



NEW

CPD Webinar series

ā rbv

Architects
Registration Board
of Victoria

CLIENT ARCHITECT AGREEMENTS & PARTIAL SERVICES

Speaker | **Emma Templeton**
Templeton

Speaker | **Rebecca Naughtin**
Rebecca Naughtin Architect

Acknowledgement of Country

We respectfully acknowledge the Traditional Owners of the lands wherever attendees are situated, in particular the Wurundjeri People & the Bunurong / Boonwurrung people of the Kulin Nation, and paying respects to their Elders past, present and emerging.



ā rbv

Architects Registration Board of Victoria

**The Architects Registration Board of Victoria
regulates the architectural profession in
Victoria.**

[Log in to the ARBV Portal](#)

[Apply for registration](#)

[Make a complaint about an](#)

Learning objectives

This module will cover information relating to :

- PRACTICE MANAGEMENT AND PROFESSIONAL CONDUCT
- PROJECT INITIATION AND CONCEPTUAL DESIGN
- DESIGN DELIVERY AND CONSTRUCTION PHASE SERVICES

By the end of this one-hour module, participants will:

- Understand the importance of Client Architect Agreements
- Understand how and when to vary a Client Architect Agreement
- Risks and better practice when the Architect is engaged for Partial Services

Partaking in our interactive assessment will allow participants to **claim 1 formal CPD point**. A statement of completion will be emailed to participants at the completion of this module.



Client- Architect Agreements

Presented by:
Emma Templeton
Convenor
Architects Registration Board of Victoria

 **a rbv**


Architects
Registration Board
of Victoria

Why Client-
Architect
Agreements are
important

Architects
Responsibility

Communication
& Recourse

Scenarios

What is a Client Architect Agreement

Why is it important

The success of a construction project is likely to depend heavily on the client architect relationship.

A positive client architect relationship typically ensures that the client's core concerns are addressed and communicated clearly throughout the process.

These concerns are likely to included;

Core Concerns

- Time
- Budget (Project Cost)
- Accordance with the specifications

In the experience of the Architects Registration Board of Victoria (ARBV), the modest number of complaints regarding an architects service (mainly concerning residential projects), could have been avoided through better communication and if the client had a more detailed understanding of what to expect from an architect providing services. (ACUMEN)

The Client Architect Agreement is one of the first steps creating a positive and clear communication with the client, resulting in a better client architect relationship.

The importance of this is reflected in regulatory requirements in Victoria.



Code of Professional Conduct

In Victoria Architects are regulated under the Code of Professional Conduct

The requirement of the Code of Professional Conduct include;

- A written client-architect agreement
- Architects must discharge their obligations diligently and promptly.
- Architects must keep clients informed and respond with reasonable promptness to clients requests for information.

These regulatory requirements are designed to ensure that the client –architect relationship is managed well.



What is an architect's duty under the Act?

Clause 4 of the Victorian Architects Code of Conduct

Division 2—Client relations

4 Client agreements

- (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;

Architects Regulations 2015
S.R. No. 28/2015
Schedule 1—Victorian Architects Code of Professional Conduct

- (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.



Clause 4 - The Architects Act 1991

Summary of inclusions

A written Client Architect Agreement is a requirement of the Act and must include:

- The scope, nature and specific requirements of the architectural services
- The timeframes for providing the services
- The manner in which professional fees and the costs of services will be calculated
- The way the architect will inform the client of progress regarding the provision of services
- The requirement that the architect must inform the client how change or amendment to the services will affect professional fees and the costs for the services
- How the agreement may be terminated and for what reason
- Provide the correct Architects information include their registration number
- Signed by both parties.

A failure to comply with Clause 4 of the Architects Act is an automatic breach of the Act.



Fee Structure, Time Frames & Approval Process

How professional fees and costs are to be charge, how long will it take and how to vary an agreement,

- Establish how professional fees are to be charged, including disbursements.
- How the architect may inform the client of progress in the provision of the services.
- Establish how the client may authorise the architect to proceed with the services, or any part of the services.
- Inform the client how a change or amendment to the services will affect the professional fees and costs for the service.
- Establish if any of the services are to be charged at an hourly rate and how this would be communicated with the client.
- How will 'Scope Creep' be communicated and charged?



