
Building

Dealing With The Victorian Building Practitioners Board and Building Control Commission

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Introduction

Builders, engineers, draftspersons, quantity surveyors and building surveyors and inspectors all come within the category of “*building practitioner*” for the purposes of the *Building Act* 1993 (Vic) (“Act”).

Once a building practitioner is registered, the only contact he or she is likely to have with the Building Practitioners Board (the “Board”) or the Building Control Commission is if he or she is the subject of an inquiry or is being investigated for possible offences under the *Act*.

In both cases the possible consequences to the building practitioner, in terms of fines and sanctions, can be severe.

In relation to inquiries, the Board may conduct an inquiry into the conduct or ability to practise of a registered building practitioner.

At least seven days before an inquiry, the Board must serve on the building practitioner written notice of the inquiry. However, the Board may suspend the building practitioner’s registration pending the holding and determination of an inquiry.

Inquiry Into Conduct

The Board has power to inquire as to whether a building practitioner:

- (a) is guilty of unprofessional conduct; or
- (b) has failed to comply with the *Act* or the regulations; or
- (c) has failed to comply with a determination of the Building Appeals Board or a direction of the Commission; or
- (d) has been guilty of conduct in relation to his or her practice which:
 - (i) is constituted by a pattern of conduct or by gross negligence or gross incompetence in a particular matter; and
 - (ii) shows that he or she is not a fit and proper person to practise as a building surveyor; or

- (e) has employed or engaged to do, on his or her behalf, work of a kind that can only be done by a person registered in a particular category or class, a person who is not so registered; or
- (f) has obtained his or her registration by fraud or misrepresentation; or
- (g) has had his or her authority to practise as a building practitioner in a place outside Victoria cancelled or suspended otherwise than for failure to renew that authority; or
- (h) has failed to comply with an undertaking given to the Board.

If the Board is satisfied that the building practitioner is “guilty” of one of the above failings, the Board may do one or more of the following things:

- (a) reprimand the building practitioner;
- (b) require the building practitioner to pay the costs of or incidental to the inquiry;
- (c) require the building practitioner to give an undertaking not to do a specified thing;
- (d) impose a fine of up to \$2,000.00;
- (e) suspend registration for up to 3 years;
- (f) cancel the building practitioner’s registration.

Inquiry Into Ability To Practise

Where the Board has held an inquiry into a building practitioner’s ability to practise, and is satisfied that the building practitioner is incapable of practising, the Board may suspend or cancel the building practitioner’s registration.

Safeguards

If the person subjected to the inquiry is dissatisfied with a decision of the Board, he or she may appeal to the Building Appeals Board.

Another important safeguard is included in section 146 of the *Act*. According to section 146 a decision of the Board does not take effect until either the end of the prescribed 60 day appeal period or the decision is affirmed

on appeal by the Building Appeals Board.

If the Board makes a finding favourable to the building practitioner, it must pay the building practitioner's reasonable costs of and incidental to the inquiry.

The Building Control Commission

The Board can only hold inquiries into registered building practitioners. The Building Control Commission can, on the other hand, bring proceedings against any person for any offence against the *Act* or the regulations. The Commission may authorise persons to bring proceedings under the *Act* and to exercise the power of entry given to the Commission under the *Act*.

The Right To A Fair Hearing

When the Board holds an inquiry into the conduct of a building practitioner, the building practitioner is entitled to natural justice. The building practitioner is entitled to know the case he or she is required to answer and generally this entitles him or her to insist on:

- (a) details of the allegations levelled against him or her;
- (b) proper access to documents upon which the Board relies;
- (c) full access to any report of the Board's assessor;
- (d) a right to make a full submission and to question people upon whose evidence the Board relies; and
- (e) a Board composed of persons with no bias or who are not open to the perception of bias.

Access to Documents

A person who is the subject of an inquiry should be entitled to gain access to documents relevant to the inquiry. Usually the Board is prepared to allow the building practitioner to inspect its file once notice of an inquiry has been given. If the Board and/or the assessor is reluctant to make documents available, the building practitioner should consider making an application under the *Freedom of Information Act*.

Where the Commission or anybody else prosecutes a building practitioner, the Commission is obliged as a matter of law to make its prosecution brief available to the building practitioner.

Self-incrimination and Answering Questions

It is presently the law that a person is not bound to answer questions the answer to which will implicate the person in the commission of an offence. The same applies in relation to the production of documents. While it is an offence to obstruct a person in the carrying out of a function under the *Act*, nothing in the *Act* compels any persons to incriminate themselves. Indeed there is nothing in the *Act* compelling a person to answer any question.

On the other hand, it is an offence to make a false or misleading statement to a person who is carrying out a function under the *Act*.

At the end of the day, it is for the Board or the Commission to make out its case. It is not for the building

practitioner to make out the case for them. That is not to say that the person being questioned needs to be difficult. This may only serve to harden the Board's or the Commission's resolve to proceed.

Similarly, there is no point in refusing to answer questions which, if answered truthfully, will clear the building practitioner of the offence or help his or her case in the inquiry.

The difficulty is knowing when to answer questions and when not to answer questions. The same applies in relation to the production of documents. As a general rule, if the person being questioned is in any doubt he or she should decline to answer the question or ask that he or she be given an opportunity to seek advice before answering.

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