

FIRST PRINT

## ARCHITECTS BILL 1994

NEW SOUTH WALES



### EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The object of this Bill is to repeal the Architects Act 1921 and replace it with a new Act to be called the Architects Act 1994 with the following changes:

- Provisions dealing with registration as an architect are simplified.
- Architectural practices other than those carried on by architects alone and in their own names will have to be registered.
- Disciplinary procedures dealing with complaints against registered architects and architectural practices will be reformed.
- A tribunal, to be called the New South Wales Architects Tribunal, will be established to hear and determine those complaints that are referred to it by the Board of Architects of New South Wales.
- The Board is to be reconstituted so as to include 2 lay members.
- The language and structure of the old Act is modernised and simplified and obsolete provisions are omitted.

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### PART 1—PRELIMINARY

**Clause 1** sets out the short title of the proposed Act.

**Clause 2** provides for proposed sections 1, 2 and 85 to commence on the date of assent to the proposed Act. (Those sections respectively deal with the proposed Act's short title and commencement and provide for the first election of members to the reconstituted Board.) The remainder of the proposed Act will commence on a day or days to be appointed by proclamation.

**Clause 3** specifies the main purposes of the proposed Act. One of those purposes is to regulate the practice of architecture in New South Wales.

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**Clause 4** defines certain expressions used in the proposed Act. Among the expressions defined are "architect", "architectural practice", "architect principal" (in relation to an architectural practice), "architectural service", "Board" (the Board of Architects of New South Wales), "building", "complaint", "Fund" (the New South Wales Architects Fund), "Professional Conduct Code", "registered", "the nominated architect principal", "Tribunal" (the New South Wales Architects Tribunal) and "unacceptable professional conduct".

**Clause 5** makes it clear that notes in the text of the proposed Act are explanatory only.

**PART 2—UNREGISTERED AND UNQUALIFIED PRACTICE**

**Clause 6** will make it an offence, punishable by a penalty of up to 100 penalty units (\$10,000), for a natural person who is not registered as an architect to hold himself or herself out as being an architect, in the course of carrying on a business of providing or offering architectural services.

**Clause 7** will make it an offence, punishable by a penalty of up to 50 penalty units (\$5,000), for a person to hold himself or herself out as having an architectural qualification that he or she does not actually have.

**Clause 8** will make it an offence, punishable by a penalty of up to 100 penalty units (\$10,000), for a person to carry on, or participate in the carrying on of, a business that is held out to be an architectural business, unless the business is registered as an architectural practice. The clause will not apply to a business carried on by a person alone under his or her own name. Nor will the clause apply to the provision or offering of architectural services by a Government department.

**Clause 9** prescribes cases in which an offence against Part 2 will not be committed. For example, such an offence will not be committed merely because a person who is a landscape architect or a person who is a naval architect is described as such. A person who carries on a business of supplying goods used in architecture will not commit such an offence merely because the person uses the word "architectural" in connection with the business. The clause also provides that a person who uses a title, name, words or a combination of letters prescribed by regulations under the proposed Act, or who uses such a title, name, words or combination of letters in circumstances so prescribed, will not be guilty of such an offence.

**PART 3—REGISTRATION OF ARCHITECTS AND ARCHITECTURAL PRACTICES****Division 1—Registration of architects**

**Clause 10** specifies the qualifications for registration as an architect. Only natural persons will be capable of being registered as architects. The clause will also enable certain persons registered as architects outside New South Wales to be registered as architects in New South Wales.

**Clause 11** sets out the requirements for an application for registration as an architect.

**Clause 12** will require the Board to register an applicant who satisfies it that he or she is eligible for registration and meets the standards of integrity and competence reasonably expected of an architect.



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**Division 2—Registration of architectural practices**

**Clause 13** sets out the requirements for an application for registration as an architectural practice.

**Clause 14** will require the Board to register an applicant for registration as an architectural practice if satisfied that the applicant complies with the requirements set out in the clause. One of those requirements is that all such services will be under the direct supervision of an architect engaged in the practice. A further requirement is that a professional indemnity insurance policy will be maintained in respect of the practice.

**Division 3—Registration generally**

**Clause 15** will require the Board to keep a register of architects and a register of architectural practices. A member of the public will be entitled to attend the Board's office during ordinary office hours and inspect the latest available printed version of either of the registers without charge. However, the Board will be able to charge a fee for providing a copy of that version of a register or of any part of it.

**Clause 16** provides for the names and addresses of all architects and architectural practices to be printed and published annually.

**Clause 17** will require the Board to issue a certificate of registration whenever it registers an applicant for registration.

**Clause 18** will require an annual statement to be lodged with the Board in respect of every architectural practice and every architect who practices architecture alone in his or her own name. Registration of such a practice or architect will be automatically cancelled if the requisite statement is not lodged with the Board by the date in each year prescribed by the regulations.

**Clause 19** provides for the payment of annual registration fees in respect of architects and architectural practices. The registration of an architect or practice will be automatically cancelled if the requisite registration fee is not paid on time.

**Clause 20** will require the Board to notify a cancellation of registration under proposed section 18 or 19 to the architect concerned or the nominated architect principal of the practice concerned. It will also require the registrar to record such a cancellation in the appropriate register.

**Clause 21** will require an architect to notify a change of address to the Board. The clause will also require a change in the registration particulars relating to an architectural practice (such as the name or address of the practice) to be notified to the Board.

**Clause 22** will enable the Board to re-register a person, or a business, whose registration as an architect or architectural practice has been cancelled. The clause will also enable the Board to cancel a suspension of registration. The Board will be able to take action under the clause either as a result of an application or on its own initiative. The clause will not apply to a person or practice whose registration has been cancelled under proposed section 18 or 19.

**PART 4—PRACTICE OF ARCHITECTURE**

**Clause 23** will enable regulations to be made under the proposed Act prescribing a Professional Conduct Code for Architects.

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**Clause 24** will impose on the nominated architect principal of an architectural practice responsibility for the management and control of architectural services provided or offered by the practice. If at any time an architectural practice does not have a nominated architect principal, the Board will be empowered to designate an architect principal of an architectural practice to be the nominated architect principal in respect of the practice. However, the Board will be able to exercise the power only if it has served on the architect principals of the practice a notice requiring such a principal to be nominated and the requirement has not been complied with within 14 days after the notice was served.

