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Dear Mr ~~Mr~~ <sup>Karl</sup> Apted

### **ENGINEERS REGISTRATION BILL 2018**

I am writing in response to your letter to the Hon Danielle Green MLC, Member of Yan Yean dated 23 March 2018 raising concerns about the Engineers Registration Bill 2018 (the Bill). Your letter has been forwarded to me as this issue falls within my responsibilities as Parliamentary Secretary for Treasury and Finance.

The registration scheme for engineers is a Victorian Government election commitment. The commitment aims to improve the information available to consumers of engineering services to enable them to make more informed choices. The scheme is also intended to promote professional development across the engineering profession and reduce the risk of harm and loss to the public.

I note that the Association of Consulting Structural Engineers Victoria Inc (ACSEV) is supportive of these measures where they improve the standing of professional engineers in the community and give assurances to the public as to the capability and qualification of professional engineers.

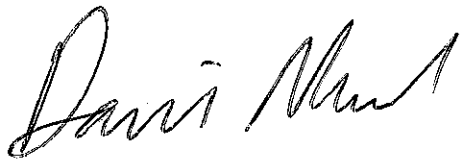
The Government has consulted broadly on the proposed scheme through stakeholder meetings, roundtable discussions and the release of a public consultation paper. This has provided valuable feedback from a number of industry stakeholders on key design aspects of the proposed registration scheme. I acknowledge that the ACSEV provided feedback to the public consultation paper and following on from our subsequent discussion, please find attached (**Attachment 1**) the responses and feedback to the concerns that you have raised.

I understand that many of your members are currently registered under the *Building Act 1993*. I note that the transitional arrangements provide that these engineers will be taken to be registered under the Bill in the same area as their current class of engineering under the Building Act until their registration with the Victorian Building Authority falls due. At that time, these engineers will need to go through the assessment process and apply for registration to the Business Licensing Authority. This five-year transition period provides a considerable amount of time for engineers to ensure that they meet the eligibility criteria. As a professional association holding expertise in structural engineering and providing technical and professional support to your members, you may wish to consider becoming an assessment entity under the Bill.

In future, a number of important elements of the scheme such as the fees to be charged for registration and details around continuing professional development will also be subject to public consultation through the regulatory impact statement. The government would value ACSEV input into this process.

The Government will continue to consult with the engineering sector as we progress this scheme.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Daniel Mulino', written in a cursive style.

**Daniel Mulino**  
**Parliamentary Secretary to the Treasurer**

19/4/2018

cc: Hon Danielle Green MLA, Member for Yan Yean

# ACSEV correspondence

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## 1. Engineers Registration Bill and Definition of Engineer

The Victorian Engineers Registration Bill, like Queensland's Professional Engineers Act 2002, regulates the provision of 'professional engineering services'. The definition in Victoria's legislation mirrors that in Queensland's legislation to ensure consistency of coverage.

It will be an offence for a person who is unregistered to represent that:

- they can provide professional engineering services;
- they are an endorsed building engineer; or
- they are a non-practising engineer.

The Bill does not propose express prohibitions on the use of certain titles because it is intended the offences will operate more broadly than a restriction on titles would.

For example, an offence that only prohibits an unqualified and unregistered person from calling themselves an 'engineer' would not prohibit that person from offering complex engineering designs provided they did not call themselves an engineer when doing so. The broader offence provision will prevent consumer harm by ensuring that the person cannot offer to provide professional engineering services.

## 2. Administration and Disciplinary Proceedings

### Scheme is co-regulatory

The Engineers Registration Bill establishes a co-regulatory model which establishes a clear division of responsibility between industry and Government. This will see:

- (a) an engineer's qualifications, experience and continuing professional development assessed by assessment entities such as professional associations that hold the expertise to conduct such assessments and are competent in doing so; and
- (b) enforcement and compliance remaining the responsibility of the State.

Industry bodies will need to apply to Government to be able to assess eligibility under the scheme.

### Government regulators

The Business Licensing Authority (which is separate to the Victorian Building Authority) will:

- perform the role of the lead regulator;
- determine applications for registration and renewal;
- determine applications for endorsement on the basis of a report by the Victorian Building Authority (VBA);
- approve and revoke the approval of assessment schemes; and
- maintain a Register of Professional Engineers, including processing changes following disciplinary action.

Membership of the BLA will be expanded to include a member who has qualifications and experience in the field of engineering.

Consumer Affairs Victoria (CAV) will:

- provide the 'back office' support to the BLA;
- monitor compliance with the *Engineers Registration Act 2018*;
- investigate and apply to Victorian Civil and Administrative Tribunal to discipline engineers in relation to an engineer's registration; and
- prosecute offences under the Act.

The VBA will:

- consider applications for endorsements and report to the BLA;
- investigate and discipline engineers in relation to an engineer's endorsement under the *Building Act 1993*.

### **Assessment entities**

Assessment entities will:

- examine the qualifications and competencies of applicants for registration;
- report to the BLA about the applicant's eligibility for registration;
- audit registered engineers' compliance with Continuing Professional Development requirements.

Based on the experience in Queensland (there are currently nine approved assessment entities in Queensland), it is expected that many of the associations representing the engineering profession will seek to become assessment entities in Victoria. This was reinforced by the stakeholder consultation process where many professional associations expressed an interest in establishing assessment schemes. Assessment entities will not be limited to Engineers Australia and Professionals Australia, and indeed ACSEV may wish to consider applying to become an assessment entity.

In considering whether to approve a proposed assessment scheme, the BLA will be able to consider the fees to be charged by the assessment entity. Because fees charged must be 'reasonable', fees that are significantly different between members and non-members may not be approved. Given that entities providing the competency assessment are in competition with one another we expect there to be a downward pressure on fees.

The registration scheme will not require registered engineers to be a member of a professional association such as Engineers Australia in order to obtain or maintain registration. Further, any fees set by an assessment entity must be reasonable (refer to Section 34(e)) of the Bill.

### **Peer review of engineers through the composition of disciplinary bodies**

The Victorian Civil and Administrative Tribunal (VCAT) will be the disciplinary body in relation to matters brought by CAV. VCAT members are generally Australian Legal Practitioners, although the President of VCAT has a capacity to determine the composition of the VCAT under section 64 of the *Victorian Civil and Administrative Tribunal Act 1998*. It is expected that the VCAT President will

choose a panel of members with the appropriate balance of skills depending on the nature of the disciplinary issue at hand.

