



# **Building Practitioners Board Complaints and Inquiry Procedures**

**Procedures for the management of Complaints and Inquiries  
relating to Licensed Building Practitioners under the Building  
Act 2004 and the Building Practitioners (Complaints and  
Disciplinary Procedures) Regulations 2008**



**LICENSED  
BUILDING  
PRACTITIONERS**

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## Interpretation

In these procedures, unless the context otherwise requires-

<b>Act</b>	means the Building Act 2004 and any subsequent amendment to that Act
<b>Board</b>	means the Building Practitioners Board established by section 341 of the Act and/or a subcommittee of the Board under clause 34 of Schedule 3 of the Act
<b>Board Inquiry</b>	means a Board led or initiated Complaint
<b>Board Officer</b>	means the person or persons designated to provide administrative support for the Board
<b>Chief Executive</b>	means the Chief Executive of the Ministry or a person under a delegation from the Chief Executive
<b>Complaint</b>	means a complaint about the conduct of a licensed building practitioner made under section 315 of the Act
<b>Complainant</b>	means a person who makes a Complaint
<b>Complaints Regulations</b>	means the Building Practitioners (Complaints and Disciplinary Procedures) Regulations 2008
<b>Counsel for the Registrar</b>	means a person or counsel engaged or appointed by the Registrar to represent the Registrar at Board Hearings convened to consider Complaints or Inquiries
<b>Disciplinary Matter</b>	means an Inquiry into, or Complaint about, the conduct of a Licensed Building Practitioner, or a decision on that Inquiry or Complaint
<b>Grounds for Discipline</b>	means any 1 or more of the Grounds for Discipline set out in section 317(1) of the Act
<b>Hearing</b>	means a meeting of the Board on a Disciplinary Matter
<b>Hearing File</b>	means the information and documentation collected prior to a Hearing to be placed before the Board as evidence at the Hearing
<b>Inquiry</b>	means an inquiry by the Board into the conduct of a licensed building practitioner in accordance Part 4 of the Act and Part 2 of the Complaints Regulations
<b>Licensed Building Practitioner</b>	means a building practitioner whose name is, for the time being, entered in the Register and, in relation to a Complaint, includes a person who is no longer a Licensed Building Practitioner but who was a Licensed Building Practitioner at the time of the relevant conduct that is the subject of the Complaint
<b>Meeting</b>	means a meeting of a quorum of the Board for the purpose of undertaking Board business or a subcommittee of the Board appointed under clause 34 of Schedule 3 of the Act
<b>Member</b>	means a member of the Building Practitioners Board

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<b>Minister</b>	means the Minister of the Crown who, under the authority of a warrant or with the authority of the Prime Minister, is responsible for the administration of the Act (currently the Minister for Building and Construction)
<b>Ministry</b>	means the Ministry of Business, Innovation and Employment
<b>Pre-hearing Conference</b>	means a conference convened by a Board Member with the Respondent to ensure that proper preparations are made for a fair, orderly, and efficient Hearing
<b>Presiding Member</b>	means the Chairperson of the Board, or the Deputy Chairperson if the Chairperson is not present, or the Member chosen by the Members present if the Chairperson and/or Deputy Chairperson is not present or, as the case may be, the person appointed as Presiding Member of a subcommittee
<b>Register</b>	means the register of Licensed Building Practitioners established and maintained under section 298 of the Act
<b>Registrar</b>	means the Registrar of Licensed Building Practitioners appointed by the Chief Executive under section 310 of the Act
<b>Registrar’s Delegate</b>	means a person acting under delegation from the Registrar under section 312 of the Act
<b>Registrar’s Report</b>	means a report prepared by the Registrar in accordance with the Complaints Regulations
<b>Respondent</b>	means a Licensed Building Practitioner whose conduct has been complained about to the Board under section 315 of the Act, or whose conduct has been Inquired into by the Board
<b>Rules</b>	means the Licensed Building Practitioner Rules 2007 and any subsequent amendments to the Rules under sections 353 and 361 of the Act
<b>Special Adviser</b>	means a person appointed under section 322(1)(d) of the Act to assist the Board
<b>Technical Assessor</b>	means a person assisting the Board with its investigations or inquiries
<b>Working Day</b>	means any day except: <ol style="list-style-type: none"><li>Saturday, Sunday, Good Friday, Easter Monday, ANZAC Day, the Sovereign’s Birthday, Labour Day and Waitangi Day; and</li><li>the day observed in the appropriate area as the anniversary of the province of which the area forms a part; and</li><li>a day in the period beginning on 20 December in any year and ending with the close of 10 January in the following year.</li></ol>

## General

### 1.1 Scope of Procedures and Policies

- 1.1.1 These procedures apply to Complaints and Inquiries and to all Members and to all persons assisting with or attending or appearing at Complaints or Inquiries.
- 1.1.2 In the performance and exercise of their decision-making functions and powers, the Board and the Registrar must comply with the principles of natural justice.
- 1.1.3 The principles of natural justice require that Hearings are conducted in a manner that ensures that the Respondent is given a fair opportunity to be heard and to contradict evidence against him or her, and that the decision-making process is conducted fairly, transparently and in good faith.
- 1.1.4 Clause 27 of Schedule 3 of the Act provides that the Board may regulate its own procedures. Accordingly it may at any time vary or depart from these procedures if it considers to do so would be in the best interests of natural justice or to do so would achieve the purposes of the Act.
- 1.1.5 In the event of any conflict between the provisions in these procedures and the Act or the Complaints Regulations, the Act and then the Complaints Regulations will apply.

### 1.2 The Legislative Framework

- 1.2.1 The legislation and regulations referred to in these procedures can be accessed at [www.legislation.govt.nz](http://www.legislation.govt.nz). The Licensed Building Practitioners Rules 2007 are available at [www.lbp.govt.nz/lbp/the-board/the-building-practitioners-board/the-lbp-rules](http://www.lbp.govt.nz/lbp/the-board/the-building-practitioners-board/the-lbp-rules)
- 1.2.2 Provisions that relate to the Complaints Procedures can be found in Part 4 of the Act and in the Complaints Regulations.

#### The Building Act

- 1.2.3 The overarching purpose of the Act is to ensure that buildings are safe and comply with the Building Code. The Act aims to achieve its purpose by providing for the regulation of building work, the establishment of a licensing regime for building practitioners and the setting of performance standards for buildings.
- 1.2.4 Part 2 (subpart 4) and Part 4 of the Act deal with the regulation of building practitioners.

#### Regulations

- 1.2.5 The Complaints Regulations prescribe information that must be provided in a Complaint about the conduct of a Licensed Building Practitioner; and specify the process for evaluation of the information, and how decisions in Inquiries and about Complaints are made.
- 1.2.6 The Building (Designation of Building Work Licensing Classes) Order 2010 designates the licensing classes for Licensed Building Practitioners under the Act. The Order also specifies the persons who, under section 291(2) of the Act, are to be treated as if they are licensed in a specified class because they are already registered or licensed under other relevant enactments (e.g. registered architects and chartered professional engineers).

