



## Clearing up Compliance Confusion for Remedial Building Work in NSW Class 2 Buildings Project

Confusion is rife within the industry regarding ongoing changes to regulations surrounding class 2 buildings. Most remedial work on class 2 buildings now triggers the full regulatory documented pathway demonstrating compliance with the Building Code of Australia (BCA) **in force at the time the construction certificate is issued**, thereby increasing the costs of remediation significantly.

Following the introduction of the *Design and Building Practitioners Act 2020* (NSW) (DPB Act) and its subsequent regulation, the *Design and Building Practitioners Regulation 2021* (NSW) (the Regulation), most common upgrades now trigger the full compliance pathway, leaving little room for minor maintenance to be considered exempt development work.

### Before the DBP Act

Remedial work is a broad term involving repair, upgrades or defect rectification on both existing and new buildings. Previously, remedial work on Class 2 buildings often did not require planning approval as the work was considered 'repair and maintenance', as opposed to a major development. Under older rules where operating design practitioners were not required to be registered in all circumstances, and fewer specific compliance declarations were required; less accountability and significant defects existed.

### New Compliance Framework

The DBP Act and subsequent regulations emerged to ensure that remedial work improves the overall safety and quality of existing buildings to contemporary standards, as opposed to the old "grandfathering" approach. New regulations require a formal design, declaration, and lodgment process for most remedial work regardless of whether a building approval was previously required. Design practitioners must ensure their designs comply with contemporary building codes regardless of the existing construction certificate for the original building works, often resulting in increased works to be undertaken. Building practitioners in turn must ensure that the construction aligns with the compliant designs.

## Impact on the Industry

### 1. Cost and Scope Blowouts:

The requirement for existing older buildings to comply with current standards when considering remedial works often converts a straight-forward repair to an unaffordable and complex venture. Industry critique centers on the 'one-size-fits-all' application of the framework requiring both major structural repair and essential small-scale maintenance to undertake the same compliance pathway. Accordingly, there is a push for proportionality in the regulatory approach.

### 2. Misinterpretation of the narrow regulatory frameworks

Though some development is exempt on account of its minor impact, similar to operations prior to the DBP act, the scope is now narrower. Even if work is considered exempt development under the Codes SEPP, the DBP Act applies for most common building elements, triggering the full DBP compliance regime.

## Practical Scope Blowout Examples:

### 1. Cost Blowout of Essential Small-Scale Maintenance

A simple balcony repair under NCC rules in 2022 cost approximately \$55,000, starkly contrasted with the \$200,000 that may be required when complying with the 2025 regulations. This increase in cost largely accrues from obtaining approvals, insurance, certifier costs, consultant input, and construction required to upgrade building elements. Particularly evident in elements such as waterproofing, requiring modern waterproofing standards that the original building was not designed for. Complex certifications to satisfy current standards may force some owners' corporations to defer essential remedial work if costs are not adequately accounted for.

### 2. Bathroom and Waterproofing Upgrades:

As opposed to previous "like-for-like" repairs, which did not require formal approval, the new compliance framework often turns minor maintenance into major ongoing projects with complex certification and scope of the required work. Often minor essential work such as 'moisture management' reveals further limitations of the existing buildings, requiring major upgrades or complete replacement of bathrooms to meet current BCA standards.

### 3. The impact on Builders

In the case of *The Owners – Strata Plan 80867 v Da Silva* [2024] NSWDC 263, Mr Da Silva, a tiler and waterproofer, was engaged to undertake remedial works on common balcony terraces. Upon commencement of the works, the initial remedial scope had to be broadened to satisfy current building standards and address water ingress, which was not present in the initial inspection. The new framework under the DBP act ensures strict compliance with the current BCA, with liability conferred on the builder practitioner as per their statutory duty of care.

#### 4. Delay issues in meeting the requirements explored in Regional Areas:

Often in regional areas, a limited number of registered practitioners are available to act on a matter, increasing delays and costs of prospective minor renovations complying with the stricter requirements. This was seen with a Dubbo strata building in 2024, requiring a roof replacement, which became a complex project on account of the unavailability of a registered building practitioner. Once skilled labour was secured in Bathurst, the added cost and delays exceeded the initial scope for repairs.

## Conclusion

As the industry calls for reform to avoid scope and cost blow-outs under the new legislation, staying informed and compliant with current regulatory updates is crucial. For practitioners, builders and strata owners the presumption is clear: remedial work for class 2 buildings must comply with the current BCA standards.

## More information

For further details on construction law insights and legal case notes, visit [Construction Legal Insights](#).