

New rules for construction industry in NSW

Association of Consulting Structural Engineers NSW, presentation, August 2020



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Building Commissioner



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Customer
Service

Construct NSW and the Better Regulation Division

David Chandler OAM, Building Commissioner

August 2020

www.customerservice.nsw.gov.au

The Construct NSW Strategy



- Shifting the focus from looking at the performance of individual **players** to the quality of the entire construction **team**
- The key players on the team are Developers, Builders, Designers, Certifiers, Manufacturers, Suppliers and Installers. Each player must take responsibility for ensuring quality
- Ultimate responsibility rests with the Developer as they are the principal, and they are selling to the customer

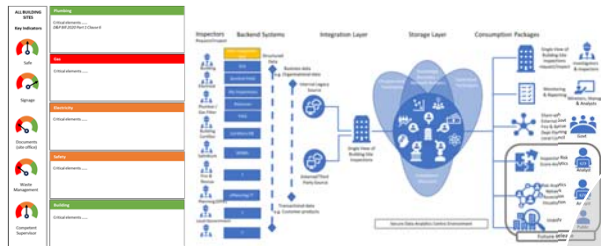


- All players on the team must be pointing towards the same goal, **trustworthy buildings**
- The homeowner must be at the centre as they are putting their trust in the team to deliver a safe and reliable product
- The regulator will be on the building sites (fields) of the most risky teams offering the choice of lifting performance or leaving the game
- Consumers, finance, insurance, contracts, etc will reinforce the value of trustworthy teams that produce trustworthy buildings

Risk Rating Tools (SVOB, MPRT, Intel Dashboard)

Data source

- ✓ NSW Fair Trading Inspection systems
- ✓ Safe Work NSW Inspection systems
- ✓ Cordell

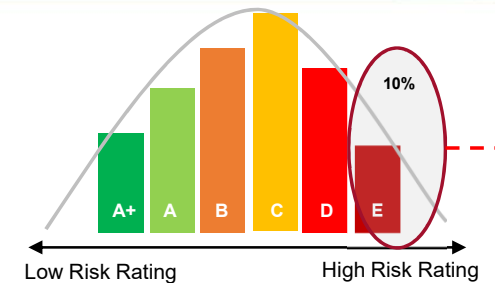


Data source overlap with Cordell

Single View of a Building
(internal)

Multi Party Rating Tool
(external)

BRD Intelligence
(internal)



External procurement

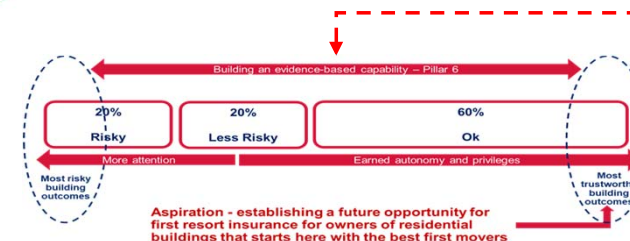
Regulated risk ratings based on *Developer, Builder and Certifier* (multi-party) aggregate of individual risk ratings



