

Before the Building Practitioners Board

	BPB Complaint No. CB26297
Licensed Building Practitioner:	Achin Bedi (the Respondent)
Licence Number:	BP136902
Licence(s) Held:	Carpentry

Decision of the Board in Respect of the Conduct of a Licensed Building Practitioner Under section 315 of the Building Act 2004

Complaint or Board Inquiry	Complaint
Hearing Location	by audio-visual link
Hearing Type:	In Person
Hearing Date:	30 January 2024
Decision Date:	12 February 2024

Board Members Present:

Mr M Orange, Chair, Barrister (Presiding)
Mrs F Pearson-Green, Deputy Chair, LBP, Design AoP 2
Mr P Thompson, LBP, Carpentry and Site AoP 3, Quantity Surveyor

Appearances:

J Loh for the Respondent
A Ferguson and R Davis for the Complainant

Procedure:

The matter was considered by the Building Practitioners Board (the Board) under the provisions of Part 4 of the Building Act 2004 (the Act), the Building Practitioners (Complaints and Disciplinary Procedures) Regulations 2008 (the Complaints Regulations) and the Board's Complaints and Inquiry Procedures.

Disciplinary Finding:

The Respondent **has** committed disciplinary offences under sections 317(1)(1)(b) and (da)(ii) of the Act.

The Respondent is fined \$2,000 and ordered to pay costs of \$2,625. A record of the disciplinary offending will be recorded on the Public Register for a period of three years.

Contents

Summary	2
The Charges	3
Prehearing Matters	3
Interim Name Suppression	3
Evidence	4
Negligence	4
Has the Respondent departed from an acceptable standard of conduct?	5
<i>Building Consent</i>	5
<i>Building Work</i>	7
Was the conduct serious enough?.....	8
Has the Respondent been negligent?	8
Failure to Provide a Record of Work	8
Did the Respondent carry out or supervise Restricted Building Work?	8
Was the Restricted Building Work complete?	8
Has the Respondent provided a Record of Work?	9
Was there a good reason for the Respondent to withhold his Records of Work?	9
Did the Respondent fail to provide a Record of Work?	9
Board's Decisions	9
Penalty, Costs and Publication	9
Penalty	10
Costs.....	11
Publication	11
Section 318 Order	12
Submissions on Penalty, Costs and Publication	12
Right of Appeal	12

Summary

- [1] The Respondent carried out building work on an alteration to an existing dwelling. The alteration was consented. The consent did not include wet area showers, which were constructed by the Respondent. The Board found that the Respondent had been negligent because he constructed the showers when he knew, or ought to have known, that a Building Consent was required and knew that one had not been issued for that work. The Board also found that the Respondent failed to provide a Record of Work on completion of Restricted Building Work.

- [2] The Respondent was fined \$2,000 and ordered to pay costs of \$2,625. A record of the disciplinary offending will be recorded on the public Register for a period of three years.

The Charges

- [3] The prescribed investigation and hearing procedure is inquisitorial, not adversarial. There is no requirement for a complainant to prove the allegations. The Board sets the charges and decides what evidence is required.¹
- [4] In this matter, the disciplinary charges the Board resolved to further investigate² were that the Respondent may, in relation to building work at [OMITTED], Auckland, have:
- (a) carried out or supervised building work in a negligent or incompetent manner contrary to section 317(1)(b) of the Act; and
 - (b) failed, without good reason, in respect of a Building Consent that relates to Restricted Building Work that he or she is to carry out or supervise, or has carried out or supervised, (as the case may be), 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) of the Act contrary to section 317(1)(da)(ii) of the Act.
- [5] The Board gave notice that, in further investigating the Respondent's conduct under section 317(1)(b) of the Act, it would be inquiring into:
- (a) whether a Building Consent should have been obtained for the creation of wet areas showers (main bedroom and ensuite) prior to the associated building work being undertaken; and
 - (b) the quality and compliance of the construction of wet area showers, including the method of construction, waterproofing membrane application, tiling and grouting and remedial work in relation to the same.

Prehearing Matters

- [6] Prior to the hearing, Counsel acting for the Complainant filed a submission seeking an amendment to the charges and an adjournment to allow for the appointment of a Special Advisor. On 2 October 2023, a ruling was made that the hearing would proceed without the assistance of a Special Advisor and that the charges would not be amended.

