

# **PROFESSIONAL ENGINEERS BILL 2002**

## **EXPLANATORY NOTES**

### **SHORT TITLE**

**Professional Engineers Bill 2002**

### **POLICY OBJECTIVES OF THE BILL**

The policy objectives of the Bill are set out in clause 3 of the Bill as being:

- (a) to protect the public by ensuring professional engineering services are provided by a registered professional engineer in a professional and competent way; and
- (b) to maintain public confidence in the standard of services provided by registered professional engineers; and
- (c) to uphold the standards of practice of registered professional engineers.

By ensuring that only competent persons provide professional engineering services, a level of health and safety protection is afforded to the public.

The Bill's objective is also to reform existing legislation to be consistent with National Competition Policy (NCP).

Registration of engineers and the practice of engineering were first regulated in Queensland by the *Professional Engineers Act 1929* and are currently regulated by the *Professional Engineers Act 1988*. All legislation since 1929 has provided for the Act to be administered by a Board of Professional Engineers of Queensland.

A staff discussion paper "Reforming the Regulation of the Professions" issued by the National Competition Council in May 2001 recognised that the primary objective of regulating a profession is to protect the welfare of consumers of professional services and to protect the public. This primary objective is clearly reflected in the Bill.

The paper further recognises a need for regulation (or continuing regulation) where information asymmetry exists – that is, where consumers are not reasonably able to inform themselves sufficiently about the skills of different practitioners. As reported in an NCP review of existing legislation, information asymmetry exists as a key characteristic for purchasers of professional engineering services. It emerges as a concern due to the technical nature of services provided relative to the general level of knowledge of consumers, and an adverse timing dimension where potential problems may not emerge until well after the service is provided. Regulation provides a means of distinguishing those persons who have achieved competency in the provision of professional engineering services.

In accordance with the Queensland Government's obligations under National Competition Policy, a review was undertaken of the *Professional Engineers Act 1988*. The outcome of this review was support for the continued regulation of the profession with removal (from existing legislation) of anti-competitive elements which could not be justified on public interest grounds. The review identified a preferred approach for the continued regulation of professional engineers as being by means of co-regulation. i.e. joint administration by the engineering profession and a statutory governing body.

In view that the amendments required to existing legislation to meet recommendations were extensive in nature, drafting of the Bill has proceeded on a basis of a new or replacement Act which has consistency in drafting style and is arguably easier for a consumer to understand. The Bill replaces the *Professional Engineers Act 1988*.

## **ACHIEVEMENT OF POLICY OBJECTIVES**

The manner by which the policy objectives of the Bill will be achieved is set out in clause 4 of the Bill – viz

- (a) providing for the registration of individuals as registered professional engineers under this Act; and
- (b) providing for the monitoring and enforcement of compliance with this Act; and
- (c) imposing obligations on persons about the practice of engineering; and
- (d) establishing the Board of Professional Engineers of Queensland.

The Bill provides that professional engineering services may only be provided by registered professional engineers.

The policy objective of meeting obligations under National Competition Policy is achieved by removing existing legislative requirements for the registration of engineering companies and engineering units, thereby freeing up the manner by which the business of delivery of engineering services may be conducted.

The preferred approach of co-regulation is achieved through the proposed adoption (through the promulgation of regulations under the Act) of professional standards for national registration of engineers and the accreditation of professional associations for assessing applications. In effect, the State will set standards for registration, professional associations will assess applicants for registration against the set standards and the board will register those applicants who have been assessed as meeting professional standards.

## **CONSIDERATION OF ALTERNATIVE WAYS OF ACHIEVING POLICY OBJECTIVES**

A number of alternatives were considered in the review of the legislation and were subject to a public benefit test process to identify any incremental net public benefit/cost as compared with the base case of existing legislation, consistent with the policy objectives of the legislation. The alternatives considered were:

- (i) Option 1 – deregulation;
- (ii) Option 2 – State Government regulation of engineers only in the building industry;
- (iii) Option 3 – co-regulation, with accredited professional engineering organisations taking responsibility for assessment, and government accrediting professional organisations and conducting any disciplinary action; and
- (iv) Option 4 – co-regulation as in Option 3, but involving a board structure that governs all professions involved in the building design and planning industry.

Preliminary investigations quickly indicated that Option 2 was unsuitable for consideration as the option involved regulation of engineers in the building industry only and therefore the option would not achieve the policy objective of the legislation in regard to the practice of engineering in industries other than the building industry.

The conclusions reached were:

- (i) Option 1 – large net cost and does not meet the objectives of the legislation.
- (ii) Option 3 – a small to moderate net benefit; largely meeting objectives through similar mechanisms to base case, but with improved assessment of competency for initial and ongoing registration, thereby enhancing consumer protection.
- (iii) Option 4 – small net cost – would be likely to result in a reduced risk for consumers within the building industry, but this would occur at the expense of consumers in other industries and may result in confusion over the appropriate complaints process.

The drafting of the Professional Engineers Bill 2002 adopts Option 3 – the co-regulatory approach - as offering the greatest incremental net benefit over the base case in addition to a slight enhancement of compliance with policy objectives of the legislation.

## **ASSESSMENT OF ADMINISTRATIVE COST TO GOVERNMENT**

All costs to Government associated with the regulation of engineers, including costs of administration by the board, are met from fees levied on registrants under the Act i.e. all activities conducted under the legislation are self-funded.

## **CONSISTENCY WITH FUNDAMENTAL LEGISLATIVE PRINCIPLES**

### **Criminal History Checks**

Clause 90 of the Bill permits a chief executive to obtain from the commissioner of the police service a written report about the criminal history of a person for help in deciding whether such a person is suitable to be nominated or appointed as a member to the board. The report may only be obtained if the person has given written consent and any report so obtained must be destroyed as soon as practicable after it is no longer needed for the purpose for which it was requested.

The provision does not override the application of the *Criminal Law (Rehabilitation of Offenders) Act 1986* but nonetheless raises a possible fundamental legislative principle issue about whether the legislation has sufficient regard to the rights and liberties of a person about whom a criminal history report may be obtained.

In accordance with clause 82 of the Bill, it is the Governor in Council who appoints members to the Board of Professional Engineers and in accordance with clause 86 it is the Governor in Council who may remove a member from office. The grounds upon which the Governor in Council may remove a member are listed in clause 86 and one of those grounds is whether a member is, or has been, convicted of an indictable offence (clause 86 (1)(b)(v)). It will be apparent that the events listed in clause 86 (as relevant) would also form a basis of the Governor in Council deciding not to appoint any person that may be recommended for appointment.

In accordance with administrative procedures, the chief executive recommends to his or her Minister suitable persons for board appointments. The Minister then makes a recommendation to the Governor in Council. Incumbent in this process, is the need to ensure that recommended persons have no relevant disqualifications.

The ground of “conviction of an indictable offence” is a consistent ground of disqualification for membership of boards contained in recent legislation (for example: *Pharmacists Registration Act 2001*, *Medical Practitioners Registration Act 2001* and *Dental Practitioners Registration Act 2001*) and is consistent with the eligibility requirements for registration of professional engineers under this Bill.

A natural consequence of including this (indictable offence) ground of disqualification is the necessity to undertake checks in appropriate circumstances. It is noted that the power and discretion to request a report has been vested in the chief executive and only then with the written consent of the person concerned.

### **Register of professional engineers**

Clause 102 of the Bill provides that the board must keep a register of persons who are, or have been, registered professional engineers and that register must contain the particulars listed in subclause (3) which include:

- a person’s name and contact details;
- details of person’s eligibility for registration;
- orders of the tribunal – disciplinary proceedings; and
- reasons for cancellation or non-renewal of registrations.

Clause 103 of the Bill provides that the register and the content noted in clause 102 (3) must be kept open for inspection by members of the public.

In respect of an order of the tribunal concerning a disciplinary proceeding, clause 134 accords to the tribunal a discretion of what and for how long matters are to be recorded on the register. Matters in respect of cancellation and non-renewal of registration are reviewable by the tribunal under clause 122, which gives the tribunal a similar discretion.

The content and availability of the information on the register raises a fundamental legislative principle issue about whether the legislation has sufficient regards to the rights and liberties of a person who may be adversely affected by, for example, publication of the information.

Registered professional engineers are the persons responsible for the delivery of professional engineering services to the public. A professional engineer does not have to be registered in order to carry out professional engineering services provided that such professional engineer carries out those services under the supervision of a registered professional engineer (see clause 115). This is to say that a person does not have to be registered in order to gain employment in his or her chosen profession.

The Bill further provides that the name or names of registered professional engineers who are to be responsible for the provision of engineering services must be identified to clients, in correspondence to clients and in any advertising material (clauses 117, 118 and 119).

Clauses 102 and 103 of the Bill are included as being in the public interest. These clauses are aimed at allowing the public to research a registered professional engineer's disclosable professional history, to enable an informed decision to be made on any engagement of professional services.

The provisions have a secondary effect of providing a disincentive for registered professional engineers to engage in conduct that may later be judged to be "unsatisfactory professional conduct" (see meaning in schedule 2 to the Bill) in view of the fact that any adverse judgement may later appear on the register and become available for inspection.

The provisions do not provide for removal of information from the register except at the direction of the tribunal or a court.

## **Penalties**

The Bill contains a number of clauses creating offences punishable by financial penalty (clauses 30, 31, 32, 54, 56, 65, 66, 67, 68, 113, 114, 115, 116, 117, 118 and 119). The maximum penalties imposed in clause 30-68 are 100 penalty points (\$7,500) or less but the maximum penalties imposed

in clause 113-119 are very substantive being 1000 penalty points (\$75,000) in respect of clauses 113 – 116 and 300 penalty points (\$22,500) in respect of clause 117-119.

A full listing of penalty provisions is provided in the schedule at the end of these explanatory notes.

The size of the substantive penalties raises a fundamental legislative issue about whether the legislation has sufficient regard to the rights and liberties of a person potentially subject to the penalties.

The main objects of the Bill are expressed in clause 3 as being to protect the public by ensuring the professional engineering services are only provided by registered professional engineers. The Bill then provides for the standard according to which a professional engineer may be registered. The intent is to protect the health and safety of the community by ensuring that only competent persons provide professional engineering services.

A significant level of risk exists in the provision of professional engineering services. Risk is variously defined as the "chance of loss or injury" it refers to the uncertainty of outcomes that may result from a particular action. Specifically these are risks of harm and financial risks resulting from construction failure and or operating inefficiencies of deficiencies. Risk manifests itself throughout the lifecycle of engineering projects through construction, operation and maintenance. Put simply, there is risk to life and risk of high financial loss if professional engineering services are not provided by competent persons. Examples of recent public disasters (which have been linked to inappropriate engineering services (in other jurisdictions) include the Royal Canberra Hospital implosion, the HMAS Westralia fire; the Esso Longford gas explosion and the Israeli bridge failure.