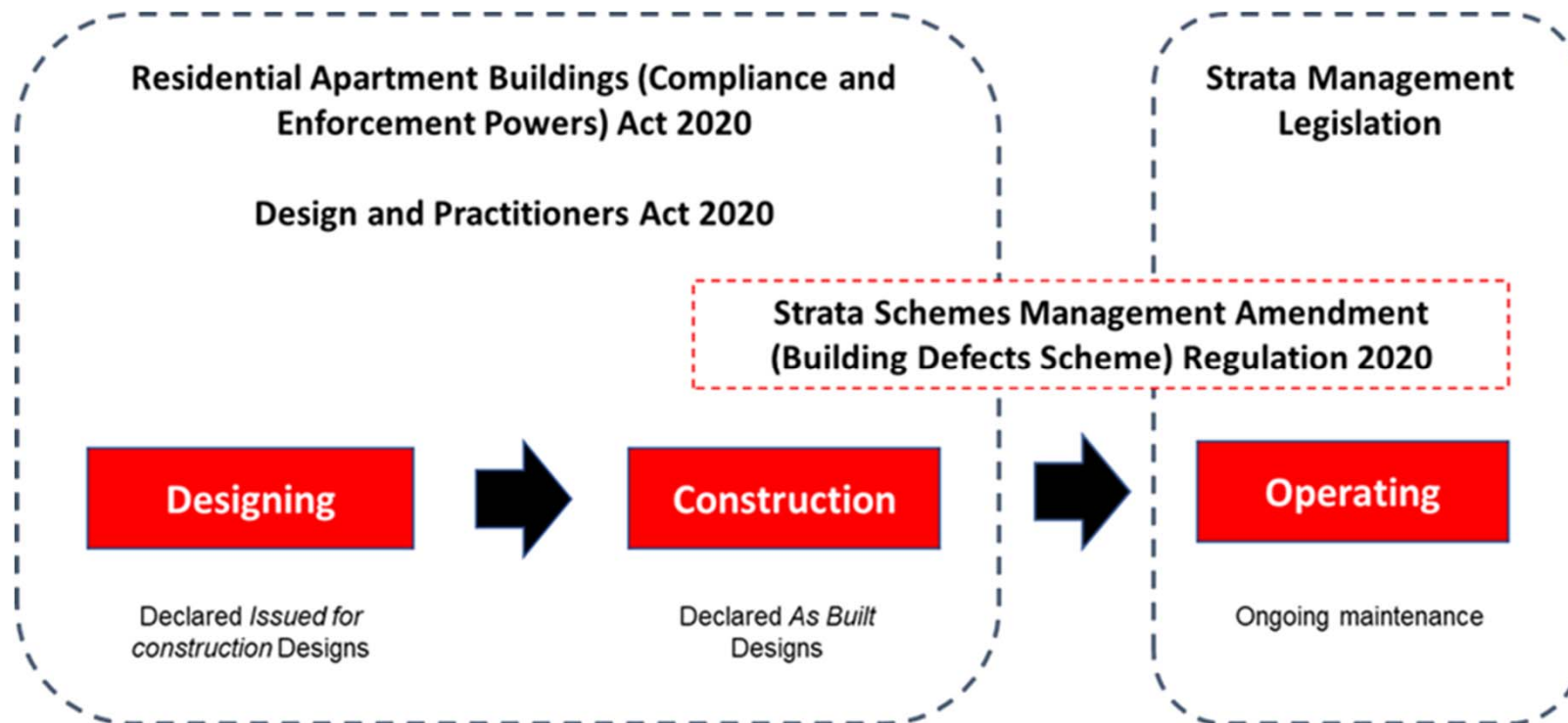
Data source overlap with publicly available data

BRD Intelligence Data source

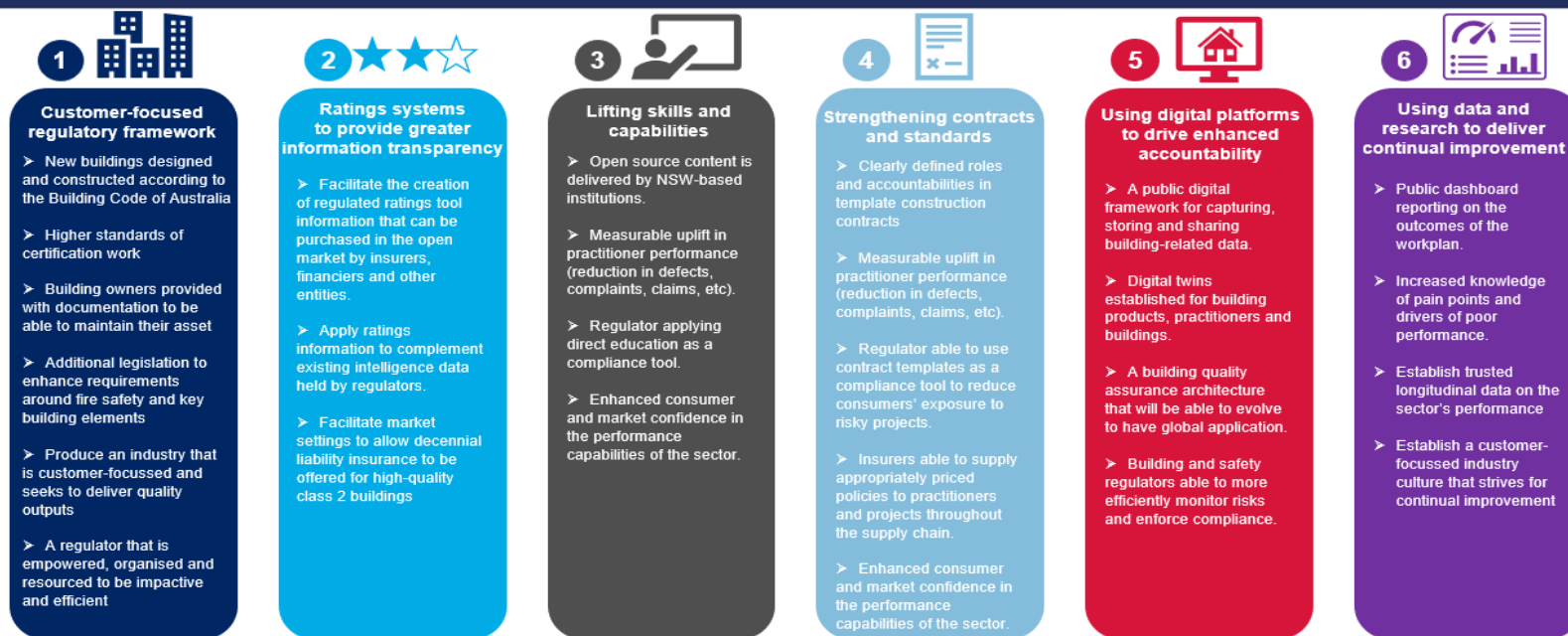
- ✓ NSW Fair Trading Incident system (CAS)
- ✓ Safe Work NSW Incident system
- ✓ Cordell, ASIC, ACNC, ATO



