NZRAB Consultation  
Re proposed rule changes in relation to NZRAB complaints procedures

The NZRAB is proposing to make two changes to the Registered Architects Rules 2006 in regard to 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.

Then please save this and email it back to [consult@nzrab.org.nz](mailto:consult@nzrab.org.nz).

Replies need to be back to the NZRAB by **5 May 2017.**

**Proposed Rule Change 1  
That an additional ground for dismissing a complaint be added to rule 69, that *there is no real prospect of grounds for discipline under section 25(1)﻿(a) to (d) of the Act being proven.***

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| --- | --- |
|  | **Indicate preference with an X below** |
| **Fair and reasonable** | - |
| **NOT fair and reasonable** | - |

**Proposed Rule Change 2  
That a new sub clause to Rule 68 be added as follows. *68(2) If the Board has made a decision under Rule 68(a) and then prior to the Disciplinary Hearing circumstances change so that Rule 69(aa) applies, the Board may dismiss the matter.***

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|  | **Indicate preference with an X below** |
| **Fair and reasonable** | - |
| **NOT fair and reasonable** | - |

You are also welcome to add any other additional commentary below.

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**Proposed rule changes/additions highlighted and in italics**

**68 Board must consider report and decide whether to refer complaint or inquiry to disciplinary hearing***(1)* The Board must, as soon as practicable after receiving an investigating committee’s report on a complaint or an inquiry, consider the report and—  
(a) refer the matter to a disciplinary hearing; or  
(b) dismiss the matter on a ground in rule 69.

***(2) If the Board has made a decision under Rule 68(a) and then prior to the Disciplinary Hearing circumstances change so that Rule 69(aa) applies, the Board may dismiss the matter.***

**69 Grounds for not referring complaint or inquiry to disciplinary hearing**The Board may dismiss a complaint or an inquiry without referring it to a disciplinary hearing if—  
(a) there is no applicable ground of discipline under section 25(1)﻿(a) to (d) of the Act; or  
**(aa) *there is no real prospect of grounds for discipline under section 25(1)﻿(a) to (d) of the Act being proven.***(b) the subject matter is trivial; or  
(c) the matter is insufficiently grave to warrant further investigation; or  
(d) the complaint is frivolous or vexatious or is not made in good faith; or  
(e) the complainant does not wish action to be taken or continued; or  
(f) the complainant does not have a sufficient personal interest in the subject matter of the complaint; or  
(g) a disciplinary hearing is no longer practicable or desirable given the time that has elapsed since the matter giving rise to the complaint or inquiry arose.

**Background**When a member of the public lays a complaint with the NZRAB against an architect, the complaint is referred to an Investigating Committee which conducts an initial investigation and then determines which complaints must go before a disciplinary hearing.

Rule 69 lays out a series of grounds on which the Investigating Committee can dismiss a complaint, the most commonly used being Rule 69(a): *there is no applicable ground of discipline under section 25(1)﻿(a) to (d) of the Act;*

Interpreting this has been problematic for a long time, and recently this led to litigation. As a result, the High Court has ruled that: “The Investigating Committee must ensure that matters are NOT referred to a disciplinary committee when there is no real prospect of a finding against the architect even where there is a prima facie case against him or her.”

This interpretation is very helpful. To provide enhanced clarity going forward, the NZRAB wishes to write the court ruling into the Rules, as per the proposed Rule 69(aa).

In addition, Proposed Rule Change 2 would deal with the situation where after an Investigating Committee has decided to refer a complaint to a disciplinary hearing something in regard to the evidence changes (eg a critical witness refuses to appear or dies).

Otherwise the complaint would still have to proceed to a disciplinary hearing even though there is now no real prospect of any grounds for discipline being proven, thereby wasting time and resources, and causing unwarranted distress.