

# BUILDING PRACTITIONERS INQUIRY BOARD

## Reasons for Decision

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<b>Building Practitioner:</b>	AB Consulting (NT) Pty Ltd ( <b>the Practitioner</b> )
<b>Building Practitioner Category:</b>	Building Certifier (Unrestricted)
<b>Referred By:</b>	Director of Building Control
<b>Proceedings:</b>	Referral of Inquiry to the Building Practitioners Board in accordance with s 34E(1) of the <i>Building Act (1993) NT</i>
<b>Inquiry Board:</b>	Maria Savvas (Presiding Member) Craig Leslie Chris Lovewell
<b>Date of Hearing:</b>	1 December 2023
<b>Date of Decision:</b>	11 June 2024

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### Background

1. On 17 April 2023 the Director Building Control (**DBC**) referred this matter to the Building Practitioners Board (**Inquiry Board**) for inquiry pursuant to section 34E(1)(a) of the *Building Act (1993) NT (the Act)*.
2. The referral was made on the basis that the DBC alleges that the Practitioner, after having received notice of an audit pursuant to section 34A(1)(b) of the Act and a notice to produce documents for that audit on 27 October 2022, the Practitioner has refused or failed to comply with a reasonable request from the auditor to produce documents.
3. Section 34(E) of the Act relevantly provides as follows:
  - (1) *If, in the course of an audit, a building practitioner:*
    - (a) *Refuses or fails to comply with any reasonable request from the auditor to answer a question, provide information or produce documents;*
    - (b) ....

*the Director may refer the matter to the Practitioners Board for inquiry.*

4. By way of agreed facts submitted jointly with the DBC and received by the Inquiry Board on 4 October 2023, the Practitioner has admitted that they engaged in conduct in breach of s34(1)(a) of the Act, and further admits that such conduct amounts to professional misconduct (**the Agreed Facts**).
5. A copy of the Agreed Facts as signed by both the DBC and the Practitioner is annexed hereto as Schedule A of this decision. The Agreed Facts discloses the particulars of the allegations supporting the DBC's referral of 17 April 2023, and the Practitioner's agreement to such particulars.
6. Section 34S of the Act relevantly provides as follows:

*A building practitioner is guilty of professional misconduct if, on completion of an inquiry, the Inquiry Board is satisfied on the balance of probabilities that the practitioner:*

*(a) has committed an offence against this Act or the Regulation; or*

*(b) ...*

*(c) ...*

*(d) ...*

*(e) ...*

*(f) is guilty of conduct referred to in section 33(1) or (b) or 34(1)(a) or (b));....*

7. Following receipt of the Agreed Facts, and in advance of the hearing on 1 December 2023, the DBC provided the Practitioner and the Board with the DBC's submissions on proposed disciplinary action.
8. The Inquiry Board held a hearing on 1 December 2023 to afford the Practitioner the opportunity to make submissions in relation to the DBC's proposed disciplinary action and any action to be taken.
9. The Practitioner, who was self-represented, made no submissions on disciplinary action and by way of explanation as to conduct stated that:
  - a. in the last 3 years she had not been able to fulfil obligations in terms of keeping workloads under control due to personal issues which resulted in the lack of response to the audit;

- b. at the time of the audit, the nominees and sole director of the Practitioner, was due to have a baby and was not able to manage her personal life and workloads;
  - c. the nominee and sole director of the Practitioner had made improvements in terms of workload and the operation of the Practitioner; and
  - d. the Practitioner had not complied with the audit request as at the time of the hearing however they did have the documents ready to upload.
10. The Practitioner agreed to supply the relevant audit documents by 6 December 2023, and the DBC was to provide confirmation to the Inquiry Board as to whether the Practitioner had complied with the audit request by 4pm 6 December 2023.
11. On 12 December 2023 the DBC's legal representative advised the Inquiry Board that the Practitioner had partially complied with the audit request but that the majority of documents requested in the audit were still outstanding.

## **Decision**

12. Given the Practitioner's admissions, the Inquiry Board has determined pursuant to section 34P(1)(a) that the Practitioner has breached section 34E(1) of the Act and finds that the Practitioner is guilty of professional misconduct.
13. Having made that determination, pursuant to section 34P(1)(b), the Inquiry Board must now determine any action to be taken under section 34T and 34U of the Act.
14. Section 34T of the Act provides as follows:

*If, on completion of an inquiry, the Inquiry Board decides under section 34P(1)(a) that a building practitioner is guilty of professional misconduct, the Board may take any of the following actions in relation to the practitioner:*

