

Ms Katherine Sharah

Assistant Policy Officer, Policy and Legislation
NSW Fair Trading
Department of Finance, Services and Innovation
Level 9, McKell Building
Rawson Place
SYDNEY NSW 2000

19 December 2016

Dear Ms Sharah

Re: Engineers Australia response to draft accreditation framework

I am writing in response to the invitation issued on 1 December 2016 to Engineers Australia to comment on the draft ‘Accreditation Framework’ that would outline the process by which industry schemes are deemed to provide ‘competent practitioners’ in NSW for building certifiers.

Engineers Australia is the peak body of the engineering profession. We are a member-based professional association with over 100,000 individual members. Established in 1919, Engineers Australia is a not-for-profit organisation, constituted by Royal Charter to advance the science and practice of engineering for the benefit of the community.

Engineers and engineering are at the heart of a healthy and sustainable construction sector in NSW and play a vital role in ensuring that commercial and residential buildings are built to standards that the public expect. Engineers Australia is the responsible body for setting, maintaining and monitoring the practice standards for every discipline of engineering in Australia in each of the three occupational categories of professional engineer (four-year degree qualified), engineering technologist (three-year degree qualified) and engineering associate (two-year associate degree or advanced diploma qualified).

Engineers Australia welcomes the opportunity to participate in the proposed working group to further develop the Accreditation Framework into a fully working document that will help the industry raise standards in the state.

Businesses and the community expect a certain set of standards and skills from the professionals they engage. This is possible only in a society that has access to the services of practitioners in a diversity of disciplines who operate according to benchmark standards of professionalism.

Engineers Australia is supportive of a co-regulatory system which ensures that high professional standards are maintained across the sector. Members of any profession must assure the broader community that benchmark standards are met, that training has been undertaken, that appropriate skills and knowledge have been attained and that they—the professionals—will diligently apply their skills in a risk averse and ethical way.

Engineers Australia believes that the content of the Accreditation Framework should be consistent with the three pillars of the nationally consistent professional standards legislation in force in each state or territory: to protect consumers, improve professional standards and to strengthen and improve professionalism within professions.

Potential content for the Accreditation Framework

1. Requirements for industry bodies who administer an accreditation scheme.

Certain financial standing and/or management resources.

Engineers Australia considers that industry associations which administer an accreditation scheme ought to be required to demonstrate that they have the financial capacity and processes in place to conduct assessments of qualifications and competencies over a sustained period.

Industry associations, such as Engineers Australia, operate in a dynamic environment. Such bodies ought to be able to show that they take a responsible approach to business accountability and performance by ensuring their operations are conducted in accordance with legal and internal policy requirements and community and ethical expectations.

There are a number of ways of demonstrating this:

- (i) through provision of the entity's annual consolidated financial reports for the last 3-5 years;
- (ii) through provision of the means by which the entity is legally constituted. This could be a constitution, a charter or legislation;
- (iii) through demonstration that the entity has compliance and risk management frameworks in place which conform to Australian Standard AS 3806:2006 *Compliance Programs* and AS/NZS/ISO 31000:2009 *Risk management – Principles and Guidelines*;
- (iv) through provision of details of its financial objectives and that it has sound financial management processes in place which include the following three elements:
 - financial planning, including management's obligation to ensure that sufficient funding is available to meet the needs of an organisation in the short, medium and long term.
 - financial control, including the financial policies and procedures put in place to ensure the day-to-day management of the organisation's resources meet its objectives.
 - financial decision making, the foundation for financial planning and financial control. In order for this to be effective and efficient there must be sound corporate governance and a stable organisation structure; and
- (v) through demonstration that the entity has well established governance structures in place as well as procedures for monitoring and improving its assessment processes and for managing members' compliance including continuing professional development (CPD) and ethical conduct.

Procedures for managing complaints and resolving disputes related to accredited individuals and the public.

Applicant associations should have in place a complaints handling system that:

- (i) allows and actively facilitates a consumer's ability to make a complaint (against scheme members and also possibly against the association);
- (ii) responds to those complaints with a formalised investigation process; and
- (iii) encourages resolution of complaints through alternative dispute resolution or mediation.

