

Before the Building Practitioners Board

	BPB Complaint No. 26638
Licensed Building Practitioner:	Ramon Allan Valentine McFarlane (the Respondent)
Licence Number:	BP 138882
Licence(s) Held:	Roofing - Profiled Metal Roof and/or Wall Cladding

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	Christchurch
Hearing Type:	In Person
Hearing Date:	2 October 2025
Decision Date:	8 October 2025
Board Members Present:	

Mr M Orange, Chair, Barrister (Presiding)
Mrs F Pearson-Green, Deputy Chair, LBP, Design AoP 2
Mr G Pearson, Barrister and Solicitor – Legal Member
Mr G Anderson, LBP, Carpentry and Site AoP 2

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)(b), (d) and (da)(ii) of the Act.

The Respondent is fined \$2,750 and ordered to pay costs of \$2,950. A record of the disciplinary offending will be recorded on the Public Register for a period of three years.

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Summary

- [1] The Respondent carried out and supervised building work in an incompetent manner. The building work involved the installation of a wall cladding product that the Respondent was not familiar with, and for which he did not have specifications or design details for its installation. The work was also contrary to the building consent issued, and the Respondent failed to provide a record of work on the completion of his restricted building work.

- [2] The Board fined the Respondent \$2,750 and ordered him to pay costs of \$2,950. The fine was reduced on the basis that there were mitigating factors. 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], have:
- (a) carried out or supervised building work in a negligent or incompetent manner contrary to section 317(1)(b) of the Act;
 - (b) carried out or supervised building work that does not comply with a building consent contrary to section 317(1)(d) of the Act; and
 - (c) 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 sections 317(1)(b) and (d) of the Act, the Board will be inquiring into:
- (a) The matters set out in the Central Otago District Council Building Inspection Report dated 5 December 2024 (sections 2.5.5 - 2.5.8, commencing page 93 of the Board's file);
 - (b) The matters set out in the Priority Roofing Solutions Roofing and Cladding Assessment dated 10 July 2024 (sections 2.1.30 – 2.1.45, commencing page 46 of the Board's file); and
 - (c) The Respondent's failure to follow proper procedure for product substitution when changing from the specified "5 Rib" product to "Brownbuilt 900" cladding without obtaining a formal minor variation to the building consent or providing documentation to confirm the substitution was compliant with the Building Code.

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.

- [6] In further investigating the Respondent's conduct under section 317(1)(da)(ii) of the Act, the Board gave notice that it would be inquiring into whether the Respondent failed, without good reason, to provide a record of work. The specific particular that will be investigated is whether the Respondent has failed to provide a record of work for restricted building work carried out at [OMITTED], between June 2023 and September 2023, despite having completed substantial portions of the roofing and cladding work.

Evidence

- [7] The Board must be satisfied on the balance of probabilities that the alleged disciplinary offences 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.

Background

- [8] The Respondent, by way of his company McFarlane Roofing Limited, was contracted to install the roof and wall cladding on a new residential build. The build used structurally insulated panels (SIPs) instead of conventional framing and insulation. The Respondent had no experience with SIPs, recessed windows, or the type of wall cladding installed (Brown built 900). He had been involved in roofing work for approximately 12 years and was first licensed as an LBP on 25 February 2021. When he commenced the work on the property, he had been in business for approximately one year.
- [9] The Respondent was assisted on-site by three staff members with limited roofing experience. He stated he was present at all times when the roof and wall cladding work was carried out. The Respondent did not complete the full scope of the cladding work. His engagement on the project came to an end on 28 November 2023, when he terminated his engagement. The roof and wall claddings have since been completed by another LBP who also attended to remedial work.
- [10] The contractual arrangements for the build were somewhat murky. The Complainant gave evidence that she had contracted with [OMITTED] for the build [OMITTED] is jointly owned by [OMITTED], the sole shareholder and director of [OMITTED], and [OMITTED] of [OMITTED], a Licensed Building Practitioner (LBP) with a Design AoP 3 Licence holder [OMITTED], who carried out the design work and applied for the building consent. [OMITTED], according to [OMITTED], was the supplier of materials and arranged subcontractors. She stated that [OMITTED] was not project managing the build, but other evidence received and heard indicated that her son, [OMITTED], was involved, at least in the early stages, with the build and acted as a project manager.

