

CPD Webinar series

SYSTEMIC RISKS IN THE AUSTRALIAN ARCHITECTURE SECTOR

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a rbv



Architects
Registration Board
of Victoria



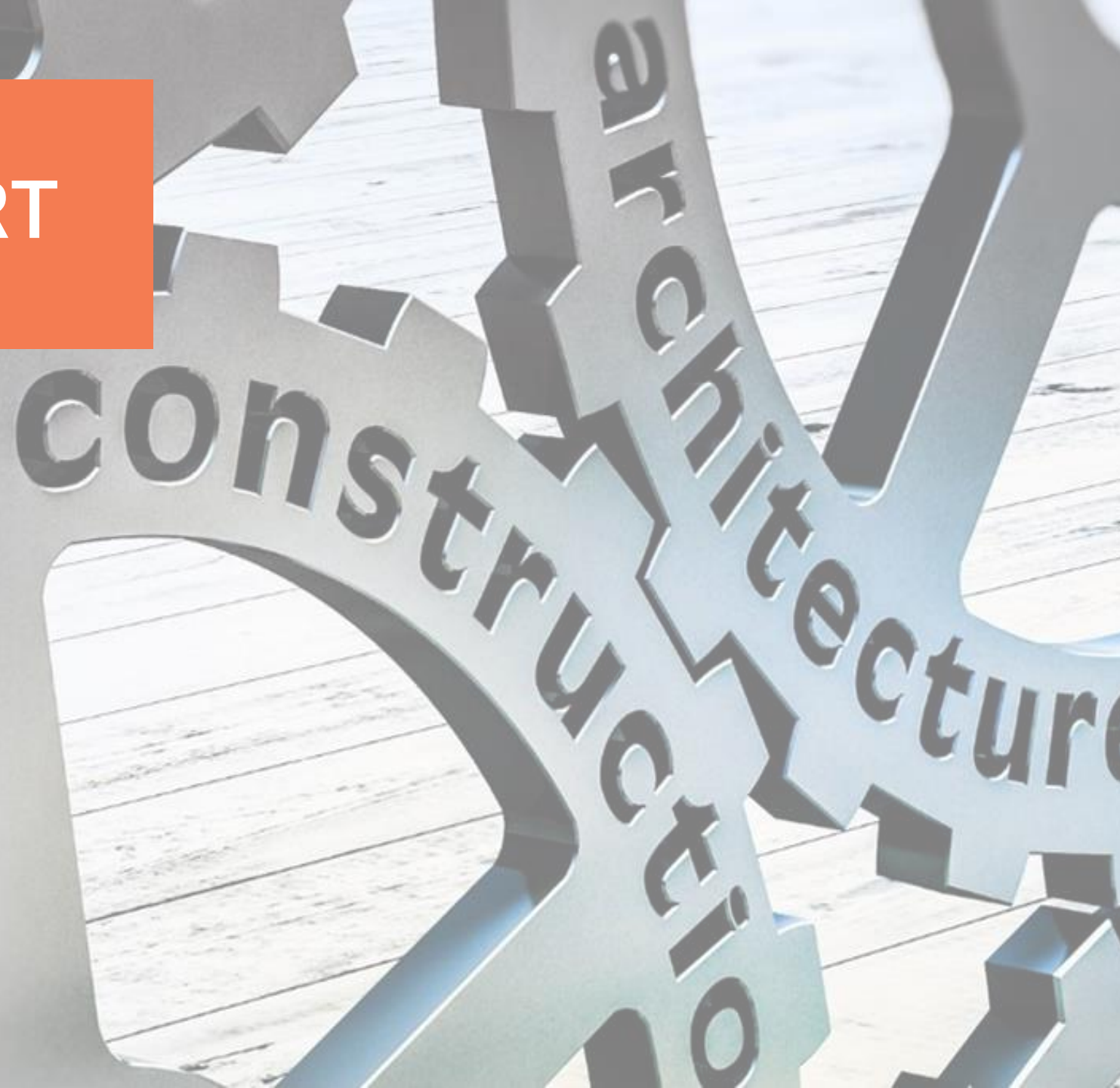
Acknowledgment of Traditional Owners

This presentation is being delivered on the lands of the Wurundjeri People and I wish to acknowledge them as Traditional Owners.