**Clause 25** will require an appropriate professional indemnity insurance policy to be in force in respect of each architectural practice and by each architect who practices architecture alone in his or her own name.

**Clause 26** will require an architect, from time to time, to undertake and complete professional development programs in accordance with guidelines laid down and notified by the Board. The clause will also require the nominated architect principal of an architectural practice to take reasonable steps to ensure that architects engaged in the practice undertake those programs.

**Clause 27** will require the names of all architect principals engaged in an architectural practice and certain other information relating to the practice to appear in all correspondence and other documents used in connection with the practice.

**PART 5—COMPLAINTS AND DISCIPLINARY PROCEEDINGS****Division 1—Making and investigation of complaints**

**Clause 28** will enable any person to make a complaint to the Board about the conduct of an architect or an architectural practice. The Board will also be able to initiate a complaint.

**Clause 29** will enable a complaint to be made and dealt with even if an architect or an architectural practice is no longer registered.

**Clause 30** will require a complaint to the Board to be in writing and to include details of the allegations on which it is based.

**Clause 31** will enable the Board to ask for further details about a complaint and to reject the complaint if those details are not provided.

**Clause 32** will require the Board to ensure that a complaint is investigated expeditiously. It will be possible for a complaint to be investigated by the Board itself or by an investigator appointed by the Board. The Board will be able to reject a complaint if it is satisfied that the complaint is frivolous or vexatious, is not made in good faith or is made for an improper purpose.

**Clause 33** will require the Board to give notice of a complaint to the architect or the nominated architect principal of the practice concerned. However, it will be possible to withhold the notice for up to 60 days if the giving of the notice would, or would be likely to, prejudice the investigation of the complaint or subject the complainant or some other person to risk of intimidation or harassment.



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**Clause 34** specifies how a complaint is to be dealt with after investigation. The Board will be required to reject a complaint that, after investigation, it believes to be without substance. If, however, the Board believes a complaint alleging unacceptable professional conduct to have substance, it will be required to refer it to the New South Wales Architects Tribunal for hearing. If, on the other hand, the Board believes a complaint not alleging unacceptable professional conduct to have substance, it will have to refer the complaint for conciliation under proposed Division 2 if appropriate. The Board will be required to give written notice to the complainant of its decision with respect to a complaint.

**Division 2—Conciliation of certain complaints**

**Clause 35** will enable the Board to appoint a conciliator to deal with a complaint in respect of which the complainant seeks redress in connection with architectural services. It will be the duty of the conciliator to assist the parties to reach a mutually agreeable settlement of the complaint. If conciliation of a complaint is unsuccessful, the conciliator will be required to refer the complaint back to the Board for such further action as it considers appropriate.

**Clause 36** will render inadmissible in legal proceedings evidence of anything said or admitted during a conciliation or an attempted conciliation. The clause will also render inadmissible as evidence certain documents prepared for the purpose of a conciliation or an attempted conciliation. However, the clause will not apply where the parties to the conciliation or attempted conciliation consent to the admission of the evidence.

**Division 3—Constitution and functions of New South Wales Architects Tribunal**

**Clause 37** provides for the constitution of the New South Wales Architects Tribunal. The Tribunal is to consist of at least 6 members. At least 2 of the members are to be architects, at least 2 others are to be legal practitioners and at least a further 2 are to be lay members. A member of the Board will not be eligible to be a member of the Tribunal. The members are to be appointed by the Minister after consultation with the Board. The Minister is to appoint one of the members to be the president of the Tribunal.

**Clause 38** provides that, for the purposes of a particular hearing, the Tribunal is to consist of 3 members. One of the members is to be an architect member, one is to be a legal practitioner member and the other is to be a lay member. The president of the Tribunal is to select the members who are to constitute the Tribunal for a particular hearing.

**Clause 39** provides that a decision supported by at least 2 of the members is to be the decision of the Tribunal.

**Clause 40** will enable the hearing of a complaint to be continued even if a member of the Tribunal ceases to hold office during the hearing.

**Clause 41** specifies the various kinds of orders that the Tribunal will be able to make if it finds a complaint proved. Among the orders that may be made are an order administering a caution or reprimand, an order imposing a fine and an order cancelling or suspending registration. It will be possible for the operation of an order to be

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suspended for a period and for conditions to be imposed on the registration or re-registration of an architect or architectural practice as to the practice of architecture.

**Division 4—Post-hearing procedure**

**Clause 42** will require the Tribunal to notify its decision concerning a complaint to the architect or the nominated architect principal concerned, the complainant and the Board (if not the complainant). The notice will be required to include a statement of the Tribunal's reasons for its decision.

**Clause 43** prescribes the action to be taken by the registrar of the Board in consequence of the Tribunal's decision in respect of a complaint.

**Clause 44** provides that a decision of the Tribunal in respect of a complaint is to be suspended pending an appeal against the decision.

**PART 6—CANCELLATION OF REGISTRATION BY THE BOARD**

**Clause 45** provides for the cancellation of registration of architects in cases not involving disciplinary proceedings. For instance, the Board will be required to cancel the registration of an architect if satisfied, after inquiry, that the registration was obtained by means of a false or misleading representation. In some cases, as an alternative to cancellation of registration, the Board will be able to impose conditions with which the architect must comply. Failure to comply with such conditions will result in cancellation of the architect's registration.

**Clause 46** provides for the cancellation of registration of architectural practices in cases not involving disciplinary proceedings. For instance, the Board will be required to cancel the registration of an architectural practice if satisfied that the practice has ceased to operate or an appropriate professional indemnity insurance policy is not in force in respect of the practice. However, in the latter case and some of the other cases covered by the clause, the Board will, as an alternative to cancelling the practice's registration, be able to impose on the practice conditions that must be complied with. Failure to comply with such conditions will result in cancellation of the practice's registration.

**Clause 47** will require the Board to give written notice of cancellation of registration under proposed Part 6.

**PART 7—RIGHT OF APPEAL TO THE DISTRICT COURT**

**Clause 48** will confer on an applicant for registration who is dissatisfied with a decision of the Board refusing to register the applicant as an architect or an architectural practice a right to appeal to the District Court. It will also confer a similar right of appeal on an architect or an architect principal of an architectural practice who is dissatisfied with a decision of the Tribunal under Part 5 or a decision of the Board under Part 6. A complainant will also be able to appeal against a decision of the Tribunal if dissatisfied with the decision.