An association's complaints handling procedures should be available to the public (eg via its website) and should detail:

- (i) who may make a complaint;

- (ii) how a complaint is to be made;
- (iii) what happens after a complaint is made;
- (iv) if a hearing is held, what happens after a hearing (i.e. details about the range of sanctions that may be imposed, including that a complaint must be dismissed if the association does not find a complaint substantiated);
- (v) information about how notices of decision are notified;
- (vi) rights of representation; and
- (vii) appeal rights.

Importantly, the complaints handling procedures should clearly articulate the philosophy of the approach which is investigative not adversarial. The procedures should clearly identify that the association is not acting on behalf of either the complainant or the person against whom the complaint has been made. The role of the association is to discharge its obligations as an authorised accreditation entity that is determining whether the respondent has engaged in improper conduct. It is not to provide financial restitution.

For this framework, Engineers Australia also recommends that there are clear notices for the public of how the Office of Fair Trading and the applicant association ensure that complaints are handled between the government and the association, and, that a complaint against an individual through the association will trigger a notification to the Office of Fair Trading and vice versa.

Finally, the association ought to also be required to collect and analyse its complaints data to highlight areas where strategies can be developed to equip individuals with the skills or knowledge to protect themselves against future complaints or to identify topics of relevant CPD.

A code of conduct and/or disciplinary processes

Codes of ethical conduct have been the hallmarks of professional practice since the inception of professions per se. Professional integrity and ethical behavior underpin what it is to be a professional. Professional bodies have a key leadership role in defining ethical conduct and setting professional standards for their members, through codes of conduct and disciplinary processes.

According to Professions Australia, the peak collective representational body for professions in Australia, a profession is “*a disciplined group of individuals who adhere to high ethical standards and uphold themselves to, and are accepted by, the public as possessing special knowledge and skills in a widely recognised, organised body of learning derived from education and training at a high level, and who are prepared to exercise this knowledge and these skills in the interest of others*”.

Codes of conduct are used by industry associations to set standards for their members; they are a key feature which set professionals apart from other employees. Such codes set out the ethical ‘values’ that professionals adhere to in making choices which are ‘good’, and the ethical ‘principles’ that they follow in doing things ‘the right way’.

A code of conduct also communicates to members of the community what they can expect from members of the profession. A code of conduct must be definitive enough to provide reasonable certainty for the public and to form the basis of disciplinary processes that protect the public from professional misconduct.

Associations’ applicants should have in place a professional code of conduct which defines the values and principles that shape the decisions its members make in (engineering) practice. The code should include related guidelines on professional conduct which provide a framework for association members to use when exercising their judgement in their professional practice. Scheme members should be bound by the applicant association’s code of conduct.

Processes to regularly review the quality of the services provided by accredited individuals.

Accredited individuals should be required to demonstrate to the applicant association that they possess and have maintained the competencies of professionalism, up-to-date expertise and risk management training required for independent practice.

Accredited associations ought to have in place a system for regular periodic practice review of its members. Engineers Australia recommends that a full practice review be undertaken of accredited individuals every five years in line with current practices unless otherwise required e.g. because of a complaint.

Accredited individuals should be required to attest annually that they are complying with the scheme's accreditation requirements which includes:

- complying with their obligations to abide by the code of ethics;
- complying with the CPD requirements; and
- maintaining the benefit of professional indemnity insurance.

Failure to do so should trigger a full practice review.

The components of the periodic practice review of accredited individuals should include:

- a CPD record statement to demonstrate how much CPD the individual has undertaken in the three year period prior to the practice review (Engineers Australia's CPD policy requires 150 hours of CPD in any three-year period);
- a statement of experience (CV) to demonstrate that the accredited individual has been engaged in independent practice, or has worked as an employee under general direction, or has been enrolled in a formal post graduate training program in their area of practice for at least the equivalent of one full-time year, during the past three years; and
- confirmation that the accredited individual has systems in place to manage their risks/work practices. Compliance with this requirement can include provision of a certificate of currency that the individual is working under a third party accredited risk/quality management system compliant with:
 - AS/NZS ISO 31000:2009 *Risk management—Principles and guidelines*; and/or
 - AS/ISO 9001:2015 *Quality management systems*; and/or
 - AS/ISO 14000 *Environmental Management*; and/or
 - AS /NZS 4801:2001 *Occupational Health & Safety Management Systems*.