Further, under section 14 of the *Victorian Civil and Administrative Tribunal Act 1998* the Minister may appoint persons with special knowledge or experience in relation to any class of matter in respect of which functions may be exercised by the Tribunal. This can include members with engineering backgrounds.

This will enable VCAT to be constituted by a panel appropriate to the circumstances of the matter. For example, discipline arising from an engineer's poor design could be handled by a panel comprising both engineer and non-engineer members. Discipline arising from more clear cut matters that do not go to the engineer's work, such as practising as an engineer when they were registered as non-practising can be handled by a single VCAT member.

Funding to VCAT to undertake the disciplinary role for the engineers registration scheme, including the appointment of persons with specialist engineering knowledge, has been incorporated into the design of the scheme.

It should also be noted that under the *Architects Act 1991*, VCAT acts as the appeal body for decisions of disciplinary tribunals established by the Architects Registration Board of Victoria.

### **3. Powers of entry and search and keeping of records**

Clause 71 of the Bill requires an engineer to make available records (including all documents) relating to the engineer's own practise as an engineer. It would be expected that the documents would relate to matters which could be prosecuted. CAV's trained inspectors are able to enter with technical assistance such as an engineer so those people will know what documents are of relevance.

Clause 71 does not incorporate an ongoing obligation on the engineer if they leave the employment of an engineering firm. Instead, that firm has an obligation to produce documents under clause 74.

With respect to the nature of the powers, the Bill gives CAV entry and information-gathering powers broadly similar to a range of other industry regulation schemes they administer. The powers have been designed to ensure CAV can effectively monitor compliance with the legislation, and reflect the structure of powers in a wide range of other legislation administered by CAV such as the *Rooming House Operators Act 2016* and the *Conveyancers Act 2006*. The VBA will rely on a similar suite of powers contained in the *Building Act 1993*. Like CAV's other powers, these powers have been structured to reflect the safeguards recommended by a Parliamentary Inquiry into the Powers of Entry, Search, Seizure and Questioning by Authorised Persons in 2002.

#### **Power to enter premises without consent**

Provisions in the Engineers Registration Bill permitting CAV inspectors entry to premises without consent or a warrant have safeguards attached. Safeguards in the provision include:

- restrictions on hours of entry;
- only permitting entry for compliance monitoring purposes; and

- not permitting entry to residences under any circumstances.

Inspectors powers of entry and search are generally standardised across “Consumer Acts” and are modelled upon the inspection powers in Part 6.4 of the *Australian Consumer Law and Fair Trading Act 2012* (ACLFT Act).

Relevant provisions in the ACLFT Act are:

- s 149 entry or search with consent
- s 155 entry without consent or warrant
- s 157 search warrants

Acts declared to be “Consumer Acts” are listed in Schedule 1 to the ACLFT Act. It is proposed that the Engineers Registration Act will be included in the Schedule as a Consumer Act.

Examples of existing Consumer Acts which contain entry and inspection powers equivalent to those proposed for the Engineers Registration Bill include:

*Motor Car Traders Act 1986*

- s 82AG entry or search with consent
- s 82AH entry without consent or warrant
- s 82AI search warrants

*Estate Agents Act 1986*

- s 70I entry or search with consent
- s 70J entry without consent or warrant
- s 70K search warrants

*Conveyancers Act 2006*

- s 163 entry or search with consent
- s 164 entry without consent or warrant
- s 165 search warrants

Many other professions such as legal practitioners (under the *Legal Profession Uniform Law Application Act 2014*) and health professionals (under the *Health Practitioner Regulation National Law (Victoria) Act 2009*) are subjected to extensive search and seizure powers reflecting the need to ensure that the regulatory schemes set out by those Acts are effectively enforced. The regulatory schemes of these professions are outlined in a comparison table provided at **Attachment 4**.

The information-gathering powers given to disciplinary tribunals constituted by the Architects Registration Board of Victoria under the *Architects Act 1991* are more extensive than those used in this Bill, being modelled on the powers previously given to Royal Commissions under the *Evidence (Miscellaneous Provisions) Act 1958*. Sanctions for non-compliance with those powers can include fines up to \$2378.55 every day that non-compliance occurs or imprisonment for 3 months.

## 4. Offences

The maximum penalties applicable to the offences in Part 5 of the Bill are modelled on similar maximum penalty levels that apply for similar offences under the *Building Act 1993* relating to representations that a person is registered when they are not. The intent of keeping penalty levels consistent was to ensure that in setting up the new engineers registration scheme, there would be no weakening of protections that currently exist for engineers engaged in the building industry.

It is also worth noting that Queensland's Professional Engineers Act 2002 imposes penalty levels of 1000 penalty units for similar offences (in Queensland, a penalty unit is worth \$126.15, meaning the maximum penalty is \$126,150). Hence Victoria's maximum penalty of \$79,285 is broadly aligned with that applicable in Queensland.

It should also be noted that these are the maximum penalties and a court may exercise its discretion to impose a smaller penalty. As with other enforcement regimes, it should be expected that the maximum penalties will only be applied in the most serious cases.

## 5. Codes of Conduct

Under clause 31, an assessment entity can prepare a code of conduct and present it to the Director of CAV if the assessment entity also represents engineers. While it is possible to have multiple codes of conduct, including in relation to the same area of engineering, it is expected that only one code of conduct will be approved.

It is expected that the Director will engage in consultation as part of the process of preparing or approving codes of practice. This expectation of consultation is reinforced by the fact that, in preparing or approving codes of practice, clause 31 of the Bill requires the Director to consult with any prescribed organisations representing engineers and enables the Director to consult with any other organisations.

## 6. Existing registered engineers in Victoria

Engineers registered under the *Building Act 1993* have been recognised by the Bill, and will be taken to be registered in the same area as their current class of engineering under the *Building Act 1993*.

