

Professional Engineers and Other Legislation Amendment Bill 2008

Explanatory Notes

Short Title

Professional Engineers and Other Legislation Amendment Bill 2008

General Outline

Objectives of the Bill

The objective of the Professional Engineers and Other Legislation Amendment Bill 2008 (the Bill) is to amend the *Professional Engineers Act 2002*, the *Electrical Safety Act 2002* and the *Public Records Act 2002*.

The amendments to the *Professional Engineers Act 2002* are to:

- introduce a simplified co-regulatory scheme under which assessment entities are approved to carry out the assessment of qualifications and competency of professional engineers;
- improve the fitness to practise provisions;
- introduce a range of miscellaneous amendments in relation to matters such as restoration of registration, staffing of the Board and disciplinary and penalty provisions.

The amendments to the *Electrical Safety Act 2002* are to update references to electrical engineers so they are consistent with the *Professional Engineers Act 2002*.

The amendments to the *Public Records Act 2002* are to provide that the records of a Parliamentary Secretary are treated in the same way as the records of a Minister.

Reasons for the objectives and how they will be achieved

Professional Engineers Act 2002

The *Professional Engineers Act 2002* provides that a regulation may prescribe qualifications and competencies in the practice of engineering and the assessment entities that would assess applicant engineers against these qualifications and competencies. The assessment entities are also required to conduct competency assessments against continuing competency requirements. The Board of Professional Engineers of Queensland (the Board) has experienced difficulties in developing detailed qualifications and competencies in the practice of engineering for prescription by regulation. As a result the transitional provisions of the *Professional Engineers Act 2002* (based on the repealed *Professional Engineers Act 1988*) are still being used to assess applicant engineers for registration.

The proposed amendments to the *Professional Engineers Act 2002* addresses these issues by introducing a simplified co-regulatory scheme under which the qualifications and competencies for registration of engineers will no longer be prescribed by regulation. Instead, one or more entities could apply for approval by the Minister of a scheme for the assessment of engineers' qualifications and competencies in identified areas of engineering, for a period of up to 5 years.

Proposed schemes will be evaluated against a set of criteria which will be set out in the Act, including that:

- the scheme adequately provides for the assessment of qualifications and competencies of engineers in identified areas of engineering;
- the scheme must be consistent with national and international standards for the recognition of professional engineers;
- assessments of applicant engineers are carried out independently and professionally;
- fees imposed on applicant engineers are reasonable;
- the body has the ability to establish adequate continuing professional development requirements and an effective audit program.

Engineers seeking to be registered under the *Professional Engineers Act 2002* will be assessed by the assessment entity which will advise the Board

whether applicant engineers have the necessary qualifications and competence to be registered. The Board will continue to assess fitness to practise requirements, register professional engineers and carry out disciplinary processes.

The Bill also proposes to broaden the fitness to practise provisions to enable the Board to request a written report from the Police Commissioner about the criminal history of an applicant for registration and to request that a registered engineer undergo a health assessment if the Board reasonably believes that the registered engineer is unable to competently and safely practise as a registered engineer because of the engineer's mental or physical health. The amendments relating to criminal history checks and health assessments are consistent with provisions in the *Legal Profession Act 2007*. These provisions will enhance the consumer protection provisions provided by the *Professional Engineers Act 2002*. The provisions support and enhance the Board's existing power to consider an applicant's criminal history (see s11(a)) and mental or physical health (see s11(e)) as part of the assessment of an applicant's fitness to practise as a registered professional engineer.

The Bill also introduces a further ground for cancellation of registration where a registered professional engineer has been removed from a register in another jurisdiction in Australia or elsewhere, and including a non-government register such as the National Professional Engineering Register.

Some improvements to the disciplinary processes are included in the Bill. They include giving the Board the ability to adopt another option for dealing with a discipline matter should the original option not proceed for some reason and giving the Board greater flexibility in the resolution of matters once they reach the Commercial and Consumer Tribunal, and providing a greater range of penalties and enforcement options.

Under the Bill the maximum disciplinary penalty is increased to 200 penalty points (currently \$15,000). This is consistent with the maximum penalty in discipline cases provided for by the *Commercial and Consumer Tribunal Act 2003*. This will make disciplinary penalties more proportionate to the offence provisions of the Act and more consistent with similarly regulated professions both interstate and internationally.

Public Records Act 2002

The *Public Records Act 2002* does not currently make provision for records of a Parliamentary Secretary. While many records of a Parliamentary

Secretary are also records of a Minister and therefore classed as ministerial records under the *Public Records Act 2002* there may be other records of a Parliamentary Secretary that are not ministerial records.

