

Architects Bill 2003

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The objects of this Bill are:

- (a) to provide for the registration of architects, and
- (b) to provide for the constitution and functions of the NSW Architects Registration Board (the **Board**), and
- (c) to regulate the conduct of registered architects, and
- (d) to create offences that prohibit persons from representing themselves or others to be architects when they are not registered as architects and from advertising the provision of architectural services in a misleading manner, and
- (e) to require corporations and firms that operate as architects to have a registered architect who is nominated to be responsible for the provision of architectural services by the corporation or firm, and
- (f) to repeal the *Architects Act 1921* and the regulations made under that Act and to enact savings, transitional and other provisions consequent on the enactment of the proposed Act.

The Bill arises from a National Competition Policy review of the *Architects Act 1921* and incorporates the following reforms:

- (a) the introduction of the concept of a registered architect as a replacement for the concepts of chartered architect and non-chartered architect that are currently used in the *Architects Act 1921*,
- (b) the removal of the requirement that at least a third of the directors of a corporation or firm offering architectural services be chartered architects,
- (c) the introduction of a new system for making complaints against, and the disciplining of, architects who are found guilty of unsatisfactory professional conduct or professional misconduct,
- (d) the inclusion in the membership of the Board of Architects of New South Wales (to be renamed the NSW Architects Registration Board) of community, consumer and industry representatives,
- (e) the establishment by the regulations of codes of professional conduct for architects,
- (f) the extension of the ability of the Board to fund its own activities by imposing and recovering fees for the services it provides,
- (g) the extension of the role of the Board in accrediting courses of study for architecture and promoting discussion on architectural issues in the community.

Outline of provisions

Part 1 Preliminary

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 sets out the objects of the proposed Act.

Clause 4 defines certain words and expressions used in the proposed Act. For instance, **architect** is defined to mean a person who is registered as an architect under the proposed Act. **Firm** is defined to mean a partnership or other unincorporated association of persons.

Clause 5 provides that the proposed Act binds the Crown.

Clause 6 provides that the proposed Act does not limit or otherwise affect the operation of the *Mutual Recognition Act 1992* of the Commonwealth or the

Trans-Tasman Mutual Recognition Act 1997 of the Commonwealth.

Part 2 Practice of architecture

Division 1 Code of professional conduct

Clause 7 provides that the regulations may establish a code of professional conduct. The clause also provides for the Board to provide the Minister with advice or proposed guidelines relating to conduct that the Minister thinks should be the subject of such a code.

Clause 8 provides that the provisions of a code of professional conduct are relevant in determining what constitutes proper and ethical conduct by an architect.

Division 2 Offences relating to the practice of architecture

Clause 9 makes it an offence for an individual who is not registered as an architect under the proposed Act to be represented to be an architect.

Clause 10 makes it an offence for a corporation or firm to be represented to be an architect unless the corporation or firm has at least one nominated architect who is responsible for the provision of architectural services by the corporation or firm.

Clause 11 requires an architect corporation or architect firm to ensure that there is a nominated architect responsible for the provision of architectural services in regular attendance at the places of business at which it provides architectural services. The clause also requires advertising by an architect corporation or architect firm to include the name of a nominated architect responsible for the provision of architectural services by the corporation or firm. The Board is authorised to grant exemptions from the provisions of the clause.

Clause 12 makes it an offence for a person to provide architectural services other than by or under the supervision of an architect if the person has offered to provide the services, or represented that they will be provided, using an architect. Correspondence concerning those services to the client is also required to include the name of an architect who is to be responsible for the provision of those services.

Clause 13 deems certain representations to be a representation that a person, corporation or firm is an architect.

Clause 14 makes provision for what does not constitute a representation that a person, corporation or firm is an architect.

Clause 15 extends the meaning of “represent” to include claim and hold out.

Part 3 Registration

Division 1 Entitlement to registration

Clause 16 specifies the qualifications required for registration as an architect. The proposed section also enables the Board to accredit a course of study offered by an educational or training institution for the purposes of qualification for registration as an architect. An institution that is refused accreditation by the Board may apply to the Administrative Decisions Tribunal (the *Tribunal*) for a review of that decision.

Clause 17 specifies the circumstances in which a person is entitled to full registration as an architect under the proposed Act.

Clause 18 provides for temporary registration under the proposed Act in certain circumstances of architects with overseas qualifications.

Clause 19 provides that an applicant for full or temporary registration as an architect must pay the fee approved by the Board for such registration before the person can be registered.

