



# **Professional Engineers Act 2002**

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Queensland

# Professional Engineers Act 2002

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# Professional Engineers Act 2002

**An Act to provide for the registration of professional engineers,  
and for other purposes**

## **Part 1 Preliminary**

### **Division 1 Introduction**

#### **1 Short title**

This Act may be cited as the *Professional Engineers Act 2002*.

#### **2 Commencement**

(1) The following provisions of this Act commence on assent—

- (a) part 1, division 4;
- (b) part 11, division 2, subdivision 1;
- (c) section 150;
- (d) schedule 2.

(2) The remaining provisions of this Act commence on 1 January 2003.

### **Division 2 Objects**

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

The main objects of this Act are—

- (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.

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

The main objects are to be achieved primarily by—

- (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.

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

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

- (1) This Act binds all persons, including the State.
- (2) Subsection (1) does not make the State liable to be prosecuted for an offence.

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

This Act does not affect the operation of the *Mutual Recognition (Queensland) Act 1992* or the *Trans-Tasman Mutual Recognition (Queensland) Act 2003*.

## **6A Extraterritorial application of Act**

- (1) This Act applies both within and outside Queensland.
- (2) This Act applies outside Queensland to the full extent of the extraterritorial legislative power of the Parliament.

## **Division 4 Interpretation**

### **7 Definitions**

The dictionary in schedule 2 defines particular words used in this Act.

### **7A Areas of engineering**

- (1) The *areas of engineering* for this Act are the areas of engineering for which—
  - (a) there is an assessment scheme; or
  - (b) qualifications and competencies are prescribed under section 10(1)(b).
- (2) The board must publish the areas of engineering on its website.

## **Part 2 Registration of professional engineers**

### **Division 1 Preliminary**

#### **7B Types of registration as a professional engineer**

The types of registration as a professional engineer under this Act are registration as a practising professional engineer or a non-practising professional engineer.

## **8 Applying for registration**

- (1) Only an individual may apply to the board for registration as a registered professional engineer for an area of engineering.
- (2) The application must be—
  - (a) in the approved form and state the type of registration to which the application relates; and
  - (b) accompanied by each of the following—
    - (i) satisfactory evidence of the applicant’s eligibility for registration;
    - (ii) if there is an assessment scheme approved for the area of engineering the applicant is applying to be registered in—the assessment entity’s assessment of the applicant against the qualifications and competencies provided for under the scheme;
    - (iii) any other documents, identified in the approved form, the board reasonably requires to decide the application;
    - (iv) the application fee and registration fee prescribed under a regulation.
- (3) The approved form must provide for the inclusion of the applicant’s contact details as a registered professional engineer.
- (4) The applicant also must provide any other relevant information reasonably required by the board to decide the application.

*Note—*

For how the board may make a requirement for information under section 8(4), 18(6) or 23(5), see section 27.



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## **Division 2                      Eligibility for registration**

### **9                      Eligibility**

- (1) An applicant for registration is eligible for registration only if—
  - (a) the applicant is qualified, under section 10, for registration; and
  - (b) the board considers the applicant is fit to practise as a registered professional engineer.
- (2) Also, an applicant for registration as a non-practising professional engineer is eligible for registration only if the board is satisfied the applicant will not carry out, or be responsible for the carrying out of, professional engineering services within the registration period to which the application for registration relates.

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

- (1) An applicant for registration is qualified for registration in an area of engineering if the applicant has the qualifications and competencies—
  - (a) if there is an assessment scheme for the area of engineering—provided for under the assessment scheme; or
  - (b) otherwise—prescribed under a regulation for the area of engineering.
- (2) The competencies mentioned in subsection (1)—
  - (a) may relate to the practice of engineering in the area of engineering; and
  - (b) may include requirements about the following for the area of engineering—
    - (i) the nature, extent and period of practice of engineering by the applicant;

- (ii) the nature and extent of any research, study or teaching, relating to engineering, undertaken by the applicant;
- (iii) the nature and extent of any administrative work, relating to engineering, performed by the applicant.

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

In deciding whether an applicant for registration is fit to practise as a registered professional engineer, the board may have regard to each of the following—

- (a) whether the applicant has a conviction, other than a spent conviction, for—
  - (i) an indictable offence; or
  - (ii) an offence against this Act or the repealed Act; or
  - (iii) another offence, relating to the practice of engineering, against a law applying, or that applied, in the State, the Commonwealth, another State or a foreign country;
- (b) if the applicant has been registered under this Act or the repealed Act, or registered to practise as a professional engineer under a law applying, or that applied, in the Commonwealth, another State or a foreign country and the registration was suspended or cancelled—the reason for its suspension or cancellation;
- (c) if the applicant has been a member of an association of professional engineers, whether in Australia or a foreign country, and the membership was suspended or cancelled—the reason for its suspension or cancellation;
- (d) an order about the applicant made under section 131 or 132 of this Act or section 60 of the repealed Act;
- (e) a proceeding taken against the applicant for a matter mentioned in section 36 under a law applying, or that

- 
- applied, in the Commonwealth, another State or a foreign country;
- (f) whether the applicant—
    - (i) is affected by bankruptcy action; or
    - (ii) is an executive officer of a corporation affected by control action after the commencement of this section;
  - (g) if the applicant was required to undergo a health assessment—
    - (i) whether the applicant complied with the requirement; and
    - (ii) whether the applicant cooperated with the medical practitioner appointed to perform the assessment;
  - (h) whether a health assessment report for the applicant states that the applicant is unable to competently and safely practise as a professional engineer;
  - (i) whether the board reasonably believes a materially false or misleading representation or document is included in the application;
  - (j) any other issue relevant to the applicant's ability to competently practise as a registered professional engineer, including, for example, the applicant's mental or physical health.

## **Division 3                      Decision on applications for registration**

### **12            Deciding application**

- (1) The board must consider each application for registration made under section 8 and either grant or refuse to grant the application as soon as practicable after the last of the following events to happen—
  - (a) the board receives the application;

- (b) the board receives all necessary information to decide the application.
- (2) In deciding the application, the board must have regard to the assessment of an assessment entity, if any, given to the board by the applicant under section 8(2)(b)(ii).

### **13 Grant of application**

- (1) If the board decides to grant the application, it must as soon as practicable—
- (a) register the applicant as a registered professional engineer in 1 or more of the areas of engineering for which the applicant is qualified for registration; and
  - (b) give the applicant a certificate of registration.
- (2) The board may, in granting the application, decide to impose conditions on the applicant's registration that are reasonable and relevant.
- (3) 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.
- (4) In deciding the areas of engineering for which an applicant may be registered, the board must have regard to the applicant's qualifications and competencies in the practice of engineering.

### **14 Refusal of application**

If the board decides to refuse to grant the application, it must as soon as practicable—

- (a) give the applicant an information notice for the decision; and
- (b) refund the fees that accompanied the application less a reasonable amount, if any, prescribed under a regulation for processing the application.

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## 15 Period of registration

- (1) The period of registration that is to apply to a registered professional engineer (the *registration period*) is a financial year.
- (2) If the board decides to register an applicant during a registration period, the registration remains in force for the period—
  - (a) commencing on the day when the board makes the decision; and
  - (b) ending on the last day of the registration period.

## Division 4 Renewal and restoration of registrations

### Subdivision 1 Preliminary

## 16 Meaning of *continuing registration requirements*

- (1) *Continuing registration requirements* are requirements that, if satisfied, demonstrate that an applicant for renewal or restoration of registration has maintained competency in the practice of engineering in the area of engineering for which the applicant is, or was, registered.
- (2) The requirements may include requirements about the following for an area of engineering—
  - (a) the nature, extent and period of practice of engineering by the applicant;
  - (b) the nature and extent of continuing professional development to be undertaken by the applicant;
  - (c) the nature and extent of research, study or teaching, relating to engineering, to be undertaken by the applicant;

- (d) the nature and extent of administrative work, relating to engineering, to be performed by the applicant.
- (3) The requirements are met by—
  - (a) if the applicant is registered with an assessment entity for participation in the continuing registration requirements of an assessment scheme conducted by the entity—complying with the continuing registration requirements of the assessment scheme; or
  - (b) otherwise—complying with the board’s continuing registration requirements for the area of engineering for which the applicant is, or was, registered.
- (4) An assessment entity must—
  - (a) keep published the continuing registration requirements of each of the entity’s assessment schemes on the entity’s website; and
  - (b) ensure the continuing registration requirements of each of the entity’s assessment schemes are readily available to any registered professional engineer on request.
- (5) The board must—
  - (a) keep published the board’s continuing registration requirements on the board’s website; and
  - (b) keep the requirements available for inspection, without charge, at the board’s office when the office is open to the public; and
  - (c) if asked by a person and on payment of the fee, if any, prescribed under a regulation, give the person a copy of the requirements.

## **17 Notification of expiry of registration**

The board must give a registered professional engineer notice of the expiry of the engineer’s registration at least 3 months before the expiry.

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## Subdivision 2      **Renewal**

### **18      Applying for renewal**

- (1) A registered professional engineer may apply to the board for renewal of the professional engineer's registration.
- (2) The application may only be made at least 1 month, but not more than 3 months, before the last day of the registration period (the *expiry day*).
- (3) The application must be—
  - (a) in the approved form; and
  - (b) accompanied by each of the following—
    - (i) the documents, identified in the approved form, the board reasonably requires to decide the application;
    - (ii) the annual registration fee.
- (4) Despite subsection (2), the board may accept an application for renewal of registration made within 1 month before the expiry day if the board is satisfied it would be reasonable in all the circumstances to accept the application.
- (5) The approved form must provide for the inclusion of the applicant's contact details as a registered professional engineer.
- (6) The registered professional engineer also must provide any other relevant information reasonably required by the board to decide the application.

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

- (1) If an application is made under section 18(2), or the board decides to accept an application under section 18(4), the applicant's registration is taken to continue in force from the day it would, apart from this section, have expired until—

- (a) if the board decides to renew the registration—the day a new certificate of registration is given to the applicant under section 21; or
  - (b) if the board decides to refuse to renew the registration—the day stated, under section 22(a), in the information notice for the decision; or
  - (c) if the application is taken to have lapsed under section 27—the day it is taken to have lapsed.
- (2) Subsection (1) does not apply if the registration is earlier suspended or cancelled under this Act.

## **20 Deciding application**

- (1) The board must consider an accepted application and either renew or refuse to renew the registration as soon as practicable after the last of the following events to happen—
- (a) the board receives the application;
  - (b) the board receives all necessary information to decide the application.
- (2) In deciding the application, the board must have regard to—
- (a) whether the board considers the applicant is fit to practise as a registered professional engineer; and
  - (b) the extent, if any, to which the applicant has satisfied the continuing registration requirements.
- (3) Also, for an application for renewal of registration as a non-practising professional engineer, the board must be satisfied the applicant will not carry out, or be responsible for the carrying out of, professional engineering services within the registration period to which the application relates.
- (4) In considering whether an applicant is fit to practise as a registered professional engineer, the board may have regard to the same matters to which the board may have regard in deciding whether an applicant for registration is fit to practise as a registered professional engineer.



*Note—*

For the matters the board may have regard to in deciding if an applicant for registration is fit to practise as a registered professional engineer, see section 11.

(5) In this section—

***accepted application*** means an application made under section 18(2) or an application the board accepts under section 18(4).

## **21 Renewal of registration**

- (1) If the board decides to renew the applicant's registration, it must as soon as practicable give the applicant a new certificate of registration.
- (2) The board may, in renewing the applicant's registration, decide to impose conditions on the applicant's registration that are reasonable and relevant.
- (3) If the board decides to impose conditions on the registration, the board must as soon as practicable give the applicant an information notice about the decision.

## **22 Refusal to renew registration**

If the board decides to refuse to renew the registration, it must as soon as practicable—

- (a) give the applicant an information notice for the decision stating the day, not before the expiry day and not earlier than 7 days after the notice is given, on which the registration ends; and
- (b) refund the annual registration fee that accompanied the application.

## **Subdivision 3      Restoration**

### **23      Applying for restoration**

- (1) If a person's registration has expired, the person may, within 2 months after the expiry, apply to the board for restoration of the registration.
- (2) The application must be—
  - (a) in the approved form; and
  - (b) accompanied by each of the following—
    - (i) the documents, identified in the approved form, the board reasonably requires to decide the application;
    - (ii) the application fee prescribed under a regulation;
    - (iii) the annual registration fee.
- (3) Despite subsection (1), the board may accept an application for restoration of registration made more than 2 months after the expiry if the board is satisfied it would be reasonable in all the circumstances to accept the application.
- (4) The approved form must provide for the inclusion of the applicant's contact details as a registered professional engineer.
- (5) The applicant also must provide any other relevant information reasonably required by the board to decide the application.

### **24      Deciding application**

- (1) The board must consider an accepted application and either restore or refuse to restore the registration as soon as practicable after the last of the following events to happen—
  - (a) the board receives the application;
  - (b) the board receives all necessary information to decide the application.

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- (2) In deciding the application, the board must have regard to—
    - (a) whether the board considers the applicant is fit to practise as a registered professional engineer; and
    - (b) the extent, if any, to which the applicant has satisfied the continuing registration requirements.
  - (3) Also, for an application for restoration of registration as a non-practising professional engineer, the board must be satisfied the applicant will not carry out, or be responsible for the carrying out of, professional engineering services within the registration period to which the application relates.
  - (4) In considering whether an applicant is fit to practise as a registered professional engineer, the board may have regard to the same matters to which the board may have regard in deciding whether an applicant for registration is fit to practise as a registered professional engineer.
  - (5) In this section—

*accepted application* means an application made under section 23(1) or an application the board accepts under section 23(3).

## 25 Restoration of registration

- (1) If the board decides to restore the applicant's registration, the board must as soon as practicable give the applicant a new certificate of registration.
- (2) The board may, in restoring the applicant's registration, decide to impose conditions on the registration that are reasonable and relevant.
- (3) 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.
- (4) The registration remains in force for the period—
  - (a) commencing on the day when the board makes the decision; and

- (b) ending on the last day of the registration period in which the decision is made.

## **26 Refusal to restore registration**

If the board decides to refuse to restore the registration, it must as soon as practicable—

- (a) give the applicant an information notice for the decision; and
- (b) refund the annual registration fee that accompanied the application.

## **Division 5 Lapsing of applications**

### **27 Lapsing of application**

- (1) This section applies if an application for registration, or renewal or restoration of registration, is made under this part.
- (2) The board may make a requirement under section 8(4), 18(6) or 23(5) for information to decide the application by giving the applicant a notice stating—
  - (a) the required information; and
  - (b) the time by which the information must be given to the board; and
  - (c) that, if the information is not given to the board by the stated time, the application will lapse.
- (3) The stated time must be at least 21 days after the requirement is made.
- (4) The board may give the applicant a further notice extending or further extending the time if the board is satisfied it would be reasonable in all the circumstances to give the extension.
- (5) A notice may be given under subsection (4) even if the time to which it relates has lapsed.

