**Guidelines on the extraterritorial application of the Act**

## Purpose

These Guidelines provide an explanation of the extraterritorial application of the *Professional Engineers Registration Act 2019* (the Act).

They cover the registration requirements for providing professional engineering services in Victoria and for Victoria.

These Guidelines also include a checklist for determining when the Act applies to the provision of professional engineering services.

## What the Act requires

The Act requires a professional engineer to be registered with the Business Licensing Authority (BLA) to provide professional engineering services within Victoria, and also outside Victoria if the services are intended for Victoria.[[1]](#footnote-2)

For guidance on the meaning of professional engineering services see the “Guidelines on providing professional engineering services” at [consumer.vic.gov.au/engineers](https://www.consumer.vic.gov.au/engineers).

## When the Act applies

The Act applies to the provision of professional engineering services in three situations. These are where a person:

1. located in Victoria provides professional engineering services for Victoria
2. located in Victoria provides professional engineering services for outside Victoria, and
3. located outside Victoria provides professional engineering services for Victoria.

In each of these situations the person providing the professional engineering services must be registered with the BLA as a practising professional engineer.

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| **In Victoria**A professional engineering service is provided ‘in Victoria’ if the person providing the service is physically located in Victoria when providing the service. |  | **For Victoria**A professional engineering service is provided ‘for Victoria’ if it is:* provided for a project or purpose in Victoria, or
* the service specifically relates to or is connected to Victoria in some way.
 |  | **For outside Victoria**A professional engineering service is provided ‘for outside Victoria’ if it is provided to a person or project in an Australian state or territory other than Victoria or for another country.  |

In the situations described in (i) and (ii), registration is required because the professional engineer is physically located in Victoria. In these situations, the Act requires a professional engineer to be registered to practice regardless of whether or not the professional engineering services are being provided for Victoria.

Registration with the BLA is also required in the situation described in (iii). While the professional engineer is located outside Victoria, the connection with Victoria is that the professional engineering services are being provided for Victoria. For example, a professional engineer located in Denmark designing a bespoke structure for a bridge to be built in Victoria, or a professional engineer located in Germany customising the design of a piece of machinery for use in a tunnelling project in Victoria must both be registered in Victoria or directly supervised by a registered Victorian professional engineer. The extraterritorial provision of the Act applies to this situation to ensure that professional engineers are accountable for the services they provide for Victoria.

If the engineer in situation (iii) is not registered, they will have committed an offence under the Act unless they are providing the professional engineering services only in accordance with a prescriptive standard or under the direct supervision of a professional engineer who is registered.

A professional engineer who is registered to practice with the BLA may take responsibility for the professional engineering services being provided by directly supervising the unregistered engineer. In this case, the registered practising professional engineer would need to be competent in the relevant area/s of engineering and the professional engineering services being provided to ensure the standard and appropriateness of the work being done by the unregistered engineer. The unregistered engineer would need evidence to demonstrate that they are being directly supervised.

## When the Act does not apply

A person located outside Victoria who provides professional engineering services for people or projects located outside Victoria is not required to be registered with the BLA.

**Professional engineering services for generic products**

A product is generic if it can be used anywhere, that is, it has no specific use or connection to Victoria, for example, a motor vehicle or a television. Therefore, for a generic product the location of the professional engineer providing the professional engineering services determines whether they must be registered in Victoria.

**Professional engineering services provided outside Victoria**

A professional engineer located in another Australian state or territory or overseas who provides professional engineering services for a generic product, regardless of where the product is manufactured, is not required to be registered in Victoria. This is because the professional engineering services are provided outside Victoria and is not for Victoria.

**Professional engineering services provided in Victoria**

Where a generic product is designed by a professional engineer located in Victoria or other professional engineering service is provided in Victoria for the product, the professional engineer must have a Victorian registration. This is because the professional engineering service is provided in Victoria.

## Professional engineering services provided at different stages of a project

Professional engineering services provided at any stage of a project must be provided by a professional engineer if those services are provided within Victoria or have a connection to Victoria.

An example of how the requirement to be registered applies in this situation is a large Victorian project where the design and development work for different stages of the project occur in different locations. If the plant is designed in Western Australia, the construction and maintenance systems are developed in Victoria and the design of the plant machinery is customised in Hong Kong, the professional engineers involved in each of these stages and locations must be registered in Victoria. The professional engineers located in Western Australia and Hong Kong must be registered because they are providing professional engineering services for Victoria, and the professional engineers designing the construction and maintenance systems must be registered because they are located in Victoria.

## Existing laws and standards

The Act does not:

* change the Australian laws and standards that apply to products manufactured or constructed using professional engineering services provided in or for Victoria, or
* impose additional certification or permit requirements on professional engineering services or products manufactured or constructed using professional engineering services provided in or for Victoria.

## Mutual recognition

The extraterritorial provisions of the Victorian Act and the Queensland *Professional Engineers Act 2002* mean that in certain circumstances a professional engineer must be registered in both Victoria and Queensland. These circumstances include, for example, a professional engineer not working under direct supervision who:

* is located in Queensland and provides professional engineering services for Victoria, or
* is located in Victoria and provides professional engineering services for Queensland.

Similarly, an engineer located and registered in New Zealand who provides professional engineering services for Victoria would also need to be registered in Victoria.

The Commonwealth *Mutual Recognition Act 1992* and the *Trans-Tasman Mutual Recognition Act 1997* provide a mechanism for a person to hold multiple registrations. Under the Commonwealth Acts a professional engineer registered in Victoria, Queensland or New Zealand can have their registration recognised in the other State or New Zealand without the need to be reassessed for registration in that other State or New Zealand. For advice on mutual recognition for professional engineers within Australia and with New Zealand contact Consumer Affairs Victoria BLAengineers@justice.vic.gov.au.

## Checklist on when the Act applies to professional engineering services

A professional engineer must be registered with the BLA to provide professional engineering services if they are:

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| 🗹 | located in Victoria, regardless of whether the services are being provided for Victoria or another Australian state or territory, or overseas, or |
| 🗹 | If they are providing professional engineering services for Victoria, regardless of whether they are located in Victoria or in another Australian state or territory, or overseas. |

1. Section 5 of the Act applies the Act within and outside Victoria to the full extent of the extraterritorial legislative powers of the Victorian Parliament. [↑](#footnote-ref-2)