

Your Name: Mark Monk

Organisation Name: HELM Pty Limited

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## About you

HELM was established in 2010 with the specific goal of specialising in the development and construction of high-quality owner occupier residential apartment developments in Sydney.

HELM have been instrumental in developing and constructing a significant number of highly distinguished projects that have won 29 National, State, and Regional Awards, including the 2020 and 2015 UDIA National Award for Medium-Density Apartment Project of the Year and the 2017 Urban Taskforce Australia Finest Medium-Rise Development in Australia.

## Regulatory Impact Statement (RIS)

*Please use this section to provide feedback on the RIS. The questions from the RIS have been reproduced here for convenience. Page numbers in brackets refer to the section in the RIS.*

### Scope of reforms (page 15)

1. Do you think the reforms should be expanded to other types of buildings over time? Why/Why not? If so, which types of buildings do you think should be next?

Commercial and industrial buildings usually involve more sophisticated owners and tenants, who are better able to represent their interests in the legal system, so require fewer consumer protections.

Class 1 buildings and homes are much simpler, so do not require the design certification process that is envisaged in this Act. It is also possible that many homeowners would be inappropriately captured through these provisions.

2. Do you agree that the reforms should only apply to existing arrangements where the Complying Development Certificate or Construction Certificate has been applied for on or after 1 July 2021? Why/Why not?

Yes, this allows for a consultation during the transitional period and registrations to be completed.

## Regulated design (page 17)

### 3. Are the proposed exclusions from 'building work' appropriate? Why/Why not?

We are supportive of the Scope provided in the Act for Building Work, as the Scope of Regulated Designs is significant and will address the issues that we believe cause the greatest number of concerns for Occupants of Class 2 Buildings.

### 4. Are there other works that should be exempted? Please provide the basis for the exemption and when the exemption should be effective (for example, a description of the works or threshold of the value including the reason for that value).

No, not to our knowledge.

## Registration of Compliance Declaration practitioners (page 23)

### 5. Do you support the proposed classes of Design Practitioner? Why or why not?

Yes, however we believe further consideration needs to be given to Waterproofing. Traditionally waterproofing products are selected by the Builder/Waterproofing Subcontractor and a waterproofing specification is provided by the waterproofing manufacturer once products are selected. These details are then provided to the Architect by the Builder. The Architect does not verify, nor are they qualified to verify that the selected products are fit for purpose. The Principal Certifier then inspects various stages of the wet area membranes.

We believe the design and inspections should be completed by a competent waterproofing specialist / or as a minimum the waterproofing manufacturer.

A Principal Design Practitioner should not be able to provide a compliance certificate for waterproofing as they are not qualified. i.e Geotech engineer should not be able to provide a compliance declaration for internal waterproofing. Under the proposed arrangement it appears this is possible.

With the above in mind, when amending the regulation, consideration needs to be given to the fact that there are very few people qualified to certify waterproofing and we need to be careful that the Regulation does not overload the small number of people that have the qualifications to certify waterproofing.

We would welcome the opportunity to discuss this matter further.

6. Are there other types of Design Practitioners that should be included or any that should be removed? If so, what are they and why?

Yes. Please refer to our comments in the previous question.

7. Do you support the proposed qualification, skills, knowledge and experience requirements for each class of practitioner? Why or why not? Please make suggestions for additional or alternative requirements.

We are supportive of the requirements and the transitional arrangements.

8. Other than qualifications, skills, knowledge and experience requirements, are there any other eligibility criteria that applicants should meet to be eligible for registration?

Not to our knowledge.

9. Do you agree that practitioners should be required to have 5 years of recent and relevant practical experience?

Yes.

10. Some classes of practitioner have been proposed with authority to work on low and medium rise buildings? Do you support this approach?

We share the concerns expressed in the RIS, in relation to delays in the Registration process, and are supportive of the transitional arrangements to manage this issue.

## Registration of Professional Engineers (page 29)

11. Are there any other areas of engineering that should be captured for the purposes of designing or constructing a class 2 building, or a building containing a class 2 part?

No. We believe the defined Classes of Registration will ensure the issues that cause the greatest number of concerns for Occupants of Class 2 Buildings are addressed by these Classes of Engineers

12. Do you support a co-regulatory approach for the registration of engineers?

Yes. The Pathways 2 and 3 are sensible, and enable the Organisations representing Engineers to adopt similar standards to their counterparts in other States of Australia.

**13. Pathway 1 will require an engineer to satisfy certain qualifications, skills, knowledge and experience requirements. Are there any other eligibility criteria that engineers should meet before being registered?**

Not to our knowledge.

