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Registration of Building Engineers in WA

Submission to the Government of Western Australia
Department of Mines, Industry Regulation and Safety

2 December 2020



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Registration of Building Engineers in WA: Submission to Government of Western Australia Department of Mines,
Industry regulation and Safety.

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Engineers Australia
11 National Circuit, Barton ACT 2600
Tel: 02 6270 6555
Email: publicaffairs@engineersaustralia.org.au

www.engineersaustralia.org.au

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Introduction

Engineers Australia welcomes the opportunity to provide a submission to the Western Australian (WA) Government, Department of Mines, Industry Regulation and Safety (DMIRS) on the Consultation Regulation Impact Statement (CRIS) for the Registration of Building Engineers in WA.

Engineers Australia's contribution is designed to assist in delivering a better-performing engineering sector with greater accountability of those involved. Our work is supported by around 100,000 members, including about 14,000 in WA. The submission is informed by our WA-based members who have provided feedback as part of a member-wide consultation process.

Comprehensive registration of engineers is good for Western Australia and our nation. Rather than restricting registration to the building sector, Engineers Australia advocates for compulsory registration for anyone providing professional engineering services. That will enable significant enhancement to public safety and consumer protection.

The primary reason for this position is that it recognises all areas of professional engineering practice are complex and would benefit from registration. Importantly, a comprehensive registration scheme would also limit the risk of loopholes being created whereby some types of engineering work do not require registration, or someone might attempt to perform work without registration. An example could be someone performing electronic engineering work without registration because only electrical engineering is prescribed, despite both areas of practice having important similarities that warrant registration.

It is acknowledged that the registration of building engineers in WA, through amending the Building Services (Registration) Regulation, is deemed by Government as an efficient means to quickly register building engineers. Whilst Engineers Australia agrees this is a step in the right direction, we continue to advocate for an Engineers Registration Act to introduce regulation to the profession as a whole and not just engineers in the building sector. As such, we recommend that the current proposed scheme for the building sector is able to expand or mould easily into a future broader registration scheme.

Engineers Australia's response includes general recommendations and responses to the consultation questions.

About Engineers Australia

Engineers Australia is the peak member-based professional association for engineers. Established in 1919, Engineers Australia is constituted by Royal Charter to advance the science and practice of engineering for the benefit of the community.

Engineers Australia maintains national professional standards, benchmarked against international norms. As Australia's signatory to the International Engineering Alliance, this includes accreditation of university engineering programs.

Furthermore, Engineers Australia manages Australia's largest voluntary register for engineers, the National Engineering Register (NER). Given the broad membership coverage and knowledge we have of the engineering profession, Engineers Australia is well placed to provide informed views to the Western Australian Government on Registration of Building Engineers in WA.

Contact Details

To discuss the contents of this submission further, please contact Susan Kreemer Pickford, WA General Manager, at wa@engineersaustralia.org.au

Engineers Australia submission on reform proposals to register engineers

General Comments

The CRIS refers to a proposal to amend the Building Services (Registration) Regulations 2011 (WA) (BSR Regulations) to make it an offence for a person to provide prescribed engineering services ‘to another person’ in an area of engineering unless they are either:

- Registered as a building engineering contractor in that area; or
- An employee of a registered building engineering contractor in that area¹.

Engineers Australia suggests removing the words ‘to another person’. As it stands, an unregistered person could ‘design’ a balcony for their own home which could cause harm to a visitor or future owner of the property. To achieve the outcomes of these reforms they should apply to all engineering works in the building sector.

In reference to *Table 3: Pathways proposed to register building engineers*,² use of the NER and CPEng status as a pathway to registration in WA is strongly supported. However, it should be noted that not all NER or CPEng registered engineers will have had building industry experience. This means that not all NER or CPEng can be considered to have been assessed by a scheme equivalent to Set 1 which requires 5 years of relevant building engineering industry experience in the past 7 years in their area(s) of practice. To support this, Engineers Australia could provide an additional assessment service by assessing the applicants’ building industry knowledge and experience. If required, Engineers Australia could explore provision of a ‘competent for the building industry’ endorsement or “national construction code accreditation” for those applications who are NER or CPEng registered.

