

Queensland



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ELIZABETHAE SECUNDAE REGINAE

No. 72 of 1988

**An Act to consolidate and amend the law relating to the
registration and practice of professional engineers and
for related purposes**

[ASSENTED TO 28TH OCTOBER, 1988]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows:—

PART I—PRELIMINARY

1. Short title. This Act may be cited as the *Professional Engineers Act 1988*.

2. Commencement. (1) Section 1 and this section shall commence on the day on which this Act is assented to for and on behalf of Her Majesty.

(2) Except as provided by subsection (1) this Act shall commence on a date appointed by Proclamation.

3. Arrangement of Act. This Act is arranged as follows:—

PART I—PRELIMINARY (ss. 1-5);

PART II—THE BOARD (ss. 6-16);

PART III—REGISTERS (s. 17);

PART IV—REGISTERED PROFESSIONAL ENGINEERS (ss. 18-29);

PART V—REGISTERED PROFESSIONAL ENGINEERING COMPANIES (ss. 30-40);

PART VI—PROHIBITED PRACTICES (ss. 41-42);

PART VII—DISCIPLINARY PROCEEDINGS (ss. 43-52);

PART VIII—MISCELLANEOUS (ss. 53-63).

4. Repeals and savings. (1) *The Professional Engineers Act of 1929*, the *Professional Engineers Act Amendment Act 1973* and the *Professional Engineers Act Amendment Act 1975* are hereby repealed.

(2) Without limiting the operation of the *Acts Interpretation Act 1954-1985* in relation to the repeals effected by subsection (1), unless the contrary intention appears in this Act—

- (a) every act done and decision made, every instrument or document made or issued, for the purposes of the repealed Act shall continue in force and be deemed to have been done, made or issued under this Act and shall be construed subject to this Act;
- (b) all moneys, including fees that, having accrued due under the repealed Act, are at the commencement of this Act due or payable to or recoverable by The Board of Professional Engineers of Queensland constituted under the repealed Act shall be and continue to be so due, payable and recoverable, and may be paid to and received and recovered by the Board constituted under this Act;
- (c) any Gazette, register, book, certificate or other document made evidence under the repealed Act shall continue evidence to the same extent as if this Act had not come into operation.

(3) The Board shall continue to be constituted by the members by whom it is constituted immediately prior to the commencement of this Act, and such members shall continue in office as members of the Board in terms of their appointments thereto under the repealed Act.

(4) The registrar and every other officer of The Board of Professional Engineers of Queensland constituted under the repealed Act holding office immediately prior to the commencement of this Act shall, upon the commencement of this Act and without further appointment, be deemed to be appointed registrar or, as the case may be, officer of the Board constituted under this Act and shall hold office subject to the provisions of this Act.

(5) A person who, immediately before the commencement of this Act, is a registered professional engineer under the repealed Act, on and from that commencement, shall be a registered professional engineer under this Act up to and including 31 December, 1988, and, subject to the provisions of this Act, may continue, up to and including 31 December, 1988, to practise as a registered professional engineer notwithstanding that he is not the holder of an annual practising certificate for the year 1988.

(6) A company that, immediately before the commencement of this Act, is an approved professional engineering company under the repealed Act, on and from that commencement, shall be a registered professional engineering company under this Act and the certificate of approval issued to the company under the repealed Act shall be deemed to be a certificate of registration issued under this Act.

- 5. Interpretation.** In this Act, unless the contrary intention appears—
- “approved school of engineering” means a school of engineering approved by the Board;
 - “approved faculty of engineering” means a faculty of engineering approved by the Board;
 - “Board” means The Board of Professional Engineers of Queensland constituted under section 6;
 - “chairman” means the chairman of the Board and includes where applicable a member acting in accordance with this Act as chairman of the Board;
 - “executive officer”, in relation to a company, means a person by whatever name called and whether or not he is a director of the company, who is concerned, or takes part, in the management of the company;
 - “member” means a member of the Board and includes where applicable a person appointed under this Act to act in the place of a member;
 - “Minister” includes a Minister of the Crown who is temporarily performing the duties of the Minister;
 - “person” includes an unincorporated association or body of persons;

“registered professional engineer” means a person who is for the time being registered as a professional engineer in accordance with Part IV;

“registered professional engineering company” means a company that is for the time being registered as a registered professional engineering company in accordance with Part V;

“registrar” means the registrar of the Board appointed under section 15 and includes any person appointed to act as, or for the time being performing the duties of, the registrar;

“repealed Act” means the *Professional Engineers Act 1929-1975*.

PART II—THE BOARD

6. The Board of Professional Engineers of Queensland. (1) The Board of Professional Engineers of Queensland constituted under the repealed Act is hereby preserved, continued in existence and constituted under and for the purposes of this Act under the name “The Board of Professional Engineers of Queensland”.

(2) The Board shall continue to be a body corporate with perpetual succession and a common seal and, subject to this Act, shall be capable in law of suing and being sued, of compounding or proving in any court of competent jurisdiction all debts or sums of money due to it, and of acquiring, holding, alienating and otherwise dealing with property and of doing and suffering all such acts and things as bodies corporate may in law do and suffer.

(3) All courts and persons acting judicially shall take judicial notice of the common seal of the Board and, until the contrary is proved, shall presume that it was duly affixed to any document on which it appears.

7. Members of Board. The Board shall consist of 6 members appointed by the Governor in Council by notification published in the Gazette, as follows:—

- (a) 3 members nominated by the Minister, one of whom shall be from an approved faculty of engineering or an approved school of engineering;
- (b) 3 members who shall be elected by the registered professional engineers of Queensland in the manner prescribed by the regulations.

8. Chairman. The Governor in Council shall appoint one of the members referred to in section 7 (a) to be the chairman of the Board.

