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Engineers Australia response to:

Accredited Professionals Scheme

Discussion Paper issued by SA Department of Planning, Transport and
Infrastructure

Engineers Australia
April 2018



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Accredited Professionals Scheme – Discussion Paper

Pertaining to the *Planning, Development and Infrastructure Act 2016 (PDI Act 2016)*

Discussion Paper issued by Department of Planning, Transport and Infrastructure (DPTI),
Government of South Australia

Feedback deadline – Monday, 30th April 2018

Introduction

Engineers Australia (EA) welcomes the opportunity to provide feedback on the Discussion Paper associated with the Accredited Professionals Scheme, as provided for in Division 4 of the *PDI Act 2016*.

This response has been framed in the context of the benefits (as listed on page 3 of the Discussion Paper) of the proposed scheme, and particularly with regard to better decisions, better recognition of professionals, more choices for professionals, more choices for applicants and centralised public register for all accredited professionals. In this regard, EA sets out its contention to broaden the qualifications and recognised equivalent schemes associated with the Building Certifier and Building Inspector functions described in the Discussion Paper.

Additionally, EA addresses considerable detail with regard to processes required by regulation for certification of buildings at the design, construction and completion stages, and enforcement of regulation for annual building maintenance – this contention is based in enhancing public and consumer safety, and mitigating risks of potentially catastrophic size (irrespective of likelihood).

EA is ready and available to discuss all aspects of its feedback.

Building Certifier and Assessment Panel Participation

(Reference: Discussion Paper Section 2 (p.5) – Overview of the Scheme and Section 3 (p.9) – Becoming Accredited)

“The scheme should:

- Allow for varying levels of accreditation with differing permissions based on a person’s qualifications and experience
- Specify ongoing training requirements tied to the periodic renewal of accreditation
- Require the holding of professional indemnity insurance
- Specify arrangements for the auditing of accredited professionals
- Provide grounds for the suspension or cancellation of accreditation
- Enable private professional bodies to provide accreditation, subject to appropriate protocols established by Government
- Require compliance with codes of conduct
- Include the management of complaints and prosecutions”



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Section 2 then describes current industry bodies that provide accreditation and professional certification within both the building and planning sectors – specifically for Building being *Australian Institute of Building Surveyors (AIBS)* and *Royal Institute of Chartered Surveyors (RICS)* – noting that both of the above are recognised under the *Development Act 1993* (being the Act the *PDI Act 2016* will progressively replace). For Planning sector the document notes “industry bodies in allied fields” that “could be useful for addressing those professionals who want to become Assessment Panel Members as experts in a specialist field” – this includes Engineers Australia (EA).

EA contends that various categories of its membership are equally suitable for Building Certifier (sections 92, 99 and 154 of the PDI Act 2016) as they are for Assessment Panel Member (section 83 of the PDI Act 2016).

- ***92 – Use of term “building certifier”***

An accredited professional who is qualified under the accreditation scheme to assess development in respect of the Building Rules (and to perform other functions relating to buildings and building work under this Act) may be known as a building certifier (and this designation will, as appropriate, be used for the purposes of this Act).

- ***99 - Related provisions***

(1) If -

- (a) a proposed development involves the performance of building work; and*
- (b) a relevant authority determines to act under this subsection,*

the relevant authority may -

- (c) refer the assessment of the development in respect of the Building Rules to the council for the area in which the proposed development is to be undertaken; or*
- (d) require that the assessment of the development in respect of the Building Rules be undertaken by a building certifier.*

(2) If subsection (1) applies -

(a) in the case of subsection (1)(c) - the council for the area in which the development is to be undertaken will be the relevant authority for the purposes of -

- (i) assessing the development against and, if appropriate, granting a consent in respect of, the relevant provisions of the Building Rules; and*
- (ii) if appropriate, granting development approval; and*

(b) in the case of subsection (1)(d) -

- (i) the building certifier will be the relevant authority for the purposes of assessing the development against and, if appropriate, granting a consent in respect of, the relevant provisions of the Building Rules; and*
- (ii) the council for the area in which the development is to be undertaken will be the relevant authority for the purposes of, if appropriate, granting development approval.*

(3) In addition, where a proposed development is to be undertaken within the area of a council then, subject to the regulations, the council will be the relevant authority for the purposes of, if appropriate, granting the final development approval after all elements of the development have been approved by 1 or more relevant authorities under this section.