**14. The Regulation proposes recognition of Washington Accord accredited qualifications. Do you think this is appropriate? If not, what alternative approach do you suggest?**

To adopt an Internationally recognised benchmark for the assessment of qualifications, which allows flexibility and acknowledgement for Engineers with International Qualifications to be recognised in Australia and has been adopted by / will be adopted by other States in Australia, is appropriate.

**15. Under Pathway 2 what criteria do you think the professional engineering body should satisfy to be eligible to perform their function?**

We are not Engineers. This is a matter best answered by Engineers.

**16. Would you be supportive of professional bodies developing a PSS for Pathway 3 to be available?**

Yes. This seems sensible.

**17. Do you agree that Professional Engineers should be required to have 5 years of recent and relevant practical experience?**

Yes, for the reasons stated in the RIS, we are supportive of this requirement.

**18. Do you support the proposed generic list of skills and knowledge requirements for all classes of engineering (excluding fire safety)? If not, please outline what you think the specific skills and knowledge for each class of engineer should be.**

We are not Engineers. This is a matter best answered by Engineers.

## Compliance Declaration Scheme: practitioner requirements (page 38)

### 19. Do you support the proposal that all construction issued regulated designs must be lodged before any building work can commence? Why or why not?

No. This would delay the commencement of most projects by at least 12 months and have a negative effect on the industry. Additional holding costs would be incurred, which would affect the financial viability of the vast majority of projects, and ultimately lead to increased house prices and decreased housing affordability.

We agree that the regulated design documentation be lodged prior to commencing the building work related to the regulated design for which the Construction Certificate relates to. This will allow for staged Construction Certificates to be issued.

Our company typically applies for Three (3) Construction Certificates (CC), with each new CC superseding the prior certificate. Demolition of any existing structures is completed via a Complying Development Certificate (CDC).

These CC's are as follows;

CC1 – Excavation and Structural Design of Basement Levels up to and including Ground Floor

CC2 - All Structural Design and Services Design for the Whole of the Building

CC3 – Whole of Building (Internal set out and construction detailing)

The above-mentioned CC Stages would only commence once the regulated design documentation covered under each CC is submitted.

Confirmation of timing of lodgement to the portal prior to applying for a CC to be confirmed.

### 20. Do you support the Building Practitioner being primarily responsible for lodging regulated designs on the NSW Planning Portal? Why or why not? If not, who do you think should be responsible at the different lodgement points? Please explain your answer.

Yes, all lodgements should be completed by the appointed Building Practitioner. This requirement will ensure that the Building Practitioner is fully aware, and comprehensively understands their responsibilities associated with constructing and successfully handing over Class 2 buildings.

**21. Do you support the matters covered in the Design Compliance Declaration? Why or why not?**

Yes. However, Part 2 number 2. should allow the declarant to specify the specific Part/Clause that the regulated design complies with, rather than the BCA in its entirety. This will ensure that the declarant understands the BCA and its specific requirements for specific elements.

**22. Do you consider any other matters should be included in the Design Compliance Declaration?**

No.

**23. Do you support the proposed title block? Are there any other matters that should be included in the title block?**

Yes, we support the Title Block convention.

No, we are comfortable with the convention, however Designers of High-Rise Buildings may require further sections.

**24. Do you support the title block being available in a .dwg format?**

Yes, drawings should be available in .dwg format, however drawings submitted to the portal should be in .pdf format. The standard for Building Practitioners to view drawings is in .pdf format.

**25. Do you support the proposal that varied regulated designs be lodged within 1 day of the building work being commenced? Why or why not?**

No, we suggest a minimum of 30 business days.

While we understand the thought process and intention of the 1 day requirement, the practicalities of adhering to this requirement will be impossible.

In support of this statement, we ask you to consider the practicalities around a concrete pour, where a structural engineer has documented a reinforcing configuration for a complicated beam, that the steel fixer simply cannot make work i.e., the bars cannot be installed in the configuration, due to spatial requirements. The process in this instance would be for the Builder to contact the structural engineer, whereby a revised structural detail would be provided in a hand sketch via email from the structural engineer. The Builder would install the reinforcing to the Engineers detail, and the structural engineer would then inspect the installation of the reinforcing, as part of their structural inspection prior to the concrete being poured.

By providing 30 days, the documentation can then be amended and uploaded.

**26. Do you support the proposal that the Building Compliance Declaration, regulated designs and variation statements be lodged prior to the application for the Occupation Certificate? Why or why not?**

We presume the words 'prior to the application' relates to the 'application for OC' to the Buildings Certifier, as opposed to 'application' to the OBC'; as the building will still be under construction 6 months from when the OC is required, and as such declarations cannot be made for a future point in time.