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

- [11] [OMITTED] arranged for the Respondent to carry out the roof and wall cladding. The Respondent was not supplied with a full building consent package when he priced the work, but did have the relevant plans. The Respondent stated that the consent was on-site but that he did not review all of it prior to carrying out his work, and that he disregarded it once he had established that there had been a change of roof and wall cladding product. In respect of his methodology, he stated he reverted to cladding fundamentals.
- [12] [OMITTED] also arranged [OMITTED], an LBP, who held a Carpentry and Site AoP 2 Licence, to carry out and supervise the carpentry work. [OMITTED] ordered and supplied the materials. Mistakes were made in the take-off of quantities for the cladding materials. Those mistakes were not made by the Respondent, but they did impact progress with the cladding work.
- [13] Regarding the wall cladding, a 5-rib product had been specified, but it was changed at the Complainant's request to Brownbuilt 900 before the building work started. No consent change processes were pursued at the time by the Designer, [OMITTED], [OMITTED], or by [OMITTED], who carried out the preparation work by installing cavity battens. The change was not raised with the Building Consent Authority (BCA) inspectors as the work progressed. The change was, however, identified by a BCA inspector, who noted that a minor variation (MV) was required for it. The MV was not submitted until early 2025, which was after the work had been carried out.
- [14] As noted, the Respondent was not familiar with the SIPs product or construction methodology or the Brownbuilt 900 wall cladding product that had been supplied. He did not carry out any research on the product or methods to install flashings around recessed windows and door joinery. Nor did he refer to the flashing details that were in the consented plans, which a BCA inspector noted would have been adequate and compliant. He stated he "disregarded the plans when he found out it was a Brownbuilt product". Instead, he drew up his own flashing designs in consultation with [OMITTED]. He gave evidence that he had sketched the designs on the building wrap and asked [OMITTED] to liaise with the BCA, and that [OMITTED] had advised him that the BCA had approved his designs and that he could proceed with the work on the basis of them.
- [15] The Respondent proceeded to carry out the work using cladding fundamentals and the flashings he had designed. He did not make any enquiries to see whether a minor variation had been approved for the change of wall cladding product. He did not contact the Designer to obtain flashing details from him. The Respondent accepted that he made a mistake in proceeding with the work without having obtained new plans containing specific details for the Brownbuilt product.
- [16] After the Respondent had terminated his engagement with the work, [OMITTED], an LBP with a Roofing AoP Profiled Metal Roof and/or Wall Cladding Licence, reviewed it and provided the Complainant with a report that included a price to complete the work and remediate cladding issues identified. His report, together with a BCA

inspection, formed the basis of the Board's investigations. The report included both incomplete and non-compliant work, with the main issues being, incorrect flashings, and gaps around window and door joinery that would have allowed water ingress and which were not compliant with Clause E2 of the New Zealand Building Code. The following photographs show the gaps around the joinery:



- [17] The Respondent gave evidence that he had designed and ordered an extra flashing to go over the top of the window fascia to seal off the gap. He accepted that his original flashing solution had not created a watertight seal around the windows.
- [18] Regarding the Respondent's record of work, the Complainant noted that she had experienced difficulties getting a Code Compliance Certificate without it. The Respondent stated he thought he would provide a record of work for the roof and wall cladding when the cladding work had been finished by others, and he had been able to return to check and sign off on the work. He was not aware that a record of work is not a statement as to the quality and compliance of the building work. He undertook to provide one and did so on 7 October 2025.

Negligence or Incompetence

- [19] 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 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

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)

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"

the conduct fell seriously short of expected standards.⁸ If it does not, then a disciplinary finding cannot be made.

