NATIONAL OFFICE
Level 6, 50 Clarence Street
Sydney NSW 2000
GPO Box 56
Sydney NSW 2001

T. 02 8252 6700
E. info@consultaustralia.com.au
W. www.consultaustralia.com.au
ABN. 25 064 052 615

CONSULT AUSTRALIA

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

3 December 2020

Registration of Engineers
Building and Energy
Department of Mines, Industry Regulation and Safety

By email to: engineers@dmirs.wa.gov.au

Dear Sir/Madam,

Registration of Building Engineers in WA – Consultation Regulation Impact Statement

Consult Australia welcomes the opportunity to provide this response to the Western Australian (WA) Government's consultation on implementation of the Registration of Building Engineers in WA. We continue to advocate for a more consistent national approach to minimise impacts on business, especially as we all strive to recover from the impacts of COVID-19.

Consult Australia is the industry association representing consulting businesses in design, advisory and engineering. Our industry comprises some 48,000 businesses across Australia, ranging from sole practitioners through to 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.

A significant proportion of our members are small and medium enterprises (SMEs) and they raise real concerns about the unnecessary financial and administrative burdens of individual state/territory registration schemes. A situation only compounded by economic impacts of COVID-19 and affordability of professional indemnity (PI) insurance.

This is why, Consult Australia supports the work of the Australian Building Codes Board's Building Confidence Report (BCR) Implementation Team to find a nationally consistent approach. We also strongly support occupational mobility as the latest priority area for the Federal Deregulation Taskforce and the commitment by the Council on Federal Financial Relations on automatic mutual recognition. We see automatic mutual recognition as the most aligned with our push for mutual registration. We have recently discussed this with NSW Treasury and encourage WA to progress this approach. We believe a national approach is critical to ensuring that our members have a stable regulatory environment in which to operate.

Thank you for the opportunity to comment. If you would like further information or clarification, please contact myself (diane@consultaustralia.com.au) or Kristy Eulenstein, Policy Lead (Procurement and Practice) at kristy@consultaustralia.com.au.

Yours sincerely,

Diane Dowdell
WA State Manager

Proposal 1: Amend relevant Regulations to register engineers in accordance with the Building Confidence Report	
Our view is that registration is not the best policy lever to deliver professionalism to the industry. However, where jurisdictions are adamant that registration is necessary, Consult Australia has consistently advocated for a national approach that facilitates one registration for a practitioner covering all Australian jurisdictions (what we call mutual registration) rather than multiple state/territory registrations with then multiple mutual recognitions in the other states/territories (as is the usual practice). Consult Australia supports ***mutual registration***. **Mutual registration** allows for an engineer already licensed in one jurisdiction to automatically work in any other jurisdiction without an administrative process or additional fee. Mutual recognition that requires the prior approval in each jurisdiction is administratively and financially more burdensome than mutual registration. The mutual recognition system also introduces time delays which does not allow for the seamless provision of services across jurisdictions which is critical for engineers. Engineers, arguably more so than any other registered professionals, work across Australia and their skills are in high demand. Not only are engineering skills in demand but they are also in short supply, so it will be critical that the introduction of the registration scheme does not impinge on the movement of skills across the country or unnecessarily increase the cost of doing business.	
Support registration of the proposed categories of building-related engineers?	We can only support registration on the basis that there is mutual registration/automatic mutual recognition. It is critically important to productivity that we do not limit the movement of professionals by creating cost and administrative burdens for businesses. Where engineers are to be registered, the requirement for registered engineers should be kept to the narrowest criteria possible to support productivity, reduce the burden on business, reduce complexity of operating environments and align nationally on standards.
Civil engineering work for buildings should be required to be registered?	Many civil engineers work across multiple industry sectors and registering will create an unnecessary administrative burden noting that this reform is focussed on building compliance. The reforms should therefore focus on ensuring the appropriate standard for quality of work to be delivered, rather than requiring individual registration to manage the quality of the output.
Other categories of building engineering work that should be included?	Our preference is for the proposed list to be kept confined to the absolute minimum categories aligned with the risks the regulatory amendments are targeting.
The proposed definition of 'building engineering work' for the purposes of registration	Consult Australia supports alignment of any definition across Australia. As previously stated, many of our members work across jurisdictions (including a significant number of small niche businesses) and multiple definitions would result in unnecessary complications/uncertainty for their practice and add additional cost implications as a result.

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Definitions of engineering categories proposed in Appendix C	Consult Australia recommends aligning the definitions nationally to provide a consist framework across Australia.
Proposed pathways to register building engineers	There should be multiple pathways to allow for registration of building engineers. In addition, where a scheme is deemed to align with another scheme there should not be duplication of assessment of registration under the second scheme. The introduction of the Queensland Board of Professional Engineers (QBPE), the only fully implemented engineering registration scheme in Australia, has demonstrated the issues associated with duplication of registration process. Our members have outlined the cost and administrative burdens of registration and we attach that briefing for your information. To ensure minimal cost impact on business, Consult Australia strongly supports automatic mutual recognition. This would see all our members that employ engineers currently registered in Queensland being automatically recognised in WA. **Registration of individual practitioners vs contractors (body corporates**) Consult Australia requests that the WA government reconsider the implications of having individual *and* body corporate registrations. The CRIS does not clearly establish why two types of registration are required. Engineering registration is about technical capability, which is appropriate for individual practitioners. We do not see how registration of body corporates goes to building confidence and compliance. Even where a body corporate is registered, it is the individual practitioners within that organisation that need to have the appropriate technical capability. It seems that a company will need to manage the registration of the business in addition to the registration of the individual engineers within that business. If the WA government pursues body corporate registration, it will need to provide clear guidance to industry about application of the scheme. For example, will sole traders be registered as an individual, a body corporate or both, and to what public benefit? We note in other jurisdictions where body corporate registration is required there is confusion about the registration of a professional to undertake the technical aspect of the work versus their role in corporate governance. Therefore, we strongly urge DMIRS to ensure that where registered individuals within a body corporate must be nominated, those individuals are not required to also be involved in corporate governance (e.g. Board directors).

