Submission No 25

INQUIRY INTO FURTHER INQUIRY INTO THE REGULATION OF BUILDING STANDARDS

Organisation: Consult Australia

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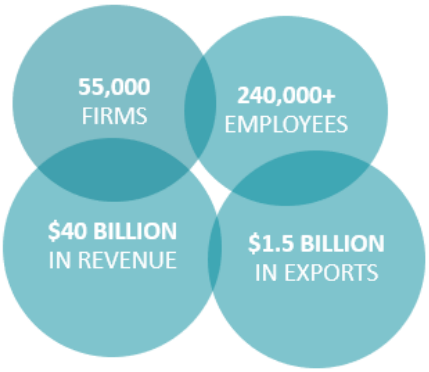
CONSULT AUSTRALIA

FURTHER INQUIRY INTO THE REGULATION OF BUILDING STANDARDS

SUBMISSION TO THE PUBLIC ACCOUNTABILITY COMMITTEE (NSW)

AUGUST 2021

ABOUT US



Consult Australia is the industry association representing consulting businesses in design, advisory and engineering, an industry comprised of over 55,000 businesses across Australia. This includes some of Australia's top 500 companies and many small businesses (97%). Our members provide solutions for individual consumers through to major companies in the private sector and across all tiers of government. Our industry is a job creator for the Australian economy, directly employing 240,000 people. The services we provide unlock many more jobs across the construction industry and the broader community.

Our members include:

A full membership list is available at: https://www.consultaustralia.com.au/home/about-us/members

EXECUTIVE SUMMARY

Consult Australia welcomes the opportunity to make a submission to the NSW Parliamentary Accountability Committee on the regulation of building standards in NSW and particularly the implementation of the *Design and Building Practitioners Act 2020* and the Design and Building Practitioners Regulation 2021.

We note that certain aspects of the Act came into force in 2020 (such as the statutory duty of care) while other aspects came into force on 1 July 2021 (including the registration scheme and requirements for regulated designs and compliance declarations). Naturally, our comments on the implementation of the latest requirements will be limited, given how recent that was.

We reiterate our commitment to and recognition of the importance of appropriate and proportionate regulation that can deliver the policy outcomes of better building compliance and increased consumer confidence for NSW. Consult Australia has always advocated for a legislative scheme that provides certainty, consistency, and a consideration of the commercial pressures facing the market.

Right now, the key pressures faced by our members are capacity constraints and the state of the professional indemnity (PI) insurance market. These issues were flagged in 2019 during development of the Act, in 2020 during development of the regulations and the issues remain in 2021. Consult Australia's most recent Industry Health Check Pulse Survey of April 2021 demonstrates that:

- around 90% of businesses have experienced significant premium increases to their PI insurance, with 11% even reporting that they have experienced increases of over 100% in the last 12 months
- around 56% of businesses are concerned about pressures on workforce capacity to deliver the expected volume of work in the market with capacity constraints in the design and building industry, and the availability of diverse skills within the Australian market.[1]

In a buoyant market of projects (from both public and private sector clients) businesses are looking for accessibility, affordability, and efficiency. Therefore, we urge the Parliamentary Accountability Committee to recommend changes to the Act and the Regulation to help de-risk the insurance market and remove the unnecessary financial and administrative burdens on industry. Our proposed solutions are to:

- amend the statutory of care to avoid indeterminacy, remove retrospectivity, protect the availability of proportionate liability and to focus on the obligations imposed and parties regulated by the Act to ensure adequate consumer protection
- remove insurance obligations from the Act and the Regulation
- streamline the legislation to provide clarity and certainty

[1] It is noted that the capacity issues are under even more pressure with closed borders and changes to visa types limiting our sector's access to skilled migration.

- streamline and redesign the registration scheme to alleviate unnecessary burdens.

We also suggest that the NSW government needs to prioritise de-risking the market by amending the *Civil Liability Act 2002* (NSW) to prohibit contracting out of proportionate liability in professional services contracts and ensuring government clients are Model Clients.

STATUTORY DUTY OF CARE

ISSUES

Consult Australia has consistently been concerned about the introduction of the statutory duty of care and how that might unfairly impact consultants and further deteriorate the PI insurance market in Australia. Since the implementation of Part 4 of the Act in 2020 our concerns have not been alleviated.

