



**ENGINEERS
AUSTRALIA**

DISCIPLINARY REGULATIONS

NOVEMBER 2007

1. PREAMBLE

- 1.1 The Disciplinary Regulations take effect from 22 November 2007 on the authority of the National Congress and Council of Engineers Australia pursuant to Clause 7 of the Supplementary Royal Charter and Bye-law 77.9, and supersede all previous Disciplinary Regulations.
- 1.2 The Disciplinary Regulations outline the requirements for investigating and deciding complaints against Respondents and the imposition of sanctions.

2. DEFINITIONS

‘Appeal’ means the appeal by a Respondent against the determination of a Complaints Panel

‘Appeal Panel’ means a Panel appointed by the Complaints Commissioner to hear an appeal lodged by a Respondent.

‘Code of Ethics’ means the Code of Ethics of Engineers Australia.

‘Complainant’ means the individual person or body corporate lodging the complaint.

‘Complaint’ means

- (a) a complaint lodged in writing by a person or body corporate or by a member of Engineers Australia or an office bearer;
- (b) alleged improper conduct of a Respondent identified by the Chief Executive or responsible staff member of Engineers Australia;
- (c) a report of an adverse finding by a court of law or other tribunal or regulator against a Respondent.

‘Complaints Commissioner’ means the member of Engineers Australia appointed by Council to monitor the handling of complaints and to make specific decisions under these Regulations.

‘Complaint in writing’ means a complaint lodged in original form either in person or by post.

‘Complaints Panel’ means the persons appointed by the Complaints Commissioner to determine a complaint.

‘Conflict of Interest’ is any interest that could reasonably be construed as conflicting.

‘Deputy Complaints Commissioner’ means the member appointed by Council to act as Deputy Commissioner for or on behalf of the Complaints Commissioner as the need arises (see Disciplinary Regulation 6.2).

‘Improper Conduct’ means conduct of a Respondent that may include one or more of the following:

- (a) a failure to observe one or more requirements of the Engineers Australia’s Bye-laws or Code of Ethics of Engineers Australia;
- (b) a failure to maintain appropriate engineering standards as determined in the matter in question by a Complaints Panel or Appeal Panel, as the case may be;
- (c) conviction of a person for an indictable offence, or another offence that, in the opinion of a Complaints Panel or Appeal Panel, as the case may be, renders the person unfit to be a member of Engineers Australia or unfit to be a Registrant;
- (d) conduct, whether consisting of an act or omission, occurring otherwise than in connection with the practice of engineering that would justify a finding that, in the opinion of a Complaints Panel or Appeal Panel, as the case may be, a person is unfit to remain a member of Engineers Australia or a Registrant;
- (e) professional misconduct or unsatisfactory professional conduct of a Respondent which Engineers Australia, pursuant to statute, is required to investigate.

‘Investigator’ means the person appointed by the Chief Executive to investigate a complaint.

‘Registrant’ means any person registered on either the National Professional Engineers Register or the National Engineering Technologists Register administered by Engineers Australia.

‘Respondent’ means the person to whom the complaint refers and includes:

- a member of Engineers Australia; and/or
- a Registrant.

‘Sanctions’ means the penalties that may be imposed by a Complaints Panel or Appeal Panel.

‘Time Frame’ means the time allowed for both Complainants and Respondents to respond which is generally to be not less than 28 days, unless stated otherwise.

3. ROLES

- 3.1 Council appoints the Complaints Commissioner and Deputy Complaints Commissioner.
- 3.2 The Chief Executive and staff manage and administer the disciplinary processes and each complaint. This includes correspondence with Complainants and Respondents, the provision of advice and secretariat support to the Complaints Commissioner, Complaints Panels and Appeal Panels.
- 3.3 The Chief Executive appoints Investigators (see Disciplinary Regulation 12.3).
- 3.4 The Complaints Commissioner determines whether a case proceeds to investigation and/or for determination by a Complaints Panel, determines that one of the grounds of appeal has been made out and appoints Complaints and Appeal Panels.
- 3.5 Investigators establish the facts of a case for the Complaints Commissioner.
- 3.6 A Complaints Panel conducts a hearing, determines the findings of a case and determines any sanctions.
- 3.7 An Appeal Panel reconsiders a Complaints Panel decision if the Complaints Commissioner has granted leave to appeal and may vary the decision(s) of the Complaints Panel.

