

Guidance Note 3

An Architect's General Obligation to Provide Information

Obligation to Provide Information

Section 60 of the South Australian Architectural Practice Act 2009 imposes an obligation on architects registered in South Australia to provide information to the Board if any person makes a claim for damages or other compensation against that architect or any other person for negligence committed by the architect. Failure to comply with this obligation is an offence carrying a maximum penalty of \$10,000.

The question for architects is – what constitutes a “claim” for the purposes of this section? The Board provides this note to give architects some guidance about when a “claim” arises and with it the obligation to provide information to the Board.

Interpretation

The word “person” refers not only to an individual but also includes companies.

The negligence complained of must be in connection with the provision of services as a registered architect. A claim against the architect in any other capacity – such as in their capacity as employer – does not have to be notified to the Board.

Claim

The word “claim”, in the context of section 60, means a claim brought by commencing legal proceedings in any court of law. A letter threatening legal proceedings does not of itself give rise to the obligation to provide information to the Board (although it might trigger the architect's obligations to notify insurers – advice from brokers should be sought in this regard). Once an architect has been served with legal proceedings, there is a two stage obligation to provide information to the Board. The same obligation arises if an architect becomes aware that another party is being sued in respect of that architect's negligence even if the architect is not a party to the court proceedings. This will include an architect who provides services for or as director of a corporation if the corporation is served with a claim concerning the provision of architectural services. Different information has to be given at each of the two stages.

First Stage Notification

The first stage of the two stage obligation is that the architect who is being sued (or in respect of whose negligence court proceedings have been issued) has to tell the Board within 30 days of the claim being served and provide the prescribed information. Days mean calendar days but if the last day falls on a Saturday or Sunday, the next business day will be sufficient.

Second Stage Notification

The second stage of the two stage obligation arises when the “claim” concludes – either by an out of court settlement or a court order being made. Again, the architect must, within 30 days of the settlement agreement being entered into or the court order being made, provide to the Board the prescribed information.

Prescribed Information

The Architectural Practice (General) Regulations 2010 set out in detail what information is required to be given at each of the two stages.

For the first stage the architect must provide the following information:

- (a) The nature of the service that is alleged to have been carried out negligently; and
- (b) Full details of the alleged negligence; and
- (c) The address of the premises at which the negligence is alleged to have occurred; and
- (d) The time at which and the date on which the negligence is alleged to have occurred; and
- (e) Full details of the injury suffered or allegedly suffered by the claimant as a result of the alleged negligence; and
- (f) The date of the claim.

And, for the second stage the architect must provide to the Board the following information:

- (a) Information adequate to identify the claim; and
- (b) Details of any change in information previously provided to the Board relating to the claim; and
- (c) Details of the order or agreement (including the amount ordered or agreed to be paid).

Although the requirement for the prescribed information to be in writing is not specified in the Act or the Regulations, the Board requests, in the interests of all the parties involved, that all information provided pursuant to section 60 be given in writing.

Please contact the Board if you require any further information.

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 Architectural Practice Act 2009 should seek their own legal advice. Persons requiring advice on their professional indemnity insurance needs should contact an insurance broker.