

Complaint Procedure

G10-1 Complaints - Practitioners

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1. BACKGROUND

Regulation 17(3)(A) of the Building (Accreditation of Building Consent Authorities) Regulations 2006 requires the Building Consent Authority (BCA) quality assurance system to ensure that the BCA considers whether to make, and whenever it necessary or desirable the BCA does make, complaints to relevant occupational or professional authorities about practitioners—

- (a) who are practitioners of or within an occupation or profession; and
- (b) who are not its employees or contractors; and
- (c) whose work it scrutinises, or otherwise becomes aware of, in performing its building control functions.

The purpose of this procedure is to describe how the BCA will decide whether such a practitioner has acted in a manner that necessitates laying a complaint with the relevant occupational or professional authority, and how the BCA will go about laying such a complaint.

Such practitioners are licenced or registered persons including:

- chartered professional engineers;
- engineering associates;
- registered architects;
- plumbers, gasfitters and drainlayers;
- electrical workers;
- licensed building practitioners.

The types of matters that may cause the BCA to consider, and possibly lay a complaint with an occupational or professional body include, but are not limited to, incompetence and/ or negligence demonstrated with respect to the following:

- the nature or number of requests necessitated for further information (RFIs) during the consent process or over repeated consents;
- lengthy requests for further information during the consent process (more than X items relating to the practitioners field of practice)
- allowing building work to proceed when it is not in accordance with the consented plans;
- allowing building work to proceed when the site is unsafe;
- failing to obtain a building consent when one is required;
- failing to carry out work otherwise than in accordance with the Building Code;
- issuing a certificate of design work when not licensed to do so;
- issuing a record of work when not licensed to do so;
- performing restricted building work without the proper notification;
- withholding a record of work for non-payment;
- bringing their profession into disrepute.

2. TREATMENT OF COMPLAINTS

Any member of the public may make a complaint about a practitioner to ORC. Receipt and management of all such complaints will be in accordance with the procedure described in BCA G10, together with this procedure BCA G10-1.

Complainants about practitioners may alternatively be made by the public directly to the practitioner's relevant occupational or professional authority.

However, ORC employees are not permitted by ORC to make complaints about practitioners, on behalf of the organisation, directly to occupational or professional authorities. Any complaint that ORC lays with an occupational or professional authority must be laid by the Manager Consents in accordance with this procedure. If an ORC employee suspects that a licensed/registered practitioner is acting inappropriately (e.g. in an incompetent and/or negligent manner), they must bring the matter to the attention of the Manager Consents.

It should be noted that nothing in this complaints procedure prevents the BCA or ORC from taking any other action or steps to resolve a problem (such as issuing a Notice to Fix or Dangerous Building Notice).

With respect to discovery of information, it is recognised that as part of the Council, a practitioner who is aware that someone has complained to the Council about them, may request a copy of the complaint. Any requests for information about complaints should be considered with regard to the Local Government Official Information and Meetings Act 1987 and the Privacy Act 1993.

3. PROCESS FOR CONSIDERING AND LAYING COMPLAINTS ABOUT PRACTITIONERS

3.1 RECEIVING AND LOGGING COMPLAINTS

Complaints about practitioners are received and logged in the same way as all other complaints (see BCA G10).

3.2 GATHERING AND CONSIDERING EVIDENCE

When considering a complaint about a practitioner, ORC staff must set out the circumstances leading to the complaint or concern and attach evidence to support the claims (e.g. RFIs, letters, emails, site instruction notices, inspection records, photographs, notices to fix or determinations (if the matter was referred for a determination)), for referral to the Manager Consents.

Once the required information about the concern or complaint has been referred to them, the Manager Consents will review it to determine if there is a case to answer, whether the evidence will be held over for possible use at a later date and/or any other action that is required.

3.2 RAISING THE COMPLAINT WITH THE PRACTITIONER

The BCA recognises that practitioners have the right to the observance of the principles of natural justice in respect of their rights, obligations, or interests. Essentially, the principle of natural justice requires decision makers to hear both sides of the argument. It also requires decision-makers to act fairly and impartially.

If further action is to be taken, the Manager Consents will endeavour to contact the practitioner and request a meeting to discuss the complaint or concern with them. The practitioner will be advised in

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writing, if possible and practicable, of the reasons for making this request so that they are able to respond as appropriate.

The Manager Consents will ensure that at least one other senior BCA or ORC staff member is present and involved in all meetings, discussions and reaching of outcomes.

The practitioner will be advised that he/she is able to bring support people to any meeting, including legal representation, if desired and will be provided with the opportunity to be heard.

3.3 DECIDING TO LAY A COMPLAINT

The Manager Consents will endeavour to hold meeting with the practitioner, listen to their explanation and conclude the meeting by advising the practitioner of the possible outcomes. The meeting details and outcomes will be recorded in Authority and the practitioner advised of the outcome.

The practitioner's right to respond is to be recognised and enabled. The practitioner's response may lead to a decision by the Manager Consents to not lay a complaint and dismiss the case, with or without issuing a warning or infringement notice. Examples of circumstances where such a decision could be made include, but are not limited to:

- highly unusual (or one-off) situations where the practitioner's response is practicable and appropriate; and/or
- the practitioner is able to justify what has occurred.

It may be possible in such circumstances for the Manager Consents to dismiss the case with, or without, issuing a warning or infringement notice. In the case of such an outcome:

- the decision together with reasons for it will be recorded for reconsideration if another complaint is made about the practitioner in the future; and/or
- the practitioner will be advised that future similar complaints will not be tolerated and may lead to a formal complaint being laid with to the relevant occupational or professional authority.

If the practitioner's response is non-existent (e.g. they refuse to attend the meeting), dismissive, unreasonable or cannot be justified, further action may be warranted. Further action may include, but is not limited, to:

- monitoring the practitioner's performance; and/or
- issuing an infringement notice.

If performance monitoring identifies further problems another meeting will be sought with the practitioner, the outcome of which could be a decision to lay a complaint with the relevant occupational or professional authority.

3.4 LAYING A COMPLAINT

If the Manager Consents decides to proceed and lay a complaint with the relevant occupational or professional authority, the following information should be forwarded to the authority:

(i) a letter to the relevant authority, signed by the Manager Consents, that:

- names the practitioner
- cites evidence of the practitioner's affiliation to the authority
- describes the nature of the complaint and reasons for the decision to lay the complaint
- any other information requested by the authority to which the complaint is being laid
- any other information that the Manager Consents considers relevant to include;

and

(ii) evidence supporting the complaint, collated in chronological order.

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A copy of the information forwarded to the occupational or professional authority will also be forwarded to the practitioner at the same time, and a further copy retained on ORC files.

3.4 RESOLVING A COMPLAINT LAID WITH AN OCCUPATIONAL OR PROFESSIONAL AUTHORITY

The Manager Consents, supported by other ORC staff as may be appropriate, shall liaise with the occupational or professional authority, practitioner and other parties as required by the authority.

It is expected that the BCA Manager will be required to review draft report prepared by the occupational or professional authority concerning the complaint and to prepare any necessary response. It may also be necessary for the Manager Consents, supported by other BCA staff as they consider appropriate, to attend hearings or other meetings prior to an outcome being reached by the authority.

The outcome of the complaints process will be advised by the occupational or professional authority, to the Manager Consents, and recorded by ORC in Authority.