



Registered Architects Amendment Rules 2019

Pursuant to section 67 of the Registered Architects Act 2005, the New Zealand Registered Architects' Board makes the following rules—

- (a) after complying with section 68 of that Act; and
- (b) after the approval of the Minister for Building and Construction required by section 69 of that Act; and
- (c) after publishing and consulting as required by rule 93 of the Registered Architects Rules 2006.

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Rules

1 Title

These rules are the Registered Architects Amendment Rules 2019.

2 Commencement

These rules come into force on 10 January 2020.

3 Principal rules

These rules amend the Registered Architects Rules 2006 (the **principal rules**).

4 Rule 3 amended (Interpretation)

(1) In rule 3(1), revoke the definition of **investigating committee**.

(2) In rule 3(1), insert in its appropriate alphabetical order:

investigating panel means an investigating panel appointed under Part 5

5 Rule 60 amended (Board may inquire into matters on own motion)

In rule 60(2)(a), replace “investigating committee” with “investigating panel”.

6 Rule 61 amended (Board must decide whether to refer complaint to investigating committee)

(1) In the heading to rule 61, replace “investigating committee” with “investigating panel”.

(2) In rule 61(a), replace “investigating committee” with “investigating panel”.

7 Rule 62 amended (Grounds for not referring complaint to investigating committee)

(1) In the heading to rule 62, replace “investigating committee” with “investigating panel”.

(2) In rule 62, replace “investigating committee” with “investigating panel”.

8 Rule 63 amended (Way in which decision on whether to refer complaint to investigating committee must be made)

In the heading to rule 63, replace “investigating committee” with “investigating panel”.

9 Rule 64 amended (Board must notify and implement decision)

(1) In rule 64(1)(b), replace “investigating committee” with “investigating panel”.

(2) In rule 64(1)(b)(i) and (ii), replace “committee” with “panel” in each place.

10 Rule 65 amended (Board must give person complained about opportunity to respond)

(1) In rule 65, replace “investigating committee” with “investigating panel” in each place.

(2) In rule 65(b), replace “him or her” with “the person complained about”.

(3) Replace rule 65(c) with:

(c) advise the person complained about that this may be the only opportunity to respond on the matter before the Board determines the matter.

11 Cross-heading above rule 66 replaced

Replace the cross-heading above rule 66 with:

Investigating panel

12 Rule 66 amended (Investigating committee must investigate and report on complaint or inquiry)

- (1) In the heading to rule 66, replace “**Investigating committee**” with “**Investigating panel**”.
- (2) In rule 66(1), replace “investigating committee” with “investigating panel”.
- (3) Replace rule 66(2) with:
 - (2) An investigating panel may include in its report on a complaint or an inquiry a recommendation to the Board to—
 - (a) decide there are grounds for disciplining the person complained about under section 25 of the Act; or
 - (b) decide there are no grounds for disciplining the person complained about under section 25 of the Act; or
 - (c) dismiss the matter on a ground in rule 69.
 - (3) An investigating panel must send a copy of its report to the complainant and the person complained about.
 - (4) When sending a copy of the report to the person complained about, the panel must advise that person in writing of the right to request a disciplinary hearing and the date by which the request must be made (*see* rule 67A).

13 Rule 67 amended (Powers of investigating committee)

- (1) In the heading to rule 67, replace “**investigating committee**” with “**investigating panel**”.
- (2) In rule 67, replace “investigating committee” with “investigating panel”.
- (3) In rule 67(b), (c), and (e), replace “committee” with “panel” in each place.
- (4) After rule 67(d), insert:
 - (da) request the person complained about or the complainant to attend a meeting of the panel, at that person’s own cost, on at least 20 working days’ notice:
- (5) In rule 67(g), replace “committee’s” with “panel’s”.

14 New rules 67A to 67C and cross-heading inserted

After rule 67, insert:

*Right to request disciplinary hearing***67A Person complained about may request disciplinary hearing**

- (1) The person complained about may request a disciplinary hearing at any time within the required period.
- (2) The request must be made to the Board in writing.
- (3) The **required period** is the period—
 - (a) starting on the day on which the person complained about receives a copy of the investigating panel's report under rule 66; and
 - (b) ending on the day that is 20 working days after the date of the Board's notice under rule 71.

67B Effect of request for disciplinary hearing

- (1) If the Board receives a request for a disciplinary hearing within the required period,—
 - (a) the Board must refer the matter to a disciplinary hearing in accordance with rule 72; and
 - (b) any decision in relation to the matter made by the Board under rule 68 is treated as if it had not been made; and
 - (c) if the Board has not yet made a decision under rule 68, rule 68 ceases to apply.
- (2) This rule is subject to rule 67C.

67C Board may refuse request for disciplinary hearing if decision reversed

- (1) The Board may reverse its decision under rule 68(1)(a) in accordance with rule 71A, despite rule 67B(1)(b).
- (2) A request for a disciplinary hearing may be refused if the Board reverses its decision.