In the event of the absence of the chairman from any meeting of the Board, one of the other members referred to in section 7 (a) shall act as chairman of the Board for the purpose of such meeting, and that other member while acting as chairman shall have all the powers of the chairman.

9. Failure to elect. If at any time the registered professional engineers refuse or fail to elect any or all of the members referred to in section 7 (b), the Governor in Council may appoint any person or persons to be a member or members and any person or persons so appointed shall for all purposes be deemed to have been duly appointed as a member or members of the Board.

10. Qualifications of members. A person shall not be appointed as a member unless—

- (a) if he is the person referred to in section 7 (a) who is from an approved faculty of engineering or an approved school of engineering, his qualifications are such that he is eligible to be registered as a registered professional engineer;
or
- (b) if he is one of the other 5 members referred to in section 7, he has been registered as a registered professional engineer for a continuous period of at least 2 years.

11. Business. Subject to this Act, the Board shall meet at such times and conduct its business in such manner as is prescribed by the regulations or in so far as the manner is not so prescribed as the Board thinks fit.

12. Tenure of members. (1) The members referred to in—

- (a) section 7 (a) shall hold office as such members at the pleasure of the Governor in Council;
- (b) section 7 (b) shall be appointed as such members for a term of 2 years and, subject to this Act, shall be eligible for re-election and re-appointment.

(2) Each member of the Board shall receive such fees and allowances as are determined from time to time by the Governor in Council.

13. Vacancies. The office of a member becomes vacant if he—

- (a) dies;
- (b) resigns his office by written notice given to the Minister;
or
- (c) is removed from office by the Governor in Council pursuant to section 14.

14. Removal by Governor in Council. (1) The Governor in Council may remove any member if he—

- (a) refuses or fails to act as a member;
- (b) is absent without prior leave granted by the Board from more than 3 consecutive meetings of the Board of which he has received due notice;
- (c) becomes bankrupt or takes advantage of the laws in force for the time being relating to bankrupt or insolvent debtors;
- (d) becomes incapable of performing his duties because of mental illness;

or

- (e) is not qualified or registered as required by section 10 or ceases to be so qualified or registered.

(2) For the purposes of subsection (1) (b), a member shall be deemed to be present at a meeting if he attends at the time and place appointed for the meeting notwithstanding that, by reason that no quorum is present, no meeting is actually held on that day and the registrar shall record the name of any member who so attends.

(3) If the office of a member becomes vacant during his term of office for a reason mentioned in section 13, the Governor in Council may appoint a person to that office who shall hold office for the balance of the term of appointment of his predecessor in office.

(4) If at any time a member is, from illness, absence or other proper cause—

- (a) prevented from attending a meeting of the Board, the Minister may appoint a person to act in the place of that member during his absence;

or

- (b) likely to be absent from meetings of the Board for more than 4 months, the Governor in Council may appoint a person to act in the place of that member during his absence.

(5) A person appointed to act in the place of a member pursuant to subsection (4) during the term of his appointment, shall have all the powers of and be deemed to be a member.

15. Registrar and other officers. (1) The Governor in Council may appoint a registrar of the Board and fix the remuneration to be paid for his services.

In fixing such remuneration the Governor in Council shall have regard to any recommendation made in that respect by the Board.

(2) The Board may appoint such other officers as it thinks necessary to give effect to this Act, and may pay such other officers such remuneration as it thinks fit.

All officers so appointed shall hold office during the pleasure of the Board.

16. Funds of Board. (1) All moneys received by the Board or by the registrar on behalf of the Board including fees and fines imposed pursuant to section 48 (1) and penalties imposed for offences against this Act, shall be paid into the funds of the Board.

(2) The remuneration of the registrar and other officers appointed under this Act, and all other expenses of and incidental to the administration of this Act, shall be paid by the Board out of its funds.

(3) Any surplus moneys of the Board which are not required for the purposes of subsection (2) may be expended by the Board for the

purposes of the advancement of professional engineering in such manner as it may determine.

(4) The Board may from time to time direct that moneys held by it that are not immediately required for the purposes of subsection (2) or (3) be placed on fixed deposit or be invested in accordance with section 48 of the *Statutory Bodies Financial Arrangements Act 1982-1988*.

PART III—REGISTERS

17. Registers to be kept. (1) There shall be kept a register of registered professional engineers in which the registrar shall enter—

- (a) the full name and address of all persons who are registered professional engineers;
- (b) the date and division of engineering in respect of which such registration is granted;
- (c) the roll number of each registered professional engineer;
- and
- (d) such other particulars as are determined by the Board.

(2) The register of professional engineers kept under the repealed Act shall continue and shall be the register of registered professional engineers for the purposes of this Act.

(3) There shall be kept a register of registered professional engineering companies in which the registrar shall enter—

- (a) the full name and address of all companies that are registered professional engineering companies;
- (b) the date such registration is granted;
- (c) the roll number of each registered professional engineering company;
- and
- (d) such other particulars as are determined by the Board.

(4) There shall be kept such other registers as are required by the Board.

PART IV—REGISTERED PROFESSIONAL ENGINEERS

18. Qualifications for registration. Subject to this Part, the Board may register any person as a registered professional engineer if he satisfies the Board that he is of good fame and character, and that he—

- (a) holds—
 - (i) a degree in engineering granted by an approved school of engineering or an approved faculty of engineering;
 - or
 - (ii) a qualification in engineering granted by a tertiary education institution which entitles him to be admitted to the Institution of Engineers, Australia, as a graduate member,

and that he has been engaged for not less than 5 years since obtaining the degree or qualification in gaining experience of engineering and that he possesses the knowledge and experience required to practise as a registered professional engineer;

or

- (b) has been engaged during a period of not less than 5 years in acquiring, in a manner considered satisfactory by the Board, professional knowledge in engineering, and a further 7 years in gaining experience of engineering and that he possesses the knowledge and experience required to practise as a registered professional engineer.

