

Summary of Victorian Building Act 1993 requirements for when is a registered *fire safety engineer* required and what a *relevant building surveyor* must, and must not, do.

1. Firstly, a Private Building Surveyor (RBS) must be appointed by an Owner¹ or an application made for a building permit by the Owner (or his agent)² to a Municipal Building Surveyor. This commences the Building Act process.
2. In accepting that appointment, if the RBS is a private building surveyor, then the RBS cannot have prepared the design of the building or, within the prescribed period (12 months), have been employed or engaged by the person or body which prepared the design of the building³. The RBS therefore cannot issue a Building Permit for work which they have designed, or which was designed by a company they work for, or used to work for in the previous 12 months.
3. The application form (Form 1)⁴ requires the Owner (or agent) to include details of building practitioners *'to be engaged in the building work'* or *'who were engaged to prepare documents forming part of the application for the permit'*. The RBS has additional powers to seek that information⁵. This includes all persons with a contractual engagement from the owner to prepare documents, or be engaged in the building work. In my view, any person who is engaged to prepare documents relating to an application for a building permit is part of the *'design'*.
4. Regulation 301 requires *"an application for a building permit must contain sufficient information to show that the building work will comply with the Act and these Regulations"*, so if an Alternative Solution is required as part of an application for a building permit (if DtS compliance is not to be used) then that must form part of the application.
5. The Act requires that *'A person who is not registered in the appropriate category or class under this Part must not take or use any of the following titles: building practitioner or registered building practitioner; or building surveyor; or building inspector; or engineer, if the use of the title relates to the building industry; etc'*⁶. A person therefore cannot contract with an owner to provide engineering services unless a registered engineer. Engineer is not defined in the Act and therefore the common or ordinary meaning will apply.
6. The Building Regulations 2006 (the *'Regulations'*) prescribes classes of engineer, including a class of fire safety engineer⁷.
7. The Building Commission website includes a description of the tasks of a Fire Safety Engineer as *'Designing fire safety systems in buildings, in accordance with the performance requirements of the Building Code of Australia and fire safety management in buildings'*⁸.
8. The BCA defines a *'fire safety system'* as follows; *fire safety system means one or any combination of the methods used in a building to—*
 - (a) *warn people of an emergency; or*
 - (b) *provide for safe evacuation; or*
 - (c) *restrict the spread of fire; or*
 - (d) *extinguish a fire,**and includes both active and passive systems.*

¹ Section 78 of the Act.

² Sections 16-24 of the Act.

³ Section 79 of the Act.

⁴ Regulation 301 of the Regulations.

⁵ Regulation 305(f) of the Regulations.

⁶ Section 176 of the Act.

⁷ Clause 8 of Schedule 7 of the Regulations.

⁸ http://www.buildingcommission.com.au/resources/documents/Engineer_Info_20051.pdf

9. The Regulations define "*fire performance requirement*" as performance requirements BP1.1, DP2, DP3, DP4 or DP6 of Volume One of the BCA (to the extent that it relates to fire safety), CP1, CP2, CP3, CP4, CP5, CP6, CP7, CP8, CP9, DP5, EP1.1, EP1.2, EP1.3, EP1.4, EP1.5, EP1.6, EP2.1 or EP2.2 of Volume One of the BCA; or performance requirement P2.1, P2.3.1, P2.3.2 of Volume Two of the BCA (to the extent that it relates to fire safety for a Class 1b building and a Class 10 building not associated with a Class 1a building). These *fire performance requirements* are required to form part of an *Alternative Solution* which must be prepared by a registered *Fire Safety Engineer*.
10. Regulation 113 requires that a relevant building surveyor must not determine that an *Alternative Solution* (the one required to be submitted with the application for a building permit, see point 4 & 14) complies with a fire performance requirement of the BCA unless the criteria in Reg 113 are met.
11. Therefore, where an *Alternative Solution* is required to be prepared, or a fire safety system is required in a building as a result of compliance with an *Alternative Solution*, that *Alternative Solution* must be by a registered *Fire Safety Engineer* (who is not the RBS or an employee or other related person, see Section 79 of the Act).
12. The Act creates an offence provision if a person holds himself or herself out as being registered under this Part or in a particular category or class of registration; or holds himself or herself out as being qualified to practise as a building practitioner either generally or in a particular category or class of work⁹.
13. The RBS is required to list on the Building Permit '*Details of building practitioners and architects to be engaged in the building work, or who were engaged to prepare documents forming part of the application for this permit*'¹⁰. For example, any person who is engaged by the owner (in a contractual sense) to prepare documents in relation to an application for a building permit is required to be a registered building practitioner and it is the role of the RBS to police this⁶ (see also point 4).
14. The RBS is required to indicate on the Building Permit; details, including relevant performance requirements, of any *Alternative Solution* that was used to determine compliance with the BCA for that project subject to the Building Permit¹¹ (the *Alternative Solution* required to be submitted with the application for a building permit, see point 4).
15. A building permit cannot be issued unless compliance with the Act, Regs and BCA (as relevant) is demonstrated¹².
16. The BCA requires that decisions made under the BCA should be fully documented and copies of all relevant documentation should be retained. Examples of the kind of documentation which should be prepared and retained include¹³: *in cases where an Alternative Solution has been proposed—*
 - (i) *details of the relevant Performance Requirements; and*
 - (ii) *the Assessment Method or methods used to establish compliance with the relevant Performance Requirements; and*
 - (iii) *details of any Expert Judgement relied upon including the extent to which the judgement was relied upon and the qualifications and experience of the expert; and*
 - (iv) *details of any tests or calculations used to determine compliance with the relevant Performance Requirements; and*
 - (v) *details of any Standards or other information which were relied upon.*

⁹ Section 176(1)(c) & (d) of the Act.