I would also like to pay my respects to their Elders, past and present, and Aboriginal Elders of other communities who may be here today.



ABOUT THE REPORT



What is the report about?

- Key current, emerging and future systemic risks facing the architectural profession in Australia
- Systemic risks are risks that:
 - Extend across the sector
 - Can cause widespread harm
 - Can also raise questions about the efficacy of the regulatory regime and regulator
- Systemic risks may be difficult to address:
 - May be latent
 - Difficult to identify in advance
 - Too widespread for the regulator to tackle at once
- The main purpose of the report is to assist the ARBV and NSW ARB to better target proactive regulatory activity so that aspects of systemic risks that are within the ARBs remit can be pre-empted, prevented and mitigated

Process and basis for the report

- Desktop review to identify high-level issues:
 - Reports by government and non-government bodies (such as the AIA and the ACA)
 - Academic literature
 - Case law
- In-depth workshops with a joint ARBV/NSW ARB working group to determine relevance of issues for Victorian and NSW architecture sectors
- Reference to complaints data and anecdotal information available to members of the joint working group
- Report consolidates findings from desktop review and workshop discussions

REGULATORY CONTEXT

The image features a close-up of several interlocking metal gears on a light-colored wooden surface. The gears are arranged in a cluster, with some overlapping others. The words 'Architecture', 'Construction', and 'Software' are embossed on the teeth of the gears. 'Architecture' is on a gear in the upper right, 'Construction' is on a gear in the center, and 'Software' is on a gear in the lower right. The lighting creates shadows, giving the gears a three-dimensional appearance.

Architecture
Construction
Software

ARBV's regulatory role

REGULATOR

- ARBV is regulator under the regulatory framework
- As such, ARBV must ensure compliance with the regulatory framework
- In turn, this will help to deliver regulatory outcomes

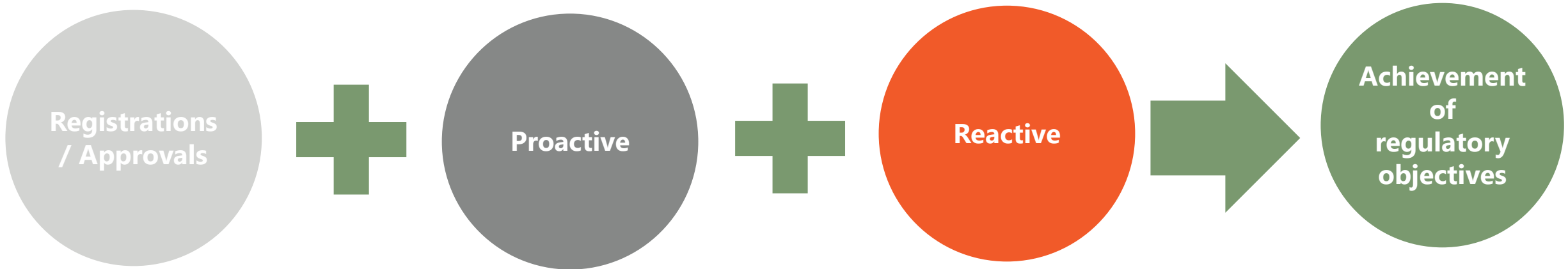
REGULATORY FRAMEWORK

- ARBV has regulatory oversight of the *Architects Act 1991* and the *Architects Regulations 2015*, including the Victorian Architects Code of Professional Conduct

REGULATORY OUTCOMES

- The regulatory outcomes which the ARBV must strive to achieve are reflected in the regulatory framework
- These include to ensure the professional conduct of architects (s 1 of the Act) and to address unprofessional conduct (r 9 of the Regulations)

Discharging ARBV's role as regulator



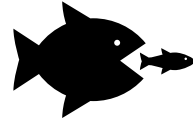
Question 1: What is the primary role of the ARBV in managing systemic risks affecting the architecture sector in Victoria?