With respect to qualifications and experience, it is recognised that some engineers previously registered by the Victorian Building Authority and Building Practitioners Board may not have the qualifications necessary to successfully meet the minimum competency standards set by an assessment scheme (expected to be a four year Washington Accord degree and five years' experience). For these engineers there is a transition period of up to five years so that they have ample time to approach assessment schemes and develop a plan to ensure that they meet the required competency standards.

The five –year transition period provides sufficient time for engineers to meet the eligibility criteria. This approach, rather than grandfathering of existing engineers, reflects one of the key aims of the registration scheme: to ensure that registered engineers are both appropriately experienced and qualified.

## 7. Multiple registrations

It is expected that professional associations will provide clear definitions of what their assessment scheme covers in relation to the area of engineering it applies to. Engineers who are registered under that assessment scheme will be expected to only provide professional engineering services in relation to the matters they have been found competent to carry out under that assessment scheme.

Where an engineer is registered in more than one area, this will not entail an additional 150 hours over three years for each area of engineering. Queensland currently requires an engineer to do 150 hours over three years, regardless of how many areas they are registered in. It is expected the Victorian scheme will operate on the same basis.

It is expected that engineers who work outside the area of engineering for which they have been granted registration will be subject to discipline for unsatisfactory professional conduct. This reflects that they will not have had their qualifications and experience in other areas of engineering assessed by the relevant assessment scheme, and reviewed and approved by the BLA.

## 8. General comments

### Intent of the Bill

Despite the fundamental role in the economy that engineers have, the often complex nature of their work and the importance of their work in ensuring public safety, most engineers are not required to hold any kind of formal registration or licence. This stands in contrast to other leading professions in Victoria, such as lawyers, doctors, nurses, architects and teachers.

The scheme aims to:

- improve consumer confidence in the provision of engineering services;
- ensure the qualifications and experience of engineers working on Victoria's infrastructure pipeline is checked;
- help to promote professional development within the engineering profession;
- reduce the risk of loss and harm to the public; and
- facilitate labour mobility with respect to jurisdictions in Australia and elsewhere that have registration schemes.

Finally, the engineering profession is increasingly globalised. Some of Australia's trading partners such as Japan, the United States, Korea, Singapore, New Zealand and Malaysia have registration schemes for engineers. A registration scheme will help Victorian engineers to compete in this global marketplace by giving consumers of engineering services the assurance that the engineer they engage:

- is suitably qualified and experienced, and
- will comply with well-recognised and internationally understood professional benchmarks such as Washington Accord-level degrees.



## Costs of the scheme to engineers and the community

The registration scheme only requires professional engineers who are carrying out a design, or a construction or production activity, relating to engineering to be registered. Two broad exemptions will also exist:

- the direct supervision exemption; and
- the prescriptive standard exemption.

These exemptions are designed to minimise the need for people to be registered where the risks arising from their work are relatively low, thereby minimising regulatory burden.

In the case of direct supervision, it means that a qualified and experienced registered engineer must review the other person's work to ensure it is of an appropriate standard. For regional engineers, the Government has committed that supervision can be undertaken remotely, including by telephone, written correspondence or voice or video chat. This is consistent with the current practice in Queensland (see **Attachment 5** – BPEQ Practice Note Series – Direct Supervision).

In the case of a prescriptive standard, it enables people to avoid the need to be registered if the design work to be undertaken is straightforward, rather than requiring advanced calculations.

The scheme is therefore targeted in such a way that appropriately balances the need for registration of engineers that are responsible for complex design and construction works, while ensuring the scheme is not overly cumbersome.

## Consultation

The following stakeholder consultation occurred during the development of the Engineers Registration Bill:

December 2015	Stakeholder Roundtable (with six organisations in attendance)
September 2016	Consultation Paper published on Department of Treasury and Finance website, 'A statutory registration scheme for Victorian engineers' (received written submissions from 40 organisations and individuals)
September 2016	Stakeholder Roundtable (with over 30 attendees)
December 2017 – February 2018	Targeted Stakeholder consultation on Exposure Draft (received 20 written submissions and held 20 meetings)

There have been numerous other consultations held in addition to the major stakeholder consultations outlined above.

## Cost/benefit analysis

A Legislative Impact Assessment (LIA) has been prepared and assessed by the Commissioner for Better Regulation.

The Victorian Guide to Regulation stipulates how an LIA should be developed. The Guide explains the use of different decision tools to determine whether the benefits of a regulatory option outweigh its costs, and to rank different options, depending on the data available. The most commonly used

methodologies are: cost-benefit analysis (CBA), multi-criteria analysis and break-even analysis. Where cost-benefit analysis is not used, there will, by definition, not be a cost-benefit ratio (CBR).

It is often difficult or not possible to undertake CBA in relation to primary legislation that governs a regulatory regime. This reflects the fact that primary legislation usually implements the overarching framework of a regulatory regime. The impact of such higher level characteristics of regulation are often difficult to quantify. LIAs are Cabinet-in-Confidence documents that are used by Cabinet to evaluate legislation.

In contrast, regulations typically deal with more specific elements of a regulatory regime – such as detailed requirements for registration and fees. It is often possible to quantitatively assess the impact of these aspects of regulatory arrangements. Regulatory Impact Statements (RISs), which evaluate the impact of Regulations underpinning legislation, are publicly released. A RIS will be undertaken in relation to the regulations underpinning this legislation and will involve extensive public consultation. When finalised, the RIS for the Engineers Registration Regulations will be publicly released.

In the Engineers Registration Bill LIA, the multi-criteria analysis found that the proposed scheme would be the most effective at improving the information available to users of engineering services and assuring them that any legally practising professional engineer meets the specific standards that have been assessed and verified by industry. The break-even analysis concluded that the proposed scheme serves to mitigate the risk of any future decline in quality standards and professionalism within the engineering industry.

## Practice Note Series – Direct Supervision

### 1. Rationale

A number of registered professional engineers (“RPEQs”) have made enquiries to the Board of Professional Engineers of Queensland (“Board”) about the concept of ‘direct supervision’ of a person carrying out a professional engineering service,<sup>1</sup> as contemplated by the *Professional Engineers Act 2002 (Qld)* (“Act”). The purpose of this Practice Note is to provide an explanation of the concept of ‘direct supervision’.

