



## **Guidance on Disciplinary Procedures**

This document is intended to be read in conjunction with the Registered Architects Act 2005 and Registered Architects Rules 2006. The Act and the Rules remain the primary source of information about the NZRAB complaints process.

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## 1. Introduction

1. On 10 January 2020, new disciplinary procedures came into effect applying to current and former New Zealand Registered Architects, as required by the Registered Architects Act 2005 (the Act) and the amended Registered Architects Rules 2006 (the Rules).
2. This manual describes how the procedures work. It is designed to assist primarily:
  - the Chairs of Investigating Panels
  - the other members of Investigating Panels
  - the Board
  - the Executive Officer Public Protection (EOPP) and other Executive staff.
3. The high-level procedural steps are as follows:
  - a) A written complaint is received by the NZRAB Executive.
  - b) The EOPP determines if the NZRAB has jurisdiction. To have jurisdiction the complaint must be about a person who was a Registered Architect at the time the alleged conduct occurred (except in respect of a section 25(1)(a)(i) conviction)<sup>1</sup>, and the alleged conduct must have occurred on or after 1 July 2006.
  - c) If there is jurisdiction, the person complained about (the architect) is advised by the EOPP of the complaint, provided with a copy of the complaint, and asked to provide a written response.
  - d) The complaint and the architect's written response are submitted to an Investigating Panel (IP).
  - e) The IP investigates the complaint and prepares a report containing its findings based on the evidence received and considered. This may be done just on the documents provided, or the IP may request further information from the architect or the complainant or take evidence from the parties at a meeting of the IP.
  - f) The IP must write a report for the Board on the investigation, and it may (but is not required to) include in the report a recommendation that—
    - i) there are grounds for disciplining the architect under section 25 of the Act; or
    - ii) there are no grounds for disciplining the architect under section 25; or
    - iii) the matter should be dismissed on a ground in rule 69.
  - g) The EOPP provides the report to the Board, complainant and the architect and advises the architect of their right to request a Disciplinary Hearing.
  - h) The Board makes its decision taking into account the IP's report, and notifies the parties and the IP of its decision.

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<sup>1</sup> Section 25(1)(a)(i) of the Registered Architects Act 2005 deals with the situation where a registered architect has been convicted, whether before or after being registered, of an offence punishable by imprisonment for six months or more.

- i) If the Board decides there are grounds for discipline, the EOPP reminds the architect of their right to request a Disciplinary Hearing, then:
  - i) the EOPP calls for the IP to report to the Board with recommendations on penalty, costs, and publication,
  - ii) the EOPP provides the IP's penalty report to the complainant and architect and invites their submissions on penalty, costs, and publication,
  - iii) the Board considers the IP's penalty report and the submissions from the parties and then decides on penalty,
  - iv) the EOPP Notifies the parties of the penalty, which is implemented after 20 working days from the date of notification.
- j) If the architect requests a Disciplinary Hearing within the required timeframe, then it must be held, unless the Board reverses its decision to discipline the architect (based on new evidence or changed circumstances).
- k) A Board Disciplinary Hearing is a formal hearing with both parties present, legal representation etc. The hearing is technically a Board meeting and the persons presiding are exclusively Board members.
- l) The Board Disciplinary Hearing hears the complaint and decides whether there are grounds for discipline.
- m) If the Board determines that there are grounds for discipline submissions are received on penalty and then a penalty is imposed.