Legislative Reforms - Landscape



Construct NSW: Program Update



- ▶ Pillar 1: Working on the OC Audit for 1st September 2020
- ▶ Pillar 2: Tendering for multi-party ratings information internally and externally
- ▶ Pillar 3: Partnering with TAFE NSW to produce the Construct NSW learning management platform
- ▶ Pillar 4: Drafting a term sheet to ensure supplier contracts will face the requirements of the DBP Act
- ▶ Pillar 5: Sprint 2 of e-Planning that will support OC audits and strata bonds
- ▶ Pillar 6: Commissioning tactical research to deliver impactful change

What is coming on 1st September 2020?

Compliance Gates in ePlanning Portal

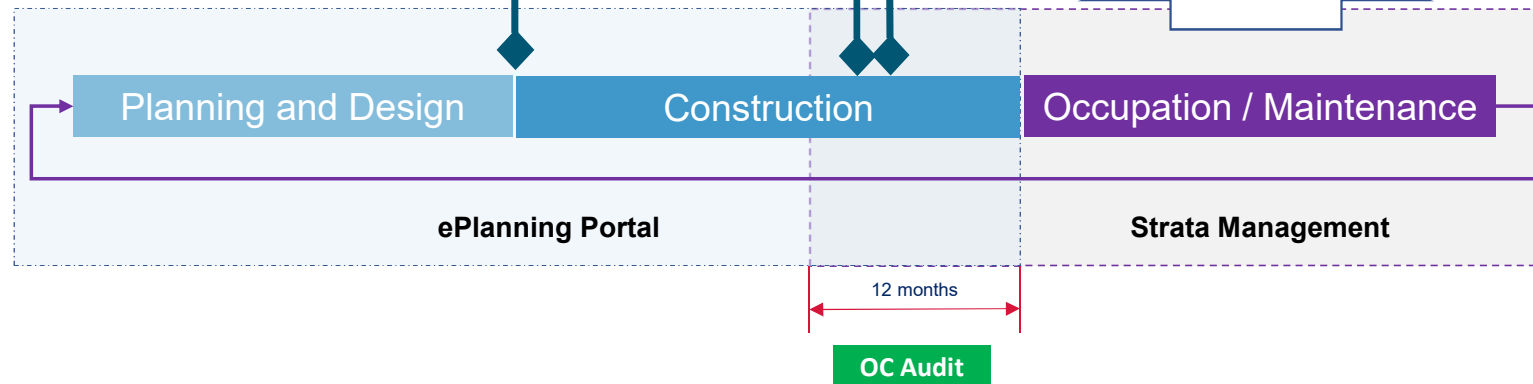
Occupation certificates and strata plan registrations not to occur if:

- ✓ Failure to give notice within 6-12 months before the application for the occupation certificate was made
- ✓ Failure to give *expected completion amendment notice* (if original estimate expected date changed)
- ✓ Serious defect exists – *outcome of OC Audit*
- ✓ Building bond under *Strata Schemes Management Act 2015* has not been lodged with associated documents including IFC and As Built designs.

