



## Consultation

regarding proposed amendments to the New Zealand Code of Minimum Standards of Ethical Conduct for Registered Architects

The New Zealand Registered Architects Board is proposing to amend the Code of Minimum Standards of Ethical Conduct for Registered Architects, as set out in the Registered Architects Rules 2006.

This follows extensive research by a working party of architects and others, and additional legal advice.

The NZRAB now needs to consult with architects and its other stakeholders, and your input is requested. The identity of individual respondents will be kept confidential.

On the pages overleaf the proposed new code

is presented, alongside explanations of the proposed changes and the equivalent wording in the current code.

The NZRAB needs your overall response in terms of whether or not what's proposed is fair and reasonable.

You are also most welcome to comment on the proposed reform as a whole or the specifics of any of the proposed changes. Individual commentary helps us make further improvements and identify risks that haven't been considered previously.

A response form is attached which you are asked to fill out. Please then place it in the enclosed post-paid envelope and post it back to the NZRAB.

An invitation to take part in this consultation is also being sent out by email. Another option is to access the consultation at [www.nzrab.nz/newsfeed/](http://www.nzrab.nz/newsfeed/)

**The deadline for responses is 26 August 2016.**

Thank you for your input, which will be considered carefully.

# Proposed Amended New Zealand Code of Minimum Standards of Ethical Conduct for Registered Architects

Proposed amended code (new words in italics)	Reasons for changes	Equivalent sections of the current code
<p><b>1. Uphold the law</b> A Registered Architect must abide by the <i>laws and professional codes of ethics and conduct</i> in force in the countries and jurisdictions in which he or she provides professional services.</p>	<p>This clause is unchanged except that “professional codes of ethics and conduct and laws” from the current code have been reversed. This is because the law takes precedence over everything else.</p>	<p><b>47) Uphold the law</b> A Registered Architect must abide by the professional codes of ethics and conduct and laws in force in the countries or jurisdictions in which he or she provides professional services.</p>
<p><b>2. Act with honesty and fairness</b> A Registered Architect must pursue his or her professional activities with — a) <i>honesty</i>; and b) <i>fairness</i>.</p>	<p>“Honesty and fairness” has been split into subclauses, so that an architect can be found to have breached one subclause without there being an inference that the other subclause has been breached.</p>	<p><b>54) Act with honesty and fairness</b> A Registered Architect must pursue his or her professional activities with honesty and fairness.</p>
<p><b>3. Exercise unprejudiced and unbiased professional judgement</b> A Registered Architect must exercise unprejudiced and unbiased <i>professional</i> judgement.</p>	<p>“Professional” has been added to make clear that this requirement relates to architectural activities only.</p>	<p><b>48) Exercise unprejudiced and unbiased judgement</b> A Registered Architect must exercise unprejudiced and unbiased judgement</p>
<p><b>4. Skill, care and diligence</b> A Registered Architect must perform his or her professional work or services — a) with <i>reasonable skill</i>, care and diligence, and b) <i>in accordance with the applicable terms of appointment</i>.</p>	<p>“Reasonable skill” is added to reference the standard negligence test in conditions of engagement among a number of professions. Subclause b is added so that architects can be held to account ethically if they do not honour their terms of appointment.</p>	<p><b>49) Care and diligence</b> A Registered Architect must perform his or her professional work with due care and diligence.</p>
<p><b>5. Not misrepresent himself or herself</b> A Registered Architect must not represent or promote himself or herself, <i>or his or her qualifications, other registrations, experience, awards</i>, business, or professional services in a false, fraudulent, misleading, or deceptive manner.</p>	<p>“His or her qualifications, other registrations, experience, awards” is added for the sake of completeness.</p>	<p><b>46) Not misrepresent himself or herself</b> A Registered Architect must not represent or promote himself or herself, his or her business, or his or her professional services in a false, fraudulent, misleading, or deceptive manner.</p>
<p><b>6. Conflict of interest</b> A Registered Architect must disclose to <i>the client and/or any other materially interested or affected party and manage any circumstances</i> known to the Registered Architect that <i>create, or could reasonably be construed as creating or potentially creating, a conflict of interest</i>. <i>In circumstances involving a commission where a conflict cannot be adequately managed or resolved a Registered Architect must decline that commission</i>.</p>	<p>This clause is redrafted so that the architect has the obligation to determine who might be affected by an actual or perceived conflict and to give guidance in terms of declining a commission which involves a conflict.</p>	<p><b>53) Conflict of interest</b> A Registered Architect must disclose to clients, owners, or contractors significant circumstances known to the Registered Architect that could be construed as creating a conflict of interest. The Registered Architect must ensure that the conflict does not interfere with the Registered Architect’s duty to render unprejudiced and unbiased judgment.</p>
<p><b>7. Abuse of position or authority (new)</b> A Registered Architect must not abuse his or her professional position or authority.</p>	<p>This new clause is intended to cover abusive behaviour when an architect is a manager or in some other position of authority.</p>	
<p><b>8. Not maliciously criticise</b> A Registered Architect must not maliciously <i>or in bad faith</i> criticise or attempt to discredit another <i>Registered Architect or a Registered Architect’s practice</i>.</p>	<p>This clause is redrafted to reflect concern that the current code may have an unwarranted chilling effect on legitimate debate between architects about architectural matters. The redraft focuses more narrowly on ad hominem attacks and motives.</p>	<p><b>56) Not maliciously or unfairly criticise</b> A Registered Architect must not maliciously or unfairly criticise or attempt to discredit another Registered Architect’s work.</p>