A further penalty provision is contained in clause 141 "Performance and carrying out of professional engineering services by particular entities". Briefly this provides that a person who represents that the person is a registered professional engineer or will provide professional engineering services and that representation is false, then the person is not entitled to recover monetary or other consideration for the performance of those services.

The rationale for this is that the output from an unregistered person performing professional engineering services may be unacceptable in view that the work would not have been authenticated by a registered professional engineer.

The provision does not preclude acceptance of the unregistered person's work nor for voluntary payment for that work. The provision simply provides that the unregistered person has no legal right to demand payment for work performed. Similarly the provision does not demand that the work output from the unregistered person be "handed over" without payment.

The substantive penalties in the Bill are aimed at being a disincentive to those who may be persuaded to provide or offer to provide (to a person who may not be well informed) a service for which they are not professionally qualified. The financial penalties have been sized as being in the public interest.

### **Transitional Provisions**

Clause 149 of the Bill provides that when the substantive provisions of the Bill commence on 1 January 2003, the board (which is established under the *Professional Engineers Act 1988* and will be repealed by the Bill) is dissolved and the members of the board go out of office. Clause 149 (2) provides that no compensation is payable to a member because of these events.

Similarly clause 155 of the Bill provides that when the substantive provisions of the Bill commence on 1 January 2003, the professional engineers disciplinary panel established under the *Professional Engineers Act 1988* is dissolved and that the members of the panel go out of office. Clause 155 (2) provides that no compensation is payable to a member because of these events.

These provisions are not regarded as being fundamental legislative principle issues, but nonetheless require explanation of the extent of any financial detriment which may be suffered by any member.

The existing membership and fee structures are as follows:

#### *Board of Professional Engineers*

The board comprises 6 members as follows:

Chair	Expiry	02/05/2003	(nominated by the Minister – currently on leave of absence)
2 members	Expiry	07/12/2002	(nominated by the Minister)



3 members      Expiry      13/09/2002      (elected by registered professional engineers)

The board meets once per month with meeting fees of \$331 for the chair and \$272 for members.

As the substantive provisions of the new legislation commence on 1 January 2003, the financial detriment for board members is negligible.

*Professional Engineers disciplinary panel*

This panel comprises 6 members. The term of office of all members will expire on 13 December 2003. Remuneration of panel members per meeting day is \$636 for the chair and \$456 for members.

A panel of 3 members is constituted for a hearing of any particular matter. Total fees paid in respect of all panel members during the 2001-2002 financial year was \$26,000 with the majority of fees (\$14,000) being paid to the Chairperson (who is a senior partner in a large legal firm in Brisbane).

Financial detriment for panel members is considered minimal particularly when regard is made to the alternative potential earnings from private practise.

## **EXTENT OF CONSULTATION**

Consultation during the preparation of the Bill has taken place with:

- The Board of Professional Engineers of Queensland and, through the board, Registered Professional Engineers in Queensland;
- The Institution of Engineers (Australia) – Queensland Division and, through the Institution, members of the Institution of Engineers;
- The Chair, Professional Engineers Disciplinary Panel;
- The National Engineering Registration Board;
- The Australasian Institution of Mining and Metallurgy;
- The Institution of Structural Engineers (Queensland Division);
- The Queensland Building Services Authority; and
- Mr M Mathie, CBD Community Liaison Officer (Energex Limited).

The major medium of consultation has been through the promulgation of drafts (in both hard copy and electronic format) to the board and to the Queensland Division of the Institution of Engineers (Australia), but in addition:

- a presentation was made to Institution of Engineers members at their Queensland Division headquarters on 28 May 2002 (which was video taped by the Institution for distribution to regional areas of Queensland);
- a telephone briefing was given to a meeting of the National Engineering Registration Board held in Sydney on 31 May 2002 subsequent to which the Chair and a member of the board were verbally briefed during their visit to Brisbane; and
- verbal briefings have been given to all persons who have raised concerns with any aspect of the proposed legislation.

Interdepartmental consultation has also occurred.

## **NOTES ON PROVISIONS**

(purpose and intended operation of each clause)

### **PART 1—PRELIMINARY**

#### *Division 1—Introduction*

##### **Short Title**

*Clause 1* sets out the Short Title.

##### **Commencement**

*Clause 2 Subclause (1)* provides that existing members of the Board of Professional Engineers appointed under the *Professional Engineers Act 1988* remain in office until the commencement of the substantive

provisions of the Bill notwithstanding that a member's term of office may otherwise have expired.

*Subclause (2)* provides that the substantive provisions of the Bill commence on 1 January 2003.

### ***Division 2—Objects***

#### **Main objects of Act**

*Clause 3* sets out the main objects that the Bill is intended to achieve.

The objects are expressed widely and as a sub set are intended to include protection of the health and safety of the public through ensuring that only competent persons provide professional engineering services.

#### **How main objects are achieved**

*Clause 4* describes the manner by which the main objects will be primarily achieved.

### ***Division 3—Application of Act***

#### **Act binds all persons**

*Clause 5* states that the Bill is binding on all persons including the State.

The State, in providing a professional engineering service (as defined) must have a registered professional engineer registered in the relevant area of engineering, carrying out or taking responsibility for the delivery of those services in each office where the service is offered (see clause 116).

The State cannot be prosecuted for an offence under the Bill, but registered professional engineers in the employment of the State may be prosecuted for disciplinary offences.

#### ***Mutual recognition legislation not affected***

*Clause 6* reaffirms that the operation of mutual recognition legislation is not affected by the terms of this Bill.

***Division 4—Interpretation*****Definitions**

*Clause 7* states that the dictionary in schedule 2 to the Bill defines particular words used in the Bill.

**PART 2—REGISTRATION OF PROFESSIONAL ENGINEERS**

The legislation requires engineers who are responsible for the delivery of professional engineering services to be registered. Registration is granted in areas of engineering prescribed by regulation. In order to become registered an applicant must demonstrate that the applicant is fit to practise, and possesses a sufficient level of proficiency in the area or areas of engineering for which registration is sought.

The philosophy is that only individuals (as opposed to “organisations”) are to be registered and that a register is to be kept of such individuals. This does not, of course, preclude the board from maintaining a listing of organisations that offer professional engineering services, and making such listing available to the public as a “public interest” activity.

The legislative philosophy is also that registration is effective for one financial year, but is renewable annually, subject to certain conditions stated in the Bill.

It is envisaged that systems will be administratively introduced that will permit registrations to be effected electronically.

***Division 1—Preliminary*****Applying for registration**

*Clause 8* provides that only individuals may apply to the board for registration. The clause reflects the intent that only individuals (as opposed to “organisations”) should be registered.

An individual who has previously been registered, but is not presently registered for any reason and is not able to satisfy the renewal or restoration requirements contained in clauses 20 and 24, must reapply for registration under clause 8. The individual must satisfy the eligibility requirements for registration existing at the time of application.

*Subclause (2)* sets down the requirements for making an application.

*Subclause (2)(a)* requires an application to be in an approved form. It is intended that the board produce this and, in accordance with clause 143 of the Act, submit these to the Director-General (chief executive) of the administering department for approval and subsequent publication in the gazette.

*Subclause (2)(b)* requires an application to be accompanied by:

- (i) satisfactory evidence of eligibility;
- (ii) assessment entity's assessment of the applicant against the qualifications or competencies. Note: the "or" between qualification and competency is to be read "disjunctively";
- (iii) any other documents required by the board; and
- (iv) an "application fee" and a "registration fee" in amounts prescribed by regulation. The "application fee" is an amount payable once only upon application for registration. The "registration fee" is an annual fee payable by registrants under the Act.

Regulations will provide that—

- (a) new registrants who register within one month of the end of the financial year will not be required to pay a registration fee for that year;
- (b) new registrants who register more than one month but less than six months before the end of a financial year will pay one half of the registration fee payable for that year; and
- (c) new registrants who register more than six months before the end of the financial year will be required to pay the full amount of the registration fee.

*Subclause (3)* requires that the approved form provide for the applicant's contact details. These contact details must include a contact detail for entry on the register (see clause 102(3)(a)); and a contact detail for the personal service of notices under the Act if that detail differs from the contact detail for entry on the register.

*Subclause (4)* which is to be read in conjunction with clause 27, provides that an applicant must provide any other relevant information required by the board to decide the application.

The words “any other relevant information” do not refer to the information required to complete an application. The board is not required to decide an incomplete application. This subclause refers to information required in addition to a complete application, which the board considers necessary for the purposes of deciding the application.

A complete application is considered to be an application comprising a fully completed application form accompanied by relevant supporting documents and relevant fees in correct amounts.

## ***Division 2—Eligibility for registration***

### **Eligibility**

*Clause 9* provides that an applicant is eligible for registration if the applicant:

- (a) is qualified under clause 10 for registration and;
- (b) is considered by the board to be fit to practise as a registered professional engineer. Clause 11 provides matters that are relevant to fitness to practise.

### **When applicant is qualified for registration**

*Clause 10* contains the considerations relevant to assessing whether an applicant is qualified for registration (in accordance with clause 9(a)).

The intent of this clause is for benchmark standards (of qualification and competencies) for registration to be derived by the board, who will then, in accordance with clause 80, recommend these to the Minister for publication by regulation. It is intended that accredited organisations (assessment entities) be recommended to the Minister for publication by regulation. These assessment entities will be responsible for assessing applicants for registration against the benchmark standards.

It is envisaged that there may be a number of benchmark standards (in each area of engineering) catering for a wide variety of situations ranging from an applicant with minimal experience to an applicant with extensive experience to applicants from foreign countries having foreign

qualifications. It is also envisaged that benchmark standards would cover situations where an applicant seeks re-registration following a period of cancellation on grounds of fitness to practice or a tribunal ruling.

The use of assessment entities is to create an environment where the board itself does not undertake assessment of an applicant's qualification or competency but instead accepts an assessment entity's assessment of the applicant against the benchmark standards.

*Subclause (1)(a)* requires applicants to have achieved a benchmark level of qualification as set by regulation.

By reference to clause 144(4), it will be noted that a regulation may provide for a qualification by reference to subjects or areas of learning relating to engineering.

It is envisaged that the benchmark level may require competency across a range of subjects, and may include a requirement for practical experience. Academic qualifications are expected to be expressed with a reference to a currency date (to reflect that standards may change over time) e.g. a University of Queensland degree in 2000 may be at a standard that is different to a University of Queensland degree in later years.

To meet the requirements of this subclause, individuals will have to show they have attained a level of proficiency at least equivalent to that set by a benchmark.

*Subclause (1)(b)* requires an applicant to have achieved a benchmark level of competency as set by regulation. It is conceivable that the competency requirements for each area of engineering will differ. Benchmark competencies may include requirements stated in subclause (2) or any other matters the board considers appropriate.

It is intended that relevant areas of engineering be derived by the board, who will then, in accordance with clause 80, recommend these to the Minister for publication by regulation.