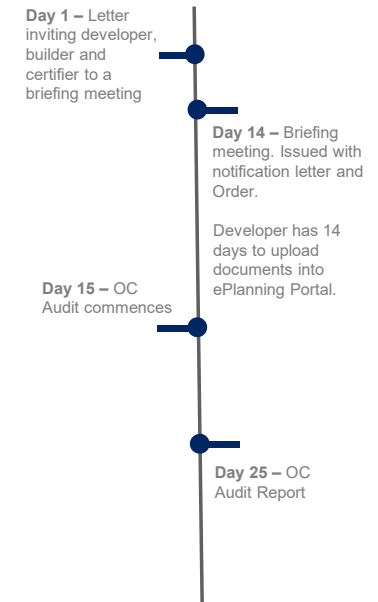
- **Developer** must upload *Interim As Built* designs.
- **Developer** must upload the *building bond and associated documents*, in accordance with the Strata Building Bond and Inspection Scheme.
- **Developer** must notify expected date of intent to lodge occupation certificate. *Date should not be less than 6 months or greater than 12 months [RAB Act 2020].*
- **Developer** must upload *Issue for Construction* designs.

Building Lifecycle

Design, planning, construction, occupation to maintenance

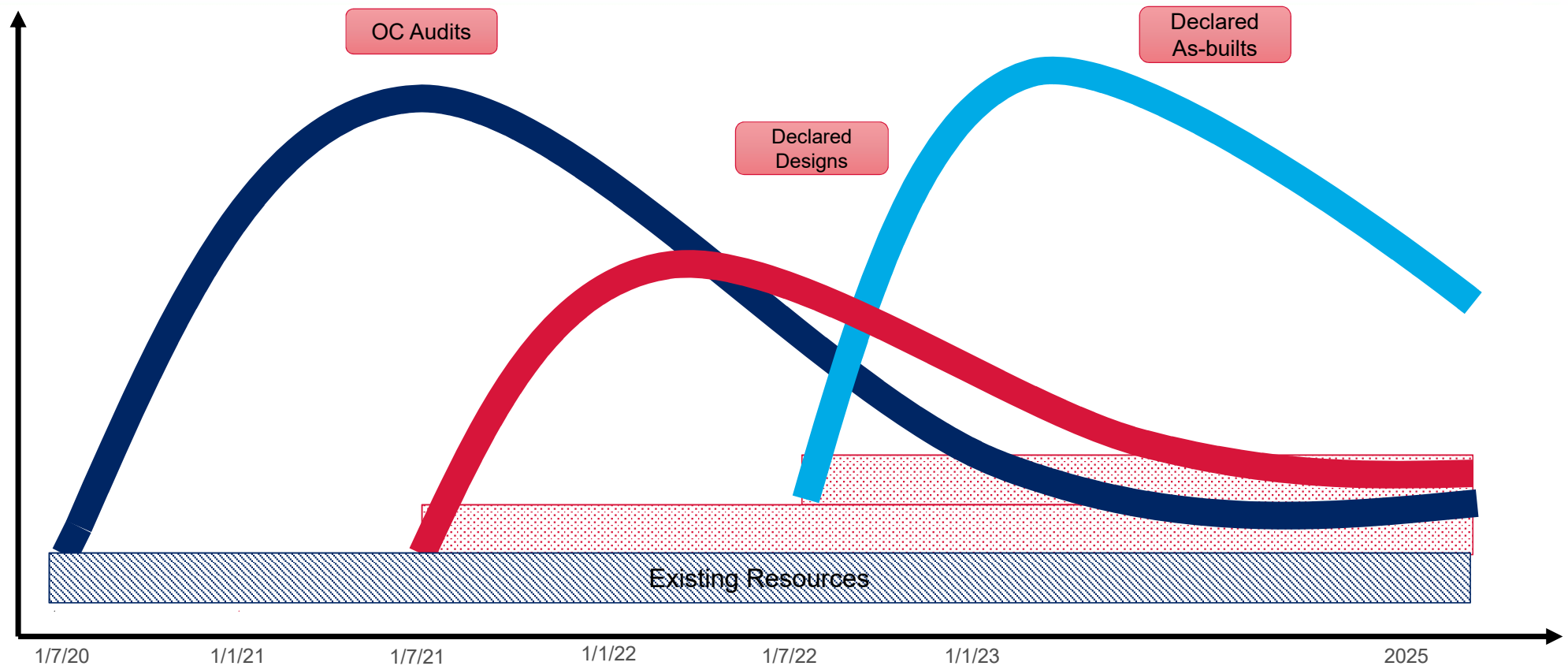


OC Audit

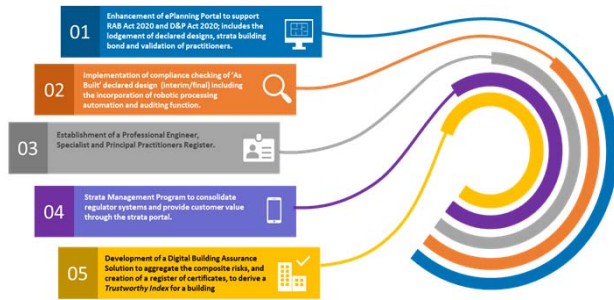


Transition Resources

Boots on the ground – not in an office



Creating a digital core to transform the regulator and the industry....



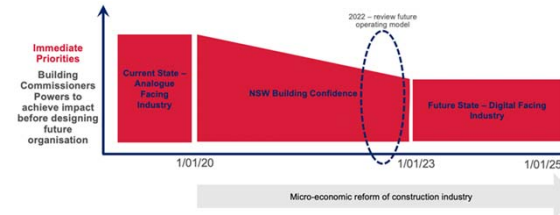
Creating a Digital Core

Taking advantage of emerging technology and innovation



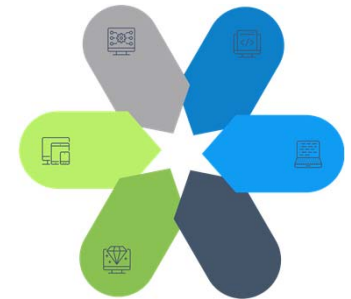
Customer Centric

Single touch point, Tell Us Once, privacy / confidential



More Efficient Delivery of Regulation

Move to a more proactive and impactful regulator



Digital Tools and Data

Delivering new digital capabilities, drive informed decision-making

Construct NSW will help Better Regulation Division to transform into the modern regulator that it wants to be

BRD's Strategic Objectives



"To deliver effective regulation and protection for NSW consumers, workers and businesses"

- ☐ Improved customer experience
- ☐ Reduced regulatory burden
