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Driving business success for consulting firms in the built and natural environment

21 May 2021

Building & Construction Policy
Better Regulation Division
Department of Customer Service
NSW Government
Via email: BCR@customerservice.nsw.gov.au

Dear Policy Team,

Submission on the Proposed Fees in the *Design and Building Practitioners Amendment (Fees) Regulation (2021)*

Thank you for the opportunity to comment on the NSW Government's *Design and Building Practitioners Amendment (Fees) Regulation 2021* (the Fees Regulation) and the Explanatory Note which sets out the proposed fees for the Design and Building Practitioners scheme. I am writing on behalf of Consult Australia member businesses.

As you know, Consult Australia is the industry association representing consulting businesses in design, advisory and engineering. Our industry comprises some 55,000 businesses across Australia, over 97% of which are small businesses and include some of Australia's top 500 companies. Our members provide 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 over 240,000 people. The services we provide unlock many more jobs across the construction industry and the broader community.

NSW must smoothly and effectively implement its registration scheme, otherwise our industry's ability to deliver a rapidly growing pipeline of projects in NSW and across the nation will be significantly impacted. We are already seeing capacity constraints in the design and building industry, and the availability of diverse skills within the Australian market. Pipeline, capacity and skills availability are key concerns raised by our members in our recent [Industry Health Check](#). Around 48% of businesses surveyed reported an overall upturn in work, and 56% reported being concerned about pressures on workforce capacity to deliver the expected volume of work. Therefore, minimising unnecessary financial and administrative burdens on industry should be a priority for the NSW government to ensure that designers and engineers continue to commit resources to class 2 building developments in NSW. In a buoyant market with limited capacity businesses are looking for accessibility, affordability, and efficiency.

Consult Australia continues to advocate for a one-fee, one-registration approach where cross jurisdictional mobility is prioritised so that designers and engineers can seamlessly provide services in every jurisdiction. Around 91% of our member businesses provide services in multiple jurisdictions,¹ which means design practitioners and professional engineers, arguably more than any other profession, require occupational mobility to enable them to deliver a vast range of projects in different parts of the country. This is particularly the case where recent pipeline investments have increased the already constrained resource pool within the Australian market. It is not just large businesses that work across jurisdictions. With over 50% of the consulting businesses in Australia being sole practitioners, we see these as well as micro and small businesses providing design and engineering services in various jurisdictions.

¹ Of a sample survey of 33 member businesses, only three provided services to only one jurisdiction.

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We are concerned that the NSW government has not taken into consideration the significant business costs to practitioners who operate in multiple jurisdictions. Design practitioners and engineers, arguably more than any other profession, require greater occupational mobility to enable them to deliver a vast range of projects in different parts of the country. This is particularly the case where recent pipeline investments have increased the already constrained resource pool within the Australian market. Any registration scheme needs to empower practitioners to enable cross-jurisdictional occupational mobility through flexibility and affordability, so that practitioners, especially those working at micro and small businesses, can fairly and affordably meet the demand across multiple Australian jurisdictions.

Requiring practitioners to pay associated registration fees in each jurisdiction they are working (where a registration scheme exists) will have significant impacts on the practitioners' access to cross-jurisdictional projects, and consequently, the ability of the timetable for projects to be met. Many small businesses provide niche services that see them in high demand across the country, charging multiple registration fees impinge on their ability to carry the costs to continue servicing those clients. We note that the Commonwealth budget has dedicated funding to operationalise occupational mobility.

We discuss below our key areas of concern with the Fees Regulation:

- The scheme of fees is overly confusing with many aspects remaining unclear including:
 - what requirements or standards body corporates directors will need to meet
 - how mutual recognition fits into the fee scheme
 - whether professional engineering bodies will be required to comply with the scheme of fees.
- Fee amounts seem to be excessive in comparison to other jurisdictions.
- The fee structure is likely to negatively impact professional engineers who are also design practitioners under the Act as well as those who perform roles under related legislation such as the *Building Design Certifiers Regulations 2020* (NSW).

We also provide case studies of the cost on business of the Fees Regulation.

Seeking clarity and consistency

The breakdown of fees in the Explanatory Note was confusing, with the categories of design practitioners being broken down into different levels and different treatment of body corporate registrations. Also, several issues remain unclear including how mutual recognition fits into the fee scheme and if there will any restrictions on professional engineering bodies charging fees.

