

# Professional Engineers Regulation 2024

## Subordinate law SL2024–3

made under the

**Professional Engineers Act 2023, s 89 (Regulation-making power)**

## EXPLANATORY STATEMENT

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This explanatory statement relates to the *Professional Engineers Regulation 2024* (the *regulation*) as made by the Executive. It has been prepared to assist the reader of the regulation. It does not form part of the regulation and has not been endorsed by the Legislative Assembly.

This statement must be read in conjunction with the regulation. It is not, and is not meant to be, a comprehensive description of the regulation. What is said about a provision is not to be taken as an authoritative guide to the meaning of a provision, this being a task for the courts.

### OVERVIEW

The regulation is made under section 89 of the *Professional Engineers Act 2023* (the Act).

The Act establishes a registration scheme for professional engineers; provides for the monitoring and enforcement of compliance with the Act and imposes obligations on people registered about the provision of professional engineering services.

The registration scheme sets standards of practice for professional engineers; promotes ongoing professional development within the engineering profession; reduces the risk of loss and harm to the public from engineering services; and gives consumers more confidence in engaging the services of a registered professional engineer.

There are potential significant risks to health, safety and the economic wellbeing of individuals and the broader community resulting from the provision of engineering services where an individual attempts to undertake engineering work without the adequate qualifications, experience and/or competencies. These impacts can manifest through:

- a. **Health:** Poorly designed or ‘sick’ buildings (poor air-conditioning, rising damp, low natural light levels). Beyond the building sector, health effects can include things such as contaminated drinking water and other environmental incidents.

- b. **Safety:** through the structural failure of whole or part of buildings, structural failure of infrastructure (for example, bridges) or through the failure of hazardous services such as gas, electricity or mechanical works.
- c. **Economic:** involving financial costs such as design and construction costs, litigation expenses, lost production and rectification costs.

This regulation:

- a. provides the Professional Engineers Registrar with the ability to issue a registration for a shorter registration period than the default 3-year term. This is limited at this time to circumstances where a person applies for an additional area of engineering following the issuing of their original registration so that registrations for all areas of engineering expire at the same time.
- b. provides for how the term of registrations issued prior to 6 March 2025 will be determined.
- c. establishes statutory conditions on registration in circumstances where an applicant for registration does not meet the additional requirements prescribed in the qualifications, experience and competencies determination for providing professional engineering services to the building and construction industry.

From 6 March 2025, all professional engineers will be required to be registered and the offence provisions in the Act will commence.

The Scheme will initially apply to the following five areas of engineering: Civil; Structural; Mechanical; Electrical; and Fire Safety. Additional eligibility requirements are proposed to apply to a professional engineer working in the building and construction industry. These are contained in the qualifications, experience and competencies determination and cover knowledge of the National Construction Code (NCC) and a specified period of experience in the building and construction industry.

The scheme will apply to individuals providing professional engineering services (developing or overseeing the development of engineer designs) in the prescribed areas of engineering if the services are provided:

- a. in the ACT; and/or
- b. from a location outside the ACT, but the services are provided for projects in the ACT (for example, provided for a project or purpose in the ACT).

Engineers working under direct supervision of a registered professional engineer or only in accordance with prescriptive standards are not required to be registered.

## **HUMAN RIGHTS IMPLICATIONS**

The Standing Committee on Justice and Community Safety (Legislative Scrutiny Role) terms of reference require consideration of human rights impacts of subordinate legislation, among other matters.

This regulation could be seen to engage and limit the right to work (section 27B (1) of the *Human Rights Act 2004* (HRA)) by restricting work that an individual can undertake.

A detailed human rights assessment is contained in the [Explanatory Statement](#) to the Act including consideration of the impact of the introduction of a professional engineers registration scheme in the ACT on section 27B of the HRA.

The statutory condition on registration established in this regulation is considered reasonable and proportionate to the objectives of the Professional Engineers Registration Scheme established by the Act. Section 27B (1) of the HRA expressly provides that the practice of a trade, occupation or profession may be regulated by law.

There are potential significant risks to health, safety and the economic wellbeing of individuals and the broader community resulting from the provision of engineering services where an individual attempts to undertake engineering work without the adequate qualifications, experience and/or competencies.

In developing this Bill, consideration of the significant impact poor engineering services can have on the community has been at the forefront. Requiring registration of professional engineers addresses community and national expectations around professional engineering services.

The objective of the scheme is to ensure that engineers that do not have the necessary qualifications, experience and competencies do not provide their services to the community thus providing confidence in the community in obtaining these services. It is a reasonable expectation of the community that professional engineers are subject to a level of accountability and regulatory oversight in providing professional engineering services.

