



COMPLAINTS AGAINST REGISTERED PROFESSIONAL ENGINEERS AND INVESTIGATION DECISIONS

POLICY ID 2.1 (5A)

Effective: 2 August 2017

1. Purpose

- 1.1 The Board of Professional Engineers of Queensland (**BPEQ**) is responsible for protecting the public, maintaining confidence in the profession and upholding professional standards of registered professional engineers of Queensland (**RPEQs**). BPEQ's professional discipline function, of which the complaints process is a key part, is critical to maintaining those standards, and consequently, public safety and public confidence in engineering services.
- 1.2 This Policy:
- (a) sets out the framework by which BPEQ will deal with complaints made against RPEQs pursuant to section 37 of the *Professional Engineers Act 2002* (Qld) (**PE Act**); and
 - (b) provides guidance to BPEQ, RPEQs and the public as to how BPEQ will receive, assess and deal with complaints and make decisions in respect of complaints, in particular a decision to investigate, or not to investigate, a complaint.

2. Authority

- 2.1 The PE Act empowers BPEQ to investigate complaints regarding the conduct of RPEQs and to take disciplinary action where appropriate.
- 2.2 Section 37 of the PE Act permits a person, who is aggrieved by the conduct of a RPEQ in carrying out professional engineering services, to make a complaint to BPEQ.
- 2.3 Sections 37 to 45 of the PE Act specify how a complaint is to be made and what action BPEQ can take in dealing with a complaint, including when BPEQ can make a decision to investigate.



3. Scope

- 3.1 This Policy applies to all complaints made to BPEQ relating to the conduct of a RPEQ in carrying out a professional engineering service. It guides all aspects of the complaints process including:
- (a) complaints procedures;
 - (b) validity of complaints;
 - (c) seeking submissions from respondent/accused RPEQs;
 - (d) grounds for rejecting complaints; and
 - (e) decisions to investigate (section 41 of the PE Act).
- 3.2 Complaints made about unregistered persons are not considered 'complaints' for the purpose of section 37(1) of the PE Act, and are outside the scope of this Policy. They will, however, serve to bring to BPEQ's attention information that may give rise to a reasonable suspicion of the commission of an offence against the PE Act.
- 3.3 BPEQ acts for the broader community (rather than for individuals). BPEQ is not a forum for settling contractual disputes and has no power to order restitution.
- 3.4 BPEQ does not have the power to intervene in respect of complaints regarding fee disputes, requests for compensation or staff grievances, and this Policy does not cover those types of complaints.

