

Before the Building Practitioners Board

	BPB Complaint No. CB26434
Licensed Building Practitioner:	Andrew David Williams (the Respondent)
Licence Number:	BP132633
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 Type:	On the Papers
Draft Decision Date:	9 May 2024
Final Decision Date:	12 June 2024

Board Members

Mr M Orange, Chair, Barrister (Presiding)
Mr D Fabish, LBP, Carpentry and Site AoP 2
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 \$2,000 and ordered to pay costs of \$875. A record of the disciplinary offending will be recorded on the Public Register for a period of three years.

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Summary of the Board’s Decision

- [1] The Respondent supervised building work (a suspended concrete floor slab) in a negligent manner and in a manner that was contrary to a building consent. He also failed to provide a record of work on completion of restricted building work. He is fined \$2,500 and ordered to pay costs of \$875. The disciplinary finding will be recorded on the public Register for a period of three years.
- [2] In the Draft Decision, the Respondent was given the opportunity to provide a record of work before the Board made a Final Decision. The Board indicated that if he did, its provision would be taken into account as a mitigating factor. A record of work has now been provided. The fine is reduced to \$2,000.

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;
 - (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.

Draft Decision Process

- [5] The Board's jurisdiction is that of an inquiry. Complaints are not prosecuted before the Board. Rather, it is for the Board to carry out any further investigation that it considers necessary prior to it making a decision.
- [6] The Board also took into account that the Respondent, who stated he would provide a response to the complaint and was given an extension to do so, has not.
- [7] Ordinarily, the Board makes a decision having held a hearing.³ The Board may, however, depart from its normal procedures if it considers doing so would achieve the purposes of the Act, and it is not contrary to the interests of natural justice to do so.⁴

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.

³ Regulation 10 of the Complaints Regulations.

⁴ Under Clause 27 of Schedule 3 the Board may regulate its own procedure and it has summary jurisdiction, which allows for a degree of flexibility in how it deals with matters: *Castles v Standards Committee No.* [2013] NZHC 2289, *Orlov v National Standards Committee 1* [2013] NZHC 1955

[8] In this instance, the Board decided that a formal hearing was not necessary. The Board considered that there was sufficient evidence before it to allow it to make a decision on the papers. It noted, however, that there may have been further evidence in relation to the matter that the Board was not aware of. To that end, it issued a Draft Decision. The Respondent was provided with an opportunity to comment on the draft findings and to present further evidence prior to the Board making a final decision. The Board further noted that if the Respondent requested an in-person hearing, then the Draft Decision would be set aside, and a hearing would be scheduled.

Evidence

- [9] The Board must be satisfied on the balance of probabilities that the disciplinary offences alleged have been committed⁵. 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.
- [10] The Respondent was engaged as a subcontractor to construct a suspended concrete floor slab on a new residential dwelling under a building consent. The work was restricted building work because it formed part of the primary structure.⁶ As such, it had to be carried out or supervised by a Licensed Building Practitioner (LBP). The Respondent was noted on multiple building consent inspections as the LBP. The Board was satisfied that he was the supervising LBP.
- [11] The evidence was that the Respondent further subcontracted some or all of the work. However, as the work was restricted building work, and the Respondent was the only LBP involved in the work, he is responsible for the quality and compliance of the work and for the provision of a record of work.
- [12] Following the completion of the suspended concrete floor slab, issues with the floor levels were identified. A report was obtained from [OMITTED], a Chartered Professional Engineer. His report, which was supported by photographs, noted:

While carrying out these inspections, we were advised that the post-pour condition of the mid-floor slab was not acceptable. The slab has discrete low points and areas where the reinforcing mesh can be seen protruding through the finished slab.

Onsite Observations

We attended site on 28 April 2023 to inspect the as-built condition of the mid-floor slab. During this inspection the following photos were recorded. Photo 1 shows the south-west corner of the mid-floor slab. Water can be seen pooling across this low point. There are four main low points, located toward each corner of the building.

⁵ *Z v Dental Complaints Assessment Committee* [2009] 1 NZLR 1

⁶ Clause 5 of the Building (Definition of Restricted Building Work) Order 2011

We were advised by the main contractor that they recorded heights with a laser level across the midfloor slab. From this they determined that the slab was up to 10mm too thin in parts. [OMITTED], who carried out the structural design, were advised of this. They have confirmed to us that the mid-floor slab still maintains adequate structural strength and stiffness, to resist the required loadings.

Remedial Recommendations

In accordance with NZS 3109:1997 Concrete Construction, Table 5.2, the maximum acceptable vertical deviation is +/- 12mm. The levels recorded by the main contractor indicate that the mid-floor slab was placed and finished with deviations of -10mm to +26mm, which therefore does not comply with the NZ Building Code.