**Clause 49** provides for an appeal to be made, heard and determined in accordance with the rules of court and to be reheard. The District Court will be able to receive evidence not given at the original hearing.



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**Clause 50** will empower the District Court to confirm or reverse the decision appealed against or to remit the matter to the Tribunal or the Board for further consideration.

**Clause 51** will require the Tribunal or Board to give effect to a decision of the District Court given in respect of an appeal under proposed section 48.

**PART 8—BOARD OF ARCHITECTS OF NEW SOUTH WALES****Division 1—Constitution and functions of the Board**

**Clause 52** provides for the reconstitution of the Board of Architects of New South Wales and makes it clear that the Board will not represent the Crown for any purpose.

**Clause 53** sets out the main functions of the Board. Among those functions are responsibility for determining the qualifications for registration as an architect, conducting examinations leading to registration as an architect and fixing fees for certain matters.

**Clause 54** sets out the ancillary functions of the Board. Those functions include the power to enter into contracts and to appoint agents.

**Division 2—Management of the Board**

**Clause 55** provides for the Board to consist of 11 members and specifies who they are to be. Three will be ex-officio members and three will be elected by architects. Two of the members are to be teachers of architecture appointed by the governing bodies of educational institutions prescribed by the regulations. The remainder will be appointed by the Minister. Two of the ministerial appointees will represent the interests of users of architectural services.

**Clause 56** provides for the election of those members who are to be elected to be conducted in accordance with regulations under the proposed Act. If there is a failure to elect such a member, or the governing body of a prescribed educational institution fails to appoint a member, the Minister will be able to appoint an architect to be the member without such an election or appointment.

**Clause 57** will enable the Board to employ a registrar and other staff.

**Clause 58** will enable the Board to arrange to use staff or facilities of a Government department or a public or local authority.

**Division 3—Finance**

**Clause 59** provides for there to be a fund known as the New South Wales Architects Fund.

**Clause 60** specifies the composition of the Fund.

**Clause 61** specifies what payments are to be made from the Fund. Expenses incurred in administering the proposed Act (including remuneration payable to Board members and members of the Board's staff) are to be paid from the Fund.

**Clause 62** will enable the Board to invest money held in the Fund and specifies how the money can be invested.

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**Clause 63** provides for the Board's financial year to be the period of 12 months starting on 1 July. However, it will be possible to change the financial year in accordance with section 4 (1A) of the Public Finance and Audit Act 1983.

**Clause 64** will enable the Board, by proceedings brought in a court of competent jurisdiction, to recover money owing to it.

**Division 4—Other matters**

**Clause 65** will enable the Board to delegate its functions to a committee of the Board, a Board member or the Board's staff. However, the Board will not be able to delegate its functions under Part 5 or 6 of the proposed Act.

**PART 9—ENFORCEMENT**

**Clause 66** will enable the Supreme Court, on the application of the Board or a person whose interests are affected, to make orders restraining persons from contravening, or requiring persons to comply with, provisions of the proposed Act or regulations.

**Clause 67** will make directors and persons concerned in the management of a corporation liable for offences against the proposed Act or regulations under that Act committed by the corporation.

**Clause 68** creates various offences involving fraudulent or deceptive conduct. For example, it will be an offence to falsify the register of architects or architectural practices or to forge a certificate of registration. Such an offence will be punishable by a penalty of up to 100 penalty units (\$10,000) or imprisonment for up to 2 years, or both.

**Clause 69** provides for certain certificates purporting to be signed by the Board's registrar to be admissible in legal proceedings as evidence. For example, it will be possible for the registrar to give a certificate specifying that a named person was or was not registered as an architect at a particular time.

**Clause 70** will enable proof of certain matters to be dispensed with in legal proceedings involving the Board or the Tribunal. Those matters include proof of the constitution of the Board or Tribunal.

**Clause 71** will empower the Board or the person presiding over the proceedings of the Tribunal to summon witnesses and take evidence.

**Clause 72** will empower the Board or the person presiding over the proceedings of the Tribunal to require a person to produce a specified document.

**Clause 73** provides for offences against the proposed Act or regulations under that Act to be disposed of in a summary manner before a Local Court.

**PART 10—MISCELLANEOUS****Division 1—Mutual recognition**

**Clause 74** will require the Board to notify the local registration authorities of other States and Territories of decisions of the Board arising out of disciplinary proceedings taken under the proposed Act. The clause will also permit the notification to those



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authorities of decisions of the Board cancelling the registration of architects and architectural practices.

**Clause 75** will require the registrar to record in the register of architects the cancellation or suspension of registration of an architect arising under section 33 of the Mutual Recognition Act 1992 of the Commonwealth.

**Division 2—Other matters**

**Clause 76** provides for the proposed Act to bind the Crown.

**Clause 77** provides that, while the registration of an architect or practice is suspended, the registration is to be regarded as cancelled.

**Clause 78** specifies how documents can be served on the Board.

**Clause 79** provides for the giving or serving of notices required by the proposed Act.

**Clause 80** will enable regulations to be made for the purposes of the proposed Act, including regulations creating offences punishable by a maximum penalty of 5 penalty units (\$500). A list of the matters about which regulations will be able to be made is contained in proposed Schedule 3.

**Clause 81** will require the Minister to review the operation of the proposed Act as soon as possible after the period of 5 years from the date of assent to the Act.

**Clause 82** will repeal the Architects Act 1921 and the regulations in force under that Act.

**Clause 83** is a machinery provision giving effect to the savings and transitional provisions set out in Schedule 4.

**Clause 84** is a machinery provision designed to give effect to Schedule 5, which contains amendments to other Acts.

**Clause 85** will enable the first election of the 3 architect members of the Board to be conducted in accordance with the provisions of Part V of the Architects Regulation 1983.

**Schedule 1** prescribes the procedures to be followed by the Tribunal. The Schedule deals with such matters as Tribunal sittings, the conduct of hearings and the right to attend Tribunal proceedings.