Under the amendments in the Bill the *Public Records Act 2002* will treat records of a Parliamentary Secretary in the same way as records of a Minister so that:

- documents created or received by a Parliamentary Secretary in the course of carrying out their duties as a Parliamentary Secretary, including documents created or received in the course of carrying out a Minister's portfolio responsibilities, are public records; and
- documents created or received by a Parliamentary Secretary which relate to his or her personal or party political activities or his or her capacity as a member of the Legislative Assembly are not public records.

Administrative cost to Government of implementation

It is anticipated that the Bill will not impose any significant administrative cost to Government.

Consistency with Fundamental Legislative Principles

Whether the legislation has sufficient regard to the rights and liberties of individuals

Under the Bill there is no merit based review of a decision of the Minister in relation to the approval of an assessment scheme. However, the applicant is given the opportunity to make representations about a proposed negative decision and the Minister must take into account the representations before making the final decision. The Minister is also required to provide reasons for the decision and there is no removal of the right to seek judicial review of the decision.

It is not considered that the Bill raises any other fundamental legislative principles issues.

Extent Of Consultation

All Government departments and the Board have been consulted in the preparation of the Bill.

Wide industry consultation has been undertaken with respect to the amendments to the *Professional Engineers Act 2002* with organisations including Engineers Australia, the National Engineering Registration Board, Association of Consulting Engineers Australia (ACEA), Institute of Public Works Engineering Australia (IPWEA), Association of Professional Engineers, Scientists and Managers Australia (APESMA), Australasian Institute of Mining and Metallurgy (AusIMM), a representative from the Electrical/Electronic Engineering Industry and the Society of Fire Safety (Queensland Chapter).

Notes On Provisions

Part 1 Preliminary

Short title

Clause 1 sets out the short title as the Professional Engineers and Other Legislation Amendment Act 2008.

Commencement

Clause 2 provides that Part 3 commences on 1 July 2008.

Part 2 Amendments of Professional Engineers Act 2002 commencing on assent

Act amended in pt 2

Clause 3 provides for an amendment to the *Professional Engineers Act 2002*.

Clause 4 amends section 23(2)(b)(iii) of the *Professional Engineers Act 2002* to allow for an application fee to be charged for processing applications for restoration.

Clause 5 of the Bill inserts section 35A (Inquiries about fitness to practise as a registered professional engineer). Section 35A permits the Board to make inquiries about applicants, registered engineers applying for renewal and persons applying for restoration of their registration to help in deciding whether the person is, or continues to be, fit to practise as a registered professional engineer.

Clause 5 of the Bill inserts section 35B (Report about relevant person's criminal history). Section 35B allows the Board to ask the commissioner of the police service for a written report about the criminal history of an applicant for registration, a registered engineer applying for renewal or a person applying for restoration of their registration. This amendment will provide further assistance to the Board when assessing an applicant engineer's criminal history pursuant to section 11 of the *Professional Engineers Act 2002*.

Division 1AA Extended application of part 3

Clause 6 inserts section 36AA (Application to former registered professional engineers) to enable the commencement of disciplinary action against engineers who have de-registered prior to the commencement of disciplinary proceedings.

Clause 7 inserts section 69AA (Application of pt 4 to certain former registered professional engineers) which provides that a formerly registered professional engineer mentioned in section 36AA(1) is taken to be a registered professional engineer for the purposes of applying Part 4 of the *Professional Engineers Act 2002*.

Clause 8 updates the reference to the Queensland Division of the Institution of Engineers Australia in section 82(2)(b)(i).

Clause 9 amends the heading of Part 5, Division 7 to read 'Registrar of Board and other Staff'.

Clause 10 inserts section 100A (Other staff) which provides that, with the Board's consent, public service employees may be engaged by a public sector unit to provide services for the Board.

Clause 11 omits and replaces section 101 of the *Professional Engineers Act 2002*. The new section provides that the Board must reimburse the public sector unit in which the registrar or a public service employee is employed the reasonable costs of the services provided by the registrar or public service employee for the Board.

Part 6A Assessment entities and schemes

Division 1 Preliminary

Clause 12 inserts section 112A (Definitions for pt 6A) which provides definitions for new Part 6A of the *Professional Engineers Act 2002*.

Division 2 Suitability of assessment schemes

Clause 12 inserts section 112B. Section 112B(1) sets out criteria that assessment schemes would need to meet on initial application and to remain suitable for approval as an assessment scheme. Section 112B(2) defines ‘continuing registration requirements’ that are to be met by applicants for renewal of registration.

