



# PROSECUTION DECISIONS (s.75)

## POLICY ID: 2.14 (1A)

Effective: 2 August 2017

### 1. Purpose

- 1.1 The Board of Professional Engineers of Queensland (“**Board**”) is, pursuant to the provisions of the *Professional Engineers Act 2002* (Qld) (“**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 the Board is overseeing and managing the offence monitoring and enforcement regime set up by the Act.
- 1.3 As part of that function, where the Board reasonably suspects that a person has committed an offence against the Act, the Board may investigate the suspected offence.
- 1.4 Following an investigation, pursuant to section 75 of the Act, the Board may decide to start a proceeding to prosecute a person for an offence, enter into an undertaking with a person, caution or reprimand a person or take no further action (**Prosecution Decision**). That decision, including a decision to start a disciplinary proceeding, is a discretionary one.
- 1.5 The Board is committed to ensuring that it exercises its Prosecution Decision fairly, impartially, consistently and in furtherance of the objects of the Act.
- 1.6 This policy provides guidance to the Board, RPEQs and the public on how the Board will make a Prosecution Decision and how it will exercise its discretion in doing so.

### 2. Authority

- 2.1 Section 75 of the Act provides that, as soon as practicable after receiving or preparing a report regarding the conduct of a RPEQ, the Board must decide to:
  - (a) start a proceeding to prosecute a person for an offence;
  - (b) enter into an undertaking agreed with the person about the person’s conduct, including, for example, to apply for registration or to only carry out professional engineering services under the direct supervision of a practising professional engineer;
  - (c) caution or reprimand a person; or
  - (d) take no further action about the matter the subject of the investigation.



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### 3. Scope

- 3.1 This Policy applies to the decision to be made by the Board pursuant to section 75(2) of the Act following receipt by it of an investigation report regarding the suspected commission of an offence against the Act.

### 4. Decision

- 4.1 The options available to the Board in making a Prosecution Decision under section 75(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 person or caution or reprimand the person (**Summary Conclusion Powers**); or
  - (c) start a proceeding to prosecute a person for an offence against the Act.
- 4.2 What the Board decides to do is a matter for the exercise of its discretion.
- 4.3 In exercising its prosecutorial discretion under section 75(2) the Board will consider:
- (a) whether there are reasonable prospects of a conviction; and
  - (b) whether it is in the public interest to start a proceeding to prosecute the person for the offence.

#### Reasonable Prospect of Conviction

- 4.4 In deciding whether evidence is sufficient to justify the commencement of a proceeding to prosecute a person for an offence against the Act, the existence of a *prima facie* case is not sufficient to justify a prosecution. Once it is established that there is a *prima facie* case it is then necessary to consider whether the evidence provides reasonable prospects of a conviction. If it is not of sufficient strength, any prosecution would be unfair to the relevant person and a waste of the Board's finite resources.
- 4.5 The decision as to whether there is a reasonable prospect of a conviction requires an evaluation of how strong the case is likely to be when presented in Court. That evaluation is to be conducted having regard to the standard of proof to be established in criminal matters – beyond reasonable doubt.
- 4.6 In evaluating evidence, the Board will take into account all relevant matters including:
- (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 conviction;
  - (b) the strength of the evidence;
  - (c) whether there are competing versions of events such that the decision “could go either way”;



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- (d) whether evidence might be excluded bearing in mind the principles of admissibility at common law;
- (e) whether there is a defence that has been indicated as being relied upon by the relevant person or which is otherwise plainly open to him or her;
- (f) the competency, reliability and availability of witnesses; and/or
- (g) any other factors that the Board believes in all the circumstances might impact upon the prospect of a conviction.

## Public Interest

4.7 If the Board decides that there is a reasonable prospect of securing a conviction, it will then consider whether starting a proceeding to prosecute is in the public interest. The objects of the Act give context to the Board's consideration of what is in the public interest.

4.8 The objects of the 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.

4.9 In many cases the interests of the public will only be served by the deterrent effect of a prosecution. Mitigating factors may always be put forward by an offender when the court is considering the appropriate sentence to be imposed, and it will often be appropriate that they be taken into account only in that manner. Generally, the more serious the offence the more likely it will be that the public interest will require that a prosecution be pursued.

4.10 The factors relevant to the public interest and the weight which should be accorded to them will depend upon the circumstances of each case. Without purporting to be exhaustive those factors may include:

- (a) the seriousness or, conversely, the triviality of the alleged offence;
- (b) whether it is of a "technical" nature only;
- (c) any mitigating or aggravating circumstances;
- (d) the youth, age, physical health, mental health or special vulnerability of the relevant person;
- (e) the antecedents and background of the relevant person;
- (f) the degree of culpability of the relevant person in relation to the offence;
- (g) the effect on public order and morale;
- (h) whether the prosecution would be perceived as counter-productive or contrary to the objects of the Act;



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- (i) the availability and efficacy of any alternatives to prosecution (in particular the Summary Conclusion Powers);
- (j) the prevalence of the alleged offence and need for deterrence, both personal and generally among the engineering profession;
- (k) whether the consequences of any resulting conviction would be unduly harsh and oppressive; and
- (l) whether the alleged offence is of considerable public concern.

4.11 The Board recognises that there are sometimes equally effective but more cost-efficient ways to protect the interests of the public and the standards of the profession than by prosecuting a person for an offence against the Act. The provisions of the Act, in providing the Board with the Summary Conclusion Powers, are consistent with that view.

4.12 Whether to exercise its Summary Conclusion Powers (as opposed to commencing a proceeding to prosecute) forms a part of the Board's consideration of what is in the public interest.

4.13 The Board might, in considering whether to exercise its summary conclusion powers (and in addition to public interest considerations), have regard to:

- (a) the person's status (as a RPEQ or not) (there would be little force in cautioning or reprimanding a lay person);
- (b) if a RPEQ, the RPEQ's disciplinary history including any prior convictions or complaints made against the engineer in the proceeding 10 years or disciplinary findings;
- (c) the nature and seriousness of the conduct giving rise to the offence;
- (d) whether, if the person is a RPEQ, the RPEQ made a mistake and is unlikely to repeat and/or is unlikely to repeat the conduct;
- (e) whether the person co-operated fully and frankly during the investigation;
- (f) whether there are grounds for lenience; and
- (g) any other relevant consideration.

4.14 Plainly the Prosecution Decision must not be influenced by:

- (a) the race, religion, sex or political association, activities or beliefs or any other personal characteristic of the relevant person or any other person or persons who may be involved in the matter; and/or
- (b) personal feelings about the alleged conduct, the relevant person or any other third party.



## 5. References

### 5.1 Related legislation:

*Professional Engineers Act 2002*

Part 3 – Complaints and Investigations

Part 4 – Reports and Board’s Decisions about Investigations

Part 8 – Reviews and Disciplinary Proceeding