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OPP--OPPOSITION

LEGISLATIVE COUNCIL

Design and Building Practitioners Bill 2019

Second print

Proposed amendments

- No. 1 **Registration of engineers and specialist practitioners**
Page 2, clause 3(1), definition of *practitioner*, line 29. Insert “, professional engineer, specialist practitioner” after “principal design practitioner”.
- No. 2 **Registration of engineers and specialist practitioners**
Page 2, clause 3(1). Insert after line 35—
professional engineer means a person who carries out professional engineering work in a prescribed area of engineering within the meaning of section 29B.
professional engineering work—see section 29A.
- No. 3 **Registration of engineers and specialist practitioners**
Page 2, clause 3(1), definition of *register*, line 36. Omit “design practitioner, principal design practitioner or building practitioner”. Insert instead “registered practitioner”.
- No. 4 **Registration of engineers and specialist practitioners**
Page 2, clause 3(1), definition of *registered practitioner*, line 44. Insert “, registered professional engineer, registered specialist practitioner” after “design practitioner”.
- No. 5 **Registration of engineers and specialist practitioners**
Page 3, clause 3(1). Insert after line 3—
registered professional engineer means a person who is registered as a professional engineer under this Act or recognised as a professional engineer under this Act.
registered specialist practitioner means a person who is registered as a specialist practitioner under this Act or recognised as a specialist practitioner under this Act.
- No. 6 **Registration of engineers and specialist practitioners**
Page 3, clause 3(1), lines 4 and 5. Omit “registered design practitioner, principal design practitioner or building practitioner”. Insert instead “registered practitioner”.
- No. 7 **Registration of engineers and specialist practitioners**
Page 3, clause 3(1). Insert after line 8—

specialist practitioner means a person who carries out specialist work.
specialist work—see section 29D.

No. 8 **Responsibility of building practitioner**

Page 10, clause 19(2). Insert after line 40—

- (a1) the registered design practitioner is given (or otherwise has access to in the manner prescribed by the regulations) any of the following that are relevant to the provision, by the registered design practitioner, of a design compliance declaration for the varied design—
 - (i) regulated designs,
 - (ii) design compliance declarations,
 - (iii) principal compliance declarations, and

No. 9 **Responsibility of building practitioner**

Page 11, clause 19(3). Insert after line 6—

- (a1) the registered design practitioner is given (or otherwise has access to in the manner prescribed by the regulations) any of the following that are relevant to the provision, by the registered design practitioner, of a design compliance declaration for the design—
 - (i) regulated designs,
 - (ii) design compliance declarations,
 - (iii) principal compliance declarations, and

No. 10 **Compliance with Building Code of Australia**

Page 13, clause 24. Insert after line 12—

- (3A) In determining whether a variation to a regulated design or building work complies with the *Building Code of Australia* for the purposes of this Act, the variation must not be considered in isolation but consideration must also be given to the effect of the variation on other aspects of the building work or other regulated designs for the building work.

No. 11 **Registration of engineers and specialist practitioners**

Page 14. Insert after line 40—

Part 2A Engineering work and specialist work

Division 1 Professional engineering work

29A Professional engineering work

- (1) For the purposes of this Act, *professional engineering work* means engineering work that requires, or is based on, the application of engineering principles and data to—
 - (a) a design, or
 - (b) a construction, production, operation or maintenance activity, relating to engineering.
- (2) However, engineering work is not *professional engineering work* if—
 - (a) the work is only provided in accordance with a document that states the procedure or criteria for carrying out the work and the work does not require the application of advanced scientifically based calculations, or
 - (b) the engineering work is prescribed by the regulations as not being professional engineering work.

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- (3) For the purposes of this section, *engineering work* includes engineering services provided by a person.

29B Professional engineering work only carried out by professional engineers

- (1) A person must not carry out professional engineering work in a prescribed area of engineering unless—
- (a) the person is a registered professional engineer and the person's registration authorises the person to carry out the professional engineering work, or
 - (b) the person carries out the professional engineering work under the direct supervision of a person referred to in paragraph (a), or
 - (c) the person is authorised by the regulations to carry out the professional engineering work.

