

# Information Sheet

## COMPLAINT AGAINST AN ARCHITECT

November 2018

### Complaints about an architect's professional conduct

Under the *Architects Act 2003* (the Act), the NSW Architects Registration Board (the Board) is obliged to investigate complaints against the professional conduct of an architect.

You should read this Information Sheet in conjunction with the attached extract from Part 4 of the Act that deals with complaints against an architect's professional conduct.

### Basis for complaints

If you are unhappy about the services provided by your architect, the first thing you should do is talk to your architect to try and resolve these issues.

If you believe your architect has behaved unprofessionally, you may have a basis to commence a complaint against their professional conduct, which the Board may hear. If you have a legal dispute with your architect, then this may not be a matter for the NSW Architects Registration Board.

### Who may make a complaint?

- Any person may make a complaint against an architect in respect of the architect's conduct as an architect.
- The Board may also make a complaint of its own volition.
- Board staff will provide you with assistance in following the process. A complaint may be withdrawn at any time in the process.

### Architects' professional conduct

Architects are experienced professionals and as such are expected to act fairly and ethically.

The NSW Architects Code of Professional Conduct (the Code) articulates what is expected of architects in their professional conduct and the level of accountability expected of them in the provision of architectural services.

The Code may be downloaded from the Board's website [HERE](#).

The Act provides two categories of conduct which may result in a disciplinary finding:

- Unsatisfactory professional conduct, and
- Professional misconduct.

### Unsatisfactory professional conduct

Unsatisfactory professional conduct may be found in the following circumstances:

- Any failure to comply with the Code;
- Any breach of the Act;
- Any conduct which indicates the architect is not a fit and proper person to be registered;
- Any conduct that demonstrates incompetence, or a lack of adequate knowledge, skill, judgment or care in the practice of architecture;
- Any other improper or unethical conduct of the architect in the course of his/her practice;
- Or any failure by a nominated architect to supervise properly the provision of architectural services.

Where a complaint is found for unsatisfactory professional conduct, the Board may take one or more of the following actions:

- Cautioning or reprimanding the architect,
- Ordering the withholding or refunding of part or all of the payment for the architectural services that are the subject of the complaint,

- Directing that appropriate conditions be imposed on the architect's registration, relating to the architect's practice of architecture,
  - Ordering that the person complete any educational course or courses specified by the Board,
  - Ordering that the person report on his or her architectural practice at specified times, in a specified manner and to specified persons,
  - Ordering that the person seek and take advice, in relation to the management of his or her architectural practice, from a specified person or persons,
  - Ordering the architect to pay a fine of an amount not exceeding 15 penalty units.
3. Write your complaint, including reasons and relevant details for the complaint.
    - The Board suggests that the complaint may be set out in chronological order and may make specific reference to any provisions of the Code or Act that you believe are at issue.
    - You may also attach any additional documentation that you deem relevant to your complaint.
    - Note that the Board may ask you to provide further particulars in the course of investigating the complaint.
  4. Once the Board has confirmed receipt of the complaint, the Board will notify the architect in writing of the complaint made against them, including your identity as complainant, as soon as practicable after the complaint is made.
    - The architect will have 28 days in which to provide a written response.

### Professional misconduct

Professional misconduct is defined as:

- Unsatisfactory professional conduct of a sufficiently serious nature to justify the cancellation or suspension of an architect's registration; or
- Unsatisfactory professional conduct where the conduct involves a substantial or consistent failure to reach reasonable standards of competence and diligence for an architect.

Where the Board is satisfied that an architect's conduct amounts to professional misconduct, the Board must refer the matter to the NSW Civil and Administrative Tribunal (NCAT) for a disciplinary finding.

