



Complaints and discipline policy

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GENERAL PROVISIONS

Purpose

1. This policy sets out the Board's approach to dealing with complaints and discipline matters under Part 3, subpart 1 of the Plumbers, Gasfitters, and Drainlayers Act 2006.

Scope

2. This policy applies to complaints about sanitary plumbing, gasfitting or drainlaying done by registered people, provisional licence holders or people subject to a disciplinary order of the Board.
3. This policy does not apply to complaints about sanitary plumbing, gasfitting or drainlaying done by unauthorised people. Such complaints are covered by the Board's prosecutions policy.

Legislation and relevant policies

4. The following legislation is relevant to this policy.
 - a. Plumbers, Gasfitters, and Drainlayers Act 2006, and any relevant regulations made under that Act
 - b. Plumbers, Gasfitters, and Drainlayers Act 1976, and any relevant regulations made under that Act
 - c. Building Act 2004, and any relevant regulations made under that Act
 - d. Gas Act 1992, and any relevant regulations made under that Act
 - e. Commissions of Inquiry Act 1908
 - f. Criminal Procedure Act 2011, and any relevant regulations made under that Act
 - g. Lawyers and Conveyancers Act 2006
 - h. Witnesses and Interpreters Fees Regulations 1974.
5. The following policies are also relevant to this policy:
 - a. decision-making
 - b. operational policies and procedures
 - c. dealing with unreasonable behaviour.
 - d. prosecutions
 - e. communications, public relations and stakeholder

Definitions

6. In this policy, unless the context otherwise requires:
 - a. **Act** means the Plumbers, Gasfitters, and Drainlayers Act 2006
 - b. **Board** means the Plumbers, Gasfitters and Drainlayers Board
 - c. **complaint** means a complaint received in accordance with section 90 of the Act
 - d. **complaints and discipline function** means the Board's function, as set out in section 137(o) of the Act, to hear complaints and to hold disciplinary hearings
 - e.
 - f. **hearing** means a disciplinary hearing before the Board
 - g. **investigation** means an investigation conducted in accordance with Part 3, subpart 1 of the Act
 - h. **investigator** means an investigator appointed by the Registrar under section 91 of the Act
 - i. **lay advocate** means any person who wishes to represent a tradesperson in a hearing who is not an admitted barrister and solicitor

- j. **legal advisor** means a person appointed under section 115 of the Act
- k. **notice of disciplinary proceedings** means a notice of disciplinary proceedings served in accordance with section 101 of the Act
- l. **offence** means a disciplinary offence under section 89 of the Act
- m. **parties** means:
 - i. with regard to a complaint, the person making the complaint and the tradesperson they are complaining about; or
 - ii. with regard to a hearing, the investigator and the tradesperson
- n. **Registrar** means the Registrar of the Plumbers, Gasfitters and Drainlayers Board appointed under section 140 of the Act
- o. **staff** means employees of the Board and includes contractors and agents
- p. **tradesperson** means a registered person, provisional licence holder, or a person who is the subject of a disciplinary order of the Board, and includes a person who is no longer registered or licensed but was at the time they did the work that is the subject of a complaint
- q. **suppression order** means an order made under section 113(3)(b)-(d)
- r. **work** means sanitary plumbing, gasfitting or drainlaying as it is defined in the Act.

CORE POLICY PROVISIONS

Guiding principles

- 7. The complaints and discipline function contributes to protecting the health and safety of the public by enforcing competency expectations.
- 8. The Board carries out its complaints and discipline function in accordance with the law, fairly, reasonably, and in good faith.
- 9. Complaints and discipline matters are dealt with as promptly and efficiently as possible and without causing unnecessary delays or expense for any party.
- 10. The complaints and discipline function is conducted in a way that is proportionate to the severity of any alleged offences.
- 11. The Board tries to resolve complaints as early as possible and on such terms as are appropriate in all the circumstances.
- 12. Board members and staff dealing with complaints and discipline matters act impartially. All conflicts of interest or potential conflicts of interest are reported and managed appropriately.
- 13. Effective and appropriate communication is maintained with all parties involved in a complaint and/or hearing.
- 14. All media communications by the Board concerning a disciplinary matter take into account the interests of all the parties involved and the Board's role and responsibilities.

Delegations

- 15. The Board has delegated its power to issue summonses under section 4D(2) of the Commissions of Inquiry Act 1908 to the Registrar.

Inquiries to the Board

- 16. All potential complaints received by the Board are initially treated as inquiries.