Additional Services

- Handling additional services and associated fees
- Report & Consent for Dispensations to Building Regulations
- Amendment to Building Permit
- Town Planning Services, including Application and Negotiation
- Contractor Selection, Construction and Post Occupancy Consultation
- Neighbour negotiation, including Protection Works Notices
- Performance Based Design Solutions
- Value Management
- Interior decorating advice for soft furnishings such as blinds, furniture, artwork



Variations to Architectural Services

AIA Acumen 'Scope of Service Variation'

- Identify the variation
- Summarise the reasons for it
- Provide a fee costing or basis for future fee costing
- Advise of any programming implications
- Advise on potential budget implications
- Record the client's approval.

Sample

Company Name

Scope of Services Variation

Company logo

SD DD WD

Company address

T Telephone

F Facsimile

E Email address

I Web address

SSV number:

Project:

Project number:

Date:

Attention:

Reference

In accordance with the Consultancy Agreement for the above project, we are pleased to note your instructions as follows:

1.0 Variation description and major issues to be resolved:

2.0 Authorised approval to:

Proceed with the works unless otherwise advised within 3 working days from the above date.

Await further confirmation and/or clarification as required.

3.0 Program implications:

This instruction will impact on the completion of our services as follows:

4.0 Cost implications:

This instruction will involve a claim for additional fees as follows:

Yours sincerely

Company name
ABN/ACN

Director

Issued To: Original: Client Copies: Project Manager Project File Fee File

Office Use:

Scope Proforma.doc

CLIENT ARCHITECTS
AGREEMENTS



Importance of Communication

Architects Capacity to meet client expectations

The capacity of architects to meet client expectations depends upon various factors which are not always easily controlled by the architect.

These items include

- type of client,
- type of project,
- the contract for which architectural services are sought.

Architects may be engaged by owners and end-users for small-scale residential projects, or by developers and builder contractors for large-scale, multi-storey residential and non-residential projects.

The degree of knowledge and sophistication, motivations, perspectives and interests of clients are likely to differ in each of these contexts.

Managing these differences and expectations is one of the challenges of the profession, however, communication is often the key to establishing and maintaining a good client architect relationship and avoiding conflict.

A survey undertaken by the AIA in 2021, clients rated effective communication as the most important factor for their relationship with their architect.



Client's Access to Recourse

The ARBV is able to receive and consider complaints made by aggrieved clients about architects.

If referred to the Tribunal may, as a result of the inquiry and pursuant to section 32 of the Act make one or more of the following determinations

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



Templates Available

Many architects prefer to create their own Client-Architect Agreements. We will not have time today or expertise to cover this in detail today, other than to encourage you to seek legal advice when creating a bespoke agreement.

Alternatively, there are a number of Client Architect Agreements templates available to you for use including;

- AIA - Client Architects Agreement 2019 (CAA2019)
- Architeam - Client Architects Agreement (Ver 4)
- ACA Short Form Architect Client Agreement - Ed. 4 updated March 2021



Oral Agreements

In the given scenarios, there are various instances where the responsibilities and expectations between the client and architect are unclear, leading to confusion and potential problems. Let's break down each scenario and discuss the possible issues:

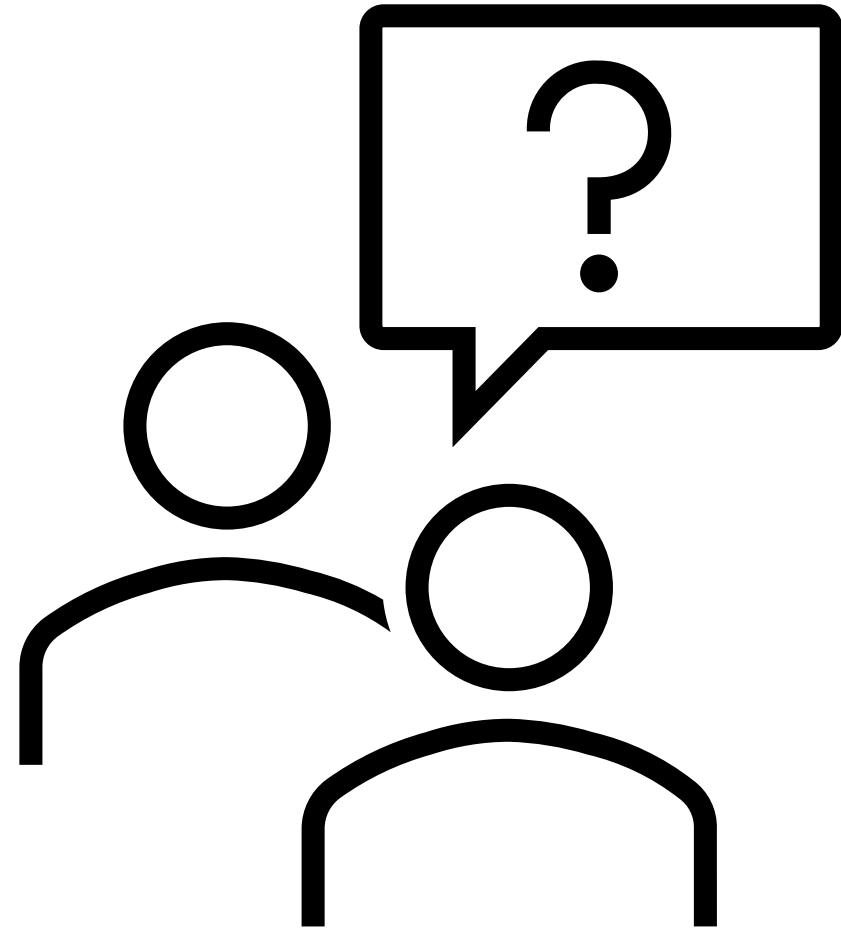
Scenario 1: Oral agreement without written terms of engagement:

Issue: Lack of clarity regarding the roles and responsibilities of the client and architect.

Impact: The project came to a halt due to expired permits, and both parties blame each other for the responsibility to seek an extension.

Lesson: It is important to have written terms of engagement that clearly define the scope of work, responsibilities, and project management aspects. The architect should be mindful that the client may be inexperienced and provide guidance accordingly.

1. True or false: The architect must inform the client on how a change or amendment to the services will affect professional fees



No Formal Agreement

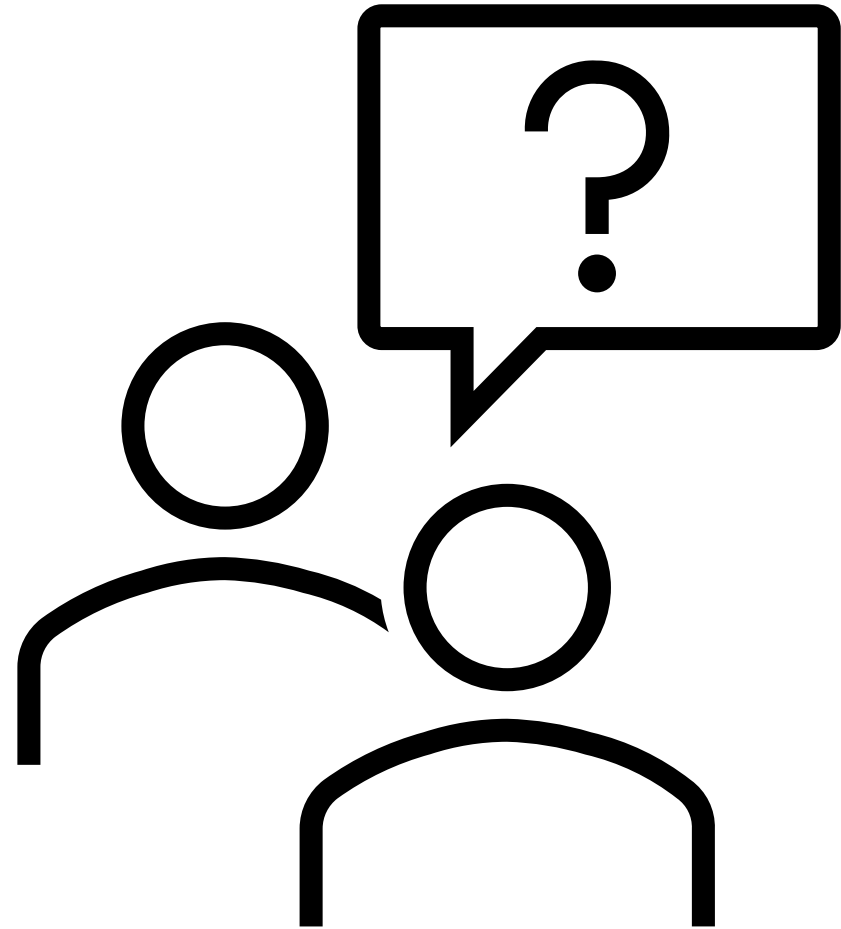
Scenario 2: Inappropriate client-architect relationship and lack of formal agreement:

Issue: The architect is engaged by family friends without an adequate client-architect agreement, roles, and responsibilities.