- (6) If the applicant does not comply with the requirement within the stated time, or any extension, the application lapses.
- (7) If an application lapses under subsection (6), the board must, as soon as practicable after it lapses, refund the fees that accompanied the application less a reasonable amount, if any, prescribed under a regulation for processing the application.

## **Division 5A            Further conditions imposed on registration**

### **27A    Imposition of certain conditions on registration**

- (1) The board may impose the following conditions on a registered professional engineer's registration—
  - (a) if a health assessor recommends, under section 35G(2)(b), that a condition be imposed on the engineer's registration—a condition that is reasonable and relevant having regard to the health assessor's recommendation;
  - (b) a condition the board decides to impose under section 73(2)(d).
- (2) If the board imposes a condition on a registered professional engineer's registration under this section, the board must give the engineer—
  - (a) a notice (the *warning notice*) stating that the registered professional engineer must return the engineer's certificate of registration to the board within 21 days after receiving the notice; and
  - (b) an information notice for the decision.
- (3) A condition imposed under this section has effect when the warning notice is given to the registered professional engineer and does not depend on the condition being noted on the engineer's certificate of registration.

## **Division 6**                      **Cancellation and immediate suspension of registrations**

### **28**        **Grounds for cancellation**

The board may cancel a registered professional engineer's registration if—

- (a) the board believes on reasonable grounds the registered professional engineer was registered because of a materially false or misleading representation or document; or
- (b) the registered professional engineer is—
  - (i) affected by bankruptcy action; or
  - (ii) an executive officer of a corporation affected by control action; or
- (c) the registered professional engineer's registration to practise as a professional engineer under a law applying, or that applied, in the Commonwealth, another State or a foreign country has been cancelled under that law for disciplinary reasons; or
- (d) 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
- (e) an order about the registered professional engineer is made under section 131 or 132; or
- (f) a proceeding is taken against the registered professional engineer for a matter mentioned in section 36 under a law applying in the Commonwealth, another State or a foreign country; or
- (g) the registered professional engineer is convicted of—
  - (i) an indictable offence; or
  - (ii) an offence against this Act; or

- (iii) another offence, relating to the practice of engineering, against a law applying in the State, the Commonwealth, another State or a foreign country; or
- (h) the registered professional engineer has contravened a condition of the engineer's registration; or
- (i) the registered professional engineer is required to undergo a health assessment and—
  - (i) the engineer does not comply with the requirement; or
  - (ii) the engineer does not cooperate with the medical practitioner appointed to perform the assessment; or
- (j) a health assessment report for the registered professional engineer states that the engineer is unable to competently and safely practise as an engineer.

## **29 Procedure for cancellation**

- (1) If the board proposes to cancel a registered professional engineer's registration, the board must give the engineer a notice stating the following—
  - (a) the board proposes to cancel the registration;
  - (b) the grounds for the proposed cancellation;
  - (c) the facts and circumstances that are the basis for the grounds;
  - (d) that the engineer may make, within a stated period, written representations to show why the registration should not be cancelled.
- (2) The stated period must end at least 21 days after the engineer is given the notice.
- (3) The board may also ask for more information by giving the registered professional engineer a notice stating—
  - (a) the information sought; and

- (b) the time, at least 21 days after the notice is given, by which the information is required.
- (4) If, after considering all written representations made within the stated period and any requested information received by the stated time, the board still believes a ground exists to cancel the engineer's registration, the board may cancel the registration.
- (5) The board must, as soon as practicable after making a decision under subsection (3), give the engineer an information notice for the decision.
- (6) The decision takes effect on—
  - (a) the day the notice is given; or
  - (b) if a later day is stated in the notice—the stated day.

## **29A Immediate suspension of registration**

- (1) This section applies if the board reasonably believes—
  - (a) a ground exists to cancel a registered professional engineer's registration under section 28; and
  - (b) it is in the public interest to immediately suspend the engineer's registration.
- (2) The board may, by information notice given to the registered professional engineer, immediately suspend the engineer's registration.
- (3) The information notice must also state the period of suspension.
- (4) The suspension—
  - (a) may be for the period the board decides; and
  - (b) has effect immediately when the notice is given.
- (5) The board must end the suspension if satisfied that the ground for the suspension no longer exist.
- (6) The suspension ends if the registered professional engineer's registration is cancelled or otherwise ends.



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## **Division 7                      Offences**

### **30            False or misleading statement**

A person, in relation to an application under this part, must not state anything to the board the person knows is false or misleading in a material particular.

Maximum penalty—50 penalty units.

### **31            False or misleading document**

- (1) A person, in relation to an application under this part, must not give the board a document containing information the person knows is false or misleading in a material particular.

Maximum penalty—50 penalty units.

- (2) Subsection (1) does not apply to a person if the person, when giving the document—
- (a) tells the board, to the best of the person's ability, how the information in the document is false or misleading; and
  - (b) if the person has, or can reasonably obtain, the correct information—gives the correct information.

### **31A          Proof of giving false and misleading statements and documents**

- (1) This section applies to a proceeding for an offence against section 30 or 31.
- (2) It is sufficient proof the statement was made, or the document was given, to the board to prove it was made or given to a person authorised to receive it.
- (3) It does not matter whether the authorisation was a delegation, agency or any other form of authorisation by which someone acts through another.

## **32 Notification about particular matters**

A registered professional engineer must, within 21 days after changing his or her name or contact details, advise the board about the change unless the engineer has a reasonable excuse.

Maximum penalty—10 penalty units.

## **32AA Notification of prescribed changes**

- (1) A registered professional engineer must give notice to the board of a prescribed change for the engineer within 21 days after the change, unless the engineer has a reasonable excuse.

Maximum penalty—50 penalty units.

- (2) In this section—

*prescribed change*, for a registered professional engineer, means a change relating to a matter that the board may consider under section 11 when deciding whether a person is fit to practise as an engineer.

## **32A Notification of disciplinary event by other bodies**

- (1) A registered professional engineer must, within 21 days after a disciplinary event for the engineer, give notice to the board of the disciplinary event, unless the engineer has a reasonable excuse.

Maximum penalty—50 penalty units.

- (2) In this section—

*disciplinary event*, for a registered professional engineer, means a proceeding taken against the engineer in relation to—

- (a) the engineer's membership of an association of professional engineers; or
- (b) the engineer's registration to practise as a professional engineer under a law applying in the Commonwealth, another State or a foreign country.

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### **32B Notification of inability to practise**

- (1) This section applies if a registered professional engineer has been 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.
- (2) The engineer must immediately notify the board in writing of that fact, unless the engineer—
  - (a) has already notified the board in writing of the incapacity; or
  - (b) has a reasonable excuse.

Maximum penalty—50 penalty units.

### **32C Amending or replacing certificates of registration after certain conditions imposed**

- (1) This section applies if—
  - (a) a registered professional engineer receives a warning notice under section 27A; or
  - (b) the tribunal makes an order imposing a condition on the engineer's registration under section 131(3)(b).
- (2) The engineer must return the engineer's certificate of registration to the board within 21 days after receiving the warning notice or the tribunal makes the order, unless the engineer has a reasonable excuse.

Maximum penalty—50 penalty units.

- (3) On receiving the certificate, the board must—
  - (a) amend the certificate appropriately and return it to the engineer; or
  - (b) issue another certificate of registration to the engineer to replace the certificate returned to the board.
- (4) In this section—

*warning notice* see section 27A(2)(a).

## **Division 8                      Miscellaneous**

### **33            Surrender of registration**

- (1) A registered professional engineer may, by notice given to the board, surrender the engineer's registration.
- (2) The surrender takes effect on the later of the following—
  - (a) the end of 7 days after the day the notice is given;
  - (b) a day stated in the notice for the surrender.

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

- (1) A certificate of registration given under this part must be in the approved form.
- (2) The approved form must provide for the inclusion of—
  - (a) the registered professional engineer's name; and
  - (b) the area of engineering for which the engineer is registered; and
  - (c) the period of registration; and
  - (d) whether the registered professional engineer is a practising professional engineer or a non-practising professional engineer.

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

- (1) This section applies if an applicant withdraws an application made under this part before the application is decided.
- (2) The board must, as soon as practicable after the application is withdrawn—
  - (a) for an application for registration—refund the fees that accompanied the application less a reasonable amount, if any, prescribed under a regulation for processing the application; or

- (b) for an application for renewal or restoration of registration—refund the annual registration fee that accompanied the application.

### **35A Inquiries about fitness to practise as a registered professional engineer**

- (1) This section applies to the following persons (each a *relevant person*)—
  - (a) an individual applying for registration as a registered professional engineer under section 8;
  - (b) a registered professional engineer applying for renewal of registration under section 18;
  - (c) a person applying for restoration of the person's registration under section 23.
- (2) The board may make inquiries about the relevant person to help in deciding whether the person is, or continues to be, fit to practise as a registered professional engineer.

### **35B Report about relevant person's criminal history**

- (1) The board may ask the police commissioner for a written report about the criminal history of a relevant person.
- (2) If asked by the board, the police commissioner must give the board a written report about the criminal history of the relevant person.
- (3) The duty imposed on the police commissioner applies only to information in the commissioner's possession or to which the commissioner has access.
- (4) A report mentioned in subsection (2) may only be used for the purposes of this Act and must be destroyed as soon as practicable after it is no longer needed for those purposes.

### **35C Information about relevant persons from assessment entities**

- (1) The board may ask an assessment entity for information, about a relevant person, relating to the practice of professional engineering.
- (2) If asked by the board, the assessment entity must give the board the information mentioned in subsection (1) to which the entity has access.

*Note—*

Contravention of this provision is a ground for cancelling or suspending the approval of an assessment scheme.

- (3) An assessment entity that, honestly and on reasonable grounds, gives information to the board under subsection (2) 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.
- (4) Information obtained under this section may only be used for the purposes of this Act.

## **Part 2A Health assessments**

### **35D Definitions for pt 2A**

In this part—

*health assessment report* see section 35G(1).

*subject engineer* see section 35E(1).

### **35E Health assessment**

- (1) This section applies if the board reasonably believes a registered professional engineer (the *subject engineer*) is unable to competently and safely practise as a registered

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professional engineer because of the engineer's mental or physical health.

- (2) The board may require the subject engineer to undergo a health assessment by a medical practitioner (the *health assessor*) appointed by the board.
- (3) If the board decides to require a health assessment, the board must give the subject engineer an information notice about the decision to require the assessment that includes—
  - (a) a stated date, time and place, for the assessment; and
  - (b) the name and qualifications of the health assessor appointed by the board to conduct the assessment; and
  - (c) the possible consequences of failing to undergo, or cooperate during, the assessment.
- (4) The stated date must be no sooner than 14 days after the information notice is given to the subject engineer unless the engineer and the board agree, in writing, to an earlier date.
- (5) The stated time and place must be reasonable having regard to the circumstances of the subject engineer as known to the board.

### **35F Appointment of health assessor**

Before appointing a medical practitioner as a health assessor, the board must be satisfied the medical practitioner does not have a personal or professional connection with the subject engineer that may prejudice the way in which the medical practitioner conducts the assessment.

### **35G Health assessment report**

- (1) A health assessor conducting all or part of a health assessment of a subject engineer must prepare a report about the assessment (*health assessment report*).
- (2) The health assessment report must include—

[s 35H]

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- (a) 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
  - (b) if the health assessor finds that the subject engineer is unable to competently and safely practise as a registered professional engineer—the health assessor's recommendations as to any conditions that could be imposed on the engineer's registration to overcome the inability.
- (3) The health assessor must give the health assessment report to the board and a copy to the subject engineer.

### **35H Payment for health assessment and report**

- (1) The board is liable for the cost of the health assessment and the preparation of the health assessment report.
- (2) 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, by notice, to pay the board the amount of the cost of the assessment and of the preparation of the health assessment report.
- (3) The amount mentioned in subsection (2) is a debt payable to the board.

### **35I Use of health assessment report**

- (1) A health assessment report 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.
- (2) Subsection (1) does not apply in relation to—
  - (a) a proceeding relating to an application by the subject engineer to whom the report relates for registration as, or renewal or restoration of registration as, a registered professional engineer under this Act; or



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- (b) a proceeding on an appeal by the subject engineer against a decision of the board—
    - (i) refusing to grant, renew or restore registration; or
    - (ii) cancelling or immediately suspending registration.
  - (3) Also, subsection (1) does not apply if the report is admitted or produced, or evidence about the report or its contents is given, in a proceeding with the consent of—
    - (a) the health assessor who prepared the report; and
    - (b) the registered professional engineer to whom the report relates.
  - (4) A health assessment report may only be used for the purposes of this Act and must be destroyed as soon as practicable after it is no longer needed for those purposes.
  - (5) In this section—

*health assessment report* includes a copy of the report or a part of the report or copy.

## Part 2B                      Audits of registered    professional engineers

### 35J    Approved audit programs

- (1) The board may approve a program (an *approved audit program*) to audit 1 or more registered professional engineers.
- (2) The purpose of the approved audit program is to find out if a registered professional engineer to whom the program applies (an *audited engineer*) has complied with—
  - (a) a code of practice approved under section 108; or
  - (b) part 7.
- (3) The approved audit program must state all of the following—

[s 35K]

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- (a) the purpose of the program;
- (b) when the program starts and ends;
- (c) the criteria used to select a registered professional engineer for the program;
- (d) who will carry out the program;
- (e) any other matter relevant to carrying out the program.

### **35K Power to require production of documents**

- (1) The board may, by notice given to an audited engineer, require the audited engineer to give the board a copy of, or access to, a document about a stated matter in the audited engineer's possession or control.
- (2) The notice must require the copy of, or access to, the document to be given within a stated reasonable period and in a stated reasonable way.
- (3) The audited engineer must comply with the requirement, unless the audited engineer has a reasonable excuse.

Maximum penalty—100 penalty units.

- (4) For subsection (3), it is a reasonable excuse for the audited engineer not to comply with the requirement if complying with the requirement might tend to incriminate the audited engineer or expose the audited engineer to a penalty.

## **Part 3 Complaints and investigations**

### **Division 1AA Extended application of part 3**

#### **36AA Application to former registered professional engineers**

- (1) Action may be taken under this part in relation to a person who was a registered professional engineer at the time the

conduct of the person that is relevant for this part happened even though the person is no longer a registered professional engineer.

- (2) For the purpose of taking action under this part, the person mentioned in subsection (1) is taken to be a registered professional engineer.
- (3) This section does not limit, but may extend, the operation of the other provisions of this part.

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

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

Each of the following is a ground (a *disciplinary ground*) for disciplining a registered professional engineer—

- (a) the engineer has, whether before or after the commencement of this Act, behaved in a way that constitutes unsatisfactory professional conduct;
- (b) the engineer has failed to comply with a provision of this Act or the repealed Act;
- (c) the engineer has been convicted of an offence against an Act of the State, the Commonwealth or another State related to the practice of engineering;
- (d) the engineer has contravened an undertaking entered into by the engineer and the board under section 73(2)(b);
- (e) the engineer has contravened a condition of the engineer's registration.