### 2. Introduction

The Act provides that a person who is not an RPEQ must not carry out professional engineering services.<sup>2</sup> A person who does so commits an offence, and is liable to a maximum penalty of \$110,000.00.<sup>3</sup> However, this is not the case if the non-RPEQ carries out the professional engineering services under the direct supervision of an RPEQ who is responsible for the services.<sup>4</sup>

The Act provides that an RPEQ must not carry out professional engineering services in an area of engineering other than an area of engineering for which the RPEQ is registered.<sup>5</sup> For example, an RPEQ Electrical must not carry out professional engineering services in the Civil area of engineering. An RPEQ who does so commits an offence, and is liable for a maximum penalty of \$110,000.00.<sup>6</sup> However, again, this is not the case if the RPEQ carries out the professional engineering services under the direct supervision of another RPEQ who is registered in the area of engineering and responsible for the services.<sup>7</sup>

If a person who would not otherwise be allowed to carry out particular professional engineering services carries out the services under the direct supervision of an appropriately qualified RPEQ who is responsible for the services, that person will **not** contravene the Act.

### 3. Requirements of the Act

The Act provides that a person carries out professional engineering services under the direct supervision of an RPEQ only if the RPEQ directs the person in the

<sup>1</sup> Please see the Board’s Practice Notes 4.3(1A) ‘Professional Engineering Services and Prescriptive Standards’, and 4.4 ‘A guide to the elements of a professional engineering service’, for a more detailed explanation of a professional engineering service.

<sup>2</sup> *Professional Engineers Act 2002 (Qld)* s 115(1).

<sup>3</sup> *Professional Engineers Act 2002 (Qld)* s 115(1). A penalty unit is currently \$110.00: *Penalties and Sentences Act 1992 (Qld)* s 5(1)(d).

<sup>4</sup> *Professional Engineers Act 2002 (Qld)* s 115(2).

<sup>5</sup> *Professional Engineers Act 2002 (Qld)* s 115(3).

<sup>6</sup> *Professional Engineers Act 2002 (Qld)* s 115(3). A penalty unit is currently \$110.00: *Penalties and Sentences Act 1992 (Qld)* s 5(1)(d).

<sup>7</sup> *Professional Engineers Act 2002 (Qld)* s 115(4).

carrying out of the services and oversees and evaluates the carrying out of the services by the person.<sup>8</sup>

The Code of Practice for Registered Professional Engineers (“Code”) states that if an RPEQ supervises a person in carrying out professional engineering services within the meaning of section 115 of the Act, the RPEQ must, in the role of the supervisor: (a) have sufficient knowledge of the professional engineering services carried out; (b) sufficient control over any outputs of the professional engineering services to reasonably form the view that the standard of the professional engineering services is that to be expected of an RPEQ; and (c) take full professional responsibility for the professional engineering services provided by that person.<sup>9</sup>

#### 4. Practice

Based on the provisions of the Act and the Code, the objects of the Act, and the history of the amendments to the Act, the Board considers that for supervision to be ‘direct supervision’ as required by the Act, each of the following five elements must be satisfied:

- (a) the supervision must be **direct**; and
- (b) the supervising RPEQ must **direct the person** in the carrying out of the service; and
- (c) the supervising RPEQ must **oversee** the carrying out of the service by the person; and
- (d) the supervising RPEQ must **evaluate** the carrying out of the service by the person; and
- (e) the supervising RPEQ must **take full professional responsibility** for the service.

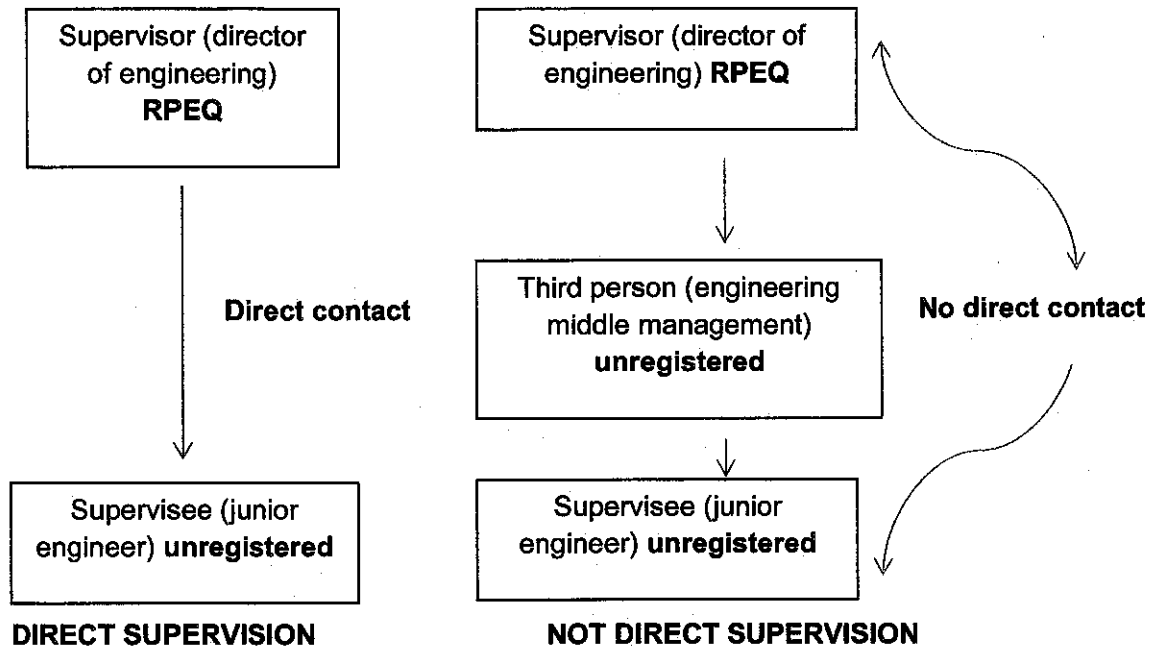
The supervision must be **direct**. The supervisor must have direct contact with the supervisee and actual knowledge of the professional engineering service being provided. Depending on the nature of the service being supervised, direct contact need not be in person, but may be through written correspondence (letters, drawings, or emails), telephone, or voice or video chat. However, the contact must be directly between supervisor and supervisee, and not through a third person.