Clause 20 specifies the circumstances in which the Board may refuse to register a person under the proposed Act. It also enables the Board to impose conditions on registration as an alternative to refusing registration.

Clause 21 restricts the re-registration of de-registered persons and certain other

persons.

Division 2 Registration procedures

Clause 22 provides for the registration by the Board, under the *Licensing and Registration (Uniform Procedures) Act 2002*, of architects, and makes certain modifications to the way that Act applies in that regard.

Division 3 Cancellation and suspension of registration

Clause 23 specifies the effect of the removal of a person's name from the Register and the suspension of a person's registration as an architect.

Clause 24 provides for the circumstances when the Board must remove a person's name from the register of architects. It also specifies circumstances when a name may be removed by the Board.

Division 4 Register of architects

Clause 25 requires the Registrar of the Board to establish and maintain a register of architects (the *Register*) and to make the Register available to the public.

Clause 26 requires the Board to publish a list of registered architects at least once a year for the information of the public.

Clause 27 enables a corporation or firm that provides architectural services to nominate one or more architects to be responsible for the supervision of architectural services provided by the corporation or firm.

Clause 28 requires an architect registered under the proposed Act to pay on or before 31 March each year the annual registration fee approved by the Board.

Clause 29 makes it an offence for an architect to fail to notify the Board of a change of particulars. It also makes it an offence for a corporation or firm not to notify the Board that a nominated architect has ceased to be responsible for the provision of architectural services by the corporation or firm.

Clause 30 gives evidentiary weight to a certificate by the Registrar of the Board as to matters recorded in the Register.

Division 5 Review of registration decisions

Clause 31 enables a person who has been refused full registration (or who has had conditions imposed on that registration) by the Board to apply to the Tribunal for a review of such a decision. It also enables a person whose name has been removed from the Register by the Board under the proposed Part to apply for a review of that removal by the Tribunal.

Part 4 Complaints and disciplinary proceedings

Division 1 Interpretation

Clause 32 defines certain terms and expressions used in the proposed Part, including *professional misconduct* and *unsatisfactory professional conduct*.

Clause 33 provides for the cessation of complaints and disciplinary proceedings against a deceased architect. It also provides that the proposed Part extends to persons who have ceased to be registered as architects under the proposed Act.

Division 2 Complaints

Clause 34 enables any person (including the Board) to make a complaint against an architect in respect of the architect's conduct as an architect.

Clause 35 enables a complaint to be withdrawn at any time.

Clause 36 provides for the form that a complaint must take.

Clause 37 provides that generally the Board must notify the person against whom a complaint has been made of the making of the complaint, the nature of the complaint and the identity of the complainant.

Clause 38 requires the Board to investigate complaints and provides for how multiple complaints may be dealt with.

Clause 39 provides that, for the purposes of investigating or determining a complaint, the Board is not bound to observe the rules of evidence but may inform itself of any matter in such manner as it thinks fit. It also enables the Board to pursue alternative dispute resolution to assist in resolving issues raised

by a complaint.

Clause 40 enables the Board to require an architect to produce documents and assist in an investigation of a complaint.

Clause 41 enables a person to be summoned to appear before the Board to give evidence and produce documents for the purposes of investigating or determining a complaint. It also enables the Board to take evidence on oath or affirmation.

Clause 42 provides that, after the investigation of a complaint, the Board may take certain action.

If the Board is satisfied that the architect is not guilty of professional misconduct or unsatisfactory professional conduct, it must dismiss the complaint.

If the Board is satisfied that the architect is guilty of professional misconduct, it must apply to the Tribunal for a disciplinary finding against the architect.

If the Board is satisfied that the architect is guilty of unsatisfactory professional conduct (but not professional misconduct), it may apply to the Tribunal for a disciplinary finding against the architect or it may itself take any one or more of the following actions against the architect:

- (a) caution or reprimand the architect,
- (b) order the withholding or refunding of part or all of the payment for the architectural services that are the subject of the complaint,
- (c) direct that such conditions relating to the architect's practice of architecture as it considers appropriate be imposed on the architect's registration,
- (d) order that the person complete any educational course or courses specified by the Board,
- (e) order that the person report on his or her architectural practice at specified times, in a specified manner and to specified persons,
- (f) order that the person seek and take advice, in relation to the management of his or her architectural practice, from a specified person or persons,
- (g) order the architect to pay a fine of an amount not exceeding 100 penalty units.

