

BUILDING PRACTITIONER INQUIRY BOARD

Reasons for Decision

Building Practitioner:	Professional Building Services Australia Pty Ltd
Building Practitioner Category:	Building Certifier (Unrestricted)
Referred By:	Director of Building Control
Proceedings:	Referral of Inquiry to the Building Practitioners Board in accordance with section 34F(2)(b) of the <i>Building Act (1993)</i> NT
Inquiry Board:	Maria Savvas (Presiding Member) Craig Leslie (Member) Natasha Bertinazzi (Member)
Date of Hearing:	26 April 2023
Date of Decision:	24 June 2025

Background

1. On 15 February 2022, the Director of Building Control (**the DBC**) referred Professional Building Services Australia Pty Ltd (**the Practitioner**) to the Building Practitioners Board for Inquiry pursuant to section 34F(2)(b) of the Act (**the Referral**).
2. The Referral was made following the audit of the Practitioner on 13 May 2021 on the basis that the DBC determined there was evidence that the Practitioner was guilty of professional misconduct. Specifically, the DBC alleges in the Referral dated 15 February 2022 that the Practitioner is guilty of professional misconduct pursuant to section 34S of the *Building Act (1993)* NT (**the Act**) as the Practitioner has committed the following offences against the Act:
 - (a) Section 42(1)(a) – a permit register was not maintained in the approved form.
 - (b) Section 42(1)(c) – the Director was not given copies of certification within 7 days after granting the following occupancy certifications for permits on 12 June 2019:
 - (i) 010/7403/52;
 - (ii) 010/7403/52/A1;

- (iii) 010/7403/53;
 - (iv) 010/7403/60;
 - (v) 010/7403/60/A1;
 - (vi) 010/7403/61; and
 - (vii) 010/7403/71.
- (c) Section 42(1)(c) – the Director was not given a copy of certification within 7 days after granting the occupancy certification for permit 010/7403/53 on 7 June 2021.
 - (d) Section 70(2)(a) – granted occupancy permits 010/7403/52 and 010/7403/52/A1 on 11 June 2021 when no application for occupancy permit was made by the owner or the owner’s agent (per Sch.3 Cl.3).
 - (e) Section 70(2)(a) – granted occupancy permit 010/7403/53 on 7 June 2021 when no application for occupancy permit was made by the owner or the owner’s agent (per Sch.3 Cl.3).
 - (f) Section 70(2)(a) – occupancy permit 010/7403/52 and 010/7403/52/A1 granted on 11 June 2021 with reliance on section 40 certificate given by an unregistered building practitioner (per Sch.3 Cl.3).
 - (g) Section 70(2)(a) – occupancy permit 010/7403/53 granted on 7 June 2021 with reliance on section 40 certificate given by an unregistered building practitioner (per Sch.3 Cl.3).
 - (h) Section 70(2)(a) – occupancy permit 010/7403/61 granted on 2 July 2021 with reliance on section 40 certificate given by an unregistered building practitioner (per Sch.3 Cl.3).
 - (i) Section 70(2)(a) – occupancy permit 010/7403/61 granted on 2 July 2021 when no electrical certificate of compliance (per Sch.3 Cl.3).
 - (j) Section 70(2)(a) – occupancy permit 010/7403/53 granted on 7 June 2021 when no consent, report or approval from the Chief Health Officer (per Sch.3 Cl.3).
 - (k) Section 70(2)(a) – occupancy permit 010/7403/61 granted on 2 July 2021 when no consent, report or approval from the Chief Health Officer (per Sch.3 Cl.3).
 - (l) Section 70(2)(a) – occupancy permit 010/7403/53 granted on 7 June 2021 when no consent, report or approval from the Northern Territory Fire and Rescue Services (per Sch.3 Cl.3).
 - (m) Section 70(1) – occupancy permit 010/7403/52 and 010/7403/52/A1 granted on 11 June 2021 when insufficient documentation to support that building was compliant in all material respects with the regulations and suitable for occupation.
 - (n) Section 70(1) – occupancy permit 010/7403/53 granted on 7 June 2021 when insufficient documentation to support that building was compliant in all material respects with the regulations and suitable for occupation.