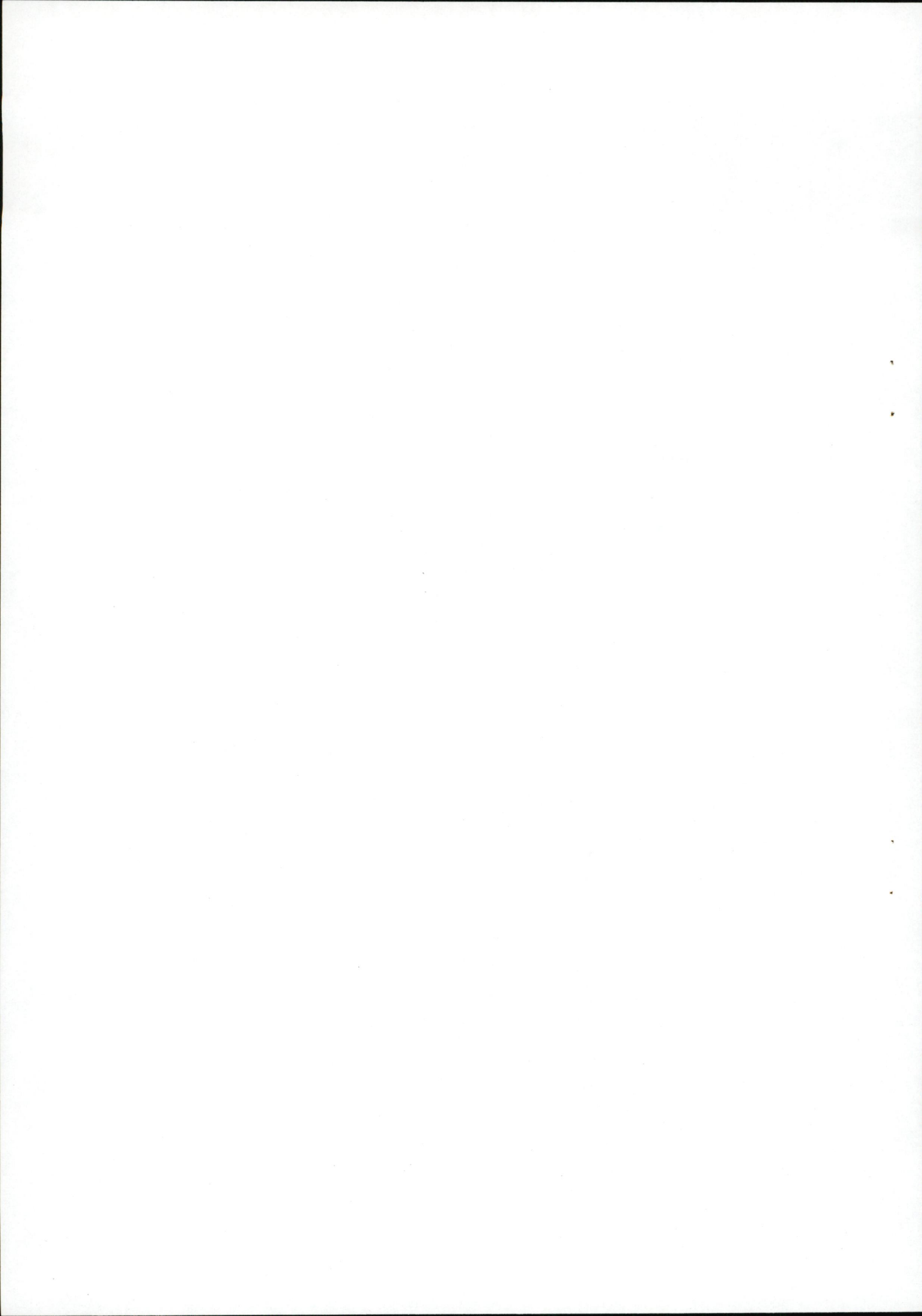
**Schedule 2** contains provisions relating to the Board. The Schedule includes provisions for the election of the president and vice-president of the Board, alternate members, terms of members, members' remuneration, vacancies (when they occur and how they are to be filled), disclosure requirements relating to members' pecuniary interests and exculpation of members and the registrar from certain liabilities. It also deals with the Board's procedure and will enable the Board to appoint committees.

**Schedule 3** specifies matters on which regulations can be made.

**Schedule 4** contains savings and transitional provisions.

**Schedule 5** contains amendments to certain other Acts.

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## ARCHITECTS BILL 1994

NEW SOUTH WALES



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**ARCHITECTS BILL 1994**

NEW SOUTH WALES



No. , 1994

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**A BILL FOR**

An Act to regulate the practice of architecture; to provide for the registration of architects and architectural practices; to provide for the reconstitution of the Board of Architects of New South Wales; to repeal the Architects Act 1921; and to provide for related matters.

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**The Legislature of New South Wales enacts:**

**PART 1—PRELIMINARY**

**Short title**

1. This Act may be cited as the Architects Act 1994.

**5 Commencement**

2. (1) Sections 1, 2 and 85 commence on the date of assent.

(2) This Act commences on a day or days to be appointed by proclamation, except as provided by subsection (1).

**Purposes of this Act**

- 10 3. The main purposes of this Act are as follows:

- (a) to regulate the practice of architecture;
- (b) to regulate the use of the title "architect" and other expressions derived from that word;
- 15 (c) to provide for the registration of architects and architectural practices;
- (d) to prescribe procedures for dealing with complaints made against architects and architectural practices;
- (e) to reconstitute the Board of Architects of New South Wales.