15 Rules 68 and 69 replaced

Replace rules 68 and 69 with:

68 Board must consider report and determine complaint

- (1) The Board must consider the investigating panel's report and, as soon as practicable after receiving the report,—
 - (a) decide there are grounds for disciplining the person complained about under section 25 of the Act; or
 - (b) decide there are no grounds for disciplining the person complained about under section 25 of the Act; or
 - (c) dismiss the matter on a ground in rule 69.

- (2) Despite subclause (1), the Board may delay making a decision until the outcome is known of any other legal proceedings that may affect its decision.

69 Grounds on which complaint or inquiry may be dismissed

The Board may dismiss a complaint or an inquiry if—

- (a) there is no applicable basis for discipline under section 25(1)(a) to (d) of the Act; or
- (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) it is no longer practicable or desirable to determine the matter given the time that has elapsed since the matter giving rise to the complaint or inquiry arose.

16 Rule 70 revoked (Way in which decision on whether to refer complaint or inquiry to disciplinary hearing must be made)

Revoke rule 70.

17 Rule 71 replaced (Board must notify and implement decision)

Replace rule 71 with:

71 Board must notify decision

- (1) The Board must notify the complainant, the person complained about, and the panel of the decision or dismissal under rule 68 and the reasons for the decision or dismissal.
- (2) If the Board decides under rule 68(1)(a) that there are grounds for disciplining the person complained about, the notice to the person complained about must include a reminder about that person's right to request a disciplinary hearing and the date by which the request must be made.

18 Rule 71A replaced (Board may reverse decision in certain circumstances)

Replace rule 71A with:

71A Board may reverse decision in certain circumstances

- (1) The Board may reverse its decision (1) under rule 68(1)(a) at any time before it makes a penalty determination under rule 71E.
- (2) The Board may reverse its decision only if the Board is satisfied that—
 - (a) after the Board made its decision under rule 68(1)(a)—

- (i) evidence became available to the Board that was not available when it made its decision; or
- (ii) circumstances relevant to the decision changed; and
- (b) had that evidence been available, or had the new circumstances existed, at the time the Board made its decision, the Board would have been justified in making a decision under rule 68(1)(b) or dismissing the matter under rule 68(1)(c) (each as in force at the time of the Board's decision).
- (3) If the Board reverses its decision, it must notify the complainant, the person complained about, and the panel of the reversal and the reasons for the reversal.

19 New rules 71B to 71F and cross-heading inserted

After rule 71A, insert:

Determination of penalty

71B Application of rules 71C to 71F

- (1) Rules 71C to 71F apply if the Board decides under rule 68(1)(a) that there are grounds for disciplining the person complained about.
- (2) However, if a request for a disciplinary hearing is received within the required period, rule 67B applies instead.

71C Investigating panel report on penalty

The investigating panel must, as soon as practicable after receiving notice under rule 71, provide a report to the Board with the panel's recommendations on—

- (a) what penalty (if any) to impose under section 26 of the Act; and
- (b) whether the Board should use its power under section 26(4) of the Act to order that the person complained about must pay costs and expenses of, and incidental to, the inquiry by the Board; and
- (c) whether the Board should use its power under section 26(5)(b) of the Act to publicly notify any action taken.

71D Board must invite submissions on penalty

- (1) The Board must, before making a decision under rule 71E, invite the person complained about and the complainant to make a written submission to the Board, within a specified period (which must be at least 20 working days), setting out their opinion on—
 - (a) any penalty under section 26 of the Act that the Board should or should not impose, and the reasons why; and

- (b) the use of the Board’s power under section 26(4) of the Act to order that the person complained about must pay costs and expenses of, and incidental to, the inquiry by the Board; and
 - (c) the use of the Board’s power under section 26(5)(b) of the Act to publicly notify any action taken.
- (2) At the same time as it invites submissions, the Board must provide a copy of the investigating panel’s report under rule 71C to the complainant and the person complained about.

71E Board must consider report and determine penalty

The Board must consider the investigating panel’s report under rule 71C and, as soon as practicable after receiving the report, decide what penalty (if any) to impose under section 26 of the Act.

71F Board must notify and implement decision

- (1) The Board must, as soon as practicable after making a decision under rule 71E,—
- (a) notify the complainant and the person complained about of the Board’s decision; and
 - (b) implement any part of a decision that requires actions by the Board.
- (2) However, the Board must not implement an action taken under section 26 of the Act until the expiry of a period of at least 20 working days after notifying the person complained about of the Board’s decision under rule 71E.

20 Rule 72 amended (Board must determine complaint or inquiry referred to disciplinary hearing)

- (1) In rule 72, replace “a complaint or an inquiry is referred to a disciplinary hearing” with “receiving a request for a disciplinary hearing under rule 67A”.
- (2) In rule 72, insert as subclause (2):
- (2) But *see* rule 67C (which allows a request for a disciplinary hearing to be refused if the Board’s decision is reversed).