### How to make a complaint: an overview of the process

The complaints process is as follows:

1. Ensure that you are aware of the architect's registration status. You may check the Register on our website to confirm whether the architect is currently registered to provide architectural services in NSW.
2. Read the Code and the Act to understand the nature of the architect's responsibilities and standards of practice.
3. Write your complaint, including reasons and relevant details for the complaint.
  - The Board suggests that the complaint may be set out in chronological order and may make specific reference to any provisions of the Code or Act that you believe are at issue.
  - You may also attach any additional documentation that you deem relevant to your complaint.
  - Note that the Board may ask you to provide further particulars in the course of investigating the complaint.
4. Once the Board has confirmed receipt of the complaint, the Board will notify the architect in writing of the complaint made against them, including your identity as complainant, as soon as practicable after the complaint is made.
  - The architect will have 28 days in which to provide a written response.
5. The Board will forward you the architect's response once it has been received.
  - You will have 14 days in which to provide a submission in response.
6. Your response will be forwarded to the architect once it has been received.
  - The architect will have 14 days in which to provide a final written response.
7. Once all parties have made the required submissions, the matter will be considered by a **Complaints Committee** convened by the Board.
  - Committees convened by the Board to hear a complaint must comprise three of its members; a legal practitioner who will chair the committee, an architect and a non-architect.
  - Both parties may be requested to provide other information the Board deems relevant to the allegation.
8. After consideration of the complaint, the Board will come to a decision based upon the recommendation of the Committee convened to consider the complaint after it

has considered all of the evidence presented.

- The Board sits each month so there is regular opportunity to consider complaints.
9. In some matters, the Board may convene a hearing.
- The hearing is meant to be less formal than a court, but the Board still has some of the powers of the court.
  - You must appear if summonsed to appear.
  - You may also be directed to provide documents to the Board.
  - The Board may request you to provide further particulars relating to the matter.

may apply to the NCAT for a review of a decision of the Board to dismiss the complaint before investigation.

### Investigating complaints

For the purposes of investigating or determining a complaint, the Board is not bound to observe the rules of evidence but may inform itself of any matter in such manner as it thinks fit. However, the Board conducts any investigation in accordance with the principles of procedural fairness.

The Board may meet separately or jointly with the complainant and architect concerned in an attempt to resolve any issue raised by the complainant if it considers the complaint may be resolved expeditiously by doing so.

Where appropriate the Board may be assisted by any person that it considers has relevant expertise in mediation or alternative dispute resolution in any such attempt to resolve a complaint.

The Board may require the architect to: provide written information by the date specified in the notice, and to verify the information by statutory declaration; produce at a time and place specified in the notice, any document (or a copy of any document) specified in the notice; otherwise assist in, or co-operate with, the investigation of the complaint in the specified manner.

The Board may also summons individuals as witnesses to appear before it to give evidence and to produce such documents (if any) as may be referred to in the summons. Penalties may apply for non-compliance with Board summons.

### After investigation of a complaint

Both the complainant and the architect will receive a decision in writing from the Board.

The Board will dismiss the complaint against the architect if it is satisfied that the architect is not guilty of either unsatisfactory professional conduct or professional

### The Board may dismiss complaints without investigation

The Board is not bound to hear any allegation of unsatisfactory professional conduct and may dismiss a complaint if the Board is satisfied that the complaint is:

- frivolous or vexatious or otherwise lacking in merit;
- a complaint in respect of a matter that has already been dealt with as a complaint by the Board; or
- is trivial in nature.

The Board may also decline to deal with a complaint if further particulars of the complaint are not given, or not verified, as required by the Board.

If the Board dismisses a complaint under this section, the Board may also issue a caution to the architect against whom the complaint was made in respect of the matter complained of.

The complainant and architect concerned will be notified as to the reasons for dismissing complaints.

### Review of decision to dismiss complaints without investigation

A person who makes a complaint, or the architect against whom a complaint is made

misconduct. The Board produces a statement outlining the reason for the Board's decision.

If the Board is satisfied that the architect is guilty of *unsatisfactory professional conduct*, it may apply to the NCAT for a disciplinary finding against an architect.

