New Zealand
Institute of Architects
Incorporated

Date 10 December 2013

To Mr Paul Jackman
Chief Executive
NZ Registered Architects Board
PO Box 11106
WELLINGTON 6142

Emailed to: consult@nzrab.org.nz

From Teena Hale Pennington, Chief Executive

Re **NZRAB RULE CHANGE CONSULTATION**

Dear Paul

1. Thank you for the opportunity for the New Zealand Institute of Architects (NZIA) to provide feedback on the NZRAB proposed rule changes relating to the complaints and disciplinary procedures and the standards required for the initial and continuing registration.

2. The Institute congratulates the NZRAB on proposing these changes to the *Registered Architects Rules, 2006*. The simplication of the complex and time consuming complaints and disciplinary procedures is welcomed by the Institute and its members. Looking at the flowchart, it generally does have the potential to provide a speedier process.

3. However, the Institute has issues with the proposed truncated process for ***"architect accepts at fault".*** Outlined below are the supporting reasons for our concerns.

4. Firstly, the architect's insurer will almost certainly be prohibiting the architect from admitting fault.

5. Second, there seems to be a problem if the Board imposes a higher or different penalty from that recommended by the Investigating Committee. Applying natural justice principles, the Board could only do that if it heard further evidence, and gave the architect an opportunity to respond.

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6. It is possible that the Board might want to impose a higher penalty; for example, if the Board was aware of previous disciplinary proceedings that (quite rightly) would not and should not have been known to the Investigating Committee.

7. At that point, would the architect have the right to withdraw the "acceptance of fault" and go through the full Board Disciplinary Hearing? It seems that would have to be the case; but then the Board is determining the question of fault knowing that the architect has accepted fault, then withdrawn that concession.

8. There are two relevant analogies; albeit from the criminal justice system, but in effect these disciplinary proceedings are penal so far as reputation and continuation in the profession is concerned.

9. The first is the infringement system. Parking and speeding infringements are the most well known, but in fact there are over 30 different regimes, each with their own features. The one common theme is that there is no admission of fault or guilt.

10. In essence, faced, with an infringement notice, a citizen can choose to pay the fee or to dispute liability for the matter. Paying the fee is not treated as an admission of anything other than a decision to pay. No conviction is recorded.

11. The second, and perhaps more relevant, is the sentencing indication process that has recently been introduced in the *Sentencing Act*. Here, a defendant can ask the judge what the sentence will be if the defendant pleads guilty. If the sentencing indication is not accepted by the defendant, the fact that the indication was sought is not admissible in any proceeding, and it is an offence for anyone to make it publicly known. The defendant can go ahead and plead not guilty if he or she wishes.

12. While judges may well be trained to disregard inadmissible matters, the Board members will not be; they are more akin to jurors who would not be told of an application for a sentencing indication.

13. Before making a sentence indication, the Court must have a full summary of the facts of the case, as well as any information about any previous convictions the defendant has. As is noted above, the Investigating Committee will not (and should not) know about any previous disciplinary proceedings; it is quite likely therefore that in many cases their recommended penalty will not be the most suitable option.

14. The current rules allow the Investigating Committee to explore alternative dispute resolution process for complaints before deciding whether to recommend to the Board that the case go to a Disciplinary Committee. The proposed changes do away with the recommendation stage. While this creates a more streamlined process, the Institute is concerned that it is at the expense of preventing the Investigating Committee from considering alternative resolution processes. The end result may be that more cases go through the formal (albeit slightly streamlined process) for not much reduction in effort overall?

Recommendations

15. That the concept of "architect agrees at fault" be dropped, and replaced with "architect agrees to accept penalty".

16. A sentencing indication should not lead the person to believe that he or she will receive a harsher sentence if he or she does not plead guilty. It is important that an architect does not agree to fault on the assumption that the Board will impose a less harsh penalty, as this is inviting a guilty plea on a false premise.

17. The "architect agrees to accept penalty" option would avoid this. That has to go to the Board. If the Board proposes an alternative penalty, or rejects the agreed penalty, the Board must give the architect the reasons for that; see section 28 of the Act. Since the Board has not at this stage heard any evidence, the Board could only base its decision on something like previous disciplinary proceedings not known to the Investigating Committee.

18. The architect must have the opportunity to comment on the Board's proposed penalty, and retain the right to reject it and have a full disciplinary hearing. This is consistent with the current provision in rule 69 for the architect to make submissions to the Board on the facts prior to the Board sending the matter to a disciplinary committee. As the current proposals stand, the architect could lose the ability to comment; this must be preserved. Anything less would be a breach of the ordinarily accepted rules of natural justice.

19. One further point that needs to be set out clearly is that when deciding penalty after a full hearing, it is not sufficient for the Board to say that it has considered the penalty submissions (which should have been exchanged) and the penalty is X.

20. The Board has to give the reasons for the penalty it imposes; again, see section 28. The architect needs that so that the architect can decide whether or not to appeal.On appeal the Board would have to give the

reasons anyway.

21. Giving the reasons earlier could reduce the number of appeals. It would no longer be necessary to appeal just to get the reasons for the penalty.

22. The current proposals mean the "architect agrees at fault" process is only an option. If the proposals are adopted as they currently stand, it is highly unlikely any architect would opt for this process, given the problems the Institute has identified.

23. This could well frustrate the NZRAB's aims for a quicker disciplinary process. We also recommend retention of rule 67(1) concerning exploration of alternative processes.