The Explanatory Note describes why different levels of fees are proposed for different design practitioners. It does not make clear why body corporate registration is different for principal design practitioners than for design/building practitioners. It is also unclear what requirements will be imposed on directors of body corporates that requires the significant fees attached to body corporate registration for design practitioners and building practitioners. In practice, there may be significant administrative burdens stemming from this as many of the medium and large businesses in Australia are global businesses with large overseas-based boards.

The Explanatory Note makes no reference to mutual recognition or automatic deemed registration. It is our understanding that mutual recognition will require less administrative burden on NSW government and therefore we would expect reduced fees.

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The Fees Regulation allows professional engineering bodies to be recognised to carry out the registration of practitioners and/or engineers. The Explanatory Note does not make clear if the NSW government will impose a restriction on the fees able to be collected by these bodies. We believe the government should impose maximum fee caps on professional engineering bodies rather than fixed regulated amounts. If the fees these bodies can charge is different to the fees in the Fees Regulation we also advocate for maximum caps on those fees. The setting of maximum caps for fees follows a similar approach to other areas of government such as aged care and social services by seeking to protect the interests of participants and, at the same time, encouraging a market-based response to ensure fees are kept to a minimum. Fees based on maximum caps could encourage organisations managing the scheme to pursue efficiencies that could help reduce costs on participants, and competition based on fees could also attract other assessment scheme proposals from other suitable entities.

Recommendation

It is recommended that the NSW government:

- invest in clearer information for industry, including an online calculator to assist practitioners and business to calculate the fees for registration
- provide clear information on what assessment will be undertaken in respect of body corporates and registration
- reduce any unnecessary administrative burdens for industry, especially in terms of the body corporate registration
- provide clear information on the role of professional engineering bodies and how the government will manage the fees charged by those bodies.

Seeking costs more in line with other jurisdictions

The proposed fees in the Fee Regulation are based on the anticipated administrative services expected to be undertaken. Whilst we understand the need for a cost recovery model, we do not believe the fees outlined are equitable for businesses, especially when compared to other jurisdictions.

As an example, the registration fee proposed under the NSW Fees Regulation for professional engineers applying for a three-year registration is \$1,332.00. In comparison, the Victorian Professional Engineers Registration Scheme proposed a fee of \$820.16 for the three-year registration of professional engineers. Further, businesses working on class 2 buildings in NSW will also likely need staff registered as design practitioners (and possibly body corporate registration) and potentially staff registered as principal design practitioners.

The NSW scheme seems considerably more expensive than schemes in other jurisdictions. Not only is this an industry concern from an accessibility perspective, but the fee variation may impact project delivery across the jurisdictions. For example, this might see engineers more attracted to Victorian projects over NSW class 2 building projects. This is particularly problematic in the current market where capacity is constrained throughout Australia.

The fees also fail to take into consideration the administrative requirements and financial burden a professional engineer incurs in completing the application process. A sample survey of our members has indicated that it costs approximately \$3,750 for each practitioner, for each registration (this was based on the time taken to complete the administrative requirements of the QLD scheme and a modest charge-out rate of an engineer).²

² In the Consult Australia sample survey, the average time members estimated spent by each practitioner for each registration was 15 hours to complete the administrative requirements. We used a modest charge-out rate of \$250 per hour per engineer (noting it could be significantly more for a more senior engineer).

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Recommendation

It is recommended that the NSW government:

- redesign the fees to provide for affordability
- ensure that administrative processes are minimised for industry
- ensure that mutual recognition occurs at a reduced fee
- ensure that automatic deemed registration is made available for minimal to no cost for industry.

Seeking reconsideration of treatment of multiple discipline registrations

The separate classes of registration fees proposed for different disciplines is likely to have an impact on occupational capacity. In an industry where skill shortages are a consistent challenge, career diversity should be accessible and affordable. The Fees Regulation seeks to categorise design practitioners into different levels based on the anticipated time spent processing each category of registration, and also provides separate assessments for a practitioner seeking registration as a design practitioner and engineer in the same discipline. Therefore, member businesses seeking to register employees who fit under various disciplines will incur significant administrative and financial burdens that are unnecessary to address the policy problem. As per our submissions on other aspects of the reforms, we are of the view that the key improvements to consumer and community confidence in buildings will come from the investment in design work – not in a complex and expensive registration scheme.