Alternatively, the Board may apply any of the following sanctions:

- caution or reprimand the architect;
- order the withholding or refunding of part or all of the payment for the architectural services that are the subject of the complaint;
- direct that such conditions relating to the architect's practice of architecture as it considers appropriate be imposed on the architect's registration;
- order that the person complete any educational course or courses specified by the Board;
- order that the person report on his or her architectural practice at specified times, in a specified manner and to specified persons;
- order that the person seek and take advice, in relation to the management of his or her architectural practice, from a specified person or persons; or
- order the architect to pay a fine of an amount not exceeding \$1650.

If the Board determines that the architect is guilty of the more serious *professional misconduct* it must refer the matter to the NCAT.

NCAT may apply any of the following sanctions:

- suspend or cancel the architect's registration;
- caution or reprimand the architect;
- order the withholding or refunding of part or all of the payment for the architectural services that are the subject of the complaint;
- direct that such conditions relating to the architect's practice of architecture as it

considers appropriate be imposed on the architect's registration;

- order that the person complete any educational course or courses specified by the Board;
- order that the person report on his or her architectural practice at specified times, in a specified manner and to specified persons;
- order that the person seek and take advice, in relation to the management of his or her architectural practice, from a specified person or persons; or
- order the architect to pay a fine of an amount not exceeding \$11,000 for an individual or \$22,000 for a corporation or firm.

### Review of decision

An architect who has been the subject of a disciplinary finding made by the Board may apply to the NCAT for a review of that finding and any action taken by the Board.

### Outcome of the disciplinary actions made public

A Register of Disciplinary Actions must be kept by the Board and must be made freely available to the public. This Register documents the outcomes of matters where the Board has taken disciplinary action against an architect.

The Register of Disciplinary Actions is published on the Board's website in accordance with the Board's policy that:

*Where an architect is found guilty of unsatisfactory professional conduct the decision will be published on the Register of Disciplinary Action, located on the Board's website, for a period of 2 years unless otherwise determined. Where an architect is found guilty of professional misconduct, the decision will be published for a period of 5 years unless otherwise determined.*

Registration authorities in other states and territories are also informed of the outcomes of these matters.

## Format

If you wish to lodge a complaint we recommend you take the time to detail the reasons for the complaint in writing; setting out your experience in chronological order.

You may support this with evidence like the agreement or fee proposal provided by your architect; along with any correspondence, emails or notes.

Set these out neatly as appendices and put all of these in PDF in an email or on a USB stick before posting or drop in at the Board's office, Level 2, 156 Gloucester Street, Sydney during business hours.

The Board must advise the architect against whom the complaint is made unless providing notice of the complaint will, or is likely to

- prejudice the investigation of the complaint
- place the health or safety of a person at risk, or
- place the complainant or another person at risk of intimidation or harassment

If you do not believe providing notice will result in any of the above, make sure you tell us in writing – this will avoid time taken to confirm this with you.

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## Extracts

# PART 4 ARCHITECTS ACT

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## Division 1

### Interpretation

#### 32 Definitions

In this Part:

**complainant** means a person who makes a complaint.

**complaint** means a complaint made under this Part.

**disciplinary finding** means a finding of unsatisfactory professional conduct or professional misconduct.

**professional misconduct** means:

- (a) unsatisfactory professional conduct of a sufficiently serious nature to justify the suspension of an architect or the cancellation of an architect's registration, or
- (b) any other conduct that is declared by the regulations to be professional misconduct for the purposes of this Act.

**unsatisfactory professional conduct** means any of the following:

- (a) any contravention by the architect of the conditions of the architect's registration,
- (b) a failure by the architect to comply with a provision of any code of professional conduct established by the regulations and in effect under section 7,
- (c) any failure without reasonable excuse by the architect to comply with a direction, order or requirement of the Board, Tribunal or Supreme Court,
- (d) any failure without reasonable excuse by the architect to properly supervise the provision of architectural services by an architect corporation or architect firm while the architect is a nominated architect responsible for the provision of those services,

- (e) any failure by the architect to comply with the applicable requirements of the *Licensing and Registration (Uniform Procedures) Act 2002*,
- (f) any contravention by the architect of this Act or the regulations,
- (g) any conduct of the architect that demonstrates that the architect is not a fit and proper person to be registered as an architect,
- (h) any other conduct of the architect that demonstrates incompetence, or a lack of adequate knowledge, skill, judgment or care in the practice of architecture,
- (i) any other improper or unethical conduct of the architect in the course of the practice of architecture,
- (j) any conduct that is declared by the regulations to be unsatisfactory professional conduct for the purposes of this Act.