For context, prior to the introduction of the Act we were already seeing a constrained insurance market. The current hardening of the insurance market started in 2017. An insurance agency needs to *earn* approximately $1.00 for every 70 cents of claims incurred to break even. In Australia, gross claims incurred was $1.25 billion at the end of 2017. This value was 86% of total premiums earned in the Australian market. This means that the average insurer *lost* 16 cents for every $1.00 earned. As a result of this declining profitability, the market has tightened in the years following 2017 and has continued to do so at a rapid rate, with some underwriters withdrawing entirely. Looking at the experience of consultancy businesses across Australia throughout 2020 and 2021, it is difficult to say that we are experiencing a periodic 'hard' cycle – it is more critical than that and we are at risk of long-term lack of capacity in the insurance market.

Therefore, reforms that increase disputation and claims against insurance policies will only add to the problems in the insurance market. For these reasons, our concerns with the duty of care in the Act centre on:

- the imposition of the duty without the need for end users to prove a duty was owed
- the retrospectivity of the duty of care
- the failure to ensure proportionate liability is preserved for consultants where claims are made under this statutory duty of care.

In our submission and representations in 2019 on the Act we raised the above issues. We sought critical amendments to the duty of care to ensure it provided *real* consumer protection and was not just a means to bog down the court system with legal disputes over drafting ambiguities.

We were very concerned that the duty of care did not focus on the legal obligations introduced by the Act and therefore tackle the problems in the building and construction process that lead to compliance issues. Instead, regulated practitioners are required to exercise reasonable care to avoid economic loss. There will be significant disputation over this obligation – when a duty tied to the requirements of the Act would allow claims to go directly to the question of whether the practitioner met their obligations and if not if that failure caused a loss incurred by the end user of the building.

Consult Australia was also concerned that the Act's duty of care captured parties regulated by the Act, but not developers who have ultimate control and decision-making on the project. This runs the risk of exposing engineers and design practitioners to claims that are better brought against other parties and well as for losses not attributable to them. The statutory duty of care is subject to the *Civil Liability Act 2002* (NSW) which permits, at subsection 3A(2) contracting out of proportionate liability. Therefore, under the Act parties will be able to contract out of the statutory duty of care. This will mean the burden will not be equitably shared or in line with each party's role. We have been a vocal advocate for guaranteeing proportionate liability for consultants for many years. The civil liability reforms that introduced proportionate liability into law in Australia was as result of a PI insurance crisis. However, the policy intention of those reforms is not being realised with clients requiring consultants to contract out of proportionate liability and laws such as this Act not guaranteeing proportionate liability. In our submissions we called on the NSW government to ensure the duty of care liability guaranteed proportionate liability for claims made against consultants.

Consult Australia was concerned that the retrospectivity of the duty of care would put a strain on the PI insurance market which insurers might not be able to meet in the current environment. We predicted that insurers would exclude coverage for the NSW Act in future policies.

Our concerns have been proved well founded. Since late 2020 we have seen insurers increasingly exclude coverage for retrospective claims made under the Act. There is insufficient capacity in the insurance market to fund these historic claims. There is also anecdotal evidence of increased litigation in NSW relying on the Act's duty of care. We call on the Parliamentary Accountability Committee in inquire into this aspect.

SOLUTIONS

Amend the statutory of care to avoid indeterminacy, remove retrospectivity, protect the availability of proportionate liability and to focus on the obligations imposed and parties regulated by the Act to ensure adequate consumer protection

The statutory of care in the Act should be amended to avoid indeterminacy, remove retrospectivity and to save significant expense and time expended by all parties (including building owners) on legal disputes clarifying the duty rather than identifying if a practitioner failed the duty and the owner suffered economic loss. Consult Australia has discussed these concerns with insurance specialists as well as experts in tort and construction law – all support better drafting of the duty of care. The insurance industry supports removal of the retrospectivity:

https://www.insurancenews.com.au/daily/industry-wants-pi-insurance-requirements-applied-prospectively

The duty of care should focus on the obligations imposed by the Act and incorporate the role of the building developer to ensure adequate consumer protection. Further, the right to proportionate liability should be protected.

