



Australian
Institute of
Architects

Inquiry into the Professional Engineers Registration Bill 2019

Submission to the Parliament of New South Wales Legislative Assembly
Committee on Environment and Planning

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PURPOSE

- This submission is made by the Australian Institute of Architects NSW Chapter (the Institute) to provide comments on the Professional Engineers Registration Bill.
- At the time of this submission, the NSW Chapter President of the Institute is Ms Kathlyn Loseby.
- The NSW Chapter State Manager is Ms Kate Concannon.

INFORMATION

The Australian Institute of Architects (the Institute) is the peak body for the architectural profession in Australia. It is an independent, national member organisation with around 11,000 members across Australia and overseas. More than 3,000 of these are based in NSW.

The Institute exists to advance the interests of members, their professional standards and contemporary practice, and expand and advocate the value of architects and architecture to the sustainable growth of our communities, economy and culture.

The Institute actively works to maintain and improve the quality of our built environment by promoting better, responsible and sustainable design.

TABLE OF CONTENTS

1. INTRODUCTION	1
2. BEST PRACTICE REGULATION OF PROFESSIONALS	1
Regulation of the architectural profession	2
Regulation of the engineering profession.....	2
3. CO-REGULATION OF ENGINEERING PROFESSIONALS.....	4
4. CONCLUSION.....	5

1. INTRODUCTION

The Australian Institute of Architects (the Institute) is the peak body for the architectural profession in Australia, representing around 11,000 members, with around 3200 members residing in NSW. The Institute works to improve our built environment by promoting quality, responsible, sustainable design.

Architecture influences all aspects of the built environment and brings together the arts, environmental awareness, sciences and technology. By combining creative design with technical knowledge, architects create the physical environment in which people live, which in turn, influences quality of life. Through its members, the Institute plays a major role in shaping Australia's future, with the Institute's Code of Conduct expecting architects to 'improve standards of health and safety for the protection and welfare of all members of the community.'

The Institute has strongly called for all Australian governments to take action and urgently improve how building and construction is regulated. It is clear that quality outcomes will not occur and the consumer will not be protected, if time and cost continue to be the prime drivers in the construction industry. There are embedded recurring failures in building quality occurring across Australia. Current building practice must change from time and cost being put above quality and safety so that people's welfare and economic security are not jeopardised. The Institute believes that community well-being must be paramount.

For large and complex projects, continuous oversight and quality assurance is required throughout the design and construction stages, to mitigate errors and manage risk. Without quality controls in the building process, government and industry cannot restore public confidence in the building system when there are building failures.

To ensure both consumer and community protection, all building practitioners need to be brought under a regulatory regime and only regulated practitioners should be accountable for complex matters such as the design of multi-unit residential dwellings, the design certification of any parts of the construction works, the structural design of buildings, and the water-tightness of buildings.

For higher risk buildings such as multi-unit residential buildings, mixed used buildings and speculative commercial buildings, only fully qualified, experienced and regulated professionals should be responsible for the delivery of design services and project management.

While it is very encouraging to see the NSW government making changes in response to the nationally endorsed recommendations of the Shergold-Weir "Building Confidence" report, the Institute looks forward to supporting the implementation of the full suite of required reforms. The Institute therefore welcomes the opportunity to make a submission to the Parliament of NSW Legislative Assembly Committee on Environment and Planning inquiry into the Professional Engineers Registration Bill 2019.

2. BEST PRACTICE REGULATION OF PROFESSIONALS

Regulation is the diverse set of instruments by which governments set requirements on enterprises and citizens. Regulation has been traditionally used by government to protect consumers and vulnerable social and economic groups and promote better economic performance by, for example, safeguarding competition in the marketplace.

Governments however tend to shy away from regulation due to the costs associated with regulatory intervention, noting that these will vary depending on how well the regulatory regime is designed, implemented and administered. These costs can include the fiscal costs to government, compliance costs to business and consumers and dynamic costs to economic performance. Poor quality regulation also leads to a lack of transparency in the regulation making process and the uneven implementation of regulatory instruments.

Well designed, implemented, monitored and maintained regulation supports effective and efficient regulatory outcomes and enhances the operation of the economy. This is why in most countries,

architecture and engineering are regulated professions, where professionals are required by law to be licensed before they provide services. Many other accredited professions such as accountancy and legal services are also subject to accreditation or licensing requirements. In Australia, architects are regulated in every state and territory, however engineering is only regulated in Queensland and Victoria.

