

**ARBV guidance for design and construct businesses who provide services relating to the design and construction of buildings, which are commonly carried out by architects, must ensure that they do not mislead or deceive clients or prospective clients by representing themselves as architects or as providing architectural services.**

Unregistered and uninsured persons cannot work as an architect in Victoria. The Architects Act 1991 (the Act) prohibits 'holding out' or representing unregistered persons or bodies to be an architect or as providing architectural services. Care must be taken when describing or presenting information about unregistered staff on websites, professional networking sites and on social media. Those who engage in prohibited conduct may be prosecuted by the ARBV.

For information on the Legal Framework please refer to our Fact Sheet **Guidance for Prohibited Conduct - Legal Framework**.

***Scenario: We are a building company offering our clients a design and construct model. We are not an approved company with the ARBV.***

***How can we avoid representing the company as an architect or as providing the services of an architect?***

Some builders promote themselves as providing services relating to the design of buildings. The services may be carried out in-house or may be provided through an architect or building designer with whom the builder has a relationship or affiliation.

If you are a builder providing design services, you should take extra care to ensure that you do not represent any staff, consulting architect, building designer or the business as providing the services of an architect. It is a criminal offence for a person or business to represent or allow themselves to be represented to be an architect or as providing the services of an architect when they are not registered as an architect or approved under the Act.

Having an architect on staff or using an architect with whom a builder has an affiliation or relationship increases the risk of representing the business as being an approved company.

### ***Having an architect on staff***

It is not false or misleading to refer, on a business' website or other publication, to a director or employee who is registered as an architect as working for the business. However, doing so may also amount to a representation about the business – namely, that the business:

- is itself an architect;
- undertakes work as an architect via the architect or architects that it employs or engages; or
- is providing the services of an architect via the registered architect or architects.

Where the architect is the director of or partner in an unapproved company or partnership, particular care needs to be taken to ensure that it is not also represented that the unapproved company or partnership is providing the services of an architect via that person. A representation to the effect that an unapproved company or partnership has a director or company officer or partner who is an architect who provides services to the clients of the company or partnership is likely to amount to an offence under the Act.

It is also important to note that a person who is not registered under the Building Act 1993 as a building designer must not be represented to be a registered building designer.

## ***Avoid using misleading or prohibited terms***

You should ask yourself, 'What overall impression is being created by the title given/description of/ biographical information provided about the architect(s) that the business employs or engages?' Could a consumer mistakenly believe that, as the business employs or engages architects, it is providing architectural services? If the answer is yes or there is any risk of misapprehension, it is incumbent on you to take positive steps to avoid a breach of the Act.

Such steps may include:

- Avoiding stating that a person is an architect;
- Avoiding referencing the person's qualifications as an architect;
- Clearly stating that the business is not an architect or an approved company or partnership with the ARBV;
- Clearly stating that the business does not provide architectural services;

- Not using expressions prohibited under the Act, namely 'architectural services', 'architectural design services' or 'architectural design'; and
- Avoiding using the terms 'architecture' and 'architectural' in business and company names or otherwise in business materials as they may create a false impression in a consumer's mind from the outset about the nature of your qualifications and registration.

## ***Potential Consequences***

Failing to ensure that representations are accurate may make a client or prospective client think that they have been deliberately misled or deceived about the nature of your services and may result in a complaint to the ARBV.

The ARBV has the power to prosecute individuals and bodies for breaches of the Act. A breach of the Act is a criminal offence and may result in a conviction and/or the imposition of a financial penalty.

## ***Using an architect or architectural firm with whom the builder has a relationship or affiliation***

You should make clear that the services are being provided by an entirely separate legal entity and that the client will need to enter into a client-architect agreement directly with that person, company or partnership for the provision of those services. The person must be registered with the ARBV and the company or partnership must be approved by the ARBV.