Clause 43 enables a person against whom a disciplinary finding has been made by the Board to apply to the Tribunal for a review of that finding and any action taken against the person by the Board.

Clause 44 enables the Board to delegate its functions under the proposed Part to specially constituted committees of the Board.

Division 3 Applications to Tribunal for disciplinary findings

Clause 45 enables the Board to apply to the Tribunal for a disciplinary finding against an architect with respect to a complaint against the architect.

Clause 46 provides that on any such application the Tribunal is to determine whether or not the architect is guilty of professional misconduct or unsatisfactory professional conduct. If the Tribunal finds that the architect is guilty of either, the Tribunal may take any one or more of the following actions against the architect:

- (a) caution or reprimand the architect,
- (b) order the withholding or refunding of part or all of the payment for the architectural services that are the subject of the complaint,
- (c) direct that such conditions relating to the architect's practice of architecture as it considers appropriate be imposed on the architect's registration,
- (d) order that the person complete any educational course or courses specified by the Tribunal,
- (e) order that the person report on his or her architectural practice at specified times, in a specified manner and to specified persons,

- (f) order that the person seek and take advice, in relation to the management of his or her architectural practice, from a specified person or persons,
- (g) order the architect to pay a fine of an amount not exceeding 200 penalty units,
- (h) order the suspension of the architect's registration for such period as the Tribunal thinks fit,
- (i) order the cancellation of the architect's registration.

Clause 47 provides that the Tribunal may award costs under section 88 of the *Administrative Decisions Tribunal Act 1997* in respect of proceedings commenced by the Board for a disciplinary finding.

Clause 48 provides that a decision of the Tribunal on an application for a disciplinary finding may be appealed to an Appeal Panel of the Tribunal under Part 1 of Chapter 7 of the *Administrative Decisions Tribunal Act 1997*.

Division 4 Confidentiality issues

Clause 49 provides that an architect may disclose confidential information to the Board, a committee of the Board or the Tribunal despite any duty of confidentiality.

Clause 50 provides that the Tribunal is not required to include confidential information in its statement of a decision. If the statement would be false or misleading without the confidential information, the Tribunal is not required to provide the statement. However, a confidential information notice must then be provided indicating that confidential information is not given or the statement will not be provided.

Division 5 Co-operation with other jurisdictions in respect of disciplinary action

Clause 51 requires the Board to notify various architect professional registration authorities in Australia and New Zealand of the taking of disciplinary action against an architect. It also enables the Board to notify the architect professional registration authorities of other jurisdictions outside the State of the taking of such action.

Division 6 Publicising disciplinary action

Clause 52 defines certain terms used in the proposed Division.

Clause 53 enables and requires the Board to publicise disciplinary action taken against an architect or former architect.

Clause 54 requires the Registrar of the Board to keep a register of disciplinary action and to make it available to the public.

Clause 55 requires the Board to publicise the quashing on appeal or review of any disciplinary action taken against an architect or former architect and to update the register of disciplinary action to reflect the quashing of the action.

Clause 56 provides that no liability is incurred by the State, the Board, the Registrar or a person acting at the direction of the Board or Registrar in respect of anything done in good faith for the purpose of publicising disciplinary action or otherwise carrying out functions under the proposed Division. It also provides that no liability is incurred by a person who publishes a fair report or summary of disciplinary action that is publicised.

Clause 57 specifies what matters cannot be published when publicising disciplinary action.

Part 5 NSW Architects Registration Board

Division 1 Constitution

Clause 58 provides for the constitution of the NSW Architects Registration Board as a body corporate.

Clause 59 provides for the membership of the Board.

Division 2 Functions of the Board

Clause 60 provides that the functions of the Board are the following:

- (a) the registration of architects,
- (b) the investigation of complaints against architects,
- (c) the taking of disciplinary action against architects,
- (d) the investigation of matters referred to it by the Minister for advice and report in relation to the practice of architecture (including codes of professional conduct),
- (e) co-operation with the other States, the Territories and New Zealand to further a common and harmonious approach to the administration of legislation relating to architects,
- (f) the accreditation of courses of study in architecture,
- (g) the maintenance and operation of the Architects Fund,
- (h) the promotion of community discussion about architectural issues,
- (i) the provision of general advice to consumers of architectural services with respect to the ethics and standards of professional competence that are generally expected of architects,
- (j) the provision of advice to the Minister with respect to any other matter in connection with the administration of the proposed Act,
- (k) such other functions as are conferred or imposed on the Board by or under the proposed Act or any other Act.

