

NORTHERN TERRITORY BUILDING PRACTITIONERS BOARD

POLICY TITLE: INQUIRY BOARD PROCEDURES

POLICY NO.: BPB-009

EFFECTIVE DATE: 24 September 2008

REVIEW DATE: January 2015

Adopted by the Building Practitioners Board



.....
Chairperson

5.3.13

.....
Date

1. Introduction	3
2. Objectives of the Act	3
3. Functions of the Board	3
4. Matters which may be referred to the Board for Inquiry	4
5. Constitution of an Inquiry Board	4
5.1 Process for Establishment of an Inquiry Board	5
6. Members' Duty to the Inquiry Board	6
6.1 Declaration	6
6.2 Confidentiality	7
6.3 Impartiality	7
7. Conduct of an Inquiry	7
7.1 Consideration of the Inquiry	7
7.2 Inquiry Process	8
7.3 Decision Making Process	9
7.4 Possible Actions	10
7.5 Written Notice of Decision	10
7.6 Dismissal	11
8. Protection of Inquiry Board Members	11
9. Appeal of Inquiry Board Decision	11
10. Further Information	12

1. Introduction

The Inquiry Panel Procedures provides general guidance for members of an Inquiry Board established under the Building Act (the Act). This document is designed to assist members of Inquiry Boards in the process and the decision making tasks and to deal with the evidence and issues before them in a fair, equitable and objective manner.

Members of Inquiry Boards should form their own opinions when deliberating the merits of the evidence and issues before them, and be prepared to discuss their individual views openly within the privacy of the Inquiry Board. The private deliberations of the Inquiry Board form an important part of the decision making process and must be dealt with by members of the Inquiry Board in strict confidence to protect the Inquiry Board's independence.

When dealing with a Practitioner's Inquiry matter, Inquiry Board members must adhere to the following principles:

- Act impartially;
- Act independently of any extraneous information and without bias;
- Maintain confidentiality of all proceedings associated with the process including private deliberations;
- Declare any potential for conflict of interest or apprehension of bias;
- Uphold the principles of natural justice.

Decisions of Inquiry Boards may be subject to Judicial Review by the Local Court and must be made on the evidence properly put before them, and not on extraneous information or bias. Such decisions can have a profound effect on the lives and careers of the people concerned and Inquiry Board members carry an important responsibility.

2. Objectives of the Act

The objectives of the Building Act as defined in section 3 pertaining particularly to the professional standards and conduct of building practitioners are:

- (a) to establish, maintain and improve building standards;
- (h) to facilitate national uniformity in the training and qualifications of certain building practitioners and the recognition of qualifications on a national basis;
- (ha) to provide for the registration of building practitioners; and
- (hb) to provide for the investigation, audit and disciplining of building practitioners.

3. Functions of the Building Practitioners Board

The Board is empowered under section 14(1) of the Act to:

- (a) establish and maintain a system of performance reporting on building practitioners to ensure that information on past performance is available and able to be taken into account when assessing the competence of building practitioners;
- (b) to register persons as building practitioners;
- (c) to monitor the compliance of building practitioners with their registration requirements;

- (d) to monitor the competence to practice and professional conduct of building practitioners;
- (e) to conduct inquiries into the work and conduct of building practitioners and, if necessary, to discipline building practitioners;
- (f) to develop and publish codes of practice about the work and conduct of building practitioners for reference by building practitioners and for use by the Board and the Director in assessing the work and conduct of building practitioners; and
- (g) any other functions imposed on the Board by this or another Act or the Minister.

Under section 14(2) the Board may do all things necessary or convenient to be done for or in connection with or incidental to the performance of its functions and the exercise of its powers.

