



Architects Bill.

ARCHITECTS BILL

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Second Reading

The Hon. JOHN DELLA BOSCA (Special Minister of State, Minister for Commerce, Minister for Industrial Relations, Assistant Treasurer, and Minister for the Central Coast) [8.56 p.m.]: I move:

That this bill be now read a second time.

As the second reading speech has been delivered in the other place, I seek leave to incorporate my speech in *Hansard*.

Leave granted.

Honourable members would be well aware of the Carr Government's record of both maintaining and enhancing consumer protection, and introducing policies to improve the standard of the built environment for all members of the community. As a major part of the Government's initiatives in both these areas, the Government has undertaken extensive review of legislation regulating the architectural profession. The Government sought to undertake reforms in 1998, but decided to hold them in abeyance pending the results of the work of the Productivity Commission, which undertook a review of legislation regulating the architectural profession. The review was handed down in late 2000.

Following the review State and Territory governments agreed to compile a joint response to the report. Under the leadership of New South Wales the joint response provided a framework that was adopted by State and Territory governments. It was also endorsed by the Australian Procurement and Construction Ministerial Council. I am introducing a bill to implement this nationally agreed framework into New South Wales. The bill will achieve greater consumer protection, more effective professional discipline and enable a renamed Architects Registration Board to take a more active role in promoting community discussion on the role of architects in the community. In addition, the new board will have a broader membership than the current board to reflect its redefined role under the legislation.

There has been extensive consultation with the profession over the past 18 months. Organisations consulted include the Royal Australian Institute of Architects, the Association of Consulting Architects of Australia, the Architects Accreditation Council of Australia and the current Board of Architects. There have also been representations from consumers of architectural services regarding deficiencies in the complaint process available under the current Act for unprofessional conduct by architects. The resulting proposals for reform are so extensive that the bill I am introducing repeals the Architects Act 1921 and starts afresh. Enhanced consumer protection is a major plank of the reform, with the legislation guarding the interests of consumers and supported by a board that draws its membership from a wider range of backgrounds and architecture alone.

Community members will predominate on the board and include persons with demonstrated public interest in architecture, representing consumers, local government, and legal and allied professions. Architect members will include two architects elected by all New South Wales registered architects, the past President of the Royal Australian Institute of Architects New South Wales Chapter, the New South Wales Government Architect, and an academic drawn from one of the schools of architecture in New South Wales. The Government wants the new board to be concerned with consumer issues, and broader public and industry interests in architecture, while at the same time ensuring a strong professional presence is maintained and professional architectural knowledge is applied to the board's activities.

The bill also creates a code of professional conduct for all registered architects and provides for the creation of a model client-architect agreement for use in home design. These will go through the normal process for the making of subordinate legislation, the code itself being in the form of a regulation. The code will define the conduct required of architects; breaches will provide grounds for discipline. The client-architect agreement, when made, as advised by the board will balance the rights and responsibilities of the parties in a fair and equitable manner, and mandate a dispute resolution process. This process must be exhausted prior to more formal proceedings being commenced by either party. Such formal proceedings will also occur in the first

instance in the Consumer Trader and Tenancy Tribunal.

The Government intends to take steps to co-ordinate these processes with amendments to home building legislation when they are finalised. Through this new legislation consumers will be provided with the strongest protection of any jurisdiction of which I am aware. It will also protect the interests of competent professional architects and the profession as a whole by creating a robust regime of disincentives to poor conduct, which will enhance public confidence in the profession. The major effect of the current legislation is to protect the use of the title "architect". This will continue in the legislation, but with some changes. Protection will be restricted to the use of the title in connection with building and construction, overcoming the awkwardness of the current Act in dealing with terms such as systems architect and software architect in use in the information technology industry.

Although only registered architects will be able to use the title "architect" and offer services provided by an architect, any corporation or firm that employs an architect may also use the title architect or its derivatives on notifying the board of its nominated architect. The nominated architect is an architect nominated by a corporation as the one who manages and directs the services provided by the corporation. The nominated architect must be normally on duty during business hours at the place at which the services are advertised as being provided. In addition, primary dealings with clients must be with the registered architects employed by the corporation or firm. These provisions of the proposed legislation replace the current requirement that one-third of directors of a company be architects to allow such a company to use the title "architect".