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### Rules

- 1.2.7 The Act requires that there be Rules relating to Licensed Building Practitioners. Rules are to be prepared by the Chief Executive, approved by the Board, and “made” by the Minister. The Rules are deemed to be regulations for certain purposes.
- 1.2.8 The Licensed Building Practitioners Rules 2007 set out the standards of competence that Licensed Building Practitioners must meet to become licensed and to continue to be licensed, and specify information and evidence requirements associated with licensing. The Rules also specify procedures for licensing and managing the suspension and cancellation of licensing.

### Resources

- 1.2.9 Resources to assist a Licensed Building Practitioner are available on the Board’s website at [www.lbp.govt.nz](http://www.lbp.govt.nz)
- 1.2.10 Past Board Complaint and Inquiry decisions, including notable and significant decisions are available at [www.lbp.govt.nz/complaints-and-past-decisions/past-complaint-decisions](http://www.lbp.govt.nz/complaints-and-past-decisions/past-complaint-decisions)

## 1.3 Roles and Functions

### The Registrar

- 1.3.1 The Ministry is responsible for administering the Licensed Building Practitioner Scheme. The Registrar of Licensed Building Practitioners is appointed by the Chief Executive. The Registrar's functions include helping the Board to receive and investigate Complaints about Licensed Building Practitioners and providing other administrative support to the Board.

### The Board

- 1.3.2 The Board is a statutory board with members appointed by the Governor-General on the recommendation of the Minister.
- 1.3.3 The Board is independent of the Ministry. The Board's functions include receiving, investigating and hearing Complaints about, and inquiring into the conduct of Licensed Building Practitioners and disciplining them in accordance with the Act.

### The Minister

- 1.3.4 The Minister appoints Members and approves the Rules submitted by the Board. Once the Minister approves the Rules they are “made” and have the status of deemed regulations. entitled to be heard at a hearing:

### Licensed Building Practitioners

- 1.3.5 Licensed Building Practitioners have duties and obligations under the Act and the Rules, including but not limited to:
- (a) demonstrating as frequently as required by the Rules that they continue to meet the applicable minimum standards of competence;
  - (b) completing skills maintenance programmes set by the Registrar;

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- (c) responding to annual contact from the Registrar;
  - (d) ensuring that the information about them on the register is up-to-date;
  - (e) ensuring that they do not carry out or supervise restricted building work outside the scope of their licensing class(es);
  - (f) providing memoranda or certificates stating the restricted building work that they carried out or supervised;
  - (g) ensuring that work is not carried out or supervised in a negligent or incompetent manner;
  - (h) complying with relevant building consents; and
  - (i) not holding themselves out as being licensed to carry out or supervise building work of a type that they are not licensed to carry out or supervise.
- 1.3.6 Under section 314B of the Act a Licensed Building Practitioner must not misrepresent his or her competence and must carry out or supervise building work only within his or her competence.

## Complaints and Inquiries

### 2.1 Introduction

- 2.1.1 Any person may complain to the Board about the conduct of a Licensed Building Practitioner under section 315 of the Act:

**315** *Complaints about licensed building practitioners*

- (1) *Any person may complain to the Board about the conduct of a licensed building practitioner in accordance with the regulations.*
- (2) *A complaint or inquiry, and any decision on the complaint or inquiry, may relate to a person who is no longer a licensed building practitioner but who was a licensed building practitioner at the time of the relevant conduct.*

### 2.2 Grounds for a Complaint or Board Inquiry

- 2.2.1 The Board may take disciplinary action in relation to a Complaint or in relation to its own inquiries if it is satisfied that a Licensed Building Practitioner's conduct comes within one or more of the Grounds for Discipline in section 317 of the Act:

**317** *Grounds for discipline of licensed building practitioners*

- (1) *The Board may (in relation to a matter raised by a complaint or by its own inquiries) take any of the actions referred to in section 318 if it is satisfied that—*
  - (a) *both of the following matters apply:*
    - (i) *a licensed building practitioner has been convicted, whether before or after he or she is licensed, by any court in New Zealand or elsewhere of any offence punishable by imprisonment for a term of 6 months or more; and*

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- (ii) *the commission of the offence reflects adversely on the person's fitness to carry out or supervise building work or building inspection work; or*
- (b) *a licensed building practitioner has carried out or supervised building work or building inspection work in a negligent or incompetent manner; or*
- c) *a licensed building practitioner has carried out (other than as an owner-builder) or supervised restricted building work or building inspection work of a type that he or she is not licensed to carry out or supervise; or*
- (d) *a licensed building practitioner has carried out or supervised building work or building inspection work that does not comply with a building consent; or*
- (da) *a licensed building practitioner has failed, without good reason, in respect of a building consent that relates to restricted building work that he or she is to carry out (other than as an owner-builder) or supervise, or has carried out (other than as an owner-builder) or supervised, (as the case may be),—*
  - (i) *to provide a certificate of work about any plans and specifications required to accompany the building consent application; or*
  - (ii) *to provide the persons specified in section 88(2) with a record of work, on completion of the restricted building work, in accordance with section 88(1); or*
- (db) *a licensed building practitioner has held himself or herself out as being licensed to carry out or supervise building work or building inspection work of a type that, at that time, he or she was not licensed to carry out or supervise; or*
- (e) *a licensed building practitioner has, for the purpose of becoming licensed himself or herself, or for the purpose of any other person becoming licensed,—*
  - (i) *either orally or in writing, made any declaration or representation, knowing it to be false or misleading in a material particular; or*
  - (ii) *produced to the Registrar or made use of any document, knowing it to contain a declaration or representation referred to in subparagraph (i); or*
  - (iii) *produced to the Registrar or made use of any document, knowing that it was not genuine; or*
- (f) *a licensed building practitioner has failed, without good reason, to provide to the owner the record of work referred to in clause 1(b) of Schedule 1E or clause 1(b) of Schedule 1F; or*
- (g) *a licensed building practitioner has breached the code of ethics prescribed under section 314A; or*



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- (h) *a licensed building practitioner has breached section 314B; or*
- (i) *a licensed building practitioner has conducted himself or herself in a manner that brings, or is likely to bring, the regime under this Act for licensed building practitioners into disrepute.*

(2) *The Board may take the action whether or not the person is still a licensed building practitioner.*

2.2.2 The Board must, under section 316 of the Act, as soon as practicable after receiving a Complaint, investigate it and determine whether or not to proceed with it.

### 2.3 Making a Complaint

2.3.1 A Complaint must be made in writing using the approved form. The form is available online at [www.lbp.govt.nz](http://www.lbp.govt.nz), or may be requested from the Registrar or Board Officer. The form must contain the information specified in regulation 5 of the Complaints Regulations:

#### **5 Form of complaint**

*A complaint to the Board about the conduct of a licensed building practitioner must—*

- (a) *be made in writing; and*
- (b) *be in a form approved by the Board; and*
- (c) *identify the complainant and include the complainant's name and contact details; and*
- (d) *identify the licensed building practitioner's name and include any of his or her contact details known to the complainant; and*
- (e) *provide details of the conduct that is the subject matter of the complaint; and*
- (f) *indicate the grounds for discipline to which the conduct that is the subject matter of the complaint may correspond, if they are known by the complainant; and*
- (g) *be accompanied by any evidence that the complainant has to support the complaint; and*
- (h) *state what steps have already been taken to resolve the complaint, to the extent that they are known by the complainant.*

### 2.4 Receipt of Complaints

2.4.1 One of the Registrar's functions is to help the Board to receive and investigate Complaints under section 311(c) of the Act.

