

Raising awareness of the unintended consequences of the *Design and Building Practitioners Act 2020* on the remedial industry

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There are unintended consequences of the *Design and Building Practitioners Act 2020* (**DBP Act**) on remedial practitioners.

Remedial work in NSW performed on class 2 buildings = potential obligations arising under the DBP Act and planning approvals



Q 1: Are you performing *building work*?

'Building work' means 'work involved in, or in coordinating or supervising work involved in, construction, making alterations or additions to or repairing, renovating or carrying out the protective treatment of a building of a class or type prescribed by the regulations'

Q 2: Is this *building work*:

- A. in a class 2 building or a building with a class 2 part;
- B. to a building element?

Building element means any of the following:

- > 'Fire safety systems' within the meaning of the BCA;
- > Waterproofing;
- > Internal or external load-bearing component of a building that is essential for the stability of a building;
- > A component of a building that is part of the building enclosure
- > Those aspects of the mechanical, plumbing and electrical services for a building that are required to achieve compliance with the BCA

Q 3: Is the *building work* exempt or non- exempt development work?

If exempt - planning approval is not required but the works may still be captured by the DBP Act if they involve for example waterproofing and/or cladding.

If non-exempt works - planning approval and compliance with the DBP Act is required?

Clause 1.16 of the SEPP codes needs to be considered along with the Exempt and Complying Development codes – for remedial - a DTS may not be available for the remedial works proposed. Compliance with the BCA may not be achievable under a performance solution.

Therefore, triggering the need for planning approval and putting the remedial works not only in the category of 'non-exempt' works but also making them subject to the DBP Act.

Q 4: Does the building work involve waterproofing works extending beyond a single bathroom, kitchen, laundry in a single dwelling i.e. in multiple apartments?

If so, the DBP Act will apply?

Q 5: Are you performing emergency works?

Do they satisfy the 'reasonable excuse' test under section 19 of the DBP Act?
What does this mean in respect of compliance with the DBP Act?

Guidance is coming!

The ACRA Advocacy team and a group of ACRA members have been in consultation with Government for the past 12 months.

We are expecting in the near future:

- > An Emergency Works factsheet to be published by NSW Fair Trading to provide guidance for what is and what is not 'emergency work' and the impact of this classification
- > Guidance as to a number of typical remedial works in a strata building and whether these are considered 'exempt' or 'non-exempt' works and whether or not the DBP Act applies
- > Guidance as to demarcation when performing remedial works
- > Guidance as to the preparation of a performance solution

Stay tuned! Further updates to be released shortly.