## **Division 2                      Complaints**

### **37            Complaints about conduct**

- (1) A person who is aggrieved by a registered professional engineer's conduct in carrying out professional engineering services, whether before or after the commencement of this Act, may make a complaint about the conduct to the board.
- (2) A complaint must be in the approved form.
- (3) The chairperson must keep available for inspection, at the board's office by members of the public, information about—
  - (a) the type of conduct the board considers may give rise to a complaint; and
  - (b) how a person may make a complaint.
- (4) The board must publish on the board's website the information mentioned in subsection (3).

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

- (1) The board may, by notice, ask a complainant to give the board further information about the complaint within the reasonable time stated in the notice.
- (2) Also, the board may require a complainant to verify the complaint or further information by statutory declaration.

### **39            Rejection of complaint**

The board may decide to reject a complaint if the board reasonably considers the complaint is—

- (a) frivolous, trivial or vexatious; or
- (b) misconceived or lacking in substance.

#### **40 Withdrawal of complaint**

- (1) If a complainant withdraws a complaint, the board need not take any further action about the complaint.
- (2) However, the withdrawal does not stop the board—
  - (a) investigating, or continuing to investigate, the matter of the complaint; or
  - (b) authorising an investigator to investigate, or continue to investigate, the matter of the complaint.
- (3) In deciding whether to act as mentioned in subsection (2), the board must have regard to the main objects of this Act and the grounds for disciplining a registered professional engineer.

*Note—*

For the grounds for disciplining a registered professional engineer, see section 36.

### **Division 3 Investigations**

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

- (1) This section applies if—
  - (a) a complaint is made about a registered professional engineer's conduct in carrying out professional engineering services; or
  - (b) the board reasonably believes an aspect of a registered professional engineer's conduct in carrying out professional engineering services may provide a ground for disciplining the engineer.
- (2) The board may conduct an investigation of the registered professional engineer's conduct or authorise, in writing, an investigator to conduct the investigation.
- (3) To help the board decide whether to act under subsection (2), the board may give the registered professional engineer a notice stating he or she may make a submission to the board

about the complaint or ground for disciplining the registered professional engineer within the reasonable time stated in the notice.

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

- (1) If the board reasonably suspects a person has committed an offence against this Act, the board may—
  - (a) investigate the suspected offence; or
  - (b) authorise, in writing, an investigator to conduct the investigation.
- (2) For helping the board decide whether to act under subsection (1), the board may give the person a notice stating the person may make a submission to the board about the matter the subject of the suspected offence within the reasonable time stated in the notice.

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

The board, or an investigator it authorises to conduct an investigation, must conduct the investigation as quickly as possible having regard to the nature of the matter being investigated.

#### **44 Notice of investigation**

- (1) As soon as practicable after deciding to conduct, or authorising an investigator to conduct, an investigation in relation to a person, the board must give the person notice of the investigation.
- (2) The notice must state each of the following—
  - (a) whether the investigation is being conducted by the board or an investigator;
  - (b) if an investigator is conducting the investigation—the investigator's name;

- (c) if the investigation relates to a complaint—the nature of the complaint;
  - (d) if the board or an investigator is conducting the investigation on the board’s own initiative under section 41(1)(b) or 42—the grounds that are the basis for the investigation;
  - (e) that the person may make, during the course of the investigation, a submission to the board or investigator about the complaint or other grounds for the investigation, and how a submission may be made.
- (3) However, the board need not give the person the notice if the board reasonably believes that giving the notice may—
- (a) seriously prejudice the investigation; or
  - (b) place the complainant or another person at risk of harassment or intimidation.
- (4) A submission under subsection (2)(e) must be made to—
- (a) if an investigator is conducting the investigation—the investigator; or
  - (b) otherwise—the board.

#### **45 Board may engage persons to help investigation**

- (1) The board may engage a person to help the board or investigator in conducting an investigation if the board is satisfied the person is sufficiently qualified or experienced to help the board or investigator about the matter the subject of the investigation.
- (2) Without limiting subsection (1), the board may engage the person to give the board or investigator a written report about the matter the subject of the investigation.

## **Division 4                      Investigators**

### **46            Function of investigator**

An investigator has the function of conducting the investigation the investigator is authorised to conduct by the board.

### **47            Powers of investigator**

To conduct the investigation, an investigator has the powers given to the investigator under this Act.

## **Division 5                      Appointment of investigators and other matters**

### **48            Appointment and qualifications**

- (1) The board may appoint a person as an investigator.
- (2) The person must be an individual who is not a board member.
- (3) However, the board may appoint a person as an investigator only if the board is satisfied the person is appropriately qualified.

### **49            Appointment conditions and limit on powers**

- (1) An investigator holds office on any conditions stated in—
  - (a) the investigator's instrument of appointment; or
  - (b) a signed notice given to the investigator; or
  - (c) a regulation.
- (2) The instrument of appointment, a signed notice given to the investigator or a regulation may limit the investigator's powers under this Act.
- (3) In this section—



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*signed notice* means a notice signed by the chairperson or deputy chairperson.

## **50 Issue of identity card**

- (1) The board must issue an identity card to each investigator.
- (2) The identity card must—
  - (a) contain a recent photograph of the investigator; and
  - (b) contain a copy of the investigator's signature; and
  - (c) identify the person as an investigator under this Act; and
  - (d) state an expiry date for the card.

## **51 Production or display of identity card**

- (1) In exercising a power under this Act in relation to a person, an investigator must—
  - (a) produce the investigator's identity card for the person's inspection before exercising the power; or
  - (b) have the identity card displayed so it is clearly visible to the person when exercising the power.
- (2) However, if it is not practicable to comply with subsection (1), the investigator must produce the identity card for the person's inspection at the first reasonable opportunity.
- (3) For subsection (1), an investigator does not exercise a power in relation to a person only because the inspector has entered a public place under section 62A(1)(b).

## **52 When investigator ceases to hold office**

- (1) An investigator ceases to hold office if any of the following happens—
  - (a) the term of office stated in a condition of office ends;
  - (b) under another condition of office, the investigator ceases to hold office;

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- (c) the investigator's resignation under section 53 takes effect.
- (2) Subsection (1) does not limit the ways an investigator may cease to hold office.
- (3) In this section—  
*condition of office* means a condition on which the investigator holds office.

### **53 Resignation**

An investigator may resign by signed notice given to the board.

### **54 Failure to return identity card**

An individual who ceases to be an investigator must return the individual's identity card to the board within 21 days after ceasing to be an investigator, unless the individual has a reasonable excuse.

Maximum penalty—10 penalty units.

## **Division 6 Powers of board and investigators**

### **55 Power to require information or attendance**

- (1) For an investigation, the board or an investigator may, by notice given to a person, require the person to—
  - (a) give the board or investigator information related to the investigation by a stated reasonable time; or
  - (b) attend before the board or investigator at a stated reasonable time and place to answer questions, or produce documents, related to the investigation.
- (2) For information that is an electronic document, compliance with the requirement requires the giving of a clear image or written version of the electronic document.

(3) In this section—

*information* includes a document.

*Example of information*—

engineering plans or drawings, or a document containing engineering calculations

## **56 Offence to contravene information or attendance requirement**

(1) A person of whom a requirement is made under section 55(1)(a) must comply with the requirement unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

(2) A person of whom a requirement is made under section 55(1)(b) must not fail, without reasonable excuse—

- (a) to attend as required by the notice; or
- (b) to continue to attend as required by the board or investigator until excused from further attendance; or
- (c) to answer a question the person is required to answer by the board or investigator; or
- (d) to produce a document the person is required to produce by the notice.

Maximum penalty—50 penalty units.

(3) It is a reasonable excuse for a person not to give the information, answer the question or produce the document, if giving the information, answering the question or producing the document might tend to incriminate the person or expose the person to a penalty.

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

(1) If a document is produced to the board or an investigator, whether under a notice under section 55 or otherwise, the board or investigator may inspect it.

- (2) Also, the board or investigator may make a copy of, or take an extract from, the document if the board or investigator reasonably considers the document may be relevant to the investigation being conducted by the board or investigator.

## **Division 7                    Seizure of documents**

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

The board or investigator may seize a document mentioned in section 57(1) if the board or investigator reasonably believes the document is evidence that is relevant to the investigation being conducted by the board or investigator.

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

- (1) As soon as practicable after the board or investigator seizes a document, the board or investigator must give a receipt for it to the person from whom it was seized.
- (2) The receipt must describe generally each document seized and its condition.

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

If an investigator seizes a document under section 58, the investigator must give the document to the board when the investigator gives the board a report about the investigation under section 71(1).

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

- (1) Until a seized document is returned, the board or investigator must allow its owner to inspect or copy it.
- (2) Subsection (1) does not apply if it would be unreasonable to allow the inspection or copying.

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## **62 Return of seized document**

- (1) The board must return a document seized as evidence, whether by the board or an investigator, to its owner—
  - (a) at the end of 6 months; or
  - (b) if proceedings involving the document are started within 6 months—at the end of the proceedings and any appeal from the proceedings.
- (2) Despite subsection (1), the board must immediately return the document to its owner if the board stops being satisfied its continued retention as evidence is necessary.

## **Division 7A Entry of places by investigators**

### **Subdivision 1 Power to enter**

#### **62A General power to enter places**

- (1) An investigator may enter a place if—
  - (a) an occupier at the place consents under subdivision 2 to the entry and section 62D has been complied with for the occupier; or
  - (b) it is a public place and the entry is made when the place is open to the public; or
  - (c) the entry is authorised under a warrant and, if there is an occupier of the place, section 62I has been complied with for the occupier.
- (2) If the power to enter arose only because an occupier of the place consented to the entry, the power is subject to any conditions of the consent and ceases if the consent is withdrawn.
- (3) If the power to enter is under a warrant, the power is subject to the terms of the warrant.

## **Subdivision 2      Entry by consent**

### **62B      Application of subdivision**

This subdivision applies if an investigator intends to ask an occupier of a place to consent to the investigator or another investigator entering the place under section 62A(1)(a).

### **62C      Incidental entry to ask for access**

For the purpose of asking the occupier for the consent, an investigator may, without the occupier's consent or a warrant—

- (a) enter land around premises at the place to an extent that is reasonable to contact the occupier; or
- (b) enter part of the place the investigator reasonably considers members of the public ordinarily are allowed to enter when they wish to contact an occupier of the place.

### **62D      Matters investigator must tell occupier**

Before asking for the consent, the investigator must—

- (a) explain to the occupier the purpose of the entry, including the powers intended to be exercised; and
- (b) tell the occupier that—
  - (i) the occupier is not required to consent; and
  - (ii) the consent may be given subject to conditions and may be withdrawn at any time.

### **62E      Consent acknowledgement**

- (1) If the consent is given, the investigator may ask the occupier to sign an acknowledgement of the consent.
- (2) The acknowledgement must state—

- 
- (a) the purpose of the entry, including the powers to be exercised; and
  - (b) that the occupier has been given an explanation about the purpose of the entry, including the powers intended to be exercised; and
  - (c) that the occupier has been told—
    - (i) that the occupier is not required to consent; and
    - (ii) that the consent may be given subject to conditions and may be withdrawn at any time; and
  - (d) that the occupier gives the investigator or another investigator consent to enter the place and exercise the powers; and
  - (e) the day and time the consent was given; and
  - (f) any conditions of the consent.
- (3) If the occupier signs the acknowledgement, the investigator must immediately give a copy to the occupier.
- (4) If—
- (a) an issue arises in a proceeding about whether the occupier consented to the entry; and
  - (b) a signed acknowledgement complying with subsection (2) for the entry is not produced in evidence;
- the onus of proof is on the person relying on the lawfulness of the entry to prove the occupier consented.

### **Subdivision 3      Entry under warrant**

#### **62F      Application for warrant**

- (1) An investigator may apply to a magistrate for a warrant for a place.
- (2) The investigator must prepare a written application that states the grounds on which the warrant is sought.

- (3) The written application must be sworn.
- (4) The magistrate may refuse to consider the application until the investigator gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.

*Example—*

The magistrate may require additional information supporting the written application to be given by statutory declaration.

## **62G Issue of warrant**

- (1) The magistrate may issue the warrant for the place only if the magistrate is satisfied there are reasonable grounds for suspecting there is at the place, or will be at the place within the next 7 days, a particular thing or activity that may provide evidence of an offence against this Act.
- (2) The warrant must state—
  - (a) the place to which the warrant applies; and
  - (b) that a stated investigator or any investigator may with necessary and reasonable help and force—
    - (i) enter the place and any other place necessary for entry to the place; and
    - (ii) exercise the powers of the investigator; and
  - (c) particulars of the offence that the magistrate considers appropriate; and
  - (d) the name of the person suspected of having committed the offence unless the name is unknown or the magistrate considers it inappropriate to state the name; and
  - (e) the evidence that may be seized under the warrant; and
  - (f) the hours of the day or night when the place may be entered; and
  - (g) the magistrate's name; and
  - (h) the day and time of the warrant's issue; and



- (i) the day, within 14 days after the warrant's issue, the warrant ends.

## **62H Defect in relation to a warrant**

A warrant is not invalidated by a defect in—

- (a) the warrant; or
- (b) compliance with this subdivision;

unless the defect affects the substance of the warrant in a material particular.

## **62I Entry procedure**

- (1) This section applies if an investigator named in a warrant issued under this subdivision for a place is intending to enter the place under the warrant.
- (2) Before entering the place, the investigator must do or make a reasonable attempt to do the following things—
  - (a) identify himself or herself to a person present at the place who is an occupier of the place by producing the investigator's identity card or another document evidencing the investigator's appointment;
  - (b) give the person a copy of the warrant;
  - (c) tell the person the investigator is permitted by the warrant to enter the place;
  - (d) give the person an opportunity to allow the investigator immediate entry to the place without using force.
- (3) However, the investigator need not comply with subsection (2) if the investigator believes on reasonable grounds that immediate entry to the place is required to ensure the effective execution of the warrant is not frustrated.

## **Division 7B                    General powers of investigators after entering places**

### **62J    Application of division**

- (1) The powers under this division may be exercised if an investigator enters a place under section 62A.
- (2) However, if the investigator enters a place to get the occupier's consent to enter a place, this division applies to the investigator only if the consent is given or the entry is otherwise authorised.

### **62K    General powers**

- (1) The investigator may do any of the following (each a *general power*)—
  - (a) search any part of the place;
  - (b) inspect, examine or film any part of the place or anything at the place;
  - (c) take for examination a thing, or a sample of or from a thing, at the place;
  - (d) take an extract from, or copy, a document at the place, or take the document to another place to copy;
  - (e) take into or onto the place any person, equipment and materials the investigator reasonably requires for exercising a power under this division;
  - (f) remain at the place for the time necessary to achieve the purpose of the entry.
- (2) The investigator may take a necessary step to allow the exercise of a general power.
- (3) If the investigator takes a document from the place to copy it, the investigator must copy the document and return it to the place as soon as practicable.

- (4) If the investigator takes from the place an article or device reasonably capable of producing a document from an electronic document to produce the document, the investigator must produce the document and return the article or device to the place as soon as practicable.
- (5) In this section—
- examine* includes analyse, test, account, measure, weigh, grade, gauge and identify.
- film* includes photograph, videotape and record an image in an other way.
- inspect*, a thing, includes open the thing and examine its contents.

