



# **Automatic Mutual Recognition / Automatic Deemed Registration of Occupational Registrations: Exposure Draft Legislation**

**Submission**

## ABOUT US



Consult Australia is the industry association representing consulting businesses in design, advisory and engineering. Our industry comprises over 48,000 businesses across Australia, over 97% of which are small businesses and also include some of Australia's top 500 companies, providing solutions for individual consumers through to major companies in the private sector and across all tiers of government. Our industry is a job creator for the Australian economy, directly employing 240,000 people. The services we provide unlock many more jobs across the construction industry and the broader community.

Some of our members are:



## Executive summary

Consult Australia welcomes the opportunity to have input into this consultation on the Automatic Mutual Recognition/ Automatic Deemed Registration of Occupational Registrations: Exposure Draft Legislation.

Consult Australia has actively advocated for a more seamless and less burdensome approach to occupational registration across Australia, particularly in respect of engineers and other design professionals. Arguably, more than any other profession, consultants work across borders and need occupational mobility to provide their skills on projects of significance to local communities as well as state and federal governments. Around 91% of our membership provides services in multiple jurisdictions.<sup>1</sup> Shortages in engineering skills in Australia make a single point of registration even more critical to ensure these essential skills can work from anywhere across the country.<sup>2</sup>

Since September 2019 we have proactively engaged with the Deregulation Taskforce on this issue and we congratulate the team and the government for acknowledging the significant benefits that will flow from well-crafted regulation. Consult Australia publicly supported the announcements by the Prime Minister and the Assistant Minister to the Prime Minister in early 2020 that occupational mobility was a key focus of the Deregulation Taskforce and the Department of Prime Minister and Cabinet.

We believe the benefits listed in the Consultation Paper of automatic mutual recognition (also referred throughout as automatic deemed registration) are not overstated. We know that our membership will derive significant cost and administrative savings if the scheme is enacted properly, thus avoiding a drag on productivity.

Unfortunately, the definition of the new term 'home State' proposed for Part 3A of the *Mutual Recognition Act 1992* which centres on the state in which a person has their principal place of residence or principal place of work creates significant concern. The drafting assumes that a person's 'home State' has a relevant licensing/registration scheme, which is not always the case. The drafting also fails to consider individuals that, from their principal place of work, provide services to other jurisdictions. These two issues combine if we look at engineering as an example.

A sample survey of our member businesses that provide engineering services indicates that around 77% employee engineers are registered in a jurisdiction where they do not principally live or work.<sup>3</sup> This is primarily because Queensland is the only jurisdiction that currently has a government registration scheme for engineers. Without modifying the drafting of the legislation, these businesses will not be able to fully realise the benefits of the automatic deemed registration scheme for already registered practitioners. The Board of Professional Engineers of Queensland notes that 5,414 engineers are registered under that scheme who are not based in that state. This equates to over \$27million in immediate cost for these registered individuals, assuming they all seek registration in either Victoria or New South Wales when those schemes commence on 1 July 2021 (up to over \$54million if they seek registration in both states).<sup>4</sup> This could immediately be realised as a cost saving if the draft legislation was amended to alleviate these issues, see our proposed solutions below).

This is only an indicative initial cost. At present not all Australian jurisdictions have indicated that they will introduce engineering registration, meaning that there will be ongoing costs for individuals who are registered, but not in their 'home State'.

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<sup>1</sup> Of a sample survey of 33 businesses, only 3 provided services to only one jurisdiction (all of these were small to medium businesses).

<sup>2</sup> <https://www.employment.gov.au/occupational-skill-shortages-information>

<sup>3</sup> Of a sample survey of 33 businesses, 25 employee engineers registered in a jurisdiction where they do not live and work from (this includes sole practitioners, small to medium enterprises and large companies).

<sup>4</sup> This cost estimate is based on \$5,000 per individual per scheme based on Consult Australia member feedback and is explained further in the body of this submission.

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## Consult Australia's submission



This issue impacts businesses of all sizes from sole traders to the largest companies. In this submission we have provided cases studies to demonstrate this cost impact, both on industry and on individual businesses.

### Solutions

To ensure that the government does not miss a significant opportunity to realise the benefits of automatic deemed registration in all jurisdictions Consult Australia urges the government to reconsider the definition of 'home State'. We suggest there are two possible solutions, either one should alleviate the impact on our members and deliver the significant benefits envisaged by the policy intent of the legislation:

- **OPTION 1** – Remove 'home State' from Part 3A and replace with the definition of 'first State' used in subsection 16(3) of the *Mutual Recognition Act 1992*. This would allow individuals registered in any Australian jurisdiction to benefit from automatic deemed registration without any requirement that the first registration be in the jurisdiction where they primarily live or work.
- **OPTION 2** – Modify section 42A of the *Mutual Recognition Act 1992* so that if there is no relevant registration scheme in the individual's 'home State' on or before 30 June 2021, the individual can rely on registration in the 'first State' as per the definition used in subsection 16(3) of the *Mutual Recognition Act 1992*. This would provide flexibility to cover individuals who cannot first register in their 'home State'.