Our proposed amended provisions would read:

37 Extension of duty of care

(1) A person who:

(a) Commissions construction work has a duty of care that they engage a suitably qualified building practitioner to carry out the construction work and must not impose obligations on any person carrying out construction work that would hinder that person's ability to comply with their obligations under this Act, and regulations;

(b) carries out construction work has a duty to exercise reasonable care in:

(i) preparing the regulated design, where the person is a design practitioner;

(ii) doing the building work, where the person is a building practitioner;

(iii) providing compliance declarations, where the person is a registered practitioner;

to avoid economic loss caused by defective construction work.

(2) The duty of care is owed to each owner of the land in relation to which the construction work is carried out and to each subsequent owner of the land.

(3) A person to whom the duty of care is owed is entitled to damages for the breach of the duty as if the duty were a duty established by the common law.

(4) The duty of care is owed to an owner whether or not the construction work was carried out under a contract or other arrangement entered into with the owner or a previous owner.

41 Relationship with other duties of care and law

(3) This Part is subject to the *Civil Liability Act 2002*, except section 3A(2) of that Act.

Note. Actions under this Part are subject to applicable limitation periods established under the *Limitation Act 1969*, and section 6.20 of the *Environmental Planning and Assessment Act 1979* which relates to civil actions relating to certain work.

INSURANCE REQUIREMENTS

BACKGROUND ON INSURANCE

PI insurance provides cover for professional services, such as those provided by design practitioners and professional engineers (as well as a vast array of other professionals such as lawyers, bankers and accountants). An individual or business applies for coverage and is not guaranteed it. When determining whether to insure and the terms of the policy, the insurance provider considers:

- the claims history of the applicant
- the type of work the applicant does
- the market conditions for that type of work
- the market conditions for the type of insurance applied for.

We are seeing that the market conditions are having a significant impact on policies – businesses with no claims history are facing significant premium increases and cover reductions. This means that there is very little that a business can do to 'fix' their PI problem.

As discussed above, insurance is a commercial product, and an insurance underwriter needs to *earn* approximately $1.00 for every 70 cents of claims incurred to breakeven.[2] At the end of 2017 the average insurer *lost* 16 cents for every dollar earned on the Australian PI market – unsurprisingly the insurance market hardened following 2017.

The Insurance Council of Australia advised that the PI market has experienced loss ratios of over 95 per cent for the past three years.[3] A gross loss ratio of more than 100 per cent means that insurers do not have sufficient income from premiums alone to pay out claims.[4] Claims incurred have grown from around $1.2 billion in 2017 to $2.7 billion in 2020, representing a 125 per cent increase over the past 4 years while average premiums have risen from around $2,504 in 2017 to $4,078 in 2020, representing a 63 per cent increase over the past 4 years. As a result of these losses, a number of insurers no longer offer PI insurance lines.

Consult Australia members in particular are feeling the pain of the current market conditions, and not because they are risky operators or have a history of insurance claims. Our members are experiencing significant increases in premiums. Previously the increase was 1-2% each year, on average our members are reporting increased premiums of around 20% with a not insignificant number reporting considerably higher premium increase (e.g., 100%-1,000%).

[2] AON Professional Indemnity Insurance Market Insights Q3 2018.

[3] More detail on PI market trends is included in the ICA's January 2021 submission to the NSW Department of Customer Service consultation *Design and Building Practitioners Regulations* (link)

[4] In practice, claims cost is only one component of an insurers cost of doing business meaning that a lower loss ratio is required to sustain profitability. This will vary between insurers and portfolios but as a general guide is often around 70%.

They are also reporting reduced coverage, by way of new exclusions, increased excesses, and reduced limits.

While larger businesses can weather the changes better than smaller operators, the hardening of the insurance market affects all business. Our small and medium enterprise (SME) members advise that PI insurance is the biggest cost to their business, and many are struggling with the affordability of their PI insurance. One member recently advised that their newly quoted premium for 2020/21 has gone from $30,000 for a $2million policy in the previous year, to over $100,000 for a $1million policy. This is not an isolated case, and it is occurring all around Australia for consultants of all disciplines.