To meet the requirements of this subclause, individuals will have to demonstrate that they have attained a level of competency at least equivalent to that set by a benchmark.

The competency requirements necessary for registration may differ from the competency requirements for renewal and restoration of registration under clause 16.

*Subclause (3)* provides for the prescribing by regulation of accredited organisations or entities for assessing applications.

It is envisaged that over time there may be a number of accredited entities who would each render a charge upon a prospective applicant for the assessment of an application. An applicant would be entitled to approach the entity of the applicant's choice, and may approach more than one entity in an endeavour to obtain a favourable assessment.

### **Fitness to practise as a registered professional engineer**

*Clause 11* This clause provides matters to which the board may have regard when assessing an applicant's fitness to practise under the eligibility requirements of clause 9(b).

The clause is also relevant to decisions of the board regarding renewal of registration (clause 20) and restoration of registration (clause 24).

The clause is drafted in discretionary terms so that the occurrence of an event is not necessarily determinative of the outcome of an application. The events listed are simply matters to which the board may have regard.

This is particularly important in respect of a clause 11(d) event (relating to bankruptcy and insolvency) in view that not all circumstances (of bankruptcy and insolvency) would qualify to exclude an applicant from registration. It is expected that the board will exercise a discretion in the endeavour not to cause unnecessary disadvantage or prejudice to the rights of creditors of an applicant or be unduly harsh upon an applicant involved, while remaining in a position to sanction those applicants who are intrinsically culpable for the event.

The matters listed are not exclusive. The board may issue policies or guidelines that indicate other matters or provide more detail about matters that it considers relevant to fitness to practise, and which are to be taken into account in any assessment carried out.

An applicant's fitness to practise is intended to be assessed generally through a system of self-declaration, using the approved application form required under clause 8(2)(a). This form would contain a list of items relevant to determining fitness to practise, which an applicant must complete and declare that the details contained in it are correct. It is an offence under clause 30 to make false or misleading statements, and under clause 31, to give to the board a false or misleading document. These offences are punishable by financial penalty, and each is a ground for disciplining a registered professional engineer under clause 36.



***Division 3—Decision on applications for registration*****Deciding application**

*Clause 12* provides that the board must consider and decide an application as soon as practicable.

*Subclause (2)* provides that the board must have regard to any assessment of qualification or competency carried out by an assessment entity.

**Grant of application**

*Clause 13* provides that where the board decides to grant the application, it must as soon as practicable issue a certificate of registration to the applicant.

The certificate of registration will identify the area or areas of engineering in which the applicant may practise.

**Refusal of application**

*Clause 14* provides for a refusal of an application by the board. This clause is to be read in conjunction with the meaning of “information notice” defined in schedule 2 to the Bill.

Briefly, an information notice is a notice of the decision with reasons, and includes advice as to how the decision may be appealed.

The decision is appealable to the Queensland Building Tribunal under Part 8 of the Bill within 28 days of the person receiving the information notice.

*Subclause (b)* provides that if an application is refused, the applicant must be refunded the fees that accompanied the application, less an amount of the application fee prescribed by regulation to cover the cost to the board in processing the application.

**Period of registration**

*Clause 15* provides that the period of registration is one financial year. For individuals who register part way through a financial year, the registration period expires at the end of the financial year in which they were first registered.

***Division 4—Renewal and restoration of registrations***

An applicant in applying for a renewal or restoration of registration must demonstrate that the applicant has maintained competency in the area or areas of engineering in which the applicant is registered, and is otherwise fit to practise.

***Subdivision 1—Preliminary*****Meaning of “continuing competency requirements”**

*Clause 16(1) and (2)* define “continuing competency requirements” for the purposes of clauses 20 and 24, according to which the board must decide an application for renewal or restoration of registration.

These subclauses are, in broad terms, counterpart to the competency requirements under clause 10(2).

It is intended that benchmark standards of continuing competency be derived by the board, who will then, in accordance with clause 80, recommend these to the Minister for publication by regulation.

It is envisaged that there may be a number of benchmark standards (possibly in each area of engineering) catering for various situations over a period of time. For example, in practical terms a “self assessment” may be acceptable on a yearly basis with a more vigorous independent assessment undertaken every 3 to 5 years.

An applicant for renewal or restoration of registration will have to demonstrate a maintenance of a level of competency equivalent to that set by a benchmark.

*Subclause (3)* provides for the prescribing by regulation of accredited organisations or entities for assessing applications.

Similar to the operation of clause 10, it is envisaged that over time, there may be a number of accredited entities who would each render a charge upon a prospective applicant for the assessment of an application. An applicant would be entitled to approach the entity of the applicant’s choice, and may approach more than one entity in an endeavour to obtain a favourable assessment.

**Notification of expiry of registration**

*Clause 17* requires the board to give all registrants under the Bill at least three months notice of expiry of registration. In practice, these notices must be issued prior to 1 April annually.

It is envisaged that an application form for renewal of registration, together with appropriate advice on the requirements that need to be completed and submitted to obtain renewal, would accompany an expiry notice.

***Subdivision 2—Renewal*****Applying for renewal**

*Clause 18* provides that a registered professional engineer may apply to the board for renewal of registration, and outlines the manner by which an application may be made.

Only currently registered professional engineers may apply for renewal of registration under this clause. An individual who is not presently registered for any reason, cannot apply for renewal of registration under clause 18.

*Subclause (2)* provides that an application to renew must be lodged with the board at least 1 month, but not more than 3 months before the expiry date i.e. between 1 April and 1 June annually.

*Subclause (3)(a)* requires an application to be in an approved form (see also commentary to clause 8 (2)(a)).

*Subclause (3)(b)* requires an application to be accompanied by:

- (i) assessment entity's assessment of the registrant against the continuing competency requirements;
- (ii) any other documents required by the board; and
- (iii) the annual registration fee prescribed by regulation.

*Subclause (4)* provides the board with a discretion to accept "late applications" received during the month of June annually.

*Subclause (5)* requires the approved form to provide the applicant's contact details (see also commentary to clause 8 (3)).

*Subclause (6)* which is to be read in conjunction with clause 27, provides that an applicant must provide any other relevant information required by the board to decide the application.

The words “any other relevant information” do not refer to the information required to complete an application. The board is not required to decide an incomplete application. This subclause refers to information required in addition to a completed application, which the board considers necessary for the purposes of deciding the application.

A complete application is considered to be an application comprising a fully completed application form accompanied by relevant supporting documents and relevant fees in correct amounts.

### **Registration in force while application is considered**

*Clause 19* provides that once an application is properly made under clause 18 for renewal of registration, then, provided the applicant’s registration is not sooner cancelled, an applicant’s registration remains current until a decision of the board is made notwithstanding that it would have otherwise have expired. This provision allows for an applicant to continue to be registered in the event that the board is unable to deal with the renewal application promptly and before the registration expires at the end of a financial year.

An application is not a properly made application if it is incomplete in any respect, and may be returned at any time by the board. The board is not required to decide an incomplete application. It remains the responsibility of an applicant to ensure that the application is complete.

In the unlikely event that an applicant’s current registration expires through mere inadvertency on the applicant’s part, an avenue is provided in clause 23 below.

### **Deciding application**

*Clause 20* is a counterpart to clause 12, and provides that the board must consider and decide an application for renewal of registration as soon as practicable.

*Subclause (2)(a)* provides that the board must have regard to whether an applicant is fit to practise as a registered professional engineer. *Subclause (3)* then provides that relevant considerations are those in clause 11.

*Subclause (2)(b)* requires the board to consider whether the applicant has satisfied continuing competency requirements (as defined in clause 16), and in this regard subclause (4) provides that the board must have regard to any assessment carried out by an assessment entity.

Unlike an application for registration, it is expected that an application to renew under clause 18 would not require any consideration of academic proficiency.

### **Renewal of registration**

*Clause 21* is a counterpart to clause 13, and provides that where the board decides to renew a registration, it must as soon as practicable issue a new certificate of registration to the applicant.

### **Refusal to renew registration**

*Clause 22* is a counterpart to clause 14, and provides for a refusal to renew registration. This clause is to be read in conjunction with the meaning of “information notice” given in Schedule 2 to the Bill.

Briefly, an information notice is a notice of the decision with reasons, and includes advice as to how the decision may be appealed.

The decision is appealable to the Queensland Building Tribunal under Part 8 of the Bill within 28 days of the person receiving the information notice.

The registration of an individual who intends to appeal the refusal will still expire on its expiry date or such extended time as provided in clause 19, or 7 days after the notice has been given, whichever is later in time.

*Subclause (b)* provides that if an application is refused, the applicant must be refunded the annual registration fee that accompanied the application.

## ***Subdivision 3—Restoration***

### **Applying for restoration**

*Clause 23* is an extension of the provisions of clause 18(4), and allows an individual whose registration has expired to apply to the board for restoration of the individual’s registration.

*Subclauses (1) and (2)* gives a right to an individual to make application and to have that application considered provided that the application is made within 2 months after expiry. In practice, this requires an applicant to apply before 31 August annually.

*Subclause (3)* give a discretionary power to the board to consider an application made outside of the time period allowed in subclause (1) if it is considered that there are reasonable grounds for doing so.

These provisions effectively allow for “out of time” applications, but nonetheless such applicants will be penalised by not being registered for the period of time between the expiration of their registration (i.e. 30 June), and the date the registration is restored. A period of non-registration could adversely affect the individual’s business affairs, which promotes vigilance to ensure that an application for renewal is made before the expiry of registration. If an individual’s registration has expired, then for the period between expiration and restoration, that individual is unable to hold out as being registered (offences clauses 113-115) – and also that individual is not able to claim consideration for services rendered – (clause 141).

This clause otherwise parallels clause 18 relating to applications for renewal of registration, and reference is made to the commentary under clause 18.

This clause is only available to engineers whose registration has expired by time. An individual cannot apply for restoration under clause 23 if the individual is unregistered for any other reason whatsoever.

### **Deciding application**

*Clause 24* is a counterpart to clauses 12 and 20, and provides that the board must consider and decide an application for restoration of registration as soon as practicable.

Refer to commentaries under clauses 12 and 20.

### **Restoration of registration**

*Clause 25* is a counterpart to clauses 13 and 21 and provides that where the board decides to restore a registration, it must as soon as practicable issue a new certificate of registration to the applicant.

Restoration of registration takes effect from the date of the board’s decision, and ends on the last day of the registration period in which the decision is made.

**Refusal to restore registration**

*Clause 26* is a counterpart to clauses 14 and 22. This clause is to be read in conjunction with the meaning of “information notice” given in Schedule 2 to the Bill.

Briefly, an information notice is a notice of the decision with reasons, and includes advice as to how the decision may be appealed.

The decision is appealable to the Queensland Building Tribunal under Part 8 of the Bill, within 28 days of the person receiving the notice.

*Subclause (b)* provides that if an application is refused, the applicant must be refunded the annual registration fee that accompanied the application.

