

# Guideline

## Conflicts of interest

### Clause 12 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.*

Architects have obligations to disclose any conflict of interest (COI) between themselves and current/former clients.

Actual, potential, and perceivable conflicts of interest may not present an issue for architects in and of themselves, but constitute breaches of the Victorian Architects Code of Professional Conduct when they are not managed consistently with the requirements set out in the Code. Central to appropriately managing COIs is to ensure any actual, potential, or perceivable COI is disclosed as soon as it is identified.

The declaration of a COI does not necessitate termination of the engagement so long as the architect disclosed the conflict to each affected person and written consent was obtained from each affected person.

### Framework

Clause 12 of the Victorian Architects Code of Professional Conduct (contained within Schedule 1 of the Architects Regulations 2015) provides:

1. An architect must not enter into an agreement with a person under clause 4 for the provision of architectural services if the agreement would result in an actual or potential conflict between the interests of—
  - a. the architect and that person; or
  - b. a current client and that person.

2. An architect member or director of an approved partnership or an approved company must take all reasonable steps to ensure that the partnership or company does not enter into an agreement with a person under clause 4 if the agreement would result in an actual or potential conflict between the interests of—
  - a. a member of the approved partnership and that person; or
  - b. an officer of the approved company and that person; or
  - c. a current client of the approved partnership or approved company and that person.
3. An architect must not continue to provide architectural services to a client that result in a conflict between the interests of—
  - a. the architect and that client; or
  - b. 2 or more current clients.
4. An architect does not contravene this clause if the architect first—
  - a. discloses the actual or potential conflict of interest to each affected person; and
  - b. obtains the written consent of each affected person or more current clients.

Clause 14 of the Code provides:

An architect must withdraw from the provision of any architectural services to a client if the architect reasonably believes that the provision of those services would cause the architect to contravene the Act, the Regulations or [the] Code.

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Clause 7 of Code provides:

An architect must:

1. take reasonable steps to ensure that a client is informed of decisions required of the client in respect of the services; and
2. provide sufficient relevant information with reasonable promptness to enable a client to make an informed decision in relation to the provision of services; and
3. respond, with reasonable promptness, to a client's reasonable requests for information or other communications about the provision of services to the client; and
4. take reasonable steps to ensure that all information and material provided to a client is accurate and unambiguous.

Clauses 11 and 13 of the Code provide that architects must disclose paid referrals and paid endorsements to a client before entering into a client architect agreement (CAA) or before recommending a product or service to a client. Paid referrals and paid endorsements are types of COI and must be disclosed. Payment can be in the form of money, services, goods, favour or other benefit.

### ARBV guidance

The ARBV acknowledges that architects, like other professionals, form contacts through their career that can create advantages for clients. Providing a commercial advantage to a client does not negate an obligation to declare and appropriately manage a COI if the architect also receives or expects to receive any benefit from that arrangement. Benefit can be material in form (such as money or goods) or immaterial in form (such as services or favours).

Possible COIs include, but are not limited to:

- an architect receiving payment (in money, material, or favour) for the referral of a client to a consultant, contractor, or other person/entity
- an architect receiving or expecting to receive payment (in money, material, or favour) for endorsing, recommending, or specifying a product or service
- an architect working on two separate projects that impact each other, such as two neighbouring properties in which objections from one may arise with respect to the other
- an architect administering a building contract in which the architect or a close friend/relative has an interest in the contractor or any subcontractors
- an architect recommending the services of another specialist consultant or a contractor with whom they are a close friend/relative or have an interest
- an architect administering a building contract in which the architect is a close friend/relative of the client
- an architect working on a project in which they are not the client but in which they have otherwise invested.

While clause 12 of the Code provides obligations regarding actual or potential COIs, the ARBV considers it best practice to also consider perceivable conflicts of interest and to declare relevant information. Being proactive and transparent may avoid concerns being raised about potential COIs later in a project.

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Clause 12(4) does not require COI declarations to be in writing, however the ARBV considers it best practice to provide declarations in writing. This supports transparency and good communication.

Clause 12(4) of the Code requires the affected party's consent following a COI declaration to be in writing. It is not the affected party's responsibility to provide consent, but rather it is the architect's responsibility to ensure they do not enter a CAA or continue to provide services without obtaining written consent.

A client must know about any actual, potential, or perceivable COIs to be sufficiently informed and to make informed decisions. An architect is obliged under clause 7 of the Code to keep a client informed and to be able to make informed decisions.

## Conclusion

While conflicts of interest will not always cause issues and will not always necessitate termination of the engagement, they can quickly become problems when not handled appropriately and in accordance with the requirements of the Code.



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This guideline is issued by ARBV under regulation 7 of the Architects Regulations 2015 for the purpose of providing general guidance as to the operation of the Architects Act 1991 and the Regulations. The guideline should be considered in the context of the reader's individual circumstances. It is the reader's responsibility to obtain independent advice where necessary in respect of their individual circumstances and the application of legislation, guidelines and other instruments. To the extent permitted by applicable laws, the ARBV, its employees, agents and consultants exclude any and all liability for any direct, indirect, incidental, special or consequential loss or damage a person may suffer arising out of or in connection with the access and use of the ARBV's resources (including any third-party material included in these resources).