

Queensland



**PROFESSIONAL
ENGINEERS AMENDMENT
BILL 1997**



PROFESSIONAL ENGINEERS AMENDMENT BILL 1997

TABLE OF PROVISIONS

Section	Page
1 Short title	4
2 Act amended	4
3 Amendment of s 5 (Interpretation)	4
4 Replacement of pt 8 heading	4
PART 8—COMPLAINTS AND PROCEEDINGS	
<i>Division 1—Complaints and investigations</i>	
5 Amendment of s 51 (Disciplinary charge may be laid)	5
6 Insertion of new div 2	6
<i>Division 2—Disciplinary charges and proceedings</i>	
<i>Subdivision 1—Establishment and membership of disciplinary panel</i>	
51A Disciplinary panel	6
51B Disciplinary panel's functions	6
51C Disciplinary panel's powers	7
51D Membership of disciplinary panel	7
51E Appointment of members	7
51F Restriction on appointment	7
51G Duration of appointment	8
51H Conditions of appointment	8
51I Member ceasing as a member	8
51J Ending of appointment	8
51K Disclosure of interests	9
51L Acting chairperson	9

Professional Engineers Amendment

51M	Chairperson's power to give directions on arrangement of business	10
	<i>Subdivision 2—Constituting disciplinary panel for particular proceedings</i>	
51N	Constitution of disciplinary panel for particular proceeding	10
51O	Member of disciplinary panel ceasing to be available	11
51P	Sitting places	12
7	Replacement of s 52 (Proceedings)	12
	<i>Subdivision 3—Disciplinary panel proceedings</i>	
52	Proceedings before disciplinary panel	12
8	Omission of ss 53–55	13
9	Insertion of new s 59A	13
	59A Determinations of questions before disciplinary panel	14
10	Amendment of s 60 (Board may order cancellation of registration, etc.)	14
11	Insertion of new s 61A	15
	61A Notification of disciplinary panel's decisions and reasons	15
12	Amendment of s 62 (Publication of decision)	15
13	Amendment of s 66 (False statements)	16
14	Amendment of s 67 (Appeals)	16
15	Insertion of new pt 10	18
	PART 10—TRANSITIONAL	
72	Disciplinary charges before the board	18
73	Existing proceedings	18
	SCHEDULE	19
	MINOR AMENDMENTS OF THE PROFESSIONAL ENGINEERS ACT 1988	

1997

A BILL

FOR

An Act to amend the Professional Engineers Act 1988

The Parliament of Queensland enacts—

1

Short title

2

Clause **1.** This Act may be cited as the *Professional Engineers Amendment Act 1997*.

3

4

Act amended

5

Clause **2.** This Act amends the *Professional Engineers Act 1988*.

6

Amendment of s 5 (Interpretation)

7

Clause **3.(1)** Section 5, definitions “**chairperson**” and “**member**”—
omit.

8

9

(2) Section 5—

10

insert—

11

‘ “**chairperson**” means—

12

(a) for the board—the chairperson of the board; and

13

(b) for the disciplinary panel—the chairperson of the disciplinary panel.

14

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“**disciplinary panel**” means the Professional Engineers Disciplinary Panel established under section 51A.

16

17

“**member**” means—

18

(a) for the board—a member of the board; and

19

(b) for the disciplinary panel—a member of the disciplinary panel.

20

“**presiding member**” see section 51N.’.

21

Replacement of pt 8 heading

22

Clause **4.** Part 8, heading—

23

omit, insert—

‘PART 8—COMPLAINTS AND PROCEEDINGS

‘Division 1—Complaints and investigations’.

Amendment of s 51 (Disciplinary charge may be laid)

Clause 5.(1) Section 51, heading—

omit, insert—

‘Disciplinary charge may be laid and referred to disciplinary panel’.

(2) Section 51(1), from ‘(1) If the investigator’ to ‘on the ground that—’—

omit, insert—

‘(1) This section applies if, after considering an investigator’s report, the board considers a prima facie case for a disciplinary charge to be laid is made out against a registered person.

