

**Submission  
No 47**

## **PROFESSIONAL ENGINEERS REGISTRATION BILL 2019**

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**Date Received:** 30 January 2020



# Submission to the Professional Engineers Registration Bill Inquiry

by

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I make the following submission to the Legislative Assembly's Environment and Planning Committee Inquiry into my Bill, the Professional Engineers Registration Bill 2019.

I note the Terms of Reference of the Inquiry:

That the Legislative Assembly Committee on Environment and Planning conduct an inquiry into the Professional Engineers Registration Bill 2019, including:

1. The most appropriate way to regulate professional engineers in the building and construction industry.
2. How engineers and other building industry professions are regulated and monitored, and proposals for reform under the Bill and consideration of alternate proposals.
3. Any other related matter.

[1 - The most appropriate way to regulate professional engineers in the building and construction industry.](#)

It will not surprise the Inquiry that I remain committed to a legislative instrument at the most appropriate way to regulate professional engineers in the building and construction industry.

I was pleased to introduce the Professional Engineers Registration Bill 2019 as a Private Member's Bill to the NSW Legislative Assembly.

The Bill provides for the registration of professional engineers and sets up the parameters for a registration scheme and professional engineering board.

The outcomes this Bill will produce align with people's expectations, it aligns our State with other States and it helps the industry and the Government to establish checks and balances for all engineering work to ensure that disastrous events like those at Opal Tower and Mascot Towers never occur again.

Those checks and balances will ensure that engineers practising in New South Wales are appropriately qualified. Fundamentally, there will be a comprehensive system to ensure that anything designed by engineers in our State is of the best standard it can be, which meets community expectations.

The Bill is the result of Labor's extensive work with stakeholders in the industry and was a commitment we made to the sector at the last State election. In fact, during the election campaign the Liberal-Nationals Government also committed to establishing an engineering registration scheme.

Matt Kean, the former Minister for Innovation and Better Regulation, said in a media release of 22 February 2019 that "the biggest recommendation" in the Opal Tower report was "about registering engineers". He went on to say, "We have already agreed to that."

It's therefore mystifying that instead of supporting the Bill in order to fulfil the promise it made in February this year, the Government have referred this Bill to a Committee process and delayed the positive outcomes it offers.

Most importantly, the industry needs this Bill to restore consumer confidence in our building and construction sector and in all areas of building design, including bridges, roads and tunnels.

Engineers Australia has repeatedly called on the Government to provide the sector with a robust registration scheme to ensure that unqualified engineers are not practising in our State.

We rely on engineers to ensure that our buildings are safe, to ensure that our bridges can carry heavy loads and to ensure that public infrastructure, such as tunnels, roads and government buildings like schools and hospitals, stands the test of time.

In Engineers Australia's poll, 88 per cent of Australians said that engineers should be registered. In New South Wales that figure was even higher, at 91 per cent.

It is clear that this is what our community wants and it is our role as legislators to ensure the laws of this Parliament meet community expectations and solve existing problems in our State that are not otherwise captured by current legislation. The comprehensive scheme to register engineers proposed in the bill clearly passes the pub test.

Engineers Australia is frank about the impact of community concern on their industry

They have said:

*It is unacceptable that virtually anyone in NSW will still be able to call themselves an engineer even if they have no relevant education or experience, and no commitment to maintain competency. This contrasts with other professionals like architects, doctors and lawyers, who all must be registered before legally providing services.*

*Without regulation of professional engineers, public confidence will remain broken, leaving innocent people and the economy as victims.*

The Government has introduced the Design and Building Practitioners Bill 2019, but this is inadequate.

That Bill only requires the registration of the few select class 2 engineers who work on the construction of residential buildings. This does not include engineers who work on commercial buildings, bridges, tunnels, transport infrastructure or schools and hospitals.

Just as we would require doctors or architects to register, have degrees and complete continuing professional development, we should expect a high standard from our engineers as well. I point to Queensland for an example of a robust and comprehensive Act.

## 2 - How engineers and other building industry professions are regulated and monitored, and proposals for reform under the Bill and consideration of alternate proposals.

In respect of the legislative arrangements in force in Queensland, Engineers Australia have said:

*Engineers Australia's position is that we support New South Wales introducing legislation which is the same, or similar, to laws in Queensland.*

There, comprehensive registration of engineers is in place, under a model which has proven to be highly successful in maintaining professional standards for engineers and public confidence in the building sector, as well as engineers more broadly.

Furthermore, the Victorian Parliament recently voted for its own engineering registration legislation, the Victorian Professional Engineers Registration Act 2019.

The Victorian Government said of its scheme that:

*The comprehensive scheme recognises the pivotal role engineers have in ensuring public safety in a wide range of areas, including complex infrastructure projects, and promote continuing professional development for practitioners.*

Professionals Australia, the association representing engineers in the workplace, is also supportive of a comprehensive registration scheme. Those organisations have seen how comprehensive registration schemes have worked in other States. They know that this will lift professional standards for engineers and ensure that engineering work is of the highest quality.