17. Inquiries are assessed to determine whether they raise matters the Board can consider.
18. If an inquiry is not about a matter the Board can consider, the person making the inquiry is told the Board cannot deal with their inquiry and, if possible, they are re-directed to an agency that may be able to help.

Informal resolution of inquiries

19. If an inquiry is about a matter the Board can consider, it is assessed to see whether it is appropriate to try to resolve the matter informally.
20. An inquiry may be resolved informally by providing compliance advice to the tradesperson if:
 - a. it raises no significant health or safety issues
 - b. there is little or no detriment to the person making the inquiry
 - c. there is no significant history of non-compliance by the tradesperson
 - d. the conduct is not of a type identified as a priority by the Board
 - e. there are no wider public interest considerations.
21. An inquiry may be resolved informally if:
 - a. it raises no significant health or safety issues
 - b. the detriment to the person making the inquiry is capable of being remedied
 - c. the conduct is not of a type identified as a priority by the Board
 - d. there are no wider public interest considerations
 - e. both parties are willing to try to resolve the matter informally.
22. If an inquiry is assessed as appropriate for informal resolution, the Board works with the parties to try to resolve the inquiry in a way that is acceptable to the parties and the Board.
23. If, at any time during the process, the parties involved in informal resolution no longer wish to try to resolve the matter informally, the inquiry becomes a complaint.
24. The Board may discontinue an informal resolution process at any time prior to resolution if it considers it appropriate, and the inquiry becomes a complaint.
25. Inquiries that cannot be resolved informally become complaints.
26. Inquiries that are not appropriate for informal resolution become complaints.

Complaints to the Board

27. All complaints to the Board must be made in writing and be addressed to the Registrar.
28. Complaints must:
 - a. be about a tradesperson
 - b. be about sanitary plumbing, gasfitting or drainlaying work
 - c. involve conduct that could be an offence.
29. The Registrar does not accept anonymous complaints, or complaints where the person making the complaint wishes to have their identity withheld.
30. If the Registrar is satisfied that a complaint is frivolous or vexatious, the complaint is dismissed.

Complaints raising serious health and safety concerns

31. If a complaint raises serious health or safety concerns, in addition to following the Board's complaints and discipline process, the Registrar may take any other steps that he considers reasonable and appropriate in the circumstances.

Investigating complaints

32. The Registrar appoints an investigator to investigate a complaint to determine whether, in the investigator's opinion, the complaint should be considered by the Board.
33. In conducting their investigation, the investigator:
 - a. gives the parties a fair and reasonable opportunity to comment on the complaint
 - b. talks to any other person they consider can provide information relevant to the complaint
 - c. gathers any evidence they consider is necessary to their investigation.
34. If the investigator considers it necessary to protect the safety of the public, they may apply to the Board to have a tradesperson's licence/s suspended or have them disqualified from doing work until they have finished their investigation or the Board has held a hearing.
35. Once the investigator has finished their investigation they produce a preliminary investigation report setting out their findings and determination.
36. The preliminary investigation report is provided to the parties for their comment.
37. Having regard to any comments received from the parties, the investigation:
 - a. amends their preliminary report if necessary as a result of the comments from the parties and provides an amended preliminary investigation report to the parties for comment; and/or
 - b. finalises their report.
38. If the investigator determines the complaint should not be considered by the Board, the parties are informed and the file is closed.
39. If the investigator determines the complaint should be considered by the Board, the matter is set down for a hearing.
40. The investigator's determination on whether or not a complaint should be considered by the Board is final.

Board hearings

41. All hearings take place before a quorum of five Board members.
42. Hearings are open to the public unless the Board orders otherwise.
43. All Board deliberations are conducted in private.
44. Hearings are conducted at the Board's offices in Wellington, however a party may apply to have a hearing held in a different location.
45. All hearings where oral submissions are made are recorded and a written transcript of the hearing is prepared.
46. The Board may appoint an independent barrister as a legal advisor to advise it on matters of law and procedure in any hearing.

47. If required, the Board may appoint an interpreter to assist with a hearing and any pre-hearing administration.
48. The Board may issue practice notes setting out its approach to issues commonly arising in hearings.

Parties to a hearing and representation

49. Disciplinary charges against a tradesperson are brought by the investigator.
50. The investigator is represented by a lawyer at the hearing.
51. A tradesperson can:
 - a. be represented by a lawyer
 - b. represent themselves
 - c. be represented by a lay advocate but only with the prior permission of the Board.

