

CPD Webinar series

DEEP DIVE INTO SYSTEMIC RISKS IN THE AUSTRALIAN ARCHITECTURE SECTOR

Client architect relationships &
agreements

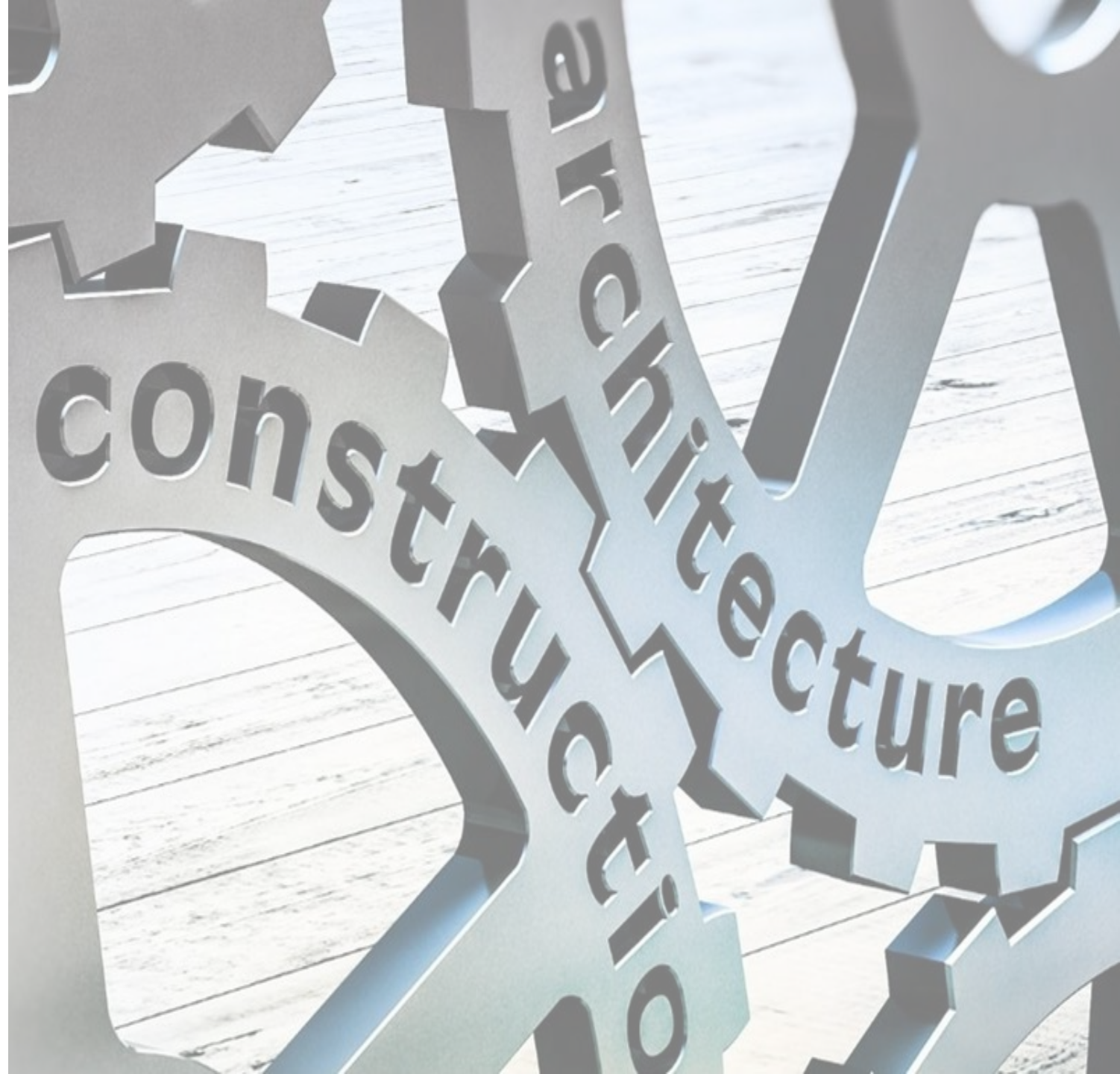
Isabel Legge | ARBV

Daniel De Sousa | Dart Legal & Consulting

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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 joining us today.



