

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

Organisation: Australian Elevator Association

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PUBLIC ACCOUNTABILITY AND WORKS COMMITTEE

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

SUBMISSION BY AUSTRALIAN ELEVATOR ASSOCIATION

SUMMARY OF SUBMISSION

The Australian Elevator Association (AEA) is pleased to make this submission to the Review of the Design and Building Practitioner's Act 2020 and the Residential Apartment Buildings (Compliance and Enforcement Powers) Act 2020.

The AEA supports the policy objectives of the Acts under review and also supports the establishment of the NSW Building Commission.

In providing this submission the AEA seeks to highlight the benefit of the Parliament undertaking legislative reviews as this process serves to identify where opportunities for improvement to legislative outcomes exist and also provides important feedback for Members when considering the structure of legislative proposals and their potential impacts in operational terms.

In this submission, the AEA describes some areas for improvement of the operation of the legislation, in particular the Design and Building Practitioner's Regulation. The AEA notes that the Government has engaged with it in relation to the areas of improvement that the AEA has identified and the AEA is hopeful that the consultation process that has been instituted will result in a positive outcome insofar as both the vertical transportation sector, its clients and the public are concerned.

The key area of improvement that the AEA has identified (and aspects of these may also be relevant to other building and construction industry sectors), relates to clause 1(a) of the Terms of Reference, being the functions exercised or delegated by the Secretary.

The AEA considers that in implementing the Regulation the functions given to the Secretary to determine whether a person is appropriately qualified and experienced to be a design practitioner (in particular in the area of vertical transportation) have resulted in unintended consequences for industry in that they:

- Do not have adequate regard to the lack of persons who may have the relevant qualifications, experience or interest in being a design practitioner.
- Unnecessarily limit the classes of registration that a person may apply for in a way that reduces the ability of industry participants to be registered in areas in which they specialise.
- Do not provide an adequate pathway for industry participants with extensive experience and certificate level qualifications to become design practitioners.
- Place unnecessary focus on skills relating to construction related activities when the primary role of persons involved in vertical transportation is the integration of vertical transport products into buildings to ensure that those products are able to safely operate.

Recommendations

The AEA has recommends that the Design and Building Practitioner's Regulation be amended as follows:

1. Re-insert qualification pathway 3 for design practitioners (vertical transportation) as contained in clause 21 (3) in Schedule 1 to the Design and Building Practitioner's Regulation 2021.
2. Expand the range of classes of registration in the field of design practitioner (vertical transportation) to recognise the wide specialisation of industry participants.
3. Provide clear guidelines for assessments undertaken to establish the competency of an applicant for registration together with provision for applicants to seek independent reviews of competency assessments.

AUSTRALIAN ELEVATOR ASSOCIATION (AEA)

General

The AEA is the peak Australian association for businesses operating in the vertical transportation sector. The AEA is committed to providing information and support to companies involved in the vertical transportation industry and through that process ensure the efficient and effective functioning of the sector and the safety of the community who use vertical transportation products.

The AEA was originally founded in 1961 as the Lift Manufacturers' Association of Australia (LMAA). It changed its name to the AEA in 1981. Over the years the AEA has become a major force in assisting local companies to address the dynamic changes that have occurred with the design and construction of lifts, escalators and other forms of vertical transportation.

Members of the AEA include the largest vertical transportation companies in the world today together with over 50 local Australian businesses. In combined terms, AEA members are responsible for most vertical transportation products in commercial, residential and infrastructure projects in Australia.

In the context of the NSW Design and Building Practitioners Act 2020 and the Residential Apartment Buildings (Compliance and Enforcement Powers) Act 2020, the AEA represents small to medium enterprises as well as the major local and international businesses responsible for the integration of vertical transport products into high-rise and complex apartment and commercial buildings that incorporate residential accommodation.

Vertical transport encompasses a wide variety of products with many of those products applicable to residential accommodation. Examples of vertical transportation products include:

- Elevators (lifts) for residential, commercial and infrastructure projects primarily used to transport passengers (including persons with disabilities), freight and for service purposes
- Moving walkways
- Escalators
- Car and boat lifts/stackers
- Chair and platform lifts, cable cars and gondolas
- Hoists used on construction projects and for other lifting purposes

- Inclined lifts for steep ascent and descent activities

The State of the Vertical Transportation Sector

Over the period since the Design and Building Practitioner's Act 2020 has been in operation, it has become evident that there are insufficient numbers of design practitioners (including engineers) registered to oversee the integration of vertical transportation in buildings.

