

Before the Building Practitioners Board

	BPB Complaint No. CB25833
Licensed Building Practitioner:	Shane Treadaway (the Respondent)
Licence Number:	BP 132436
Licence(s) Held:	Roofing – Profiled metal roof and 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	Auckland
Hearing Type:	In Person
Hearing and Decision Date:	31 August 2022
Board Members Present:	

Mr M Orange, Deputy Chair, Barrister (Presiding)
Mr D Fabish, LBP, Carpentry and Site AOP 2
Ms K Reynolds, Construction Manager
Mr G Anderson, LBP, Carpentry and Site AoP 2

Appearances:

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 a disciplinary offence under sections 317(1)(b) of the Act.

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Summary of the Board's Decision

- [1] The Respondent has conducted himself in a negligent manner by failing to ensure a building consent was in place for building work that required one and was incompetent in the manner in which he carried out the work. He is fined \$2,000 and is ordered to pay costs of \$5,500. The matter will be published, and a record of the disciplinary offending will be on the Public Register for a period of three years.

The Board

- [2] The Board is a statutory body established under the Building Act.¹ Its functions include receiving, investigating, and hearing complaints about, and to inquire into the conduct of, and discipline, licensed building practitioners in accordance with subpart 2 of the Act. It does not have any power to deal with or resolve disputes.

¹ Section 341 of the Act.

The Charges

[3] The hearing resulted from a complaint about the conduct of the Respondent and a Board resolution under regulation 10 of the Complaints Regulations² to hold a hearing in relation to building work at [OMITTED], Auckland. The alleged disciplinary offences the Board resolved to investigate were that the Respondent may have carried out or supervised building work or building inspection work in a negligent or incompetent manner (s 317(1)(b) of the Act), in that he may have:

- (a) carried out building work that may not have been in accordance with acceptable standards in that:
 - (i) an incorrect type of building wrap may have been used (wall wrap);
 - (ii) building wrap may have been installed in a noncompliant manner;
 - (iii) purlins may not have been installed in a compliant manner; and
 - (iv) building work may not have been progressed in a manner that ensured the building was protected and/or inadequate weather protection was installed when the building work was being carried out; and
- (b) carried out building work which may have required a building consent, noting that clause 1 of Schedule 1 of the Building Act may not have applied on the basis that the roof cladding material was not “like for like” in that it was a change from concrete tiles to long-run iron.

Function of Disciplinary Action

[4] The common understanding of the purpose of professional discipline is to uphold the integrity of the profession. The focus is not punishment, but the protection of the public, the maintenance of public confidence and the enforcement of high standards of propriety and professional conduct. Those purposes were recently reiterated by the Supreme Court of the United Kingdom in *R v Institute of Chartered Accountants in England and Wales*³ and in New Zealand in *Dentice v Valuers Registration Board*⁴.

[5] Disciplinary action under the Act is not designed to redress issues or disputes between a complainant and a respondent. In *McLanahan and Tan v The New Zealand Registered Architects Board*,⁵ Collins J. noted that:

“... the disciplinary process does not exist to appease those who are dissatisfied The disciplinary process ... exists to ensure professional standards are maintained in order to protect clients, the profession and the broader community.”

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

³ *R v Institute of Chartered Accountants in England and Wales* [2011] UKSC 1, 19 January 2011.

⁴ [1992] 1 NZLR 720 at p 724

⁵ [2016] HZHC 2276 at para 164

- [6] In a similar vein, the Board's investigation and hearing process is not designed to address every issue that is raised in a complaint or by a complainant. The disciplinary scheme under the Act and Complaint's Regulations focuses on serious conduct that warrants investigation and, if upheld, disciplinary action. Focusing on serious conduct is consistent with decisions made in the New Zealand courts in relation to the conduct of licensed persons⁶:

... the statutory test is not met by mere professional incompetence or by deficiencies in the practice of the profession. Something more is required. It includes a deliberate departure from accepted standards or such serious negligence as, although not deliberate, to portray indifference and an abuse.

- [7] Finally, the Board can only inquire into "the conduct of a licensed building practitioner" with respect to the grounds for discipline set out in section 317 of the Act. Those grounds do not include contractual breaches other than when the conduct reaches the high threshold for consideration under section 317(1)(i) of the Act, which deals with disrepute.
- [8] The above commentary on the limitations of the disciplinary process is important to note as, on the basis of it, the Board's inquiries, and this decision, focus on and deal with the serious conduct complained about.

