



IS 3.1: Information Sheet for Architects: *How the BOAQ Handles Complaints about Architects*

Our Role

The Board of Architects of Queensland (the BOAQ) is established under section 4 of the *Architects Act 2002* (Qld) (the Act), with the objects of the Act being to:

- **protect the public** by ensuring architectural services are provided in a professional and competent way;
- **maintain public confidence** in the standard of services provided by architects; and
- **uphold the standards of practice** of architects in Queensland.

The BOAQ's functions and powers include considering complaints from persons aggrieved by an architect's conduct in carrying out architectural services.

It may also conduct or authorise investigations about the professional conduct of architects.

If you are an architect or former architect, you may be the subject of a complaint under the Act.

When Complaints can be made about Architects

All practising architects in Queensland are required to comply with the Act, the *Architects Regulation 2019* (the Regulation) and the *BOAQ Code of Practice* (the Code), which sets out standards of conduct expected of members of the architectural profession. Copies are available on the BOAQ website at: www.boaq.qld.gov.au.

If your client or another aggrieved person is unsatisfied with your professional conduct or competence in carrying out architectural services, they have the right to make a complaint to the BOAQ under section 37(1) of the Act.

Complaining About Other Architects

If you are aggrieved by the professional conduct of another architect in carrying out architectural services, you may make a complaint about them to the BOAQ.

For more details about how to submit a complaint about another architect, please see the BOAQ Information Sheet: *Making a Complaint about an Architect*.

Please note, complaints can only be made about an architect registered to practice in Queensland.

Notifying the BOAQ about Misuse of the Title 'Architect'

If you believe a person is representing or holding themselves out to be an architect when they are not, you may inform the BOAQ by filling in the form: *Form 8 – Notification of a Potential Holding out Offence under the Architects Act 2002 (Qld)*.

If you are unsure of whether a person is legally registered to practice architecture in Queensland, you can perform a simple search using the 'Search Register' tab on the BOAQ website, or contact the Registry on: [\(07\) 3069 2397](tel:0730692397).

The BOAQ's Complaint Management Process

Stage 1: The BOAQ assesses the complaint

After receiving a complaint about an architect, the BOAQ will make an initial assessment to decide whether it contains sufficient information to make a decision under the Act.

The BOAQ may request the complainant to give further information, including information in the form of a statutory declaration.

If the BOAQ reasonably considers the complaint to be frivolous, vexatious or trivial, it may reject it and no further action will be taken.

The complainant may also withdraw the complaint at any time. However, once a complaint has been made, the BOAQ retains the power to investigate the matter of its own volition.

Stage 2: The BOAQ may investigate the complaint

The BOAQ may decide to conduct an investigation if it has received a complaint about an architect's conduct in carrying out architectural services, or if the BOAQ reasonably believes an architect's conduct may provide disciplinary grounds under section 36 of the Act.

Grounds for disciplining an architect include:

- behaving in a way that constitutes unsatisfactory professional conduct;
- failing to comply with a provision of the Act; and/ or
- being convicted of an offence anywhere in Australia related to the practice of architecture.

The BOAQ may conduct the investigation itself, or appoint an investigator to do so.

Before deciding whether to investigate, the BOAQ may inform the architect of the complaint or disciplinary ground/s and invite the architect to make a submission about the matter.

Stage 3: The process of investigation

If the BOAQ decides to conduct an investigation under the Act, it will notify the architect as soon as practicable, giving notice about the grounds for the complaint or investigation, and who will be conducting the investigation.

The BOAQ will further advise the architect that they will be able to make a submission during the investigation and will explain how to do this.

However, the BOAQ is not required to give notice if it reasonably believes doing so would seriously prejudice the investigation or place the complainant or another person at risk of harassment or intimidation.

Under section 55 of the Act, the BOAQ or an investigator may require the architect to give stated information, or attend a stated place, such as the BOAQ Registry, to answer

questions and/or produce requested documents.

During an investigation, the architect is required to comply with the provisions of the Act. There are several offences related to the investigation process with various penalties attached, including:

- Failing to give information, attend an interview, or produce a document without reasonable excuse (such as self-incrimination) (s 56);
- Providing false or misleading statements (s 65);
- Providing false or misleading documents (s 66); and
- Obstructing the Board or its investigator in conducting the investigation, without reasonable excuse (s 67).

After completing the investigation, the BOAQ or the investigator will prepare a written report outlining findings about the complaint and investigation.

Stage 4: Decision following an investigation

After receiving and considering the report about the investigation, the BOAQ may take one or more of the following actions:

- start a disciplinary proceeding against the architect in the Queensland Civil and Administrative Tribunal (QCAT);
- enter into an agreed undertaking with the architect about a matter relating to the carrying out of architectural services (such as to submit to a practice audit);
- caution or reprimand the architect;
- impose a condition, agreed to by the architect on the architect's registration; and/ or
- take no further action.

The BOAQ will inform the architect and the complainant of its decision as soon as practicable.

Overview of the BOAQ complaint handling process

For an overview of how the BOAQ manages complaints and investigations, please refer to the BOAQ Flowchart: *Process for Management of a Complaint about an Architect*.

