

**Northern Territory of Australia
Building Practitioners Board**

In the Inquiry into

The Director of Building Control

and

ACT Builders (NT) Pty Ltd - a Registered
Building Practitioner and

Mr. Ioannis Glynatsis - a Registered
Building Practitioner

Reasons for Decision

Introduction

1. The Director of Building Control (Director) referred four matters to the Building Practitioners Board for Inquiry concerning two separate but related building practitioners on the 14 February 2012. There are two referrals in relation to Mr. Ioannis Glynatsis in his personal capacity as a registered building practitioner. There are two referrals in relation to ACT Builders (NT) Pty Ltd (ACT Builders) which is a corporation registered as a building practitioner. Mr. Glynatsis is the sole director and shareholder of ACT Builders.
2. Mr. Glynatsis and ACT Builders were at the relevant time in 2011 registered building practitioners in accordance with the *Building Act* (NT). The Act provides for the registration of individuals and Corporations. The definition of a building practitioner also includes a person who was registered at the time of the conduct alleged in any complaint but who is no longer registered (s21A).
3. A Building Practitioners Board Registration Check admitted in evidence during the proceedings disclosed that ACT Builders was registered at the relevant time as a Building Contractor Residential (Unrestricted). There was no evidence before the Inquiry Board concerning Mr. Ioannis Glynatsis's registration. It was agreed by the parties, including Mr. Glynatsis that he was a registered practitioner at the relevant time and the Registration Check concerning ACT Builders contains an entry that lists him personally as a related Individual in the Corporation's registration.
4. There is a substantive linkage in the Act between the registration of Mr. Glynatsis as a building practitioner in his personal capacity and as the person responsible for the corporation. A corporation can only be

registered as a building practitioner if at least one director or nominee of the corporation is registered as a building practitioner and will provide adequate supervision of the building work carried out by the corporation (section 24B(2)(a)). Similar provisions were applicable with respect to corporations in the Act as it stood in 2011.¹

Referrals alleging Professional Misconduct

5. The two referrals in relation to each building practitioner are identical. These are that each:
 - (a) have refused or failed, without reasonable excuse, to comply with a reasonable request from the Director to answer a question, provide information or produce a document, pursuant to section 33(1)(a) of the Act; and
 - (b) are both considered guilty of professional misconduct pursuant to sections 34S(f) (as detailed above) and 34S(g) of the Act, as the building contract entered into by ACT Builders (NT) Pty Ltd resulted in payment of \$67,644.60 (deposit and first progress payment) to Building Materials Australia Pty Ltd for prescribed building works at Lot 5117 Galbraith Road Virginia. Following this payment there was no building permit obtained or works commenced. Mr. Ioannis Glynatsis is the sole director, secretary and shareholder of both Building Materials Australia Pty Ltd and ACT Builders (NT) Pty Ltd.

6. These are the reasons for decision in relation to both practitioners concerning the referral in (a) only that both practitioners in short form refused or failed without reasonable excuse to answer a question or questions of the Director pursuant to section 33(1)(a) of the Act.

Admission to professional misconduct (s 33(1)(a))

7. In relation to (a) above Mr. Ioannis Glynatsis and ACT Builders (NT) Pty Ltd admitted a contravention of section 33(1)(a) of the Act in their answer to particulars filed on behalf of the Director. In a document signed by Mr. Ioannis Glynatsis for himself personally and as a Director of ACT Builders (NT) Pty Ltd on the 16 November 2012 he admitted to a particular in the following terms:

In so far as the alleged professional misconduct relates to section 34S(f) of the *Building Act*, neither ACT Builders (NT) Pty Ltd or Ioannis Glynatsis complied with a reasonable request from the Director to answer questions asked of them pursuant to section 33(1)(a) of the *Building Act*.

8. This constituted an admission of professional misconduct in that both Mr. Glynatsis and ACT Builders (NT) Pty Ltd refused or failed, without

¹ See section 24(3) of the Act prior to the amendments introduced by the *Building Amendment (Registration and Other Matters) Act 2012*.

reasonable excuse, to comply with a reasonable request from the Director to answer a question, provide information or produce a document, pursuant to section 33(1)(a) of the Act. Section 34S(f) of the Act states that a building practitioner is “guilty” of professional misconduct if the Inquiry Board “is satisfied on the balance of probabilities” that the person is “guilty of conduct” referred to in section 33(1)(a). The admission by the practitioners – Mr. Glynatsis and ACT Builders (NT) Pty Ltd satisfies these legal requirements.

