

As of 01 July 2021 the *Design and Building Practitioners Act 2020* and the *Design and Building Practitioners Regulation 2021* comes into effect. It applies to all Class 2 residential buildings or any building containing a Class 2 part. This is how it will affect your development moving forward...

## New terminology

<i>Regulated designs</i>	<ol style="list-style-type: none"> <li>1. Design for a Building Element being:           <ul style="list-style-type: none"> <li>▪ Fire safety systems defined by BCA (methods used to warn people of an emergency; or provide for safe evacuation; or restrict the spread of fire; or extinguish a fire, and includes both active and passive systems). (Note: content requirements in clause 6 of reg regarding penetrations in fire resisting building elements )</li> <li>▪ Waterproofing</li> <li>▪ Structure</li> <li>▪ Building enclosure (external walls, roof etc)</li> <li>▪ Mechanical; Plumbing; &amp; electrical designs required to meet BCA.</li> </ul> </li> <li>2. Design prepared for a performance solution. (Note: content requirements in clause 5 of reg).</li> <li>3. Integration of vertical transportation product (include registration number of product).</li> </ol>
<i>Design Compliance Declaration</i>	Statement of BCA/Standards design compliance in approved form by Registered Design Practitioner.
<i>Principal Compliance Declaration</i>	Statement, in an approved form, by principal design practitioner that design compliance declarations have been provided.
<i>Building Compliance Declaration</i>	Statement, in an approved form, by the registered building practitioner issued at building completion making the declarations specified in 8(3) of the Act.
<i>Registered Building Practitioner</i>	The builder / head contractor.
<i>Registered Design Practitioner</i>	A person who prepares regulated designs.
<i>Registered Principal Design Practitioner</i>	A registered design practitioner who has been identified by the developer as the principal design practitioner. This is not mandatory.
<i>Registered Professional Engineer</i>	A registered design engineer responsible for designing professional engineering work.
<i>Professional engineering work</i>	Design involving engineering principles and data to design or for a construction/production/operation/maintenance activity, relating to engineering.
<i>Prescribed area of engineering</i>	Structural; Civil; Mechanical; Fire safety; Electrical: Geotechnical



## Certifier Responsibilities

1. Certifiers will require a design certificate from a **registered professional engineer** for the following designs:
  - Structural
  - Civil
  - Mechanical
  - Fire Safety
  - Electrical
  - Geotechnical
2. A construction certificate or a complying development certificate for building work is prohibited from being issued unless the following documents are provided to the certifier\*:
  - a) each design compliance declaration to which the building work relates that is required by the certifier in order to issue the certificate,
  - b) for each design compliance declaration - each regulated design in relation to which the design compliance declaration is made.
3. Prior to the issue of an occupation certificate:
  - a) The applicant must provide the Principal Certifier a copy of the **building compliance declaration** provided by the **building practitioner**.
  - b) If a **building compliance declaration** provided by a **registered building practitioner** sets out steps required to be taken to ensure compliance with the Building Code of Australia and other requirements, the **building practitioner** must give a written notice containing the steps to the Principal Certifier.
  - c) An occupation certificate for building work is prohibited from being issued unless a **building compliance declaration** in relation to the building work has been provided to the Principal Certifier\*.
  - d) A Principal Certifier who is responsible for issuing an occupation certificate for building work must not determine an application for an occupation certificate unless they are satisfied that all **building compliance declarations** required for the building work have been lodged on the Planning Portal in accordance with this Act.
  - e) A Principal Certifier who is responsible for issuing an occupation certificate for building work must consider any instances of non-compliance specified in the **building compliance declarations** provided to them relating to the building work when deciding whether to issue the certificate.

\* Applies only if the application for the construction certificate or complying development certificate for the building work was made on or after 01 July 2021.



## Regulated Designs – A Step by Step Process

### Stage 1:

Before the building work commences

#### Step 1 - Design:

Design is developed.

#### Step 2 - Declare:

Registered Design Practitioner declares compliance with Building Code of Australia and other relevant standards by completing the approved form – design compliance declaration.

#### Step 3 - Declare (consolidated):

Registered Principal Design Practitioner, if appointed, provides a principal compliance declaration.

#### Step 4 - Lodge:

The Building Practitioner lodges 'construction-issued regulated designs' on NSW Planning Portal before construction starts.

*Documents lodged at this stage:*

- a) a copy of each construction-issued regulated design for building work
  - b) a copy of each design compliance declaration for regulated designs
  - c) a principal compliance declaration (if there is a principal appointed).
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### Stage 2:

After building work starts

#### Step 5 - Declare variations:

Variations on regulated designs need to be declared for compliance (using approved form). This may be continuous throughout the construction phase.