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<sup>8</sup> *Professional Engineers Act 2002* (Qld) s 115(5).

<sup>9</sup> Code of Practice for Registered Professional Engineers, paragraph 3.6.

Diagram 1: Examples of appropriate and inappropriate supervision



Also, again depending on the nature of the service being supervised, the supervisor may not need to be physically present at the site where the service is being carried out. However, the supervisor must still have sufficient knowledge of every significant element of the service being undertaken. Such knowledge might only be attainable by the supervisor being physically present at the site, but in some cases could be gained through photographs or video footage, or review of site investigation notes prepared by the supervisee. The type of direct contact and actual knowledge required will depend on the actual circumstances of each situation.

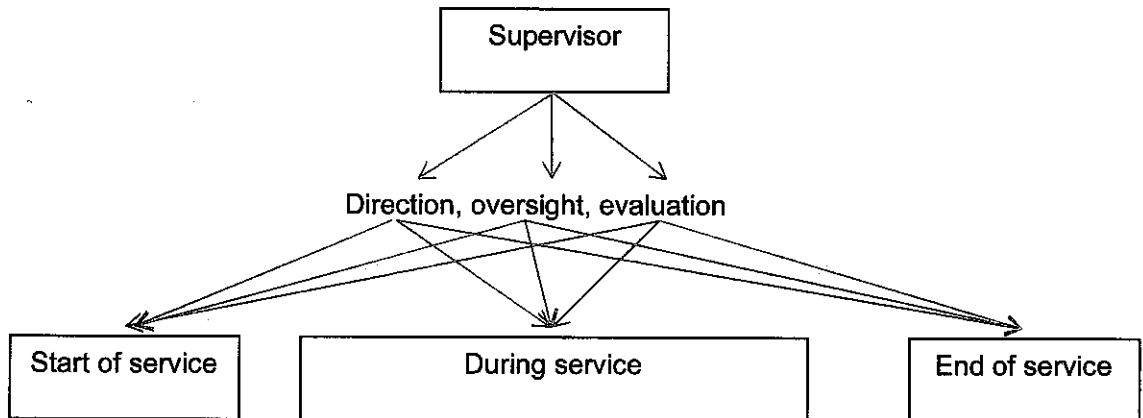
The supervising RPEQ must **direct the person** in the carrying out of the service. The supervisor must not merely observe the carrying out of the service by the supervisee, but must be in control of the carrying out of the service, in the sense of directing the supervisee in the carrying out of the service. Supervision will not be direct supervision if the supervisor allows the supervisee to have free reign in how the service is carried out.

The supervising RPEQ must **oversee** the carrying out of the service by the person. The supervisor must be involved at all stages of the carrying out of the service by the supervisee. Supervision will not be direct supervision if a supervisor merely checks the completed service and approves or 'signs off' on it. **Certification or approval at the conclusion of a service is not sufficient to constitute direct supervision without all other elements of direct supervision also being present.**

The supervising RPEQ must **evaluate** the carrying out of the service by the person. The supervisor must be satisfied that, at all times, the service is being carried out by the supervisee to a standard which might reasonably be expected of an RPEQ, in a

professional and competent way, exercising adequate knowledge, skill, judgement, and care. This will require the supervisor to be satisfied about the information the supervisee has gathered, the calculations the supervisee has made, and the judgements the supervisee has made in the application of engineering principles and data to the carrying out of the service.

Diagram 2: A diagram of appropriate direction, oversight, and evaluation



Finally, the supervising RPEQ must **take full professional responsibility** for the service. This means that if a complaint is made about the standard of the service supervised, the supervisor must accept that the complaint will attach to them as the person who provided direct supervision of the carrying out of the service, and not the supervisee, and that they may be subjected to investigation and subsequent disciplinary action by the Board.

***The exact requirements for direct supervision will vary depending on the nature and circumstances of the service being supervised.***

Finally, the Board considers that ***both the supervisor and supervisee should document, and retain documentation of, the supervision provided*** by the supervisee, to be produced if verification of the existence and nature of the supervision is ever required.

## 5. References

*Acts Interpretation Act 2002 (Qld).*

*Professional Engineers Act 2002 (Qld).*

Code of Practice for Registered Professional Engineers.

Australian Concise Oxford Dictionary.