Maximum penalty—1,500 penalty units (in the case of a body corporate) or 500 penalty units (in any other case).

- (2) If a person carries out professional engineering work in contravention of subsection (1)—
- (a) no monetary or other consideration is payable for the carrying out of the professional engineering work, regardless of any contract or arrangement, and
 - (b) an amount paid for the carrying out of the professional engineering work is recoverable as a debt in a court of competent jurisdiction.

- (3) In this section—

prescribed area of engineering means the following—

- (a) structural engineering,
- (b) civil engineering,
- (c) mechanical engineering,
- (d) fire safety engineering,
- (e) electrical engineering,
- (f) an area of engineering prescribed by the regulations.

29C Registered professional engineers to be indemnified

- (1) A registered professional engineer must not—
- (a) carry out professional engineering work, or
 - (b) hold out that the engineer is adequately insured with respect to the work, unless the engineer is adequately insured with respect to the work.

Maximum penalty—300 penalty units (in the case of a body corporate) or 100 penalty units (in any other case).

- (2) For the purposes of this section, a registered professional engineer is *adequately insured* with respect to work if the engineer—
- (a) is indemnified by insurance that complies with the regulations against any liability to which the engineer may become subject as a result of carrying out the work, or
 - (b) is part of some other arrangement approved by the regulations that provides indemnity against the liability.
- (3) It is a condition of registration that a registered professional engineer must provide to the Secretary, in the time specified by the Secretary, information that the Secretary may require to satisfy the Secretary that the engineer is adequately insured in accordance with this section.

Division 2 Specialist work

29D Specialist work

For the purposes of this Act, *specialist work* means—

- (a) the design, construction, installation or maintenance of a building element, or
- (b) other work, involving a building element, that is prescribed by the regulations,

but does not include work prescribed by the regulations as not being specialist work.

29E Specialist work only carried out by registered specialist practitioner

A person must not carry out specialist work unless—

- (a) the person is a registered specialist practitioner and the person's registration authorises the person to carry out the specialist work, or
- (b) the person is authorised by the regulations to carry out the specialist work.

Maximum penalty—1,500 penalty units (in the case of a body corporate) or 500 penalty units (in any other case).

No. 12 Requirements for registration

Page 19, clause 41(2), line 1. Insert "registration or recognition by professional bodies," after "qualifications,".

No. 13 Registration of engineers and specialist practitioners

Page 19, clause 44(1), line 17. Insert ", professional engineering work or specialist work" after "building work".

No. 14 Conditions of registration for registered practitioners

Page 19, clause 44. Insert after line 19—

- (1A) The regulations may impose a condition of registration that a registered practitioner must comply with a code of practice prescribed by the regulations.

No. 15 Conditions of registration for registered practitioners

Page 19, clause 44. Insert before line 20—

- (1B) The regulations may impose a condition of registration that a registered practitioner must be registered or recognised by a professional body or a professional body belonging to a class of professional bodies.

No. 16 Registration of engineers and specialist practitioners

Page 20, clause 48(2)(a), lines 29–31. Omit all words on those lines. Insert instead—

- (a) the recognition of persons as registered practitioners who—
 - (i) hold designated qualifications, or
 - (ii) are registered or recognised as practitioners by a professional body or a professional body belonging to a class of professional bodies, or
 - (iii) are registered or recognised as practitioners under a law of this State or another State or a Territory or the Commonwealth,
- (a1) the requirements relating to the registration or recognition processes of professional bodies that register or recognise practitioners including the following—
 - (i) how qualifications and competencies are to be assessed,

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- (ii) the time in which a decision on registration or recognition must be made,
 - (iii) the procedures to be used to monitor and improve the registration or recognition processes,
 - (iv) the maximum fees that may be charged,
 - (v) the requirements relating to continuing professional development,
 - (vi) audit requirements,
- (a2) the financial and other facilities that a professional body must have and other requirements that must be met before a professional body is able to register or recognise practitioners,