Division 3 Applications relating to assessment schemes

Clause 12 inserts section 112C (Application for approval) which provides that an entity may apply to the Minister for approval of a proposed assessment scheme for 1 or more areas of engineering to be conducted by the entity. The application for approval must be in the approved form and be supported by enough information to enable the Minister to decide the application. The application must also be accompanied by the proposed assessment scheme and the fee, if any, prescribed under a regulation.

Clause 12 inserts section 112D (Application for renewal) which provides that an assessment entity for an assessment scheme may apply to the Minister for renewal of the approval of the assessment scheme. The application for renewal must be in the approved form and be supported by enough information to enable the Minister to decide the application. The application must also be made at least 28 days before the approval of the assessment scheme ends and be accompanied by the fee, if any, prescribed under a regulation.

Clause 12 inserts section 112E (Application for variation) which provides that the assessment entity for an assessment scheme may apply to the Minister to vary the assessment scheme. The application for variation must be in the approved form and be supported by enough information to enable the Minister to decide the application. The application must also be accompanied by the proposed variation of the assessment scheme and the fee, if any, prescribed under a regulation.

Division 4 Referral of applications under this part to the board

Clause 12 inserts section 112F (Minister to refer an application under this part to the board for assessment) which provides that, after receiving an application under Part 6A of the *Professional Engineers Act 2002*, the Minister must refer the application to the Board for assessment.

Clause 12 inserts section 112G (Consideration by board) which specifies what the Board must consider when an application for approval, an application for renewal or an application for variation is referred by the Minister. The Board is not restricted in its consideration to the information contained in the application.

Clause 12 inserts section 112H (Further information or document to support application) which provides that the Board may require the applicant to give the Board further information or a document the Board reasonably requires to make its recommendation on the application. The applicant must respond within a reasonable time of not less than 14 days. The Board and the applicant may agree on an extension of the time stated in the notice. The applicant is taken to have withdrawn its application if it does not comply with the requirement within the specified time.

Clause 12 inserts section 112I (Report by board about application) which requires the Board to give the Minister a written report about the application which contains the Board's recommendation about whether the Minister should grant the application and whether the Minister should impose a condition on the approval.

Division 5 Decision of Minister

Clause 12 inserts section 112J (Decision on application) which requires the Minister to consider the application and decide to either grant, or refuse to grant, the application. The Minister must have regard to the Board's report when considering the application but is not bound by any recommendation contained in the report. The Minister may also impose conditions on the approval that are reasonable and relevant.

Clause 12 inserts section 112K (Grant of application) which provides that if the Minister decides to grant the application without conditions then the Minister must give the applicant notice of the decision as soon as practicable.

Clause 12 inserts section 112L (Grant of application with conditions) which provides that if the Minister proposes to grant the application with conditions, the Minister must give the applicant a notice stating the proposed conditions, the reasons for the proposed decision and that the applicant may make written representations to the Minister about the proposed decision within 28 days. The Minister must consider all written representations and decide whether to grant the application with, or without, conditions.

Clause 12 inserts section 112M (Refusal of application) which provides that if the Minister proposes to refuse to grant the application, the Minister must give the applicant a notice stating the reasons for the proposed decision and that the applicant may make written representations to the Minister about the proposed decision within 28 days. The Minister must consider all written representations and decide whether to grant the application with, or without, conditions or refuse to grant the application.

Division 6 Term of approval

Clause 12 inserts section 112N (Term of approval) which specifies that, unless sooner cancelled, suspended or otherwise ended, approval of an assessment scheme remains in force for the term decided by the Minister but must not be more than 5 years.

Clause 12 inserts section 112O (Approval continues pending decision about renewal) which provides that if an assessment entity applies for renewal of approval of an assessment scheme the approval of the assessment scheme is taken to continue in force until the assessment entity withdraws that application or the Minister decides to renew the approval or refuses to grant the renewal.

Division 7 Cancellation, suspension and surrender of approval

Clause 12 inserts section 112P (Grounds for cancellation and suspension) which specifies the grounds for cancelling or suspending the approval of an assessment scheme.

Clause 12 inserts section 112Q (Show cause notice) which requires that the Minister must give the assessment entity a show cause notice if the Minister believes that a grounds for cancellation or suspension of the approval of an assessment scheme exists and the Minister proposes to cancel or suspend the approval. The assessment entity may make written representations explaining why the approval should not be cancelled or suspended.

Clause 12 inserts section 112R (Consideration of representations) which requires that the Minister consider all written representations made.