**Definitions**

- 20 4. In this Act:

"**architect**" means a natural person registered as an architect;

"**architect principal**" (of an architectural practice) means:

- (a) an architect who conducts the practice alone but in a name other than his or her own name; or
- 25 (b) an architect who is a partner of a firm of architects that conducts the practice; or
- (c) an architect who is a director of a corporation that conducts the practice;

"**architectural practice**" means a business registered as an

30 architectural practice;



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- “architectural service”** means a service provided in connection with the design, or the construction or enlargement or alteration, of a building or of a group of buildings, and includes:
- (a) planning that design or that construction, enlargement or alteration; and 5
  - (b) preparing or providing preliminary studies, designs, drawings and specifications and other technical data relating to the construction, enlargement or alteration of a building or group of buildings; and
  - (c) administering the performance of a contract for the construction, enlargement or alteration of a building or group of buildings; and 10
  - (d) providing advice on any of the matters referred to in paragraphs (a)–(c);
- “Board”** means the Board of Architects of New South Wales; 15
- “building”** includes a space within or surrounding a building and also includes a structure;
- “business”** includes a practice;
- “complaint”** means a complaint made or initiated under section 28;
- “conduct”** includes an act or an omission; 20
- “exercise”** of a function includes the performance of a duty;
- “function”** includes a power, authority or duty;
- “Fund”** means the New South Wales Architects Fund referred to in section 59;
- “Government department”** means a Government department within the meaning of the Public Sector Management Act 1988; 25
- “nominated architect principal”** means:
- (a) in relation to an architect who conducts an architectural practice alone but in a name other than in his or her own name—that architect; or 30
  - (b) in relation to a firm of architects that conducts an architectural practice—the architect principal of the firm who is nominated by the partners or, if there is no such nomination, the architect principal of the firm who is designated by the Board in accordance with section 24; or 35
  - (c) in relation to a corporation that carries on an architectural practice—the architect principal of the corporation who is nominated by the corporation or, if there is no such nomination, the architect principal of the corporation who is designated by the Board in accordance with section 24; 40

- “**prescribed educational institution**” means a tertiary educational institution where architecture is taught and which is prescribed by the regulations;
- 5 “**Professional Conduct Code**” means the Professional Conduct Code for Architects prescribed under section 23;
- “**registered**” means registered by the Board under this Act;
- “**registrar**” means the person holding office or acting as registrar of the Board;
- “**registration**” includes re-registration;
- 10 “**State**” includes the Australian Capital Territory and the Northern Territory;
- “**Tribunal**” means the New South Wales Architects Tribunal constituted under section 37;
- “**unacceptable professional conduct**” means:
- 15 (a) conduct that involves a substantial or consistent failure to reach reasonable standards of competence and diligence as an architect or an architectural practice; or
- (b) conduct (whether committed in the course of practising architecture or not) that is misleading or deceptive, or is likely to mislead or deceive; or
- 20 (c) unconscionable conduct engaged in in the course of practising architecture; or
- (d) conduct (whether committed in the course of practising architecture or not) resulting in being convicted in New South Wales of an offence which is punishable by penal servitude or imprisonment for 12 months or more or being convicted elsewhere than in New South Wales of an offence which, if committed in New South Wales, would be an offence so punishable; or
- 25 (e) failure to comply with a condition imposed by an order referred to in section 41 (1) (e), (2) (e) or (4); or
- 30 (f) conduct involving a contravention of the Professional Conduct Code.

#### **Notes in text**

- 35 **5.** Notes in the text of this Act are explanatory notes only and do not form part of this Act.



**PART 2—UNREGISTERED AND UNQUALIFIED PRACTICE****Unregistered persons not to call themselves architects**

6. (1) A natural person who is not registered as an architect must not, in the course of carrying on a business of providing or offering architectural services, hold himself or herself out as being an architect. 5

(2) Without limiting subsection (1), a natural person holds himself or herself out as being an architect if the person:

- (a) takes or uses the title “architect”, or any word or words derived from the word “architect” or “architecture”; or
- (b) states or implies that the person is registered as an architect under this Act. 10

Maximum penalty: 100 penalty units.

**Unqualified persons not to use architectural qualifications**

7. A person must not:

- (a) use a degree, diploma or other qualification of a kind that would make a person eligible to be registered as an architect; or 15
- (b) state or imply that he or she holds such a degree, diploma or qualification,

unless the person in fact holds such a degree, diploma or qualification.

Maximum penalty: 50 penalty units. 20

**Unregistered businesses not to be called architectural practices**

8. (1) A person must not carry on, or participate in carrying on, a business that is held out to be an architectural business, unless the business is registered as an architectural practice.

(2) Without limiting subsection (1), a business is held out to be an architectural business if a person carrying on, or participating in carrying on, the business: 25

- (a) uses the word “architect” or any word or words derived from the word “architect” or “architecture” to describe the services that are provided or offered by the business; or 30
- (b) states or implies that the business is registered as an architectural practice under this Act.

Maximum penalty: 100 penalty units.

- (3) This section does not apply:
- (a) to a business carried on by a person alone in his or her own name and in no other name; or
  - 5 (b) to or in respect of architectural services that are provided or offered by persons in their capacity as persons employed in a Government department.

**Exceptions from the operation of Part 2**

9. (1) An offence under this Part is not committed only because:
- 10 (a) a person uses a title, name, words or combination of letters that indicates that the person holds a qualification that the person in fact holds; or
  - (b) a person who practises landscape architecture is described as a "landscape architect"; or
  - 15 (c) a person who practises naval architecture is described as a "naval architect"; or
  - (d) a person who carries on a business of supplying goods used in connection with architecture uses the word "architectural" in connection with carrying on that business; or
  - 20 (e) a person uses a title, name, words or combination of letters prescribed, or of a class prescribed, by the regulations, or uses such a title, name, words or combination of letters in circumstances so prescribed.
- (2) Nothing in this Part prevents a person from using a title, name, words or combination of letters authorised by a law of the  
25 Commonwealth or another law of New South Wales if the usage is in accordance with that law.

**PART 3—REGISTRATION OF ARCHITECTS AND  
ARCHITECTURAL PRACTICES**

**Division 1—Registration of architects**

30 **Qualifications for registration as an architect**

10. (1) A person is eligible to be registered as an architect if the person is a natural person who:
- 35 (a) holds a qualification in architecture prescribed by the regulations, or accredited by an organisation so prescribed, or has attained a standard of professional competence that, in the opinion of the Board, is equivalent to such a qualification; and



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(b) has acquired the practical experience prescribed by the Board as a pre-requisite for entry to the examination referred to in paragraph (c); and

(c) has, to the satisfaction of the Board, passed the examination in architectural practice prescribed by the Board. 5

(2) A natural person is also eligible to be registered as an architect if registered as an architect by an authority outside New South Wales that is prescribed by the regulations.