Utilising of industry accreditation schemes to assess and manage CPD requirements	Onerous and inflexible CPD requirements would impose unnecessary financial and administrative burdens on our members. We therefore support flexibility in the CPD schemes and flexibility regarding how they are delivered.
Industry associations that should be considered appropriate pathways	Recognising existing professional accreditation schemes will assist in reducing cost duplication, administration and time burdens on individuals needing to register. Flexibility should be maintained to allow incoming qualified and accredited individuals to easily demonstrate alignment with the preferred schemes.
Proposed minimum financial requirements	Consult Australia does not see value in the introduction of proposed minimum financial requirements. Firstly, the intent of the changes is to improve the outcomes of buildings and this element does not drive this outcome. Secondly, the financial requirements are adequately managed through other legislative processes. Finally, it is not clear how the department proposes to ensure compliance with this element.
Mandatory minimum professional indemnity	Consult Australia is acutely aware and concerned regarding the challenges in the insurance market, particularly in relation to professional indemnity (PI) insurance. These challenges include reduced capacity due to market consolidation, significantly increased premiums, and a reduction in policy coverage with carve-outs for risks associated with building work. Many of our SME businesses are advising challenges associated with PI insurance affordability. We recommend that the WA government reviews the attached recent AON Market Update to understand some of the current challenges in the PI market. The introduction of mandatory minimum PI insurance may be problematic considering the ongoing concerns on insurance availability in Australia and does not reflect the diversity of the businesses and project that would need to be insured.
Minimum proposed CPD requirements	Consult Australia supports the CPD requirements to be consistent where possible and transferable to different schemes where necessary.
Proposal 2: Introduce a Code of Conduct for register engineers, based on the Code of Practice in place in Queensland	
If the WA government wishes to pursue a formalised code of conduct that it does so through regulations rather than amendments to legislation. This is a more responsive mechanism that can be updated as necessary in the future.	
Proposal 3: Registered persons to only work within their area of competence	
Anticipated costs or benefits to implementing this proposal	Consult Australia has recently sought feedback from its members regarding the operation of a similar scheme in Queensland. Primarily, our members are concerned about

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	the cost on many SME businesses that make up the industry, the possibility of 'double dipping' on fees (in particular for those who work in multiple jurisdictions) and adding further administrative burdens to their businesses. We provide a copy of that briefing as an attachment.
Is the estimated cost of $388 per engineer reasonable?	This is only the base cost that will be charged on application, it does not factor in the assessment costs, administration costs, and ongoing CPD costs. The cost to business will in fact be much be higher. Consult Australia would like an assurance that this cost will only be charged to first time registrants that are not already registered in another jurisdiction or through another scheme, i.e. a commitment to automatic mutual recognition/registration (see attached briefing).
Is 24 months a suitable transition time period?	Consult Australia supports a measured and transparent process for implementation that will allow businesses to understand the proposed changes and prepare for the burdens on their businesses.
How should feedback on the scheme be obtained?	Consult Australia recommends that any evaluation of the scheme should be designed appropriately to gather appropriate feedback from all relevant stakeholders. Online surveys are only one possible tool that may be used to seek feedback from both impacted parties and the general public. These should be used judicially, recognising their limitations and other tools be considered (either as alternatives or to complement the weaknesses of online surveys) to ensure that the Government receives an appropriate and valid response to its question of effectiveness. Therefore, when the time comes to determine effectiveness of the scheme, the evaluation program should be designed based upon the key questions it is seeking to answer and chose an appropriate suite of tools to assist in providing a valid response.

Attachments:

Attachment 1 – AON Current Global Insurance Market Conditions

Attachment 2 – Government Briefing Costs of Registration October 2020

Current Global Insurance Market Conditions

Design and Construction Professional Liability

Professional Liability Sentinel | Issue 14: Q2 2020
Revised

Empower Results®

Table of Contents

Introduction

Due to the COVID-19 pandemic, the world and many of its economies have experienced unprecedented challenges. Where we were once enjoying predictions of growth in 2020, we are now facing a profound – but hopefully short – recession.

For contractors and designers, the effect of a recession comes on top of other recent professional liability challenges. The market has seen some insurers adjusting their appetite for risks, as well as twelve carriers withdrawing from the market altogether following the Lloyd's "Thematic Review" in July 2018. To further compound the issue, contractors and designers operating in the United Kingdom, Australasia and the Middle East are continuing to deal with concerns around cladding, and insurers' associated exposure. In South America, we see increased focus on mining activities (principally concerning tailing dams).

As far as contractors' and designers' professional indemnity/liability is concerned, it may be some time before things stabilize. The global market hardened significantly during 2019 and remains hard today. The London market (which writes risks on a global basis) has lost over $150 million in professional liability capacity.

The reduced global capacity has enabled insurers worldwide to insist on blanket rate increases as follow:

- between 5-30% on primary layers; and
- as much as 50% for excess layers (which have been historically under-priced).

Insurers argue such increases are justified to remain viable and return their portfolios to profitability.

The onset of COVID-19 has only exacerbated the firming market, and while the pandemic may not in the first instance appear to have any direct impact on the professional liability market, insurers are nervous that a new global recession could affect construction risk in much the same fashion that the 2008 global financial crisis (GFC) did.

Some Insurers are starting to build-in additional factors to combat the potential effects of a recession. Insurers are conscious that, following the GFC, many contractors and designers agreed to onerous contractual terms and conditions, undertook low margin work, or began working in sectors where they didn't have adequate experience. Furthermore, the recession meant that the number of professional resources was reduced during so-called "right-sizing" exercises. The obvious hope is that contractors and designers will have learned from the recent past and not repeat similar mistakes.

Insurers are still evaluating how they are going to deal with COVID-19. In short, how do you deliver professional services in a remote work environment or while practicing social distancing? Specific areas of concern include:

- Impaired collaboration between professionals.
- Overseeing work undertaken by others and adhering to QA and QC procedures.
- Ensuring resources and not being under- or over-utilized.
- Authorizing payments.
- Inspection and construction management.
- Attention to circumstances surrounding delays because of supply chain impact and any attempt to push risk of supply chain delays or failures onto the design team, and the necessity to maintain detailed records on all projects.
- Digital and mechanical solutions are not always effective substitutes for in-person performance of professional services, and clients' agreement to how professional services are differently performed must be documented.
- Professional liability insurers are likely to focus on staff retention when assessing risk going forward.
- When life returns to normal, it is likely that there will be a resumed demand for professional services and, if staff have been furloughed, what will the effect be on firms' performance, in particular if different project teams are working to complete projects, than those involved at the beginning of those projects?
- Potential changes in design required in buildings (including elevators) to allow for new social distancing rules.

