

PROFESSIONAL DISCIPLINE DECISIONS (s.73)

POLICY ID: 2.13 (1A)

Effective: 2 August 2017

1. Purpose

- 1.1 The Board of Professional Engineers of Queensland (BPEQ) is, pursuant to the provisions of the *Professional Engineers Act 2002* (Qld) (**PE Act**), responsible for protecting the public, maintaining confidence in the profession of engineering and upholding professional standards of registered professional engineers of Queensland (**RPEQs**).
- 1.2 A key function of BPEQ is overseeing and managing the professional discipline regime set up by the PE Act.
- 1.3 As part of that function, BPEQ receives and investigates complaints regarding certain conduct of RPEQs. BPEQ may also investigate the conduct of a RPEQ of its own volition, where it reasonably believes that a RPEQ's conduct may give rise to grounds for disciplining him or her.
- 1.4 Following an investigation, BPEQ may decide to start a disciplinary proceeding against a RPEQ in the Queensland Civil and Administrative Tribunal (the **QCAT**), impose other disciplinary sanctions or take no further action. That decision, including a decision to start a disciplinary proceeding, is a discretionary one.
- 1.5 BPEQ is committed to ensuring that it exercises its discretion in respect of disciplinary decisions, (including exercising its discretion to start disciplinary proceedings) fairly, impartially, consistently and in furtherance of the objects of the PE Act.
- 1.6 This policy provides guidance to BPEQ, RPEQs and the public on how BPEQ will make decisions and exercise its discretion regarding matters of professional discipline pursuant to section 73 of the PE Act.

2. Authority

- 2.1 Section 73 of the PE Act provides that, as soon as practicable after receiving or preparing a report regarding the conduct of a RPEQ, BPEQ must decide to:
 - (a) start a disciplinary proceeding against the RPEQ in the QCAT;
 - (b) enter into an undertaking agreed with the RPEQ about a matter relating to the RPEQ carrying out professional engineering services;



- (c) caution or reprimand the RPEQ;
- (d) impose a condition, agreed to by the RPEQ on the his or her registration; or
- (e) take no further action about the matter the subject of the investigation.

2.2 Section 73(3) requires that in making a decision pursuant to section 73(2), BPEQ must have regard to the main objects of the PE Act and the disciplinary grounds.

3. Scope

- 3.1 This Policy applies to the decision to be made by BPEQ pursuant to section 73(2) of the PE Act following receipt by it of an investigation report regarding the conduct of a RPEQ.
- 3.2 This Policy applies equally to investigations commenced following receipt of a complaint by BPEQ pursuant to section 41(1)(a) of the PE Act and where BPEQ has formed a reasonable belief that an aspect of a RPEQ's conduct in carrying out professional engineering services may have provided grounds for disciplining him or her.

4. Decision

- 4.1 The options available to BPEQ under section 73(2) fall into 3 relevant categories:
 - (a) take no further action about the matter the subject of the investigation;
 - (b) enter into an undertaking agreed with the RPEQ, caution or reprimand the RPEQ or impose a condition (agreed to by the RPEQ) on the RPEQ's registration (**Summary Conclusion Powers**); or
 - (c) start a disciplinary proceeding against the RPEQ in the QCAT.
- 4.2 What BPEQ decides to do is a matter for the exercise of its discretion having regard to the objects of the PE Act and the disciplinary grounds.

5. Exercise of the Discretion

- 5.1 BPEQ will not decide to start a disciplinary proceeding in the QCAT unless it is satisfied that:
 - (a) there is a reasonable likelihood that the QCAT would find the RPEQ guilty of unsatisfactory professional conduct (**Reasonable Likelihood Test**);
 - (b) it is in the public interest to start a disciplinary proceeding (**Public Interest Test**); and
 - (c) it is not, having regard to the objects of the PE Act, a matter which can be, and is more appropriately, dealt with by the exercise of BPEQ's Summary Conclusion Powers.



