

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 you believe that your 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 proven, it may result in an architect being fined, reprimanded or suspended. The Board does not have the ability to award costs to a complainant or order any refund of fees or other related matters. If financial compensation is your primary interest, you should consider a claim in the civil court.

The Board will not act on a complaint if other legal proceedings are underway. 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 A complaint may be withdrawn at any time in the process.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may carry out any investigation that it considers necessary, and this may include matters which were the subject of a withdrawn complaint.

Complainants should be aware that typically a complaints process may take from 3 to 9 months to be resolved.

Grounds for Complaints

The Board's powers are generally limited to investigating complaints that constitute cause for disciplinary action or may constitute an offence under the Act. These include allegations of unprofessional conduct. Relevant extracts of the Act and Regulations are presented in Appendix 1.

For the purposes of the Act, unprofessional conduct as an architect includes conduct that is prescribed by the Regulations. In addition, existing case law defines the term 'unprofessional conduct' as meaning 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 intellectual property rights are outside the Board's jurisdiction. In these circumstances you should seek independent legal advice from a lawyer experienced in building or architectural disputes. You may also like to contact the Department of Commerce. If the architect is a

member of the Australian Institute of Architects (Institute), the Institute may be able to assist in resolving a dispute. If your dispute concerns a builder or persons carrying out building work, you may like to contact the Building Commission.

The Board may not investigate a complaint made more than 3 years after the alleged conduct unless it is just and fair to conduct an investigation, bearing in mind the reasons for the delay, or if it is in the public interest to do so.

Initial Steps

If you are unhappy about the services provided by your architect, you should first establish that you are dealing with a registered architect and/or a licensed corporation. You can do this by either searching the Register on the Board's website or contacting the Board on (08) 9287 9920.

Secondly, you should talk to your architect and try to resolve your issues and concerns. If this fails, you should follow the dispute resolution process specified in the contract or agreement you have with your architect (if applicable). This may include mediation in which a 'mediator' controls the negotiation process and helps the parties reach a point where they can settle their own dispute. If these processes have failed, you may decide to lodge a complaint with the Board.

Lodging a Complaint

If you are considering lodging a complaint about an architect you should:

- Discuss the matter with the Board's Registrar, who may be able to help you clarify if lodging a complaint with the Board is appropriate for your circumstances. You should also seek your own legal advice if appropriate.
- Ask for a Complaint Form (Form 21 – Complaint Form) to be sent to you. Complaints must be lodged using this form. The Complaints Form is not available from the Board's website, so you need to contact the Board to obtain one.
- Complete the Complaint Form and attach supporting material. Complaints have to be substantiated so you need to provide some evidence of 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 underway.



Board Procedures

The Board is obliged to act in good faith and in the public interest when considering complaints. Consequently, the Board is committed to having a transparent complaints process which is outlined below.

It is the responsibility of the complainant and architect to prepare and present their submissions to the Board. It is not the role of Board staff to advise the parties how to prepare or present their submissions or to provide legal advice.

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 initially reviewed by the Chairman of the Board to determine if there are grounds for investigating the complaint. If the Chairman is of the opinion that a complaint should be dismissed it will be referred to the Board. If the Board decides a complaint is misconceived, the Board will not seek a response from the architect, but simply dismiss it. In these circumstances the architect will be informed that the Board has received a complaint but dismissed it. A copy of the complaint will be provided to the architect for their information. 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. Generally, the Board is not obliged to give its reasons for deciding not to further investigate a complaint.
3. If the Chairman or the Board determines that the complaint should be investigated 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.
4. 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 separately 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 an edited form.
5. 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.
6. In due course, the complaint together with 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;
 - require additional information from the complainant, architect or third parties, before making a decision;
 - decide to appoint an investigator;
 - resolve that there is proper cause for disciplinary action and refer the matter for conciliation; or
 - resolve that there is proper cause for disciplinary action.

7. If the Board resolves that there is no proper cause for disciplinary action, all parties are informed accordingly and no further action is taken.

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 State Administrative Tribunal (SAT). If the Board's solicitors advise that in their view, insufficient evidence exists to conduct a formal inquiry, 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 does exist to warrant referring the matter to the SAT, the Board may resolve to do so.