***Division 5—Lapsing of applications*****Lapsing of application**

*Clause 27* allows the board to give some finality to an application where information from the applicant has been requested, and the applicant fails to respond in a manner that allows the board to give proper and timely consideration to the application.

The board may request “any other relevant information” in accordance with clauses 8(4), 18(6), and 23(5). These words do not refer to the information required to complete an application. The board is not required to decide an incomplete application. Subclauses 8(4), 18(6) and 23(5) refer to information that is required in addition to the complete application, which the board considers necessary for the purposes of deciding the application.

When read in conjunction with clauses 8(4), 18(6) and 23(5); clause 27 permits an application to lapse if the requested information is not received in a timely manner.

In the event that an application lapses, the applicant must be refunded the fees that accompanied the application less a reasonable amount prescribed by regulation to cover the cost of the board in processing the application.

***Division 6—Cancellation of registrations*****Grounds for cancellation**

*Clause 28* allows the board to cancel an individual's registration in circumstances identified in subclauses (a),(b) and (c).

Clauses 30 and 31 contain the offences that may lead to cancellation under subclause (a); “affected by bankruptcy action”, referenced in subclause (b), and “affected by control action” referenced in subclause (c), have meanings described in schedule 2 to the Bill.

This clause is drafted in discretionary terms so that the occurrence of an event listed is not necessarily a determinative ground.

This is particularly important in respect of subclauses (b) and (c) in view that not all circumstances of bankruptcy and insolvency (to which the clauses relate) will qualify as grounds of cancellation. It is expected that the board will exercise a discretion in an endeavour not to cause unnecessary disadvantage or prejudice to the rights of creditors of an individual or be unduly harsh upon an individual involved, while remaining in a position to sanction those individuals who are intrinsically culpable for the event.

**Procedure for cancellation**

*Clause 29* provides the procedure for cancellation of registration under clause 28.

In accordance with principles of natural justice, the procedure requires the board to give notice to the individual stating the proposed action with reasons, and to provide the opportunity for the individual to respond to the notice. If the board thereafter believes on the basis of all the material before it that proper grounds exist, the board may cancel the registration by providing (in accordance with subclause (4)) an information notice to the individual concerned. Cancellation takes effect on the date the information notice is given or any later date stated in the information notice.

The meaning of “information notice” is given in Schedule 2 to the Bill. Briefly, this is a notice of the decision with reasons, and includes advice as to how the decision may be appealed.

The decision is appealable to the Queensland Building Tribunal under Part 8 of the Bill, within 28 days of the individual receiving the notice.



***Division 7—Offences about registration*****False or misleading statement**

*Clause 30* creates the offence of making materially false or misleading statements.

The offence is created because the board will be relying on the truth and accuracy of statements made by an applicant in assessing that applicant's eligibility for registration.

This clause imposes a financial penalty (currently \$3,750) for the offence, which is also a ground for disciplining a registered professional engineer under clause 36 where the person is a registered professional engineer.

**False or misleading document**

*Clause 31* creates the offence of giving to the board a document containing information that the person knows is materially false or misleading.

The offence is created because the board will be relying on documents provided by an applicant in assessing that applicant's eligibility for registration.

*Subclause (2)* provides that the offence is not committed if the person identifies how the information in the document is false or misleading and, if the person has the correct information, gives the correct information to the board.

The clause imposes a financial penalty (currently \$3,750) for the offence, which is also a ground for disciplining a registered professional engineer under clause 36 where the person is a registered professional engineer.

**Notification about particular matters**

*Clause 32* imposes an obligation on a registered professional engineer to notify the board of changes in contact details.

This clause relates to matters that are noted on the register, but includes a change to contact details for the personal service of notices under the Bill where this contact detail is different to that appearing on the register.

There is a financial penalty (currently \$750) imposed for a breach of this obligation, which is also a ground for disciplining a registered professional engineer under clause 36.

### ***Division 8—Miscellaneous***

#### **Surrender of registration**

*Clause 33* provides that a registered professional engineer may surrender the engineer's registration. The surrender takes effect on the day stated in the notice or seven (7) days after the date the notice is given.

#### **Form of certificate of registration**

*Clause 34* provides for the approved form of certificate of registration.

The approved form must provide for the matters stated in subclause (2) which includes of the area or areas of engineering for which the engineer is registered.

#### **Refund of fees—withdrawal of application**

*Clause 35* provides that where an applicant withdraws an application before the application is decided, the applicant must be refunded the fees that accompanied the application less, in the case of an application for registration, an amount, if any, prescribed by regulation to cover the costs to the board in processing the application.

## **PART 3—COMPLAINTS AND INVESTIGATIONS**

### ***Division 1—Grounds for disciplining registered professional engineers***

#### **Grounds for disciplining a registered professional engineer**

*Clause 36* provides the grounds for disciplining a registered professional engineer.

## ***Division 2—Complaints***

### **Complaints about conduct**

*Clause 37* provides that a person aggrieved by a registered professional engineer's conduct in carrying out professional engineering services may make a complaint to the board.

*Subclause (2)* requires the complaint to be in an approved form. It is not intended that there be a rigid adherence to any particular form or format but rather that a complaint be made in a coherent and complete manner to enable timely processing by the board. The approved form would provide assistance to complainants by providing a list of matters required to be addressed by the complainant.

*Subclause (3)* requires that the board keep available for inspection information about the type of conduct likely to give rise to a complaint and how a person may complain.

### **Board may require further information or statutory declaration**

*Clause 38* allows the board to request further information from a complainant and, if necessary, a statutory declaration to verify the complaint.

This would normally occur soon after a complaint is received and would be used to assist the board in deciding whether to reject the complaint under clause 39.

### **Rejection of complaint**

*Clause 39* allows the board to reject a complaint if it reasonably considers the complaint to be frivolous, vexatious or trivial.

### **Withdrawal of complaint**

*Clause 40* allows the board to continue to investigate a complaint notwithstanding that a complainant has withdrawn a complaint.

The board has a duty to uphold the objects of the legislation and does not have to rely on a complaint or the continuation of a complaint to do so. Once the board becomes aware of a matter that brings into question a registered professional engineer's conduct, which may form a ground for

disciplining a registered professional engineer under clause 36, the board may undertake investigation of its own volition.

### ***Division 3—Investigations***

#### **Investigation of registered professional engineer's conduct**

*Clause 41* provides for the board to conduct an investigation into the conduct of a registered professional engineer if it reasonably believes that an aspect of such conduct may provide a ground for disciplining the engineer. Action may be taken by the board whether or not a complaint is received, and whether or not a person is aggrieved by the registered professional engineer's conduct.

*Subclause (2)* provides that the board may conduct an investigation itself or authorise an investigator to do so.

*Subclause (3)* provides that the board, before deciding to conduct an investigation may, by notice, refer the complaint to the registered professional engineer (whose conduct is in question), and seek a submission within a reasonable time from that registered professional engineer.

This is in the nature of a preliminary investigation (to which clause 44 does not apply) to assist the board in reaching a decision whether or not to investigate a complaint.

#### **Investigation of compliance with Act**

*Clause 42* is a complementary clause to clause 41 and provides for the board to conduct an investigation into the conduct of a person who the board reasonably suspects may have committed an offence against the Bill.

The board may conduct an investigation itself, or authorise an investigator to do so.

*Subclause (2)* provides that the board, before deciding to conduct an investigation, may, by notice, refer the matter to the person (who is suspected of committing an offence) and seek a submission within a reasonable time from that person.

This is in the nature of a preliminary investigation (to which clause 44 does not apply) to assist the board in reaching a decision whether or not to conduct an investigation.

**Investigation to be conducted as quickly as possible**

*Clause 43* requires the board, or an investigator authorised to conduct an investigation, to conduct the investigation as quickly as possible.

**Notice of investigation**

*Clause 44* provides that as soon as practicable after deciding to conduct the investigation, the board must give notice of the investigation to the person who is under investigation. It is envisaged that the notice would be in an approved form.

Subclause (2) provides that the notice must state:

- (a) who is conducting the investigation (the board or an investigator);
- (b) the investigator's name (if not the board);
- (c) the nature of the complaint (if the investigation relates to a complaint);
- (d) the grounds for the investigation (if there has not been a complaint);
- (e) that the person under investigation will be given an opportunity to respond to the allegations (with advice on how this may occur).

*Subclause (3)* provides that the notice is not required to be given if it is reasonably believed that the investigation may be prejudiced or that the complainant or another person may be placed at risk of harassment or intimidation.

*Subclause (4)* provides that a person responding under subclause (2)(e) must respond to the investigator named under subclause (2)(a).

**Board may engage persons to help investigation**

*Clause 45* provides that the board may engage an appropriate person to help with the investigation.

This clause anticipates the situation where the person (or persons) helping hold particular expertise which is necessary for the completion of the investigation, and which is not held by the investigator.

***Division 4—Investigators*****Function of investigator**

*Clause 46* provides that an investigator has the function of conducting the investigation authorised by the board.

**Powers of investigator**

*Clause 47* provides that the powers of the investigator are those given to the investigator under the Bill (see clauses 42, 49, 55, 57 and 58).

***Division 5—Appointment of investigators and other matters*****Appointment and qualifications**

*Clause 48* provides that the board may appoint an individual who is not a board member as an investigator. The board must be satisfied that the person appointed has the necessary expertise or experience.

**Appointment conditions and limit on powers**

*Clause 49* provides that the investigator holds office on conditions stated in a regulation or in the investigator's instrument of appointment or by notice given to the investigator signed by the Chair or Deputy Chair of the board.

Subclause (2) provides that the regulation or instrument of appointment or signed notice may limit the investigator's powers under the Bill.

**Issue of identity card**

*Clause 50* requires the board to issue an identity card to an investigator.

*Subclause (2)* provides for matters that must be included on the identity card.

**Production or display of identity card**

*Clause 51* requires an investigator to produce or display the investigator's identity card to the person under the investigation.

**When investigator ceases to hold office**

*Clause 52* provides that an investigator ceases to hold office upon the occurrence of an event stated in this clause.

**Resignation**

*Clause 53* provides that an investigator may by notice resign at any time.

**Failure to return identity card**

*Clause 54* requires an individual who ceases to be an investigator to return the individual's identity card to the board within 21 days after ceasing to be an investigator.

A financial penalty (currently \$750) is imposed in the event that the individual fails to do so without reasonable excuse.

***Division 6—Powers of board and investigators*****Power to require information or attendance**

*Clause 55* provides that for an investigation, the board or an investigator may by notice require a person to give information, answer questions or produce documents. The board or investigator must state in the notice a reasonable time and a reasonable way by which this must be done.

**Offences**

*Clause 56* provides that it is an offence if a person does not comply with a notice given under clause 55.

*Subclause (3)* provides that the offence is not committed if compliance with a notice may incriminate the person.

Common law Rights (e.g. legal professional privilege) of non-disclosure will also apply.