## **62L Power to require reasonable help**

- (1) The investigator may make a requirement (a *help requirement*) of an occupier of the place or a person at the place to give the investigator reasonable help to exercise a general power, including, for example, to produce a document or to give information.
- (2) When making the help requirement, the investigator must give the person an offence warning for the requirement.

## **62M Offence to contravene help requirement**

- (1) A person of whom a help requirement has been made must comply with the requirement unless the person has a reasonable excuse.
- Maximum penalty—50 penalty units.
- (2) It is a reasonable excuse for an individual not to comply with a help requirement if complying might tend to incriminate the individual or expose the individual to a penalty.

## **Division 7C                      Power to seize evidence**

### **62N      Seizing evidence at a public place that may be entered without consent or warrant**

- (1) This section applies if an investigator enters a public place.
- (2) The investigator may seize a thing at the public place if the investigator reasonably believes the thing is evidence of an offence against this Act.

### **62O      Seizing evidence at a place that may only be entered with consent or warrant**

- (1) This section applies if—
  - (a) an investigator is authorised to enter a place under this part only with the consent of the occupier of the place or a warrant; and
  - (b) the investigator enters the place after obtaining the necessary consent or warrant.
- (2) If the investigator enters the place with the occupier's consent, the investigator may seize a thing at the place if—
  - (a) the investigator reasonably believes the thing is evidence of an offence under this Act; and
  - (b) seizure of the thing is consistent with the purpose of entry as explained to the occupier when asking for the occupier's consent.
- (3) If the investigator enters the place under a warrant, the investigator may seize the evidence for which the warrant was issued.
- (4) The investigator may also seize anything else at the place if the investigator reasonably believes—
  - (a) the thing is evidence of an offence against this Act; and
  - (b) the seizure is necessary to prevent the thing being hidden, lost or destroyed.

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**62P Power to secure seized thing**

- (1) Having seized a thing under this division, an investigator may—
  - (a) leave it at the place where it was seized (the *place of seizure*) and take reasonable action to restrict access to it; or
  - (b) move the thing from the place of seizure.
- (2) For subsection (1)(a), the investigator may, for example—
  - (a) seal the thing, or the entrance to the place of seizure, and mark the thing or place to show access to the thing or place is restricted; or
  - (b) for equipment—make it inoperable; or
  - (c) require a person the investigator reasonably believes is in control of the place or thing to do an act mentioned in paragraph (a) or (b) or anything else an investigator could do under subsection (1)(a).

**62Q Offence to contravene seizure requirement**

A person must comply with a requirement made of the person under section 62P(2)(c) unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

**62R Offence to interfere**

- (1) If access to a seized thing is restricted under section 62P, a person must not tamper with the thing or with anything used to restrict access to the thing without—
  - (a) an investigator's approval; or
  - (b) a reasonable excuse.

Maximum penalty—50 penalty units.
- (2) If access to a place is restricted under section 62P, a person must not enter the place in contravention of the restriction or

[s 62S]

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tamper with anything used to restrict access to the place without—

- (a) an investigator's approval; or
- (b) a reasonable excuse.

Maximum penalty—50 penalty units.

## **62S Receipt and information notice for seized thing**

- (1) This section applies if an investigator seizes anything under this division unless—
  - (a) the investigator reasonably believes there is no-one apparently in possession of the thing or it has been abandoned; or
  - (b) because of the condition, nature and value of the thing it would be unreasonable to require the investigator to comply with this section.
- (2) The investigator must, as soon as practicable after seizing the thing, give an owner or person in control of the thing before it was seized—
  - (a) a receipt for the thing that generally describes the thing and its condition; and
  - (b) an information notice about the decision to seize it.
- (3) However, if an owner or person from whom the thing is seized is not present when it is seized, the receipt and information notice may be given by leaving them in a conspicuous position and in a reasonably secure way at the place at which the thing is seized.
- (4) The receipt and information notice may—
  - (a) be given in the same document; and
  - (b) relate to more than 1 seized thing.
- (5) The investigator may delay giving the receipt and information notice if the investigator reasonably suspects giving them may frustrate or otherwise hinder an investigation by the investigator under this part.

- (6) However, the delay may be only for so long as the investigator continues to have the reasonable suspicion and remains in the vicinity of the place at which the thing was seized to keep it under observation.

### **62T Access to seized thing**

- (1) Until a seized thing is forfeited or returned, the investigator who seized the thing must allow an owner of the thing—
  - (a) to inspect it at any reasonable time and from time to time; and
  - (b) if it is a document—to copy it.
- (2) Subsection (1) does not apply if it is impracticable or would be unreasonable to allow the inspection or copying.
- (3) The inspection or copying must be allowed free of charge.

### **62U Return of seized things**

- (1) If a seized thing is not forfeited, the investigator must return it to its owner—
  - (a) at the end of 1 year; or
  - (b) if proceedings involving the thing are started within 1 year, at the end of the proceedings and any appeal from the proceedings.
- (2) Despite subsection (1), unless a thing that has been seized as evidence is forfeited, the investigator must immediately return it to its owner if the investigator stops being satisfied its continued retention as evidence is necessary.

### **62V Forfeiture of seized things**

- (1) The board may decide a thing that has been seized under this division is forfeited to the board if the board or an investigator—

- (a) after making reasonable inquiries, can not find an owner; or
  - (b) after making reasonable efforts, can not return it to an owner; or
  - (c) reasonably believes it is necessary to keep the thing to prevent it being used to commit the offence for which it was seized.
- (2) However, for subsection (1)(a) and (b), the board or investigator is not required to—
- (a) make inquiries if it would be unreasonable to make inquiries to find an owner; or
  - (b) make efforts if it would be unreasonable to make efforts to return the thing to an owner.

*Example for paragraph (b)—*

The owner of the thing has migrated to another country.

- (3) Regard must be had to the thing's condition, nature and value in deciding—
- (a) whether it is reasonable to make inquiries or efforts; and
  - (b) if inquiries or efforts are made—what inquiries or efforts, including the period over which they are made, are reasonable.

## **62W Information notice about forfeiture decision**

- (1) If the board decides under section 62V(1) to forfeit a seized thing, the board must as soon as practicable give a person who owned the thing immediately before the forfeiture (the *former owner*) an information notice about the decision.
- (2) If the decision was made under section 62V(1)(a) or (b), the information notice may be given by leaving it at the place where the seized thing was seized, in a conspicuous position and in a reasonably secure way.



- (3) The information notice must state that the former owner may apply for a stay of the decision if he or she applies to the tribunal for a review of the decision.
- (4) However, subsections (1) to (3) do not apply if—
  - (a) the decision was made under section 62V(1)(a) or (b); and
  - (b) the place where the seized thing was seized is—
    - (i) a public place; or
    - (ii) a place where the notice is unlikely to be read by the former owner.

#### **62X When thing becomes property of the board**

A thing becomes the property of the board if the thing is forfeited to the board under section 62V.

#### **62Y How property may be dealt with**

- (1) This section applies if, under section 62X, a thing becomes the property of the board.
- (2) The board may deal with the thing as the board considers appropriate, including, for example, by destroying it or giving it away.
- (3) The board must not deal with the thing in a way that could prejudice the outcome of an appeal against the forfeiture under this part.
- (4) If the board sells the thing, the board must, after deducting the costs of the sale, make reasonable efforts to return the proceeds of the sale to the former owner of the thing.



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- (3) Compensation may be claimed and ordered to be paid in a proceeding—
    - (a) brought in a court with jurisdiction for the recovery of the amount of compensation claimed; or
    - (b) for an offence against this Act brought against the person claiming compensation.
  - (4) A court may order compensation to be paid only if it is satisfied it is fair to make the order in the circumstances of the particular case.

## **Division 9                      Offences about investigations**

### **65            False or misleading statements**

A person must not, in relation to an investigation under this part, state anything to the board or an investigator that the person knows is false or misleading in a material particular.

Maximum penalty—50 penalty units.

### **66            False or misleading documents**

- (1) A person must not, in relation to an investigation under this part, give the board or an investigator a document containing information that the person knows is false or misleading in a material particular.

Maximum penalty—50 penalty units.

- (2) Subsection (1) does not apply to a person who, when giving the document—
  - (a) informs the board or investigator, to the best of the person's ability, how it is false or misleading; and
  - (b) if the person has, or can reasonably obtain, the correct information—gives the correct information to the board or investigator.

## **67 Obstructing board or investigators**

- (1) A person must not obstruct the board in its exercise of a power in the conduct of an investigation, or an investigator in the exercise of a power, unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

- (2) If a person has obstructed the board or an investigator as mentioned in subsection (1) and the board or investigator decides to proceed with the exercise of the power, the board or investigator must warn the person that—
- (a) it is an offence to obstruct the board or an investigator, unless the person has a reasonable excuse; and
  - (b) the board or investigator considers the person's conduct is an obstruction.

- (3) In this section—

*obstruct* includes hinder and attempt to obstruct or hinder.

## **68 Impersonation of investigators**

A person must not pretend to be an investigator.

Maximum penalty—100 penalty units.

# **Part 4 Reports and board's decisions about investigations**

## **69AA Application of pt 4 to certain former registered professional engineers**

For applying this part to a person mentioned in section 36AA(1), the person is taken to be a registered professional engineer.

## **69 Board's report about investigation**

- (1) The board must, as soon as practicable after completing an investigation, prepare a written report about the investigation.
- (2) The report must include the board's findings about the investigation, including, if the investigation was the result of a complaint, the board's findings about the complaint.

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

An investigator must, if asked by the board, give the board an interim report about the conduct of an investigation being conducted by the investigator.

## **71 Investigator's report about investigation**

- (1) An investigator must, as soon as practicable after the investigator considers an investigation being conducted by the investigator is completed, give the board a written report about the investigation.
- (2) If the investigation was the result of a complaint, the report must include the investigator's findings about the complaint.
- (3) If the board considers the report does not include enough information to enable the board to make a decision under section 73(2) or 75(2), the board may, by notice, ask the investigator to give the board a further report about the investigation.
- (4) The investigator must, as soon as practicable, comply with a request under subsection (3).

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

The board may, at any time, give the Minister a report about an investigation conducted by the board or an investigator.

**73 Board's decision on investigation about registered professional engineer**

- (1) This section applies if the board—
  - (a) prepares a report under section 69(1) about a registered professional engineer; or
  - (b) receives a report under section 71(1) about a registered professional engineer and does not request a further report about the engineer under section 71(3); or
  - (c) receives a further report under section 71(3) about a registered professional engineer.
- (2) As soon as practicable after preparing the report, or receiving the report or further report, the board must decide to do 1 or more of the following—
  - (a) start a disciplinary proceeding against the registered professional engineer;  
*Note—*  
For how to start a disciplinary proceeding, see part 8.
  - (b) enter into an undertaking agreed with the registered professional engineer about a matter relating to the engineer carrying out professional engineering services, including, for example, to submit to an audit of the engineer's practice of engineering;
  - (c) caution or reprimand the registered professional engineer;
  - (d) impose a condition on the engineer's registration;
  - (e) take no further action about the matter the subject of the investigation.
- (2A) If the engineer does not comply with an undertaking entered into under subsection (2)(b), the board may decide to take another action mentioned in subsection (2).
- (3) In acting under subsection (2), the board must have regard to the main objects of this Act and the disciplinary grounds.

- (4) Also, regardless of what the board decides under subsection (2)(a) to (d), the board may start proceedings to prosecute the registered professional engineer for an offence.
- (5) A decision to take action as mentioned in subsection (2)(b) to (e) does not prevent the board taking the matter the subject of the investigation into consideration at a later time as part of a pattern of conduct or practice that may result in starting a disciplinary proceeding against the registered professional engineer.

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

- (1) As soon as practicable after making a decision under section 73(2) or (4) about a registered professional engineer, the board must give notice of the decision to—
  - (a) the registered professional engineer; and
  - (b) if the investigation was the result of a complaint—the complainant.
- (2) If the board decides, under section 73(2)(c), to caution or reprimand the registered professional engineer, the board must give the engineer an information notice for the decision.
- (3) If the board decides, under section 73(2)(e), to take no further action about the matter the subject of an investigation started because of a complaint, the board must give the complainant an information notice for the decision.

#### **74A Publishing of certain decisions on investigation about registered professional engineer**

- (1) This section applies if the board decides—
  - (a) to caution or reprimand a registered professional engineer under section 73(2)(c); or
  - (b) to impose a condition on a registered professional engineer's registration under section 73(2)(d).

- (2) The board may notify the decision, and reasons for the decision, on the board's website.
- (3) The board must not act under subsection (2) until the particulars of the decision are included in the register under section 102.

## **75 Board's decision about other investigations**

- (1) This section applies if the board—
  - (a) prepares a report under section 69(1) about a person other than a registered professional engineer; or
  - (b) receives a report under section 71(1) about a person other than a registered professional engineer and does not request a further report about the person under section 71(3); or
  - (c) receives a further report under section 71(3) about a person other than a registered professional engineer.
- (2) As soon as practicable after preparing the report, or receiving the report or further report, the board must decide to do 1 or more of the following—
  - (a) start proceedings to prosecute the person for an offence;
  - (b) enter into an undertaking agreed with the person about the person's conduct, including, for example, to apply for registration or to only carry out professional engineering services under the direct supervision of a practising professional engineer;
  - (c) caution or reprimand the person;
  - (d) take no further action about the matter the subject of the investigation.
- (3) If the person does not comply with an undertaking entered into under subsection (2)(b), the board may decide to take another action mentioned in subsection (2).
- (4) As soon as practicable after making the decision, the board must give notice of the decision to the person.



- (5) If the board decides, under subsection (2)(c), to caution or reprimand the person, the board must give the person an information notice for the decision.

**75A Other investigations—recording decision if person becomes registered professional engineer**

- (1) This section applies if—
- (a) the board makes a decision about a person under section 75; and
  - (b) the person later becomes a registered professional engineer.
- (2) The board may include in the register particulars of its decision with other particulars relevant to the person's registration.

**75B Publishing information if person other than registered professional engineer found guilty of offence**

- (1) This section applies if a person other than a registered professional engineer is found guilty of an offence against part 7 of this Act, whether or not a conviction is recorded.
- (2) The board may, during the relevant period, publish the information about the offence on the board's website.
- (3) For subsection (2), only the following information may be published—
- (a) the person's full name and any other identifying particulars;
  - (b) the person's business address or former business address;
  - (c) particulars of the offence committed by the person;
  - (d) any other particulars prescribed by regulation.
- (4) If the finding of guilt is quashed on appeal, the board must remove any reference to the offence from the website.

(5) In this section—

*relevant period* means the period starting on the date the finding of guilt is made and ending 5 years after that date.

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

As soon as practicable after deciding to take action under section 73(2)(a) to (d), or (4), or section 75(2)(a) to (c), the board must take the action.