2.4.2 Complaints about Licensed Building Practitioners are to be lodged with the Registrar. If the Board Officer receives a Complaint, it will forward it to the Registrar.

2.4.3 After receiving a Complaint, the Registrar will:

- (a) stamp the Complaint with the date of receipt;
- (b) log the Complaint and open a Complaint file by allocating a Complaint number;
- (c) acknowledge in writing to the Complainant that his or her Complaint has been received;

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- (d) check whether the Complaint is complete and constitutes a valid Complaint within the Board's jurisdiction (refer to paragraphs 2.5 and 2.6); and
- (e) if the Complaint has been lodged correctly and the Complaint constitutes a valid Complaint within the Board's jurisdiction, proceed with the process of preparing the Registrar's report in accordance with the Complaints Regulations and paragraph 2.9.

### 2.5 Incomplete and Lapsed Complaints

2.5.1 A Complaint must comply with regulation 5 of the Complaints Regulations:

#### **5 Form of complaint**

*A complaint to the Board about the conduct of a licensed building practitioner must—*

- (a) be made in writing; and*
- (b) be in a form approved by the Board; and*
- (c) identify the complainant and include the complainant's name and contact details; and*
- (d) identify the licensed building practitioner's name and include any of his or her contact details known to the complainant; and*
- (e) provide details of the conduct that is the subject matter of the complaint; and*
- (f) indicate the grounds for discipline to which the conduct that is the subject matter of the complaint may correspond, if they are known by the complainant; and*
- (g) be accompanied by any evidence that the complainant has to support the complaint; and*
- (h) state what steps have already been taken to resolve the complaint, to the extent that they are known by the complainant.*

2.5.2 If a Complaint is incomplete and/or has not been lodged correctly, the Registrar will contact the Complainant as soon as practicable to request the information necessary to complete the lodgement of the Complaint and/or to provide him or her with assistance or advice about how to complete the lodgement of the Complaint.

2.5.3 If the Complaint is not complete and lodged correctly within three months after contact from the Registrar, the Registrar will advise the Complainant in writing that the Complaint will lapse and no further action will be taken in relation to it if the information necessary to complete the Complaint is not provided within 20 working days after the date of receipt of the Registrar's letter. If the information is not received within that time, the Complaint will lapse.

2.5.4 If a Complaint lapses, the Registrar will advise the Board of the lapse and provide the Board with a summary of the known details of the lapsed Complaint.

2.5.5 The Board may, at its sole discretion and regardless of a Complaint lapsing, initiate a Board Inquiry into the conduct of the Licensed Building Practitioner to which the original Complaint related.

2.5.6 The lapsing of a Complaint does not prevent the Complainant from making a further Complaint about the same Licensed Building Practitioner on the same subject matter at a later time.

## 2.6 Jurisdiction

- 2.6.1 If the Registrar considers that a Complaint does not meet the requirements of section 315 of the Act or is outside the Board's jurisdiction or otherwise invalid, refer to paragraphs 2.6.2 and 2.6.3 the Registrar must advise the Board of this in writing and must include the reasons why the Registrar considers it is not within the Board's jurisdiction.

### Confirming Validity of Complaint

- 2.6.2 In checking whether a Complaint is a valid Complaint within the Board's jurisdiction, the Registrar must consider:
- (a) whether the person being complained about was a Licensed Building Practitioner at the time when the work complained about was carried out; and
  - (b) whether the Complaint is outside all of the Grounds for Discipline in section 317 of the Act.

### Referral of Complaints to another Body

- 2.6.3 Where a Complaint is received about a Licensed Building Practitioner who:
- (a) is treated under section 291 of the Act as if he or she is licensed because he or she is registered, licensed, or otherwise recognised under another enactment; and
  - (b) is, in the opinion of the Board, subject to a substantially similar or more stringent disciplinary regime by or under that other enactment;
- then the Complaint must be referred to the body that is responsible for dealing with Complaints under that other enactment (sections 316(2) and 316(3) of the Act).
- 2.6.4 The Registrar must advise the Board if he or she receives a Complaint that may need to be referred to another disciplinary body pursuant to section 316(3) of the Act. Advice may also be sought from the other disciplinary body to help determine whether the other disciplinary body has jurisdiction over the Complaint.

### Board Confirmation

- 2.6.5 Upon receipt of advice under paragraphs 2.6.1 or 2.6.4, the Board must consider whether or not to:
- (a) refer the Complaint to another body;
  - (b) decide whether the Complaint does not warrant further investigation under regulation 9 of the Complaint Regulations, or
  - (c) proceed to investigate the Complaint.
- 2.6.6 Regulation 9 of the Complaints Regulations provides:
- 9 Complaint not warranting further investigation**
- A complaint does not warrant further investigation if—*
- (a) *it does not come within the grounds for discipline; or*
  - (b) *it does not meet the requirements of regulation 5; or*

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- (c) *it is frivolous, vexatious, or not made in good faith; or*
- (d) *its subject matter is [minor or] trivial, or both; or*
- (e) *there is insufficient evidence to warrant the investigation of the complaint; or*
- (f) *the investigation of it is—*
  - (i) *not practicable; or*
  - (ii) *unnecessary; or*
  - (iii) *not possible (for example, because [the licensed building practitioner] has died or cannot be located); or*
- (g) *its subject matter has been considered previously by the Board, and the Board—*
  - (i) *considered that the complaint did not warrant further investigation, because 1 or more of paragraphs (a) to (f) applied to it; or*
  - (ii) *otherwise made a decision on the complaint.*

2.6.7 If the Board considers that another disciplinary body has jurisdiction over the Complaint, the Board will direct that the Complaint be referred to that disciplinary body. In such a case, the Registrar will forward the Complaint, including any information related to the Complaint, to the appropriate body and notify the Complainant in writing of the referral as soon as practicable.

2.6.8 If the Board decides the Complaint does not warrant further investigation, the Board will issue its decision in writing to the Complainant. Having dismissed a Complaint, the Board may also refer the matter to an alternate authority for its consideration or the Complainant may make another Complaint to the Board supported by new or further evidence.

## 2.7 Complainant Not Proceeding

2.7.1 A Complainant may give notice in writing to the Registrar or Board Officer that he or she does not want to proceed with a Complaint. If the notice is received by the Board Officer, the notice will be provided to the Registrar.