4. Matters which may be referred to the Board for Inquiry

Under section 34G, the Building Practitioners Board must hold an inquiry into a matter that is referred to it by the Director of Building Control under the following circumstances –

Section 33(1)

If, in the course of the conduct of an investigation of a complaint by the Director, a practitioner

- (a) refuses or fails, without reasonable excuse, to comply with any reasonable request from the Director to answer a question, provide information or produce a document; or
- (b) in purported response to a request from the Director, gives an answer, provides information or produces a document that is false or misleading.

Section 34(1)(b)

If, on completion of the investigation of a complaint, the Director decides that there is evidence that a building practitioner the subject of the investigation may be guilty of professional misconduct.

Section 34E(1)

If, in the course of an audit, a practitioner

- (a) refuses or fails to comply with any reasonable request from the auditor to answer a question, provide information or produce a document; or
- (b) in purported response to a request from the auditor, gives an answer, provides information or produces a document that is false or misleading.

Section 34F(2)(b)

If, on completion of an audit, the Director decides there is evidence that a building practitioner the subject of the audit may be guilty of professional misconduct.

Section 34F(3)

If, at the completion of an audit, the Director makes the decision that a remedial program be developed and implemented and the building practitioner does not participate in the development or implementation of the remedial program to the Director's reasonable satisfaction.

5. Constitution of an Inquiry Board

Inquiry Boards are established under section 34J of the Act. Members of an Inquiry Board must be chosen by the Chairman of the Building Practitioners Board and membership comprises –

- (a) the legal practitioner of the Practitioners Board to be the presiding member for the inquiry;

- (b) an industry member of the Practitioners Board who is appointed to represent the interests of the category of building practitioner in which the building practitioner the subject of the inquiry is or was registered;
- (c) any other member of the Practitioners Board as appointed by the Chairman.

5.1 Process for Establishment of an Inquiry Board

The Registrar will ensure that the documentation from the Director is recorded and referred directly to the Chairman or Acting Chairman of the Practitioners Board in the Chairman's absence within 2 working days of receipt from the Director. The Registrar will not refer the matter to any other Board Member or to a general or extra-ordinary Board Meeting.

Within 7 working days of receipt of advice from the Registrar of the matter for inquiry, The Chairman will, in writing, invite –

- (a) the Board's legal practitioner to preside over the inquiry; and
 - (b) the industry member on the Board (or one of the industry members should there be more than one); and
 - (c) one other Board member at the Chairman's discretion;
- to make up the Inquiry Board.

In accordance with the principles of natural justice, each of these members will be formally requested to declare in writing no conflict of interest with regard to the inquiry matter. No Board member who has a conflict of interest or who is not an appointed member of the Inquiry Panel will be involved in the receipt, investigation or hearing of evidence or any other matter associated with the inquiry matter or determination of the inquiry matter.

If the Board's legal practitioner is not available (because of a conflict of interest or otherwise) to be appointed as the presiding member, the Chairman of the Board may appoint (in writing), a legal practitioner who is enrolled as a legal practitioner (however described) of the High Court, the Supreme Court, or the Supreme Court of a State or another Territory of the Commonwealth and has been so enrolled for at least 5 years, as the presiding member of the Inquiry Board.

If there are no Board industry members available (because of a conflict of interest or otherwise) to be appointed as the industry member on the Inquiry Board, the Chairman may appoint (in writing) either:

- (i) a person who is not a member of the Practitioners Board but is registered in the category of building practitioner in which the building practitioner the subject of the inquiry is or was registered; or
- (ii) if it is not practicable to appoint a person referred to in subparagraph (i) – an industry member who is registered in a category of building practitioner (although not the category in which the building practitioner the subject of the inquiry is or was registered).

to represent the interests of the category of building practitioner in which the building practitioner the subject of the inquiry is or was registered.

The Chairman cannot appoint the Director of Building Control as a member of an Inquiry Board.

6. Members' Duty to the Inquiry Board

It is of fundamental importance that Inquiry Board members understand that their only allegiance when dealing with an Inquiry matter is to the Inquiry Board. The Inquiry Board and its members are not subject to directions or instructions from any other person, body or authority, other than a court.