Some insurers are seeking to impose new exclusions; for example, one tried to apply a "transit exclusion" in connection with shipping or transportation delays. Globally, Aon is resisting such measures and, at the very least, we are insisting on exceptions for professional negligence.

Insurers are still evaluating how they are going to deal with COVID–19. In short, how to deliver professional services in a remote work environment or while practicing social distancing?

Asia

Over the last six months, we have seen a gradual change in the appetite of markets in Asia for project risks.

Insurers are being more critical in their underwriting, and certainly not as flexible in their terms when compared to six months prior. Market appetite has narrowed with some insurers turning away new opportunities they were once very keen on writing, or insurers limiting project periods to five years or less. There are fewer primary lead markets for complex placements, with most insurers preferring to write excess.

With respect to capacity, markets that were once eager to put up $25 million per project are now putting up a $10 million maximum line size. Capacity has been less of an issue for projects that require limits of up to $50 million for traditional project coverage.

Australia

Historically the London market has provided considerable competition to the local Insurers. This is no longer the case with several accounts repatriating back to Australia due the hardening London market.

Australian insurers are focused on cost over-runs, loss mitigation, warranties and cross liability, with related exclusions and sub-limits commonplace. As the Australian government tries to kick start the economy with infrastructure investments, capacity may become an issue.

See Market Trend Tables

Asia

Market Trends

2019 Q3/4				2020 Q1/2
Insurers warning of increased pricing. Some insurers are trying to increase their rates but overall, still manageable as we are able to pressure markets to follow the more competitive terms.	↔	Pricing/ Rates	↑	More insurers are continuing to look for rate uplift into 2020 and will not want to participate on programs without achieving their technical pricing.
Limits required by Asia Clients still achievable, although the options on primary are now limited.	↔	Limits	↔	As 2019 Q3/4.
Increase in retentions overall.	↑	Deductibles/ Retentions	↑	Increase in retentions overall, also Clients are increasing so try and manage the rate increases.
Relatively stable.	↔	Coverage	↓	Insurers are conducting underwriting reviews before they will consider providing more enhancements to the policy coverage.
Generally cautious.	↔	Capacity/ Appetite	↔	Remaining cautious. Very little market appetite for more complex projects (e.g. infrastructure/offshore windfarms) where some insurers are committing limited capacity, with most declining participation.
Market feedback has been that there has been increase in claims notifications.	↑	Losses	↑	As 2019 Q3/4.

Australia

Market Trends

2019 Q3/4				2020 Q1/2
Back half of 2019 saw the beginning of considerable hardening of the Australian PI book with rates increasing anywhere from 10-100% depending on the appetite for the risk.	↑	**Pricing/ Rates**	↑	Going into 2020 Insurer portfolio reviews resulted in increased rates of on average 30%. COVID-19 has seen further rate increases as supply tightens and insurers relay concerns of a property market downturn and contagion claims across their portfolio.
The ability to purchase large limits is still possible, but new capacity could be relatively expensive compared to existing given the current market conditions.	↔	**Limits**	↓	Overall reduction in limit size offered by carriers. Greater utilisation of reinsurance capacity is required to fill programs. An emerging focus on excess layer rates in order to attract capacity.
Insurers are looking generally to increase deductible levels especially where these have not kept pace with turnover/fee growth of firms at previous renewals.	↑	**Deductibles/ Retentions**	↑	Where the insured or the sector in which they operate dictates increased deductibles are the preferred route for insurers rather than just premium uplifts which alone are inadequate.
Broad coverage still available from the Australian market. Loss mitigation sub-limits being applied by some carriers. London market is hesitant in following local Australian forms. Contractual liability, Cyber and pollution three areas of focus. Cladding exclusions being applied across the board.	↓	**Coverage**	↓	Greater focus from Insurers on coverage specifically in relation to loss mitigation, cost over-runs, warranties & cross liability. Whilst we haven't seen a broad application of COVID-19 exclusions being applied, where Insurers perceive a heightened risk coverage is restricted.
Overall reduction in capacity & appetite. Focus from insurers on aggregation across clients & projects. Greater differentiation between sub disciplines resulting in a shortage of capacity for insureds in higher risk sectors.	↓	**Capacity/ Appetite**	↓	COVID-19 has added to the capacity constraints seen in the second half of 2019 with insurers concerned there will be a contagion flow of claims. Rate increases mean insurers are reaching their budgets without needing to write a lot of new business further reducing capacity. With limited supply of capacity for single project PI, insurers are rejecting the consultants in favour of the contractor where the rate will be higher.
There is a deterioration in insurers' back years pushing loss ratios towards the 100% mark.	↑	**Losses**	↑	There continues to be a deterioration in insurers' back years. Broad insurer wordings has resulted in the PI policy acting as a quasi-financial guarantee for cost over-runs and rectification where not enough attention was given at the pre-tender design phase.