**Note:** Subsection (2) does not limit the operation of Part 3 of the Mutual Recognition Act 1992 of the Commonwealth. 10

**Application for initial registration as an architect**

**11. (1)** An application for the registration of a person as an architect must be made to the Board and must:

(a) contain the information, and be accompanied by any documents, required by the Board; and 15

(b) be accompanied by the fee fixed by the Board.

(2) A fee so fixed must not exceed the amount (if any) prescribed by the regulations.

(3) The Board may, by notice, require an applicant to provide further information or documents. If such a requirement is not complied with within a period specified in the notice, the Board may reject the application. 20

(4) This section does not apply to a person who is seeking re-registration as an architect under section 18, 19 or 22.

**Registration and refusal of registration as an architect** 25

**12. (1)** The Board must register as an architect a person who has made an application under section 11 if it is satisfied that:

(a) the person is eligible to be so registered and meets the standards of integrity and competence reasonably to be expected of an architect; and 30

(b) the application complies with that section.

(2) If the Board is not so satisfied, it must refuse to register the person as an architect.

(3) If the Board refuses to register the person as an architect, it must give to the person notice of the refusal. The notice must state the grounds for the refusal. 35



(4) The registration of a person as an architect is subject to compliance with such conditions as are prescribed by the regulations and to any condition imposed on the person by an order of the Tribunal under section 41.

- 5 **Note:** By virtue of section 20 of the Mutual Recognition Act 1992 of the Commonwealth a person is entitled to be registered as an architect if the person is registered in another State or a Territory for an equivalent occupation if that State or Territory participates in the mutual recognition scheme. The entitlement arises once the person lodges a notice under section 19 of that Act and, until registered, the person is  
10 then deemed (by section 25 of that Act) to be registered.

## **Division 2—Registration of architectural practices**

### **Application for initial registration as an architectural practice**

**13. (1)** An application for the registration of a business as an architectural practice must be made to the Board and must:

- 15 (a) contain the information required by the Board and by subsection (3); and  
(b) be accompanied by any documents required by the Board; and  
(c) be accompanied by the fee fixed by the Board; and  
(d) be made by the person or persons who will, on registration, be the  
20 architect principal or architect principals of the practice.

(2) A fee so fixed must not exceed the amount (if any) prescribed by the regulations.

- 25 (3) If an application relates to a business that will, on registration, have 2 or more architect principals, the application must specify which of those persons is to be the nominated architect principal in relation to the practice.

30 (4) The Board may, by notice, require an applicant to provide further information or documents. If such a requirement is not complied with within a period specified in the notice, the Board may refuse to register the business concerned as an architectural practice.

(5) An architect who practises architecture alone in his or her own name and in no other name is not required to be registered as an architectural practice.

- 35 (6) This section does not apply to a business in respect of which re-registration as an architectural practice is sought under section 18, 19 or 22.

**Registration and refusal of registration as an architectural practice**

**14. (1)** The Board must register as an architectural practice a business in respect of which an application under section 13 is made if it is satisfied that:

- (a) the application complies with that section; and 5
- (b) all architectural services to be provided or offered by the business will be under the direct supervision of an architect who is engaged in the business; and
- (c) unless the practice is exempted under section 25 (4)—the architect principal or principals have entered into an undertaking with the Board that there will be in force at all times while the business continues to be registered as an architectural practice a professional indemnity insurance policy in accordance with section 25. 10

**(2)** If the Board is not so satisfied, it must refuse to register the business as an architectural practice. 15

**(3)** If the Board refuses to register a business as an architectural practice, it must give to the applicant notice of the refusal. The notice must state the grounds for the refusal.

**Division 3—Registration generally****Register of architects and register of architectural practices** 20

**15. (1)** The Board must keep a register of architects and a register of architectural practices.

**(2)** The registrar must:

- (a) make such entries in the registers; and
- (b) keep the registers in such manner, 25

as may be prescribed by the regulations.

**(3)** The Board must keep the registers at its office or, if it has more than one office, at its main office.

**(4)** A member of the public who calls at the office or main office of the Board during the ordinary office hours of the Board and asks to inspect either register is entitled to inspect the most recent printed version of the register without charge. The printed versions of the registers need contain only the names and addresses of architects and architectural practices and such other particulars as may be prescribed by the regulations. 30



(5) However, the Board may charge a fee for providing a copy of the latest printed version of a register or of any part of it. The amount of the fee must not exceed the amount (if any) prescribed by the regulations.

**List of architects and architectural practices to be published annually**

5    **16.** (1) The registrar must ensure that, at least once each year, there is printed for the information of the public a list of the names and addresses of all architects and architectural practices.

(2) The list is to be published in the Gazette or in such other publication as the Board specifies from time to time.

**10 Board to issue certificates of registration**

**17.** Whenever the Board registers an architect or an architectural practice, it must issue a certificate of registration to the architect or practice.

**Annual statement to be lodged with the Board**

15    **18.** (1) An annual statement must be lodged with the Board not later than the date prescribed by the regulations in each year in respect of each architect and each architectural practice. The date prescribed for architects may be different from that prescribed for architectural practices.

20    (2) The statement must include or be accompanied by the following:

(a) in the case of an architect—the name and business address of the architect;

25    (b) in the case of an architectural practice—the name and business address of the practice and the name and address of each architect principal engaged in the practice;

(c) any other information or documents prescribed by the regulations for the purposes of this section.

(3) The registration of an architect or architectural practice is cancelled if the relevant annual statement is not lodged with the Board on time.

30    (4) The Board must re-register an architect or architectural practice whose registration is cancelled under this section if:

(a) an application for re-registration is later made to the Board by or on behalf of the architect or practice; and

35    (b) the application is accompanied by the relevant annual statement and the re-registration fee (if any) fixed under subsection (5).



