

Architects Registration Board of Victoria

Notice of Inquiry

TO: [Architect]
Registered Architect No [...]

OF: [address]

1. BASIS OF INQUIRY:

TAKE NOTICE THAT the Architects Registration Board of Victoria (**Board**) pursuant to section 18 of the *Architects Act 1991* (**Act**) has decided to hold an Inquiry into your professional conduct. The Board pursuant to Division 2 of Part 4 of the Act has constituted a Tribunal to conduct the inquiry on its behalf.

The Tribunal has decided and intends to hold an inquiry into your professional conduct.

2. MODE OF INQUIRY:

The Inquiry will proceed by way of oral hearing. Section 30 of the Act stipulates that:

At an inquiry—

- (a) subject to this Part [Part 4 of the Act], the procedure of the Tribunal is in its discretion; and*
- (b) the proceedings must be conducted with as little formality and technicality as the requirements of this Act and the proper consideration of the matter permit; and*
- (c) the Tribunal is not bound by rules of evidence but may inform itself in any way it thinks fit; and*
- (d) the Tribunal may require evidence to be given on oath or affirmation and any member may administer an oath or take an affirmation for that purpose; and*
- (e) the Tribunal is bound by the rules of natural justice.*

3. APPEARANCE OF PARTIES:

You have a right to be present, to make submissions and to be represented at the Inquiry.

If neither you nor a nominated representative appears at the hearing, the Tribunal may proceed in your absence and will make a finding on the evidence before it at the Inquiry. You may explain your behaviour or answer the allegations contained within this Notice personally or in writing or both.

4. TIME AND DATE OF PRELIMINARY CONFERENCE:

10:00 a.m. Friday 13th September 2013

5. TIME AND DATE OF INQUIRY:

The time and date will be fixed at the preliminary conference.

6. VENUE:

Both the preliminary conference and the Inquiry will be held in the Conference Room within the ARBV Office, Level 7, 372 Albert Street, East Melbourne 3002.

7. MATTERS AND/OR BEHAVIOUR ALLEGED:

Allegation 1:

You are guilty of unprofessional conduct (including in accordance with the meaning of 'unprofessional conduct' in Regs 14 and 16 of the *Architects Regulations 2004*) as a consequence of your failure to, in writing, set out the terms of engagement with [the owners] for provision of architectural services in relation to [address], and supply a copy of that document to the owners.

Particulars:

1. On 26 August 2011 you were requested to attend a meeting at the owners' residence to discuss potential renovations to the property.
2. On 28 August 2011, you met with the owners at the property and conducted an assessment of the property, including providing preliminary advice regarding re-organisation and possible expansion of the property.
3. On or around 22 September 2011, the owners requested a copy of the original drawings of the property, which your practice retrieved from archives and on 27 September 2011 your practice provided these drawings to the owners.
4. On 28 September 2011 you invoiced the owners for \$818.95 for architectural services including a meeting between yourself and the owners and the cost of retrieval of original architectural drawings for the owners' property. The fees were calculated as \$400 for 2 hours of your time and \$325 for 2.5 hours of architectural graduate [name], with \$19.50 in disbursements and \$74.45 in GST.
5. Prior to accepting this engagement to provide architectural services, you did not set out in writing the description, terms and conditions of the engagement to provide architectural services, and you did not supply a copy of that document to the owners.

8. POWERS EXERCISABLE BY THE TRIBUNAL:

Pursuant to section 32 of the Act:

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.

9. TRIBUNAL DETERMINATIONS AND REASONS

Pursuant to section 33 of the Act:

- (1) A determination made on an inquiry comes into operation on its making or at any later time stated in the determination.*
- (2) As soon as possible after making a determination on an inquiry the Tribunal must give to the person to whom the determination relates a written statement setting out its determination.*
- (3) A person affected by a determination made on an inquiry may, by notice in writing given to the Board within 2 months after the date on which the determination is made request the Board for the reason for the determination.*

(4) As soon as possible but not later than one month after receiving the request, the Board must give the applicant a written statement setting out the determination made on the inquiry, the reason for the determination and the findings of fact on which they were based.

The Tribunal in its discretion may issue a written statement setting out its determination, reason for determination and findings of facts and before receiving submissions on penalty and costs and making determinations on penalty and costs.

10. ENFORCEMENT OF TRIBUNAL DETERMINATIONS:

Section 35 of the Act states that the Board must take all action necessary to give effect to a determination.

11. REVIEW BY VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL:

You have a right under section 42(c) of the Act to apply to the Victorian Civil and Administrative Tribunal for review of a determination made at an Inquiry under Part 4 of the Act.

Under section 44(c) of the Act, any such application for review must be made within 3 months after the day on which the Tribunal gives notice of the determination.

This Notice is given to you pursuant to section 27 of the Act.

DATED thisday of....., 201....

SIGNED:

.....
Margaret Pitt
Chair of the Tribunal

FINDING AND DETERMINATION

IN THE MATTER of the Architects Act 1991

AND IN THE MATTER of an Inquiry into the professional conduct of (the Architect)

This is the determination of the Tribunal constituted by the Architects Registration Board of Victoria to hold an inquiry into the fitness of (the Architect) to practise as an architect and into his professional conduct. The determination was made at the conclusion of an Inquiry conducted on Friday 22 November 2013.

The Tribunal, having conducted an Inquiry into the particular conduct or acts or omissions raised in the Notice of Inquiry pursuant to Division 2 of Part 4 of the Architects Act 1991 ("the Act") and having considered the submissions made at the Inquiry, makes the following determination:

That the Architect contravened Regulations 14 (a) and 14 (b) of the Architects Regulations 2004 ("the Regulations") in that the Architect failed to set out in writing the description, terms and conditions of his engagement as an Architect and to supply a copy of that document to his client before accepting an engagement to provide architectural services to the client.

FINDING:

The Tribunal accepts the Architect's admission in relation to the above matter.

By reason of the allegation contained in paragraph 7 of the Notice of Inquiry for the purposes of Section 32 (c) and 32 (d) of the Act, the Tribunal finds the Architect to be guilty of unprofessional conduct.

Penalty:

Having found the Architect to be guilty of unprofessional conduct, the Tribunal determines to caution the Architect.

Costs:

The Tribunal finds in relation to costs that the architect had the opportunity to resolve this dispute with his client at any time from when he received the first letter from the client on 9 October 2011 up to the lodgment of the complaint with the ARBV on 14 March 2013, including a further opportunity of mediation through Consumer Affairs Victoria in early December 2012.

We also find that the architect, by failing to indicate he would not contest the allegations until one week before the hearing, contributed directly to the amount of costs incurred by the Board.

The Tribunal therefore determines that the Architect pay the Architects Registration Board of Victoria costs of the Inquiry in the sum of \$9,958.00. This payment is to be made by 22 November 2014.

DATED this 22nd day of November 2013

(Signed)

Margaret PITT (Chair)

Anthony MUSSEN

Peter HARKNESS