

NZRAB Complaints and Discipline Policy

3 March 2020

1. This policy is to apply to the processing of complaints received on or after 10 January 2020, that being when new rules came into effect.
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 NZRAB has constituted a Public Protection Committee with terms of reference including:
 - a. to advise the NZRAB Board on the development and implementation of the Board’s policies and procedures regarding public protection, including complaints and discipline procedures
 - b. to monitor and advise on the implementation of the Board’s policies and procedures regarding public protection, including complaints and discipline procedures.
5. The pool of architects to be on Investigating Panels and their Chairs shall be appointed by the Board on the recommendation of the Chair of the Public Protection Committee.
6. The NZRAB also has in place a series of delegations necessary for the NZRAB’s Disciplinary Procedures to operate as intended (attachment 1).

Procedures

7. The NZRAB shall maintain a NZRAB Disciplinary Procedures Manual (the Manual) which shall describe in detail how the NZRAB’s disciplinary procedures shall be conducted at a practical level.
8. The Manual shall be kept up to date as the NZRAB’s disciplinary procedures evolve, with amendments to be made by the CE, with the Board Chair and the Chair of the Public Protection Committee to be advised.
9. The Manual and therefore the NZRAB’s complaints procedures must be fully compliant with the requirements of the Act and the Rules. In addition, the following are determined as procedural steps about which the Board has discretion.

10. Where a member of the public raises an Architectural Service Concern, the person the concern has been raised about shall be advised, unless that person is not a Registered Architect or was not a Registered Architect when the alleged events occurred.
11. In determining whether or not to dismiss a complaint under Rule 62(c), Investigating Panels (IPs) shall give consideration to the legal advice in the NZRAB Disciplinary Procedures Manual as to the meaning of the grounds for dismissal in Rule 69 and in regard to finding or not finding fault under Rules 62(a) and (b) this shall be on the basis of the balance of probability.
12. In determining a penalty, the Board shall give consideration to the legal advice in the NZRAB Disciplinary Procedures Manual as to the significance of the various penalty options provided under section 26 of the Act and precedent.
13. Where fault has been determined by an IP the architect shall not be charged costs and where fault has been determined following a Disciplinary Hearing (DH), 100 per cent of the actual costs shall be recovered, unless there is good reason otherwise.
14. 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 payments that the NZRAB has agreed to. If no such plan has been presented and agreed to and payment is not made, then, subject to a Board decision, 60 days after the date of the invoice for payment, if the person is a Registered Architect, his or her registration shall be suspended and then after 12 months cancelled, as allowed for under section 27(b) of the Act, and reasonable efforts shall be made to recover the money where practical.
15. Public notification under section 26(5)(b) shall NOT occur unless there are good reasons in terms of the public interest, given that separately 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.
16. If IP/DH determines that there are grounds for disciplining an architect AND there shall be no public notification, the name of the architect shall be redacted from the Board's published minutes.
17. Where there are useful lessons for the profession to be gained from a disciplinary procedure, the NZRAB shall prepare an anonymised report and/or a cautionary note, and architects shall be so advised.

Attachment 1

10 December 2019

Resolutions

1) That the Board accepts the recommendation of the Board Chair and the Chair of the Public Protection Committee that when the Registered Architects Amendment Rules 2019 comes into effect, the Board delegates:

1. to the Board Chair and/or Chief Executive (CE), a decision, under rule 60(1) & (2), to initiate an inquiry (which may be undertaken on the same basis as the investigation of a complaint in accordance with these delegations)
2. to the CE, a decision, under rules 59(1), 61(b), 62 and 63, as to whether a complaint can be dismissed because the person complained about was not a Registered Architect at the time the alleged events happened, or a prior complaint has already been dealt with or is being dealt with, or the alleged events occurred before 1 July 2006
3. to the CE, the task, under rule 64, of advising the parties if a complaint has been dismissed unless, in the CE's assessment, this is not required under rule 64(2)
4. to the CE, a decision, under rules 61(a) and 63, to refer a complaint to an Investigating Panel (IP)
5. to the CE, the task, under rule 64(1)(a), of notifying the parties if a complaint has been referred to an IP
6. to the CE, the task, under rule 65, of providing the architect with the complaint, inviting the architect to make a submission to the IP and advising that the complaint will proceed whether or not the architect makes a submission
7. to the IP, the power to consider the IP's report to the Board made under rule 66(1)(b) and to decide, under rule 68, whether or not there are grounds for disciplining the person complained about or to dismiss a complaint
8. to the CE, the task, under rule 71(1), of advising the parties of the IP's decision under rule 68
9. to the CE, the task under rule 66(4) of advising an architect of their right to request a Disciplinary Hearing (DH).
10. To the CE, the task under rule 71D of providing to the person complained about and the complainant a copy of the IP's rule 71C report and inviting them to make a written submission on penalty, costs and publicity
11. to the CE, the task, under rule 71(2), of setting the date, time and place of the DH, and providing all the information required in advance of the hearing under rule 74
12. to the CE, the task, under rule 78, of notifying the parties if the DH decides under rule 72(a) to dismiss a complaint, and the affected party's appeal rights
13. to the CE, the task, under rule 78, of notifying the parties of the Board's decision under rule 72(a) that there are grounds for discipline and inviting submissions on penalty, costs and public disclosure, and the affected party's appeal rights
14. to the CE, the task, under rule 78, of notify the parties of the penalty imposed, the reasons for the decision and appeal rights and then, if required, implementing any actions required of the Board.

2) That the Board delegates to the Board Chair the responsibility of notifying the individuals who currently hold the office of CE or are members of IPs of the terms of these delegations.

3) That the delegations in 1 and 2 are subject to the person concerned complying with the requirements of the Registered Architects Act 2005 and the Registered Architects Rules 2006 and any applicable policies and procedures.

4) That the delegations notified under resolution 2 continue in effect as long as the individual who has been given the delegation holds the position or until the delegation is revoked by the Board.