There is consensus moving forward. Industry groups are in favour of it. Engineers are in favour of it. Consumers—regular people buying houses, using public toilets, driving on newly constructed roads, working in new commercial office buildings—are in favour of it. In fact, many would be flabbergasted that engineers do not presently have to be registered in this state.

## 3 - Any other related matter.

I provide the below commentary about certain aspects of the Bill to assist the Inquiry in understanding the scope and objectives of the Bill.

The Bill defines a professional engineer and professional engineering service in clause 3 (1) as:

**professional engineer** means an individual registered under this Act as a practising professional engineer or non-practising professional engineer.

**professional engineering service** means an engineering service that requires, or is based on, the application of engineering principles and data to a design, or to a construction, production, operation or maintenance activity,

relating to engineering, and does not include an engineering service that is provided only in accordance with a document that states procedures or criteria—

- a. for carrying out a design, or a construction, production, operation or maintenance activity, relating to engineering, and
- b. the application of which, to the carrying out of the design, or the construction, production, operation or maintenance activity, does not require advanced scientifically based calculations.

The Bill then describes the objects of the proposed Act:

- a) to protect the public by ensuring professional engineering services are provided by a professional engineer in a professional and competent way, and
- b) to maintain public confidence in the standard of services provided by professional engineers, and
- c) to uphold the standards of practice of professional engineers, and
- d) to provide mechanisms to monitor and enforce compliance with this Act.

Part 2 prescribes the registration of professional engineers. Clause 6 (1) prescribes the areas of engineering, stating that the following are considered areas of engineering for the purposes of this bill:

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

This is important as it will capture a wide range of engineering professions, not just engineers that work on class 2 buildings. That is a critical point. Clause 7 prescribes that professional engineering services require registration. This means that persons cannot falsely represent themselves as an engineer and it also prescribes penalties for those who do—an important measure needed to maintain consumer confidence. Division 2 prescribes the application for registration. Clause 9 describes the application process for registration. Clause 10 describes the eligibility for registration, which will be defined in the regulations or assessment scheme. Clause 11 describes the fitness to practise as a professional engineer, including provisions for ensuring engineers who have had their registration cancelled or suspended in another jurisdiction are thoroughly assessed.

Division 6, "Disclosure by professional engineers", outlines the obligations of engineers, including obligations to notify the board of particular matters. Division 7 contains some miscellaneous matters, including identifying the criminal history of applicants, inquiries about fitness to practise and the refunding of fees. Part 3, "Board of Professional Engineers", describes the function of the board and register, who will oversee the registration and assessment schemes for engineers. Part 4 is the code of practice. It prescribes the board's role to develop the code of practice within nine months of the commencement of the part, the tabling of the code, inspection of the

code and the notice of approval or amendment of the code. It also outlines the use of the code in disciplinary proceedings.

Part 5 covers complaints and investigations. Division 2 outlines complaints about conduct and how complaints may be made, the collection of information for complaints—including statutory declaration—and the rejection and withdrawal of complaints. Division 3, "Investigations", outlines the investigation of a professional engineer's conduct, investigation of compliance with the Act, timing of investigations, notice of an investigation and its processes, and the authority for the board to engage persons to help in investigations. Division 5 outlines the action following investigation. This includes the board's decision, notice to show cause and the grounds for suspension or cancellation of a professional engineer's registration. It also describes the procedure for suspension or cancellation, notice of result of investigation and the process for publishing certain decisions about professional engineers after investigations.

Division 6 provides for action following an investigation of persons other than a professional engineer. Part 6, division 1, "Appointment of authorised officers", describes the appointment of authorised officers, their scope of authority, information-gathering powers and recording of evidence by authorised officers. Authorised officers also have the power to enter premises and on premises can examine and inspect, take samples, take photographs and direct persons to produce records, among other powers. This is crucial to ensure the scheme is robust and people can remain confident that there are adequate checks and balances in place. This sort of transparency is absolutely necessary. Persons who fail to comply with those directions will face severe penalties.

Part 7, "Assessment entities and schemes", describes the assessment schemes that will assess professional engineers. This includes detailed instructions on the application, approval, renewal and cancellation of the assessment schemes by the board. This is in line with the way in which assessment schemes already operate in other States. Part 8 contains miscellaneous provisions. It outlines processes on warning notices, the NSW Civil and Administrative Tribunal, personal liability, regulations and so forth. Schedule 2 to the bill describes the constitution and procedure of the board.

#### 4 – Conclusion

The Bill works to mirror existing legislation in Queensland and forthcoming schemes in Victoria so as to make it as practicable as possible for engineers to practise across States and to provide assurance to engineers and engineering firms that there is consistency on how they operate across this country.

I extend my thanks to those organisations whom I consulted when developing this Bill—in particular, Gordon Brock and his staff from Professionals Australia and Jonathan Russell and staff from Engineers Australia. I also thank my counterpart in the other place, the Hon. Adam Searle, who has worked on this Bill with me, and other Labor colleagues who have provided their input.

I commend the Bill and its outcomes to the Committee.