#### 33 Application of Part

- (1) If an architect has died:
  - (a) a person cannot make a complaint against the architect, and
  - (b) the Board is not to investigate (or continue to investigate) a complaint made against the architect or to make an application to the Tribunal for a disciplinary finding, and
  - (c) the Tribunal is not to determine an application for a disciplinary finding against the architect.
- (2) A complaint about an architect may be made and dealt with even though the architect has ceased to be registered. For that purpose, a reference in this Part to an architect includes a reference to a person who has ceased to be registered or whose registration is suspended.
- (3) Despite subsection (2), the Board or the Tribunal may decide not to investigate a complaint or determine an application (or may decide to terminate an investigation or application) if the person to whom the complaint or application relates has ceased to be registered.

## Division 2 Complaints

### 34 Persons who may make complaints

- (1) Any person (including the Board) may make a complaint against an architect in respect of the architect's conduct as an architect.
- (2) Complaints (other than complaints made by the Board) are to be made to the Board and are to be lodged with the Registrar.
- (3) The Board may direct the Registrar to provide reasonable assistance in making a complaint to a person, or a person belonging to a class of persons, specified by the Board from time to time.

### 35 Withdrawal of complaint

A complaint may be withdrawn by the complainant at any time.

### 36 Form of complaint

- (1) A complaint must be in writing, must identify the complainant and must contain particulars of the allegations on which it is founded.
- (2) (Repealed)
- (3) The Board may consider and investigate a complaint even if it does not comply with the requirements of this section (except the requirement that it identify the complainant) but must not proceed to deal with the complaint under this Part until they are complied with.
- (4) The Board may require the complainant to provide further particulars of a complaint.

### 37 Power to dismiss certain complaints

- (1) The Board may dismiss a complaint if the Board is satisfied that the complaint:
  - (a) is frivolous or vexatious or otherwise lacking in merit, or
  - (b) is a complaint in respect of a matter that has already been dealt with as a complaint under this Part, or
  - (c) is trivial in nature.

- (2) The Board may dismiss a complaint under this section without having investigated the complaint under this Part, or following an investigation of the complaint under this Part. The Board is not required to investigate a complaint that has been dismissed under this section.
- (3) The Board is to notify the architect and complainant concerned of the dismissal of a complaint under this section.
- (4) If the Board dismisses a complaint under this section, the Board may also issue a caution to the architect against whom the complaint was made in respect of the matter complained of.
- (5) A person who makes a complaint or the architect against whom a complaint is made may apply to the Tribunal for a review of a decision of the Board to dismiss the complaint under this section.

### 38 Board to notify person against whom complaint is made

- (1) Written notice of the making of a complaint, the nature of the complaint and the identity of the complainant is to be given by the Board to the architect against
- (2) whom the complaint is made, as soon as practicable after the complaint is made.
- (3) Any such notice must invite the architect to make, within such period (being at least 7 days) as the Board specifies in the notice, such representations to the Board with respect to the complaint as the architect thinks fit.
- (4) Notice is not required to be given if the giving of the notice will or is likely to:
  - (a) prejudice the investigation of the complaint, or
  - (b) place the health or safety of a person at risk, or
  - (c) place the complainant or another person at risk of intimidation or harassment.

### 39 Board to investigate complaints

- (1) The Board must, subject to this Part, conduct an investigation into each complaint made under this Part.
- (2) The Board may deal with one or more complaints about an architect in an investigation.
- (3) If during an investigation of any one or more complaints it appears to the Board that there is a matter in respect of which another complaint could have been made against the architect concerned, the Board may deal with the matter in its investigation as if a complaint had been made about the matter.
- (4) For the purposes of subsection (3), the Board may deal with a matter that could have been the subject of another complaint:
  - (a) whether that complaint could have been made instead of or in addition to any complaint that was in fact made, and
  - (b) whether or not that complaint could have been made by the same complainant.
- (5) The Board may dismiss any complaint without investigation if further particulars of the complaint are not given, or the complaint or the further particulars are not verified, as required by the Board.

