



ENGINEERS
AUSTRALIA

Automatic Mutual Recognition of Occupational Registration

Submission on the exposure draft legislation

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Introduction

1.1 About Engineers Australia

Engineers Australia is the peak body of the engineering profession in Australia. We are a professional association with about 100,000 individual members. Established in 1919, Engineers Australia is a not-for-profit organisation, constituted by Royal Charter to advance the science and practice of engineering for the benefit of the community.

Engineers Australia maintains national professional standards, benchmarked against international norms. As Australia's signatory to the International Engineering Alliance, this includes accreditation of undergraduate university engineering programs. Furthermore, Engineers Australia manages Australia's largest voluntary register for engineers, the National Engineering Register (NER).

1.1.1 Contact details

For a discussion about the issues raised in this submission, please contact Jonathan Russell, General Manager for Policy and Advocacy, at JRussell@engineersaustralia.org.au.

1.2 Registration of engineers in Australia

The requirement to be registered to practice without supervision as a professional engineer is different in every Australian jurisdiction. A summary of basic requirements is shown at Table 1.

Table 1 Scope of registration for professional engineers

Jurisdiction	Registration required	Areas of practice registered	Industry scope
QLD	Yes	All areas of practice	All industrial sectors
NSW	Yes (from 1 July '21)	Civil, structural, mechanical, electrical, fire safety, geotechnical	Building sector (Class 2 buildings only)
ACT	No	N/A	N/A
Vic	Yes (from 1 July '21)	Civil, structural, mechanical, electrical, fire safety	All industrial sectors
Tas	Limited	Civil, building services, fire safety	Building sector
SA	No	N/A	N/A
WA	No (expected '21)	N/A (proposed: civil, structural, mechanical, fire safety, geotechnical, hydraulic)	Building sector
NT	Limited	Certifier engineers in structural, mechanical, hydraulic	Building sector

1.3 Context of feedback

The following information is provided to explain the context in which this submission is made. To begin with, Engineers Australia recognises the distinction between Part 3 and the proposed Part 3A of the *Mutual Recognition Act 1992* (the Act, or MRA). Part 3A is the mechanism for implementing automatic mutual recognition of occupational registrations (AMR).

It is noted that calling the policy proposal "AMR" could cause some misunderstanding amongst stakeholders because the proposed changes to the Act do not seek to make the provisions of Part 3 automatic. Instead, it may be better to

refer to it as Automatic Deemed Registration or “ADR”, to highlight its role and operation as distinct from mutual recognition under Part 3 as follows:

- Part 3 is all about registration. It entitles a person who is registered in one state for an occupation to be *registered* in another state for the equivalent occupation and, pending that registration, carry on the equivalent occupation in the second state. An occupation is equivalent between states ‘if the activities authorised to be carried out under each registration are substantially the same’. There is no plan to make this process automatic, hence, it can be ambiguous to refer to the proposed changes to the Act as “AMR”.
- Part 3A is all about being able to carry on *activities* outside your home state without having to become registered. It entitles a person who is registered in their home state for an occupation to carry on in another state the activities covered by their occupation. They do not become registered in the second state (as they would under Part 3), they are just taken as registered (hence, Automatic Deemed Registration or ADR). Their deemed registration lasts only as long as their substantive registration back in their home state. They will not need to notify the second state that they will be carrying on their activities there unless the Minister specifically requires it. They are subject to disciplinary action in both states.

To illustrate Engineers Australia’s understanding of how Part 3A will operate for engineers, especially when the scope of registration for engineers can vary widely from state to state (refer to Table 1), consider an engineer operating in NSW and QLD. Under ADR:

- An engineer registered in Qld would be entitled to carry on their usual activities in NSW without hindrance. If those activities are for Class 2 buildings, ADR would operate. If those activities are not in the building sector, then NSW does not require the engineer to be registered and the engineer could continue their work.
- On the other hand, an engineer registered in NSW (working in the building industry on Class 2 buildings) should be able to use ADR to carry out their building industry activities in Qld. If the NSW engineer is not registered (because they work outside the building industry) then ADR does not apply and they cannot work in Qld unless if they become registered under Qld rules.

With the above contextual information in mind, Engineers Australia’s feedback in response to the discussion paper is contained in Section 2, below, and focuses on Automatic Deemed Registration (ADR).

2. Feedback on the reform proposal

2.1 Guidance for practitioners

Overall, the objective of ADR is supported and the draft legislation, with some minor amendments or clarifications as provide below, should be workable. Engineers Australia continues to fully support this initiative.

To help ensure that practitioners understand the scope of the proposed changes it is recommended that community information on two issues is given some priority:

- The discussion paper says that the new rules will apply to any occupation subject to mutual recognition under the Act. That would include engineering (and presumably all other professions) but, to allay concerns within the profession Engineers Australia recommends that the government issue a list of occupations to which the ADR will apply on 1 July 2021.
- ADR has a veneer of simplicity but is in fact complex to navigate due to:
 - differences in how a single occupation can be regulated in each jurisdiction,
 - bespoke requirements of some jurisdictions in applying ADR, and
 - the potential for some jurisdictions to carve themselves out of ADR.

It is therefore recommended that the Commonwealth government work with state regulatory bodies to provide clear guidance material for practitioners to ensure they can comply with the revised law. This is especially pertinent when the different purposes of Part 3 and Part 3A are considered.

