

Disciplinary Penalty Guidelines

Under section 31 (4) of the Building Professionals Act 2005

Application of the guidelines

The Guidelines reflect the policy of the Board on the range of disciplinary decisions that are appropriate to address the current level of justified complaints being received by the Board, and in particular the issue of repeated infringements by accredited certifiers. The Guidelines are to assist delegates in the exercise of their discretion.

Delegates will continue to have the absolute discretion to take into account the individual extenuating or aggravating circumstances of a matter. For example, extenuating circumstances may exist which justify the delegate not imposing a fine, or in not adding to the fine on the basis of there being past disciplinary decisions, in accordance with the Guidelines. Conversely, aggravating circumstances may justify the imposition of a cancellation of accreditation for a Category F infringement even if there are no previous disciplinary decisions. The delegate is required to have regard to the provisions of these Guidelines when making any disciplinary decision.

Category of infringement	Infringement status	Disciplinary decision - range of fines	Possible additional disciplinary decisions	Effect of prior record of disciplinary decisions (DD)	Additional actions
A - Dismissal or no further action	Complaints that satisfy the requirements of s.22 BP Act for taking no further action or s.23 BP for dismissal.	N/A	N/A	None	None
B - Penalty infringement notice (PIN)	Minor infringements identified in legislation as	Fine fixed by relevant legislation.	Refer to the Board's PIN policy at www.bpb.nsw.gov.au		

Category of infringement	Infringement status	Disciplinary decision - range of fines	Possible additional disciplinary decisions	Effect of prior record of disciplinary decisions (DD)	Additional actions
	capable of being dealt with by the issue of a PIN.				
C - Minor infringements.	Minor matters that are unsatisfactory professional conduct.	Up to \$5,000	Caution, reprimand, conditions, report on practice, undertake educational course.	Fine of up to \$5,000 may be imposed if: <ul style="list-style-type: none"> • there has been no more than two DDs in the previous 12 months, and • no DD in the previous 12 months has resulted in the imposition of a fine of \$5,000 or more, or an order for suspension or cancellation. 	Listed on website. Where DD is second DD in previous 12 month period, an audit investigation of the certifier is undertaken.
D - Moderate infringements.	Moderate matters involving unsatisfactory professional conduct, or where it is not appropriate to deal with matter under Category C	\$5,000 - 20,000	Caution, reprimand, conditions, report on practice, undertake educational course, suspension or cancellation of accreditation.	Fine to be determined within the range, having regard to history of DDs. If there have been three or more DDs made in the	Listed on website. Board may undertake audit, re-assessment of competence or further education, depending on infringement.

Category of infringement	Infringement status	Disciplinary decision - range of fines	Possible additional disciplinary decisions	Effect of prior record of disciplinary decisions (DD)	Additional actions
	due to the record of DDs in the previous 12 months.			previous 12 months, or six or more DDs made in total in the previous five years, and if the delegate is not satisfied that further infringements are unlikely, consideration to be given whether to suspend or cancel.	Where DD is second DD in previous 12 month period, an audit investigation of the certifier is undertaken.
E - Significant infringements	Significant infringements involving unsatisfactory professional conduct or professional misconduct.	\$20,000 - \$50,000	Caution, reprimand, conditions, report on practice, undertake educational course, suspension or cancellation of accreditation.	Fine to be determined within the range, having regard to history of DDs. If there have been three or more DDs made in the previous 12 months, or six or more DDs made in total in the previous five years, and if the delegate is not satisfied that further infringements are unlikely,	Listed on website. Board may undertake audit, re-assessment of competence or further education, depending on infringement. Finding of professional misconduct conduct possible. Where DD is second DD in previous 12 month period, an audit investigation

Category of infringement	Infringement status	Disciplinary decision - range of fines	Possible additional disciplinary decisions	Effect of prior record of disciplinary decisions (DD)	Additional actions
				consideration to be given whether to suspend or cancel.	of the certifier is undertaken.
F - Major infringements	Major errors of judgment or compliance involving unsatisfactory professional conduct or professional misconduct.	\$50,000 - \$110,000	Caution, reprimand, conditions, report on practice, undertake educational course, suspension or cancellation of accreditation, disqualification from reapplying for accreditation.	Fine to be determined within the range, having regard to the prior history of DDs. In addition , all possible additional DDs are to be considered.	Listed on website. Board may undertake audit, re-assessment of competence or further education, depending on infringement. Finding of professional misconduct probable. Where DD is second DD in previous 12 month period, an audit investigation of the certifier is undertaken.

