

POLICY ON PROSECUTIONS FOR OFFENCES UNDER SECTIONS 4, 5, 6 AND 8 OF THE ARCHITECTS ACT 1991

Purpose of Policy

Section 46(k) of the *Architects Act 1991 (Act)* enables the Architects Registration Board of Victoria (**Board**) "to investigate and take proceedings for offences against [the] Act". In particular, the Board is empowered to investigate and take proceedings (that is, to prosecute) for offences against sections 4, 5, 6 and 8 of the Act. These provisions prohibit persons who are not registered as architects from representing themselves to be architects. (The Board is also empowered to investigate and take proceedings for other offences under the Act, but this policy does not apply to those offences.)

The Board routinely receives complaints about possible breaches of the Act, many of which arise from representations made in the media, on signage and business stationery, and in advertisements or entries in telephone and other directories. The purpose of this policy is to inform both architects and the general public of the Board's approach to prosecutions for breaches of the Act and, in particular, the factors that the Board generally takes into account in deciding whether to commence a prosecution.

This policy does not replace or reduce the scope of the Act or the *Architects Regulations 2004 (Regulations)* and the Board reserves its discretion to carry out its functions under that legislation as it considers appropriate from time to time.

Section 4, 5, 6 and 8 of the Act

Sections 4, 5, 6 and 8 of the Act prohibit individuals and bodies (both corporate and unincorporated) that are not registered as architects from representing themselves or allowing themselves to be represented as architects.

Section 7 of the Act provides examples of how such a representation might arise, including (but not limited to):

- by using the title "architect";
- by using the terms "architectural services", "architectural design services" and "architectural design" in certain contexts; and
- by representing that the person provides the services of an architect or undertakes or is willing to undertake work as an architect.

These provisions of the Act protect consumers by prohibiting those who have not satisfied the educational and other requirements for registration as an architect from representing themselves as architects. Incidentally, the Act also protects consumers in relation to registered architects, who are required to practise in accordance with the Act and the Regulations and who are subject to disciplinary action under the Act if they fail to do so.

Board's Policy on Prosecutions under Sections 4, 5, 6 and 8 of the Act

- (1) The Board is committed to investigating complaints as to possible breaches of the Act and, from time to time, may investigate possible breaches on its own initiative.
- (2) Where, after conducting an investigation, the Board forms the view that a person has breached section 4, 5, 6 or 8 of the Act, the Board's policy is to write to the person concerned, notify the person of the alleged breach and formally request the

person to cease the prohibited conduct. In doing so, the Board's intention is to uphold the consumer protection objectives of the Act, and not to inhibit legitimate competition.

- (3) Where a person continues to breach the relevant provisions of the Act after receiving the Board's letter, the Board will refer the matter to its lawyers with a view to commencing a prosecution in the Magistrates' Court.
- (4) Before commencing a prosecution, the Board will normally require one or more of:
 - (a) written evidence in original form (that is, in the form of an affidavit, statutory declaration or witness statement) from the person complaining of the breach of the Act (**complainant**);
 - (b) copies of all relevant documentation, including correspondence, plans, drawings, specifications, photographs and advertisements; and
 - (c) the agreement of the complainant to give evidence before the Magistrates' Court in any prosecution.
- (5) Ultimately, the Board will generally only prosecute for an offence where it is satisfied that to do so is in the public interest.