The vertical transportation sector, like many other sectors of the building and construction industry, is affected by reduced numbers of workers entering the sector, the need to upskill industry participants and to improve the productivity of the sector. In this context, legislative and regulatory regimes may both assist or hinder industry sectors achieving and maintaining a sustainable future for their businesses.

The AEA assesses that there are approximately 50 persons registered in NSW as design practitioners (vertical transportation) and of those persons registered there are approx. 28 who are actually operating as design practitioners. Further, of the 28 operating, there would be approx. 18 employed by vertical transportation businesses with the remaining 10 or so operating as consultants to industry.

The AEA submits that the number of operational design practitioners in the sector is totally inadequate to enable many businesses to function efficiently and places the completion of building projects at risk of time and cost delays.

GENERAL COMMENTS

Design and Building Practitioners Act 2020

The Design and Building Practitioners Act 2020 was introduced by the NSW Government in response to the Building Confidence Report (the Report) authored by Professor Peter Shergold and Ms Bronwyn Weir.

The Report found that the accountabilities of different parties in the construction process were unclear and there were insufficient controls on the accuracy of documentation. It identified that, particularly for design practitioners, there was a systemic failure to expressly require documentation to demonstrate compliance with the National Construction Code.

This Act introduces a number of new requirements, designed to ensure that key practitioners are held accountable for their work across the planning, design and construction stages by introducing prescribed categories of regulated designs and a requirement for registered design practitioners who prepare regulated designs to issue a compliance declaration stating compliance with the Building Code of Australia.

Design and Building Practitioners Regulation 2021

The policy behind the Act is implemented through the Design and Building Practitioners Regulation 2021 (Regulation). The Regulation identifies a number of design practitioner occupations that are required to be registered under the Regulation and one of these occupations relates to vertical transportation.

However, unlike some other occupations such as the different types of engineering professionals and building designers (low or medium rise) or design practitioner drainage and drainage (restricted) that are permitted to be separately registered on the basis of their occupational specialities, registration as a design practitioner – vertical transportation

includes all the differing vertical transportation products that are installed in **any class of building** (which is effectively much wider than those covered by the legislation under review).

Schedule 2(1) to the initial Design and Building Practitioner's Regulation set out the pathways pursuant to which persons seeking registration as a design practitioner (vertical transportation) may take for the purpose of seeking registration.

The first two pathways required tertiary qualifications in engineering while the third pathway provided opportunities for persons with significant industry experience eg 10 years together with certificate III or IV level qualifications in electrical or mechanical studies (amongst others).

All pathways require successful completion of a competency assessment.

Schedule 2 (1) also set out the knowledge and skill requirements for all applicants as design practitioners (vertical transportation). Those requirements are as follows:

Knowledge—all pathways

Must know and understand the following—

- (a) the Act and this Regulation,**
- (b) the Environmental Planning and Assessment Act 1979, including regulations made under that Act, to the extent that the legislation is relevant to this class of registration,**
- (c) the Building Code of Australia, Volumes 1 and 2, including documents adopted by reference in the Building Code of Australia, to the extent that the documents are relevant to this class of registration,**
- (d) AS 1735, Lifts, Escalators, and Moving Walks, as in force from time to time,**
- (e) building design, including methods, materials and planning, to the extent that this knowledge is relevant to this class of registration.**

(5) Skills—all pathways

Must be able to do the following—

- (a) interpret, apply and assess compliance with the relevant requirements of the Building Code of Australia,**
- (b) apply and assess compliance with relevant standards relating to the design of a building, including materials, finishes, fittings, components and systems of a building, to the extent that the standards are relevant to this class of registration.**

It is important to note that the knowledge criteria includes building design in the context of knowing and understanding building design to the extent that this knowledge is “**relevant to this class of registration**” which, it is submitted, limits the level and depth of knowledge required when compared with a design practitioner for the whole building within which the vertical transportation product is contained.

By way of example, the building design knowledge required for a 30-storey residential apartment or commercial office complex is significant whereas that required for a stairway chair lift would be substantially different. Likewise, the requirement to be able to undertake or

understand traffic studies for a 30-storey apartment building is far more complicated than for a stairway chair lift designed to transport one person in low-rise residential premises.