Canada

Contractors Market Trends

2019 Q3/4				2020 Q1/2
Rate Change: In relation to Annual placements, rate increases of 5-10% were felt by risks without a claims experience. Firms with a negative claims experience or firms operating primarily in a field with negative portfolio claims experience, rate increases in excess of 20% wasn't uncommon. In relation to project specific placements, rates increased.	⇔↑	**Pricing/ Rates**	⇔↑	Expected Rate Change: We expect the rate pressure to continue, with carriers coming off programs which have had a negative claims experience.
While clients are focused on benchmarking their programs against their peers, they are not seeking less or more limit generally unless driven by contract due to the increased pricing on their current towers. We found less capacity available in the market for complex risks with Insurers cutting their capacity. Key project specific markets are decreasing their available limits on a primary basis.	⇔	**Limits**	⇔	We expect firms to maintain the status quo, unless an external event forces them to seek additional limits or their financial outlook requires them to manage their spending.
We saw more carriers push for higher retentions on annual programs and Project Specific placements. Increased retentions are not yielding significant savings, but rather facilitate the insurer's participation.	↑	**Deductibles/ Retentions**	↑	Expect pressure on retentions to continue. We also expect clients to use retention levels to manage costs. At this time, insurers are accepting those choices by clients without the investigation of the client's ability to carry the retention on their balance sheet. We expect underwriting in Q2 to tighten in this regard.
Coverage broadening that was common in the market in 2019 is no longer the norm. Generally, more detailed underwriting discussions are required to maintain current levels of coverage. Carriers continue to seek to roll back coverage directly related to specific claim on a portfolio basis. Further, some coverage enhancements more routinely obtained for project specific placements in Q1 of 2018 are now not available at all.	↓	**Coverage**	↓	Due to the current economic and social environment, we expect additional underwriting questions surrounding work from home strategies, financial impact of physical distancing and lockdowns and changes in contracts as a result of the pandemic. We expect to see clarity of coverage as it relates to COVID-19. We expect to continue to experience a tightening of terms offered for project specific placements based on type of project, jurisdiction, and make-up of the design team.
Insurers continue to provide solutions for clean, proven and preferred clients on annual placements, however they are more selective in how they deploy their capital and their enhanced cover. Some markets have limited their capacity or are de-risking, other strategies have taken on more importance (excess layers or a quota share approach). Capacity for primary business in Quebec is shrinking.	⇔↓	**Capacity/ Appetite**	⇔	Increases in overall rate have made this space more appealing to carriers who have felt the historic rating model was too low. However, we expect proper risk appetite to overtake rate adequacy as the indicator of a market's participation. Further, given the global pandemic, domestic carriers are increasingly conservative seeking to support their current clients. There may be additional capacity from traditionally US led carriers, but that is linked to the terms and conditions Canadian firms are prepared to accept. We aren't expecting an increase in London capacity due to the continued scrutiny by Lloyd's of the syndicates trading on that platform.
As the Professional liability placements mature, their loss experience is increasing in severity and frequency on larger projects.	↑	**Losses**	↑	This trend is expected to continue.

Canada

Architects & Engineers Market Trends

2019 Q3/4				2020 Q1/2
Rate Change: In relation to Annual placements, rate increases of 5-10% were felt by risks without a claims experience. Firms with a negative claims experience or firms operating primarily in a field with negative portfolio claims experience, rate increases in excess of 15% wasn't uncommon. In relation to project specific placements, rates increased.	↔↑	**Pricing/ Rates**	↔↑	Expected Rate Change: We expect the rate pressure to continue.
Clients are not seeking less or more limit generally unless driven by contract due to the increased pricing on their current towers; however, we found less capacity available in the market for complex risks with Insurers cutting their capacity. This requires additional carriers, and premium to maintain current limits for clients. Key project specific markets are decreasing their available limits on a primary basis.	↔	**Limits**	↔↓	We have seen clients seek to manage their insurance spend during this global pandemic by more serious consideration of decreased limits, or lapsing their towers. In many instances, this is occurring without consideration of triggering the extended reporting period provisions.
We saw more carriers push for higher retentions on annual programs, and Project Specific placements. Increased retentions are not yielding significant savings, but rather facilitate the insurer's participation.	↑	**Deductibles/ Retentions**	↑	Expect pressure on retentions to continue. We expect clients to use retention levels to manage costs. At this time, insurers are accepting those choices by clients without the investigation of the client's ability to carry the retention on their balance sheet. We expect underwriting in Q2 to tighten in this regard.
Coverage broadening that was common in the market in 2019 is no longer the norm. Generally, more detailed underwriting discussions are required to maintain current levels of coverage. Carriers continue to seek to roll back coverage directly related to specific claim on a portfolio basis. Further, some coverage enhancements more routinely obtained for project specific placements in Q1 of 2018 are now not available at all.	↓	**Coverage**	↓	Due to the current economic and social environment, we expect additional underwriting questions surrounding work from home strategies, financial impact of physical distancing and lockdowns and changes in contracts as a result of the pandemic. We expect to see clarity of coverage as it relates to COVID-19. We expect underwriters will continue to narrow coverage for higher risk design professions. In addition, it is more difficult to get broader terms with incumbents on clean accounts and we expect a tightening of terms offered for project specific placements based on type of project, jurisdiction, and make-up of the design team.
Insurers continue to provide solutions for clean, proven and preferred clients on annual placements, however they are more selective in how they deploy their capital and their enhanced cover. Some markets have limited their capacity or are de-risking, other strategies have taken on more importance (ACT, excess layers or a quota share approach). Capacity for primary business in Quebec is shrinking.	↔	**Capacity/ Appetite**	↔	Increases in overall rate have made this space more appealing to carriers who have felt the historic rating model was too low. However, we expect proper risk appetite to overtake rate adequacy as the indicator of a market's participation. Further, given the global pandemic, domestic carriers are increasingly conservative seeking to support their current clients. There may be additional capacity from traditionally US led carriers, but that is linked to the terms and conditions Canadian firms are prepared to accept. We aren't expecting an increase in London capacity due to the continued scrutiny by Lloyd's of the syndicates trading on that platform.
As the Professional liability placements mature, their loss experience is increasing in severity and frequency on larger projects	↑	**Losses**	↑	This trend is expected to continue.

Europe

Continental Europe

Spain > The hard market is now accelerating, and many Insurers are reducing capacity while implementing much stricter internal compliance and referral policies. This has resulted in premium increases of up to 10% for insureds with clean claims histories and increases of anywhere between 30% and 50% for insureds with poor loss histories. Retentions have traditionally been low in Spain but are now increasing. The conditions for project policies are even worse, with higher premiums and insurers implementing strict referral protocols. Capacity remains limited, and it is now impossible to obtain cross liabilities (insured versus insured) coverage.

Italy > Much like Spain, insurers' underwriting approaches continue to change, with authority being centralized in insurers' home offices. Insurers are reducing long term capacity for project policies, and only a few carriers are able to provide lead capacity. Some insurers insist on the opportunity to write multiple lines of coverage as a condition of doing business.

The Netherlands > The hardening market has affected premiums and retentions, but coverage terms have remained largely unaffected thus far. The market is still competitive for annual policies, although markets with a strong footprint in the UK are becoming less competitive. Terms remain broad for project policies, but we expect it to shrink. Extensions are becoming more difficult to obtain, with some insurers announcing they won't quote on projects that are longer than 5 years.

France > The market is hardening, but the extent to which it is doing so depends on the territory, limits, and complexity of the risk. Many clients who previously used London markets are now looking for local capacity, and French insurers are very interested. Capacity can still be found for project policies, even for large projects.

