

Introduction

The *Architects Act 2004* (Act) provides for a process whereby a person who is aggrieved by an architect carrying out architectural services is able to make a complaint to the Architects Board of Western Australia (Board).

If a person believes that an architect is behaving in an unprofessional manner or has contravened the Act in some other way, then a complaint can be made to the Board.

If a complaint is brought before the State Administrative Tribunal (SAT) by the Board and a decision is made against the architect (see the discussion below on SAT proceedings), the architect may be fined, reprimanded or suspended. The Board does not have any power under the Act to award costs to a complainant or order any refund of fees. If financial compensation is the primary interest, any potential complainants should consider obtaining independent legal advice in regard to any rights they may have, including whether there is a potential claim in a civil court.

The Board will not act on a complaint if other legal proceedings between the complainant and the architect are under way. In these circumstances, the Board will stay a complaint until all other proceedings have been completed.

Complaints

Any person may make a complaint against an architect. The Board may also make a complaint of its own volition. A complaint may be withdrawn at any time in the process. The Board may carry out any investigation that it considers necessary, including investigation of a withdrawn complaint.

Complainants should be aware that as the Board meets monthly, it may take a considerable period of time for a decision to be made in relation to a complaint.

Grounds for Complaints

The Board's powers are limited to complaints that constitute a cause for disciplinary action pursuant to section 56 of the Act or complaints that relate to a breach of the Act. These include allegations that an architect has engaged in unprofessional conduct as an architect or has, in the practice of architecture, acted in a manner that falls short of the standard of competence and diligence expected of a reasonably competent architect.

For the purposes of the Act, unprofessional conduct as an architect includes conduct that is prescribed by Regulation 20 of the *Architects Regulations 2005* (Regulations). The term "unprofessional conduct" can include conduct that would be seen as disgraceful or dishonourable by reputable and

competent practitioners, or conduct that substantially falls short of the professional standards approved of by reputable and competent practitioners.

Disputes of a legal nature relating to, for example, fees, contractual obligations and/or intellectual property rights are outside the Board's jurisdiction. In these circumstances, independent legal advice should be sought. Consumers and/or persons with a dispute concerning a builder may also wish to contact the relevant State Government department.

The Board may not investigate a complaint made more than three years after the alleged conduct unless the Board considers it is just and fair to conduct such an investigation, bearing in mind the reasons for the delay or whether it is in the public interest to do so.

Initial Steps

If a person is unhappy about the services provided by a person believed to be an architect and is considering lodging a complaint with the Board, that person should first establish that the services have been provided by an architect and/or a licensed corporation. This can be done by searching the Register on the Board's website or contacting the Board on (08) 9287 9920.

If discussion with the relevant architect about the relevant concerns does not result in a satisfactory outcome, the dispute resolution process specified in the contract or agreement with the architect (if applicable) should be followed.

If these processes are unsuccessful, it may be appropriate to seek legal advice on any available rights. A complaint may be lodged with the Board (if such a complaint is available in the circumstances).

Lodging a Complaint

If considering lodging a complaint with the Board about an architect (after verifying that the person the subject of the complaint is an architect), a person should:

- discuss the matter with the Board's Registrar, who may be able to help clarify whether lodging a complaint with the Board is appropriate in the circumstances;
- ask for a Complaint Form (**Form 21 – Complaint Form**). Complaints must be lodged using this form (which is not available on the Board's website);
- complete the Complaint Form and attach all relevant supporting material (as any complaint must be substantiated, it is necessary to provide evidence of any matters being complained about).



Complainants are obliged to inform the Board of all matters relevant to the complaint (e.g. if any other legal proceedings are under way).

Board Procedures

The Board is obliged to act in good faith and in the public interest when considering any complaints.

It is the responsibility of the complainant and the architect to prepare and present their submissions to the Board. While Board staff are available to inform the parties in relation to the complaints process and to answer questions in relation to that process, it is not the role of the Board or Board staff to advise the complainant or architect in relation to the contents of any complaint or response, including how to prepare or present any submissions. Further information may be requested by the Board from either the complainant or the architect, at the Board's discretion.