2.7.2 Notwithstanding that the Complainant does not want to proceed with the Complaint (including after a Hearing has commenced), the Board may make its own Inquiries into, or continue to investigate the matter that is the subject of the Complaint under regulation 17 of the Complaints Regulations:

### 17 Application

- (1) *This Part applies to an inquiry into a matter about the conduct of a building practitioner raised by the Board’s own inquiries.*
- (2) *This Part also applies to an inquiry into a matter about the conduct of a building practitioner raised by a complaint where the Board carries on an inquiry into that matter on its own motion after the complainant decides not to proceed with the complaint—*
  - (a) *as if every reference to a matter raised by the Board’s own inquiries included a reference to the matter raised by that complaint; and*
  - (b) *with all modifications necessary to take into account that there is no need for the Board to repeat any process already undertaken as part of the*

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*investigation of the complaint under Part 1 where a substantially equivalent process may be, or is required to be, undertaken as part of an inquiry under this Part; and*

*(c) with any other necessary modifications.*

- 2.7.3 On receipt of a notice not to proceed, the Registrar will advise the Board and, unless there are good reasons to the contrary, the Board will continue with a Complaint as a Board Inquiry.
- 2.7.4 If the Registrar considers there are good reasons why the Board should not continue with a Complaint as a Board Inquiry, it will provide a memorandum to the Board noting the reasons for the Board to consider. The Board will consider the memorandum and resolve whether or not to proceed with the matter.
- 2.7.5 The Registrar shall, in respect of all matters that are to proceed as a Board Inquiry, if necessary, continue to prepare a Registrar's Report under regulation 20 of the Complaints Regulations.
- 2.7.6 If the Board had, in respect of matters that are to proceed as a Board Inquiry, made a decision to hold a hearing then any notices issued shall apply as if given under regulations 22 of the Complaints Regulations.

### **2.8 Board Inquiries**

- 2.8.1 Whether or not a Complaint has been made in relation to a Licensed Building Practitioner, or a Complainant has not proceeded or has lapsed, the Board may make its own inquiries into the conduct of a Licensed Building Practitioner if the Board has reason to suspect that his or her actions may come within any of the Grounds for Discipline in section 317 of the Act.
- 2.8.2 The Board may on its own motion and without having received a Complaint initiate an Inquiry into the conduct of a Licensed Building Practitioner if it suspects the conduct may come within any of the Grounds for Discipline in section 317 of the Act.
- 2.8.3 For the purposes of making its own Inquiries into the conduct of a Licensed Building Practitioner the Board may, by resolution in writing, require the Registrar to prepare a report on the matter.

### **2.9 Registrar's Report**

- 2.9.1 Unless a Complaint is incomplete, outside the Board's jurisdiction, invalid, or is not proceeded with by the Complainant (refer to paragraphs 2.5 to 2.7) and not proceeded with as a Board Inquiry, the Registrar must prepare a report on the Complaint.
- 2.9.2 The Registrar must also prepare a report if required to do so by the Board under paragraph 2.8.3.
- 2.9.3 The preparation of the report for a Complaint is governed by regulation 7 of the Complaints Regulations:

#### **7 Registrar's preparation of report to Board**

- (1) *When the Board asks the Registrar for a report on a complaint, he or she must—*
- (a) collect information in accordance with subclauses (2) to (4); and*
  - (b) compile a report as described in regulation 8; and*

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- (c) *provide the Board with the report; and*
  - (d) *send a copy of the report to [the complainant and the licensed building practitioner.*
- (2) *The Registrar must provide a copy of the complaint to the licensed building practitioner and ask him or her to provide—*
  - (a) *his or her response, in writing; and*
  - (b) *any relevant information; and*
  - (c) *any evidence that he or she wishes to provide.*
- (3) *The Registrar may ask the complainant for any further information.*
- (4) *The Registrar may ask any special adviser appointed by the Board under section 322(1)(d) of the Act to provide his or her comments, opinion, or advice on any information supplied under regulation 5 or collected under subclauses (2) and (3).*

2.9.4 The preparation of the report for a Board Inquiry is governed by regulation 19 of the Complaints Regulations:

### **19 Registrar’s preparation of report to Board**

- (1) If the Board requests the Registrar to prepare a report on a matter, the Registrar must—
  - (a) *collect information in accordance with subclauses (2) to (4); and*
  - (b) *compile a report as described in regulation 20; and*
  - (c) *provide the Board with the report; and*
  - (d) *send a copy of the report to the relevant licensed building practitioner.*
- (2) *The Registrar must—*
  - (a) *provide the licensed building practitioner with—*
    - (i) *the details of the conduct that the Board is inquiring into, including all evidence that the Board has in support of its request for the Registrar’s report under regulation 18; and*
    - (ii) *the grounds for discipline to which the conduct that is the subject of the inquiry may correspond; and*
  - (b) *ask the licensed building practitioner to provide—*
    - (i) *his or her response, in writing; and*
    - (ii) *any relevant information; and*
    - (iii) *any evidence that he or she wishes to provide.*
- (3) *The Registrar may—*
  - (a) *make any inquiries that are reasonably necessary to determine whether the conduct of the licensed building practitioner comes within any of the grounds for discipline; and*
  - (b) *without limiting paragraph (a), invite any person to provide further information relevant to the inquiry.*

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- (4) *The Registrar may ask any special adviser appointed by the Board under section 322(1)(d) of the Act to provide his or her comments, opinion, or advice on any information supplied or collected under subclauses (2) and (3).*

2.9.5 Regulation 8 of the Complaints Regulations requires the following content in the report for Complaints:

### **8 Contents of Registrar's report to Board**

- (1) *The Registrar's report to the Board must—*
- (a) *contain the details of the complaint, including—*
    - (i) *any information supplied under regulation 5; and*
    - (ii) *whatever [the licensed building practitioner] provides under regulation 7(2); and*
    - (iii) *whatever the complainant provides under regulation 7(3); and*
    - (iv) *the special adviser's response, if any, under regulation 7(4); and*
  - (b) *contain the Registrar's summary of the facts as agreed and as disputed between [the complainant and the licensed building practitioner]; and*
  - (c) *indicate whether, in his or her view, regulation 9 applies to the complaint.*
- (2) *The details of the complaint under subclause (1)(a) may be in summary form, either in whole or in part.*

2.9.6 Regulation 20 of the Complaints Regulations requires the following content in the report for Board Inquiries:

### **20 Contents of Registrar's report to Board**

*The Registrar's report to the Board must—*

- (a) *contain the details of the matter inquired into, including—*
  - (i) *whatever information and evidence the licensed building practitioner provides under regulation 19(2); and*
  - (ii) *whatever information is collected or provided under regulation 19(3); and*
  - (iii) *the special adviser's response, if any, under regulation 19(4); and*
- (b) *contain the Registrar's summary of facts as agreed and as disputed by the licensed building practitioner; and*
- (c) *indicate whether, in the Registrar's view, regulation 21 applies to the matter.*

2.9.7 In preparing the Registrar's Report the Registrar shall serve the Complaint on the Respondent and give no less than 25 working days for the Respondent to provide a response to the Complaint.