4. AUTHORITY FOR ENGINEERS AUSTRALIA'S DISCIPLINARY PROCESSES

- 4.1 Engineers Australia is the peak body for engineering practitioners in Australia with one of its purposes being “to promote honourable practice and repress malpractice and to settle disputed points of practice and to decide all questions of professional usage and etiquette affecting members...” (Clause 4(d) of the Supplemental Royal Charter and Bye-laws 2006).
- 4.2 Maintenance of appropriate ethical and engineering standards is a cardinal requirement of a self-regulating professional body. Engineers Australia has a responsibility to both the community and its members that these standards are maintained.
- 4.3 Clause 7(a) (iii) of the Supplemental Royal Charter and Bye-laws 2006 empowers National Congress to “review and approve before coming into effect any changes to the Code of Ethics or Disciplinary Regulations”.
- 4.4 Bye-law 77.92 authorises Council to adopt regulations with respect to “procedures for the investigation of breaches of Bye-law 30 and the imposition of sanctions”.

- 4.5 Engineers Australia's right to discipline its members and Registrants also derives from the members and Registrants themselves and their agreement at the time of joining to be formally bound by the Bye-laws, Code of Ethics and regulations of Engineers Australia. Specifically Bye-law 30 provides that all members of Engineers Australia "shall observe and shall be bound by these Bye-laws, the Code of Ethics and by all other regulations made by the Council pursuant to these Bye-laws."

5. SCOPE OF ENGINEERS AUSTRALIA'S DISCIPLINARY PROCESSES

- 5.1 Engineers Australia's disciplinary processes may be triggered in one of three ways:
- (a) as a result of a complaint being lodged in writing by an individual or on behalf of a body corporate; or by a member of Engineers Australia or an office bearer;
 - (b) the Chief Executive or responsible staff member of Engineers Australia identifying alleged improper conduct;
 - (c) as a result of an adverse finding by a court of law or other tribunal or regulator.
- 5.2 The investigation of complaints under these Regulations is limited to determining whether the Respondent has engaged in improper conduct as defined in these Regulations. Engineers Australia does not have any statutory powers and is not to investigate or act on complaints concerning breaches of contract, statute, torts or criminal matters.
- 5.3 The purpose of Engineers Australia's disciplinary processes is not to provide compensation or financial restitution.
- 5.4 Engineers Australia is not to commence or proceed with the consideration or investigation of a complaint, if an investigation of the matter(s) complained about is in progress or likely to commence in a court of law, statutory authority, regulator or other legally constituted tribunal.
- 5.5 Engineers Australia may engage a legal practitioner for the purposes of providing advice on any complaint.
- 5.6 Engineers Australia is to proceed with the investigation of a complaint if there is sufficient evidence to support the complaint, irrespective of whether or not the Respondent chooses to participate.
- 5.7 Unless required by law or determined otherwise by Engineers Australia confidentiality is to be maintained about:
- (a) a complaint that has been lodged;
 - (b) the identity of individuals and/or companies involved;

- (c) proceedings that are or have been instituted to deal with the complaint;
 - (d) the outcome of the complaint.
- 5.8 The standard of proof for determining whether a Respondent has engaged in improper conduct under these Regulations is that the Complaints Commissioner, Complaints Panel or Appeal Panel must be comfortably satisfied based on the evidence that the Respondent has engaged in improper conduct.
- 5.9 People undertaking duties on behalf of Engineers Australia, pursuant to these Regulations, are indemnified by Engineers Australia in the discharge of their duties under these Regulations pursuant to Bye-law 76.
- 5.10 Engineers Australia may recover by legal proceedings a debt arising from any decisions made under these Regulations.
- 5.11 Where a conflict of interest arises:
- (a) the facts and circumstances should be disclosed to the Complaints Commissioner as soon as possible; and
 - (b) the person appointed under these Regulations should stand aside during the consideration or investigation of the complaint unless the Complaints Commissioner is satisfied that, in the circumstances, it is appropriate that the person continues in the role.
- 5.12 Engineers Australia will not be liable to the Respondent or any other person for damage arising from publication of a sanction imposed in accordance with these Regulations.