(5) The Board may, from time to time, fix the amount payable as a re-registration fee for the purposes of subsection (4), but the amount must not exceed the amount (if any) prescribed by the regulations. The Board may, for any reason it considers appropriate, waive the payment of the whole or a part of such a fee. 5

#### **Annual registration fee to be paid to the Board**

19. (1) An annual registration fee must be paid in respect of each architect and each architectural practice not later than the date in each year prescribed by the regulations for the lodgment of an annual statement in respect of the architect or practice. 10

(2) The annual registration fee is to be an amount fixed by the Board but must not exceed the amount (if any) prescribed by the regulations. The fee prescribed for an architect may be different from that prescribed for an architectural practice. 15

(3) The registration of an architect or an architectural practice is cancelled if the relevant annual registration fee is not paid on time. 15

(4) The Board must re-register an architect or architectural practice whose registration is cancelled under this section if:

(a) an application for re-registration is later made to the Board by or on behalf of the architect or practice; and 20

(b) the application is accompanied by the relevant annual registration fee and the re-registration fee (if any) fixed under subsection (5).

(5) The Board may, from time to time, fix the amount payable as a re-registration fee for the purposes of subsection (4), but the amount must not exceed the amount (if any) prescribed by the regulations. The Board may, for any reason it considers appropriate, waive the payment of the whole or a part of such a fee. 25

#### **Consequences of cancellation of registration under sections 18 and 19**

20. (1) As soon as practicable after the registration of an architect or an architectural practice is cancelled under section 18 or 19, the Board must give notice of the cancellation to the architect or to the nominated architect principal of the practice. 30

(2) Whenever the registration of an architect or architectural practice is cancelled under section 18 or 19, the registrar must record the cancellation in the appropriate place in the relevant register. If the architect or architectural practice is re-registered under either of those sections, the registrar must record the re-registration in the appropriate place in the relevant register. 35

**Changes of particulars to be notified**

21. (1) Every architect must, within 30 days after changing address (as appearing in the register of architects), give notice to the Board of the new address.

- 5 (2) If any of the details provided in the application for registration made, or provided under this subsection, in respect of an architectural practice change (such as the name or address of the practice or the name or address of an architect principal of the practice), the nominated architect principal of the practice must, within 30 days after the change,  
10 give notice to the Board of the new details.

Maximum penalty: 10 penalty units.

**Re-registration and revocation of suspension of registration**

22. (1) The Board may re-register a person whose registration as an architect has previously been cancelled or may revoke the suspension of a  
15 person whose registration as an architect is suspended. The Board may act either on its own initiative or on the application of the person concerned.

- (2) The Board may also re-register a business whose registration as an architectural practice has previously been cancelled or may revoke the  
20 suspension of a business whose registration as an architectural practice is suspended. The Board may act either on its own initiative or on the application of an architect engaged in the business concerned.

(3) An application must:

- 25 (a) contain the information, and be accompanied by any documents, required by the Board; and  
(b) be accompanied by the re-registration fee (if any) fixed by the Board.

The re-registration fee must not exceed the amount (if any) prescribed by the regulations.

- 30 (4) The Board may, for any reason it considers appropriate, waive the payment of the whole or a part of a re-registration fee.

(5) The Board must consider such an application without delay and, if appropriate, may conduct an inquiry to determine whether or not the application should be granted.

- 35 (6) The Board must not re-register a person as an architect, or a business as an architectural practice, if an order under section 41 imposing conditions as to re-registration is in force in respect of the person or business and the conditions have not been complied with.



(7) If the Board refuses an application, it must give the applicant notice of the refusal. The notice must state the grounds for the refusal.

(8) If the Board re-registers a person as an architect or re-registers a business as an architectural practice, or revokes the suspension of registration of an architect or an architectural practice: 5

- (a) the Board must give without delay notice of the re-registration or revocation of suspension to the applicant; and
- (b) the registrar must record the re-registration or revocation of suspension in the appropriate place in the relevant register.

(9) This section does not apply to a person or business whose registration has been cancelled under section 18 or 19. 10

#### **PART 4—PRACTICE OF ARCHITECTURE**

##### **Professional Conduct Code**

23. (1) The regulations may prescribe a Professional Conduct Code for Architects. 15

(2) In particular, the Code may make provision for or with respect to:

- (a) regulating the practice of architecture by an architect or an architectural practice; and
- (b) regulating the provision or offering of any architectural service by an architect or on behalf of an architectural practice; and 20
- (c) specifying the precautions to be taken to protect the interests of clients of architects and architectural practices, or of the public in general, with respect to the provision of architectural services.

**Note:** A contravention of the Professional Conduct Code constitutes unacceptable professional conduct and may result in disciplinary action being taken under Part 5. (See the definition of "unacceptable professional conduct" in section 4.) 25

##### **Nominated architect principals of architectural practices**

24. (1) While a business is registered as an architectural practice, the nominated architect principal of the practice is, for the purposes of this Act, responsible for the management and control of architectural services provided or offered by the business. 30

(2) If at any time a business registered as an architectural practice has no nominated architect principal, the Board may, by notice served on the architect principals of the practice, require one of those principals to be nominated in respect of the practice within a period specified in the notice. 35



- (3) If an architect principal is not nominated in respect of an architectural practice within the period specified in such a notice, the Board may, by further notice served on the architect principals of the practice, designate one of those principals to be the nominated architect principal in respect of the practice.

#### **Practice to be covered by professional indemnity insurance**

25. (1) Every architect who practices architecture alone in his or her own name must ensure that an appropriate professional indemnity insurance policy is in force in respect of the business at all times.
- 10 (2) The nominated architect principal of an architectural practice must ensure that an appropriate professional indemnity insurance policy is in force in respect of the practice at all times.
- (3) The regulations may specify requirements with which such a policy must comply.
- 15 (4) Subsection (2) does not apply to an architectural practice if the Board exempts the practice from that subsection because it is satisfied that the practice would be able to meet any claims for loss or damage that, in its opinion, could reasonably be expected to arise in connection with the conduct of the practice.
- 20 (5) If this section is not complied with, the architect or nominated architect principal of the architectural practice concerned is guilty of an offence.

Maximum penalty: 100 penalty units.

- 25 (6) In this section, “**appropriate**” means appropriate to the architect or architectural practice concerned, having regard to the architectural services provided or offered by the architect or practice.

**Note:** Failure to comply with this section will result in the registration of the architect or architectural practice concerned being cancelled. (See sections 45 (3) and 46 (2).)