#### Step 6 - Lodge:

Registered Building Practitioner lodges each varied design and declaration within one day of the variation.

*Documents lodged at this stage:*

- a) a copy of each varied regulated design
  - b) a copy of the regulated design for a new building element or performance solution
  - c) a copy of each design compliance declaration for the above designs.
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**Stage 3:  
Before the issue of  
an Occupation  
Certificate**

**Step 7 - Declare:**

Registered Building Practitioner makes the building compliance declaration on the NSW Planning Portal as part of the lodgement process in step 8.

**Step 8 - Lodge:**

Registered Building Practitioner completes building compliance declaration online and lodges other required documents before applying for an OC.

*Documents lodged at this stage:*

- a) *the online building compliance declaration*
- b) *a contractor document (approved form - includes list of all contractors doing building work)*
- c) *a copy of each variation statement required for building work*
- d) *a copy of any other regulated design that contains additional details not in the construction-issued regulated design, but are not variations*
- e) *a principal compliance declaration, if any.*

**Step 9 - Apply for OC:**

Before or when the property developer applies for an OC, the principal certifier will be able to access the completed building compliance declaration and declared designs on the NSW Planning Portal.

**Step 10 - Certify:**

Certifier will only issue OC if they have all compliance declarations.

**Stage 4:  
After issue of OC**

**Step 11. Declare variations:**

Any variations to building work made after this stage will need to be declared.

**Step 12. Lodge:**

Registered Building Practitioner lodges regulated designs showing any variations to building work within 90 days of OC being issued or confirm online that no variations have been made.

*Documents lodged at this stage:*

- a) *a building compliance declaration*
- b) *a contractor document*
- c) *a copy of each variation statement required for building work*
- d) *a copy of any other regulated design that contains additional details not in the construction-issued regulated design, but are not variations*
- e) *a principal compliance declaration, if any*



## Transitional Provisions

### Where regulated building work has already commenced

If:

- CC/CDC for regulated work already issued; and
  - Some of regulated work has commenced before 1/07/21; and
  - All regulated work not complete by 1/07/21:
1. The following requirements of the Act do not apply to the regulated building work or any design in relation to the regulated building work:
    - a) provisions requiring regulated designs to be prepared for the regulated building work, including requirements for **compliance declarations**,
    - b) provisions requiring a person to be registered to carry out the regulated building work,
    - c) provisions requiring a **building compliance declaration** to be prepared for the regulated building work.
  2. The **building practitioner** for the regulated building work must provide copies of all designs relied on to carry out the regulated building work:
    - a) to the Secretary in the approved way, and
    - b) before an application is made for an occupation certificate for a building to which the regulated building work relates.
  3. A principal certifier must not issue an occupation certificate for a building to which the regulated building work relates unless satisfied that all designs required to be provided to the Secretary under this clause have been provided.

### Where regulated building work have designs prepared

If the:

- CC/CDC for regulated work already issued, and
  - the design was prepared before 1 July 2021, and
  - the person who prepared the design is not eligible to registered after 30 June 2021 in a class that would permit the person to provide a **design compliance declaration** for the design, and
  - the regulated building work is commenced after 30 June 2021 and before 1 July 2022:
1. The design is taken to be a regulated design for which a **design compliance declaration** has been given if a **registered design practitioner**:
    - a) assesses whether or not the design complies with the requirements of the Building Code of Australia, and
    - b) issues a certificate in an approved form that the design does comply with the requirements.



2. The **registered building practitioner** must not carry out building work under the CC/CDC until copies of the design and certificate are provided to the Secretary.
3. If a design that is taken to be a regulated design is varied on or after 1 July 2021, this clause no longer applies to the design.

*Note: A **registered design practitioner** will be required to prepare the varied design.*

### **Time for lodging regulated designs and compliance declarations**

This clause applies to development carried out under more than 1 construction certificate if building work has commenced under at least 1 of the construction certificates before 1 July 2022.

A requirement that copies of all regulated designs and compliance declarations be provided to the Secretary before building work commences is taken to mean the regulated designs and compliance declarations required to carry out the building work under a construction certificate must be provided to the Secretary before building work commences under that construction certificate.

### **Frequently Asked Questions and Useful Links**

The following links have further information

- [Department of Fair Trading FAQ](#)
- [Design and Building Practitioners Act 2020](#)
- [Design and Building Practitioners Regulation 2021](#)

**For more information on how these changes may affect your development,  
please contact our team on 8270 3500.**