

Architects Registration Board of Victoria

Notice of Inquiry

TO: [Architect]
Registered Architect No [...]

OF: [address]

1. BASIS OF INQUIRY:

TAKE NOTICE THAT the Architects Registration Board of Victoria (**Board**) pursuant to section 18 of the *Architects Act 1991* (**Act**) has determined that an inquiry should be held into your fitness to practise as an architect and into your professional conduct. The Board pursuant to Division 2 of Part 4 of the Act has constituted a Tribunal to conduct the Inquiry on its behalf.

The Tribunal has decided and intends to hold an inquiry into your fitness to practise as an architect and into your professional conduct.

2. MODE OF INQUIRY:

The Inquiry will proceed by way of oral hearing. Section 30 of the Act stipulates that:

At an inquiry—

- (a) subject to this Part [Part 4 of the Act], the procedure of the Tribunal is in its discretion; and*
- (b) the proceedings must be conducted with as little formality and technicality as the requirements of this Act and the proper consideration of the matter permit; and*
- (c) the Tribunal is not bound by rules of evidence but may inform itself in any way it thinks fit; and*
- (d) the Tribunal may require evidence to be given on oath or affirmation and any member may administer an oath or take an affirmation for that purpose; and*
- (e) the Tribunal is bound by the rules of natural justice.*

3. APPEARANCE OF PARTIES:

You have a right to be present, to make oral or written submissions and to be represented at the Inquiry.

If neither you nor a nominated representative appears at the hearing, the Tribunal may proceed in your absence and will make a finding on the evidence before it at the

Inquiry. You may respond to this Notice and the allegations contained within this Notice personally or in writing or both.

4. TIME AND DATE OF PRELIMINARY CONFERENCE:

10:00 a.m. on Thursday 22 August 2013

5. TIME AND DATE OF INQUIRY:

The time and date will be fixed at the preliminary conference

6. VENUE:

Both the preliminary conference and the Inquiry will be held in the Conference Room within the Board's Office, Level 7, 372 Albert Street, East Melbourne VIC 3002.

7. MATTERS AND/OR BEHAVIOUR ALLEGED:

Allegation 1

In or around 2003 you were careless or incompetent in your practice in that you failed to comply with the Building Code of Australia in specifying Kool-Wall panels for external cladding at the warehouse conversion at [address].

Particulars:

You were engaged to prepare the architectural documentation in respect of the warehouse conversion at [address].

You prepared specifications and working drawings as part of that documentation.

All specifications must comply with the performance requirements set out in the Building Code of Australia including the fire-resistance level (**FRL**) provisions.

Building solutions which do not meet the 'deemed-to-satisfy' provisions of the Building Code are required to meet the 'alternative solution' standards set out in that Code.

You specified at paragraph 4.11 of the General Specification a system of external wall cladding manufactured by Kool-Wall Industries Ltd.

The Kool-Wall system specified does not meet the 'deemed-to-satisfy' requirement under the Building Code of Australia for requisite FRL, nor does it have the requisite alternative approval under that Code.

Allegation 2

Further and in the alternative, your professional standards were demonstrably lower than the standards which a competent architect should meet when, in or around 2003, you specified Kool-Wall panels for external cladding at the warehouse conversion at [address].

Particulars:

Refer to each of the particulars made in respect of Allegation 1 above.

Allegation 3

Further and in the alternative you are guilty of unprofessional conduct (including in accordance with the meaning of 'unprofessional conduct' in regs 5 and 22 of the *Architects Regulations 1993*) as a consequence of your conduct in or around 2003, when you specified Kool-Wall panels for external cladding at the warehouse conversion at [address].

Particulars:

Refer to each of the particulars made in respect of Allegation 1 above.

Allegation 4

In or around 2003 you were careless or incompetent when you provided designs of external stairs in respect of the warehouse conversion at [address].

Particulars:

You were engaged to prepare the architectural documentation in respect of the warehouse conversion at [address].

You prepared General Specifications and Drawings as part of that documentation.

The stairwell is open to the air between level 2 and first landing between level 2 and level 1 and after the first landing on level 1. An atrium to the north of this stairwell is open to the sky.