## Definition of 'home state'

Proposed section 42A of the *Mutual Recognition Act 1992* reads:

### 42A Mutual recognition of activities through automatic deemed registration

(1) The mutual recognition principle as applying to activities covered by occupations is as set out in this Part.

Note 1: Part 3 provides for mutual recognition of occupations that are equivalent.

Note 2: For the definition of **activity**, see section 4.

(2) This Part deals with the ability of a person who is registered for an occupation in the person's home State to carry on, in another State (the **second State**), the activities covered by the occupation.

(3) (a) The **home State** of a person, in relation to an activity, is the State in which the person has:

- (a) their principal place of residence; or
- (b) their principal place of work in relation to the activity.

If the person's home State under paragraphs (a) and (b) in relation to an activity is different, the person's home State is whichever of the 2 States is chosen by the person.

(4) To avoid doubt, a reference in subsection (2) or (3) to a State does not include a reference to a pre-adoption State.

This definition of 'home State' works well for professionals that move residences to work (such as teachers and nurses) and fly-in-fly-out workers. However, it does not work well for professional service providers who provide services to any jurisdiction from any other jurisdiction. Such is the case for Consult Australia members, who demonstrated during both before and during COVID-19 pandemic restrictions that they could continue to work on projects in other jurisdictions from home. Approximately 91% of Consult Australia members provide services in multiple jurisdictions. This includes sole practitioners and small and medium enterprises (SMEs) where it would be an unnecessary, and in many cases an unachievable, cost to maintain offices in all locations.

### Problem

To benefit from automatic deemed registration under proposed Part 3A of the *Mutual Recognition Act 1992* the individual's first registration must be in the jurisdiction where they principally live or work. There are several problems faced by our members with this definition:

- Not all jurisdictions have licensing/registration schemes in place – if you hold a registration from a jurisdiction that is not your 'home State' (because that state has no scheme) you cannot benefit from automatic deemed registration in other jurisdictions where there are equivalent licensing/registration schemes in place.
- Many professional service providers can provide services to any jurisdiction from any other jurisdiction (and potentially multiple jurisdictions in a short time frame) making it difficult to meet the 'principal place of work'.

These two issues combine when looking at engineering registration.

### Engineering registration as an example

Since 1929 Queensland has been the only jurisdiction in Australia with government required engineering registration.<sup>5</sup> The Board of Professional Engineers of Queensland (BPEQ) permits suitably qualified individuals to be registered under the scheme irrespective of their place of residence. BPEQ notes that 5,414 engineers are registered under that scheme that do not reside in the state.

In addition, our members advise that these registered engineers would be unlikely to meet the obligation that Queensland be the 'principal place of work' because of one or more of the following reasons:

- Most would principally work out of offices in other jurisdictions
- Queensland projects only make up a proportion of their work, and the projects they principally work on can change frequently
- A number of registered engineers based interstate are registered by the BPEQ so they can supervise unregistered engineers providing services to Queensland.

Businesses make decisions on registration to suit the needs of the business. As the Queensland scheme allows a registered engineer to supervise unregistered engineers, many businesses do not register all engineers providing services in or to Queensland with the BPEQ. Businesses advise that this can be a logistical challenge, ensuring there are sufficient numbers of engineers registered to supervise the work of others on all Queensland projects. It is expected the number of interstate engineers being registered in Queensland will increase off the back of large infrastructure projects in Queensland and the need to move more staff to those projects.

From 1 July 2021, NSW and Victoria will also have registration schemes in place. The automatic deemed registration scheme as currently drafted will allow engineers that primarily live or work in Queensland to be deemed to have registration in these two additional jurisdictions (assuming these state governments do not exclude engineering registration from the scheme). This will deliver significant benefits to those practitioners and the businesses that employ them – but Queensland-based businesses only make up less than 22% of the consulting engineering businesses in Australia.<sup>6</sup> This leaves behind many businesses and potentially skews competition.

Queensland-based engineers will be able to take advantage of automatic deemed registration to work on projects in projects in Victoria and NSW. While registered engineers based in those jurisdictions will not have that benefit and will need to seek additional registration, including through mutual recognition which is administratively burdensome and time consuming.

