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22/566

Mr Peter Cain MLA
Chair
Standing Committee on Justice and Community Safety

scrutiny@parliament.act.gov.au

Dear Mr Cain

I write in response to comments made by the Standing Committee on Justice and Community Safety (Legislative Scrutiny Role) (the Committee) in its *Scrutiny Report 25* in relation to the Professional Engineers Bill 2022 (the Bill).

I thank the Committee for its comments relating to the Bill. The Committee's comments requesting a response are addressed below.

Clause 68 - Complaints Process – non-disclosure of name and contact details of the complainant to the respondent in certain circumstances

Clause 68 of the Bill provides for the provision of information about a complaint to the respondent. It does not stipulate the details that need to be provided. In addition, while clause 66 of the Bill states the form and contents of a complaint, it also provides that the Professional Engineering Registrar (the Registrar) can accept a complaint that does not comply with those requirements.

Information protection obligations together with operational practices will ensure that information about a complainant will not be provided to a respondent where that would not be in accordance with the *Information Privacy Act 2004*, the *Human Rights Act 2004* (HRA), other legislative obligations or would put the complainant at risk.

Complaints will be handled by the Registrar who will be a public servant within Access Canberra. Under their Accountability Commitment Framework, which includes a Customer Service Charter and a Regulatory Complaint and Investigation Policy, Access Canberra:

- are committed to respecting and protecting people’s privacy and managing information in a way that protects their personal safety;
- will accept anonymous complaints, noting that in certain circumstances, it will not be able to progress compliance action in response to an anonymous complaint;
- will look into the issues raised where there is sufficient information provided to enable Access Canberra to action any issues arising from the complaint; and
- will protect the identity of people making complaints where this is practical, legally permissible and appropriate. If a party is concerned about the need to protect their identity, they should advise Access Canberra so that appropriate measures and supports can be put in place.

Clause 62 - Offence – Allowing an unregistered person to provide professional engineering services - onus of proof on the defendant – right to presumption of innocence

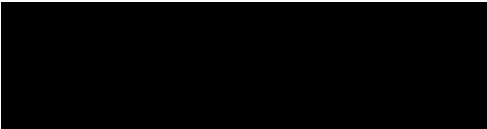
As noted by the Committee, Clause 62 of the Bill introduces an offence of allowing an unregistered person to provide professional engineering services. This offence, including the defences, mirror existing licensing schemes in the ACT, such as the *Constructions Occupations (Licensing) Act 2004*. The explanatory statement has been revised to include reasoning as to why the defendant should bear the legal onus to establish a defence to this offence using the framework in section 28 of the HRA. The revised explanatory statement will be tabled in the Legislative Assembly during debate of the Bill. A copy is attached for the Committee’s information.

Incorporation of instruments and displacement of section 47(6) of the *Legislation Act 2001*

I note the Committee’s comment that “it would have preferred that an explanation for why it was considered necessary to generally displace registration requirements for incorporated instruments also be included in the explanatory statement”. In revising the explanatory statement to address the Committee’s comment in respect to the right to presumption of innocence in criminal proceedings, revisions have also been made to incorporate an explanation of why it is necessary to displace registration requirements for incorporated instruments.

I trust that this response and the revised explanatory statement address the Committee’s comments in relation to the Bill.

Yours sincerely



Rebecca Vassarotti MLA
Minister for Sustainable Building and Construction

16/3/2023