Version 1.2 – 5 February 2014

## Comparison of regulatory schemes

Aspect	Engineers (as proposed by the Bill)	Accountants	Lawyers	Architects	Doctors (and other Health Practitioners)
Regulatory model and legislation	<p><u>State-based scheme</u></p> <p>Engineers will be regulated under a state-based Act: the <i>Engineers Registration Act 2018</i>.</p>	<p><u>National scheme</u></p> <p>The Australian Securities and Investments Commission (ASIC) regulates accountants' activities under a number of Commonwealth laws. These laws include:</p> <ul style="list-style-type: none"> <li>• Corporations Act 2001; and</li> <li>• Australian Securities and Investments Commission Act 2001.</li> </ul> <p>The Tax Practitioners Board (TPB) registers accountants who wish to act as tax agents, BAS agents or tax advisers under the <i>Tax Agent Services Act 2009</i> (TASA).</p>	<p><u>State-based uniform scheme</u></p> <p>Legal practitioners are regulated through the <i>Legal Profession Uniform Law Application Act 2014</i> which applies the Legal Profession Uniform Law (Uniform Law) in Victoria. Victoria is the 'host jurisdiction', meaning the Uniform Law is a schedule to the <i>Legal Profession Uniform Law Application Act 2014</i>.</p> <p>On 1 July 2015, the Legal Profession Uniform Law became the governing legislation for all lawyers in Victoria and New South Wales.</p> <p>Other jurisdictions have not yet adopted the uniform scheme.</p>	<p><u>State-based scheme</u></p> <p>The <i>Architects Act 1991</i> regulates architects.</p>	<p><u>State-based uniform scheme</u></p> <p>The Council of Australian Governments (COAG) decided in 2008 to establish a single National Registration and Accreditation Scheme (National Scheme) for registered health practitioners.</p> <p>Each jurisdiction applies the Health Practitioner National Law Act 2009 of Queensland.</p> <p>Victoria applies the law through the <i>Health Practitioner Regulation National Law (Victoria) Act 2009</i>.</p>
Regulator	<p>The Business Licensing Authority will approve assessment schemes and register applicants.</p> <p>Consumer Affairs Victoria will investigate contraventions, apply to VCAT to undertake discipline and prosecute offences.</p> <p>The Victorian Building Authority examines applications for endorsement and disciplines engineers who are engaged in the building industry.</p> <p>Assessment schemes assesses applicants' qualifications and experience.</p>	<p>ASIC regulates accountants who perform certain functions. Regulated functions include:</p> <ul style="list-style-type: none"> <li>• the provision of certificates relating to disclosure in market offers. In such a case, an accountant must be a 'qualified accountant'.</li> <li>• operating as an auditor under Part 9.2 of the Corporations Act.</li> </ul> <p>The TPB registers tax agents, BAS agents and tax (financial) advisers.</p>	<p>The <i>Legal Profession Uniform Law Application Act 2014</i> names the Victorian Legal Services Board and the Victorian Legal Services Commissioner as the local regulators responsible for regulating lawyers in Victoria.</p> <p>The Victorian Legal Admissions Board handles initial applications for admission to the profession.</p> <p>The Legal Services Board handles ongoing registration and receives complaints.</p> <p>The Legal Services Commissioner handles complaints, discipline and enforcement.</p>	<p>The Architects Registration Board of Victoria registers architects.</p> <p>The Architects Accreditation Council of Australia (AACA) accredits courses and conducts examinations.</p>	<p>The Australian Health Practitioner Regulation Agency (AHPRA) established under the Health Practitioner National Law is the organisation responsible for the implementation of the National Registration and Accreditation Scheme across Australia.</p> <p>The Medical Board of Australia:</p> <ul style="list-style-type: none"> <li>• registers medical practitioners and medical students</li> <li>• develops standards, codes and guidelines for the medical profession</li> <li>• investigates notifications and complaints about medical practitioners</li> <li>• where necessary, conducts panel hearings and refers serious matters to Tribunal hearings</li> <li>• assesses international medical graduates who wish to practise in Australia, and</li> <li>• approves accreditation standards and accredited courses of study.</li> </ul> <p>The National Boards set the registration standards that practitioners must meet in order to register.</p> <p>Once registered, practitioners must</p>

Aspect	Engineers (as proposed by the Bill)	Accountants	Lawyers	Architects	Doctors (and other Health Practitioners)
Activities regulated	<p>The Bill proposes to initially cover five areas of engineering:</p> <ul style="list-style-type: none"> <li>• Civil</li> <li>• Structural</li> <li>• Electrical</li> <li>• Fire safety</li> <li>• Mechanical.</li> </ul> <p>The areas of engineering covered can be expanded by regulation.</p> <p>A person must not provide professional engineering services in an area of engineering unless they are registered or working under direct supervision. Professional engineering services do not include work to prescriptive standards.</p>	<p>Accountants are not directly regulated by either the state or federal government. However, aspects of services typically provided by accountants are regulated by the federal government. These functions include:</p> <ul style="list-style-type: none"> <li>• operating as an auditor under the Corporations Act 2001, and</li> <li>• providing tax agent services.</li> </ul> <p>Under the Corporations Act, certain audit, review or assurance engagements are only able to be carried out by registered auditors.</p> <p>Under the TASA, anyone provides tax agent services, BAS agent services or tax (financial) adviser services for a fee or other reward, they must be registered with the TPB.</p>	<p>The Legal Profession Uniform Law sets up obligations of legal practitioners in Victoria, how they are admitted, CPD requirements, misconduct (unsatisfactory professional conduct, professional misconduct)</p> <p>On being admitted to the legal profession in Victoria, a lawyer becomes an officer of the Supreme Court of Victoria. As such, that lawyer must comply with certain professional obligations. These obligations are defined by the Legal Profession Uniform Law.</p> <p>Section 10(1) of the Legal Profession Uniform Law prohibits an entity from engaging in legal practice in Victoria unless it is a qualified entity.</p> <p>The terms 'engage in legal practice' and 'legal services' are defined in the Uniform Law.</p> <p>Section 11 of the Uniform Law also prohibits a person from representing that they are a qualified entity to engage in legal practice if they are not so qualified.</p>	<p>The <i>Architects Act 1991</i> controls the title architect, and expressions containing the word architectural (architectural design, architectural services and architectural design services).</p> <p>An architect is a person registered with the Architects Registration Board of Victoria. No one else can use the title.</p> <p>The <i>Architects Act 1991</i> contains provisions against non-architects generally "holding out" to be architects: they must not use any other title, name or description that indicates, or is capable of being understood to indicate, or is calculated to lead a person to infer, that the person or body is an architect or is registered or approved under the Act.</p> <p>Architects' professional conduct is regulated by the Architects Regulations 2015 which contains the Victorian Architects Code of Professional Conduct.</p> <p>All architects must be covered by the required insurance.</p> <p>The <i>Architects Act 1991</i> does not prohibit any person from doing work as an architect.</p>	<p>continue to meet the standards and renew their registration yearly with the National Board.</p> <p>On 1 July 2010 (18 October for Western Australia), the following professions became nationally regulated by a corresponding National Board:</p> <ul style="list-style-type: none"> <li>• chiropractors</li> <li>• dental practitioners (including dentists, dental hygienists, dental prosthetists &amp; dental therapists)</li> <li>• medical practitioners</li> <li>• nurses and midwives</li> <li>• optometrists</li> <li>• osteopaths</li> <li>• pharmacists</li> <li>• physiotherapists</li> <li>• podiatrists, and</li> <li>• psychologists</li> </ul> <p>On July 2012, four additional professions joined the National Scheme:</p> <ul style="list-style-type: none"> <li>• Aboriginal and Torres Strait Islander health practitioners</li> <li>• Chinese medicine practitioners (including acupuncturists, Chinese herbal medicine practitioners and Chinese herbal dispensers)</li> <li>• medical radiation practitioners (including diagnostic radiographers, radiation therapists and nuclear medicine technologists), and</li> <li>• occupational therapists.</li> </ul> <p>Regulation of paramedicine is due to commence in late 2018. The title 'paramedic' will become a 'protected title' – only people registered with the Board will be able to call themselves a paramedic.</p> <p>Anyone who calls themselves any of the 'protected titles' in the National Law, such as 'chiropractor', 'medical practitioner', 'midwife' or 'psychologist', must be registered with the corresponding National Board.</p> <p>It is an offence to call yourself one of the protected titles, and it is also an offence to hold yourself out to be a registered</p>