9. The allegations of professional misconduct in relation to (b) were dismissed by the Board on the 14 December 2012 and are subject to separate reasons. There were some initial oral submissions made concerning the appropriate “actions” the Inquiry Board should make in relation to (a) on this date. In the end directions were made to file written submission and the hearing on penalty was adjourned until the 18 January 2013.
10. A hearing concerning the appropriate “actions” the Board should take ultimately took place on the 11 February 2013. There was a delay in this hearing because of the death of Mr. Glynatsis’s wife and the Inquiry Board’s request that he attend in person.
11. Written submissions concerning penalty were filed by the Director and on behalf of Mr. Glynatsis and ACT Builders (NT) Pty Ltd.
12. Section 34P of the Act requires the Inquiry Board to decide “the action to be taken under section 34T” and whether to take additional action under section 34U.
13. Section 34T provides in short form that upon a finding of professional misconduct the Board “may take any of the following actions in relation to the practitioner” including: a reprimand; payment of all or a specified part of the reasonable costs of the Director in the inquiry; provision of an undertaking by the building practitioner to do or not do something; a civil penalty not exceeding 40 penalty units; suspension of registration for a period not exceeding 3 years and cancellation of the practitioner’s registration. The use of the words “take any of the following actions” means that the Board may impose one or more of the listed actions.
14. Section 34U provides that the Inquiry Board may direct the Director to audit the building practitioner’s work or conduct or both.
15. It is important to note that the Act was amended since the conduct that constituted professional misconduct occurred in 2011. The relevant amendment was the *Building Amendment (Registration and Other Matters) Act 2012*. This Act amended the civil penalty provision for professional misconduct from a maximum of \$5000.00 to 40 penalty units and came into effect on the 1 January 2013. This means that the civil penalty applicable in the Act at the time of the conduct was a

maximum of \$5000.00 and this applies in this case as the new provisions are not retrospective.

Object of Disciplinary Proceedings

16. It is well known that the object of disciplinary proceedings when regulating professional conduct is to protect the public and not to punish the practitioner in the sense understood in relation to the criminal law. The extent to which the “actions” the Board can take in relation to the building practitioner can be described as punishment is subject to different views in the case law.
17. The main High Court authorities concerning disciplinary proceedings in the regulation of professions are *NSW Bar Association v Evatt* 117 CLR 173 and *Clyne v NSW Bar Association* 104 CLR 186.
18. To quote from the first case *Evatt* at 183:
- The power of the Court to discipline a barrister is, however, entirely protective, and, notwithstanding that’s its exercise may involve a great deprivation to the person disciplined, there is no element of punishment involved.
19. In this jurisdiction in *The Director of Building Control and Ian Donald Gum* (4 June 2009) the Inquiry Board stated that the “imposition of penalties in disciplinary proceedings also has a specific and general objective of deterrence”. The Board cited *Building Professionals Board v Hans (No. 2)* a decision of the NSW Administrative Decisions Tribunal Appeal Panel as authority for this proposition.² Specific and general deterrence are generally associated with the criminal law.
20. The language used in the *Building Act* also has connotations of punishment by using the words “guilty” and “penalty”. The Board is empowered in section 34T to take “actions” in relation to a practitioner found “guilty” of professional conduct. One of those actions includes a civil penalty.
21. These apparent discrepancies may be more readily understood if one has regard to the observations of Basten, JA in *NSW Bar Association v Meakes* [2006] NSWCA 340 at [112], [113] and [114]. His Honour observes that the “courts continue to use the language of punishment in making disciplinary orders” and further states:

Firstly, that “no order should be made which has more serious consequences for the practitioner than is reasonably necessary in execution of the protective purpose.”

Secondly that the protective purpose “may operate in different

² (GD) NSWADTAP 48 at [155].

ways.” “First, by its direct effect upon the practitioner, the order will either remove that practitioner from membership of the profession (by disbarment or suspension) or will provide a deterrent against the repetition of such conduct (in the case of a fine or reprimand). There are also important but indirect effects to be considered. First, the order reminds other members of the profession of the public interest in the maintenance of high professional standards. Secondly and more specifically, it may give emphasis to the unacceptability of the kind of conduct involved in the disciplinary offence. Thirdly, by speaking to the public at large, it seeks to maintain confidence in the high standards of the profession.”

