



NEWSLETTER

ISSUE 08 AUGUST 2014

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A WORD FROM THE REGISTRAR

The LNP Government is committed to reducing red tape and delivering benefits to Queensland business and the community. In line with this commitment the Office of Best Practice Regulation (OBPR) undertook a count of regulatory requirements for all legislation and regulations in Queensland and has recommended reduction targets for the various departments of government.

The Board has been requested by the Minister for Housing and Public Works to consider its legislation – the *Professional Engineers Act 2002*, the *Professional Engineers Regulation 2003* and the Code of Practice - to look to see where reductions can be made that will deliver tangible benefits to business and the community.

The OBPR undertook a count of the regulatory burden that affects external parties. The total count for the *Professional Engineers Act 2002* (the Act), Regulations and Code of Practice was 200 regulatory requirements.

The overall goal of the red tape reduction requirements is to reduce red tape by 20% without compromising the integrity of the Act. This will also provide an opportunity to streamline the Act whilst still protecting all Queenslanders.

An initial meeting has been held with all key external stakeholders. Recommendations will be provided to the Minister by the Board. We will communicate all changes but it is anticipated that any changes will not occur until after the election next year.

AMENDED PRACTICE NOTE - PROJECT CERTIFICATION

THE BOARD HAS REVIEWED THE PROJECT CERTIFICATION PRACTICE NOTE AND I RECOMMEND THAT IT BE READ. IT CAN BE FOUND ON OUR WEBSITE UNDER RESOURCES.

The key points are that the certifying RPEQ should:

- Satisfy him/herself that the overall project meets appropriate standards;
- Take responsibility for the overall project in terms of compliance with the *Professional Engineers Act*;
- Take responsibility for the work of the unregistered engineers that he/she supervises.

In the event a complaint is lodged with the Board in relation to the project the certifying RPEQ:

- May rely on work performed by other RPEQ's;
- And should be able to identify all RPEQ's who provided professional engineering services on the project.



REGIONAL BOARD MEETING 9 OCTOBER 2014 IN GLADSTONE

MEET AND GREET WITH THE BOARD AND REGISTRAR

The Board's annual regional Board meeting will be held in Gladstone on 9 October 2014, and the Board would like to invite RPEQs based in Gladstone and surrounding areas of Central Queensland to meet and mingle with members of the Board and Registrar over canapés and drinks. RPEQs who "fly-in-fly-out" to Gladstone for work but live elsewhere are also more than welcome to attend (you may not receive an individual invitation if your residential address is not in or around Gladstone). The details of the event are:

Date: Thursday, 9 October 2014
Time: 5:30 pm to 7:30 pm
Venue: The MacArthur Room
The Grand Hotel
79 Goondoon Street, Gladstone

The Board looks forward to meeting as many Central Queensland RPEQs as possible. Please RSVP to the Board's Executive Assistant by email executiveassistant@bpeq.qld.gov.au by no later than 25 September 2014.

BOARD ATTENDANCE AT THE NATIONAL ASSOCIATION OF WOMEN IN CONSTRUCTION

CRYSTAL VISION AWARDS FOR QUEENSLAND AND NORTHERN TERRITORY

The National Association of Women in Construction ("NAWIC") is a not-for-profit organisation formed to promote and improve the construction industry by the advancement of women within it.

Since 1995, NAWIC has united women actively involved in the various areas of the construction industry for their mutual benefit, promoted education and contribute to the betterment of the construction industry, and encouraged women to pursue and establish careers in construction. NAWIC recognises and celebrates the amazing contributions that women make in the construction industry through the presentation of a range of awards at annual NAWIC Crystal Vision dinner around the capital cities of Australia.

The Board is a strong supporter of NAWIC. For the past three years, the Board has hosted a table at the Brisbane awards dinner, and the Board's Registrar, Clare Murray, last year sat as a judge for the Queensland and Northern Territory awards. This year, Board members Michael Brady and Michael Duff, the Registrar, and the Assistant Registrar Gary Stirling attended the awards to represent the Board. The NAWIC Crystal Vision Awards was an excellent event to attend.

Below is a photograph from the evening.



From left to right:
Steve Williams
(Consult Australia),
Clare Murray
(Registrar of the Board),
Michael Brady
(Board member),
Stacey Rawlings
(Consult Australia),
and Ian McEwen
(Engineers Australia)

Photograph
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EXPRESSIONS OF INTEREST FOR APPOINTMENT TO THE BOARD'S PANEL OF INVESTIGATORS – MECHANICAL ENGINEERING

The Board is currently inviting expressions of interest from RPEQs registered in the Mechanical area of engineering for appointment to the Board's panel of investigators. The Board maintains a panel of investigators who assist the Board in investigating the conduct of RPEQs and suspected offences against the *Professional Engineers Act*. The Board has been receiving an increasing amount of complaints about mechanical engineering work and therefore seeks to appoint another RPEQ (Mechanical) to its investigation panel.

Interested RPEQs should forward their expression of interest attaching a copy of their curriculum vitae to the Board's Senior Legal Officer by email to david.brotchie@bpeq.qld.gov.au.