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Register	The BLA will maintain a register of engineers.	ASIC maintains a number of registers of regulated activities, including of auditors. Separate registers are operated by membership bodies.  The TPB maintains registers of tax agents, BAS agents and tax advisers.	Victorian legal profession register operated by the Victorian Legal Services Board.	A register of architects, architectural partnerships and architectural companies is operated by the Architects Registration Board of Victoria.	AHPRA operates registers of practitioners.
Eligibility requirements	<p>It is expected that, when fully established, the scheme will require a person to:</p> <ul style="list-style-type: none"> <li>hold a Washington Accord four year degree</li> <li>have successfully completed five years of practical experience, and</li> <li>attest to certain personal and probity requirements.</li> </ul> <p>In addition, a person who wishes to apply for an endorsement will need to provide proof of insurance coverage, and be subjected to scrutiny under the <i>Building Act 1993</i> 'fit and proper person test.</p> <p>It is expected that the scheme will establish a requirement for 150 hours of CPD over three years.</p> <p>CPD can be completed in a number of ways, including: formal education and training; informal learning activities (including on-the-job learning); conferences and meetings; presentation and papers; service activity; and, industry involvement. There is no restriction on who can provide CPD activities.</p>	<p>Certain financial products must be sold with a certificate by a 'qualified accountant'.</p> <p>A qualified accountant is defined in s 88B of the Corporations Act 2001 as a person meeting the criteria in a class declaration made by ASIC. Under the ASIC class order, a qualified accountant must:</p> <ul style="list-style-type: none"> <li>be a member of an accredited professional body, and</li> <li>comply with the body's continuing professional education requirements.</li> </ul> <p>All members are required to complete 120 hours of CPD over three years.</p> <p>Three major membership bodies have their own declared membership classifications:</p> <ul style="list-style-type: none"> <li>CPA Australia</li> <li>Chartered Accountants Australia &amp; New Zealand</li> <li>Institute of Public Accountants</li> </ul> <p>Membership bodies regulate the use of their designations (e.g. CPA, CA, IPA). It would be an offence under the Australian Consumer Law for a person to claim that the person had a sponsorship, approval or affiliation they did not have. However, it would be the ACCC, rather than the accounting body, that would enforce this.</p> <p>Under Part 9.2 of the Corporations Act, an applicant must meet the requirements of the auditing competency standard approved by ASIC, and be a fit and proper person.</p> <p>Similar to the scheme proposed for engineers, competency is assessed by CPA Australia after being approved by ASIC.</p> <p>ASIC must grant application and register auditors</p>	<p>To practise law in Victoria, you must first be admitted to the legal profession by the Supreme Court of Victoria, and then obtain a practising certificate from the Victorian Legal Services Board.</p> <p>All admissions in Victoria are administered by the Victorian Legal Admissions Board and the Supreme Court of Victoria.</p> <p>The Uniform Law provides the prerequisites for the issue of a compliance certificate for admission to the Supreme Court of Victoria. The Legal Profession Uniform Admission Rules 2015 state that a person must:</p> <ul style="list-style-type: none"> <li>attain the academic qualifications specified under the Rules;</li> <li>satisfactorily complete the practical legal training requirements specified in the Rules; and</li> <li>be a fit and proper person to be admitted to the Australian legal profession.</li> </ul> <p>The Supreme Court of Victoria may admit a person to the Australian legal profession as an Australian lawyer if the person:</p> <ul style="list-style-type: none"> <li>is aged 18 years or over;</li> <li>is not already admitted to the Australian legal profession;</li> <li>has attained the specified academic qualifications prerequisite;</li> <li>has satisfactorily completed the specified practical legal training;</li> <li>is a fit and proper person to be admitted to the Australian legal profession; and</li> <li>takes an oath of office, or makes an</li> </ul>	<p>The requirements for registration as an architect in Victoria:</p> <ul style="list-style-type: none"> <li>have an accredited academic qualification in architecture (5 years professional education) or a pass in the National Program of Assessment (NPrA); and</li> <li>have 2 years recent practical experience; and</li> <li>successfully complete the AACA Architectural Practice Examination (APE) or successfully complete one of the alternative AACA pathways to registration.</li> </ul> <p>It is a Victorian Government requirement for Practising Architects to be covered by Professional Indemnity Insurance in the interests of consumers.</p> <p>CPD is not mandatory in Victoria, but it is recommended that the ACAA national model for CPD is followed.</p>	<p>Under the Health Practitioner Regulation National Law, as in force in each state and territory, there is a range of registration categories under which a doctor can practise medicine in Australia. Different categories apply to different types of registration.</p> <p>A medical practitioner applying for registration must demonstrate that they are qualified, suitable and eligible for registration including that they:</p> <ul style="list-style-type: none"> <li>are a suitable person for registration. That is, the practitioner does not have an impairment, a criminal history or professional disciplinary history that may impact or is relevant to their ability to practise</li> <li>will meet the recency of practice registration standard</li> <li>will meet the continuing professional development registration standard during the period of registration</li> <li>will meet the professional indemnity insurance arrangements registration standard, and</li> <li>will meet any other registration standard or requirement of the Board.</li> </ul> <p>Medical practitioners who have general registration only (i.e. do not have specialist registration) must complete a minimum of 50 hours of CPD per year.</p>