Impact: The client is not aware of the responsibilities usually carried out by the architect, leading to delays and issues with relevant applications.

Lesson: Even when assisting friends or family, it is essential to have a formal agreement and clearly define the scope of work and responsibilities. Architects should consider using a Client-Architect Agreement (CAA) for their own protection and to ensure clarity in the working relationship.

2. True or false: An Architect, pursuant to Clause 4 of the Victorian Architects Code of Conduct, must clearly identify how an agreement may be terminated



Partial or Limited Services

Presented by:
Rebecca Naughtin
Convenor
Architects Registration Board of Victoria

 **a** rbv


Architects
Registration Board
of Victoria

Understanding
Partial Services

Key
Considerations

Risks and
Mitigation

Scenarios

Understanding Partial Services Agreements

There is an increasing prevalence of partial services engagements in architecture.

Clients may seek to engage an architect to provide partial services only for a variety of reasons, including:

- as part of a feasibility study to assess the viability of a project;
- for Design only
- for Documentation only
- for Design and Documentation only
- for partial contract administration (D&C, Novation)
- the architect engaged as secondary or subconsultant to a Primary Consultant
- full stages with reduced services to avoid the fees for a full service as part of a selection process



Partial Services Agreements

CAA FOR LIMITED SERVICES 2019



AGREEMENT MADE ON ____/____/____ BETWEEN:
(insert date when the last person signs)

THE CLIENT	THE ARCHITECT
Name	Name
Client's representative	ABN Registration No.
ABN	Architect's representative
Email	Email
By signing, you agree to be bound by the terms and conditions of this Agreement:	
<small>If the Client is an individual, individual trustee, or partnership:</small>	<small>If the Architect is an individual, individual trustee, or partnership:</small>
Signed	Signed
<small>If the Client is a corporation, executed in accordance with section 127 of the Corporations Act 2001:</small>	<small>If the Architect is a corporation, executed in accordance with section 127 of the Corporations Act 2001:</small>
Signed director/sole director	Signed director/sole director
Signed director/secretary	Signed director/secretary
Date	Date

Most Institute standard-form contracts are unsuitable unless administered by an architect.

There is a **perception** that a prospective client will be more receptive of a shorter form however the longer form provides a better platform for customization and protection.

*NB. The CAALS2019 is not a substitute or direct alternative to the CAA2019. The CAALS2019 should only be used for **limited engagements with a low value and low complexity**. For all other engagements, or if in doubt which of the two agreement forms to use, we strongly recommend you use the more comprehensive CAA.*

Acumen "Client Architect Agreement for Limited Services" 27/6/23.



Key Considerations in Partial Services Engagements

Fee negotiation and structuring for partial services

- A partial services agreement may include all stages of a traditional agreement, with reduced deliverables

Importance of clear agreements and scope definition

- Consider using a full Client Architect Agreement and striking through the deliverables that you are not offering to better communicate your services

Limitation of liability and insurance considerations

- Discuss limiting your liability from the outset – see wording later in the presentation

Client Architect Agreement

- Always refer to your Agreement to ensure you are not in breach of your obligations



Key Considerations in Partial Services Engagements

Withdrawal of license clause in case of breach

- What constitutes a breach & the commercial value of a license
 - non-payment
 - unauthorized design changes
 - alternative site usage

Addressing copyright and moral rights concerns

- Potential a design that is not executed as the design intended

No involvement in construction

- The contract may be administered in the construction stage by a Primary Consultant who is not professionally qualified to do so or who does not understand the design intent

Partial Services in the Construction Stage & Certification

- Limiting liability in certification



Feasibility &/or Design &/or Documentation

Issues with limited services

- The terms of agreement in relation to the licence granted to the client are unclear; breach
- Limitation of liability regarding compliance with planning or building codes, and being clear on the purpose of the documents the architect has provided
- Amendments to the design without the architect's consent
- No opportunity to correct any errors or omissions during construction
- No recourse on substitutions
- Request to inspect during construction however, if accepted without limitations, you could expose yourself to full liability just as if you had been engaged for full contract administration
- The contract administrator is not experienced or qualified
- ALWAYS seek advice from your professional indemnity insurer



Feasibility &/or Design &/or Documentation only

An architect's documentation of a building normally describes the end result, not the means of achieving that result. The responsibility for construction methods rests with the contractor.