Please ensure your CV includes detailed information about your experience and expertise in mechanical engineering and details of any investigative or expert witness work you have previously carried out.

MEET THE BOARD

CHRIS CARR, CHAIR

Over the coming months the Board's newsletters will contain a small section to introduce each of your Board Members. This month, we introduce the Board's Chair, Chris Carr (BE (Mining) MBA (Tech Mgt) MSc (Min Eco) FAusIMM(CP) RPEQ MIEAust MAICD).



Chris completed his Bachelor in Engineering (Mining) at the South Australian Institute of Technology in 1985, his Master of Business Administration with the Association of Professional Engineers Scientists and Managers Australia (now Professionals Australia) and Deakin University in 1998, and his Master of Science (Mineral Economics) at Curtin University in 2002.

During his career, Chris has worked in a variety of roles in underground and open-cut hard rock operations, both in-house and with contract mining companies, and has been involved in the mining of many commodities including copper, gold, nickel, and silver-lead-zinc. He was most recently with Mount Isa Mines/Xstrata Copper from 1999 in various operational and technical roles culminating in leadership of the Ernest Henry underground project as the Project Director, from pre-feasibility through early production to the final stages of the shaft sink. He currently consults to the mining industry.

Chris was a Director of the Australian Institute of Mining and Metallurgy (AusIMM) from 2007 to 2012 and Chair of the Mass Mining Technology Group's Executive Steering committee from 2008 to 2013, and is currently Chair of the AusIMM's Chartered Professional Board, the Board of Professional Engineers Queensland, and the 2014 Underground Operators Organising Committee.



THE CODE OF PRACTICE — GUIDELINES OR RULES?

YOU'RE PIRATES. HANG THE CODE, AND HANG THE RULES. THEY'RE MORE LIKE GUIDELINES ANYWAY.

— Elizabeth Swan, *Pirates of the Caribbean: The Curse of the Black Pearl*

So should RPEQs hang the code? Unlike pirates, you are engineers, members of a noble profession that derives its name from the Latin words *ingenium*, meaning “cleverness,” and *ingeniare*, meaning “to contrive and devise.” Admittedly, perhaps being a pirate also involves cleverness and contriving and devising ingenious ways to plunder and loot, but as RPEQs you must use your skills for good and provide your services in a professional and competent way. The Code of Practice, formally titled the Code of Practice for Registered Professional Engineers, is integral to ensuring this is achieved.

The Code, made by the Board as required by the *Professional Engineers Act*, provides guidance to RPEQs as to appropriate professional conduct and practice. It has been developed and subsequently reviewed by the Board with consultation and assistance from Australian professional engineering bodies, Queensland universities, the State Government, and various other organisations. The most recent revision of the Code took place late last year and the current version came into effect from 29 November 2013. You can download a copy of the code from the Board’s website at www.bpeq.qld.gov.au > [Resources](#) > [Code of Practice](#). The Board recommends that every RPEQ has a bound copy of the Code in his or her office for easy reference.

The Code has two purposes. The first is to assist RPEQs to act ethically by setting out the minimum levels of professional conduct required to be met by RPEQs in Queensland so that they can carry out all their roles within a framework of integrity, care for the public, and competency. RPEQs should bear in mind the provisions of the Code in the course of their professional practice and seek guidance from it in situations where they are unsure of how to act. The Code contains both general guidance on appropriate professional conduct and specific provisions for conduct in certain situations. For example, Clause 1.1 provides that an RPEQ must take reasonable steps to be informed, and to inform clients and employers, of the social, environmental, economic, and other possible consequences that might arise from professional engineering services. This is general guidance on appropriate conduct and must be interpreted with reference to each particular situation to determine what reasonable steps to take.

However, other clauses, such as Clause 2.5, leave little room for such situational interpretation and must be followed strictly. For example, Clause 2.5 provides that in a situation where an actual or potential conflict of interest exists, an RPEQ must disclose that conflict to his or her client or employer on discovery of it. This clause is fairly prescriptive and there is little room for interpretation. If there is an actual or apparent conflict, it must be disclosed on discovery.

The second purpose of the code is to assist the Queensland Civil and Administrative Tribunal in determining whether an RPEQ has behaved in a way that constitutes unsatisfactory professional conduct or practice. The Code does this by being evidence as to what appropriate conduct or practice is. If the Tribunal conducts a disciplinary proceeding, it *must* have regard to the Code in determining whether the RPEQ in question has behaved in a way that constitutes unsatisfactory professional conduct. The Tribunal regularly references the Code, and examples of this can be seen in previous disciplinary decisions of the Tribunal. For example, in the disciplinary proceeding entitled *Board of Professional Engineers of Queensland v Khatri*, the Tribunal noted in its reasons that the conduct of the RPEQ in question was contrary to Clauses 1.3 (reasonable steps to safeguard health, welfare, and community safety) and 3.1 (bring knowledge, skill, judgement, and care to the task) of the Code. However, it must be noted that although a breach of the Code is capable of constituting unsatisfactory professional conduct, such a finding is not mandatory, and is at the discretion of the Tribunal.