Clause 12 inserts section 112S (Ending show cause process without further action) which provides that if, after considering the accepted representations for the show cause notice, the Minister no longer believes the ground exists to take the proposed action, the Minister must not take further action about the show cause notice and must, as soon as practicable, give notice to the assessment entity that no further action is to be taken about the show cause notice.

Clause 12 inserts section 112T (Cancellation or suspension of approval) which provides that if, after considering the accepted representations for the show cause notice (or if no accepted representations are made) the Minister believes the ground exists to cancel or suspend the approval, the Minister may cancel or suspend the approval as the case may be. If the Minister decides to cancel or suspend the approval the Minister must give the assessment entity notice of the decision and the reasons for the decision.

Clause 12 inserts section 112U (Voluntary surrender of approval) which provides that the assessment entity for an assessment scheme may surrender the approval for the scheme by notice given to the Minister.

Division 8 Record of assessment entities

Clause 12 inserts section 112V (Record of assessment entities) which requires the Board to keep a record of the name and contact details of each assessment entity and the areas of engineering for which the entity conducts an assessment scheme. The record must be published on the Board's website and made available to the public in hard copy form.

Starting disciplinary proceeding

Clause 13 corrects a cross-reference in section 128 of the *Professional Engineers Act 2002* to the *Commercial and Consumer Tribunal Act 2003*.

Amendment of s 129 (Tribunal to have regard to code of practice)

Clause 14 amends section 129 of the *Professional Engineers Act 2002* so that the Commercial and Consumer Tribunal (the Tribunal) must have regard to the code of practice in deciding whether a registered professional engineer or former registered professional engineer has behaved in a way that constitutes unsatisfactory professional conduct or practice.

Amendment of s 131 (Orders relating to registered professional engineer)

Clause 15 amends section 131 to increase from 40 to 200 penalty units the maximum penalty the Tribunal may order a registered professional engineer to pay if a disciplinary ground is established.

Clause 15 also amends section 131(3) to enable the Tribunal to impose a condition on the registered professional engineer's registration or to suspend the registered professional engineer's registration for a stated period. This amendment adds to the already existing orders which the Tribunal may make.

Amendment of s 132 (Orders relating to former registered professional engineer)

Clause 16 replaces section 132(1) of the *Professional Engineers Act 2002* which now provides for orders to be made by the Tribunal against a person who is not a registered professional engineer at the time of the Tribunal's order.

Clause 16 increases from 40 to 200 penalty units the maximum penalty the Tribunal may order a formerly registered professional engineer to pay if a disciplinary ground is established.

Clause 16 also omits and replaces section 132(2)(b). The new section provides that if a disciplinary ground is established against a formerly registered professional engineer the Tribunal may:

- order the person to pay a penalty;
- make an order reprimanding the person; and/or
- make an order disqualifying, indefinitely or for a stated period, the person from obtaining registration as a registered professional engineer.

Clause 16 also omits section 132(3) and section 132(4) as a consequence of the other amendments made by this clause 16.

Amendment of s 133 (Effect of particular orders)

Clause 17 makes amendments to section 133 required as a consequence of amendments made in clause 15 and clause 16 to section 131 and section 132 respectively.

Amendment of s 139 (Summary proceedings for offences)

Clause 18 redrafts section 139(2) of the *Professional Engineers Act 2002*. The amendment updates the wording of the existing section to accommodate current drafting practices.

Amendment of pt 11, div 2, hdg

Clause 19 amends the heading of Part 11, division 2 to make it more descriptive of the provisions.

Insertion of new pt 11, div 4

Division 4 Transitional provision for Professional Engineers and Other Legislation Amendment Act 2008, part 2

Clause 20 inserts section 167 (Certain decisions made under part 6A to have effect from 1 July 2008) which provides that a decision of the Minister, made before 1 July 2008, under section 112J (Decision on application) to grant an application for approval of a proposed assessment scheme, has effect from 1 July 2008.

Amendment of sch 2 (Dictionary)

Clause 21 makes a number of amendments to Schedule 2 of the *Professional Engineers Act 2002* required as a consequence of this Bill. The amendment of the definition of 'professional engineering service' in Schedule 2 is to clarify that the exclusion from the definition applies only to an engineering service that is wholly provided in accordance with a prescriptive standard.

Part 3 Amendments of Professional Engineers Act 2002 commencing on 1 July 2008

Clause 22 provides that Part 3 of the Bill amends the *Professional Engineers Act 2002*.