Further to this, the WA Government estimates there will be approximately 2,000 engineers in total who will require registering in WA based on the figures provided by Professionals Australia, Engineers Australia and Chartered Institute of Building Service Engineers (CIBSE). Some of these engineers will not be working in the building industry so won’t need to be registered. Conversely, it should be noted that there is currently no compulsion for an engineer to be registered in WA—the schemes provided by Engineers Australia and others are voluntary. As such, when the Regulations are amended it is likely that a large cohort of currently unregistered engineers will emerge. The estimate of 2,000 could therefore be substantially higher or lower and this uncertainty should be taken into consideration by the WA Government when undertaking its analysis and making implementation plans. Engineers Australia estimates that about 3,000 WA-based engineers will ultimately seek registration though it should be noted that, like the Government’s own estimates, this is based on many assumptions.

The continuing professional development (CPD) requirement should be clarified to state whether it is the intent for an engineer to comply with the CPD requirement only for renewal of registration or for the initial registration as well. As the wording stands, it would suggest that under the heading *Continuing Professional Development (CPD)*³ it only refers to renewal whereas the experience required under *Table 3: Pathways proposed to register building engineers* suggests it is required for initial registration too.

Engineers Australia is not opposed to the proposal to introduce a “building service contractor” class of register for engineering. However, we recommend that the regulations require any person providing engineering services in the prescribed areas of practice to be registered or work under the direct supervision of a registered person, and that it should apply even if they work within a company that holds a registered contractor status.

¹ Registration of Building Engineers in WA – Consultation Regulation Impact Statement (CRIS), page 15

² CRIS, p 17.

³ CRIS, p 23.

Proposal 1 – Amend Relevant Regulations to register building engineers in accordance with the Building Confidence Report.

Question 1: Do you support registration of the proposed categories of building-related engineers? Why or why not?

The categories listed should be expanded to include electrical engineering. See further comments in response to Question 3.

The category of hydraulic engineering should be clearly defined to ensure the wide range of sub-disciplines understand their obligations (for example, hydraulic work could include wastewater management, or power control systems in machinery).

Consideration should also be made for those engaged in the building sector who complete building work that is allied to that of professional engineers but who are not considered professional engineers themselves. Without clear regulations and guidance materials, the risk is some occupations may be unnecessarily prevented from practising independently.

An example of this are Engineering Geologists. Engineering geologists play a role in the planning, design and construction of civil and building infrastructure. All types of building works cause a change of stress on the ground. Understanding the nature, behaviour and performance of soil and rock under changes in stress and the predictions of potential failure mechanisms must be considered in engineering analysis and design which require skills in the science of geology. The pathway for an engineering geologist typically requires an undergraduate degree in geology with either post-graduate studies in engineering geology or significant practical engineering experience working in the geotechnical industry. Their work has some overlap with, but is distinct from, “geotechnical engineers” who would fall within the scope of a scheme to register professional engineers.

It is likely that an occupation as important as engineering geology should be regulated, but the registration scheme for *professional engineers* is not the appropriate mechanism. Further work may be required to determine if a separate scheme is needed to regulate the work of important and technically complex occupations that fall outside the scope of professional engineering. As a minimum, clear regulations and guidance materials is needed to avoid the risk that some occupations are unnecessarily prevented from practising independently.

Question 2: Do you think people doing civil engineering work for buildings should be required to be registered? Why or why not?

People doing civil engineering work for buildings should be required to be registered. If omitted it would mean that professional engineering services that apply to elements such as pavement design, car parking and water tank design for irrigation or use of recycled water would continue to go unregulated.

Question 3: Are there any other categories of building engineering work that you think should be added, or deleted? If so, please specify.

Engineers Australia recommends that electrical engineers be included in registration of building engineers in WA. It is understood that electrical engineers are omitted because “electrical engineers are not mentioned in the Building Confidence Report and are not...in this paper. Electrical work is already heavily regulated in WA, with licensing for electrical workers and contractors, and a comprehensive regime of inspections of electrical works.”