19. Divisions of professional engineering. A registered professional engineer shall be registered in one or more of the divisions of professional engineering that are prescribed by the regulations.

20. Applications for registration. (1) Applications to the Board for registration under section 18 shall—

- (a) be made in the form prescribed by the regulations;
- (b) be supported by such evidence as the Board may require;
- (c) be accompanied by the fee prescribed by the regulations.

(2) Unless the Board grants an extension of time (which it is hereby so empowered to do), an application for registration shall lapse if it is not approved within 12 months from the date of receipt of the application by the Board.

21. Entitlement. A person registered as a registered professional engineer shall be entitled in connexion with his practice as a registered professional engineer to use or publish the words “Registered Professional Engineer of Queensland” or the abbreviation “R.P.E.Q.”.

22. Certificates of registration. (1) Where the Board grants registration pursuant to section 18 it shall issue a certificate in the form prescribed by the regulations.

(2) On payment of the roll fee for any year subsequent to the year of registration there shall be issued to a registered professional engineer, in respect of the year for which that payment has been made, an annual practising certificate in the form prescribed by the regulations.

23. Registered professional engineers’ roll fee. (1) Subject to subsection (2), every person who is registered as a registered professional engineer, upon registration and in respect of the year of registration, shall pay to the registrar the roll fee for that year.

(2) A person who is registered as a registered professional engineer subsequent to 1 October in any year, upon registration, in addition to the roll fee for the year of registration, shall pay to the registrar the roll fee for the year commencing on 1 January next following the date of registration of that person.

(3) Every registered professional engineer, on or before 1 October in each year, shall pay to the registrar the roll fee for the year commencing on 1 January next following.

(4) If a registered professional engineer fails to pay the roll fee in accordance with subsection (3), the registrar forthwith shall notify him by certified mail addressed to him at the address appearing in the register that, if the fee is not paid to the registrar on or before 31 December next following, the Board may remove his name from the register.

If a registered professional engineer fails to pay the fee on or before 31 December next following, the Board may remove his name from the register, such removal to take effect on and from the expiration of that date, and notification of the removal shall be published in the Gazette as soon as is practicable thereafter.

(5) The roll fees referred to in this section shall be such amounts as are prescribed by the regulations.

24. Publication of roll of registered professional engineers. The Board shall cause to be published in the Gazette, as soon as is practicable in each year, a list of the names of registered professional engineers appearing in the register as at 1 January of that year.

25. Appeals against refusal to register. If an application for registration or restoration of name is refused by the Board upon the ground other than the ground that the applicant is not the holder of a degree or qualification referred to in section 18 (1) (a) the applicant may appeal to a District Court Judge at Brisbane who shall have jurisdiction to hear and determine the appeal and whose decision thereon shall be final.

26. Removal from register of registered professional engineers. (1) The Board, in addition to the powers given to it under sections 23 (4) and 48 (1) (c), may remove from the register the name of any person who—

- (a) has died;
- (b) applies to the Board in writing to have his name removed from the register;
- or
- (c) owing to mental illness, is not capable of practising as a registered professional engineer.

(2) If the Board removes the name of a person from the register pursuant to subsection (1) (a) or (b), it shall cause notice of the removal to be published in the Gazette.

(3) Before removing the name of a person from the register pursuant to subsection (1) (c), the Board shall give him reasonable opportunity to appear before it, in person or by a legal practitioner or that person's duly authorized agent, to contest the proposed removal of his name from the register.

(4) If the Board removes the name of a person from the register pursuant to subsection (1) (c), it shall cause, at the expiration of a period of 28 days after the date on which notification of the removal is given to him by the Board, notice of the removal to be published in the Gazette unless, within that period, an appeal is instituted against the removal.

(5) A person aggrieved by the decision of the Board pursuant to subsection (1) (c) that his name be removed from the register may appeal to a District Court Judge or a Justice of the Peace who shall have jurisdiction to hear and determine the appeal and whose decision thereon shall be final.

If such an appeal is not proceeded with or is dismissed, the Board shall cause notice of removal to be published in the Gazette.

27. Return of certificate. (1) A person whose name has been removed from the register pursuant to section 23 (4), 26 (1) or 48 (1) (c) shall surrender, within 14 days after publication in the Gazette of the removal, to the Board any certificate issued to him under this Act or the repealed Act.

Penalty: 20 penalty units.

(2) The removal of the name of a person from the register shall be effectual notwithstanding failure to surrender any certificate.

28. Restoration of name. (1) Where the Board removes the name of a person from the register, his name shall not be entered on the register again except by direction of the Board or by order of a District Court Judge where an appeal made under section 26 (5) or 50 is upheld.

(2) The Board, if it thinks fit in any case, may restore to the register any name removed therefrom on payment of such fees as the Board directs.

29. Continuation of name of deceased engineer. (1) Notwithstanding section 26 (1) (a), upon the death of a registered professional engineer, the Board may permit his name to remain upon the register, and may authorize his executor, administrator, or trustee to carry on in the name of the deceased engineer the professional engineering practice formerly carried on by him: Provided that the professional engineering practice is carried on under the supervision of a registered professional engineer approved by the Board.

(2) Any such approval, in the first instance, shall be limited to a period not exceeding 12 months.