United Kingdom and Ireland

Aon risks placed in the London market continue to benefit from the Aon Client Treaty; however, it is now limited to 15% per policy, with the total capacity also reduced in dollar amount to $37.5 million (ex. US risks which is $10 million). Although a hardening market combined with firms' organic revenue growth substantially boosted the profitability of London insurers' professional liability books. Although, we are seeing restrictions in line size from individual insurers, we are not yet seeing market pressure on capacity for placements under $220 million.

Firms doing business in Ireland are seeing insurers capping their limits at €5 million in the aggregate. A further development is a reluctance on insurers' part to write an excess layer that "overhangs" the primary limit (i.e., where the excess layer limit is greater than the liability limit of the underlying layer).

Europe

Continental Europe Market Trends

2019 Q3/4				2020 Q1/2
Rate of increase depends on country and complexity of risk	↑	Pricing/ Rates	↑	Insurers quote every policy on a zero basis and give new terms according with their internal procedures.
Limits are stable but for higher limits on mega projects can be difficult to maintain.	↓	Limits	↓	Reduction in capacities and budget restrictions, make some Insureds reduce their limits.
Increasing, especially on more complex placements where insured sometimes must take higher retentions.	↑	Deductibles/ Retentions	↑	Insurers are looking generally to increase deductible levels especially where these have not kept pace with turnover/fee growth of firms at previous renewals.
Becoming more restrictive, cross liability and longer ERPs hard to obtain.	↓	Coverage	↓	In general, coverages keep the same, in general trying to use standard wordings instead of manuscript wordings. Special requirements like cross liability are not accepted.
Appetite for complex risks is declining due to poor loss records.	↓	Capacity/ Appetite	↓	Capacities offered by insurers and appetite, reduce significantly.
Increasing.	↑	Losses	↑	There is deterioration in insurers' loss record, particularly in Australia and Canada.

Europe

United Kingdom and Ireland Market Trends

2019 Q3/4				2020 Q1/2
Insurers have taken the opportunity in 2019 to review their portfolios and manage line sizes on programmes. As well as reducing overall capacity on each placement insurers have also looked to ventilate their capacity by gapping on layered programmes. Rate increases have gained momentum in 2019 and coupled with organic growth of insureds have depleted insurers available capacity.	↑	**Pricing/ Rates**	↑	Insurers are continuing to look for rate uplift into 2020. We have seen some insurers who were slower to push for rate in 2019 now approach each renewal with sometimes what seems like arbitrary uplifts regardless of the exposure or loss experience of the insured.
The ability to purchase large limits is still possible, but new excess layers could be relatively expensive to the underlying given the current market conditions. Towers for practice policies above US$250M have become more challenging from a capacity perspective	↔	**Limits**	↔	Similar to the Q3/4 2019.
Insurers are looking generally to increase deductible levels, especially where these have not kept pace with turnover/ fee growth of firms at previous renewals.	↑	**Deductibles/ Retentions**	↑	Where the insured or the sector in which they operate dictates increased deductibles are the preferred route for insurers rather than just premium uplifts which alone are inadequate.
Inadvertent silent cyber cover has been raised by Lloyd's and the company markets. There has not been a consistent approach taken by insurers however from 2020 wordings will have to determine cyber cover one way or other.	↓	**Coverage**	↓	The silent cyber cover has still not been addressed by many markets. At the start of the COVID-19 Pandemic there were a minority number of insurers that chose to put on standard market exclusionary language that excluded both indirect and direct losses and which was unsuitable for professional liability policies. Following lobbying revised market wordings were published which although not ideal were more appropriate for PI. Some insurers have chosen to focus on specific points of coverage and exclude the risk of increased costs of a claim due to short supply of resources as a result of COVID-19.
Some Insurers are closed to new business and only have capacity for their renewal book in the run up to the end of the year. Over the course of the year to date we have seen insurers review aggregation and reduce their exposure to a single insured by cutting line sizes.	↓	**Capacity/ Appetite**	↓	Insurers continue to review aggregation and reduce their exposure to a single insured by cutting line sizes. Insurers only have modest growth targets, so the renewal book is the main focus for most. There has been a further reduction in appetite for SPPI.
We are hearing in the market there is still deterioration in insurers' back years.	↑	**Losses**	↑	There is still deterioration in insurers' back years particularly in territories ex-USA.

Aon Risks placed in London market continue to benefit from the Aon Client Treaty; however, it is now limited to 15% per policy...

Firms doing business in Ireland are seeing insurers capping their limits at €5 million in the aggregate

Middle East

The local market is showing signs of hardening rapidly, although not to the same degree seen in other territories. Annual policies are priced more competitively than project policies, which will always be more expensive given the longer tail nature of liability.

For larger and more complex project policies, reinsurers are approving fewer treaty exceptions. Dubai-based reinsurers' rates continue to harden, and companies' underwriting appetites are contracting.

In terms of capacity, line sizes are reducing by up 50% from some of the main players on larger project policy placements.

The local market is showing signs of hardening rapidly, although not to the same degree seen in other territories.

Middle East

Market Trends

2019 Q3/4				2020 Q1/2
Rate Change: 0% to +10%. We saw international reinsurers push for increased rates slightly.	↑	Pricing/ Rates	↑	We have continued to witness international and domestic (re)insurers push for increased rates, to a greater degree than 2019 Q3/4.
Generally, there is a lack of understanding on sensible limits to purchase. Limits purchased are typically driven by contractual conditions.	⇔	Limits	⇔	The experience of 2019 Q3/4 has remained consistent.
Re/insurers were continually pressurized to offer lower retentions whilst reducing premiums at the same time.	⇔	Deductibles/ Retentions	↑	We saw (re)insurers push for increased deductibles, especially in respect of the larger and more complex SPPI (prospective) placements.
Whilst some principals are becoming more educated, the general understanding still allows for 'basic' cover to be the norm. Buyers' sophistication centres around price more than coverage.	⇔	Coverage	⇔↑	We have seen principals push for fitness for purpose cover in respect of some of the larger prospective SPPI policies.
No new re/insurers entered the market; this was driven by the availability of plenty of capacity and many projects big and small being put on hold or even cancelled.	⇔	Capacity/ Appetite	↓	We have not seen any new entrants to the market, and a contraction in line sizes offered by established (re)insurers in respect of SPPI policies.
Two significant losses reported in Abu Dhabi in respect of structural failure; quantum for each reportedly circa $10M.	↑	Losses	⇔↑	Whilst the Middle East remains relatively non-litigious, we may see allegations made as a result of COVID-19 related delays masked in other guises.

