



23 October 2018

Consideration of professional conduct issues by VCAT, the Supreme Court and the Court of Appeal

The Victorian Civil and Administrative Tribunal (VCAT), the Supreme Court and the Court of Appeal have considered a professional conduct matter involving an architect, following an appeal from a decision of the Architects Tribunal.

The matter began with a complaint to the ARBV about the architect's conduct with respect to architectural services he provided for an extension to a terrace house in North Fitzroy. The ARBV constituted an Architects Tribunal to conduct an inquiry into the architect's professional conduct. The Architects Tribunal found the architect guilty of eight allegations of breaches of the Architects Act 1991 and the Architects Regulations 2004 (which applied given the timing of the conduct. The Architects Regulations 2015 came into force in May 2015).

The architect applied to VCAT for a review of the decision, and VCAT conducted a rehearing of the inquiry. VCAT set aside the finding of the Architects Tribunal and found the four allegations proven against the architect. The allegations related to:

- a failure to, after a change to the terms, conditions and/or scope of the engagement, to set out in writing the change and supply a copy of that document to the client;*
- a failure to adequately inform or consult with the client regarding the basis for an increase in the estimated cost of building works; and*
- a failure to provide documents to the client in a format in which they could be digitally modified so they could comply with the National Construction Code and the Building Regulations 2006 (as applied at the time).*



The VCAT reprimanded the architect and ordered that he pay fines totalling \$3,500, the costs of the original inquiry (save for costs specifically referable to the allegations that were not found proven against him) and a substantial part of the ARBV's costs of the VCAT proceedings.

The architect made an application to the Supreme Court for leave to appeal VCAT's decision on questions of law. The Supreme Court dismissed the application.

The architect then sought leave to appeal from that decision to the Court of Appeal. The Court of Appeal granted leave to appeal and allowed the appeal with respect to one ground only, leading it to vary one of the orders made by VCAT but otherwise affirm its decision. As such, VCAT's determination that three allegations against the architect, relating to the three failures set out above, stands.

*The decision highlights the importance of understanding and fulfilling professional obligations with respect to communication with clients, as set out in the Architects Regulations 2015 and the Victorian Architects Code of Professional Conduct (**Code**).*

The Architects Regulations 2015 and Code can be found [here](#).

The VCAT determination about the allegations against the architect can be found [here](#). The VCAT decision with respect to penalty and costs and the decisions of the Supreme Court and Court of Appeal regarding the applications for leave to appeal can be found [here](#) and [here](#)

If you have any queries regarding compliance with the Code or other conduct issues, please contact the Board's Compliance Consultant at compliance@arbv.vic.gov.au or on 0437 912 922.