Water landing on the stairs at the open sections drains down the stairs to the car park.

The drainage at the car park level is not adequate.

You designed the stairs using timber and fibre cement sheet soffits which are subject to the weather and are inadequate in the circumstances.

Allegation 5

Further and in the alternative, your professional standards were demonstrably lower than the standards which a competent architect should meet when, in or around 2003 you provided designs of external stairs in respect of the warehouse conversion at [address].

Particulars:

Refer to each of the particulars made in respect of Allegation 4 above.

Allegation 6

Further and in the alternative you are guilty of unprofessional conduct (including in accordance with the meaning of 'unprofessional conduct' in regs 5 and 22 of the *Architects Regulations 1993*) as a consequence of your conduct in or around 2003, when you provided designs of external stairs in respect of the warehouse conversion at [address].

Particulars:

Refer to each of the particulars made in respect of Allegation 4 above.

Allegation 7

In or around 2003 you were careless or incompetent when you provided designs and specifications for balconies and external walkways in respect of the warehouse conversion at [address].

Particulars:

You were engaged to prepare the architectural documentation in respect of the warehouse conversion at [address].

You prepared General Specifications and Drawings as part of that documentation.

The balconies and terraces on level 2 were timber framed balconies and terraces.

The specifications do not detail the finishes required for balconies and walkways on level 2 of the building but

refers the builder to the tiling requirements of the bathrooms and toilets.

The relevant drawings require that the balconies and terraces on level 2 were to be constructed of particle board flooring.

Particle board flooring for external decking does not comply with Australian Standard SA 1860 - 1998 'Installation of Particle Board Flooring'.

You did not make allowance for a waterproof membrane or cement fibre sheeting under the tiling in external areas to provide adequate protection to the underlying particle board.

Allegation 8

Further and in the alternative, your professional standards were demonstrably lower than the standards which a competent architect should meet when, in or around 2003 you provided designs and specifications for balconies and external walkways in respect of the warehouse conversion at [address].

Particulars:

Refer to each of the particulars made in respect of Allegation 7 above.

Allegation 9

Further and in the alternative you are guilty of unprofessional conduct (including in accordance with the meaning of 'unprofessional conduct' in regs 5 and 22 of the *Architects Regulations 1993*) as a consequence of your conduct in or around 2003, when you provided designs and specifications for balconies and external walkways in respect of the warehouse conversion at [address].

Particulars:

Refer to each of the particulars made in respect of Allegation 7 above.

8. POWERS EXERCISABLE BY THE TRIBUNAL:

Pursuant to section 32 of the Act:

If after considering the submissions made at an inquiry the Tribunal finds that—

- (a) *the architect is careless or incompetent in his or her practice; or*
- (b) *the professional standards of the architect are demonstrably lower than the standards which a competent architect should meet; or*
- (c) *the architect is guilty of unprofessional conduct; or*
- (d) *the architect has breached or failed to comply with any provision of this Act; or*
- (e) *the architect has been convicted in Victoria of an indictable offence or has elsewhere been convicted of an offence which if committed in Victoria, would be an indictable offence; or*
- (f) *the registration of the architect has been obtained by fraud or misrepresentation or concealment of facts—*

the Tribunal may make one or more of the following determinations—

- (g) *to caution the architect;*
- (h) *to reprimand the architect;*
- (i) *to require the architect to undertake further education of a kind, and to complete it within a period, stated in the determination;*
- (j) *to impose a condition or limitation on the architect's registration relating to the architect's practice;*
- (k) *to impose a penalty not exceeding 50 penalty units;*
- (l) *to suspend the architect's registration for the period stated in the determination;*
- (m) *to cancel the architect's registration—*
and may make any determination as to costs that it thinks fit.

9. TRIBUNAL DETERMINATIONS AND REASONS:

Pursuant to Section 33 of the Act:

- (1) *A determination made on an inquiry comes into operation on its making or at any later time stated in the determination.*
- (2) *As soon as possible after making a determination on an inquiry the Tribunal must give to the person to whom the determination relates a written statement setting out its determination.*
- (3) *A person affected by a determination made on an inquiry may, by notice in writing given to the Board within 2 months after the date on which the determination is made request the Board for the reason for the determination.*
- (4) *As soon as possible but not later than one month after receiving the request, the Board must give the applicant a written statement setting out the determination made on the inquiry, the reason for the determination and the findings of fact on which they were based.*

The Tribunal in its discretion may issue written findings and reasons for findings before receiving submissions

on penalty and costs and making determinations on penalty and costs.