We recommend that Sikafloor Level-30 levelling compound is used to achieve a level finish, as well as achieving the minimum required reinforcing cover of 30mm. We note that this additional compound should not be greater than 30mm thickness, to not overload the mid-floor slab.

We also recommend that Sika MonoTop-910N is applied to the areas where the reinforcing mesh can be seen through the slab, to provide corrosion protection. This compound should be added to a 6mm thickness and only in the discrete locations where the reinforcing mesh can be seen. This compound shall be applied before the levelling compound.

- [13] Another contractor was engaged to carry out the remedial work.
- [14] The Complainant stated that as a result of the issues with the floor levels, a payment dispute arose, and that the Respondent has refused to provide a record of work.
- [15] The Respondent has not provided a response to the allegations. As such, there is no contradictory evidence.

Negligence or Incompetence

- [16] The Board's finding is that the Respondent has negligently supervised building work.
- [17] To find that the Respondent was negligent, the Board needs to determine, on the balance of probabilities,⁷ 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*⁸ test of negligence.⁹ A threshold test applies. Even if the Respondent has been negligent, the Board must

⁷ *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.

⁸ *Bolam v Friern Hospital Management Committee* [1957] 1 WLR 582

⁹ 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)

also decide if the conduct fell seriously short of expected standards.¹⁰ If it does not, then a disciplinary finding cannot be made.

Has the Respondent departed from an acceptable standard of conduct?

- [18] 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 Code¹¹ and any building consent issued.¹² The test is an objective one.¹³
- [19] As noted, the Respondent did not carry out the building work, which was restricted building work. Because it was restricted building work, it had to be carried out or supervised by an LBP. The Respondent was that supervisor.
- [20] Supervision is a defined term in the Act.¹⁴ There are various factors that the Board needs to consider when it determines whether an LBP's supervision has met an acceptable standard. The District Court has stated, albeit in the context of the Electricity Act, that at the very least, supervision requires knowledge that work is being conducted, visual and other actual inspection of the work during its completion, assessment of safety measures undertaken by the person doing the work on the site itself, and, after completion of the work, a decision as to the compliance of the work with the requisite regulations.¹⁵
- [21] There are varying types of supervision. The Ministry of Business Innovation and Employment has issued a supervision guidance document.¹⁶ It notes the different types of supervision: direct, general and remote. It also provides a matrix to assist in determining the appropriate form of supervision to be used. Generally, the greater the complexity of the work, the higher the need for direct supervision. The skill level of the person being supervised also needs to be taken into consideration. Because the Respondent has not engaged in the investigation process, there is no evidence as to the competence of the persons who carried out the work.

¹⁰ *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".

¹¹ Section 17 of the Building Act 2004

¹² Section 40(1) of the Building Act 2004

¹³ *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.

¹⁴ Section 7:

supervise, in relation to building work, means provide control or direction and oversight of the building work to an extent that is sufficient to ensure that the building work—

(a) is performed competently; and

(b) complies with the building consent under which it is carried out.

¹⁵ *Electrical Workers Registration Board v Gallagher* Judge Tompkins, District Court at Te Awamutu, 12 April 2011

¹⁶ Practice Note: Supervision, August 2017, issued under section 175 of the Act.

[22] Looking at the building work, a Chartered Professional Engineer has noted that the floor levels of the mid-floor slab were non-compliant because they exceeded the tolerances in table 5.2 in NZS 3109:1997 in that the floor ranged from a deviation of -10mm to +26mm.

[23] NZS 3109 is a New Zealand Standard. The building consent for the dwelling incorporated NZS 3109 in the specifications. Under tolerances, it stated:

1.24 Tolerances

All work to be level, plumb, and true in line and face. Unless otherwise specified in specific work sections of this specification, tolerances for structural work shall comply with the following:

Concrete Construction To NZS 3109 Concrete construction

[24] Table 5.2 stipulates the linear tolerance for foundations that are to receive in-situ construction. It is referenced in clause 5.3, which states:

5.3 Tolerances

The tolerances required by tables 5.1 and 5.2 are the least strict which will ensure that structures designed in accordance with NZS 3101 will meet the minimum requirements of the New Zealand Building Code.

[25] NZS 3010 deals with concrete structures. The applicable standard for the in-situ timber structures is NZS 3604:2011 Timber-framed buildings. The tolerances noted in it are contained in Table 2.1. It provides:

Deviation from Horizontal:

- | | | |
|------------|---------------------------------|-----------------------|
| <i>(a)</i> | <i>In any length up to 10 m</i> | <i>5mm</i> |
| <i>(b)</i> | <i>In any length over 10 m</i> | <i>10 mm in total</i> |

[26] Again, NZS3604 is referenced and relied on in the building consent.