6. AUTHORITIES AND RESPONSIBILITIES OF COUNCIL

- 6.1 Council monitors the management and performance of the disciplinary process on behalf of the National Congress, and reports to the National Congress on an annual basis.
- 6.2 Council appoints a member who has the requisite skills and interest, preferably a Past National President or a Fellow with Chartered Status, as Complaints Commissioner for a three-year term and may also appoint a member as Deputy Complaints Commissioner should the need arise. The National President is not eligible for these roles.

- 6.3 Council delegates responsibility to the National President to stand aside the Complaints Commissioner in favour of the Deputy Complaints Commissioner should a conflict of interest arise which could impede the proper performance of these Regulations unless the National President is satisfied that, in the circumstances, it is appropriate that the Complaints Commissioner continue in the role.
- 6.4 A decision to expel a Respondent does not take effect until ratified by Council.

7. AUTHORITIES AND RESPONSIBILITIES OF COMPLAINTS COMMISSIONER

7.1 The Complaints Commissioner:

- (a) determines whether a complaint investigation is to be conducted, determines the scope of an investigation and terminates an investigation;
- (b) decides whether or not a complaint is to proceed to consideration by a Complaints Panel, having due regard to the findings of the Investigator;
- (c) appoints the members and chair of a Complaints Panel and removes members or chairs from a Complaints Panel where circumstances indicate that it would be inappropriate for a person appointed under these Regulations to continue under such appointment;
- (d) determines whether there are grounds for appeal by a Respondent;
- (e) grants leave to appeal if satisfied that at least one of the grounds of appeal has been made out;
- (f) appoints the members and chair of an Appeal Panel;
- (g) monitors and reports annually, and as required, to Council and the National Congress on activities undertaken under these Regulations and makes such recommendations as are considered necessary for the efficient and effective operation of these Regulations.

7.2 The Complaints Commissioner may:

- (a) dismiss a complaint on the grounds that it is vexatious, frivolous, misconceived or lacking in substance;
- (b) suspend, terminate or re-initiate any appointment or proceedings under these Regulations where a major procedural error has occurred or where due to other circumstances such action is warranted;
- (c) decide that the Respondent be counselled about his/her conduct even if a complaint does not proceed to investigation;

- (d) re-initiate proceedings under these Regulations.

8. AUTHORITIES AND RESPONSIBILITIES OF INVESTIGATORS

- 8.1 An Investigator has no statutory or judicial powers and is authorised to investigate a complaint against a Respondent for the purpose of establishing and clarifying the factual basis of an allegation.
- 8.2 An Investigator is to be appointed by the Chief Executive.
- 8.3 As part of the investigation, an Investigator may
 - (a) obtain and consider information or expert advice from any relevant source;
 - (b) convene conferences with the Respondent and witnesses, including the complainant.
- 8.4 On completion of an investigation, an Investigator is to prepare a report in writing to the Complaints Commissioner which includes:
 - (a) the details of the complaint submitted by the Complainant and any additional matter or complaint which has arisen during the investigation; and
 - (b) the response by the Respondent and the significant issues to be addressed by the Complaints Panel.

9. ESTABLISHMENT OF COMPLAINTS AND APPEAL PANELS

- 9.1 Complaints and Appeal Panels are to be drawn for particular cases from the pool of members and non members regarded as suitably qualified to act as members of Complaints and Appeal Panels.
- 9.2 The pool of members is to include both members of Engineers Australia and Registrants and non members.
- 9.3 Complaints and Appeal Panels must comprise a minimum of three members, two of whom must be members of Engineers Australia, or such number of members as the Complaints Commissioner deems necessary.
- 9.4 In cases where the Respondent is both a member of Engineers Australia and a Registrant, Complaints and Appeal Panels must include a Registrant.

10. AUTHORITIES AND RESPONSIBILITIES OF COMPLAINTS PANELS

10.1 A Complaints Panel may determine, on the evidence before it, whether it is comfortably satisfied that the Respondent has engaged in improper conduct and may or may not decide to impose one or more of the following sanctions provided for in Bye-law 77.9.2, against the Respondent:

- (a) expulsion from membership;
- (b) suspension from membership;
- (c) a fine;
- (d) reprimand;
- (e) admonition;
- (f) the undertaking of specified professional development;
- (g) the obligation for specified decisions to be referred from time to time to an appropriate person;
- (h) the obligation to operate professionally for a specified time under the supervision of an appropriate person;
- (i) suspension of certification on the relevant National Register administered by Engineers Australia until specified actions have been completed;
- (j) withdrawal of certification on the National Registers administered by Engineers Australia.