2. Requirements for accreditation schemes

Qualifications and/or industry experience.

Engineers Australia believes that the qualifications/experience to practice set out in the Accreditation Framework should meet the benchmark standard of professionalism of Engineers Australia's National Engineering Register (NER) which are aligned to best practice registration requirements in Australia of:

- a recognised qualification benchmarked to international education standards;
- a minimum level of professional practice;
- currency of continuing professional development;
- the benefit of Professional Indemnity Insurance;
- a commitment to ethical practice; and
- an annual certificate of registration.

The annual registration certificate issued to registrants on the NER demonstrates a registrant's currency and continued commitment to the serious obligations of professional practice.

The qualifications listed in the current Building Professionals Board (BPB) Accreditation Scheme (October 2016) meet the benchmark qualifications requirements and should be the basis of transition to the new accreditation Framework.

Engineers Australia strongly supports the recommendation in the Building Professionals Board ('Lambert') Review Report that A1-A3 certifiers' qualifications be extended to engineers. This should also include civil/structural engineering degrees accredited under the Washington Accord or equivalent.

Relevant industry experience should be a provision in the Accreditation Framework.

Insurance requirements

Professionals are considered 'experts' who present themselves as having special skills or expertise on which members of the community can rely. This reliance attracts a duty of care. If a professional breaches this duty, then those persons affected are entitled to claim damages against the professional. Professional indemnity (PI) insurance serves as a compensatory mechanism for losses suffered as a result of a breach of a professional's professional duty.

Engineers Australia supports PI insurance being a mandatory component of the proposed Accreditation Framework.

The requirement for accredited individuals to have the benefit of PI Insurance is three fold: to satisfy government regulations, to satisfy contractual obligations and as a risk mitigation measure for professionals to protect their business and personal assets.

At the time of annual membership renewal, accredited individuals ought to be required to confirm that they have maintained PI Insurance that meets the scheme requirements. Where it is considered necessary, accredited individuals should be prepared to provide a certificate of currency (or, if unavailable, a policy schedule) in relation to their PI Insurance at renewal or when requested.

Having the benefit of PI insurance cover will be different depending on the accredited individual's employment arrangement:

- sole practitioners ought to have a current PI Insurance policy in their own name; or
- if employed by a corporation or partnership (including sole practitioners whose business is incorporated) the accredited individual will be covered by the corporation's or partnership's current PI Insurance policy; or
- if employed by a Commonwealth, state or local Government or tertiary institution the accredited individual will be covered under the indemnity arrangements that these entities have in place to cover their employees for the work they do in their normal occupation as a government/tertiary institution employee.

Engineers Australia cautions against setting specified limits for PI Insurance as determining appropriate limits is based on a number of factors. What is relevant is that accredited individuals have PI Insurance that is 'adequate', having regard to the nature of the business, including, but not limited to:

- the volume of business in terms of turnover;
- the number and kind of clients;
- the kind or types of services provided;
- the number of employees;
- the degree of risk of the engineering and engineering related activities undertaken; and
- previous PI Insurance claims history.

This is not an exhaustive list of factors that needs to be taken into account in assessing what PI insurance cover is adequate. It should be the responsibility of each accredited individual or their employer to determine what constitutes adequate cover for them and to obtain the required cover from a suitably qualified insurance broker.

Engineers Australia recommends that PI insurance should be issued by an insurer regulated by the Australian Prudential Regulation Authority (APRA) or an insurer operating under an exemption within the *Insurance Act 1973* (Cth) or the *Insurance Regulations 2002* (Cth).

The issue of PI insurance for engineering is complex and warrants detailed consideration and consultation by the working group. The contract nature of engineering work in the current economic climate and the lack of run-off cover for engineering generally require close examination before deciding the PI insurance requirements for the Accreditation Framework.

