Welcome to the first issue of Codewords for 2019.

Looking back, 2018 was a big year for Building System Performance as we worked to improve the building regulatory system. This year, our focus continues to be on ensuring New Zealand has an efficient system that encourages innovation, while making sure buildings are safe, healthy and durable.

In the first quarter of the year, you will have the opportunity to take part in public consultation on a number of legislative changes as part of the Building System Legislative Reform Programme. This consultation is your opportunity to comment on our proposals to address issues in the building regulatory system, specifically in the areas of Risk and Liability, Building Products, and Occupational Regulation. These proposals represent the biggest change to the building regulations since the Building Act was introduced in 2004, and may result in a long-term programme of change in the sector.


Last year BSP committed to making more regular improvements to the Building Code. Using sector feedback, the Building Code was updated at the end of November in the first of our regular Bi-Annual Building Code System updates. These updates will now take place each year in June and November following public consultation so the Building Code is continually enhanced and does what it’s intended to do.

Finally, the Building Performance online learning site has been live for almost a year and new courses continue to be added to support sector education. The most recent updates to the site are three courses for geoprofessionals. You can find out more about the courses in this issue of Codewords, and by visiting learning.building.govt.nz (http://learning.building.govt.nz).

There is a lot to achieve in 2019, but I feel confident that BSP and you in the sector are ready to tackle the challenges.

Anna Butler  
GM Building System Performance (BSP)  
Ministry of Business, Innovation and Employment
Public consultation: overhaul for building legislation

In the first quarter of 2019, you'll have the opportunity to have your say on a number of proposed changes to building legislation.

After discussions between government and the building sector in 2018, legislation changes that are set to improve performance of the building sector have been identified.

There's no question a number of challenges across the entire building system are preventing the building and construction sector reaching its potential. Low productivity, skills and labour shortages, and how costs are allocated when things go wrong are issues the sector is currently facing. Within the building regulatory system, roles and responsibilities are unclear, there's insufficient information to help perform roles, and an inability to hold people to account when things go wrong.

To address these regulatory inefficiencies, government is considering changes to the areas of risk and liability, building product and occupational regulation. Within occupational regulation, the focus is on the regimes for licensed building practitioners, engineers and plumbers, gasfitters and drainlayers.

Ultimately, the result of any changes must be safe and durable buildings. This is dependent on robust, efficient regulations and a high-performing building and construction sector.

MBIE will soon be asking you to get involved. In the next issue of Codewords, we'll tell you more about what's changing and where to go to learn about the consultation.

Designing for access and usability

“Buildings for everyone – Designing for access and usability” has been recently published on the Building Performance website, with the aim to improve understanding of all building users’ needs when accessing public buildings.

The guide is for those who own, design, build, and manage public buildings to encourage them to consider the varying needs of members of the public right from the start.

Permanent or temporary disability affects about a quarter of the population at any one time. Everyone should be able to access and use public buildings. This guide describes the building user experience for people with different physical, sensory and cognitive capabilities and shows practical approaches to the design, construction and management of public buildings to meet their needs.

The guide provides information about good practice for the design of buildings that are safe and easy to use for everyone, some of which may exceed the requirements of the Building Code. 


Geotechnical online learning courses launch

Three new courses for geoprofessionals have been released on the Building Performance online learning site. All courses are based on the geotechnical guidance created by MBIE and the New Zealand Geotechnical Society.

The courses are:

- Earthquake resistant foundation design
  This course is based on Module 4: Earthquake resistant foundation design.

- Liquefaction – mitigating hazards
  This course is based on Module 3: Identification, assessment and mitigation of liquefaction hazards.

- Rockfall – passive protection structures
  This course is based on Rockfall: Design considerations for passive protection structures.

These courses take about 30 minutes each to complete. Once you have completed a course, a Record of Learning can be printed off and used in your professional development portfolio.


Read the modules and technical guidance these courses are based on (https://www.building.govt.nz/building-code-compliance/b-stability/b1-structure/geotechnical-guidance/).

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LBP Registrar update (Codewords 88)

Welcome to our first edition of 2019. I hope that your summer months have been enjoyable so far. In the building world, we can expect another busy year ahead; things don’t seem to be slowing down.

