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12th April 2019

Hon. Louise Staley MLA
Shadow Treasurer
Victorian Parliament

E: louise.staley@parliament.vic.gov.au

Dear Louise,

RE: Professional Engineers Registration Bill 2019
Concerns

The Association of Consulting Structural Engineers Victoria (ACSEV) represents some 250 plus consulting structural engineers in Victoria, most of whom are registered civil engineers as per the requirements of the Victorian Building Act. We do have some engineer members who are not registered, but are junior, retired, or simply employed by a firm run by a registered civil engineer.

We are also a registered Continuing Professional Development Provider with the Victorian Building Authority, providing professional development for currently registered engineers (Registered Building Practitioners Class Engineer Civil). We note that many of our already registered engineers practice in multiple areas of engineering including: structural, civil, geotechnical, hydraulic, and traffic engineering – all whilst being registered as Civil Engineers

We have reviewed the Professional Engineers Registration Bill 2019 currently before the Victorian Parliament Legislative Assembly, and have some concerns with the Bill.

We note that we are extremely disappointed by the Treasurer's reading of the Bill on 6th March where it was noted that the Government's commitment 'to work with relevant stakeholders on the introduction of a mandatory, statutory registration scheme and work with other jurisdictions to develop a nationally consistent registration scheme for engineers' included reference to the recent problems with the Opal Tower in Sydney 'which highlights the problems that can occur with poor engineering'. We fail to see how a relatively unregulated construction industry in New South Wales can be compared to an already regulated industry in Victoria. We note the engineering firm involved in this project is also based in Victoria, where they need to be registered to practice in the construction industry.

The Bill is largely a reintroduction of the Engineers Registration Bill 2018 which was put to the previous Parliament and was not passed by the Legislative Council.

The consultation process for the preparation of this Bill (and the 2018 Bill) has not included our organisation, or as far as we can determine, the general engineering profession. We did provide a response to the Department of Treasury and Finance regarding the original white consultation paper ‘A Statutory Registration Scheme for Victorian Engineers’ from September 2016, but received no reply, and have had no further involvement with the preparation of this Bill.

We provided response to Victorian Government, the Department of Treasury and Finance, and the Parliamentary Secretary to the Treasury regarding the Engineers Registration Bill 2018 and received feedback addressing our concerns basically noting that most could be dealt with by regulations. We believe that the proposed bill needs to be amended or rejected before the regulations can be adopted and amended.

We acknowledge that professional groups such as Engineers Australia have been involved with the process as targeted stakeholders, but their interests do not always coincide with ours.

ACSEV generally represents sole practitioners and small business firms of engineers (but we do have members who work for large practices also), nearly all of whom are directly involved in the construction industry. We are concerned as to what appears minimal consultation within the profession regarding this Bill and its affect on the engineering profession.

We support the intent of the Bill, which is to improve the standing of professional engineers in the community and give assurances to the public as to the capability and qualification of professional engineers.

However, we question the need of the Bill and believe that the Bill should at the least be significantly amended. We believe the Bill should only be accepted after considerable amendments, which we believe are necessary to protect the interests of both Engineers and the wider community.

We request your consideration as Shadow Treasurer in asking the Parliament to significantly amend the Proposed Bill.

Attached are our comments, which we ask be considered as part of our request to significantly amend the Bill.

We hope for your support and we look forward to your response.

Yours faithfully,



Karl Apted BE(Civil) MIE(Aust) MACSEV RBP-EC
President

On behalf of the Committee of the
Association of Consulting Structural Engineers Inc.
Association Number A0026069J

Professional Engineers Registration Bill 2019

ACSEV Review of Bill 12th April 2019

Comments:

1. Administration and Disciplinary Proceedings (Part 4)

ACSEV has concerns as to who will administer and form part of any disciplinary proceedings. ACSEV believes that any disciplinary body should include peer representation from an engineer of the same category.

We have concerns as to who will be administering the Act, including:

- Who is to be assessing engineer applications once an engineer is considered qualified by an Assessment Entity?
We understand that ‘Business Licensing Authority’ will do this, we assume this will remain the Victorian Building Authority.
- Who will be the ‘Assessment Entity’ administering the ‘Assessment Scheme’? We assume this to be Engineers Australia at this stage. We would like to see additional entities also be ‘Assessment Entities’ to increase competitiveness and reduce a monopoly situation. Engineers Australia is already asking varying fees, depending on whether you are a member or not, to be part of the National Engineers Register (NER). If there is to be a single Assessment Entity, fees should be the same for all applications.
- Who will be part of the Business Licensing Authority or the VCAT disciplinary body? Will there be ‘Professional Engineer’ peers on these bodies?

It seems unconscionable to have professional conduct questioned by those who are not part of the profession, especially in regards to negligence. We understand that at least one member will be an engineer.

We believe that at least two members of any disciplinary body should be registered professional engineers, with at least one of these being registered in the same area of expertise as the engineer being investigated.