Interim Name Suppression

- [7] At the hearing, a suppression order was sought. An interim order was granted, and Counsel for the Respondent was directed to file submissions establishing that the

¹ Under section 322 of the Act, the Board has relaxed rules of evidence which allow it to receive evidence that may not be admissible in a court of law. The evidentiary standard is the balance of probabilities, *Z v Dental Complaints Assessment Committee* [2009] 1 NZLR 1.

² The resolution was made following the Board's consideration of a report prepared by the Registrar in accordance with regulation 10 of the Complaints Regulations.

Respondent would suffer extreme hardship if publication occurred. Counsel subsequently advised, on the basis that the media representative did not consider that the matter reached the public interest threshold. The interim suspension application was not formally withdrawn. The interim suppression order was lifted on the basis that the Respondent had not established that he would suffer extreme hardship.

Evidence

- [8] The Board must be satisfied on the balance of probabilities that the disciplinary offences alleged have been committed³. Under section 322 of the Act, the Board has relaxed rules of evidence which allow it to receive evidence that may not be admissible in a court of law.
- [9] The Respondent was engaged to carry out building work for the Complainant. Two separate Building Consents had been issued for the work. One related to: “*Alteration work for extend the dining area (9 sqm)*”. The other to: “*Add a covered pergola over the existing deck*”.
- [10] The complaint centred around the quality and compliance of wet area showers. The Respondent submitted that those showers were included in the alteration Building Consent. The Respondent used subcontractors to carry out some of the specialist trade work, including installing waterproofing membranes and installing tiles, which were aspects of the building work that were complained about.
- [11] With respect to the building work that the Respondent undertook or supervised, the Respondent was assisted by staff. He maintained that he was on-site whenever the work was undertaken, except for possibly the demolition stage.

Negligence

- [12] There was no evidence of incompetence, which is the lack of skill or knowledge to carry out or supervise the building work. As such, the conduct was considered under the alternative of negligence.
- [13] To find that the Respondent was negligent, the Board needs to determine, on the balance of probabilities,⁴ that the Respondent departed from an accepted standard of conduct when carrying out or supervising building work as judged against those of the same class of licence. This is described as the *Bolam*⁵ test of negligence.⁶ To make a finding of incompetence, the Board has to determine that the Respondent has demonstrated a lack of ability, skill, or knowledge to carry out or supervise

³ *Z v Dental Complaints Assessment Committee* [2009] 1 NZLR 1

⁴ *Z v Dental Complaints Assessment Committee* [2009] 1 NZLR 1. Under section 322 of the Act, the Board has relaxed rules of evidence which allow it to receive evidence that may not be admissible in a court of law.

⁵ *Bolam v Friern Hospital Management Committee* [1957] 1 WLR 582

⁶ Adopted in New Zealand in various matters including: *Martin v Director of Proceedings* [2010] NZAR 333 (HC), *F v Medical Practitioners Disciplinary Tribunal* [2005] 3 NZLR 774 (CA)

building work to an acceptable standard.⁷ A threshold test applies to both. Even if the Respondent has been negligent or incompetent, the Board must also decide if the conduct fell seriously short of expected standards.⁸ If it does not, then a disciplinary finding cannot be made.

- [14] As noted, there were two issues under investigation. The first was whether a Building Consent should have been obtained for the creation of wet areas showers (main bedroom and ensuite) prior to the associated building work being undertaken. The second was the quality and compliance of the construction of wet area showers, including the method of construction, waterproofing membrane application, tiling and grouting and remedial work in relation to the same.

Has the Respondent departed from an acceptable standard of conduct?

- [15] When considering what an acceptable standard is, the Board must consider the purpose of the Building Actⁱ as well as the requirement that all building work must comply with the Building Code⁹ and any Building Consent issued.¹⁰ The test is an objective one.¹¹

Building Consent

- [16] The Respondent submitted that the Building Consent included the alteration of the bathrooms and the construction of wet area showers. His submission was based on the plans indicating, in his submission, that the bathrooms were to be demolished. The consented plans, however, showed that the bathrooms were to remain. The Complainant stated that the alteration of the bathrooms was not discussed with the designer they had instructed to obtain the Building Consent.
- [17] The Building Consent did not contain any specific detail on how wet area showers were to be constructed or any specifications on materials to be used and the method of their installation. If wet area showers were to be constructed as part of the consented work, then the Building Consent would have included such details and specifications. When the Respondent was asked how he determined the construction methodology for the showers, he stated it was based on his experience.
- [18] The Board finds that neither Building Consent included the construction of wet area showers.