It is noted that applications for registration in vertical transport that could have been made pursuant to pathway 3 of the Regulation were repealed in part as at 31 December 2021 and in full as at 30 June 2022.

The effect of the repeal provisions of the Regulation was to prevent persons with substantial industry experience and certificate level qualifications, but without an engineering degree (or equivalent), from applying for registration as a design practitioner (vertical transportation) after 30 June 2022.

Competency Assessment

It is noted that the requirements for pathways 2 and 3 (since deleted – see below) in vertical transport incorporate a competency assessment to be successfully undertaken.

Engineers Australia was appointed by the Government to take responsibility for managing competency assessments for vertical transport personnel seeking to obtain registration. It is noted that the Regulation did not detail how competency assessments are to be undertaken, nor whether those assessments could be reviewed by an independent entity.

COMMENT – WHY AMEND THE REGULATION

General

In broad social policy terms, governments across Australia have been examining the benefits of Australia's ageing population continuing to live in their own premises (houses, town houses and apartments) rather than in retirement villages or similar communal accommodation. This situation is being driven by both cost as well as mental and physical wellbeing issues.

When the above is coupled with mobility issues impacting the country's ageing population the vertical transportation sector anticipates that there is likely to be a significant increase over coming years in the need for vertical transport products such as stairway platform lifts, inclined lifts and low-rise platform lifts (amongst others).

While still relevant in terms of the design practitioner registration scheme, these forms of vertical transport do not involve the complexity of usage assessment, design, building integration or installation of lifts servicing larger buildings such as high-rise apartment buildings, commercial and office accommodation and public buildings such as hospitals.

Market Capacity and Capability

As previously indicated, at this time it appears that there are insufficient design practitioners to manage the market for large scale buildings incorporating high-rise lifts, escalators and moving footways and it is not considered that these persons will be sufficiently available to be involved in the developing design practitioner market for the more basic vertical transport products.

Further, this market is also expected to grow as high-rise developments are constructed in clusters surrounding transportation hubs.

Many of the vertical transportation products that will be incorporated into future residential or other premises will require more limited design input and this would appear to be able to be capably managed by companies that specialise in this area of the vertical transportation sector.

Separately, the industry needs to ensure that it provides adequate pathways for industry participants to improve their knowledge and skills as well as their academic qualifications. It makes sense for the industry to be able to develop those skills and knowledge through appropriately qualified persons being able to be involved as design practitioners but in a more restricted market than is currently the position under the Regulation. This will support the ongoing sustainability of the industry sector and make it more attractive for workers to aspire to higher level positions.

WHAT AREAS OF THE REGULATION REQUIRE AMENDMENT

The AEA has proposed that, in a manner similar to existing design practitioner registration options that establish a hierarchy of registration for those practitioners who tend to specialise in specific areas of a trade or profession, the design practitioner (vertical transportation) registration be divided into what may be regarded as a “general” category as at present and what could be described as a “restricted” category. Alternatively, registrants could have conditions placed on their registration that limit their ability to design and/or approve designs to identified vertical transportation categories.

As indicated above, the establishment of additional categories will enable a significant component of the industry that is involved in less complex vertical transportation products and engineering/construction solutions to be afforded the opportunity to obtain a design practitioner registration for the segment of the market within which these entities generally work.

Vertical Transportation Products to be Included in Restricted Category

The proposed products and areas that could be included in the restricted category are as set out below together with corresponding references to the relevant code or standard:

- **Service Lift (Dumbwaiters)** - AS 1735 Part 4
- **Stairway Lift** – AS 1735 Part 7 and includes a Stairway Chair Lift and Stairway Platform Lift and NCC (**Stairway platform lift** means a power-operated device for raising or lowering people with limited mobility on a platform (with or without a chair) in the direction of a stairway (**Travel limited to 1 floor**)).
- **Inclined Lift** - AS 1735 Parts 8.1 and 8.2 and NCC - **Inclined lift** means a power-operated device for raising or lowering people within a carriage that has one or more rigid guides on an inclined plane. **No limitation**
- **Lifts for People with Limited Mobility** (Low rise platforms for passengers) - Restricted use - AS 1735 Part 14 and NCC - **Low-rise platform lift** means a power-operated device for raising or lowering people with limited mobility on a platform, that is controlled automatically or by the application of constant pressure to a control. **Must not travel more 1000 mm.**
- **Lifts for People with Limited Mobility** - AS 1735 Part 15 - Safety rules for the construction and installation – Special lifts for the transport of persons and goods - Lifts for people with limited mobility - Non automatic lifts and NCC - **Low-rise, low-speed constant pressure lift** means a power-operated low rise, low-speed device for raising or lowering people with limited mobility on a carriage that is controlled by

the application of constant pressure to a control (**Maximum travel 4m enclosed and 2m enclosed**).

