



Architects Bill.

Second Reading

Mr WHELAN (Strathfield—Parliamentary Secretary), on behalf of Mr Iemma [10.48 a.m.]: I move:

That this bill be now read a second time.

In accordance with the resolution, of the House I table the second reading speech for incorporation in *Hansard*.

Honourable members will be aware of this Government's record of both maintaining and enhancing consumer protection and introducing policies to improve the standard of the built environment for all 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. This review was handed down in late 2000.

Following this, State and Territory governments agreed to compile a joint response to this report. Under the leadership of New South Wales that joint response provided a framework which was adopted by all State and Territory governments, and it was also endorsed by the Australian Procurement and Construction Ministerial Council. I am here today introducing a Bill to implement this nationally agreed framework into New South Wales.

This 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 this legislation.

There has been extensive consultation with the profession over the past 18 months. The organisations consulted have included 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. I have also had 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 which draws its membership from a wider range of backgrounds than architecture alone. The Government wants the new Board to be concerned with consumer issues, broader public and industry interests in architecture, whilst, at the same time, ensuring a strong professional presence is maintained and professional architectural knowledge is applied to the Board's activities.

The community members will include persons with demonstrated public interest in architecture and representing consumers, local government, and legal and allied professions.

Architect members will include two architects elected by all New South Wales registered architects, the current and past presidents 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 legislation 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. The terms of reference of these will be established in the Regulations.

The Code will define the conduct required of architects; breaches will provide grounds for discipline.

The Client-Architect agreement 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 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, enhancing public confidence in the profession.

I also point out that this Bill needs to be read in conjunction with the tort law reforms recently adopted by this Parliament. Those reforms introduced proportionate liability for certain claims and "profession focussed" 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 being taken to the Administrative Decisions Tribunal. The Tribunal 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 will 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 \$10,000, for an individual and double this for corporations and firms. Penalties of suspension or cancelling 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.

The major effect of the current legislation is to protect the use of the title "architect". This will continue in this legislation, however 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.

While only registered architects will be able to use the title "architect" and offer services provided by an architect, any corporation or firm which 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 an architect. In addition, primary dealings with clients must be with a registered architect 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 their nominated architect and advertise 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 in a prominent place in the place of business such that prospective clients would be able to read it.

Any corporation, firm or person offering architectural services in the market place to be performed by an architect, or could be reasonably construed as such, will be committing an offence, if they are 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 whom is and who is not an architect so that prospective clients can make an informed commercial judgement 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 not an architect who has clearly stated in any offering to the market the qualifications relied upon and that the person or company is not an architect will obviously 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 a 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.

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.

Importantly 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 applied for assessment by this program to meet the criteria established by the Minister for Planning in State Environmental Planning Policy 65. As honourable members know, this 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 a theoretical examination of their knowledge of technical aspects of architectural practice and 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, this legislation allows for the Board to join with counterpart Boards in other jurisdictions to administratively join their registers nationally to create a national registry of registered architects. The Architects Accreditation Council of Australia has undertaken to the Australian Procurement and Construction Ministerial Council, which I chair, to facilitate this. The Bill offers no impediment to the Board to work with the Architects Accreditation Council of Australia to achieve a national compilation of registers, but rather in its objectives encourage the Board to work toward this and other national initiatives to achieve uniformity of administration of architects.

The Carr Government committed itself to the introduction of this legislation during this sitting of Parliament. In fulfilling this commitment on behalf of the 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 this legislation.

I commend the Bill to the House.

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