As the recent construction failures and findings of the Shergold-Weir report have shown, better regulation is needed across the building and construction sector. Self-regulation has failed and there is a need to upskill the whole industry.

As already exists for architects, mandated standards for education and experience for engineers, building designers, drafters and project managers are needed. In addition, the Institute believes that only fully qualified and experienced professionals should be responsible for the delivery of design services and project management for multi-unit residential buildings, mixed use buildings and speculative commercial buildings.

The regulation of building professionals, whether engineers, designers, draftspersons, certifiers, or project managers is essential to provide the community with protection. Regulation would provide that these professionals are educated to accredited standards, hold professional indemnity insurance, abide by a code of conduct, and undertake continuing professional development, thereby increasing quality outcomes and better mechanisms for consumer protection. This is already the case for architects.

Regulation of the architectural profession

Architects are registered professionals trained in the art and science of building design. They develop the concepts for structures and turn those concepts into images and plans. Architects create the overall aesthetic and look of buildings and other structures, but the design of a building involves far more than its appearance. The architect ensures the design is functional, safe, and economical and suits the needs of the end users.

Each state and territory of Australia has its own architect registration board, an independent statutory authority established under legislation to register architects, conduct disciplinary investigations, pursue unregistered use of the term architect, accredit programs of study and educate the public on architectural issues.

As a result of this regulation, consumers can be assured that an architect included on the NSW Register of Architects has five years professional education from an accredited education institution, a minimum of two years practical experience, has successfully completed the Architectural Practice Examination, as well as annually completing Continuing Professional Development (CPD) and holding professional indemnity insurance. In addition, penalties apply for individuals, corporations and firms who misrepresent as architects or offer architectural services while not registered.

A registered architect who is a member of the Institute is professionally qualified, legally registered to practice by State Registration Boards and bound by a code of practice established by the Institute and the Registration Board. This code requires they perform all duties with professional integrity.

Regulation of the engineering profession

For the public, the risk of inadequate engineering work depends in part on their exposure to engineering services. However, when broadly considered, every person's lifestyle is dependent on engineering for example via transport, communications, manufacturing, the built environment and utilities. Therefore, every Australian citizen has some risk exposure to engineering services.

There are many regulatory and quasi-regulatory regimes maintained by local, state and territory governments that have emerged due to an absence of a comprehensive regulatory system for engineering. Each state and territory has different notions of what constitutes an effective regulatory regime for engineers. Some jurisdictions have implemented registration through a statutory board, while others have introduced a co-regulatory regime with professional associations and government taking on various roles in the regulations process.

Other jurisdictions have elected to have no regulatory regime, preferring to leave the profession to self-regulate. Various government agencies and departments keep their own lists of engineers for procurement, certification and employment purposes. These “registers” are usually based on highly subjective and often biased or ill-informed judgement as to who is competent to practice as an engineer.

The systematic failures of the building and construction industry to effectively self-regulate, as identified in the Shergold-Weir report, has confirmed the Institute’s view, that as for architects, it is time for the systematic regulation of the building and construction sector in Australia. The public expects an adequate response by the NSW government to the failure of self-regulation in the building and construction industry and this includes the provision of engineering services.

There are a number of key benefits that would stem from the application of a registration system for engineers in NSW to redress these industry failures:

Information government, business and the consumer can rely on

Engineering services are purchased by governments, large and small business, and individual consumers and without a registration system consumers are limited in the extent to which they can determine the skills, abilities and professionalism of an engineer they may wish to engage. A registration scheme would allow consumers to determine the competence and experience levels of engineering practitioners, enabling them to make more informed decisions and have confidence that the skills they are procuring are of an acceptable standard.

Reducing risks to public health, safety and welfare

The greatest risk to consumers comes from engineering practitioners attempting to undertake work without adequate skills or competencies. Registration helps to ensure that only those with suitable baseline qualifications, enough relevant experience, and a proven commitment to ongoing training and development can provide engineering services.

Professional recognition

Businesses and the community expect a certain set of standards and skills from professional engineering practitioners. As with other professionals including architects, 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, insurance, cumulative and current experience, competencies and commitment to ethical conduct and continuing professional development are at the expected standard.

Legislative efficiency

A registration scheme in NSW that mirrors the requirements 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 different requirements in each jurisdiction. Business, industry and consumers will be able to have confidence in the professional services provided by engineers, both within and beyond NSW.