¹⁰ Regulation 301 and Form 1 of Schedule 2 of the Regulations.

¹¹ Ditto.

¹² Section 24(1)(a) of the Act.

¹³ The 'Documentation of Decisions' Section in the Introduction to the BCA.

17. The Guide to the BCA and a Building Commission Practice Note¹⁴ includes reference to the International Fire Engineering Guidelines (IFEG's)¹⁵ and any practitioner who does not use the IFEG's would need to have a reason why not, to satisfy the Regulations which require that '*a registered building practitioner must perform his or her work as a building practitioner in a competent manner and to a professional standard*'¹⁶.
18. Obvious examples of agreed professional standards would be the IFEG's and the Society of Fire Safety Code of Practice (SFS CoP). These would also be the standards that the lawyers would look to, and compliance with these would be a greater obligation for a designer, or approval authority, than just compliance with the Act, Regs and BCA.
19. The IFEG'S discuss in detail in several locations the design process, undertaken by Fire Engineers and the approval process, undertaken by the Authority Having Jurisdiction (AHJ). Further text discusses peer review. The IFEG's are clear that Fire Engineers design fire safety systems and numerous references in the document confirm this. The two key regulatory documents referenced in the IFEG's are the 'Fire Engineering Brief' and the 'Fire Engineering Report', which are prepared by a Fire Engineer. The Building Surveyor is clearly indicated as a separate stakeholder in the process.
20. The SFS CoP describes similar process and methodology.
21. The Regulations require the RBS to not '*determine that an alternative solution (the Alternative Solution required to be submitted with the application for a building permit, see point 4) complies with a fire performance requirement of the BCA unless the RBS has specific additional qualifications*'¹⁷. This Regulation includes several process methods for determining compliance, two of which are that the RBS '*relies on a certificate under section 238 of the Act by a fire safety engineer, who did not design the building work*' or '*relies on a certificate under section 238 of the Act by a registered building surveyor, who did not design the building work*'.
22. The approved form under Section 238¹⁸ is a 'Certificate of Compliance-Design' and includes two options, i.e. that the practitioner signing the form indicates whether they '*did or did not prepare the design*'. Regulation 113 requires that this form can only be completed by a practitioner who did not prepare the design. This is because the process is to support the RBS as the independent reviewer of the design documents submitted with the application for a building permit.
23. Other examples of separation of design and approval under the Act include; '*The design of every stormwater drainage system to the point of discharge from an allotment must be approved by the relevant building surveyor*'¹⁹. Clearly a RBS cannot be a designer otherwise they could not complete this statutory function.
24. The Ministers Guideline²⁰ also notifies a RBS that '*In deciding whether to rely on a certificate of compliance in relation to a design by a registered building practitioner in the category of engineer, the relevant building surveyor must have regard to the complexity of the design and may determine that any such certificate be by a registered building practitioner in the category of engineer, other than the one who prepared the design.*' This again confirms that for 'complex designs' an independent engineer might need to review the original engineers design.
25. Building Commission Practice Note 29¹⁴ also requires that '*the use of appropriate assessment methods must be undertaken by the designer (or person proposing the alternative solution) to establish compliance of the alternative solution with the relevant performance requirement. The RBS' are reminded that they can also use an assessment method to check the alternative solution, but that section 79 of the Act prohibits the RBS from designing the building work.*

¹⁴ Practice Note 2006-29 first issued 1997 and re-issued June 2006.

¹⁵ The guide to clause A0.8 of the BCA, in the Guide to the BCA.

¹⁶ Regulation 1502 of the Regulations.

¹⁷ Regulation 113 of the Regulations.

¹⁸ Regulations 1505-1507 of the Regulations.

¹⁹ Regulation 610 of the Regulations.

²⁰ Ministers Guideline MG/04 first issued 1995 and re-issued June 2005.

Where an approval is based on use of an alternative solution, this means that the use of an assessment method by the RBS must not be the sole method of determining compliance.'

26. The Practice Note goes on to state *'the application for a building permit must include one or more appropriate assessment methods, to substantiate the use of that alternative solution (the Alternative Solution required to be submitted with the application for a building permit, see point 4). It is the responsibility of a building owner (or agent) to satisfy the RBS that the building and all elements within the building achieve the performance requirements of the BCA.'* This is clearly a responsibility of the owner (through the owners agents who are preparing documents forming part of the application for the permit), to present this information (as a completed package including any *Alternative Solution*) to the RBS for review and approval.

Summary:

- a) In relation to when is a fire safety engineer required, the answer will be whenever the designers decide to propose a fire safety *Alternative Solution*, or when the RBS decides that the proposed Alternative Solution put forward by the design team requires independent engineering review.
- b) In relation to whether a RBS can design any part of a building, including preparing or proposing an Alternative solution, the answer is no.
- c) In relation to whether a building surveyor (who is not the RBS) can design any part of a building, the answer will be determined by what they design however they cannot do Architecture, Engineering or Drafting as these are protected titles under the Act, or the Architects Act.

For example, in considering what is 'engineering' this will be determined by the relevant professional standards, industry accepted practice and any documents prepared (a 'fire engineering brief' or 'fire engineering report' under the IFEG's is an obvious example).

A building surveyor (or any other person) might be able to prepare a disabled access design, soil investigation report, or an energy efficiency design as there are currently no specific practitioner registration categories or classes in these areas. As stated before, any activities are also subject to the provision that *'a registered building practitioner must perform his or her work as a building practitioner in a competent manner and to a professional standard'*. If the work is used to support an application for a building or occupancy permit then it will be subject to this provision. The RBS role is to ensure these provisions are met at application review stage.