‘(1A) The board may lay a disciplinary charge against the registered person on the ground—’.

(3) Section 51(2), ‘to the board and’—

omit.

(4) Section 51(3) and (4)—

omit, insert—

‘(3) The board must also refer a copy of the charge to the disciplinary panel for hearing and determination.’.

(5) Section 51(5), ‘subsection (1)’—

omit, insert—

‘In this section’.

(6) Section 51(5)—

renumber as section 51(4).

	Insertion of new div 2	1
Clause	6. Part 8, after section 51—	2
	<i>insert—</i>	3
	<i>‘Division 2—Disciplinary charges and proceedings</i>	4
	<i>‘Subdivision 1—Establishment and membership of disciplinary panel</i>	5
	‘Disciplinary panel	6
	‘51A. A panel called the ‘Professional Engineers Disciplinary Panel’ is established.	7 8
	‘Disciplinary panel’s functions	9
	‘51B. The functions of the disciplinary panel are—	10
	(a) to hear any disciplinary charge referred to it under this Act; and	11
	(b) for disciplinary charges, to make findings whether or not a registered person is guilty of a disciplinary charge; and	12 13
	(c) to take appropriate action under section 60; ¹ and	14
	(d) to keep a record of—	15
	(i) its proceedings; and	16
	(ii) its decision on each proceeding and the reasons for the decision; and	17 18
	(iii) the documents produced to it in relation to each disciplinary charge referred to it.	19 20
	(e) to give to the board a report of its work and activities for each financial year; and	21 22
	(f) to carry out the other functions conferred on it by this Act.	23

¹ Section 60 (Disciplinary panel may order cancellation of registration, etc.)

‘Disciplinary panel’s powers

1

‘51C.(1) The disciplinary panel has power to do all things necessary or convenient to be done for the performance of its functions.

2

3

‘(2) Without limiting subsection (1), the disciplinary panel has the powers conferred on it by this Act.

4

5

‘Membership of disciplinary panel

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‘51D.(1) The disciplinary panel is to consist of a chairperson and at least 2 other members.

7

8

‘(2) A person is eligible for appointment as chairperson only if the person is a retired judge of an Australian court or a lawyer of at least 5 years standing.

9

10

11

‘(3) A person is eligible for appointment as another member only if the person is—

12

13

(a) a retired judge of an Australian court or a lawyer of at least 5 years standing; or

14

15

(b) a registered professional engineer of at least 5 years standing.

16

(4) At least 2 of the other members must have the qualification mentioned in subsection (3)(b).

17

18

‘Appointment of members

19

‘51E.(1) The members of the disciplinary panel are to be appointed by the Governor in Council.

20

21

‘(2) The members must be appointed under this Act and not the *Public Service Act 1996*.

22

23

‘Restriction on appointment

24

‘51F. A member of the board may not be appointed a member of the disciplinary panel.

25

26

‘Duration of appointment

1

‘51G. The appointment of a member of the disciplinary panel is for the term (not longer than 7 years) stated in the member’s instrument of appointment.

2

3

4

‘Conditions of appointment

5

‘51H.(1) A member of the disciplinary panel holds office on a part-time basis.

6

7

‘(2) A member is entitled to the remuneration and allowances that may be determined by the Governor in Council.

8

9

‘(3) A member holds office on conditions not provided by this Act that are decided by the Governor in Council.

10

11

‘Member ceasing as a member

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‘51I. A member of the disciplinary panel stops being a member if—

13

(a) the member resigns by signed notice given to the Minister; or

14

(b) the member ceases to be qualified to be appointed as a member;
or

15

16

(c) the member’s appointment is ended by the Governor in Council.

17

‘Ending of appointment

18

‘51J. The Governor in Council may end the appointment of a member of the disciplinary panel if the member—

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20

(a) engages in misbehaviour; or

21

(b) refuses or fails to act as a member; or

22

(c) becomes incapable of performing the duties of a member because of physical or mental incapacity; or

23

24

(d) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit.