10. ENFORCEMENT OF TRIBUNAL DETERMINATIONS:

Section 35 of the Act states that the Board must take all action necessary to give effect to a determination.

11. REVIEW BY VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL:

You have a right under section 42(c) of the Act to apply to the Victorian Civil and Administrative Tribunal for review of a determination made at an Inquiry under Part 4 of the Act.

Under section 44(c) of the Act, any such application for review must be made within 3 months after the day on which the Tribunal gives notice of the determination.

This Notice is given to you pursuant to section 27 of the Act.

DATED this 16th day of July, 2013

(SIGNED:)

Michael A. Ryan
Chair of the Tribunal

Architects Act 1991.

Section 18

NOTICE OF FINDINGS

These are the Findings of the Tribunal constituted by the Architects Registration Board of Victoria to hold an inquiry into the fitness of [Name], (Registered Architect Number [. . .]), to practise as an Architect and into his professional conduct. The Inquiry was conducted on the 19th November 2013.

The Tribunal comprised Mr Michael Ryan (chairperson), Ms Heather Howes and Mr John Permewan.

The Tribunal reserved its decision.

The Tribunal, having conducted an Inquiry into the particular conduct, acts or omissions raised in the Amended Notice of Inquiry issued pursuant to section 27 of the *Architects Act 1991*, and having considered the evidence presented to, and the submissions made at the Inquiry, makes the following findings in respect of each of the allegations.

Allegation 1: That in or around 2003 the Architect was careless or incompetent in his practice in that he failed to comply with the Building Code of Australia in specifying the external wall system comprising Kool-Wall panels and CSR Gyprock Fyrchek plasterboard for external walls at the warehouse conversion at [address].

Finding: The Tribunal does not find this matter proved.

Allegation 2: That further and in the alternative, his professional standards were demonstrably lower than the standards which a competent architect should meet when, in or around 2003, he specified the external wall system comprising Kool-Wall panels and CSR Gyprock Fyrchek plasterboard for external walls at the warehouse conversion at [address].

Finding: The Tribunal does not find this matter proved.

Allegation 3: That further and in the alternative he is guilty of unprofessional conduct (including in accordance with the meaning of 'unprofessional conduct' in regs 5 and 22 of the *Architects Regulations 1993*) as a consequence of his conduct around 2003, he specified the external wall system comprising Kool-Wall panels and CSR Gyprock Fyrchek plasterboard for external walls at the warehouse conversion at [address].

Finding: The Tribunal does not find this matter proved.

Allegation 4: That in or around 2003 he was careless or incompetent when he provided designs of external stairs in respect of the warehouse conversion at [address].

Finding The Tribunal does not find this matter proved.

Allegation 5: That further and in the alternative his professional standards were demonstrably lower than the standards which a competent architect should meet when, in or around 2003, he provided designs of external stairs in respect of the warehouse conversion at [address].

Finding The Tribunal does not find this matter proved.

Allegation 6: That further and in the alternative he is guilty of unprofessional conduct (including in accordance with the meaning of ‘unprofessional conduct’ in regs 5 and 22 of the *Architects Regulations 1993*) as a consequence of his conduct around 2003 when , he provided designs of external stairs in respect of the warehouse conversion at [address].

Finding: The Tribunal does not find this matter proved.

Allegation 7: That in or around 2003, he was careless or incompetent when he provided designs and specifications for balconies and external walkways in respect of the warehouse conversion at [address].

Finding: The Tribunal finds this allegation proved.

Allegation 8: That further and in the alternative, his professional standards were demonstrably lower than the standards which a competent architect should meet when, in or around 2003, he provided designs and specifications for balconies and external walkways in respect of the warehouse conversion at [address].

Finding: The Tribunal does not find this allegation proved.

