

Disciplinary hearing guide for practitioners

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Introduction

1. This guide contains information to assist you if you are facing disciplinary charges under the Plumbers, Gasfitters and Drainlayers Act 2006 (**Act**). The guide is designed to help you understand how the disciplinary hearing will proceed. It is for information purposes only and is not intended to tell you what you should do in your case.
2. To get advice or guidance on what you should do in your particular case, you should consult with a lawyer. If you do not have a lawyer, you should contact your local community law centre to see if they are able to assist. You can find your closest community law centre at <https://communitylaw.org.nz/>.

What has happened already?

3. The Plumbers, Gasfitters, and Drainlayers Board has received a complaint about sanitary plumbing, gasfitting, and/or drainlaying work which you carried out or which you were responsible for. The complaint has been investigated as part of the complaints and investigations process, and the investigator has recommended that the complaint should be considered by a panel of Board members (**Board**) in a disciplinary hearing. The Board must now hold the disciplinary hearing to decide whether or not it considers you have committed a disciplinary offence or offences.
4. The disciplinary process is a separate process to the complaints and investigation process. The panel of Board members that considers the case in a disciplinary hearing is not involved in the complaints or investigation process. The panel doesn't have any information about the case until it is provided for its consideration as part of the disciplinary process.
5. The Hearings Manager administers the disciplinary process on behalf of the Board and organises the hearing. They will be the point of contact for you and the investigator's lawyer (see [Parties to the hearing](#) below) throughout the proceedings.

Disciplinary offences

6. Disciplinary offences are set by the Act. The offences are listed in section 89 of the Act and are¹:
 - carrying out negligent or incompetent work or causing it to be carried out
 - carrying out work that does not comply with the law or causing it to be carried out
 - intentionally or negligently created a risk of serious harm or significant property damage through work that has been carried out
 - failing to comply with a term or condition of your registration or licence
 - doing work you are not authorised to do
 - intentionally deceiving any registered person who is authorised to test and certify work

¹ For a full and accurate description of the disciplinary offences please go to <https://www.legislation.govt.nz/act/public/2006/0074/latest/DLM397185.html>

- failing to provide a return required by law (e.g. a gas certificate) or providing a false or misleading return
 - using an unauthorised person to do work
 - being convicted of an offence under certain laws in relation to work
 - acting so improperly in charging for work or in carrying out work that you are unfit to be registered or licensed.
7. The Board hearing panel's role is to determine whether your conduct amounts to one or more of these offences.

Parties to the hearing

8. There are two parties involved in the hearing – the investigator and you. The investigator will bring the charges against you alleging you have committed one or more of the disciplinary offences above following the investigation of the complaint.
9. These are formal proceedings, and the parties are expected to comply with all administrative arrangements and directions from the Board in relation to the hearing. They must also conduct themselves in a professional and courteous manner throughout the process and during the hearing.

Being represented at the hearing

10. The investigator will be represented throughout the hearing process by a lawyer (sometimes referred to as the prosecutor) who will conduct the investigator's case.
11. You can also be represented by a lawyer if you choose. If you do want to have a lawyer to represent you, you should get them involved as soon as possible as this will avoid any delays or additional administration. You do not need to seek permission from the Board to be represented by a lawyer. It will help if you (or your lawyer) let the Hearings Manager know the name and contact details for your lawyer as soon as possible.
12. If you would like someone to represent you who is not a lawyer you will need to seek permission from the Board first. For the Board to grant permission, it will need to be satisfied that the person you want to represent you has some understanding of the hearing process and can fairly and reasonably represent you. They will also have to be able to carry out all the administrative steps in the lead-up to the hearing and present your case to the Board during the hearing.
13. If you do want to have someone represent you, you will need to get an *Application to be represented* from the Hearings Manager. You should do this as soon as possible.

How the process begins

14. The first step in the process is for the investigator's lawyer to determine what disciplinary offences they think you have committed in the case. They prepare a Notice of Disciplinary

Charges (**Notice**) setting out the charge or charges against you which is signed by the Chair of the Board. They also prepare a summary of facts which sets out what the investigator says are the facts of the complaint and why they consider your conduct in this case amounts to a disciplinary offence or offences.