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<p><b>9. <i>Supplanting another architect</i></b>  <i>A Registered Architect, acting in his or her own capacity or representing a practice, must not on his or her own initiative supplant or attempt to supplant another Registered Architect or practice from a commission.</i></p>	<p>This clause is intended to prohibit an architect from attempting to drive a wedge between another architect and that architect's client. This is in the context of the view that clauses 57 and 58 in the current code are both unrealistic in a modern commercial environment.</p>	<p><b>57) Conflicts of professional appointment</b>  A Registered Architect must, on being approached to undertake professional work for which he or she knows, or by reasonable inquiry ascertains, that another Registered Architect has a current appointment with the same client, notify the other registered Architect.</p> <p><b>58) Giving an opinion on the work of another Registered Architect</b>  A Registered Architect must, when appointed to give an opinion on the work of another Registered Architect, notify the other Registered Architect unless the appointed Registered Architect is aware of any current or pending litigation concerning the work that is the subject of the opinion</p>
<p><b>10. Remuneration and inducements</b>  <i>In respect to his or her professional work, a Registered Architect must—</i></p> <ul style="list-style-type: none"> <li>a) be remunerated solely by the fees and benefits specified in his or her <i>written</i> agreement of appointment, or employment agreement; and</li> <li>b) not offer <i>or accept any material</i> inducement(s) <i>which create or may create conflicts of interest or potential conflicts of interest; and</i></li> <li>c) not offer any <i>material</i> inducement(s) to procure a <i>commission or gain an unfair advantage</i>.</li> </ul>	<p>The reference to “professional work” is intended to make clear the boundaries of this ethical obligation. Regarding 51(a) “written”, see revised rule 50. Regarding 51(b) and (c), and the word “material”, trivial expressions of good will in a business context (the Christmas bottle of wine etc) are judged harmless. Re rule 51(c) the intent is to cover advantages other than just procuring a commission.</p>	<p><b>51) Remuneration and inducements</b>  A Registered Architect must:</p> <ul style="list-style-type: none"> <li>(a) be remunerated solely by the fees and benefits specified in the appointment or employment agreement; and</li> <li>(b) not offer any inducements to procure an appointment.</li> </ul>
<p><b>11. Professional Reputation</b>  A Registered Architect must—</p> <ul style="list-style-type: none"> <li>a) build his or her professional reputation on the merits of his or her own performance; and</li> <li>b) <i>acknowledge the contributions of others to projects where significant.</i></li> </ul>	<p>The proposed change to subclause (b) reflects the view that for legitimate reasons cultural activities, including architecture, always involve ideas that have a context and have often been reworked, but where work has a clear antecedent or others were contributors, this should be acknowledged.</p>	<p><b>55. Acknowledge colleagues' contributions</b>  A Registered Architect must:</p> <ul style="list-style-type: none"> <li>(a) build his or her professional reputation on the merits of his or her own performance; and</li> <li>(b) not claim as his or her own intellectual property and ideas of other Registered Architects.</li> </ul>
<p><b>12. Competence Maintenance (new)</b>  <i>A Registered Architect must actively maintain the currency of his or her professional skills and knowledge relevant to the Registered Architect's work.</i></p>	<p>Proposed clauses 12, 13 and 14 covering competence are new. Their inclusion acknowledges that architects specialise and that the practice of architecture is always evolving. As a result, an architect could be held to account ethically if he or she blunders into a project without sufficient prior experience and as a result fails to provide an adequate service. Also an architect could be held to account if his or her work was inadequate because of a failure to keep up to date. Likewise, an ethical duty of care is created when employing or commissioning others to do architectural work.</p>	
<p><b>13. Competence to do work (new)</b>  <i>A Registered Architect must only undertake architectural work for which the Registered Architect is competent, or must obtain appropriate support to ensure the work is completed to a competent standard.</i></p>		
<p><b>14. Competence of others (new)</b>  <i>If a Registered Architect tasks others to do architectural work, the Registered Architect must take all reasonable steps to ensure that those persons are competent and their work is appropriately supervised to ensure the work is completed to a competent standard.</i></p>		