- (o) Section 70(1) – occupancy permit 010/7403/61 granted on 2 July 2021 when insufficient documentation to support that building was compliant in all material respects with the regulations and suitable for occupation.
- (p) Section 70(2)(b) – it is unclear if the building work is consistent with the building permit given the lack of documentation for permits 010/7403/52, 010/7403/52/A1, 010/7403/53, 010/7403/61

(“the Alleged Offences”)

- 3. Prior to the Hearing, the parties provided the Board with an Agreed Statement of Facts dated 10 August 2022 and written submissions were also provided in relation to the facts not agreed between the parties and the evidence in preparation for the Hearing.
- 4. On 26 April 2023, this matter proceeded to a Hearing before the Board. During the course of the Hearing the Practitioner conceded the Alleged Offence and the parties agreed to provide the Board with an Amended Statement of Facts and submissions in relation to penalty.

Decision

- 5. This is the decision of the Inquiry Board convened pursuant to s34J of the Act to hear and determine whether the Practitioner is guilty of the Alleged Offences, and the appropriate action to take in respect of such conduct.
- 6. Section 34P of the Act provides as follows:
 - (1) *On completion of an 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. The Board accepts the facts and makes the findings as set out Amended Statement of Agreed of Facts signed by the DBC on 14 September 2023 and the Practitioner on 19 September 2023 is annexed hereto and marked ‘A’ (the **Agreed Facts**).
- 8. At paragraph 18 of the Agreed Facts, the Practitioner admits the Alleged Offences the subject of the Referral.

9. Accordingly, the Board is satisfied on the balance of probabilities that the Practitioner has committed the Alleged Offences and is therefore guilty of professional misconduct in accordance with section 34S(a) of the Act (the **Offences**).

10. It is now a matter for this Board to evaluate the conduct of the Practitioner to assess the degree of seriousness of the offending and level of culpability of the Practitioner, in order to determine what constitutes an appropriate penalty under section 34T of the Act.

11. 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*
 - (ii) at a specified time or during a specified period;**
- (d) require the practitioner to pay to the Territory a civil penalty not exceeding:
 - (i) if the practitioner is an individual – 160 penalty units; or*
 - (ii) If the practitioner is a corporation – 800 penalty units;**
- (e) suspend the practitioner's registration for a specified period (not exceeding 3 years);*
- (f) cancel the practitioner's registration.*

12. The objective of disciplinary proceedings is to promote the objects of the Act and to ensure adherence with the legislative framework by all building practitioners. The Inquiry Board endeavors to communicate to building practitioners its concerns regarding industry practices that do not comply with the Act. In particular any intentional, reckless or negligent disregard of the statutory requirements of the Act is not acceptable and will likely attract serious penalties. The Board has also had regard to protecting the public and principles of specific and general deterrence.

13. In assessing the Practitioner's conduct and determining the appropriate penalty, the Board has had regard to the DBC's submissions dated 25 January 2024 and 30 April 2024, and the Practitioner's submissions provided on 27 March 2024.
14. There is no doubt that the role of a certifier is critically important in upholding professional standards and ensuring that other categories of building comply with their obligations. Ultimately, such compliance serves to protect consumers and the public more broadly.
15. In its submissions, the Practitioner highlights the long history relating to the services performed by the Practitioner and others relating to the relevant building. The Board accepts that the works to be performed by the Practitioner were difficult and complicated by historical issues. The Board also accepts that the Practitioner, in part, relied on information provided by others. However, these are not matters which excuse the Practitioner failings in ensuring that it complied with the statutory requirements, undertake its own due diligence and provide a service in manner to be expected by the profession.
16. The Offences committed by the Practitioner are numerous, and for the most part, serious. Specifically, the Board considers the offences relating to breaches of section 70(1), 70(2)(a) and 70(2)(b) as serious because they go to the core of certifiers statutory responsibilities. These sections impose a duty on certifiers to carry out their functions in a professional manner and in accordance with the Act and relevant regulations. A breach of these obligations undermines the standard of professionalism expected of certifiers and may compromise the quality, safety, or compliance of building work. These breaches risks undermining the purpose of independent certification, which is to provide a safeguard against non-compliant or unsafe building practices.
17. The DBC concedes, and the Board accepts, that the Practitioner did not commit the Offences intentionally, however this does not mitigate the seriousness of the conduct. The Practitioner's conduct clearly demonstrates its lack of understanding into the requirements of the Act.
18. The DBC submits that the Board should seek a written undertaking from the Practitioner that it will not apply for registration as a building practitioner in the NT for a period of not less than 3 years. The DBC further submits that the decision of the Board be published, and a copy of the decision be provided to the equivalent authority in South Australia where the Practitioner continue to operate. The DBC also seeks its costs thrown away in respect of the matter in the amount of \$9,800 plus GST.

