



## GUIDANCE – EXTRATERRITORIALITY OF THE *PROFESSIONAL ENGINEERS ACT 2002*

### Practice Note ID 4.08

### Version 2 (February 2024)

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Version control	Date	Comments
Second Draft	February 2024	Practice Note reviewed and updated
Approved by Board		
Superseded	Version 1	Practice Note ID 4.08 (September 2021)

### PURPOSE

The purpose of this practice note is to offer guidance and an explanation of the Board of Professional Engineers of Queensland's (**Board's**) position on the extraterritorial application of the *Professional Engineers Act 2002* (Qld) (**Act**).

This practice note is NOT legal advice. The Board and its staff cannot provide legal and/or technical advice to engineers or members of the public. Consider seeking your own independent legal advice in relation to your personal circumstances.

### SUMMARY

A person must be a registered professional engineer of Queensland with practising status (**RPEQ**) or directly supervised by a RPEQ, to perform a 'professional engineering service' in or for Queensland.

A person located outside of Queensland is not required to be a RPEQ to provide professional engineering services for outside of Queensland or for a generic product (i.e. with no connection to Queensland).

### WHAT THE ACT REQUIRES

The Act requires any person carrying out a 'professional engineering service', within Queensland and also outside Queensland (if the service is intended for Queensland), to be a RPEQ or directly supervised by a RPEQ.

The Act has extraterritorial application, the Act applies outside the state boundaries of Queensland. Section 6A of the Act provides that it:

1. applies both within and outside Queensland; and
2. applies outside Queensland to the full extent of the extraterritorial legislative power of the Parliament.



The Queensland Parliament amended the Act in 2014 to clarify the application of the Act's extraterritorially. The Explanatory Notes to the Professional Engineers and Other Legislation Amendment Bill 2014 include:

*[This] Act applies both within and outside of Queensland. [The extraterritorially] provision clarifies that engineers who provide professional engineering services outside of Queensland for Queensland projects must be registered under the Act or directly supervised by a registered professional engineer.*

## WHEN THE ACT APPLIES

In practice, there are three (3) situations in which the Act will apply. It will apply where a person:

1. located in Queensland provides professional engineering services for Queensland; and/or
2. located in Queensland provides professional engineering services for outside Queensland; and/or
3. located outside Queensland provides professional engineering services for Queensland.

## WHY THE ACT APPLIES IN THE ABOVE SITUATIONS

In the first two situations, the person providing the professional engineering services must be a RPEQ or be directly supervised by a practicing RPEQ, because the professional engineering services are being physically carried out by the person in Queensland. This is regardless of whether the services are being provided for Queensland or another Australian State or Territory, or overseas.

In the third situation, even though the person providing the professional engineering service is doing so from outside of Queensland (i.e. they are not physically located in Queensland), they must be a RPEQ or be directly supervised by a practicing RPEQ if the service is either:

- a. provided for a project or purpose in Queensland; or
- b. the service specifically relates to or is connected to Queensland in some way.

## WHEN THE ACT DOES NOT APPLY

### **Professional engineering services with no nexus to Queensland**

A person physically located outside Queensland who provides a professional engineering service which has no connection with Queensland is not required to be a RPEQ. There is no 'nexus' to Queensland where the person is not physically located in Queensland and the service provided does not relate to a project with a connection to Queensland.

### **Professional engineering services for generic products**

A product is generic if it can be used anywhere, that is, it has no specific use or connection to Queensland, for example, a motor vehicle or a television. For a generic product, the location of the person providing the professional engineering service determines whether they must be registered in Queensland.



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A person must be a RPEQ to provide professional engineering services in relation to the design of (or other professional engineering work in relation to) a generic product when located in Queensland. The professional engineering service is provided in Queensland.

### **Professional engineering services provided outside Queensland**

A professional engineer located in another Australian state or territory or overseas providing professional engineering services for a generic product, regardless of where the product is manufactured, is not required to be registered in Queensland. The professional engineering services are provided outside Queensland and are not for Queensland.

Engineers and businesses should always seek their own legal advice on the extraterritoriality of the Act where professional engineering services are provided outside of Queensland for projects based in Queensland.

### **REFERENCES**

#### **Related legislation and policies:**

*Professional Engineers Act 2002 (Qld)*

#### Board policies

Prosecution Decisions Policy

Offences and Investigation Decisions Policy – Policy ID 2.2 (5A)