⁷ In *Beattie v Far North Council* Judge McElrea, DC Whangarei, CIV-2011-088-313 it was described as “a demonstrated lack of the reasonably expected ability or skill level”. In *Ali v Kumar and Others*, [2017] NZDC 23582 at [30] as “an inability to do the job”

⁸ *Collie v Nursing Council of New Zealand* [2001] NZAR 74 - [21] “Negligence or malpractice may or may not be sufficient to constitute professional misconduct and the guide must be standards applicable by competent, ethical and responsible practitioners and there must be behaviour which falls seriously short of that which is to be considered acceptable and not mere inadvertent error, oversight or for that matter carelessness”.

⁹ Section 17 of the Building Act 2004

¹⁰ Section 40(1) of the Building Act 2004

¹¹ *McKenzie v Medical Practitioners Disciplinary Tribunal* [2004] NZAR 47 at p.71 noted that the tribunal does not have to take into account the Respondent’s subjective considerations.

- [19] Under the Act, all building work must be carried out in accordance with a Building Consent¹² unless an exemption applies. Exemptions are provided for in section 41 of the Act. The main exception is building work described in Schedule 1 of the Act, and this is further provided for in section 42A of the Act. The burden is on those that seek to rely on an exception to show that the building work comes with that exception.
- [20] The Ministry of Business Innovation and Employment guidance on Schedule 1¹³ states that wet area showers are not covered by the exemptions in Schedule 1. The Auckland Council, who are the Building Consent Authority within which the work was carried out, note on their website:
- You will need a Building Consent to:*
- install a tiled wet area shower - as it involves critical building work that is not sanitary plumbing, such as carpentry and installing waterproof membranes*
- [21] The Board finds that a Building Consent was required for the installation of wet area showers.
- [22] The question then is whether, by failing to obtain a Building Consent prior to the building work being completed, the Respondent has departed from an acceptable standard of conduct.
- [23] In *Tan v Auckland Council*,¹⁴ the High Court, whilst dealing with a situation where no Building Consent had been obtained, stated the importance of the consenting process as follows:
- [35] The Building Consent application process ensures that the Council can check that any proposed building work is sufficient to meet the purposes described in s 3 (of the Act). If a person fails to obtain a Building Consent that deprives the Council of its ability to check any proposed building work.*
- [24] Justice Brewer in *Tan* also noted:
- [37] ... those with oversight (of the Building Consent process) are in the best position to make sure that unconsented work does not occur.*
- [38] ... In my view making those with the closest connection to the consent process liable would reduce the amount of unconsented building work that is carried out, and in turn would ensure that more buildings achieve s 3 goals.*
- [25] The *Tan* case related to the prosecution of the project manager of a build. The project manager did not physically carry out any building work. The High Court on appeal, however, found that his instructions to those who did physically carry out the work amounted to “carrying out” for the purposes of section 40 of the Act.

¹² Refer section 40 of the Act.

¹³ Issued under section 175 of the Act

¹⁴ [2015] NZHC 3299 [18 December 2015]

- [26] The Board considers the Court in *Tan* was envisaging that those who are in an integral position as regards the building work, such as a Licensed Building Practitioner, have a duty to ensure a Building Consent (or an amended Building Consent) is in place prior to building work being carried out. It follows that failing to do so can fall below the standards of care expected of a Licensed Building Practitioner, and that is the finding that the Board makes.

Building Work

- [27] The complaint noted that leaks occurred within six months of completion in the areas of the newly constructed wet area showers. The Complainant also obtained a report on the standard of the tiling, which noted issues with the grout and calcium carbonate forming.
- [28] The Respondent constructed the wet area showers to the point where a waterproofing membrane was applied. A specialist applicator was then engaged to install the membrane and an under-tile heating system. A specialist was also engaged to install the tiles.
- [29] As noted, the Respondent constructed the wet area showers on the basis of his past experience. He described his construction method and the materials he used. It was noted that he used 6mm Villaboard for wall linings that were to be tiled. The industry standard is not less than 9mm Villaboard or similar. There was disagreement over whether the flooring substrate used was a particle board or plywood. Subsequent evidence submitted indicated that a compliant plywood substrate was used. Evidence was also received that, in relation to the master bathroom, the membrane installed had missed one corner of the total area that had to be encapsulated.
- [30] The Board formed the view that the building work issues complained about with regard to the showers were either the work of other tradespersons or were not established to the required evidentiary standard.
- [31] The installation of the tiles and membrane was not Restricted Building Work, which only relates to work on the primary structure or external moisture management systems of a residential dwelling. As such, the work did not have to be carried out or supervised by a Licensed Building Practitioner and, because specialist trades were instructed, it would not be appropriate to find that the Respondent had a duty, from a licensing perspective, to supervise their work. In this respect, disciplinary responsibility, which the Board is investigating, must be distinguished from contractual responsibility for the quality of the work over which the Board has no jurisdiction.
- [32] Turning to evidentiary standards, one leak may have been caused by a substandard membrane. As noted above, from a disciplinary perspective, the Respondent is not accountable for that issue. The causes of the other leaks have not been established. As such, the Board cannot make any findings on them.