2.9.8 Service of a Complaint and any other document on a Licensed Building Practitioner may be carried out in accordance with the provisions of section 394 of the Act:

### **394 Service of notices**

- (1) *Any notice or other document required to be served on, or given to, any person under this Act is sufficiently served if it is—*
- (a) *delivered personally to the person; or*

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- (b) *delivered to the person at the person’s usual or last known place of residence or business; or*
  - (c) *sent by fax or email to the person’s fax number or email address; or*
  - (d) *posted in a letter addressed to the person at the person’s usual or last known place of residence or business.*
- (2) *If a notice or other document is to be served on a body (whether incorporated or not), service on an officer of the body in accordance with subsection (1) is taken to be service on the body.*
- (3) *If a notice or other document is to be served on a partnership, service on any one of the partners in accordance with subsection (1) or subsection (2) is taken to be service on the partnership.*
- (4) *Despite subsection (1), if a notice or other document is to be served on a Crown organisation for the purposes of this Act, it may be served—*
  - (a) *by delivering it personally to an employee of the organisation at its head office or principal place of business; or*
  - (b) *by delivering it at the organisation’s head office or principal place of business, including by fax; or*
  - (c) *in accordance with a method agreed with the organisation.*
- (5) *A notice or other document sent by post to a person in accordance with subsection (1)(d) must be treated as having been received by that person at the time at which the letter would have been delivered in the ordinary course of post.*

2.9.9 In addition to the contents of the Registrar's Report required under regulation 8 of the Complaints Regulations for Complaints or regulation 20 for Board Inquiries, the report may advise the Board of the Registrar's views regarding relevant Grounds for Discipline and include any other recommendations the Registrar considers appropriate (e.g. regarding how to address, resolve, or proceed with further investigation of a matter).

### **2.10 Board’s action after receiving Registrar’s Report**

2.10.1 After considering the Registrar’s Report, the Board must decide whether or not to proceed with the Complaint or with a Board Inquiry. The Board may only proceed if it considers that regulation 9 or 21 of the Complaints Regulations (“Complaint not warranting further investigation”) does not apply.

2.10.2 If the Board decides not to proceed with a Complaint or a Board Inquiry because regulation 9 or 21 applies then it will advise all persons involved of its decision and thereafter will not enter into any further communication with any person involved in the Complaint.

2.10.3 If, after the Board has made a decision not to proceed, a Complainant considers there is new or fresh evidence that might result in a Complaint proceeding then they may make a new complaint identifying the new or fresh evidence. The new Complaint will then be dealt with in accordance with the Complaints Regulations.

2.10.4 If the Board proceeds with the Complaint or with a Board Inquiry, then it must hold a Hearing, either in person or, at the Board’s discretion, on the papers.



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- 2.10.5 In the case of a Complaint, if a Complainant does not proceed with the Complaint (including after the Hearing has commenced) then the Board may, at its discretion, proceed with a Hearing on the matter as a Board Inquiry.

### 2.11 Consolidation of Complaints

- 2.11.1 If two or more Complaints are about substantially the same subject matter and the Board is of the opinion that it would assist the Board to better determine each of the Complaints if they were considered together the Board may, with the agreement of the Complainant(s) and the Respondent(s), consolidate the Complaints into one Hearing provided that in doing so they meet the requirements of regulation 13 of the Complaints Regulations:

#### **13 Consolidation of complaint hearings**

- (1) *The Board may consolidate the hearing of 2 or more complaints into 1 hearing if—*
- (a) *the complaints are, in the opinion of the Board, about substantially the same subject matter; and*
  - (b) *the complainant and the licensed building practitioner in respect of each complaint agree to the consolidation.*
- (2) *Regulation 11 applies, with all necessary modifications, to a consolidated hearing.*

### 2.12 Hearings

- 2.12.1 A Hearing is a meeting of the Board for the purposes of the Act, whether or not the Registrar, the Complainant (if applicable), the Respondent, or their representatives attend it. The relevant provisions in Schedule 3 of the Act apply to Hearings of the Board.

#### **Notice of Hearing**

- 2.12.2 The Respondent must under regulation 12 of the Complaints Regulations be given **at least 15 working days' notice** of the date of the Hearing. Where the Hearing follows a Complaint, a copy of the notice of Hearing must also be provided to the Complainant with at least 15 working days' notice:

#### **12 Notice of hearing**

*The Board must give the complainant and the licensed building practitioner notice of the hearing at least 15 working days before the date set for the hearing.*

- 2.12.3 The Board's Notice of Hearing will include the following and may be provided in one or more notices:
- (a) where the Hearing follows a Complaint information on the Grounds for Discipline on which the Complaint is based;
  - (b) where the Hearing follows Inquiries made by the Board information on the Grounds for Discipline on which the concerns are based;
  - (c) confirm the time and place of the Hearing;
  - (d) provide information about how the Hearing will be conducted, including that the Hearing will be held in public;

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- (e) who may be heard at the Hearing;
- (f) convey directions from the Board or Presiding Member to ensure that proper preparations are made for a fair, orderly, and efficient Hearing (if any); and
- (g) advise the Respondent that he or she:
  - i) must, within the period specified in the Notice of Hearing, inform the Board in writing whether he or she intends to appear before the Board at the Hearing;
  - ii) may, if he or she does not wish to appear in person, provide a written submission or any other documentation relevant to the Complaint or an Inquiry in accordance with directions issued;
  - iii) may have representation (legal or otherwise) at the Hearing;
  - iv) may call witnesses to give evidence under oath or affirmation before the Board, provided that the Respondent submits a list of witnesses to the Board within the period specified in the Notice of Hearing; and
  - v) may, in writing with reasons for the request, request that the Board summon a witness to appear at the Hearing. A request for summons must be made to the Board within the period specified in the Notice of Hearing; and
- (h) may include a response sheet for the Respondent to complete and return to the Board Officer.

2.12.4 If a Respondent requests that the Board exercise its power to summons a witness on behalf of the Respondent then the Respondent will be liable for the payment of any witness fees and expenses that the witness is entitled to in accordance with paragraphs 2.12.28 and 2.12.29 herein. The Board Officer will provide details of the fees and expenses entitlements on request.

### **Hearing Location**

2.12.5 The Location of the Hearing will be at the Board's discretion.

2.12.6 The Board may, where it considers it is expedient to do so, require that a Hearing be held by way of teleconference or video conference.

2.12.7 A Respondent may request that his or her Hearing is held in a main centre that is more convenient or appropriate for the Respondent and/or any witnesses he or she proposes to call. Such request must be in writing and be made no later than 5 working days' from receipt of the Notice of Hearing and include the reasons for the request. The Presiding Member for the Hearing will decide whether or not to grant the application and the Respondent will be advised accordingly.

### **Pre-hearing Conference**

2.12.8 The purpose of a Pre-hearing Conference is to ensure that proper preparations are made for a fair, orderly, and efficient Hearing. This may include issuing directions in respect of the Hearing, variations to directions and/or consideration of adjournment requests.

2.12.9 The Presiding Member for the Hearing may convene a Pre-hearing Conference if he or she considers that a conference is necessary. If a Pre-hearing conference is not

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required or the Respondent does not or will not attend it then any instructions or directions the Presiding Member considers necessary for the Hearing will be issued to the Respondent in writing.

- 2.12.10 A Pre-hearing Conference must be held as soon as is practicable and where possible no later than 10 working days prior to the Hearing.
- 2.12.11 Pre-hearing conferences will be conducted by the Presiding Member or any other Member of the Board appointed for the purpose. A quorum of Board Members is not required for a Pre-hearing Conference.
- 2.12.12 A Pre-hearing Conference will generally be conducted by teleconference but may, at the discretion of the Member conducting it, be conducted in person. The Board Officer and where appropriate Counsel for the Registrar may attend.
- 2.12.13 Minutes of the Pre-hearing conference will be produced and a copy sent to the Respondent.