No. 17 **Registration of engineers and specialist practitioners**

Page 20, Part 4, Division 3. Insert after line 37—

48A Recognition of professional bodies for engineers

- (1) The recognition of a person as a registered professional engineer because the person is registered or recognised as a practitioner by a professional body of engineers may occur only if the professional body of engineers is recognised by the Secretary.
- (2) The Secretary may recognise a professional body of engineers only if the Secretary is satisfied that—
 - (a) the professional body's recognition or registration scheme—
 - (i) adequately provides for the assessment of qualifications and competencies of professional engineers in an area of engineering, and
 - (ii) is consistent with national and international standards for the recognition of professional engineers, and
 - (iii) has fees that are reasonable having regard to the scope of the services being offered, and
 - (iv) includes adequate continuing professional development requirements for professional engineers and an effective audit program to ensure continuing registration requirements are met, and
 - (v) meets the requirements, if any, prescribed by the regulations, and
 - (b) the professional body has—
 - (i) adequate procedures for monitoring and improving the assessment process carried out under the scheme, and
 - (ii) the financial capacity and facilities to conduct assessments of qualifications and competencies, and
 - (iii) a proven capacity to undertake independent and authoritative assessments in a timely manner.

No. 18 **Registration of engineers and specialist practitioners**

Page 24, clause 57(a), line 6. Insert “, professional engineering work or specialist work” after “building work”.

No. 19 **Registration of engineers and specialist practitioners**

Page 24, clause 57(c)(i), line 17. Insert “, professional engineering work or specialist work” after “building work”.

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- No. 20 **Registration of engineers and specialist practitioners**
Page 24, clause 57(d), line 25. Insert “, professional engineering work or specialist work” after “building work”.
- No. 21 **Registration of engineers and specialist practitioners**
Page 24, clause 57(f), line 31. Insert “, professional engineering work or specialist work” after “building work”.
- No. 22 **Registration of engineers and specialist practitioners**
Page 25, clause 60(b), line 41. Insert “, professional engineering work or specialist work” after “building work”.
- No. 23 **Registration of engineers and specialist practitioners**
Page 32, clause 81, line 6. Insert “, professional engineering work or specialist work” after “building work”.
- No. 24 **Registration of engineers and specialist practitioners**
Page 32, clause 82(1) and (2), lines 11–21. Omit all words on those lines. Insert instead—
- (1) The Secretary may, by order (a *stop work order*) in writing given to either or both of the following persons, order the person to ensure that building work, professional engineering work or specialist work stops—
 - (a) a person carrying out the work,
 - (b) the owner of the land on which the work is being carried out.
 - (2) The Secretary may give a stop work order only if the Secretary is of the opinion that—
 - (a) the work is, or is likely to be, carried out in contravention of this Act, and
 - (b) the contravention could result in significant harm or loss to the public or occupiers or potential occupiers of the building to which the work relates or significant damage to property.
- (2A) A stop work order takes effect on the day it is given to the person who is the subject of the order or on a later day specified in the order.
- No. 25 **Registration of engineers and specialist practitioners**
Page 32, clause 82(4), lines 23 and 24. Omit “a building practitioner or the owner of land”. Insert instead “the person”.
- No. 26 **Registration of engineers and specialist practitioners**
Page 33, clause 85(1)(b), line 17. Insert “, professional engineering work or specialist work” after “building work”.
- No. 27 **Registration of engineers and specialist practitioners**
Page 36, clause 91(1), lines 3–6. Omit all words on those lines. Insert instead—
- (1) The Secretary is to maintain a register of registered practitioners that contains the information prescribed by the regulations.
 - (1A) Different registers may be maintained under this section for different types of registered practitioners.
- No. 28 **Registration of engineers and specialist practitioners**
Page 36, clause 91(3), line 9. Omit “particulars”. Insert instead “information”.
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- No. 29 **Registration of engineers and specialist practitioners**
Page 38, clause 97(1)(b), line 23. Insert “, professional engineering work or specialist work” after “building work”.
- No. 30 **Registration of engineers and specialist practitioners**
Page 40, clause 100(2)(d), line 11. Insert “, professional engineering work or specialist work” after “building work”.
- No. 31 **Registration of engineers and specialist practitioners**
Long title. Insert “, professional engineers, specialist practitioners” after “principal design practitioners”.