

*Architects Act 1991*

Architects Registration Board of Victoria

**Notice of Inquiry**

**TO:** [Name of Architect]  
Registered Architect No [...]

**OF:** [address]

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**BASIS OF INQUIRY:** The Architects Registration Board of Victoria (“the Board”) pursuant to Division 1 of Part 4 of the *Architects Act 1991* (“the 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.

**THE MODE OF INQUIRY** The Inquiry will proceed by way of oral hearing. The Act stipulates that:  
At an inquiry—

1. subject to Part 4 of the Act, the procedure of the Tribunal is in its discretion; and
2. 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
3. the Tribunal is not bound by rules of evidence but may inform itself in any way it thinks fit; and
4. 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
5. the Tribunal is bound by the rules of natural justice.

**APPEARANCE OF PARTIES** It is in your best interests to appear personally or through a representative 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 personally or in writing or both.

**TIME AND DATE OF INQUIRY:** The time and date will be fixed at the preliminary conference.

**VENUE:**

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Both the preliminary conference (if one is held) and the inquiry will be held in the Conference Room, Level 7, 372 Albert Street, East Melbourne.

**MATTERS AND/OR BEHAVIOUR  
ALLEGED:**

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**Allegation One**

In or around July 2009 and before accepting an engagement from your client, [Name] in relation to a proposed restaurant fitout at [Address], you failed to provide a copy of a document in writing setting out the description, terms and conditions of the engagement to your client in contravention of regulation 14 of the *Architects Regulations 2004 (Regulations)* and pursuant to regulation 16 of the Regulations you are therefore guilty of unprofessional conduct within the meaning of section 32(c) of the *Architects Act 1991*.

Particulars

1. In or around July 2009 you were engaged to provide architectural services, namely, the design of a restaurant fitout at (**Site**) for [Client], the lessee of the Site and the provision of submissions and plans for the obtaining of a planning permit and health department approval from City of Glen Eira and for the obtaining of a building permit.
2. Prior to entering into the engagement, you did not prepare a document setting out the description, terms and conditions of the engagement and provide a copy to your client.

**POWERS EXERCISABLE BY THE  
TRIBUNAL:**

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The Tribunal may, as a result of the inquiry and pursuant to section 32 of the Act, make one or more of the following determinations—

1. to caution the architect;
2. to reprimand the architect;
6. to require the architect to undertake further education of a kind, and to complete it within a period, stated in the determination;
7. to impose a condition or limitation on the architect's registration relating to the architect's practice;
8. to impose a penalty not exceeding 50 penalty units;
9. to suspend the architect's registration for the period stated in the determination;
10. to cancel the architect's registration—

and may make any determination as to costs that it thinks fit.

**TRIBUNAL DETERMINATIONS AND  
REASONS**

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*(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 written findings and reasons for findings before receiving submissions on penalty and costs and making determinations on penalty and costs.

**ENFORCEMENT OF TRIBUNAL  
DETERMINATIONS**

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The Act states that the Board must take all action necessary to give effect to a determination

**TIME AND DATE OF PRELIMINARY  
CONFERENCE**

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10:00 a.m., Thursday 27 October 2011, in the Boardroom of the Architects Registration Board of Victoria at Level 7, 372 Albert Street, East Melbourne, VIC 3002.

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

DATED this 19<sup>th</sup> day of October 2011.

SIGNED:



Mark Yorston  
(Type Name)  
Chairperson of the Tribunal

## INTHE MATTER OF [NAME]-REGISTERED ARCHITECT NUMBER [-]

1. By Notice of Inquiry ("Notice") dated 19 October 2011 the Architects Registration Board of Victoria ("Board") pursuant to Division 1 of Part 4 of the Architects Act 1991 ("Act") gave notice to the Architect that it had decided to hold an inquiry into the Architect's fitness to practice as an architect and into his professional conduct ("Inquiry").
2. The Board pursuant to Division 2 of Part 4 of the Act has constituted a Tribunal to conduct the Inquiry on its behalf.
3. The Tribunal having conducted an Inquiry into the matters raised in the Notice now sets out its Findings and Reasons for Findings and its Determinations.
4. The Notice issued to the Architect identified one (1) allegation.
5. The allegation is set out below:-

### Allegation One

In or around July 2009 and before accepting an engagement from his client, [Name], in relation to a proposed restaurant fitout at [Address], the Architect failed to provide a copy of a document in writing setting out the description, terms and conditions of the engagement to his client in contravention of regulation 14 of the Architects Regulations 2004 ("Regulations") and pursuant to regulation 16 of the Regulations the Architect is therefore guilty of unprofessional conduct within the meaning of section 32(c) of the Architects Act 1991.