# **Part 5 Board of Professional Engineers of Queensland**

## **Division 1 Establishment**

### **77 Establishment of board**

- (1) The Board of Professional Engineers of Queensland is established.
- (2) The board—
  - (a) is a body corporate; and
  - (b) has perpetual succession; and
  - (c) has a common seal; and
  - (d) may sue and be sued in its corporate name.

### **78 Board's relationship with the State**

The board does not represent the State.

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**79 Board's independence etc.**

In performing its functions, the board is to act independently, impartially and in the public interest.

**Division 2 Functions and powers**

**80 Functions of board**

- (1) The functions of the board are as follows—
- (a) to assess applications made to it under this Act;
  - (b) to register persons who are eligible for registration and issue certificates of registration;
  - (c) to conduct, or authorise, investigations about the professional conduct of registered professional engineers and contraventions of this Act;
  - (d) to approve a program to audit registered professional engineers under part 2B;
  - (e) to keep the register;
  - (f) to advise the Minister about—
    - (i) eligibility requirements for persons applying for registration, or renewal or restoration of registration; and
    - (ii) the suitability of assessment schemes for approval; and
    - (iii) the operation of this Act in its application to the practice of engineering;
  - (g) to review the eligibility requirements mentioned in paragraph (f)(i);
  - (h) to perform other functions given to the board under this or another Act;
  - (i) to perform a function incidental to a function mentioned in paragraphs (a) to (h).

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- (2) The board must, at least once every 2 years, review the eligibility requirements mentioned in subsection (1)(f)(i).

## **81 Powers of board**

- (1) The board has all the powers of an individual, and may, for example, do all or any of the following—
- (a) enter into contracts;
  - (b) acquire, hold, deal with and dispose of, property;
  - (c) appoint and act through agents and attorneys;
  - (d) employ staff and engage consultants;
  - (e) do anything else necessary or convenient to be done for the performance of its functions.
- (2) Without limiting subsection (1), the board has the other powers given to it under this Act.

## **Division 3 Membership**

### **82 Membership of board**

- (1) The board consists of 7 members appointed by the Governor in Council.
- (2) The board must include—
- (a) 1 person who—
    - (i) is the academic head or an academic representative of a school of engineering prescribed under a regulation; and
    - (ii) is a registered professional engineer, or as an applicant would be eligible for registration; and
  - (b) 1 person who—
    - (i) is a representative of the Queensland Division of the Institution of Engineers Australia (the *institution*); and

- (ii) is a registered professional engineer, or as an applicant would be eligible for registration; and
  - (c) 1 registered professional engineer elected under this Act; and
  - (d) 1 registered professional engineer who lives, and undertakes professional engineering services predominantly, in regional Queensland; and
  - (e) 1 lawyer, of at least 10 years standing, with experience in the law relating to building and construction; and
  - (f) 1 person who has at least 10 years experience as a construction contractor in the building and construction industry; and
  - (g) 1 person who is not a registered professional engineer.
- (3) The members mentioned in subsection (2)(a), (b) and (d) to (g) are to be nominated by the Minister.
  - (4) If a registered professional engineer is not elected under subsection (2)(c), the Minister may nominate a registered professional engineer for appointment to the board.
  - (5) A registered professional engineer nominated under subsection (4) is taken to be elected under subsection (2)(c).
  - (6) The Minister must nominate a person for appointment under subsection (2)(g) who the Minister reasonably believes will represent community interests.

### **83 Chairperson and deputy chairperson**

- (1) The chairperson of the board is the member appointed by the Governor in Council as the chairperson.
- (2) The deputy chairperson of the board is the member appointed by the Governor in Council as the deputy chairperson.
- (3) A person may be appointed as the chairperson or deputy chairperson at the same time the person is appointed as a member.

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- (4) The chairperson or deputy chairperson holds office for the term decided by the Governor in Council, unless the person's term of office as a member ends sooner than the person's term of office as chairperson or deputy chairperson.
- (5) A vacancy occurs in the office of chairperson or deputy chairperson if the person holding the office resigns the office by signed notice of resignation given to the Minister or stops being a member.
- (6) However, a person resigning the office of chairperson or deputy chairperson may continue to be a member.
- (7) The deputy chairperson is to act as chairperson—
  - (a) during a vacancy in the office of chairperson; and
  - (b) during all periods when the chairperson is absent from duty or for another reason can not perform the functions of the office.

#### **84 Duration of appointment**

- (1) A member is to be appointed for the term, of not more than 3 years, stated in the member's instrument of appointment.
- (2) However, if at the end of a member's term of appointment a person has not been appointed to replace the member, the member's term does not end until the first of the following events to happen—
  - (a) the end of 3 months after the member's term would, apart from this subsection, have ended;
  - (b) the member is reappointed;
  - (c) if the member is not reappointed—another person has been appointed to replace the member.

#### **85 Conditions of appointment**

- (1) A member holds office—
  - (a) on a part-time basis; and

- (b) on terms, not otherwise provided for in this Act, that are decided by the Governor in Council.
- (2) A member is entitled to be paid the remuneration and allowances decided by the Governor in Council.

## 86 Termination of appointment

- (1) The Governor in Council may remove a member from office if—
  - (a) the member is absent from 3 consecutive meetings of the board without the board's permission and without reasonable excuse; or
  - (b) the Minister is satisfied the member—
    - (i) is incapable of performing the duties of a member because of physical or mental incapacity, or otherwise fails to perform the member's duties; or
    - (ii) is performing the member's duties carelessly, incompetently or inefficiently; or
    - (iii) is affected by bankruptcy action; or
    - (iv) is an executive officer of a corporation affected by control action after the commencement of this section; or
    - (v) has a conviction, other than a spent conviction, for an indictable offence or an offence against this Act; or
    - (vi) commits misconduct of a kind that could justify dismissal from the public service if the member were a public service officer.
- (2) In this section—

**meeting** means the following—

  - (a) if the member does not attend—a meeting with a quorum present;
  - (b) if the member attends—a meeting with or without a quorum present.

## **87 Vacation of office**

- (1) The office of a member becomes vacant if the member—
  - (a) dies; or
  - (b) resigns office by written notice given to the Minister; or
  - (c) is removed from office under section 86.
- (2) Also, the office of a member becomes vacant if the member ceases to hold the office or qualification, if any, mentioned in section 82(2) for the member.
- (3) If a member resigns, the resignation takes effect on the day the notice is given or, if a later day is stated in the notice, on the later day.

## **88 Leave of absence for a member**

- (1) The Minister may approve a leave of absence for a member (the *absent member*) of not more than 9 months.
- (2) The Minister may appoint another person to act in the office of the absent member while the member is absent on the leave.
- (3) A person appointed under subsection (2), must be—
  - (a) if the absent member is a person mentioned in section 82(2)(a), (b), (e), (f) or (g)—a person who belongs to the same category of persons, mentioned in the section, to which the absent member belongs; or
  - (b) if the absent member is a person mentioned in section 82(2)(c) or (d)—a registered professional engineer.
- (4) The Minister's power to appoint a person to act in the office of an absent member does not limit the Governor in Council's powers under the *Acts Interpretation Act 1954*, section 25(1)(b)(v).



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**89 Effect of vacancy in membership of board**

- (1) The performance of a function, or exercise of a power, by the board is not affected merely because of a vacancy in the membership of the board.
- (2) Subsection (1) applies despite section 82(1).

**90 Criminal history reports**

- (1) The chief executive may make inquiries about a person to help decide whether the person—
  - (a) is suitable for appointment as a member of the board under section 82(2); or
  - (b) is suitable to act in the office of a member under section 88(2); or
  - (c) has a conviction for an offence mentioned in section 86(1)(b)(v).
- (2) Without limiting subsection (1), the chief executive may ask the police commissioner for—
  - (a) a report about the person's criminal history; and
  - (b) a brief description of the nature of the offence giving rise to a conviction mentioned in the person's criminal history.
- (3) However, the chief executive may make a request under subsection (2) about a person only if the person has given the chief executive written consent for the request.
- (4) The police commissioner must comply with the request.
- (5) The duty imposed on the police commissioner applies only to information in the commissioner's possession or to which the commissioner has access.

## **Division 4                      Business and meetings**

### **91            Conduct of business**

Subject to this division, the board may conduct its business, including its meetings, in the way it considers appropriate.

### **92            Times and places of meetings**

- (1) Board meetings must be held at least once in every 2 months at the times and places the chairperson decides.
- (2) However, the chairperson must call a meeting if asked, in writing, to do so by the Minister or at least 2 members.

### **93            Quorum**

A quorum for a meeting of the board is 4 members.

### **94            Presiding at meetings**

- (1) The chairperson is to preside at all meetings of the board at which the chairperson is present.
- (2) If the chairperson is absent from a board meeting, but the deputy chairperson is present, the deputy chairperson is to preside.
- (3) If the chairperson and deputy chairperson are both absent from a board meeting—
  - (a) the member nominated by the chairperson is to preside; or
  - (b) if the chairperson does not nominate a member under paragraph (a)—the member nominated by the deputy chairperson is to preside.
- (4) If the offices of chairperson and deputy chairperson are vacant, the member chosen by the members present is to preside.

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## 95 Conduct of meetings

- (1) A question at a board meeting is to be decided by a majority of the votes of the members present and voting.
- (2) Each member present at the meeting has a vote on each question to be decided and, if the votes are equal, the member presiding has a casting vote.
- (3) A member present at the meeting who abstains from voting is taken to have voted for the negative.
- (4) The board may hold meetings, or allow members to take part in its meetings, by using any technology that reasonably allows members to hear and take part in discussions as they happen.

*Example of use of technology—*

teleconferencing

- (5) A member who takes part in a board meeting under subsection (4) is taken to be present at the meeting.
- (6) A resolution is validly made by the board, even if it is not passed at a board meeting, if—
  - (a) a majority of the members gives written agreement to the resolution; and
  - (b) notice of the resolution is given under procedures approved by the board.

## 96 Minutes

- (1) The board must keep minutes of its meetings.
- (2) Each of the following must be recorded in the minutes—
  - (a) a decision made under section 73(2) or 75(2);
  - (b) a resolution made under section 95(6).

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

### **97            Disclosure of interests**

- (1) This section applies to a board member if—
  - (a) the member has a direct or indirect interest in an issue being considered, or about to be considered, by the board; and
  - (b) the interest could conflict with the proper performance of the member's duties about the consideration of the issue.
- (2) As soon as practicable after the relevant facts come to the member's knowledge, the member must disclose the nature of the interest to a meeting of the board.
- (3) Unless the board otherwise directs, the member must not—
  - (a) be present when the board considers the issue; or
  - (b) take part in a decision of the board about the issue.
- (4) The member must not be present when the board is considering whether to give a direction under subsection (3).
- (5) If there is another member who must, under subsection (2), also disclose an interest in the issue, the other member must not—
  - (a) be present when the board is considering whether to give a direction under subsection (3); or
  - (b) take part in making the decision about giving the direction.
- (6) If—
  - (a) because of this section, a member is not present at a board meeting for considering or deciding an issue, or for considering or deciding whether to give a direction under subsection (3); and
  - (b) there would be a quorum if the member were present;

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the remaining members present are a quorum of the board for considering or deciding the issue, or for considering or deciding whether to give the direction, at the meeting.

- (7) A disclosure under subsection (2) must be recorded in the board's minutes.
- (8) If the member is a registered professional engineer, the member does not have a direct or indirect interest in an issue if the interest arises merely because the member is a registered professional engineer.

## **Division 6                      Directions by Minister and performance agreements**

### **98            Ministerial direction**

- (1) The Minister may give the board a written direction about the performance of the board's functions or exercise of its powers if satisfied it is necessary to give the direction in the public interest.
- (2) Without limiting subsection (1), the direction may be to—
  - (a) give reports and information; or
  - (b) apply to the board a policy, standard or other instrument applying to a public sector unit.
- (3) The direction can not be about—
  - (a) the registering of, or refusal to register, an applicant for registration; or
  - (b) the renewing of, or refusal to renew, a registration; or
  - (c) the restoring of, or refusal to restore, a registration; or
  - (d) the cancelling of a registration.
- (4) Despite section 79, the board must comply with the direction.
- (5) However, before giving the direction the Minister must consult with the board.

- (6) The Minister must publish a copy of the direction in the gazette within 21 days after the direction is given.

## **99 Performance agreement**

- (1) The board must enter into an agreement with the Minister (a *performance agreement*) within 1 month after the end of each financial year.
- (2) The performance agreement must identify the board's strategic direction for the current financial year and the 2 following financial years.
- (3) The agreement may include other matters relevant to the board's functions and agreed to by the Minister and the board.

## **Division 7 Registrar of board and other staff**

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

- (1) There is a registrar of the board.
- (2) The registrar is to be appointed to the office under the *Public Service Act 2008*.
- (3) The registrar is responsible for managing the board's administrative affairs.

### **100A Other staff**

With the board's consent, other public service employees may be engaged by a public sector unit to provide services for the board.

### **101 Board to reimburse cost of registrar's or other staff's services**

The board must reimburse the public sector unit in which the registrar or a public service employee is employed the

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reasonable costs of the services provided by the registrar or public service employee for the board.

### **101A Delegation by registrar**

- (1) The registrar may delegate the registrar's functions under this Act to—
  - (a) an appropriately qualified employee of the board; or
  - (b) an appropriately qualified public service employee providing services for the board under section 100A.
- (2) In this section—

*functions* includes powers.

## **Division 8 Register**

### **102 Keeping register**

- (1) The board must keep a register of persons who are, or have been, registered professional engineers.
- (2) The register may be kept in the way the board considers appropriate, including, for example, in an electronic form.
- (3) The register must contain all the following particulars for each person—
  - (a) the person's name and contact details;
  - (b) details of the person's eligibility for registration as a registered professional engineer;
  - (c) if the tribunal makes an order about the person under section 131(2) or (3) or section 132(2)(b)—details of the order, other than any details identified in the order as details that are not to be included in the register;
  - (d) if the tribunal conducts a disciplinary proceeding in relation to the person because of the person's conviction for an offence against this Act—the fact of the conviction;

- (e) if the person's registration is subject to a condition—particulars of the condition;
  - (f) if the board cautions or reprimands the person under section 73(2)(c)—particulars of the caution or reprimand;
  - (g) if the person's registration is cancelled under section 29(4)—the day the registration is cancelled and the reasons for the cancellation;
  - (h) if the person's registration is not renewed under section 20—the reasons for not renewing the registration;
  - (i) if the person's registration is not restored under section 24—the reasons for not restoring the registration;
  - (j) whether the person is registered as a practising professional engineer or non-practising professional engineer;
  - (k) other particulars relevant to the person's registration and prescribed under a regulation.
- (4) If an order mentioned in subsection (3)(c) states a period in which details of the order may be included in the register, the details may be included in the register only for the stated period.
- (5) The particulars mentioned in subsection (3)(e) to (i) for a relevant decision of the board must not be included in the register until—
- (a) the period in which the person may apply to the tribunal for a review of the decision has ended; or
  - (b) if the person has applied to the tribunal for a review of the decision—the review, and any appeal from the tribunal's decision on the review, has been decided or is otherwise ended.
- (6) However, if a person applies to the tribunal for a review of a relevant decision of the board, the particulars mentioned in



subsection (3)(e) to (i) for the decision may only be included in the register if—

- (a) the review, and any appeal from the tribunal’s decision on the review, is decided or otherwise ended; and
- (b) the result of the decision on the review and any appeal from the decision, or the ending of the review or appeal, is that the person’s registration remains cancelled or may not be renewed or restored.