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		<p>if:</p> <p>a) the applicant:</p> <ul style="list-style-type: none"> <li>• satisfies the academic qualifications, which are to hold a degree (or similar) from a prescribed university (or similar) in Australia and has, as part of that degree, passed exams in accountancy, which includes auditing (3 years course) and commercial law (2 years course) and satisfactorily completed a prescribed course in auditing after completing their degree; OR</li> <li>• The appropriate university authority must certify these stipulations have been met has other qualifications and experience that is in ASIC's opinion equivalent. AND</li> </ul> <p>b) ASIC is satisfied that the applicant has either:</p> <ul style="list-style-type: none"> <li>• satisfied all the components of an approved competency standard, OR</li> <li>• has prescribed experience in auditing AND</li> </ul> <p>c) ASIC is satisfied that the applicant is capable of performing duties as auditor and is otherwise a fit and proper person to undertake audit engagements.</p> <p>Requirements for registration as a tax agent, BAS agent or tax adviser are that person:</p> <ul style="list-style-type: none"> <li>• must be at least 18 years of age to be eligible to apply.</li> <li>• must be a fit and proper person</li> <li>• must satisfy the qualification and experience requirements.</li> <li>• maintain, or will be able to maintain, professional indemnity insurance that meets our requirements.</li> <li>• must complete an online application and provide all supporting documents.</li> </ul>	<p>affirmation of office, in the form required by the Supreme Court.</p> <p>Admission to the legal profession does not entitle a lawyer to engage in legal practice. They must also hold a current practising certificate. The Board will not grant you an Australian Practising Certificate unless it is satisfied that the lawyer is:</p> <ul style="list-style-type: none"> <li>• eligible to apply; and</li> <li>• a fit and proper person to hold the certificate.</li> </ul> <p>The application must be accompanied by:</p> <ul style="list-style-type: none"> <li>• the appropriate practising certificate fee;</li> <li>• the required Fidelity Fund contribution (if applicable);</li> <li>• evidence of professional indemnity insurance as required by the Legal Profession Uniform Law (if applicable); and</li> <li>• the completed declaration.</li> </ul> <p>2 years of supervised legal practice is required after admission.</p> <p>Australian legal practitioners must complete continuing professional development (CPD) activities of 10 hours during each year of practice.</p>		
Criminal sanctions	<p>Clauses 67 and 68 are the main provisions imposing criminal sanctions. These clauses</p> <ul style="list-style-type: none"> <li>• Restrict the provision of professional engineering services in an area of engineering</li> <li>• Prohibit certain representations regarding being registered when a person is not.</li> </ul> <p>500 penalty unit maximum</p>	<p>There are criminal sanctions relating to representing to being a registered auditor that are covered by sections 1308 or 1309 of the <i>Corporations Act 2001</i> as well as offences for not using a qualified accountant. Those provisions set out penalties of fines of up to 200 penalty units (\$42,000) or imprisonment for 5 years (see Schedule 3 to the <i>Corporations Act</i>).</p>	<p>Section 10 of the Uniform Law restricts an unqualified entity from engaging in legal practice.</p> <p>Section 11 of the Uniform Law prohibits an unqualified entity from representing that they can engage in legal practice. Section 12 deems that taking certain titles is a breach of section 11.</p> <p>An entity that breaches section 10(1) or section 11 commits an offence and is liable to a maximum penalty of 250 penalty units</p>	<p>The <i>Architects Act 1991</i> prohibits the following actions:</p> <ul style="list-style-type: none"> <li>• Representing an unregistered natural person to be an architect</li> <li>• Representing an unregistered unincorporated body to be an architect</li> <li>• Representing an unregistered body corporate to be an</li> </ul>	<p>The Health Practitioners National Law makes it an offence to take or use certain titles or engage in certain kinds of practice such as optometry, spinal manipulation or some dentistry.</p> <p>A maximum penalty of \$30,000 for individuals and \$60,000 for bodies corporate applies for each offence.</p>

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	<p>penalties apply for contraventions of these provisions (currently \$79,285). These penalties are consistent with the penalties under the <i>Building Act 1993</i> that are administered by the VBA. Under the in <i>Professional Engineers Act 2002</i> (QLD), the maximum penalties for these offences are 1 000 penalty units (currently \$126,150).</p>		<p>(\$39,642.50) or two years' imprisonment or both.</p>	<p>architect</p> <ul style="list-style-type: none"> <li>• Restriction on use of particular expressions</li> <li>• Working as architect without required insurance</li> <li>• Representing that you are insured when uninsured</li> <li>• Contravening restrictions on provision of architectural services by companies and partnerships (e.g. that it has a director who is registered).</li> </ul> <p>The Act provides for penalties of up to 60 penalty units per offence (\$9,514.20).</p>	
Search powers	<p>Under Part 6 of the Bill, CAV will have search and entry powers similar to those under the <i>Australian Consumer Law and Fair Trading Act 2011</i> and similar regulatory schemes they administer (including for: conveyancers; debt collectors; estate agents; introduction agents; motor car traders; owners corporation managers; rooming house operators; second-hand dealers and pawnbrokers; and, sex work service providers). It is important to note that CAV can only investigate issues using powers under ACLFTA which are relevant to the occupation in question.</p> <p>These powers include:</p> <ul style="list-style-type: none"> <li>• powers of entry with consent, with a warrant or without consent or a warrant;</li> <li>• information-gathering for compliance-monitoring or investigation purposes.</li> </ul>	<p>ASIC has powers under Division 3 of Part 3 of the Australian Securities and Investments Commission Act 2001 to require 'books' (which includes information) to be produced. The requirement to produce 'books' can occur under the authority of a notice to produce, or by ASIC officers entering premises under a search warrant.</p> <p>Under subdivision 60-E of Part 6 of the TASA, the TPB can call for documents and for witnesses to give evidence. There is no power to seek a search warrant.</p>	<p>Under Parts 7.2 and 7.3 of the Uniform Law, investigators can:</p> <ul style="list-style-type: none"> <li>• call for information and documents,</li> <li>• require a person to attend before the investigator, and</li> <li>• to enter premises with consent or a warrant,</li> <li>• enter premises without consent or a warrant if it is necessary to prevent destruction of evidence or with the authorisation of the local regulatory authority.</li> </ul>	<p>Under section 31 of the Architects Act 1991, the ARBV has powers to call for information and documents that were similar to those for Royal Commissions before the passage of the <i>Inquiries Act 2014</i>.</p> <p>A person who fails to comply with a request for information can be exposed to imprisonment of up to 3 months.</p>	<p>Under Parts 1 and 2 of Schedules 5 and 6 to the Health Practitioners National Law, investigators and inspectors will be able to enter premises open to the public, or with consent or a warrant, to obtain information.</p> <p>They can also issue notices to produce information, including attending to produce that information.</p>