Given the current failure of self-regulation in the NSW building and construction industry it is clear that a joint approach by the NSW government and the engineering profession, with appropriate legislative support (co-regulation) is an essential step forward. This is particularly fundamental for those areas of engineering practice that clearly have the potential to impact public health and safety or where there is a significant asymmetry of knowledge between the engineer and the consumer.

The Institute therefore supports the following regulatory measures:

Restrictions on who may deliver a service – legislation must reserve the provision of services to qualified and/or experienced persons. The boundaries of what activities are to be confined to professional engineers and what other activities are able to be performed by less qualified or skilled persons must be clearly delineated.

Regulation as to professional conduct – legislation must provide for the adherence to codes of ethics or codes of conduct and disciplinary measures to minimise the incidence of malpractice and unprofessional conduct, and to provide visible assurance to clients and the general public that practitioners can be trusted to act in their interests.

Regulation as to continuing professional development – legislation must ensure that continuing professional development is a requirement for continuing practice after initial registration.

3. CO-REGULATION OF ENGINEERING PROFESSIONALS

The Institute supports the position of Engineers Australia that engineers in all areas of practice and operating in all industries should be registered before being able to practice and provide professional services to the public, unless they are working under the direct supervision of a registered engineer.

This comprehensive approach has existed in Queensland, where a compulsory register of engineers has been in place, since 1930. Anyone providing a professional engineering service in Queensland must be registered as a Registered Professional Engineer of Queensland (RPEQ), or work under the supervision of an RPEQ. The system helps to ensure that standards are maintained across the profession and underpins a high level of public confidence in the services provided by engineers.

In Victoria the *Professional Engineers Registration Act 2019* was recently passed. The Act introduces a co-regulatory scheme where initially, five categories of engineers must be registered: civil, structural, mechanical, electrical and fire safety. The scheme will commence from 1 July 2021 and has been designed to be extended to other engineering disciplines over time.

Given that engineering encompasses all industries, there are widespread risks from failures to regulate. This is not just confined to the building industry. Unless there is compulsory registration of all engineers, engineering failures will continue to pose a risk to community safety and consumer protection.

The design and construction of buildings requires the professional expertise of three major parties: engineers, architects, and builders. As outlined above, architects are separately registered and regulated in NSW by the *Architects Act 2003*. At the same time builders are registered and regulated by the *Building Professionals Act 2005* and, where it applies, the *Home Building Act 1989*.

In the design and construction of buildings, particularly higher risk buildings such as multi-unit residential buildings, mixed used buildings and speculative commercial buildings, engineers of many disciplines have a major role to play in both the structural fabric of the building and associated building services. Yet, engineers are not registered and regulated by the NSW government.

It is essential that the NSW government facilitates the introduction of a consistent registration system for the engineering profession in areas of highest risk to public health and safety, adopting a co-regulatory approach to the regulation of the engineering profession.

The Institute therefore strongly supports a stand-alone Professional Engineers Act mirroring the legislative provisions of the *Queensland Professional Engineers Act 2002* and the *Victorian Professional Engineers Registration Act 2019*.

Aligning regulation in this way will ensure mutual recognition of registration across borders, and minimise any costs associated for Australian governments in underpinning a co-regulation regime, and for professionals wanting to be registered in more than one jurisdiction.

Like Engineers Australia, the Institute is also concerned that with compulsory registration now required in both Queensland and Victoria there is an increased risk that unqualified or substandard engineers will seek to provide engineering services in NSW, where the engineering profession is currently unregulated.

Key Recommendation:

The NSW government must introduce a compulsory registration system for the engineering profession. This should be delivered through a statutory co-regulation scheme underpinned by a stand-alone Professional Engineers Act mirroring the legislative provisions of the *Queensland Professional Engineers Act 2002* and the *Victorian Professional Engineers Registration Act 2019*.

4. CONCLUSION

Despite the need for reform, the Institute would like to take this opportunity to note that although the issues facing the building and construction industry in NSW seem systemic and widespread, there are also many reputable builders and engineers, working closely and effectively with architects and other design professionals to ensure their own checks and balances are in place to deliver high quality construction projects to the market. The introduction of a registration system for the engineering profession underpinned by a stand-alone Professional Engineers Act will further support this occurring.

The existing registration of architects is also a positive reality. All Australian architects are insured and are required to have ongoing registration making them particularly well placed to deliver design quality throughout the construction process. Along with our members, the Institute is working tirelessly to assist Australian governments to bring consumer confidence back to the building and construction sector.

The Institute looks forward to continuing to work with the NSW government on these important issues.