

Information for Architects about the Architects Registration Board of Victoria complaints process

What happens if the Board receives a complaint

Architect's response requested

When the Board receives a complaint about an architect, we send a copy of the complaint form and any material accompanying it to the architect complained of, with a request that the architect respond to the complaint within 1 calendar month. (If the architect declines to respond to the complaint, the Board may automatically refer the complaint to an inquiry.)

Complaint reviewed by Board member

A Member of the Board reviews the matter and reports to the Board.

The purpose of a complaint review is to determine whether there are grounds for referring the complaint to inquiry by an Architects Tribunal and/or mediation. **It is important to understand that it is not the purpose of a review to arrive at a finding on the merits of the allegations made.**

Reviewing member reports to Board, and Board makes a decision

The following is the range of possible outcomes of a complaint review:

- i) If the complaint is not substantiated, or there are other reasons listed in the Board's *Policy on Referral to Inquiry by Architects Tribunal* for not inquiring further, the complaint will not be inquired into further. You will be informed in writing of the Board's decision as soon as possible. The Board is not obliged to give reasons for not inquiring further into a complaint, but it may do so in general terms. (See *Appeal Procedures*, below.)
- ii) The reviewing Member may feel that further investigation of the complaint is required before a recommendation can be made. In that case, the Board would be asked to authorise further investigation, and the Member would make a further report when the investigation is completed.
- iii) The reviewing Member may feel that some or all of the matters complained of may be appropriate for referral to mediation, if the complainant and the architect have indicated they consent to this. If the Board decides to refer matters to mediation, it does not prevent the Board from also referring matters to Architects Tribunal inquiry.
- iv) If the Board decides that there are sufficient grounds for inquiring further, the complaint is referred to the Board's solicitor for advice and the drafting of a Notice setting out the matters being inquired into.
- v) The Board considers the legal advice and draft Notice and makes a decision whether to refer the matter to inquiry by an Architects Tribunal. A hearing before the Tribunal will then be scheduled and the architect and any witnesses given at least 14 days' notice of this hearing.

Inquiry by an Architects Tribunal

If the Board refers a matter for inquiry by an Architects Tribunal, a Tribunal is set up specifically to inquire into that matter (there is no standing Architects Tribunal).

An Architects Tribunal is independent of the Registration Board and its composition and procedures are governed by the *Architects Act 1991*:

21. Membership of Tribunal

- (1) *A Tribunal must consist of—*
 - (a) *one person who is a practising architect; and*
 - (b) *one person who is not an architect; and*
 - (c) *one person who is a representative of consumer interests.*
- (2) *The members of a Tribunal must be chosen from a panel of persons appointed by the Minister under section 21A.*
- (3) *A member of the Board cannot be a member of a Tribunal.*
- (4) *At least one member of a Tribunal is to be a person with legal experience and knowledge.*
- (5) *A Tribunal must elect one of its members to be the Chairperson of the Tribunal.*

Determinations of an Architects Tribunal

Decisions of the Tribunal are called determinations. The Registration Board has the responsibility to enforce Tribunal determinations.

Appeal procedures

A person whose interests are affected can apply to the Victorian Civil and Administrative Tribunal (VCAT) for review of a decision by the Registration Board that an inquiry should not be held into an architect's fitness to practice or professional conduct. This must be done within 3 months of the date on which the Board gives notice of its decision.

An architect who is the subject of a determination by a Tribunal can also apply to VCAT for review of the determination. This must be done within 3 months of the date on which the Tribunal gives notice of its determination.

Some commonly-asked questions

1. *Can a complaint be withdrawn?*

Once a complaint has been made the Board must investigate it and decide whether it will proceed. Even if a complainant withdraws a complaint, the Board may decide to proceed with investigation and may refer the matter to Tribunal. If the matter is referred to a Tribunal, the original complainant may still be called as a witness.

2. *Who are the parties if a matter is referred to Tribunal?*

When the Board receives a complaint, it decides on the basis of the information regarding the complaint whether it will inquire further into the matter. If any action is taken, it is taken by the Board, not by the person who complained. If a Tribunal is held, the parties before the Tribunal are the Registration Board and the architect. The Board takes on the role of prosecutor, and the architect is in the role of defendant.