Allegation 9: That further and in the alternative he is guilty of unprofessional conduct (including in accordance with the meaning of ‘unprofessional conduct’ in regulations 5 and 22 of the *Architects Regulations 1993*) as a consequence of his conduct in or around 2003, when he provided designs and specifications for balconies and external walkways in respect of the warehouse conversion at [address].

Finding: The Tribunal does not find this allegation proved.

FINDING

In view of the above finding the Tribunal finds:

- (a) The Architect was careless in his practice within the meaning of section 32(a) of the *Architects Act 1991*.

Michael A. Ryan

Chairperson.

Dated the 11th day of December 2013.

REASONS FOR FINDINGS

1. The Tribunal was constituted pursuant to the provisions of section 27 of the *Architects Act 1991* to enquire into certain conduct, acts or omissions of George Petridis, architect, as set out in the Amended Notice of Inquiry filed by consent of the parties on the 19th November 2013. At the hearing, which was conducted on the 19th November 2013, Ms Miller of the office of the Victorian Government Solicitors Office appeared on behalf of the Architects Registration Board (the Board), and Ms Kirton of Counsel appeared on behalf of the Architect.
2. In the course of the hearing, Mr William Henning gave evidence on behalf of the Board and the statements of witnesses [name] and [name], both dated the 11th September 2013 were admitted in evidence as Exhibits 'C', 'A' and 'B' respectively. [The Architect] and Mr Bryan Miller gave evidence on behalf of the Architect and the statements of the said [Architect] and Mr Miller, both dated the 18th October 2013 were admitted in evidence as Exhibits '1' and '2' respectively.
3. At the commencement of the hearing Ms Kirton indicated that all the allegations set out in the Amended Notice of Inquiry would be contested. A Statement of Agreed Facts was tendered for consideration of the Tribunal, by agreement of the parties.

Background

4. The circumstances surrounding the preparation of the drawings and specifications in question, as related to the Tribunal by the Architect were not contested by the Board. Briefly, in December 2001, the Architect was engaged by [name of architectural company], a firm of architects, in the Architect's words, "to prepare amendments to drawings, prepared by [the company], for the purpose of a proposed town planning permit application, and to prepare working drawings", in relation to a project consisting of a warehouse conversion into 17 units at [address] (presumably the premises identified in the Amended Notice of Inquiry as [address]). Subsequently, in March 2002, [the company] withdrew from the project and the Architect continued to carry out the same functions for the Developer, [name of developer], becoming the Architect's client for the project.
5. It was not clear to the Tribunal whether the Drawings produced by the Architect were in response to the requirement to produce "working drawings", or whether the production of those prepared were merely a work in progress. As indicated below, the Tribunal does not accept any diminution in the level of professional competence to be provided by the Architect in this instance by reason of any assertion that the Drawings were "Not for Construction Drawings" when there is no statement indicating that they are a work in progress.

6. The Architect gave evidence, which was accepted by the Tribunal, that he had defined the terms of his engagement in accordance with the obligations now imposed by regulation 14 of the *Architects Regulations 2004*, in respect to both his engagement by FYI and later by the Developer. He gave further evidence, again accepted by the Tribunal, that such documentation had become lost during the period in excess of ten years between the preparation of such documentation and the present time.
7. The Tribunal passes the comment that substantial misunderstanding and confusion might be avoided by reference to a clear definition of the role undertaken by the Architect, and in particular the demarcation of the role of the Architect and that of other consultants involved on the project. This is particularly the case in this instance, given that the Architect's evidence was to the effect that he was the last consultant engaged by the Developer on the project, and as such, did not occupy the role more usually occupied by the architect in co-ordinating the role and input of the other consultants.
8. Certain of the Drawings and Specifications were marked "For Building Approval Not for Construction" by the Architect. Such Drawings and Specifications were noted to be used for the purpose of obtaining a Building Permit, to the knowledge of the Architect, as appears at paragraph 3 of the said Statement of Agreed Facts. However it appears that the Specification actually approved by the Building Surveyor was not the Specification prepared by the Architect. It is the opinion of the Tribunal that the obligations of the Architect in the preparation of these documents for the purpose of obtaining a Building Permit are not in any way relieved by the endorsement of the words, "Not for Construction." The Tribunal accepts the evidence of Mr Henning to the effect that such documentation should be prepared to a level which would enable construction, although he conceded that certain details may be added and more detailed working drawings prepared as the project advanced to the construction stage. Any major changes, of course, such as in relation to structural issues, safety, fire risk etc. would require re-submission to the Building Surveyor. The Tribunal therefore does not accept that the obligations of the Architect were in any way reduced by the endorsement of these words.
9. The Architect further gave evidence, accepted by the Tribunal, that he was not aware that the Drawings and Specifications were being used for construction. He asserted that he never even met the Builder until after the contract was signed and that to his later knowledge the construction went ahead using the "Not for Construction" documents. Once again, the Tribunal does not accept that these factors in any way reduce the obligation upon the Architect for Drawings and Specifications prepared by him to be of a proper professional standard.