In conclusion, perhaps the Code is more a set of guidelines than a set of rules. But don’t hang the Code just because of that: it sets out the minimum standards of professional conduct and is relied on by the Tribunal to evidence appropriate conduct or practice, and it will, if followed, ensure you carry out your practices in an appropriate, ethical, and professional way.



CASE UPDATE

HART—DISCIPLINARY—UNSATISFACTORY PROFESSIONAL CONDUCT—CIVIL AND STRUCTURAL ENGINEERING—DESIGN OF STRUCTURAL ASPECT OF STEEL FRAMED KIT HOUSE AND CERTIFICATION OF THE DESIGN—REPRIMAND AND PENALTY

Consequent on an investigation, the Board commenced a disciplinary proceeding against Mr Hart for his conduct in designing the structural aspects of a steel framed kit house and certifying the design by way of a Form 15 design certificate under the *Building Act* and *Building Regulation*. The Tribunal found that Mr Hart's designs included defects where, broadly stated, elements of the house (particularly the roof sheeting fixings and roof purlins) lacked specified reinforcements, were significantly underspecified for a residential dwelling in the particular cyclonic region, were overstressed for the loading conditions, and criteria specified were incorrect and did not correlate with the design certificate.

The Tribunal found that Mr Hart demonstrated a fundamental lack of understanding of, or regard for, proper engineering practices and principles required to safely design the house, and that this was unsatisfactory professional conduct, being conduct: (a) of a lesser standard than that which might reasonably be expected of an RPEQ by the public or the RPEQ's professional peers; (b) that demonstrates a lack of adequate judgement or care in the practice of engineering; and/or (c) misconduct in a professional respect.

The Tribunal reprimanded Mr Hart and ordered him to pay a penalty of \$5,000.

COUTURE—REVIEW OF BOARD DECISION TO TAKE NO FURTHER ACTION ABOUT AN INVESTIGATION OF AN RPEQ—ENGINEER'S OBLIGATIONS UNDER THE CODE OF PRACTICE IN THE CONTEXT OF FUNCTION IN PARTICULAR POSITION

The Board opposed a review application by a complainant about its decision to take no further action about an RPEQ who recommended, in his capacity as an employee of a Queensland Government department, technical approval for a rock wall constructed by a River Trust as a flood mitigation measure. The matter was complicated by the River Trust's failure to apply for the approval until it had already constructed the works. The Board decided to take no further action because its investigation did not establish that the RPEQ had behaved in a way that constitutes unsatisfactory professional conduct. The review applicant, Mr Couture, disagreed, and maintained that the RPEQ had failed to ensure appropriate environmental and design approvals were obtained.

The Tribunal confirmed the Board's decision.

The decision turned on a detailed examination of the RPEQ's function in his position in the particular department. Although the Tribunal found in the RPEQ's position he was expected to apply his engineering experience and expertise, it found that the extent to which he was required to do so was determined by his description of the responsibilities of his position, or his function in that position. The RPEQ was employed as a leader for water resource management of a large region. In that role, he was required to assess applications for riverine works to ensure that the proposed works were consistent with the State Government interests and riverine

management best practices in the region. He was then required to recommend to his department whether or not to grant technical approval to those proposed works. The Tribunal found that he was only obliged to apply his engineering experience and expertise so far as he was obliged by his function in his particular position.

The Tribunal found that the RPEQ was aware that the River Trust should have obtained particular permits but had not. However, the Tribunal found that although he was required in his position to apply his engineering experience and expertise to consider the consequence of approvals being obtained, he was not required to obtain those permits himself. The Tribunal also found that the RPEQ was aware that there was no involvement of any RPEQ in the design or construction of the proposed works. However, similarly, the Tribunal found that it did not follow that the RPEQ was required to carry out a detailed design check as a result of this or take responsibility for the design of the works himself. The Tribunal found that he was still only required to go as far as to take the information into account in assessing whether the works were still consistent with the State Government interests and riverine management best practices in the region.

Because he did this, he acted appropriately, in a manner consistent with the requirements of the Code, and in a way that did not constitute unsatisfactory professional conduct.



BOARD OFFICE MOVE COMPLETED

The Board has completed its move to its new office. The Board's new details are as follows:

Street address: Level 15,
53 Albert Street
Brisbane, Queensland

General enquiries: (07) 3198 0000

Registrar: (07) 3198 0008

Assistant Registrar: (07) 3198 0002

Communications Officer: (07) 3198 0004

Senior Legal Officer: (07) 3198 0006

The Board's postal address and all email addresses remain unchanged.

T 07 3198 0000 E admin@bpeq.qld.gov.au

Level 15, 53 Albert Street Brisbane 4000
PO Box 15213 CITY EAST QLD 4002

This newsletter is provided for general information only. It is not legal advice and should not be taken or relied upon as such. If you have any questions or concerns about your compliance with the Professional Engineers Act 2002 (Qld) or your general legal obligations as an engineer, you should obtain appropriate legal advice. The Board accepts no legal responsibility or liability for any loss you may suffer as a result of reliance upon the information contained in this newsletter.