### **Other Pre-hearing Matters**

- 2.12.14 The Presiding Member may determine minor procedural and/or administrative matters prior to the Hearing or at the Pre-hearing Conference.

### **Hearing Administration**

- 2.12.15 A copy of the Hearing file will be provided to the Registrar or Counsel for the Registrar (if attending), the Respondent, the Complainant (if attending) and the Board Members before the Hearing. The Hearing file will contain copies of the relevant documents lodged with the Board Officer and any other material documents relevant to the Hearing.
- 2.12.16 The Board Officer will ensure, in accordance with the Board's directions (if any), that:
  - (a) the attendance (or otherwise) of the Respondent and/or his or her representative has been confirmed and the Board notified;
  - (b) the list of witnesses that the Respondent wishes to call (if any) has been distributed to the Board Members attending the Hearing;
  - (c) the attendance or otherwise of any person summoned has been confirmed; and
  - (d) the attendance of any Special Adviser or Technical Assessor has been confirmed.
- 2.12.17 The Counsel for the Registrar will, where requested by the Board, provide their opening submissions to the Respondent and the Board no less than three working days prior to the Hearing.
- 2.12.18 All documentary evidence should be filed with the Board Officer no later than 10 working days prior to the Hearing to allow it to be distributed with the Hearing File. The Board may accept relevant late documentary evidence including documentary evidence presented at the Hearing. Any person tabling documentary evidence at the Hearing must provide sufficient copies for all persons' present and in any case not less than six copies.

### **Hearing Quorum**

- 2.12.19 A quorum for the Hearing of a Complaint is in any case, no fewer than three Members.

**Polling Members for Conflict of Interest**

- 2.12.20 Before the commencement of a Hearing the Presiding Member will (in private) poll all attending Members to determine whether any has a conflict of interest in relation to the Disciplinary Matter. Any Member who has a conflict of interest must stand aside and may not participate in the Hearing.
- 2.12.21 Where a Member has an association with a person who is the subject of a Disciplinary Matter, that Member must declare the association to the Board as soon as he or she becomes aware of it. The Board will decide whether the association reflects adversely (or may be seen to reflect adversely) on the independence of the Member, and whether the Member should withdraw himself or herself from investigating the Disciplinary Matter.

**Hearing on the Papers**

- 2.12.22 The Board may decide a Disciplinary Matter on the papers:
- (a) where the Respondent fails to attend the Hearing after receiving notice; or
  - (b) where the Board considers, taking into account the requirement to adhere to the principles of natural justice that a hearing on the papers is an appropriate manner in which to conduct a hearing; and
  - (c) if the Board decides to hear the matter on the papers then the Respondent may still attend by phone or video conference or in person at his or her own cost. The Board’s Practice Direction – Rules for the use of Audio and Visual Links are to be followed when a person appears by phone or video conference. They are contained in Appendix One.

**Who may be Heard at a Hearing**

- 2.12.23 The following persons may be heard at a Hearing:
- (a) the Registrar (and/or his/her counsel);
  - (b) the Respondent (either personally or through a representative);
  - (c) witnesses for the Respondent;
  - (d) witnesses that the Registrar or Counsel for the Registrar requests to attend the Hearing;
  - (e) any person summoned as a witness by the Board;
  - (f) any Special Adviser or Technical Assessor appointed by the Board;
  - (g) where the Hearing follows a Complaint, the Complainant (either personally or through a representative);and
  - (h) any other person with the permission of the Board.

**Witnesses**

- 2.12.24 Subject to any direction given in writing or at a Pre-hearing Conference, a person intending to call witnesses must submit a list of witnesses to the Board by the date specified in the Notice of Hearing, and may be required to provide briefs of evidence.
- 2.12.25 A witness may be required by the Presiding Member to:

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- (a) give evidence under oath or affirmation; and
  - (b) produce documents, things or information in their possession or control that are relevant to the Hearing.
- 2.12.26 A person may be summoned, requiring that person to attend a Hearing before the Board and give evidence (s 323). Where a summons is issued, the summons must be in writing, and signed by a Member of the Board. Failure to comply with a summons is an offence liable to a fine of up to \$2,000.
- 2.12.27 The Registrar, Counsel for the Registrar or the Respondent may, in writing with reasons, request the Board to summon a witness to appear at the Hearing. Such requests must be made in accordance with section 324 of the Act:

### **324 Service of summons**

- (1) *A summons may be served—*
    - (a) *by delivering it personally to the person summoned; or*
    - (b) *by posting it to the person summoned at that person's usual place of residence.*
  - (2) *A summons must,—*
    - (a) *if it is to be served under subsection (1)(a), be served at least 48 hours before the attendance of the witness is required;*
    - (b) *if it is to be served under subsection (1)(b), be served at least 10 days before the attendance of the witness is required.*
  - (3) *A summons that is posted is treated as having been served when it would have been delivered in the ordinary course of post.*
- 2.12.28 A witness appearing before the Board under a summons is entitled to be paid witnesses' fees, allowances, and expenses in accordance with the scales prescribed by regulations under the Criminal Procedure Act 2011.
- 2.12.29 The person requiring attendance of a summonsed witness must pay or tender to the witness the fees, allowances, and expenses at the time the summons is served or at some other reasonable time before the Hearing.
- 2.12.30 A witness may, with the express consent of the Board give evidence by phone or video conference at his or her own cost. The Board's *Practice Direction: Rules for the use of Audio and Visual Links* are to be followed when a person gives evidence by phone or video conference. They are contained in Appendix One.

### **Hearing Procedure**

- 2.12.31 The Board must be guided by the principle that it should avoid unnecessary formality whilst also adhering to the principles of natural justice. Regulation 14 of the Complaints Regulations provides:

#### **14 Nature of hearing**

- (1) *The Board, when exercising the power under section 284 of the Act to regulate its own procedure for making decisions, must be guided by the principle that it should avoid unnecessary formality.*

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(2) *Subclause (1) does not limit section 283 of the Act, which includes requirements for the Board to comply with the rules of natural justice and give written notices of, and reasons for, its decisions.*

2.12.32 The Board may regulate its own procedures and may at any time adopt such procedures as it thinks would be in the best interest of natural justice and or would achieve the purposes of the Act.