Feasibility &/or Design &/or Documentation only

If the services exclude contract administration completely, you should write to the client and recommend that inspection during the construction stage is carried out by a **competent, experienced and independent inspector**.

Advise the client that issues will need to be addressed during construction to assist the contractor in completing the works.

If the services are for Design only, a Fee Proposal and Agreement should provide a clear statement:

"the architectural services are for design only (preliminary, schematic, indicative)"

"the design drawings are not suitable for building approval or for construction purposes"

Acumen "Client Architect Agreement for Limited Services" 27/6/23.



Feasibility &/or Design &/or Documentation only

If the architect is engaged for partial construction stage services:

"During monthly site attendances, the architect's duty will be to confer with the builder and the client, to answer specific questions concerning design problems or concerning the documents put to them by the builder, and the architect will inspect such items of work specifically referred to them by the builder and the client only.

Because the builder is responsible for the superintendence of the work, the architect has no obligation or duty to ensure that the construction work is in accordance with the contract documents and there is no general duty cast on the architect to supervise, to inspect, or generally to observe the progress of the works."

Acumen "Client Architect Agreement for Limited Services" 27/6/23.



Construction Stage Services Only

- Adequate time should be given to inspect the documents prior to calling tenders or contract negotiation. The documents and examine the product to confirm that it meets the intended purpose
- Coordination, ensure each party knows who is doing what
- Consultation between primary and secondary consult, make this clear. E.g. who is coordinating knowledge from authorities, how information shared
- How will the architect be acknowledged, signage? Architects should not give away their intellectual property without appropriate consideration
- Where a package is prepared by the architect and the primary consultant, in most cases both will own the copyright jointly



Certification & Subcontractor/Secondary Consultant engagement

Architects may be asked to state that the project is constructed in accordance with the contract documents – even though the architect has not undertaken the contract administration and may visit the site infrequently.

- Architects may be asked to confirm that the building work complies with all codes and standards and contains no defects
- It is strongly recommended that architects avoid any situation where they could be asked to supply such a certificate where the architect has not been involved in full services
- When providing a certificate – in essence a guarantee – it can expose the architect to litigation



Certification & Subcontractor/Secondary Consultant engagement

- Only provide a certificate if you have a contractual obligation to do so
- Ask yourself – Can I honestly make the statement that I am being asked to make? Do I have all the information and all the expertise I need to have to make the statement? If the answer is ‘No’, then do not make the statement
- Only provide certificates addressed to and in favour of your client, and do not provide copies of certificates to third parties
- Include a disclaimer in your certificate stating that you accept no liability to any third party who may try to rely on the certificate. Get legal advice on appropriate wording
- Only allow senior staff to provide and sign-off on certificates
- Agree the wording of the certificates before you start work



Fee Calculation and Agreement Guidance

- control of, and attendance at, meetings
- procedure and responsibility for variations
- authority for giving instructions to the contractor
- arrangements for issuing certificates
- Fees, terms and methods of payment are clear
- travelling expenses and other reimbursements
- evidence of professional indemnity insurances held by all consultants – if in doubt about the adequacy of the insurance held by others, ask your broker for advice
- copyright ownership and how the moral rights of the authors of designs are to be managed
- If the primary consultant, as agent for the client, appoints the architect as a secondary consultant to the client, the primary consultant should be asked to obtain a letter from the client agreeing to the appointment and to the relevant conditions outlined above.



Lower Fees as part of Limited Services

Low fees will result in a lower level of service. Often, this results in a temptation to reduce time required to design and document a project, resulting in a higher chance of litigation.