The Building Compliance Declaration is not yet available for review, however Part 1, Section 8 (3) of the Act describes the items required to be declared. We are comfortable with the Declarations to be made.

**27. Are there further matters that should be included in the Building Compliance Declaration? If so, what are they?**

We are comfortable with the requirements of the Act regarding the Building Compliance Declaration.

**28. Are there further matters that should be included in the Principal Compliance Declaration? If so, what are they?**

We are comfortable with the requirements of the Act regarding the Building Compliance Declaration.

## **Insurance (page 51)**

**29. Do you support the approach proposed for insurance requirements for Design Practitioners and Professional Engineers? Why or why not?**

Yes.

**30. Do you consider additional insurance requirements should be prescribed for Design Practitioners and Professional Engineers? If so, what?**

Not at this stage.

**31. Do you support the proposed transitional arrangements that exempt Building Practitioners from being insured for issuing Building Compliance Declarations? Why or why not?**

We understand the difficulties of this matter, however, are concerned that the requirement is quite arbitrary, and relies on a number of unresolved matters. Further

consultation with the UDIA and Insurers would be preferred, prior to finalisation of the regulation.

## Continuing professional development (CPD) (page 54)

**32. Do you support the proposed CPD requirements for Design and Building Practitioners? Why or why not?**

We are wholly supportive of the targeted approach detailed in the RIS.

**33. What types of training, education or topic areas would be relevant for the functions carried out by Design and Building Practitioners?**

With reference to the Regulated Designs, the areas that should be targeted are those areas that form the basis for the greatest number of complaints to NSW Fair Trading.

**34. Do you support the proposed CPD requirements for engineers under pathway 1?**

This is a matter that should be commented on by Engineers.

**35. Do you support the mandatory CPD topic areas? Why/why not? Please make any suggestions for amendments and explain why they are necessary.**

This is a matter that should be commented on by Engineers.

## Penalty notice offences (page 57)

**36. Do you support the proposed penalty notice offences and amounts proposed in Appendix 1? Why or why not?**

On the basis that the focus of the Department is firstly based on education programs, we are supportive of Penalty Notice Offences being issued as a last resort.

Regarding the Penalty Units, we feel the 1,500 (Corporation) and 500 (Individual) is too high for a system that is just being implemented. With this in mind, we suggest a stepped Penalty Notice regime for Year 1, which could be 1/3<sup>rd</sup> of these amounts, and then Year 2 as 2/3<sup>rd</sup>s, with Year 3 incurring the full amount. Alternatively, and perhaps more appropriately, the Penalty Points applied could relate to three construction cost thresholds, as it seems unfair that a Practitioner designing or constructing 3 apartments, should be fined the same amount as a Practitioner designing or constructing 300 apartments.

**37. Do you think the proposed penalty notice offences and amounts are fair and reasonable?**

Please see the previous answer.

## **Fees (page 59)**

**38. Do you support the reasons for the proposed fees? Why or why not?**

Yes. We understand there is a cost associated with what is proposed and that cost must be met by the industry. The cost, will be offset by greater community confidence in our Industry

**39. What do you think NSW Fair Trading should consider in determining the fees?**

Please see our response to Question 40.

**40. Are you interested in being involved in targeted stakeholder consultation on fees?**

UDIA NSW would welcome the opportunity to assist in this process.

## **Proposed Design and Building Practitioners Regulation 2020**

*Please use this section to provide feedback on the proposed Regulation. Headings have been included to assist you in providing feedback on particular topics covered in the Regulation.*

### **1. Part 2 – Regulated designs and types of work**

*Requirements for regulated designs and compliance declarations, building work and professional engineering work*

The regulation does not appear to make clear the definition of a regulated design or what constitutes a regulated design. The RIS provides further descriptions. It is suggested these descriptions (a – e page 17 of RIS) are included in the regulation.

### **2. Part 3 – Requirements for designs and building work**

*Lodgement of designs and compliance declarations, requirements of principal design practitioners and building practitioners*

Part 3 Division 3 Section 26 appears to conflict with Part 3 Division 1 Section 17. There appears to be two different processes required for the same function.

### **3. Part 4 – Registration of practitioners**

*Applications and conditions of registration and registration obligations*

We are comfortable with what is proposed; however, we are interested in the following;

- Who will maintain the Register of Registered Practitioners, and will Building Practitioners have access to this information?

- How will a Building Practitioner confirm registration of its Design Practitioner?
- How is proof of maintenance of registration managed by a Building Practitioner for its outsourced designers, i.e., registration lapses or is withdrawn for a Design Practitioner by the Commissioner's Office part way through construction for an issue that occurs on another project.

#### **4. Part 5 – Recognition of professional bodies of engineers**

*Applications and requirements for recognition or registration scheme*

We are comfortable with what is proposed.