2.2 Unintended consequences

The concept of 'home state' is central to the operation of ADR. 'Home state' is currently defined as the person's principal place of residence or their principal place of work in relation to the activity in question. This definition would appear to confine a person's home state to the physical location of the person (ie the location of their home or office) rather than the location of the relevant site for which they are performing the work. Accordingly, the definition of 'home state' is well suited to activities where the work is performed and delivered on site. However, engineering is a professional service that is often delivered remotely (from across state and international borders), with individuals often delivering services for more than one jurisdiction at any given time.

In addition to this, ADR and the concept of 'home state' appears to be designed for occupations:

- for which registration is required in all jurisdictions; and
- for which the activities authorised by registration are the same in each jurisdiction.

Engineering is not regulated (or not regulated uniformly) in all Australian jurisdictions.

In this context, Engineers Australia recommends that the definition of 'home state' be reviewed and refined to accommodate occupations, such as engineering, that are often performed remotely and for which registration requirements are disparate. Under the current definition of 'home state', consider situations such as the following, for engineers:

- SA has no registration requirement: an engineer may live in SA and have an office there but also provide services in QLD and Vic where they are registered. What should be their 'home state'?
- QLD requires engineers to be registered for work in any industry: An engineer might live in Tweed Heads in NSW and have an office there too but deliver services wholly for QLD (perhaps they work on amusement rides, or service QLD coal mines). In this situation they are required to be registered in QLD but not NSW, where they live and perform the work. What would be their 'home state'?
 - Building on the above example, if the engineer also delivers services in Victoria (where a structural engineer is required to be registered for any industry), could this NSW-based engineer be fully registered on the Queensland register, and utilise ADR to practice in Victoria?
- Engineers often provide services in more than two jurisdictions. ADR will need to operate for work in two, three or more jurisdictions. Confirmation that this is possible under the proposed legislation is recommended.

2.3 Section 42R

In Part 3A at section 42R, a Minister of a State may declare that a specified occupation is excluded from the operation of automatic deemed registration because of significant risk to public safety. Engineers Australia is concerned that this provision may be applied too liberally.

It is critically important to explore this issue and to reach cross-jurisdictional agreement on its intended application. Section 42R gives states and territories the ability to not participate in ADR. This has the potential to undermine the policy objectives of ADR.

The fact that a Minister will need to provide written reasons for carving an occupation out of ADR, and that a five-year sunset clause applies will protect against that to some extent, but 'significant risk' (for the purposes of section 42R) is not defined and so the potential for it to undermine the ADR policy is not known.

For example, although both QLD and NSW have robust registration schemes, they are different, and the QLD Government could seek to argue that NSW registration is too simple and so presents a significant risk to QLD consumer protection or health and safety. QLD could in that scenario decide to exclude NSW registered engineers from using ADR for work in QLD.

If such a scenario is not intended, then the legislation should be refined, and guidance provided to stakeholders. If, however, broad use of section 42R is contemplated then the states need to be clear about what they think of other jurisdictions' registration systems across a significant portion of the occupations.

2.3.1 CPD

Building on section 2.3, Continuing Professional Development (CPD) is emerging as one registration requirement that is different between jurisdictions for engineering (the base qualification and years of experience are largely the same). However, the differences in CPD are at the margins and no jurisdiction is proposing wildly different levels of CPD for a registered engineer. Engineers Australia recommends that CPD not be permitted to be used as a justification for excluding an occupation from ADR.

2.3.2 Scope of registration

As highlighted at Table 1, the scope of registration for engineers is different in every jurisdiction with regard to areas of practice and the industries for which it applies. The potential effect of those differences on the operation of ADR and some clarification that will be required has been explored at section 2.2 and 2.3 of this submission.

2.3.3 Other conditions of registration

There are standard requirements for professional registration that are common across all jurisdictions with a registration regime, such as holding a base qualification, a certain number of years of experience and fulfilling CPD requirements each year. They may differ in detail, but as described for CPD, the experience of Engineers Australia is that differences are at the margin.

However, there are likely to be other conditions of registration that exist in one jurisdiction, and not another. It is recommended that the Commonwealth Government explore the extent to which factors may inhibit implementation of ADR. Two examples follow:

Insurance

Professional indemnity insurance (PII) is a condition of registration that is particularly relevant to engineers. For example, PII will become a condition of registration in NSW, but not in QLD. In this example, NSW is unlikely to permit an engineer to work on Class 2 buildings as a registered engineer without PII. Rather than being a cause for excluding an occupation from ADR, it is recommended that an agreed approach to fulfil additional conditions within the framework of ADR be found.

Sector-specific endorsements

Another example is that while Victoria requires engineers in five areas of practice to be registered to practice in any industrial sector, if that same engineer wishes to practice in the building sector they are required to also attain a building sector 'endorsement' to their registration. This contrasts with WA which is expected to introduce registration for engineers but apply it only to the building sector, so presumably ADR can apply simply. And it also contrasts with QLD which, like Victoria, requires registration for work in any industry sector but does not require any further endorsements specific to the building sector.

Again, rather than being a cause for excluding an occupation from ADR, it is recommended that an agreed approach to fulfil additional conditions within the framework of ADR be found.



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