- ACSEV would prefer to see a board or similar to that required under the Architects Act 1991 in Victoria rather than a legal tribunal under VCAT. We note that the penalty system proposed is significantly more onerous than that of the Architects Act.
- Complaints can be made by near anyone involved with the registered engineer’s practice.

Complaints are heard by CAV and VCAT.

ACSEV has concerns that costs cannot be claimed if complaints are found to be baseless. Engineers will need to wear all of their costs.

ACSEV believes engineers should be able to seek costs from anyone bringing or pursuing complaints that are found to be baseless. Baseless complaints should never have been brought against the engineer, so why should they wear costs defending themselves?

2. Powers of Entry and Search, and keeping of Records (Part 6)

ACSEV has concerns as to the onerous requirements and excessive powers provided to investigate engineers. These appear excessive, especially when compared to similar professions.

- ACSEV has concerns as to how these provisions work for ‘Registered Engineers’ who are employees of a firm or another Registered Engineer.
- Whose are the records? How does an employee keep records if they are held by former employer? Does an employer release their information prepared by former employees?
- Clause 71(1) states that a registered engineer must, at all reasonable times at each place at which the engineer practices as a registered engineer, keep all documents relating to business available for inspection by an inspector in a form that can readily be inspected.
 - o What does ‘business’ mean?
 - o What does ‘all documents’ refer to?
 - o What is a format that can be ‘readily inspected’?
 - o Is the inspector an engineer or is the inspector qualified to know what they are inspecting for?
- Powers of search and entry seem excessive. Why can these not match other professions such as the Architects or Medical Practitioners?

3. Offences (Part 5)

The associated penalties to offences appear quite significant. ACSEV has concerns as to the size of proposed penalties for breach of the proposed Bill. These appear excessive, especially when compared to similar professions.

- Penalty amounts are significantly higher than for similar profession such as Architects. The penalties noted appear up to 60 (\$9 514.20) Penalty Units. The Engineers Registration Act limits VCAT to 200 Penalty Units (\$31 714.00). Currently a penalty unit is \$158.57.
- Sections 67 & 68 note 500 (\$79 285.00) Penalty Units for providing professional services whilst unregistered or purporting to be registered when not. The Architects Act is 60 (\$9 514.20) Penalty Units (Architects Act Section 4).

4. Codes of Conduct

ACSEV has concerns as to who will be setting the code of conduct, whether there are multiple codes for each type of engineering, and what provisions will there be for changes?

- Will there be multiple assessment entities for each area of practice? We understand that in Queensland there are multiple assessment entities, but not for each area of practice.
- If there are multiple assessment entities, can there then be multiple codes of conduct for the same area of profession or will there be only one?
- Will engineers need to abide by multiple codes of conduct?

5. Supervision

ACSEV has concerns as to what will constitute direct supervision?

- The term direct supervision can be hard to define. The requirement for an auditable supervision process is onerous and will be difficult to demonstrate in practice.
- ACSEV believes the wording should be altered to effective supervision or similar to allow some extent for non registered engineers to work away from registered engineers.
- The review and checking and provision of feedback for non registered engineers works should be acceptable as supervision.
- ACSEV is concerned that in other jurisdictions with registration in place, this is a demonstrable issue with engineers being fined for not being able to demonstrate direct supervision.

6. Existing Registered Engineers in Victoria (Part 8)

ACSEV has concerns as to how existing registered and professional engineers will be treated, and the compliance costs (fees and time) for existing registered engineers to transition.

- The Bill does not effectively recognise that already in Victoria we have registration of professional engineers under the Victorian Building Act 1993.
 - We note that there is a category of Endorsed Building Engineer, which is effectively a Registered Building Practitioner of Class Engineer.
These are already regulated professions, and the Bill appears limited to the same already registered engineers. How is this to improve the construction industry?
Perhaps the addition of other categories should be considered (Geotechnical Engineers?)
 - What is the process for recognition of existing registered engineers in the future?
ACSEV is concerned that currently registered engineers will only have a 5 year grace period on commencement of this Bill, but will then need to reapply under the requirements of the Act, effectively as a new engineer.
What recognition is given to experienced engineers, some with 25 years plus experience, of having being a registered engineer?
The Bill gives transition provisions in Section 8, and states that if you are a Registered Building Practitioner at the time this Bill comes into force, you will be a Professional Registered Engineer with the Building Engineer Endorsement.
 - ACSEV believes that any Registered Building Practitioner Engineer under the current Building Act should be ‘grandfathered’ into the new scheme and be considered a registered professional engineer in the same categories provided they meet the *ongoing* requirements of the ‘Assessment Entity’, not their entry requirements.
- ACSEV has concerns that many Engineers with extensive experience and knowledge, who have practiced for many years, will no longer be able to practice due to not having ‘prescribed qualifications’. The current understanding of ACSEV, is that a ‘Washington Accord’ degree qualification is required (generally offered after 1989). This will mean that many currently registered engineers with pre 1989

or non Washington Accord degrees will not be recognised under the Act, despite their many years of experience.