The Board is not obliged to give reasons for the decision to, or not to, refer the matter to the SAT.

The Board meets monthly, so it may take some months before a decision is made in relation to a complaint. The Registrar will however keep both parties informed of the steps being taken.

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, he can enter and search any premises and inspect any documents that the investigator finds on the premises.

Conciliation Process

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

Members of the committee will include at least one Board member.

The function of this committee is not to act as an arbitrator, but to act as conciliator and to encourage settlement of the matter. The committee will act by arranging discussion between the persons concerned, or their representatives, and assisting in those discussions. The committee will give advice and 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 that 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, nor is it 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 final determination.

SAT Process

If the Board determined 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. A person who has made the complaint 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:

- that the person be cautioned or reprimanded;
- that the person pay a penalty not exceeding \$5000;
- that a condition be imposed on the person relating to the practice of architecture or an aspect of that practice specified in the order;
- that the person 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;
- that the person practise under the supervision that is specified in the order for a period specified in the order;
- that the person 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;
- that the person 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;
- that the registration of the person be suspended for a period, not exceeding 12 months, specified in the order; and
- that the person's name be removed from the register and that the person's registration be cancelled.

Results of Disciplinary Actions

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.

Frequently Asked Questions

Will it cost me anything to make a complaint?

No. When the Board receives a complaint, it decides on the basis of the information provided whether it will inquire into the matter further. If any action is taken, it is taken by the Board, not by the person who complained.

If the matter is referred to the SAT, will I have to testify?

If the matter is referred to the SAT, 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. A person who has made the complaint would generally be called as a witness.

Will the architect know that I have made a complaint?

Yes, in most circumstances the architect will be sent a copy of the complaint and invited to respond to it.

Can I withdraw a complaint?

A complaint can always be withdrawn by the complainant; however, the Board, at its discretion, may determine that further investigation is required.

Can the SAT order the architect to pay me damages or compensation or to make restitution?

No. The purpose of the complaints procedure is to regulate the practice of architecture. It is a disciplinary process that may impose penalties on architects, but does not arbitrate in disputes between clients and architects. Disputes of a legal nature are outside the Board's jurisdiction, and you should seek legal advice about how these can be resolved.

However, conciliation could result in an order that includes financial elements if agreed by the parties.

How long will it take for my complaint to be dealt with?

The Board meets monthly, so it may take some time to make a decision about a complaint. The whole process can take from 3 to 9 months to complete.

Are Board meetings and the SAT hearings open to the public?

Board meetings are not open to the public. Unless the SAT decides to hold part or all of its proceedings in camera, SAT hearings are open to anyone who wishes to attend.

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 Architects Act or Regulations should seek their own legal advice.

Appendix 1 Relevant Sections from the Architects Act 2004 and Architects Regulations 2005

Architects Act 2004

12. Powers of investigation and investigator

1. The Board may carry out any investigation that the Board considers necessary or expedient for the purposes of —
 - (a) determining any application or any other matter before the Board;