PART V—REGISTERED PROFESSIONAL ENGINEERING COMPANIES

30. Conditions of registration of companies. Subject to this Part, the Board may register any company as a registered professional engineering company if—

- (a) it is duly registered as a company in Australia;
- (b) the person having the supervision and management of the

business of the company at each of its places of business in Queensland is a registered professional engineer and is resident in Queensland;

- (c) its articles of association provide that at all times—
 - (i) the principal executive officer of the company is to be a registered professional engineer and a director of the company;
 - (ii) where the company has only 2 directors, each is to be a registered professional engineer or one is to be a registered professional engineer and the other is to be—
 - (A) a person who holds a professional qualification satisfactory to the Board;
 - (B) a relative of the registered professional engineer who is a relative of a class of person prescribed by the regulations;
 or
 - (C) a public accountant or legal practitioner acting for the company;
 - (iii) where the company has more than 2 directors, at least three-fifths of the directors are to be registered professional engineers and the remaining directors are to hold a professional qualification satisfactory to the Board;
 - (iv) at least three-fifths of the total voting rights of all directors of the company entitled to vote at a meeting of directors of the company are to be held by registered professional engineers;
 - (v) at least three-fifths of the total voting rights of all persons entitled to vote at a general meeting of members of the company are to be held by registered professional engineers;
- (d) the company is the holder of a current professional indemnity insurance policy from an insurer satisfactory to the Board and in such sum as is prescribed by the regulations.

31. Applications for registration. (1) Applications to the Board for registration under section 30 shall—

- (a) be made in the form prescribed by the regulations;
- (b) be supported by such evidence as the Board may require;
- (c) be accompanied by the fee prescribed by the regulations and by a certified copy of the insurance policy referred to in section 30 (d).

(2) Unless the Board grants an extension of time (which it is hereby so empowered to do), an application for registration shall lapse if it is not approved within 12 months from the date of receipt of the application by the Board.

32. Entitlement. A registered professional engineering company shall be entitled in connexion with its practice as a professional engineering

company to use or publish the words “Registered Professional Engineering Company of Queensland” or the abbreviation “R.P.E.C.Q.”.

33. Certificate of registration. Where the Board grants registration pursuant to section 30, it shall issue a certificate of registration in the form prescribed by the regulations which shall take effect on and from the date of its issue and shall expire on 31 March next following but may be renewed as provided by section 34.

34. Renewal of certificate of registration. (1) Every registered professional engineering company shall on or before the last day of February in each year, apply to the Board for renewal of its certificate of registration as a registered professional engineering company.

(2) Each application—

- (a) shall be made in the form prescribed by the regulations;
- (b) shall be supported by such evidence as the Board may require;
- (c) shall be accompanied by the fee prescribed by the regulations and by a certificate or other evidence of renewal of the insurance policy referred to in section 30 (d).

(3) The Board may grant a renewal of a certificate of registration for a period of 12 months expiring on 31 March in any year.

(4) If a registered professional engineering company fails to apply for renewal of its certificate of registration in any year in accordance with subsection (1), the registrar shall forthwith notify the company by certified mail addressed to the company at the address appearing in the register that, if an application is not made to the Board on or before 31 March next following, the Board may remove its name from the register.

If a registered professional engineering company fails to apply for renewal of its certificate of registration on or before 31 March next following, the Board may remove its name from the register, such removal to take effect on and from the expiration of that date, and notification of the removal shall be published in the Gazette as soon as is practicable thereafter.

35. Publication of roll of professional engineering companies. The Board shall cause to be published in the Gazette, as soon as is practicable in each year, a list of the names of registered professional engineering companies appearing in the register as at 1 April of that year.

36. Returns by registered professional engineering companies. (1) Every registered professional engineering company, within one month after a person becomes or ceases to be a director, principal executive officer or person having the supervision and management of the business of the company at each of its places of business in Queensland, shall lodge with the registrar a notice stating that fact and, in the case of a

person who becomes any such director, officer or person, his name and residential address and whether he is a registered professional engineer.

(2) A registered professional engineering company that fails to comply with the provisions of this section or that lodges a notice under this section that is false or misleading in any material particular commits an offence against this Act.

37. Appeals against refusal to register. If any application for registration as a registered professional engineering company or for the renewal of a certificate of registration under this Part is refused by the Board, the applicant may appeal to a District Court Judge at Brisbane against such refusal who shall have jurisdiction to hear and determine the appeal and whose decision thereon shall be final.

38. Removal from register of registered professional engineering companies. (1) The Board, in addition to the powers given to it under sections 34 (4) and 48 (1) (c), may remove from the register of registered professional engineering companies the name of any company which—

- (a) applies to the Board in writing to have its name removed from the register;
- (b) is refused renewal of registration.

(2) If the Board removes the name of a company from the register pursuant to subsection (1) (a), it shall cause notice of the removal to be published in the Gazette.

(3) Before removing the name of a company from the register pursuant to subsection (1) (b), the Board shall give the company reasonable opportunity to appear before it, by an executive officer of the company or a legal practitioner or by its duly authorized agent, to contest the proposed removal of its name from the register.

(4) If the Board removes the name of a company pursuant to subsection (1) (b), it shall cause, at the expiration of a period of 28 days after the date on which notification of the removal is given to the company by the Board, notice of the removal to be published in the Gazette unless, within that period, an appeal is instituted against the decision.

If such an appeal is not proceeded with or is dismissed the Board shall cause notice of the removal to be published in the Gazette.

(5) A company aggrieved by the decision of the Board pursuant to subsection (1) (b) that its name be removed from the register may appeal to a District Court Judge at Brisbane who shall have jurisdiction to hear and determine the appeal and whose decision thereon shall be final.

39. Return of certificate. (1) Any company the name of which has been removed from the register pursuant to section 34 (4), 38 (1) or 48 (1) (c) shall surrender, within 14 days after publication in the Gazette of the removal, to the Board any certificate issued to it under this Act or the repealed Act.