## 2 Complaints and Discipline Procedural Description

### Complaint laid

4. A complaint can only be considered by the NZRAB if it is in writing and is not anonymous (Rule 59(2)). The complaint:
  - a) must be about the conduct of a Registered Architect (section 24(1) of the Act)<sup>2</sup>
  - b) must indicate what aspect of section 25(1)(a) to (d) of the Act and, if applicable, what aspect of the architects' code of ethical conduct, the complainant believes has been breached (Rule 59(2)(d)).
5. A complaint may be dismissed by the Board if:
  - a) if it is about a person who (except in respect of a section 25(1)(a)(i) conviction) was not a Registered Architect at the time the alleged conduct occurred (Rule 59(1) read together with section 25(1) of the Act)
  - b) the matter has already been dealt with or is already being dealt with (Rule 62(a))
  - c) the alleged conduct occurred prior to 1 July 2006 (Rule 62(b)).
6. If the complaint is dismissed prior to a referral to an IP, the complainant is notified of the decision and the reasons (Rule 64(1)(a)). The person complained about is also notified of the decision and the general nature of the complaint, unless the complaint was dismissed due to a lack of jurisdiction to determine the complaint in which case the person complained about need not be notified (Rule 64, Rule 62).
7. If the complaint is not dismissed under Rule 62, then a complaint file is created, the complaint is given a reference number and it is referred to an Investigating Panel (IP).
8. In addition, the NZRAB can on its own motion initiate an inquiry if it has reasonable grounds to suspect that the conduct of a registered architect or former registered architect may fall within the grounds for discipline in section 25 of the Act (Rule 60). Under a Board delegation the inquiry can be initiated by the Chair or Chief Executive.

### Investigation

9. If the complaint is not dismissed under Rule 62, it is referred to an IP of three people to be investigated (Rule 61(a) and 90(1)). The EOPP convenes an IP from one of two laypersons and the Architectural Services Advisory Panel (ASAP); a panel of experienced architects working under delegation of the Board. The layperson represents consumer interests, and is always appointed as Chair of the IP.

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<sup>2</sup> Under section 24(4), a complaint or inquiry, and any decision on the complaint or inquiry, may relate to a person who is no longer a registered architect but who was a registered architect at the time of the relevant conduct.

10. As part of convening an IP under Rule 90, the EOPP checks for any conflicts of interest. A person cannot serve on an IP if they have a direct financial interest in the matter, or a non-financial interest relating to a relationship with a party or witness, or they held a predetermined view, such as personal hostility toward any of the parties or their witnesses, or to the merits of a complaint, or a known and settled viewpoint on the matter
11. At the same time, the architect complained about (the architect) is notified, provided with a copy of the complaint, and invited to provide a written response within a minimum of 20 working days.<sup>3</sup> The architect must be advised that if they don't respond, the complaint will still proceed.
12. The IP then conducts its investigation (Rules 66, 67). The IP must give reasons for its decisions, comply with the rules of natural justice, and comply with the Act and the Rules. Outside of these requirements, IPs may regulate their own procedures (Rule 80). A description of how IPs typically operate and legal advice as a guide for the IP when recommending whether a complaint should be dismissed, or whether there are grounds for disciplining the architect are provided below.

*IP recommends complaint/inquiry should be dismissed*

13. If the IP considers that there is no applicable basis for disciplining the architect under section 25 of the Act, or that the complaint should be dismissed on another ground in Rule 69 (Rule 66(2)(b) or (c)) then the IP prepares a report on the investigation, and may include in it a recommendation, for the Board to consider (Rule 66(1) and (2)).
14. The IP sends a copy of the report to the parties and must advise the architect of their right to request a disciplinary hearing and the date by which such a request would need to be made (Rules 66(3) and (4) and 67A).
15. The Board must consider the IP's report as soon as practicable after receiving it (Rule 68). If the Board decides there is no applicable basis for disciplining the architect under section 25 of the Act or that the complaint should be dismissed on another ground in Rule 69, the parties and the IP are advised and provided with the reasons for the decision and the investigation is closed.

*IP considers there are grounds for disciplining architect*

16. If the IP considers that there are grounds for disciplining the architect under section 25 of the Act, then the IP prepares a report on the investigation, and may include in it a recommendation, for the Board to consider (Rule 66(1) and (2)). The EOPP sends a copy of the report to the parties and must advise the architect of their right to request a disciplinary hearing and the date by which a request would need to be made (Rules 66(3) and (4) and 67A)

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<sup>3</sup> Twenty working days is 20 working days exclusive of the day of notification.

