

Board Practice Direction: Guidelines for Provision and admissibility of documents at hearings

This Guide is intended to help participants who are participating in a Tribunal hearing who wish to submit documents to support their position.

Introduction

1. The Board is not constrained by normal court rules of evidence and may accept into evidence any document that it considers would assist it in dealing with the disciplinary matter.¹
2. There are, however, certain categories of documents that the Board may decide not to accept into evidence or are statutorily prevented from accepting.

Confidential Documents

3. Confidential documents are generally confidential in nature and communicated or generated in confidence. An example is commercially sensitive pricing. Confidentiality can be set aside if
 - (a) the person waives the confidence; or
 - (b) the Board decides that the value of the evidence outweighs the prejudicial effect of it being disclosed.
4. If a Respondent or Complainant wants to place confidential documents before the Board, it will determine based on the above factors whether the documents will be accepted.

Privileged Documents

5. Privileged documents are generally communications between a party and their lawyer, documents created for the purposes of litigation and without prejudice settlement communications.
6. These categories of documents will not be accepted into evidence by the Board unless all relevant parties waive their privilege in writing.

Construction Contracts Act

7. Documents created for the purposes of an adjudication under this Act (including the determination itself) cannot be accepted in evidence by the Board unless all relevant parties consent in writing.²

Arbitration

8. The documents filed in, and the ruling of an arbitration are not accepted in evidence by the Board unless the Arbitrator and /or the High Court has allowed disclosure³.

Provision of documents

9. All documents must be emailed to the Board Officer no later than one week before the hearing date.

¹ section 322 of the Building Act.

² section 68 of the Constructions Contract Act

³ section 14 Arbitration Act 1996

10. If this is not possible then the party relying on the documents must bring 10 copies for distribution on the hearing day and provide a copy to the Board Officer by email.
11. It is important that all documents, but particularly diagrams, videos and photographs, are of sufficient quality that they are easily legible.

Any queries on the acceptance of documents by the Board should be sent to the Board Officer at BPB@lbp.govt.nz