



**Australian Road Transport
Suppliers Association Inc.**

PO Box 2230,

Hawthorn LPO Vic 3122

Australia

Phone: 03 9818 7899

Fax: 03 9818 6534

Email: exec@artsa.com.au

Web: <http://www.artsa.com.au>

23rd March 2018

Ms Lizzie Blandthorn MP
Chair Scrutiny of Acts and Regulations Committee
Member for Pascoe Vale
Parliament House
Spring St
EAST MELBOURNE VIC 3002
Via Email: sarc@parliament.vic.gov.au

Dear Ms Blandthorn MP,

RE: ENGINEERING REGISTRATION BILL 2018

The Executive committee of the Australian Road Transport Suppliers Association (ARTSA) has reviewed the Engineering Registration Bill 2018. ARTSA's mission is to provide the technical expertise to promote the uptake of practices and technologies that will enhance the safety, productivity and reputation of the heavy transport industry.

ARTSA is made up principally of senior engineer from the over 60 member organisations, which include heavy vehicle and parts suppliers such as Paccar, Isuzu, MaxiTrans, Ringfeder, and many others. The estimated annual economic contribution of the engineering services and products that the heavy vehicle industry generates is over \$6 Billion across Australia. See this link for more details: http://www.artsa.com.au/assets/articles/2016_12.pdf

Victoria is by far the leading State in terms of heavy vehicle engineering including the employment of hundreds of engineers in this work.

ARTSA's executive are concerned that there are issues with the proposed engineering regulation Bill from a Common Law and Human Rights perspective which requires further consideration and we wish to bring our concerns to your attention. If there is an opportunity to make further representations then we would be pleased to assist. Our concerns are noted in the separate attached document.

Yours sincerely

Robert Perkins
Executive Director
exec@artsa.com.au

Attachment:

Engineering Registration Bill

ARTSA's chief concerns are as follows:

1. Regulatory Impact Statement (RIS)

There is no Regulatory Impact Statement completed for this Bill, despite the direct cost of this legislation to Engineers in Victoria estimated to be well above the \$2million threshold. The immediate short term cost impacts include:

- a. Registration fees alone are conservatively estimated at **\$4,406,347**.¹
- b. The opportunity cost to engineers to apply for CPEng or equivalent, a pre-requisite for registration, will be significant. Table 12 in the ACIL Tasman 2011 report describes what the authors refer to as a 'streamlined process', which halved the estimated opportunity cost to each new applicant at \$4200. This conservative figure translates for all *new* applicants to be a total application opportunity cost of **\$42,000,000**. Application fees, transport, accommodation and other costs are not included in this conservative estimate. Assuming a modest total cost of these items of \$1000, plus the first year's \$600 annual fee with the engineering union or association, this equates to an additional cost in the first year of another **\$16,000,000**.²
- c. It should be noted that additional costs will be incurred with rural and regional engineers who will require travel and accommodation to meet assessment requirements. The number of rural engineers in Victoria is estimated to be around 40%.
- d. Additional ongoing opportunity costs incurred by engineers as a result of CPD requirements (150 hours over three years) are also significant. This is estimated simply in terms of time commitment to be at an annual cost of \$5000 per engineer. Using the same method as for other costs, for Victorian Engineers this is an additional **\$86,953,000** per annum.³

¹ This figure is calculated based on estimates using Queensland regulation data overlaid with Victorian employment figures for engineers, which is a conservative estimate. No. of registered QLD Engineers/total number of QLD Engineers[ACIL TASMAN REPORT] x Total Vic Engineers[ACIL TASMAN REPORT] x Queensland income fees/fines per engineer[2016-17 BPEQ ANNUAL REPORT] Financial information is from 2016-17 QLD registration fee information in the BPEQ Annual Report, and uses conservative estimate of engineer registrations requiring that the ratio of Victorian Engineers – the same proportion as is reported in uptake of registration of Engineers within QLD.

² This figure is a conservative estimate, accounting for the same ratio of registered engineers as in Queensland, and assuming that the quantity that would need to register in order to meet this level once the law is in place in would be approximately 10,000, all of whom would need to apply for CPEng or equivalent, at an individual opportunity cost of \$4200[CPEng cost shown Table 12 ACIL TASMAN REPORT]. Note that the number of Victorian engineers with NER registration 2011 was 1579, and the proportion of Qld engineers now registered is 46%. This leaves a shortfall of $(0.46 * 37806 - 1579 =)$ 15811 engineers, which has been reduced to 10,000 new applicants, assuming some engineers already holding CPEng will not elect to be listed on the NER.

³ This figure is derived using the following equation: No of registered QLD Engineers/total number of QLD Engineers x Total Vic Engineers X \$5000. The \$5000 per engineer figure is achieved by using the \$100 per hour

- e. This opportunity cost must be considered in the context of compulsory CPD participation reducing the available time pool of engineers who are therefore not able to participate in engineering work and delivering on Victorian, interstate and international engineering projects.
- f. Available data indicates that the cost of doing business may increase significantly as a result of regulation of Engineers. A simple salary comparison between Queensland and Victorian engineers shows that it costs an average of 17.8% more to employ an Engineer in Queensland than in Victoria.⁴ Matching the Queensland participation rate for registration of 46% of engineers, and with an estimated 50,000 active Victorian engineers and a salary base at senior levels of \$85,000, this translates to an additional salary cost of **\$347,990,000**.
- g. These figures do not account for legal fees and other significant costs that are associated with responding to vexatious or trivial claims.

