

30 October 2017

Briefing to the Incoming Minister

The following note provides an overview of the work of the New Zealand Registered Architects Board (NZRAB), with a particular focus on issues that may in time require ministerial involvement.

Overview

The registration of architects began on a voluntary basis at the beginning of the 20th century. In 1963 the registration of architects became mandatory. The Registered Architects Act 2005 (the Act) established the NZRAB and made the requirements for registration and for continuing registration more rigorous, and the criteria under which architects can be disciplined more expansive.

The Act requires that the Board:

- registers architects who have been assessed by their peers as competent to practice independently
- maintains an online register, so the public can confirm that an architect is registered
- reviews the competence of architects every five years
- investigates complaints and, if need be, disciplines architects.

The Act's purpose, as stated in the legislation, is "to protect the title of Registered Architect". The Act (S7(2)), says that only persons who are Registered Architects may describe themselves as Registered Architects and only Registered Architects may call themselves "architects" when providing building design services.

The NZRAB is fully self-funding from fees paid by Registered Architects and applicants for registration. As at 30 June 2017, 1,889 architects were registered in New Zealand. On average, about 60 new architects are registered annually.

In most advanced economies architects are registered in some way, so that only persons who have met the required standards are entitled to use the title. Jurisdictions vary in terms of whether or not particular kinds of work are reserved for architects. In New Zealand the work of architects is not protected as such. However, the restricted work requirements of the Building Act 2004 mean only Registered Architects and Licensed Building Practitioners – Design are permitted to design and sign off standalone residential properties and small apartments.

Context

The Government's long-standing view is that when "incompetent service by members of the occupational group could result in significant harm to the consumer or a third party,"¹ then some form of occupational regulation is required.

¹ See Cabinet Office Circular Policy Framework for Occupational Regulation CO (99) 6

Against that template, the mandatory registration of architects remains valid, given the potentially severe and costly consequences if buildings or, more broadly, the built environment are designed incompetently.

There are also positive reasons for registering architects which go wider than just ensuring building standard compliance. The registration of architects entrenches competence requirements that lift the contribution that architects make to society and the economy. A well designed built environment that is appropriate for the New Zealand context confers enduring social and economic benefits. This is the result of good design and also the quality processes that architects bring to their work.

Architects take into account the broader environmental and cultural context, including the need for the built environment to be sustainable. As our cities and towns become more complex and sophisticated, it is very much in the public interest for the quality, professional integrity and reputation of the architectural profession to be preserved and enhanced.

The NZRAB has articulated a vision statement that describes this broader context. It states:

The task of architecture is to lead the way in terms of what the built environment can and should be. This goes beyond designing for function, essential though that is. In so far as architecture articulates the national imagination, it contributes to nation building. If the built environment in New Zealand is the best that it can be, then it contributes to the realisation of this nation's potential. The NZRAB determines who can be a Registered Architect. In doing this, the NZRAB is mindful of the broader contribution that the profession makes to New Zealand.

International

The NZRAB operates in an international context. The title “New Zealand Registered Architect” needs to be and is internationally credible, so that New Zealand architects can export their services, thereby advancing New Zealand’s trade agenda. To that end:

- the competencies that applicants need to demonstrate for registration in New Zealand are derived from those that apply in Australia
- the process used for recognising academic qualifications for initial registration is shared with Australia
- the NZRAB is a participant in the APEC Architect Project
- the NZRAB has a mutual recognition arrangement with the United States of America which allows for experienced US architect to be registered in New Zealand, and vice versa
- the NZRAB is currently negotiating an arrangement with the United Kingdom Architects Registration Board allowing for degree recognition and cross-border registration
- the NZRAB expects to soon be negotiating an arrangement with Canada allowing for degree recognition and cross-border registration.

Also, under the Trans-Tasman Mutual Recognition Act 1997, a person registered to practice an occupation in either Australia or New Zealand is entitled to practise an equivalent occupation in the other country. Architects are included in this.

Governance

The Board of the NZRAB is required to have six to eight members who are appointed by the Governor General on the recommendation of the Minister. Up to four of the Board members must be nominated to the Minister by the New Zealand Institute of Architects Inc (NZIA).

At the time of writing, the NZRAB Board members were as follows:

| Board members | Occupation | First appointed | Current term expires |
|----------------------------|--------------------|------------------------|-----------------------------|
| Warwick Bell (Chairperson) | Architect | 05/08/2010 | 04/08/2018 |
| Prof Diane Brand | Academic Architect | 19/12/2015 | 18/12/2017 |
| Kimberly Browne* | Architect | 03/10/2016 | 02/10/2018 |
| Euan Mac Kellar* | Architect | 19/12/2013 | 18/12/2017 |
| Marc Woodbury* | Architect | 02/05/2016 | 01/05/2018 |
| Louise Wright* | Architect | 18/12/2014 | 17/12/2017 |

* NZIA nominated

The NZRAB maintains a small office in Wellington, with four staff (3.5 FTEs).

The NZRAB is reliant on about 50 registration assessors who are senior Registered Architects. Their principal task is to assess applicants for initial and continuing registration. The assessors are paid modest honoraria. Any planning for the future should pay particular attention to retaining and nurturing this resource and the professional commitment and enthusiasm that underpins it.