The law requires members to act in all matters before an Inquiry Board with fairness, equity and impartiality, independent of any interests of government, any employer or any industry association.

6.1 Declaration

To ensure a fair review or hearing, Inquiry Board members must disqualify themselves if there are grounds for reasonable apprehension of bias or a bias (or prejudice) on their part. Prior to the commencement of proceedings, Inquiry Board Members will be required to declare (in writing) that-

1. They do not have and have not had a relationship with a party before the Inquiry Board of a kind that may cause a reasonable person to suspect that they may be biased, including:
 - i. A family relationship;
 - ii. A close personal relationship;
 - iii. A relationship involving personal hostility;
 - iv. A business or employment relationship.
2. They do not have and have not had any other personal or professional involvement in the matter to be considered by the Inquiry Board (eg a pecuniary, or non-pecuniary interest in the matter – such as acting as a party's adviser in relation to that matter).
3. They understand that, while acting as an Inquiry Board member, they are not subject to direction by, nor should they act on instructions from any other person, body or authority other than a court of law.
4. They will conduct their duties as a member of the Inquiry Board in accordance with the *Building Act* with fairness, equity and impartiality independent of any sectional interests;
5. They will contribute to the identification of the key issues of the Inquiry and participate in the analysis and assessment of those issues based on their own opinions on the merits and the information before the Inquiry Board.
6. After making this declaration, should a relationship, involvement or interest of a kind described in this declaration develop, and there are grounds for reasonable suspicion of bias or prejudice on their part, they will disqualify themselves from participation in the Inquiry.
7. They will ensure that the free and frank exchange of views of the Inquiry Board in deliberating the evidence and matters before it remain, strictly confidential.

6.2 Confidentiality

The scope of discussion necessary to arrive at a decision on an inquiry matter will vary with each inquiry. Consistent with the necessity for a free and frank exchange of views, it is important that Inquiry Board members ensure any such discussion remains, without exception, strictly confidential.

6.3 Impartiality

Inquiry Members should not form any pre-conceived views about the outcome of the process, should not receive any briefing on the inquiry matter from any independent source and should not feel intimidated or under pressure from any person or body to reach a particular outcome. If a member is concerned about any such aspect, they should declare their concern to the presiding member.

7. Conduct of an Inquiry

The Act does not specify set procedures to be followed for the conduct of an inquiry. Section 14(2) empowers the Practitioners Board *“to do all things necessary or convenient to be done for or in connection with or incidental to the performance of its functions and the exercise of its powers”*. The procedures of an Inquiry Board should provide an assurance of a person’s rights through natural justice. This applies equally to a complainant and to the practitioner who is the subject of the inquiry.

7.1 Consideration of the Inquiry

The procedure for considering an Inquiry is, subject to Section 34K of the Act, within the discretion of the presiding member for the inquiry within the limits of the Act and the Regulations, provided the principles of natural justice are satisfied.

Section 34K(1) of the Act provides:

“The Inquiry Board is not bound by the rules of evidence but is bound by the rules of natural justice”.

The Building Practitioners Board accepts that the principals of natural justice are a part of a democratic way of life and that these rules exist to ensure that all people are given the right to be treated equitably.

Natural Justice has two basic principles:

- Any proceedings or processes must be conducted impartially and without bias; and
- Any hearing or determination must be fair and each party must have adequate notice of the case they are called to answer, an opportunity to present their case, and to answer or challenge any prejudicial evidence.

Section 34K(3) of the Act provides:

“The inquiry must be conducted with as little formality and technicality, and with as much expedition, as this Act and the Regulations and a proper consideration of the matter being inquired into permits”.

Parties to the Inquiry are the Inquiry Board, the Director of Building Control and the building practitioner the subject of the inquiry. A practitioner may appear before the inquiry personally or by a representative (legal or otherwise).

