

Complaints and Discipline Policy

Version reference: 5.0

Effective date: 1 July 2022

Legislative reference: Sections 24 – 38 of the Registered Architects Act 2005
Part 4 of the Registered Architects Rules 2006

Purpose

1. This policy applies to the processing of concerns and complaints received on or after 10 January 2020. It covers:
 - a. Formal complaints and disciplinary processes and disciplinary hearings
 - b. Formal concerns about competence.
 - c. Architectural Service Concerns.
2. The NZRAB has a statutory function under section 50(d) of the Registered Architects Act 2005 (the Act) to receive, investigate, and hear complaints about, inquire into the conduct of, and discipline, registered architects.
3. The way the NZRAB must do this is specified primarily in Part 2 of the Act and Part 4 of the Registered Architects Rules 2006 (the Rules).

Governance and Administration

4. The Board delegates certain responsibilities to experienced architects who serve on one or more of four panels: the Architectural Service Advisory Panel (ASAP), the Standing Panel of Assessors, the Accreditation Management Panel and the Accreditation Standing Panel.
5. In the Public Protection area, members of the ASAP investigate complaints and review Architectural Services Concerns. Members of the Standing Panel of Assessors, referred to in this policy as Assessors, review concerns about an architect's competence.
6. Investigating panels are convened from the ASAP to investigate formal complaints about an architect. Each Investigating Panel is Chaired by a lay person contracted to the Board to lead the investigation. The layperson acts as a representative of consumer interests. Each investigating panel comprises two architect members and the layperson (Chair).
7. An ASAP Chair is appointed from within the ASAP. The ASAP Chair is responsible for reviewing Architectural Services Concerns, assigning the concern to an ASAP member

and providing mentorship to the ASAP members who undertake an Architectural Service Concern process.

8. The Board's Appointments policy sets out the appointment of delegates who serve on committees and panels.
9. Rule 90 of the Registered Architects Rules 2006 sets out the appointment of investigating panels. Whilst the Rule 90 allows Board Members to serve on investigating panels, in practice they do not, providing an additional measure of independence between the investigation and Board decision making.
10. An investigating panel has the power to recommend to the Board whether or not there are grounds for disciplining an architect. An architect may choose to accept the Board decision following its consideration of the IP report recommendation. Or the architect may request a disciplinary hearing and defend any charge against them.
11. The NZRAB has in place a series of delegations necessary for the NZRAB's Disciplinary Procedures to operate as intended by the Act and Rules (attachment 1).
12. The NZRAB has a document Guidance on Disciplinary Procedures (the Manual), which describes in detail how the NZRAB's formal disciplinary procedures work at a practical level.

Procedures

Complaints and Inquiries

13. The NZRAB can initiate its own inquiry under Rule 60 if it has reasonable grounds to suspect that the conduct of a registered architect or former registered architect may come within any of the grounds for discipline in [section 25](#) of the Act.
14. Situations that might prompt the CE and Board Chair to review whether or not such grounds exist could include but are not limited to, a disclosure or notification of a conviction, or as a result of information disclosed in an Architectural Service Concern form, or Competence Concern form.
15. As a matter of process, when the Board becomes aware of criminal convictions to which the Registered Architects Act 2005 Section 25(1)(a)(i) applies the matter will be referred to the CE to determine whether a Rule 60 inquiry is required.
16. If the NZRAB receives a written complaint about a registered architect, it must refer the matter to an investigating panel unless:
 - a. it does not hold jurisdiction to investigate the matter, or
 - b. it has received a prior complaint on the same subject matter and has already dealt with, or is dealing with, that prior complaint under the Rules.
17. Once referred to an investigating panel, a Rule 60 Board initiated Inquiry and complaint matter follow the same process as outlined in the Manual.

Disciplinary hearings

18. Disciplinary hearings are not a predetermined part of the complaints and disciplinary process. All complaints and inquiries which the Board has jurisdiction to investigate, and are not already being/have been dealt with, are referred to an investigating panel as the first step. The investigating panel makes a recommendation to the Board on whether or not there are grounds for discipline, or that the complaint be dismissed under a ground in Rule 69.
19. The Architect is first advised of their right to request a disciplinary hearing at the same time as receiving the Investigating Panel report. The opportunity to request a hearing expires 20 working days after communication of the Board's decision on grounds for discipline.
20. In the event the architect requests a disciplinary hearing, any decision the Board has made on grounds for discipline ceases to apply. If the Board has not yet considered the IP report and made its decision on grounds for discipline, the requirement for the Board to consider the IP recommendation also ceases to apply.
21. When an architect who is the subject of a complaint requests a disciplinary hearing, the complaint file and IP report are referred to a prosecutor who will prepare a charge. The architect will have the opportunity to defend that charge in person at a hearing of the Board. In this scenario, the complainant becomes the witness.