- (b) determining whether or not a registered person or a licensed corporation is or has been acting in conformity with the conditions, if any, of the registration or licence and is or has been complying with the requirements of this Act;
 - (c) determining whether any other cause exists that might be considered by the Board a proper cause for disciplinary action;
 - (d) detecting offences under this Act.
2. The Board is not to investigate a complaint that is made more than 3 years after the conduct is alleged to have occurred, unless the Board decides that —
 - (a) it is just and fair to investigate the complaint having regard to the delay and the reasons for the delay; or
 - (b) it is in the public interest to investigate the complaint.
 3. The Board may appoint an investigator to investigate a matter and report to the Board.
 4. The investigator may —
 - (a) require any person —
 - (i) to give the investigator such information as the investigator requires; and
 - (ii) to answer any question put to the person, in relation to any matter the subject of the investigation;
 - (b) require any person to produce any document to the investigator;
 - (c) enter at all reasonable times and search any premises and inspect any documents that the investigator finds on the premises; and
 - (d) make a copy or abstract of any document produced or inspected under this section, or of any entry made in the document.
 5. A requirement made under subsection (4)(a) —
 - (a) may be made orally or by notice in writing served on the person required to give information or answer a question, as the case may be;
 - (b) is to specify the time at or within which the information is to be given or the question is to be answered, as the case may be; and
 - (c) may, by its terms, require that the information or answer required —
 - (i) be given orally or in writing;
 - (ii) be given at or sent or delivered to any place specified in the requirement;
 - (iii) in the case of written information or answers, be sent or delivered by any means specified in the requirement; and
 - (iv) be given on oath or affirmation or by statutory declaration for which purpose the investigator may administer an oath or affirmation and have the authority of a commissioner for declarations.
 6. A requirement made under subsection (4)(b) —
 - (a) is to be made by notice in writing served on the person required to produce a document;
 - (b) is to specify the time at or within which the document is to be produced; and
 - (c) may, by its terms, require that the document be produced —
 - (i) at any place specified in the requirement; and
 - (ii) by any means specified in the requirement.
 7. Where under subsection (4)(a) an investigator orally requires a person to give any information or answer any question, the investigator is to inform that person that the person is required under this Act to give the information or answer the question, as the case may be.
 8. Where under subsection (4)(a) or (b) a person is required by notice in writing to give any information, answer any question, or produce any document, the notice is to state that he or she is required under this Act to give the information, answer the question, or produce the document, as the case may be.
 9. Before entering any premises under this section the investigator—
 - (a) is to obtain a warrant to do so from a magistrate or Justice of the Peace which warrant the magistrate or Justice of the Peace is authorised to issue upon being satisfied that the entry is sought in good faith for the purpose of an investigation under this section; and
 - (b) is to display to the person, if any, giving the investigator entry, a document signed by the Board and certifying that he or she is an investigator appointed by the Board.
13. Incriminating information, questions, or documents
- Without prejudice to the provisions of the *Evidence Act 1906* section 11, where under section 12 of this Act a person is required to —
- (a) give any information;
 - (b) answer any question; or
 - (c) produce any document,
- the person must not refuse to comply with that requirement on the ground that the information, answer, or document may tend to incriminate the person or render the person liable to any penalty, but the information or answer given, or document produced, by the person is not admissible in evidence in any proceedings against the person other than proceedings in respect of an offence under section 14(1)(b).
14. Failure to comply with investigation
1. Where under section 12 a person is required to give any information, answer any question, or produce any document and that person, without reasonable excuse (proof of which shall lie on that person) —
 - (a) fails to give that information or answer that question at or within the time specified in the requirement;

- (b) gives any information or answer that is false in any particular; or
- (c) fails to produce that document at or within the time specified in the requirement,

the person commits an offence.

Penalty: \$2 000.

2. It is a defence in any proceeding for an offence under subsection (1)(a) or (1)(c) for the defendant to show —
 - (a) that, in the case of an alleged offence arising out of a requirement made orally under section 12, the investigator did not, when making the requirement, inform the defendant that the defendant was required under this Act to give the information or answer the question, as the case may be;
 - (b) that, in the case of an alleged offence arising out of a requirement made by notice in writing under section 12, the notice did not state that the defendant was required under this Act to give the information, answer the question, or produce the document, as the case may be;
 - (c) that the time specified in the requirement did not afford the defendant sufficient notice to enable the defendant to comply with the requirement; or
 - (d) that, in any case, the investigator did not, before making the requirement, have reasonable grounds to believe that compliance with the requirement would materially assist in the investigation.

15. Obstruction of investigator

A person must not prevent or attempt to prevent an investigator from entering premises or otherwise obstruct or impede an investigator in the exercise of his or her powers under section 12.

Penalty: \$2000.

56. Causes for disciplinary action

1. Proper causes for disciplinary action in respect of a person are any of the following things —
 - (a) that the person has engaged in unprofessional conduct as an architect;
 - (b) that the person has done or omitted to do something, or engaged in conduct (whether in this State or elsewhere and whether before or after registration) that renders the person unfit to be registered;
 - (c) that the person has contravened or failed to comply with—
 - (i) a provision of this Act;
 - (ii) a condition imposed under this Act; or
 - (iii) a requirement under this Act to give the Board advice or information;
 - (d) that the person has done or omitted to do something in connection with the practice of architecture in a manner or to the extent that falls short of the standard of

competence and diligence that a member of the public is entitled to expect of a reasonably competent architect;

- (e) that the person has engaged in conduct, other than the non-payment of fees, that has caused at any time—
 - (i) the name of a person to cease to appear in the register of architects or other record kept by a board or authority charged with regulating the registration of architects in a place outside the State (other than a place that is a participating jurisdiction as defined in the Mutual Recognition Act 1992 of the Commonwealth); or
 - (ii) the disqualification of a person by such a board or authority from carrying on the practice of architecture.

