

Consultation
Proposed rule changes in relation to architects’ complaints procedures 2018

The New Zealand Registered Architects Board (NZRAB) is proposing to make a series of changes to the Registered Architects Rules 2006 (the Rules) regarding its complaints and discipline procedures. Rule changes require consultation with relevant stakeholders, hence this consultation.

For an explanation of these proposed changes, please see overleaf.

To indicate your view, please respond as per the table below indicating with an X whether you think what’s proposed is fair and reasonable, or not.

We also welcome any general feedback or suggestions for improvements in the space provided.

Then please save this and email it back to consult@nzrab.org.nz.

Replies need to be back to the NZRAB by **Friday 14 September 2018.** Responses will be treated as confidential.

**Please indicate which you are of the following**

|  |  |
| --- | --- |
|  | **Indicate which you arewith an X below** |
| **Architect** |  |
| **Person working towards registration** |  |
| **Other stakeholder** |  |

If “other stakeholder” please specify:

**Then please indicate your view of the proposed rule changes**

|  |  |
| --- | --- |
| **The proposed changes to the NZRAB’s complaints procedures are:** | **Indicate your viewwith an X below** |
| **Fair and reasonable** | - |
| **NOT fair and reasonable** | - |

You are welcome to add any other additional commentary below.

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**Proposed rule changes in relation to architects’ complaints procedures 2018**

The NZRAB’s complaints procedures have long had two difficulties which these proposed rule changes are intended to solve.

**Problem 1:**
The NZRAB’s complaints procedures are time consuming and expensive. They involve numerous checks and balances which make sense when complaints are about very serious matters, and the stakes are high for everyone involved and especially the architect whose professional future is at risk.

However, in practice, most of the complaints received are about relatively minor matters and for these complaints the current procedures are overly complex, expensive, protracted and often extremely stressful for the parties involved.

As a result, sometimes architects have been found at fault on relatively minor matters, a modest penalty, if any, has been imposed, and yet then the architect has had costs imposed, potentially up to about $25,000.

Costs are not supposed to be a penalty, and yet, at this level, in effect they are.

The proposed rule changes would allow complaints to be dealt with in a much less expensive way.

However, to ensure natural justice, if an architect found to be at fault was not prepared to accept the result, then he or she would be able to require that the matter be put before a full Disciplinary Hearing as at present, with its checks and balances, but also its attendant risks and costs.

The current procedure works as follows:

1. When a complaint is received, it and the architect’s written response, are referred to a three person Investigating Committee.
2. The Investigating Committee investigates the complaint
3. The Investigating Committee may either dismiss the complaint or the complaint must be referred to a Disciplinary Hearing, which is a meeting of the Board.
4. At the Disciplinary Hearing a Queen’s Counsel employed by the NZRAB presents a charge, evidence is heard under oath, cross examination takes place and then a determination is made as to whether the architect is at fault.
5. If the architect is found to be at fault further submissions are made regarding penalty and then the penalty and costs, if any, are determined.

The NZRAB budgets $50,000 to conduct a Disciplinary Hearing, ie step 4. Normal practice for proceedings such as these is that if a person is found to be at fault costs of 50 per cent are imposed unless there are extenuating circumstances

The NZRAB is proposing a new, less expensive procedure as follows.

1. When a complaint is received, it and the architect’s written response, are referred to a three person Investigating Committee.
2. The Investigating Committee investigates the complaint.
3. The Investigating Committee may either dismiss the complaint or decide the architect is at fault.
4. If the architect is at fault, the Investigating Committee then recommends a penalty to the Board.
5. The Board considers the recommendation and decides what the penalty shall be, thereby ending the matter.
6. However, if the architect declines to accept that he or she is at fault, the complaint is referred to a Disciplinary Hearing, which is a meeting of the Board.
7. In that case, at the Disciplinary Hearing a Queen’s Counsel employed by the NZRAB presents a charge, evidence is heard under oath, cross examination takes place and then a determination is made as to whether the architect is at fault.
8. If the architect is found to be at fault further submissions are made regarding penalty and then the penalty and costs, if any, are determined.

The critical difference is steps 3 to 5 which would spare all the parties the time and cost of a full Disciplinary Hearing. At step 2, if the architect wanted a lawyer present that would be allowed, but generally the NZRAB would not need to involve its lawyers which is where most of the cost comes from. Steps 6 and 7 would allow the architect his or her “day in court”, if the architect insists.

We think under this proposal a full investigation by an Investigating Panel would cost about $11,000. If the architect is found to be at fault by the Investigating Panel, and then the Board imposes a penalty, then, as a matter of policy, the Architect will NOT be charged costs. However, if the architect insists on a Disciplinary Hearing and then is found to be at fault, almost certainly costs will be imposed, as at present.

The intention is to provide a less costly procedure, while also providing a full range of checks and balances if an architect requires them. For the profession in general and the architect, the savings will be significant when there is no Disciplinary Hearing.

**Problem 2**Rule 90(1)(C) of the Registered Architects Rules 2006 requires that two NZRAB board members must serve on Investigating Committees. As a result, sometimes there are difficulties finding other non-conflicted Board members to sit on Disciplinary Hearings that follow on from Investigating Committees. This is because the two Board members who served on the initial Investigating Committee cannot serve on the follow-on Disciplinary Hearing. The Board currently has six members in total.

The proposed rule change would remove the requirement that two Board members serve on Investigating Committees, enabling the Board to better manage the memberships of Investigating Committees to ensure that enough non-conflicted Board members are available to serve on Disciplinary Hearings.

8 August 2018