Penalty, Cost and Publication orders

22. If grounds for discipline are found, the Board will need to consider penalty, cost and publication orders.
23. In determining a penalty, the Board will consider the significance of the various penalty options provided under section 26 of the Act, the nature of the breaches of section 25 of the Act, precedent, submissions of the relevant parties and in some instances, the recommendation of the IP¹.
24. Section 26 of the Act provides the penalty options available to the Board. The Board is limited to one penalty order except when considering a censure or a fine.
 - A censure can be ordered in addition to either a fine, conditions on practice, or training.
 - A fine can be ordered in addition to either censure, training or suspension.
 - A fine cannot be ordered if the penalty order follows a finding of grounds for discipline because of conviction matter.
25. The Board has no power to award compensation. Claims for compensation need to proceed through separate civil proceedings in the appropriate court or tribunal.

¹ The Board will only receive a penalty, costs and publication recommendation from the IP if the matter has remained on the IP pathway.

26. Where the Board determines that there are grounds for discipline, 100 per cent of the costs and expenses of, and incidental to an inquiry, including Investigating Panel costs, may be recovered, unless there is good reason otherwise. The Board must consider the submissions of the parties and where applicable, the views of the Investigating Panel before making a decision.
27. Public notification under section 26(5)(b) will occur unless there are good reasons not to publicise the architect's name. As with cost determinations, the Board will consider the submissions of the parties and where applicable, the views of the Investigating Panel before making a decision.
28. In addition to any publication order in section 25(5)(b), sections 21(1)(a)(iii) and 21(2) of the Act require that penalties imposed on architects must be publicly recorded on the Register for three years.
29. If a determination is made that there will be no public notification; the name of the architect will be redacted from the Board's published minutes and an anonymised decision will be published on the NZRAB website.
30. Where there are useful lessons for the profession to be gained from a disciplinary procedure, the NZRAB will prepare a cautionary note for publication on the NZRAB website.

Competence concern

31. The NZRAB allows members of the public to raise concerns about an architect's competence to practise.
32. Upon receiving a competence concern form, two Registration Convenors (experienced Assessors) review the form to decide whether or not to initiate an out of cycle competence review under section 12(1) of the Act (a Convenors' Review).
33. In addition, a Convenors' Review will automatically be triggered if an Architect has been the subject of a combination of two or more complaints and /or Architectural Service Concerns within a 5 year period.
34. Where the trigger for considering a competence review includes one or more Architectural Service Concerns, the ASAP Chair will first review the ASC form(s) to determine if a Convenors' Review is warranted.
35. When Registration Convenors recommend a competence review, the architect will be asked to complete a continuing registration competence review form, and will undergo an assessment in line with an out of sequence competence review as set out in the continuing registration policy.
36. A convenors review may also be requested following an investigation into a complaint that has not reached the threshold for grounds for discipline, but where there are broader concerns about the architect's competence to practise that were outside of the scope of the complaint.

37. Where the Board determines that there are grounds for discipline, the architect may be required to have a one-off competence review. The Board may either order a competence review as a condition on the architect's practice, or where appropriate, it may instead use its powers under section 12(1) of the Act to require the architect to undergo a competence review.

Architectural Service Concern

38. An Architectural Service Concern (ASC) process is informal in that it does not involve an investigation and there is no formal finding or order resulting from the process. Rather it aims to achieve a mutually agreeable way forward between an architect and concerned person (usually a client of the architect).
39. To be eligible for the ASC process, the person who is the subject of the concern needs to be currently registered with the NZRAB or registered when the alleged events occurred.
40. Where a member of the public raises an Architectural Service Concern, the ASAP Chair reviews the form and in particular, the objectives of the concerned person to determine if the matter is appropriate for an ASC process.
41. If the decision is that the ASC process is not appropriate for the matter outlined in the form, the EOPP contacts the concerned person to explain the reasons why, and to advise the concerned person of the options available to them. This may be a formal complaint or a competence concern process, or it may be that they need to contact another regulator such as the Licensed Building Practitioners.
42. When the Architectural Service Concern is accepted for the ASC process, the architect that the concern has been raised about will be advised and will receive a copy of the concern form.
43. The concern is then assigned to an ASAP member who contacts both parties separately to understand what has occurred from each perspective and initiate conversations about what can be done to achieve a resolution. It is not the ASAP member's role to investigate, or to pass judgement or provide an opinion on the work of the architect.
44. An ASC process is considered closed when:
 - a. the ASAP Chair reports to the NZRAB Executive that the parties have agreed a way forward; or
 - b. the ASAP Chair reports to the NZRAB Executive that efforts to facilitate a resolution have not been successful and the ASAP member has ended the process.
45. The ASC form, and notification of who has been assigned the concern, and notification that the process has ended (or considered to be in abeyance) is saved to NZRAB filing system.
46. A record of the conversation, including any notes between the ASAP member and parties, are destroyed/deleted and not used for the basis of an investigation or competency review.