- [33] The Board does note, however, that 9mm Villaboard should have been used as a lining, and the Respondent is cautioned with respect to the use of a substandard material. He should also note, as regards the master bedroom bathroom floor, that the evidence indicated the shower floor was flat, which would be contrary to E3/AS1. Again, the Respondent is cautioned.

Was the conduct serious enough?

- [34] The finding of negligence under consideration is the failure to ensure a Building Consent was in place for the construction of wet area showers prior to their construction. The Respondent, as a Licensed Building Practitioner, should have known that a Building Consent was required or at least have carried out investigations to ascertain that one was not required. He took no such steps. Moreover, it was plainly evident that the Building Consent for alterations that had been issued did not include changes to bathrooms. The Respondent's departure was not inadvertence or a simple error. It was serious, and the Respondent should be disciplined.

Has the Respondent been negligent?

- [35] The Respondent has carried out building work in a negligent manner by failing to ensure that a Building Consent was in place for the construction of wet area showers prior to their construction.

Failure to Provide a Record of Work

- [36] A Licensed Building Practitioner must provide a Record of Work for any Restricted Building Work that they have carried out or supervised to the owner and the Territorial Authority on completion of their Restricted Building Work.¹⁵
- [37] There is a statutory requirement under section 88(1) of the Building Act 2004 for a Licensed Building Practitioner to provide a Record of Work to the owner and the Territorial Authority on completion of Restricted Building Work¹⁶ unless there is a good reason for it not to be provided.¹⁷

Did the Respondent carry out or supervise Restricted Building Work?

- [38] The Respondent was engaged to carry out and/or supervise building work on an alteration to an existing dwelling under a Building Consent. His work included Restricted Building Work being work on the primary structure and external moisture management system of a residential dwelling.¹⁸

Was the Restricted Building Work complete?

- [39] Final inspections were scheduled for January 2023. The Respondent maintained that there was outstanding work, and so completion had not occurred. The work, however, was primarily in relation to the pergola structure and it did not relate to

¹⁵ Section 88(1) of the Act.

¹⁶ Restricted Building Work is defined by the Building (Definition of Restricted Building Work) Order 2011

¹⁷ Section 317(1)(da)(ii) of the Act

¹⁸ Clause 5 of the Building (Definition of Restricted Building Work) Order 2011

the primary structure or external moisture management system, so it was not restricted. Completion, therefore, occurred in or about January 2023. In this respect, it is also noted that the Respondent sought practical completion of the contract in January 2023, which indicates that he considered the work was complete.

Has the Respondent provided a Record of Work?

[40] A Record of Work was provided on 17 November 2023. That provision was not on completion or soon thereafter as required under the Act.

Was there a good reason for the Respondent to withhold his Records of Work?

[41] Following completion, a dispute arose. The Respondent submitted that once it became apparent that he would not be returning, which was in early November 2023, he then provided a Record of Work.

[42] When the Respondent originally replied to the complaint through his Counsel, he stated:

The documents have not been provided ... due to non payment of sums owing

...

[43] The Board finds that there were no good reasons.

[44] The Respondent should note that a Record of Work is a statutory requirement, not a negotiable term of a contract. The requirement for it is not affected by the terms of a contract, nor by contractual disputes. Licensed Building Practitioners should now be aware of their obligations to provide them, and their provision should be a matter of routine. Also, the requirement is on the Licensed Building Practitioner to provide a Record of Work, not on the owner or Territorial Authority to demand one. The Respondent is required to act of his own accord and not wait for others to remind him of his obligations.

Did the Respondent fail to provide a Record of Work?

[45] That Respondent has failed to provide a Record of Work on completion of Restricted Building Work as per the requirements of section 88(1) of the Act.