Hearings administration

52. The hearing process begins when the tradesperson is served with a notice of disciplinary proceedings.
53. Wherever possible, the Board serves all hearing documents by electronic mail.
54. The hearing administrator contacts the tradesperson to check they have received the notice.
55. A teleconference is held with the parties before the hearing to discuss arrangements for the hearing.

Pre-hearing applications

56. Either party can make the following pre-hearing applications to the Board:
 - a. adjournment
 - b. change of venue
 - c. exception to the Board's normal process.
57. In addition, the tradesperson may also make the following pre-hearing applications:
 - a. representation by a lay advocate
 - b. interim name suppression.
58. Pre-hearing applications must be in writing and be received by the hearing administrator no less 10 working days before the hearing.
59. Pre-hearing applications are provided to the other party for comment and the legal advisor, if any, for legal directions before being provided to the Board for consideration.
60. All Board decisions on pre-hearing applications are given in writing and provided to the parties.
61. If required, the Board issues orders dealing with pre-hearing matters.

Types of hearings

62. Hearings are conducted in three ways:
 - a. with no appearances by the parties (the hearing proceeds on the papers only)
 - b. with the investigator attending in person and the tradesperson joining the hearing by teleconference
 - c. with the investigator and the tradesperson attending the hearing in person.

63. A hearing on the papers or with the tradesperson joining the hearing by teleconference will only be appropriate if the tradesperson has pleaded guilty to the charges or indicated they will plead guilty at the hearing.
64. Where a tradesperson wishes to defend the charges against them ("defended hearing") they must attend the hearing in person.
65. A defended hearing will only deal with matters that are in dispute between the parties.
66. All hearings are subject to time restrictions.

Conduct of the hearing

67. Hearings are conducted in two stages. First the Board considers whether the tradesperson has committed an offence. If the Board finds they have, it then consider what penalty to impose.
68. A tradesperson may plead guilty to a disciplinary charge before the hearing, but must do so in writing and agree a summary of facts with the investigator.
69. Where a tradesperson pleads guilty, unless it has any concerns, the Board accepts the guilty plea and the hearing will only consider penalty.
70. During a hearing each party can make submissions and present evidence, and challenge the other parties' submissions and evidence.
71. A party may make submissions to the Board where they wish the Board to take a different position to a matter covered by an application practice note.
72. The Board may question any person appearing before it as part of a hearing.
73. The Board may summons any person to attend a hearing and give evidence, and/or produce any evidence relevant to the hearing.
74. Any summons witness is entitled to be paid witness fees, allowances and travel expenses.
75. Non-summonsed witnesses may be paid witness fees, allowances and travel expenses.
76. Payments to witnesses are at the rates specified in the Witnesses and Interpreters Fees Regulations 1977 unless the Registrar chooses otherwise.
77. Once the Board has heard all of the parties' submissions and evidence, it deliberates and reaches a decision.
78. If a tradesperson is found not guilty of an offence, the charges against them are dismissed.
79. If the tradesperson is found guilty of an offence, the Board can impose a penalty on them.
80. In addition to imposing a penalty, the Board can order a tradesperson to pay a contribution to the costs of the investigation, prosecution and hearing.
81. All Board disciplinary decisions are given in writing and provided to the parties and the person who made the complaint.

Publication of decisions and orders

82. The Board publishes any information about a tradesperson who has been disciplined on the public register unless they have been granted permanent name suppression.

83. The Board may publish information about a tradesperson who has been disciplined in the *New Zealand Gazette* and any other publications it considers appropriate.
84. Board decisions are made available on the Board's website.
85. The Board may make an order prohibiting publication of ("suppression orders"):
 - a. any report or account of any proceedings, whether held in public or private
 - b. the whole or any part of documents presented at the hearing
 - c. the name or particulars of the affairs of a respondent or any other person.
86. When considering whether or not to make an order prohibiting publication of information about a hearing, the Board takes into account the public interest and the interests of any person concerned.
87. The Board only publishes information about a disciplinary hearing after the expiry of the 20 day appeal period for the hearing and then only if no appeal has been brought.

Communicating with the media

88. All communications with the media are made in compliance with the Communications, Public Relations and Stakeholder Policy.
89. All media communications are made taking into account:
 - a. the nature of the media inquiry
 - b. the circumstances of the case
 - c. the nature and stage of the process
 - d. the rights of any people involved
 - e. any applicable legal obligations
 - f. any applicable suppression orders
 - g. any other matter the Board considers relevant.
90. The Board does not disclose personal information (including contact information) about the person making the complaint and/or any victim of the offending without their consent.
91. All communications concerning an inquiry, complaint, investigation, hearing or appeal must be reviewed by the General Counsel.