*Rule 71B—Board determines there are grounds for disciplining architect*

17. The Board must consider the IP's report as soon as practicable after receiving it (Rule 68). If the Board decides there are grounds for disciplining the architect under section 25 of the Act, the parties and the IP are advised and provided with the reasons for the decision. The Board must remind the architect of their right to request a disciplinary hearing and the date by which such a request would need to be made (Rules 71 and 67A)
18. As soon as practicable after receiving the notification of the Board's decision that there are grounds for disciplining the architect, the IP prepares a report providing penalty recommendations to the Board (Rule 71C).
19. The Board must provide the IP's recommendations on penalty to the complainant and the architect and invite them to make submissions on penalties within 20 working days of the invitation. The Board considers the IP's recommendations and the various submissions regarding penalty and decides what penalty, if any, will be imposed (assuming the architect has not requested a disciplinary hearing within the required timeframe). The Board's [Complaints and Disciplinary Policy](#) provides further information on penalty determinations and cost recovery.
20. If the architect elects to have the complaint referred to a DH, the IP's report and the complaint file are provided to a lawyer (the prosecutor) retained by the Board who then prepares the charge that will be the basis of the DH.
21. Once the complaint has been dismissed or grounds to discipline the architect have been found and a penalty has been imposed, or the architect has decided that a DH will take place, any notes taken by members of the IP and the Chairpersons' notes from IP meetings should be provided to the EOPP for secure storage.
22. The Board acknowledges that the parties may settle. Under Rule 60 the Board can continue or initiate its own inquiry after settlement, if appropriate in all circumstances.

### 3 Disciplinary Hearing (DH)

23. When an architect requests a DH, this will be set up as soon as practicable in accordance with the following procedures.
24. A DH is legally a Board meeting (Rule 73(1)), and so DH members must be Board members and the DH must have enough members to constitute a quorum under clause 29 of the Schedule to the Act. Also, because it is a meeting of the Board, all Board members must be notified in writing of the date, time, and place of the DH. Board members who would be unavailable to attend the entire hearing should put in an apology, and members who are conflicted or for whom their participation would trigger bias or apparent bias should disqualify themselves from participation in the hearing.
25. Before the Board holds the DH, the parties must be notified at least 30 working days before the hearing of the date, time, and place of the hearing and of their right to be heard and represented, and the architect provided with the charge. The architect is also provided with the complaint and invited to submit a response etc. within 20 working days, which is forwarded to the DH members and the prosecutor prior to the DH (Rule 74(1) and Rule 76(1)(a)).
26. Prior to the hearing, preliminary inquiries under rule 75(1)(a) are conducted or arranged by the NZRAB lawyer preparing the charge, assisted by the EOPP.
27. At the DH the complaint is heard, and a determination is made as to whether or not there are grounds for disciplining the architect under section 25 of the Act (Rule 72), this being a Board decision given that the DH is a Board meeting under Rule 73(1).
28. If the DH decides to dismiss the complaint, the matter is closed.
29. If the DH decides that there are grounds for disciplining the architect, the DH must invite the parties to make submissions setting out their opinion on penalty, costs and public notification, within a 20-working day period (Rule 77).
30. Once the DH has made its decision (whether to dismiss the complaint or that there are grounds for disciplining the architect), the parties are notified of the decision and the reasons for the decision and are advised of their appeal rights (Rule 78(1)). The right to appeal lies with the architect, not the complainant or aggrieved person (section 38 (1) of the Act), although they must all be told of the appeal rights (Rule 78(1)(a)).
31. Twenty working days after the notification of penalty, costs, and public notification (to cover the appeal period) any Board actions required in relation to penalty, costs and public notification are taken (Rule 78(2)).