Penalty: 20 penalty units.

(2) The removal of the name of any company from the register shall be effectual notwithstanding failure to surrender any certificate.

40. Restoration of name. (1) Where the Board removes the name of any company from the register, the name of that company shall not be entered on the register again except by direction of the Board or by order of a District Court Judge where an appeal made under section 38 (5) or 50 is upheld.

(2) The Board, if it thinks fit in any case, may restore to the register any name removed therefrom on payment of such fees as the Board directs.

PART VI—PROHIBITED PRACTICES

41. Prohibited practices. (1) A person, other than—

- (a) a registered professional engineer;
- (b) a registered professional engineering company;
- or
- (c) an unincorporated association or body of which all its members are registered professional engineers,

shall not undertake professional engineering services for fee or reward.

(2) Subsection (1) does not apply to an individual who is—

- (a) an officer of the public service of Queensland;
- or

(b) a servant of a statutory corporation or any other person, if that individual, in the execution of his duties as such officer or servant, undertakes professional engineering services and in so doing is under the supervision of a registered professional engineer.

(3) A person, other than a person referred to in subsection (1), shall not—

- (a) take or use or by reference adopt the name, title, symbol or description of registered professional engineer;
- or
- (b) have attached to or exhibited at his or its place of business or, as the case may be, residence or otherwise use any word, letter, symbol or description that implies or is calculated to imply or is likely to imply that he or, as the case may be, it is entitled to practise as a registered professional engineer.

(4) A person, other than a registered professional engineer or registered professional engineering company, shall not have attached to or exhibited at his or its place of business or residence, or otherwise use, any word, letter, symbol or description that implies or is calculated to imply or is likely to imply that he or it is a registered professional

engineer or, as the case may be, registered professional engineering company.

(5) A person, other than a person referred to in subsection (1), shall not advertise that he or it is willing to undertake professional engineering services or is skilled in professional engineering.

(6) A person, other than a person referred to in subsection (1), shall not advertise or hold himself or itself out as being, or in any manner pretend to be or to possess the status of a consultant with respect to professional engineering or take or use, or by inference adopt (either alone or in combination with any other word or letter) the name, title, symbol or description of a consultant with respect to professional engineering or any division of professional engineering, or take or use or by inference adopt any other name, title, symbol or description that implies or is calculated to imply or is likely to imply that he or it is a consultant with respect to professional engineering or any division of professional engineering.

(7) A person that advertises or holds himself or itself out as being, or in any manner pretends to be or to possess the status of a consultant with respect to professional engineering or any division of professional engineering, or who takes or uses (either alone or in combination with any other word or letter) the name or title of consultant or any word that implies or is calculated to imply or is likely to imply that he or it is a consultant with respect to professional engineering or any division of professional engineering shall be deemed, if he or it is not a person referred to in subsection (1), to hold himself or itself out as a consultant with respect to professional engineering or any division of professional engineering.

(8) A person, other than a person referred to in subsection (1) (a), shall not advertise himself as, or hold himself out as being, a registered professional engineer, or permit any such advertising or holding out.

42. Company to use registered name. A registered professional engineering company that takes, uses, or adopts in connexion with professional engineering, or the practice of professional engineering, a name other than its name as shown in the certificate of registration issued to it under section 33 commits an offence against the Act.

PART VII—DISCIPLINARY PROCEEDINGS

43. Interpretation. In this Part, unless the contrary intention appears—

“commission” means an agreement (whether in writing or not) in which a registered professional engineer or a company undertakes to provide professional engineering services to a person (hereinafter in this Part referred to as the “client”), whether or not the agreement provides for the registered professional engineer or company to receive a fee or reward in respect of the provision of those engineering services;

“company” means a registered professional engineering company.

44. Grounds for exercising disciplinary powers against a registered professional engineer. (1) Subject to this Part, the Board may exercise any of the disciplinary powers referred to in section 48 against a registered professional engineer on one or more of the following grounds:—

- (a) that he has been convicted in Queensland of an indictable offence or has been convicted elsewhere of an offence which, if it were committed in Queensland, would be an indictable offence or has been convicted in Queensland or elsewhere of any other offence which renders him unfit to practise as a registered professional engineer;
- (b) that he fraudulently obtained his registration under this Act;
- (c) that he is not a fit and proper person to be a registered professional engineer;
- (d) that he is guilty of misconduct in a professional respect;
- (e) that his membership of an institution or society established for the purpose of promoting the study and practice of the profession of engineering has been suspended or cancelled for reasons other than non-payment of fees;
- (f) that he is an executive officer of a company in respect of which disciplinary action has been, or is to be, taken pursuant to section 46, unless he satisfies the Board that the act or omission relevant to the proceedings against the company was done or made without his knowledge and that he could not with reasonable diligence have prevented the doing of the act or the making of the omission.

(2) Without limiting the meaning of the expression “misconduct in a professional respect” used in subsection (1) (d), a registered professional engineer shall be deemed to be guilty of such misconduct if he—

- (a) performs or attempts to perform in connexion with a commission work that is outside his area of professional competence;
- (b) allows a person, other than another registered professional engineer with whom he is in partnership, to practise as a registered professional engineer in his name;
- (c) in connexion with a commission accepted by him, by a firm of which he is a member or by a company of which he is an executive officer or employee, intentionally does an act or makes an omission that prejudices the interests or rights of the client arising out of the commission;
- (d) signs any account, statement, report, specification, plan or other document thereby representing, or in any other manner represents, that he has performed professional engineering services if those services were not performed by him or under his supervision;
- (e) directly or indirectly gives or offers, or agrees to give or offer, a person a fee or reward or any other inducement for

the person securing or attempting to secure a commission for the registered professional engineer;

- (f) undertakes or agrees to undertake a commission in connexion with a matter the subject of a dispute if his remuneration for performing the commission depends in any way upon whether or not the dispute is resolved in favour of the client;
- (g) provides professional engineering services in connexion with any utility, structure, building, machine, equipment, process, work or project and is the constructor of the utility, structure, building, machine, equipment, process, work or project without the written consent of the client.