Wayne Burroughs - Registrar - Profile Photo

As you may be aware, there is some change in the air for the Licensed Building Practitioner (LBP) scheme. I have stepped in as Registrar of LBPs as Paul Hobbs has been appointed to another building regulatory role as Manager of the Building System Assurance team. I wish Paul all the best and thank him for his contribution to the LBP scheme over the last several years. In addition, we consulted last year on fees and whether stonemasonry should be included in the scheme, and also released the stakeholder assessment report.

On the radar this year is policy and legislative change following the feedback we received from those pieces of work. MBIE hopes to open a consultation in the first quarter of the year, and we will be in touch when that happens so that you can have your say. Please keep an eye out for this - it’s important to make sure your voice is heard.

In this Codewords, our first article covers the different types of LBP licence suspensions. Consumers regularly review the public register, so keeping your history clear of disciplinary or relicensing suspensions is in your best interest.

Our second article completes our quantity surveying-related series. This time, we are taking a look at learning opportunities. Quantity surveying practices go hand-in-hand with estimating, quoting and tendering for work. These are essential business practices to operate a construction company, and getting it right is more important than ever during a period of high industry activity.

Thanks for reading,
Wayne Burroughs
Registrar Building Practitioner Licensing

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Learning opportunities and tools for LBPs

As an LBP, keeping up to date with the latest information is paramount to running a successful business.

Licensing classes

We are lucky in New Zealand as there are lots of opportunities and tools to learn and grow your business, as long as you know where to look! This article is the third and final article tying quantity surveying to being an LBP.

Often we hear that LBPs are unsure where to start learning about business practices. Here’s some advice for Small to Medium sized Enterprise (SME) builders to pick up some tools and tricks from a Quantity Surveying perspective.

Business practices are relevant to your Skills Maintenance. Contractors have a range of regulatory obligations alongside LBP obligations, so knowledge in this area is relevant to being able to contract with consumers and participate in our building industry.

Trade Events

Get along to as many trade events as you can. Hearing from a range of informative speakers, and the general camaraderie these events encourage, is something you can’t put a dollar value on. Trade Events are often held by different institutions as well as by merchants or other trade suppliers.

Another great place to meet and share your knowledge and listen to a range of speakers is your local Chamber of Commerce. They will generally cover more than just trade information and also give out free information for those interested in human resources, business acumen, accounting, and all those other things SME builders need to understand to run their businesses profitably and efficiently.

NZTE – Regional Partnership Networks

New Zealand Trade and Enterprise offer learning opportunities and funding to SME’s across New Zealand, and in many cases this includes our local trades. They can offer business mentoring, financial acumen, Human Resources support and training and marketing. Support is offered by way of courses around the country and one-on-one consulting and training with regional partners.

You can apply for funding for this assistance if you go to the website and become part of the network, it is definitely worth checking out. Suppliers to the NZTE have to be thoroughly vetted to ensure they are going to give value and help businesses so it is a great place to find real value, and help with funding.


Estimating Tools

There are lots of online tools, some free and others by subscription, providing data-based industry averages across the regions for labour constants, built up rates, and cost planning information. Quantity surveyors use this global information for estimating purposes, but for builders who are looking for estimating guidance, it is a fantastic wealth of information.

You can also find paperback books about quantity surveying. These are a common tool quantity surveyors use, alongside online services, to obtain information about labour constants. You’ll often find one within reach of a quantity surveyors desk.

Using resources to make the process quicker and easier is an added bonus. The information in these resources has been gathered through years of data analysis, and is a good basis to use when completing your own pricing work. A very handy tool to have in the office!

Quiz

1. Learning about contracting with consumers and complying with your obligations can be relevant for:
   a. LBP Skills Maintenance
   b. Running a competitive and resilient business
Article is relevant to LBP licence classes: All

c. Winning contracts and staying profitable
d. All of the above

2. True or false: If you’re operating a small business, you won’t need to know anything about recruiting staff, human resources or accounting – just turn up and do the work!
   a. False
   b. True

3. Where is one good place to get started on learning business skills and getting support to grow your company?
   a. A quantity surveyor
   b. NZTE Regional Partnership Networks
   c. You’ll just have to learn it yourself


Suspensions – it is your choice

There are several types of licensed building practitioner (LBP) licensing suspensions: voluntary, relicensing, or disciplinary.