[27] Taking the combined effect of the standards into account, and looking at the extent to which the floor levels were outside of tolerance, it is clear that the building work did not comply with the building code or the building consent. Further, as a result of the floors being out of tolerance, reinforcing mesh was exposed, and additional work was required to cover the mesh and to level the floor using floor-levelling compound.

[28] Turning to the Respondent's supervision, there is no evidence as to the level of supervision provided other than that the Respondent subcontracted the work. Whether he maintained oversight of the work and checked it for compliance as it progressed is not clear. Notwithstanding, the Board would expect a competent LBP who applied the appropriate type and level of supervision to identify and address the tolerance issue as the building work progressed. On that basis, the Board finds that the Respondent's conduct has fallen below an acceptable standard.

Was the conduct serious enough?

[29] The conduct is at the lower end of the disciplinary scale. Nonetheless, the Board found that the conduct was serious enough to warrant it taking disciplinary action. In arriving at this decision, the Board noted that, based on the evidence that was available, the Respondent did not actually supervise. Rather, he subcontracted the work and abdicated his responsibilities as the supervisor. Put simply, he placed his trust in others. The licensing regime, however, is not based on trust. It is based on those who have been assessed as having the knowledge and skill to carry out or supervise restricted building work being integrally involved in it to ensure compliance. In this respect, it is to be noted that the regime's purpose is to improve the skills and knowledge of those involved in residential construction. The following was stated as the intention of the enabling legislation when it was introduced:¹⁷

The Government's goal is a more efficient and productive sector that stands behind the quality of its work; a sector with the necessary skills and capability to build it right first time and that takes prides in its work; a sector that delivers good-quality, affordable homes and buildings and contributes to a prosperous economy; a well-informed sector that shares information and quickly identifies and corrects problems; and a sector where everyone involved in building work knows what they are accountable for and what they rely on others for.

We cannot make regulation more efficient without first getting accountability clear, and both depend on people having the necessary skills and knowledge. The Building Act 2004 will be amended to make it clearer that the buck stops with the people doing the work. Builders and designers must make sure their work will meet building code requirements; building owners must make sure they get the necessary approvals and are accountable for any decisions they make, such as substituting specified products; and building consent authorities are accountable for checking that plans will meet building code requirements and inspecting to make sure plans are followed.

Has the Respondent been negligent or incompetent?

[30] The Respondent has supervised building work in a negligent manner.

Contrary to a Building Consent

[31] Contrary to a building consent is a form of strict liability offence. All that needs to be proven is that the building consent has not been complied with. No fault or negligence has to be established.¹⁸ The Board does, however, consider that the seriousness of the disciplinary offending still needs to be taken into account.

¹⁷ Hansard volume 669: Page 16053

¹⁸ *Blewman v Wilkinson* [1979] 2 NZLR 208

[32] As noted above, the mid-floor slab was not constructed in accordance with the building consent, and the Board has already found that the departure was serious. As such, it finds that the disciplinary offence has been committed.

[33] There is a commonality between the finding of negligence and building contrary to a building consent. The Board will take that into account when it makes its penalty decision.

Failure to Provide a Record of Work

[34] An LBP 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.¹⁹

[35] There is a statutory requirement under section 88(1) of the Building Act 2004 for an LBP to provide a record of work to the owner and the territorial authority on completion of restricted building work²⁰ unless there is a good reason for it not to be provided.²¹

Did the Respondent carry out or supervise restricted building work?

[36] 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 a suspended concrete floor slab, which is restricted building work because it forms part of the primary structure of a residential dwelling.²²

Was the restricted building work complete?

[37] The Respondent was engaged as a subcontractor. He did not carry out or supervise any other restricted building work beyond the foundations, and what he did supervise was completed in March 2023. That was when a record of work was due.

Has the Respondent provided a record of work?

[38] The Respondent has not provided a record of work despite requests being made for one.

[39] The Respondent should note that the requirement is on the LBP to provide a record of work, not on the owner or territorial authority to demand one. He is required to act of his own accord and not wait for others to remind him of his obligations.

Was there a good reason?

[40] The Complainant noted that the Respondent refused to provide a record of work because he was owed money by the head contractor. That is not a good reason.

¹⁹ Section 88(1) of the Act.

²⁰ Restricted Building Work is defined by the Building (Definition of Restricted Building Work) Order 2011

²¹ Section 317(1)(da)(ii) of the Act

²² Clause 5 of the Building (Definition of Restricted Building Work) Order 2011

[41] The Board has repeatedly stated 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 or by contractual disputes. LBPs should now be aware of their obligations to provide them, and their provision should be a matter of routine.