Your Review and Appeal Rights

If an architect is unsatisfied with the BOAQ's conduct or decision/s in handling a complaint or investigation against them, they may be able to apply to an external body to have the matter reviewed and/ or appealed, as follows:

QCAT Merits Review

If the BOAQ decides to caution or reprimand an architect after conducting an investigation, section 121(2)(d) of the Act allows them to apply to QCAT for a review of the decision.

QCAT will review the case on its merits and can consider new information in appropriate circumstances. It has the power to take any of the following actions:

- confirm or amend the decision;
- set aside the decision and substitute its own decision; or
- set aside the decision and return the matter to the BOAQ for reconsideration, with any directions the it considers appropriate.

For more information about how to apply for a review of a decision at QCAT, please contact the BOAQ or visit the QCAT website directly: www.qcat.qld.gov.au.

QCAT Appeal Tribunal or Court of Appeal

Under Part 8 of the *Queensland Civil and Administrative Tribunal Act 2009* (Qld), an architect may be able to appeal a decision of the BOAQ or QCAT to the QCAT appeals tribunal and/ or the Queensland Court of Appeal.

For more information on appeals under Part 8, please contact the QCAT Registry or seek independent legal advice.

Queensland Ombudsman

Under the *Ombudsman Act 2001*, the Queensland Ombudsman has powers to assess the BOAQ's conduct or decisions in managing complaints.

If an architect has a complaint against the BOAQ, the Ombudsman can assess the complaint to decide whether it is within its power to investigate.

The Ombudsman may conduct an investigation and make non-binding recommendations to the

BOAQ. It cannot investigate an architect's professional conduct.

If a complaint is more than 12 months old, the Ombudsman may not be able to investigate the matter unless special circumstances exist.

For more information about making a complaint to the Ombudsman, please visit:

<https://www.ombudsman.qld.gov.au/>.

Queensland Human Rights Commissioner (QHRC)

In carrying out its functions, the BOAQ is required to act compatibly with the rights as contained in the *Human Rights Act 2019* (Qld) (HR Act) unless it is justifiable to reasonably limit them.

Under the HR Act, persons can make an internal complaint to the BOAQ if they believe the BOAQ has:

- acted or made a decision in a way that is not compatible with their human rights; and/ or
- failed to give proper consideration to a relevant human right in making a decision.

Complaints about human rights can be made to the BOAQ using the prescribed form: *Form 7 – BOAQ Complaint under the Human Rights Act 2019 (Qld)*.

If a person makes an internal complaint to the BOAQ and it does not respond within 45 days, or they consider its response inadequate, they may make a complaint to the QHRC. The QHRC may take actions such as investigating the complaint, conducting a conciliation conference and/ or writing a report about an unresolved complaint.

This complaint process relates to conduct and decisions by the BOAQ only. The QHRC cannot investigate an architect's professional conduct or overturn the BOAQ's decision.

For more information about complaints to the QHRC, please visit:

<https://www.qhrc.qld.gov.au/>

Please note: The relevant laws in the HR Act commenced on 1 January 2020 and as such, this option only applies to conduct and decisions by the BOAQ after that date.

Complainant's Review Rights

If the BOAQ decides to take no further action after conducting an investigation, section 121(2)(e) of the Act allows the complainant to apply to QCAT for a review of the BOAQ decision.

QCAT will review the case on its merits and can consider new information in appropriate circumstances. Under section 130 of the Act, QCAT may make one or more of the following orders if it decides a disciplinary ground is established:

- order the architect to pay a fine of not more than 200 penalty units (\$26,690);
- order that if the architect does not pay the fine within the stated period, their registration is suspended until the fine is paid;
- reprimand the architect;
- cancel the architect's registration;
- disqualify the architect indefinitely or for a stated period from obtaining registration as an architect; and/ or
- take no further action.

If QCAT makes one or more of these orders, it will inform the architect of their appeal rights.

What the BOAQ Cannot Do

The BOAQ has a public regulatory role and does not have the power to deal with private disputes relating to contractual obligations or intellectual property rights. If architect and a client have a dispute of a commercial nature, they should seek independent legal advice and may need to commence a claim in a civil court, and/ or pursue an alternative dispute resolution pathway.

Under the Act, the BOAQ can only consider matters that relate to an architect's professional conduct in carrying out architectural services. Therefore, matters relating to workplace relations or employment issues are outside the BOAQ's jurisdiction.

The BOAQ cannot provide legal advice to help an architect respond to any complaint made against them.

Privacy Statement

An architect's personal information is collected by the BOAQ for the purposes of administering the Act. Those purposes include receiving and investigating complaints about architects and making disciplinary decisions.

Please note that the information an architect submits to the BOAQ during a complaint or investigation process may be disclosed to the complainant and other relevant third parties in connection with any investigation, disciplinary proceeding or prosecution resulting from the complaint. Such parties may include investigators, legal professionals, and/ or QCAT. By providing information during a complaint or investigation process, the architect consents to the information being shared with those parties.

The BOAQ will not use or disclose an architect's personal information for any purpose not connected with the administration of the Act without their consent, unless authorised or required by law.

For more information about Information Privacy, please visit:

<https://www.qld.gov.au/law/your-rights/privacy-and-right-to-information/privacy-rights>.

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