45. Grounds for exercising disciplinary powers against a company.

(1) Subject to this Part, the Board may exercise any of the disciplinary powers referred to in section 48 against a company on one or more of the following grounds:—

- (a) that the company has been convicted in Queensland or elsewhere of an offence that renders the company unfit to be a registered professional engineering company;
 - (b) that the company is guilty of misconduct in a professional respect;
 - (c) that an executive officer of the company is not a fit and proper person to be an executive officer of a registered professional engineering company;
 - (d) that disciplinary action has been, or is to be, taken against an executive officer of the company pursuant to section 46;
 - (e) that the company fraudulently obtained approval as a registered professional engineering company;
- or
- (f) that the company has ceased to fulfil the requirements of section 30 in respect of obtaining registration as a registered professional engineering company.

(2) Without limiting the meaning of the expression “misconduct in a professional respect” used in subsection (1) (b), a company shall be deemed to be guilty of such misconduct if it—

- (a) performs or attempts to perform in connexion with a commission work that is outside its area of professional competence;
- (b) in connexion with a commission accepted by it, intentionally does an act or makes an omission that prejudices the interests or rights of the client arising out of the commission;
- (c) signs any account, statement, report, specification, plan or other document thereby representing, or in any other manner represents, that it has performed professional engineering services if those services were not performed by it;
- (d) directly or indirectly gives or offers, or agrees to give or offer, a person valuable consideration as a reward or

inducement for the person securing or attempting to secure a commission for the company;

- (e) undertakes or agrees to undertake a commission in connexion with a matter the subject of a dispute if its fee or reward for performing the commission depends in any way upon whether or not the dispute is resolved in favour of the client;
- (f) provides professional engineering services in connexion with any utility, structure, building, machine, equipment, process, work or project and is the constructor of the utility, structure, building, machine, equipment, process, work or project without the written consent of the client.

46. Commencement of disciplinary proceedings. (1) Subject to this section, the Board may of its own motion or upon the written complaint of any person appoint an individual to conduct an investigation into the conduct of—

- (a) a registered professional engineer in respect of a ground mentioned in section 44;
- or
- (b) a company in respect of a ground mentioned in section 45.

(2) The Board, if it considers that a complaint referred to in subsection (1) is frivolous or vexatious shall refuse to appoint an individual to investigate the complaint.

(3) If the Board determines to appoint an individual pursuant to subsection (1) it shall give, before the commencement of the investigation, the registered professional engineer, or as the case may be, company, written notice of its determination accompanied by—

- (a) sufficient particulars to inform the registered professional engineer or company of the matter to be investigated;
- and
- (b) an invitation to lodge with the registrar a reply to the particulars contained in the notice, within 21 days after the date shown in the notice.

(4) Subject to subsection (5), the Board may, after considering—

- (a) the results of any investigation made pursuant to subsection (1);
- and
- (b) any reply lodged in accordance with subsection (3),

summon the registered professional engineer or, as the case may be, company to appear before the Board to show cause at a time (being not less than 14 days after the date of service of the summons) and place specified in the summons, why disciplinary action should not be taken pursuant to section 48.

(5) A summons referred to in subsection (4) shall—

(a) not be served until a reply is lodged in accordance with subsection (3) (b) or until the expiration of the 21 days allowed by that subsection for lodging a reply, whichever is the first to occur;

and

(b) be accompanied by a written notice signed by the registrar stating the ground or grounds mentioned in section 44 or, as the case may be, 45 on which disciplinary action may be taken, and containing sufficient particulars to inform the registered professional engineer or, as the case may be, company of the matter of complaint.

(6) If a notice referred to in subsection (5) (b) served on a company alleges against an executive officer of the company a ground mentioned in section 45 (1) (c) or (d), a copy of the notice shall be served upon that officer together with a summons requiring him to appear at the time and place appointed for the hearing of the show cause proceedings against the company.

A summons required by this subsection to be served on an executive officer shall be served not less than 14 days before the date upon which the show cause proceedings are to be heard.

47. Hearing. At the hearing of show cause proceedings referred to in section 46—

(a) the Board may or, if required so to do by any registered professional engineer, executive officer or company summoned pursuant to that section, shall order that the hearing take place in public;

(b) any registered professional engineer or executive officer summoned pursuant to that section shall attend throughout the duration of the hearing unless excused from so doing by the Board;

(c) subject to paragraph (b), any registered professional engineer or executive officer summoned pursuant to that section may be represented at the hearing by a legal practitioner;

(d) a company summoned pursuant to that section may be represented at the hearing by a legal practitioner or its duly authorized agent;

(e) a legal practitioner or other person appointed by the Board may appear to examine or cross-examine witnesses or to otherwise assist the Board;

(f) if any registered professional engineer, executive officer or company summoned pursuant to that section fails to obey the summons then, upon proof of the due service of the summons, the Board may hear and determine the matter in the absence of the engineer, officer or, as the case may be, company;

(g) if the Board believes that instead of or in addition to the ground or grounds specified in the notice referred to in

section 46 (5) (b), the registered professional engineer or, as the case may be, company should show cause in relation to some ground or grounds other than the ground or grounds specified in the notice the engineer or company shall, subject to paragraph (h), show cause in relation to the other ground or grounds;

- (h) before a registered professional engineer or, as the case may be, company is required to show cause pursuant to paragraph (g), the Board shall give the engineer or company particulars of the other ground or grounds and, if required to do so by the engineer or company, adjourn the hearing for a period of 7 days or such longer period as the Board allows.