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(4) The notice of a decision of a council granting a development approval must include the name and contact details of every other entity that has acted as a relevant authority in relation to that approval.

Categories of EA membership that should qualify for “building certifier” designation and accreditation

EA membership covers three occupational categories –

1. Professional Engineer – represented as someone with a four year professional engineering degree (or the equal of for those educated in other jurisdictions), focusing on overall systems, development and application of new engineering practices, pursuit of opportunity holistically, and a solver of diverse problems
2. Engineering Technologist – represented as someone with a three year engineering technology degree, focusing on interactions within the system, modifying and adaptation of established engineering practices, and advancement of engineering technology
3. Engineering Associate – represented by someone with a two year advanced diploma or associate degree of engineering, focusing on specific elements of the system, and working within codes through application of established practices and procedures

Baseline membership in the above categories is referred to as **Stage 1 Competency**, and reflects engineers of varying levels of experience. Engineers Australia’s National Engineering Register (NER) requires at least five years experience to qualify for registration.

Once any person in the above membership categories can **satisfactorily evidence or demonstrate** capability across experience and areas of engineering practice, that person can apply for registration on the NER – which in turn evidences capability in the declared area of practice, and is supported by a commitment to Engineers Australia’s Code of Ethics and continuing professional development requirements.

For the purposes of the *PDI Act 2016* relevant areas of practice include **Building Services engineering, Civil engineering, Fire Safety engineering** and **Structural engineering**.

With regard to the Accreditation Scheme, EA’s membership and NER process provides for differentiation based on capability and relevant experience, requires continuing professional development, requires holding of professional indemnity insurance, provides an audit program for continuing professional development, requires compliance with a code of conduct, and manages complaints. It’s acknowledged the process developed by government may undertake all Accreditation Scheme aspects through its own registration process, nonetheless it’s evident that as a professional body, EA already delivers most elements required of the Accreditation Scheme, and arguably could deliver services as a private accreditor (EA members would still have the ability to seek accreditation directly with any government Accrediting Authority, retaining the choice objective of the *Accredited Professionals Scheme – Discussion Paper*).



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On the basis of the above, EA contends that various engineers should be recognised as “building certifiers” as per the following table (aligned to the table presented on page 11 of the Discussion Paper) –

Level 1: Building Certifier	
Anticipated function	Assess against the building rules, with no limitation. Undertake building inspections on behalf of a council.
Qualification and experience	Any professional engineer, engineering technologist and engineering associate with at least 5 years of relevant experience (equivalent to a Level 1 Building Certifier) in the past 7 years in their area(s) of practice, and is registered on Engineers Australia’s National Engineering Register
Recognised equivalent designation	Registered on Engineers Australia’s National Engineering Register
Level 2: Building Certifier	
Anticipated function	Assess against the building rules, limited to buildings that are no more than 3 storeys in height and floor area no more than 2000m ² . Undertake building inspections on behalf of a council.
Qualification and experience	Any professional engineer, engineering technologist and engineering associate with at least 5 years of relevant experience (equivalent to a Level 2 Building Certifier) in the past 7 years in their area(s) of practice, and is registered on Engineers Australia’s National Engineering Register
Recognised equivalent designation	Registered on Engineers Australia’s National Engineering Register
Level 3: Building Certifier	
Anticipated function	Assess against the building rules, limited to Class 1 and Class 10 buildings. Undertake building inspections on behalf of a council.
Qualification and experience	Any professional engineer, engineering technologist and engineering associate with at least 5 years of relevant experience (equivalent to a Level 2 Building Certifier) in the past 7 years in their area(s) of practice, and is registered on Engineers Australia’s National Engineering Register
Recognised equivalent designation	Registered on Engineers Australia’s National Engineering Register