Inquiry Process

- [9] The investigation and hearing procedure under the Act and Complaints Regulations is inquisitorial, not adversarial. There is no requirement for a complainant to prove the allegations. Rather the Board sets the charges, and it decides what evidence is required at a hearing to assist it in its investigations. In this respect, the Board reviews the available evidence when considering the Registrar's Report and determines the witnesses that it believes will assist at a hearing. The hearing itself is not a review of all of the available evidence. Rather it is an opportunity for the Board to seek clarification and explore certain aspects of the charges in greater depth.
- [10] Whilst a complainant may not be required to give evidence at a hearing, they are welcome to attend and, if a complainant does attend, the Board provides them with an opportunity to participate in the proceedings.

Respondent's Appearance

- [11] The Respondent did not appear.
- [12] The Board noted that the Respondent had not engaged in the complaint process and that he had previously been granted an adjournment on the basis that he claimed he was not aware of the complaint or the hearing. A Board Minute dated 3 May 2022 setting out the background to the hearing was issued. A new hearing date was set.

⁶ *Pillai v Messiter (No 2)* (1989) 16 NSWLR 197 (A) at 200

- [13] In anticipation of the new hearing date the Board Officer attempted to contact the Respondent to arrange a prehearing conference. The Respondent replied on the same day, stating:

Hi yes what is in this in regards to?

- [14] And on the same day, following further clarification from the Board Officer, the Respondent replied:

A complaint from who and for what? Haha, I have only used my lbp maybe twice? And I'm pretty sure it's expired now? Lol

- [15] Again, further clarification was provided by the Board Officer. The Respondent replied:

I didn't do this job, [OMITTED] got someone else to do it. I bailed on it. He's just being salty because it took me a while to get his money back to him, I did take any Roofing off, I didn't lay one Roofing sheet. A new Roofing crowd did this job. Not me.

- [16] A date for a prehearing conference was proposed, and an invitation was sent. The Respondent declined the invitation. He did not attend the prehearing conference.
- [17] The Board Officer attempted to contact the Respondent on the hearing day, but he did not respond.
- [18] Given the background to the hearing, the notices issues, and the efforts that have been made to get the Respondent to engage, the Board was satisfied that the Respondent had been provided with adequate notice of the hearing and an opportunity to appear and be heard.
- [19] The Board decided to proceed with the hearing.

Evidence

- [20] The Board must be satisfied on the balance of probabilities that the disciplinary offences alleged have been committed⁷. Under section 322 of the Act, the Board has relaxed rules of evidence that allow it to receive evidence that may not be admissible in a court of law.
- [21] The procedure the Board uses is inquisitorial, not adversarial. The Board examines the documentary evidence available to it prior to the hearing. The hearing is an opportunity for the Board, as the inquirer and decision-maker, to call and question witnesses to further investigate aspects of the evidence and to take further evidence from key witnesses. The hearing is not a review of all of the available evidence.
- [22] In addition to the documentary evidence before the Board heard evidence at the hearing from the Complainant confirmed that matters set out in his complaint and clarified certain aspects.

⁷ *Z v Dental Complaints Assessment Committee* [2009] 1 NZLR 1

- [23] The Complainant set out that he had engaged the Respondent on behalf of family members to carry out an urgent replacement of the roof on a commercial building. The existing roof was concrete tile. The intention was to replace it with long-run iron. There was no discussion with the Respondent as regards whether a building consent was required.
- [24] The Complainant set out his concerns with the quality and compliance of the Respondent's building work. He noted:
- (a) joins in the purlins that the Respondent supplied, were, in places, not connected on rafters;
 - (b) purlins were connected to rafters with incorrect fastenings and only one fastening per rafter was in place, and, in places, there were no fixings;
 - (c) an incorrect underlay which the Respondent supplied, was used. The Respondent installed a Watergate building wrap that was suitable for use on walls only and which expressly stated "must not be used as a roof underlay;
 - (d) the Watergate building wrap was, in places, installed under the purlins when it should have been installed over them; and
 - (e) the building wrap was not correctly overlapped and did not extend to the ridge line.
- [25] The Complainant provided photographs to support his allegations. He stated that the Respondent was carrying out the work with the assistance of two other persons.
- [26] The Respondent did not complete the work in a timely manner and abandoned the job. Half the price had been paid for the work. The Complainant noted that the interior was damaged as a result of the building being left exposed to the weather and that the tenant's possessions were damaged. Insurance claims of \$30,000 for the tenant's possessions and \$20,000 for water damage were made.
- [27] The Complainant shrink-wrapped the building to make it watertight. The owners arranged for another contractor to complete the work.