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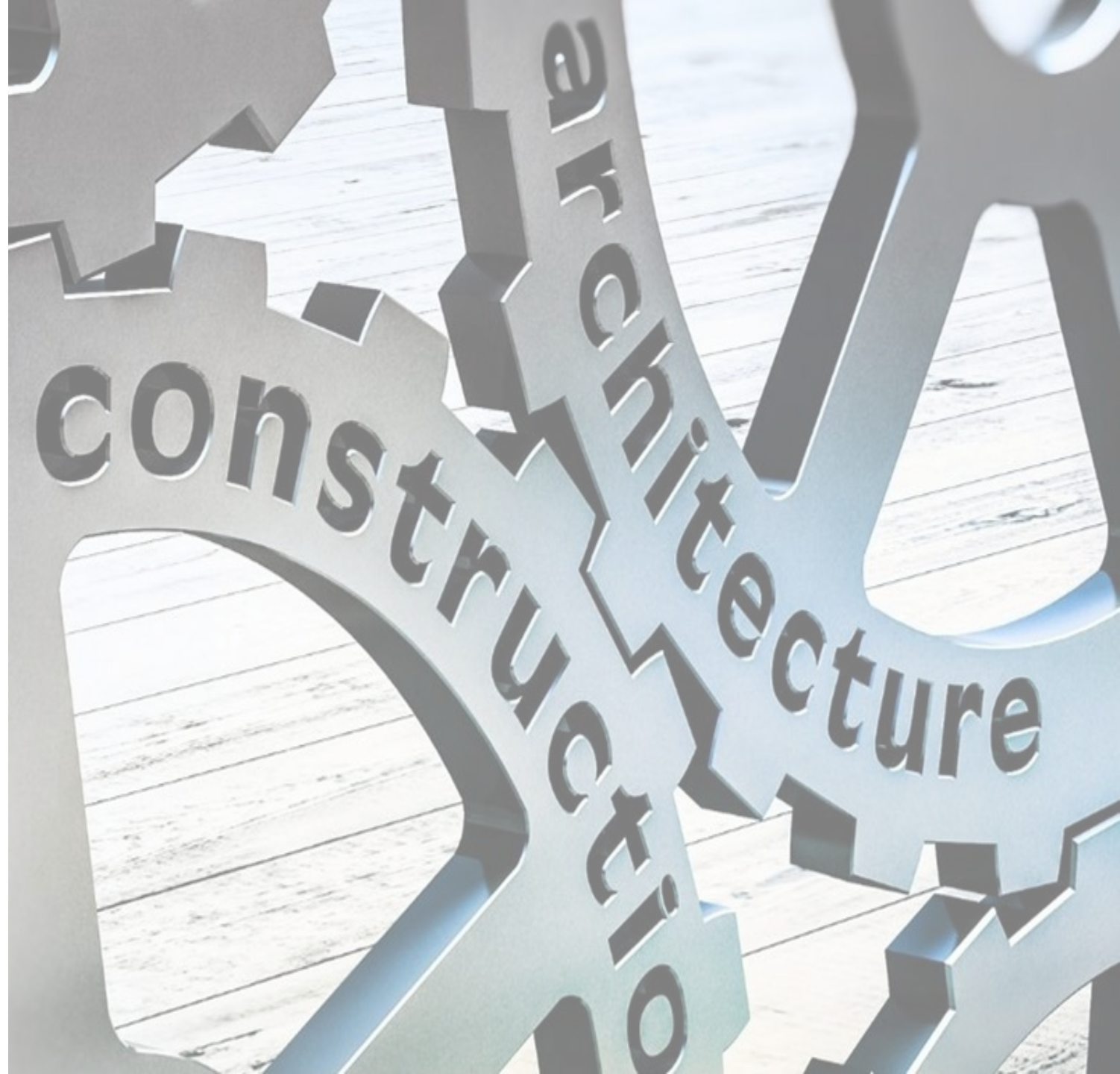
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ABOUT THE RESEARCH



What are systemic risks and why is the ARBV concerned about them?

