

31 July 2019



Dear Sir/Madam,

Professional Engineers Registration Bill 2019

The Victorian Automobile Chamber of Commerce (VACC) is writing on behalf of its members who will be directly or indirectly affected by the passing of the Professional Engineers Registration Bill 2019 (the Bill). This includes automotive and mechanical engineers, automotive repairers, dealerships, speciality vehicle builders or any other business that requires certification of compliance with Vehicle Standards Bulletin 14.

VACC has maintained its opposition to the Bill and restates our position to assist you in making an informed decision before the vote is taken to the Victorian Legislative Council.

To be very clear, VACC fully endorses safe workplaces and safety practices. This is never in question. The proposed Bill, however, does nothing to improve safety practices, reduce risk or increase consumer confidence.

Instead, the Bill will substantially increase costs for consumers and businesses, increase liability for practicing engineers, force highly trained engineers to consider leaving the profession and push business over the border.

Drafted without proper industry consultation, there is absolutely no conclusive evidence to suggest the Bill will benefit the profession, consumers or the community.

VACC makes the following important points regarding the proposed Bill for your consideration.

- 1. Registration does not make the profession or industry safer.**
- 2. There are already regulatory bodies overseeing engineers' work.**
- 3. It will drive up costs for consumers and government.**
- 4. It will penalise women and others taking leave while in the profession.**
- 5. Registered engineers carry all the risk.**
- 6. The Bill encourages vexatious claims.**
- 7. The Bill will apply to past and present engineering work.**
- 8. Mandatory 'codes of conduct' are still secret.**
- 9. Non-engineers making 'engineering' decisions can be penalised.**
- 10. The Bill substantially increases red-tape.**



We provide further explanation of each point below.

1. Registration does not make the profession or industry safer

The proposed law is punitive and does nothing to improve Australian Standards, standards of practice, community safety, or environmental responsibility.

There is no evidence to suggest registration will improve quality or safety standards as demonstrated by the current and proposed registration process.

The proposed registration process is flawed. It does not provide adequate checks and balances to guarantee that those who are registered are actually quality and/or qualified engineers.

For example, Competence Demonstration Reports (CDRs) can be falsified, or 'assisted', with many websites worldwide helping engineers write their reports. There are no comprehensive tests engineers must undertake to corroborate their ability, and once registered, there are no subsequent competency audits or checks undertaken for the rest of their career.

Registration does nothing to assist consumers identify quality engineers. Instead, it gives a false impression that all registered engineers are equally competent in any work 'allowed' under their registered area. Even more concerning, a register can provide a cover for charlatans posing as engineers, with very little scrutiny. For example, Gerald Shirtcliffe, the construction manager who stole the identity of an engineer and faked an engineering degree, was an Engineers Australia and Board of Professional Engineers Queensland (BPEQ) registered engineer for 12 years.

2. There are already regulatory bodies overseeing engineers' work

Consumer and community protections already exist under innumerable laws such as Occupational Health and Safety, VicRoads, Australian Consumer Law, Victorian Building Authority, Australian Design Rules, as well as civil protections. This additional level of regulation is unnecessary and serves absolutely no purpose.

3. It will drive up costs for consumers and government

The Victorian Parliamentary Budget Office's (PBO) 2019 report estimated the total cost of assessment, registration and compliance to the sector to be between \$148 million and \$200 million.

Further, all registered engineers will be compelled to engage Engineers Australia, Professionals Australia, or equivalent organisations for regular three yearly Continuing Professional Development (CPD) assessments. This includes mandatory participation in approximately 50 hours per year of CPD – regardless of the nature of one's engineering practice or stage of career. It is vital to note that attendance at information sessions does not verify competency.

More specially, the PBO stated in their 2019 report:

*"The largest cost impact to engineers registered under the scheme is the area of CPD which, by 2023-24—when the scheme is proposed to be fully implemented—is estimated to cost approximately \$6 000 per year for each registered professional engineer."
(PBO, Professional Engineers Registration Bill 2019: Independent advice based on public information, p. 4.)*

This cost will be weathered by businesses, who will have no choice but to pass this cost onto the consumer – making engineering services more expensive to acquire.

4. It will penalise women and others taking leave while in the profession

According to Queensland law, which this Bill is based upon, the BPEQ state:

"A RPEQ must immediately notify BPEQ in writing if the engineer has been unable to competently and safely practise as a registered professional engineer for a continuous period of 3 months because of the engineer's mental or physical health unless the engineer has already notified BPEQ in writing of the incapacity or has a reasonable excuse."
(BPEQ, Offences and Investigation Decisions, Policy ID 2.2 (5A), p.3.)

This has ramifications for engineers taking maternity/paternity leave, being ill, or taking a career break due to stress. It changes their classification from registered practicing engineer to registered non-practicing engineer.

Being classified as a non-practicing engineer indicates professionals are no longer allowed to do any unsupervised engineering. However, it is common practice for female engineers who have been leading large and complicated projects to be contacted during maternity leave to answer project related questions. This provides a barrier to productivity and can slow project progress. It can also act as a disincentive to the hiring of female engineers for large, complicated and long-term assignments.