### 40 Proceedings before Board in respect of complaints

- (1) For the purposes of investigating or determining a complaint, the Board is not bound to observe the rules of evidence but may inform itself of any matter in such manner as it thinks fit.
- (2) Without limiting subsection (1), the Board may meet separately or jointly with the complainant and architect concerned in an attempt to resolve any issue raised by the complaint if it considers the complaint may be resolved expeditiously by doing so.
- (3) The Board may be assisted by any person that it considers has relevant expertise in

mediation or alternative dispute resolution in any such attempt to resolve a complaint.

- (4) Nothing in subsection (2) or (3) operates to prejudice the rights of the complainant or architect concerned.

### 41 Powers of Board in investigation in respect of architects

- (1) For the purpose of investigating or determining any complaint, the Board may, by notice served on any architect, require the architect to do any one or more of the following:
  - (a) provide written information, by the date specified in the notice, and to verify the information by statutory declaration,
  - (b) produce, at a time and place specified in the notice, any document (or a copy of any document) specified in the notice,
  - (c) otherwise assist in, or co-operate with, the investigation of the complaint in the specified manner.
- (2) The Board may inspect any document produced before the Board under this section and may retain it for such period as the Board thinks necessary for the purposes of an investigation in relation to which it is produced. The Board may make copies of the document or any part of the document.

### 42 Power to summon witnesses and take evidence

- (1) For the purposes of investigating or determining a complaint, the President or Deputy President may summon a person to appear before it to give evidence and to produce such documents (if any) as may be referred to in the summons.
- (2) The person presiding at a meeting of the Board concerning a complaint may require a person appearing before the Board in respect of the investigation or determination of a complaint to produce a document.
- (3) The Board may, in proceedings before it in respect of a complaint, take evidence on



oath or affirmation and, for that purpose, a member of the Board:

- (a) may require a person appearing in the proceedings to give evidence either to take an oath or to make an affirmation in a form approved by the person presiding, and
  - (b) may administer an oath to or take an affirmation from a person so appearing in the proceedings.
- (4) A person served with a summons to appear in any such proceedings and to give evidence must not, without reasonable excuse:
- (a) fail to attend as required by the summons, or
  - (b) fail to attend from day to day unless excused, or released from further attendance, by the Board.
- Maximum penalty: 20 penalty units.

- (5) A person appearing in proceedings before the Board in respect of a complaint to give evidence must not, without reasonable excuse:
- (a) when required to be sworn or to affirm—fail to comply with the requirement, or
  - (b) fail to answer a question that the person is required to answer by the person presiding, or
  - (c) fail to produce a document that the person is required to produce by this section.
- Maximum penalty: 20 penalty units.

- (6) In this section, a reference to a person presiding at a meeting of the Board includes a reference to a person presiding at a meeting of a committee established under section 62 exercising functions in relation to a complaint.

### 43 Decision after investigation of complaint

- (1) After the Board has completed an investigation into a complaint against an architect, the complaint is to be dealt with in accordance with this section.

- (2) The Board may apply to the Tribunal for a disciplinary finding against an architect under Division 3 if it is satisfied that the architect is guilty of unsatisfactory professional conduct or it may instead exercise the functions conferred on it by subsection (4).
- (3) However, the Board must apply to the Tribunal for a disciplinary finding against an architect under Division 3 if it is satisfied that the architect is guilty of professional misconduct.
- (4) If the Board is satisfied that the architect is guilty of unsatisfactory professional conduct (but not professional misconduct), the Board may take any one or more of the following actions:
- (a) caution or reprimand the architect,
  - (b) order the withholding or refunding of part or all of the payment for the architectural services that are the subject of the complaint,
  - (c) direct that such conditions relating to the architect's practice of architecture as it considers appropriate be imposed on the architect's registration,
  - (d) order that the person complete any educational course or courses specified by the Board,
  - (e) order that the person report on his or her architectural practice at specified times, in a specified manner and to specified persons,
  - (f) order that the person seek and take advice, in relation to the management of his or her architectural practice, from a specified person or persons,
  - (g) order the architect to pay a fine of an amount not exceeding 15 penalty units.