Allegations.

10. The group of allegations contained in allegations 1, 2 and 3 of the Amended Notice of Inquiry relate to the specification of the external wall system to comprise Kool-Wall panels and CSR Gyprock Fyrchek plasterboard. It is alleged that such specification fails to comply with the Building Code of Australia (BCA) in that such proposed solution does not meet the Fire

Resistance Level (FRL) provisions of the BCA as either “deemed to satisfy” or meeting the “alternative solution “ standards of the Code.

11. The Architect gave evidence detailing the architectural, aesthetic and costing imperatives imposed by the client which led to the proposed specified solution. The building was to be of a light weight construction so as not to overload the foundations of the existing building. A framed wall might in his view have looked “cheap” and the windows appear that they were “papered on.” He wanted to achieve depth in the windows to give relief and shadows, i.e. bulk without weight.
12. The Architect gave evidence that it was his view that the 2001 version of the “Red Book” referred to by him at the time could be interpreted to the effect that Kool-Wall, as part of a total wall system, would provide the requisite degree of BCA required ratings, although he acknowledged that the regulations more recently imposed were more stringent. With the plaster board on the outside also, and with cement rendering he was of the opinion that this would achieve the finish, thickness and appearance wanted, and that such solution ought be approved by the Building Surveyor. He gave evidence that the proposed solution was not within the “deemed to satisfy” provisions of the Code, nor had he conducted any independent testing in order to satisfy the “alternative solution” provisions of the Code.
13. It was submitted by Ms Miller on behalf of the Board that the Architect should have specifically raised the issue with the Building Surveyor and should have discussed the issue with the fire engineer, CSR and representatives of Kool-Wall. There was evidence that in fact the fire engineer had not yet been appointed by the Developer at this time and was thus unavailable for comment. Mr Miller’s evidence on this point was to the effect that it was often the case that the representatives of firms such a CSR and Kool-Wall were little better than salespersons with little technical knowledge of the product they were selling and as a consequence of no real help in resolving issues such as the matter in hand. However there is evidence that the issue was raised specifically by the Building Surveyor. The Tribunal accepts that details of the system were requested, as item 16, by the Building Surveyor in his letter of the 27th February 2003, marked ‘GP D’ to Exhibit 1. The Architect responded, as is evident from the minutes of a meeting of the 6th March, exhibited as ‘GP E’ to Exhibit 1, wherein item 16 is noted, “[Architect] provided information to [Building Surveyor]”, which the Tribunal takes to mean that the Building Surveyor was satisfied. Further, as appears at paragraph 9 of the Statement of Agreed Facts, the Architect was instructed by the Developer that it had engaged a fire engineer, [Name], to advise it and the Building Surveyor on fire issues. Finally, the Architect gave evidence that he did discuss the matter with others at his firm.
14. The Architect gave evidence that the specified solution was submitted to the Building Surveyor on his understanding that the Building Surveyor had authority to give approval. Mr Miller’s evidence was strongly supportive of the position taken by the Architect in submitting his specification on the basis that the Building Surveyor would have the power to approve or not. Mr Henning also commented that whether a wall system satisfied the BCA was a matter that could be decided by the Building Surveyor. Mr Henning further acknowledged that the

Building Surveyor was the authority to accept or reject the Architect's submissions with respect to building regulations. Taking all of the forgoing into account the Tribunal is not satisfied that the allegations dealing with the issue of the Kool-Wall, allegations 1-3, are proved.