There is a financial penalty (currently \$3,750) for the offence, which is also a ground for disciplining a registered professional engineer under clause 36 where the person is a registered professional engineer.

### **Inspection and copying of produced documents**

*Clause 57* provides that if a document is produced, whether under clause 55 or otherwise, the board or investigator may inspect it, take a copy of or take an extract from it, if the board or investigator reasonably considers the document to be relevant to the investigation.

### ***Division 7—Seizure of documents***

#### **Seizing document as evidence**

*Clause 58* permits the board or an investigator to seize a document mentioned in clause 57(1) if the investigator reasonably believes that the document is evidence that is relevant to the investigation being conducted.

#### **Receipt for seized document**

*Clause 59* states that if a document is seized, the board or investigator must give a receipt to the person from whom it was seized. The receipt must adequately describe the document.

#### **Investigator to give seized document to board**

*Clause 60* provides that a document seized by an investigator must be given to the board at the same time that a report on the investigation is delivered to the board under clause 71(1).

#### **Access to seized document**

*Clause 61* provides that the owner of a seized document must be given access to it for inspection or copying unless it would be unreasonable to do so.



**Return of seized document**

*Clause 62* provides that a document seized as evidence must be returned to its owner at the end of 6 months, or at the end of proceedings if proceedings are commenced within 6 months.

*Subclause (2)* provides that, in any event, the document must be returned to its owner when it is no longer required for evidence.

***Division 8—Notice of damage and compensation*****Notice of damage**

*Clause 63* provides that if property is damaged, other than in a trivial nature, by the board or an investigator during the process of an investigation, the board or investigator must give notice to the person (who appears to be the owner of the property) of the damage. The board or investigator must also advise the person that the person may be entitled to compensation under clause 64.

**Compensation**

*Clause 64* entitles a person who incurs loss or damage because of the exercise or purported exercise of a power by the board or an investigator, to be paid compensation if it is fair in the circumstances. The clause sets out the manner by which compensation may be claimed.

***Division 9—Offences about investigations*****False or misleading statements**

*Clause 65* creates the offence of making a materially false or misleading statement.

This section imposes a financial penalty (currently \$3,750) for the offence which is also a ground for disciplining a registered professional engineer under clause 36 where the person is a registered professional engineer.

**False or misleading documents**

*Clause 66* creates the offence of providing to the board or an investigator, a document containing information which the person knows is materially false or misleading.

*Subclause (2)* provides that the offence is not committed if a person identifies how the information in the document is false or misleading and, if the person has the correct information, gives the correct information to the board or investigator.

This clause imposes a financial penalty (currently \$3,750) for the offence which is also a ground for disciplining a registered professional engineer under clause 36 where the person is a registered professional engineer.

**Obstructing board or investigators**

*Clause 67* creates the offence of obstructing the board or an investigator in the conduct of an investigation.

*Subclause (2)* provides that, in the event of an obstruction, the board or investigator must warn the person of this offence, and that the board or investigator considers the person's conduct to be an obstruction.

This clause imposes a financial penalty (currently \$7,500) for the offence which is also a ground for disciplining a registered professional engineer under clause 36 where the person is a registered professional engineer.

**Impersonation of investigators**

*Clause 68* provides that it is an offence to pretend to be an investigator.

This clause imposes a financial penalty (currently \$7,500) for the offence which is also a ground for disciplining a registered professional engineer under clause 36 where the person is a registered professional engineer.

## **PART 4—REPORTS AND BOARD’S DECISION ABOUT INVESTIGATIONS**

### **Board’s report about investigation**

*Clause 69* provides that where the board itself has conducted an investigation, it must prepare a written report about the investigation. If the investigation was the result of a complaint, the report must include findings about the complaint.

The investigation (and report) may be about a registered professional engineer or another person.

### **Report about investigation being conducted**

*Clause 70* provides that, if requested by the board, an investigator must give the board a report about the investigation being conducted.

The board may request this report at any stage of the investigation. It may, for example, simply be a “status” or interim report.

### **Investigator’s report about investigation**

*Clause 71* requires that an investigator must, on completion of the investigation, provide a written report to the board about the investigation. If the investigation was the result of a complaint, the report must include findings about the complaint.

In accordance with clause 60, documents seized by an investigator during the course of an investigation must be given to the board at the same time as the report.

The investigation (and report) may be about a professional engineer or another person.

*Subclause (3)* provides that the board may request further reports about the investigation as circumstances may require.

These further reports may comprise additional explanation or description of matters contained in the report, or may require the investigator to undertake further investigation and provide an additional report at the conclusion of that further investigation.

It is conceivable that the board may require several “further” reports.

It is expected that all reports and requests for further reports be expressed in writing. Nonetheless, if a request for a further report is of a minor nature, it is expected that the request may be “verbal”, but with the fact and nature of the verbal request included in the following written report of the investigator.

*Subclause (4)* requires the investigator to comply with a request under subclause (3) as soon as practicable.

### **Board may report to Minister**

*Clause 72* provides that the board may report to the Minister at any time on an investigation being conducted.

### **Board’s decision on investigation about registered professional engineer**

*Clause 73* requires that the board must decide on the action to be taken as a result of an investigation as soon as practical after receiving (or itself preparing) a final report on an investigation.

*Subclause (2)* details the decisions the board may make.

If the board takes action under subclauses (2)(b) or (c), the decision will not be recorded on the “register” maintained by the board under clause 102 of the Bill, because the disciplinary measures would not have been formally imposed by the tribunal. However a decision under subclauses (2)(b),(c) or (d) with reasons for that decision are expected to be recorded in the board Minutes and on any “personal file” maintained by the board regarding the registered professional engineer concerned. In addition, they would be matters that may be taken into account under subclause (5).

In respect of subclause (2)(c), if the board decides to caution or reprimand a registered professional engineer, then that engineer may appeal to the Queensland Building Tribunal under clause 122.

In respect of subclause (2)(d), if the board decides to take no further action, a complainant may appeal to the Queensland Building Tribunal under clause 122.

*Subclause (3)* explains that in acting under subclause (2), the board must have regard to the main objects of the Bill and the disciplinary grounds.

*Subclause (4)* provides that irrespective of disciplinary proceedings, if an offence under the Bill has been committed, then the board may start proceedings for that offence.

*Subclause (5)* explains that the decision under subclause (2)(b), (c) and (d) does not prevent the board taking such matters into account when initiating any subsequent disciplinary proceedings against a registered professional engineer.

### **Notice of result of investigation about registered professional engineer**

*Clause 74* requires notice of a decision of the board under clause 73(2) or (4) to be given to the registered professional engineer and the complainant (if any).

*Subclause (2)* requires that if a decision is made under clause 73(2)(c) the board must give an information notice to the registered professional engineer.

*Subclause (3)* requires that if a decision is made under clause 73(2)(d) the board must give an information notice to the complainant.

*Subclause (2) and (3)* must be read in conjunction with the meaning of “information notice” as given in schedule 2 to the Bill. Briefly, an information notice” is a notice of the decision with reasons and includes advice as to how the decision may be appealed.

A decision is appealable to the Queensland Building Tribunal under Part 8 of the Bill within 28 days of the person receiving the notice.

### **Board’s decision about other investigations**

*Clause 75* Applies to a report on an investigation about a person other than a registered professional engineer.

As soon as practicable after receiving the report, the board must decide to take one of the actions given in subclause (2)(a) to (d). If the board decides to take action under subclause (2)(a) or (2)(d), it must give a notice of the decision to the person concerned as soon as practicable. If the Board decides to take action under subclause (2)(c) it must give the person an information notice for the decision.

An information notice has the meaning given to it in Schedule 2 to the Bill.

**Board to take action as soon as practicable**

*Clause 76* imposes a general requirement on the board after deciding to take action under clause 73(2)(a), (b) or (c), 73(4) or clause 75(2)(a) to (c), to take such action as soon as practicable.

**PART 5—BOARD OF PROFESSIONAL ENGINEERS OF QUEENSLAND*****Division 1—Establishment*****Establishment of board**

*Clause 77* establishes the board as a Body Corporate.

**Board's relationship with the State**

*Clause 78* provides that the board does not represent the State.

**Board's independence etc.**

*Clause 79* requires the board to act independently, impartially and in the public interest. It is not intended that clauses 98 and 99, (which provide that the board is subject to Ministerial direction, and that the board must enter into a performance agreement with the Minister) impact upon the independence of the board.

***Division 2—Functions and powers*****Functions of board**

*Clause 80* provides for the functions of the board.

*Subclause (1)(a)* requires that the board assess applications for registration.

The intent is to establish a regime where the board itself does not assess applications against benchmark standards set for qualification and

competency but rather that the board accept an assessment from an accredited “assessment entity” that attests to the applicant’s achievement of the required standard.

*Subclause (1)(b)* requires that the board register those persons who are eligible for registration and issue certificates of registration.

*Subclause (1)(c)* requires that the board undertake investigations about the professional conduct of registered professional engineers, and for contraventions of the Bill.

*Subclause (1)(d)* requires that the board keep a register of registered professional engineers.

*Subclause (1)(e)* requires that the board advise the Minister about eligibility requirements for persons applying for registration or renewal or restoration of registration; about the suitability of entities to be “assessment entities”; and about the operation of the Bill in its application to the practice of engineering.

Clause 10 of the Bill provides that an applicant is qualified for registration if the applicant has a qualification and competency provided for under a regulation. Clause 10 further provides that a regulation may prescribe an entity for assessing an individual against a qualification and competency requirement. Clause 16 defines the meaning of “continuing competency requirements” which are necessary for renewal or restoration of registration. Clause 16 further provides that these requirements are provided for under a regulation, and that the regulation may prescribe an entity for assessing an individual against the requirements.

The intent is for benchmark standards for registration, and for renewal, or restoration of registration to be derived by the board who would then recommend these standards to the Minister in accordance with the requirements of clause 80(1)(e). The Minister would review the recommendation received from the board and make recommendations to the Governor in Council for publication by regulation.

Similarly, the intent is for the board to recommend to the Minister of appropriate assessment entities in accordance with the requirements of clause 80(1)(e). The Minister would review the recommendations received and again make recommendations to Governor in Council for publication by regulation.

*Subclause (1)(f)* is to be read in conjunction with subclause (2). It requires that the board review eligibility requirements and suitability of

assessment entities at least once every two years, and to advise the Minister accordingly.

The intended purpose of subclause (1)(e), together with subclauses (1)(f) and (2), is to ensure that the standards of service provided by a registered professional engineer remain at a high level, commensurate with national and international standards and with the expectations of the community.

*Subclauses (1)(g) and (1)(h)* require the board to perform the functions given to it under the Bill or any other Act, and to perform any incidental functions.

An incidental function may be, for example, the listing of companies offering the services of registered professional engineers, as a means of keeping the public informed.

### **Powers of board**

*Clause 81* provides broadly that the board has all the powers of an individual.

