

**AT:00/15**

*Architects Act 1991  
Section 32*

## **Findings and Determination**

*These are the Findings of the Tribunal constituted by the Architects Registration Board of Victoria to hold an inquiry into the fitness of [the architect]. Registered Architect No. [] to practise as an architect and into his professional conduct. The Inquiry was conducted on 8 May 2001*

*[], Inquiries Officer, appeared on behalf of the Architects Registration Board of Victoria, and the Architect, [], appeared in person.*

*The Tribunal adjourned for a short time and delivered its Findings and Determination which follow.*

### **FINDINGS**

**The Tribunal having conducted an Inquiry into the particular conduct or acts or omissions raised in the Notice issued pursuant to s27 of the *Architects Act 1991*, having considered the evidence presented to, and the submissions made at that Inquiry, makes the following findings**

#### **Allegation:**

The architect failed to set out in writing the description, terms and conditions of his engagement as an architect and supply a copy of that document to the clients before accepting the engagement to provide architectural services to them;

#### **Finding**

This allegation is admitted by the architect and therefore the Tribunal finds it proved

#### **Allegation:**

By reason of the above allegation, the architect breached Regulation 18 of the Regulations and by virtue of Regulation 22 his conduct constituted unprofessional conduct irrespective of whether it otherwise was.

#### **Finding**

Regulation 22 being a deeming provision, the Tribunal finds this allegation proved

In view of these findings the Tribunal finds:

- (a) The architect was careless and incompetent in his practice
- (b) The architect's professional standards are demonstrably lower than the standards which a competent architect should meet

- (c) The architect is guilty of unprofessional conduct (by virtue of Regulation 22 and otherwise).
- (d) The architect has breached Regulations 18 of the **Architects Regulations 1993**.

### **DETERMINATION**

**Pursuant to the provisions of s32 of the *Architects Act 1991* the Tribunal makes the following Determination and order as to costs which come into effect on 8 May 2001**

1. To reprimand and caution the architect.
2.
  - (a) To instruct the Architects Registration Board of Victoria (the Board) to appoint a suitably qualified person to attend at the architect's office during the month of August 2001 and again 6 months after the date of such inspection for the purpose of investigating whether the architect is complying with his obligations under Regulation 18.
  - (b) The person so appointed is to concern him/herself with all files relating to projects entered into by the architect on or after 1 January 2001
  - (c) The person so appointed shall report to the Board as to his or her findings as soon as practicable after such inspections and if it is reported the architect has not been complying with this obligations under Regulation 18, the matter is to be referred to the Tribunal as constituted for the purpose of this Inquiry, for further consideration as to penalty, providing such Tribunal Members are available, or otherwise as appointed by the Board.
3. The architect shall pay the costs of the Board fixed at \$616.00 within 14 days

8 May 2001

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### **REASONS FOR FINDINGS AND DETERMINATION**

1. Oral Reasons were given at the conclusion of the Inquiry, but the Tribunal has determined to provide these written reasons as a courtesy to the parties.
2. This Tribunal was constituted pursuant to the provisions of s27 of the Architects Act 1991 to enquire into certain conduct, acts or omissions of [the architect], as set out in the Notice of Inquiry dated 13 March 2001. At the Inquiry, [], Inquiries Officer, appeared on behalf of the Board, and the architect, [], appeared in person.

3. [The architect] conceded that he had failed to provide the Complainants, [], with a document setting out a description, terms and conditions of his engagement as an architect before accepting the engagement to provide architectural services to them. This is a breach of Regulation 18, and by virtue of the deeming provisions of Regulation 22 such conduct was found to be unprofessional.
4. Although [the Inquiries Officer] on behalf of the Board suggested that an appropriate penalty would be a caution, the Tribunal having regard to all the circumstances determined to exercise its discretion under s32 of the Act in making its determination.
5. [The architect] gave evidence that he has been a registered architect since 1983 and director of an architectural practice for 15 years, during which time he has been associated with large practices, and significant projects. He agreed that he was aware of the obligations imposed by Regulation 18, but that in this instance the provision of the required document had apparently “slipped through the net” because of his excitement about the project. He said that he usually uses the RAIA shortform Architects Agreement, and that during his association with large firms, the RAIA longform Architects Agreements had been utilised.
6. The Tribunal invited [], one of the complainants, who was in attendance at the Inquiry to address it in relation to the impact on the project occasioned by the failure of the architect to provide the required document. It was apparent that there was a fundamental misunderstanding that had arisen between the architect and his clients, and to where his and certain other fees would lie. [The clients] had always intended and understood they would be accounted for as part of the total project cost, but in the event they were added on to the project cost. [The client] said they were not concerned about the quantum of the fees, just that they were an extra when their expectation was that they would be included.
7. In late October 1996, [The clients] had provided to the architect a projected budget for the project inclusive of the architect’s fees. A copy of this was included in the folder of common documents provided to the architect and the Tribunal for the purposes of this Inquiry. [The client] said that the cost overrun

- occasioned by the addition to, rather than inclusion of the architect's and some other fees in, the project costs had led to financial ruin for him and his wife.
8. The Tribunal is concerned that [the architect], being a very experienced architect, who admitted that he was aware of this obligations under Regulation 18, had failed to comply with those obligations in circumstances where his omission had a significant deleterious effect on his clients. Had the required document been forwarded to them before the commencement of the project, they would have been in a position to consider their options in view of their stated financial constraints. This opportunity was not afforded to them because of the architect's absolute disregard of his obligations under Regulation 18.
  9. The Tribunal does not consider [the architect's] explanation that he was so excited by the project this requirement "slipped through the net" to be an acceptable or plausible excuse in these or any circumstances. It is reasonable to expect an architect of his experience, and with his admitted understanding of his obligations, to comply with them knowing that non-compliance can lead to confusion and misunderstandings as has obviously occurred in this instance.
  10. In such circumstances, the Tribunal having a duty to consider the public interest, determines that an appropriate penalty in the circumstances is firstly to caution and reprimand the architect, and to require an inspection of his project documentation since 1 January 2001, by a suitably qualified person appointed by the Board, to ensure compliance with his obligations. The first such inspection to take place during August 2001 and the second six months later. Should it be discovered that the architect has not been complying with his obligations under Regulation 18 the Board is directed to refer the matter back to the Tribunal for the purposes of further considering an appropriate penalty.

8 May 2001