Voluntary suspensions are by choice, but relicensing or disciplinary suspension happens as a result of your actions as an LBP.

All suspensions appear on your public register page, the reason for the suspension is described including for disciplinary or relicensing reasons. Clients might steer away from you if you have a disciplinary or relicensing suspension history, so maintaining your current licence status can be very important to your reputation and future business.

Voluntary Suspension

You may choose to have your licence (or a class of licence) suspended for up to two years by completing the ‘Voluntary suspension of licence form’. You can end your voluntarily suspension at any time by completing the ‘Ending voluntary suspension of licence form’. You need to continue to maintain your skills while on a voluntary suspension.

These two forms can be found on the LBP website: [https://www.lbp.govt.nz/for-lbps/your-licence/suspend-or-cancel-your-licence/](https://www.lbp.govt.nz/for-lbps/your-licence/suspend-or-cancel-your-licence/)

Voluntary suspensions are shown on the public register, but are described as ‘at the request of the practitioner’, to separate them from suspensions placed on your licence by the Registrar or Building Practitioners Board.

Relicensing Suspension

Every year, the Registrar will make contact with you about a month prior to your licence ID card expiring to ensure that you wish to remain licensed.

You can renew your licence online, or contact the LBP licensing team. Your licence will be suspended if you do not respond, if you don’t pay your yearly licensing fee, or do not complete your skills maintenance (required every 2 years).

It is important to make contact with the LBP team and renew your licence (which can be done online) because if your licence is suspended you will be considered ‘non-licensed’. When you are ‘non-licensed’ you are not able to carry out Restricted Building Work (RBW) unless you’re...
supervised by an LBP, and you can’t supervise RBW. You also can’t tell people that you are an LBP.

Your suspension is required by law to be shown on the public register for 3 years. You cannot request to have your suspension history removed. A suspension can impact on your ability to get jobs as consumers check the public register regularly.

Disciplinary Suspension
The Building Practitioners Board can suspend an LBP’s licence if an LBP commits a disciplinary offence under section 317 of the Building Act 2004.

A disciplinary suspension means you are ‘non-licensed’ and not able to carry out RBW unless you are supervised by an LBP. If your licence is suspended by the board you can’t supervise RBW and you can’t tell people you are an LBP. Your suspension will also be shown on the public register for 3 years and may impact on your ability to get work.

Quiz
1. How long can you voluntarily suspend your licence (or class of licence) for?
   a. Up to 6 months
   b. Up to 2 years
   c. As long as a piece of string

2. When can you uplift your voluntary suspension on your licence (or class of licence)?
   a. When the suspension period you selected has ended
   b. 2 years after your voluntary suspension started
   c. Any time, but you can only voluntarily suspend your licence for 2 years

3. If your licence is suspended because you did not complete relicensing, what are you able to do?
   a. Only carry out RBW under the supervision of an LBP
   b. Supervise RBW as long as you’re not the person carrying it out
   c. Tell people that you’re an LBP

4. How long will a suspension stay on your public register profile?
   a. Until you request to have it removed
   b. 3 years
   c. 1 year


Carpentry LBP’s licence cancelled for 10 years after three offences

The Building Practitioners Board has revoked the licence of a carpentry LBP for committing three disciplinary offences under the Building Act 2004. Due to the seriousness of the sanction, the Board has chosen to publish its decision.

Disciplinary action and publication of decisions is designed to uphold the integrity of the LBP scheme, and inform LBPs of the consequences of a similar failure.

Misi Sau Evile (C2-01854)
A complaint was laid against Mr Misi Sau Evile for work he carried out in Franklin, Auckland. Mr Evile was responsible for a complex high-spec two-storey build on a semi-rural lifestyle site.

Mr Evile was found to have:
- carried out building work in a negligent or incompetent manner;
- failed to provide a record of work; and
In September 2016, Mr Evile quoted six months for the completion of a 462m² home. The complainants then paid 35 per cent of the total build cost to Mr Evile. There were ensuing issues with project completion dates and monetary matters. Materials were left to weather in the elements. Progress was described as start-stop, and there were periods of zero activity. Framing that had been erected had deteriorated to the point where it would have to be replaced.

During the build, Mr Evile became insolvent and was unable to complete the project. The complainants stated in their evidence that they had lost 20 years of life savings due to the conduct of Mr Evile.