Both parties are usually legally represented. A person who has made a complaint (and any other persons involved with the matter) may be called as a witness, but there is no reason for them to have legal representation.

3. *If a complaint is referred to an Architects Tribunal, should the architect be legally represented?*

In simple matters, for example a failure to comply with Regulation 14 not contested by the architect, or other matters alleged not contested by the architect, by mutual arrangement the architect and Board may agree not to be legally represented in order to contain costs. In other matters, the Board is usually represented by a lawyer, and the architect should seek legal advice as to his or her own representation. An architect may be represented by a person other than a lawyer if he or she wishes. A Preliminary Conference may be held prior to the Tribunal itself. It would determine: admissions, if any; issues in dispute; number of witnesses; legal representation; probable duration of the inquiry; hearing dates.

4. *If an Architects Tribunal arrives at findings adverse to the architect, what penalties can be imposed?*

The grounds on which a Tribunal can take disciplinary action against an architect are described in Section 32 of the Architects Act. The same section describes the determinations the Tribunal may make:

32. Grounds for disciplinary action against a registered architect

If after considering the submissions made at an inquiry the Tribunal finds that—

- (a) the architect is careless or incompetent in his or her practice; or*
- (b) the professional standards of the architect are demonstrably lower than the standards which a competent architect should meet; or*
- (c) the architect is guilty of unprofessional conduct; or*
- (d) the architect has breached or failed to comply with any provision of this Act; or*
- (e) the architect has been convicted in Victoria of an indictable offence or has elsewhere been convicted of an offence which if committed in Victoria, would be an indictable offence; or*
- (f) the registration of the architect has been obtained by fraud or misrepresentation or concealment of facts—*

the Tribunal may make one or more of the following determinations—

- (g) to caution the architect;*
- (h) to reprimand the architect;*
- (i) to require the architect to undertake further education of a kind, and to complete it within a period, stated in the determination;*
- (j) to impose a condition or limitation on the architect's registration relating to the architect's practice;*
- (k) to impose a penalty not exceeding 50 penalty units;*
- (l) to suspend the architect's registration for the period stated in the determination;*

(m) to cancel the architect's registration—
and may make any determination as to costs that it thinks fit.

It should be noted that the purpose of Tribunal determinations is to protect the public; determinations may have the effect of imposing a “penalty” on the architect, but that is not their purpose.

It should also be noted that in the event of findings adverse to the architect, the Board will make a submission to the Tribunal that the architect pay at least a proportion of the Board’s costs.

In the event of the architect being exonerated by the Tribunal, the Tribunal has no power to make costs determination.

5. *Are Board Meetings and Tribunals open to the public?*

Board meetings are not open to the public. (The Architects Registration Board of Victoria meets on the second Tuesday of each month except for January, when no meeting is held.)