15. The investigator's lawyer then files the Notice and summary of facts with the Board's Hearings Manager.
16. The Board's Hearings Manager schedules a proposed date for the hearing and completes the other administrative details in the Notice.
17. The Hearings Manager then prepares the following documents:

Notice of Teleconference

This sets out the date and time for a telephone call between you (and your lawyer if you have one), the Hearings Manager, and the lawyer for the investigator. The purpose of the call is to discuss the arrangements for the hearing. The teleconference is discussed in more detail below.

Pre-hearing teleconference checklist

This is a checklist that you (or your lawyer) and the investigator's lawyer must complete and return before the teleconference. The checklist contains the information that the Hearings Manager will need for the teleconference. You must return the checklist to the Hearings Manager by the date specified.

Before the teleconference, the Hearings Manager will provide you with a copy of the investigator's checklist so you will have a copy of the investigator's information in time to discuss it at the teleconference. The Hearings Manager will also provide a copy of your checklist to the investigator's lawyer for the same reason.

18. Once all the documents above are ready, the Hearings Manager will send them to you both by email (wherever possible) and through the post.

The pre-hearing teleconference

19. The purpose of the pre-hearing teleconference is to discuss the practical arrangements for the hearing based on the information provided in the checklist. The teleconference will cover things like:
 - whether the proposed hearing date needs to be changed
 - what type of hearing you will have (see [Types of hearings](#) below)
 - the length of time required for the hearing
 - the documents which need to be provided to the Board for the hearing and the timetable for providing them (see [Providing information needed for the hearing](#) below)
 - any special requirements for the hearing (e.g. an interpreter).

20. The Hearings Manager leads the teleconference on behalf of the Board. If you have any questions about the teleconference, you should call the Hearings Manager before the teleconference to discuss.

Providing information needed for the hearing

21. Before the hearing, you and the investigator's lawyer will be required to provide the documents you will wish to use during the hearing. These must be provided to the Hearings Manager in advance of the hearing.
18. The types of documents you will need to provide will depend on the type of hearing you choose which will be discussed and agreed at the teleconference. They could include:
- signed documents indicating your guilty plea
 - evidence, e.g. signed statements from witnesses, any documents you are relying on to prove your case
 - your submissions on liability, penalty, costs
 - any applications you or the investigator have made, e.g. appearing by audio visual link, name suppression.
19. There is a set process for providing documents required for a hearing. For example, to prepare for a defended hearing, the investigator's lawyer will provide their evidence first. You will have an opportunity to read and consider the evidence and then you must provide your evidence. Once all of the evidence has been provided, the same happens with submissions (submissions are the presentations the investigator's lawyer and you make to the Board about what you say happened in the case and why you have or have not committed a disciplinary offence). The investigator's lawyer provides their submissions first and then you provide your submissions. A timetable will be set for this process to happen, and this will be discussed with you and the investigator's lawyer at the teleconference.
20. Once a timetable has been set for providing documents, you must ensure you comply with it. Failing to comply with the timetable may mean you cannot put evidence or other information before the Board which you may wish to rely on at the hearing. If there is a good reason why you are not able to provide your documents on time, you must contact the Hearings Manager as soon as possible before the due date and seek an extension to the timetable.
21. All documents for the hearing are compiled into a bundle. A copy of the bundle will be made available to the Board and the parties prior to the hearing. You must bring your copy of the bundle with you to the hearing.

Applications

22. In some cases, the parties in the case may need the Board to decide on an administrative or legal point prior to - or sometimes at - the hearing.