In making its decision to cancel Mr Evile’s licence, the Board considered the length of time Mr Evile had been in the industry along with the evidence he presented regarding his standard pricing procedure. It was clear that he under-quoted this job by almost a quarter of a million dollars based on his stated square metre rate. The rate he used was significantly less than what would have been required to build a high-spec house.

The Board considered that Mr Evile poses a genuine and continuing risk to the public (he had been disciplined on two other occasions, one of which was for similar behaviour). As a result they cancelled Mr Evile’s licence with a stand-down period of 10 years, ordered he pay costs towards the Board inquiry, and determined that this decision would be published.

What we can learn from this decision

Failure to follow his regulatory obligations as an LBP, and a complete lack of planning and commitment to the project, led to this practitioner being seriously disciplined. Quoting and pricing for jobs is an important part of the interaction between a client and a contractor. Actively misleading consumers causes a great deal of harm and, in this case, led to a severe sanction against Mr Evile.

Practicing honesty and integrity is essential to conducting work as an LBP. Open and honest communication with clients helps to address problems that can come up during a build.

A record of work must also be provided to the homeowner and the Territorial Authority, even in cases where an LBP is unable to complete a project.

Read this and other past decisions in full on the LBP website [https://www.lbp.govt.nz/complaints-and-past-decisions/past-complaint-decisions/].

Repeat offender’s licence cancelled

Carpentry LBP Ronald Carmichael has again been sanctioned by the Building Practitioners Board. Due to the repeated nature of Mr Carmichael’s behaviour and the seriousness of his conduct, the Board has chosen to publish the details.

Ronald Carmichael (C2-01901)

Mr Carmichael of Christchurch, who held a Carpentry licence, was found to have:

- conducted himself in a manner that brings, or is likely to bring, the LBP scheme into disrepute.

In this matter, Mr Carmichael was engaged to build a house for a fixed price. He submitted his price to the homeowner prior to the building consent being issued, and it was accepted.

After the homeowner paid close to the full fixed price, the build was only 60–70 per cent complete. Additional invoicing was questioned by the homeowner, as it exceeded the agreed fixed price, and Mr Carmichael failed to provide a basis for seeking this money. From there the relationship deteriorated.
Mr Carmichael left New Zealand (he claimed permanently) without completing the contracted building work. The complainants told the Board that they will have to spend an additional $230,000 over what they have already paid to Mr Carmichael to complete the build.

The Board doubted that the house could be constructed for the fixed cost sum that was agreed upon. Mr Carmichael failed to pay a number of suppliers, despite being paid by the homeowner for the work undertaken. The Board therefore determined that Mr Carmichael made a financial gain at the expense of the complainants. This, as with his previously publicised matter, brings the LBP regime into disrepute.

In addition, Mr Carmichael failed in his obligation to provide a record of work after he ceased work on the project.

The Board cancelled Mr Carmichael’s licence for a period of five years, ordered he pay costs of $3000 and required this decision to be published.

What we can learn from this decision

Pricing, quoting and tendering for building work is a critical component of operating in the industry – getting it wrong has many significant consequences. The Board has routinely held that LBPs have an obligation to act reasonably and with expected care when engaging with consumers or others. The Board does not get involved in commercial disputes between the parties, but does take an interest in how the LBP went about determining a price for the job and the systems used to both monitor the cost of the job and keep the consumer informed of any changes.

Mr Carmichael has demonstrated a pattern of behaviour over at least two serious complaints where he failed to meet the behavioural standards expected of an LBP. He has caused serious financial harm to consumers and, as a result, the Board has stripped him of his licence and repeatedly published his actions.

These situations can be avoided by pricing work in good faith, with accuracy and care. It is exceptionally poor behaviour to submit a price simply to win a job when the project cannot be constructed for that amount of money.

Read this and other past decisions in full on the LBP website (https://www.lbp.govt.nz/complaints-and-past-decisions/past-complaint-decisions/).

Records of work and disputed contracts

The Building Practitioners Board recently found that an LBP failed to provide a record of work in line with his obligations. They decided to publish the details of the matter to assist other practitioners, but not to name the LBP as the incident was not serious enough to warrant doing so.

