are there any obstacles that would prevent a person from submitting a statutory declaration for variations? If so, what are those obstacles?***

Nil comment

#### Question 6

***What other options could be workable if there are variations to plans?***

FRNSW is of the view that at the occupancy certificate (OC) stage, changes of the OC requirements are to be compliant with the National Construction Code (NCC). There should be a mechanism to allow for variations at OC stage. All variations must be documented and detailed in the OC and how they were considered and comply with the NCC.

#### Question 7

***How could the modifications process be made simpler and more robust?***

FRNSW is of the view that a modified construction certificate (CC) should be introduced and that it should apply the BCA for the development. This should be time limited to 5 years.

#### Question 8

***How should plans be provided to, or accessed by, the Building Commissioner?***

FRNSW is of the view that the plans should be provided in an electronic format and that FRNSW be given secure access to these due to its role in building regulation.

#### Question 9

***What types of documents should 'building designers' provide to the Building Commissioner?***

FRNSW is of the view that all documents related to the development CC, the complying development certificate (CDC) and OC should be provided.

### Question 10

***In what circumstances would it be difficult to document performance solutions and their compliance with the BCA?***

FRNSW is of the view that a report justifying performance solutions should be submitted and assessed on each occasion.

### Question 11

***Would a performance solution report be valuable as part of this process? If not, why not?***

Yes.

### Question 12

***Are there any other methods of documenting performance solutions and their compliance that should be considered?***

FRNSW is of the view that it should be in a report format.

### Question 13

***What would the process for declaring that a building complies with its plans look like?***

FRNSW is of the view that a declaration is required to confirm the final building work complies with submitted or modified plans.

### Question 14

***What kind of role should builders play in declaring final building work?***

FRNSW is of the view that all builders must hold an appropriate licence and be required to submit a statutory declaration confirming the final building work complies with the submitted or modified plans.

### Question 15

***Which builders involved in building work should be responsible for signing off on buildings?***

FRNSW is of the view that the main contractor should be responsible, as it has the legal/contractual oversight of all subcontractors.

### Question 16

***Are there any circumstances which would make it difficult for builders to declare that buildings are constructed in accordance with their plans? If so, what are those circumstances?***

Nil comment.

### Question 17

***Are existing licensing regimes appropriate to be accepted as registration for some builders and building designers, such as architects, for the new scheme?***

FRNSW is of the view that the Building Commissioner should be the authority for all registrations and accreditations.

### Question 18

***What occupations or specific activities are involved in 'building design' and should be in scope for the registration scheme?***

FRNSW is of the view that a registration scheme should apply to anyone who provides final building design and/or specifications of elements of building designs where they will be the subject of a CC.

### Question 19

***What should be the minimum requirements for a registration scheme?***

Nil comment.

### Question 20

***What form of insurance should be mandatory for 'building designers'? Why?***

FRNSW is of the view that all accredited individuals should have Professional Indemnity insurance to protect the consumer.

### Question 21

***What kinds of minimum requirements should be prescribed for the insurance policy (for example, value, length of cover, etc.)?***

Nil comment.

### Question 22

***What skills should be mandatory for 'building designers'?***

Nil comment.

**Question 23**

***Should specific qualification(s) be required?***

Nil comment.

**Question 24**

***Should there be other pre-requisites for registration?***

Nil comment.

**Question 25**

***What powers should be provided to the regulator to support and enforce compliance by registered 'building designers'?***

FRNSW is of the view that the Building Commissioner should be provided with a full suite of investigation and enforcement powers. These should include:

- The power of entry onto all construction sites for investigation and audit functions.
- The power of entry into all buildings for the purpose of investigation and audit functions, with the exclusion of within a residential dwelling. Entry into the common areas of a residential strata building should not be restricted. Entry into a residential dwelling should be permitted with a search warrant or equivalent.
- Auditing functions of all registered/accredited individuals.
- To be able to require the assistance of all registered/accredited individuals for the purposes of gathering information.
- Evidence gathering and collection powers.
- The ability to issue Orders for the closure of construction sites and Stop Work Orders.
- Prosecution powers.

**Question 26**

***Which categories of building practitioners should owe a duty of care?***

FRNSW is of the view that any registered professional engaged in the process of the construction of a building, including the main contractor/builder, engineers, architects and designers owe a duty of care.

**Question 27**

***What should be the scope of the duty of care? Should it apply to all or certain types of work? If so, which work?***

Nil comment.

**Question 28**

***How will the duty of care operate across the contract chain?***

Nil comment.

**Question 29**

***What types of consumers should be owed a duty of care?***

FRNSW is of the view that all affected consumers are owed a duty of care.

**Question 30**

***On what basis should a particular consumer be afforded the protection?***

Nil comment.