#### *Dealing with disciplinary penalties after an IP & Board decision, or after a DH*

32. Where a person has been ordered to pay a fine or costs under section 26(4) of the Act, payment may be made over 12 months if the person has presented a plan involving regular payment that the NZRAB has agreed to. If no such plan has been

presented and agreed to and payment is not made, then, the Board may decide, 60 days after the date of the invoice for payment, if the person is a registered architect, to suspend their registration and then if the invoice remains unpaid after 12 months, cancel the registration, as allowed for under section 27(b) of the Act. The Act provides that these invoices are recoverable as a debt due to the Board from the architect (section 76), which simplifies the legal procedure for debt recovery and reasonable efforts should be made to recover the money where practical.

33. Details of any disciplinary penalty are shown on the architect's entry in the New Zealand Architects Register for three years, as required under section 21(1)(a)(iii) of the Act.
34. Under section 25(5) of the Act, the Board may order publication of its decision in any way it sees fit. The Board's policy position is to publicise the architects name, unless there are good reasons not to do so. If the Board decides that there is to be no public notification, the name of the architect is to be redacted from the publicised Board minutes, and an anonymised decision will be published on the NZRAB website.
35. Once the Board has made its decision on grounds for discipline and any required penalty, individual notes taken by IP and/or Board members are destroyed. The meeting minute, IP report and Board Decision become the documents of record.



#### 4 Investigating Panel Procedures in Detail

36. The following describes a typical Investigating Panel (IP) investigation, though IPs are free to regulate their own procedures (subject to ensuring they give reasons for their decisions, comply with the rules of natural justice, and comply with the requirements of the Act and Rules (Rule 80)).
37. Prior to the IP commencing its investigation, the parties and the IP members are sent the complaint and architect's response, which together form the 'complaint file' (Rule 64(1)(a)). The parties are also advised that the matter has been put to an IP (Rule 64(1)) and are advised of the role and membership of the IP.
38. IP members read the complaint file and an initial meeting (which may be via video/teleconference technology) occurs at which the IP discusses the complaint in general and how to proceed.
39. At the same meeting, the IP decides if it needs any further information from the parties (Rule 67(c)). For example, if the complaint is voluminous the complainant can be asked to identify the key facts and documents. Alternatively, more information relating to the complaint may be sought from either party (or both), but they must be given at least 20 working days to provide the information (which should be sent to the EOPP who can make copies of any documents for the IP) (Rule 67(c) and (d)). There is no obligation to provide the architect's response to the complainant, but the IP may do so (see paragraph 40).
40. Minutes are taken at the first and subsequent meetings by the EOPP, which are checked by the IP Chair and circulated to IP members.
41. The EOPP will instruct all parties that the architect has the right to make submissions in response to the complaint. The IP may allow the complainant to make a submission in reply, and the architect may submit a rejoinder to any new information in the complainant's reply. Following that, only additional information sought by the IP will be received (unless on natural justice grounds the architect has any further information in their defence to provide).
42. The EOPP actions any IP requests for additional information, which when received is sent to IP members. The architect must be given a copy of all the evidence against them. If the IP decides to seek additional information at least 20 working days must be given for responses. The IP may, in its direction, instruct the EOPP to provide the architect's additional information to the complainant, but need not do so (see paragraph 40).
43. The IP continues to discuss the complaint and any new information as required.
44. The IP then completes its investigation and forms a view under Rule 66(2) as to whether not there are grounds for discipline or whether or not the complaint should be dismissed on a ground in Rule 69.

