

Information for complainants about the Architects Registration Board of Victoria Complaints Procedures

What to do if you are thinking of making a complaint

If you are considering complaining about an architect to the Architects Registration Board of Victoria, this is what you need to do:

- Discuss the matter with the Compliance Officer at the Board, who will be able to help you clarify what your options are, and whether the matters fall under the Board's jurisdiction. If you wish to lodge a complaint the Compliance Officer can assist you.
- If you want to make a complaint, the Compliance Officer will send you an *Architectural Services Complaint Form* and help you decide what additional or supporting material should accompany your complaint. Remember that complaints need to be **substantiated**: that is, there needs to be some evidence of the matters being complained about.
- If you need assistance with copying of material, e.g. plans or other documents, the Compliance Officer can help.
- Complaints **must** be lodged using an *Architectural Services Complaint Form*, which can only be obtained from the Board. (The *Complaint Form* is not available from the web site; you need to contact the Board to obtain one.)

Grounds for complaint

The ARBV is only able to refer matters to inquiry by Architects Tribunal if there is prima-facie evidence of matters which could lead to a Tribunal making one or more of the following findings:

- 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 the Architects Act 1991; 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.*

What happens if the Board receives a complaint

Architect's response requested

When the Board receives a complaint about a registered 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 the Architects Tribunal.)

Complaint reviewed by Board members

Two Board members (including at least one architect) review the matter and report 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 members report 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 unable to give specific reasons for not inquiring further into a complaint, but it may do so in general terms. (See *Appeal Procedures*, below.)
- ii) The Board may feel that further investigation of the complaint is required before a decision can be made. In that case, the reviewing Members would make a further report when the investigation is completed.
- iii) The reviewing Members 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 lawyers for the drafting of a Notice setting out the matters being inquired into.
- v) The Board considers the 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. Will it cost me anything to complain?

No. There is no fee for lodging a complaint. 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 normally legally represented. A person who has made a complaint (and any other persons involved with the matter) may be called as a witness, but as they are not a party to the matter, there is no reason for them to have legal representation.

It is particularly important to understand that lodging a complaint is a serious matter which imposes certain obligations on the complainant.

These include an obligation to:

- ***supply all relevant materials in the possession of the complainant;***
- ***co-operate with investigation of the matter, including being interviewed by an investigator;***
- ***co-operate with preparation of witness statements if required;***
- ***appear as a witness if required at an inquiry if one is held, and be examined on their evidence.***

2. Will the architect know that I have made a complaint?

Yes, because the architect will be invited to respond to it.

3. Can I withdraw a complaint?

Once a complaint has been made the Board must investigate it and decide whether it will proceed. This will happen even if you advise us that you wish to withdraw the complaint. If the matter is referred to a Tribunal, you may be obliged to attend as a witness.

4. *Can a Tribunal order the architect to pay me damages or compensation 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 disciplinary process that may impose determinations on the architect, but does not arbitrate in disputes between clients and architects. If disputes concerning money or other practical matters arise, they cannot be resolved by complaining to the Board: you should seek legal advice about how these can be resolved. (See also question 1 above.)

5. *What penalties can a Tribunal impose on an architect?*

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—

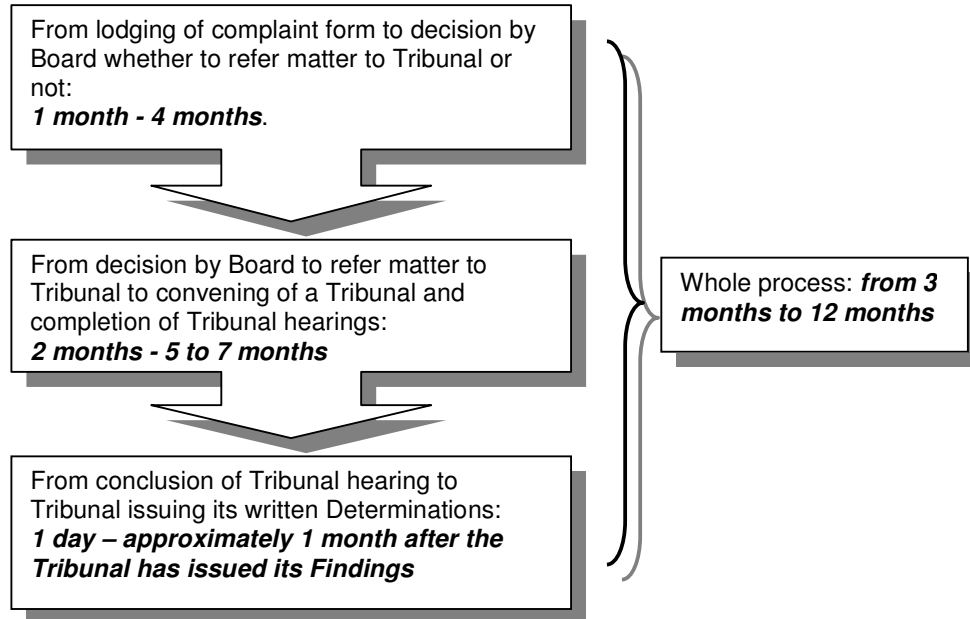
- (g) to caution the architect;*
- (h) to reprimand the architect;*
- (i) to require the architect to undertake further education of a kind, and to complete it within a period, stated in the determination;*
- (j) to impose a condition or limitation on the architect's registration relating to the architect's 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.

6. *How long will it take for my 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:



7. *If I complain about an architect and the Board dismisses the complaint, or a Tribunal finds the architect was not at fault, can the architect sue me for defamation?*

No.

8. *Are Tribunals open to the public?*

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

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* on our website 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.

Copies of the Act and Regulations may be viewed here <http://www.dms.dpc.vic.gov.au> – click on Victorian Law Today, then use the alphabetical guide to locate the *Architects Act 1991* and the *Architects Regulations 2004*.

Consumer Affairs Victoria can assist with information about your rights as a consumer: Victorian Consumer & Business Centre, 113 Exhibition Street Melbourne 3000 telephone 1300 55 81 81. The website is www.consumer.vic.gov.au.

If you are in a dispute in relation to the supply of goods or services (whether for private or business use) the Victorian Civil and Administrative Tribunal (VCAT) may be able to help you resolve the dispute. The Victorian Civil and Administrative Tribunal is located at 55 King Street, Melbourne 3000, telephone 9628 9700. Its website is www.vcat.vic.gov.au.