Continuing professional development

Continuing Professional Development (CPD) is the means by which all professionals maintain and enhance their knowledge and skills. Continuing Professional Development ought to be a mandatory component of the Accreditation Framework.

Engineers Australia's Code of Ethics places an obligation on all members to undertake CPD and to practise competently by maintaining and developing their knowledge and skills. Continuing Professional Development should be integral to how individuals, employers, industries and the nation invest in the capabilities required to practise.

Traditional thinking of CPD has involved formal learning. Engineers Australia suggests that the CPD requirements for the Accreditation Framework ought to more closely align with modern thinking on the relevance and reliability of CPD and experienced practitioner assessment models. Continuing Professional Development ought to better align managing both the perceived risks in the profession and consumer risks. This is one of the reasons why Engineers Australia has integrated risk management practices into its practice review assessment process. This shift in thinking requires:

- recognition of lifelong learning and professional standards that may be acquired beyond the classroom;
- a shift to workplace development and online or open learning models and methodologies; and
- a shift in how educational providers, professions, industries, employers and regulators systematically record, track, report and verify a professional's competence and professional standards.

Engineers Australia recommends that the CPD requirements and provision of CPD should, in the new paradigm, more closely mirror the new thinking around CPD and professionalism and align with the CPD requirements of the accreditation body.

Yearly reporting of CPD should be through the annual attestation of compliance. The current provision contained in the BPB Accreditation Scheme of 25 hours of training, as approved by the BPB, should be transferred to 25 hours of CPD relevant to certification work.

Engineers Australia recommends that the reporting of CPD should be done through the applicable approved accrediting bodies and that that body report to the Office of Fair Trading any member who has failed to attest annual compliance of having completed the relevant annual hours of CPD. Failure to complete CPD for the purposes of this scheme should carry a penalty, and continued failure to complete CPD should see the accredited individual removed from the roll held by the Office of Fair Trading.

There should be further consultation through the working group about the most cost effective and efficient way of delivering CPD related changes to legislation, regulations, legal decisions or changes within the Office of Fair Trading to accredited individuals.

3. Procedures for Government's administration of the Framework:

Process for assessing applications.

Engineers Australia recommends that the following documentation be submitted as a minimum in support of an application for accreditation by an industry body. These requirements are modelled on the requirements set down for other regulatory schemes in Australia.

(i) Application association

- A brief description of the history of the organisation, including its objectives and role in the regulatory environment
- Details of the organisation's legal foundation, including copies of its constitution, by-laws or similar documents which give it authority in the regulatory environment
- Details of the organisational structure, including its resources and capability
- Details of the organisation's corporate governance
- Details of the organisation's financial capacity and its facilities to conduct assessments of qualifications and competencies including the provision of the organisation's last three financial statements.

(ii) Risk Management Strategies and the means by which those strategies are to be implemented

- Details of the organisation's compliance program
- Details of the organisation's risk management framework
- Details of the organisation's risk management of member compliance

(iii) Membership requirements

- Educational and other qualifications
- Overseas qualifications
- Other entry requirements
- Verification of entry requirements

(iv) Continuing Professional Development

- Power to require continuing professional development
- Required strands of continuing professional development and number of hours
- Monitoring compliance with continuing professional development requirements
- Sanctions for non-compliance
- Data collection and analysis
- Review of continuing professional development system

(v) Code of conduct

- Body in the organisation responsible for developing the Code of Conduct
- Adherence to the Code of Conduct
- Review of the Code of Conduct
- Consequences of non-compliance

(vi) Complaints and discipline systems and voluntary mediation services

- Complaints handling body in the organisation
- The organisation's authority to handle complaints
- Investigators' competencies and investigation procedures

- Identification of who the decision makers are in the investigation process
- Role of the appeal panel and what they can review
- Reporting complaints information
- Methods for lodging a complaint
- Actions forming the subject of a complaint
- Persons who can make a complaint
- Methods for determining complaints
- Methods and process of hearing a complaint
- Test for upholding or dismissing complaints
- Review/appeals process for the complainant and practitioner/member
- Mediation in the process