15. The group of allegations contained in allegations 4, 5 and 6 of the Amended Notice of Inquiry relate to the design of the external stairs. The allegations were twofold, firstly that the drainage to the car park level is not adequate, and secondly that the stairs were designed using timber and fibre cement sheet soffits which are subject to the weather and inadequate in the circumstances.
16. Dealing firstly with the issue of the drainage to the car park level, at first sight it appears that the drawings are inadequate in this respect. It was the Architect's evidence however that it was his understanding that all drainage issues were to be the responsibility of the civil engineer. Collection and discharge of water is not detailed anywhere on the drawings. So glaring an omission, in view of the Tribunal, tends to support the Architect's evidence. Also relevant are the circumstances of the appointment of the Architect, referred to in paragraph 7 above, as a result of which the Architect did not fill the more traditional role of co-ordinating the consultants on the project. All consultants were appointed and controlled directly by the Developer, thereby depriving the Architect of his usual role of consultant co-ordination. This is far from an ideal situation, but not in the Tribunal's view, a situation of the Architect's making. It was submitted by Ms Miller on behalf of the Board that the Architect did not do enough to eliminate any omissions in consultant co-ordination caused by the arrangements set up by the Developer. Ms Miller also observed that the Architect must try to establish where the demarcation occurred. The Tribunal has considered this carefully. On balance, the Tribunal accepts the Architect's evidence to the effect the Developer was aware that the drainage of the project would be designed by the civil engineer, and that no further enquiry needed to be made by the Architect as to the demarcation. The Tribunal's attention was directed to the notation appearing on page 591 of the Tribunal Book reading, "Refer civil engineering drawings for layouts and grades." The Tribunal also noted that in the Specification at page 407 of the Tribunal Book, under "Stormwater Drains", the notation, "Refer to Civil Design prepared by [name of engineers]." Further, it is noted at paragraph 13 of the Statement of Agreed Facts that the Architect specified that drainage at the Project was to be designed by the civil engineer. Taking all of the foregoing into account, the Tribunal was not satisfied that the Architect failed in his professional duties in respect to the issue of the drainage to the car park level.
17. The second issue dealt with within allegations 4-6 related to the design of the stairs using timber and fibre cement soffits. It was Mr Henning's evidence that the partial exposure to the elements meant that windswept rain would reach the stairs causing deterioration, slipperiness etc. It was his view that the stairs ought to have been constructed from steel or concrete, although he conceded that there was nothing in the BCA to direct this. He further conceded that the specification of 42mm thick hardwood may be acceptable, although the specification ought to have been more precise. Mr Henning said that he saw no evidence of splitting or deterioration in the stairs. Finally he indicated that in forming his views he had

not taken aesthetics into consideration. The Architect's evidence was to the effect that concrete construction was out of the question in view of the requirement for a light weight construction, and steel would have created noise problems. Further the stairs were substantially protected from the weather having only a partial northern exposure. It was noted that as much of the weather comes from a southerly direction, the northerly exposure was a relevant issue, given also that such exposure would maximise sunlight. The drawings show the staircase to the penthouse constructed with the soffit, (see page 601 of the Tribunal Book). Although the Architect was clearly in favour of the soffit to the stairs between the first and second floor levels, those the subject of these allegations, for aesthetic reasons, it appears that such soffit was not actually specified or shown on the drawings for the stair between the first and second floors. Mr Miller was strongly of the view that timber construction was entirely appropriate, and that, with the soffit, if properly constructed would form a sealed "box." It was his view that, if properly constructed, such stairs would last 100 years. Upon inspection he had formed the view that the stairs were poorly constructed and that any problems encountered were not the result of a failure by the Architect. Taking all of these matters into consideration the Tribunal does not find allegations 4-6 proven.