21 Rule 76 amended (Way in which Board’s determination of complaint or inquiry referred to disciplinary hearing must be made)

In rule 76(1)(a), replace “investigating committee’s report” with “investigating panel’s reports”.

22 Rule 79 amended (Persons carrying out delegated functions and powers under rules)

In rule 79(1)(f), replace “investigating committees” with “investigating panels”.

23 Cross-heading above rule 90 replaced

Replace the cross-heading above rule 90 with:

Investigating panels

24 Rule 90 amended (Appointment of investigating committee)

- (1) In the heading to rule 90, replace “investigating committee” with “investigating panel”.
- (2) Replace rule 90(1) with:
 - (1) The Board may appoint, for a particular case or class of cases, an investigating panel consisting of 3 or more persons, of whom—
 - (a) at least 1 person is a registered architect; and
 - (b) at least 1 person is not a registered architect (and is acting as a representative of consumer interests); and
 - (c) no more than 2 persons are Board members.
 - (3) In rule 90(2), replace “investigating committee” with “investigating panel”.
 - (4) In rule 90(3), replace “investigating committee” with “investigating panel”.

25 Rule 90A amended (Procedures of investigating committee)

- (1) In the heading to rule 90A, replace “investigating committee” with “investigating panel”.
- (2) In rule 90A, replace “investigating committee” with “investigating panel” in each place.
- (3) In rule 90A, replace “the committee” with “the panel” in each place.

26 Schedule 1AA amended

In Schedule 1AA, after clause 3, insert:

4 Provisions relating to Registered Architects Amendment Rules 2019

Interpretation

- (1) In this clause, **2019 amendment rules** means the Registered Architects Amendment Rules 2019.

Complaints and inquiries

- (2) These rules, as in force immediately before the commencement of the 2019 amendment rules, continue to apply, and the rules as amended by the 2019 amendment rules do not apply, to every complaint received and inquiry commenced by the Board before the commencement of the 2019 amendment rules, and not considered or determined before that commencement.
- (3) These rules, as amended by the 2019 amendment rules, apply to every complaint received and inquiry commenced on or after the commencement of the

2019 amendment rules, regardless of whether the matter that is the subject of the complaint or inquiry occurred before, on, or after that commencement.

Dated at Wellington this 10th day of December 2019.

Gina Jones,
Chairperson.

Marc Woodbury,
Deputy Chairperson (New Zealand Registered Architects' Board).

Explanatory note

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

These rules amend the Registered Architects Rules 2006 (the **principal rules**). They come into force on 10 January 2020.

The amendments in these rules are designed to streamline the current procedure for resolving complaints. In particular, a complaint will be determined at the end of the investigation process, and a disciplinary hearing will only be held if the architect requests one.

The current disciplinary procedure for registered architects is set out under Part 4 of the principal rules. It is generally summarised as follows:

- an investigating committee investigates a complaint about the conduct of a registered architect or a former registered architect:
- the committee gives a report on the complaint to the New Zealand Registered Architects' Board (the **Board**):
- the Board must consider the report and—
 - dismiss the complaint; or
 - refer the complaint to a disciplinary hearing:
- a disciplinary hearing is held (unless the complaint has been dismissed):
- after the hearing is completed, the Board decides whether there are grounds for disciplining the architect under section 25 of the Registered Architects Act 2005 (the **Act**):
- if there are grounds for disciplining the architect, the Board decides what penalty (if any) should be imposed under section 26 of the Act. The architect and

the complainant are given an opportunity make submissions before the Board makes a decision on penalty.

The main changes to this process made by these rules are summarised as follows:

- an investigating panel will carry out the investigation, not an investigating committee. Because a panel is not a committee of the Board, there is no longer a requirement for Board members to be appointed to the panel:
- the report that the panel gives to the Board may contain a recommendation to the Board about how the complaint should be determined:
- the Board must consider the report and—
 - decide there are grounds for disciplining the architect under section 25 of the Act; or
 - decide there are no grounds for disciplining the architect under section 25 of the Act; or
 - dismiss the complaint:
- if the Board decides there are grounds for disciplining the architect, a decision about what penalty (if any) should be imposed under section 26 of the Act is made in the following manner:
 - the panel gives the Board a recommendation about whether a penalty should be imposed:
 - the architect and the complainant are given an opportunity make submissions in relation to the penalty:
 - as soon as practicable after receipt of the recommendation and any submissions made, the Board will decide what penalty (if any) should be imposed:
- the architect is able to request a disciplinary hearing. That request can be made at any time starting from when the architect receives the panel's report on liability, up until the day that is 20 working days after the Board has made its decision on liability:
- however, if there is no request, the complaint will be determined and a penalty can be imposed without the need for a disciplinary hearing.

Issued under the authority of the Legislation Act 2012.

Date of notification in *Gazette*: 13 December 2019.

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