The work undertaken by an electrical contractor or licensed electricians is generally vastly different to work undertaken by an electrical engineer. Work undertaken by professional electrical engineers includes complex commercial, institutional (such as hospitals) and industrial installations, which require conceptual electrical design work and sometimes quite detailed technical assessments. The consequences of this work being done incorrectly

could be catastrophic. Including a category of electrical engineers will have the added benefit of capturing types of engineering such as control and instrumentation engineers which fall under the banner of electrical engineers.

Furthermore, engineering is a broad profession with many primary areas of practice and a great many subdisciplines. To ensure all relevant engineering work is captured within the Regulations, it is recommended that clear definitions are used, and supporting materials published to ensure the profession and industry understand when their work is regulated. For example, some engineers identify as façade engineers rather than within their usual primary qualification as a civil, structural or mechanical engineer. In this example, the government's guidance material should explain that an engineer who specialises in facades will need to be registered under the most appropriate regulated area of practice. The points about control and instrumentation engineers falling within the broader category of electrical engineer is a similar example.

The building confidence report refers to the need for further consultation with industry with a view to reaching agreement on the full range of appropriate disciplines to be included. A further observation is made that if evidence emerges that the work performed is sufficiently complex and relates to areas of high-risk building design, construction or maintenance then this may be justification for other categories of practitioner. Engineers Australia encourages this further consultation to ensure that the categories of engineering are appropriate, and definitions are clear.

Question 4: Do you support the proposed definition of 'building engineering work' for the purposes of registration.

Engineers are involved in the full life cycle of buildings, including initial concept, detailed design, construction, commissioning, operation and maintenance. The definition of 'building engineering work' could be amended to include engineering work in all the life cycle stages, and not refer specifically only to design.

Engineers Australia proposes the possible definition for building engineering work means "engineering work 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 for a building other than engineering work that is done only in accordance with a prescriptive standard."

This proposed definition is consistent with the definitions of 'professional engineering service' in existing Acts relating to registration of engineers, namely the *Professional Engineers Act 2002 (QLD)*, the *Professional Engineers Registration Act 2019 (Vic)* and the *Design and Practitioners Act 2020 (NSW)*. Engineers Australia supports efforts to keep a nationally consistent approach to definitions to aid cross-border harmonisation.

Question 5: Do you support the definitions for the engineering categories proposed in Appendix C? Please specify.

Engineers Australia recommends any definitions that are provided be clear, so they serve their purpose effectively. The definitions of engineering categories outlined in Appendix C of the CRIS do not help to determine what the category of engineering entails. This could lead to ambiguity when engineering work could be done by two different categories of engineers.

For example, Appendix C states that structural professional engineering design work is engineering work that requires the application of engineering principles to a design related to structural engineering. It makes no attempt to give a definition of structural engineering. If the work is designing a footing or a retaining wall, it may not be clear to everyone if engineering design should be done by a registered structural engineer, or a civil engineer or a geotechnical engineer.

Question 6: Do you support the pathways proposed in Table 3 to register building engineers?

The pathways proposed in Table 3 are supported overall. For the engineering disciplines, five years of practical experience is considered appropriate. However, flexibility is recommended because there can be situations where variations to this are required. Engineers Australia would suggest including 'Or equivalent experience as determined by the Board' in Table 3 set 1 under 'Experience'.

Engineers Australia's assessment experience shows that it takes approximately five years to develop the necessary professional maturity for an engineer who follows a typical career path from secondary school directly to university and straight to a graduate engineering role.

To be admitted to Engineers Australia's National Engineering Register (NER), registrants must have accumulated, within the last seven years, five years of relevant engineering experience in their area(s) of practice or have completed a Chartered Assessment to meet the benchmark level of practical experience.

However, Engineers Australia has two categories of registered professional engineers on the NER:

- a Registered Professional Engineer, entitled to use the postnominal NER; and
- a Chartered Registered Professional Engineer, entitled to use the postnominal CPEng NER.

Both categories of registrant meet the standard to practice independently within their area of practice. A Registered Chartered Professional Engineer is a practising professional engineer with advanced skills and knowledge, who can demonstrate attainment of additional competencies to those competencies applying to the benchmark standards for the NER.

