

STRATA REMEDIAL UPDATE: EMERGENCY REMEDIAL BUILDING WORKS

The NSW Department of Customer Service has released a *Fact Sheet: Emergency Remedial Building Work*:

<https://www.fairtrading.nsw.gov.au/trades-and-businesses/construction-and-trade-essentials/working-on-class-2-buildings/building-practitioner-obligations/emergency-remedial-building-work>

This Fact Sheet has been prepared as a guideline to assist owners corporations, strata managers and design and building practitioners in respect of remedial emergency building works in existing class 2 buildings.

The ongoing construction reform in NSW is presently focused on class 2 buildings, or buildings with a class 2 part, that is, existing strata buildings. The strata remedial industry has been thrown into turmoil and confusion as a result.

With multiple ‘1-in-a-100-year’ storm events occurring across the densely populated urban areas of Sydney over the past 15 months, the issue of *emergency works* has been a topic at the forefront of discussion.

From 1 July 2021, in addition to imposing obligations on new construction of class 2 buildings, the *Design and Building Practitioners Act 2020 (DBP Act)* also impacts existing strata buildings. If an owners corporation is performing remedial building works which are not ‘exempt’ building works for the purposes of that legislation^[1], a regulated design needs to be prepared by a registered design practitioner before your registered building practitioner undertakes those remedial building works.

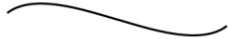
This takes time...and money.

So...what is the process if there are emergency remedial building works required in an existing strata building? There may be an owner or owners whose amenity is impacted, owners or occupiers who may not be able to live in their units, and, the owners corporation may be exposed to potential damages claims if the issue is not fixed in a timely manner.^[2]

How do owners corporations comply with their statutory obligations to maintain and repair common property in a situation where there are urgent works required and there is no time to have a regulated design prepared.

Clarity is here!

If your owners corporation is deemed to be performing *emergency remedial building works* giving rise to a *reasonable excuse*^[3] your building practitioner is exempt from having to engage a registered design practitioner to prepare a regulated design for those works. A registered building practitioner is permitted to proceed to repair



the building element associated with the ‘emergency’, without a regulated design.

However, the question of whether the works are indeed *emergency remedial building works* giving rise to these exemptions for compliance with the DBP Act should be carefully considered using the guidelines and case studies offered in the Fact Sheet and the relevant legislation.

Why do some remedial building works not require a regulated design?

In strata buildings, there are often emergencies where an owners corporation is required to perform immediate works to address an issue that is impacting the building. That is, the issue:

“...*is causing, or is likely to cause, damage to the building and:*

1. *the inability to inhabit or use the building (or part of the building) for its intended purpose, or*
2. *a risk to health or safety, or*
3. *a risk of further damage to the building (or part of the building)...*”; and

is serious in nature”.

If this is the case, you still need to lodge a design compliance declaration on the NSW Planning Portal with that declaration, if applicable, stating that the Building Code of Australia (**BCA**) has not been met in respect of the emergency remedial building works and, giving sufficient detail of the works including photographs and sketches.

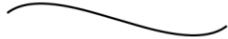
After performing emergency remedial building works, you cannot just walk away from the DBP Act. Once the immediate works are performed, you need to further consider your statutory obligations should the emergency remedial building works not fully resolve the issue. However, this *reasonable excuse* will allow you to get on with the works and avoid the preparation of a regulated design at first instance.

If it is apparent down the track that the works have been successful, no regulated design is required. If they are not, the next time around, a regulated design and full compliance with the DBP Act is required. You cannot keep ‘going back’ to do emergency remedial building works.

Just a tip, if there is time to undertake all steps necessary to comply with the DBP Act before performing the remedial building works, then it is likely that those works are not *immediately required* and will not satisfy the guidelines of being *emergency remedial building works*.

Careful consideration is required as to whether the remedial works being performed in your building are:

- *emergency remedial building works*, giving rise to a *reasonable excuse* and resulting in the works being able to be performed immediately without a regulated design prepared (but the steps noted above being performed); or

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- works that do not meet the criteria for *emergency remedial building works* meaning a regulated design is to be prepared in compliance with the DBP Act (if no exemptions apply).

If there is any doubt, obtain professional advice to avoid any compliance issues arising.

There are other areas of the DBP Act that impact the strata remedial industry and are also causing angst. Further guidelines are coming with ongoing consultation between the strata remedial industry and Government but, in the meantime, this Fact Sheet should provide guidance if you are needing to perform emergency remedial building works.

[1] See clause 13 of the *Design and Building Practitioner Regulations 2021*

[2] Section 106 of the *Strata Schemes Management Act 2015*

[3] Section 19 of the *Design and Building Practitioners Act 2020*