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Professional Engineers Act 2002

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Proposed Amendments to the *Professional Engineers Act 2002*

The Board of Professional Engineers of Queensland (the Board) initiated a review of the Act in late 2012 to promote compliance with the provisions of the legislation, and ensure that the legislation is effective and up-to-date. A discussion paper was circulated to seek the views of industry, the profession, economic development organisations and consumers about the operations of the Act and the achievement of its objects.

The Board invited submissions in response to the discussion paper. Specific questions were asked in the paper to provide a structure for formal consultation. They were prepared as a result of information and feedback received through:

- ◆ the Board's deliberations in conducting its governance responsibilities;
- ◆ the Registrar's knowledge and understanding based on an engagement strategy with peak engineering and industry bodies and employers and registrants;
- ◆ code of practice presentations and submissions; and
- ◆ registrant feedback.

The questions canvassed in the Paper include:

- ◆ the registration of professional engineers, graduates and non-practising engineers;
- ◆ enforcement and other issues;
- ◆ the interpretation of aspects of carrying out a professional engineering service; and
- ◆ the governance of the Board.

Questions also addressed the reduction of red tape and invited comments and information more generally on issues.

In total, 97 submissions were received of which 10 were from associations representing various engineering interest groups, 8 were from corporations and the remaining 79 were from individuals. Responses were not made to all questions by those making submissions and a number of submissions included general comments.

Proposed Amendments to the *Professional Engineers Act 2002*

KEY ISSUES

Outcomes not requiring Amendments to the Act

Overall, there was clear support from stakeholders for continuing the current registration process.

Definitions in the Act

The definition of 'professional engineering service' is to be amended to provide greater clarity and guidance to stakeholders. It has always been the intention of Parliament that the Act applies to the whole lifecycle of a project from its design to its eventual demolition. Parliament recognised there is a significant level of risk for the provision of professional engineering services. Risk can manifest itself not only in the construction of a project but during its operation and maintenance. The definition of a professional engineering service will be expected to read '... the application of engineering principles and data to a design, construction, production, operation and maintenance activity ...'.

Non practising engineers

There will be a new category of registration for non-practising professional engineers. Registration under this category would allow those engineers who are retired or not currently practising, including those on extended leave (maternity/paternity, illness, sabbatical, etc) to be permitted to use the title 'non practicing professional engineer' for an annual registration fee which, it is proposed, will be a percentage of the annual registration fee for full registration based on the cost to the Board of administering the new category.

The new category of non-practising professional engineers would be in line with the *Architects Act 2002* which has had a similar category of registration since 2010. The current non-practising fee for registered architects is approximately half the usual registration fee.

Work outside of Queensland for Queensland projects

The *Professional Engineers Act 2002* does apply to engineering work undertaken outside of Queensland for Queensland.

Clarification in the Act on this issue was sought in responses to the discussion paper issued by the Board. The Act will be amended to state that the Act will have extraterritorial effect. This will clarify that professional engineering services, even if conducted outside of Queensland, must be performed by a registered professional engineer if the professional engineering services are for Queensland.

Decisions about unregistered persons

In relation to the activities of an unregistered person, the Board can currently only decide to prosecute or take no action. The Board has no explicit power to make a decision to take other actions.

The amendments will expand the options for the Board in relation to breaches by unregistered persons to include the following:

- ◆ enabling the Board to decide to enter into an undertaking about becoming registered and/or carrying on professional engineering services under supervision to caution or reprimand the person;
- ◆ creating an offence where the undertaking is not carried out or the caution or reprimand is ignored;
- ◆ enabling the Board to record the decision on the person's registration if and when it is granted; and
- ◆ enabling the Board to notify that a person has been found guilty of an offence under the Act on the board's website, whether or not a conviction has been recorded (at the moment the Board can only note that a person has been convicted of an offence in a disciplinary proceeding).

Proposed Amendments to the *Professional Engineers Act 2002* cont...

Grounds for dismissing a complaint by the Board

Under the Act, a person who is aggrieved by a registered professional engineer's conduct in carrying out professional engineering services can make a complaint to the Board.

Pursuant to section 39 of the Act, the Board can reject a complaint if it reasonably considers the complaint is "*frivolous, vexatious or trivial.*" However, often a complaint, upon investigation and consideration by the Board, has grounds for rejection that could be more accurately described, such as "misconceived" or "lacking in substance".

The Act will be amended so that the Board has the power to reject complaints if it reasonably considers that the complaint is misconceived or lacking in substance. Rejection of complaints on such grounds is consistent with other Queensland legislation such as the *Anti-Discrimination Act 1991* and *Professional Standards Act 2004*.

Awarding of Costs for Prosecutions

It is proposed to amend the Act to include provisions that enable investigation costs and other costs, such as legal costs, to be awarded to the Board by the Queensland Civil and Administrative Tribunal or the Magistrates Court.

Penalties and Fees to be paid to Board

From the original *Professional Engineers Act 1927* until the *Professional Engineers Act 1988*, it was expressly provided that all penalties and fees recovered by the Board under the Acts shall be paid to the Board and become part of its funds.

The current version of the Act for some reason does not contain that provision. The amendments to the Act will reinstate all penalties awarded to the Board by the Magistrates Court. Currently the penalties are paid to the Consolidated Fund.

The Board is an independent statutory body that does not receive any public funds.

There are a number of examples in Queensland legislation where penalties recovered as a result of proceedings for offences against various acts are payable to the respective statutory bodies (including boards). These include the *Queensland Building and Construction Commission Act 1991*, *Building Act 1975* (in relation to the fees that must be paid to the Queensland Building and Construction Commission and the Pool Safety Council), *Education (Queensland College of Teachers) Act 2005*, *Valuers Registration Act 1992*, *Surveyors Act 2003* and *Veterinary Surgeons Act 1936*.

Two recent examples of ones where the penalty has gone into consolidated funds despite significant resources used by the Board.

Penalty \$60,000 - Costs incurred by Board - \$178,602.00
Penalty \$5,000 - Costs incurred by Board - \$120,093.48

Annual Renewal of Registration

Annual registration renewal fees MUST be paid by 31 May 2014. Please ensure you have either paid online or have submitted your completed renewal form with payment to the office by 31 May 2014.

If you have not received your renewal form, please contact the office by email at admin@bpeq.qld.gov.au quoting your RPEQ number and requesting another copy of your renewal notice.

Failure to renew or submit your renewal form to the office by 31 May 2014 will mean your application will lapse and to maintain your registration you will need to apply for restoration which will incur an additional fee of \$51.90.

A Note from the Registrar..... I hope this issue of our Newsletter.....I hope this issue of our Newsletter has been of interest to you and if you have anything you would like to see in future newsletters please do not hesitate to contact me.

I regularly undertake presentation on the *Professional Engineers Act* and its requirements to various organisations and to groups ranging from 5 persons to over 100.

If you are interested in a presentation please contact the Registrar: Clare Murray on (07) 3224 4632 or e-mail clare.murray@bpeq.qld.gov.au.