23. For example, a party may wish to ask the Board to allow a witness to appear remotely via audiovisual link, or they may be seeking an adjournment (postponement) of the hearing, or they may want to provide additional evidence outside of the agreed timetable. In these types of situations, the Board expects the parties to put their request in writing (known as an 'application') by email to the Hearing Manager.
24. If you think you may need to make an application to the Board, you must tell the Hearing Manager as soon as possible to avoid delays - preferably during the pre-hearing teleconference. The Hearing Manager will explain the steps for making an application to you and will provide you with an appropriate timetable for providing the application and any responses to it. This can vary depending on how urgent it is.
25. When making an application you must:
 - Tell the Board what the application is for and why you are making it
 - Provide good reasons why you think the Board should grant the application
 - Provide documents to support your application, where possible.
26. It is helpful if applications are made by consent: this means that the person making the application should tell the Board if they have spoken to the other party and that they both agree with what is being sought in the application.
27. If the other party doesn't agree with the application, they will be given the opportunity to respond and provide good reasons why the Board should decline the application. The party making the application then has a final chance to respond to any further points raised. Finally, the Board considers the application and any responses, and issues a decision.
28. Applications are granted at the Board's discretion only. The Board takes into account the views of both parties when considering an application. The Board only grants applications where it is satisfied there is good reason for doing so.

Types of hearings

29. There are different ways the hearing can proceed.
 - a. If you agree with what the investigator has said in the Notice and in the summary of facts, and accept that you have committed a disciplinary offence, you may want to plead guilty to the charge. If this happens, you can choose to have an [undefended hearing](#).
 - b. If you don't agree with what the investigator has said in the Notice or summary of facts and believe you have not committed a disciplinary offence, you may want to plead not guilty to the charge. If that happens, you will have a [defended hearing](#).
 - c. In some cases you may agree with some of the facts in the summary of facts but not agree with others. Or, you may agree with the facts in the summary of facts, but not agree that they mean you have committed a disciplinary offence. In that case, the hearing may focus

only on the facts that you don't agree with or on whether your conduct amounts to a disciplinary offence. This will still be a defended hearing but will often be a shorter hearing as it will only be dealing with the matters which are in dispute between you and the investigator. It is important to be clear with the investigator's lawyer about what you do and don't agree with.

- d. If you choose not to participate in the hearing at all, the hearing will proceed to a [formal proof hearing](#).

Pleading guilty (undefended hearing)

30. If you want to plead guilty, you and the investigator's lawyer must both sign documents to confirm that you accept the charge and the summary of facts. The signed documents must be provided to the Hearings Manager before the hearing by a specified date.
31. At the hearing, the Board will consider the documents you and the investigator's lawyer have signed and make a formal finding about whether you have committed a disciplinary offence or offences. The Board will then go on to consider what penalty to impose on you in the circumstances (see *Penalties* below).
32. If you are pleading guilty, you can choose not to appear before the Board in person for you hearing. If you don't want to appear in person, the hearing can proceed:
- on the papers
 - by telephone
 - by audio-visual link.
33. Where the hearing proceeds on the papers, you and the investigator's lawyer must prepare all the documents the Board needs to consider as part of the hearing and send them to the Hearings Manager as per the timetable. This will include the papers referred to above that you need to complete to plead guilty and any documents you want the Board to consider when deciding what penalty to impose in your case. The Board will then consider these papers and come to a decision. You and the Investigator's lawyer don't attend the hearing.
34. Where the hearing proceeds with you calling in by telephone or joining the hearing by audio-visual link, the investigator's lawyer will also telephone in or join by audio-visual link. At the beginning of the hearing the Board will make a formal finding about whether you have committed a disciplinary offence. The investigator's lawyer will then say what penalty they think the Board should impose in your case. You will then have a chance to say what penalty you think the Board should impose in your case. The hearing will then end and the Board will consider what penalty to impose (see section on [Penalties](#)).
35. The Hearings Manager can tell you more about each of the above options during the teleconference.