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Level 4: Building Inspector	
Anticipated function	On behalf of a council, undertake building inspections of Class 1 or 10 matters, including roof truss and swimming pool safety inspections.
Qualification and experience	Any professional engineer, engineering technologist and engineering associate with at least 5 years of relevant experience (equivalent to a Level 2 Building Certifier) in the past 7 years in their area(s) of practice, and is registered on Engineers Australia's National Engineering Register
Recognised equivalent designation	Registered on Engineers Australia's National Engineering Register

Note that EA contends that the definition of “relevant experience” and the process by which an Accrediting Authority determines “relevant experience” is demonstrated, requires detailed and clear framing. That position is not clear in the Discussion Paper.

Note also that EA holds the view that two years or less experience, for any building certifier/inspector role, as proposed in the Discussion Paper, is insufficient for any level of building certification/inspection. The actual certification (or “sign off”) responsibility must fall to greater experience, even if that’s completed on a supervised basis.

Independence and certification practices

EA holds some anecdotal concern over the possible lack of independence and certification against Building Rules at various stages of building. These concerns apply to compliance at design stage, completion and during construction, together with the need for independence in these stages.

EA also highlights the conflict of interest matter that has been experienced in other jurisdictions. The Victorian Building Authority regulated against conflict of interest (refer Section 79 of the Victorian *Building Act 1993* – as revised in July 2016). “...a private building surveyor (PBS) must not act in certain circumstances, (including) ... a general requirement not to act where there is a conflict.” This “change” meant it was still an offence to carry out any function of a PBS where the PBS prepared the design of the building or building work, is an employee, contractor or financial beneficiary of the person or body that prepared the design of the building or building work, or is a financial beneficiary of a person or body carrying out the building work.

The regulatory change extends the offence for acting in circumstances that fit the Act definition of “related person” (note that similar provision applies in NSW legislation and regulation).

Without suggesting similar activity in SA, reports of past activity in Victoria is concerning. “Victoria’s building surveyors have been found guilty over more than 700 misconduct claims since 2009, and many have ignored illegal building work or serious fire risks, or issued an occupancy permit when a building was not fit for occupation. ... comes amid concerns that there is inherent conflict of interest in requiring building surveyors to assess building work while they are also employed by the builder.”
– *The Age*; 31st July 2015



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EA contends the need to improve the concept of independence and certification at the design stage of building (including certification against Building Rules as defined in the PDI Act 2016 – in effect issuing a statement of design compliance), at completion (in effect issuing a certification of compliance), and during construction (specifically footings prior to concrete pour, periodic structural inspections, framing inspections – where relevant, fire and life safety services second fix, fire and smoke walls – prior to painting, and practical completion). This level of inspection and certification is proposed to mitigate current system risks where an incident (despite extent of likelihood) is likely to be catastrophic. It's also reiterated that review and certification must be conducted on an independent basis – that is, there must be no self-certification process – adoption of this approach removes risk (real and perceived) of commercial influence. Noted also that this position appears to be consistent with the RICS Code of Conduct applying since 1st January 2018.

EA further contends that the equivalent of Form 3 (with regard to the Development Act 1993), needs to form part of regulation associated with the PDI Act 2016, and be monitored for conformance.

Assessment Panel Member (section 83)

EA acknowledges the Discussion Paper description of *Assessment Panel Member* (p.12), and particularly the inclusion in 'Recognised equivalent scheme' of "...accreditation in a recognised allied field." We note reference to, and **fully concur with**, the requirement of a "...qualification in an allied field (eg ...engineering ...) and 2 years full time equivalent experience considered appropriate by the accrediting authority."