### The cost for engineers

The cost impact of registration is not insignificant considering both financial and administrative costs. A survey of over 30 Consult Australia members demonstrates that on a conservative estimate it costs approximately \$5,000 per new engineering registration, per individual, per scheme:

- \$1,106 in annual fees for registration in one engineering discipline (plus the cost of continual professional development)<sup>7</sup>

<sup>5</sup> Although it is noted there are limited licensing schemes for building practitioners etc which can incorporate engineering disciplines in NT, Victoria and Tasmania which a number of our members are also registered under.

<sup>6</sup> See page 43 of *Consult Australia Economic Forecast 2021*, January 2021.

<sup>7</sup> Based on Engineers Australia NER membership of \$767 (it can range between \$574 to 767) with 'chartered' status costing \$109. Then \$230 to Queensland government for recognising the NER registration.

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- 15 hours to complete the administrative requirements, amounting to \$3,750, assuming a modest charge-out rate of \$250 per hour per engineer (it could be significantly more for a more senior engineer).

This equates to over \$27million in immediate cost for the 5,414 registered engineers on the BPEQ who are not based in that state, assuming they all seek registration in either Victoria or New South Wales when those schemes commence on 1 July 2021 (up to over \$54million if they seek registration in both states). This could immediately be realised as a cost saving if the draft legislation was amended to alleviate these issues, see our proposed solutions below). This amount assumes these registered engineers only need registration in one discipline, addition cost is incurred when a practitioner needs to be registered in more than one discipline.<sup>8</sup>

Even if these registered practitioners used the existing mutual recognition scheme, little time or money is saved. Members advise that most jurisdictions do not offer any discount for mutual recognition as compared to registration.

Many businesses indicate that the process of registration (and renewal) is the responsibility of the individual, even where the employer pays the fees etc. It is essentially the same process each time for each registration no matter the jurisdiction. This means that significant hours of productivity are lost spent on several iterations of generally the same task

- For initial registration:
  - demonstrating competency
  - completing forms
  - getting and attaching passport photos
  - providing professional insurance (PI) certificate
- For renewal:
  - completing forms
  - providing PI certificate
  - reporting on CPD
  - making payments and processing receipts.

Members advise that there is also a fair amount of undocumented time and energy spent clarifying aspects of the current requirements. For example, where government clients require registration on the QBPE for certain roles when those roles may not be necessary for the particular project.

To put in context the cost impact for individual businesses and to demonstrate its impact no matter business size, please see case studies drawn from the Consult Australia membership below. The importance of small businesses and sole practitioners in consulting cannot be overstated:

- the vast majority of consulting firms (97.4 per cent) had less than 20 employees
- over half (51.3 per cent) had no employees at all.<sup>9</sup>

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<sup>8</sup> The cost of adding an additional discipline on the NER is the same as for the first registration. Under the Victorian building practitioner registration, an additional category or call only costs \$60.40 (where initial registration costs \$130.90).

<sup>9</sup> See page 43 of *Consult Australia Economic Forecast 2021*, January 2021.

This is in comparison to the very few larger companies, of more than 50,000 businesses, only 65 of them had over 200 employees.<sup>10</sup>

Our SME members are increasingly undertaking more work on a distributed office basis and it is becoming increasingly evident that unless there is a national system or functional cross border deemed registration there will be barriers in being able to get engineers to practice or be registered in each state.

### Case studies

#### 1 – Sole practitioners working across Australia

Many sole practitioners provide their services across Australia, including specialists where the capacity and capability is not available in the relevant jurisdictions. Their home base is irrelevant to the services they provide. These engineers service both private and public clients.

#### 2 – SME with 100% of registered engineers living outside of Queensland

A structural engineering business employs 22 people, 5 of which are registered with the BPEQ. The business maintains offices in Victoria but works across all of Australia including on solar projects. Therefore, 100% of its registered engineers do not reside in Queensland and may work on Queensland projects periodically. The cost of having those 5 registered engineers also registered in both NSW and Victoria is estimated to cost the business \$50,000 (based on the above cost estimate). This is a significant cost impost on an SME.

#### 3 – Large business with office locations around Australia and 70% of registered engineers living outside of Queensland

A large multidisciplinary company employs 485 staff, maintaining offices in Canberra, Melbourne, Brisbane, Perth, South Australia and Sydney. Several hundred engineers are employed by the business, with 71 being registered with BPEQ. Fifty percent of these registered engineers do not reside in Queensland. Most of these engineers would have worked on a Queensland project, usually via remote work-sharing. However, the wider policy of the business is that once an engineer achieves Chartered Engineer status or equivalent (via IChemE, IStrucE etc) they then register with BPEQ as it is currently the only regulated system. This policy gives the company flexibility of staffing on projects. It is likely that this policy will need to be reviewed as other engineering registration schemes come into play, because the company cannot afford to register everyone everywhere.