- Systemic risks are risks that:
 - Extend across the sector
 - Can compromise architects' ability to comply with their professional standards' obligations
 - Can cause widespread harm to clients, users, the public and architects themselves
- Systemic risks may be difficult to address:
 - May be latent
 - Difficult to identify in advance
 - Too widespread for the regulator to tackle at once or without assistance from other bodies

What is the purpose of the research?

- Joint research project undertaken by the ARBV and the NSW ARB:
 - To identify key current, emerging and future systemic risks facing the architectural profession in Australia
 - To assist the ARBV and NSW ARB to better target proactive regulatory activity
 - To support architects to navigate systemic risks while discharging their regulatory obligations
- Work undertaken by the ARBs:
 - **Systemic Risks in the Australian Architecture Sector (2022)** – largely based on a desktop review
 - **Deep Dive Report into Systemic Risks in the Australian Architecture Sector (2024)** – insights gained from focus groups with broad range of sectoral participants from Vic and NSW

Focus groups

- Purpose:
 - Interrogate desktop review conducted in 2022
- Sectoral participants:
 - Architects/industry bodies
 - Clients/users of architectural services
 - Developers/builders
 - Building surveyors
 - Insurers/brokers
 - Academics
 - Government agencies and other regulatory bodies
- Themes:
 - Client-architect relationships and agreements
 - D&C procurement
 - NCC compliance
 - Disruptive change

Using a systemic lens



REGULATORY CONTEXT

The image features a close-up of several interlocking metal gears. The gears are arranged in a cluster, with some overlapping others. The background is a light-colored wooden surface with visible grain. The text 'Architecture' is embossed 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 overall composition suggests a complex, interconnected system or process.

Architecture
Construction
Software

ARBV's regulatory role

REGULATOR

- ARBV is regulator under the regulatory framework and is responsible for compliance and enforcement