- ☐ Risk based compliance
- ☐ Digital on the inside
- ☐ Data driven
- ☐ Great place to work
- ☐ Strong finances

The Construct NSW Transformation Program

Legislative reform

Ratings information

Education


Contracting

Digital

Research

BRD's regulation of building and construction in 2022

- ✓ A multi-disciplinary agency providing seamless regulatory services across all building licensing, quality and safety issues
- ✓ Enforcing nation-leading laws that requires all class 2 buildings to designed, built and maintained to a high standard
- ✓ Using innovative data analytics in all decision-making to deliver programs that are risk-based, high-impact and resource efficient
- ✓ Using best-practice operational policies and procedures that are consistent across teams
- ✓ Using directive education to embed sustained uplifts in industry capability
- ✓ Employing a modern workforce that is customer-focussed and equipped with the technical skills needed to regulate the sector
- ✓ Highly respected by businesses, communities and consumers



***‘Our collective resolve must be to make
customers feel safe to enter the market asap’***

Thank you

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Agenda

Design and Building Practitioners Act 2020 (D&BP Act)

- Registered practitioners
- Regulated designs
- Declaration regime (including *Residential Apartment Buildings (Compliance and Enforcement Powers) Act 2020 (RAB Act)*)
- Professional Engineering Work
- Duty of care