22. It is true that these observations are made in relation to disciplinary proceedings in relation to legal practitioners but we see no reason why they should not apply in this type of disciplinary proceeding.
23. The particular type of professional misconduct in this case being a failure to respond to the investigating authority – the Director, does not involve any actual risk to members of the public for example if it was faulty building work. It is purely regulatory in the sense that the facts consist of not responding to the regulatory investigating authority. One of the Director’s functions is to investigate complaints concerning a building practitioner and ensure the maintenance of standards of registered building practitioners in the public interest.
24. The purpose of the registration of building practitioners is to set standards in the public interest and to provide a means by which the Director can investigate a complaint in relation to practitioners. In this regard the comments of the Board in the matter of *Director of Building Control and Baxter* in 2010 are apposite at [19].

...it behoves a registered practitioner to develop the practice of minimizing exposure to allegations of professional misconduct by ensuring that each complaint is dealt with promptly and appropriately.

The Complaint

25. A person may make a complaint that a building practitioner has committed an offence against the Act, carried out work in a negligent or incompetent manner or is otherwise guilty of professional misconduct (section 26(1)).
26. A complaint in this matter, in the form of a letter dated 15 February 2011 was received by the Director on the 22 February 2011 that section 48B(1) of the Act was breached. The complaint was made by Davison Legal, Barristers and Solicitors on behalf of Heather and William Reed. This section concerns a requirement that a prescribed building contractor must not commence or carry out prescribed building

work without a contract with the owner of the land. A contravention of this provision may result in the imposition of a civil penalty. The provision as the Act stood in 2011 was in the following terms:

48B Building contract to be entered into

- (1) A prescribed building contractor must not commence or continue to carry out prescribed building work unless the building contractor has entered into a contract with the owner of the land on which the building work is to be carried out or with a person authorised by the owner to enter into the contract.

Penalty: If the offender is a natural person - \$10 000.
If the offender is a body corporate - \$50 000.

27. A prescribed building contractor is a type or "category" of registered building practitioner. The complaint was in relation to both building practitioners. The complaint related to ACT Builders, Mr. Ioannis Glynatsis and Building Materials Australia Pty Ltd (BMA) concerning the construction of a house at 106 Galbraith Road, Virginia in the Northern Territory. ACT Builders and Mr. Ioannis Glynatsis were registered as a Building Contractor Residential (Unrestricted). BMA was not a registered building practitioner. The sole director, secretary and shareholder of BMA and ACT Builders was Mr. Ioannis Glynatsis.
28. This complaint was subject to a hearing and as previously mentioned was dismissed and is subject to separate reasons for decision.

Professional Misconduct – the Facts

29. It was admitted during the hearing by both building practitioners that on some five (5) occasions the practitioners did not respond to the Director in relation to the investigation of the complaint.
30. These occasions were:
- On the 25 February 2011 a letter of notification of the complaint was sent inviting a response by 18 March 2011. There was no response.
 - On 29 March 2011 a further letter was sent requesting a response by 5 April 2011. There was no response.
 - On 6 April 2011 Mr. Glynatsis was telephoned to follow up the requests made concerning the complaint in the aforementioned letters. A response was promised by the 8 April 2011. There was no response.
 - On the 20 April 2011 a letter was sent requesting a response by the 4 May 2011. There was no response.
 - On the 20 May 2011 a further letter was sent advising "that an investigation would be commenced and requesting a written

response to a number of questions by the 30 May 2011. There was no response.

31. The matters were then referred to the Chairman of the Building Practitioners Board for the convening of an Inquiry on the 14 February 2012. On the same date the Director wrote to Mr. Glynatsis and ACT Builders advising of the referral and enclosing a copy of the documents referred to the Board.
32. The Inquiry Board when considering these reasons had some initial concerns as to whether an adequate distinction had been made by the Director when asking questions and seeking a response between Mr. Glynatsis as an individual building practitioner and ACT Builders as a registered building practitioner corporation. In the end the Inquiry Board was satisfied that this was not an issue given the close statutory relationship and responsibilities between the two practitioners, the fact that separate complaints were made concerning each practitioner and notified as such to the practitioners and the specific admissions made by Mr. Glynatsis on behalf of himself and ACT Builders and the fact that the building practitioners were legally represented.