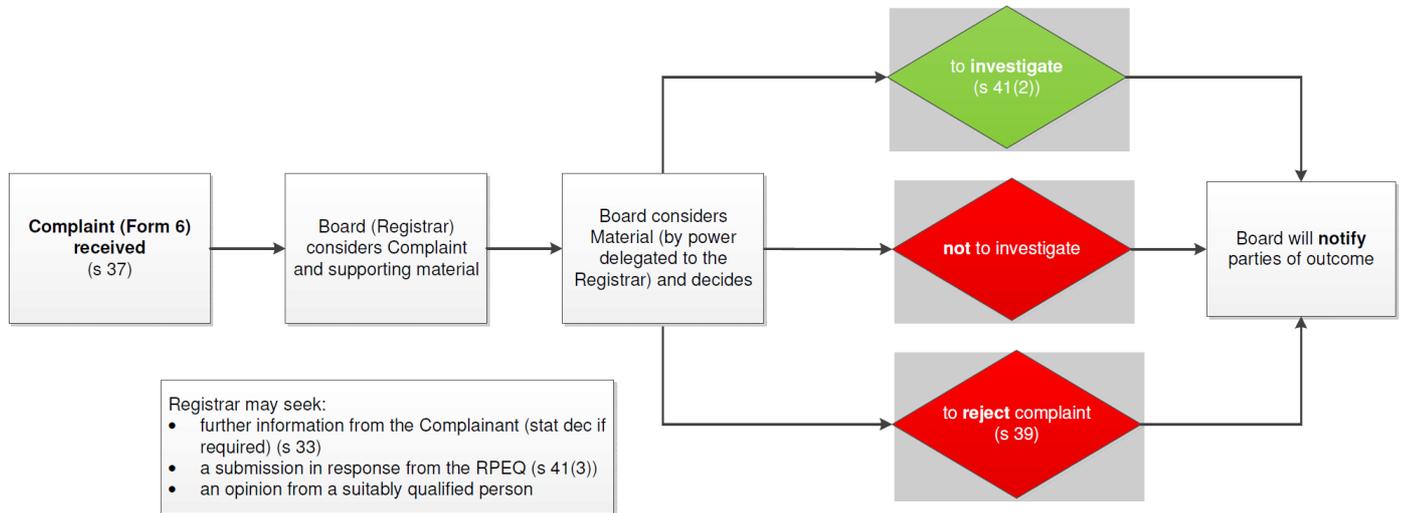
4. Managing a Complaint

- 4.1 Complaints will be reviewed in a professional and timely manner.
- 4.2 Each complaint will be managed with reference to the following principles:
- (a) procedural fairness will be afforded as required throughout the complaint process;
 - (b) decisions about complaints will be made on a case-by-case basis and with reference to all relevant information provided to BPEQ to ensure the appropriate decision is reached;
 - (c) the complaint process will be unbiased, objective and impartial;
 - (d) people involved in the complaints process have the right to be supported by third parties, when appropriate; and
 - (e) processes for managing complaints will, where appropriate, comply with the relevant Australian Standard for the handling of complaints as well as relevant Queensland Government guidelines and directives.
- 4.3 Complaints with a higher risk profile (eg because they bring attention to a risk to the public), may be expedited or dealt with outside the framework provided for in this Policy.



5. Overview

5.1 The statutory framework in respect of a decision to investigate an offence is illustrated below:



6. Procedure

Receiving a Complaint

- 6.1 Any person aggrieved by the conduct of a RPEQ in carrying out a professional engineering service may submit a complaint to BPEQ using the Form 6 – Complaint Form.
- 6.2 BPEQ will also consider information otherwise received (ie in the absence of a complaint) where that information may give rise to a reasonable belief on the part of BPEQ that a RPEQ's conduct may provide a ground for disciplining the RPEQ. Information provided with a complaint that is not a valid complaint may constitute information to be considered by BPEQ in this manner.
- 6.3 The Registrar (or by delegation, BPEQ's Principal or Senior Legal Officer) will review the complaint, and if necessary, contact the complainant to request further information.
- 6.4 The Registrar may also, where he or she considers that there is insufficient information to inform an investigation decision, seek an opinion from an appropriately qualified RPEQ to assist BPEQ to reach a decision.

Requesting a Submission

- 6.5 The Registrar will generally issue a notice to the respondent/accused RPEQ inviting a submission in response to the complaint and will, in so doing, either provide the RPEQ with a copy of the complaint and its supporting documents, or a summary of it.



- 6.6 BPEQ may make a decision without seeking a submission from the respondent RPEQ where:
- (a) BPEQ reasonably considers that the complaint is frivolous, vexatious, trivial, misconceived or lacking in substance pursuant to section 39 of the PE Act; or
 - (b) the position of the RPEQ is already clear from the material provided to BPEQ.

Board Decision

- 6.7 BPEQ will consider the complaint, the RPEQ's submission(s) and any expert opinion (if any) and decide to either:
- (a) reject the complaint pursuant to section 39 of the PE Act; or
 - (b) conduct an investigation into the conduct complained of; or
 - (c) decide not to investigate the complaint or take any further action.