25

26

27

28

‘Disclosure of interests

‘51K.(1) If a member of the disciplinary panel is, or is to be, a member of the panel as constituted for a proceeding and the member has or acquires an interest (whether financial or otherwise) that could conflict with the proper performance of the member’s functions in relation to the proceeding—

- (a) the member must disclose the interest to the parties to the proceeding; and
- (b) except with the consent of all parties to the proceeding—the member must not take part in the proceeding or exercise any powers in relation to the proceeding.

‘(2) Subsections (3) and (4) apply if the chairperson of the disciplinary panel becomes aware that a member who is, or is to be, a member of the panel as constituted for a proceeding has, in relation to the proceeding, an interest of the kind mentioned in subsection (1).

‘(3) If the chairperson considers that the member should not take part, or continue to take part, in the proceeding, the chairperson must direct the member accordingly.

‘(4) Unless the chairperson has acted under subsection (3), the chairperson must cause the interest of the member to be disclosed to the parties to the proceeding if the interest has not already been disclosed to them.

‘Acting chairperson

‘51L. The Governor in Council may appoint a person, who is eligible for appointment as the chairperson of the disciplinary panel, to act as chairperson—

- (a) during a vacancy in the office; or
- (b) during any period, or all periods, when the chairperson is absent from duty or Australia or is, for another reason, unable to perform the duties of the office; or
- (c) in relation to a proceeding in which the chairperson has an interest of a kind mentioned in section 51K(1).

‘Chairperson’s power to give directions on arrangement of business

‘51M.(1) The chairperson of the disciplinary panel may give directions about—

- (a) the arrangement of the business of the disciplinary panel; and
- (b) the members of the disciplinary panel who are to constitute the panel for a particular proceeding.

‘(2) Subsections (3) and (4) apply if the chairperson gives a direction about the members who are to constitute the disciplinary panel for a particular proceeding.

‘(3) The chairperson may, at any time before the disciplinary panel starts to hear the proceeding, revoke the direction and give a further direction under subsection (1) as to the members who are to constitute the panel for the proceeding.

‘(4) Also, if 1 of the members ceases to be a member, or ceases to be available for the proceeding, during the hearing of the proceeding or after the completion of the hearing but before the matter to which the proceeding relates is determined, the chairperson may revoke the direction and give a further direction under subsection (1) as to the persons who are to constitute the disciplinary panel for the proceeding.

‘(5) This section is subject to section 51N.

‘Subdivision 2—Constituting disciplinary panel for particular proceedings

‘Constitution of disciplinary panel for particular proceeding

‘51N.(1) The disciplinary panel is to be constituted for the hearing and determination of a proceeding by—

- (a) a member (the **“presiding member”**), eligible for appointment under section 51D(3)(a); and
- (b) 2 other members, each of whom is eligible for appointment under section 51D(3)(b).

‘(2) The member mentioned in subsection (1)(a) may, but need not, be the chairperson of the disciplinary panel.

‘(3) The disciplinary panel may be constituted for the exercise of powers in relation to the hearing of a proceeding, or for purposes other than the hearing and determination of a proceeding, by the presiding member.

‘(4) The disciplinary panel constituted by the presiding member alone, may make decisions and give directions only about the following—

- (a) whether an investigator appointed by the board has complied with section 45(4) and (5)(b);²
- (b) the way or sufficiency of service of a notice of a disciplinary charge;
- (c) the sufficiency of particulars of a disciplinary charge, and whether further and better particulars of the charge should be given;
- (d) the granting of leave to amend a notice of a disciplinary charge;
- (e) requiring a person making an affidavit for a hearing to be present at the hearing for cross-examination;
- (f) admissions about facts or documents;
- (g) the place, time and length of a hearing;
- (h) the issue of summonses by the member to witnesses;
- (i) the giving of evidence at a hearing;
- (j) the exchange of affidavits of proposed witnesses;
- (k) the disclosure of reports of expert witnesses before a hearing;
- (l) whether the whole or a stated part of a hearing should not be open to the public;
- (m) applying for further directions.