Complaints Process

1. The Board will acknowledge receipt of a complaint in writing as soon as practicable after it has been received.
2. The complaint will be considered by the Board at the next scheduled monthly meeting following receipt of the complaint.
3. If the Board decides that a complaint is misconceived, the Board will not seek a response from the architect, but will simply dismiss the complaint. In these circumstances, the architect will be informed that the Board has received a complaint and advised that the complaint has been dismissed. Misconceived complaints include complaints that are frivolous, vexatious or otherwise lacking merit, refer to matters that have already been dealt with as a complaint by the Board or are trivial in nature. The Board is not required to give its reasons for deciding not to progress a complaint.
4. If the Board determines that the complaint should be reviewed further, the architect will be notified of the complaint and provided with a copy of the complaint and any accompanying material. The architect will be asked to respond to the complaint within 14 days.
5. A copy of the architect's response will be provided to the complainant. If the architect wishes the Board to deviate from this practice, the architect must provide written reasons to the Board to justify this course of action. In any event, the Board will act as it sees fit. In some circumstances, at the Board's discretion, it may provide the architect's response to the complainant in a redacted form.
6. The complaint and the architect's response will be considered by the Board. If the architect's response raises facts or issues not considered by the complainant, the Board may invite the complainant to reply to the architect's response.
7. In due course the complaint, together with the relevant comments or replies by the parties concerned, will be considered by the Board. The Board may:
 - resolve that there is no proper cause for disciplinary action, inform all parties accordingly and take no further action;
 - require additional information from the complainant, architect or third parties, before making a decision;
 - decide to appoint an investigator;
 - refer the matter for conciliation; or
 - resolve that there is proper cause for disciplinary action.
8. If the Board resolves that there is proper cause for disciplinary action, the matter is referred to the Board's solicitors for advice on whether sufficient evidence exists to warrant referring the matter to the SAT. If the Board's solicitors advise that, in their view, insufficient evidence exists, the Board may resolve that no further action is warranted and all parties are so informed. If the Board's solicitors advise that, in their view, sufficient evidence exists to warrant referring the matter to the SAT, the Board may resolve to do so. The Board is not obliged to give reasons for any decision to refer the matter to the SAT or not to do so.

Investigating Complaints

The Board has extensive powers of investigation in determining whether proper cause exists for disciplinary action to be taken.

The Board may appoint an investigator to investigate a matter and report to the Board. The investigator may require any person to give the investigator any information the investigator requires, and to answer any information put to the person. Subject to the investigator obtaining a warrant, the investigator can enter and search any premises and inspect any documents that the investigator finds on the premises (see section 12 of the Act).

Conciliation Process

If the Board considers that there is proper cause for disciplinary action, it may refer a complaint to a committee for conciliation.

The function of this committee (which will include at least one Board member) is not to act as an arbitrator, but to act as a conciliator and to encourage settlement of the matter. The committee will arrange discussion between the persons concerned (or their representatives) and assist in those discussions. The committee may make recommendations to assist in reaching a settlement.

The Board may, with the consent of both parties, issue an order giving effect to a settlement which has been negotiated. If the Board makes an order, the terms of the settlement reached between the parties are final and binding on those parties. The Board may order anything that the SAT is able to order (as listed below) and other orders as negotiated by the parties.

Evidence of anything lawfully said or done, or any record produced for the conciliation, cannot be used in any subsequent consideration of the complaint by the Board, and it is not admissible in evidence against that person in any subsequent civil proceedings concerning the subject matter of the complaint.

If conciliation fails, the Board may still refer the matter to the SAT for a final determination.



SAT Process

If the Board determines that the complaint constitutes proper cause for disciplinary action, it may refer the matter to the SAT for final determination.

The parties before the SAT are the Board and the architect. The Board takes on the role of prosecutor, and the architect is the defendant. The complainant would generally be called as a witness.

If the SAT is of the opinion that proper cause exists for disciplinary action, it may order one or more of the following in respect of a registered architect:

- the architect be cautioned or reprimanded;
- the architect pay a penalty not exceeding \$5,000;
- a condition be imposed on the architect relating to the practice of architecture or an aspect of that practice specified in the order;
- the architect undergo and complete the education, training or professional development or learning relevant to the practice of architecture or an aspect of that practice that is specified in the order;
- the architect practise under the supervision that is specified in the order for a period specified in the order;
- the architect obtain and implement, within a period specified in the order, advice from a person specified in the order, in relation to the practice of architecture or an aspect of that practice specified in the order;
- the architect give an undertaking, either with or without security not exceeding \$5000, for a period specified in the order in relation to -
 - the future conduct of the person as an architect; or
 - ensuring compliance with another disciplinary action taken in relation to the person;
- the registration of the architect be suspended for a period, not exceeding 12 months, specified in the order; or
- the architect's name be removed from the register and his/her registration cancelled.

(see section 57(2) of the Act).

Results of Disciplinary Action

The Board is required to ensure that a record is kept of each investigation undertaken, the action taken, and the decisions and orders made in relation to an architect or licensed corporation.

Unless the SAT orders otherwise, the Board may publish notice of the action taken or a decision or order made under the Act (see section 62(1) of the Act).

Disclaimer

The content of this Information Sheet is based upon the best information available at the date of issue and is subject to change without notice. The Board does not accept any liability to any person for the information or the use of this information. Persons requiring an interpretation of the meaning of the Act or Regulations should seek their own legal advice.