18. The group of allegations contained in allegations 7, 8 and 9 of the Amended Notice of Inquiry relate to the balconies and terraces on level 2. The particulars to the allegations outline three areas of concern.
19. The first area of concern is that the specifications do not detail the finishes required for the balconies and walkways on level 2 but refer the builder to the tiling requirements of the bathrooms and toilets. This is referred to further in paragraph 21 below.
20. The second area of concern is that the drawings required that the balconies and terraces on levels 2 and 3 were to be constructed of particle board flooring, and that, as such, would not comply with AS 1860-1998 Australian Standard for Installation of Particleboard Flooring in Domestic Situations. The Tribunal notes, in respect to this allegation, that the drawings and specifications do not require that the balconies and terraces were to be constructed *of* particle board, but rather *with* particle board as a component. The Tribunal is of the view that the use of particle board for exterior use was not, at the relevant time, in breach of the BCA, provided that it was adequately protected, and, although such use of particle board is no longer considered good practice, its use in external applications remains possible within the BCA, provided it is adequately protected. The external use is not directly stated but reasonably inferred. In this regard the Tribunal had reference to paragraph 105 of the statement of evidence of Mr Miller to the effect that it is noted in the relevant Australian Standard that when particle board is used as a decking substrate it must be protected from and not exposed to the elements.
21. The third area of concern is that the Architect did make allowance for waterproof membrane under the tiling in external areas. Drawings 8, 9 and 10 at pages 593, 594 and 595 of the Tribunal Book include the following notation, "Waterproofing/ finishing of balcony: (Typical throughout). Select tiled finish, set at 50mm nominal fall to exterior; set over cement rich

mortar grout; set over 3 coats of fibre glass based waterproofing compound; set over reinforced concrete slab; provide acrylic coving to all wall / slab corners; provide tiled skirtings over as well." It is the Architect's contention that the use of the words, "Typical throughout" would constitute an adequate direction to the builder that such waterproofing should apply to the balconies and walkways on level 2, constructed with particle board as well as those elsewhere constructed of reinforced concrete. The Tribunal is unable to agree with this. In the view of the Tribunal the directions for waterproofing of the balconies to level 2 were inadequate and the directions for the waterproofing of the walkways were non-existent. The Specification at page 664 of the Tribunal Book under the heading, "Other" includes a reference to balconies, describing the finish and sub-strata as being "as per bathrooms and kitchen." The Tribunal finds this conflicting and misleading. The Architect drew the Tribunal's attention to page 650 of the Tribunal Book, paragraph 4.6 of the Specification where, under the heading, "External flooring or decking" there is reference to "external flooring or decking shall be of a durable or suitable protected timber." Given the specification of particle board, the only word which may be of assistance here is "protected." The Tribunal finds this insufficient and unsatisfactory.

22. It is the Tribunal's view that the deficiencies identified in allegation 7 are the result of carelessness by the Architect in preparation of the drawings and specifications. The Tribunal was not of the view that the Architect was incompetent in the sense defined by the Macquarie dictionary, i.e. that he lacked qualification or ability. The Tribunal was not of the view that the level of carelessness involved was of such a degree or so serious as to warrant an adverse finding in respect to allegations 8 or 9.
23. Accordingly, taking into account all of the above matters the Tribunal finds allegation 7 proven, in that the Architect was careless when he provided designs and specifications for the balconies and walkways in respect of the warehouse conversion at 101-111 Rose Street Fitzroy. The Tribunal does not find the allegations contained in allegations 8 and 9 proven.

Michael A. Ryan
Chairperson.

Dated the 11th day of December 2013.

Architects Act 1991

Section 32

**DETERMINATION AS TO PENALTY AND
COSTS**

This is the Determination, as to penalty and costs, of the Tribunal, constituted by the Architects Registration Board of Victoria, to hold an inquiry into the fitness of George Petridis, Registered Architect Number 13719, (the Architect), to practice as an Architect and into his professional conduct. The Tribunal comprised Mr Michael Ryan (chairperson), Ms Heather Howes and Mr John Permewan.

The Tribunal inquiry was conducted on the 19th November 2013. The Tribunal reserved its decision.

Notice of Findings was published on the 11th December 2013.

The Tribunal found that allegations 1 – 6, 8 and 9 were not proved. The Tribunal further found that allegation 7- that in or around 2003 the Architect was careless or incompetent when he provided designs and specifications for balconies and external walkways in respect to the warehouse conversion at [address] - to be proved.