ISSUES

Consult Australia has consistently been concerned about the introduction of insurance requirements into the Act and the Regulation noting that insurance providers are not a regulated party under the Act. Consult Australia supports initiatives that de-risk the market, however the insurance requirements in the Act and Regulation do nothing to address the underlying issues with building confidence and only exacerbates insurance issues.

Insurance policies are commercial products, the Act and the Regulation fails to adequately address that point. In consultation material released by the NSW government there is an assumption that a private entity's insurance policy is there as a community/consumer safeguard, when in fact it is a business tool for the private entity. Further, in the Act and the Regulation there is an expectation that a private entity has ultimate control on whether it can obtain and maintain insurance coverage, which is in stark contrast to any other consumer of any other commercial product. Imagine requiring a consumer to guarantee they would source the same product, with the same specifications for every year for the next five to ten years.

There are significant issues in the insurance market, with members seeing it as a business-critical issue with businesses never guaranteed coverage, even with a limited claim history. Consult Australia agrees with the position of the Insurance Council of Australia (ICA) in its recent consultation paper *The Role of the Private Insurance Market that* these issues are not market failures in the true sense. Rather, insurers and underwriters are making commercial decisions based on the risk in the market and the potential (or lack thereof) of profitability – as would any commercial operator.

In response to the consultation on the draft Regulation, Consult Australia, ICA and Engineers Australia all called out concerns with the insurance requirements in the regulations. While Consult Australia members appreciate the one-year transitional period granted by the government, however we have serious reservations about whether any of the obligations in Part 6 of the Regulation can actually be complied with:

- no PI insurance policy can cover 'any' or 'all' or liabilities a practitioner may be subject to as a result of delivering their services – the cover and conditions of cover are set by the insurance underwriter
- liabilities change over time (e.g., contract to contract not year on year renewal of the insurance policy) therefore the obligations to make the determination as well as keep records becomes unmanageable

- individual practitioners within a business (except where the individual is a sole trader etc) cannot generally access the full terms of the PI policy, as most commonly the policy is taken out by the business and the business itself may be unable to disclose its coverage terms without insurer approval (i.e., because such action may potentially prejudice an insured's coverage position in the future)
- individual practitioners do not have a role in commercial contract negotiations and therefore cannot control the liabilities that might attract to their work (except where the individual is a sole trader etc)
- the insurer maintains the right to accept or reject claims made under a policy – meaning that the insured is never guaranteed coverage
- no person or body (such as a recognised engineering body) can determine if a practitioner/engineer has adequate coverage as they are not party to the commercial contractual arrangements of the practitioner/engineer
- there are many more factors that need to be considered before a practitioner could hazard a guess as to whether their insurance policy provides 'adequate' cover, including:
    - what are the broader market conditions?
    - what additional indemnities and warranties are being sought in the various contracts for services?
    - how litigious is the other party to the contract, for example will litigation be threatened/pursued for minor contractual issues such as time delays etc?
    - where I am in the supply chain? The further down I am the less power I have to ensure that I am given the time and access to develop the design fully pre-construction and to be involved in any variations
    - is proportionate liability guaranteed for professional services in the jurisdiction?
    - what government policy and advice impacts on insurance?

Consult Australia does not believe that any design practitioner or professional engineer can meet the obligations of Part 6 of the Regulation if they truly understand the nature of insurance as well as contractual liability. These concerns are echoed by the insurance industry: https://www.insurancenews.com.au/daily/nsw-building-reforms-pose-insurance-challenge-wtw

The NSW government is essentially asking practitioners to guarantee they will be offered a commercial product that will cover all scenarios. This is worse than asking a homeowner to guarantee they will have access to a home and contents policy that covers all risks including bushfire, flood etc. The home insurance market is at least more stable than the PI market and the conditions facing the homeowner don't change nearly as rapidly as they do for a consultant who works under contract.

SOLUTIONS

Remove insurance obligations from the Act and the Regulation

No requirements should be passed into law if there is no practical way that a regulated person can comply, especially when there are penalties attached.

Consult Australia supports initiatives that de-risk the market and seek to address the underlying causes of building construction issues. The core policy problem sought to be addressed by the Act and the Regulation is building compliance and consumer confidence. We argue that other reforms (including the lodgement of regulated designs and the inspection regime by the NSW government) go to the heart of the policy problem and should be the focus.