We estimate that it could easily cost a business over \$9,000 to register one employee engineer as both a design practitioner and professional engineer in their discipline and this goes up to over \$16,000 if the business also seeks to be registered as a design practitioner – body corporate, the costs being:

- \$5,082** to register the individual as a Professional Engineer – Fire Safety for 3 years (comprising \$1,332 to government as the 3-year application registration fee and estimated \$3,750 cost impact on the business from the administrative burden to apply based on the Consult Australia sample survey of other engineering registration schemes)
- +\$4,661** to register the individual as a Design Practitioner – Fire Safety Engineer for 3 years (comprising \$911 to government as the 3-year application registration fee and estimated \$3,750 cost impact on the business from the administrative burden to apply based on the Consult Australia sample survey noting that the NSW process seems similar to the process for engineering registration)
- +\$6,824** to register the business as a Design Practitioner – Body Corporate for 3 years (comprising \$3,074 to government as the 3-year application registration fee and \$3,750 cost impact on the business from the administrative burden to apply based on the Consult Australia sample survey noting that the NSW process for body corporate registration seems similar to the process for engineering registration – further clarity from government would assist in developing a more robust estimate)

TOTAL = \$16,527

If the NSW scheme allowed an individual to use an existing registration as an engineer to demonstrate eligibility as a professional engineer and design practitioner in the same discipline, the administrative costs to business could be vastly reduced.

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Further, if the registration of body corporate registration was simple, the business costs would also be able to be reduced.

An additional aspect is that many businesses working on class 2 buildings in NSW who will require registration under the *Design and Building Practitioners Act 2020* have already paid registration fees under the related *Building Design Certifiers Regulations 2020*. Any way to ease the administrative and financial burden for these businesses would be appreciated.

Recommendation

It is recommended that the NSW government:

- redesign the assessment approach – especially for practitioners seeking registration under the same discipline as a professional engineer and design practitioner
- ensure that administrative processes are minimised – especially for the application of body corporates as design practitioners.

Estimated cost of engineering registration for businesses working in QLD, VIC and NSW

Almost \$14,000 for a sole practitioner (for a 3-year registration)

A significant proportion of consultant sole practitioners provide their services across Australia, including specialists where the capacity and capability is not available in the relevant jurisdictions. These engineers service both private and public clients. For example, it is estimated to cost a fire engineer who is a sole practitioner \$13,952.36 to be registered for 3 years in QLD, NSW and VIC. This is based on a business cost of \$3,750 per jurisdiction to apply and fees of \$1,332 in NSW (additional if they also seek registration as a design practitioner), \$550.20 in QLD and \$820.16 in VIC. This is a significant cost impost on a sole practitioner.

Almost \$70,000 for a small business with 5 engineers (for a 3-year registration)

The majority of small consultancy businesses provide services across Australia. For example, a structural engineering business employs 22 people, 5 of which are structural engineers (currently registered in QLD). The estimated cost of having those 5 engineers registered in QLD, NSW and VIC is \$69,821.80 for three years. This is based on a business cost of \$3,750 per jurisdiction per individual to apply and fees of \$1,332 per individual in NSW (additional if they also seek registration as a design practitioner and the business seeks body corporate design practitioner registration), \$550.20 per individual in QLD and \$820.16 per individual in VIC. This is a significant cost impost on a small business.

Over \$990,000 for a large business with 71 engineers (for a 3-year registration)

All large consultancy businesses provide services across Australia. For example, a large multidisciplinary company that employs 485 staff, employ several hundred engineers with 71 currently registered in QLD. The wider policy of the business is that once an engineer achieves Chartered Engineer status or equivalent (via IChemE, IStrucE etc) they then register in QLD (as the only current government 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. The estimated cost of having these 71 engineers registered in QLD, NSW and VIC is \$990,617.56. This is based on a business cost of \$3,750 per jurisdiction per individual to apply and fees of \$1,332 per individual in NSW (additional if they also seek registration as a design practitioner and the business seeks body corporate design practitioner registration), \$550.20 per individual in QLD and \$820.16 per individual in VIC. This is a significant cost impost, even on a large business.

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I would be please to meet with you to discuss this further. I invite your office to contact me at kristy@consultaaustralia.com.au.

Yours sincerely,

A handwritten signature in black ink that reads "K. Eulenstein".

Kristy Eulenstein
Policy Lead (Procurement and Practice)
NSW Manager