United States of America

Contractors

Over the past year, the insurance market for contractors' professional liability has solidified for the first time in fifteen years. Most contractors performing work in North America have been asked to take modest increases in their Self-Insured Retentions.

Fortunately, rates for professional liability have increased by no more than 5% on "clean" risks, and capacity has remained fairly stable. That said, carriers are starting to restrict capacity deployed on a single risk, both for corporate and project specific risks.

For the foreseeable future we believe that the market will continue to examine risks very carefully, with the availability of project policies being reduced. In addition, due elevated claims activity, large civil contractors engaged in design-build activity and contractors with significant in-house design capability are coming under increased scrutiny. This comes at a time when design-build delivery is increasingly favored by owners, and contractors are now assuming risks which have historically fallen directly to designers. The continued uptick of claims activity related to design means these issues are now hitting contractors' policies.

Architects & Engineers

Beyond the financial consequences for firms attributable to the hardened London insurance market, US insurers, seeing the increased rates that London insurers are achieving, are now seeking their own rate increases. So far, the increases domestically are between 5-10% for large Architects & Engineers (A&E) risks and, fortunately, non-existent on small- and medium-sized risks.

There have been some changes in available capacity. For example, one prominent A&E insurers now limits the amount it will deploy on a single risk to $10 million, down from a previous high of $25 million. The same insurer has decided that it will no longer offer project policies in the New York area. Perpetuating the capacity issue, London market insurers continue to balk at writing project polices for US risks.

Unlike contractors' professional liability policies that are all sourced domestically in the US, the insurers for Architects & Engineers is a mixture of both from the US and London, and this has resulted in a significant reduction in total market capacity for annual corporate and project policies.

United States of America

Contractors Market Trends

2019 Q3/4				2020 Q1/2
To a large extent rating is highly dependent upon client- specific factors, most notably claims history. On "clean" risks, expected rate change is 0% to -5%.	↔↑	**Pricing/ Rates**	↔↑	Expect this to continue, with some carriers declining risks with multiple claims and those with high "design" risk content, particularly in the oil & gas sector. On project policies, we are seeing a more conservative rating approach, with limits on the maximum policy terms and capacity.
Clients continue to evaluate limits due to the perceived severity of professional liability losses.	↔↑	**Limits**	↔↑	This position is unlikely to change
Most clients have maintained their deductible/retention levels.	↔	**Deductibles/ Retentions**	↔↑	No material change is expected; however, carriers continue to push higher retentions on larger clients in an effort to offset the risk of claims deterioration.
No material changes in the annual or project programs.	↔	**Coverage**	↔	No material changes on annual or project programs.
While capacity continues to be readily available, the pricing on the excess limits is becoming increasingly scrutinized by insurers as claims values escalate. Lower excess layers are being priced more akin to primary coverage as carriers are viewing these excess limits as still being in the "burn" layer.	↔	**Capacity/ Appetite**	↔	Capacity is expected to remain available for most insureds, but pricing will escalate.
Claims activity in the construction sector was fairly constant, but we continue to see an escalation in the severity of these claims.	↑	**Losses**	↑	We expect this trend to continue, with year-over-year escalation in claim values and defense costs.

United States of America

Architects & Engineers Market Trends

2019 Q3/4				2020 Q1/2
Rate increases of 25% or more are common for insureds with claims.	↑	**Pricing/ Rates**	↑	On larger risks domestic insurers are generally looking for rates increases of 5-10%. For those larger US risks placed in the London market, the rate increases can range between 10-25%, particularly on Excess Layers that are under greater scrutiny as insurers evaluate their capital deployment.
We believe most firms will be focusing on maintaining their current limits in a changing market.	↔	**Limits**	↓	We have seen reductions in total limits being purchased due to reduced available capacity, or premium savings.
With the advent of larger claims, insurers are looking for increased retentions, especially with claims inflation running at 3% per year, and firms are considering higher retentions to offset premium increases.	↑	**Deductibles/ Retentions**	↑	We believe the current trend will continue.
Neutral, as previous enhancements were being evaluated by insurers.	↔	**Coverage**	↔	No changes at present but COVID-19 restrictions are being considered by London insurers.
As rates increase we are hearing that new insurers are considering entering this space, but this may only replace capacity that has already left the market.	↔	**Capacity/ Appetite**	↓	Overall market capacity has dropped for annual corporate and project policies.
Losses are increasing, with more claims coming from design-build contractors where there has been under-design at the bid stage and insufficient contingencies built in by contractors.	↑	**Losses**	↔	While the number of claims coming from contractors are increasing, limitations of liability are proving to be effective in limiting the severity of claims.

Contacts

To learn more about
our Design and Construction
services, please contact:

Mark J. Peterson
+1.402.203.5396
mark.peterson1@aon.com

Michael Earp
+1.312.381.1187
michael.earp@aon.com

Ante Petricevic
+1.403.267.7874
ante.petricevic@aon.ca

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GOVERNMENT BRIEFING

Costs of engineering registration

DATE: October 2020

CONSULT AUSTRALIA

BACKGROUND AND PURPOSE

Consult Australia has been advocating for national mutual registration of engineers to ensure a nationally consistent operating environment for our members. As part of that advocacy we have been engaging with the Commonwealth Deregulation Taskforce, Department of Prime Minister and Cabinet. With a focus on occupational mobility, the Deregulation Taskforce has asked Consult Australia for information on the cost of engineering registration on businesses and likely impacts of state/territory rollouts of separate schemes.

We note the only fully implemented engineering registration scheme is the Queensland Board of Professional Engineers (QBPE), while some other states and territories have selected schemes for building works and/or certification. For example, in Victoria 'building practitioners' need to be registered for building work[1] and public construction[2] while in Tasmania 'building services providers' need to be licensed[3] and in the Northern Territory 'certifying engineers' need to be registered.[4] Engineers Australia also maintains a National Engineering Register (NER) which is non-compulsory, but registration on the NER is recognised under many of the above schemes.