Has the Respondent departed from an acceptable standard of conduct

- [20] 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
- [21] The Respondent's wall cladding work did not comply with either the building consent issued or the building code. In particular, it was not compliant with Clause E2 of the Building Code. Without remedial work, it would have allowed the ingress of water.
- [22] The Board considered that the Respondent had, as regards the wall cladding product that he installed, conducted himself in an incompetent manner. He was not familiar with the product or with SIPs or recessed windows. He did not carry out any research or make any inquiries with persons who could have provided him with guidance or assistance, such as the Designer. Nor did he consult the manufacturer's specification and installation details. He reverted to standard methodologies, which were inadequate and resulted in a noncompliant installation
- [23] Regarding the consent change process, the Board decided that the Respondent had not conducted himself in a negligent or incompetent manner. The reason for the finding was that the Board considered the primary obligation to obtain a building consent change lay with others who were more inherently involved in the building work. The Respondent is, however, cautioned that he should, when attending a building site, always ensure that he reviews the building consent, including the specification and supporting documents, and that, if the product to be installed does not match the building consent, he should follow up with those who are dealing with the building consent to ensure changes are processed before he carries out any work.

Was the conduct serious enough

- [24] The conduct was serious and it meets the threshold for disciplinary action. Put simply, the Respondent was out of his depth and should not have continued with the work without first obtaining advice or guidance. There have been ongoing ramifications of the Respondent's failings, including the need for remedial work, and it was fortunate that a complete re-clad was not required.

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.

Has the Respondent been negligent or incompetent

[25] The Respondent has conducted himself in an incompetent manner.

Contrary to a Building Consent

[26] Building consents provide detailed plans and specifications for building work. They are issued by Territorial or Building Consent Authorities on the basis that the building work will meet the provisions of the Building Code.¹² Once issued, the building work must be carried out in accordance with the building consent.¹³ Building consents also stipulate the number and type of inspections the issuing authority will carry out during the build.¹⁴ Inspections ensure independent verification that the building consent is being complied with.

[27] If building work departs from the building consent issued, the Board can find that a disciplinary offence under section 317(1)(d) of the Act has been committed. The Board does not have to find that the departure was deliberate or a result of negligent conduct.¹⁵ The Board does, however, consider that the seriousness of the conduct under investigation does have to be taken into account. As such, even if the Respondent's building work departed from the building consent, the Board must also decide if the conduct fell seriously short of expected standards.¹⁶ If it does not, then a disciplinary finding cannot be made.

Was there building work that differed from the building consent

[28] The building consent did not provide for the type of wall cladding product that was installed, and the way the flashings were installed was not consistent with the building consent. It follows that the Respondent has carried out building work that was contrary to a building consent.

Was the conduct serious enough

[29] The Respondent, in essence, disregarded the building consent. Because of that, the conduct was serious.

Has the Respondent breached section 317(1)(d) of the Act

[30] The Respondent has carried out building work that was contrary to a building consent.

¹² Section 49 of the Act

¹³ Section 40 of the Act

¹⁴ Section 222 of the Act

¹⁵ *Blewman v Wilkinson* [1979] 2 NZLR 208

¹⁶ *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".

- [31] The Board does note that there is a commonality between the findings under sections 317(1)(b) and (d) of the Act, which is a factor that will be taken into account by it when it considers the appropriate penalty to be imposed.

Failure to Provide a Record of Work

- [32] 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.¹⁷
- [33] 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 work¹⁸ unless there is a good reason for it not to be provided.¹⁹

Did the Respondent carry out or supervise restricted building work

- [34] The Respondent was engaged to carry out and/or supervise building work on a new residential dwelling under a building consent. His work included work on the external moisture management system of a residential dwelling, which is restricted building work.²⁰ He had an obligation to provide a record of work on its completion.

Was the restricted building work complete

- [35] The Respondent decided that he would not continue with the project on 28 November 2023. Because he had brought his involvement to an end, that was the completion date, and it was when a record of work was due. The Respondent should have provided one to the owner and the Territorial Authority then or soon thereafter.

Has the Respondent provided a record of work

- [36] The Respondent had not provided a record of work, and the complainant noted the difficulty that had been caused when she sought a Code Compliance Certificate.
- [37] The Respondent noted that, because others had finished what he had started, he had wanted to go back to check the work before he did his record of work. He did not, however, take any steps to do that.
- [38] It was explained to the Respondent that providing a record of work is not signing off on the compliance of the work. A record of work should not be confused with a producer statement. It is not a statement as to the quality or compliance of restricted building work. It is, put simply, a statement of who did or supervised what in the way of restricted building work.
- [39] As noted, at the hearing, the Respondent was asked if he would provide a record of work. He undertook to do so and did. That provision came well after when it should

¹⁷ Section 88(1) of the Act.