Board's Conclusion and Reasoning

- [28] The Board has decided that the Respondent **has** carried out or supervised building work or building inspection work in a negligent and incompetent manner (s 317(1)(b) of the Act) and **should** be disciplined.

- [29] The Board's decision that the Respondent has been negligent relates to the failure to ensure that a building consent was in place for building work that required a building consent prior to it being started. The Board's decision that the Respondent carried out building work in an incompetent manner related to the manner in which the building work was carried out.

Negligence – Carrying out Building Work without a Building Consent

- [30] Under section 17 of the Act, all building work must comply with the building code. The building code is contained in Schedule 1 of the Building Regulations 1992 (the Building Code).

- [31] All building work must also be carried out in accordance with a building consent. Section 40 of the Act provides:

40 Buildings not to be constructed, altered, demolished, or removed without consent

- (1) *A person must not carry out any building work except in accordance with a building consent.*
- (2) *A person commits an offence if the person fails to comply with this section.*
- (3) *A person who commits an offence under this section is liable on conviction to a fine not exceeding \$200,000 and, in the case of a continuing offence, to a further fine not exceeding \$10,000 for every day or part of a day during which the offence has continued.*

- [32] Building consents are granted under section 49 of the Act. A building consent can only be granted if the provisions of the Building Code will be satisfied.

- [33] The process of issuing a building consent and the subsequent inspections under it ensure independent verification that the Building Code has been complied with and that the works will meet the required performance criteria in the Building Code. In doing so, the building consent process provides protection for owners of works and the public at large. This accords with the purposes of the Act as set out in section 3 of the Act.

- [34] In *Tan v Auckland Council*⁸ 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.

⁸ [2015] NZHC 3299 [18 December 2015]

[35] 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.

[36] 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.

[37] 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.

[38] There are limited exceptions to the requirement for a building consent. These 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.

[39] The building work in question with regard to a building consent was the replacement of a concrete tile roof with a long-run iron roof.

[40] A roof can, in some instances, be replaced under Clause 1 of Schedule 1 of the Act, which provides:

1 General repair, maintenance, and replacement

(1) *The repair and maintenance of any component or assembly incorporated in or associated with a building, provided that comparable materials are used.*

(2) *Replacement of any component or assembly incorporated in or associated with a building, provided that—*

(a) *a comparable component or assembly is used; and*

(b) *the replacement is in the same position.*

(3) *However, subclauses (1) and (2) do not include the following building work:*

(a) *complete or substantial replacement of a specified system; or*

(b) *complete or substantial replacement of any component or assembly contributing to the building’s structural behaviour or fire-safety properties; or*

- (c) *repair or replacement (other than maintenance) of any component or assembly that has failed to satisfy the provisions of the building code for durability, for example, through a failure to comply with the external moisture requirements of the building code; or*
- (d) *sanitary plumbing or drainlaying under the Plumbers, Gasfitters, and Drainlayers Act 2006.*

- [41] Clause 1 is generally referred to as “like for like” replacement in that a comparable component needs to be installed in the same position.
- [42] In this instance, a heavy-weight concrete tile roof was to be replaced with a light-weight iron roof. The two roofing materials are not comparable. They have different characterises, and there are different structural and external moisture management considerations. For example, the purlin set out is different for each, and when changing to a light-weight roof, consideration needs to be given to potential uplift and wind zones. The flashing requirements are different. Clause 1 of Schedule 1 does not apply. A building consent was required.
- [43] There is no evidence that the Respondent turned his mind to building consent requirements.
- [44] The question for the Board to consider is whether, at the time the building work was undertaken by the Respondent, he knew or ought to have known that a building consent was required for what was being undertaken and if so whether the Respondent has, as a result of the failing, been negligent.
- [45] Negligence is the departure by a licensed building practitioner whilst carrying out or supervising building work from an accepted standard of conduct. It is judged against those of the same class of licence as the person whose conduct is being inquired into. This is described as the *Bolam*⁹ test of negligence which has been adopted by the New Zealand Courts¹⁰.
- [46] The New Zealand Courts have stated that an assessment of negligence in a disciplinary context is a two-stage test¹¹. The first is for the Board to consider whether the practitioner has departed from the acceptable standard of conduct of a professional. The second is to consider whether the departure is significant enough to warrant a disciplinary sanction.
- [47] When considering what an acceptable standard is the Board must have reference to the conduct of other competent and responsible practitioners and the Board’s own assessment of what is appropriate conduct, bearing in mind the purposes of the Act¹², which are outlined above. The test is an objective one and, in this respect, it

⁹ *Bolam v Friern Hospital Management Committee* [1957] 1 WLR 582

¹⁰ *Martin v Director of Proceedings* [2010] NZAR 333 (HC), *F v Medical Practitioners Disciplinary Tribunal* [2005] 3 NZLR 774 (CA)

¹¹ *Martin v Director of Proceedings* [2010] NZAR 333 (HC), *F v Medical Practitioners Disciplinary Tribunal* [2005] 3 NZLR 774 (CA)

¹² *Martin v Director of Proceedings* [2010] NZAR 333 at p.33

has been noted that the purpose of discipline is the protection of the public by the maintenance of professional standards and that this could not be met if, in every case, the Board was required to take into account subjective considerations relating to the practitioner¹³.