EA contends that registration on its NER comfortably exceeds the qualification and experience requirements detailed, and proposes that for engineering as an "allied field", that registration evidences any given engineer's equivalent qualification and experience at all Planning levels (and particularly "Assessment Panel Member") in accordance with the "Proposed Accreditation Levels: Planning" as described in the Discussion Paper.

Keeping the System Honest

Although not explicitly addressed in the *Discussion Paper*, EA believes it appropriate to raise the effects of section 158 and 159 of the *PDI Act 2016*.

Section 158 appears to limit liability of people involved with the **building work**, where that work is defective.

Building work is defined in the *PDI Act 2016* as the construction, demolition or removal of a building (including any incidental excavation or filling of land); or any other prescribed work or activity.

This appears to result in any other person who may be involved in design work or specification, including where a builder or building certifier relies on that work, **not being afforded the protections of sections 158 and 159.**



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EA contends this appears inequitable and untenable, and requires re-drafting to extend liability protections to all supply chain participants who have acted in good faith.

Detailed Operation Recommendations

EA holds the view that regulations associated with the *PDI Act 2016* must rectify perceived shortfalls of previous legislation and associated regulation. EA's position in this regard is also intended to reinforce and extend public and consumer safety matters, and mitigate associated risks.

EA contends regulations associated with building certifiers (subject to the inclusion of acceptable "allied field" professionals – refer to the "Proposed Accreditation Levels: Building" table content in this response paper) must be drafted to broaden the range of building certifiers and choice for consumers of that service, and improve the concept of independence and certification at the design stage of building (including certification against Building Rules as defined in the *PDI Act 2016* – in effect issuing a statement of design compliance), at completion (in effect issuing a certification of compliance), and during construction (specifically footings prior to concrete pour, periodic structural inspections, framing inspections – where relevant, fire and life safety services second fix, fire and smoke walls – prior to painting, and practical completion). This level of inspection and certification is proposed to mitigate current system risks where an incident (despite extent of likelihood) is likely to be catastrophic. It's also reiterated that review and certification must be conducted on an independent basis – that is, there must be no self-certification process – adoption of this approach removes risk (real and perceived) of commercial influence and conflict of interest.

With regard to building certifiers, EA also contends a review of "relevant experience" levels for any form of certification or inspection, with the view that 2 years or less experience is insufficient. Furthermore, it is apparent the Regulations need to detail more specifically the definition of "relevant experience" and the process by which any Accrediting Authority applies that definition in deeming satisfaction of the criteria.

With regard to "Proposed Accreditation Levels: Planning" EA contends that registration on its NER comfortably exceeds the qualification and experience requirements detailed, and proposes that for engineering as an "allied field" (as proposed in the Discussion Paper) registration on the NER evidences any given engineer's equivalent qualification and experience at all Planning levels (and particularly "Assessment Panel Member"), and should be included in the regulations accordingly.

EA also notes that the *Development Act 1993* (and its associated regulations) provided for *Form 3* annual completion and lodgment. EA is led to understand that despite penalties existing for failure to lodge *Form 3* certification, enforcement of completion and application of penalties are rarely enforced.



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EA contends that the equivalent of Form 3 annual completion must form a part of regulation, and appropriately applies to processes associated with the Accredited Professionals Scheme. EA further contends that relevant authorities must enforce the regulation and drive application of penalties and consequences associated with non-conformance. Finally with regard to annual maintenance inspections, EA recommends adoption of the practice already applying in a number of other states whereby annual maintenance certificates are displayed within the foyer of a building to ensure all engineers, designers, architects, fire authorities etc are able to determine installed systems and any maintenance matters in the event they are required to conduct action (and particularly associated with emergency situations) with respect to said building.

Finally, EA contends that sections 158 and 159 of the PDI Act 2016 require review for equity in delivery of protections for all supply chain participants where those parties have acted in good faith.

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For and on behalf of Engineers Australia

30th April 2018