Categorisation of infringements

For the purpose of applying the Guidelines it is necessary for the delegate to categorise the seriousness of the infringement.

For the purpose of categorising a complaint, consideration is to be given to:

- the objects of the legislation
- the nature, width and extent of the contravention(s)
- the circumstances in which the contravention(s) took place
- whether there is the presence of fraudulent or dishonest intent and deliberation on the part of the certifier
- the extent of carelessness or wilfulness of the conduct
- the impact or ramifications of the conduct i.e. the loss or damage and prejudice resulting from the contravention
- whether efforts have been made to correct the situation, including any measures that have been taken by the accredited certifier
- the consciousness the certifier had and displayed, of his or her legislative obligations.

The types of conduct set out under each of the Category headings below are regularly occurring examples of infringements which have been the subject of recent investigations by the Board. The examples of conduct set out under each Category are provided as general assistance to delegates to categorise an infringement. The examples set out are only illustrative and do not constitute an exhaustive list of categorised conduct. The Board may in the future add additional examples to the Guidelines if further types of regular infringements are identified.

Category A – Dismissal or no further action

Complaints that satisfy the requirements of s.22 BP Act for taking no further action or s.23 BP Act for dismissal. Examples include:

- complaints that are trivial, misconceived or lacking in substance
- complaints that do not deal with matters that constitute unsatisfactory professional conduct
- complaints about conduct that occurred more than three years before the making of the complaint.

Category B – Penalty infringement notices (PIN)

Minor infringements identified in legislation as capable of being dealt with by the issue of a PIN. Examples include:

- PCA failing to notify council of appointment [s.81A(2)(b1)(i) EP&A Act]
- failing to endorse application for a complying development certificate with the date of receipt [cl.126(2) EP&A Regulation].

Category C – Minor infringements

Minor matters involving unsatisfactory professional conduct. Examples include:

- minor regulatory matters for which penalty infringement notices may be issued
- minor PCA monitoring incidents.

Category D – Moderate infringements

Moderate matters involving unsatisfactory professional conduct. Examples include:

- minor visual departures from development consent
- more significant PCA monitoring incidents
- more significant offences for which penalty infringement notices may be issued
- lesser BCA non compliances
- lesser departures from the development consent/CDC
- OC issued where the preconditions are not satisfied and those preconditions do not relate to health and/or safety.

Category E – Significant infringements

Significant infringements involving unsatisfactory professional conduct or professional misconduct. Examples include:

- CC doesn't comply with the BCA
- CDC doesn't comply with the BCA
- major visual or material departures from development consent/BASIX
- CC inconsistent with development consent, excluding category C matters
- CDC doesn't comply with planning instrument (SEPP)
- OC issued where the preconditions are not satisfied.

Category F – Major infringements

Major errors of judgment or compliance involving unsatisfactory professional conduct or professional misconduct. Examples include:

- CC inconsistent with development consent – adding additional floor space or volume
- CDC doesn't comply with a planning instrument (e.g. SEPP), excluding category B matters
- CC doesn't comply with the BCA – significant health and/or safety
- CDC doesn't comply with the BCA – significant health and/or safety
- OC issued when building unsuitable to occupy – significant health and/or safety
- OC issued to extent that a development consent or CDC is not in force for the building (declared invalid)
- OC issued to extent that a development consent CDC is not in force for the building (building is substantially different from consent).

In these Guidelines, “Disciplinary Decision” and “DD” mean a decision made under s.31(4) or s.34(2) of the BP Act, or a penalty imposed by the issue of a PIN.

© State of New South Wales through the Department of Finance, Services and Innovation. December 2016.

Disclaimer: While every reasonable effort has been made to ensure that this document is correct at the time of publication, the State of New South Wales, its agents and employees, disclaim any and all liability to any person in respect of anything or the consequence of anything done or omitted to be done in reliance upon the whole or part of this document.