To address the challenges of low fees in architectural services:

- Clearly define the scope of services in the Client Architect Agreement.
- Specify the time period for service provision and any additional fees for extended durations.
- Outline the engagement and payment terms for secondary consultants.
- State the number of design options to be prepared during the design stage.
- Set clear terms for the client-architect agreement and progress fee payments.
- Consider a lump sum fee in certain market conditions for both parties' benefit.



Using Appropriate Language

'in my professional opinion', or *'to the best of my knowledge, information and belief'*, at the commencement of your certificates

Preface an otherwise absolute statement by reference to limitations on your assessment, such as *'based on my periodic observations at the site'*; and *'in accordance with my last visit on site.'*

State at most that the building work is *'substantially'* or *'generally'* compliant with the design intent as there will always be construction details that are beyond your ability to observe

If you must certify that any work complies with a specific document, make sure it is a document that is known to you, such as your own contract documents, rather than a vague or unknown standard such as *'the client's requirements'* or *'the requirements of the Head Contract'*.



License Withdrawal in Breach Cases

- Examples of breach scenarios:
 - non-payment
 - unauthorized design changes
 - alternative site usage
- License Withdrawal in Breach Cases
- Including clauses for withdrawing client's license in case of breach
- Protecting rights to recover damages resulting from breaches



Partial Services – No Contract Administration Engagement

Scenario 3: Inadequate sharing of documentation and interpretation issues:

Issue: The architect is not provided with documentation between the client and the builder, leading to misinterpretation of the design.

Impact: Problems arise regarding the interpretation of the documentation and what was included in the design, causing disputes between the client and the architect.

Lesson: Effective communication and collaboration are crucial. The architect should emphasize the importance of sharing all relevant documentation to avoid misunderstandings and ensure that the hierarchy of documents is clearly explained to the client and builder.

Partial Services – Design and Contract Documentation Only

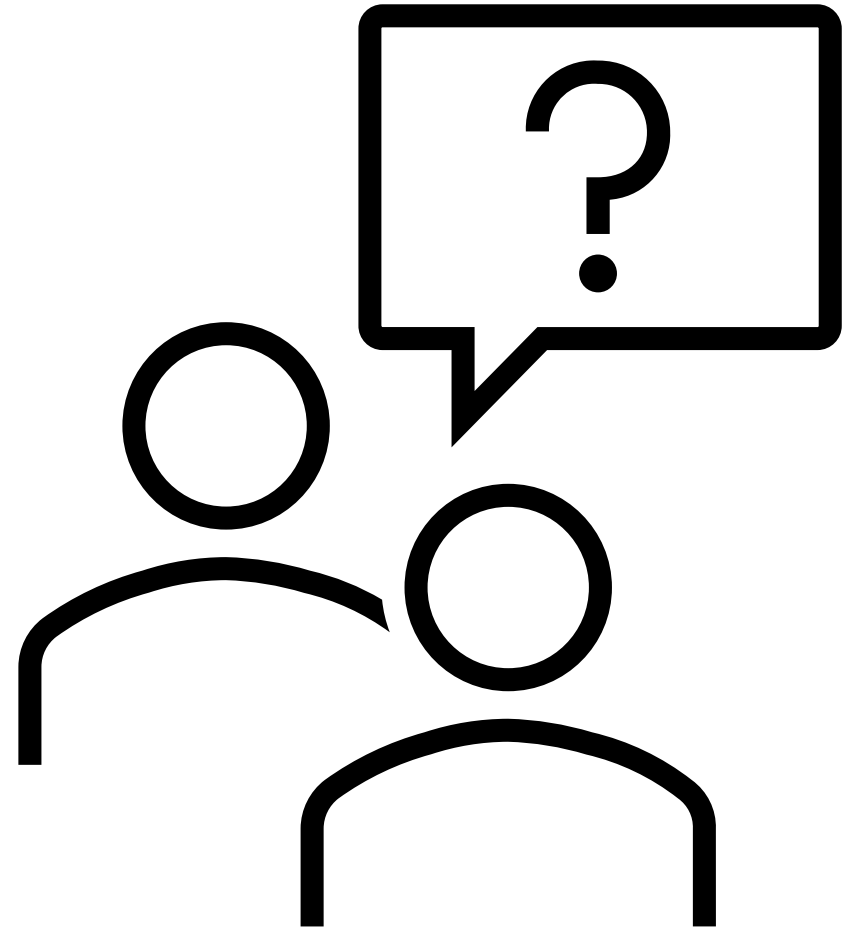
Scenario 4: Separate engagements for design and construction documentation:

Issue: The client expects the architect to undertake contract administration activities, even though it was not part of the architect's engagement.

