

**Reprint
as at 3 July 2014**



**Building Practitioners (Complaints
and Disciplinary Procedures)
Regulations 2008
(SR 2008/304)**

Rt Hon Dame Sian Elias, Administrator of the Government

Order in Council

At Wellington this 8th day of September 2008

Present:

The Right Hon Helen Clark presiding in Council

Pursuant to section 402(1)(f), (h), and (k) of the Building Act 2004, Her Excellency the Administrator of the Government, acting on the advice and with the consent of the Executive Council, and on the recommendation of the Minister (as defined by section 7 of that Act), makes the following regulations.

Note

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.

Note 4 at the end of this reprint provides a list of the amendments incorporated.

These regulations are administered by the Ministry of Business, Innovation, and Employment.

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Schedule 14

**Application, savings, and transitional provisions
relating to amendments made to these regulations
after 1 July 2014**

Regulations

1 Title

These regulations are the Building Practitioners (Complaints and Disciplinary Procedures) Regulations 2008.

2 Commencement

These regulations come into force on 9 October 2008.

3 Interpretation

In these regulations, unless the context otherwise requires,—

Act means the Building Act 2004

complainant means a person who makes a complaint

complaint means a complaint about the conduct of a licensed building practitioner made under section 315 of the Act

grounds for discipline means any 1 or more of the grounds for discipline set out in section 317(1) of the Act

inquiry means an inquiry by the Board into the conduct of a licensed building practitioner in accordance with subpart 2 of Part 4 of the Act and these regulations

licensed building practitioner, in relation to a complaint or an inquiry, includes a person who is no longer a licensed building practitioner but who was a licensed building practitioner at the time of the relevant conduct.

Regulation 3 **complainant**: replaced, on 3 July 2014, by regulation 4(2) of the Building Practitioners (Complaints and Disciplinary Procedures) Amendment Regulations 2014 (LI 2014/220).

Regulation 3 **complaint**: inserted, on 3 July 2014, by regulation 4(1) of the Building Practitioners (Complaints and Disciplinary Procedures) Amendment Regulations 2014 (LI 2014/220).

Regulation 3 **grounds for discipline**: amended, on 3 July 2014, by regulation 4(3) of the Building Practitioners (Complaints and Disciplinary Procedures) Amendment Regulations 2014 (LI 2014/220).

Regulation 3 **inquiry**: inserted, on 3 July 2014, by regulation 4(1) of the Building Practitioners (Complaints and Disciplinary Procedures) Amendment Regulations 2014 (LI 2014/220).

Regulation 3 **licensed building practitioner**: amended, on 3 July 2014, by regulation 4(4)(a) of the Building Practitioners (Complaints and Disciplinary Procedures) Amendment Regulations 2014 (LI 2014/220).

Regulation 3 **licensed building practitioner**: amended, on 3 July 2014, by regulation 4(4)(b) of the Building Practitioners (Complaints and Disciplinary Procedures) Amendment Regulations 2014 (LI 2014/220).

Regulation 3 **party**: revoked, on 3 July 2014, by regulation 4(5) of the Building Practitioners (Complaints and Disciplinary Procedures) Amendment Regulations 2014 (LI 2014/220).

Regulation 3 **respondent**: revoked, on 3 July 2014, by regulation 4(5) of the Building Practitioners (Complaints and Disciplinary Procedures) Amendment Regulations 2014 (LI 2014/220).

3A Transitional, savings, and related provisions

The transitional, savings, and related provisions set out in the Schedule have effect according to their terms.

Regulation 3A: inserted, on 3 July 2014, by regulation 5 of the Building Practitioners (Complaints and Disciplinary Procedures) Amendment Regulations 2014 (LI 2014/220).

Part 1 Complaints

Part 1 heading: inserted, on 3 July 2014, by regulation 6 of the Building Practitioners (Complaints and Disciplinary Procedures) Amendment Regulations 2014 (LI 2014/220).

4 Application to complaints

In relation to any complaint about the conduct of a licensed building practitioner, these regulations apply only to a complaint made to the Board after the close of 8 October 2008.

Complaint *[Revoked]*

Heading: revoked, on 3 July 2014, by regulation 7 of the Building Practitioners (Complaints and Disciplinary Procedures) Amendment Regulations 2014 (LI 2014/220).