(7) In this section—

*relevant decision*, of the board, means a decision of the board to—

- (a) impose a condition on a person’s registration; or
- (b) caution or reprimand a person; or
- (c) cancel, or refuse to renew or restore, a person’s registration.

### **103 Inspection of register**

(1) The board must—

- (a) keep the register open for inspection, free of charge, at the board’s office by members of the public when the office is open to the public; and
- (b) give a person a copy of the register, or a part of it, on payment of the fee prescribed under a regulation.

(2) Also, the board must make the register available for inspection on its website.

## **Division 9 Other provisions about the board**

### **104 Application of other Acts**

(1) The board is a statutory body within the meaning of the—

- (a) *Financial Accountability Act 2009*; and

(b) *Statutory Bodies Financial Arrangements Act 1982*.

- (2) The *Statutory Bodies Financial Arrangements Act 1982*, part 2B, sets out the way in which the board's powers under this Act are affected by the *Statutory Bodies Financial Arrangements Act 1982*.

## 106 Board to reimburse tribunal costs

- (1) The board must reimburse the department the tribunal costs paid by the department to the tribunal department.
- (2) In this section—

*tribunal costs* means the reasonable costs of the tribunal incurred in conducting—

- (a) proceedings for reviews of decisions mentioned in section 122(2); or
- (b) disciplinary proceedings.

*tribunal department* means the department in which the QCAT Act is administered.

## 107 Matters to be included in annual report

The board's annual report under the *Financial Accountability Act 2009* for a financial year must include each of the following—

- (a) a copy of all ministerial directions given to the board under section 98(1) during the year;
- (b) details about action taken by the board to comply with each direction mentioned in paragraph (a);
- (c) information about whether the board's activities during the year were consistent with its performance agreement;
- (d) details about disciplinary proceedings, or proceedings for a contravention of the Act, started by the board;

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- (e) details of the results of reviews, under part 8, division 2, of decisions.

### **107A Delegation**

- (1) The board may delegate the board's functions under this Act to any of the following—
  - (a) a board member;
  - (b) a committee of board members;
  - (c) the registrar;
  - (d) an appropriately qualified employee of the board;
  - (e) an appropriately qualified public service employee providing services for the board under section 100A.
- (2) In this section—  
*functions* includes powers.

## **Part 6 Codes of practice**

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

- (1) The board must, within 9 months after the commencement of this part, make a code of practice to provide guidance to registered professional engineers as to appropriate professional conduct or practice.
- (2) In developing or amending a code of practice, the board must consult with—
  - (a) professional associations in the State that the board considers represent the interests of registered professional engineers; and
  - (b) universities that—
    - (i) are established in Queensland; and

- (ii) are engaged in the education of students in the profession of engineering; and
  - (c) any other entity the Minister directs the board to consult with.
- (3) A code of practice, or an amendment of a code of practice, has no effect until it is approved under a regulation.
- (4) The board may make a code of practice by adopting another entity's code of practice with or without changes.
- (5) The board must review its code of practice at least once every 3 years.
- (6) The board's code of practice is a statutory instrument within the meaning of the *Statutory Instruments Act 1992*.

### **109 Tabling of code**

- (1) This section applies if, under section 108(3), a code of practice, or amendment of a code of practice, has been approved under a regulation.
- (2) The Minister must, within 14 sitting days after the regulation is notified, table a copy of the code, or amendment or amended code, in the Legislative Assembly.
- (3) A failure to comply with subsection (2) does not invalidate or otherwise affect the code or the regulation.

### **110 Inspection of code**

- (1) The board must—
  - (a) keep copies of the code of practice, as in force from time to time, available for inspection, free of charge, at the board's office by members of the public when the office is open to the public; and
  - (b) give a person a copy of the code, or a part of it, on payment of the fee prescribed under a regulation.
- (2) Also, the board must make the code of practice available for inspection on its website.

## **111 Notice of approval or amendment of code**

The board must notify registered professional engineers of the approval of a code of practice and any amendment of the code.

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

- (1) An approved code of practice is admissible as evidence in a disciplinary proceeding brought by the board against a registered professional engineer.
- (2) The code may only be used to provide evidence, in the disciplinary proceeding, of appropriate professional conduct or practice for a registered professional engineer.

# **Part 6A Assessment entities and schemes**

## **Division 1 Preliminary**

### **112A Definitions for pt 6A**

In this part—

*application for approval* means an application for approval of a proposed assessment scheme under section 112C.

*application for renewal* means an application for renewal of the approval of an assessment scheme under section 112D.

*application for variation* means an application for variation of an assessment scheme under section 112E.

*suitable for approval* see section 112B.

## **Division 2                      Suitability of assessment schemes**

### **112B   Suitability of assessment schemes for approval**

A proposed assessment scheme is, and an assessment scheme continues to be, *suitable for approval* under this part if—

- (a) the scheme adequately provides for the assessment of qualifications and competencies of engineers in an identifiable area of engineering; and
- (b) the scheme is consistent with national and international standards for the recognition of professional engineers; and
- (c) the scheme includes procedures for the assessment of applicants under part 2 that are conducted in an independent and professional manner; and
- (d) the entity conducting the scheme has adequate procedures for monitoring and improving the assessment process carried out under the scheme; and
- (e) the fees imposed under the scheme for the assessment of qualifications and competencies are reasonable having regard to the scope of the services being offered; and
- (f) the scheme includes adequate continuing professional development requirements for professional engineers and an effective audit program to ensure continuing registration requirements are met; and
- (g) the entity conducting the scheme employs competent persons to perform assessments of applicants under part 2 and has proven procedures for training and accrediting those persons who will perform the assessments; and
- (h) the entity conducting the scheme has the financial capacity and facilities to conduct assessments of qualifications and competencies; and

- (i) the entity conducting the scheme has a proven capacity to undertake independent and authoritative assessments in a timely manner; and
- (j) the scheme or entity conducting the scheme satisfies other criteria provided for under a regulation.

## **Division 3                      Applications relating to assessment schemes**

### **112C Application for approval**

- (1) An 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.
- (2) The application must—
  - (a) be in the approved form; and
  - (b) be supported by enough information to enable the Minister to decide the application; and
  - (c) be accompanied by—
    - (i) the proposed assessment scheme; and
    - (ii) the fee, if any, prescribed under a regulation.

### **112D Application for renewal**

- (1) The assessment entity for an assessment scheme may apply to the Minister for renewal of the approval of the assessment scheme.
- (2) The application must—
  - (a) be in the approved form; and
  - (b) be supported by enough information to enable the Minister to decide the application; and
  - (c) be made at least 28 days before the approval ends; and

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- (d) be accompanied by the fee, if any, prescribed under a regulation.

### **112E Application for variation**

- (1) The assessment entity for an assessment scheme may apply to the Minister for variation of the assessment scheme.
- (2) The application must—
  - (a) be in the approved form; and
  - (b) be supported by enough information to enable the Minister to decide the application; and
  - (c) be accompanied by—
    - (i) the proposed variation of the assessment scheme; and
    - (ii) the fee, if any, prescribed under a regulation.

## **Division 4 Referral of applications under this part to the board**

### **112F Minister to refer an application under this part to the board for assessment**

After receiving an application under this part the Minister must refer the application to the board for assessment.

### **112G Consideration by board**

- (1) The board must consider—
  - (a) for an application for approval—whether the applicant’s proposed assessment scheme is suitable for approval; or
  - (b) for an application for renewal—whether the applicant’s assessment scheme continues to be suitable for approval; or



- 
- (c) for an application for variation—whether the applicant’s assessment scheme as proposed to be varied is suitable for approval.
- (2) In its consideration, the board is not restricted to the information contained in the application.

### **112H Further information or document to support application**

- (1) The board may, by notice given to the applicant, require the applicant to give the board, within a reasonable time of at least 14 days stated in the notice, further information or a document the board reasonably requires to make its recommendation on the application.
- (2) The board and the applicant may agree on an extension of the time stated in the notice.
- (3) The applicant is taken to have withdrawn its application if within the following time the applicant does not comply with the requirement—
  - (a) the time stated in the notice;
  - (b) if the board and the applicant have agreed on an extension of time—the time agreed to.

### **112I Report by board about application**

- (1) The board must give the Minister a written report about the application.
- (2) The report must contain—
  - (a) the board’s recommendation about whether the Minister should grant the application; and
  - (b) if the board recommends that the Minister grant the application—any recommendation by the board that the Minister impose a condition on the approval.
- (3) In this section—  
*recommendation* includes reasons for the recommendation.

## **Division 5                      Decision of Minister**

### **112J    Decision on application**

- (1) The Minister must consider the application and decide to either grant, or refuse to grant, the application.
- (2) When considering the application, the Minister must have regard to the board's report on the application but is not bound by any recommendation contained in the report.
- (3) The Minister may grant the application only if the Minister is satisfied that—
  - (a) for an application for approval—the proposed assessment scheme is suitable for approval; or
  - (b) for an application for renewal—the assessment scheme continues to be suitable for approval; or
  - (c) for an application for variation—the assessment scheme as proposed to be varied is suitable for approval.
- (4) The Minister may, in granting the application, decide to impose conditions on the approval that are reasonable and relevant.

### **112K    Grant of application**

If the Minister decides to grant the application without conditions, the Minister must as soon as practicable give the applicant notice of the decision.

### **112L    Grant of application with conditions**

- (1) If the Minister proposes to grant the application with conditions, the Minister must give the applicant a notice stating the following—
  - (a) the Minister proposes to grant the application with conditions (the *proposed decision*);
  - (b) the proposed conditions;

- 
- (c) the reasons for the proposed decision;
  - (d) that the applicant may make, within 28 days of receiving the notice, written representations to the Minister about the proposed decision.
- (2) The Minister must consider all written representations about the proposed decision (the *accepted representations*) made by the applicant within 28 days of receiving the notice under subsection (1).
  - (3) After considering the accepted representations, or if there are no accepted representations, the Minister must decide to grant the application with, or without, conditions.
  - (4) The Minister may impose any conditions under subsection (3) that are reasonable and relevant.
  - (5) The Minister must, as soon as practicable after making a decision under subsection (3), give the applicant—
    - (a) for a decision to grant the application without conditions—notice of the decision; or
    - (b) for a decision to grant the application with conditions—notice of the decision and reasons for the decision.

### **112M Refusal of application**

- (1) If the Minister proposes to refuse to grant the application, the Minister must give the applicant a notice stating the following—
  - (a) the Minister proposes to refuse to grant the application (the *proposed decision*);
  - (b) the reasons for the proposed decision;
  - (c) that the applicant may make, within 28 days of receiving the notice, written representations to the Minister about the proposed decision.
- (2) The Minister must consider all written representations about the proposed decision (the *accepted representations*) made by

the applicant within 28 days of receiving the notice under subsection (1).

- (3) After considering the accepted representations, or if there are no accepted representations, the Minister must decide—
  - (a) to grant the application, with or without conditions; or
  - (b) to refuse to grant the application.
- (4) As soon as practicable after deciding under subsection (3), the Minister must give the applicant—
  - (a) for a decision to grant the application without conditions—notice of the decision; or
  - (b) for a decision to grant the application with conditions or to refuse to grant the application—notice of the decision and reasons for the decision.
- (5) To remove any doubt, it is declared that section 112L does not apply in relation to conditions imposed under this section.

## **Division 6                      Term of approval**

### **112N    Term of approval**

- (1) Unless sooner cancelled, suspended or otherwise ended, an approval under this part remains in force for the term decided by the Minister when granting an application for approval or renewal.
- (2) A term under subsection (1) must not be more than 5 years.
- (3) A variation of an approval under this part does not extend the term of the approval.

### **112O    Approval continues pending decision about renewal**

- (1) If an assessment entity applies for renewal of approval of an assessment scheme under section 112D, the approval of the assessment scheme is taken to continue in force from the day



### **112Q Show cause notice**

- (1) This section applies if—
  - (a) the Minister believes a ground exists to cancel or suspend the approval of an assessment scheme; and
  - (b) the Minister proposes to cancel or suspend the approval (the *proposed action*).
- (2) The Minister must give the assessment entity for the assessment scheme a notice (a *show cause notice*) stating the following—
  - (a) the proposed action;
  - (b) if proposing to suspend an approval—the period of the proposed suspension;
  - (c) the grounds for the cancellation or suspension;
  - (d) an outline of the facts and circumstances forming the basis for the grounds;
  - (e) that the assessment entity may make, within a stated period (the *show cause period*), written representations explaining why the approval should not be cancelled or suspended.
- (3) The show cause period must be a period ending at least 21 days after the show cause notice is given to the assessment entity.

### **112R Consideration of representations**

The Minister must consider all written representations (the *accepted representations*) made in the show cause period by the assessment entity.

### **112S Ending show cause process without further action**

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—

- (a) must not take further action about the show cause notice; and
- (b) must, as soon as practicable, give notice to the assessment entity that no further action is to be taken about the show cause notice.

### **112T Cancellation or suspension of approval**

- (1) This section applies if, after considering the accepted representations for the show cause notice, the Minister—
  - (a) still believes the ground exists to cancel or suspend the approval; and
  - (b) believes cancellation or suspension is warranted.
- (2) This section also applies if there are no accepted representations for the show cause notice.
- (3) The Minister may—
  - (a) if the proposed action was to cancel the approval—cancel the approval or suspend it for a period; or
  - (b) if the proposed action was to suspend the approval for a period—suspend the approval for not longer than that period.
- (4) If the Minister decides to cancel or suspend the approval of the assessment scheme, the Minister must give the assessment entity notice of the decision and the reasons for the decision.
- (5) The decision takes effect—
  - (a) on the day the notice is given to the assessment entity; or
  - (b) if a later day is stated in the notice—on the later day.

### **112U Voluntary surrender of approval**

- (1) The assessment entity for an assessment scheme may surrender the approval for the scheme by notice given to the Minister.

[s 112V]

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- (2) The surrender of the approval takes effect—
  - (a) 90 days after the day the notice is given to the Minister;  
or
  - (b) if a later day is stated in the notice, on the later day.

## **Division 8                      Record of assessment entities**

### **112V    Record of assessment entities**

- (1) The board must keep a record stating each of the following—
  - (a) the name of each assessment entity;
  - (b) the contact details for the entity;
  - (c) the areas of engineering for which the entity conducts an assessment scheme.
- (2) The board must—
  - (a) publish the record on the board’s website; and
  - (b) keep the record available for inspection, without charge, at the board’s office when the office is open to the public; and
  - (c) if asked by a person and on payment of the fee, if any, prescribed under a regulation, give the person a copy of all or part of the record.