Specific safeguards in the scheme relating to registration include:

- If the criteria for eligibility are met, the registrar must register the individual.
- A decision to refuse to register a professional engineer, or to refuse to renew their registration, can be internally reviewed by an applicant.
- The ACAT can also confirm, vary or set aside these internally reviewable decisions.

Under the scheme, if you are registered in another jurisdiction, you will be able to operate in the ACT under that registration to the extent that the professional engineering services are covered by that registration without needing to be registered in the ACT. This will be through the automatic mutual recognition (AMR) scheme that has been gradually implemented across several States and Territories since July 2021.

The objective of the AMR scheme is to create a more mobile labour force by allowing workers who hold an occupational registration in one Australian State or Territory to work in another Australian State or Territory without needing to pay additional fees or apply for a separate registration. This process gives workers what is called Automatic

Deemed Registration (ADR). To be eligible for AMR, individuals must hold and maintain a registration or licence in their home state or territory (i.e. their primary place of residence or work) that covers the activity that they intend to carry out in another Australian State or Territory.

Queensland and Victoria have professional engineer registration schemes that cover the provision of professional engineering services across all industries. New South Wales, Northern Territory and Tasmania only register engineers undertaking activities within the building and construction industry. Western Australia will commence their registration scheme on 1 July 2024, and it will also only apply to engineers undertaking activities within the building and construction industry.

## **REGULATORY IMPACT STATEMENT**

A regulatory impact statement is not required as the regulation does not impose any appreciable costs on the community, or part of a community under section 34 (1) of the *Legislation Act 2001*.

## **SCRUTINY COMMITTEE PRINCIPLES**

The regulation is consistent with Scrutiny Committee (the Committee) principles.

## **CLAUSE NOTES**

### **Clause 1      Name of regulation**

This clause provides that the name of the regulation is the *Professional Engineers Regulation 2024*.

### **Clause 2      Commencement**

This clause provides for the commencement of the regulation.

Section 3 of the regulation commences on the earlier of section 24 or section 25 of the *Professional Engineers Act 2023* commencing.

Section 4 commences on the commencement of section 24 of the *Professional Engineers Act 2023*.

Sections 5 and 6 commence on the commencement of section 25 of the *Professional Engineers Act 2023*.

### **Clause 3      Notes**

This clause provides that a note found in the regulation is explanatory and is not part of the regulation.

### **Clause 4      Registration conditions—Act, s 24 (1) (b)**

This clause prescribes a registration condition for the purposes of section 24 (1) (b) of the Act.

For any registration issued where the applicant has not provided a report with their application for registration from an approved assessment entity that assesses the

applicant as meeting the qualifications and experience requirements contained in the Professional Engineers (Qualifications, Experience and Competencies) Determination for providing professional engineering services in the building and construction industry, will be issued with a condition that prevents them providing professional engineering services in the building and construction industry.

To remove the condition, a professional engineer will need to make an application to vary their registration in accordance with section 28 of the Act.

**Clause 5 Registration term—registration period for additional area of engineering—Act, s 25 (b) (ii)**

This clause provides for how the term of a registration will be calculated in the circumstances where registration in an additional area (s) of engineering is granted. In instances where an area of engineering is added to an existing registration, the term of the registration for that additional area will end at the same time as the initial registration.

For example, David is granted registration in the area of civil engineering on 6 April 2025 and then applies for registration in the area of electrical engineering in November 2025 and is granted registration in that additional area of engineering. David's registration term for civil and electrical engineering will expire on 5 April 2028.

**Clause 6 Registration term—applications for registration decided before commencement day—Act, s 25 (b) (ii)**

This clause provides for how the term of a registration will be calculated in the period from when the scheme opens for applications on 6 March 2024 and when it becomes mandatory to be registered on 6 March 2025.

All registrations issued prior to 6 March 2025 will begin their registration on 6 March 2025. To enable expiry of registrations to be staggered and administratively managed, registrations issued prior to 6 March 2025 will have an end date based on the date the decision to register them is made.

For example, Kym applies for registration in the areas of civil and mechanical engineering on 12 April 2024 and is granted registration on 6 June 2024. Her registration term will commence on 6 March 2025 and her term will end 5 June 2027.

If an applicant adds an area of engineering to their registration prior to 6 March 2025, their registration term for the additional area of engineering will end at the same time as their initial registration (see clause 5).

This clause expires 3 years after it commences as is a transitional provision for the first 3 years of the scheme.