The LBP was employed by a contractor who, part-way through a job, entered a dispute with the homeowner. Work ceased on the property in mid-2015 and the parties negotiated an agreement to recommence work at the end of that year. In February 2016 the parties dissolved their agreement to continue, however the dispute between the parties lasted until late 2016.

The LBP did not provide a record of work until October 2016, after the dispute ended. The Board decided that, due to the contracting parties bringing their agreement to an end in February of that year, it was reasonable to expect that the work would cease for the LBP and therefore the record of work should have been provided at that time.

What we can learn from this behaviour

In this case, the record of work was held back until the dispute was set aside. This is not acceptable practice as it was clear that the restricted building work was not going to continue.

The Board has previously held that, when there have been negotiations which include an LBP continuing restricted building work at a later date, a record of work may not be required until those negotiations are complete. However, if that negotiation breaks down and it becomes clear that the LBP will not complete the work (as occurred in this example during 2016) a record of work should be
produced without delay.

Records of work are a common theme in complaints. The Board reminds LBPs of their obligation to provide a record of work at the completion of their part of the restricted building work. Failure to provide a record of work could lead to disciplinary action.

Read these and other past decisions in full on the LBP website [https://www.lbp.govt.nz/complaints-and-past-decisions/past-complaint-decisions/](https://www.lbp.govt.nz/complaints-and-past-decisions/past-complaint-decisions/).

Notable decisions against two LBPs

The Building Practitioners Board recently handed down significant sanctions against two LBPs and has chosen to publish the details of the matters due to their seriousness and the strong penalties.

The first complaint was made against Dale Kay in Tauranga, and the second against Sam Spence in Auckland. This is a good opportunity for others to learn from these mistakes and avoid similar circumstances.

Dale Kay (C2-01866)

Mr Kay, who holds a Carpentry and Site (area of practice Site 1) licence, was found to have:

- carried out building work in a negligent or incompetent manner.

The Board heard evidence that Mr Kay was engaged by a lift installation company to install a lift for a homeowner. Mr Kay prepared the house for the installation, including removing structural timber framing and creating a hole in the concrete slab. A building consent was not obtained for this work.

It was clear the work required a building consent, both for the installation of the lift or elevator itself, as well as for the significant amount of structural change. Much of the work did not comply with the Building Code or meet standard practice. Mr Kay had, for example, cut back a large amount of structural framing to 75 mm x 50 mm as opposed to the 100 mm x 50 mm that was called for.

Mr Kay claimed that obtaining a building consent is the homeowners’ responsibility and that the work would have been inspected by an engineer.

On consideration of the evidence, the Board stated an LBP must, as an integral part of the building work, ensure a building consent is obtained if required. Homeowners are not experts in the building process, and in this case both Mr Kay and the lift installation company misled the homeowner as to the need for a building consent.

The Board stated that an LBP cannot contract out of their obligations. Being employed by a company that is hired by a consumer to undertake the work does not mean that the LBP isn’t responsible for their own conduct. While the homeowner, Mr Kay or the lift installation company could have obtained a building consent, Mr Kay neither obtained one nor ensured that one had been obtained before commencing work.

Mr Kay’s work also fell significantly short of acceptable practice and quality. Evidence presented identified that, had the lift been installed as prepared, it would have been unsafe.

The Board considered Mr Kay had been negligent or incompetent in his work. The Board ordered that he pay a fine of $3000 and costs of $2000 and that this decision be published.

Sam Spence (C2-01906)

Mr Spence, who held a Roofing licence (in the area of practice Profiled Metal Roof and/or Wall Cladding), was found to have:

- acted in a manner that brings, or is likely to bring, the LBP scheme into disrepute.

The Board’s inquiry into Mr Spence resulted from a segment on the Fair Go television programme. The work in question was re-roofing work for which Mr Spence had been subcontracted to carry out.

In the early stages of the work concerns about the workmanship were raised, the subcontract for the re-roofing work was terminated and the relationship between the customer and Mr Spence broke
down. Both the company he was engaged by, and Mr Spence, demanded a substantial progress payment from the customer. When no payment was forthcoming, Mr Spence used threats of violence and intimidating behaviour to coerce payment from the customer. His behaviour far exceeded what would be reasonably expected in the normal pursuit of a debt in the course of business.