To ensure that the market is properly informed of the nominated architect, firms or corporations will be required to advise the board of the nominated architect, and advise the identity and business location of the nominated architect or architects. The intent is that this advertising would relate to normal business communications, including letterheads, and be prominently displayed in the place of business such that prospective clients would be able to read it. Any corporation, firms or person offering architectural services in the marketplace to be performed by an architect, or could be reasonably construed as such, will commit an offence if that person is not an architect or if a corporation or firm does not have a nominated architect. The intent is for the market to be clearly informed as to who is and who is not an architect so that prospective clients can make an informed commercial judgment as to whose services to use.

The Government does not want to prevent non-architects from engaging in the business of designing buildings, but it does not want anyone to mislead their market in any way as to their professional status. The legislation provides severe penalties for any such misleading. However, a person or company not an architect, who has clearly stated in an offering to the market the qualifications relied upon, obviously will not intend to mislead. If it is found that these provisions do not provide sufficient consumer protection, those terms found to be used in a misleading manner will be proscribed at a later date by a regulation under the new Act. The board will have as part of its role the responsibility of ensuring adequate communication to the market of what the term "architect" means in connection with building and construction. I also point out that the bill should be read in conjunction with the tort law reforms adopted by the previous Parliament.

The reforms introduced a proportionate liability for certain claims and profession-focused defences for professional negligence for professions, including architects. Other features of the legislation are the provision for two levels of misconduct with simpler matters able to be dealt with by the board and more significant matters taken to the Administrative Decisions Tribunal, which will sit with an architectural member. The board's role will be to investigate complaints and take matters to the tribunal where it considers a case can be made against an architect. Penalties for misconduct would be greatly increased, commensurate with the seriousness of misconduct and offences created by the legislation. The maximum penalty will be 100 penalty units or, currently, approximately \$10,000 for an individual and double for corporations and firms.

Penalties of suspension or cancellation of registration will also exist. Greater flexibility in available penalties will be provided with orders possible to require architects to undergo further education and/or mentoring under an architect approved by the board. This brings the regulation of architects into line with the other regulated professions, as the community would expect. All findings against architects will be published to inform both possible clients and other architects. Because entry to registration is of great concern to the board it will be empowered to accredit courses that produce graduates suitable to seek registration. This replaces the current fixed schedule of courses in the regulations under the current Act. It is important to note that the board will be required to provide a pathway to registration that recognises the demonstrated experience of non-architect building designers.

The current board has developed such a pathway in consultation with the Architects Accreditation Council of Australia, named the Built Work Program of Assessment, which is an examination of candidates' built work against published competency criteria. A number of people have already been successfully assessed under the program to meet the criteria established in State environmental planning policy 65. As honourable members know, the policy limits to architects the right to design certain classes of multiple unit residential buildings. The Built Work Program of Assessment ensures that experienced building designers of demonstrated capability will be able to register as architects without sitting theoretical examination of the knowledge of technical aspects of

architectural practice. They will be able to continue designing these classes of multiple unit residential buildings, thus helping to achieve the Government's objective of improved urban built environments.

This will not remove the consumer protection requirement on all candidates seeking registration to pass an examination in professional aspects of architectural practice. One issue that has been of concern to architects who export their services has been the lack of a national register of architects. Of course, given the division of powers under the Australian Constitution it is not possible to legislate to create a national register. However, the legislation allows for the board to join with counterpart boards in other jurisdictions to administratively compile their registers to create a national registry of architects. The Architects Accreditation Council of Australia has undertaken to the Australian Procurement and Construction Ministerial Council to facilitate this.

The bill offers no impediment to the board to work with the Architects Accreditation Council of Australia to achieve national compilation of registers, but rather in its objectives encourage the board to work towards this and other national initiatives to achieve uniformity of administration of architects. The Carr Government committed itself to the finalisation of this legislation during this sitting of Parliament. In moving towards fulfilling this commitment on behalf of the Carr Government, I am pleased to note that consumers of architectural services, the market for building design as a whole, the community and architects who practice in a professional manner will all benefit from the introduction, passage and implementation of the legislation. I commend the bill to the House.

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