## **Part 7                                      Other offence provisions**

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

- (1) A person who is not a registered professional engineer must not—
  - (a) claim, or hold himself or herself out, to be a registered professional engineer; or



- 
- (b) allow himself or herself to be held out as a registered professional engineer.

Maximum penalty—1000 penalty units.

- (2) A person must not hold out another person as a registered professional engineer if the person knows or ought reasonably to know the other person is not a registered professional engineer.

Maximum penalty—1000 penalty units.

#### **114 Using titles or names**

A person who is not a registered professional engineer must not use—

- (a) the titles ‘registered professional engineer’, ‘registered professional engineer of Queensland’ or ‘RPEQ’; or
- (b) another title or name, prescribed under a regulation, that in the context in which the title or name is used suggests that the person is a registered professional engineer.

Maximum penalty—1000 penalty units.

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

- (1) A person who is not a practising professional engineer must not carry out professional engineering services.

Maximum penalty—1000 penalty units.

- (2) However, a person does not commit an offence under subsection (1) if the person carries out the professional engineering services under the direct supervision of a practising professional engineer who is responsible for the services.

- (3) A person who is a practising professional engineer must not carry out professional engineering services in an area of engineering other than an area of engineering for which the person is registered under this Act.

Maximum penalty—1000 penalty units.

- (4) However, a person does not commit an offence under subsection (3) if the person carries out the professional engineering services under the direct supervision of a practising professional engineer who is registered in the area of engineering and responsible for the services.
- (5) For this section, a person carries out professional engineering services under the direct supervision of a practising professional engineer only if the engineer directs the person in the carrying out of the services and oversees and evaluates the carrying out of the services by the person.

*Note—*

See also section 6A in relation to the potential application of this section outside Queensland.

## **Part 8                      Reviews and disciplinary proceedings**

### **Division 1                Reviews**

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

- (1) The tribunal may, on application by a person mentioned in subsection (2), review the decision of the board stated in the subsection for the person.
- (2) Each of the following persons may apply, as provided under the QCAT Act, to the tribunal to review the decision mentioned for the person—
  - (a) a person whose application for registration, or renewal or restoration of registration, is refused;
  - (b) a person whose application for renewal or restoration of registration is not accepted by the board under section 18(4) or 23(3);

- (c) a person whose registration is subject to conditions imposed by the board under section 13(2), 21(2), 25(2) or 27A(1);
- (d) a person whose registration is cancelled under section 29(4);
- (e) a person whose registration is immediately suspended under section 29A(2);
- (f) a person who is required to undergo a health assessment under section 35E(2);
- (g) a person who has been given, or is entitled to be given, an information notice about a decision to forfeit a seized thing under section 62W;
- (h) a person who, under section 73(2)(c) or 75(2)(c), has been cautioned or reprimanded;
- (i) a person whose registration is subject to a condition imposed under section 73(2)(d);
- (j) a person who makes a complaint if the board decides, under section 73(2)(e), to take no further action about the complaint.

## **126 Information about review**

- (1) The board must keep available for inspection, at the board's office by members of the public, information about how a person may apply to the tribunal for a review of a decision mentioned in section 122(2).
- (2) The board must publish on the board's website the information mentioned in subsection (1).

## **Division 2                      Disciplinary proceedings**

### **127      Tribunal may conduct disciplinary proceeding**

The tribunal may, on application by the board, conduct a proceeding (a *disciplinary proceeding*) to decide whether a disciplinary ground is established.

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

If the tribunal is making a decision about whether a registered professional engineer or former registered professional engineer has behaved in a way that constitutes unsatisfactory professional conduct or practice, the tribunal must have regard to the approved code of practice.

### **130      Continuation of particular proceeding**

- (1) This section applies if, after a disciplinary proceeding is started against a person, the person ceases to be a registered professional engineer.
- (2) The proceeding may continue under this part.

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

- (1) If the tribunal decides that a disciplinary ground is established, the tribunal may—
  - (a) make 1 or more of the orders mentioned in subsections (2) to (4); or
  - (b) take no action against the registered professional engineer.
- (2) The tribunal may order the registered professional engineer to pay a stated amount of not more than the equivalent of 200 penalty units.
- (3) Also, the tribunal may make an order—
  - (a) reprimanding the registered professional engineer; or

- (b) imposing a condition on the registered professional engineer's registration including, for example, to submit to an audit of the engineer's practice of engineering; or
  - (c) suspending the registered professional engineer's registration for a stated period; or
  - (d) cancelling the registered professional engineer's registration; or
  - (e) disqualifying, indefinitely or for a stated period, the registered professional engineer from obtaining registration as a registered professional engineer; or
  - (f) requiring the registered professional engineer to pay an amount to the board as compensation for all, or a part of, the reasonable costs of any investigation about the matter the subject of the proceeding, including the costs of preparing for the proceeding.
- (4) An order for payment of an amount under subsection (2) or (3)(f) may direct that, if the registered professional engineer does not pay the amount within the period stated in the order, the registered professional engineer's registration be suspended until the amount is paid.
- (5) If the registered professional engineer does not pay the amount within the stated period, the registration is suspended until the earlier of the following—
- (a) the day the amount is paid;
  - (b) the day the registration expires.
- (6) The suspension under subsection (5) takes effect immediately after the end of the stated period.
- (7) Subsection (3)(f) does not limit the powers of the tribunal under the QCAT Act, chapter 2, part 6, division 6.

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

- (1) This section applies if the tribunal decides that a disciplinary ground is established against a person who is not a registered professional engineer at the time of the tribunal's decision.
- (2) The tribunal may decide—
  - (a) to take no action against the person; or
  - (b) to do 1 or more of the following—
    - (i) order the person to pay a stated amount of not more than the equivalent of 200 penalty units;
    - (ii) make an order reprimanding the person;
    - (iii) make an order disqualifying, indefinitely or for a stated period, the person from obtaining registration as a registered professional engineer.

### **133 Effect of particular orders**

- (1) An order under section 131(2) or 132(2)(b)(i) must order that the amount be paid to the board.
- (2) If the tribunal makes an order under section 131(3)(e) or 132(2)(b)(iii) about a person, the board must not—
  - (a) if the disqualification is indefinite—re-register the person; or
  - (b) if the disqualification is for a stated period—re-register the person during the period stated in the order.

### **134 Recording details of orders**

If the tribunal makes an order about a person under section 131(2) or (3) or section 132(2)(b), the order may state—

- (a) the period in which the details of the order are to be included in the register for the person; and

- (b) the particular details of the order, if any, that the tribunal decides are not to be included in the register.

## **Part 9                      Legal proceedings**

### **Division 1                Evidence**

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

This division applies to a proceeding for an offence against this Act or a disciplinary proceeding.

#### **136      Appointments and authority**

The following must be presumed unless a party to the proceeding, by reasonable notice, requires proof of it—

- (a) the appointment of—
  - (i) the chairperson or another board member; or
  - (ii) the registrar; or
  - (iii) an investigator;
- (b) the authority of the board or a person mentioned in paragraph (a) to do anything under this Act.

#### **137      Signatures**

A signature purporting to be the signature of the chairperson, a member or an investigator, is evidence of the signature it purports to be.

### **138 Evidentiary matters**

A certificate purporting to be signed by the registrar and stating any of the following matters is evidence of the matter—

- (a) a stated document is 1 of the following things made, given, issued or kept under this Act—
  - (i) an appointment;
  - (ii) an order, direction, requirement, notice or decision;
  - (iii) a certificate of registration;
  - (iv) the board's minutes or an extract from the board's minutes;
  - (v) another record or an extract from another record;
  - (vi) the register or an extract from the register;
- (b) a stated document is an approved code of practice;
- (c) a stated document is another document kept under this Act;
- (d) a stated document is a copy of a thing mentioned in paragraph (a), (b) or (c);
- (e) on a stated day, or during a stated period, a stated person was or was not registered under this Act;
- (f) on a stated day, a registration or approval was cancelled;
- (g) on a stated day, or during a stated period, a registration or approval was suspended;
- (h) on a stated day, or during a stated period, an appointment as an investigator was, or was not, in force for a stated person;
- (i) on a stated day—
  - (i) a stated person was given a stated notice or direction under this Act; or
  - (ii) a stated requirement under this Act was made of a stated person;



- (j) a stated fee or other amount is payable by a stated person to the board and has not been paid.

## **Division 2                    Offence proceedings**

### **139    Proceedings for offences**

- (1) A proceeding for an offence against this Act is to be heard and decided summarily.
- (2) The proceeding must start—
  - (a) within 1 year after the commission of the offence; or
  - (b) within 1 year after the offence comes to the complainant's knowledge, but within 2 years after the commission of the offence.

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

In a proceeding for an offence against this Act defined as involving false or misleading information, or a false or misleading statement, it is enough for a charge to state that the information or statement was, without specifying which, 'false or misleading'.

### **140A   Costs of investigation**

- (1) This section applies if a court finds a person guilty of an offence against this Act.
- (2) The court may make an order requiring the person to pay an amount to the board as compensation for all, or a part of, the reasonable costs of any investigation by the board about the offence, including the costs of preparing for the prosecution.
- (3) This section does not limit the orders for costs the court may make on the finding of guilt.

## Part 10 Other matters

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

- (1) This section applies to—
  - (a) a person who is not a practising professional engineer if the person, in performing, or undertaking to perform, professional engineering services for someone (the *client*)—
    - (i) claims, or holds himself or herself out, to be a practising professional engineer; or
    - (ii) allows himself or herself to be held out as a practising professional engineer; or
  - (b) another person if—
    - (i) the person, in providing, or undertaking to provide, professional engineering services for someone (also the *client*) claims, or holds out, that the services are carried out, or to be carried out, by or under the supervision of a practising professional engineer; and
    - (ii) the services are not carried out by or under the direct supervision of a practising professional engineer who is responsible for the services.
- (2) Despite any agreement between the person and the client, the person is not entitled to any monetary or other consideration for the performance or carrying out of the professional engineering services.
- (3) For this section a person carries out professional engineering services under the direct supervision of a practising professional engineer only if the engineer directs the person in the carrying out the services and oversees and evaluates the carrying out of the services by the person.

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## **142 Protection from liability**

- (1) This section applies to each of the following persons (a *relevant person*)—
  - (a) the Minister;
  - (b) a board member;
  - (c) an investigator;
  - (d) a person engaged, under section 45, to assist the board or an investigator;
  - (e) an employee of the board.
- (2) A relevant person is not civilly liable to someone for an act done, or omission made, honestly and without negligence under this Act.
- (3) If subsection (2) prevents a civil liability attaching to a relevant person mentioned in subsection (1)(a), the liability attaches instead to the State.
- (4) If subsection (2) prevents a civil liability attaching to a relevant person mentioned in subsection (1)(b), (c), (d) or (e), the liability attaches instead to the board.

## **142A Appropriation of penalties**

- (1) A monetary penalty recovered for an offence against this Act must be paid to the board.
- (2) This section applies despite the *Acts Interpretation Act 1954*, section 43.

## **142B Statutory declarations to verify information required under the Act**

- (1) This section applies if a person is required under this Act to give information to the board.
- (2) The board may ask the person to verify the information by statutory declaration.

- (3) If the person gives the information to the board but does not comply with a request under subsection (2), the person is taken to have not given the information to the board.

### **143 Approval of forms**

The chief executive may approve forms for use under this Act.

### **144 Regulation-making power**

- (1) The Governor in Council may make regulations under this Act.
- (2) A regulation may be made about the following—
  - (a) fees, including the refunding of fees, payable under this Act;
  - (b) the procedures for electing a member of the board;
  - (c) imposing a penalty of no more than 20 penalty units for contravention of a regulation.
- (3) Without limiting subsection (2)(a), a regulation may prescribe amounts as fees having regard to the costs of the board performing its functions under, or complying with, this Act or another Act.
- (4) Also, without limiting section 10(1)(a), a regulation may provide for a qualification under that paragraph by reference to subjects or areas of learning relating to engineering.

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## **Part 11                      Repeal, transitional and    validating provisions**

### **Division 1                      Repeal**

#### **145      Repeal of Professional Engineers Act 1988**

The Professional Engineers Act 1988 (1988 Act No. 72) is repealed.

### **Division 2                      Transitional provisions for Act No.    54 of 2002**

#### **Subdivision 1                  Preliminary**

##### **146      Definitions for div 2**

*commencement* means the commencement of the provision in which the term is used.

*disciplinary panel* means the Professional Engineers Disciplinary Panel established under the repealed Act.

*former board* means the Board of Professional Engineers of Queensland established under the repealed Act.

*registered professional engineering company* means an entity that, immediately before the commencement, is registered as a registered professional engineering company under part 5 of the repealed Act.

*registered professional engineering unit* means an entity that, immediately before the commencement, is registered as a registered professional engineering unit under part 6 of the repealed Act.

## **Subdivision 2      Transitional references**

### **147      References to repealed Act**

A reference in an Act or document to the repealed Act may, if the context permits, be taken as a reference to this Act.

### **148      References to former board**

A reference in an Act or document to the former board may, if the context permits, be taken as a reference to the board.

## **Subdivision 3      Other transitional provisions**

### **149      Dissolution of former board**

- (1) On the commencement—
  - (a) the former board is dissolved; and
  - (b) the members of the board go out of office.
- (2) No compensation is payable to a member because of subsection (1).

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

- (1) This section applies to a person who is a member of the former board immediately before the commencement if the person's term of appointment as a member would, other than for this section, have ended before the commencement of section 149 of this Act.
- (2) Despite section 12 of the repealed Act, the person continues as a member of the former board until it is dissolved under section 149 of this Act.

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### **151 First appointment of particular member**

- (1) For the purpose of the first appointment of a member of the board under section 82(2)(c), the Governor in Council may appoint any person holding office under section 7 of the repealed Act before the commencement.
- (2) A person appointed under subsection (1)—
  - (a) is taken to be properly appointed under section 82; and
  - (b) holds office until—
    - (i) the end of 18 months after the commencement; or
    - (ii) if the person, or another person, is earlier elected under section 82(2)(c)—the day the person or other person is elected.

### **152 Employees of former board**

- (1) This section applies to a person who, immediately before the commencement, was an employee of the former board.
- (2) On the commencement, the person becomes an employee of the board.
- (3) The person—
  - (a) must be employed on terms and conditions at least equivalent to the person's terms and conditions of employment immediately before the commencement; and
  - (b) remains entitled to all rights of employment existing or accruing immediately before the commencement.

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

On the commencement, the assets, rights and liabilities of the former board vest in the board.

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

- (1) This section applies to a legal proceeding that—

- (a) was taken by or against a following person before the commencement—
    - (i) the former board;
    - (ii) a member of the former board in the person's capacity as a member of the former board; and
  - (b) has not been finished before the commencement.
- (2) From the commencement, the proceeding may be continued and finished by or against the board.

### **155 Dissolution of disciplinary panel**

- (1) On the commencement—
- (a) the disciplinary panel is dissolved; and
  - (b) the members of the panel go out of office.
- (2) No compensation is payable to a member because of subsection (1).