Therefore, we propose amending the Act and the Regulation to remove insurance obligations because these obligations have no practical impact on improving practices in construction and are not community/consumer safeguards.

There is no evidence that the PI insurance market will improve dramatically by 1 July 2022 (when the current transition period ends). Removal of the obligations would alleviate significant stress on practitioners, who will otherwise be cornered into declaring they have adequate coverage when they cannot be certain of that until a claim is made against their insurance.

This does not mean that design practitioners and engineers will conduct regulated activities without insurance. Not only is it good business practice it is also a requirement of most contracts (see AS4122-2010) and Engineers Australia registration, which a vast majority of professional engineers under the Act are also registered under.

To make Part 6 of the Regulation workable, significant redrafting is needed in consultation with the insurance industry and impacted professionals as well as considerable de-risking of the PI market. Consult Australia is keen to work with the government and the insurance industry to resolve outstanding issues.

Amend the statutory of care to avoid indeterminacy, remove retrospectivity, protect the availability of proportionate liability and to focus on the obligations imposed and parties regulated by the Act to ensure adequate consumer protection

The statutory duty of care is not de-risking the market, and with insurers increasingly excluding coverage for claims under the duty of care as drafted, our members are exposed to more risk that ever before. See above for our proposed drafting.

De-risk the market by amending the Civil Liability Act 2002 (NSW) to prohibit contracting out of proportionate liability in professional services contracts and ensuring government clients are Model Clients

In the longer term, the NSW government will need to consider what other actions it can take to de-risk the NSW market to improve PI insurance availability and affordability.

Consult Australia proposes amendment of the *Civil Liability Act 2002* (NSW) to prohibit contracting out of proportionate liability in professional services contracts. It is proposed that section 3A of the *Civil Liability Act 2002* (NSW) continues to expressly permit the contracting out, but instead of only excepting personal injury damages from this, proportionate liability for professional services contracts should also be an explicit exception.

Consult Australia also believes that ensuring government client contracts are the exemplar, for example by meeting the Model Client Policy will go a long way to de-risking the market.

CERTAINTY OF REGULATED DESIGNS AND DESIGN PRACTITIONER

ISSUES

In 2019, the drafting of the Act provided minimal information on what designs would be captured by the reforms. In considering the draft Regulation in late 2019 and early 2020, Consult Australia members were concerned about the uncertainty of the regulated design definition and the array of design practitioners captured. Members noted that the requirement to declare every product that is to be incorporated in a building work design creates an unreasonable burden both financially and administratively on the designer. Design practitioners are responsible for selecting compliant products, not for justifying product selection.

Prior to 1 July 2021, Consult Australia members were unable to provide information on the financial/administrative costs and other burdens of the regime when asked as too many questions remained including:

- What designs will be a regulated design?
- How much will registration cost? Will the cost differ if the practitioner is seeking mutual recognition?
- If an individual is registered as a professional engineer and prepares regulated designs within their competency, will their registration as a professional engineer be recognised for the purposes of being registered as a design practitioner (for example where there is a class of design practitioners and professional engineers; civil, electrical, fire safety, geotechnical, mechanical and structural engineering)?
- How does the regime for fire safety and fire systems correlate with other relevant legislation – noting there are conflicts and overlaps?

Even now members remain confused about the role of a registered design practitioner vs other design practitioners, especially those providing 'specialist advice'. Small business members are concerned about how their sub-consultancy work fits into the scheme, for example whether their work will be regulated designs and therefore whether their business/practitioners will need to be registered.

Members also had concerns where design variations are to be signed off by a designer who was not the original designer. Consult Australia requested that the government indicate in guidance material an express preference for all design variations to be signed off (or at least sighted by) the original design practitioner where it is possible to locate that original practitioner. This would ensure that the practitioner doing the variation considered the original design thinking, constraints and intent before progressing the variation.

Our members also had concerns about the title block required on regulated designs. Small business members advised that the title block suggested by the government does not work with their internal processes and procedures and will require significant extra work to use that block for designs submitted to ePlanning. These small businesses were willing to update their existing title blocks to ensure accountability and traceability.