The assessment for the advanced level of Chartered is more comprehensive than the benchmark standard for the level of NER and includes a rigorous and thorough competency assessment. Chartered status (CPEng) can be awarded in extremely rare circumstances to highly skilled and very competent engineers with as little as three years of experience post-graduation. Because of the thorough and bespoke competency assessment, engineers with CPEng status and fewer than five years of experience should be considered to have met the five years of experience requirement.

Question 7: Do you support using industry accreditation schemes -e.g. professional NER, CPEng, RPEng and CEng – to assess qualifications and experience, and manage CPD requirements of registered engineers.

Engineers Australia supports using industry assessment and registration schemes. This co-regulatory model of assessment for registration involves statutory bodies and professional associations undertaking various roles. The co-regulatory model provides greater assurance of the competency of registered engineering practitioners and reduces the risk of physical and financial harm to consumers. This approach allows industry and assessment entities like Engineers Australia to control the qualifications and competency standard applied to a practitioner and allows government to oversee the assessment and monitoring system and standards applied to practitioners through the approval process.

Using assessing authorities can help simplify compliance requirements and avoid red tape. It offers a mechanism for assessing the qualifications and experience requirements of a statutory register, with a letter of assessment that is issued once but can be used in all jurisdictions that require registration of engineers.

For governments, independent assessment entities can provide confidence, transparency and consistency across jurisdictions. That is a consideration when multiple states and territories require an occupation to be registered to practice, as is becoming the case for engineers. Providing flexibility and comparability of registration between jurisdictions for individual engineers is an important factor.

When provided by a professional or industry association, independent assessments do not need to be tied to membership. A key to all assessment activity is the need for continual development of assessors and back-end systems and support structures. A mature assessment entity will be appropriately resourced, maintain currency of knowledge, and have support structures including administrative, quality assurance and technologies.

Question 8: Are there any other industry accreditations that you think should be considered as appropriate pathways to register as an engineer in WA?

If additional industry accreditation schemes are to be accepted as pathways to registration, they should be subject to formal review by Government to ensure that a suitable level of rigour to the assessment process is maintained.

Question 9: Do you support the proposed minimum financial requirements for engineering contractors? Why or why not?

Engineers Australia has no objection to the proposed minimum financial requirements for engineering contractors. However, it is noted that these requirements indicate ability to conduct business and are not a measure of competence to provide engineering services.

Question 10: Do you think there should be mandatory minimum professional indemnity insurance requirements for engineering contractors? Why, or why not? And, if so, what do you think the minimum insured amount should be?

Engineers Australia supports the requirement of registered engineers to hold adequate professional indemnity insurance.

Determining appropriate limits is not straightforward and is based on several factors. What is relevant is that registrants have PI Insurance that is 'adequate', having regard to the nature of the business carried on by the registrant, 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; and
- The degree of risk.

This is not an exhaustive list of factors that need to be considered in assessing what PI Insurance cover is adequate.

It should be the responsibility of each registrant to determine an adequate level of PI Insurance cover and to determine the required cover from a suitably qualified insurance broker. Registrants should assess their own PI insurance requirements by considering their own business and risk circumstances and obtain PI Insurance that is appropriate for them, factoring in legal or defence costs.

It is recommended that the Government consider the current context for the insurance market when making the rules for professional indemnity insurance. Engineers are finding it increasingly difficult to secure affordable insurance policies and providers are imposing conditions on insurance policies. This is a national issue and it is suggested that the Western Australian government also collaborate with the Building Ministers Meeting and Australian Building Codes Board, amongst others. The aim should be fostering a sustainable and effective insurance market.

Question 11: Do you support the proposed minimum CPD requirements for registered engineering practitioners? Why, or why not?

The minimum CPD requirement for registered engineering practitioners is supported by Engineers Australia. With the rate of change in today's world, it is even more important for engineers to maintain and update their knowledge. CPD activities are designed to extend or update a practitioner's knowledge, skill or judgment in their area or areas of practice and enable them to:

- Maintain technical competence;
- Retain and enhance their effectiveness in the workplace;
- Be able to help, influence and lead others by example;
- Successfully deal with changes in their career; and
- Better serve the community.