The guidelines for requiring a RIS or LIA process set a cost threshold at \$2 million and requires consideration if there are to be significant costs or burden on a sector or the public. We believe there is a demonstrated need for this Bill to have appropriately considered the impost of this regulatory change on the Engineering sector, in addition to a proper consideration of business impact (such as restraint of trade concerns), evidence of effectiveness against the stated aims, and cost benefit.

2. Implied restraint of Trade due to supervision requirements

Currently it is not unusual for a senior engineer at an organisation to supervise the work of a competent team of 5 to 20 engineers, providing employment, mentoring and training opportunities to graduates and skilled immigrants. The implied ratio of supervisor (registered) to supervised (unregistered) engineers that is laid out in various sources is, conservatively, 1:3⁵. This represents a major upheaval of the engineering workplace structure that has not been fully thought through, requiring recruitment and salary challenges as well as many new workplace systems including record keeping and communication requirements.

figure for an engineer's time provided in ACIL TASMAN report and multiplying that by 50 hrs to produce an annual cost per Vic Engineer.

⁴ Using data from Engineers Australia Wages and Salary Survey 2010 (private sector salary figures).

⁵ The ACIL Tasman Report makes the following statement, which implies that the ratio of registered to unregistered engineers would be about 46%: "Based on discussions with the BPEQ, we have estimated that just under 46 per cent of engineers would need to be registered under the proposed arrangements. This estimate suggests that around 68,800 of the 150,169 practicing engineers would require registration under the proposed scheme." A conservative estimate of an appropriate supervision ratio to meet the new onerous supervision requirements is around 1:3. The professional practice supervision expectation is laid out in the Queensland engineering board's practice note:

[https://www.bpeq.qld.gov.au/images/documents/Practice%20Notes/4.5%20\(1A\)%20Practice%20Note%20-%20Direct%20Supervision.pdf](https://www.bpeq.qld.gov.au/images/documents/Practice%20Notes/4.5%20(1A)%20Practice%20Note%20-%20Direct%20Supervision.pdf)



3. Breach of Freedom of Association Laws

APESMA, trading as Professionals Australia, is a registered Union listed on with Fair Work Australia. Engineers will be forced under the draft Bill to join either Professionals Australia, Engineers Australia, or an equivalent organisation that relates to their field or specialisation (for example, the Institute of Public Works Engineers Australia will typically support council engineers, etc). This possible breach of freedom of association laws should be investigated.

It is noted that the accountability and transparency of the engineering bodies listed above is not enshrined in the regulation. For example, if an engineer has a dispute with the engineering union, the only way to continue with the profession is to negotiate with the same union for accreditation, which in turn is a prerequisite to registration under the co-regulatory model.

4. Search and Seizure

We believe that the search and seizure powers are an overstep. These powers are not appropriate in a competitive environment where intellectual property and the course of business may be put at risk. Many of our members represent the Australian branch of multi-national companies, who would be loath to disclose engineering computations that constitute sensitive intellectual property simply because of an anonymous vexatious claim. This will drive engineering offshore and is a disincentive against local innovation within Australia.

It is noted that nowhere in Europe, the source of much of Australia's heavy vehicle know-how, is there any engineering regulation, no search and seizure powers, and there is not deemed to be any need for it despite nations such as Germany and Italy being world leaders in engineering.

5. Rationale is not clear

The government have quoted the ACIL Tasman 2011 report as a means to demonstrate a benefit to regulation at various times. The link is here:

https://www.finance.gov.au/publications/coag-future-regulatory-paper/docs/National_Registration_of_Engineers_Australia_final.pdf

This report attributes all of its estimated cost benefit to a hypothetical reduction in 'botched projects', the calculation for which is outlines in Chapter 7.3. We consider that this very rough calculation, generated without any reference evidence, is not sufficient rationale for the significant disruption to business and cost that the proposed regulation will introduce.

It is noted that this figure discusses only national regulation and that the same report elsewhere estimates the cost of administering the regulation itself to be of the order of \$400 million per year. It is therefore disingenuous to refer to this report as one that claims a cost benefit, as using their own figures there is a **net loss** of around \$200 million per year.



6. Risk of regulatory capture

Regulation of professions has been carefully considered by the ACCC in a report authored by then director Professor Alan Fels in 2001. The link is here:

https://www.accc.gov.au/system/files/Fels_Industry_Economics_14_7_01%5B1%5D.pdf

Professor Fels outlines in Chapter 2.7, titled 'Regulatory Failure, a number of risks that are prescient to the consideration of the regulation of engineering in Victoria:

Regulations should address a clearly stated objective, be analysed from an economywide perspective, be the minimum feasible regulation, and be periodically reviewed by appropriate bodies.

Even if regulations were appropriately targeted when established, it is possible that the context and application evolve over time such that regulation no longer addresses the objectives effectively. Two issues that need to be considered are “regulatory capture” and “regulatory drift”. Regulatory capture occurs when a regulator takes decisions which are biased in favour of the industry that is being regulated. There is a particular risk that this can occur when professional bodies or associations representing an occupation have an operational responsibility to set standards of entry, in addition to carrying out registration, licensing or even certification functions. Professional bodies may be keen to maintain the incomes of existing practitioners and do so by restricting the supply of practitioners through high entry standards.