Building Defects Advanced Edition FAQ – Declared Design Regime under the D&BPA

The Design and Building Practitioners Act 2020 (NSW) (D&BPA) was introduced to improve accountability and quality within the construction industry. Coming into force on 11 June 2020, the Act created a statutory duty of care, requiring those who carry out construction work to take reasonable steps to avoid economic loss caused by building defects.

A second wave of changes followed on 1 July 2021, including mandatory registration requirements for key building professionals—such as designers, builders, and engineers—alongside the introduction of compliance declarations. These reforms also required practitioners to maintain adequate insurance. From this date, only registered practitioners could carry out certain kinds of work or make compliance declarations, particularly for tasks involving engineering or regulated building elements.

What are compliance declarations?

Compliance declarations are formal statements provided by registered practitioners to confirm that construction work complies with the Building Code of Australia (BCA) and all applicable standards. These declarations are particularly important in the context of regulated buildings, such as multi-storey apartment developments, where the risks and complexity of the work are higher.

Before construction work can begin, both the relevant regulated designs and the compliance declarations must be submitted through the NSW Planning Portal. This regulatory requirement is aimed at ensuring that safety and quality standards are met from the outset—not simply corrected later. A regulated design refers to a document such as a plan, specification, or report that has been prepared in relation to a building element or a performance solution under the BCA.

What constitutes a regulated design?

A regulated design is any design prepared for use in building work that relates to certain critical elements of a building.

These elements include fire safety systems, structural components, waterproofing systems, the building enclosure, and the essential services that support the functioning of the building.

Additionally, regulated designs are required for any performance solution—that is, a design that departs from the standard prescriptive requirements of the BCA and instead uses an alternative means of compliance.

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These designs must be prepared by a registered design practitioner and lodged with the Planning Portal before any building work begins. A certifier cannot issue a construction certificate or a complying development certificate unless these declarations and designs are in place.

The role of declared designs and the variation process

Declared designs are not only required at the outset of a project but must also be updated and re-lodged if there are any variations during construction. Any modification to a regulated design must be formally declared by the responsible practitioner. These revised designs must be lodged within one business day of the variation work being undertaken.

Notably, the requirement to declare variations also applies even after an occupation certificate has been issued. This is a key feature of the D&BPA regime— ensuring that any post-certification work is still properly documented and compliant.

Failure to comply with these obligations is a serious offence. Practitioners who fail to lodge a declaration may face penalties of up to $33,000 for companies and $11,000 for individuals. Those who knowingly provide a false or misleading declaration face even harsher consequences, including up to two years of imprisonment or financial penalties equivalent to 2,000 penalty units.

This is why it is essential to engage qualified, registered professionals and to ensure all compliance documentation is accurately and promptly lodged on the portal.

Are there any exemptions?

Yes, there are limited exemptions set out in Section 13 of the Design and Building Practitioners Regulation 2021.

For example, regulated designs are not required for building work valued under $5,000 (inclusive of materials and labour).

Minor waterproofing works in bathrooms, kitchens, or laundries may also fall outside the regime.

Other exemptions include electrical or plumbing work that involves performance solutions but does not affect a building element, as well as certain non-structural fit-outs and the installation of features like awnings or blinds—provided those installations comply with placement restrictions.

However, exemptions must be assessed carefully, and it's always recommended that practitioners or strata managers refer to the Regulations or obtain legal advice before proceeding without a declared design. To assist we have formulated a detailed quiz which you can undertake for renovations or repairs being undertaken by someone other than the original builder. You can access it here: DBPA Quiz.

High-level takeaways for practitioners

Builders, design practitioners, and engineers should familiarise themselves with the full scope of the D&BPA and its Regulations. It's critical to review all existing construction contracts to ensure they align with the new compliance requirements and declaration obligations. Practitioners must ensure

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that they are properly registered with the NSW Planning Portal, as only registered professionals are permitted to prepare and lodge regulated designs and declarations.

When commencing any new construction work, it is imperative that all relevant regulated designs are lodged before work begins on-site.

This approach not only ensures legal compliance but also mitigates risk and reduces potential liability.

It's a proactive step toward avoiding costly delays, penalties, or reputational damage.

How can we help?

Bannermans Lawyers can provide you with the expert legal advice you need in relation to building defects as we understand that your home or investment property is one of your most important assets.

For a FREE 15 minute consultation on how we can help resolve your defects in a cost effective and efficient manner click more information.

Key takeaways

- The D&BPA establishes a statutory duty of care for construction practitioners to avoid economic loss due to building defects.
- Compliance declarations are mandatory for registered practitioners to confirm adherence to the Building Code of Australia.
- Regulated designs must be submitted before construction begins and updated for any variations during the project.
- Failure to comply with D&BPA obligations can result in significant penalties for individuals and companies.
- Engaging qualified professionals is essential to ensure compliance documentation is accurately lodged.

****The information contained in this article is general information only and not legal advice. The currency, accuracy and completeness of this article (and its contents) should be checked by obtaining independent legal advice before you take any action or otherwise rely upon its contents in any way.*

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