‘Member of disciplinary panel ceasing to be available

‘51O.(1) Subsections (2) and (3) apply if the hearing of a proceeding has been started or completed by the disciplinary panel but, before the matter to which the proceeding relates has been determined, 1 of the members constituting the panel (other than the presiding member) ceases to be a

² Section 45 (Board may authorise investigation)

member, or ceases to be available for the proceeding. 1

‘(2) If the parties agree and the chairperson does not give a direction 2
under section 51M, the hearing and determination, or the determination, of 3
the proceeding may be completed by the disciplinary panel constituted by 4
the remaining members. 5

‘(3) If subsection (2) does not apply, the proceeding is to be reheard by 6
the disciplinary panel as constituted under section 51N. 7

‘(4) If the hearing of a proceeding has been started or completed by the 8
disciplinary panel but, before the matter to which the proceeding relates has 9
been determined, the presiding member ceases to be a member, or ceases to 10
be available for the proceeding, the proceeding is to be reheard by the panel 11
as constituted under section 51N. 12

‘(5) If a proceeding is reheard by the disciplinary panel, the panel may, 13
for the proceeding, have regard to any record of the proceeding before the 14
panel as previously constituted, including any evidence taken in the 15
proceeding. 16

‘Sitting places 17

‘51P. Sittings of the disciplinary panel may be held as required at any 18
place in the State.’. 19

Replacement of s 52 (Proceedings) 20

Clause 7. Section 52— 21

omit, insert— 22

‘Subdivision 3—Disciplinary panel proceedings 23

‘Proceedings before disciplinary panel 24

‘52.(1) A disciplinary charge referred to the disciplinary panel for hearing 25
and determination is to be filed with the panel’s chairperson. 26

‘(2) The chairperson is to take all steps necessary to have the disciplinary 27
panel constituted to hear and determine the charge. 28

‘(3) At least 30 days before the day fixed for the hearing, the chairperson must give written notice to the person charged of the charge, its particulars and the place, day and time of the hearing. 1
2
3

‘(4) The hearing of the charge is to be open to the public unless the disciplinary panel determines that, in the special circumstances of the case, the whole or a particular part of the hearing should not be open to the public. 4
5
6

‘(5) At the hearing— 7

(a) a lawyer or a person employed by the board may appear for adducing evidence or assisting the disciplinary panel; and 8
9

(b) the person charged has the right to be represented by— 10

(i) a lawyer; or 11

(ii) a person nominated by the person charged as the person’s agent. 12
13

‘(6) In conducting the hearing, the disciplinary panel— 14

(a) must observe natural justice; and 15

(b) must proceed quickly with as little formality and technicality as is consistent with a fair and proper hearing of the charge; and 16
17

(c) is not bound by rules or practice about evidence and may inform itself on any matter as the panel considers appropriate. 18
19

‘(7) Subject to subsection (6), the chairperson may give directions about the procedure to be followed in a hearing.’. 20
21

Omission of ss 53–55 22

Clause 8. Sections 53 to 55— 23
omit. 24

Insertion of new s 59A 25

Clause 9. After section 59— 26
insert— 27

‘Determinations of questions before disciplinary panel

‘59A.(1) A question before the disciplinary panel is to be decided according to the opinion of the majority of the members constituting the panel for the hearing of the disciplinary charge concerned.

‘(2) However, if the members of the disciplinary panel are equally divided on a question, the question is to be decided according to the opinion of the presiding member.

‘(3) Also, a question of law arising before the disciplinary panel is to be decided by the presiding member.’.

Amendment of s 60 (Board may order cancellation of registration, etc.)

Clause **10.(1)** Section 60, heading—

omit, insert—

‘Disciplinary panel may order cancellation of registration, etc.’.

(2) Section 60(1), ‘If the board’ to ‘the board may’—

omit, insert—

‘If the disciplinary panel finds a registered person guilty of the charge made against the person, the panel may’.

(3) Section 60(1)(d), ‘fixed by the board’—

omit, insert—

‘fixed by the panel’.

(4) Section 60(1)(g), ‘who the board’—

omit, insert—

‘who the panel’.

(5) Section 60(2), ‘If the board’—

omit, insert—

‘If the disciplinary panel’.