## ***Division 3—Membership***

### **Membership of board**

*Clause 82* states that the membership of the board is to consist of 7 members.

*Subclause (2)(a)* requires one member to be the academic head or an academic representative of a school of engineering prescribed under a regulation who must be or must be eligible for registration as a registered professional engineer.

If an academic representative is nominated, it is intended that the person hold a senior academic office.

*Subclause (2)(b)* requires one member to be a representative of the Queensland Division of the Institution of Engineers (Australia) who must be or must be eligible for registration as a registered professional engineer.

*Subclause (2)(c)* provides for one registered professional engineer to be elected as member. The conduct of elections are provided for by regulation. Failing an election of a member, the Minister appoints a member under subclause (4).



*Subclause (2)(d)* provides for one registered professional engineer from regional Queensland to be a member.

Regional Queensland is given the meaning provided in Schedule 2 to the Bill.

*Subclauses (2)(e)* and *(f)* are self-explanatory.

*Subclause (2)(g)* is to be read in conjunction with subclause (6) and provides for one member to be a person who is not a registered professional engineer but who represents community interests.

*Subclause (5)* states that members mentioned in subclauses (2)(a),(b) and (d) to (g) are to be nominated by the Minister.

### **Chairperson and deputy chairperson**

*Clause 83* provides for the chairperson and deputy chairperson to be appointed by Governor in Council.

*Subclause (4)* provides that the chairperson and deputy chairperson hold office for the term decided by Governor in Council (normally this will be the term for which they are appointed as a member), or for as long as they remain members.

*Subclause (5)* provides that a vacancy occurs in the office of the chair or deputy chair if the person holding office resigns or ceases to be a member.

*Subclause (6)* allows the chair or deputy chair to resign from office, but to remain a member of the board.

*Subclause (7)* provides that the deputy chair is to act as chair during periods when there is no chair or the chair is unable to perform the functions of the office.

### **Duration of appointment**

*Clause 84* provides that members hold office for a period not exceeding 3 years.

*Subclause (2)* allows for the continuation of membership after the expiry of a member's term, until the member is reappointed or a replacement member is appointed or in any event for a period not exceeding three months.

This permits a small degree of flexibility in the timing of appointing members to the board.

**Conditions of appointment**

*Clause 85* provides that members are appointed on a part-time basis. Members hold office according to the terms of the Bill and as determined by Governor in Council.

Remuneration arrangements will be in accordance with approved procedures on “Remuneration of part-time chairs and members of government boards, committees and statutory authorities”.

**Termination of appointment**

*Clause 86* provides that the Governor in Council may remove a member from office on the occurrence of an event listed in subclauses (1)(a) and (b). By inference, the events listed, as relevant, will also form a basis for not recommending a person for appointment to the board.

Similar to clause 11, this clause is drafted in discretionary terms so that the occurrence of an event is not necessarily determinative of action by the Governor in Council. The events listed are simply matters to which the Governor in Council may have regard.

This is particularly important in respect of a clause 86 (b) (iii) and 86 (b) (iv) event (i.e. events that relate to bankruptcy and insolvency), in view that not all circumstances (of bankruptcy and insolvency) will qualify for action by Governor in Council. It is expected that the Governor in Council will exercise discretion in an endeavour not to cause unnecessary disadvantage or prejudice to the rights of creditors or be unduly harsh upon an individual involved while remaining in a position to sanction a member who is intrinsically culpable for an event.

**Vacation of office**

*Clause 87* provides the circumstances under which the office of a member becomes vacant, apart from the natural expiry of a member’s term.

**Leave of absence for a member**

*Clause 88* recognises that work or personal commitments of board members may necessitate a member’s absence from office for an extended period.

*Subclause (1)* provides that the Minister may approve a leave of absence of a member for a period not exceeding 9 months.

*Subclause (2)* allows the Minister to appoint another person to act in the office of member while the member is absent.

*Subclause (3)* provides that a person appointed to act in the office of an absent member must belong to the same category of persons mentioned in the clause to which the absent member belongs.

*Subclause (4)* states that the incidental powers of Governor in Council are not affected by the provisions of the Bill that permits the Minister to make an acting appointment.

### **Effect of vacancy in membership of board**

*Clause 89* provides that the performance, function or exercise of a power by the board is not affected by a vacancy in the membership of the board.

### **Report about person's criminal history**

*Clause 90* For help in deciding whether a person is suitable for an appointment as a board member, this clause permits the chief executive to obtain a report about the person's criminal history. Through the operation of clause 86(1)(b)(v), the provision of a criminal history report does not override the application of the *Criminal Law (Rehabilitation of Offenders) Act 1986*.

*Subclause (2)* provides that the chief executive may make a request for a report only if the person has given the chief executive written consent for the request.

*Subclause (5)* requires that any report obtained from the commissioner of the police service must be destroyed as soon as practicable after it is no longer needed for the purpose for which it was requested.

## ***Division 4—Business and meetings***

### **Conduct of business**

*Clause 91* provides that board may conduct its business in any way it considers appropriate.

This clause is to be read subject to clauses 92 to 96 inclusive.

**Times and places of meetings**

*Clause 92* requires board meetings to be held at least once every 2 months at a time and place decided by the chairperson. A meeting must also be convened if requested by the Minister or at least two members.

**Quorum**

*Clause 93* provides that a quorum for a meeting is 4 members.

**Presiding at meetings**

*Clause 94* provides that the chair is to preside at meetings. If the chair is absent, the deputy chair is to preside. If both chair and deputy chair are absent, the person nominated by the chair or deputy chair is to preside.

*Subclause (4)* provides that where the offices of chair and deputy chair are both vacant, a member chosen by the members present is to preside.

**Conduct of meetings**

*Clause 95* sets out a manner by which meetings are to be conducted.

*Subclause (4)* allows meetings to be held using any technology that reasonably allows members to hear and take part in discussions as they happen .

*Subclause (6)* provides a procedure for passing a valid resolution by written agreement without holding a board meeting (eg. the “flying minute”).

**Minutes**

*Clause 96* requires the board to keep minutes of meetings, which, apart from any other matter, must record decisions, resolutions and authorisations, and reasons for those decisions, resolutions, and authorisations, that may be made respectively under clauses 73(2), 75(2), 95(6), and 105.

***Division 5—Disclosure of interests by board members*****Disclosure of interests**

*Clause 97* provides the mechanism and procedures for disclosure of interests by members of the board.

*Subclause (7)* provides that disclosures must be recorded in the board's minutes.

To preserve confidentiality, unless the member disclosing the interest consents it is expected that, only the fact of disclosure without the content of disclosure would be recorded.

***Division 6—Directions by Minister and performance agreements*****Ministerial direction**

*Clause 98* provides that the Minister may give written direction about the performance of the board's functions or the exercise of its powers if satisfied it is necessary to do so in the public interest.

*Subclause (2)* and *(3)* list the type of directions that may or may not be given.

*Subclause (4)* provides that the board must comply with the direction notwithstanding the provisions of clause 79.

*Subclause (5)* provides that the Minister must consult with the board before giving a direction.

*Subclause (6)* provides that any direction must be gazetted within 21 days of it being given.

**Performance agreement**

*Clause 99* requires the board to enter into annual performance agreements with the Minister, which identifies the board's strategic direction. It may include any matter relevant to the operation of the board.

It is expected that financial planning and the manner by which the board would operate within given budgets would be a significant feature in any agreement.

This agreement is not to be regarded as being in the nature of a “direction” under clause 98 that would be reportable in the annual report under clause 107, but it is expected that the strategic direction of the board would feature prominently in any annual report.

### ***Division 7—Registrar of board***

#### **Appointment and function of registrar**

*Clause 100* provides that a registrar to the board is to be appointed under the Public Service Act 1996 with duties of managing the administrative affairs of the board.

The registrar will be a public servant, employed in the department under the Minister responsible for administering the Bill. The department will be responsible for the payment of the registrar’s salary and for ongoing relieving arrangements during any absence of the registrar.

It is conceivable that the person appointed as registrar may be assigned duties in addition to those of managing the administrative affairs of the board.

#### **Board to reimburse cost of registrar’s services**

*Clause 101* requires the board to reimburse the relevant department for the costs incurred in the employment of the registrar.

### ***Division 8—Register***

#### **Keeping register**

*Clause 102* requires the board to keep a register of persons who are or have been registered professional engineers.

*Subclause (2)* provides that the register may be kept in any form the board considers appropriate, including in electronic format.

*Subclause (3)* lists the matters that must and must not be contained on the register, but this does not preclude additional matters being contained on the register as the board may require, provided that such additional matters do not infringe privacy principles or any other relevant laws.

**Inspection of register**

*Clause 103* requires the board to keep the register open for inspection by the public and must provide a person with a copy of, or an extract from the register upon payment of a prescribed fee. The board may make the register available for inspection on its website.

When read in conjunction with clause 102, this clause aims to allow the public to research a registered engineer's professional history, to enable an informed decision to be made on any potential engagement of professional services.

***Division 9—Other provisions about the board*****Application of other Acts**

*Clause 104* states that the board is a statutory body within the meaning of the Financial Administration and Audit Act and the Statutory Bodies Financial Arrangements Act.

**Board's common seal**

*Clause 105* provides that the board has a common seal, which is to be used only as authorised by the board.

**Board to reimburse tribunal costs**

*Clause 106* requires the board to pay the reasonable costs of the tribunal in conducting proceedings for reviews of decisions made by the board, and for disciplinary proceedings.

**Matters to be included in annual report**

*Clause 107* states matters that are to be included in the board's annual report.

Clause 99 requires the board to enter into a performance agreement with the Minister that identifies the board's strategic direction. This agreement is not a "direction" reportable under subclause 107(a), but it is expected that the strategic direction of the board would feature prominently in any annual report.

## **PART 6—CODES OF PRACTICE**

### **Board to make code of practice**

*Clause 108* requires the board to make a code of practice to provide guidance as to appropriate professional conduct and practice.

It is expected that the code of practice may provide for matters such as:

- (a) acommunication with clients in respect of costs; charging excessive fees or costs;
- (b) conflicts of interest;
- (c) acting prejudicial to a client’s interest;
- (d) continuing professional development;
- (e) conduct of business with adequate levels of professional indemnity insurance and identification to clients of the levels of professional indemnity insurance held;
- (f) misleading statements or representations to clients;
- (g) offering or giving of inducements or rewards in an attempt to obtain a commission;
- (h) speculative commissions;
- (i) serious neglect or undue delay in performance of a commission;  
and
- (j) failure to maintain reasonable standards of competence and diligence.

*Subclause (2)* lists the entities that the board must consult with in developing a code, or before adopting a code.

*Subclause (3)* provides that the code has no effect until it is approved under a regulation.

*Subclause (4)* provides that the board may make the code of practice by adopting or amending another entity’s code of practice.

*Subclause (5)* requires the board to review its code of practice at least once every three years.