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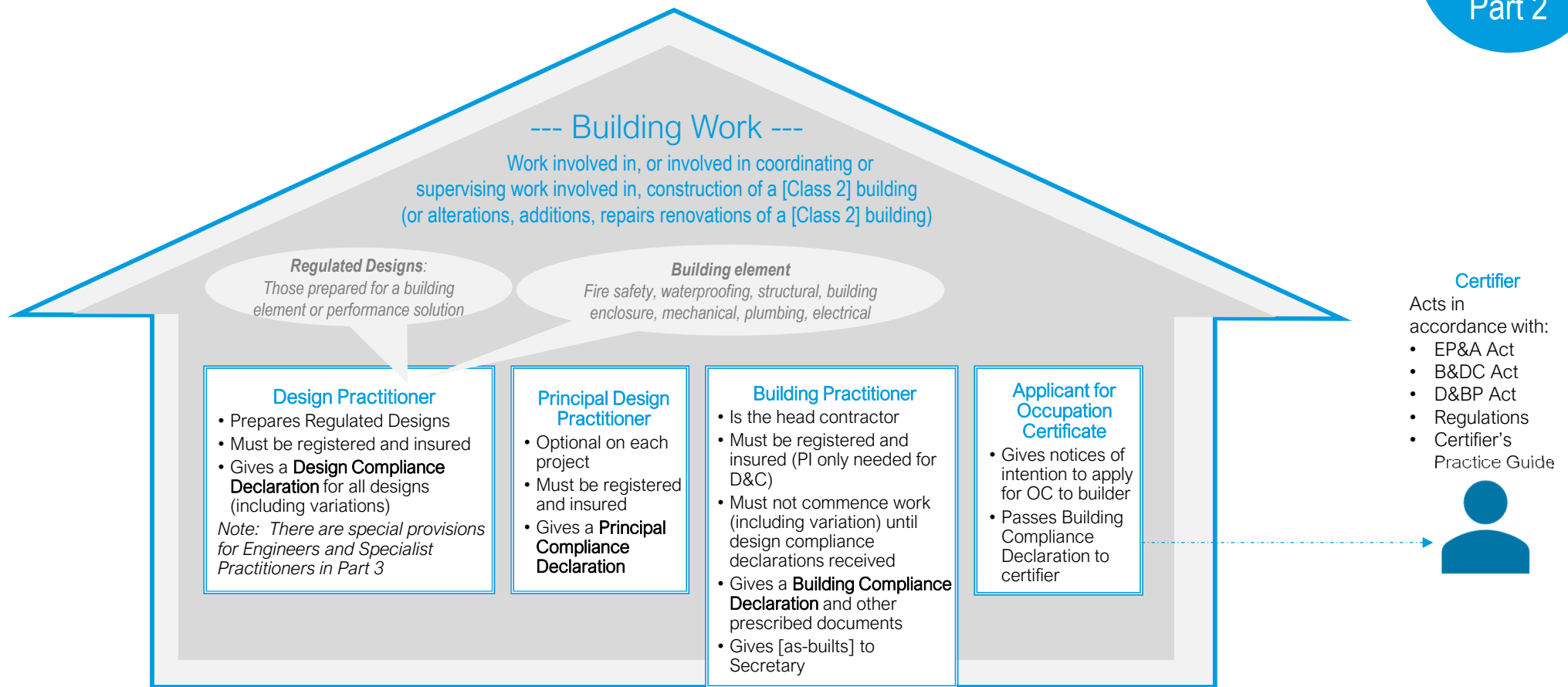
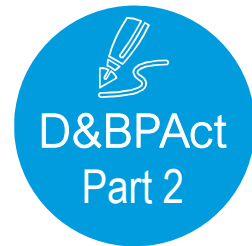
Carrie Metcalfe

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Quick guide – Practitioners and their roles

Part 2 of the D&BP Act – Regulated designs and building work



Please note this diagram is intended for guidance only. You should refer to the D&BP Act for details.