5.2 Unsatisfactory professional conduct, for a RPEQ, is defined in Schedule 2 of the PE Act as including:

- (a) conduct that is of a lesser standard than that which might reasonably be expected of the RPEQ by the public or the RPEQ's professional peers;
- (b) conduct that demonstrates incompetence, or a lack of adequate skill, judgment or care, in the practice of engineering;
- (c) misconduct in a professional respect;
- (d) fraudulent or dishonest behaviour in the practice of engineering; or
- (e) other improper or unethical conduct.

Requesting a Submission

5.3 To find a RPEQ guilty of unsatisfactory professional conduct, the QCAT must be satisfied on the civil standard (the balance of probabilities) that BPEQ has proved the allegations in its disciplinary application. Given the seriousness of the allegations, the QCAT will require sufficiently strong probative evidence before it can or will be satisfied that a RPEQ has engaged in unsatisfactory professional conduct. While the standard of proof is not changed, the QCAT must be persuaded by the evidence to a greater degree of certainty because of the significance a finding may have upon the RPEQ.¹

5.4 Accordingly, BPEQ will not make a decision to start a disciplinary proceeding in the QCAT unless it considers that there is reliable evidence capable of supporting a finding on the balance of probabilities that a RPEQ's conduct amounts to unsatisfactory professional conduct.

5.5 In evaluating the likelihood that the QCAT would find a RPEQ guilty of unsatisfactory professional conduct, BPEQ will assess the evidence in its totality having regard to:

- (a) whether the evidence, given previous findings by courts and disciplinary bodies in relation to the same or similar facts, establishes a reasonable prospect of a finding by the QCAT that the RPEQ's conduct falls within the definition of unsatisfactory professional conduct;
- (b) the strength of the evidence including with reference to any competing version of events;
- (c) whether evidence might be excluded, having regard to the principles of admissibility at common law (even though not directly applicable in the QCAT);
- (d) whether there is a defence that has been indicated as being relied upon by the RPEQ or which is otherwise plainly open to him or her;
- (e) the competence, reliability and availability of witnesses; and

¹ *Briginshaw v Briginshaw* (1938) 60 CLR 336



- (f) any other factors that BPEQ believes in all the circumstances might impact upon the likelihood of a finding by the QCAT of unsatisfactory professional conduct.

5.6 In setting out those matters relevant to exercise of BPEQ's discretion, it makes clear that:

- (a) even if BPEQ is confident of the likelihood of a finding by the QCAT of unsatisfactory professional conduct, it makes no representation as to the likelihood or success of any disciplinary referral. A finding in each matter is ultimately at the discretion of the QCAT; and
- (b) a decision not to start a disciplinary proceeding in the QCAT in circumstances where allegations involve the word of one person against another does not mean or infer that BPEQ believes one person over the other; just that the evidence in its totality is not sufficient to support a view that it is reasonably likely that the QCAT will find one person's version of events to be proved and not the other's.

The Public Interest Test

5.7 BPEQ does not believe that the public interest mandates that it decide to start a disciplinary proceeding whenever the Reasonable Likelihood Test is satisfied.

5.8 Assuming satisfaction of the Reasonable Likelihood Test, BPEQ will consider whether starting a disciplinary proceeding is in the public interest. The objects of the PE Act give context to BPEQ's consideration of what is in the public interest.

5.9 The objects of the PE Act are:

- (a) protection of the public by ensuring that professional engineering services are provided by RPEQs in a professional and competent way;
- (b) maintenance of the public confidence in the standard of services provided by RPEQs; and
- (c) to uphold the standards of practice of RPEQs.

5.10 BPEQ also recognises that there are sometimes equally effective, but more cost efficient, ways to protect the interests of the public and uphold the standards of the profession than by disciplining an errant RPEQ. Relevantly, the PE Act provides BPEQ with the Summary Conclusion Powers.

5.11 As a general rule, the more serious the alleged conduct, the more likely it is that BPEQ will decide to start a disciplinary proceeding in the QCAT. Where the conduct of a RPEQ, that is the subject of investigation, involves misconduct in a professional respect, fraudulent or dishonest behaviour in the practice of engineering or other improper or unethical conduct, BPEQ will, unless there are exceptional circumstances, decide to start a disciplinary proceeding.