5 Form of complaint

A complaint to the Board about the conduct of a licensed building practitioner must—

- (a) be made in writing; and
- (b) be in a form approved by the Board; and
- (c) identify the complainant and include the complainant's name and contact details; and
- (d) identify the licensed building practitioner's name and include any of his or her contact details known to the complainant; and
- (e) provide details of the conduct that is the subject matter of the complaint; and
- (f) indicate the grounds for discipline to which the conduct that is the subject matter of the complaint may correspond, if they are known by the complainant; and
- (g) be accompanied by any evidence that the complainant has to support the complaint; and
- (h) state what steps have already been taken to resolve the complaint, to the extent that they are known by the complainant.

Registrar's report *[Revoked]*

Heading: revoked, on 3 July 2014, by regulation 7 of the Building Practitioners (Complaints and Disciplinary Procedures) Amendment Regulations 2014 (LI 2014/220).

6 Board to ask Registrar for report

When the Board receives a complaint, it must either—

- (a) refer the complaint to another body under section 316(3) of the Act (which relates to the Board referring certain complaints to the bodies responsible for dealing with those complaints under other enactments); or
- (b) ask the Registrar to prepare and provide a report to the Board in accordance with regulations 7 and 8.

7 Registrar's preparation of report to Board

- (1) When the Board asks the Registrar for a report on a complaint, he or she must—

- (a) collect information in accordance with subclauses (2) to (4); and
 - (b) compile a report as described in regulation 8; and
 - (c) provide the Board with the report; and
 - (d) send a copy of the report to the complainant and the licensed building practitioner.
- (2) The Registrar must provide a copy of the complaint to the licensed building practitioner and ask him or her to provide—
- (a) his or her response, in writing; and
 - (b) any relevant information; and
 - (c) any evidence that he or she wishes to provide.
- (3) The Registrar may ask the complainant for any further information.
- (4) The Registrar may ask any special adviser appointed by the Board under section 322(1)(d) of the Act to provide his or her comments, opinion, or advice on any information supplied under regulation 5 or collected under subclauses (2) and (3).

Regulation 7(1)(d): amended, on 3 July 2014, by regulation 8(1) of the Building Practitioners (Complaints and Disciplinary Procedures) Amendment Regulations 2014 (LI 2014/220).

Regulation 7(2): replaced, on 3 July 2014, by regulation 8(2) of the Building Practitioners (Complaints and Disciplinary Procedures) Amendment Regulations 2014 (LI 2014/220).

8 Contents of Registrar's report to Board

- (1) The Registrar's report to the Board must—
- (a) contain the details of the complaint, including—
 - (i) any information supplied under regulation 5; and
 - (ii) whatever the licensed building practitioner provides under regulation 7(2); and
 - (iii) whatever the complainant provides under regulation 7(3); and
 - (iv) the special adviser's response, if any, under regulation 7(4); and
 - (b) contain the Registrar's summary of the facts as agreed and as disputed between the complainant and the licensed building practitioner; and
 - (c) indicate whether, in his or her view, regulation 9 applies to the complaint.

- (2) The details of the complaint under subclause (1)(a) may be in summary form, either in whole or in part.

Regulation 8(1)(a)(ii): amended, on 3 July 2014, by regulation 9(1) of the Building Practitioners (Complaints and Disciplinary Procedures) Amendment Regulations 2014 (LI 2014/220).

Regulation 8(1)(b): amended, on 3 July 2014, by regulation 9(2) of the Building Practitioners (Complaints and Disciplinary Procedures) Amendment Regulations 2014 (LI 2014/220).

Complaint not warranting further investigation
[Revoked]

Heading: revoked, on 3 July 2014, by regulation 7 of the Building Practitioners (Complaints and Disciplinary Procedures) Amendment Regulations 2014 (LI 2014/220).

9 Complaint not warranting further investigation

A complaint does not warrant further investigation if—

- (a) it does not come within the grounds for discipline; or
- (b) it does not meet the requirements of regulation 5; or
- (c) it is frivolous, vexatious, or not made in good faith; or
- (d) its subject matter is minor or trivial, or both; or
- (e) there is insufficient evidence to warrant the investigation of the complaint; or
- (f) the investigation of it is—
 - (i) not practicable; or
 - (ii) unnecessary; or
 - (iii) not possible (for example, because the licensed building practitioner has died or cannot be located); or
- (g) its subject matter has been considered previously by the Board, and the Board—
 - (i) considered that the complaint did not warrant further investigation, because 1 or more of paragraphs (a) to (f) applied to it; or
 - (ii) otherwise made a decision on the complaint.