This briefing provides the initial feedback from Consult Australia members on:

- current costs of engineering registration, particularly in Queensland, including the cost of registration, administration and compulsory professional development (CPD)
- likely burdens on business if the current registrations in QBPE are not automatically recognised in other state/territories
- any other barriers because of the way in which registration works across borders in Australia, which would benefit from a move to automatic mutual recognition.

SNAPSHOT OF RESULTS

We received input from 23 businesses, 91% of which are classified as small and medium enterprises (SMEs). All but three businesses provide services in more than one state or territory.

- 100% of respondents have at least one engineer registered on the NER, and all businesses that provide services in Queensland have at least one engineer registered on the QBPE.
- All businesses indicated that while engineering registration on the NER and QBPE is on an individual basis, the employer covers registration costs for employees as well as funding CPD (between $200 and $1000 per employee).
- The financial cost of registration is not a multiplier of registration fee by the number of engineers employed. This is because businesses do not always register all engineers, for example as the Queensland scheme permits registered engineers to supervise unregistered staff, some businesses register enough senior staff to supervise other staff.
- Many businesses found it difficult to put a dollar value on the current administrative costs of registration, although one member estimated that initial registration took 15 hours, while renewal takes two hours per individual. Sole practitioners see it as a necessary task and couldn't calculate the time spent on registration as distinct from other administrative aspects of the business. One large multi-disciplinary business advised it tracks professional memberships now, but this could easily grow to a full-time position if every state and territory has separate schemes.

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[1] See detail of Victorian scheme for 'building practitioner registration': https://www.vba.vic.gov.au/building/registration/engineer

[2] See detail of the Victorian Construction Supplier Register: https://www.dtf.vic.gov.au/infrastructure-investment/construction-supplier-register

[3] See detail of Tasmanian scheme for 'licensed engineers': https://www.cbos.tas.gov.au/topics/licensing-and-registration/licensed-occupations/building-provider-licences/engineer

[4] See detail of the Northern Territory scheme for 'certifying engineers': https://nt.gov.au/industry/licences/certifying-engineers-and-architects

CONSULT AUSTRALIA

CURRENT COSTS OF ENGINEERING REGISTRATION

All respondents advised that they had at least one engineer registered on the NER. For those based in Queensland, the number of employees registered on the QBPE is usually equal to or higher than on the NER. Larger businesses advise that they do not record the engineers registered on the NER (as it is not a mandatory scheme).

Where businesses operate in Queensland as well as other jurisdictions, some engineers based in Queensland are registered on the QBPE, but there are also a smaller number of engineers based interstate that are registered on the QBPE so they can supervise unregistered engineers providing services to Queensland. Because of this supervision allowance, many businesses do not register all engineers providing services in Queensland on the QBPE. Businesses advise that this can be a logistical challenge, ensuring there are sufficient numbers of engineers registered on the QBPE to supervise the work of others on all Queensland projects. It is expected the number of interstate engineers being registered on the QBPE will increase off the back of large infrastructure projects in Queensland and the need to move more staff to those projects.

FINANCIAL COSTS

In terms of financial costs, our members understand that registration cannot be free, however as the various state/territory government schemes recognise registration on the NER, there is a feeling of 'double dipping' of fees. There seems to be no discount for mutual recognition. This is compounded when a practitioner wants to be registered in more than one discipline.[5]

There is also a concern that where schemes recognise businesses, sole practitioners do not just pay as an individual but must pay an increased fee as a body corporate.

- An individual registered to provide civil engineering services (at the 'chartered' level) in Queensland alone could spend up to $1,106 annually in fees (plus the cost of CPD) [6]
- An individual registered to provide civil engineering services and certification (at the 'chartered' level) in Queensland, Victoria, Tasmania and the Northern Territory could cost up to $2,737 annually in fees (plus cost of CPD).[7]

ADMINISTRATIVE COSTS

The administrative burden on businesses of registration comes from the time spent by each engineer to register and renew registration. One member estimated that initial registration takes 15 hours per applicant, while renewal takes two hours per applicant (per year). Many businesses indicate that the process of registration and renewal was the responsibility of the individual, even where the employer pays the fees etc. It is essentially the same process each time for each registration/renewal 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, and providing professional insurance (PI) certificate. For renewal; completing forms, providing PI certificate, reporting on CPD, making payments and processing receipts.

Assuming a modest charge-out rate of $250 per hour per engineer (it could be significantly more for a more senior engineer) the time impost costs the business $3,750 for each new registration and $500 per individual for each renewal. That is per scheme. As indicated above, engineers working on Queensland projects will often

[5] 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).
[6] 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.
[7] Based the costs for NER and QBPE as above plus $388 for Tasmanian licence, and $1,112 for registration in the Northern Territory and $130.90 for registration as a 'building practitioner' in Victoria..

be registered on the NER and QBPE, then there is the registration and renewal for other schemes such as in Victoria, Tasmania and the Northern Territory.

- An individual seeking initial registration to provide civil engineering services and certification (at the 'chartered' level) in Queensland, Victoria, Tasmania and the Northern Territory could spend up to 15 hours per jurisdiction, that is 60 hours to be registered, losing $15,000 in charge out costs.
- An individual seeking renewal of existing registration to provide civil engineering services (at the 'chartered' level) in Queensland, Victoria, Tasmania and the Northern Territory could spend up to two hours per jurisdiction, that is eight hours, losing $2,000 in charge out costs.

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.

BARRIERS OF SEPARATE STATE/TERRITORY SCHEMES

The above already indicates the financial barriers of operating across state/territory borders with only the limited schemes in place, many with mutual recognition already. While the vast majority of members that provided responses work in multiple jurisdictions, they also advise that they have avoided work in some jurisdictions because of these existing costs. Businesses often make strategic decisions on renewing registration/licensing depending on the likelihood of work in that jurisdiction.

Members advised that they have walked away from work in other states/territories because the time to get registered results in inability to hit deadlines plus it's not worth the cost of registration if you only get a hand-full of jobs in that jurisdiction. In another example, a business may have licensed two civil engineers in Tasmania for a project, but now the project is completed the business needs to decide if/when the licence will be needed again.