Grounds for Rejecting Complaint

- 6.8 BPEQ may reject the complaint if it reasonably considers that the complaint is:
- (a) **frivolous** – if it is manifestly futile or does not have any serious purpose or value; or
 - (b) **trivial** – if it is of little value or importance; or
 - (c) **vexatious** – if it causes or tends to cause annoyance, frustration or worry; if it is an action which is brought without sufficient grounds; if it is an action which is brought for a collateral purpose; or, finally, if, irrespective of the motive of the complainant, it is so obviously untenable or manifestly groundless to be utterly hopeless; or
 - (d) **misconceived** – if it is clear that the complainant has failed to understand something correctly.

Investigation Decision

- 6.9 BPEQ may decide to investigate the conduct of a RPEQ which is the subject of complaint or the conduct of a RPEQ where no complaint exists, but BPEQ is of a reasonable belief that conduct of a RPEQ may provide grounds for disciplining that person.
- 6.10 The only alternative to a decision to investigate is a decision not to investigate.
- 6.11 BPEQ's power to investigate is discretionary.
- 6.12 The factors relevant to the exercise of BPEQ's discretion are:
- (a) whether BPEQ reasonably believes that the conduct in question may give rise to a disciplinary ground;
 - (b) the age of the conduct that is the subject of the complaint or information;
 - (c) the grounds for disciplining a RPEQ;



- (d) the objects of the PE Act (with reference to the circumstances of the specific complaint or information provided to BPEQ);
- (e) whether the complaint is based on an allegation (or allegations) that has already been appropriately and relevantly dealt with by BPEQ or another entity; and
- (f) any other matter brought to the attention of BPEQ that may bear relevance to the decision.

6.13 Where BPEQ decides to conduct an investigation, it must notify the RPEQ of the decision as soon as practicable after that decision is made, in accordance with section 44 of the PE Act.

7. Complaints about Historic Conduct

- 7.1 The PE Act imposes no time limit for making a complaint.
- 7.2 While each complaint will be considered on its merits, BPEQ is unlikely to exercise its discretion under the PE Act to conduct an investigation of conduct of a RPEQ where that conduct occurred more than five years prior to the making of the complaint.
- 7.3 BPEQ would ordinarily expect an aggrieved person to become aware of conduct of a RPEQ that could give rise to a disciplinary ground within 12 months of its occurrence and to make a complaint to BPEQ within at least two years.
- 7.4 BPEQ's ability to fully and fairly investigate complaints is compromised the longer the aggrieved person delays in making a complaint given the effluxion of time negatively effects the availability of documentary records and the location of witnesses, and causes the fading of people's memories (as examples).
- 7.5 A lengthy delay in the making of a complaint that cannot be explained may also impugn the credit of the aggrieved person.
- 7.6 BPEQ acknowledges that other matters, such as the ascertainment of latent defects in design, may plausibly explain delay.
- 7.7 In considering whether to exercise its discretion to investigate complaints regarding conduct which is more than five years old, BPEQ will have regard to:
 - (a) when the conduct that is the subject of complaint first came to the knowledge of the complainant;
 - (b) the explanation for the delay in making the complaint;
 - (c) whether, and the extent to which, the parties might be prejudiced by the effluxion of time. This includes, but is not limited to, consideration of the availability of evidence and witnesses, and the likelihood of any denial of procedural fairness; and
 - (d) utility in investigating the conduct with reference to the objects of the PE Act.



8. References

8.1 Related Legislation:

Professional Engineers Act 2002

Part 3 – Complaints and Investigations

Part 4 – Reports and Board’s Decisions about Investigations

Section 37(3) of the PE Act:

The Chairperson must keep available for inspection, at the Board’s office for members of the public, information about:

- (a) the type of conduct the Board considers may give rise to a complaint; and*
- (b) how a person may make a complaint.*

8.2 Gazetted Forms:

Form 6 – Complaint Form

8.3 Other Relevant Information:

Complaint Form Information Sheet

Complaints Checklist