

HEALTH, BUILDING & REGULATORY SERVICES

---

# Building Stronger Foundations Discussion Paper Questions for Comment

24 July 2019

D03600008

Roman Wereszczynski  
Manager Health, Building & Regulatory Services

---

# Contents

<b>Summary of questions for comment</b>	<b>4</b>
1. What kinds of plans should be signed off and declared by a statutory declaration?	4
2. To what extent should changes to plans be submitted to the regulator?	4
3. Should a statutory declaration accompany all variations to plans or only major variations?	4
4. Are there any obstacles that would prevent a person from submitting a statutory declaration for variations? If so, what are those obstacles?	4
5. What other options could be workable if there are variations to plans?	5
6. How could the modifications process be made simpler and more robust?	5
7. How should plans be provided to, or accessed by, the Building Commissioner?	5
8. What types of documents should 'building designers' provide to the Building Commissioner?	5
9. In what circumstances would it be difficult to document performance solutions and their compliance with the BCA?	5
10. Would a performance solution report be valuable as part of this process? If not, why not?	6
11. Are there any other methods of documenting performance solutions and their compliance that should be considered?	6
12. What would the process for declaring that a building complies with its plans look like?	6
13. What kind of role should builders play in declaring final building work?	6
14. Which builders involved in building work should be responsible for signing off on buildings?	6
15. 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?	6
16. Are existing licensing regimes appropriate to be accepted as registration for some builders and building designers, such as architects, for the new scheme?	7
17. What occupations or specific activities are involved in 'building design' and should be in scope for the registration scheme?	7
18. What should be the minimum requirements for a registration scheme?	7
19. What form of insurance should be mandatory for 'building designers'? Why?	7

---

20. What kinds of minimum requirements should be prescribed for the insurance policy (for example, value, length of cover, etc.)?	7
21. What skills should be mandatory for 'building designers'?	8
22. Should specific qualification(s) be required?	8
23. Should there be other pre-requisites for registration?	8
24. What powers should be provided to the regulator to support and enforce compliance by registered 'building designers'?	8
25. Which categories of building practitioners should owe a duty of care?	8
26. What should be the scope of the duty of care? Should it apply to all or certain types of work? If so, which work?	8
27. How will the duty of care operate across the contract chain?	8
28. What types of consumers should be owed a duty of care?	9
29. On what basis should a particular consumer be afforded the protection?	9

---

## Summary of questions for comment

### 1. What kinds of plans should be signed off and declared by a statutory declaration?

All key plans (and associated design documentation) associated with class 2 to 9 developments over a given value (e.g. \$2m or greater value of works), including:

- Architectural plans
- Structural Engineering design/plans
- Fire Safety Systems (inc. Sprinkler systems, Fire Hydrants & Boosters, Smoke Detection & Alarm systems, Smoke Hazard Management & Pressurisation systems)
- Other Professional Engineers design/plans (e.g. Hydraulic, Geotechnical)
- NCC-BCA Performance Solutions

---

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

- Changes to the approved referenced CDC or CC plans
- Changes which affect any of the abovementioned plans (encompassed in the response to question 1) that have been signed off by the relevant specialist in a statutory declaration
- Changes requiring or affecting a Performance Solution

Plans incorporating these changes should be submitted to and approved / accepted by the Building Certifier before commencement of those works or changes.

---

### 3. Should a statutory declaration accompany all variations to plans or only major variations?

In all cases as detailed above in the response to question 2.

---

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

The regulatory framework which details this process and willingness of the specialists to provide a statutory declaration.

The regulatory framework must be workable and provide for a prompt and effective process for the submission and sign-off of proposed variations.

Also, depends on the availability of the Building Certifier at the time of the proposed variations.

---

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

In some cases, the acceptance of the modified specialist plans before commencing the changes by an accredited specialist, could be permitted with the concurrence of the appointed Building Certifier e.g. in relation to relatively minor changes which are not inconsistent with the consent or fundamental design and construction of the building and do not involve a performance solution e.g. minor structural design variations could be signed off by an accredited structural engineer.

---

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

The regulatory framework must be straight-forward and be workable e.g. develop a one page prescribed form for the submission of the proposed variation (which includes a statutory declaration) to the Building Certifier and the approval/acceptance by the Building Certifier (so as to form part of the approved CDC or CC).