- [48] Turning to seriousness in *Collie v Nursing Council of New Zealand*¹⁴, the Court's noted, as regards the threshold for disciplinary matters, that:

[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.

- [49] Looking at the facts, it was clear to the Board that the Respondent should have known that a building consent was required. He holds a roofing licence. An understanding of the regulatory regime under which building work is carried out, is one of the competencies expected of a Licensed Building Practitioner. Further, the Respondent had a duty, as a Licensed Building Practitioner, to inform those that he was engaged by that a building consent was required and he should not have proceeded with any work until such time as one had been sought. He did not, and in failing to do so, he has been negligent. The Board also finds that the conduct was sufficiently serious enough to warrant a disciplinary outcome. The requirement for a building consent was clear, and the Respondent's failure was fundamental.

Incompetence

- [50] Incompetence is a lack of ability, skill, or knowledge to carry out or supervise building work to an acceptable standard. *Beattie* put it as "*a demonstrated lack of the reasonably expected ability or skill level*". In *Ali v Kumar and Others*,¹⁵ it was stated as "*an inability to do the job*".
- [51] When looking at how the Respondent went about the building work that he did carry out, the Board found that he had been incompetent. The evidence showed that he simply did not know how the work should be carried out so as to meet Building Code requirements. The work would not have met the requirements of clauses B1 Structure, B2 Durability or E2 External Moisture Management. As such, the Board found that he had carried out building work in an incompetent manner.

¹³ *McKenzie v Medical Practitioners Disciplinary Tribunal* [2004] NZAR 47 at p.71

¹⁴ [2001] NZAR 74

¹⁵ *Ali v Kumar and Others* [2017] NZDC 23582 at [30]

Penalty, Costs and Publication

- [52] Having found that one or more of the grounds in section 317 applies, the Board must, under section 318 of the Act¹, consider the appropriate disciplinary penalty, whether the Respondent should be ordered to pay any costs and whether the decision should be published.
- [53] The Respondent has not engaged in the complaints process. Notwithstanding, the Board has decided to make indicative orders and give the Respondent an opportunity to provide further evidence or submissions relevant to the indicative orders.

Penalty

- [54] The purpose of professional discipline is to uphold the integrity of the profession; the focus is not punishment, but the enforcement of a high standard of propriety and professional conduct. The Board does note, however, that the High Court in *Patel v Complaints Assessment Committee*¹⁶ commented on the role of “punishment” in giving penalty orders stating that punitive orders are, at times, necessary to provide a deterrent and to uphold professional standards. The Court noted:

[28] I therefore propose to proceed on the basis that, although the protection of the public is a very important consideration, nevertheless the issues of punishment and deterrence must also be taken into account in selecting the appropriate penalty to be imposed.

- [55] The Board also notes that in *Lochhead v Ministry of Business Innovation and Employment*,¹⁷ the Court noted that whilst the statutory principles of sentencing set out in the Sentencing Act 2002 do not apply to the Building Act, they do have the advantage of simplicity and transparency. The Court recommended adopting a starting point for a penalty based on the seriousness of the disciplinary offending prior to considering any aggravating and/or mitigating factors.
- [56] The Board has found that the Respondent was both negligent and incompetent. The level of negligence and incompetence was in the medium to high bracket. The Respondent has not previously appeared. Based on those factors and on the above, the Board adopted a starting point of a fine of \$2,000, which is consistent with other fines for similar conduct that the Board has imposed. There are no aggravating or mitigating factors.

Costs

- [57] Under section 318(4) the Board may require the Respondent “to pay the costs and expenses of, and incidental to, the inquiry by the Board.”

