

Prosecutions policy

Version 3 approved by the Board on 31 October 2017

Contents

Purpose	2
Scope.....	2
Legislation and relevant policies.....	2
Definitions.....	2
Guiding principles	2
Delegations	3
Information about unauthorised work received by the Board.....	3
Information raising serious health and safety concerns.....	3
Inquiring into unauthorised work.....	3
Warning letters	4

Purpose

1. This policy sets out how the Board fulfils its function under section 137(p) of the Plumbers, Gasfitters, and Drainlayers Act 2006 of instituting prosecutions against persons for the breach of any Act or regulations relating to sanitary plumbing, gasfitting and drainlaying.

Scope

2. This policy does not apply to any breach of section 89 of the Plumbers, Gasfitters, and Drainlayers Act.

Legislation and relevant policies

3. The following legislation is relevant to this policy:
 - a. Plumbers, Gasfitters, and Drainlayers Act 2006, and any relevant regulations made under that Act
 - b. Building Act 2004, and any relevant regulations made under that Act
 - c. Gas Act 1992, and any relevant regulations made under that Act
 - d. Criminal Procedure Act 2011 and any relevant regulations made under that Act.
4. The following policies are also relevant:
 - a. the decision making policy;
 - b. the official information and privacy policy; and
 - c. the media policy.

Definitions

5. 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. **Registrar** means the Registrar of the Plumbers, Gasfitters and Drainlayers
 - d. **unauthorised work** means acts or omissions that are, or may be in breach of any Act or regulations relating to sanitary plumbing, gasfitting, or drainlaying.

Guiding principles

6. The Board's function of instituting prosecutions for unauthorised work contributes to protecting the health and safety of the public.
7. The Board carries out its prosecutions function in accordance with the law, fairly, reasonably, and in good faith.
8. Prosecutions are dealt with as promptly and efficiently as practicable and without causing unnecessary delays or expense for any party.
9. The prosecution function is conducted in a way that is proportionate to the severity and seriousness of any alleged offences.
10. Where appropriate, the Board seeks to resolve cases of alleged unauthorised work as early as practicable, and on such terms as appropriate.

11. The Board institutes prosecutions only where there is sufficient evidence to provide a reasonable prospect of conviction and the prosecution is in the public interest.
12. The Board has regard to the *Solicitor-General's Prosecution Guidelines*¹ in carrying out its prosecution function and making assessments of evidential sufficiency and public interest.
13. The Board pursues an appeal only where it considers it has a reasonable chance of success and/or the appeal is otherwise in the public interest.
14. All media communications by the Board concerning unauthorised work take into account the interests of all the parties, and the Board's role and responsibilities.

Delegations

15. The Board has delegated its power to institute prosecutions against persons for unauthorised work to the Registrar.

Information about unauthorised work received by the Board

16. All information about unauthorised work received by the Board is assessed.
17. As a result of the initial assessment, the Board may:
 - a. decide to conduct further inquiries into the matter
 - b. record the information and use it for intelligence purposes
 - c. pass the information on to another agency if it is not something the Board can deal with and/or another agency is better able to deal with the matter
 - d. take no further action.

Information raising serious health and safety concerns

18. If the information raises serious health or safety concerns, in addition to following the Board's prosecutions process, the Registrar may take any other steps that he considers reasonable and appropriate in the circumstances.

Inquiring into unauthorised work

19. When conducting inquiries into unauthorised work, the Board may speak to:
 - a. the person who provided the information to the Board
 - b. the person who may have carried out the unauthorised work
 - c. any other person who may have knowledge of the circumstances of the work concerned (eg. Council inspectors, other regulators, registered tradespeople who may have seen or fixed the work).
20. The Board may also carry out an inspection of the site where the unauthorised work may have occurred, and collect any evidence which relates to the matter (eg, building consent documents, photographs, invoices, correspondence).
21. The Board takes reasonable steps to speak to all relevant people in relation to an allegation of unauthorised work and/or to obtain all relevant evidence.
22. Once the Board has conducted all the inquiries it considers reasonable and necessary in the circumstances, it determines what course of action to take.

¹ 1 July 2013

23. If the Board is considering instituting a prosecution, it first assesses whether there is sufficient evidence to prove the allegation of unauthorised work in court, and considers whether a prosecution is in the public interest in the particular case.
24. As a result of its inquiries, the Board may decide to:
 - a. issue a warning letter
 - b. institute a prosecution
 - c. take no further action.
25. The Board will only revisit a decision it makes about a person doing unauthorised work in special circumstances (eg, where significant new evidence becomes available following a decision not to prosecute).

Warning letters

26. A person who has done unauthorised work may only be issued with a warning letter where one or more of the following factors apply:
 - a. there are no significant health or safety issues with the work
 - b. there is little or no detriment to any other person involved in the matter
 - c. there are issues with the evidence that may make it difficult to prove an offence in court
 - d. the person has not been warned or prosecuted for doing unauthorised work previously
 - e. there are no wider public interest considerations.
27. In addition to sending a warning letter, the Board may also notify the local building consent authority of the name of any person it has found doing unauthorised work.