Clause 23 inserts section 7A (Areas of engineering) which defines the term ‘areas of engineering’ as the areas of engineering for which there is an assessment scheme or for which qualifications and competencies are prescribed under section 10(1)(b) of the *Professional Engineers Act 2002*. The Board is required to publish the areas of engineering on its website.

Amendment of s 8 (Applying for registration)

Clause 24 omits and inserts section 8(2)(b)(ii) of the *Professional Engineers Act 2002*. This amendment is of a technical drafting nature to ensure that the section is consistent with the new simplified co-regulatory scheme introduced by the Bill.

Amendment of s 10 (When applicant is qualified for registration)

Clause 25 omits and replaces section 10(1). The new section specifies the requirements that an applicant for registration needs to satisfy to qualify for registration in an area of engineering, being qualifications and competencies provided for under an assessment scheme or as specified in a regulation.

Clause 25 also makes consequential changes to section 10(2) and omits section 10(3) which provided for the prescription of assessment entities in a regulation.

Amendment of s 11 (Fitness to practise as a registered professional engineer)

Clause 26 inserts a new provision in section 11 which allows the Board, in deciding whether an applicant is fit to practise, to have regard to whether an applicant underwent a health assessment as requested or whether the applicant cooperated with the doctor appointed to conduct the health

assessment. Health assessments are provided for in section 35E of the *Professional Engineers Act 2002*.

Amendment of s 12 (Deciding application)

Clause 27 amends section 12 of the *Professional Engineers Act 2002*. This amendment is of a technical drafting nature to ensure that the section is consistent with the simplified co-regulatory scheme introduced by the Bill.

Amendment of s 13 (Grant of application)

Clause 28 inserts new sections 13(2) and 13(3) which provide that the Board may, in granting an application, decide to impose conditions on the applicant's registration that are reasonable and relevant. If the Board decides to impose conditions on the applicant's registration, the Board must as soon as practicable give the applicant an information notice about the decision.

Replacement of s 16 (Meaning of continuing competency requirements)

Clause 29 omits and replaces section 16. The new section changes the terminology of what was referred to as 'continuing competency requirements' to be referred to as 'continuing registration requirements'. This creates a more suitable definition which is consistent with current practice within the engineering profession.

Clause 29 also specifies what the continuing registration requirements may include and that they are met by applicants complying with either the continuing registration requirements of the assessment scheme or complying with the Board's continuing registration requirements for the relevant area of engineering.

Clause 29 also requires an assessment entity to publish the continuing registration requirements of each of the entity's assessment schemes on the entity's website and ensure that the continuing registration requirements of each of the entity's assessment schemes are readily available to any registered professional engineer on request.

Clause 29 also provides that the Board must publish its continuing registration requirements on the Board's website and ensure the requirements are available for inspection by the public.

Amendment of s 18 (Applying for renewal)

Clause 30 amends section 18(3) of the *Professional Engineers Act 2002*. This amendment is of a technical drafting nature to ensure that the section is consistent with the simplified co-regulatory scheme introduced by the Bill.

Amendment of s 20 (Deciding application)

Clause 31 amends section 20 to ensure consistency with amendments relating to continuing registration requirements made by clause 29 of the Bill.

Amendment of s 21 (Renewal of Registration)

Clause 32 amends section 21 to provide that in renewing an applicant's registration the Board may impose conditions on the applicant's registration that are reasonable and relevant. The Board must give the applicant an information notice about the imposed conditions as soon as practicable.

Amendment of s 23 (Applying for restoration)

Clause 33 amends section 23(2) of the *Professional Engineers Act 2002*. This amendment is of a technical drafting nature to ensure that the section is consistent with the simplified co-regulatory scheme introduced by the Bill.

Amendment of s 24 (Deciding application)

Clause 34 amends section 24 to ensure consistency with amendments relating to continuing registration requirements made by clause 29 of the Bill.

Amendment of s 25 (Restoration of registration)

Clause 35 amends section 25 by inserting provisions allowing the Board, in restoring an applicant's registration, to impose conditions on the registration that are reasonable and relevant. If the Board decides to impose conditions it must advise the applicant of the decisions as soon as practicable.

Insertion of new pt 2, div 5A

Division 5A Further conditions imposed on registration

Clause 36 inserts section 27A (Imposition of certain conditions on registration) which provides that the Board may impose certain conditions on a registered professional engineer's registration as agreed to by the registered professional engineer or relating to a health assessor's recommendation pursuant to section 35G(2)(b). The Board is to give the professional engineer a warning notice requiring the engineer to return the engineer's certificate of registration to the Board within 21 days.

