

22 March 2018

The Hon Michael O'Brien MP
Shadow Treasurer
313 Waverly Road
Malvern East VIC 3145

Dear Michael

Engineers Registration Bill (2018)

In response to your letter to VACC Executive Director, Mr Geoff Gwilym and further conversations with myself, please find the response of the Approved Vehicle Examiners Group (AVEG). AVEG is a special interest group of VACC that is comprised of mechanical/automotive engineers who are currently licensed to the VicRoads Vehicle Assessment Signatory Scheme (VASS) for the approval of vehicle modifications, imported vehicles and individually constructed vehicles.

The draft legislation makes one reference only to mechanical engineers (Section 4 (1)(c)). The Bill itself is populated with references to the Building Sector and organisations such as the Victorian Building Authority (VBA). These organisations are either not relevant to automotive or not having an impact on consumer issues as far as our sector is concerned. It is a 'Claytons' bill, having no benefit for any VACC members and should be exposed for the farce that it is. It should also be noted that no industry consultation has taken place, nor any Regulatory or Business Impact Statement been conducted. VACC is not aware of the annual licence fee or costs associated with complying with any legislation.

This response to your queries has been gathered after the AVEG Executive Committee appointed a subcommittee of engineers to express the concerns of retail industry regarding the proposed introduction of the Engineers Registration Bill 2018.

For stakeholder recognition, VACC has been referenced in place of AVEG.

VACC thanks you for your attention to the plight of mechanical engineers. We look for a pragmatic outcome.

a) Whether VACC supports the Bill

VACC does not support the Engineer Registration Bill 2018.

- The Bill in its current format will create significant regulatory risk for automotive engineers. It is poorly designed against its stated aims. Other regulatory models would be more effective, relevant and offer less proportionate risk to practising engineers.
- The Bill creates another level of regulation for Victorian Mechanical Engineers to follow. From mid-2019 the National Heavy Vehicle Regulator (NHVR) will take responsibility for



standardising the approach to vehicle modifications, including a revised code of practice for vehicle modifications. NHVR auditing processes will further support this.

- It is the view of VACC that Victorian Engineering Signatories should dedicate themselves to transitioning from the VASS (Vehicle Assessment Signatory Scheme) scheme to the national NVHR scheme. This will allow for harmonisation amongst the states and reduce the burden of red tape.
- The NHVR already has powers within its purview to investigate complaints and apply punitive measures under National Heavy Law.
- To introduce another level of regulation would be a retrograde step, it duplicates an existing regulatory scheme, overly complicating an industry that should not be the focus of any new registrations.

b) Whether VACC would propose amending the Bill or other changes to the proposal.

VACC proposes the following amendments and changes to the current Bill:

Section 3 Definitions

- Definitions (in general in Definitions section) are not clear enough for engineers, particularly those who are not involved in the building sector.
- There is a need to define precisely what a professional engineering service is (p.4, S3). As part of this definition, VACC seeks clarity on:
 - What is a prescriptive standard (p.3, S3 definition is vague)
 - What happens if the prescriptive standard cannot possibly cover every aspect of the project (e.g. VSB6 does not detail every specific step for every kind of modification) and general engineering principles have to be applied (based on interpretations of VSB6 or otherwise); does this then become a professional engineering service?
 - What is a general engineering service that falls outside of this bill?
- Non-engineering technicians with trade experience are allocated modification numbers. These signatories could lose codes if VSB/ADR/AS, etc. aren't defined as prescriptive standards.
- The definition of *Unsatisfactory professional conduct* contains a reference to "as expected ... by the public." This legal test is dangerous as engineers operate in highly technical environments and any public expectation test would be unfair due to the low level of public knowledge specifically related to our profession (p.4, S3). One way to address this is to change the 'or' to 'and' after that, such that the judgement must also account for the views of informed, relevant professional peers. Public expectation is a poor measure of professionalism due to the technical complexity of engineering and our reliance on trades/other professionals to do their job correctly. By way of example, any member of the public would rightly expect a component not to fail, yet failure has many causes and failure may not indicate engineering oversight, such as a flat tyre.
- Definitions (1) (2). Does the Director have absolute discretion over the definition of a prescriptive standard? If so we fear 'regulatory drift' and regulatory risk attached to the culture of the CAV staff. Also, see above notes for the prescriptive standard.



Section 4 what are areas of engineering?

- Need further definitions of 'Areas of engineering' (p.5, S4). Prescribed by who/when/how? Publishing on the internet could be easily missed.
- VACC recommends 4 (1) (c) to be removed (Mechanical Engineers).

Section 7 Functions of Director

Peer review can occur, but it is not mandatory, and the investigator has the power to nominate a reviewer of their choice. This weights the investigation against the engineer in question. In this way, the legislation produces a systemic power imbalance.

Section 12 Registration

12 (2) (b) Losing registration as a result of 'disqualification or cancellation of registration' is problematic. E.g. losing a VASS licence through the VicRoads autocratic process, a process that has no appeals mechanism, could remove an engineer's ability to provide any other professional engineering service.

Section 34 (f) Suitability of assessment schemes for approval

How will 'adequate' be defined for CPD? (p.24, S34 and f). This needs to be more clearly defined. CPD relevant to industry (as offered by highly regarded industry groups such as ARTSA / TMC / CVIAA / ComVec, etc.) needs to be recognised as acceptable. Is there any scope for regulation of fees?

Section 79. Entry or search with consent & Section 80. Entry without consent or warrant

When can the administrators and their compliance and enforcement arm go through the 'entry without consent or warrant path'? (p.53, S80). Conditions for being allowed to do this are vague and seem to be the same as entering with consent (p.51, S79). It is not clear what 'compliance' is.