To upgrade a qualification (which has likely already been accepted as adequate for many years) is a time and money cost to affected engineers, and to be quite frank an insult to professionals with many years of experience (most of whom graduated before 1989). There are also major concerns as to how qualifications can be upgraded, in most cases a new qualification will be required.

We fear many experienced engineers will be lost to the profession.

- On a personal note, I firmly believe that many older Diploma Qualifications from the late 1960's and early 1970's were the equivalent of Washington Accord degrees. I hold a 'Washington Accord' degree, whilst my father, who is still practicing and is well respected in the profession, has a Diploma. Whilst I was still studying, we both compared our syllabus and the level of knowledge he studied for was similar to that of mine, and differed mainly in that the Degree had a slightly higher level of mathematics and the Diploma had a broader practical experience emphasis giving knowledge to many facets of civil engineering design.

I firmly believe there are many professional engineers, who do not hold an equivalent degree and who will be considered unsuitable for registration under this act, that are well qualified and experienced to be registered professional engineers under the propose Act.

7. Multiple Registrations

ACSEV has concerns as to how professional registered engineers will be treated and registered under multiple categories.

Ideally the engineer should be registered in their area of expertise, but should not practice outside their area of competency.

Currently Registered Building Practitioner Engineers under the Category Civil Engineer as per the Building Act 1993 can practice as (and are required to have knowledge of) Civil (drainage / stormwater), Structural, and Geotechnical engineers. This is similar for Mechanical and Electrical engineers.

- Will there be restrictions on working in similar fields. For example, will a Structural Engineer be able to design subsurface drainage (ie. Civil Engineering)?
- What will be continuing professional development requirements for multiple engineer category registrations?
- Many engineers currently work, and are expected to work, over multiple engineering categories.

For example, how does a Chief Engineer of a project manage a team of engineers representing all areas of practice on a larger project? How does a Structural Engineer designing a structure such as a basement allow for drainage design if this is to be covered by Civil Engineers? How do Mechanical Engineer's design

equipment that needs electrical works that should be designed by an Electrical Engineer?

- There are many instances of crossover in areas of engineering practice. Will this now be prohibited if you only have one category of registration. This will be a significant impost to the profession, which will likely be passed onto the public in terms of additional fees and costs and time requirements to have multiple engineers perform the same tasks.

8. Review

ACSEV feels the act will impose unnecessary burdens on Professional Engineers and will discourage members of the profession from becoming Registered Professional Engineers.

- ACSEV has concerns as to what the intent of the Bill is, and what is the intended outcome?
- Absence of a grandfather clause and reliance on an academic qualification cut off date (for Washing Accord degrees) favouring academic qualification over experienced engineers in their field of practice is considered a mistake which will lead to the loss of many experienced engineers.
- Making the registration process more onerous will not lead to more engineers becoming registered. It will more likely discourage engineers from becoming registered, especially when they can work under the supervision of a registered engineer.
- ACSEV believes that compliance with the Act will lead to increased administrative burdens and costs that will in turn need to be passed onto the consumer and public.
- ACSEV believes the proposed Bill to be a restriction of trade, in that the proposed system will likely ensure that all Registered Professional Engineers need to register via an assessment entity that sets its own assessment scheme and code of conduct. Engineers who currently are not members of these organisations will be penalised financially (higher fees to be Assessed if not a member of the Assessment Entity) and there is also a significant time impact to detail with this process.
- ACSEV believes there to be a potential conflict of interest where Assessment Entities charge more for assessment if applicants are not members of the entity. This could be particularly of concern if there is only one assessment entity (at this stage we understand the Engineers Australia will be an assessment entity, and as far as we can determine at this stage, they are the only entity setup to do this).
- ACSEV would like to see further more widespread consultation with all stakeholders, including the engineering profession and the general public. We do not consider the profession to have been adequately consulted.
- ACSEV has concerns that costs cannot be claimed if complaints are found to be baseless. Engineers will need to wear all of their costs.
- ACSEV has concerns as to the offences and the size of the fines proposed. These are not comparable to similar professions (eg. architects).
- ACSEV would like to see consideration given to overlap in areas of practice in engineering.

It beggars belief that additional engineers will be required to design minor elements of projects readily able to be designed by already competent engineers.

ACSEV believes that this must be clarified and allowed for.

Engineers should be registered in their area of expertise, but should be allowed to practice in areas where they are competent.

- ACSEV has concerns as to the way in which the proposed disciplinary body will work and the extent of engineering knowledge the body will have that is relevant to the engineer being investigated.
- ACSEV would also like to see whether a cost benefit analysis has been done to confirm the need for changes.

ACSEV has concerns as the cost of administering this process and questions the need for the Bill.