*Subclause (6)* provides that the code is a statutory instrument.



**Tabling of code**

*Clause 109* provides that, where a code of practice has been approved under a regulation, the Minister must, within 14 days, table a copy of the code in the Legislative Assembly.

*Subclause (3)* provides that the code is not invalid if there is a failure to table the code in the Legislative Assembly.

**Inspection of code**

*Clause 110* provides that the code of practice must be kept available for inspection by the public, and a copy of it or part of it must be provided to any person upon payment of a fee prescribed by regulation.

*Subclause (2)* provides that the board may make the code of practice available for inspection on its website.

**Notice of approval or amendment of code**

*Clause 111* provides that the board must notify registered professional engineers of the approval of the code and of any amendments of the code.

**Use of code of practice in disciplinary proceeding**

*Clause 112* provides that the approved code of practice is admissible as evidence in a disciplinary proceeding brought against a registered professional engineer.

*Subclause (2)* provides that the code may only be used as evidence of appropriate professional conduct or practice.

Clause 129 requires the tribunal to have regard to the code of practice in deciding whether a registered professional engineer has behaved in a way that constitutes unsatisfactory professional conduct.

**PART 7—OTHER OFFENCE PROVISIONS**

The intention of Part 7 is to restrict the title and use of the words “registered professional engineer”, “registered professional engineer of

Queensland” and the derivative “RPEQ”, to persons registered under the Bill.

It is intended that a person must not offer, hold out or provide a professional engineering service unless a registered professional engineer, registered in the area of engineering for which the service is offered, held out or provided, carries out or is responsible for the carrying out of those services.

The further intention is to require a registered professional engineer, registered in the area of engineering for which a professional engineering service is offered, to be located at a place from where the service is offered, to carry out or to take responsibility for the carrying out of the service. Advertising material must identify the name and contact details of the registered professional engineer responsible and individual clients must similarly be informed of the engineer’s contact name and details.

Part 7 is to be read in conjunction with clause 141 which provides that a person who claims or holds out or provides professional engineering services and does not have a registered professional engineer – registered in the area of engineering for which the services are offered or provided - carrying out or responsible for the carrying out of those services, then such person cannot recover monetary or other consideration for the performance of those services.

### **Claims about being a registered professional engineer**

*Clause 113 Subclause (1)* provides that it is an offence for a person who is not a registered professional engineer to claim or hold out to be, or allow himself or herself to be held out to be a registered professional engineer.

*Subclause (2)* provides that a person must not knowingly hold out another person to be a registered professional engineer if that other person is not a registered professional engineer.

A high financial penalty (currently \$75,000) is imposed for this offence.

### **Using titles or names**

*Clause 114* provides that it is an offence for a person who is not a registered professional engineer to use the title “registered professional engineer”, or “registered professional engineer of Queensland” or the abbreviation “RPEQ” or any other title that is prescribed by regulation, or

to use a title in any way that suggests that the person is a registered professional engineer.

A high financial penalty (currently \$75,000) is imposed for the offence, in view that this offence constitutes a “holding out” similar to clause 113.

### **Who may carry out professional engineering services**

*Clause 115* provides that a person who is not a registered professional engineer must not carry out professional engineering services.

*Subclause (2)* provides that the offence under subclause (1) is not committed if the person carries out the services under the supervision of a registered professional engineer.

A high financial penalty (currently \$75,000) is imposed for this offence.

*Subclause (3)* provides that it is an offence if a registered professional engineer carries out professional engineering services outside of the area of engineering in which the engineer is registered.

A high financial penalty (currently \$75,000) is imposed for this offence.

*Subclause (4)* provides that the offence under subclause (3) is not committed if the person carries out the services under the supervision of a registered professional engineer who is registered in the relevant area of engineering.

### **Claims about provision of professional engineering services**

*Clause 116* applies if a person (i.e. individuals and organisations) claims or holds out to provide a professional engineering service at a place.

*Subclause (2)* provides that the person must ensure that:

- (a) a registered professional engineer, registered in the area of engineering for which the service is offered, is at the place while the services are provided; and
- (b) that registered professional engineer, carries out or takes responsibility for the carrying out of the services.

A high financial penalty (currently \$75,000) is imposed for this offence.

These provisions are intended to require a registered professional engineer to be located at the office from where professional engineering services are offered, and to create an offence where such services are

provided without a registered professional engineer, registered in the area of engineering for which the service is offered, being at that location and taking responsibility for their provision, notwithstanding the ability of modern communication systems. For example, if a person advertises the services of a registered professional engineer from a regional office in Townsville, it is not acceptable that the work carried out at the Townsville office be supervised from Brisbane through weekly visits to the Regional office. A registered professional engineer, registered in the area of engineering for which the services are offered, based at the regional office must be responsible for providing the services from the regional office, and must be conferred with the authority and responsibility to supervise, direct, and provide such professional engineering services.

It is to be appreciated that, using the above example, there would be no impediment to work being carried out in the regional office in Townsville (without the presence of a relevant registered professional engineer) provided that it was not claimed or held out that the services of a registered professional engineer, registered in the area of engineering for which the service was offered, was provided at the regional office in Townsville. In such a case, it would need to be claimed or held out that the professional engineering services were provided from the Brisbane office and information provided to a client accordingly.

By way of further explanation, the work may not physically be done at the location or by the registered professional engineer concerned and the work may not be physically supervised in the sense of actual physical supervision while the work is being performed. The responsible registered professional engineer must see the results of the work performed and actually take responsibility for it. For example, some design work may be outsourced to another office of an organisation but the registered professional engineer at the location from where the service was offered must see the results of the work performed, verify adequacy and accept responsibility for it.

The term “place” in the phrase “at a place” does not refer to individual project or construction sites where the services of a registered professional engineer are provided solely in respect of that individual construction project.

### **Providing information about registered professional engineers**

*Clause 117* provides that a person who claims or holds out to “someone” that the person will provide a professional engineering service, must

inform that “someone” of the name and contact details of the registered professional engineer who is to be responsible for the provision of the service and similarly for any change in responsible engineer.

A high financial penalty (currently \$22,500) is imposed for the offence.

### **Information on correspondence about professional engineering services**

*Clause 118* provides that a person who provides or intends to provide to “someone” that the person will provide a professional engineering service, then the person must ensure that the name and contact details of the registered professional engineer who is or is to be responsible for the performance of that service, is stated in all correspondence between the person and that “someone”.

A high financial penalty (currently \$22,500) is imposed for the offence.

### **Information for advertisements**

*Clause 119* provides that all advertisements offering a professional engineering service must contain the name and contact details of the registered professional engineer responsible for the provision of that service.

A high financial penalty (currently \$22,500) is imposed for this offence.

## **PART 8—REVIEWS AND DISCIPLINARY PROCEEDINGS**

### *Division 1—Preliminary*

#### **Application of Tribunal Act**

*Clause 120* provides that the Queensland Building Tribunal Act applies to a review of a disciplinary proceeding to the extent that it is capable of applying.

In accordance with the Queensland Building Tribunal Act, hearings are conducted before a single member, who will be from the legal profession. From time to time, the sitting member will require technical assistance

from the engineering profession, and in this regard, it is intended that the board draw up a list of experts in each of the areas of engineering prescribed by regulation, who may be called upon by the sitting member to provide expert advice in respect of the matter being heard. This process will be facilitated by a memorandum of understanding between departments responsible for administering respective legislation.

### **Representation at proceeding**

*Clause 121* provides for representation before the tribunal.

*Subclause (1)* provides that the board must only be represented by a person who is not a lawyer and an individual must represent himself or herself.

In the case of the board it is expected that, the board would generally be represented by the Registrar.

*Subclause (2)* provides that, notwithstanding subclause (1), the board may be represented by a lawyer and an individual may be represented by a lawyer or other person if:

- (a) all parties agree; or
- (b) it is a disciplinary proceeding; or
- (c) the tribunal considers it appropriate in the interests of justice.

*Subclause (3)* provides that at a disciplinary proceeding, a person summoned to appear before the tribunal may be represented by a lawyer or other person.

### ***Division 2—Reviews***

#### **Review of particular decisions**

*Clause 122* provides for an appeal of administrative decisions of the board.

Persons who have standing to make an application for review and the administrative decisions the review will relate to, are set down in subclause (2).

*Subclause (3)* provides that the tribunal may make such orders as it decides.

**Application for review**

*Clause 123* states the procedures for commencing a proceeding for review in the tribunal.

**Stay of operation of decision**

*Clause 124* allows the tribunal to order the stay of the operation of an administrative decision refusing to renew a person's registration or cancelling a person's registration for a particular period, or until the tribunal decides on the matter under review.

**Effect of review on operation of decision**

*Clause 125* provides that a review of a decision does not affect the operation of the decision unless there is a stay of operation under clause 124.

**Information about review**

*Clause 126* provides that the board must keep available for public inspection information about the manner by which a person may apply for a review of an administrative decision.

***Division 3—Disciplinary proceedings*****Tribunal may conduct disciplinary proceeding**

*Clause 127* provides that the tribunal may conduct disciplinary proceedings.

**Starting disciplinary proceeding**

*Clause 128* states the procedures for commencing a disciplinary proceeding in the tribunal.

**Tribunal to have regard to code of practice**

*Clause 129* requires the tribunal to have regard to the code of practice established under Part 6 of the Bill when deciding whether a registered

professional engineer's conduct constitutes "unsatisfactory professional conduct", as given in schedule 2 to the Bill.

It is intended that the code of practice provide a benchmark standard of acceptable practice against which a registered professional engineer may be assessed by the tribunal. However the code is not the only source of information to which the tribunal may have regard in determining whether the registered professional engineer's conduct constitutes unsatisfactory professional conduct.

Clause 112 provides for the use of the code in disciplinary proceedings.

### **Continuation of particular proceeding**

*Clause 130* provides that if, during the course of a disciplinary proceeding against a registered professional engineer, the person ceases to be a registered professional engineer, the proceeding may continue.

### **Orders relating to registered professional engineer**

*Clause 131* outlines the orders the tribunal may make if it decides that a disciplinary ground is established.

Details of orders made by the tribunal may be noted on the register of professional engineers maintained by the board.

Clause 92 of the Queensland Building Tribunal Act provides that a party to a tribunal proceeding may appeal to the District Court against a decision of the tribunal that fully decides a matter that is the subject of the proceeding.

It is noted that the words "cancellation"; "disqualification" and "suspension" are to be accorded their ordinary dictionary meanings.

### **Orders relating to former registered professional engineer**

*Clause 132* This clause applies where a disciplinary proceeding is taken against a previously registered individual who is not currently registered at the time of the tribunal's decision. (For example, this provision would apply to an engineer who resigns after commencement of disciplinary proceedings but before the time of the tribunal's decision).

*Subclause (2)* sets down the orders that may be made by the tribunal. An order made under subclause (2)(b)(i) is effectively one that would have



been made if the person was currently registered. If such an order is made, it may, as required by clause 102, be entered on the register of professional engineers, as if the person remained registered.