10.2 A Complaints Panel:

- (a) is not bound by the rules of evidence;
- (b) must conduct its proceedings as promptly as proper consideration of the matter(s) permits;
- (c) must declare to the Complaints Commissioner and take action to remove any conflict of interest.

10.3 A Complaints Panel must make a decision in relation to each complaint referred to it that:

- (a) the Respondent has no case to answer and the complaint is be dismissed; or

- (b) the Respondent has engaged in improper conduct.
- 10.4 A Complaints Panel may convene such meetings either face-to-face or by telephone or by other means of communication as it sees fit to consider whether a Respondent has engaged in improper conduct.
- 10.5 A Complaints Panel may make a determination, in consultation with the Complaints Commissioner, that any expenses incurred by the Respondent in the proceedings of the Panel are to be paid by Engineers Australia or that the Respondent pay such of Engineers Australia's costs incurred in the proceedings.
- 10.6 A Complaints Panel must prepare a statement outlining the reasons for its decision and must notify the Complaints Commissioner in writing of its finding on each complaint and any sanction or sanctions imposed.
- 10.7 If a Complaints Panel is comfortably satisfied that the Respondent has engaged in improper conduct and when considering the imposition of a sanction or sanctions against a Respondent, a Complaints Panel:
- (a) may have regard to any previous adverse finding against the Respondent and the sanction imposed.
 - (b) is to give due consideration to:
 - (i) the complaint and the evidence;
 - (ii) the severity of the improper conduct;
 - (iii) the wider public interest;
 - (iv) the interests of the engineering profession, including its standing in the community;
 - (v) the rights, well being and interests of the Respondent and any comments made by the Respondent on the proposed sanction(s).
- 10.8 A Complaints Panel must determine whether and in what manner any sanction imposed by it is to be published by Engineers Australia in accordance with Bye-law 77.9.3.

11. AUTHORITIES AND RESPONSIBILITIES OF APPEAL PANELS

- 11.1 Once leave to appeal has been granted to the Respondent by the Complaints Commissioner, an Appeal Panel:
- (a) considers an appeal by a Respondent against the decision of a Complaints Panel on one or more of the following grounds:

- (i) that procedures required by these Regulations had not been followed.
 - (ii) that the conduct complained of does not constitute improper conduct.
 - (iii) that a material fact of a decisive character was not known to the Respondent until after the determination was made by the Complaints Panel.
 - (iv) the level of the sanction(s) imposed by the Complaints Panel.
- (b) may make a determination, in consultation with the Complaints Commissioner, that any expenses incurred by the Respondent in the proceedings of the Appeal Panel are to be paid by Engineers Australia or that the Respondent pay such of Engineers Australia's costs incurred in the proceedings;
 - (c) may have regard to any previous adverse finding against the Respondent and the sanction(s) applied;
 - (d) confirms, varies or overturns the determination of the Complaints Commissioner or Complaints Panel;
 - (e) refers back to the Complaints Commissioner for re-consideration a complaint in which a procedural error has been identified; or
 - (f) repeals any inappropriate sanctions and/or imposes such other sanctions consistent with these Regulations.

11.2 An Appeal Panel must take into consideration:

- (a) any investigation reports;
- (b) any responses/comments from the Respondent;
- (c) the statement of reasons of the Complaints Panel;
- (d) the grounds of the Respondent's appeal;
- (e) any relevant submissions, including new information made orally or in writing to the Appeal Panel.

12. RESPONSIBILITIES OF CHIEF EXECUTIVE AND STAFF

- 12.1 The Chief Executive is responsible for communicating the Code of Ethics to members of Engineers Australia and for providing information to guide Complainants and may delegate this responsibility.

- 12.2 The Chief Executive is responsible for the management and administration of the disciplinary processes as set out in the disciplinary operating procedures and may delegate such responsibilities to staff members and make such appointments to the extent that they are consistent with the prescriptions of Council, and subject to relevant financial delegations.
- 12.3 The Chief Executive is to employ or otherwise retain the services of people with appropriate competencies to perform the role of Investigators and is to provide training and resources as necessary.