Did the Respondent fail to provide a record of work?

[42] The Respondent has failed to provide a record of work.

Further Evidence and Submissions Received

[43] Following the Board issuing a Draft Decision, it received a record of work from the Respondent. It has taken that provision into account when setting the penalty.

Board's Decision

[44] The Respondent **has** breached:

- (a) Section 317(1)(b) of the Act, in that he has supervised building work in a negligent manner;
- (b) Section 317(1)(d) of the Act, in that he has supervised building work that was contrary to a building consent; and
- (c) Section 317(1)(da)(ii) of the Act, in that he failed to provide a record of work on completion of restricted building work.

Penalty, Costs and Publication

[45] 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.

[46] The matter was dealt with on the papers. The Board made an indicative order in its Draft Decision. It has since received submissions and has made a final decision regarding penalty, costs, and publication.

Penalty

[47] 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.²³ It is not a formulaic exercise, but there are established underlying principles that the Board should take into consideration. They include:²⁴

- (a) protection of the public and consideration of the purposes of the Act;²⁵

²³ *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]

²⁴ Cited with approval in *Robinson v Complaints Assessment Committee of Teaching Council of Aotearoa New Zealand* [2022] NZCA 350 at [28] and [29]

²⁵ Section 3 Building Act

- (b) deterring other LBPs from similar offending;²⁶
 - (c) setting and enforcing a high standard of conduct for the industry;²⁷
 - (d) penalising wrongdoing;²⁸ and
 - (e) rehabilitation (where appropriate).²⁹
- [48] 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 cases³⁰ and applying the least restrictive penalty available for the particular offending.³¹ In all, the Board should be looking to impose a fair, reasonable, and proportionate penalty³² that is consistent with other penalties imposed by the Board for comparable offending.³³
- [49] 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.³⁴
- [50] The Respondent committed two disciplinary offences. The first two (negligence and contrary to a building consent) are related, and the Board will treat them as a single offence for the purposes of its penalty findings. The third is the failure to provide a record of work.
- [51] Dealing with the record of work first, The Board's normal starting point for a failure to provide a record of work is a fine of \$1,500, an amount which it considers will deter others from such behaviour.
- [52] In terms of negligence and contrary to a building consent, the Board has noted that the matters are at the lower end of the scale. A fine is also appropriate, and the Board sets it at \$1,500, an amount that is consistent with other penalties imposed by the Board for similar offending.
- [53] The total fine is \$3,000. There are no aggravating or mitigating factors present. The matter has, however, been dealt with by way of a draft Decision. A reduction of \$500 will be applied, bringing the fine down to \$2,500.
- [54] In the Draft Decision, the Board provided the Respondent with an opportunity to provide a record of work before it makes a final decision on the appropriate penalty. The Board noted that if one was provided, it would be taken into consideration as a mitigating factor, and the penalty would be reduced by \$500 to a total fine of

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

²⁷ *Dentice v Valuers Registration Board* [1992] 1 NZLR 720 (HC) at 724

²⁸ *Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818, 13 August 2007 at p 27

²⁹ *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

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

³¹ *Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818

³² *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

³³ *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

³⁴ 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.

\$2,000. On 28 May 2024, the Respondent provided a copy of a record of work. The total penalty is reduced by \$500 to \$2,000.

Costs

- [55] 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 LBPs should not be left to carry the financial burden of an investigation and hearing.³⁵
- [56] The courts have indicated that 50% of the total reasonable costs should be taken as a starting point in disciplinary proceedings³⁶. The starting point can then be adjusted up or down, having regard to the particular circumstances of each case³⁷.
- [57] 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 simple. Adjustments are then made.
- [58] Based on the above, the Board's costs order is that the Respondent is to pay the sum of \$875 toward the costs of and incidental to the Board's inquiry.

Publication

- [59] 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 LBP' scheme as is required by the Act,³⁸ 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.
- [60] Within New Zealand, there is a principle of open justice and open reporting, which is enshrined in the Bill of Rights Act 1990.³⁹ 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.⁴⁰
- [61] 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

³⁵ *Collie v Nursing Council of New Zealand* [2001] NZAR 74

³⁶ *Kenneth Michael Daniels v Complaints Committee 2 of the Wellington District Law Society* CIV-2011-485-000227 8 August 2011

³⁷ *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.

³⁸ Refer sections 298, 299 and 301 of the Act

³⁹ Section 14 of the Act

⁴⁰ *Kewene v Professional Conduct Committee of the Dental Council* [2013] NZAR 1055

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

[62] 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 \$875 (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.

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

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 9th day of July 2024



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).*
- (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.*