¹⁶ HC Auckland CIV-2007-404-1818, 13 August 2007 at p 27

¹⁷ 3 November 2016, CIV-2016-070-000492, [2016] NZDC 21288

- [58] The Respondent should note that the High Court has held that 50% of total reasonable costs should be taken as a starting point in disciplinary proceedings and that the percentage can then be adjusted up or down having regard to the particular circumstances of each case¹⁸.
- [59] In *Collie v Nursing Council of New Zealand*,¹⁹ where the order for costs in the tribunal was 50% of actual costs and expenses, the High Court noted that:
- But for an order for costs made against a practitioner, the profession is left to carry the financial burden of the disciplinary proceedings, and as a matter of policy that is not appropriate.*
- [60] In *Kenneth Michael Daniels v Complaints Committee 2 of the Wellington District Law Society*,²⁰ the High Court noted:
- [46] All cases referred to in *Cooray* were medical cases and the Judge was careful to note that the 50 per cent was the general approach that the Medical Council took. We do not accept that if there was any such approach, it is necessarily to be taken in proceedings involving other disciplinary bodies. Much will depend upon the time involved, actual expenses incurred, attitude of the practitioner bearing in mind that whilst the cost of a disciplinary action by a professional body must be something of a burden imposed upon its members, those members should not be expected to bear too large a measure where a practitioner is shown to be guilty of serious misconduct.
- [47] Costs orders made in proceedings involving law practitioners are not to be determined by any mathematical approach. In some cases 50 per cent will be too high, in others insufficient.
- [61] 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 of moderate complexity. Adjustments based on the High Court decisions above are then made.
- [62] The Board's scale costs for a half-day hearing of moderate complexity is \$3,500.
- [63] There have been two hearings. The first was set down for a half-day and was adjourned after it had been commenced. The Board reserved its position as regards costs. Costs for that hearing are set at \$2,000.
- [64] Costs for the second hearing are set at \$3,500. In making a decision on the costs for the second hearing, the Board has taken into consideration that the manner in which a licensed person responds to a disciplinary complaint and conducts their defence can also be taken into consideration by the Board. In *Daniels v Complaints*

¹⁸ *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.

¹⁹ [2001] NZAR 74

²⁰ CIV-2011-485-000227 8 August 2011

*Committee*²¹ the High Court held that it was permissible to take into account as an adverse factor when determining costs that the practitioner had responded to the complaints and discipline process in a belligerent way.

- [65] The total amount of costs to be paid is \$5,500 toward the costs of and incidental to the Board's investigations and the two hearings.

Publication

- [66] 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 Act²². The Board is also able, under section 318(5) of the Act, to order publication over and above the public register:

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.

- [67] As a general principle, such further public notification 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. This is in addition to the Respondent being named in this decision.
- [68] Within New Zealand, there is a principle of open justice and open reporting, which is enshrined in the Bill of Rights Act 1990²³. The Criminal Procedure Act 2011 sets out grounds for suppression within the criminal jurisdiction²⁴. Within the disciplinary hearing jurisdiction, the courts have stated that the provisions in the Criminal Procedure Act do not apply but can be instructive²⁵. The High Court provided guidance as to the types of factors to be taken into consideration in *N v Professional Conduct Committee of Medical Council*²⁶.
- [69] The courts have also stated that an adverse finding in a disciplinary case usually requires that the name of the practitioner be published in the public interest²⁷. It is, however, common practice in disciplinary proceedings to protect the names of other persons involved as naming them does not assist the public interest.
- [70] Based on the above, the Board will order further publication.

²¹ [2011] 3 NZLR 850.

²² Refer sections 298, 299 and 301 of the Act

²³ Section 14 of the Act

²⁴ Refer sections 200 and 202 of the Criminal Procedure Act

²⁵ *N v Professional Conduct Committee of Medical Council* [2014] NZAR 350

²⁶ *ibid*

²⁷ *Kewene v Professional Conduct Committee of the Dental Council* [2013] NZAR 1055

Section 318 Order

[71] 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 \$5,500 (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, there will be action taken to publicly notify the Board's action, in addition to the note in the Register and the Respondent being named in this decision.

[72] 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

[73] The Board invites the Respondent to make written submissions on the matters of disciplinary penalty, costs and publication up until close of business on **5 October 2022**. 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.

[74] In calling for submissions on penalty, costs and mitigation, the Board is not inviting the Respondent to offer new evidence or to express an opinion on the findings set out in this decision. If the Respondent disagrees with the Board's findings of fact and/or its decision that the Respondent has committed a disciplinary offence, the Respondent can appeal the Board's decision.

Right of Appeal

[75] The right to appeal Board decisions is provided for in section 330(2) of the Actⁱⁱ.

Signed and dated this 14th day of September 2022



Mr M Orange
Presiding Member

ⁱ **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."*

ⁱⁱ **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.*