Section 34L provides that an inquiry must be open to the public unless the presiding member for the inquiry directs otherwise.

7.2 Inquiry Process

Within 2 days of an Inquiry Board being constituted in accordance with section 34J of the Act, Members of the Inquiry Board will be provided with the case file which includes -

- a summary of the case;
- the brief of evidence;
- witness statements; and
- any other supporting documentation

from the Director of Building Control who is bringing the case to the Inquiry Board.

This documentation will be kept in strictest confidence by all parties and the Register will ensure that the documentation is delivered by hand to each Inquiry Board Member. The Inquiry Board should not rely on any information from any other source as this may constitute a denial of natural justice to the practitioner and subject the Board's decision to review.

The building practitioner, the subject of an inquiry shall be notified, in writing, by the presiding member as soon as practicable after the constitution of the Inquiry Board -

- of the particulars under inquiry;
- of the date, time, place and how the inquiry is to be held (will be provided with a copy of these procedures);
- of the names of the persons appointed to the Inquiry Board;
- of their right to make written submissions to the Inquiry Board in response to the particulars under inquiry prior to the date of the inquiry and the date by which these submissions are due;
- of their right to be represented by a third party at the inquiry and that they must be notify the Inquiry Board of the name of any such representative;
- of the date by which they must confirm receipt of the notice and their attendance or their representative's attendance at the inquiry;
- of their right to make both oral and written submissions when appearing before the Inquiry Board;
- that any written submissions presented by the third party on their behalf must be signed by the building practitioner;
- that the Inquiry will be open to the public unless the presiding member has directed otherwise and the reasons for this direction.

Under section 34N the Inquiry Board has the power to require a practitioner -

- (a) to attend and give evidence; the Inquiry Board may require a person to take an oath or affirmation or to answer a question;
- (b) to attend before the Inquiry Board and produce a document in the person's possession or control. The Board may keep a document produced to it for as long as the Board considers it necessary to complete the inquiry.

The Inquiry Board will allow a period of 21 working days to the practitioner to peruse the documentation submitted by the Inquiry Board and to make written submission to the Inquiry Board.

Presentation of a case usually follows the practice of the Inquiry Board presenting the matters for inquiry before it to the practitioner and then allowing the practitioner opportunity to reply to those submissions by way of an answer and, finally, allowing the Inquiry Board to reply to the submissions of the practitioner in respect of any further matters which may have been raised in the practitioner's response.

7.3 Decision Making Process

Members of an Inquiry Board have equal voting rights and decisions may either be unanimous or by majority. Where a decision is not unanimous, the minority view of the dissenting Board members should be included in the Board's report.

The decision of the Inquiry Board, or each member of the Board, is based on the civil standard of proof; the balance of probabilities. This means that, in finding a fact proved, the Board need only find that the fact was more probable than not to be true and it need go no further than that.

Under section 34S, a practitioner must be found 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 under the Act or the Regulations;
- (b) is guilty of a pattern of negligent or incompetent conduct or serious negligence or incompetence in carrying out particular work;
- (c) has authorized or permitted an employee, or another person engaged to do work on the practitioner's behalf, to work as a building practitioner in a category of building practitioner in which the employee or other person is not registered;
- (d) obtained his or her registration by fraud or misrepresentation;
- (e) has had his or her authority to practice as a building practitioner in a place outside the Territory cancelled or suspended, otherwise than for failure to renew the authority;
- (f) is guilty of conduct referred to in section 33(1)(a) or (b) or 34E(1)(a) or (b) (refer "Matters which may be referred to the Board for Inquiry" on page 3); or
- (g) is otherwise guilty of professional misconduct.

The Inquiry Board will make its decision as soon as practicable after it has considered all the evidence and submissions presented by the parties.

Section 34P of the Act requires that on completion of the inquiry, the Inquiry Board must –

- (a) decide, in accordance with section 34S, whether or not a building practitioner the subject of the inquiry is guilty of professional misconduct; and
- (b) if the practitioner is guilty – decide the action to be taken under section 34T and whether or not to take additional action under section 34U.