Regulation 9(d): amended, on 3 July 2014, by regulation 10(1) of the Building Practitioners (Complaints and Disciplinary Procedures) Amendment Regulations 2014 (LI 2014/220).

Regulation 9(f)(iii): amended, on 3 July 2014, by regulation 10(2) of the Building Practitioners (Complaints and Disciplinary Procedures) Amendment Regulations 2014 (LI 2014/220).

*Board's action after receiving Registrar's report**[Revoked]*

Heading: revoked, on 3 July 2014, by regulation 7 of the Building Practitioners (Complaints and Disciplinary Procedures) Amendment Regulations 2014 (LI 2014/220).

10 Board's action after receiving Registrar's report

- (1) When the Board receives the Registrar's report, the Board must decide—
 - (a) to proceed no further with the complaint because regulation 9 applies; or
 - (b) to proceed with the complaint.
- (2) If the Board decides to proceed with the complaint, it must hold a hearing.

Regulation 10: replaced, on 3 July 2014, by regulation 11 of the Building Practitioners (Complaints and Disciplinary Procedures) Amendment Regulations 2014 (LI 2014/220).

*Hearing**[Revoked]*

Heading: revoked, on 3 July 2014, by regulation 7 of the Building Practitioners (Complaints and Disciplinary Procedures) Amendment Regulations 2014 (LI 2014/220).

11 Hearing is meeting of Board

A hearing is a meeting of the Board for the purposes of the Act, whether or not the complainant or the licensed building practitioner attend it, either personally or through a representative.

Regulation 11: amended, on 3 July 2014, by regulation 12 of the Building Practitioners (Complaints and Disciplinary Procedures) Amendment Regulations 2014 (LI 2014/220).

12 Notice of hearing

The Board must give the complainant and the licensed building practitioner notice of the hearing at least 15 working days before the date set for the hearing.

Regulation 12: amended, on 3 July 2014, by regulation 13 of the Building Practitioners (Complaints and Disciplinary Procedures) Amendment Regulations 2014 (LI 2014/220).

13 Consolidation of complaint hearings

- (1) The Board may consolidate the hearing of 2 or more complaints into 1 hearing if—
 - (a) the complaints are, in the opinion of the Board, about substantially the same subject matter; and
 - (b) the complainant and the licensed building practitioner in respect of each complaint agree to the consolidation.
- (2) Regulation 11 applies, with all necessary modifications, to a consolidated hearing.

Regulation 13(1)(b): amended, on 3 July 2014, by regulation 14(1) of the Building Practitioners (Complaints and Disciplinary Procedures) Amendment Regulations 2014 (LI 2014/220).

Regulation 13(2): inserted, on 3 July 2014, by regulation 14(2) of the Building Practitioners (Complaints and Disciplinary Procedures) Amendment Regulations 2014 (LI 2014/220).

14 Nature of hearing

- (1) The Board, when exercising the power under section 284 of the Act to regulate its own procedure for making decisions, must be guided by the principle that it should avoid unnecessary formality.
- (2) Subclause (1) does not limit section 283 of the Act, which includes requirements for the Board to comply with the rules of natural justice and give written notices of, and reasons for, its decisions.

Regulation 14: replaced, on 3 July 2014, by regulation 15 of the Building Practitioners (Complaints and Disciplinary Procedures) Amendment Regulations 2014 (LI 2014/220).

Board's action after making decision *[Revoked]*

Heading: revoked, on 3 July 2014, by regulation 7 of the Building Practitioners (Complaints and Disciplinary Procedures) Amendment Regulations 2014 (LI 2014/220).

15 Decision on complaint

The Board must inform the complainant and the licensed building practitioner in writing of—

- (a) the Board's decision in regard to the complaint as soon as practicable after the Board has made the decision; and
- (b) any right of appeal under section 330 of the Act.

Regulation 15: amended, on 3 July 2014, by regulation 16 of the Building Practitioners (Complaints and Disciplinary Procedures) Amendment Regulations 2014 (LI 2014/220).

Part 2 Inquiries

Part 2: inserted, on 3 July 2014, by regulation 17 of the Building Practitioners (Complaints and Disciplinary Procedures) Amendment Regulations 2014 (LI 2014/220).