2.12.33 Hearings in person will generally adopt the following procedure:

- (a) the Presiding Member commences the Hearing by:
  - i) commencing an electronic recording of the Hearing;
  - ii) stating his or her name;
  - iii) detailing any housekeeping matters;
  - iv) inviting all other persons present to introduce themselves;
  - v) reading into the record a statement about the purpose of the Hearing, including the details of the Complaint or Inquiry as applicable;
  - vi) providing a summary of the procedure that will be adopted for the Hearing;
  - vii) explaining that if a person is giving evidence, the person will be sworn by taking an oath on the Bible or by making an affirmation and having those persons who will give evidence sworn in;
- (b) the Presiding Member may order that any person who is to give evidence, other than the Respondent, is to be excluded from the Hearing until such time as their evidence is called for and may excuse the further attendance of any person who has given their evidence;
- (c) the Registrar or Counsel for the Registrar (if present) or the Board Officer if neither is present provides Council for the Registrar's opening submissions and admits the documents before the Board into evidence. Counsel for the Registrar's submissions may include a summary of the details of the Complaint or Inquiry, as applicable, the relevant Grounds for Discipline, the key facts in dispute and any applicable legal principals;
- (d) where the Hearing follows a Complaint, the Complainant (if attending) may be provided with the opportunity to comment and/or confirm information, if necessary;
- (e) the Special Adviser or Technical Assessor, if present, will be asked to confirm their report and may be asked to summarise it. The Board may ask questions of the Special Adviser or Technical Assessor. The Registrar or Counsel for the Registrar, the Respondent or the Complainant (if present) may (with the permission of the Presiding Member) ask questions of the Special Adviser or Technical Assessor;
- (f) witnesses called in support of the Complaint or Inquiry will be asked to give their evidence and will be questioned by the Board. The Registrar or Counsel for the Registrar, the Special Adviser or Technical Assessor, the Respondent or the Complainant may (with the permission of the Presiding Member) ask questions of the witnesses;

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- (g) the Respondent (or their representative) is invited to respond to the Complaint or the subject matter of the Inquiry and to call any witnesses in support of their defence. The Board may question the Respondent and any witnesses called. The Registrar or Counsel for the Registrar, the Special Adviser or Technical Assessor, the Respondent or the Complainant may (with the permission of the Presiding Member) ask questions of the Respondent and his or her witnesses;
- (h) the Registrar or Counsel for the Registrar, the Complainant and the Respondent are each invited to make a closing statement;
- (i) depending on the complexity of the case the Presiding Board may:
  - (i) close the Hearing and advises those present of the decision-making process; or
  - (ii) adjourn the hearing and deliberate in private before recalling the Respondent and delivering its decision and, if a ground of discipline is upheld, it will then call for submissions on penalty, costs and publication and make its decision on those matters.

### **Hearings to be Public**

- 2.12.34 Hearings are to be held in public except where the Board is of the opinion that it is proper to hold a Hearing or part of a Hearing in private, having regard to the interests of any person (including, without limitation, the person's privacy interests) and the public interest.
- 2.12.35 The Respondent may request that a Hearing or part of a Hearing be held in private either in writing before the Hearing, at a Pre-hearing Conference or in person at the Hearing. A request for a Hearing to be held in private must include the reasons why and it will be heard with the Respondent in attendance but otherwise in private. The Board will consider the decision on the application in private and will deliver its decision with the Respondent in attendance but otherwise in private.
- 2.12.36 The Board has adopted the Ministry of Justice In-Court Media Coverage Guidelines 2015. Any applications for in hearing media coverage must be made and will be considered in accordance with those Guidelines.

### **Adjournments**

- 2.12.37 Requests for adjournment, other than at the Hearing or at a Pre-hearing conference, must be made in writing together with the reasons for the request.
- 2.12.38 Hearings will not be adjourned without good reason. A Hearing may be adjourned at the request of the Registrar or Counsel for the Registrar or the Respondent, or because the Presiding Member is of the opinion that it is proper to do so in the circumstances.
- 2.12.39 A Hearing will not normally be adjourned due to the unavailability of a legal representative, unless the unavailability occurs at an unavoidably short notice so that another representative would not have had sufficient time to prepare to fairly represent the person concerned.
- 2.12.40 The Presiding Member for the Hearing will decide whether or not to grant a request for an adjournment (where it is made prior to the Hearing) and may do so on the basis of the written request or may convene a telephone conference with the relevant persons prior to making a decision. The Board's Practice Direction – Rules for the use of Audio

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and Visual Links are to be followed when a person appears by phone or video conference. They are contained in Appendix One.

- 2.12.41 If a Hearing is adjourned, the Officer will fix a time and place for the resumption of the Hearing and will notify the Registrar or Counsel for the Registrar and the Respondent. Where the Hearing follows a Complaint, notice will also be provided to the Complainant.
- 2.12.42 If an adjournment is granted to the Respondent then the Board will reserve its decision as regards costs (if any) to be ordered against the Respondent as a result of the adjournment.

### **2.13 Board Decision**

- 2.13.1 The Board will deliberate in private before reaching a decision on a Disciplinary Matter. No persons other than Board Members and Board Officers may be present.
- 2.13.2 A decision of the Board must be made by resolution of the majority of Members.
- 2.13.3 The Board may:
- (a) deliberate in private before recalling the Respondent to advise its decision and if the Respondent is found to have committed a disciplinary offence then he or she will be given an opportunity to make submissions as regards penalty, costs and publication and the Board may then either deliver its decision on penalty, costs and publication at the Hearing or in writing post the Hearing. A written decision on the Disciplinary Matters will also be issued; or
  - (b) close the Hearing and issue its decision on the disciplinary offence(s) and include its preliminary decision on penalty, costs and publication. The Respondent will then be invited to make submissions if he or she disagrees with the preliminary decision; or
  - (c) close the hearing and issue its decision on the disciplinary offence(s) and invite the Respondent to make submissions on penalty costs and publication.
- 2.13.4 The Board will, once it has finalised its decision, issue it to the Respondent, with a copy to the Registrar or Counsel for the Registrar if they appeared and, where the Hearing follows a Complaint, the Complainant, as soon as practicable after coming to a decision.
- 2.13.5 The Board's decision must:
- (a) be in writing;
  - (b) state the reasons for the decision;
  - (c) contain any directions necessary for the Registrar to implement the Board's decision;
  - (d) be signed by the Presiding Member of the Board;
  - (e) record the minority view of a Member if the Member so requires; and
  - (f) set out the right of appeal to the District Court under section 330(2)(b) of the Act and the time within which an appeal must be lodged.
- 2.13.6 The Board may, at its sole discretion seek or hear submissions on penalty, publication and costs from other persons who have appeared at or made submissions to the Board at the Hearing where the Board considers it is appropriate to do so.



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- 2.13.7 The Board must set out:
- (a) the disciplinary penalty imposed, the date the penalty applies from, and if applicable, the date the penalty is served;
  - (b) the amount of the costs and expenses payable by the Respondent and the timeframe for payment (within 60 days); and
  - (c) the details of the publication of the decision (if applicable).

### Disciplinary Penalties, Costs and Publication

- 2.13.8 The penalties, costs and publication powers of the Board are set out in section 318 of the Act:

#### **318 Disciplinary penalties**

- (1) *In any case to which section 317 applies, the Board may—*
- (a) *do both of the following things:*
    - (i) *cancel the person's [licensing] and direct the Registrar to remove the person's name from the register; and*
    - (ii) *order that the person may not apply to be relicensed before the expiry of a specified period:*
  - (b) *suspend the person's [licensing] for a period of no more than 12 months or until the person meets specified conditions relating to the [licensing] (but, in any case, not for a period of more than 12 months) and direct the Registrar to record the suspension in the register:*
  - (c) *restrict the type of building work or building inspection work that the person may carry out or supervise under the [person's licensing class or classes] and direct the Registrar to record the restriction in the register:*
  - (d) *order that the person be censured:*
  - (e) *order that the person undertake training specified in the order:*
  - (f) *order that the person pay a fine not exceeding \$10,000.*
- (2) *The Board may take only 1 type of action in subsection (1)(a) to (d) in relation to a case, except that it may impose a fine under subsection (1)(f) in addition to taking the action under subsection (1)(b) or (d).*
- (3) *No fine may be imposed under subsection (1)(f) in relation to an act or omission that constitutes an offence for which the person has been convicted by a court.*
- (4) *In any case to which section 317 applies, the Board may order that the person must pay the costs and expenses of, and incidental to, the inquiry by the Board.*
- (5) *In addition to requiring the Registrar to notify in the register an action taken by the Board under this section, the Board may publicly notify the action in any other way it thinks fit.*

- 2.13.9 In considering an order for costs and expenses, the Board may:

- (a) seek a report from the Registrar concerning the costs of the Board's inquiries;
- (b) invite submissions from the Respondent concerning imposition of costs; and

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- (c) consider the circumstances of the Complaint or the Board inquiry, as applicable, and the actions of the Respondent (for example, whether the Respondent has contributed unreasonably to costs or delays).