- **Lifts for People with Limited Mobility - NCC - Small-sized, low-speed automatic lift** means a restricted use power-operated device for the infrequent raising or lowering of people with limited mobility on a platform that is controlled automatically but has the capability of being electrically isolated by a key-lockable control. **Must not travel more than 12m (This standard has been withdrawn and therefore can no longer be used for design registration under the WHS Legislation and there is also no longer a standard for a lift that this definition from the NCC can meet other than a full passenger lift).**
- **Lifts for Private Residences - AS 1735 Part 18 - Lifts for private residences** that are automatically controlled small-sized low-speed passenger lifts that are installed in a private residence and can include those situated in penthouses.

Reinstatement of Pathway 3

Unlike the original Regulation, it is not proposed that there be a subclause in the Regulation relating to the repeal of proposed reinstated pathway 3 referred to above. The reason for this is twofold – first it is intended that this restricted category of vertical transportation not be limited to those persons with an engineering degree and, second, it is intended that by maintaining the qualification at appropriate certificate level coupled with significant operational experience allows for industry participants to have a pathway to higher design practitioner categories should they choose it, but without compromising safety.

What Parts of the Regulation Would be Amended

The proposal will require an amendment to the following parts of the Regulation:

Schedule 1 Part 2 Division 1

Add an additional item 24 titled – Design Practitioner – Vertical Transportation (Restricted)

Schedule 2 Part 1 - Definitions

The definition of “relevant” will need to be adjusted to enable the introduction of the new restricted category

Schedule 2 Part 2 Item 21 – Design Practitioner – Vertical Transportation Qualifications

It is proposed that the contents of Item 21 of Part 2 of Schedule 2 will need to be retained for the proposed new category but amended in certain ways either by adjustment of Item 21 or the addition of a new Item. Whichever drafting option is adopted, the content that should be included for the limited class of design practitioner (vertical transportation) is as follows:

- Re-insert the former pathway 3 as contained in the Regulation as originally promulgated, but not so as to re-insert the repeal provisions contained in subclauses (6) and (7) of Item 21.
- Add a Knowledge – All Pathways clause that deletes the reference to AS 1735 in current clause (4)(d) and inserts reference to the proposed vertical transportation products to be included together with specific Australian Standards referred to above in relation to the proposed restricted category.

COST/BENEFIT ANALYSIS

The AEA proposal will result in lower costs for the community than would be the case if the proposed restricted categories of vertical transportation are not adopted.

The reasons for this conclusion are as follows:

- The involvement of a design practitioner (vertical transportation) in projects involving the proposed restricted category simply adds significant cost to each project where the design practitioner is required to develop an engineering design, certify that the installation complies with the design and provide further input through variations in designs.
- The establishment of the restricted category enables a company providing the vertical transportation product to incorporate an assessment of the building design vis a vis the appropriateness of the product and any design variations as part of a seamless process thus saving potentially significant costs.
- Further costs are saved through the involvement of the design practitioner (restricted) at relevant times of each project rather than the company having to coordinate the involvement of an engineer who may not always be available at appropriate stages of a project. This potentially avoids costly delays in construction schedules.

COMPETENCY ASSESSMENT

As part of its approach to improvement of the current scheme for the operation of design practitioner registration the AEA has recommended that the Regulation clarify that any entity appointed to assess a person's competency must do so pursuant to assessment criteria and processes approved by the Secretary and publicly available. This is appropriate to ensure transparency of the assessment process.

The AEA envisages that those processes would be made available to all applicants, applicants would be permitted to be accompanied by a witness of their choosing (not an adviser), and all interviews would be video, and audio recorded.

The assessment process would also incorporate provisions for applicants to seek review of any assessment action and for such review to be conducted independently of the entity that is responsible for the initial assessment. Further, where any review is undertaken and the applicant is concerned about the outcome or the process conducted there should be a right to approach the Secretary to seek external review of the assessment process relating to that person.

For further information relating to this submission the Committee is invited to contact the AEA General Manager, Mr Noel Smith who may be contacted at