In addition, a number of architects and lay persons, apart from Board members, serve on Board committees, including taking part in the Board's complaints procedures.

One of the challenges the NZRAB faces is making sure that its registration assessors are able to assess not only what is required to be a Registered Architect now, but also what will be required in the future. The Board is well aware that the New Zealand cultural context is evolving rapidly. The NZRAB recently began a search for registration assessors who would be able to undertake a registration assessment in te reo Maori.

Issues that may require ministerial attention in 2017/18

Succession Planning

The terms of all the current Board members expire during either 2017 or 2018, and will need to be renewed or the Board members replaced. The Board has been liaising with officials in this regard.

Sufficiency and Availability of Board Members

By statute, the Board can have between six and eight members, there currently being six. Having only six Board members has been problematic in that it puts at risk the NZRAB's complaints procedures. Two Board members are required to serve on Investigating Committee and Disciplinary Hearings must be conducted by three Board members at a minimum. The two Board members that have served on an Investigating Committee must be excluded from a resultant Disciplinary Hearing, given the tainting issue.

As a result, finding three Board members able to serve on a Disciplinary Hearing can be difficult, especially if there is a conflict of interest or for some other reason one or more of the remaining Board members cannot participate. This could be mitigated by the total number of Board members being restored to either seven or eight members. Discussion

has also taken place with officials in regard to the merits of having lay persons on the Board again, if the Board has seven or eight members.

Changes to the Act

By invitation, in July 2017 the NZRAB made a submission to The Ministry for Business, Innovation and Employment (MBIE) regarding possible changes to the Act that might be advanced in omnibus legislation, in part to deal with the sufficiency and availability of Board members, as described above, and to deal with some other issues. The request covers:

- dispensing with the requirement that Board committees must include two Board members, so that Board members would no longer be required to serve on Investigating Committees and thus all Board members would be available to take part in Disciplinary Hearings, if required
- removing limitations on the Board's powers to delegate, so that, if it wished, the Board could allow Investigating Committees to impose limited penalties in response to minor complaints (this would require a rule change but at the moment the Act makes it impossible)
- redrafting of the protection of title subclause 7(2) so that non-architects could not use a pretence of specialisation to evade this subclause and pretend to be architects while providing building design services.

Rule Changes

In July 2017, the Minister for Building and Construction approved in principle a series of rule changes. At the time of writing, the resultant regulations were being prepared by Parliamentary Counsel and shortly it is expected they will be submitted to you for final approval. These proposed rule changes span the following:

Complaints and discipline procedures

The proposed rule changes include measures to clarify the meaning of one of the grounds available to Investigating Committees to dismiss a complaint, being Rule 69(a) that: "There is no applicable ground of discipline under section 25(1)(a) to (d) of the Act". This has long been problematic and has led to litigation, hence the proposed clarification.

An additional measure is proposed to allow the Board to dismiss a complaint after an Investigating Committee has decided that it shall be referred to a Disciplinary Hearing and before the Hearing takes place where circumstances have changed so there is no longer any real prospect of the architect being found wanting.

Ethics

Revisions of the Code of Minimum Standards of Ethical Conduct for Registered Architects are proposed, which would raise the bar in terms of the behaviours expected and required of architects.

Fees

A series of fee changes are proposed, all of which are fee reductions, rationalisations or, in one case, a fee elimination.

Other reform ideas

Looking further out, were the opportunity to present, the NZRB would advocate the following.

The extension of restricted work to complex buildings

The previous government indicated an interest in task-based occupational regulation. Were this to be extended to building design, the NZRAB would favour restricted work in the Building Act being extended to complex buildings, with the rider that only Registered Architects could design complex buildings.

If this was done, the NZRAB would also advocate designers who are currently Licensed Building Practitioners being registered as Architectural Designers or Technicians by an extended NZRAB, so that integrated minimum standards and registration procedures could be developed to facilitate experienced architectural designers who currently design complex buildings becoming Registered Architects. The NZRAB believes stair-casing in this way would encourage skills growth and by that productivity in terms of the overall design community in the building sector.

Continuing Registration Requirements

The Act and the rules require that every five years all architects are reviewed to confirm that they are still competent. The NZRAB has been conducting these competence reviews annually since 2011 and has concluded that these reviews do NOT enhance public protection in any meaningful way, despite the expense.

The NZRAB favours the replacement of five yearly competence reviews with an annual professional development requirement that would be a prerequisite to Architects being issued with an annual certificate of registration which they must have to practice. This is a common arrangement among regulated occupations where keeping practitioners up to date is a priority.

Jurisdiction in regard to historical complaints

As previously advised, the NZRAB has received legal advice that under the Registered Architects Act 2005 the NZRAB cannot investigate complaints in regard to events that occurred prior to 1 July 2006, that being the date when the Architects Act 1963 was repealed. Section 86 of the Registered Architects Act 2005 provides transitional provisions that apply to complaints received by the Architects Education and Registration Board (which preceded the NZRAB) under the previous legislation, but it does **not** provide for a complaint received by the NZRAB about events that allegedly occurred prior to the new Act's enactment.