2.13.10 In considering publication in addition to section 318(5) of the Act which requires that a record of the disciplinary action be maintained on the Register for three years the Board will consider any public interest in publication and the learnings that other Licensed Building Practitioners may gain from further publication.

### 2.14 Implementing the Board's Decision

2.14.1 The Registrar must implement the Board's decision as soon as practicable after the Board has made its order.

2.14.2 If the Board's decision is appealed under section 330 of the Act its decision and order will remain in force pending the outcome of the appeal:

#### *334 Actions to have effect pending determination of appeal*

*A decision or action against which an appeal is lodged under this subpart continues in force unless the appeal authority to which the appeal is brought orders otherwise.*

2.14.3 The Board will not correspond with any person involved in Complaints once it has made its decision other than as required as part of an appeal process under section 330 of the Act.

2.14.4 The Registrar will report regularly to the Board on the status of overdue payments of fines and costs, including recommendations that the Board suspend or cancel the Respondent's licensing under section 319 of the Act.

### 2.15 Payment of Fines and Costs

2.15.1 Money payable as the result of a fine from disciplinary action or the imposition of costs by the Board is payable to the Registrar within 60 days of the date of the Board's decision. If fines or costs are not paid within the 60-day timeframe, the Board may under section 319 of the Act suspend or cancel the Respondent's licensing:

#### **319 Non-payment of fines or costs**

*If money payable by a person under section 318(1)(f) or (4) remains unpaid for 60 days or more after the date of the order, the Board may—*

- (a) *cancel the person's licensing and direct the Registrar to remove the person's name from the register; or*
- (b) *suspend the person's licensing until the person pays the money and, if he or she does not do so within 12 months, cancel his or her licensing and direct the Registrar to remove his or her name from the register.*

## Appendix One – Board Practice Direction: Rules for the use of Audio and Visual Links

### 1. Introduction

- 1.1 The Board deals with disciplinary matters and licensing appeals under the Building 2004 (the Act). Persons being disciplined or appealing a licencing decision have a right to appear and be heard.
- 1.2 To enable the fair and effective appearance by persons before the Board it may, at times, be necessary for persons to appear by way of an audio or a video link. These guidelines set out the criteria for and rules relating to those appearances.

### 2. General Criteria for Allowing use of Audio or Visual Links

- 2.1 Wherever possible a respondent, appellant or witness should appear before the Board in person.
- 2.2 The Board has adopted the provisions of sections 5 and 6 of the Courts (Remote Participation) Act 2010 (with necessary modifications) in determining whether a person can appear by way of and audio or visual link. The Presiding Member shall have the discretion as to whether an appearance by audio or visual link will be allowed.
- 2.3 The Presiding Member will consider the following criteria when he or she is making a determination on whether or not to allow the use of an audio or visual link for the appearance of any participant in a proceeding:
  - (a) the nature of the proceeding;
  - (b) the availability and quality of the technology that is to be used;
  - (c) the potential impact of the use of the technology on the effective maintenance of the rights of other parties to the proceeding, including—
    - (i) the ability to assess the credibility of witnesses and the reliability of evidence presented to the Board; and
    - (ii) the level of contact with other participants; and
  - (d) any other relevant matters.
- 2.4 Where an audio or visual link is to be used in a disciplinary hearing in respect of the respondent's appearance the Presiding Member will also assess the potential impact of the use of the technology on the effective maintenance of the right of the respondent to a fair hearing, and on his or her rights associated with the hearing, and, in particular:
  - (a) the ability of the respondent:
    - (i) to comprehend the proceedings;
    - (ii) to participate effectively in the conduct of his or her defence;
    - (iv) to access relevant evidence;
    - (v) to examine the witnesses; and
  - (b) the level of contact the respondent has with other participants; and
  - (c) any adverse impression that may arise through the defendant or any other participant appearing by means of AVL, and whether that adverse impression

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may be mitigated.

### 3. Minimum Audio or Visual Requirements

#### 3.1 Teleconference link minimum requirements for remote participants:

- (a) a landline is preferable, if a mobile connection is to be used the signal must be strong and consistent;
- (b) the participant must be in a quiet place and away from persons who are not connected to the proceedings;
- (c) a speaker phone is not to be used unless there is more than one remote participant. If a speaker phone is being used, then it must be placed on mute until such time as a remote participant is speaking.

#### 3.2 Video conference link minimum requirements for remote participants:

- (a) participants must use Skype and the data connection must be strong and consistent; and
- (b) the participant must be in a quiet place and away from persons who are not connected to the proceedings.

3.3 A remote participant by video link will, at a minimum, be able to observe the Presiding Member. Participants by both audio and visual link must, at a minimum, be able to hear all participants in the hearing.

3.4 Failure to adhere to the above requirements may result in the remote participant being disconnected from the proceedings.

### 4. Starting and Ending

4.1 The connection to a remote participant to an audio or visual link will be made by the Board Officer. Connection details will be provided prior to the hearing. If necessary, the audio or visual link will be tested prior to a hearing commencing.

4.2 A connection will be made when the remote participant's evidence or participation is required and at the direction of the Presiding Member.

4.3 On a connection being made the Board Officer will introduce the Presiding Member who will inform the remote participant of the persons then engaged in the hearing.

4.4 The Board Officer will administer an affirmation if the testimony to be received is to be sworn evidence.

4.5 The Presiding Member will inform the remote participant of their role and will inform them of how and when they will participate.

4.6 The connection will be ended when the Presiding Member determines that the remote participant is no longer required.

4.7 Remote participants, other than a respondent, should not expect to be able to participate throughout the proceedings. If they do want to participate throughout then they must apply for permission to do by making an application to the Board Officer with their reasons. The Presiding Member will decide whether or not to grant the request.

### 5. Technical Failure

5.1 In the event of an equipment failure, technical issues or a failure to adhere with the

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minimum requirements which result in the Board or the remote participant not being able to be heard the connection will be terminated. No more than two attempts to re-establish an acceptable connection will be made. If one cannot be made the Presiding Member will decide on the appropriate action to then be taken.

### **6. Problematic Remote Participant**

- 6.1 If the remote participant fails to comply with any direction, or is acting inappropriately, the Presiding Member can direct that the link be disconnected. The Board Officer will then contact the remote participant and advise them of any directions or decisions that that the Board or Presiding Member have made.

### **7. Recording**

- 7.1 All proceedings before the Board are recorded.