16 Overview

This Part provides for procedures in relation to inquiries on the board's own motion into matters about the conduct of licensed building practitioners.

Regulation 16: inserted, on 3 July 2014, by regulation 17 of the Building Practitioners (Complaints and Disciplinary Procedures) Amendment Regulations 2014 (LI 2014/220).

17 Application

- (1) This Part applies to an inquiry into a matter about the conduct of a building practitioner raised by the Board's own inquiries.
- (2) This Part also applies to an inquiry into a matter about the conduct of a building practitioner raised by a complaint where the Board carries on an inquiry into that matter on its own motion after the complainant decides not to proceed with the complaint—
 - (a) as if every reference to a matter raised by the Board's own inquiries included a reference to the matter raised by that complaint; and
 - (b) with all modifications necessary to take into account that there is no need for the Board to repeat any process already undertaken as part of the investigation of the complaint under Part 1 where a substantially equivalent process may be, or is required to be, undertaken as part of an inquiry under this Part; and
 - (c) with any other necessary modifications.

Regulation 17: inserted, on 3 July 2014, by regulation 17 of the Building Practitioners (Complaints and Disciplinary Procedures) Amendment Regulations 2014 (LI 2014/220).

18 Board may request Registrar to prepare report

If a matter about the conduct of a licensed building practitioner is raised by the Board's own inquiries and the Board has reasonable grounds to suspect that the conduct of a licensed building practitioner may come within any of the grounds for discipline, the Board may request the Registrar to prepare a report on the matter and provide that report to the Board.

Regulation 18: inserted, on 3 July 2014, by regulation 17 of the Building Practitioners (Complaints and Disciplinary Procedures) Amendment Regulations 2014 (LI 2014/220).

19 Registrar's preparation of report to Board

- (1) If the Board requests the Registrar to prepare a report on a matter, the Registrar must—
 - (a) collect information in accordance with subclauses (2) to (4); and
 - (b) compile a report as described in regulation 20; and
 - (c) provide the Board with the report; and
 - (d) send a copy of the report to the relevant licensed building practitioner.
- (2) The Registrar must—
 - (a) provide the licensed building practitioner with—
 - (i) the details of the conduct that the Board is inquiring into, including all evidence that the Board has in support of its request for the Registrar's report under regulation 18; and
 - (ii) the grounds for discipline to which the conduct that is the subject of the inquiry may correspond; and
 - (b) ask the licensed building practitioner to provide—
 - (i) his or her response, in writing; and
 - (ii) any relevant information; and
 - (iii) any evidence that he or she wishes to provide.
- (3) The Registrar may—
 - (a) make any inquiries that are reasonably necessary to determine whether the conduct of the licensed building

- practitioner comes within any of the grounds for discipline; and
- (b) without limiting paragraph (a), invite any person to provide further information relevant to the inquiry.
- (4) The Registrar may ask any special adviser appointed by the Board under section 322(1)(d) of the Act to provide his or her comments, opinion, or advice on any information supplied or collected under subclauses (2) and (3).

Regulation 19: inserted, on 3 July 2014, by regulation 17 of the Building Practitioners (Complaints and Disciplinary Procedures) Amendment Regulations 2014 (LI 2014/220).

20 Contents of Registrar's report to Board

The Registrar's report to the Board must—

- (a) contain the details of the matter inquired into, including—
 - (i) whatever information and evidence the licensed building practitioner provides under regulation 19(2); and
 - (ii) whatever information is collected or provided under regulation 19(3); and
 - (iii) the special adviser's response, if any, under regulation 19(4); and
- (b) contain the Registrar's summary of facts as agreed and as disputed by the licensed building practitioner; and
- (c) indicate whether, in the Registrar's view, regulation 21 applies to the matter.

Regulation 20: inserted, on 3 July 2014, by regulation 17 of the Building Practitioners (Complaints and Disciplinary Procedures) Amendment Regulations 2014 (LI 2014/220).

21 Matter not warranting continuation of inquiry

A matter does not warrant the Board continuing an inquiry into it if—

- (a) it does not come within any of the grounds for discipline; or
- (b) its subject matter is minor or trivial, or both; or
- (c) there is insufficient evidence to continue the inquiry; or
- (d) continuing the inquiry is—
 - (i) not practicable; or

- (ii) unnecessary; or
- (iii) not possible (for example, because the licensed building practitioner has died or cannot be located).