### **156 Complaints under repealed Act**

- (1) This section applies to a complaint about an individual given to the former board under the repealed Act if the former board had not authorised an investigation of, or otherwise dealt with, the complaint under that Act before the commencement.
- (2) The complaint is taken to be a complaint under this Act.

### **157 Disciplinary proceeding started before commencement**

- (1) This section applies if, under the repealed Act and before the commencement—
- (a) the board has laid a disciplinary charge against a registered professional engineer; and
  - (b) a disciplinary panel has been formed to hear and decide the charge.



- (2) The disciplinary panel may hear, or continue to hear, and decide the charge under the repealed Act as if the Act had not been repealed and the panel had not been dissolved under section 155.
- (3) Also, for hearing the charge or doing anything else under the repealed Act in relation to the charge, a disciplinary panel member has the member's entitlements under the repealed Act.
- (4) The repealed Act continues in force for the purposes of the panel and the proceeding, including, for example, the making of an order by the panel under section 60 of that Act.
- (5) An order of the panel under section 60 of the repealed Act has effect as if it were an order of the tribunal under section 131 or 132 of this Act.
- (6) For this section, a reference in the repealed Act to the board may, if necessary or desirable for the proceeding, be taken to be a reference to the board established under this Act.

## **158 Continuing investigations**

- (1) This section applies to a person who, immediately before the commencement—
  - (a) is authorised as an investigator under section 45 of the repealed Act; and
  - (b) is investigating under that Act—
    - (i) the conduct of a registered professional engineer; or
    - (ii) a suspected contravention of the repealed Act by a registered professional engineer.
- (2) On the commencement, the person is taken to be an investigator under section 48 and may continue the investigation under this Act.
- (3) In this section—

*registered professional engineer* means a registered professional engineer under the repealed Act.

## 159 Appeals

- (1) Subsection (2) applies if—
  - (a) a person has appealed to the District Court under the repealed Act before the commencement against a decision or order mentioned in section 67(1) of the repealed Act; and
  - (b) the appeal has not been decided before the commencement.
- (2) The District Court may hear, or continue to hear, and decide the appeal under the repealed Act as if the Act had not been repealed.
- (3) Subsection (4) applies if—
  - (a) immediately before the commencement a person could have appealed to the District Court under the repealed Act against a decision or order mentioned in section 67(1) of the repealed Act; and
  - (b) the person has not appealed before the commencement.
- (4) The person may appeal, and the District Court may hear and decide the appeal, under the repealed Act as if this Act had not commenced.
- (5) For giving effect to its decision under subsection (2) or (4), the District Court may make the orders it considers necessary having regard to the provisions of this Act.

*Example for subsection (5)—*

On an appeal by a person against a decision to cancel the person's registration under the repealed Act, the District Court may order that the board register the person under this Act.

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## 160 Existing registrations—individuals

- (1) This section applies to an individual who, immediately before the commencement, was a registered professional engineer under the repealed Act.
- (2) On the commencement, the individual is taken to be a registered professional engineer under this Act.
- (3) Despite section 15, the registration remains in force, unless it is sooner cancelled, until the later of the following days—
  - (a) 31 December first happening after the commencement;
  - (b) the day that is 3 months after the commencement.
- (4) However, if the individual pays the registration fee to the board before the day on which the registration would have ended under subsection (3), the registration remains in force until the last day of the financial year in which the registration would otherwise have ended under the subsection.
- (5) For the individual's first application for renewal or restoration of registration, the individual must state the areas of engineering for which the individual reasonably believes he or she is qualified for registration.
- (6) In this section—

*registration fee* means the registration fee prescribed under section 8(2)(b)(iv) for registration for not more than 6 months.

## 161 Existing registrations—divisions of engineering

- (1) This section applies—
  - (a) to an individual who, immediately before the commencement, was a registered professional engineer under the repealed Act; and
  - (b) until the day on which the individual's registration is first renewed or restored under this Act.
- (2) For part 7 of this Act, the division of engineering in which the individual was registered under the repealed Act is taken to be

the area of engineering for which the individual is registered under this Act.

## **162 Existing registrations—other entities**

- (1) This section applies to the following entities—
  - (a) a registered professional engineering company;
  - (b) a registered professional engineering unit.
- (2) On the commencement, the entity's registration under part 5 or 6 of the repealed Act ceases to have effect.

## **163 Existing applications for registration**

- (1) This section applies to an application for registration as a registered professional engineer under the repealed Act and not decided before the commencement.
- (2) The application must be decided under this Act.

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

- (1) Subsection (2) applies—
  - (a) despite the repeal of the repealed Act; and
  - (b) only before 1 July 2008.
- (2) A person is taken to be qualified for registration under section 10(1) if the person complies with the requirements for registration under section 18(a) or (b) of the repealed Act.

## **165 Refund of fees—registered professional engineering company or unit**

- (1) As soon as practicable after the commencement, the board must refund to each registered professional engineering company and registered professional engineering unit an amount calculated using the formula—

$$A = F - \left( B + \left( \frac{F}{12} \times C \right) \right)$$

(2) In this section—

*A* means the amount to be refunded.

*B* means a reasonable amount, decided by the board, for administrative costs incurred by the board in refunding the amount under this section.

*C* means the number of whole months for which the company or unit was registered as a professional engineering company or unit in the relevant period in which this section commences.

*F* means—

- (a) if the company or unit applied for registration as a registered professional engineering company or unit in the year in which this section commences—\$195; or
- (b) if the company or unit applied for renewal of its registration as a registered professional engineering company or unit in the year in which this section commences—\$121.

*relevant period* means the period from 1 April in a year to 31 March in the following year.

## Division 3                      Validating provision

### 166      Validating registration of professional engineers

- (1) Subsection (2) applies if the board purported to register an individual as a registered professional engineer in 1 or more areas of engineering between 1 January 2003 and 13 July 2006.
- (2) The purported registration of the individual is taken always to have been valid for the area or areas of engineering in which the individual is purported to be registered as if, at all relevant

times, areas of engineering had been prescribed under a regulation.

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

### **167**      **Certain decisions made under part 6A to have effect from 1 July 2008**

A decision of the Minister, made before 1 July 2008, under section 112J to grant an application for approval of a proposed assessment scheme, has effect from 1 July 2008.

## **Division 5**                      **Transitional provisions for Professional Engineers and Other Legislation Amendment Act 2008, part 3**

### **168**      **Definitions for this division**

In this division—

*commencement* means the commencement of this division.

*pre-amended Act* means this Act as in force immediately before the commencement.

*preserved area of engineering* means the following areas of engineering under the pre-amended Act—

- (a) aeronautical engineering;
- (b) agricultural engineering;
- (c) chemical engineering;
- (d) civil engineering;
- (e) computer systems engineering;

- (f) electrical engineering;
- (g) mechanical engineering;
- (h) metallurgical engineering;
- (i) mining engineering;
- (j) naval architectural engineering.

**169 Certain applications to be dealt with under pre-amended Act**

- (1) This section applies to any of the following applications if the application was made to the board, and not finally dealt with, before the commencement—
  - (a) an application for registration under the pre-amended Act, section 8;
  - (b) an application for renewal of registration under the pre-amended Act, section 18;
  - (c) an application for restoration of registration under the pre-amended Act, section 23.
- (2) The pre-amended Act continues to apply to the application for the purpose of making a decision about the application.

**170 Continuing registration requirements for preserved areas of engineering**

- (1) This section applies for the purpose of having continuing registration requirements for a preserved area of engineering.
- (2) A reference in section 16 to an area of engineering is taken to include a reference to a preserved area of engineering.

**171 Application of preserved areas of engineering to certain provisions**

- (1) This section applies to the following registered professional engineers if the engineer is registered for a preserved area of engineering—

[s 171]

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- (a) an engineer who was registered before the commencement;
  - (b) an engineer who, under section 169, was registered after the commencement.
- (2) For sections 34(2)(b) and 115(3), 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.



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## Schedule 2      Dictionary

## section 7

*accepted representations*, for part 6A, division 7, see section 112R.

*affected by bankruptcy action*, in relation to an individual, means the individual is an insolvent under administration within the meaning of the Corporations Act, section 9.

*affected by control action*, in relation to a corporation, means the corporation—

- (a) has executed a deed of company arrangement under the Corporations Act; or
- (b) is the subject of a winding-up, whether voluntarily or under a court order, under that Act; or
- (c) is the subject of an appointment of an administrator, liquidator, receiver or receiver and manager under that Act.

*annual registration fee* means the fee prescribed under a regulation to be the annual registration fee.

*application for approval*, for part 6A, see section 112A.

*application for renewal*, for part 6A, see section 112A.

*application for variation*, for part 6A, see section 112A.

*approved audit program*, for part 2B, see section 35J(1).

*approved code of practice* means the code of practice having effect under section 108(3).

*approved form* means a form approved under section 143.

*areas of engineering* see section 7A(1).

*assessment entity*, in relation to an assessment scheme, means the entity for which the scheme was approved.

*assessment scheme* means a scheme approved under part 6A.

***audited engineer***, for part 2B, see section 35J(2).

***board*** means the Board of Professional Engineers of Queensland established under this Act.

***certificate of registration*** means a certificate of registration as a registered professional engineer.

***chairperson*** means the chairperson of the board.

***complainant***, other than in section 139, means the person who makes the complaint.

***complaint*** means a complaint made under section 37(1).

***contact details***, of a registered professional engineer, means the registered professional engineer's business address, telephone number, facsimile number or email address notified to the board by the engineer and the engineer's RPEQ registration number.

***continuing registration requirements*** see section 16(1).

***criminal history***, of a person, means the person's criminal history within the meaning of the *Criminal Law (Rehabilitation of Offenders) Act 1986*, other than spent convictions.

***deputy chairperson*** means the deputy chairperson of the board.

***disciplinary ground*** see section 36.

***disciplinary proceeding*** see section 127.

***electronic document*** means a document of a type under the *Acts Interpretation Act 1954*, schedule 1, definition *document*, paragraph (c).

***executive officer***, of a corporation affected by control action, means a person who was an executive officer of the corporation when it became affected by control action or within 1 year before it became affected by the action if 5 years have not elapsed since it became affected by the action.

***executive officer***, of a corporation, means a person who is concerned with, or takes part in, the corporation's

management, whether the person is a director or the person's position is given the name of executive officer.

***expiry day*** see section 18(2).

***former owner*** see section 62W(1).

***general power*** see section 62K(1).

***health assessment***, in relation to a registered professional engineer, includes—

- (a) a physical, medical or psychiatric examination or test of the engineer; and
- (b) asking questions to assess the engineer's mental and physical health.

***health assessment report*** see section 35G(1).

***health assessor*** see section 35E(2).

***help requirement*** see section 62L(1).

***identity card*** means an identity card issued under section 50.

***indictable offence*** includes an indictable offence dealt with summarily.

***information*** includes a document.

***information notice*** means a notice complying with the QCAT Act, section 157(2).

***institution*** see section 82(2)(b).

***investigator*** means—

- (a) a person appointed as an investigator under section 48(1); or
- (b) a member nominated by the board to conduct an investigation mentioned in section 80(1)(c).

***member*** means a member of the board.

***non-practising professional engineer*** means a registered professional engineer who does not carry out, and is not responsible for the carrying out of, professional engineering services.

**notice** means a written notice.

**occupier**, of a place, includes the following—

- (a) if there is more than 1 person who apparently occupies the place—any 1 of the persons;
- (b) any person at the place who is apparently acting with the authority of a person who apparently occupies the place;
- (c) if no-one apparently occupies the place—any person who is an owner of the place.

**of**, a place, includes at or on the place.

**order**, in relation to section 60 of the repealed Act, includes a caution or reprimand given under that section.

**owner**, of a thing that has been seized under part 3, division 7C, includes a person who would be entitled to possession of the thing had it not been seized.

**performance agreement** see section 99(1).

**place** includes the following—

- (a) premises;
- (b) vacant land;
- (c) a place in Queensland waters;
- (d) a place held under more than 1 title or by more than 1 owner;
- (e) the land or water on or in which a building or other structure, or a group of buildings or other structures, is situated.

**police commissioner** means the commissioner of the police service.

**practising professional engineer** means a registered professional engineer who carries out, or is responsible for the carrying out of, professional engineering services.

**premises** includes—

- (a) a building or other structure; and
- (b) a part of a building or other structure; and

- (c) a caravan or vehicle; and
- (d) premises held under more than 1 title or by more than 1 owner.

***prescriptive standard*** means a document that states procedures or criteria—

- (a) for carrying out a design, or a construction, production, operation or maintenance activity, relating to engineering; and
- (b) the application of which, to the carrying out of the design, or the construction, production, operation or maintenance activity, does not require advanced scientifically based calculations.

*Example—*

AS1684—Timber framing code, published by Standards Australia

***professional engineering service*** means an engineering service that requires, or is based on, the application of engineering principles and data to a design, or to a construction, production, operation or maintenance activity, relating to engineering, and does not include an engineering service that is provided only in accordance with a prescriptive standard.

***proposed action***, for part 6A, division 7, see section 112Q(1)(b).

***public place*** means a place, or part of a place—

- (a) that the public is entitled to use, that is open to members of the public or that is used by the public, whether or not on payment of money; or
- (b) the occupier of which allows, whether or not on payment of money, members of the public to enter.

***regional Queensland*** means the area of the State other than—

- (a) the Beaudesert, Boonah, Brisbane, Caboolture, Caloundra, Crows Nest, Esk, Gatton, Gold Coast, Ipswich, Kilcoy, Laidley, Logan, Maroochy, Noosa, Pine Rivers, Redcliffe and Redland local government areas; and

(b) the area of the City of Brisbane.

**register** means the register kept under section 102.

**registered professional engineer** means a person registered as a registered professional engineer under this Act.

**registrar** means the registrar of the board.

**registration** means registration under part 2.

**registration period** see section 15(1).

**relevant person**, for part 2, division 8, see section 35A(1).

**repealed Act** means the *Professional Engineers Act 1988*.

**RPEQ registration number** means the number assigned to a registered professional engineer on the engineer's certificate of registration.

**show cause notice**, for part 6A, division 7, see section 112Q(2).

**show cause period**, for part 6A, division 7, see section 112Q(2)(e).

**spent conviction** means a conviction—

- (a) for which the rehabilitation period under the *Criminal Law (Rehabilitation of Offenders) Act 1986* has expired under that Act; and
- (b) that is not revived as prescribed by section 11 of that Act.

**subject engineer**, for part 2A, see section 35D.

**suitable for approval**, for part 6A, see section 112A.

**tribunal** means QCAT.

**unsatisfactory professional conduct**, for a registered professional engineer, includes the following—

- (a) conduct that is of a lesser standard than that which might reasonably be expected of the registered professional engineer by the public or the engineer's professional peers;

- (b) conduct that demonstrates incompetence, or a lack of adequate knowledge, skill, judgement or care, in the practice of engineering;
- (c) misconduct in a professional respect;
- (d) fraudulent or dishonest behaviour in the practice of engineering;
- (e) other improper or unethical conduct.

***vehicle***—

- (a) means a vehicle under the *Transport Operations (Road Use Management) Act 1995*; and
- (b) includes a vessel under that Act.