48. Disciplinary powers of Board. (1) If, upon the hearing of show cause proceedings referred to in section 46, the Board is satisfied that a ground referred to in section 44 or, in the case of proceedings against a company, section 45, is made out it may do any one or combination of the following:—

- (a) reprimand the registered professional engineer or company;
- (b) order that the registered professional engineer or company pay to the Board within the time limited by the Board a fine not exceeding 40 penalty units;
- (c) remove the name of the registered professional engineer or company from the register and order that he or it be disqualified from obtaining registration under this Act indefinitely or for a period specified in the order;
- (d) order that the registered professional engineer or company pay to the Board within the time limited by the Board such costs of and incidental to the hearing as it thinks fit (including the fees and allowances payable to the members).

(2) If, upon the hearing of show cause proceedings referred to in section 46, the Board is satisfied that an executive officer of the company, summoned pursuant to that section, is not a fit and proper person to be an executive officer of a registered professional engineering company it may order—

- (a) that the executive officer is not a fit and proper person to be an executive officer of any registered professional engineering company indefinitely or for such period as is specified in the order;
and
- (b) that the certificate of registration under this Act of the company be withdrawn until such time as the Board is satisfied that the person, in respect of whom it has made an order under paragraph (a) is no longer an executive officer of the company.

49. Recovery of fine or costs. If, pursuant to section 48, the Board orders that any fine or costs be paid and the order is not complied with within the time limited in the order the Board may recover the amount of the fine or costs outstanding as a debt due and owing to the Board by action in a court of competent jurisdiction.

A certificate of the registrar as to the making and terms of such an order and the amount outstanding in respect of the order shall be evidence and, in the absence of evidence to the contrary, conclusive evidence in all proceedings of the matters stated therein.

50. Appeal from Board's decision. If the Board—

- (a) takes disciplinary action against a registered professional engineer or company pursuant to this Part;
- or
- (b) makes an order in respect of an executive officer pursuant to section 48 (2),

the registered professional engineer or, as the case may be, company or executive officer may appeal to a District Court Judge at Brisbane who shall have jurisdiction to hear and determine the appeal and whose decision thereon shall be final.

51. Publication of decision. If the Board makes an order pursuant to section 48 (1) (c) it shall, at the expiration of 28 days after the date of notification of its decision is given to the registered professional engineer or, as the case may be, company cause notice of the order to be published in the Gazette unless, within that period, an appeal is instituted against the decision.

If such an appeal is not proceeded with or is dismissed the Board shall cause notice of the order made by it pursuant to section 48 (1) (c) to be published in the Gazette.

52. Surrender of certificate. (1) If an order is made pursuant to section 48 (1) (c), the registered professional engineer or, as the case may be, company, within 14 days after publication of notice of the order in the Gazette, shall surrender to the Board any certificate issued to him or it under this Act or the repealed Act.

Penalty: 20 penalty units.

(2) If an order is made pursuant to section 48 (1) (c) the Board, upon expiration of the period so specified and having regard to the provisions of this Act with respect to obtaining registration, may re-issue the certificate of registration to the registered professional engineer or, as the case may be, company.

(3) The removal of the name shall be effectual notwithstanding that a certificate of registration has not been surrendered.

(4) Subject to subsection (2), if an order is made pursuant to section 48 (1) (c) the name of the registered professional engineer or, as the case may be, company shall not be entered on the register again except—

- (a) on the order of a District Court Judge upon appeal pursuant to section 50;

or

- (b) by direction of the Board in any case where the Board thinks fit upon—
 - (i) application in writing being made to it;
 - and
 - (ii) payment of such fees as the Board may direct, being not greater in any case than the fees payable under this Act in respect of an application for registration as a registered professional engineer or, as the case may be, company.

PART VIII—MISCELLANEOUS

53. Duplicate certificate in case of loss, etc. If any certificate is lost or destroyed, the holder of the certificate, or if the holder is a registered professional engineering company the principal executive officer of the company, may make a statutory declaration with respect thereto and the Board, if satisfied with such declaration, may issue a fresh certificate to the holder on payment of the fee prescribed by the regulations.

The fresh certificate shall be endorsed with a memorandum setting out the reasons for the issue thereof, and thereafter such certificate shall be as valid as if it were the original certificate.

54. Board a Commission of Inquiry. (1) The Board when conducting disciplinary proceedings under Part VII shall be deemed to be a Commission of Inquiry within the meaning of the *Commissions of Inquiry Act 1950-1988* and the provisions of that Act, other than sections 4, 4A, 5A, 5B, 10 (3), 13, 14 (1A), 19A, 19B, 19C and 26, shall apply accordingly.

(2) For the purposes of applying the provisions of the *Commissions of Inquiry Act 1950-1988*, each member shall be deemed to be a Commissioner, and the chairman shall be deemed to be the chairman, within the meaning of that Act.

(3) Any allowance payable to a witness pursuant to section 24 of the *Commissions of Inquiry Act 1950-1988* when he appears before the Board when it is deemed pursuant to subsection (1) to be a Commission of Inquiry shall be paid by the Board out of its funds.

55. Penalty for forging registration. Any person who—

- (a) wilfully makes or causes to be made any false entry in or falsification of the register;
 - or
- (b) wilfully procures or attempts to procure—
 - (i) himself or any other person to be registered as a registered professional engineer;
 - (ii) a company to be registered as a registered professional engineering company,

by making or producing or causing to be made or produced any false or fraudulent representation or declaration either verbally or in writing, commits an offence against this Act.