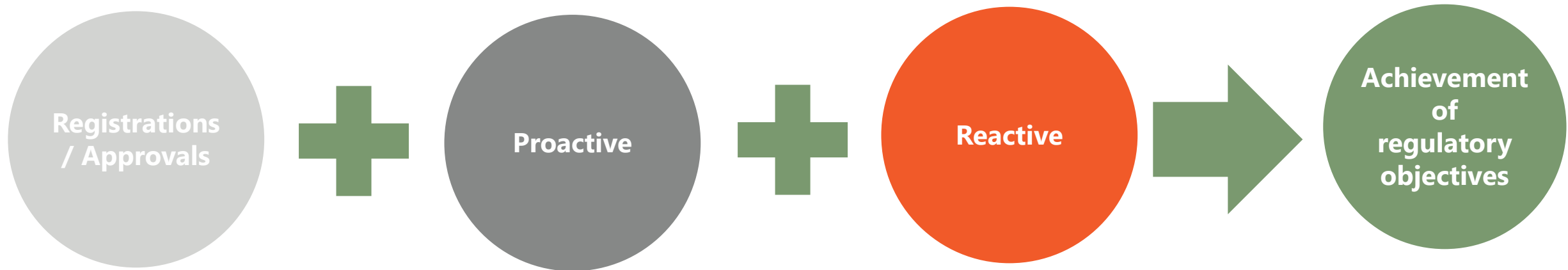
REGULATORY FRAMEWORK

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

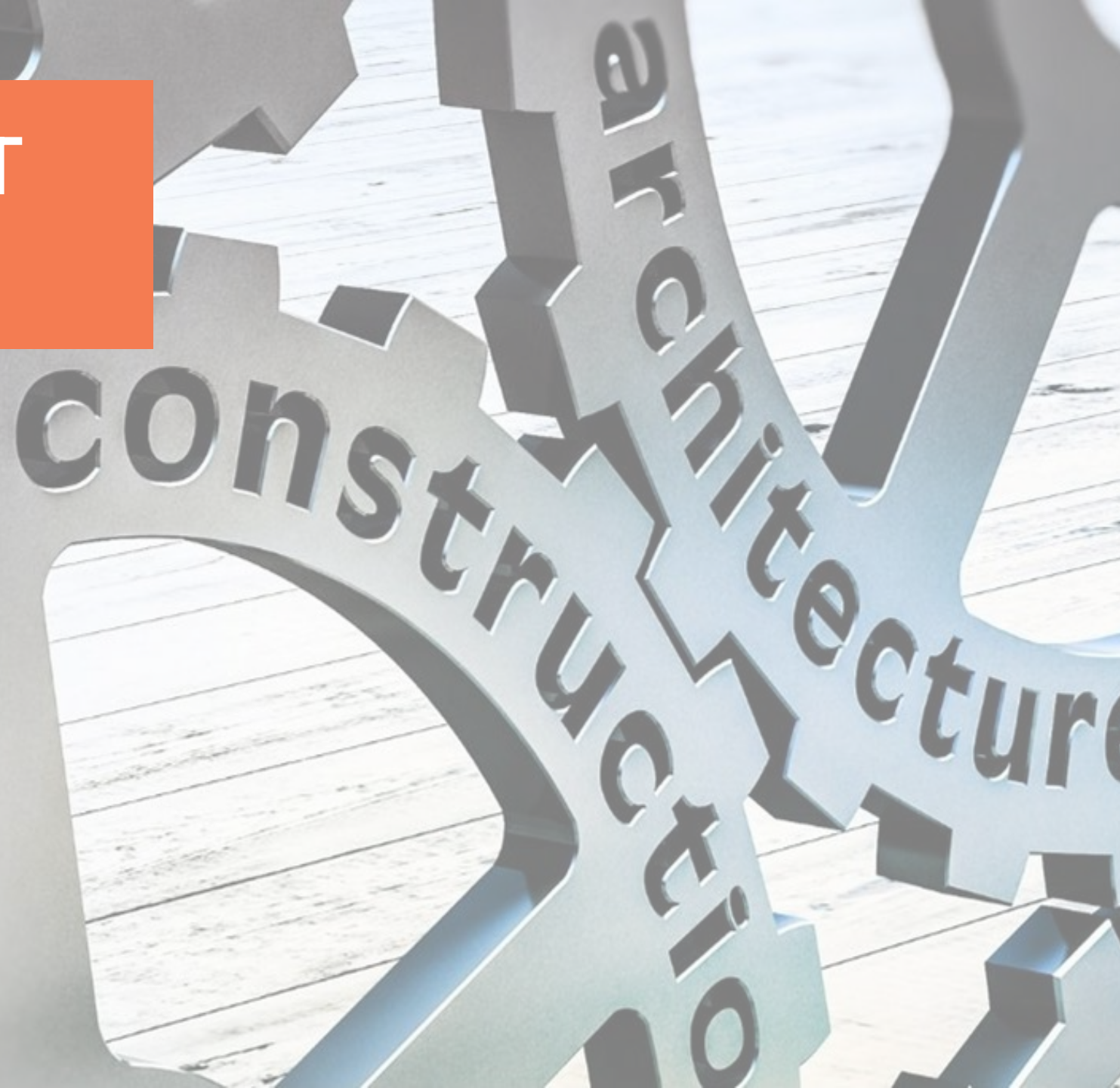
REGULATORY OUTCOMES

- The regulatory framework and ARBV's regulatory activities are designed to ensure the professional conduct of architects, which in turn protects clients, users and the public

The ARBV's regulatory role



CLIENT-ARCHITECT RELATIONSHIPS



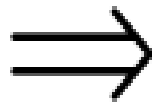
Factors that can have an adverse impact on client-architect relationships



Findings: A broad range of factors can have an adverse impact throughout the process of procuring and providing architectural services



Insights: Some factors may be linked to procurement processes and may be outside architects' control, but other factors will be within architects' control



Implications: Architects could benefit from more guidance about how to effectively address factors within their control and sectoral engagement is needed to address factors outside their control

Factors that can have an adverse impact on client-architect relationships

- Misalignment of design expectations
- Inadequate skills and expertise
- Ambiguity of roles and responsibilities
- Engagement for partial services
- Onerous and unfair contractual obligations
- Unclear fee arrangements and variations to fees
- Inefficient and ineffective communication
- Lack of detail in design documentation and regulatory non-compliance.

Question 1: Which factor(s) that could undermine the client-architect relationship are clearly outside an architect's control?