Note: Under s. 33(1) of the *Mutual Recognition Act 1992* of the Commonwealth, adopted by WA under the *Mutual Recognition (Western Australia) Act 2001*, if a person's registration is cancelled or suspended on disciplinary grounds, then the person's registration in another State or the ACT or the NT is affected in the same way.

2. For the purposes of subsection (1)(a) —

“unprofessional conduct as an architect” includes, without limiting the general meaning of the term, conduct that is prescribed by the regulations as constituting unprofessional conduct as an architect.

57. Taking disciplinary action

1. The Board may allege to the State Administrative Tribunal that there is proper cause for disciplinary action to be taken in respect of—
 - (a) a person who is a registered person; or
 - (b) a person who was a registered person when the unsatisfactory conduct the subject of an investigation allegedly occurred but who is no longer a registered person.
2. If in a proceeding commenced by an allegation under this section against a registered person the State Administrative Tribunal is of the opinion that proper cause exists for disciplinary action the Tribunal may order one or more of the following—
 - (a) that the person be cautioned or reprimanded;
 - (b) that the person pay a penalty not exceeding \$5000;
 - (c) that a condition be imposed on the person relating to the practice of architecture or an aspect of that practice specified in the order;
 - (d) that the person 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;
 - (e) that the person practise under the supervision that is specified in the order for a period specified in the order;
 - (f) that the person 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;
- (g) that the person give an undertaking, either with or without security not exceeding \$5000, for a period specified in the order in relation to—
- (i) the future conduct of the person as an architect; or
 - (ii) ensuring compliance with another disciplinary action taken in relation to the person;
- (h) that the registration of the person be suspended for a period, not exceeding 12 months, specified in the order;
- (i) that the person's name be removed from the register and that the person's registration be cancelled.
3. If in a proceeding commenced by an allegation under this section against a person referred to in subsection (1)(b) the State Administrative Tribunal is of the opinion that proper cause exists for disciplinary action the Tribunal may order one or more of the following—
- (a) that the person be cautioned or reprimanded;
 - (b) that the person pay a penalty not exceeding \$5000.
58. Failure to comply with disciplinary action
1. If the State Administrative Tribunal makes an order under this Act against a person and payment is not made in accordance with the order, or the order or a condition imposed or an undertaking given under the order is not complied with or breached, the Tribunal may order that further disciplinary action be taken in respect of the person and the further disciplinary action may be taken in respect of one or both of the following —
 - (a) the matter for which the first disciplinary action was taken;
 - (b) the conduct or omission giving rise to the failure to comply with the order, condition or undertaking.
 2. The power conferred on the State Administrative Tribunal by subsection (1) is in addition to and not in derogation of the powers conferred on it by this Act or by the *State Administrative Tribunal Act 2003*.
59. Conciliation process
1. The Board may refer to a committee a complaint that there is proper cause for disciplinary action in respect of a person, for conciliation of the matter.
 2. The committee is to commence conciliation procedures within 14 days of the complaint being referred to it under subsection (1).
 3. The function of the committee as conciliator is to encourage the settlement of the matter by —
 - (a) communicating with the persons concerned, or their representatives;
 - (b) arranging discussions between the persons concerned, or their representatives, and assisting in those discussions;
 - (c) causing the persons concerned, or any of them or their representatives, either separately or together, to appear before the committee; and
 - (d) giving advice and making recommendations to assist in the reaching of settlement.
4. The Board may, with the consent of each of the parties to a conciliation, by order give effect to a settlement negotiated under this Division.
5. If the Board makes an order under subsection (4) —
- (a) the terms of the settlement reached between the parties referred to in the order are final and binding on those parties; and
 - (b) the order may include any matter that might have been ordered by the State Administrative Tribunal under section 57.
6. It is not a function of the Board or a committee of the Board to conduct an arbitration of a dispute.
7. Evidence of anything lawfully said or done, or any record prepared and produced for the purpose of conciliation, by a person in the course of the conciliation process is not to be used in any subsequent consideration of the complaint by the Board nor, unless that person waives the right to object, is it admissible in evidence against that person in any subsequent civil proceedings concerning the subject matter of the complaint.
60. Action if conciliation fails
1. Nothing in this Division prevents the Board from investigating a complaint if —
 - (a) the conciliation process fails to result in the settlement of the complaint;
 - (b) the Board is satisfied that the parties are not cooperating in relation to the conciliation process; or
 - (c) the Board is not satisfied with the result of the conciliation process.
 2. If a member of a committee that was involved in a conciliation process in relation to a matter is a Board member, the member cannot take any further part in dealing with the matter after the conciliation process unless all parties agree to the member doing so.
61. Notice of decisions to affected persons
1. Where the Board makes a decision to which this subsection applies, it is to record the reasons for the decision and, as soon as is practicable but in any case not later than 7 days after making the decision, is to give notice of the decision and the reasons to—
 - (a) the person to whom the decision relates; and
 - (b) the complainant, if any.
 2. Subsection(1) applies to—
 - (a) the refusal of an application—
 - (i) to register a person;
 - (ii) to grant a licence;