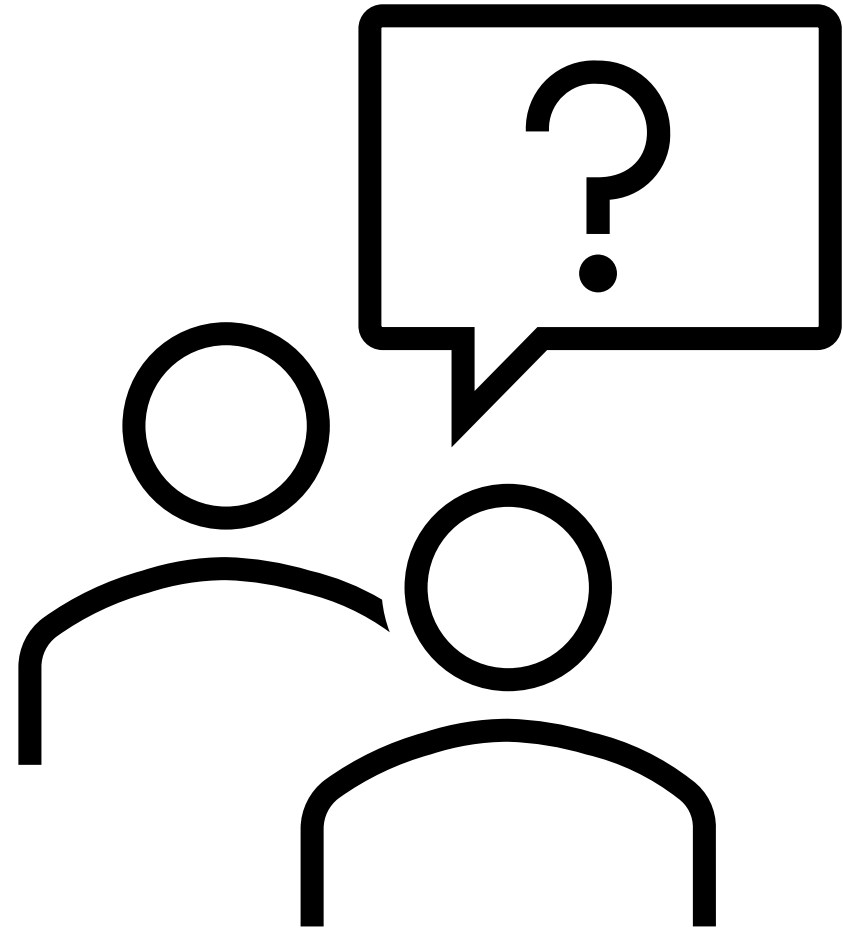
Impact: Confusion and potential conflicts arise as the client, who is not qualified or skilled in contract administration, expects the architect to perform those duties.

Lesson: Clear communication is essential to manage expectations. If the architect is not responsible for contract administration, it should be explicitly stated in the engagement agreement, and the client should be made aware of the limitations of the architect's role.

3. True or false: Design & Construct contracts limit the architect's liability as the architect is not responsible for certification



4. True or false: If the architect is only engaged for advice during the construction stage, they cannot report discrepancies in the quality of a build to the client



Summary

- Architects should be mindful of their responsibilities regarding their Agreement, provide guidance to inexperienced clients, and establish clear boundaries to avoid confusion and potential problems throughout the project
- Communicate clearly and don't avoid difficult discussions. Poor communication can compromise client-architect relationships
- Prior to architectural services commencing, adopt a comprehensive Client-Architect Agreement that contains the detailed scope of services, fees and how parties will manage variations
- Collaborate with professional indemnity insurers and legal experts
- Importance of preserving copyright and moral rights
- Vary the Client and Architect Agreement with appropriate information and at appropriate times
- Ensure you obtain the client's written approval of the drawings before proceeding to the next stage
- Provide clients with written correspondence that summarises all verbal conversations
- From a regulatory perspective, architects should also be cognisant of reducing the risk of being in breach of their professional conduct obligations



Thank you & Questions

 **a** rbv



Architects
Registration Board
of Victoria