Defending a charge (defended hearing)

36. If you do not want to plead guilty to charges against you, your case will go to a defended hearing. The hearing will take place in Wellington and you will be required to attend the hearing in person if you wish to defend the charges against you.
37. A defended hearing proceeds in the following way:
- Chairperson opens the hearing and deals with any preliminary matters
 - Investigator's lawyer makes opening submissions
 - Investigator's witnesses give evidence
 - You can question the investigator's witnesses (called cross-examination)
 - Investigator's lawyer can question the witnesses again (called re-examination)
 - Board can question the investigator's witnesses
 - You make opening submissions
 - Your witnesses give evidence
 - Investigator's lawyer can question your witnesses
 - You can re-examine the witnesses
 - Board can question your witnesses
 - Investigator's lawyer makes closing submissions
 - You make closing submissions
 - Chairperson closes the hearing.
38. Once the hearing has closed the Board must decide what it considers happened in your case and whether or not you have committed the offence or offences you have been charged with. If it does find you have committed a disciplinary offence, the Board will then go on to consider what disciplinary penalty to impose on you in the circumstances (see [Penalties](#) below). This usually takes place on the same day as the liability hearing.

Formal proof hearings

39. Where a practitioner chooses not to engage with the Hearings Manager about their hearing and charges they are facing, the hearing may take place without them. Ignoring a disciplinary hearing will not make it go away. It is important to know that the Board can and does find practitioners guilty of disciplinary offences in their absence in certain circumstances. It also can and does impose penalties on practitioners in their absence.

Conduct of hearings

40. Hearings are held at the Board's offices on Level 8, Solnet House, 70 The Terrace, Wellington. Larger hearings may sometimes need to be held offsite at another venue in Wellington. The hearing is open to the public unless you or the investigator have made an application to have the hearing held in private and the Board has granted that application.

41. Hearings begin at 9:00am and there are breaks for lunch and morning and afternoon tea. Tea and coffee are provided but you will have to make your own lunch arrangements. If you have witnesses, you will be provided with a separate room for your witnesses to wait in until they give their evidence in the hearing. This is also the room you can use during your breaks.
42. You are responsible for getting yourself, your lawyer and any witnesses to and from the hearing and you must make your own flight and transportation arrangements. If you or your witnesses require any special arrangements, such as an interpreter, you must raise this with the Hearings Manager as soon as possible.
43. The Board that will consider the case against you will consist of five Board members made up of practitioners in plumbing, gasfitting and/or drainlaying and lay people. The Chair oversees the hearing and will direct the proceedings.
44. Sitting with the panel is the Board's legal advisor for that hearing. The legal advisor advises the Board on any legal questions that might arise during the hearing.
45. You (and your lawyer if you have one) and the Investigator's lawyer will be present throughout the hearing and will be seated at tables facing the Board. Any witness will attend the hearing when they are required to give their evidence.
46. Other people that will be present at the hearing include:
 - the Hearings Manager – they are your point of contact before and during breaks in the hearing. They also conduct all administration throughout the hearing.
 - Hearing support – additional administrative support during the hearing.
 - any specialist support required as part of the hearing such as interpreters or a stenographer.
47. All hearings are audio recorded.

Penalties

48. Where you have been found guilty of a disciplinary offence, the Board must then consider what penalty, if any, to impose on you.
49. The penalties the Board can impose for disciplinary offending are listed in section 106 of the Act and they are to:²
 - cancel your registration, or licence, or both
 - order that you can't apply to be re-registered or re-licensed for a set period of time
 - suspend your practising licence for a period of time
 - suspend your practising licence until you do some training
 - place restrictions on what type of work you can do, or how you can carry out work

² For a full and accurate description of the Board's disciplinary powers please refer to <https://www.legislation.govt.nz/act/public/2006/0074/latest/DLM397707.html>

- disqualify you from doing certain types of work permanently or for a period of time
- disqualify you from doing certain types of work until you do some training
- order you to do some training
- order you to pay a fine of not more than \$10,000
- censure you³
- impose no penalty.

50. The Board can also impose some combinations of these penalties.
51. When considering what penalty to impose, the investigator's lawyer will begin by saying what penalty they think the Board should impose in your case. In choosing this penalty, they mainly consider the seriousness of what you have done and the kinds of penalties the Board has imposed in other cases that are similar to yours.
52. You will then have the chance to tell the Board what penalty you think it should impose on you. The Hearings Manager can provide you with a form to assist you in making any submissions you wish to make about penalty. The form also allows you to provide information about your personal circumstances which the Board may find helpful in determining the appropriate penalty (e.g. if you are in financial difficulty, it may impact on your ability to pay a fine). You do not have to answer any or all of the questions in this form, but if you do the information you provide will help the Board in choosing what penalty to impose.
53. The Board will then decide what penalty to impose in your case.