5.12 The factors to which BPEQ will have regard in deciding whether it is in the public interest to start a disciplinary proceeding against a RPEQ include:

- (a) the trivial or technical nature of the alleged unsatisfactory professional conduct;



- (b) the objects of the PE Act and the need to protect the public;
- (c) the need to maintain public confidence in the standard of services provided by RPEQs and in the regulation of the engineering profession, including the discipline of the profession;
- (d) the need to deter other RPEQs from behaving in the same or similar way;
- (e) whether the conduct raises a matter of general or special importance for the profession or generally;
- (f) whether the conduct involves an element of dishonesty, abuse of power and/or criminality;
- (g) the age of the conduct relative to its seriousness;
- (h) the circumstances of the RPEQ the subject of investigation, including his or her health (physical and mental), age and years of experience;
- (i) whether the RPEQ acknowledges his or her error, shows remorse and/or has made good of any loss or harm caused by his or her conduct;
- (j) whether the RPEQ has a history of complaints in respect of similar conduct;
- (k) the likely length and expense of a hearing and whether it is proportionate to the seriousness of the alleged unsatisfactory professional conduct;
- (l) the potential outcomes of a hearing, and whether the RPEQ agrees to initiate the same or similar outcome himself or herself without the need for a hearing; and
- (m) any other relevant consideration.

Exercise of Summary Conclusion Powers

5.13 BPEQ can, rather than taking no further action or starting a disciplinary proceeding:

- (a) enter into an undertaking with the RPEQ about a matter relating to the RPEQ carrying out professional engineering services;
- (b) caution or reprimand the RPEQ; and/or
- (c) impose a condition agreed to by the RPEQ on his or her registration.

5.14 BPEQ may decide to exercise one or more of its Summary Conclusion Powers when it is satisfied that:

- (a) there is a reasonable likelihood that the RPEQ would be found guilty by the QCAT of unsatisfactory professional conduct; and
- (b) the RPEQ is otherwise generally competent and diligent; and/or
- (c) it is not in the public interest to do nothing or to start a disciplinary proceeding; or
- (d) the taking of the contemplated action is justified having regard to all the circumstances of the case.



5.15 In considering whether to exercise its Summary Conclusion Powers, BPEQ will also have regard to:

- (a) the RPEQ's disciplinary history including any prior complaints made against him or her in the proceeding 10 years;
- (b) the nature and seriousness of any conduct which is the subject of any separate complaint or investigation which has not been finalised;
- (c) the seriousness of the alleged unsatisfactory professional conduct;
- (d) whether the RPEQ made a mistake and is unlikely to repeat the mistake and/or is unlikely to repeat the conduct;
- (e) whether the RPEQ co-operated fully and frankly during the investigation;
- (f) whether there are grounds for lenience; and
- (g) any other relevant consideration.

Other matters

5.16 BPEQ will endeavour to apply this policy consistently, impartially and fairly. BPEQ will deal with complaints and investigations on a case-by-case basis on their individual merits with regard to the evidence in its totality and having regard to:

- (a) the objects of the PE Act;
- (b) the well-established principle that professional discipline should be directed primarily to the protection of the public rather than punishment of errant persons;² and
- (c) the desirability of maintaining public confidence in the profession of engineering in Queensland, and maintaining and enforcing high standards of professional and personal conduct among RPEQs.

5.17 BPEQ will not allow itself to be influenced in its decision making by:

- (a) the race, religion, sex or political association, activities or beliefs or any other personal characteristic of the accused RPEQ, or any other person or persons who may be involved in the matter;
- (b) personal feelings about the alleged conduct, the RPEQ, the complainant or any other third party;
- (c) any possible political advantage or disadvantage to the government of the day or any other political party or any possible media or community reaction to the decision; and/or
- (d) the possible effect of the decision on the personal or professional circumstances of the members or staff of BPEQ.

² *AG v Bax* (1999) 2 QD R 222