Section 95 Confidentiality

There is no mention of Intellectual Property (IP) Protection.

While section 95 deals with the confidential treatment of items discovered by inspectors, a risk remains that the items that have been subject to search and seizure or otherwise presented to the court in the discovery process may inadvertently reveal intellectual property that is a crucial asset of the business in question.

In most cases, proprietary intellectual property will be irrelevant to the case and not instructive to the court. An engineering defendant could find means of calculation to show that a satisfactory engineering service has taken place without revealing elements such as critical tolerances, specific material properties, design detail, validation methodology, market information, supplier detail, and the like. As it stands, these details could be seized by CAV agents, then enter the public domain irrespective of their relevance to the case.



This is a serious issue that threatens Australian manufacturing and innovation. It must be dealt with in the legislation in order not to prejudice innovative companies, particularly those competing with importers or foreign-owned companies who are not subject to the same regulatory risk.

c) VACC opposes the Bill.

VACC opposes the Bill for the following reasons:

The impact of unions on the mechanical /automotive engineering sector

Means of redress and protections against engineers from prejudicial treatment from the engineering unions/associations must be addressed.

As it stands, the co-regulatory bodies have absolute power to determine eligibility for CPEng or equivalent, which in turn is a pre-requisite for registration.

The process, subject to essay writing, interview, and other means is sufficiently subjective that an engineer could be unfairly treated and effectively blacklisted from the profession. Approaching an alternative union would not be effective if there were not protections in-built to provide statutory means of redress.

No evidence of community benefit vs the regulatory impact

There has not been a sound rationale laid out to demonstrate a need for the regulation of engineers. The stated objectives of the Bill are sound; however, VACC is not convinced that the regulatory model can achieve these objectives in its current form. The regulation introduces many foreseeable unintended consequences that will significantly increase the personal risk of all practising automotive engineers.

The risk to jobs in country Victoria

Rural engineers will be disproportionately affected. Currently, under the current VicRoads VASS Scheme, 31 of the 88 VASS Scheme Signatories are based in remote or rural areas of Victoria (map attached). These regionally based VASS Signatories service a vast range of Franchise Dealers (light and heavy vehicle) who will also be affected, losing valuable sales.

This will lead to job losses and other real impacts (sponsorships, apprenticeships, NFP contributions etc.). It is unquestioned that some engineers will have no other option but to take their business interstate.

Zero consultation

There has been absolute no consultation with the retail automotive sector. There is no better place to test the consumer or end-user benefit than by measuring the impact from the retailer perspective. VACC is the peak retail automotive association in Australia, celebrates its 100th Anniversary this year and has a strong, vibrant cohort of automotive engineers amongst its membership. To not be consulted is staggeringly unprofessional and will result in discriminatory legislation and regulation.



Social, economic and technological impacts

Another level of regulatory interruption will stymie growth in this sector, add costs to the end user (consumer) and be a disincentive to future innovation and investment in what is already a sophisticated industry.

Continuing Professional Development

VACC is concerned that CPD offered by Engineers Australia (EA) is not relevant to this sector. Of the 13 listed in most recent periodicals from EA, only 1 course (accounting) is only remotely connected to mechanical engineering.

VACC would urge that technical courses rolled out by organisations such as CVIAA, ARTSA and TMA are given sanction as being CPD compliant at the highest levels.

It is noted that EA both provide and audit CPD for most engineers, and naturally place more weight on their own courses versus courses, seminars, and the like put together by other providers. It should not be left up to the conflicted engineering unions to independently decide what the professional knowledge base ought to be.

Other commentaries

The role of Technologists

It is the view of VACC that placing the sole responsibility on the supervising registered engineer is a convenient vehicle/mechanism/loophole which could be used to subordinates to avoid blame.

Therefore, the Act should be expanded to allow for registration (even if on a lower level) for 'Engineering Technologists (see EA definition) to be registered. (Under EA, to obtain the grade of 'member' a 4-year degree is required, less than four years means only a 'technologist' membership can be obtained). Managers above the registered engineer also must be accountable.

Organisations such as Engineers Australia have absolute power in the process of being able to determine eligibility to CPEng post-nominal, or equivalent. Historically EA has handed over CPEng to under-qualified engineers by recognising self-reported 'industry experience'. This is a loose system that the legislation should account for.

Codes of Conduct

Codes of conduct are not available. This means the substance of the law has not been revealed. These document/s could constitute a significant administrative burden that engineers must meet, could mandate restructuring of the workplace, extra training and costs, and other sources of regulatory risk. Even after they are released, they can be redrafted at the CAV's discretion, which also presents a regulatory risk to members.

Means of address and appeal regarding the Codes, designed to be consultative and conciliatory, and should be outlined in the statute, as opposed to relying on political processes or the culture of the CAV staff of the day.





**Victorian Automobile
Chamber of Commerce**

ABN 63 009 478 209

VACC House
464 St Kilda Road
MELBOURNE VIC 3004

P: 03 9829 1111

F: 03 9820 3401

W: vacc.com.au

The Economic Basis of the Case for National Registration of Engineers in Australia

The ACIL Tasman 2001 report upon which the regulation is based is now a few years old and has a rubbery rationale at best (Chapter 7.3, attached), and fails to subtract from a calculated 'benefit' the significant administrative costs, which more than double the benefit figure. The government should have properly consulted engineers, academics, industry, and outlined the costs to the profession, regulatory impact, and practicality considerations.

VACC members who participate in the VASS Scheme make themselves available to your office for further consultation.

Please feel free to call me with any queries.

Regards

A handwritten signature in blue ink, appearing to read 'Michael McKenna', is written in a cursive style.

Michael McKenna
Industry Policy Adviser