The Tribunal further afforded the Board and the Architect an opportunity to make written submissions as to penalty and costs.

The parties have made a joint submission as to penalty dated the 3rd February 2014. A submission as to costs was made on behalf of the Board dated the 3rd February 2014. A submission as to costs was also made on behalf of the Architect dated the 3rd February 2014.

The Tribunal having considered the evidence presented at the hearing together with the matters raised in the submissions as to penalty and costs made by the parties, makes the following Determination as to penalty and costs.

DETERMINATION

Pursuant to the provisions of section 32 of the *Architects Act 1991*, (the Act), the Tribunal makes the following Determination and order as to penalty and costs which come into effect on the date of the Determination.

- 1.1 Pursuant to section 32(g) of the Act the Architect is reprimanded;
 - 1.2 pursuant to section 32(h) of the Act, the Architect is cautioned;
 - 1.3 pursuant to section 32 (i) of the Act, the Architect is required to undertake further education of the following kind, such education to be completed within a period of six months:
 - a) education in the area of waterproofing of at least 15 hours duration, and,
 - b) education in the area of documentation of at least 1.5 hours duration;such education to be undertaken at the Architect's expense and may be completed via face-to-face seminars or online modules, and,
such education is to be undertaken with the Australian Institute of Architects or a similar body entitled to deliver continuing professional development to registered architects.
2. There is no determination as to costs.



Michael A. Ryan

Chairperson

Dated this 24th day of March 2014.

REASONS FOR DETERMINATION.

1. The Tribunal was mindful of the fact that the allegation which was found to be proved was one of nine allegations made. These were grouped into a series of three alternative allegations relating to the external wall system, three in respect to the design of the external stairs and three in relation to the balconies and external walkways. Each of the alternative allegations respectively alleged firstly carelessness, secondly demonstrably low

professional standards and thirdly unprofessional conduct. The Tribunal took the view that the first, the allegation of carelessness, was at the lower end of culpability when compared with the second and third levels of culpability alleged.

2. The Tribunal was further of the view that the allegation proven in respect to the balconies and external walkways was at a lower level of culpability than would have been the case had the allegations made against the Architect in respect to the external wall system or the design of the external stairs been found to be proven. This comment however does not diminish the serious nature of the allegation proved. The Tribunal was also mindful of the evidence, accepted by the Tribunal, that the condition of the balconies and external walkways involved inadequate performance by the building contractor. Taking these factors into account the Tribunal formed the view that the appropriate penalty was to be found within the provisions of section 32 (g)-(i) of the Act.
3. The parties by their legal representatives have provided to the Tribunal a joint submission as to penalty which outlines the penalty hereby imposed. The Tribunal accepts the joint submission.
4. The parties by their legal representatives have also provided separate submissions on the question of costs. The Tribunal accepts that the limited discretion of the Tribunal on the issue of costs is to be found in section 32 of the Act. Clearly the language of section 32 is to be interpreted to mean that if a finding adverse to the architect is made, in terms of sub-sections (a) to (f), then a determination may be made in accordance with sub-sections (g) to
5. (m) *and* (emphasis added), the Tribunal may make any determination as to costs it thinks fit. The Tribunal accepts that it does not have the power to make a determination for payment of costs in favour of the Architect in respect to allegations which were not proved. The Tribunal notes the argument put forward on behalf of the Architect to the effect that upon an adverse determination having been made, the discretion is enlivened to award costs in respect to allegations which have not been proved. In the Tribunal's view this interpretation is not open.
6. In determining the question of costs however the Tribunal is of the view that it is open to the Tribunal to take into account and consider the whole of the evidence – not merely the evidence pertaining to the allegation proved. Considerable time, cost and legal effort were devoted to the prosecution and defence of allegations 1-6, 8 and 9. The Tribunal is of the view that whilst the wording of the Act prevents a determination as to costs in favour of the Architect, it does not inhibit it from a discretion to take into account the fact that 8 of the 9 allegations brought were not proved, in determining what, if any, determination as to costs ought be made in favour of the Board.
7. Taking the foregoing factors into account the Tribunal is of the view that it is fit and proper to make no determination as to costs.



Michael A. Ryan

Chairperson

Dated this 24th day of March 2014.