(6) Section 60(3), ‘The board may’—

omit, insert—

	‘The disciplinary panel may’.	1
	(7) Section 60(4), ‘board’—	2
	<i>omit, insert—</i>	3
	‘disciplinary panel’.	4
	Insertion of new s 61A	5
Clause	11. After section 61—	6
	<i>insert—</i>	7
	‘Notification of disciplinary panel’s decisions and reasons	8
	‘61A.(1) The disciplinary panel must give written notice of its decisions under section 60 to the board and the person charged as soon as practicable after making the decision.	9 10 11
	‘(2) The notice must state the reasons for the decision.	12
	‘(3) Also, the notice given to the person charged must state that a person aggrieved by the decision may appeal against the decision to a District Court judge within 28 days after the person receives notice of the decision.	13 14 15
	‘(4) In this section—	16
	“decision” includes order.’.	17
	Amendment of s 62 (Publication of decision)	18
Clause	12.(1) Section 62, heading—	19
	<i>omit, insert—</i>	20
	‘Notice of cancellation of registration’.	21
	(2) Section 62(1), after ‘under’—	22
	<i>insert—</i>	23
	‘an order made under’.	24
	(3) Section 62(1), ‘decision’—	25
	<i>omit, insert—</i>	26
	‘cancellation’.	27

(4) Section 62(2), ‘decision’—	1
omit, insert—	2
‘making of the order’.	3
(5) Section 62(3), ‘decision’—	4
omit, insert—	5
‘order’.	6

Amendment of s 66 (False statements) 7

Clause	13. Section 66(1)(a) to (c), ‘the board’—	8
	omit, insert—	9
	‘the board or disciplinary panel’.	10

Amendment of s 67 (Appeals) 11

Clause	14.(1) Section 67, subsection (1)—	12
	omit, insert—	13
	‘(1) This section applies to the following decisions and order—	14
	(a) a decision of the board—	15
	(i) to refuse a person’s application for registration under the Act; or	16
	(ii) to refuse to renew a person’s registration under the Act; or	18
	(iii) to refuse to restore the person’s name to a register;	19
	(b) a decision of the disciplinary panel—	20
	(i) to caution a registered person; or	21
	(ii) to reprimand a registered person;	22
	(c) an order (a “disciplinary order”) of the disciplinary panel made under section 60(1)(d), (e), (f), or (g) or (3) or (4).	23
	‘(1A) A person who is aggrieved by the decision or disciplinary order may appeal against the decision or order to a District Court judge.	24
		25
		26

(1B) However, the board may appeal only against a disciplinary order.’.	1
(2) Section 67(2)(a)(i), ‘decision’—	2
<i>omit, insert—</i>	3
‘decision or disciplinary order’.	4
(3) Section 67(2)(b), ‘the board’—	5
<i>omit, insert—</i>	6
‘the board or disciplinary panel’.	7
(4) Section 67(3)(a), ‘made under subsection (1)(a)’—	8
<i>omit, insert—</i>	9
‘made against a decision of a kind mentioned in subsection (1)(a)(i)’.	10
(5) Section 67(3)(b), ‘made under subsection (1)(b)’—	11
<i>omit, insert—</i>	12
‘made against a decision of a kind mentioned in subsection (1)(a)(ii)’.	13
(6) Section 67(3)(c), ‘made under subsection (1)(c)’—	14
<i>omit, insert—</i>	15
‘made against a decision of a kind mentioned in subsection (1)(a)(iii)’.	16
(7) Section 67(3)(d), ‘made under subsection (1)(d)’—	17
<i>omit, insert—</i>	18
‘made against a decision of a kind mentioned in subsection (1)(b) or a disciplinary order’.	19
	20
(8) Section 67(3)(d)(ii)—	21
<i>omit, insert—</i>	22
‘(ii) allow the appeal and make any decision or order the	23
disciplinary panel may make under section 60; or’.	24
(9) Section 67(4), ‘order of the board’—	25
<i>omit, insert—</i>	26
‘order of the disciplinary panel’.	27

Insertion of new pt 10

Clause 15. After section 71—
insert—

‘PART 10—TRANSITIONAL**‘Disciplinary charges before the board**

‘72.(1) This section applies if, at the commencement of this section, a disciplinary charge has been given to the board under section 51(2) as in force immediately before the commencement and the board has not started proceedings against the person to whom the charge relates.