PRACTICAL CONTEXT



The market for architectural services

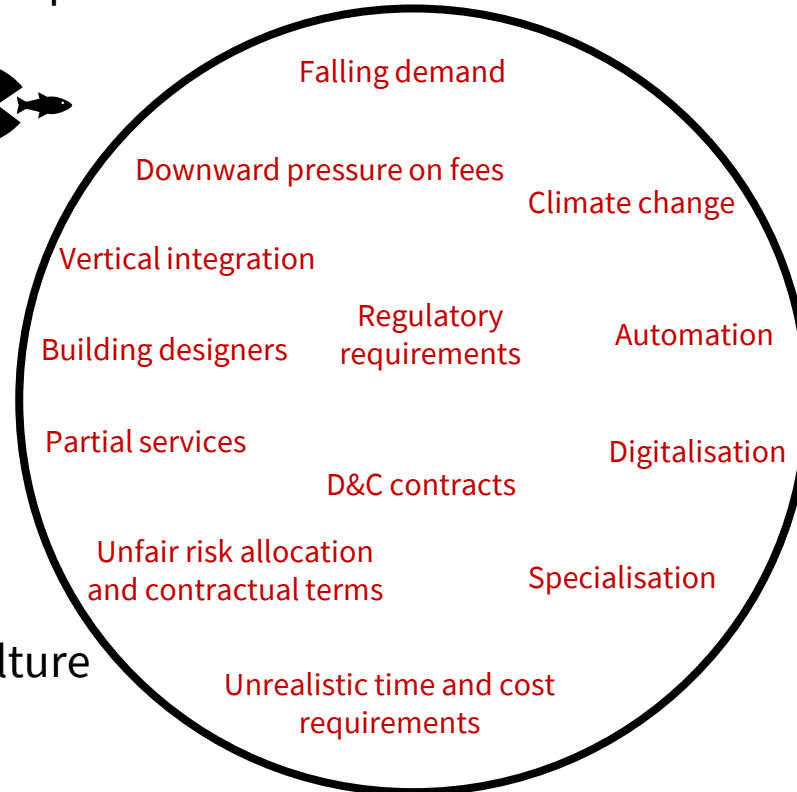
Intensifying competition



Disruptive forces



Adversarial culture



Chapters in the report

- › The market for architectural services
- › Procurement models
- › Client-architect relationships and agreements
- › Building defects, professional standards and compliance culture
- › Risk, liability and insurance
- › Climate change, sustainability and the transition to net zero
- › Automation, digitalisation and innovation
- › Education, training and continuing professional development

D&C PROCUREMENT

The background of the slide features a close-up of several interlocking metal gears. The gears are arranged in a way that they mesh together. The text 'construction architecture' is cut out of the teeth of one of the gears, and 'office' is cut out of the teeth of another. The gears are set against a light-colored wooden plank background. The overall aesthetic is industrial and modern.

construction architecture
office

Context for findings

- Procurement model:
 - D&C procurement model is the dominant procurement approach, particularly for large-scale projects
- Participants:
 - Developers, contractors, range of sub-contractors
- Contracts:
 - Typically bespoke contracts between contractors and sub-contractors
- Regulatory role:
 - ARBV does not have power to limit or hinder in any way the choices made by architects about whether or not to enter into a particular construction agreement, nor to dictate the procurement model that should be used

Main findings

- The D&C procurement model can lead to adverse outcomes for architects, including increased exposure to legal risk.
- D&C contracts are typically bespoke and may include unfair contractual terms for architects that could limit the availability of professional indemnity insurance.
- D&C contracts may lead to compromises on quality to achieve time and cost targets.
- The D&C procurement model has also led to a perception among some clients that architects do not have the technical skills to provide project management services, even though this is a core skill under the National Standard of Competency for Architects.
- Architects must take active steps to assert themselves in a D&C context and ensure that their rights, interests and regulatory obligations are effectively represented and protected throughout the negotiation and implementation of a D&C contract.

Question 2: Which type(s) of architects' compliance obligations under the regulatory framework may be affected by the procurement model?

CLIENT-ARCHITECT RELATIONSHIPS



Context for findings

- Success of a construction project is likely to depend heavily on effectiveness of relationships between parties, including client and architect.
- The client-architect relationship can be affected by various factors, including factors that are outside an architect's control, particularly in the context of large-scale projects where a D&C procurement model is employed.
- Various aspects of the client-architect relationship are regulated; these regulatory requirements are designed to ensure that the relationship is managed well.