- (5) Action is not to be taken under subsection (4) unless the Board:
- (a) has caused notice of the proposed action to be given to the architect, and
  - (b) has given the architect at least 28 days within which to make written submissions to the Board in relation to the proposed action, and

- (c) has taken any such submissions into consideration.
  - (6) The Board is to dismiss the complaint against the architect if it is satisfied that the architect is not guilty of either unsatisfactory professional conduct or professional misconduct.
  - (7) The Board may decline to deal with a complaint if the complainant fails to provide further particulars (including documents and other information) required by the Board.
  - (8) The Board is to notify the architect of any action taken by the Board under this section.
- (3) A committee to which a function of the Board under this Part may be delegated must be constituted by 3 members of the Board, of whom:
    - (a) one must be an Australian legal practitioner, and
    - (b) one must be an architect, and
    - (c) one must be a member who is neither an Australian legal practitioner nor an architect.
  - (4) The member referred to in subsection (3)(a) is to be the chairperson of the committee.

#### 44 Person may apply to Tribunal for a review of disciplinary finding of Board

A person in respect of whom the Board has made a disciplinary finding may apply to the Tribunal for an administrative review under the *Administrative Decisions Review Act 1997* of that finding and any action taken by the Board under section 43(4).

#### 45 Delegation of Board's functions under this Part to committee

- (1) Subject to subsection (2), the Board may delegate any of its functions under this Part (other than this power of delegation) to a committee established under section 62 that is constituted as provided by subsection (3).
- (2) If an architect or a complainant makes a written request to the Board for the complaint concerned to be investigated by a committee:
  - (a) the Board is to delegate its functions under this Part in relation to the investigation of the complaint to a committee established under section 62 that is constituted as provided by subsection (3), and
  - (b) the committee is to make recommendations to the Board in respect of the disciplinary action (if any) that would be appropriate.

### Division 3

#### Applications to Tribunal for disciplinary findings

#### 46 Board may apply to Tribunal for disciplinary finding

The Board may apply to the Tribunal for a disciplinary finding under this Division against an architect with respect to any complaint against the architect.

#### 47 Functions of Tribunal in applications for disciplinary findings

- (1) If any application is made under this Division for a disciplinary finding in relation to an architect, the Tribunal is to determine whether or not the architect is guilty of unsatisfactory professional conduct or professional misconduct.
- (2) If the Tribunal finds that the architect is guilty of unsatisfactory professional conduct, the Tribunal may make any one or more of the following decisions:
  - (a) caution or reprimand the architect,
  - (b) order the withholding or refunding of part or all of the payment for the architectural services that are the subject of the complaint,
  - (c) direct that such conditions relating to the architect's practice of architecture as it considers appropriate be imposed on the architect's registration,



- (d) order that the person complete any educational course or courses specified by the Tribunal,
  - (e) order that the person report on his or her architectural practice at specified times, in a specified manner and to specified persons,
  - (f) order that the person seek and take advice, in relation to the management of his or her architectural practice, from a specified person or persons,
  - (g) order the architect to pay a fine of an amount not exceeding 200 penalty units.
- (3) If the Tribunal finds that the architect is guilty of professional misconduct, the Tribunal may (in addition to any decision made under subsection (2)):
- (a) order the suspension of the architect's registration for such period as the Tribunal thinks fit, or
  - (b) order the cancellation of the architect's registration.
- (4) The Tribunal is to dismiss an application under this section if it finds that the architect is not guilty of unsatisfactory professional conduct or professional misconduct.
- (5) If the Tribunal orders the cancellation of the architect's registration, it may also order that the person cannot apply to be re-registered within such period (including the person's lifetime) as may be specified by the Tribunal.
- (6) If an architect's registration is suspended by the Tribunal, the Registrar is to note in the Register the suspension and its date and cause.
- (7) If the architect is not registered, an order or direction can still be given under this section but has effect only so as to prevent the person being registered unless the order is complied with or to require the conditions concerned to be imposed when the person is registered, as appropriate.

