

## Submission Details

### **Q1 What kind of plans should be signed off and declared by a statutory declaration?**

**Comment:** THE WRIGHTSON PLAN © The only plans that could be 'signed off' with any confidence at all are "Works as Executed" plans. At the very least the building designer must be included in the construction process. The present state of affairs in NSW (and beyond) has effectively excluded the 'designer' from the 'construction' phase. That process has evolved slowly over the years from a time when a designer was involved from concept to completion, but in the interests of 'competition' the services of the designer have now been confined to the studio (generally speaking). It is common in NSW for the designer to have NO contact at all with the builder; a situation that certainly gives rise to inferior outcomes.

The only way to ensure a smooth and successful transition from 'design' to 'construction' and beyond is to have some overlap of roles for example to have the 'building designer' engaged as a consultant during the 'construction' phase and to attend building inspections when conducted by the certifier. Likewise, it would be preferable for a 'building designer' to have input from a certifier or building surveyor during the design phase.

At practical completion the 'building designer' can deliver the "Works as Executed" drawings, appropriately certified and certified by the builder and certifier as well (and any other stakeholder i.e. under the construction contract). Those documents will be of value and significance to the ultimate building owner/occupant and other stakeholders.

### **Q2 Should a statutory declaration accompany all variations to plans or only major variations?**

**Comment:** The solution offered in Q1 above is that all approved variations would be documented and recorded in "Works as Executed" drawings that would ultimately be certified (Statutory Declaration) by all parties i.e. Designer, Builder and certifier. So only one certificate is required for each project.

Presently the Development Consent has as consent condition No.1 that ALL works are required to comply with the BCA. Likewise, the Exempt and complying Development Code has that requirement in Part 1. So, compliance with the BCA is already a statutory requirement. There is no need to duplicate that.

### **Q3 How should plans be provided to, or accessed by, the Building Commissioner?**

**Comment:** Digital copies of certified "Works as Executed" plans can be provided to the Building Commissioner.

### **Q4 In what circumstances would it be difficult to document performance solutions and their compliance with the BCA?**

**Comment:** Exempt development.

**Q5 What would the process for declaring that a building complies with its plans look like?**

**Comment:** As set out in Q1 and Q2 above. The key to addressing the underlying problem is to bring ALL stakeholders together through the project to completion, like it was in the olden days. Projects are initiated by an owner (if not always the ultimate owner). So, the owner MUST be engaged in the entire development process (even by way of a client-side delegate – Architect, Project Manager for example) from commencement to completion. As the project unfolds and other stakeholders are engaged then each one must be retained until the project is complete. This process must include the consent authority as well if approvals are required for the project. So, by the time the project reaches the construction phase the builder/contractor as well as the inspector/certifier will have an established knowledge base to tap into.

During the construction phase all stakeholders must have the opportunity for input into the progress of the works (to a greater or lesser extent), whether for variations or compliance issues (defects and the like). Depending on the scale of the project it will be desirable to have project group meetings on site where progress and status issues can be resolved.

The idea of having a collaborative approach will eliminate the problem of alienation that currently exists. Presently, as certifiers operate in isolation it is a risk to them that they can be vulnerable to pressure and intimidation to ‘rubber stamp’ inspections. This risk is eliminated when the certifier has the support of the owner, building designer, consent authority etc etc, all overseeing the progress and quality of the works.

Of course, the amount of oversight must be proportional to the scale/value of the works. What I can see arising from the discussion paper and the proposed legislation is an incredible spike in compliance costs. That presents a very real threat to housing affordability.

**Q6 What kind of role should builders play in declaring final building work?**

**Comment:** Again, as set out above in Q1, Q2 and Q5, builders become stakeholders in the process and can only be required to declare the quality standard of the work as specified and built. The ‘Works as Executed’ drawings will be required to be certified by all stakeholders (including the owner). That means that the builder must be given an opportunity post-construction to review and comment on the ‘Works as Executed’ drawings, prior to the declaration being made.

**Q7 Which builders involved in building work should be responsible for signing off on buildings?**

**Comment:** Head contractors, that is to say more specifically, a party to a construction contract. The party signing on to the contract must also be responsible for signing off the works. It is reasonable that a Head Contractor is able to request declarations and warranties from subcontractors and suppliers prior to making any declarations. All suppliers and subcontractors must be bound to warrant and declare the quality of their goods and services. There is no other way for a Head Contractor to make a genuine declaration without that pre-condition requirement.

**Q8 Are existing licensing regimes appropriate to be accepted as registration for some builders and building designers, such as architects, for the new scheme?**

**Comment:** No further comment.

**Q9 What should be the minimum requirements for a registration scheme?**

**Comment:** A Tertiary qualification for building designers, and number of years' experience at a level of project (whether designer or builder) at certain project value categories. i.e. \$0-\$500,000, \$500,001 - \$1,000,000 etc etc. So, there could be a progressive registration scale similar to the building certifier categories for project types and values.

**Q10 What form of insurance should be mandatory for 'building designers'? Why?**

**Comment:** No insurance requirement is needed. Why? Because the value component of the design service at present is very small as a proportion of project value (unless the project is of a very low value). Any additional insurance component simply adds to the already extraordinary compliance costs that presently exist, which will only adversely impact on housing affordability.

As set out in Q1 and Q2 above, the best insurance is to require the building designer to remain actively engaged on the project through to completion, and even through to post-construction if necessary.

**Q11 What kinds of minimum requirements should be prescribed for the insurance policy (for example, value, length of cover, etc.)?**

**Comment:** None. Please see my comments at Q10 above.

**Q12 What skills should be mandatory for 'building designers'?**

**Comment:** Architectural design skills, including building technology and engineering (civil, structural, hydraulic). Building surveying skills such as BCA and NCC application during the design process. Documentation skills are vital to communicate design information to other stakeholders.

Presently building designers are not financially compensated for having or offering this skill set to the market, even though the skills are available. Apparently, marketplace 'competition' is more important than the quality of documentation, or the outcome of the built environment.

**Q13 Which categories of building practitioners should owe a duty of care?**

**Comment:** All building practitioners must owe a duty of care. That includes residential and commercial builders, whether acting as head or subcontractor, whether licenced or not.

**Q14 What should be the scope of the duty of care? Should it apply to all or certain types of work? If so, which work?**

**Comment:** At the very least the duty of care in the first instance is to achieve compliance with the BCA as a minimum quality standard. The second instance is to achieve compliance with the contract documents, i.e. plans, specifications etc. as these may require a quality standard greater than the BCA in certain circumstances. This requirement must apply to all types of work, including Exempt Development and especially to owner-builders.

**Q15 What types of consumers should be owed a duty of care?**

**Comment:** The duty of care must be limited to the contract principal in the first instance (even if not the owner) and to the next (or first) owner. Subsequent owners unfortunately cannot be owed a duty of care, because transfer of property to subsequent or ultimate owners may be subject to property damage, or unauthorised changes to the certified improvements. This scenario demonstrates the importance of providing the 'Works as Executed' documents. It may become a requirement under duty of disclosure legislation for property vendors to include the 'Works as Executed' documents in a contract for sale. See for example the Conveyancing (Sale of Land) Regulation 2017 [NSW], where such a provision could be made.

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