



Building Practitioners (Complaints and Disciplinary Procedures) Regulations 2008

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.

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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 complaining under section 315 of the Act to the Board about the conduct of a licensed building practitioner
grounds for discipline means any 1 or more of the grounds for discipline set out in section 317(1)(a) to (e) of the Act
licensed building practitioner, in relation to a complaint, includes a person who is no longer a licensed building practi-

tioner but who was a licensed building practitioner at the time of the conduct

party means a complainant or a respondent

respondent means a licensed building practitioner about whose conduct the Board receives a complaint under section 315 of the Act.

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

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

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 each party.
- (2) The Registrar must provide a copy of the complaint to the respondent, and ask him or her to provide in writing—
 - (a) his or her response; 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).

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 respondent 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 parties; 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.

Complaint not warranting further investigation

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 respondent 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.

Board's action after receiving Registrar's report

10 Board's action after receiving Registrar's report

- (1) When the Board receives the Registrar's report, the Board must decide either—
 - (a) to proceed no further with the complaint because regulation 9 applies to it; or
 - (b) to proceed with the complaint.
- (2) If the Board decides to proceed with the complaint, it must hold a hearing, unless the complainant does not wish to proceed with the complaint.

*Hearing***11 Hearing is meeting of Board**

A hearing is a meeting of the Board for the purposes of the Act, whether or not any of the parties attend it, either personally or through a representative.

12 Notice of hearing

The Board must give the parties notice of the hearing at least 15 working days before the date set for the hearing.

13 Consolidation of complaint hearings

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) all parties to each complaint agree to the consolidation.

14 Nature of hearing

- (1) The Board must conduct the hearing in an inquisitorial manner, rather than an adversarial one.
- (2) Without limiting subclause (1), the Board must avoid unnecessary formality.

*Board's action after making decision***15 Decision on complaint**

The Board must inform the parties 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.

Rebecca Kitteridge,
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, which come into force on 9 October 2008, are made pursuant to section 402 of the Building Act 2004 (the **Act**). They set out procedures in relation to complaints under subpart 2 of Part 4 of the Act.

Part 4 of the Act is about the regulation of building practitioners, and subpart 2 of Part 4 includes complaints about, and the discipline of, both current and former licensed building practitioners.

Issued under the authority of the Acts and Regulations Publication Act 1989.

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These regulations are administered by the Department of Building and Housing.