56. Appeals. (1) An appeal referred to in section 25, 26 (5), 37, 38 (5) or 50—

- (a) shall be by way of re-hearing and shall be instituted by lodging in the registry of the District Court at Brisbane written notice of the appeal within 28 days after the date notification of the Board's decision is given to the appellant or, if exceptional circumstances exist, such further time as a District Court Judge allows;
- (b) shall be instituted, conducted and disposed of in such manner as is prescribed by Rules of Court made under the *District Courts Act 1967-1988* or until such rules are made or in so far as they do not extend in a particular case in such manner as is directed by a District Court Judge.

(2) Copy of the notice of appeal shall be served upon the registrar of the Board within 7 days of lodging the notice in the registry of the District Court at Brisbane.

(3) The District Court Judge who hears an appeal may—

- (a) set aside the order of the Board;
 - (b) vary the order in such manner as he thinks fit;
- or

(c) disallow the appeal and confirm the decision of the Board, and, in any case, may make such order as to the costs of the appeal as he thinks fit.

57. Offences. (1) Offences against this Act may be prosecuted, and all fees due and payable under this Act may be recovered, in a summary way under the *Justices Act 1886-1988*, upon the complaint of a person authorized by the chairman.

(2) Proceedings for an offence against this Act may be instituted at any time within 12 months after the commission of the offence, or within 6 months after the commission of the offence comes to the knowledge of the complainant, whichever period is later to expire.

(3) Any person who contravenes or fails to comply with any of the provisions of this Act commits an offence against this Act, and is liable, if no specific penalty is prescribed for that offence, to a penalty of 40 penalty units.

58. Offence by a registered professional engineering company or any association. (1) A director of a registered professional engineering company that commits an offence against this Act shall be deemed to have committed the offence and shall be liable to be proceeded against and punished accordingly unless he proves that the offence was committed without his knowledge and that he could not with reasonable diligence have prevented its commission.

(2) Subsection (1) applies so as not to limit or affect in any way the liability of a registered professional engineering company to be proceeded against and punished for an offence against this Act.

(3) Where any agent, employee or member of any association or body of persons referred to in section 41 (1) (c) commits an offence against this Act in the course of his agency with, employment by or membership of that association or body or acting under the instructions of his principal or employer or of that association or body, that association or body, for the purposes of this Act, is deemed to have committed the offence.

(4) Where, pursuant to subsection (3), any association or body of persons is deemed to have committed an offence every person who is a member of that association or body also shall be deemed to have committed the offence and shall be liable to be proceeded against and punished accordingly unless he proves that the offence was committed without his knowledge and that he could not with reasonable diligence have prevented its commission.

59. Service of documents. (1) Subject to this Act, where any notice, complaint, summons or other document is to be given to any person under or for the purposes of this Act it shall be taken—

(a) that the notice, complaint, summons or other document has been duly given to that person upon evidence that it has been sent by certified mail to or left at the address last known to the person by whom it was sent or left as the place of residence or the place of business of that person or, where that person is a company, as the registered office of that company;

and

(b) that, where service was effected by certified mail, the notice, complaint, summons or other document was received by the addressee at the time when the certified mail would have been delivered to the address to which it was sent in the ordinary course of post.

(2) Where service is to be effected on a company, it may be effected on a person who is concerned or takes part in the management of the company, or on the secretary thereof, or on a person who is apparently in charge of any premises in or from which the business of the company is conducted and service so effected shall be deemed to be service on the company.

60. Evidence. (1) In any proceeding by or on behalf of the Board, it shall not be necessary to prove the appointment of the members, chairman or registrar.

(2) A writing certified by the registrar to be a true copy of or a true extract from any register, book, certificate, notice, list, declaration, statement, document or writing of any nature in the custody of the Board or of any officer of the Board shall for all purposes, until the

contrary is proved, be conclusive evidence of the original of which it purports to be a copy of or extract from, and shall be admissible in evidence to the same extent as the original.

(3) An averment in a complaint of the date on which the commission of an offence came to the knowledge of the complainant shall be evidence and, in the absence of evidence to the contrary, conclusive evidence in all proceedings of that averment.

(4) A certificate signed by the registrar stating that a person was or was not on any date or during any period registered as a registered professional engineer or, as the case may be, registered professional engineering company, shall be evidence and, in the absence of evidence to the contrary, conclusive evidence in all proceedings of the matters stated therein.

(5) A copy of the Gazette referred to in sections 24 and 35 shall be evidence and, in the absence of evidence to the contrary, conclusive evidence in all proceedings that the persons whose names appear in the list published in the Gazette are—

(a) in the case of the list published in the Gazette pursuant to section 24, registered professional engineers for the year in which the Gazette is published;

and

(b) in the case of the list published in the Gazette pursuant to section 35, registered professional engineering companies from 1 April in the year in which the Gazette is published until 31 March next following.

(6) A copy of the Gazette referred to in sections 26, 38 and 51 stating that a person's name has been removed from the register shall be evidence and, in the absence of evidence to the contrary, conclusive evidence in all proceedings of the matters stated therein.

61. Board may sue. (1) The Board may institute or carry on any proceeding in its own name, by the registrar or by any other person thereunto authorized in writing under the hand of the chairman.

(2) It shall not be necessary to prove the authority of any person to institute or carry on any proceeding on behalf of the Board.

62. Judicial notice. For the purposes of this Act, the signatures of the chairman and registrar shall be judicially noted.

63. Regulations. The Governor in Council may make regulations not inconsistent with this Act for or with respect to all matters required or permitted by this Act to be prescribed and all matters that, in the opinion of the Governor in Council, are necessary or convenient for the proper administration of this Act or to achieve the objects and purposes of this Act.

A regulation may impose a penalty not exceeding 4 penalty units for a breach of that regulation or any other regulation.