---

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

All plans forming part of the approved CDC or CC should be provided to the Council upon approval of the plans or variations (together with an appropriate fee for service, with different fees having regard to the size and type of development).

However, only the final plans (or works-as-executed plans) accompanying the occupation certificate should be provided to the Building Commissioner and a copy provided to the Council.

---

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

All final documents encompassed in the above questions.

---

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

None.

---

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

Yes! There should always be a report on performance solutions (which may range from one page to hundreds of pages, having regard to the nature and complexity of the case).

---

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

Via a prescribed form (which may include attached reports and plans).

---

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

Via a simple prescribed form.

---

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

The principal building contractor (for specified development e.g. over a specified value) could issue a declaration via a simple prescribed form, which confirms that to the best of their knowledge and ability confirm that specified work satisfies the relevant provisions of the NCC, the development consent and the approved CC or CDC plans and documents.

---

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

The nominated principal building contractor, who must be licensed or registered with the NSW government and who holds a specified level of PI insurance.

This should extend to any residential building work (e.g. over \$50k) and commercial/industrial or other development (e.g. over \$1m).

---

## **15. 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?**

It is almost impossible for any person to declare that a building or substantial part of a building complies in all respects. To be fair and reasonable, the declaration needs to be practical and workable. The flaws in the Compliance Certificate provisions (and the lack of take-up by certifiers and specialists) should not be

duplicated in these provisions. The declaration needs to be provide some level of assurity, without having to declare the work to be 100% compliant in all respects (which is in effect almost impossible).

---

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

A whole new consistent, specifically designed scheme for all practitioners would be most appropriate.

A relevant registration scheme of a professional association or body may be a suitable interim step (together with appropriate insurance and proportionate liability provisions for all practitioners).

---

## **17. What occupations or specific activities are involved in ‘building design’ and should be in scope for the registration scheme?**

Architects, Building Designers and Specialist designers (e.g. all professional engineers, fire safety services, fire engineers and principal building contractors) for specified types and value of projects should be required to be appropriately registered (and hold PI insurance).

---

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

Appropriate qualifications and or membership of recognised professional associations, appropriate experience, PI insurance and a clean track record.

---

## **19. What form of insurance should be mandatory for ‘building designers’? Why?**

Professional Indemnity insurance of a minimum specified level. To share the responsibility, accountability and liability between all key practitioners.

---

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

The insurance policy should have a minimum value of \$1m or other nominated value (e.g. 10% of the value of development that the practitioner provides services for), whichever is greater i.e. if the practitioner proposes to provide services in respect of development up to \$50m, then the value of cover would need to be \$5m.

The insurance would need to be continuous and for at least 5 years following the provision of the services or issue of an OC.

---

## **21. What skills should be mandatory for ‘building designers’?**

Appropriate qualifications and/or registration through the relevant building designers association, or architecture (e.g. Building Designers Association of Australia – BDDA or Architects Accreditation Council of Australia – AACA).

---

## **22. Should specific qualification(s) be required?**

Ideally yes! However, membership of a recognised accreditation or registration body may be a suitable, at least for an interim period.

---

## **23. Should there be other pre-requisites for registration?**

Skills and experience in specified types and sizes of development, particularly if the cost of the development is of a specified value.

---

## **24. What powers should be provided to the regulator to support and enforce compliance by registered ‘building designers’?**

The regulator (e.g. BPB or Fair Trading) need to have adequate powers, expertise and resources to properly regulate practitioners and to take appropriate action for any breaches. A rigorous ‘complaints investigation process’ and a ‘pro-active audit program’ is essential.

---

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

All of the key practitioners encompassed in the previous questions.

---

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

All work and services provided by the identified practitioners, for the specified development.

---

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

The government would need to work closely with all key stakeholders, including the insurance industry, to develop reasonable and effective provisions

---

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

The current and future owner/s of the development and other persons that have relied upon the relevant party should be owed a duty of care, for a specified period e.g. 5 years from the date of the OC.

---

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

Where the consumer has relied upon a specified specialist/practitioner to undertake a function and the specified specialist/practitioner has been negligent in their actions or assessment.

