

**INQUIRY INTO REVIEW INTO THE DESIGN AND
BUILDING PRACTITIONERS ACT 2020 AND THE
RESIDENTIAL APARTMENT BUILDINGS (COMPLIANCE
AND ENFORCEMENT POWERS) ACT 2020**

Organisation: Owners Corporation Network of Australia

Date Received: 2 July 2024

2 July 2024

Abigail Boyd MLC

Committee Chair

Public Accountability and Works Committee

By Upload: <https://www.parliament.nsw.gov.au/committees/inquiries/Pages/lodge-a-submission.aspx?pk=3049>

RE: Review into the Design and Building Practitioners Act 2020 and the Residential Apartment Buildings (Compliance and Enforcement Powers) Act 2020

Prepared by:

Dominic Dodwell, Director, Owners Corporation Network of Australia

Introduction

OCN welcomes the opportunity to provide input into the review of the DBP Act and RAB Act at this time.

The Owners Corporation Network of Australia Limited (OCN) is the independent peak consumer body representing residential strata and community title owners and residents. As such, OCN is uniquely positioned to understand the needs and constraints within this unique housing sector, as well as to advise on the potential impacts that legislation may have on planning, development, and day-to-day operational outcomes. OCN are experts in residential strata, hence our comments relate to what our members are seeking.

Over 2.5 million people live in strata households in Australia. NSW, which has the largest sector, has just over 89,000 residential strata schemes housing 1.3 million people. It is the fastest growing type of dwelling, with over a thousand new schemes being registered each year. The national ownership profile averages 60:40 resident owners to investors.

https://cityfutures.ada.unsw.edu.au/documents/717/2022_Australasian_Strata_Insights_Report.pdf

OCN strives to create a better future for residential and community living and ownership. We support the transition to resilient, empowered communities living in climate ready, defect-free buildings and we acknowledge the positive impact that the DBP and RAB Acts have had in reducing defects in new residential buildings.

SUPPORTED BY



THANKS TO OUR PREMIUM SPONSORS



THANKS TO OUR MAJOR SPONSORS



Feedback on DBP Act

OCN Feedback

OCN members have been vocal in stating that the DBP Act has been a costly inclusion on remedial building works especially when looking at waterproofing as a single issue.

On this matter, OCN representatives have met with a local Member (whose constituents have raised similar concerns), and the responsible Minister and their Policy Advisors to review and discuss these concerns as well as review opportunities to ensure that the relevant stakeholders in the industry have access to information and resources to obtain clarifications to allow them to confidently undertake their role in the industry.

We acknowledge that any amendment to the Act for existing buildings must be done with extreme caution as the intent of the legislation is to achieve compliance to current BCA Codes & Standards as a Best Practice approach, and any substantial deviation from this will result in existing Residential Apartment Buildings being inadequately maintained.

Equally however there does need to be some means of permitting performance solutions, preferably without the need for Planning Consent and the like to be implemented by engineers and builders, be it with a peer review by an independent design practitioner or with acknowledgements of limitation of warranty and asset lifecycle. We ~~only~~ note that currently some relatively simple scopes are unreasonable.

Speaking from experience, ~~also~~ we note that a critical step in the review of these Acts is ~~also~~ to review in conjunction with Strata Legislation for the relevant buildings. The single largest hurdle in existing class 2 buildings is project funding, and the reason this is the largest issue is that very few i.e. assume a vast minority of Strata Communities have ~~what they need in their~~ adequate capital works funds to maintain common property in accordance with their obligations under the Strata Schemes Management Act 2015.

We ask that consideration is ~~made~~ given to assist owners in helping themselves by enforcing realistic capital works levies and fund plans (current mechanisms are simply insufficient and are little more than a legislative check box exercise). ~~to~~ **This will** ensure that when **owners need** funds ~~are needed by building owners~~ to undertake repairs and maintenance to their typically single largest asset, ~~that~~ the decision is limited to who to spend the money with to achieve best value ~~in lieu of~~ vs how to raise the funds and manage the complexity of the Owners Corporation etc. We recognize that, due to this underfunding of capital works funds across the sector, ~~that~~ all future buyers of these properties are purchasing significant risk. ~~whereas~~ If funds were properly managed, anyone ~~owner~~ should be able to confidently purchase a unit with the peace of mind that any necessary capital works are considered and already in the process of being budgeted for.