### Particulars

- i. In or around July 2009 the Architect was engaged to provide architectural services, namely, the design of a restaurant fitout at ("Site") for [Client], the lessee of the Site and the provision of submissions and plans for the obtaining of a planning permit and health department approval from City of Glen Eira and for the obtaining of a building permit.
  - ii. Prior to entering into the engagement, the Architect did not prepare a document setting out the description, terms and conditions of the engagement and provide a copy to his client.
6. The Architect appeared on his own behalf at the Tribunal. The Architect's legal advisor was present at the hearing but took no active part.
7. The Architect has pleaded guilty to the allegation.
8. The Tribunal was assisted during the submissions made on behalf of the Board and the Architect by an Agreed Statement of Facts which had been prepared by the parties.
9. It appears from the Summary of Agreed Facts that the Architect and the Complainant had known each other socially for some years prior to the Architect carrying out any work for the Complainant.
10. The Architect and the Complainant had discussions concerning the Complainant's plans to open a Restaurant.
11. In or around July 2009 the Complainant located premises which she felt were suitable for the Complainant's purposes and she requested that the Architect provide her with layout drawings for the proposed restaurant.
12. The Architect then commenced preparing preliminary layout drawings.

13. The Architect acknowledges in the Agreed Facts that at the time of commencing this preliminary work he had not entered into any written terms of engagement nor provided a written quotation with regard to his services.
14. On or about 28 July 2009 the Complainant and the Architect met to discuss the preliminary layouts and the project generally. During that meeting discussion also took place concerning the services which the Architect was to provide. A handwritten notation was made on the draft layout which included the following notation:

"Planning Permit Submission	\$1,800.00 plus GST
Health/Building Permit Submission	\$1,800.00 plus GST
Total	\$3,600.00 plus GST — 28/7/09"

15. The Complainant and the Architect then signed that document.
16. No other formal terms of engagement were entered into nor were any other documents sent by the Architect to the Complainant which identified the scope of the services to be provided by the Architect or otherwise setting out the terms and conditions of that engagement.
17. Between late September 2009 and March 2010, the Architect provided planning drawings and submissions and building permit drawings and submissions. A number of plan revisions were made at the request of the Complainant. The Architect, in late March 2010, also prepared a Scope of Works to assist the Complainant in the construction process although he did not charge a fee for preparing the Scope of Works.
18. The Architect submitted an account for \$1,800.00 plus GST in early 2009 in respect of the Planning Permit drawings and a further account in March 2010 in the sum of \$1,800.00 plus GST in respect of the Health/Building Permit drawings and submissions. These tax invoices were paid by the Complainant.

**Requirement to provide details of change to terms and conditions or scope of engagement**

19. In respect of the allegation the Tribunal notes that Regulation 14 of the Architects Regulations 2004 provides:

**"14. Defining the terms of engagement**

Before an architect accepts an engagement to provide architectural services as a developer or services both as an architect and a developer and as soon as practicable after any change to the terms and conditions or scope of engagement becomes known to the architect, he or she must –

- (a) in writing, set out the description, terms and conditions of the engagement or the change; and
- (b) supply a copy of that document to the client."

20. The Tribunal also notes that a breach of Regulation 14 is deemed to be unprofessional conduct pursuant to Regulation 16(a). That Regulation provides:

**"16 Unprofessional conduct**

Without limiting the meaning of *unprofessional conduct*-

(c) An architect who contravene one or more of regulations 6 to 14 is guilty of unprofessional conduct"

21. The purpose behind these regulations is to ensure that a client is able, on a properly informed basis, to provide instructions to the Architect regarding the project and any proposed changes to that project.
22. In order to provide proper instructions to the Architect the client must have a clear understanding of the financial impact on the client of the scope of the project and any proposed changes to it.
23. Whilst compliance with the Regulation is primarily to provide protection for the client, it also serves to provide protection for the Architect. Had the Architect complied with Regulation 14 it is most unlikely that a complaint of the type which the Architect now faces could have been sustained.
24. The Tribunal views contravention of Regulation 14 to be a serious matter for an Architect.
25. The Tribunal heard submissions from the Architect and the Board on the question of Penalty and Costs and has taken these submissions into account in its Determination.
26. The Tribunal has noted the co-operation of the Architect in the investigation of this matter and in his demeanor before the Tribunal.



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Mark Yorston – Tribunal Chair

Dated: 24/11/2011

## Determination

27. The Tribunal having conducted an Inquiry into the matters raised in the Notice dated 19 October 2011 issued to [REDACTED] [REDACTED] pursuant to Section 27 of the Act, the Tribunal now makes the following determinations:-
- (a) Pursuant to Section 32 of the Act the Tribunal finds that the Architect is guilty of unprofessional conduct in that he has breached Regulation 14 of the Architects Regulations 2004. The Tribunal determines in the circumstances of this matter to caution the Architect and impose a penalty of \$800.00.
28. Payment of the penalty set out in paragraph 27 is to be made to the Board pursuant to Section 58 of the Act within 3 months of the date of this Determination.
29. Pursuant to Section 32 of the Act, the Tribunal orders the Architect to pay the sum of \$4,938.40 toward the Board's costs of this matter. Such payment to be made within 60 days of the date hereof.