- (a) *reprimand the practitioner;*
- (b) *require the practitioner to pay all or a specified part of the reasonable costs of the Director in the inquiry;*
- (c) *require the practitioner to give an undertaking to do, or not to do, a specified thing:*
  - (i) *at any time or during any period; or*



- b. the Practitioner's cooperation in settling the Agreed Facts; and
  - c. the fact that the Practitioner has not previously been referred to the Board.
21. However, the factors set out above do not entirely resolve the Inquiry Board's concerns as to serious nature of the Practitioner's conduct and the consequences of same.
22. The Practitioner has demonstrated a serious disregard of its statutory obligations and the Inquiry Board must ensure that any disciplinary action reflects the seriousness of the Practitioner's offending and to also deter the Practitioner and building practitioners from such conduct.
23. The Inquiry Board had determined that the appropriate action to be taken pursuant to s 34T is as follows:
- a. The Practitioner is reprimanded and this reprimand is to be published.
  - b. The Practitioner is to pay a civil penalty of 40 penalty units.
  - c. If the Practitioner has not fully complied with the audit request of 27 October 2022 as at the date of this decision:
    - (i) the Practitioner is to produce any outstanding documents required to be produced by the Notice to Produce Documents dated 27 October 2022 on or before 26 June 2024; and
    - (ii) the Practitioner is required to give a written undertaking to this Inquiry Board that it will comply with the decision set out in paragraph 22(c)(i) within 7 days of receiving notice of this decision.
  - d. If the Practitioner fails to comply with paragraph 22(c)(i) or 22(c)(ii), then the registration of the Practitioner as a Building Practitioner be suspended from the date of 27 June 2024 until such time as the Practitioner complies with the Notice to Produce Documents dated 27 October 2022, but that such period of suspension shall not exceed a period of 3 years.
  - e. The Inquiry board directs that a copy of this determination be published and distributed to the parties.

## **REVIEW OF DECISION UNDER THE ACT**

1. Section 35(1) of the Act, with reference to Schedule 5 "Reviewable Decisions", provides that the Northern Territory Civil and Administrative Tribunal ("the Tribunal") has jurisdiction to review:

- a. a decision of the Inquiry Board under section 34P(1)(a) (in accordance with section 34S) that a building practitioner is guilty, or is not guilty, of professional misconduct; and/or
  - b. a decision of the Inquiry Board under section 34P(1)(b) to take, or to not take, an action against a building practitioner under section 34T or 34U.
2. Under section 35(3) of the Act, you may apply to the Tribunal for a review of this decision.
  3. The *Northern Territory Civil and Administrative Tribunal Rules 2016* set out the procedure for applying to the Tribunal for review of this decision and other relevant matters in relation to reviews.
  4. Rule 5 provides:
    - (1) *This rule applies to an application commencing a proceeding in the Tribunal's original jurisdiction or review jurisdiction (an **initiating application**).*
    - (2) *A person wishing to commence a proceeding (the **applicant**) must file an initiating application in the approved form with the Tribunal.*

*Note for subrule (2)*

*The current approved form for an initiating application is Form 1.*
  5. An application to commence a proceeding for the review of a reviewable decision must be filed within 28 days after the decision was notified to the applicant pursuant to section 93(3) of the *Northern Territory Civil and Administrative Tribunal Act 2014* ("the NTCAT Act").
  6. Section 94(1) of the NTCAT Act provides for the procedure to make an application:
    - (1) *An application to commence a proceeding in the Tribunal must be:*
      - (a) *filed with the Registrar; and*
      - (b) *made in accordance with the relevant Act, this Act and the rules; and*
      - (c) *accompanied by the fee prescribed by regulation.*
    - (2) *A proceeding in the Tribunal commences when the application is accepted under section 95.*
  7. Section 95 of the NTCAT Act provides:
    - (1) On receipt of an application to commence a proceeding under section 94(1), the Registrar may:
      - (a) *accept the application; or*
      - (b) *reject the application.*
    - (2) *The Registrar may accept the application under subsection (1)(a) on conditions determined by the Registrar.*
    - (3) *The Registrar may reject the application under subsection (1)(b) on the following grounds:*
      - (a) *the application is made by a person who is not entitled to make it;*
      - (b) *the application is made after the expiry of the time limit within which the application is required to be made;*
      - (c) *the application does not relate to a matter within the jurisdiction of the Tribunal;*
      - (d) *the application otherwise does not comply with the relevant Act, this Act or the rules.*

Dated 11 June 2024



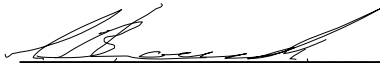
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Maria Savvas  
Presiding Member



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Craig Leslie  
Member



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Chris Lovewell  
Member