¹⁸ Restricted Building Work is defined by the Building (Definition of Restricted Building Work) Order 2011

¹⁹ Section 317(1)(da)(ii) of the Act

²⁰ Clause 5 of the Building (Definition of Restricted Building Work) Order 2011

have been provided, and, having reviewed it, it may not have covered all of the work that was carried out.

Was there a good reason for the Respondent to withhold his records of work

[40] There were no known good reasons.

Did the Respondent fail to provide a record of work

[41] The Respondent has failed to provide a record work on the completion of restricted building work.

Board Decisions

[42] The Respondent has breached sections 317(1)b), (d) and (da)(ii) of the Act.

Penalty, Costs and Publication

[43] 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.

[44] The Board heard evidence relevant to penalty, costs, and publication during the hearing 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

[45] 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.²¹ It is not a formulaic exercise, but there are established underlying principles that the Board should take into consideration. They include:²²

- (a) protection of the public and consideration of the purposes of the Act;²³
- (b) deterring the Respondent and other Licensed Building Practitioners from similar offending;²⁴
- (c) setting and enforcing a high standard of conduct for the industry;²⁵
- (d) penalising wrongdoing;²⁶ and

²¹ *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]

²² Cited with approval in *Robinson v Complaints Assessment Committee of Teaching Council of Aotearoa New Zealand* [2022] NZCA 350 at [28] and [29]

²³ Section 3 Building Act

²⁴ *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

²⁵ *Dentice v Valuers Registration Board* [1992] 1 NZLR 720 (HC) at 724

²⁶ *Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818, 13 August 2007 at p 27

(e) rehabilitation (where appropriate).²⁷

- [46] 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 cases²⁸ and applying the least restrictive penalty available for the particular offending.²⁹ In all, the Board should be looking to impose a fair, reasonable, and proportionate penalty³⁰ that is consistent with other penalties imposed by the Board for comparable offending.³¹
- [47] 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.³²
- [48] In this matter, the Board adopted a starting point of a fine of \$4,000. The Board considered at a level of fine adopted reflected the seriousness of the disciplinary offending and was consistent with penalties imposed by the Board for similar disciplinary offences.
- [49] The Board accepted that there were several mitigating factors. First, the Respondent has now provided a record work, for which the Board normally provides a \$500 reduction in the fine. Second, the Board accepted that the project was impacted by poor project management and the decisions made by other persons involved in the building work and, to a certain extent, that the Respondent relied on the advice and directions of [OMITTED]. Taking those mitigating factors into account, the Board decided that a further reduction of \$750 was warranted. The total reductions are, therefore, \$1,250, making the final fine \$2,750.

Costs

- [50] 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.³³

²⁷ *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

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

²⁹ *Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818

³⁰ *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

³¹ *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

³² 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.

³³ *Collie v Nursing Council of New Zealand* [2001] NZAR 74

- [51] The courts have indicated that 50% of the total reasonable costs should be taken as a starting point in disciplinary proceedings³⁴. The starting point can then be adjusted up or down, having regard to the particular circumstances of each case³⁵.
- [52] 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 moderately complex. Adjustments are then made.
- [53] Based on the above, the Board's costs order is that the Respondent is to pay the sum of \$2,950 toward the costs of and incidental to the Board's inquiry. That is the Board's scale amount for a moderately complex hearing, and it is significantly less than 50% of actual costs.

Publication

- [54] 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,³⁶ 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.
- [55] Within New Zealand, there is a principle of open justice and open reporting, which is enshrined in the Bill of Rights Act 1990.³⁷ 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.³⁸
- [56] 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.

³⁴ *Kenneth Michael Daniels v Complaints Committee 2 of the Wellington District Law Society* CIV-2011-485-000227 8 August 2011

³⁵ *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.

³⁶ Refer sections 298, 299 and 301 of the Act

³⁷ Section 14 of the Act

³⁸ *Kewene v Professional Conduct Committee of the Dental Council* [2013] NZAR 1055

Section 318 Order

[57] 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 \$2,750.

Costs: Pursuant to section 318(4) of the Act, the Respondent is ordered to pay costs of \$2,950 (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.

[58] 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

[59] 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 **Tuesday, 11 November 2025**. 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

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

Signed and dated this 20th day of October 2025



Mr 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).*

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- (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.*