47. However, if an ASAP member is provided with information during the course of the concern process that causes the ASAP member to believe that an architectural matter discussed in the concern, could put the safety of any person at risk, the ASAP member is required to raise the issue with the architect, reminding the architect of their obligations to report on risk under Rule 50. The ASAP member is also required to advise the EOPP of the safety concern and the notification of the issue to the architect.
48. Whilst the intent of the concerns process is to allow opportunity for a resolution of issues before the matter escalates and potentially becomes a formal complaint, the Board retains the right to initiate its own inquiry under rule 60 of the Rules or a competence review under section 12(1) of the Act if the concern form raises broader concerns about the architect's practice.
49. An inquiry or competence review can be initiated regardless of whether the concern was considered resolved or not. However the Board will allow the concerned person the first opportunity to submit a complaint or competence concern if the Board considers it appropriate to do so in all circumstances.
50. Consideration of whether or not to initiate a Rule 60 Board Inquiry or a competence review is required, is triggered by a notification from the ASAP Chair.
51. If the ASAP Chair, after reviewing the concern form, has grounds to suspect that the architect's conduct could come within any of the grounds for discipline in section 25 of the Act, they report their grounds to the EOPP.
52. The EOPP prepares a memo to the CE and the Board Chair requesting their review of the information in the concern form and the report of the ASC Chair, to determine if reasonable grounds exist for a Rule 60 Board initiated inquiry.
53. If the Board Chair and CE consider that reasonable grounds do exist, then the CE will advise the EOPP in writing and the inquiry process will commence. If such grounds do not exist, the matter will be closed, unless at a later stage a complaint is received.
54. Alternatively, if after reviewing the concern form, the ASAP Chair has reasonable grounds to suspect that the architect no longer meets the minimum standard for continued registration, they may recommend that the architect undergoes a competence review. In this scenario, the ASAP Chair's report and the Architectural Services Concern form will be referred for a Convenors' Review.

Attachment 1

27 August 2020 Delegations



Delegations

27 August 2020

By resolution of the Board, the functions, duties, and powers in regard to the following rules are delegated:

- a. rules 60(1) and (2) to the Chair and/or Chief Executive (CE)
- b. rules 61(a) and 61(b), to the CE
- c. rule 62, to the CE
- d. rule 63, to the CE
- e. rule 64, to the CE
- f. rule 65, to the CE
- g. rule 66(4), to the CE
- h. rules 71(1), 71(2), 71A(3) and 71D, to the CE
- i. rule 74, to the CE
- j. rule 78, to the CE.

Attachment 2

Document control

#	Date	Author position	Approval method	Detailed changes/description
1.0	3 Mar 2020	Chief Executive/ Executive Officer Public Protection	Board meeting	<p>Board approved policy update to reflect new Rules than come into effect in January 2020. The new Rules changed the way the NZRAB processed complaints, key changes included:</p> <ul style="list-style-type: none">• Investigating Committees became Investigating Panels.• Board members ceased serving on investigations• Investigating Panels were granted delegated authority to recommend grounds for discipline, although retained the right to request a Disciplinary Hearing. <p>The change effectively ended the practice of undefended hearings.</p>
2.0	27 Aug 2020	Chief Executive	Board Meeting	Board approved a revision and amendment to the delegations to the IP and to the Executive
3.0	10 Feb 2021	Executive Officer Public Protection	Board Meeting	Policy updated to reflect Board decision on cost recovery.
4.0	15 Jun 2021	Executive Officer Public Protection	Board Meeting	Policy updated to allow for a Rule 60 Board Initiated Inquiry to be considered at the conclusion of an unresolved Architectural Service Concern
5.0	14 June 2022	Executive Officer Public Protection	Board Meeting	<p>Policy updated to include architectural service concerns process</p> <p>Board resolved to change its position on publication orders to one of publication unless there is good reason not to.</p>