24. The Institute would strongly encourage the NZRAB to provide 'plain english' guidance information to architects about the complaints and disciplinary process and how the NZRAB will interact with the architect. This would be best provided when a complaint is forwarded to the Architect for a response.

25. The Institute would encourage the NZRAB to consider fully the communication needs around the complaints and disciplinary matters. There are two distinct audiences, Registered Architects and the public. The type and detail of information required by each varies and should be reflected in the material produced.

26. The Institute requests the opportunity to comment on the proposed wording of the rule changes before they are submitted to the Minister.

Rules for initial and continuing registration standards

27. The inititial registration and re-registration of architects relies heavily on the *Code of Ethics*. The Institute understands that several complaints have been dismissed by the Board because of the nature of the Code of Ethics, despite the issues of complaint having some merit. We would encourage the NZRAB to agree to a review of the Code of Ethics as a priority in 2014. This would be timely particularly given the recent review of the Institute of Professional Engineers of New Zealand (IPENZ) Code of Ethics.

28. The broad concept that for initial registration a person must have met broad minimum standards, but thereafter for continued registration the focus can be on a practice area has merit.

29. Some architects may be in highly specialised practice areas while others may claim general competency throughout their careers. Some, of course, will do both; so, for example an architect specialising in industrial buildings may nevertheless feel they have competency in say, related landscape or interior architecture as well.

30. It needs to be clear that while continued registration may be granted having regard to a particular practice area, the continued registration is on a full unconfined basis. Unlike some other professions eg medicine, there is no statutory basis for registration of specialties, nor for confining certain matters to those specialties.

31. If an architect practices outside an area for which continued registration was assessed that is still permitted and might be entirely appropriate; for example if integrated with others and with appropriate supervision and peer review.

32. Practising unprofessionally outside an area of competence or at a complexity beyond competence might well be a course for disciplinary proceedings, but continued registration is not able to be confined to specialisations even if it is assessed on that basis. We believe that should be made clear.

33. These are some specific concerns with the proposed wording. Item (c) refers to the "practice of architecture" which could be confusing for those architects who do not operate architecture practices but nevertheless must meet ethical standards.

34. We suggest:

    (c) conduct themselves to an ethical standard at least equivalent to the code of ethical conduct.

35. We are also concerned by the reference to ‘imagination’. How would the Board make a decision about the accepted principles of ‘imagination’? It is much easier to see how a principle of ‘judgement’ could be applied but ‘imagination’ would be in the eye of the assessor and open to subjectivity.

36. We would recommend deleting the word ‘imagination’ from both the initial registration and re-registration requirements.

37. Item (e) is also problematic. At first glance, it is perhaps harmless political correctness; but what are the implications. Is anyone willing to identify the "social, cultural, and environmental responsibilities required of a registered architect". The consequences of non compliance are serious; and who would decide that?

38. Does it mean that a design for a 1 in 10 year discharge of sewage or stormwater is not meeting environmental responsibilities because someone thinks the design should be for 1 in 100 or 50 year levels. Who decides this? What if there are varying views on the existence or effects of climate change?

39. Do the social responsibilities of an architect extend to fully considering the social consequences on people other than those immediately affected by the architect's design? Again, who decides what these responsibilities are?

40. Culturally, feng shui is important in Chinese and other Asian cultures; but not to all people of those cultures. Some regard it as superstitious nonsense inconsistent with Christianity. It was banned in the Cultural Revolution, and if Wikipedia is correct, less than 33% of mainland Chinese believe in it. However, many millions of people consider it vital to a healthy and prosperous life.

41. What is the "cultural responsibility" of an architect, and what criteria are going to be used to decide whether an architect who embraces or scorns feng shui is or is not fit to be registered?

42. We suggest Item (e) be deleted.

43. Item (f) is also problematic. A highly specialised architect, perhaps employed by a highly specialised employer or major client may be able to say "Well, I have only done architecture on power stations in the past five years". Does that demonstrate a sufficient self-awareness not to do architecture work involving industrial premises or domestic housing, or is it just a statement of fact?

44. The architect with that skill set may well be perfectly competent to do the architecture for a heavy industrial workshop, and maybe the office space as well; or maybe not?

45. It is not clear how an architect is supposed to demonstrate the self-awareness required, and in the absence of any statutory base for specialisation registration it is not acceptable to require architects to list the areas where competency is claimed or disavowed.

46. Item 2 seems to be a backdoor introduction of continuing practice development obligations; but does the profession have any formal process for this? Will the Registration Board be deciding what is needed here and will the requirements be published in advance? Ad hoc development by means of ruling some CPD insufficient with the consequence of discontinued registration seems unfair (but it is noted this is in the current rules).

47. Finally, there are at least the following terms used –

"good practice for professional architecture"
"his or her practice of architecture"
"architectural process"

48. It is important to recognise that while all architects practice architecture, not all have architectural practices. The wording needs to be reconciled and made consistent.

49. Again, the Institute requests the opportunity to comment on the specific proposed wording before it goes to the Minister.

50. Should the NZRAB need any further information from the Institute, please contact the New Zealand Institute of Architects, Chief Executive, Teena Hale Pennington on thalepennington@nzia.co.nz or 027 527 5273.

51. We would welcome the opportunity to work with the Board on these important changes.

Yours sincerely,

Teena Hale Pennington
Chief Executive