5. Registered engineers carry all the risk

If a project has issues, errors or omissions that Consumer Affairs Victoria (CAV) can attribute to engineering causes, then the registered senior engineer can face court and be liable for the whole team's work (including massive penalties and de-registration). By unrealistically requiring senior engineers to have intimate and ongoing supervision of all project aspects, the regulation implies duties of care that flow into other legal risks such as law suits.

Senior engineers can no longer simply 'manage' a competent team, instead direct and intimate supervision is mandatory, and records must be kept that show every calculation has been checked and countersigned to demonstrate ongoing specific supervision. Having confidence in your team is no longer enough. This inflexible workplace model limits innovation, limits the size and scope of engineering teams, and vastly increases project costs.

6. The proposed law encourages vexatious claims

According to the draft Bill, any person can lodge a complaint to CAV relevant to engineering work. This triggers an investigation with search and seizure powers obliging engineers to hand over product Intellectual Property without warrant. It is illegal to deny investigators any documents they request on the spot. The only recourse for engineers is to hire lawyers and take it to court. Complaints can be anonymous, vexatious and/or frivolous. There is no opportunity for professional peer review (as is used in the medical profession), instead engineers are judged against 'public expectation' of unsatisfactory practice. An engineering business can be crippled while the case runs – regardless of the outcome.

Furthermore, an offence under the proposed statute could lead to disciplinary penalties that professional indemnity (PI) insurance will not cover. Fines, loss of registration, and consequent civil proceedings could bankrupt individual engineers following a vexatious claim.

7. The Bill will apply to past and present engineering work

The legislation is retrospective and indefinite. If passed, the new law will apply to engineering work completed past and present. This means vexatious claims could harass engineers years after projects have finished, and well into retirement.

Automotive and mechanical engineers can complete between 600 – 1000 certifications per year. This means a mechanical engineer with a 20 year career could have completed as many as 20,000 engineering projects, all of which are susceptible to vexatious claims put forward by consumers with no engineering knowledge.

Additional costs related to insurance premiums and extended (seven year) insurance once an engineer retires are also likely.

8. Mandatory 'Codes of Conduct' are still secret

The mandatory 'Codes of Conduct' that will lay out professional practice standards are still secret, but even after release can be changed at any time by the government at CAV's discretion. An equivalent Queensland practice code provides an example. It contains broad statements that serve as a 'catch all' legislative net, with vague safety, economic, reporting and record keeping requirements that mean all engineers could be found guilty, subject to the court's interpretation. Inconsequential errors or even typos can and have led to serious offences. Courts in Queensland have interpreted similar laws as meaning that an Australian Standard cannot be exceeded – this kills innovation, as engineers are effectively banned from 'designing a better mouse trap'.

9. Non-engineers making 'engineering' decisions can be penalised

At the discretion of CAV and the courts, some work currently undertaken by managers, sales personnel, technicians or related roles could be deemed to be the realm of engineers, such as providing specifications, approval of vehicle modifications or structural inspections. Under the draft legislation, working outside of one's original engineering stream is banned. A 'breach' could result in fines of up to \$80,000.

10. The Bill substantially increases red-tape

Should this Bill be passed and other states and territories follow suit, engineers risk working across eight jurisdictions of red-tape. It increases unnecessary regulatory risk and poses a restraint to trade, which all comes at a huge cost, yet fails to provide a proportionate benefit to the profession or community.

Final comments

As it stands, this Bill makes little, to no economic sense. It will cost the government millions to implement, create additional layers of unnecessary red-tape to predominantly small businesses, increase costs to consumers and business and do nothing to improve the standards or safety applied to the industry.

This is rushed legislation that has not had the necessary scrutiny required and mandated for new law development. A recent independent survey of engineers revealed 273, out of 310 engineers surveyed had not been consulted (88 per cent). Almost half of those same respondents had read the Bill and were **not** comfortable with it.

A Regulatory Impact Statement is promised once the Bill has passed into law, which falls so far outside best practice, and indeed the government's own recommendation, which states:

"To get the most value from impact assessment, build it into policy development from the outset, rather than treat it as an additional compliance exercise at the end."
(Victorian Guide to Regulation - A handbook for policy-makers in Victoria, p. 2)

All professional engineers of Victoria should have the right, and deserve the opportunity, to review and comment on any new Code of Conduct applicable to their profession arising from implementation of the Bill before the Bill becomes law, not afterwards.

Finally, if the Government of Victoria has completed an independent cost-benefit analysis relevant to the implementation of the Engineers Registration Bill (applicable to Victoria only and including the cost impacts of mandatory PI insurance), then that analysis should be made public and subjected to similar scrutiny by the taxpayers of Victoria before the Bill is debated in the Upper House, and **not** kept secret.

VACC would welcome the opportunity to discuss this letter in more detail with you in person, prior to your vote in the Legislative Council.

Yours faithfully


GEOFF GWILYM