### Proposed solutions:

Our SME members are increasingly undertaking more work on a distributed office basis and it is becoming increasingly evident that unless there is a national system or functional cross border deemed registration there will be barriers in being able to get engineers to practice or be registered in each state. The policy intent of the draft legislation is supported by Consult Australia, but the definition of 'home State' will disadvantage a significant proportion of our membership. The engineering example relied on in this submission is only one of potentially more occupations that face similar challenges.

To ensure that the government does not miss a significant opportunity to realise the benefits of automatic deemed registration in all jurisdictions Consult Australia urges the government to reconsider the definition of

<sup>10</sup> See page 43 of *Consult Australia Economic Forecast 2021*, January 2021.



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'home State'. We suggest there are two possible solutions, either one should alleviate the impact on our members and deliver the significant benefits envisaged by the policy intent of the legislation:

### OPTION 1 – Remove 'home State' from Part 3A and replace with 'first State'

It is noted that 'first State' as defined in subsection 16(3) of the *Mutual Recognition Act 1992* is used for the purposes of mutual recognition of equivalent occupations (Part 3 of that Act), that is:

- (3) In this Part, the first-mentioned State is called the **first State**, and the other State is called the **second State**.

If this definition of 'first State' was used in Part 3A instead of 'home State' it would allow individuals registered in any Australian jurisdiction to benefit from automatic deemed registration without any requirement that the first registration be in the jurisdiction where they primarily live or work.

One risk with this option is that, where multiple jurisdictions have in place a relevant registration scheme (including the individual's 'home State') it would allow an individual to choose the jurisdiction of their first registration. Considering engineering registration, this would be a minimal risk as both Victoria and NSW governments have advised that the Queensland scheme has been considered for consistency. Therefore, there would be little advantage in an engineer choosing another jurisdiction over their 'home State' for first registration.

### OPTION 2 – Modify section 42 of the Act

Our proposal for Option 2 is to modify section 42A of the *Mutual Recognition Act 1992* to allow individuals whose 'home State' has no relevant registration scheme to rely on 'first State' as per subsection 16(3) of the Act – see our proposed subsection 42A(2) and paragraph 42(3)(b) below. This ensures that 'home State' remains core to automatic deemed registration but also acknowledges situations where relevant registration schemes are not in all jurisdictions. Option 2 removes the risk in Option 1 of individuals choosing another jurisdiction over their 'home State' for first registration.

We also propose a transitional arrangement for all individuals currently registered where no 'home State' scheme commenced before this automatic deemed registration is in place – see our proposed subsection 42A(3)(c) below. This is to deal with the individuals who have Victoria and NSW as their 'home State' but are already registered with BPEQ. This transitional arrangement would permit a person holding registration on or before 30 June 2021 whose 'home State' had no relevant registration scheme on or before 30 June 2021 to rely on registration in the 'first State' as per the definition used in subsection 16(3) of the Act.

Our proposal would have section 42A of the Act read:

#### **42A Mutual recognition of activities through automatic deemed registration**

- (1) The mutual recognition principle as applying to activities covered by occupations is as set out in this Part.

Note 1: Part 3 provides for mutual recognition of occupations that are equivalent.

Note 2: For the definition of **activity**, see section 4.

- (2) This Part deals with the ability of a person who is registered for an occupation in the person's home State (where available, otherwise in the **first State**) to carry on, in another State (the **second State**), the activities covered by the occupation.
- (3) (a) The **home State** of a person, in relation to an activity, is the State in which the person has:
- (i) their principal place of residence; or
  - (ii) their principal place of work in relation to the activity.

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If the person's home State under paragraphs (i) and (ii) in relation to an activity is different, the person's home State is whichever of the 2 States is chosen by the person.

- (b) If the person's home State has no relevant occupational registration or licensing scheme in place, the person can rely on **first State** of registration.
- (c) If the person's home State had no relevant occupational registration or licensing scheme in place on or before 30 June 2021, and the person held a relevant registration on or before 30 June 2021, the person can rely on **first State** of registration.
- (4) To avoid doubt, a reference in subsection (2) or (3) to a State does not include a reference to a pre-adoption State.

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## **CONTACT**

We would welcome any opportunity to further discuss the issues raised in this submission. To do so, please contact:

**Nicola Grayson**

Chief Executive

**Kristy Eulenstein**

Policy Lead (Procurement & Practice)