

Information *For architects*

This Newsletter is an official ARBV communication with Architects

GUIDELINES TO PROFESSIONAL CONDUCT REGULATIONS

Enclosed with this Newsletter is a copy of the Guidelines recently approved by the Board.

These Guidelines replace those previously published with *Information 50*.

They can be inserted in your *Resources for Architects* folder in Section 3 under the Architects Regulations and professional Conduct.

These Guidelines have been developed by the ARBV to assist architects with interpretation of the Professional Conduct regulations as implemented July 2005.

Not all Regulations are commented on. This is not meant to imply any hierarchy of regulations.

The expectations contained in the Regulations apply to advice provided in a professional capacity and to services leading to the design and construction of buildings or parts of buildings.

Consultation on the Guidelines

As this is the first time these documents have been revised since 1999, architects are invited to provide written comment to the Board on any aspect of the Guidelines.

BUILDING PRACTITIONER MANUAL

Through agreement with the Building Commission and Plumbing Commission, the Building Practitioner manual is now freely available to architects. Previously, access to 'new-release' practice notes was only available via a secure area on the Building Commission website. The change means that key industry members including registered architects, will be able to access the full range of current and new release practice notes without requiring a password or username. The navigation pathway to the practice notes is:

1. Building Commission website homepage – www.buildingcommission.com.au
2. Click on the 'Industry' section picture at the top
3. Click on 'Legislative Publications' on the right-hand-side
4. Scroll down and click on '2006 Technical Practice Notes'

The ARBV thanks the Commission for this initiative.

OHS AND WORKPLACE DESIGN

Also enclosed is additional advice from Worksafe and a joint letter from the Board and Worksafe Victoria to all architects. As advised in the April Newsletter, full information including the Guide to Section 28 of the OH & S Act 2004 is available from the work safe website at:

www.workcover.vic.gov.au/vwa/home.nsf/pages/safedesign.

INSURANCE COMPLIANCE FOR 2006-2007

The Board congratulates all architects who have confirmed their compliance with PI insurance requirements for 2006-2007.

The Act requires written proof of insurance cover for work as an architect by 1 July each year.

Our records show that 190 architects have yet to provide written proof of their insurance cover for the coming year. A copy of your Certificate of Currency or Schedule referring to cover for architectural work is accepted as written proof.

Our records show that 148 architects and 39 Companies or Partnerships have not yet renewed their registration for 2006-2007. The Act and Regulations provide for a late fee to be imposed.

Practising Certificates are sent only to architects who have both renewed registration and provided proof of insurance.

BOARD MEMBERSHIP

The Board welcomed Karen McWilliam to her first meeting in August. Karen replaces Fiona Nixon as the RAI A nominee.

Retiring members

The Board sincerely thanks Roger Frith (Government architect) and Janet Kaylock (Community representative) for their most valued contribution over 2 years.

INQUIRIES AND PROHIBITED CONDUCT 2005 – 2006

Enquiries regarding architectural services

In the 2005 -2006 financial year, 53 telephone enquiries related to the services of architects were received. In many cases, the caller was seeking information or clarification of rights and responsibilities, normal practice and reasonable expectations of architects; generally not wishing to make a complaint. Callers are assisted as far as possible with information or referred to Board publications and other relevant sources. Some callers are seeking information about or clarification of the disciplinary provisions of the Act and Regulations. Other callers require information about complaint procedures and a complaint form, so they have the necessary documentation to make a formal complaint if they wish to do so.

Board and Tribunal procedures with complaints

The Architects Act (Section 18) provides that the Board may inquire into an architect's fitness to practise or professional conduct. The Architects Regulations 2004 contain Professional Conduct Regulations required of architects. Inquiries and discipline procedures are managed by the Inquiries Officer.

The Board deals only with written complaints. All written complaints are carefully reviewed using documentation supplied by complainant and architect and further investigation conducted where necessary.

If after investigating a complaint the Board decides that on the face of the evidence before it there are grounds for further inquiry, it refers the matter to the Architects Tribunal.

The Tribunal operates independently of the Board and has access to independent legal advice. The Act provides for application to be made to the Victorian Civil and Administrative Tribunal for review of a decision by the Board not to institute an inquiry.

If the Architects Tribunal finds allegations against an architect proved, the Board is required to enforce the Determinations made by the Tribunal. The Act provides for application to be made to the Victorian Civil and Administrative Tribunal for review of a Determination made at an inquiry (sections 42-44).

The majority of complaints are from clients of architects, although the Act provides that any person may make a complaint.

Number of complaints for misconduct

5 formal written complaints were made to the Board during the reporting period. Of the 5 complaints at 30 June 2006, 4 were judged by the Board to warrant no further inquiry. One remained subject to review. Two matters are deferred pending the outcome of proceedings in other legal jurisdictions.

The incidence of complaints, as well as the proportion of complaints resulting in Tribunal inquiry, bears favourable comparison with the number of architects registered in Victoria (of whom approximately 2,700 are in practice).

	2003 - 2004	2004 - 2005	2005 - 2006
<i>Number of calls about services of architects</i>	75	55	53
<i>Number of complaint forms provided</i>	36	29	26
<i>Number of formal complaints received</i>	18	8	5
<i>Matters pending</i>	0	1	1
<i>Number of Tribunal inquiries completed</i>	3	2	2

REPORTS OF ARCHITECTS TRIBUNAL INQUIRIES

The following are reports of Architects Tribunal inquiries which took place during the reporting period.

