

Guideline

Client-architect agreements

Clause 4 of the Victorian Architects Code of Professional Conduct

This guideline has been prepared by the ARBV pursuant to regulation 7 of the Architects Regulations 2015. Guidelines provide architects guidance on professional conduct and practice. If the ARBV reasonably believes an architect has not complied with the guidelines, it may give written advice to an architect about compliance, pursuant to regulation 8 of the Regulations. Guidelines also help consumers understand what the ARBV expects of architects. Guidelines are reviewed regularly.

Written agreements between architects and clients must be entered into prior to the provision of architectural services. These agreements are commonly called a 'client-architect agreement' (CAA) and they must contain specific information.

CAAs are important because they provide a framework for both the architect and client to know and understand their rights and responsibilities. CAAs enable the architect and client to know what they can expect from each other and they protect both the architect and the client.

Framework

Clause 4 of the Victorian Architects Code of Professional Conduct (contained in Schedule 1 of the Architects Regulations 2015) provides:

1. An architect must not provide architectural services for a client unless the architect, or an approved partnership or approved company of which an architect is a member, director or employee, has entered into a written agreement with the client for the provision of those services.
2. An agreement must include the following—
 - a. the parties to the agreement;
 - b. the name, registration number, and contact details of the architect responsible for providing the services;
 - c. the scope, nature, and specific requirements of the services;
 - d. the timeframes for providing the services;
 - e. how the professional fees and costs of the services will be calculated;
 - f. where possible, reasonable estimates of disbursements;
 - g. how professional fees and costs, including disbursements, will be paid;
 - h. how the architect may inform the client of progress in the provision of the services;
 - i. how the client may authorise the architect to proceed with the services, or any part of the services;
 - j. a requirement that the architect must inform the client how a change or amendment to the services will affect the professional fees and costs for the services;
 - k. how the architect may obtain the client's authority to change or amend the services;
 - l. how variations to the agreement may be made;
 - m. a reservation of the right of an architect to withdraw from the provision of services under the agreement in the circumstances set out in clause 14;
 - n. how the agreement may be terminated and for what reason.
3. Subclause (2) applies to an agreement for the provision of architectural services entered into by an architect, an approved partnership or an approved company with a client on or after 1 July 2015.

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ARBV guidance

There is a common misconception that a fee proposal that has been accepted by a client is a sufficient agreement to satisfy the clause 4 obligation.

CAAs differ from fee proposals as a CAA is typically more project-specific, detailed, and marks the commencement of the architectural services. In broad terms, prior to entering a CAA, an architect can gain and share an understanding of what the prospective project will involve, but the architect must not provide project-specific services.

To satisfy the Code's requirement for a written agreement to be entered into, the ARBV considers that a positive agreement from both parties is essential. A positive agreement means that both parties must both sign and date the CAA document. Dates recorded should be the date that each party signs the document.

The ARBV considers that tacit or de facto agreement is not sufficient to comply with the Code's requirement for a written agreement to be entered into. The ARBV considers that the only way a written agreement can be entered into is via the CAA document being signed by both parties.

If an architect already providing architectural services identifies that a compliant CAA is not in place, continuing to provide services is a continued and known breach of clause 4(1). In such an instance, the architect must stop providing services until a compliant CAA is completed. The dates recorded on the CAA should be the dates it is signed. The ARBV may consider a CAA that is backdated to demonstrate a falsification of the CAA.

There are times when prospective clients may ask for expressions of interest from architects and may seek to confirm an architect's understanding of their brief

prior to engaging the architect. This may include some development of concept designs.

In such instances, the ARBV considers that the architect is doing architectural work but is not yet providing architectural service to a client. If engaged by the client, the architect would then be providing architectural services to the client and must have a CAA in place.

CAAs should be considered a 'living' agreement. Where elements of the engagement change, the CAA should be updated to ensure the architect and the client maintain their mutual awareness. The way in which a variation can be made to a CAA is one of the elements that must be included in a CAA.

There will be times when precise information is not yet available for inclusion in a CAA, for example, timeframes or cost estimates. The ARBV considers that it is reasonable for a CAA to include information that is as precise as possible along with prescribed confirmation triggers.

CAAs can be entered into by an individual architect or an approved company/partnership. An employee, member, or director of a company/partnership who provides architectural services on behalf of the company/partnership without a compliant CAA is in breach of clause 4(1).

If you are a member of a professional body, you may have access to a template CAA. While a template provides convenience, an architect is ultimately responsible for ensuring it is compliant with clause 4. The ARBV recommends that architects review any templates they use to ensure that the CAA is compliant with the requirements set out in the Code.

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Examples

1. An architect provides a detailed fee proposal to a prospective client. The prospective client signs the proposal and returns it to the architect. Is it a compliant CAA?

To comply with clause 4, the written agreement must include all the items provided in clause 4(2). If a written fee proposal contains all the items, it would satisfy the obligation to have a compliant written agreement. Typically, most fee proposals do not include all clause 4(2) items, so caution should be exercised.

2. An architect provides a prospective client a CAA document that includes all the details required by clause 4(2) of the Code. The client sends an email to the architect saying they agree and instructing the architect to start providing architectural services. The client does not return a signed CAA document to the architect.

As the CAA document has not been signed by both the architect and the client, the ARBV considers that there is no positive written agreement. As such, the architect should not commence providing architectural services until a compliant CAA is entered by ensuring that the CAA document is signed and dated by all parties.

3. An architect provides a prospective client a CAA document for a renovation and extension project. The CAA includes sections for all the details required by clause 4(2) of the Code, however a specific cost estimate is not yet possible as it necessitates detailed engineering assessment of the existing building to determine whether specific work (such as underpinning) is required. The CAA states that the estimated cost is 'to be confirmed'. Both the client and the architect sign the document.

Clause 4(2) requires that each of the specified items be included. It is reasonable for the architect to be able to estimate costs for each of the variables. To be compliant, the CAA should provide estimates for each variable along with explanatory notes. Once more information is available to enable a more specific estimate, the CAA should be updated.

4. An architect, working for an approved company/partnership, provides architectural services for the company/partnership on a project without a compliant CAA.

Clause 4 imposes obligations on both individual architects and approved companies/partnerships. As such, both the individual architect and the directors/members of the company/partnership are obliged to ensure a CAA is in place before providing architectural services for the client.

Conclusion

CAAs benefit and protect both the client and the architect by enabling an understanding of each parties' rights and responsibilities, and their expectations of each other.

To protect yourself and your client, and to make sure you comply with clause 4 of the Code, ensure that you have a written agreement in place that includes all the items of clause 4(2) prior to providing architectural services.



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