



Building Practitioners (Complaints and Disciplinary Procedures) Amendment Regulations 2014

Jerry Mateparae, Governor-General

Order in Council

At Wellington this 30th day of June 2014

Present:

His Excellency the Governor-General in Council

Pursuant to section 402(1)(f) and (h) of the Building Act 2004, His Excellency the Governor-General, acting on the advice and with the consent of the Executive Council and on the recommendation of the Minister for Building and Construction, makes the following regulations.

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**Building Practitioners (Complaints and
Disciplinary Procedures) Amendment
Regulations 2014**

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Regulations

- 1 Title**
These regulations are the Building Practitioners (Complaints and Disciplinary Procedures) Amendment Regulations 2014.

- 2 Commencement**
These regulations come into force on 3 July 2014.

3 Principal regulations

These regulations amend the Building Practitioners (Complaints and Disciplinary Procedures) Regulations 2008 (the **principal regulations**).

4 Regulation 3 amended (Interpretation)

- (1) In regulation 3, insert in their appropriate alphabetical order:
“**complaint** means a complaint about the conduct of a licensed building practitioner made under section 315 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”.
- (2) In regulation 3, replace the definition of **complainant** with:
“**complainant** means a person who makes a complaint”.
- (3) In regulation 3, definition of **grounds for discipline**, replace “section 317(1)(a) to (e) of the Act” with “section 317(1) of the Act”.
- (4) In regulation 3, definition of **licensed building practitioner**,—
 - (a) after “in relation to a complaint”, insert “or an inquiry”;
 - and
 - (b) replace “conduct” with “relevant conduct”.
- (5) In regulation 3, revoke the definitions of **party** and **respondent**.

5 New regulation 3A inserted

After regulation 3, insert:

“3A Transitional, savings, and related provisions

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

6 New Part 1 heading inserted

Above regulation 4, insert:

**“Part 1
“Complaints”.**

- 7 Cross-headings above regulations 5, 6, 9, 10, 11, and 15 revoked**
Revoke the cross-headings above regulations 5, 6, 9, 10, 11, and 15.
- 8 Regulation 7 amended (Registrar’s preparation of report to Board)**
- (1) In regulation 7(1)(d) replace “each party” with “the complainant and the licensed building practitioner”.
- (2) Replace regulation 7(2) with:
- “(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.”
- 9 Regulation 8 amended (Contents of Registrar’s report to Board)**
- (1) In regulation 8(1)(a)(ii), replace “the respondent” with “the licensed building practitioner”.
- (2) In regulation 8(1)(b), replace “the parties” with “the complainant and the licensed building practitioner”.
- 10 Regulation 9 amended (Complaint not warranting further investigation)**
- (1) In regulation 9(d), replace “ minor, or” with “minor or”.
- (2) In regulation 9(f)(iii), replace “the respondent” with “the licensed building practitioner”.
- 11 Regulation 10 replaced (Board’s action after receiving Registrar’s report)**
Replace regulation 10 with:
- “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.”

12 Regulation 11 amended (Hearing is meeting of Board)

In regulation 11, replace “any of the parties” with “the complainant or the licensed building practitioner”.

13 Regulation 12 amended (Notice of hearing)

In regulation 12, replace “the parties” with “the complainant and the licensed building practitioner”.

14 Regulation 13 amended (Consolidation of complaint hearings)

- (1) In regulation 13(b), replace “all parties to each complaint” with “the complainant and the licensed building practitioner in respect of each complaint”.
 - (2) In regulation 13, insert as subclause (2):
- “(2) Regulation 11 applies, with all necessary modifications, to a consolidated hearing.”

15 Regulation 14 replaced (Nature of hearing)

Replace regulation 14 with:

“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.”

16 Regulation 15 amended (Decision on complaint)

In regulation 15, replace “the parties” with “the complainant and the licensed building practitioner”.

17 New Part 2 inserted

After regulation 15, insert:

**“Part 2
“Inquiries**

“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.

“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.

“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.

“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).

“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.

“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).

“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.

“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’.”

18 New Schedule inserted

Insert the Schedule set out in the Schedule of these regulations.

Schedule

r 18

New Schedule inserted

Schedule

r 3A

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

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

Schedule—*continued*

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.

Schedule—*continued*

- (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.

Martin Bell,
for Clerk of the Executive Council.

Explanatory note

This note is not part of the regulations, but is intended to indicate their general effect.

These regulations come into force on 3 July 2014. They amend the Building Practitioners (Complaints and Disciplinary Procedures) Regulations 2008, which set out procedures in relation to complaints about, and the discipline of, current and former licensed building practitioners under the Building Act 2004 (the **Act**). The amendments—

- incorporate the additional grounds for discipline inserted in section 317(1) of the Act in 2012 (by the Building Amendment Act 2012) into the definition of grounds for discipline; and
- remove the requirement for the Building Practitioners Board (the **Board**) to conduct its hearings into disciplinary matters in an inquisitorial manner. This has the effect of confirming the Board's flexibility, under section 284 of the Act, to regulate its own procedures to the extent that this is consistent with provisions of the Act (for example, the requirements under the Act for the Board to comply with the principles of natural justice and to give written notice of, and reasons for, its decisions); and
- prescribe procedures for inquiries into the conduct of licensed building practitioners undertaken on the Board's own motion. These—

- include a process for the Board to obtain a report on a matter from the Registrar so it can to decide whether to proceed with an inquiry into the matter; and
- also cover the situation where a matter about the conduct of a licensed building practitioner is raised by a complaint and the Board carries on an inquiry into that matter on its own motion after the complainant decides not to proceed with the complaint.

Issued under the authority of the Legislation Act 2012.
Date of notification in *Gazette*: 3 July 2014.
These regulations are administered by the Ministry of Business, Innovation, and
Employment.