Industry Feedback

Industry is supportive of the DBP Act however there are still improvements to be made, especially with regards to existing buildings where the onerous nature of the Act and Regulations are causing conservatism within engineering professionals and therefore significantly increasing costs of some rectification works beyond what is deemed practicable.

To inform this submission OCN have engaged with multiple Design and Building Practitioners to focus on the implementation and suitability of the DBP Act for brownfield construction projects and below is a summary of the findings.

We asked the following questions of each ~~member~~:

1. Please outline **positive changes** since the introduction of DBP and RAB Acts
2. Please outline **issues encountered** since introduction of DBP and RAB Acts
3. Is there any particular item(s) within these Acts that you would like to see **amended** as part of the review?
4. Do you support the DBP and RAB Acts from a general perspective? **YES was the unanimous reply from all 7 respondents.**
5. Any other comment?

Below is some of the feedback received from various practitioners.

Remedial Engineering 1

1. More builders, designers and engineers are becoming aware of NCC and relevant Australian standards.
2. Complying with NCC and relevant Australian standards on older or existing buildings during remedial works. For example, upgrade the structural elements prior to waterproofing works but the remedial works mainly involve waterproofing.
3. Exemption on certain remedial works or more detail explanation on how to comply with DBPA on remedial works; or supplementary document including the example cases for certain works performing on existing buildings may be exempted. Not sure if it's possible; but for example, if we are doing waterproofing works to a balcony, technically speaking we have to upgrade the slab to meet the current code requirement too; but it's almost not possible and unfeasible to do that. We will need more case by case or guidance on that; like, if we don't upgrade the slab, are we in breach of DBPA? In order to achieve the full compliance, do we have to assess the structural capacity of the slab to make sure it meets AS3600 and AS1170 prior to design any waterproofing works? Even when the slab shows no sign of distress or cracking or spalling.
4. Yes
5. NA

Remedial Engineering 2

1. Positive changes from the introduction of the DBPA act include requiring owners to conduct works correctly using details and products that comply with relevant standards and regulations. This ensures that works are done properly, minimizing dodgy practices. Additionally, builders and engineers are held personally liable for their work, unlike companies that can dissolve. Proper designs must be lodged and adhere to standards, ensuring accountability and quality in the work performed.
2. The main issue with these acts is that they limit engineering solutions for owners, resulting in significant and extensive costs. For example, previously, if a balcony was leaking around a drainage outlet, patch waterproofing works could be done around the outlet, which is comparatively inexpensive and may have mitigated the leaks. However, due to the acts, patch works are no longer possible, necessitating the re-waterproofing of the entire balcony, which is an extensive and costly exercise for the owners. This is hard to explain to owners in certain cases where issues are minor.
3. There are still many grey areas in the DBPA Act, and several items are up to interpretation by the registered engineer. This often leads to complicated designs and questions from owners, such as whether they need to upgrade their balustrades, upgrade the hydraulic design to ensure compliance, or determine what qualifies as exempt development. It would be helpful if the act provided more specific boundaries and examples for engineers to reference.
4. Yes
5. As registered design practitioners, we mainly deal with the DBPA act rather than the RAB act, hence the responses above are primarily tailored for the DBPA act.