Submissions on Penalty

33. The Director was represented by Mr. Hutton, a legal practitioner. He submitted in general terms that the necessity for the conduct of a hearing concerning the professional misconduct and the complaints that were dismissed could have been avoided by simply responding to the Director in a timely manner. He pointed out that the first request from the Director was on the 25 February 2011 and that it was not until the 29 November 2012 that a response was received by the practitioners concerned.
34. This is not quite correct in the Inquiry Board's view. As the 29 November 2012 was the date of hearing of the matters referred to the Inquiry Board. The date of the signed admissions by Mr. Glynatsis is in fact the 16 November 2012. There was never any compliance with the Director's requests for answers to questions but there was an admission of failure to respond as outlined.
35. Mr. Hutton advised that there was no relevant history concerning any breaches of the Act by either Mr. Glynatsis or ACT Builders or previous findings of professional misconduct. He further submitted that a fine of no less than \$500.00 in relation to each practitioner should be imposed, that consideration be given to the ordering of an audit by the Director of the practitioners "work or conduct", payment of the Director's costs and publication of the Board's decision pursuant to section 34R(3) of the Act. In relation to the submission concerning an "audit" it was submitted that:

The Director makes this submission having regard to the cavalier attitude of Mr. Glynatsis towards the complaints and his demeanour during the course of the inquiry before the Board.

36. This was a reference to Mr. Glynatsis's alleged demeanour when giving evidence to the Inquiry Board in the hearing of the other matter that was referred but dismissed by the Board.
37. Mr. Hutton had originally made oral submissions that a civil penalty of \$5000.00 was appropriate.³
38. On behalf of the building practitioners concerned Mr. Mariotto submitted that Mr. Glynatsis and ACT Builders "admitted to the charge at a very early stage"; that as the other referrals had been dismissed which constituted the initial substantive complaint the failure to respond "can only objectively be viewed as minor" and that in the case of *Baxter* the misconduct was not held to be minor yet attracted a civil penalty of \$500.00. In these circumstances it was submitted that a reprimand was appropriate as the failure to respond was "minor" and that if a fine was thought by the Board to be appropriate it should be for "a nominal amount".
39. In relation to the Director's submission that an audit should be ordered (pursuant to section 34U) it was submitted by Mr. Mariotto that such an order "should only be made in circumstances where there is a course of conduct which suggests the practitioner is conducting himself in a manner in which has grounded a finding of professional misconduct". The Inquiry Board understands this submission to mean that if the related referrals outlined in (b) at page 2 of these reasons had been established and constituted continuing conduct then an order for an audit may be appropriate.

Previous decisions of the Inquiry Board

40. The Inquiry Board was also referred by Mr. Hutton to previous decisions of the Board concerning professional misconduct in *Director Building Control and Ian Izod (22/6/2007)*, *The Director of Building Control and Baxter (16/2/2010)* and *Director of Building Control and Gum (12/2/2009 and 4/6/2009)*.
41. It is noted that in relation to these decisions only *Izod* concerned section 33(1)(a) of the Act and that a civil penalty of \$500.00 was imposed as well as an undertaking in accordance with section 34T(c) of the Act. Further it is noted in this case that there was one failure by the building practitioner to respond to the Director's request and the practitioner ultimately complied a few months after the original request and displayed contrition concerning the failure to respond.

³ See transcript page 15 (464) on 14/2/12.