45. In the unlikely event the IP is having difficulty coming to a preliminary view it may decide to repeat any of the process above, being careful to comply with the rules of natural justice in allowing the architect to provide further information/submissions on any new aspect of the complaint or inquiry, a right of response by the complainant, and a right for the architect to reply to that response.
46. The IP Chair drafts a report to the Board that describes what the complaint is about and includes the IP's reasoning and recommendation to the Board as to whether or not there are grounds for disciplining the architect or that the complaint should be dismissed (Rule 66(1) and (2)). The draft report is checked by the NZRAB's legal counsel to ensure it is legally robust.
47. The report and recommendation are then sent to the Board and to the parties, and the EOPP must advise the architect, when sending them the report, of their right to request a disciplinary hearing and the date by which that request must be made (Rules 66 and 67A).
48. The Board must consider the IP's report as soon as practicable after receiving it (Rule 68). If the Board decides there are grounds for disciplining the architect under section 25 of the Act, the parties and the IP are advised and provided with the reasons for the decision. The Board must remind the architect of their right to request a disciplinary hearing and the date by which a request would need to be made (Rules 71 and 67A). The Board may delay making this decision until the outcome is known of any other legal proceedings that may affect its decision (Rule 68(2)).
49. As soon as practicable after receiving the notification from the Board of its decision that there are grounds for disciplining the architect, the IP provides penalty recommendations to the Board (Rule 71C).
50. The EOPP will provide the IP's recommendations on penalties, costs and publication to the complainant and the architect, and invite them to make submissions on penalties, costs and publication, within 20 working days of the invitation (Rule 71D).
51. The Board considers the IP's submissions regarding penalties, costs and publication, and decides, as soon as practicable, what penalty, if any, will be imposed (assuming the architect has not requested a disciplinary hearing within the required timeframe) (Rule 71E).
52. The Board may reverse its decision that there are grounds for disciplining the architect, at any time before it makes a decision on penalty under Rule 71E, if it receives new evidence or if circumstances relevant to the decision change, and either of these would justify dismissing the matter (Rules 67C and 71A). The Board must notify the complainant, the architect and IP of the reversal and the reasons for it (Rule 71A(3)).
53. The Board can refuse a request from the architect for a disciplinary hearing if the Board reverses its decision (Rules 67C and 71A).

54. If the Board dismisses the complaint, the parties are advised and provided with the reasons for the decision and that ends the matter.
55. If the architect requests a Disciplinary Hearing in writing within the required period (Rule 67C), the EOPP provides the IP's report and the complaint file to a lawyer (the prosecutor) retained by the Board who then prepares the charge that will be the basis of the DH.

### **Interviewing the parties**

56. Where a complaint is raised, the IP may want to interview the parties to consider whether there are grounds for discipline, however, it need not do so if it is satisfied that it is in a position to prepare its report on the papers (Rule 67 (f)). If it does wish to interview one or more of the parties, they must be given at least 20 working days' notice of the interview date, they cannot be compelled to attend, and attendance is at their own cost. The typical process for this is as follows:
  - (a) If possible, the IP interviews the parties in the area where they live or by video/teleconference technology, or as is convenient or necessary.
  - (b) Both parties attend and typically the complainant is first asked to explain their complaint and then the architect is invited to respond. The IP members may ask questions to clarify or seek further information.
  - (c) The parties are NOT under oath and there is no cross examination of witnesses by the parties or their counsel, the procedure being inquisitorial in that the IP members question the parties to assist the IP to come to a decision on the matter.
  - (d) The IP may take private time during the interview to consider matters.
  - (e) The services of a stenographer are NOT used.
  - (f) The meeting may be recorded, but the parties must be advised of this before it commences
  - (g) Any additional written information tendered by either party during the meeting is given to the other party afterwards.
  - (h) The parties are entitled to be represented.
  - (i) The IP may, at its discretion, allow a party to be accompanied by a support person.
  - (j) Interviews are held in private and the public and media may not attend.

## Version history

31 August 2021	Minor update following review of the Complaints and Disciplinary policy
17 Aug 2021	Minor updated to reflect a changes to Board policy on cost recovery, and composition of investigating panels.
20 Oct 2020	First version published to reflect changes to the Registered Architects Rules 2006 that came into effect January 2020