Division 3 Committees and staff

Clause 61 provides for the establishment of advisory and other committees of the Board.

Clause 62 provides for the employment of a Registrar of the Board and such other staff as are necessary to enable the Board to exercise its functions. The proposed section also enables the Board to make use of the staff and facilities of government departments and public authorities.

Division 4 General provisions

Clause 63 enables the Board to conduct such examinations as may be required for the purposes of the proposed Act and to appoint examiners in respect of those examinations.

Clause 64 enables the Board to delegate its functions, subject to certain restrictions.

Clause 65 deals with the exclusion of personal liability for acts and omissions of the Board, Board members and persons acting under the direction of the Board or a Board member.

Clause 66 gives effect to Schedule 1, which contains further provisions relating to the membership and procedure of the Board.

Part 6 Finance

Division 1 Fees

Clause 67 enables the Board to charge fees for certain services it provides.

Clause 68 enables the Board to approve certain fees for the purposes of certain provisions of the proposed Act.

Clause 69 enables the Minister to direct the Board to reduce fees that it charges or approves if the Minister considers the fees to be excessive.

Clause 70 enables the Board to waive or reduce fees.

Division 2 Architects Fund

Clause 71 requires the Board to establish and maintain a fund to be known as the Architects Fund.

Clause 72 requires any fees or monetary penalties (other than for offences) paid to, or recovered by, the Board and any other money received by or on account of the Board to be paid into the Architects Fund.

Clause 73 provides for when money may be paid out of the Architects Fund by the Board. It also provides that the Treasurer may direct the Board to pay out of the Architects Fund to the Consolidated Fund an amount (or part of an amount)

that, in the opinion of the Treasurer, is in excess of the amount required to meet the Board's expenses for a financial year.

Clause 74 enables the Board to invest money held in the Architects Fund.

Division 3 General

Clause 75 provides for the financial year of the Board to commence on 1 July.

Clause 76 provides that any fee payable under the proposed Act, and any monetary penalty imposed under the proposed Act (other than for an offence), may be recovered by the Board in any court of competent jurisdiction as a debt due to the Board.

Part 7 Miscellaneous

Clause 77 provides for the giving of notices.

Clause 78 provides for the service of documents on the Board.

Clause 79 requires the Board, the President or an authorised member of the Board to provide on request a written statement of the reasons for a decision.

Clause 80 provides for the authentication of official documents of the Board by signature instead of seal.

Clause 81 provides for a partner in or member of the governing body of a firm to be guilty of an offence if he or she knowingly authorised or permitted a contravention by the firm of any provision of the proposed Act or the regulations.

Clause 82 provides that if a corporation contravenes any provision of the proposed Act or the regulations, each director or other person concerned in the management of the corporation is also taken to have contravened the provision if the director or person knowingly authorised or permitted the contravention.

Clause 83 provides for the making of regulations under the proposed Act.

Clause 84 provides that an offence under the proposed Act or the regulations may be dealt with summarily by a Local Court.

Clause 85 provides for the repeal of the following:

- (a) the *Architects Act 1921*,
- (b) the *Architects (Elections and Appointments) Regulation 1995*,
- (c) the *Architects (General) Regulation 1995*.

Clause 86 is a formal provision that gives effect to the amendments to the Acts and Regulations set out in Schedule 2.

Clause 87 is a formal provision that gives effect to the savings, transitional and other provisions set out in Schedule 3.

Clause 88 provides for a review of the operation of the proposed Act to be undertaken after 5 years from the date of assent to the proposed Act.

Schedule 1 Constitution and procedure of Board

Schedule 1 contains standard provisions relating to the constitution of the Board and the procedure of the Board.

Schedule 2 Amendment of Acts and Regulations

Schedule 2 contains amendments to the following Acts and Regulations:

- (a) the *Administrative Decisions Tribunal Act 1997*,
- (b) the *Environmental Planning and Assessment Regulation 2000*,
- (c) the *Home Building Act 1989* (as amended by the *Home Building Legislation Amendment Act 2001*),
- (d) the *Home Building Regulation 1997*,
- (e) the *Licensing and Registration (Uniform Procedures) Act 2002*,
- (f) the *Public Finance and Audit Act 1983*.

Schedule 3 Savings, transitional and other provisions

Schedule 3 contains a number of savings, transitional and other provisions consequent on the enactment of the proposed Act, including a provision enabling the regulations under the proposed Act to make further provisions of a savings or transitional nature.