Architect 1

1. Improvement in build process, increased awareness of industry about correct construction methodologies, general improvement in sequencing of works,
2. Complexity of the system when it comes to portal and DCD completion, inconsistency of application of the Act, lack of support from the commissioner's office (although this has now improved) Generally the main issue I have is that its not very clear how to go about a lot of processes and its very hard sometimes close to impossible to get the right information so half the time we are walking blind,
Also I'm puzzled as to why waterproofing is not a DBP Discipline, Its one of key aspects of DBP yet, we as architects have to declare waterproofing
3. Yes, some projects definitely do not require to fall under DBP. Separately, waterproofing should be a discipline under DBP
4. Yes
5. NA

Architect 2

1. Builders being forced to build compliant buildings – especially waterproofing.
2. Australian Standards are not up to scratch – achieving compliance with Standards doesn't necessarily achieve "best practice" and in some cases strict compliance is actually detrimental to the required outcome.
Remedial work has been particularly difficult due to "expectation" vs reality.
Compliance with current standards and proposed BCA 2025 amendments is problematic when dealing with existing structures. Further complications with require DA approvals for simple things like hobs – that would never have been detailed on the original DA anyway.
Aligning supplier, contractor & consultant knowledge and participation in the Design Process long before builders & contractors have been engaged.
Managing documentation through the build process where changes need to be coordinated.
3. Strata Building Bond process needs to be fixed. Can take 3 months after completion to get OC.
Developers should be registered and accountable – they are the ones making the decisions that we are ultimately liable for.
4. Yes
5. NA

Private Certifier (A1 Unrestricted Surveyor)

1. The introduction of the legislation has created a far greater degree of obligation of designers to prepare appropriate documentation for the construction of residential type buildings, this was sorely needed and has woken the industry up and raised professionalism in general
2. The Acts have created a disjointed integration of legislation governing both the design, certification, construction and completion of residential projects and has resulted in significant confusion amongst many parties as to how to comply especially given the continual amendments and abject lack of information being given to practitioners as to the practical compliance expected. It is a typical example of releasing legislation with little consideration as to how it can be complied with and without any leadership from the government and the default position is to punish failure to comply than to educate and guide compliance.
Further unintended consequences of imposition of duty of care to all parties involved in the construction industry including the retrospective application in law of DoC is completely contrary to all legislation that has come before it and imperils those that may be subject to litigation for conduct undertaken prior to the introduction of legislation.

3. Amendment to the duty of care provisions to apply only to construction work undertaken post implementation of the legislation (RAB Act)
The use of the legislation by the OBC for BWO's should include a far greater requirement for consultation with parties to prevent the current approach of "big stick" and in particular the approach to apply their own interpretations of compliance with the BCA as being the only permitted interpretation that ignores all others
4. Yes
5. The legislation has provided a wake up call to the industry, however the pendulum has swung too far to the opposing direction creating a scenario where practitioners are leaving the residential market given the extreme risks.
The building of buildings is a complex and difficult process and there is a gaping sector that has been ignored between the design of buildings and the process of building. There must be a greater focus on regulating sub contractors, forcing minimum competencies, the holding of insurance and oversight by government agencies (as is the case in almost all other states) as a means of having competent people "on the tools". The problems can not be fixed simply by having high quality designs that are then not built correctly

Design Practitioner for Vertical Transport

1. We see ourselves as a leading VT consultancy who employ a strict in-house design process. We see the Acts as providing professional re-enforcement to our industry which has been lacking and left up to the individual companies to regulate. The Acts will also eliminate the lowest price offer which has been an issue for sometime and will result in quality and longevity to the end consumer.
The Acts will also eliminate poor quality consultations and will ensure a best practice process over time.
2. The Acts are not clear on the direction required for existing buildings. Ultimately, depending on who you ask, will depend on the answer you receive. I.e is a DPVT required for a like for like lift replacement? Or Is a DPVT required for a lift replacement of an existing basement drive lift system. The direction differs from all stakeholders - Certifiers, Council and the VT industry affiliations.
New Construction is clear, however the direction for existing buildings and general lift replacement works is difficult to determine.
Requirements for becoming a qualified DPVT. There is still a large gap in the VT industry as educational requirements were not available to fulfill these. Whilst an opportunity for persons to obtain a qualification was provided, this has now lapsed. The interest in now completing a qualification for existing industry members is low to the associated personal liability of the work.
3. Improvements for obtaining a DPVT pathway qualification. Also, there does not appear to be any CPD opportunities related to the VT industry.
4. Yes
5. I fully support the DBP Act and look forward to the improvements it will make to the Vertical Transportation Industry.