19. The Practitioner submits that the each of the offences in the Referral should be dealt with as one offence of professional misconduct and that the “totality principle” as set out in *Contin v The Queen* [2012] VSCA 247 should be adopted. It submits that there be a finding of one count of professional misconduct and that the Practitioner not be punished for each of the allegations which are the factors that cumulatively make up the breach and support that finding.
20. The Board has determined that there are 17 separate breaches of the Act (as outlined above) which have been admitted. That being the case, the Board, as stated above, has determined that the Practitioner is guilty of professional misconduct. The Board proposes to make that finding and impose a penalty in accordance with the totality principle.
21. On that basis, having regard to the offences collectively, the Board does not accept that the offences are at the lower end of the scale of seriousness. It is apparent from the nature of the offences that the Practitioner clearly misconceived its statutory obligations. Such misconceptions cannot be explained as administrative errors, nor justified by attributing responsibility for historical works to others.
22. The mitigating factors the Board has had regard to are:
- (i) The Board acknowledges that the Practitioner has not previously been referred to the Inquiry Board for breaches of the Act or Regulations.
 - (ii) The Practitioner fully cooperated in the audit process and, when appropriate made concessions.
 - (iii) The Practitioner has elected to cease practicing in the Northern Territory.
 - (iv) The Practitioner has rectified its permit register to comply with the approved form.
 - (v) There was no dishonesty on the part of the Practitioner.
 - (vi) The relevant works were complex, historical and lacked documentation.
23. In respect to the issue of costs, the DBC contends that the Practitioner’s conduct caused unnecessary time and costs to be incurred by having to proceed to a contested hearing, and that the Practitioner should have admitted the offences earlier. The DBC seeks to recover the costs of counsel ‘thrown away’, that is, the costs associated with drafting submissions as to liability (\$4,800 plus GST) and reviewing submissions and drafting submissions in reply (\$1,800 plus GST), preparing for the hearing and appearing at the hearing (\$3,200 plus GST).

24. The Practitioner contends that it did not make an early admission as to the facts due to its understanding of the “dire consequences” of having a finding of guilt made against it, together with the possible financial consequences resulting from same. The Board does not accept that was reasonable to defend the allegations because of the possible consequences for the Practitioner.
25. The Practitioner further submits that having raised the issue of treating all events as amounting to one breach of professional misconduct in its submissions on liability (prior to the Hearing), and not having a response to same from the DBC further warranted its position to defend the allegations. Again, the Board does not accept that explanation, as the DBC confirmed its acceptance of the application of the totality principle when assessing the appropriate penalty.
26. The Board recognizes that the Practitioner did not admit the offences at the earliest opportunity, and it was not until the Hearing that those admissions were made. Such conduct caused unnecessary time and costs to be incurred.
27. In considering the appropriate action under section 34T, the Board has had regard to the seriousness of the breaches and mitigating factors submitted by the Practitioner. The Board has had regard to the DBC’s submissions on penalty and the submissions made by the Practitioner.
28. The Inquiry Board had determined that the appropriate action to be taken pursuant to section 34T is as follows:
 - a. Pursuant to section 34T(c)(i), the Practitioner must give a written undertaking to the Building Practitioners Board that it will not apply for registration as a building practitioner in the Northern Territory for a period of not less than 2 years from the date of this decision.
 - b. The Practitioner is to pay the DBC’s costs thrown away fixed in the sum of \$9,800 plus GST within 60 days of the date of this decision.
29. The Inquiry Board directs that a copy of this decision 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 24 June 2025



Maria Savvas
Presiding Member



Craig Leslie
Member



Natasha Bertinazzi
Member