The behaviour demonstrated by Mr Spence was unrelenting and repeated, escalating in a short period of time. Voice messages included threats, obscene and offensive language, and lewd comments of a personal nature. The Board considered that this behaviour brought the LBP scheme into disrepute by using unacceptable methods to try to collect what was a disputed sum of money.

The Board cancelled Mr Spence’s licence for three years and ordered he pay $2500 towards the costs of the inquiry. The Board also decided to publicise their decision.

What we can learn from these decisions

Both matters relate to engaging with consumers in inappropriate ways. Mr Kay attempted to avoid his responsibilities in regards to ensuring a building consent had been granted before commencing building work, and Mr Spence actively threatened and intimidated a consumer for payment.

The Board has high expectations for the behaviour of LBPs. LBPs are regarded as experts in the building process and being a licensed person carries a reputation that you are trustworthy, reliable and accountable. Both of these LBPs fell short of the standards of licensing in different ways relating to consumers.

Treating clients and consumers with respect and ensuring you provide advice that is within their best interests is an excellent way to maintain the positive reputation of the LBP scheme. Failing to act reasonably in your dealings with others may bring you before the Board and result in discipline.

Read these and other past decisions in full on the LBP website (https://www.lbp.govt.nz/complaints-and-past-decisions/past-complaint-decisions/).

Recent determinations

Deciding whether a pool complex needs to provide access for people with disabilities

Determination 2018/036 discusses the application of section 118 to a swimming pool complex.

Background

A pool complex with a four-lane pool and a separate two-lane pool was built without a way for people with disabilities to get into and out of the pool. The building consent drawings showed a ramp into the two-lane pool, but that ramp was not installed. Instead, after the construction was mostly complete the owner proposed to install a hoist. The building consent authority (BCA) did not agree that the proposed hoist complied with Clause D1 and section 118 of the Building Act.

The owner argued section 118, which requires certain buildings to provide a means of access for people with disabilities, did not apply to the building because only members of the swim school club are allowed to use the complex.

Discussion

The determination noted the clear intent of the Building Act that buildings accessed by the public are constructed to allow people with disabilities to visit or work, and carry out normal activities to their fullest extent.

Section 118 of the Building Act states:

If provision is being made for the construction or alteration of any building to which members of the public are to be admitted, whether for free or on payment of a charge, reasonable and
Adequate provision by way of access... must be made for persons with disabilities who may be expected to:

a. visit or work in that building; and
b. carry out normal activities and processes in that building.

This section applies to buildings that are listed in Schedule 2 of the Building Act.

The owner argued that once a person becomes a member of the swim club they are no longer a member of the public. The determination concluded that a person’s status as a member of a club or the benefits they receive would not determine whether or not section 118 applied. In this case, the complex is intended to be open to a wide range of members of the public.

While club members received benefits that were not available to non-members, the determination found they continued to be members of the public despite their membership status. The determination considered the phrase “whether for free or on payment of a charge...” included this type of situation where members of the public are members of an organisation or group. The view was taken that section 118 still applies to buildings that house organisations or groups that provide member-only benefits or services.

The owner argued that by refusing membership for some people because their requirements could not be met, the building was not open to members of the public. However, the determination decided that although those who were refused membership were looking for services not offered, they could still join one of the club’s existing activities. Therefore, the building admitted members of the public.

The determination found section 118 applied to the pool complex because members of the public were permitted entry, and it is a building that requires access to and within for people with disabilities.


Previous determinations is a register of all previous determinations.
For our last issue of 2019, we look back on what has been a hugely productive year for the building regulatory system, and gear up for the release of the Construction Sector Accord Transformation Plan.

In the latest issue, we update you on the building law reforms recently announced by the Government. Another round of Building Code updates is coming up in November, following public consultation on selected Acceptable Solutions and Verification Methods.

This issue includes recent LBP disciplinary decisions, technical knowledge on built-up members in place of solid timber, lessons learned from the demolition of Statistics House, and recent determinations.

This issue looks at recent LBP disciplinary decisions, immediate pool areas, technical knowledge on top plate connections, how quantity surveying principles can help with pricing jobs, a new risk advisory group, and technical reviews of councils.
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- with compliance with the Building Act, it is published under section 175 of the Building Act
- with a Weathertight Services claim, it is published under section 12 of the Weathertight Homes Resolution Services Act 2006.