(vii) Discipline and sanctions

- Disciplinary rules and procedures
- Grounds for disciplining members
- The disciplinary process
- Forms of discipline and sanctions
- Monitoring sanctions
- Notices of Decision
- Rights of parties to a complaint

(viii) Complaints and discipline data

- Collection
- Analysis
- Using complaints and discipline data to inform member risk management strategies
- Review of complaints and discipline system

(ix) Procedures for assessing applicants for the scheme

(x) Details of the assessment of qualifications and competence for the areas of practice covered by the Scheme.

(xi) Procedures for assessing and monitoring Scheme members' compliance.

(xii) Continuing professional development

- Details of CPD requirements for applicant individuals and the practice review program to ensure continuing registration requirements are met.

(xiii) Administration of the scheme

- Details of persons who are engaged to perform assessments of applicants for registration of professionals and the procedures for training and accrediting those who will perform the assessments
- Details of who will be responsible for administering the scheme
- Details the systems in place for monitoring compliance with the requirements of the scheme.

Applications could be assessed by an independent selection committee appointed by the Minister through the department, and determined by Regulation on their efficiency to determine the application. There are many methods for assessing applications and the process should be examined in more detail during the roundtable discussion.

Engineers Australia favours a system where applications from approved bodies are assessed by criteria set down by the Office of Fair Trading in concert with the new regulations and the new legislation. Applications should be robust, outlining the association's ability to meet certain criteria and to meet certain benchmarks for the Office of Fair Trading.

Duration of approval

In other jurisdictions, the approval period for assessment entity registration is three years. Engineers Australia recommends that the approval period for the proposed scheme aligns with the period of accreditation for assessment entities in other jurisdictions.

In accordance with the reporting requirements for similar schemes in other jurisdictions, Engineers Australia recommends that accredited entities provide interim six monthly reports to the Office of Fair Trading on the following aspects of the scheme:

- the numbers of applications for registration received in the reporting period
- the time taken to process applications
- the failure rate
- any proposed changes to the assessment process.

Approved accreditation entities should be required to provide a comprehensive report annually to the Office of Fair Trading on the following key aspects of management of the scheme:

- Compliance
- Risk Management
- Professional Standards Improvement
- Audit

The following suggested list of items might be included in the annual report:

- Complaints against members of the association and findings of those complaints
- Practice review and CPD compliance statistics
- CPD delivery
- Annual consolidated financial report
- Initiatives taken by the association to improve risk management and consumer protection strategies
- Any changes to assessment and monitoring processes relating to membership, complaints and discipline, CPD, PI insurance
- Any changes in insurance provisions within the industry.

This data should be maintained by the Office of Fair Trading for reporting purposes and could be used as the basis for making recommendations for regulatory changes. The Office of Fair Trading should maintain enforcement of both approved associations and accredited individuals who are registered on a publicly accessible register.

Accredited individuals should publish and display their registration number on all material visible to the public. Compliance with this disclosure requirement should be monitored by the accreditation entity and penalties enforced for non-compliance.

Engineers Australia recommends that the working group develop a standard annual reporting template. This will enable the Office of Fair Trading to better analyse the reports and provide more effective feedback to associations on compliance and improvement.

Conclusion

Engineers Australia welcomes the NSW Government's commitments to work through the recommendations of the 'Lambert' Review and to continue to work collaboratively with the peak Australian industry bodies, including Engineers Australia, to develop continuous improvement in the sector.

As the trusted voice of the profession in Australia, Engineers Australia recognises that it has an obligation to uphold public trust in the profession by improving the professionalism of not only its members but the profession at large and, in doing so, to set the benchmark standard by which all practitioners should practise. As a member of the working group we look forward to working with the

Office of Fair Trading to ensure that engineers who are engaged in certification in NSW operate to the highest standards of professionalism.

I would welcome an opportunity to discuss the issues raised in this submission with you and I am contactable via GEwing@engineersaustralia.org.au, or by telephone on (02) 9410 5600.

Yours sincerely,



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