Engineers Australia's NER requires practitioners to document a minimum of 150 hours of structured CPD over the past three-years. Of the 150 hours:

- At least 50 hours must relate to their area of practice;
- At least 10 hours must cover risk management;

- At least 15 hours must address business and management skills; and
- The remainder must cover a range of activities relevant to the practitioner's career.

Engineers Australia recognises that the requirement outlined by the Western Australian Government is consistent with our policy and Queensland's model. This supports harmonisation and mutual recognition.

Question 12: Do you support Proposal 1, to register building engineers, in whole or in part? Please specify.

Engineers Australia supports in part Proposal 1 Registering building engineers considering the comments made above.

Question 13: Proposal 1 hinges on three main elements, being the: (a) definition of 'building engineering work' that only registered engineers may undertake; (b) categories of engineer required to be registered; and (c) registration pathways that set out the qualifications and experience required to be registered.

Do you think these three elements, as proposed, are likely to adequately regulate all engineers working in the building and construction industry in WA? Is there anything that you would amend or add? Please specify.

These three elements will not adequately regulate all engineers working in the building and construction industry in WA. Instead, this proposal will facilitate the regulation of the proposed categories of engineers outlined in section 5 only. This is because the practice of engineering is very broad and, unless all engineers are registered, some disciplines and engineering services provided within the building sector will remain unregulated.

To help overcome this, as described in response to Question 3, it is recommended that clear definitions are used, and supporting materials published to ensure the profession and industry understand when their work is (and is not) regulated. Note that higher order areas of practice, such as structural engineering, can include a great many more subdisciplines. Those sub disciplines should be specifically noted in guidance material as being, for the purposes of the Regulation, captured (or not captured) within the registration scheme. For example, the façade subdiscipline would be captured, but a structural engineer who works only on bridges would not be captured.

Question 14: Do you think Proposal 1 will facilitate mutual recognition of registered engineers in other States and Territories? Please specify.

With each new state or territory that introduces registration, the Mutual Recognition Act 1992 (which is adopted in all jurisdictions) applies to ensure recognition of registration status across borders.

The announcement by National Cabinet on 13 November 2020 that it has agreed in principle to establish an Intergovernmental Agreement on Automatic Mutual Recognition of Occupational Licences is welcomed by Engineers Australia. It is understood that agreement is to be signed by the end of the year following further work by the Council of Federal Financial Relations. Also, to give effect to this, draft legislation to amend the Commonwealth Mutual Recognition Act 1992 will be released by the end of the year to facilitate automatic mutual recognition commencing by 1 July 2021. We commend the Government of Western Australia for supporting this initiative. Engineers Australia advocates that any changes to the mutual recognition regime (such as instituting a system of automatic mutual recognition) should include engineers because work conducted by engineers can be done outside of the jurisdiction where the work is completed.

Question 15: Do you foresee any other costs or benefits to implementing this proposal?

Registration of building engineers in WA is the first step in creating a system to recognise competent engineers in the building industry and exclude those found to be unsuitable to conduct activities required by a competent engineer. There are five key benefits to a registration scheme:

1. Improvements to industry and consumer information.

A registration scheme will aid the market by providing advice to consumers on the competence and experience levels of engineering practitioners.

2. Reducing risks to public health, safety and welfare.

Registration helps to ensure that only those with suitable baseline qualifications (that is, an appropriately recognised engineering degree), enough relevant experience, and a proven commitment to ongoing training and professional development can provide engineering services in the building sector. Risks to the public resulting from the provision of engineering services by unqualified or incompetent persons have three elements:

- Health: through such things as badly designed or 'sick' buildings (poor air-conditioning, rising damp, low natural light levels).
- Safety: through the collapse or other significant failure of buildings such as was seen in the Opal and Mascot Towers of Sydney in 2018-2019.
- Economic: involving financial costs such as design and construction costs, litigation expenses, lost production and rectification costs.

The registration of engineering practitioners can minimise these risks.

