

**Submission  
No 44**

## **PROFESSIONAL ENGINEERS REGISTRATION BILL 2019**

**Organisation:** The Law Society of NSW

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Our ref: Prop:EPD:RHgl1818188

29 January 2020

Mr Alex Greenwich MP  
Chair  
Legislative Assembly Committee on Environment and Planning  
Parliament House, Macquarie Street,  
SYDNEY NSW 2000

Dear Chair,

**Inquiry into Professional Engineers Registration Bill 2019**

The Law Society of NSW appreciates the opportunity to comment in relation to the Inquiry into the Professional Engineers Registration Bill 2019 ("Bill"). The Law Society's Property Law and Environmental Planning and Development Committees have contributed to this submission.

Generally, we support the establishment of a scheme for the registration and regulation of professional engineers. Our comments below largely relate to the way in which the proposed Board of Professional Engineers ("Board"), as constituted by the Bill, will operate.

**1. Clause 53**

The Board has discretion, under clause 53, to request the engineer to show cause why the Board should not commence an investigation. However, we consider that, except in compelling circumstances, such a request should be mandatory. We suggest this could save the time and expense involved in unwarranted investigations.

In our view the only exception to this requirement should be where notifying the engineer might seriously prejudice the investigation or place a complainant or another person at risk of harassment or intimidation, mirroring the provisions of clause 56(3) of the Bill.

**2. Clause 57**

We suggest that it would be appropriate to expressly stipulate in clause 57 that any person appointed by the Board to assist in the investigation must be independent and that the Board will consider any potential conflicts of interest when making such appointments.

The Board should be obliged to provide a copy of any report upon which they rely to the engineer, to inform any response to it.

### **3. Clauses 62 and 63**

Clauses 62 and 63 should be amended to require the Board to give the report to the engineer, whether a disciplinary action is undertaken or not, except in exceptional circumstances. Provision of the report is especially important to allow the engineer to understand the technical basis for the decision before responding to a notice to show cause under clause 63. In our view, procedural fairness and due process necessitate the provision of the report.

### **4. Clause 64(c)**

We suggest adding the words "or a foreign country" after "Territory". This is consistent with the provisions of paragraphs (h) and (i) of this clause.

### **5. Clause 67**

We note that the Board may publish decisions under clause 67 of the Bill. We understand that in Queensland every adverse finding is published. We support the publication of all such findings, subject to the right of appeal mentioned below.

### **6. Clause 101**

Clause 101 essentially enables the making of regulations to provide for administrative review of decisions made under the *Administrative Decisions Review Act 1997* by the NSW Civil and Administrative Tribunal. This matter should not be left to regulations and should, in our view, be dealt with in the Bill itself. Decisions made under this legislation, particularly decisions to remove, cancel, suspend, caution, reprimand engineers (clauses 62(2) and 64) must be appellable and the appeal mechanism must be established as part of the initial framework.

### **7. Professional Indemnity Insurance**

We consider that any registration system, in order to be effective, must be complemented by a mandatory professional insurance regime. Provision of evidence of the currency of such insurance for the period of registration should be a condition of eligibility for registration.

Any questions in relation to this submission should be directed to Gabrielle Lea, Policy Lawyer on [REDACTED] or email: [REDACTED]

Yours faithfully,

[REDACTED]

Richard Harvey  
**President**