Penalty

42. The Board being satisfied that the practitioners are guilty of professional misconduct must consider whether any of the actions in section 34T of the Act are appropriate. That section has been summarised earlier in these reasons.
43. In the end result the Inquiry Board does not agree with either submission as it finds the conduct of Mr. Glynatsis and ACT Builders as comprising serious disregard of the obligations of a practitioner to comply with the reasonable requests of the Director when investigating a legitimate complaint. As should be obvious and was stated in *Izod* (at page 6):
- ...it is important that practitioners recognise that compliance with requests of the Director is essential to the proper administration of the Act.
44. Mr. Glynatsis and ACT Builders did not comply on some four occasions after being requested by the Director in the original notification of complaint on the 25 February 2011 requesting a response by the 18 March 2011. On the facts this constitutes some 5 occasions in which both practitioners did not respond.
45. There was no explanation given as to why Mr. Glynatsis did not respond on behalf of himself or the Corporation, nor any contrition expressed in the proceedings for the failure to respond. When the Inquiry Board expressed its concern to Counsel for the practitioners that there appeared to be no understanding or appreciation exhibited concerning the importance of compliance with the Director's reasonable requests when investigating a complaint in the public interest the response this elicited was that Mr. Glynatsis would now understand the importance of complying with such requests in the future because of the cost to him of these proceedings including legal fees. This was a disturbing feature of the case, whilst taking into account Mr. Glynatsis's eventual admissions on his own behalf and that of the Corporation.
46. It was put to the Board that the professional misconduct involved was "minor" and admissions were made at a "very early stage" in the proceedings. The admissions were made in the context of the referrals having been set down for hearing. It is true that these admissions were made prior to the commencement of the actual hearing in late November 2012 but in the context of Mr. Glynatsis having been first requested by the Director to respond to the initial request by the 18 March 2011 and the referral to the Building Practitioners Board having taken place on the 14 February 2012.

47. Given the facts it cannot be said that the misconduct is minor and a reprimand an appropriate outcome.
48. In the circumstances of this case the Board has decided to impose a civil penalty. It does so because the admitted professional misconduct is serious because it occurred on some 5 occasions without explanation, contrition or an appreciation by Mr. Glynatsis of the importance of complying with the Director's reasonable requests in the public interest. These findings are equally applicable to ACT Builders. Mr. Glynatsis was clearly responsible to answer for himself and for the corporation separately and the facts constituting professional misconduct apply to each in an equal manner.
49. In accordance with the Act as it stood in 2011 a civil penalty must not exceed \$5000.00.⁴
50. A civil penalty of \$500.00 as submitted by Counsel for the Director is manifestly inadequate in the Board's opinion given the facts outlined in this case and the clear lack of parity concerning that penalty imposed in the previous Board decision of *Izod* concerning the same type of professional misconduct. Parity of actions or penalty in appropriate cases by the same Tribunal is an important principle.
51. The Board decided that a civil penalty of \$1500.00 was appropriate in relation to each practitioner. This is because the facts and circumstances were identical in relation to each practitioner and taking into account the fact that Mr. Glynatsis was personally liable as a building practitioner and separately as the responsible person for the corporation.
52. The formal order of the Inquiry Board is that each building practitioner – Mr. Ioannis Glynatsis and ACT Builders (NT) Pty Ltd separately pay a civil penalty of \$1500.00 each.
53. The same level of responsibility clearly lies with both. It might be thought that a higher penalty was warranted but the Inquiry Board has taken into account that this is the first finding of professional misconduct in relation to both practitioners.
54. In the Inquiry Board's view an audit is not appropriate as there has been no findings concerning the practitioners quality of building work.
55. The Board directs that these reasons be available for distribution to the public including on the Building Practitioners Board website. No

⁴ The Act now provides for a civil penalty of 40 penalty points. The *Penalty Units Regulations* for a civil penalty as of the 1 July 2012 is \$141.00 per unit. This means that the maximum penalty currently is \$5,640.00.

reasons have been put as to why publication of these reasons should not occur. It is important that the public is aware of findings of professional misconduct.

56. Submissions were also made in relation to costs. These will be dealt with in the related reasons for decision concerning the dismissal of the other matter referred to earlier in these reasons.
57. The Inquiry Board is prepared to hear from the practitioners if time to pay is sought in relation to the penalties imposed.
58. The Board directs that these reasons be provided to the complainants, the Director and Mr. Glynatsis and ACT Builders pursuant to section 34P(2) of the Act.
59. The complainants, the Director and Mr. Glynatsis and ACT Builders have rights of appeal to the Local Court within 30 days after being notified of this decision.

Dated:

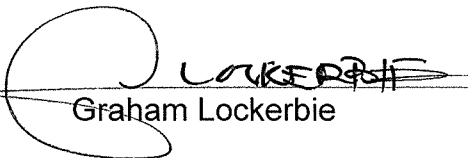
4 April 2013



Michael O'Donnell
Chair



Paul Nowland



Graham Lockerbie