Board's Decisions

[46] The Respondent has breached:

- (a) section 317(1)(b) of the Act; and
- (b) section 317(1)(da)(ii) of the Act.

Penalty, Costs and Publication

[47] Having found that one or more of the grounds in section 317 applies, the Board must, under section 318 of the Actⁱⁱ, consider the appropriate disciplinary penalty, whether the Respondent should be ordered to pay any costs and whether the decision should be published.

[48] The Board heard evidence during the hearing relevant to penalty, costs and publication and has decided to make indicative orders and give the Respondent an opportunity to provide further evidence or submissions relevant to the indicative orders.

Penalty

[49] The Board has the discretion to impose a range of penalties.ⁱⁱⁱ Exercising that discretion and determining the appropriate penalty requires that the Board balance various factors, including the seriousness of the conduct and any mitigating or aggravating factors present.¹⁹ It is not a formulaic exercise, but there are established underlying principles that the Board should take into consideration. They include:²⁰

- (a) protection of the public and consideration of the purposes of the Act;²¹
- (b) deterring other Licensed Building Practitioners from similar offending;²²
- (c) setting and enforcing a high standard of conduct for the industry;²³
- (d) penalising wrongdoing;²⁴ and
- (e) rehabilitation (where appropriate).²⁵

[50] Overall, the Board should assess the conduct against the range of penalty options available in section 318 of the Act, reserving the maximum penalty for the worst cases²⁶ and applying the least restrictive penalty available for the particular offending.²⁷ In all, the Board should be looking to impose a fair, reasonable, and proportionate penalty²⁸ that is consistent with other penalties imposed by the Board for comparable offending.²⁹

[51] In general, when determining the appropriate penalty, the Board adopts a starting point based on the principles outlined above prior to it considering any aggravating and/or mitigating factors present.³⁰

[52] There are two disciplinary findings. The first relates to negligence, the second to a failure to provide a Record of Work. The negligence is at the lower end of the scale. Record of Work matters are normally dealt with by the Board by way of a fine. Given those factors, the Board considers a fine to be the appropriate form of penalty. It has

¹⁹ *Ellis v Auckland Standards Committee* 5 [2019] NZHC 1384 at [21]; cited with approval in *National Standards Committee (No1) of the New Zealand Law Society v Gardiner-Hopkins* [2022] NZHC 1709 at [48]

²⁰ Cited with approval in *Robinson v Complaints Assessment Committee of Teaching Council of Aotearoa New Zealand* [2022] NZCA 350 at [28] and [29]

²¹ Section 3 Building Act

²² *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

²³ *Dentice v Valuers Registration Board* [1992] 1 NZLR 720 (HC) at 724

²⁴ *Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818, 13 August 2007 at p 27

²⁵ *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354; *Shousha v A Professional Conduct Committee* [2022] NZHC 1457

²⁶ *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

²⁷ *Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818

²⁸ *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

²⁹ *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

³⁰ In *Lochhead v Ministry of Business Innovation and Employment* 3 November [2016] NZDC 21288 the District Court recommended that the Board adopt the approach set out in the Sentencing Act 2002.

adopted a starting point of a fine of \$2,500. The amount is consistent with other penalties imposed by the Board.

- [53] There are no aggravating factors. There is some mitigation. The Respondent has suffered a loss and has, albeit late, provided a Record of Work. Those factors have been taken into account by reducing the fine to \$2,000.

Costs

- [54] Under section 318(4) of the Act, the Board may require the Respondent to pay the costs and expenses of, and incidental to, the inquiry by the Board. The rationale is that other Licensed Building Practitioners should not be left to carry the financial burden of an investigation and hearing.³¹
- [55] The courts have indicated that 50% of the total reasonable costs should be taken as a starting point in disciplinary proceedings³². The starting point can then be adjusted up or down, having regard to the particular circumstances of each case³³.
- [56] The Board has adopted an approach to costs that uses a scale based on 50% of the average costs of different categories of hearings: simple, moderate and complex. The current matter was moderate, and a half-day hearing was held. Adjustments are then made.
- [57] Based on the above, the Board's costs order is that the Respondent is to pay the sum of \$2,625 toward the costs of and incidental to the Board's inquiry. This is the Board's scale amount for a half-day hearing by way of an audio-visual link.