Tribunal 04/02

This inquiry took place on 23 & 24 August 2005. The Board has determined to report the matter after proceedings in the Supreme Court have been concluded.

Tribunal 04/07

This inquiry took place on 26 July 2005. The allegations, in summary, were:

Allegation 1

In or about October 2003, you, as the architect engaged to prepare an application for a planning permit on behalf of your client, obtained an upfront payment of \$5,000 for Services on the basis of a promise to complete the Services within 3 weeks when such an estimate was not reasonably achievable in all the circumstances and you therefore failed to perform your work as an architect in a competent manner and to a professional standard in breach of regulation 5 of the Architects Regulations 1993 and, pursuant to regulation 22 of those Regulations, you are therefore guilty of unprofessional conduct.

The Tribunal found the allegation not proven.

Allegation 2

Between October 2003 and April 2004, you, as the architect engaged to prepare an application for a planning permit for the proposed development (Application) on behalf of your client, failed to progress the Application in a timely manner and you therefore failed to perform your work as an architect in a competent manner and to a professional standard in breach of regulation 5 of the Architects Regulations 1993 and, pursuant to regulation 22 of those Regulations, you are therefore guilty of unprofessional conduct.

The Tribunal found the allegation not proven.

Allegation 3

In or about April 2004 you, as the architect, engaged to prepare an application for a planning permit for the proposed development (Application) on behalf of your client, filed the Application with the relevant council which contained significant errors and omissions and you therefore failed to perform your work as an architect in a competent manner and to a professional standard in breach of regulation 5 of the Architects Regulations 1993 and, pursuant to regulation 22 of those Regulations, you are therefore guilty of unprofessional conduct.

The Tribunal found the allegation not proven.

Allegation 4

In or about April 2004 you, as the architect engaged to prepare an application for a planning permit for the proposed development (Application) on behalf of your client, filed a landscape plan in support of the Application without first obtaining your client's consent to do so and you therefore failed to perform your work as an architect in a competent manner and to a professional standard in breach of regulation 5 of the Architects Regulations 1993 and, pursuant to regulation 22 of those Regulations, you are therefore guilty of unprofessional conduct.

The Tribunal found the allegation not proven.

None of the allegations in the Notice of Inquiry being found proven, the Tribunal therefore made no Determination.

PROHIBITED CONDUCT - TITLE PROTECTION

Section 46 (k) of the Architects Act 1991 enables the Board “to investigate and take proceedings for offences against [the Act]”.

Until 30 June 2005, the Act protected the title of ‘Architect’ and the derivative words ‘architecture’ and ‘architectural’ in relation to the design of buildings or parts of buildings and the preparation of plans, drawings or specifications for buildings or parts of buildings.

The Architects (Amendment) Act 2004 amended these provisions. The Act (Sections 4, 5, 6, 7 & 8) now controls the title of “architect”, as well as the expressions “architectural services”, “architectural design services” and “architectural design” in certain contexts. It also contains more general provisions against “holding out”. These amendments came into force on 1 July 2005.

Investigations of Title breach actions by the Board

The Board inquires into allegations of misuse of the title, as well as undertaking investigations on its own behalf. In the reporting period, 32 complaints of breaches of the Act were received, in addition to numerous telephone enquiries regarding registration status of individuals and firms.

If after investigation it appears that a breach of the Act has occurred, a letter from the Board requiring compliance is sent, and normally this is sufficient to achieve compliance with the Act. In cases where this purpose is not achieved, the matter is referred to the Board’s lawyers for advice regarding prosecution in the Magistrate’s Court.

During this reporting period, 17 letters of compliance were issued either to a person or firm representing themselves as an architect or using the protected terms, or to media outlets such as newspapers and magazines that have published the protected words in relation to persons or firms not registered or approved by the Board.

One prosecution was completed during the reporting period (*see below*). Two matters have been referred for prosecution and charges have been issued in one of those.

Title breach actions - summary

	2003 - 2004	2004 - 2005	2005 - 2006
<i>Number of Title breach investigations</i>	29	25	53
<i>Number of letters of compliance issued</i>	15	10	17
<i>Number of referrals for prosecution</i>	2	1	2
<i>Number of completed prosecutions</i>	2	1	1

Prosecution of Salvatore (Sam) Chiodo and Chiodo Design Corporation Pty Ltd

These matters were heard before Mr Smith M in the Melbourne Magistrates’ Court on 30 June 2006. Salvatore (Sam) Chiodo pleaded guilty to one charge of using the word ‘architect’ in relation to the design of a building when he was not registered as an architect, contrary to the former section 4(c) of the Architects Act 1991. The charge was adjourned without conviction on Chiodo giving an undertaking to be of good behaviour for 12 months and on condition that he pay costs in the sum of \$4,890.00 to the Architects Registration Board by 30 August 2006. The costs include legal costs (calculated on a party-party basis) and the investigator’s costs. Chiodo Design Corporation Pty Ltd pleaded guilty to three charges of using the word ‘architectural’ in relation to the design of buildings when not an approved architectural company, contrary to the former section 6(b) of the Architects Act. It was convicted and fined an aggregate of \$2,000.00. The fine is also payable by 30 August 2006.