#### **5. Part 6 – Insurance**

*Insurance for design and principal design practitioners, professional engineers, building practitioners and adequacy of cover*

Currently there is no industry standard for calculating adequacy of cover across organisations and professional fields. Further discussion and consideration of this matter with Industry Organisations is required. Noting that currently there is the potential for Consultants and to underinsure for Professional Liability.

#### **6. Part 7 – Record keeping**

*Record keeping for design and principal design practitioners, professional engineers, building practitioners*

We are comfortable with what is proposed.

#### **7. Part 8 – Miscellaneous**

*Authorised and penalty notice officers, exchange of information, transitional arrangements for insurance for building practitioners and qualifications for fire system designers and work done under existing arrangements.*

**Section 81** – It is imperative that a Building Practitioner is able to confirm that a Design Practitioner's Registration is current, at all times.

#### **8. Schedule 1 – Classes of registration**

*Classes of registration for practitioners and scope of work*

As noted on Page 2 of this Submission, in relation to our response to 'Registration of Compliance Declaration Practitioner (Page 23) of the RIS, further consideration is required in regard to the Qualifications of a Waterproofing Practitioner.

#### **9. Schedule 2 – Qualifications, experience, knowledge and skills**

*For building practitioners, design practitioners, principal design practitioners and professional engineers*

As noted on Page 2 of this Submission, in relation to our response to 'Registration of Compliance Declaration Practitioner (Page 23) of the RIS, further consideration is required in regard to the Qualifications of a Waterproofing Practitioner.

## **10. Schedule 3 – Continuing professional development**

*CPD for prescribed practitioners and CPD for professional engineers*

No Comments.

## **11. Schedule 4 – Code of practice**

*Code for prescribed practitioners and code for professional engineers*

No Comments

## **12. Schedule 5 – Penalty notice offences**

Please refer to Item 36 on Page 8 of this Submission.

## **13. Schedule 6 – Forms**

*Design Compliance Declaration*

Please Refer to Item 21 on Page 6 of this Submission.

## **14. General feedback**

*Any other comments you would like to make on the proposed Regulation.*

# **Proposed Continuing Professional Development Guidelines (CPD Guidelines)**

*Please use this section to provide feedback on the proposed CPD Guidelines. There are two Guidelines we are seeking feedback on:*

- 1. CPD Guidelines for prescribed practitioners (design practitioners, principal design practitioners and building practitioners) and,*
- 2. CPD Guidelines for professional engineers.*

*Questions have been included to assist you in providing feedback.*

## **CPD Guideline for prescribed practitioners**

- 1. Do you consider that requiring practitioners to undertake three hours of CPD activity is appropriate? Why or why not?**

Yes. Specifically, targeted courses will improve design and building standards.

- 2. Do you support that CPD activities must be from the approved platforms? If not, please explain why.**

Yes

3. Do you support the guidelines prioritising technical CPD activity (i.e., improving knowledge and understanding of the National Construction Code and Building Code of Australia) over other CPD activities? If not, please explain why.

Yes, for too long Builders Licenses Courses have not addressed the root cause of issues in our industry or focused on the requirements of the NCC.

4. The Department is working with industry to develop courses that would assist practitioners. What courses or topic areas should be developed and available on the Construct NSW Learning Management System? We are particularly interested in providing courses that cover gaps in current learning content.

With reference to the Regulated Designs, the areas that should be targeted are those areas that form the basis for the greatest number of complaints to NSW Fair Trading.

5. Are there any other general comments you would like to make on the Continuing Professional Development Guidelines for prescribed practitioners?

## CPD Guidelines for professional engineers

1. Do you support the proposed CPD structure and allocation of points? Why/why not? Please make any suggestions for amendments and explain why they are necessary.

This is a matter that should be commented on by Engineers.

2. Do you support the mandatory CPD topic areas? Why/why not? Please make any suggestions for amendments and explain why they are necessary.

This is a matter that should be commented on by Engineers.

3. Are there any activities that should be included/not included as:
- a) Formal education and training activities?
  - b) Informal education and training activities?

This is a matter that should be commented on by Engineers.

4. Structured training courses available from Construct NSW Learning System and from the Australian Building Codes Board are proposed to count for 2 CPD points. Do you support this approach?

This is a matter that should be commented on by Engineers.

5. The Department is working with industry to develop courses that would assist professional engineers. What courses or topic areas should be developed and available on the Construct NSW Learning Management System? We are particularly interested in providing courses that cover gaps in current learning content.

This is a matter that should be commented on by Engineers.

6. Are there any other general comments you would like to make on the Continuing Professional Development Guidelines for Professional Engineers?