Regulation 21: inserted, on 3 July 2014, by regulation 17 of the Building Practitioners (Complaints and Disciplinary Procedures) Amendment Regulations 2014 (LI 2014/220).

22 Board's action after receiving Registrar's report

- (1) When the Board receives the Registrar's report, the Board must decide—
 - (a) to discontinue the inquiry because regulation 21 applies; or
 - (b) to continue the inquiry.
- (2) If the Board decides to continue the inquiry, it must hold a hearing.

Regulation 22: inserted, on 3 July 2014, by regulation 17 of the Building Practitioners (Complaints and Disciplinary Procedures) Amendment Regulations 2014 (LI 2014/220).

23 Application of regulations 11 to 15 to inquiry

Regulations 11 to 15 apply to an inquiry as if,—

- (a) in regulation 11, “whether or not the complainant or the licensed building practitioner attend it” were replaced with “whether or not the licensed building practitioner attends it”; and
- (b) in regulation 12, “the complainant and” were deleted; and
- (c) in regulation 13,—
 - (i) each reference to a complaint or to complaints were a reference to an inquiry or to inquiries; and
 - (ii) in paragraph (b), “all parties to each complaint agree to the consolidation” were replaced with “in respect of each inquiry, the licensed building practitioner whose conduct is the subject of the inquiry agrees to the consolidation”; and
- (d) in regulation 15,—
 - (i) “must inform the complainant and the licensed building practitioner” were replaced with “must inform the licensed building practitioner”; and

- (ii) in paragraph (a), “complaint” were replaced with “inquiry”.

Regulation 23: inserted, on 3 July 2014, by regulation 17 of the Building Practitioners (Complaints and Disciplinary Procedures) Amendment Regulations 2014 (LI 2014/220).

Schedule

r 3A

Application, savings, and transitional provisions relating to amendments made to these regulations after 1 July 2014

Schedule: inserted, on 3 July 2014, by regulation 18 of the Building Practitioners (Complaints and Disciplinary Procedures) Amendment Regulations 2014 (LI 2014/220).

Transitional provisions relating to Building Practitioners (Complaints and Disciplinary Procedures) Amendment Regulations 2014

1 Interpretation

In this clause and clauses 2 and 3,—

amendment regulations means the Building Practitioners (Complaints and Disciplinary Procedures) Amendment Regulations 2014

commencement date means 3 July 2014

existing complaint means a complaint made before the commencement date that is still pending, under investigation, being proceeded with, or awaiting the Board’s decision immediately before the commencement date

existing inquiry means an inquiry on the Board’s own motion into the conduct of a licensed building practitioner (including an inquiry into a matter about the conduct of a building practitioner raised by a complaint where the complainant decided not to proceed with the complaint) begun before the commencement date and that is still in progress immediately before that date.

2 Transitional provisions relating to existing complaints

- (1) Except as provided in subclauses (2) and (3), these regulations as in force immediately before the commencement date continue to apply to all existing complaints as if the amendment regulations had not been made.
- (2) The definition of grounds for discipline in regulation 3, as amended by regulation 4(3) of the amendment regulations, applies in relation to an existing complaint unless the Registrar has, before the commencement date, compiled and provided a report on the complaint to the Board and the parties in accordance with regulation 7(1) (as in force immediately before the commencement date).
- (3) Regulation 14, as amended by regulation 15 of the amendment regulations, applies to every hearing that takes place on or after the commencement date regardless of whether the 15-working-day (or longer) period of notice of the hearing, given in accordance with regulation 12, expires sooner than 15 working days after the commencement date.

3 Transitional provision relating to inquiries

- (1) These regulations as in force on and after the commencement date apply to all existing inquiries and all inquiries begun on or after the commencement date.
- (2) Despite subclause (1), these regulations do not apply to an existing inquiry if, and to the extent that, the Board, on an application made to it by the licensed building practitioner, considers that their application to any step in the inquiry would be impracticable or unjust.

Rebecca Kitteridge,
Clerk of the Executive Council.

Reprints notes

1 *General*

This is a reprint of the Building Practitioners (Complaints and Disciplinary Procedures) Regulations 2008 that incorporates all the amendments to those regulations as at the date of the last amendment to them.

2 *Legal status*

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

3 *Editorial and format changes*

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

4 *Amendments incorporated in this reprint*

Building Practitioners (Complaints and Disciplinary Procedures) Amendment Regulations 2014 (LI 2014/220)