There has been insufficient time to determine if all these matters have been resolved in practice.

SOLUTIONS

Streamline the legislation to provide clarity and certainty

While there has been insufficient time to determine if these matters have been resolved in practice as these requirements came into force on 1 July 2021, we do know that the legislative regime is too hard to navigate and does not represent 'better regulation'. The fact that businesses need to navigate the Act, the Regulations, Ministerial Orders as well as government issued guides and codes make the regulatory environment too complex. The Act should be redrafted to capture all the core obligations so that the Regulations are no longer needed and Ministerial Orders are reserved for significant issues.

PRACTICE COORDINATION

ISSUES

During the development of the Act and the Regulation, Consult Australia members advised that coordination between practitioners and the integration of designs will be the major issue. It was agreed that it is not practical to impose strict rules on how and when different practitioners coordinate their work. Consult Australia recommended to government that it should be noted in guidance material that integration is not only a design activity, but also relates to testing, commissioning, operations, and maintenance.

We are aware that the government will be conducting design reviews/audits and we see this as a key avenue where the focus should be encouraging improved behaviours, rather than imposing penalties – especially in the first year of the reforms being in place.

There has been insufficient time to determine if these matters have been resolved in practice as these requirements came into force on 1 July 2021. Consult Australia will be seeking member feedback over the remainder of 2021 and provide feedback to the NSW government to inform the review of the Act.

COST AND IMPACT OF REGISTRATION

ISSUES

In early 2021, Consult Australia submitted to the government on the cost and impact of registration. Our key concerns were that the proposed fees were particularly high when compared with other jurisdictions and that the separate classes of registration fees for different disciplines is likely to have an impact on occupational capacity.

High fees

We understand the need for a cost recovery model, however the fees outlined (and now introduced) are not equitable for businesses, especially when compared to other jurisdictions. As an example, the registration fee proposed under the NSW Fees Regulation for professional engineers applying for a three-year registration is $1,332.00. In comparison, the Victorian Professional Engineers Registration Scheme proposed a fee of $820.16 for the three-year registration of professional engineers.

Further, businesses working on class 2 buildings in NSW will also likely need staff registered as design practitioners (and possibly body corporate registration) and potentially staff registered as principal design practitioners.

The NSW scheme seems considerably more expensive than schemes in other jurisdictions. Not only is this an industry concern from an accessibility perspective, but the fee variation may impact project delivery across the jurisdictions. For example, this might see engineers more attracted to Victorian projects over NSW class 2 building projects. This is particularly problematic in the current market where capacity is constrained throughout Australia.

The fees also fail to take into consideration the administrative requirements and financial burden a professional engineer/design practitioner incurs in completing the application process. A sample survey of our members has indicated that it costs the business approximately $3,750 for each practitioner, for each registration based on the time taken to complete the administrative requirements of the QLD scheme and a modest charge-out rate of an engineer.[5]

Multiple fees

We submitted during consultation that the separate classes of registration fees for different disciplines would likely to have an impact on occupational capacity.

In an industry where skill shortages are a consistent challenge, career diversity should be accessible and affordable.

The Fees Regulation seeks to categorise design practitioners into different levels based on the anticipated time spent processing each category of registration, and also provides separate assessments for a practitioner seeking registration as a design practitioner and engineer in the same discipline. Therefore, member businesses seeking to register employees who fit under

[5] In the Consult Australia sample survey, the average time members estimated spent by each practitioner for each registration was 15 hours to complete the administrative requirements. We used a modest charge-out rate of $250 per hour per engineer (noting it could be significantly more for a more senior engineer).

various disciplines will incur significant administrative and financial burdens that are unnecessary to address the policy problem.

As per our submissions on other aspects of the reforms, we are of the view that the key improvements to consumer and community confidence in buildings will come from the investment in design work – not in a complex and expensive registration scheme.

