

Changes coming for class 3 and 9c buildings in 2023

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The construction and design of buildings in Australia is governed by several Acts and Regulations, including the Residential Apartment Buildings (Compliance and Enforcement Powers) Act 2020 (NSW) (**RAB Act**), and the Design and Building Practitioners Act 2020 (NSW) (**DBP Act**). These Acts aim to ensure that buildings are safe and meet the necessary standards for design and construction. From 3 July 2023, the DBP Act and RAB Act will be expanded to include class 3 and class 9c buildings.

What is a class 3 and what is a class 9c building?

The answer comes from Volume 1 of Part A6 of the National Construction Code (NCC) 2019:

“A6.3 Class 3 buildings

A Class 3 building is a residential building providing long-term or transient accommodation for a number of unrelated persons, including the following:

- (1) A boarding house, guest house, hostel, lodging house or backpacker accommodation.*
- (2) A residential part of a hotel or motel.*
- (3) A residential part of a school.*
- (4) Accommodation for the aged, children, or people with disability.*
- (5) A residential part of a health-care building which accommodates members of staff.*
- (6) A residential part of a detention centre.*
- (7) A residential care building.*

Limitation 1: For A6.3, a Class 3 building is not a Class 1 or 2 residential building. However, a building could be a mixture of Class 3 and another Class.”

“Class 3 buildings include—

- A. the residential parts of hotels and motels; and*
- B. hotel or motel caretakers', managers' or owners' flats, noting that under certain circumstances such dwellings could be Class 1, Class 2 or Class 3 buildings; and*
- C. dormitory accommodation, in schools or elsewhere, noting that a dormitory is generally (but not always) considered to be a sole-occupancy unit; and*
- D. bed and breakfast accommodation, a boarding house, guest house, hostel, or lodging house; and*
- E. backpackers' accommodation; and*
- F. a building which houses elderly people or other people who require special care. (In some States or Territories it is not acceptable for a Class 1b building to be used to house elderly people or other people who require special care - it is recommended the local building regulatory body be consulted.); and*
- G. workers' quarters, including shearers' or fruit pickers' accommodation, or hotel workers' accommodation.”*



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“A6.9 Class 9 buildings

A Class 9 building is a building of a public nature that includes one or more of the following sub-classifications:

- (1) Class 9a — a health-care building...
- (2) Class 9b — an assembly building...
- (3) Class 9c — a residential care building.

Residential care building means a Class 3, 9a or 9c building which is a place of residence where 10% or more of persons who reside there need physical assistance in conducting their daily activities and to evacuate the building during an emergency (including any [aged care building](#) or [residential aged care building](#)) but does not include a hospital.”

“Class 9c buildings are residential care buildings that may contain residents who have various care level needs. The Class 9c classification recognises that many residents progress through a continuum of care needs from low to high. Many older people enter residential care with low care needs (typically Class 3 facilities) but, as they age, require higher levels of care. In the past, such progression often necessitated the transfer of a hostel resident (Class 3) to a nursing home (Class 9a). This frequently had negative consequences for the health and well-being of the resident, for whom the hostel accommodation was home. It also led, at times, to the separation of couples with differing care needs.”

For more information please read our article [What is a Class 1 and what is a Class 2 Building?](#)

Why are these changes coming?

The DBP and RAB Acts were introduced in response to the growing number of building defects and safety concerns in the construction industry such as seen in the Opal Tower incident in 2018, where residents were forced to evacuate due to structural defects, highlighted the need for better regulation and enforcement in the industry. The DBP Act was introduced to establish a registration scheme for design and building practitioners, while the RAB Act gives the NSW Government new powers to rectify defects in residential apartment buildings. The changes coming for class 3 and 9c buildings are part of the NSW Government's broader reforms to improve the quality and safety of buildings in the state. These changes will ensure that class 3 and 9c buildings are subject to the same level of regulation and oversight as class 2 buildings.

What are the changes?

From 3 July 2023, the DBP Act and RAB Act will apply to new class 3 and 9c buildings. This means that developers and builders of these buildings will need to comply with the registration requirements under the DBP Act and the defect rectification requirements under the RAB Act. The DBP Act requires that all design and building practitioners, including architects, engineers, and builders, be registered and meet certain standards of competency and conduct. The RAB Act gives the NSW Government powers to issue rectification orders, carry out rectification work, and recover costs from responsible parties in the event of defects in residential apartment buildings.

Alteration or renovation work for existing Class 3 and 9c buildings will come into effect on 1 July 2024. This means that owners and builders of these buildings will need to comply with the registration and defect rectification requirements under the DBP Act and RAB Act if they are undertaking alteration or renovation work.

The changes also introduce new requirements for developers and builders of Class 3 and 9c buildings. These include:

1. **Compliance declarations:** Developers will need to provide compliance declarations to the Secretary of the Department of Customer Service before an occupation certificate can be issued for a new class 3 or class 9c



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buildings. These declarations will confirm that the building has been designed and constructed in accordance with the Building Code of Australia and other relevant standards.

2. **Duty of care:** The duty of care established on 10 June 2020 for design and building practitioners working on class 2 buildings will now extend to design and building practitioners working on class 3 or class 9c buildings. This statutory duty of care is to ensure that their work is carried out with reasonable care and skill, meaning they will be liable for any loss or damage that results from their failure to meet this duty.
3. **Insurance:** Design and building practitioners will need to hold professional indemnity insurance that meets the minimum requirements under the DBP Act.

What are the implications of these changes?

The changes coming for Class 3 and 9c buildings in 2023 will have significant implications for the construction industry in NSW. Developers and builders of these buildings will need to ensure that they comply with the new requirements under the DBP and RAB Acts, which will increase their regulatory burden and potentially increase their costs.

However, these changes are necessary to ensure that buildings in NSW are safe and meet the necessary standards for design and construction. The Opal Tower incident highlighted the risks associated with building defects and the need for better regulation and oversight in the industry. The changes coming for class 3 and class 9c buildings will help to address these risks and improve the quality and safety of buildings in the state.

The changes will also have implications for owners and occupants of class 3 and class 9c buildings. The new requirements for compliance declarations will provide greater transparency and information about the design and construction of these buildings. This will help owners and occupants to understand the risks associated with these buildings and to take appropriate measures to mitigate these risks.

The application of the statutory duty of care for design to class 3 and class 9c buildings will also provide greater protection for owners and occupants. This duty will ensure that building practitioners are held accountable for their work and that they take appropriate measures to ensure that their work is carried out with reasonable care and skill.

Conclusion

The changes coming for class 3 and class 9c buildings in 2023 represent a significant step forward in the regulation and oversight of the construction industry in NSW. These changes will ensure that class 3 and class 9c buildings are subject to the same level of regulation and oversight as other buildings. This will help to improve the quality and safety of buildings in the state and reduce the risks associated with building defects.

Overall, the changes coming for class 3 and class 9c buildings in 2023 are a positive development for the construction industry in NSW and will help to improve the quality and safety of buildings in the state.

For legal advice, please contact one of our experienced legal practitioners.

**Prepared by Bannermans Lawyers
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