‘(2) The charge is withdrawn, but the board may, after considering the investigator’s report relevant to the charge, act under section 51 as in force after the commencement.

‘Existing proceedings

‘73.(1) This section applies if, at the commencement of this section, the board has started a proceeding against a person for a disciplinary charge but the proceeding has not been completed.

‘(2) The proceeding may be continued before, and completed by, the board as if the *Professional Engineers Amendment Act 1997* had not been enacted.’.

SCHEDULE**MINOR AMENDMENTS OF THE PROFESSIONAL
ENGINEERS ACT 1988**

section 2

1. Section 16(1), ‘fees and fines imposed pursuant to section 48(1)’—*omit, insert—*

‘penalties imposed under section 60(1)’.

2. Section 26, ‘powers given to it under sections 23(4A) and 48(1)(c)’—*omit, insert—*

‘power given to it under section 23(4A)’.

3. Section 27, ‘48(1)(c)’—*omit, insert—*

‘60(2)’.

**4. Section 38(1), ‘powers given to it under sections 34(5) and
48(1)(c)’—***omit, insert—*

‘power given to it under section 34(5)’.

5. Section 39(1), ‘48(1)(c)’—*omit, insert—*

‘60(2)’.

SCHEDULE (continued)

6. Section 43, definition “commission”—	1
<i>omit.</i>	2
7. Section 51(4)—	3
<i>insert—</i>	4
‘ “ commission ” means a written or other agreement by which a registered	5
person undertakes to provide professional engineering services for a	6
client.’.	7
	8
8. Section 56, heading ‘board’—	9
<i>omit, insert—</i>	10
‘disciplinary panel’.	11
9. Section 56(1), ‘board’ (1st occurring)—	12
<i>omit, insert—</i>	13
‘disciplinary panel’.	14
10. Section 56(1)(a) and (b), ‘board’—	15
<i>omit, insert—</i>	16
‘panel’.	17
11. Section 56(2), ‘board’—	18
<i>omit, insert—</i>	19
‘disciplinary panel’.	20

SCHEDULE (continued)

12. Section 56(1)(b), ‘chairperson’—	1
<i>omit, insert—</i>	2
‘presiding member’.	3
13. Section 57(1), ‘board’ (1st occurring)—	4
<i>omit, insert—</i>	5
‘disciplinary panel’.	6
14. Section 57(1), ‘board’ (2nd occurring)—	7
<i>omit, insert—</i>	8
‘panel’.	9
15. Section 57(2), ‘board’ (1st occurring)—	10
<i>omit, insert—</i>	11
‘disciplinary panel’.	12
16. Section 57(2), ‘board’ (2nd occurring)—	13
<i>omit, insert—</i>	14
‘panel’.	15
17. Section 57(3), ‘board’ (1st occurring)—	16
<i>omit, insert—</i>	17
‘disciplinary panel’.	18

SCHEDULE (continued)

18. Section 57(3), ‘board’ (2nd occurring)—	1
<i>omit, insert—</i>	2
‘panel’.	3
19. Section 58, ‘board’—	4
<i>omit, insert—</i>	5
‘disciplinary panel’.	6
20. Section 58, ‘chairperson’—	7
<i>omit, insert—</i>	8
‘presiding member’.	9
21. Section 59, ‘board’—	10
<i>omit, insert—</i>	11
‘disciplinary panel’.	12
22. After section 60—	13
<i>insert—</i>	14
<i>‘Division 3—Other matters’.</i>	15
23. Section 68(3), ‘ordered by the board’—	16
<i>omit, insert—</i>	17
‘ordered by the disciplinary panel’.	18

SCHEDULE (continued)

24. Section 70, ‘chairperson and’—*omit, insert—*

‘chairpersons of the board and disciplinary panel and of the’.

1

2

3

4