We estimate that it could easily cost a business over $9,000 to register one employee engineer as both a design practitioner and professional engineer in their discipline and this goes up to over $16,000 if the business also seeks to be registered as a design practitioner – body corporate, the costs being:

- Over $9000 comprises:
    - $5,082 to register the individual as a Professional Engineer – Fire Safety for 3 years (comprising $1,332 to government as the 3-year application registration fee and estimated $3,750 cost impact on the business from the administrative burden to apply based on the Consult Australia sample survey of other engineering registration schemes)
    - $4,661 to register the individual as a Design Practitioner – Fire Safety Engineer for 3 years (comprising $911 to government as the 3-year application registration fee and estimated
- Increases to over $16,000 if you then add:
    - $3,750 cost impact on the business from the administrative burden to apply based on the Consult Australia sample survey noting that the NSW process seems similar to the process for engineering registration)
    - $6,824 to register the business as a Design Practitioner – Body Corporate for 3 years (comprising $3,074 to government as the 3-year application registration fee and $3,750 cost impact on the business from the administrative burden to apply based on the Consult Australia sample survey noting that the NSW process for body corporate registration seems similar to the process for engineering registration – further clarity from government would assist in developing a more robust estimate).

Case study on cost implications

We have also prepared case studies on the cost implications of the NSW registration scheme for various business sizes who also work in QLD and VIC (other jurisdictions with government engineering registration).

Estimated cost of engineering registration for businesses working in QLD, VIC and NSW

Almost $14,000 for a sole practitioner (for a 3-year registration)

A significant proportion of consultant sole practitioners provide their services across Australia, including specialists where the capacity and capability is not available in the relevant jurisdictions. These engineers service both private and public clients. For example, it is estimated to cost a fire engineer who is a sole practitioner $13,952.36 to be registered for 3 years in QLD, NSW and VIC. This is based on a business cost of $3,750 per jurisdiction to apply and fees of $1,332 in NSW (additional if they also seek registration as a design practitioner), $550.20 in QLD and $820.16 in VIC. This is a significant cost impost on a sole practitioner.

Almost $70,000 for a small business with 5 engineers (for a 3-year registration)

The majority of small consultancy businesses provide services across Australia. For example, a structural engineering business employs 22 people, 5 of which are structural engineers (currently registered in QLD). The estimated cost of having those 5 engineers registered in QLD, NSW and VIC is $69,821.80 for three years. This is based on a business cost of $3,750 per jurisdiction per individual to apply and fees of $1,332 per individual in NSW (additional if they also seek registration as a design practitioner and the business seeks body corporate design practitioner registration), $550.20 per individual in QLD and $820.16 per individual in VIC. This is a significant cost impost on a small business.

Over $990,000 for a large business with 71 engineers (for a 3-year registration)

All large consultancy businesses provide services across Australia. For example, a large multidisciplinary company that employs 485 staff, employ several hundred engineers with 71 currently registered in QLD. The wider policy of the business is that once an engineer achieves Chartered Engineer status or equivalent (via IChemE, IStrucE etc) they then register in QLD (as the only current government regulated system). This policy gives the company flexibility of staffing on projects. It is likely that this policy will need to be reviewed as other engineering registration schemes come into play, because the company cannot afford to register everyone everywhere. The estimated cost of having these 71 engineers registered in QLD, NSW and VIC is $990,617.56. This is based on a business cost of $3,750 per jurisdiction per individual to apply and fees of $1,332 per individual in NSW (additional if they also seek registration as a design practitioner and the business seeks body corporate design practitioner registration), $550.20 per individual in QLD and $820.16 per individual in VIC. This is a significant cost impost, even on a large business.

SOLUTIONS

Streamline and redesign the registration scheme to alleviate unnecessary burdens

If the NSW scheme allowed an individual to use an existing registration as an engineer to demonstrate eligibility as a professional engineer ***and*** design practitioner in the same discipline, the administrative costs to business could be vastly reduced. It is recommended that the NSW government:

- redesign the fees to provide for affordability
- ensure that administrative processes are minimised for industry
- ensure that mutual recognition occurs at a reduced fee
- ensure that automatic deemed registration is made available for minimal to no cost for industry
- redesign the assessment approach – especially for practitioners seeking registration under the same discipline as a professional engineer and design practitioner
- ensure that administrative processes are minimised – especially for the application of body corporates as design practitioners.

CONTACT

We would welcome any opportunity to further discuss the issues raised in this submission.

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