- a) Lack of adequate detail in design documentation***
- b) The client's brief***
- c) Architect's skills and expertise***
- d) None of the above***

COMMUNICATION



Factors that affect communication between architects and clients



Findings: Communication between clients and architects is multifaceted and bi-directional



Insights: Architects are likely to have strong skills in communicating about design, but may find communicating about other aspects (such as project delivery) more challenging



Implications: More education and training is needed about all aspects of communication, particularly in relation to project delivery in the context of different procurement processes

Factors that could compromise effective communication between architects and clients

- Unclear roles and responsibilities
- Inadequate client brief
- Unclear context and manner with which communication will be undertaken
- Unclear and/or vague communication.
- Irrelevant or unhelpful information.
- Unclear or inadequate timelines for delivery
- Inflexible or unresponsiveness to client views
- Failure to be up front and frank with clients.

Question 2: Which aspect(s) of communication between an architect and client is covered by the regulatory framework?

- a) Obligation to keep clients informed about project developments***
- b) Obligation to respond to clients' requests for information***
- c) Accuracy of information provided by architects to clients***
- d) All of the above***
- e) None of the above***

CLIENT-ARCHITECT AGREEMENTS



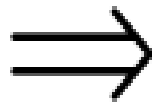
Use of a client-architect agreement to drive a positive client-architect relationship



Findings: There is evidence indicating that client-architect agreements are not being used effectively or constructively; bespoke contracts are common



Insights: There appears to be a lack of appreciation of the value of using a standardised client-architect agreement that is compliant with the regulatory framework



Implications: Architects need to adopt a proactive approach in all procurement processes to ensure that the client-architect agreement complies with the regulatory framework

How client-architect agreements are used in practice and what can go wrong

- Unclear roles and responsibilities
- Inadequate understanding of the terms and conditions in the client architect agreement
- Bespoke contracts that do not define all the requirements under the Architects Code of Professional Conduct
- Bespoke contracts that do not clearly define terms and conditions
- Bespoke contracts that are client centric and pose risks for architects.

Question 3: What are the main benefits of a standardised client-architect agreement for an architect from a compliance perspective?

- a) Architect doesn't need to engage a lawyer to draft or review the agreement***
- b) Architect doesn't need to read the agreement***
- c) The agreement contains the mandatory requirements required under the regulatory framework***
- d) All of the above***

FEE STRUCTURES



Impact of fee structures on client-architect relationships



Findings: In general, fixed fees are likely to be preferred by clients and percentage fees are likely to be favoured by architects



Insights: Fixed fees are onerous for architects because they require costing of a detailed specification of services and the uncertainty associated with percentage fees can destabilise client-architect relationships



Implications: Architects need to improve their capacity to demonstrate their value to clients through different fee structures

The impact of fee structures on client-architect relationships

- Clients unclear on the fee structure
 - Fixed fees
 - Percentage fees
 - Hourly rate fees
- Inadequate fee structure for the services being delivered
- Fees charged are inconsistent with the client architect agreement
- Unclear explanation of cost escalation and fee variations
- Inability to demonstrate value to the client through the fee structure.

Question 4: Which of the below is not a requirement of the Victorian Code of Professional Conduct in relation to client-architect agreements?

- a) How professional fees and costs, including disbursements, will be paid**
- b) Timing of payment of fees and costs**
- c) How professional fees and costs of the service will be calculated**
- d) All of the above**

EDUCATION AND TRAINING



Education and training to enhance client-architect relationships



Findings: Architects are looking for more guidance about what a good client-architect relationship looks like in practice



Insights: Architects could benefit from more education about how to use their regulatory obligations to forge positive client-architect relationships



Implications: Guidance and case studies for architects and clients to highlight factors that lead to positive client-architect relationships in different procurement contexts would be useful

How education and training could improve client-architect relationships

- Architects need to be better at:
 - advocating the value of engaging an architect
 - communicating what architects' roles are during various phases of the project
 - communicating the different roles within a practice. Principals versus architects
 - communicating the complexity within a project and the various roles an architect may play
 - understanding the minimum design documentation standards.

www.vba.vic.gov.au/surveyors/building-documentation-audit-program/design-documentation-practice-guide-for-class-2-residential-buildings



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