

ARCHITECTS REGISTRATION BOARD OF VICTORIA POLICY AND PROCEDURES FOR REFERRAL OF A COMPLAINT TO MEDIATION.

INTRODUCTION

This policy and procedures document has been adopted by the Architects Registration Board of Victoria (“the Board”) to provide advice to parties to a complaint. It is determined by the requirements of the Architects Act 1991.

The Architects Act 1991 (as at 14 June 2005), Part 4, Division 1, states that

18(1) the Board may refer a complaint to mediation under Division 1A if the Board considers it appropriate to do so.

And

18(2) A complaint may only be referred to mediation if the person making the complaint and the architect concerned consent to the referral.

These clauses, along with Division 1A, determine the scope and processes required for mediation under the Act.

OBJECTIVE

The objective of these mediation provisions is to achieve a fair, expeditious and non-adversarial process for all parties involved.

POLICY ON REFERRAL TO MEDIATION

The Board will consider whether Tribunal Inquiry is warranted in all written complaints received and will decide on the evidence available whether referral to mediation is warranted on some or all matters raised in a complaint.

Matters that may be referred to mediation are those matters which fall within the provisions of the *Architects Act 1991* and which are considered by the Board to be appropriate for mediation (The Act 18A (1)). Such matters will normally be those which do not raise substantial professional conduct issues. The Board will make this decision on a case by case basis within its Complaints Process.

Where a complaint is resolved in mediation and the Board has not previously identified aspects of that complaint for possible further inquiry, the Complaint will be considered closed.

The Board may decide that while some parts of a complaint are appropriate for mediation, other parts are appropriate for Inquiry. In this case, the complainant and architect will be advised of this decision at the time of inviting them to participate in mediation on some aspects of the complaint.

Where a mediation is unsuccessful and the Board receives, within 28 days, from the complainant, a written request to pursue further inquiry, the Board will, on the basis of the evidence before it, consider that complaint for inquiry by Tribunal.

PROCEDURE FOR REFERRAL TO MEDIATION

On receipt of a written complaint, the complaint is reviewed by the Board to determine the appropriate action in response to the complaint.

Actions available to the Board are to:

- Determine that there are no grounds for further inquiry;
- Refer the complaint or parts of the complaint to mediation;
- Refer the complaint or parts of the complaint to further inquiry at Tribunal.

For policy on referral to Inquiry please see: *Policy on Referral to Inquiry by Architects Tribunal*

Where the Board determines that MEDIATION is an appropriate action, the following steps are taken.

1. Both complainant and architect are invited to undertake mediation on identified matters. (18A(2) of the Act). (see consent to mediation form);
2. if consent from both parties is obtained, a qualified mediator is appointed and the identified matters are referred to mediation.
3. All parties to the mediation are notified by the Board of the mediation, including the time and place of the mediation. (The Act 18F)

The mediation must occur within 28 days of the matter being referred to mediation. (18F(2) of the Act) In the event that the mediation does not take place within 28 days of referral, the Board may instruct the mediator to negotiate other times with the parties.

4. The mediator obtains from the parties any relevant documents.

5. On conclusion of the mediation, the Mediator writes a mediation report to the Board.

Section 18H of the Act states

The mediator of a complaint must report to the Board –

- (a) on whether or not the mediation has been successful; or
 - (b) if the mediation does not take place within 28 days after the Board refers the complaint for mediation.
6. If all matters in a complaint have been satisfactorily resolved, both parties are informed by the Board that no further action is necessary or will be taken.
 7. If mediation is unsuccessful, the Board may, on receipt of a written request from the complainant within 28 days of notification of mediation outcomes, refer matters to tribunal Inquiry. [*Anything said or done in the course of mediation must be kept confidential and cannot be used in any inquiry...unless all parties to the mediation agree in writing to the use of the information.* [The Act 18I(2)]

Procedure for mediation and confidentiality

The procedures used during a mediation are at the discretion of the mediator. [The Act 18G]

Anything said or done in the course of mediation must be kept confidential and cannot be used in any inquiry...unless all parties to the mediation agree in writing to the use of the information.. [The Act 18I (2)]

A mediator who mediates a complaint cannot be appointed as a member of the Tribunal to conduct any inquiry into a matter to which the complaint relates. [The Act 18I (1)]

Mediation in relation to a Tribunal inquiry

During its review of a Complaint, the Board may determine that while mediation of some or all matters raised in the complaint is appropriate, some or all matters warrant referral to a Tribunal Inquiry. (The Act 18J) If this is the case, the parties will be informed of this decision at the time of inviting their participation in mediation.

If mediation is unsuccessful, the Board may, on receipt of a written request from the complainant within 28 days of notification of mediation outcomes, refer matters to Tribunal Inquiry. [*Anything said or done in the course of mediation must be kept confidential and cannot be used in any inquiry...unless all parties to the mediation agree in writing to the use of the information.* [The Act 18I(2)]

Procedures for inquiry into an architect's professional conduct are set out in The ARBV *Policy on prosecutions and referral to Tribunal.*

A mediator who mediates a complaint cannot be appointed as a member of the Tribunal to conduct any inquiry into a matter to which the complaint relates. [The Act 18I (1)]

See also Board Policy on referral to Tribunal.

Costs of mediation

Costs associated with mediation are dealt with as follows:

- The ARBV meets all clerical and support costs and provides a suitable room for mediation meetings.
- The ARBV meets the mediator's fees for the first three hours of a mediation.
- Client and architect will be required to meet mediator fees beyond the initial three hours, payable to the ARBV to reimburse the mediator.

Appointment of a mediator

Only mediators who are members of the 'Institute of Arbitrators & Mediators Australia', the Law Institute of Victoria or members of the LEADR Association of Dispute Resolvers (Lawyers Engaged in Alternative Dispute Resolution) will be appointed as mediator.

Matters not normally referred to Mediation

1. Any matter which does not fall within the provisions of the *Architects Act 1991*, (e.g. commercial disputes.)
2. Regulation 14 Terms of engagement. Where there is clear evidence that a written terms of engagement document or "Client/Architect Agreement" was not provided to the client at appropriate time(s) during the engagement, a complaint regarding this will normally result in a Tribunal inquiry.

Other avenues available to parties wishing to pursue matters outside the provisions of the Architects Act, are, for example, VCAT.

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