One SME member advises that while they were anticipating opening offices in other jurisdictions, the rollout of separate registration schemes in those areas would dissuade the business from expanding. SMEs (including sole traders) that provide specialist or niche services advise that the fees of registration in very state, if they reflect the current fees, could severely hamper the businesses ability to operate in those states/territories. These members advise that often, because of the specialist nature of their work there are very few experts in Australia and it would not be possible for them to work under the supervision of other practitioners in each jurisdiction.

All businesses that operate in multiple jurisdictions acknowledge that there will be additional fees to ensure the business can continue working around the country. However, as all Australians undertake more work on a distributed office basis, it is becoming increasingly evident that unless there is a national system or automatic cross border recognition there will be barriers in being able to get engineers to practice or be registered in each state/territory.

Even now, with only limited schemes in place businesses cannot move engineers to projects quickly – as the administrative time taken to apply and assess applications (even where it is merely recognition of an existing registration) impacts on project timelines. Automatic mutual registration would enable businesses to move engineers around Australia more quickly and freely. Without this, there will be a hurdle to being able to react quickly, and it will increase the base cost of running the businesses.

Separate state/territory schemes will necessitate businesses to have capability in People (HR/legal) teams to keep abreast of all of the individual state requirements to ensure no requirements are breached by accident or omission. Our members advise that this just introduces unnecessary complexity into an industry that is already complex enough. A large business operating across jurisdictions will need to ensure every state/jurisdiction is tracked and managed independently instead of having the benefit of one national approach enabling the business to efficiently place the best resources to meet client needs at the right time.

It is anticipated that a large business would need a full-time role to manage this including to ensure compliance with the administrative differences between each state/territory and to be aware of the transition required for those that may be registered internationally. Although developed from similar roots, the legislation in Queensland, Victorian and New South Wales for example are different, as are their relationships with the relevant government authority.

OTHER GOVERNMENT CLIENT REQUIREMENTS

In addition to the schemes discussed above in Queensland, Victoria, Tasmania and the Northern Territory there are also a range of other mandatory schemes around the country, including (but not limited to):

- Authorised Engineering Organisation (AEO) in NSW – managed by Transport for NSW, the AEO 'ensures that outsourced engineering services are delivered by capable and competent organisations'.
- Metro Trains Melbourne (MTM) registered training – managed by MTM, this scheme provides mandatory training for qualified individuals that wasn't to work on MTM projects.

It should also be noted that some government departments require registration on Engineer Australia's NER as a pre-qualification for tender.

The myriad of schemes and arrangements are difficult for business to navigate. A national register that could be utilised by all government clients could alleviate some of this burden.

COST OF OTHER TECHNICAL MEMBERSHIPS ETC

Attachment A sets out a non-exhaustive list of professional memberships/registrations that are often required by government clients. While this of particular impost on multi-disciplinary businesses, small businesses often need technical memberships in addition to their registration. For example, a civil engineer working on roads in Queensland would likely be registered on the NER and on the QBPE as well as be a member of the Australian Institute of Traffic Planning and Management as well as the Australian College of Road Safety.

CONCLUSION

The response from Consult Australia members makes clear that engineering registration in Australia already imposes significant burdens on business – which will only increase as more states and territories introduce separate schemes. The burdens and barriers are not exclusive to big business – with a vast majority of SMEs providing advisory, engineering and design services doing so in more than one jurisdiction.

Consult Australia has advocated for mutual registration 'one fee, one registration' which would give certainty and consistency nationwide for our members. Many of the benefits Consult Australia seeks for its members could be realised in the automatic mutual recognition arrangements being investigated by the Deregulation Taskforce. To ensure minimal burdens and barriers for businesses, state and territory requirements must be as consistent as possible.

ATTACHMENT A: Non-exhaustive list of professional institutional memberships/registrations our members need to manage. Even a SME will have multiple professional institution memberships/registrations.

Relevant Professional Institution	Mandatory or discretionary membership/ registration?	Fee for annual individual (unchartered) membership		Fee & time impost per individual to achieve chartered or registered status		Annual individual chartered fees	
		Member	Fellow	Financial	Time Commit-ment	Member	Fellow
Engineers Australia (National Engineering Register (NER))	Discretionary – although some government clients require registration as pre-qualification for tenders	$574	$767	$1,815	5 Days	$683	$876
Environmental Institute of Australia and New Zealand	Mandatory in NSW, Tas and SA	$330	$330	$755	4 Days	$585	$585
Australian Institute of Architects	Mandatory in all jurisdictions	$600	$600	$1,600	2 Weeks	$950	$950
Australian Institute of Project Management	Unknown	$500	$500	$1,900	2 Weeks	$500	$500
Australian Institute of Geoscientists	Unknown	$200	$200	$110	2 Days	$260	$260
Australasian Institute of Mining & Metallurgy	Discretionary – although some government clients across Australia require registration	$470	$470	$700	4 Days	$530	$530
Australian College of Road Safety	Unknown	$165	$225	n/a	n/a	n/a	n/a
Australian Institute of Traffic Planning and Management	Unknown	$175	$175	n/a	n/a	n/a	n/a

Relevant Professional Institution	Mandatory or discretionary membership/ registration?	Fee for annual individual (unchartered) membership		Fee & time impost per individual to achieve chartered or registered status		Annual individual chartered fees	
		Member	Fellow	Financial	Time Commit-ment	Member	Fellow
Environmental Institute of Australia and New Zealand	Unknown	$330	$330	$755	4 Days	$585	$585
Waste Management Resource Recovery Association of Australia	Unknown	$352	n/a	n/a	n/a	n/a	n/a
Planning Institute of Australia	Unknown	$632	$632	n/a	n/a	n/a	n/a
Institution of Chemical Engineers	Unknown	$302	n/a	$409	2 days	$719	n/a
Asset Management Council Ltd	Unknown	$154	n/a	n/a	n/a	n/a	n/a
Survey and Spatial Sciences Institute	Unknown	$460	n/a	n/a	n/a	n/a	n/a
Australian Water Association	Unknown	$300	n/a	n/a	n/a	n/a	n/a
Institute of Public Works Engineering Australia	Unknown	Unknown	Unknown	Unknown	Unknown	Unknown	Unknown
Australian Geomechanics Society	Unknown	$300	n/a	n/a	n/a	n/a	n/a
International Erosion Control Association Australasia	Unknown	Unknown	Unknown	Unknown	Unknown	Unknown	Unknown