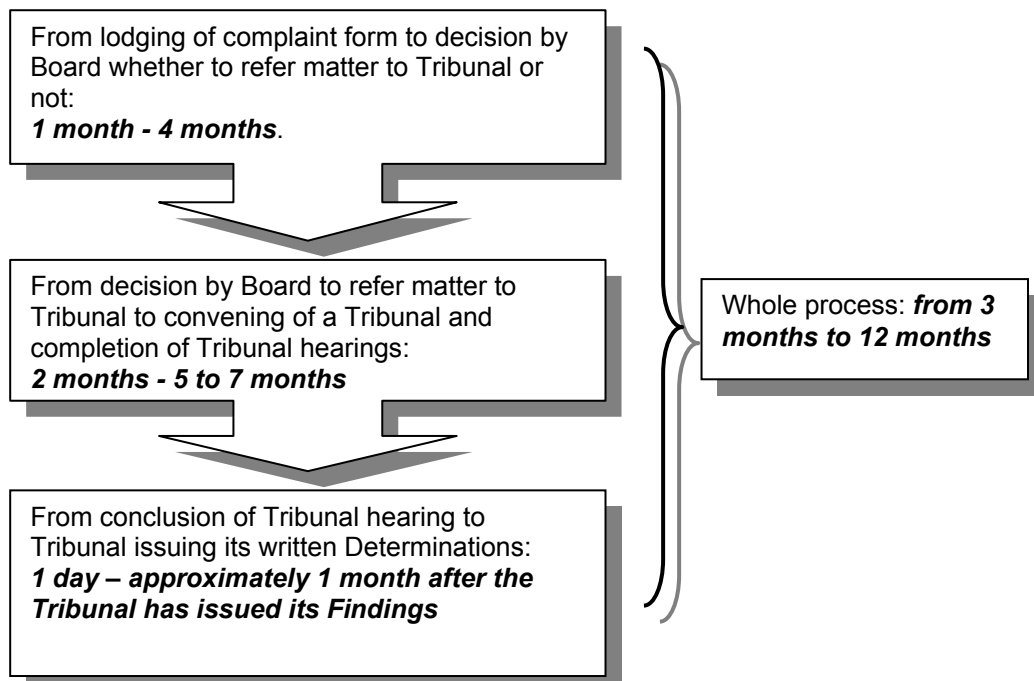
Unless the Tribunal itself decides to hold part or all of its proceedings *in camera* (i.e. closed to the public and to reporting), Tribunal hearings are open to anyone who wishes to attend.

6. *Can a Tribunal order the architect to pay damages or compensation to the complainant or to make restitution?*

No. The purpose of the complaints procedure is, according to the *Architects Act*, to “regulate the professional conduct of architects”. It is a professional disciplinary process that may make determinations affecting the architect, but it does not arbitrate in disputes between clients and architects.

7. *How long will it take for a complaint to be dealt with?*

The answer to this depends on a number of factors. The following diagram gives an idea of how long various stages of the process can take:



8. *What reporting of complaints and Tribunals takes place?*

Complaints *per se* are treated as confidential. Statistics regarding the number of complaints made per annum are reported in the Board's *Annual Report*.

However, if a complaint is referred to inquiry by an Architects Tribunal, it then comes into the public domain. As noted above, unless the Tribunal itself decides to hold part or all of its proceedings *in camera* (i.e. closed to the public and to reporting), Tribunal hearings are open to anyone who wishes to attend. This can include journalists, who may report proceedings.

If a Tribunal determines to suspend or cancel an architect's registration, the Board is obliged by Section 34 of the *Architects Act* to publish a notice to this effect.

In June 2004 the ARBV decided that, from the first Tribunal arising from any complaint received after 1 July 2004, reports will include the name of the architect concerned if a Tribunal finds that allegations against the architect are proved. The report will also include the details of Findings and penalties.

Reports of Tribunals are published in the Board's *Annual Report* and the Board's newsletter, *Information*, as well as on its web site.

Mediation

The *Architects Act 1991* was amended in July 2005 to allow the Board to refer complaints to mediation. The relevant part of the Act says:

18A. Power to refer complaint to mediation

(1) *The Board may refer a complaint to mediation under Division 1A if the Board considers it appropriate to do so.*

(2) *A complaint may only be referred to mediation if the person making the complaint and the architect concerned consent to that referral.*

The Board has developed policy and procedures for the implementation of the mediation process. Please view the document *Policy and Procedures for Referral of a Complaint to Mediation* or contact the Board if you require more information regarding this.

Further Information

Copies of the Board's *Policy on Referral to Inquiry by Architects Tribunal* and *Policy and Procedures for Referral of a Complaint to Mediation* are available from the Board on request, or may be viewed on the Board's website at www.arbv.vic.gov.au.

The relevant legislation is the *Architects Act 1991*, and the *Architects Regulations 2004*.

Copies of the Act and Regulations can be obtained from Information Victoria, telephone 1300 366 356, or they may be viewed on the ARBV website.

The Victorian Civil and Administrative Tribunal is located at 55 King Street, Melbourne 3000, telephone 9628 9700. Their website is www.vcat.vic.gov.au.

The Royal Australian Institute of Architects (Victorian Chapter) is located at 1st Floor, 41 Exhibition Street Melbourne 3000, telephone 9654 8066. Their website is <http://www.architecture.com.au>.