#### 48 (Repealed)

#### 49 (Repealed)

## Division 4

### Confidentiality issues

#### 50 Duty of confidentiality of client communications

- (1) An architect must comply with a requirement under this Part to answer a question or to produce information or a document despite any duty of confidentiality in respect of a communication between the architect and a client (but only if the client is the complainant or consents to its disclosure).
- (2) An architect may disclose a matter to the Board, a committee of the Board or the Tribunal in breach of any duty of confidentiality if the Board, committee or Tribunal is satisfied that it is necessary for the architect to do so to rebut an allegation in the complaint.

#### 51 (Repealed)

## Division 5

### Co-operation with other jurisdictions in respect of disciplinary action

#### 52 Notice of disciplinary action to other Boards

- (1) When the registration of an architect is cancelled or suspended or any condition is imposed on the registration of an architect:
  - (a) the Board must without delay notify particulars of that action to the local registration authority of each neighbouring jurisdiction, and
  - (b) the Board may notify particulars of that action to the local registration authority of any other jurisdiction.
- (2) The Board is required or authorised to act under this section despite any law relating to secrecy or confidentiality.
- (3) This section does not affect any obligation or power to provide information under the *Mutual Recognition Act 1992* of the Commonwealth or the *Trans-Tasman*

*Mutual Recognition Act 1997* of the Commonwealth.

(4) In this section:

**local registration authority** of a jurisdiction means the person or authority in the jurisdiction having the function conferred by legislation of registering persons in connection with the carrying on of architecture in the jurisdiction.

**registration** includes the licensing, approval, admission, certification (including by way of practising certificates), or any other form of authorisation, of a person required by or under legislation for the carrying on of the practice of architecture.

## Division 6 Publicising disciplinary action

### 53 Definitions

In this Division:

**architect** includes a former architect.

**disciplinary action** means any of the following actions (whether or not taken under this Part):

- (a) the suspension or cancellation of the registration of an architect,
- (b) the refusal to register a qualified person as an architect,
- (c) the removal of the name of an architect from the Register,
- (d) any direction or order made by the Board or Tribunal in respect of an architect following a disciplinary finding in respect of the architect.

### 54 Publicising disciplinary action

- (1) The Board may publicise disciplinary action taken against an architect in any manner the Board thinks fit.
- (2) However, the Board must publicise disciplinary action taken against an architect (including the name and other identifying particulars of the person against whom the disciplinary action was taken).

- (3) Without limiting subsection (1), it is sufficient compliance with subsection (2) if the Board provides to the Registrar sufficient information to enable the Registrar to exercise the Registrar's functions in respect of the register of disciplinary action required to be kept under this Division.
- (4) The requirement to publicise disciplinary action applies only to disciplinary action taken after the commencement of this section. However, the Board may publicise disciplinary action taken under the *Architects Act 1921* before the commencement of this section in accordance with this Division.
- (5) This section extends to disciplinary action taken outside this State, to the extent that the particulars of that disciplinary action are known to the Board.

### 55 Register of disciplinary action

- (1) The Registrar must keep a register of disciplinary action taken against architects.
- (2) The register is to include the following:
  - (a) the name and other identifying particulars of the person against whom the disciplinary action was taken,
  - (b) particulars of the disciplinary action taken.
- (3) The Registrar is to ensure that the register is made available to the public, free of charge, at the Board's offices during ordinary office hours and in any other manner that the Board directs.
- (4) The Registrar may, on request, provide information recorded in the register to members of the public in any other manner.
- (5) The Registrar may correct any error in or omission from the register.
- (6) The requirement to keep a register of disciplinary action applies only to disciplinary action taken after the commencement of this section. However, the Registrar may include in the register disciplinary action taken before the

commencement of this section, or publicise such action in any other manner, in accordance with this Division.