*Subclause (3)* provides that if the order is one that would have the effect of cancelling a registration or disqualifying a person from registration, the tribunal must decide the period during which the person must not be re-registered.

*Subclause (4)* provides that the tribunal may decide that a person must never be re-registered.

### **Effect of particular orders**

*Clause 133 Subclause (1)* provides that financial penalties imposed by the tribunal are to be paid to the board.

*Subclause (2)* provides that if the tribunal orders that a registered professional engineer be disqualified, the board must not re-register the person during the period of disqualification.

*Subclause (3)* provides that in respect of an order for disqualification made under clause 132(3) concerning a former registered professional engineer, the board must not re-register the person during the period of disqualification.

### **Recording details of orders**

*Clause 134* provides for the recording on the register of registered professional engineers details of tribunal orders.

## **PART 9—LEGAL PROCEEDINGS**

### *Division 1—Evidence*

#### **Application of div 1**

*Clause 135* states that clauses 136-138 inclusive apply to proceedings for offences against the Bill. These clauses apply to evidence presented to a Court.

Offences may be committed by a registered professional engineer or by any other person.

### **Appointments and authority**

*Clause 136* establishes the presumption of appointment and authority of the chair of the board, a board member, the registrar or an investigator appointed by the board.

### **Signatures**

*Clause 137* provides that the signatures of the chair, member or investigator is evidence of the signature it purports to be.

### **Evidentiary matters**

*Clause 138* provides that a certificate stating any of the matters listed in this clause that is signed by the registrar, is evidence of the matter stated.

## ***Division 2—Offence proceedings***

### **Summary proceedings for offences**

*Clause 139* requires that proceedings for an offence against the Bill are to be taken in a summary way under the Justices Act 1886. Proceedings must commence within one year of the commission of the offence, or within 6 months of the offence coming to the complainant's knowledge but in such case, within 2 years after the commission of the offence.

### **False or misleading information or statements**

*Clause 140* states that where an offence involves "false or misleading" information or statements, a charge for the offence is not required to specify which of these matters (false or misleading) apply to the particular situation.

## **PART 10—OTHER MATTERS**

### **Performance and carrying out of professional engineering services by particular entities**

*Clause 141* is to be read in conjunction with Part 7 which relates to “other offence provisions”.

The clause provides that where:

- (i) a person who is not a registered professional engineer has claimed or held out to be or has allowed himself or herself to be held out as a registered professional engineer; or
- (ii) a person, in providing or undertaking to provide professional engineering services, claims or holds out that the services are carried out or have been performed or are to be carried out under the supervision of a registered professional engineer – (registered in the area of engineering for which the services have been offered or performed) - and the services are not carried out under the responsibility of such registered professional engineer;

then that person is not entitled to recover monetary or other consideration for the performance of those services.

### **Protection from liability**

*Clause 142* provides statutory protection to the persons listed in the clause in respect of actions taken under the Bill, provided that the person has acted honestly and without negligence.

### **Approval of forms**

*Clause 143* provides that the chief executive (the Director-General of the Administering Department) may approve forms for use under the Bill.

### **Regulation-making power**

*Clause 144* provides for a general regulation making power by the Governor in Council. This clause applies in addition to particular regulation making powers stated elsewhere in the Bill.

**PART 11—REPEAL AND TRANSITIONAL PROVISIONS***Division 1—Repeal***Repeal of Professional Engineers Act 1988**

*Clause 145* repeals the Professional Engineer’s Act 1988.

*Division 2—Transitional provisions**Subdivision 1—Preliminary***Definitions for div 2**

*Clause 146* provides definitions to words and expressions used in Part 11 (clauses 147-165).

*Subdivision 2—Transitional references***References to repealed Act**

*Clause 147* provides that a reference to the Professional Engineers Act 1988 made in any other Act or document is to be taken as a reference to the Professional Engineers Act 2002, if the context permits.

**References to former board**

*Clause 148* provides that a reference in any other Act or document to the Board of Professional Engineers constituted under the Professional Engineers Act 1988 is to be taken to be a reference to the Board of Professional Engineers constituted under the Professional Engineers Act 2002, if the context permits.

***Subdivision 3—Other transitional provisions*****Dissolution of former board**

*Clause 149* provides that upon commencement of the Professional Engineers Act 2002, the former board is dissolved and its members go out of office. No compensation is payable to former board members.

**Particular members of former board continue in office**

*Clause 150* provides that existing members of the Board of Professional Engineers appointed under the Professional Engineers Act 1988 remain in office until the commencement of the substantive provisions of the Bill on 1 January 2003 notwithstanding that a member's term of office may otherwise have expired.

**First appointment of particular member**

*Clause 151* Clause 82(2)(c) of the Bill provides for one member of the board to be elected in the manner provided for by regulation. The election of this member is not able to be held until after the commencement of the substantive provisions of the Bill, giving rise to a lapse of time between the commencement of the substantive provisions of the Bill and the date of the elected member commencing office.

Clause 151 ensures that full membership of the board is achieved from the date of commencement of the Professional Engineers Act 2002. It provides that, pending an appointment to the board of an elected member, the Governor in Council may appoint any one of the previous board members to the position. The appointed member will hold office for 18 months, or until the elected member takes office, whichever first occurs.

**Employees of former board**

*Clause 152* ensures continuity of employment, and maintenance of all existing and accruing rights for employees of the former board.

**Vesting of former board's assets, rights and liabilities**

*Clause 153* provides that the assets, rights and liabilities of the former board vest in the board.

**Vesting of former board's pending legal proceedings**

*Clause 154* provides that unfinished legal proceedings by or against the former board or any of its members may be continued and finished by or against the board.

**Dissolution of disciplinary panel**

*Clause 155* provides that upon commencement of the *Professional Engineers Act 2002*, the former disciplinary panel is dissolved and its members go out of office. No compensation is payable to former panel members.

**Complaints under repealed Act**

*Clause 156* provides that if a complaint has been given to the former board under the repealed Act and has not been dealt with, the complaint is taken to be a complaint under this Bill.

**Disciplinary proceeding started before commencement**

*Clause 157* provides that if, under the repealed Act, disciplinary proceedings have been commenced against a registered professional engineer and a panel has been formed to hear and decide the matter, the disciplinary proceedings continue under the repealed Act.

*Subclause (5)* provides that an order of the panel is taken to be an order of the tribunal under this Bill.

**Continuing investigations**

*Clause 158* provides that an investigator appointed under the repealed Act and undertaking an investigation is taken to be an investigator under this Bill and may continue the investigation.

**Appeals**

*Clause 159* provides that if a person has appealed or could have appealed to the District Court before the commencement of this Bill against a decision mentioned in the repealed Act, the District Court may hear and continue to hear and decide the appeal under the repealed Bill.

*Subclause (5)* provides that the District Court may make such orders it considers necessary having regard to the provisions of this Bill.

### **Existing registrations – individuals**

*Clause 160* provides that professional engineers registered under the repealed Act are taken to be registered under this Bill, and registration remains in force (unless cancelled) until the later of the following days:

- (i) 31 December first happening after commencement; or
- (ii) the day that is 3 months after commencement.

However, if the individual pays a 6 months registration fee before (i) or (ii) then registration remains in force until the end of the next financial year.

### **Existing registration – divisions of engineering**

*Clause 161* provides that the divisions of engineering in which a professional engineer was registered under the repealed Act (immediately before commencement of this Bill) is taken to be the area of engineering for which the individual is registered under this Bill.

### **Existing registration – other entities**

*Clause 162* provides that upon commencement, “companies” and “unit” approvals granted under Part 5 or 6 of the repealed Bill cease to have effect.

### **Existing applications for registration**

*Clause 163* provides that if an application for registration has been made under the repealed Act but not decided before the commencement of this Bill, the application is to be decided under this Bill.

### **Continuing effect of qualifications under repealed Act**

*Clause 164* provides that a individual entitled under clause 18(a) and (b) of the repealed Act to be registered as a registered professional engineer is taken to be qualified for registration under clause 10(1) of this Bill.

This clause applies only if the individual qualified for registration under this clause registers before a regulation providing for qualification and competency comes into force under clause 10 of this Bill.

### **Refund of fees – registered professional engineering company or unit**

*Clause 165* provides a formula by which the board must refund to a registered professional engineering company or a registered professional engineering unit a proportional part of an annual fee.

Under the repealed Act, registered professional engineering companies and registered engineering units were required to pay an annual fee for registration, which would have been effective under the repealed Act until 28 March 2003. Under this Bill there is no requirement for registration of professional engineering companies or professional engineering units. The refund amount is calculated by reference to the commencement date of this Bill, less an administrative cost incurred by the board in processing the refund.

## **PART 12—CONSEQUENTIAL AMENDMENTS**

### **Acts Amended**

*Clause 166* notes that schedule 1 amends the Acts mentioned in it.

*Schedule 1* provides for consequential amendments to specified items of legislation.

*Schedule 2* provides a dictionary of meaning of words used in the Act.



**Professional Engineers Bill 2002**  
**Explanatory Notes**  
**Schedule**  
**List of Penalty Provisions**

<b>Clause</b>	<b>Penalty Points</b>	<b>Current dollar value</b>	<b>Division or Part</b>	<b>Offending Behaviour</b>
30	50	3,750	Offences about registration	False or misleading statement
31	50	3,750		False or misleading document
32	10	750		Notification about particular matters
54	10	750	Appointment of investigators and other matters	Failure to return identity card
56	50	3,750	Powers of board and investigators	Offences – failure to give information
56	50	3,750		Offences – failure to attend, answer questions or produce document
65	50	3,750	Offences about investigations	False or misleading statements
66	50	3,750		False of misleading documents
67	100	7,500		Obstructing board or investigators
68	100	7,500		Impersonation of investigators
113	1000	75,000	Other offence provisions	Claims about being a registered professional engineer – holding out
113	1000	75,000		Claims about being a registered professional engineer Holding out another person

*Professional Engineers Bill 2002*

<b>Clause</b>	<b>Penalty Points</b>	<b>Current dollar value</b>	<b>Division or Part</b>	<b>Offending Behaviour</b>
114	1000	75,000		Using titles or names
115	1000	75,000		A person who is not a registered professional engineer must not carry out professional engineering services
115	1000	75,000		A registered engineer must not carry out work in an area of engineering for which he or she is not registered
116	1000	75,000		Claims about provision of professional engineering services
117	300	22,500		Providing information Name and contact details of engineer
117	300	22,500		Providing information Name and contact details any substitute
118	300	22,500		Information on correspondence
119	300	22,500		Information for advertisements
131	40	3,000	Disciplinary proceedings	Penalty order on engineer by the tribunal.
132	40	3,000		Penalty imposed on former registered professional engineer by tribunal
144	20	1,500	Other matters	Regulation making power by Governor in Council