3. Professional Recognition.

Businesses and the community expect a certain set of standards and skills from engineering practitioners. As with other professionals, engineering practitioners have a high degree of responsibility and liability imposed on them by courts and regulators. A statutory registration scheme would identify those persons whose academic qualifications, cumulative and current experience, competencies and commitment to ethical conduct and continuing professional development are the standard expected of the ordinary skilled person exercising and professing to have that skill.

4. Enhanced international mobility and trade in engineering services.

In many countries, engineering is seen as an essential profession whose practitioners should be recognised and registered. Standards of practice that are recognised by government have the potential to improve overseas trade and are essential for trading in accordance with the World Trade Organisation trade and services obligations, and under bilateral trade agreements.

5. Legislative efficiency.

A registration scheme with requirements that match those of other jurisdictions creates legislative efficiency. It is a means of ensuring that both a common standard for engineering practice is in place in all states and territories and that engineers do not have to comply with the different requirements in each jurisdiction.

Proposal 2: Introduce a Code of Conduct for registered engineers, based on the Code of Practice in place in Queensland.

Question 16: Do you support the adoption of a code of conduct for registered engineers? Why, or why not?

Engineers Australia supports the adoption of a code of conduct for registered engineers. Engineers Australia members are bound by our Code of Ethics which defines the values and principles that shape the decisions we make in engineering practice and as a member of Engineers Australia broadly. A commitment by engineers to carry out their roles with integrity, care for the public and competence must underpin any registration scheme. Engineers should be bound to only practice in their area of competence or seek to address new competencies if required. They should also be required to escalate matters of public risk. This is the principle that protects the public.

Question 17: Do you agree with the code of conduct proposed in Appendix A? What would you add or delete?

Engineers Australia supports that the code of conduct for registered engineers in WA is modelled on Queensland's Code of Practice. Adopting this supports national consistency and mutual recognition amongst jurisdictions. It is recognised that the proposed code of conduct is a list of things that engineers must comply with.

It is suggested that under section 3.9 of the code that the phrase 'must report instances of professional misconduct...' be change to 'should report instances of professional misconduct.' Engineers Australia does not believe it should be a breach of the code outright. Allowance needs to be made that, for example, a supervisor might be able to fix the problem/breach and educate the practitioner, rather than reporting it to the regulator.

Question 18: Do you foresee any advantages or disadvantages, or costs or benefits to implementing this proposal?

The costs and benefits of the proposal are described in our response to the previous questions.

Proposal 3: Amend the BSR Act to require that ALL registered building service providers must work within their area of competence.

Question 19: Do you support Proposal 3? Why, or why not?

Engineers Australia strongly supports the requirement for all registered building service providers to work within their area of competence.

Question 20: Do you foresee any other costs or benefits to implementing this proposal?

Requiring registered building service providers to work within their area of competence helps avoid practitioners seeing their class of registration as a licence to work in any area of their discipline. This is particularly important when registering broad categories of engineers such as civil engineers as a civil engineer who is competent in pavement design is not necessarily competent to design a high-rise building. Engineers should use their professional judgement to ensure that they only conduct work within their area of knowledge and capability.

Question 21: Do you think an estimated average annual cost of \$388 per engineer is a reasonable administrative cost for registered engineers? Why, or why not?

Engineers Australia suggests more clarity is provided as to how the average annual cost will be apportioned into separate application and annual registration fees. It is suggested that all fees should be no more than cost-recovery and should be assessed against, and comparable to, the fees for registration of comparable professions. Further clarity should be provided between the difference in cost for an individual seeking registration Under Set 1 or registration under Sets 2, 3 and 4.

Question 22: Do you think 24 months' transition period is sufficient to allow industry participants to meet the proposed registration requirements?

Yes, 24 months' transition period is sufficient. Engineers Australia cautions against a transition period longer than 24 months.

Question 23: Do you think online surveys are an appropriate way to obtain industry feedback on the operation of these reforms? If not, how do you think the reforms' effectiveness should be evaluated.

Online surveys are an appropriate way to obtain industry feedback when used in conjunction with other mechanisms. Reforms of this type require feedback from multiple stakeholders including 1) employees; 2) business; and 3) assessment authorities. Industry forums and direct feedback from assessment authorities (such as Engineers Australia) should also be considered in evaluating the effectiveness of these reforms.



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