- (7) This section extends to disciplinary action taken outside this State, to the extent that the particulars of that disciplinary action are known to the Registrar.

## 56 Quashing of disciplinary action

- (1) If disciplinary action is quashed on appeal or review after the action was publicised by the Board under this Division, the result of the appeal or review is to be publicised with equal prominence by the Board.
- (2) If the disciplinary action was recorded in the register kept by the Registrar under this Division, any reference to that disciplinary action is to be removed from the register.

## 57 Liability for publicising disciplinary action

- (1) No liability is incurred by the State, the Board, the Registrar or any person acting at the direction of the Board or Registrar in respect of anything done in good faith for the purpose of:
- (a) publicising disciplinary action under this Division, or
  - (b) exercising the functions of the Board or Registrar under this Division.
- (2) No liability is incurred by a person publishing in good faith disciplinary action, or a fair report or summary of disciplinary action, recorded in a register kept by the Registrar, or otherwise publicised by the Board or Registrar, under this Division.
- (3) In this section:  
*liability* includes liability in defamation.

## 58 General

- (1) The provisions of this Division are subject to any order made by the Tribunal under section 64 of the *Civil and Administrative Tribunal Act 2013*.

Note. Section 64 of the *Civil and Administrative Tribunal Act 2013* allows the Tribunal to make an order prohibiting or restricting the disclosure of information.

- (2) If disciplinary action involves the suspension or cancellation of the registration of a person, or a refusal to register a person, as an architect because of the infirmity, injury or mental or physical illness of the person, the reason for the suspension, cancellation or refusal, and any other information relating to the infirmity, injury or mental or physical illness of the person, is not to be recorded in the register kept under this Division or otherwise publicised.
- (3) Despite subsection (2), the name and other identifying particulars of the person against whom the disciplinary action was taken, and the kind of disciplinary action taken, must be publicised, and recorded in the register kept under this Division, in accordance with the requirements set out in this Division.

# Guiding you through the complaints process

November 2018

*Under the provisions of the Architects Act 2003, the NSW Architects Registration Board is obliged to investigate complaints against the professional conduct of an architect. If you are unhappy with the services provided by your architect, the first thing you should do is talk to your architect to try and resolve these issues.*

## Complaint submitted to the Board:

- Talk to the Registrar for advice - check whether the matter is within the Board's jurisdiction.
- Read through the *NSW Architects Code of Professional Conduct and Information Sheet 4 - Complaint against an Architect*.
- Set out your complaint in writing and in chronological order. Make sure you include all supporting evidence. This can be ordered by setting up folders for Appendices.
- Submit on USB or via email - mail@architects.nsw.gov.au

Complaint is acknowledged by the Board within 5-7 days.

Architect is forwarded complaint and directed to respond within 28 days.

Architect's response forwarded to Complainant. Complainant to respond within 14 days.

Complainant's response received and sent to Architect for comment on the issues raised. Architect to respond within 14 days.

Board's Complaints Committee considers the complaint and may seek further information before providing advice to the Board. The Complaints Committee comprises 3 Board members; the Board's legal practitioner member, an architect and a non-architect member.

*Dismiss the complaint*

Board makes decision

*Find the complaint*

Board dismisses the complaint. Statement of Determination outlining Board's considerations is forwarded to both parties

Statement of Determination and proposed orders are sent to Architect. The Architect has 28 days to make a submission in response

Complainant may apply to the NSW Civil Administrative Tribunal (NCAT) for review of the Board's decision

Board makes final decision

Board considers any submission from the architect

*Architect found guilty of unsatisfactory professional conduct*

*Architect found guilty of professional misconduct*

Decision placed on Register of Disciplinary Actions on website

Architect may appeal to NCAT for review of Board determination

Matter may be referred to NCAT for action

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Registration  
Board

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