Amendment of pt 2, div 6, hdg (Cancellation of registrations)

Clause 37 amends the heading of Part 2, division 6 to make it more descriptive of the provisions.

Amendment of s 28 (Grounds for cancellation)

Clause 38 amends section 28 by inserting provisions which extend the grounds for which the Board may cancel a registered professional engineer's registration. These include introducing a further ground for cancellation of registration if:

- the registered professional engineer's registration to practise as a professional engineer under a law of the Commonwealth or another State or a foreign country has been cancelled under that law for disciplinary reasons; or
- the registered professional engineer's membership of an association of professional engineers, whether in Australia or a foreign country, has been cancelled under the association's rules for disciplinary reasons; or
- the registered professional engineer has contravened a condition of the engineer's registration imposed under the *Professional Engineers Act 2002*; or
- the assessment in a health assessment report given to the Board under section 35G of the *Professional Engineers Act 2002* is that

the engineer is currently unable to competently and safely practise as a registered professional engineer.

Clause 39 inserts clause 29A (Immediate suspension of registration) which provides that the Board may immediately suspend a registered professional engineer's registration if the Board requires the engineer to undergo a health assessment under section 35E and the engineer does not undergo the health assessment as required or does not cooperate with the doctor appointed to conduct the assessment.

Amendment of pt 2, div 7, hdg (Offences about registration)

Clause 40 amends the heading of Part 2, division 7 to make it more descriptive of the provisions.

Clause 41 inserts sections 32A to 32C which require that a registered professional engineer must:

- advise the Board about any disciplinary action taken against the engineer in another State or a foreign country in relation to the engineer's practice as an engineer;
- notify the Board if the engineer is unable to competently and safely practise as a registered professional engineer for a continuous period of 3 months because of the engineer's mental or physical health; and
- return the engineer's certificate of registration to the Board if certain conditions are imposed by the Board or the Tribunal. On receiving the certificate, the Board must amend the certificate appropriately and return it to the engineer or issue another certificate of registration to the engineer to replace the certificate returned to the Board.

Penalties apply for failure to comply with sections 32A to 32C.

Clause 42 inserts section 35C (Information about relevant persons from assessment entities) which allows the Board to ask an assessment entity for information, relating to the practice of professional engineering, about an applicant, a registered engineer applying for renewal and a person applying for restoration of their registration. If asked by the Board the assessment entity must give the Board the information requested to which the entity has access. An assessment entity that, honestly and on reasonable grounds, gives information to the Board under section 35C is not subject to any

liability for giving the information and no action, claim or demand may be taken or made of or against the entity for giving the information.

Insertion of new pt 2A

Part 2A Health assessments

Clause 43 inserts section 35D (Definitions for pt 2) which provides for definitions for Part 2A.

Clause 43 inserts section 35E (Health assessment) which provides that, if the Board reasonably believes a registered professional engineer is unable to competently and safely practise as a registered professional engineer because of the engineer's mental or physical health, the Board may require the subject engineer to undergo a health assessment by a doctor (the health assessor) appointed by the Board.

Clause 43 inserts section 35F (Appointment of health assessor) which requires that, before appointing a doctor as a health assessor, the Board must be satisfied the doctor does not have a personal or professional connection with the subject engineer that may prejudice the way in which the doctor conducts the assessment.

Clause 43 inserts section 35G (Health assessment report) which provides that a health assessor conducting all or part of a health assessment of an engineer must prepare a health assessment report and give a copy to the Board and the engineer. The health assessment report must include the health assessor's findings as to whether the subject engineer is currently unable to competently and safely practise as a registered professional engineer; and, if required, the health assessor's recommendations as to any conditions that could be imposed on the engineer's registration to overcome the inability.

Clause 43 inserts section 35H (Payment for health assessment and report) which provides that the Board is liable for the cost of the health assessment and the preparation of the report. However, if the assessment is that the subject engineer is currently unable to competently and safely practise as a registered professional engineer, the Board may require the engineer to pay the Board the amount of the cost of the assessment and of the preparation of the health assessment report.

Clause 43 inserts section 35I (Use of health assessment report) which specifies how a health assessment report can be used, including that is not admissible in any proceeding, and a person can not be compelled to produce the report or to give evidence about the report or its contents in any proceeding. This does not apply to a proceeding under the *Professional Engineers Act 2002* or if the report is produced in a proceeding with the consent of the health assessor who prepared the report and the registered professional engineer to whom the report relates.