Main findings

- Poor communication can compromise client-architect relationships, and is a problem that is not uncommon.
- Non-compliant client-architect agreements, and the absence of such agreements, can adversely affect client-architect relationships.
- The approach to project costing and fees can also have an adverse impact on client-architect relationships and can lead the client to perceive that a cost blowout has occurred.
- Clients' access to recourse may be limited under current regulatory arrangements, which may deter clients from raising concerns about unprofessional conduct.
- Architects need to invest in better relationships with their clients, particularly through more effective and meaningful communication.

Question 3: Which statement about architect's compliance obligations regarding relationships with their clients is correct?

BUILDING DEFECTS AND NCC COMPLIANCE

The background of the slide features a close-up of several interlocking metal gears. The gears are arranged in a way that they mesh together. The words 'Construction', 'Architecture', and 'Office' are embossed or cut into the teeth of the gears. The 'Construction' gear is the most prominent, with its text clearly visible. The 'Architecture' gear is partially visible behind it, and the 'Office' gear is at the bottom. The gears are set against a light-colored wooden surface with horizontal planks. The overall aesthetic is industrial and professional.

Construction Architecture
Office

Context for findings

- There is evidence to indicate a rise in building defects, particularly in multi-storey residential buildings.
- The Building Confidence Report observes that schemes across Australia that regulate architects do not expressly require architects to prepare documentation that demonstrates that the proposed building will comply with the NCC. The report further states that poor quality design documentation may lead builders to improvise and make decisions that are not compliant with the NCC.
- Studies undertaken in Australia have not established a clear correlation between design services rendered by architects and the growing incidence of building defects.
- Nonetheless, architects are likely to face increasing scrutiny over time regarding their contribution, if any, to these defects.

Main findings

- The scope of an architect's duty of care when providing architectural services is broad.
- Available evidence indicates that architects document compliance with the NCC and the great majority of them do so with reasonable skill and care.
- Having said that, the NCC is a detailed, complex document and is heavily text-based; aspects may be poorly understood by some architects.
- Common factors that could cause building defects include time and cost pressure, as well as unreasonable client demands and expectations, which are prevalent in the context of D&C contracts.
- A poor compliance culture may exist among limited pockets of the sector; some architects may believe regulatory compliance is optional.

Question 4: Which statement(s) correctly summarises architects' professional standards obligations regarding compliance with the NCC?

DISRUPTIVE FORCES

A close-up photograph of several interlocking metal gears resting on a light-colored wooden plank surface. The gears are arranged in a cluster, with some overlapping others. The words 'construction', 'software', and 'architecture' are embossed in a sans-serif font along the outer edges of the gears. The lighting is bright, creating highlights and shadows that emphasize the three-dimensional nature of the gears.

construction
software
architecture

Context for findings

- There are a range of disruptive forces that are likely to affect the provision of architectural services.
- Climate change, the transition to net zero and technological developments will present opportunities for some architects.
- However, these disruptive forces could alter the risk profile of construction projects and expose architects to different legal, operational and competitive risks compared to the status quo.

Main findings

- In relation to climate change and associated developments, architects could be exposed to liability if:
 - they fail to explain the meaning and implications of sustainable design to their clients
 - the intended outcomes of sustainable design are not properly documented
 - risky untested designs and materials are relied upon
 - architects providing the relevant services lack adequate expertise and experience
- In relation to technological developments:
 - the construction sector is not known for innovation and the rapid uptake of technology
 - building standards may lag these developments
 - some developments (such as BIM) require better relationships between participants in the sector

KEY MESSAGES



Key messages

- Architects face challenging market conditions.
- Systemic risks are evident in the market for architectural services.
- No evidence yet of generalised non-compliance by architects with the regulatory framework.
- There is an important role for regulation in delivering positive outcomes for architects, clients and the regulator
- The report identifies implications and recommendations for the various entities that can contribute to the management of systemic risks, including architects themselves.
- Architects will be best placed to embrace and realise opportunities the current market conditions present if they commit to regulatory compliance and, particularly, to use professional standards as the means to guide them through disruptive change

Any questions?

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