Publication

- [58] As a consequence of its decision, the Respondent's name and the disciplinary outcomes will be recorded in the public Register maintained as part of the Licensed Building Practitioners' scheme as is required by the Act,³⁴ and he will be named in this decision, which will be available on the Board's website. The Board is also able, under section 318(5) of the Act, to order further publication.
- [59] Within New Zealand, there is a principle of open justice and open reporting, which is enshrined in the Bill of Rights Act 1990.³⁵ Further, as a general principle, publication may be required where the Board perceives a need for the public and/or the profession to know of the findings of a disciplinary hearing, and the courts have stated that an adverse finding in a disciplinary case usually requires that the name of the practitioner be published.³⁶

³¹ *Collie v Nursing Council of New Zealand* [2001] NZAR 74

³² *Kenneth Michael Daniels v Complaints Committee 2 of the Wellington District Law Society* CIV-2011-485-000227 8 August 2011

³³ *Cooray v The Preliminary Proceedings Committee* HC, Wellington, AP23/94, 14 September 1995, *Macdonald v Professional Conduct Committee*, HC, Auckland, CIV 2009-404-1516, 10 July 2009, *Owen v Wynyard* HC, Auckland, CIV-2009-404-005245, 25 February 2010.

³⁴ Refer sections 298, 299 and 301 of the Act

³⁵ Section 14 of the Act

³⁶ *Kewene v Professional Conduct Committee of the Dental Council* [2013] NZAR 1055

- [60] Based on the above, the Board will not order any publication over and above the record on the Register, the Respondent being named in this decision, and the publication of the decision on the Board's website. The Respondent should note, however, that as the Board has not made any form of suppression order, other entities, such as the media or the Ministry of Business Innovation and Employment, may publish under the principles of open justice reporting.

Section 318 Order

- [61] For the reasons set out above, the Board directs that:

Penalty: Pursuant to section 318(1)(f) of the Building Act 2004, the Respondent is ordered to pay a fine of \$2,000.

Costs: Pursuant to section 318(4) of the Act, the Respondent is ordered to pay costs of \$2,625 (GST included) towards the costs of, and incidental to, the inquiry of the Board.

Publication: The Registrar shall record the Board's action in the Register of Licensed Building Practitioners in accordance with section 301(l)(iii) of the Act.

In terms of section 318(5) of the Act, the Respondent will be named in this decision, which will be published on the Board's website.

- [62] The Respondent should note that the Board may, under section 319 of the Act, suspend or cancel a Licensed Building Practitioner's licence if fines or costs imposed as a result of disciplinary action are not paid.

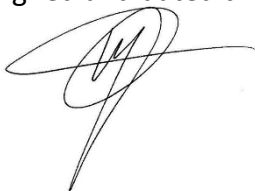
Submissions on Penalty, Costs and Publication

- [63] The Board invites the Respondent to make written submissions on the matters of disciplinary penalty, costs and publication up until the close of business on **5 April 2024**. The submissions should focus on mitigating matters as they relate to the penalty, costs and publication orders. If no submissions are received, then this decision will become final. If submissions are received, then the Board will meet and consider those submissions prior to coming to a final decision on penalty, costs and publication.

Right of Appeal

- [64] The right to appeal Board decisions is provided for in section 330(2) of the Act^{iv}.

Signed and dated this 14th day of March 2024



M Orange
Presiding Member

i Section 3 of the Act

This Act has the following purposes:

- (a) *to provide for the regulation of building work, the establishment of a licensing regime for building practitioners, and the setting of performance standards for buildings to ensure that—*
 - (i) *people who use buildings can do so safely and without endangering their health; and*
 - (ii) *buildings have attributes that contribute appropriately to the health, physical independence, and well-being of the people who use them; and*
 - (iii) *people who use a building can escape from the building if it is on fire; and*
 - (iv) *buildings are designed, constructed, and able to be used in ways that promote sustainable development:*
- (b) *to promote the accountability of owners, designers, builders, and building consent authorities who have responsibilities for ensuring that building work complies with the building code.*

ii Section 318 of the Act

- (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 one 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.”*

iii Section 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.*

^{iv} **Section 330 Right of appeal**

- (2) *A person may appeal to a District Court against any decision of the Board—*
 - (b) *to take any action referred to in section 318.*

Section 331 Time in which appeal must be brought

An appeal must be lodged—

- (a) *within 20 working days after notice of the decision or action is communicated to the appellant; or*
- (b) *within any further time that the appeal authority allows on application made before or after the period expires.*