7.4 Possible Actions

A range of penalties is available to an Inquiry Board under section 34T of the Act if, on completion of an inquiry, the Inquiry Board is satisfied 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 –
 - a. at any time or during any period; or
 - b. at a specified time or during a specified period;
- (d) require the practitioner to pay to the Territory a civil penalty not exceeding \$5,000. This is a civil penalty recoverable as a debt due to the Territory by the practitioner;
- (e) suspend the practitioner's registration for a specified period (not exceeding 3 years);
- (f) cancel the practitioner's registration.

In addition to the action decided above, under section 34U, the Inquiry Board may also direct the Director to audit the building practitioner's work or conduct or both.

Should an Inquiry Board suspend or cancel a practitioner's registration, the practitioner must, not later than 14 days after his or her registration is cancelled or suspended, deliver to the Practitioners Board, the registration certificate issued to them upon registration.

7.5 Written Notice of Decision

As soon as possible after making the decision, the Inquiry Board must give written notice of the decision to –

- (a) the Director of Building Control;
- (b) the building practitioner the subject of the inquiry;
- (c) any complainant in the investigation (if the matter was referred to the Board under s. 33(1) and 34(1)(b) (refer page 3);

The notice must set out –

- (a) the reasons for the decision
- (b) the procedure for commencing an appeal under Division 4.

After, and only after, the Inquiry Board has notified the practitioner of its decision, section 34R of the Act provides that the Inquiry Board may give a copy of its decision in an inquiry to -

- (a) a professional or trade organization of which the building practitioner the subject of the inquiry is a member; or
- (b) the practitioner's employer.

The Inquiry Board, an organization or an employee who is given a copy of a decision under section 34R, may publish a copy or report on the decision in whatever manner the Board, organization or employer considers appropriate. The Board, organization or employer may not be found civilly or criminally liable for publishing, in good faith, a copy of, or a fair and accurate report of, the decision

7.6 Dismissal

If the Inquiry Board is not satisfied that a building practitioner the subject of an inquiry is guilty of professional misconduct, the Board, under section 34Q, may order the Territory to pay all or a specified part of the practitioner's reasonable costs. These costs are recoverable as a debt due to the building practitioner by the Territory.

8. Protection of Inquiry Board Members

Section 153 of the Act refers to Liability of officers, including the Practitioners Board and by its composition, members of an Inquiry Board, and provides that "no matter or thing done, or omitted to be done ... subjects the Practitioners Board ... to any action, liability, claim or demand, if the matter or thing was done or omitted to be done in good faith for the purpose of performing a function or executing a power under the *Building Act* or any other Act, or the performance or exercise, or intended performance or exercise, of the functions or powers of the member".

9. Appeal of Inquiry Board Decision

The following decisions of an Inquiry Board are appellable decisions –

- (a) a decision under section 34P that a building practitioner is or is not guilty of professional misconduct; and
- (b) a decision under section 34P to take or not to take an action under section 34T or 34U.

A practitioner must be advised of his or her appeal rights under section 36 of the Act. A practitioner has 30 days after being notified of the decision to appeal to the Local Court against the decision. The appeal is to be a rehearing of the evidence before the Inquiry Board. However, section 36A(2), provides for the admission of evidence that was not before the Inquiry Board if the Court is satisfied there were special reasons that prevented its presentation before the Inquiry Board.

The Local Court may –

- (a) uphold the Inquiry Board's decision;
- (b) vary the Inquiry Board's decision; or
- (c) set aside the decision and substitute another decision that could have been made instead of the Inquiry Board's decision.

A decision of the Local Court on an appeal is final and is not subject to further appeal.

10. Further Information

If an Inquiry Board member is in any doubt about any aspect of their role and duty as an Inquiry Board member, they should discuss and clarify this with the presiding member.