Amendment of s 36 (Grounds for disciplining a registered professional engineer)

Clause 44 amends section 36 by inserting sections 36(d) and (e) which extend the grounds for disciplining a registered professional engineer to include circumstances where:

- the engineer has contravened an undertaking entered into by the engineer and the Board pursuant to section 73(2)(b);
- the engineer has contravened a condition of the engineer's registration.

Amendment of s 73 (Board's decision on investigation about registered professional engineer)

Clause 45 amends section 73(2) so that, on receipt of an investigation report about a registered professional engineer, the Board may pursue an option, and, if not finalised, the Board may later resolve to pursue another option. For example, the Board may seek to enter an agreed undertaking with a registered professional engineer, and, if not agreed, pursue an alternative option.

Clause 45 amends section 73(2)(b) and inserts section 73(2)(d) to further expand the options for the resolution of disciplinary matters relating to registered professional engineers.

Clause 45 inserts section 2A which provides that if the engineer does not comply with an undertaking entered into under section 73(2)(b), the Board may decide to take another action mentioned in section 73(2).

Amendment of s 74 (Notice of result of investigation about registered professional engineer)

Clause 46 amends sections 74. This amendment is of a technical drafting nature consequential to changes to section 73.

Insertion of new s 74A

Clause 47 inserts section 74A (Publishing of certain decisions on investigation about registered professional engineer) which permits the Board to provide details on its website of decisions it makes under section 73(2) of the *Professional Engineers Act 2002*.

Amendment of s 75 (Board's decision about other investigations)

Clause 48 omits sections 75(2)(b) and (c) and makes consequential changes to section 75(2).

Amendment of s 76 (Board to take action as soon as practicable)

Clause 49 makes consequential amendments to section 76 so that it is consistent with the amendments made to sections 73 and 75 by clauses 45 and 48 respectively, of this Bill.

Amendment of s 80 (Functions of board)

Clause 50 amends section 80(1)(e)(ii) and 80(2) of the *Professional Engineers Act 2002*. This amendment is of a technical drafting nature to ensure that the section is consistent with the new simplified co-regulatory scheme introduced by the Bill.

Amendment of s 102 (Keeping register)

Clause 51 inserts new sub-sections 102(3)(e) and (f) which require the Board to keep a register which includes particulars of the conditions placed on a person's registration and, in circumstances where the Board cautions or reprimands a person under section 73(2)(c), the particulars of the caution or reprimand. Section 102(7) is inserted to define what is a relevant decision of the Board for section 102.

Amendment of section 112A (Definitions for pt 6A)

Clause 52 omits the definitions of *area of engineering*, *assessment entity* and *assessment scheme* from section 112A on commencement of Part 3 of the Bill on 1 July 2008. These are defined in Schedule 2 (Dictionary) of the *Professional Engineers Act 2002*.

Amendment of section 112B (Suitability of assessment schemes for approval)

Clause 53 omits section 112B(2) which defines ‘continuing registration requirements’ for the purposes of section 112B. This is consequential to the introduction of amended continuing registration requirements from 1 July 2008.

Amendment of section 112C (Application for approval)

Clause 54 amends section 112C(1) to provide that an assessment entity may apply to the Minister for approval of a proposed assessment scheme for 1 or more areas of engineering, or proposed areas of engineering, to be conducted by the entity. This is consequential to the introduction of registration assessment schemes from 1 July 2008.

Amendment of s 115 (Who may carry out professional engineering services)

Clause 55 amends section 115(2) and (4) to include a requirement that a person does not commit an offence if the person carries out professional engineering services under the direct supervision of a registered professional engineer who is responsible for the services. A new subsection 115(5) is inserted which sets out the nature and extent of the supervision by a registered professional engineer for section 115.

Omission of ss 116 -119

Clause 56 omits sections 116 to 119 as they set out obligations that relate to professional practice. Requirements of this nature may now be addressed in the Code of Practice for registered professional engineers made by the Board.

Amendment of s 122 (Review of particular decisions)

Clause 57 amends section 122 by inserting additional categories of persons who may apply to the Tribunal to review a decision of the Board. The new categories include:

- a person whose registration is subject to conditions imposed by the Board;
- a person whose registration is cancelled under section 29(3);
- a person whose registration is immediately suspended under section 29A;
- a person who is required to undergo a health assessment under section 35E;
- a person who, under section 73(2)(c), has been cautioned or reprimanded; and
- a person who makes a complaint if the Board decides, under section 73(2)(e), to take no further action about the complaint.

Amendment of s 124 (Stay of operation of decision)

Clause 58 inserts sections 124(b) to (d) which expand the circumstances in which the Tribunal may order a stay of operation of a decision of the Board.