13. RIGHTS AND REQUIREMENTS OF RESPONDENTS

- 13.1 A Respondent has the right to be notified in writing of any complaint lodged against him/her and to be provided with copies of all relevant supporting documents.
- 13.2 A Respondent has the right to comment on the complaint and to provide such written submissions or additional evidence within the prescribed time frame.
- 13.3 The misleading of a complaint enquiry, investigation or hearing by a Respondent constitutes improper conduct.
- 13.4 A Respondent is required to make all submissions and responses to the relevant notifications from Engineers Australia within the prescribed time frame, unless an extension has been granted in writing.
- 13.5 A Respondent may decline to participate in an investigation of a complaint against him/her and is to notify the responsible staff member in writing within the prescribed time frame if he /she chooses not to take part. A failure to respond or to accept correspondence within the prescribed time frame will indicate that the Respondent has declined to participate.
- 13.6 A Respondent is to be informed of the progress of an investigation including the date, time and location of any subsequent hearing and of the process that will be adopted.
- 13.7 A Respondent may obtain legal representation at his or her own cost. Legal representatives may attend but may not speak during a Complaints or Appeal Panel hearing unless invited by the Chair of the Panel and to the extent of issues defined by the Chair of the Panel. Where the Respondent intends to be accompanied by a legal representative in any proceedings, the Respondent must notify the responsible staff member of that intention at least 10 days prior to the proceedings. Failure to do so may result in deferral of proceedings. Costs associated with the deferral may be charged to the Respondent's account.
- 13.8 A Respondent is to be notified in writing of all decisions of the Complaints Commissioner, the Complaints Panel and, if applicable, the Appeal Panel.

- 13.9 A Respondent must be invited to comment on the terms of any sanction(s) imposed by a Complaints Panel prior to submission of the Complaints Panel's determination to the Complaints Commissioner.
- 13.10 A Respondent may appeal on the following grounds:
- (a) the procedures required by these Regulations were not followed;
 - (b) the conduct complained of does not constitute improper conduct;
 - (c) a material fact of a decisive nature was not known to the Respondent at the time the Complaints Panel made its determination;
 - (d) the level of the sanctions(s) imposed by the Complaints Panel.
- 13.11 A Respondent or witness is not able to recover any sum from Engineers Australia in respect of expenses relating to a complaint.
- 13.12 A Respondent has an obligation to comply with any sanction imposed as a result of a finding of improper conduct.
- 13.13 Any fine imposed on a Respondent is a debt due to Engineers Australia which may be recovered by legal proceedings. Resignation, suspension or expulsion from membership and/or registration does not extinguish the obligation of a Respondent to pay a fine imposed prior to that date.
- 13.14 If a Respondent ceases to be a member of Engineers Australia and/or Registrant, a complaint will proceed to determination as if the Respondent/Registrant remained a member or Registrant.

14. RIGHTS AND REQUIREMENTS OF COMPLAINANTS

- 14.1 Any person has a right to submit a complaint to Engineers Australia about the conduct of a Respondent, and to receive consideration of a complaint in proper form.
- 14.2 It is the responsibility of a Complainant to produce evidence to substantiate a complaint. A Complainant must submit a complaint, unless as otherwise provided for in Disciplinary Regulation 5.1 (b) and (c) by:
- (a) lodging their complaint in writing, clearly stating their name and postal address;
 - (b) signing and dating the complaint;
 - (c) providing copies of all relevant documents relating to the matters giving rise to the complaint;
 - (d) advising whether legal or other tribunal proceedings are in prospect or have commenced;

- (e) stating in the letter of complaint that a copy of the complaint may be referred on to the Respondent.
- 14.3 No person may make a complaint on behalf of a third party.
- 14.4 At the discretion of the Complaints Commissioner, Complaints Panel or Appeal Panel, a Complainant may be interviewed and may be invited to attend any hearing in relation to the matter(s) complained about.
- 14.5 A Complainant is to be notified in writing of decisions made under these Regulations, after notification has been given to the Respondent.
- 14.6 Neither a Complainant nor witnesses may recover any sum from Engineers Australia in respect of expenses relating to a complaint.
- 14.7 Responsible staff are not to engage in discussion with Complainants about the merits or otherwise of a complaint, other than to provide advice on the disciplinary processes.
- 14.8 A Complainant has no right of appeal to Engineers Australia.