<b>Proposed amended code</b> (new words in italics)	<b>Reasons for changes</b>	<b>Equivalent sections of the current code</b>
<p><b>15. Terms of appointment</b> A Registered Architect must <i>only</i> undertake professional architectural work when—</p> <p>1) <i>the client has been provided with written terms of appointment appropriate to the commission, services to be provided, or project, that must contain —</i></p> <p>a) scope of work; and</p> <p>b) allocation <i>and any limitation</i> of responsibilities; and</p> <p>c) fees, or methods of calculating them, and <i>how billing will occur.</i></p> <p>2) <i>the client has provided a written instruction to proceed after the provisions of subclause 1 have been met.</i></p>	<p>This clause is substantially reworked. The main change is that terms of appointment <b>must</b> be in writing, to better protect both parties. The existing clause 50 has caused difficulties in that it references the contents of terms of appointment that <b>may</b> be included but is silent about what <b>must</b> be included. The proposed revision has a shorter list of components, but their inclusion in the terms of appointment would be mandatory. However, the draft recognises that sometimes clients are difficult about contracts, which is why the proposed requirement would be met if the client is provided with written terms of appointment and then responds in writing with an instruction to proceed.</p>	<p><b>50) Terms of appointment</b> A Registered Architect must not undertake professional work unless the Registered Architect and the client have agreed the terms of the appointment, which may include but need not be limited to:</p> <p>(a) scope of work</p> <p>(b) allocation of responsibilities</p> <p>(c) any limitation of responsibilities</p> <p>(d) fee, or method of calculating it, and terms of trade</p> <p>(e) any provision for termination</p> <p>(f) provision for professional indemnity insurance.</p>
<p><b>16. Resources (new)</b> A Registered Architect responsible for establishing the terms of appointment for a project must ensure that the architectural services being provided can be adequately resourced.</p>	<p>This new clause is in response to reports of architects pitching for work on the basis of fees so low that the work cannot be done properly. In the end the fee is a commercial matter, but, if a project fails because of this, an ethical basis for holding the architect to account would be available.</p>	
<p><b>17. Project time, cost and quality (new)</b> A Registered Architect must—</p> <p>a) <i>ensure that an appropriate process is in place during a project, where applicable, to establish and monitor its quality, budget, costs and time-line; and</i></p> <p>b) <i>keep the client informed in a timely manner of any significant issues that arise or are identified in the process in subclause a.</i></p>	<p>Proposed clauses 17 and 18 reflect the fact that many of the complaints that the NZRAB receives involve bad management and service-provision failure. The intent is that architects could be held to account ethically when this happens.</p>	
<p><b>18. Practice Management (new)</b> A Registered Architect who owns, manages or controls a practice must ensure—</p> <p>a) <i>effective systems and resources are in place to ensure the practice is run in a professional manner; and</i></p> <p>b) <i>projects are adequately resourced, regularly monitored and reviewed.</i></p>		
<p><b>19. Confidentiality of client's affairs</b> A Registered Architect must observe the confidentiality of his or her clients' affairs and must not disclose confidential information without the prior consent of the client <i>unless required by law to do so.</i></p>	<p>The addition of "unless required by law to do so" and the deletion of 52(2) makes this clause cleaner and simpler, but the meaning is unchanged.</p>	<p><b>52) Confidentiality of client's affairs</b> (1) A Registered Architect must observe the confidentiality of the client's affairs and must not disclose confidential information without the prior consent of the client.</p> <p>52 (2) Subclause (1) does not apply if the Registered Architect is required by law to disclose that information.</p>
<p><b>20. Registration status of others (new)</b> A Registered Architect who owns, manages or controls a practice must ensure that <i>nothing is done by the practice that creates, or may create, the impression that an unregistered person working for the practice is a Registered Architect.</i></p>	<p>This new clause would enable the NZRAB to intervene where a firm managed by an architect in its marketing etc. creates the impression that other employees are architects too when this is not correct.</p>	