Class 2 Remedial Builder

1. RAB Act: Being a company that takes ownership of our work and looks after its customers. We strive not to have this Act enforced on our company. A positive would be the RAB Act targets companies that don't share our Values.
DBP Act: Before the Act, we had the approach of only working with Engineering / remedial consultants that provided a full SOW conforming to the AS & NCC, by staying away from partial/ or incomplete remediation. A positive is that the DBP Act has removed builders that were undercutting our proposals by providing cheaper alternative such as partial/ incomplete remediation.

2. RAB Act: We haven't experienced the Act
DBP Act: Negatives
 - a. Has increase our project values by around 30%
 - b. No consideration was given to the impact of the DBP Act on the remedial industry
 - c. No clear instruction on how to apply a regulated design to an existing building 30,40-50 years old and what the minimum requirements look like.
 - d. It took Engineers /consultants/architects approximately 1 year delay for new tenders complying to the DBP Act. As a result we lost turnover because no tenders were being issued most of 2022
 - e. Moving forward, any major changes in the NCC such as changing falls to 1:80 and applying this to existing buildings will have a larger impact than the introduction of the DBP Act. Building up larger falls with engineered screeds will:
 - i. Increase design loads to concrete slabs
 - ii. Change starting points of termination height measurements.
 - iii. Increase likelihood of triggering DA
 - iv. A simple re-membrane project where a previously complying building will turn into a large project.
 - v. A simple solution, don't apply 1:80 falls to building pre-2025
3. More flexibility when the DBP Act forces you to exceed the original design requirements of the building making the costs unobtainable for the owners. We're not here to profit from the misery of owners but to provide better living standards at a reasonable cost.
4. Yes
5. NA

Feedback on RAB Act

OCN was somewhat founded on the topic of building defects and substandard practice within the construction industry. As an entity, OCN have been a long-standing advocate of an empowered Building Commissioner role in NSW to focus on reducing defective buildings.

OCN ~~are~~ is often confronted by our members who are dealing with such issues as defects in their new and existing properties and we welcome the enforcement of schemes such as Project Intervene to ensure that developers and builders are on notice to only construct quality buildings.

OCN commends all of those involved in this process to date including the Office of the Building Commissioner, and we ask that the Review Committee are confident that there is sufficient funding to ensure that Project Intervene and other similar future schemes are properly resourced and managed to assist consumers in the resolution of building defects.

We acknowledge the efforts that have been made to tighten regulations in the construction sector and the onus placed on developers and builders to achieve higher standards of construction in new buildings and look forward to a date in the future where serious defects within new construction are the minority, unlike today.

Summary

OCN represents apartment owners predominantly in the post construction period of a building's lifecycle and we acknowledge that both DBP and RAB Acts are having a positive impact on the industry in terms of qualitative improvement.

There are quantitative metrics being both time and cost that have been adversely affected. However it is noted that these may resolve themselves in time pending suitable process and management in place to ensure the industry is able to suitably resourced to alleviate the new levels of demand for Design and Building Practitioners for the DBP Act as well as Undertaking Managers and other roles under Project Intervene and the RAB Act.

What are OCN calls for as part of this review:

- Education and CPD opportunities to ensure Practitioners under the DBP Act are informed to undertake their roles confidently.
- ~~Education is critical for~~ A Consumer awareness campaign to ensure they understand why costs are higher under DBP Act and identify that comparisons to the past are not always relevant as previously.
- Considered review of technical requirements under the DBP Legislation to make provision where practicable to alleviate 'unnecessary' cost in remediation of existing buildings (typical issues are associated to water ingress).
- Ensure funding is in place for the relevant parties to maintain and/or increase the capacity of the ~~OBC~~ Building Commission NSW and teams responsible for the implementation of the DBP and RAB Acts into the future.
- Where possible review in conjunction with Legislation that manages Capital Works Funds to proactively ensure buildings generate the necessary funds to maintain common property.