Costs

54. If you are found guilty of or plead guilty to a disciplinary offence, under the Act the Board can also order you to pay a contribution towards the costs of the investigation, prosecution and hearing. Costs are in addition to any disciplinary penalty the Board may impose, including fines.
55. The Hearings Manager will provide you with a schedule of costs of the hearing before the penalty hearing which sets out those costs.
56. You and the investigator's lawyer will both get an opportunity to say whether you should make a contribution and what that might be, and the Board will then decide. The usual starting point for your contribution will be half the actual costs, but this can be decreased or increased if you have done things that have decreased or increased the costs.

The outcome of hearings

57. Once the Board has heard from both you and the investigator's lawyer on penalty and costs, it will end the hearing so it can discuss penalty and come to a decision.

³ A formal statement of disapproval

58. The Hearings Manager will let you know by phone or email what penalty the Board has chosen within 2 working days of the hearing (though usually it is on the same day). This is just informal notification so you do not have to wait to find out what happened. Formal notification of the outcome of the hearing does not happen until you receive the Board's written decision.
59. The Board prepares a formal written decision recording the outcome of all disciplinary hearings. The decision will set out the charges, the background to the charges, the process of the hearing, the outcome, the Board's decisions and the reasons for its decisions. The written decision also includes any orders the Board imposes, including any penalty orders, costs, and publication or name suppression orders.
60. The Board's decisions can take approximately eight weeks after the hearing to be issued and it may take longer if your case is complex. The Hearings Manager will send you a copy of the decision as soon as it is ready.
61. You do not have to do anything until the decision is sent to you. For example, you do not have to pay any fine or start any training until after you have received the written decision for the hearing. The letter from the Hearings Manager with the decision will tell you more about that.

Name suppression and publication

Name suppression

62. In certain limited circumstances, the Board can order that your name and any identifying details about you are suppressed. However, there must be very good reasons for the Board to do this. The Board's usual position is that it will not grant suppression because it is responsible for protecting the health and safety of the public and one of the ways this can be done is by the public knowing about practitioners who have committed disciplinary offences.
63. For the Board to make a suppression order, a practitioner must show that the negative effects for them from having the information published are so great that they outweigh the public's right to know.
64. There are two types of name suppression – interim name suppression and permanent name suppression. Interim name suppression is suppression of your name until the hearing is held. Permanent name suppression is suppression that applies after you hearing. You can ask the Board to grant you both kinds of name suppression.
65. If you would like to apply for name suppression, it is recommended you seek legal advice on this from a lawyer. You must also raise it with the Hearings Manager during the teleconference.

Publication

66. The Board is required by law under the Act to publish information about the last three years of disciplinary proceedings on the public register.

67. It is possible for details of the Board’s decisions to be published in the news media, or for the Board’s decision to be made available to the public. The Registrar also publishes anonymised summaries of disciplinary decisions in Info Brief. Previous disciplinary decisions are also made available in the decisions database on the Board’s website.

Appeal

68. You have the right to appeal your disciplinary finding and/or your disciplinary penalty to the District Court.
69. The Act sets out that an appeal must be brought within 20 working days from the date the Board’s written decision is sent to you. If you do want to appeal, it is strongly encouraged that you seek advice from a lawyer about your rights to appeal.
70. Unless the court orders otherwise, the decision and orders of the Board are still in effect pending the outcome of any appeal.

Other information and resources available

71. The following forms used in the disciplinary hearing process are available from the Hearings Manager:
- *Being represented by a lay advocate*
 - *Application to be represented by a lay advocate*
 - *Appearing at a hearing via audio-visual link*
 - *Appearing at a hearing via audio-visual link (witness guide)*
 - *Witness by audio-visual link application form*
 - *Penalty submission form*