Part 2 of the D&BP Act - Registered practitioners and what they do



Design Practitioners

Prepare
Regulated Designs

Principal Design Practitioners

Coordinate Design
Compliance Declarations

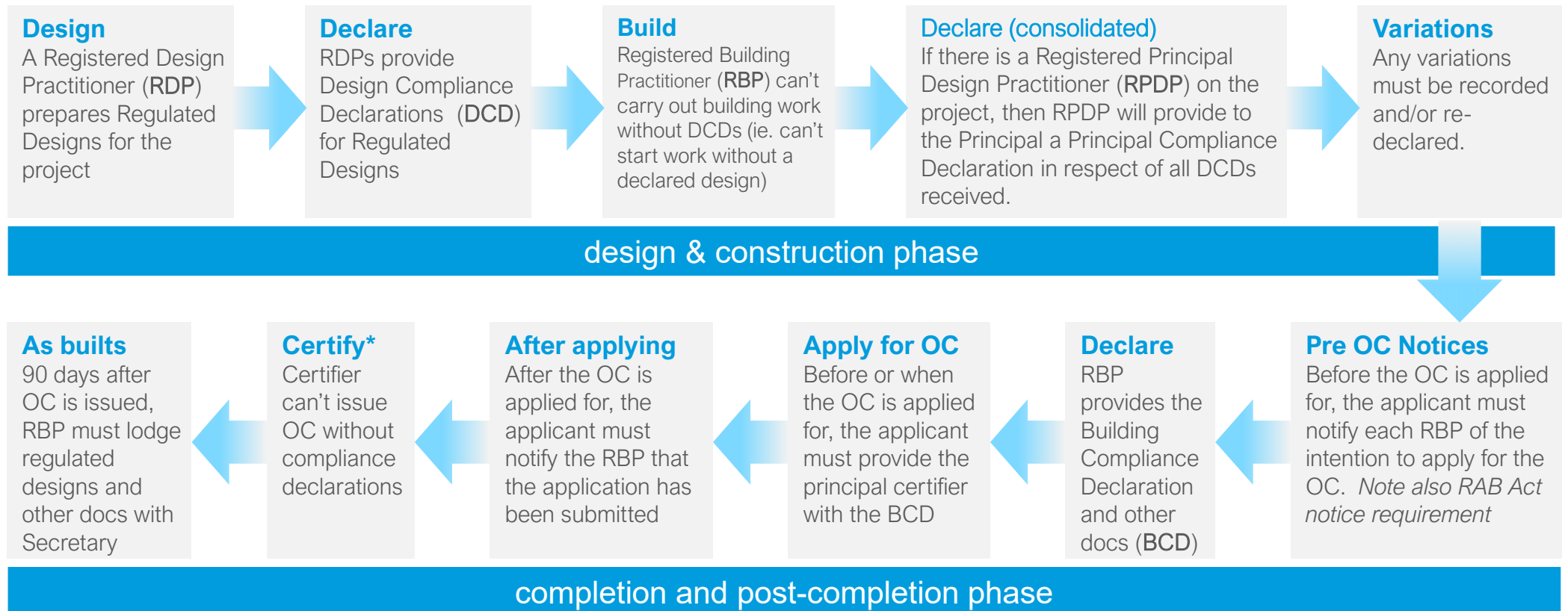
Building Practitioners

A person who agrees under
contract or other arrangement
to do Building Work

Design Compliance Declaration	Declares whether the design complies with the Building Code and other requirements prescribed by Regs, and whether other standards/codes have been applied in preparing the design	▶ Given when Regulated Design is provided and whenever varied
Principal Compliance Declaration	Provides: <ul style="list-style-type: none"> • there is a Design Compliance Declaration provided for each Regulated Design • each Design Compliance Declaration is provided by a Registered Design Practitioner 	▶ Timing is TBC in Regulations
Building Compliance Declaration	Provides, among other things: <ul style="list-style-type: none"> • Building Work is compliant with Building Code • where not compliant, the steps necessary to ensure compliance • whether the relevant compliance declarations have been obtained 	▶ Given before OC is applied for

Part 2 of the D&BP Act

Declaration and notice regime (commencing 1 July 2021)



* Also note impact of RAB Act: OC can be withheld if notice not given, serious defects, or no building bond

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Part 3 and 4 of the D&BP Act – Applicability to Engineers



Professional Engineering Work

prescribed areas:

- structural engineering
- civil engineering
- mechanical engineering
- fire safety engineering
- electrical engineering
- other area prescribed in the Regulations

Not limited to Class 2 Buildings.

Commences 1 July 2021

→ Must not be carried out unless



Person is registered OR
work is done under direct
supervision of registered
person



Registration authorises
particular type of work



Person is adequately
insured (as per Regs)

Duty of care

Owed by a person who
prepares regulated
designs and other designs
for building work:

- duty to exercise
reasonable care to
avoid economic loss
caused by defects
- no contracting out

Already commenced (in respect of
residential building work)

→ Covers [Class 2]
buildings and all
residential building work



Duty is owed to owners
and subsequent owners



Applies retrospectively
where loss became
apparent in last 10 years



D&BP Act – key takeaways for Engineers

Takeaways

- Do you need to be registered?
- Do you meet the qualification requirements?
- Check insurance requirements (when Regulations released)
- Consider terms of consultancy agreements – insurance + deliverables
- Prepare to give design compliance declarations (including for variations)
- Understand duty of care

Timing

- Registration and declaration regime commences July 2021
- For contracts entered into between June 2020 -1 July 2021, regime will apply if the application for CDC or CC was made after date prescribed in Regulations

Other

- Penalties
- Directors duties
- Enforcement/investigation powers



Questions?