- (iii) to renew a registration or licence; or
- (iv) to restore a name to the register;
- (b) the removal of a name from the register under section 37(1) or 49;
- (c) the imposition of a condition on a registration or renewal of a registration or on the grant or renewal of a licence otherwise than by consent; or
- (d) a decision under section 12(2) to investigate a complaint or not to investigate a complaint.

62. Publication and records

1. Unless the State Administrative Tribunal orders otherwise the Board may publish, in the manner and to the persons determined by the Board, notice of action taken, or a decision or order made, under this Act in relation to a registered person, a person who was a registered person, or a licensed corporation.
2. The Board is to ensure that a record is kept of each investigation and other action taken, and each decision and order made, under this Act in relation to a registered person, a person who was a registered person, or a licensed corporation.

63. Review

1. A person who is aggrieved by a decision referred to in section 61(2)(a) to (c) may apply to the State Administrative Tribunal for a review of the decision.
2. A person who is aggrieved by a decision under section 12(2) to investigate a complaint may apply to the State Administrative Tribunal for a review of the decision.

Architects Regulations 2005

20. Unprofessional conduct as an architect

For the purposes of section 56(2), the following conduct of a person ("person 1") constitutes unprofessional conduct as an architect—

- (a) holding out or in any way implying that person 1's name is entered in a particular division of the register if the name is not entered in that division of the register;
- (b) using, in connection with an architectural service provided by person 1 —
 - (i) the name of a registered person who is not a partner or employee of person 1; or
 - (ii) the name of a licensed corporation of which person 1 is not an officer, employee or partner;
- (c) allowing a natural person ("person 2") to practise in person 1's name in connection with an architectural service provided by person 2 if—
 - (i) person 2 is not registered; or
 - (ii) person 2 is registered but is not a partner or employee of person 1;

- (d) allowing a corporation to practise in person 1's name in connection with an architectural service provided by the corporation if —
 - (i) the corporation is not a licensed corporation; or
 - (ii) the corporation is a licensed corporation but person 1 is not an officer of the corporation;
- (e) signing an account, statement, report, specification, plan or other document purporting to represent any architectural work as having been done by person 1 in circumstances where the work has not been done under person 1's direct control or supervision;
- (f) accepting architectural work on condition or promise that person 1 will give or receive, or because person 1 has given or received, any remuneration, discount, gift or commission directly or indirectly to or from another person, other than remuneration to be received by person 1 from the client;
- (g) failing to disclose to a client a direct or indirect pecuniary interest (other than an interest in a public company) that person 1 has in any product or service that person 1—
 - (i) specifies or recommends for use in connection with the project in respect of which person 1's services are engaged; or
 - (ii) uses or causes to be used in connection with that project;
- (h) using, or causing to be used, in connection with a project in respect of which person 1's services are engaged, a product or service in which person 1 has an interest of a kind referred to in paragraph (g) without having—
 - (i) the client's written acknowledgment of the disclosure of the interest; and
 - (ii) the client's written consent to the use of the product or service.