Amendment of s 138 (Evidentiary matters)

Clause 59 amends sections 138(f) and (g) of the *Professional Engineers Act 2002*. This amendment is of a technical drafting nature to ensure that the section is consistent with the new simplified co-regulatory scheme introduced by the Bill.

Amendment of s 141 (Performance and carrying out of professional engineering services by particular entities)

Clause 60 amends section 141, in similar terms to the amendment of section 115 in clause 55 of the Bill, to include a reference to direct supervision by a registered professional engineer of services carried out by an unregistered person. A new subsection 141(3) is inserted which sets out the nature and extent of the supervision by a registered professional engineer for section 141.

Amendment of s 164 (Continuing effect of qualifications under the repealed Act)

Clause 61 amends section 164(1)(b) of the *Professional Engineers Act 2002* and provides for the cessation of this transitional provision from 1 July 2008. This amendment is of a technical drafting nature to ensure that the section is consistent with the new simplified co-regulatory scheme introduced by the Bill.

Insertion of new pt 11, div 5

Clause 62 inserts Part 11, division 5 (Transitional provisions for Professional Engineers and Other Legislation Amendment Act 2008, part 3) of the *Professional Engineers Act 2002*.

Clause 62 inserts section 168 (Definitions for this division) which sets out definitions for division 5.

Clause 62 inserts section 169 (Certain applications to be dealt with under pre-amended Act) which provides for certain applications which are made to the Board, and not finally dealt with, before the commencement of this Bill to be dealt with under the pre-amended Act.

Clause 62 inserts section 170 (Continuing registration requirements for preserved areas of engineering) which provides that, for the purpose of having continuing registration requirements for preserved areas of engineering, a reference in section 16 to an area of engineering is taken to include a reference to a preserved area of engineering.

Clause 62 inserts section 171 (Application of preserved areas of engineering to certain provisions) which provides that if a registered professional engineer is registered for a preserved area of engineering, then the preserved area of engineering for which the engineer is registered is taken to be the area of engineering for which the engineer is registered for the purposes of sections 34(2)(b) and 115(3) of the *Professional Engineers Act 2002*.

Amendment of sch 2 (Dictionary)

Clause 63 amends schedule 2 of the *Professional Engineers Act 2002* by inserting new definitions.

Part 4 Amendment Of Electrical Safety Act 2002

Act amended in pt 4

Clause 64 provides that Part 4 of the Bill amends the *Electrical Safety Act 2002*.

Amendment of sch 2 (Dictionary)

Clause 65 makes consequential amendments to Schedule 2 (Dictionary) of the *Electrical Safety Act 2002* including:

- omitting the definition of “Engineers Act” which refers to the repealed *Professional Engineers Act 1988*;
- amending the definition of “electrical engineer” to omit references to “Engineers Act” and replace with reference to the *Professional Engineers Act 2002*; and
- amending clause (c) of the definition of “electrical engineer” so that it applies only to persons who obtained their qualification prior to the commencement of the Bill. The effect of this amendment will be that, after the commencement of the Bill, the only persons able to be admitted to the class of persons within the definition of “electrical engineer” under the *Electrical Safety Act 2002* will be electrical engineers registered under the *Professional Engineers Act 2002*.

Part 5 Amendment To Public Records Act 2002

Act amended in pt 5

Clause 66 provides that Part 5 amends the *Public Records Act 2002*.

Amendment of s 6 (What is a public record)

Clause 67 amends section 6(1)(a) and (b) of the *Public Records Act 2002* as a consequence of the insertion of section 6(1)(d) which provides that a public record includes a record of a Parliamentary Secretary.

Clause 67 inserts section 6(1)(d) which provides that a public record includes a record of a Parliamentary Secretary.

Amendment of s 16 (Meaning of restricted access period)

Clause 68 omits and replaces section 16(1) of the *Public Records Act 2002*. This is a consequential amendment to ensure that Parliamentary Secretary records are treated in the same manner as Ministerial records.

Amendment of sch 2 (Dictionary)

Clause 69 amends Schedule 2 of the *Public Records Act 2002* so that:

- The definition of ‘public authority’ includes a ‘Parliamentary Secretary’.
- ‘record of a Parliamentary Secretary’ is to mean a record created or received by a Parliamentary Secretary in the course of carrying out the Parliamentary Secretary’s official duties but does not include a record related to the Parliamentary Secretary’s personal or party political activities or a record they hold in their capacity as a member of the Legislative Assembly.