#### **Continuing professional development**

- 30 26. (1) The Board may, from time to time, prescribe professional development programs to be undertaken by architects for the purpose of ensuring that architects’ architectural skills and knowledge are maintained or, where possible, improved.
- 35 (2) An architect must undertake and, as far as practicable, complete such professional development programs prescribed by the Board as are from time to time notified to the architect.

(3) The nominated architect principal of an architectural practice must take all reasonable steps to ensure that each architect engaged in the practice undertakes such professional development programs prescribed by the Board as are from time to time notified to that principal.

**Note:** Failure to comply with this provision may result in the registration of the architect or architectural practice concerned being cancelled. (See sections 45 (4) and 46 (3).)

5

**Names of principals engaged in architectural practices to be notified in correspondence and other documents**

27. If:

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- (a) the names of the architect principals engaged in an architectural practice are not; or
- (b) such information relating to an architectural practice as is prescribed by the regulations is not,

specified on any letter or other document prepared for use in connection with the conduct of the practice, the nominated architect principal of the practice is guilty of an offence.

15

Maximum penalty: 20 penalty units.

**PART 5—COMPLAINTS AND DISCIPLINARY PROCEEDINGS**

**Division 1—Making and investigation of complaints**

20

**Making a complaint about the conduct of an architect or practice**

28. (1) Any person may make a complaint to the Board about the conduct of an architect or an architectural practice.

(2) The Board may initiate a complaint about the conduct of an architect or an architectural practice.

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(3) The Board may not deal with or initiate a complaint about the conduct of a person, or of a business, that is alleged to have occurred before the person was registered as an architect or before the business was registered as an architectural practice.

**Complaint can be made even if the architect or practice is no longer registered**

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29. A complaint may be made or initiated, and may be dealt with, under this Part in respect of a person who was formerly an architect, or a business that was formerly an architectural practice, but only if the complaint relates to matters that arose while the person was an architect or the business was an architectural practice. In that case, a reference in

35



this Act to an architect or an architectural practice is to be read as a reference to the former architect or former architectural practice.

### **Formalities for complaints**

5 **30.** A complaint to the Board must be in writing and contain details of the conduct complained of.

### **Board can ask for further details about a complaint**

10 **31.** The Board may, by notice, ask the complainant to provide more details about a complaint made to it and may reject the complaint if the complainant does not provide those details within a period specified in the notice. The period so specified must be not less than 7 days.

### **Complaint to be investigated expeditiously**

**32. (1)** The Board must ensure that a complaint is investigated expeditiously.

15 **(2)** The Board may investigate a complaint itself or refer the complaint for investigation by an investigator appointed by the Board.

**(3)** After investigating a complaint, the investigator must provide a report of the investigation to the Board.

20 **(4)** However, the Board may summarily reject a complaint that has been made to it if, after preliminary investigation, it is satisfied on reasonable grounds that the complaint:

- (a) is frivolous or vexatious; or
- (b) was not made in good faith; or
- (c) was made for an improper purpose.

### **Board to notify person or practice against whom a complaint is made**

25 **33. (1)** The Board must give notice of a complaint to the architect or the nominated architect principal of the architectural practice concerned.

**(2)** The notice must be given as soon as practicable after the complaint is made and must state the nature of the complaint and identify the complainant.

30 **(3)** Notice is not required to be given if the Board decides, on reasonable grounds, that the giving of the notice would, or would be likely to prejudice the investigation of the complaint or subject the complainant to risk of intimidation or harassment.



(4) However, the Board must from time to time review a decision under subsection (3) and must in any case give notice to the architect or the nominated architect principal of the architectural practice concerned not later than 60 days after the complaint was made to or initiated by the Board.

5

#### **Action on complaints that have been investigated**

34. (1) This section specifies the action that the Board is to take after investigating a complaint or considering the report of an investigator appointed to investigate the complaint. This section does not apply if the complaint is withdrawn.

10

(2) The Board must reject the complaint if it believes that the complaint is without substance.

(3) The Board must refer the complaint to the Tribunal for hearing if the complaint contains an allegation of unacceptable professional conduct that the Board believes may have substance.

15

(4) The Board must arrange to have the complaint dealt with in accordance with Division 2 if the complaint does not contain an allegation of unacceptable professional conduct but the Board believes the complaint may have substance.

(5) The Board must give notice to the complainant of any action that it takes or proposes to take under this section about the complaint.

20

#### **Division 2—Conciliation of certain complaints**

##### **Board may refer certain complaints for conciliation**

35. (1) If a complaint made to the Board involves a dispute between the complainant and an architect or an architectural practice about a matter arising from the provision of or a failure to provide an architectural service and the complainant is seeking redress from the architect or practice, the Board may appoint a conciliator and refer the complaint to the conciliator for conciliation.

25

(2) A complaint may be referred for conciliation whether or not it involves an allegation of unacceptable professional conduct.

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(3) A conciliator may confer with the complainant and the architect or the nominated architect principal of the architectural practice concerned with a view to assisting them to reach a mutually agreeable settlement of the complaint.

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(4) A conciliator may also, by notice, summon the complainant and the architect or an architect principal of the architectural practice concerned to attend a compulsory conference with a view to reaching such a settlement.

5 (5) If the complainant fails to attend a compulsory conference at the time and place specified in the notice of the conference, the Board may dismiss the complaint.

(6) If the architect, or an architect principal of the architectural practice concerned, fails, without reasonable excuse, to attend a compulsory  
10 conference at the time and place specified in the notice of the conference, the architect, or the nominated architect principal of that practice, is guilty of an offence.

Maximum penalty: 20 penalty units.

(7) A complaint referred for conciliation that involves an allegation of  
15 unacceptable professional conduct may be investigated and otherwise dealt with under this Part at the same time as or after conciliation is attempted.

(8) If conciliation of a complaint is unsuccessful, the conciliator must  
20 refer the complaint back to the Board for such further action (if any) as the Board considers appropriate.

#### **Certain matters not admissible as evidence in legal proceedings**

36. (1) Evidence of anything said or admitted during a conciliation or  
25 attempted conciliation of a complaint is not admissible in proceedings in a court or before a person or body authorised to hear and receive evidence.

(2) A document prepared for the purposes of, or in the course of, a conciliation or attempted conciliation of a complaint is not admissible in any such proceedings.

(3) This section does not apply to evidence or a document if:

- 30 (a) each of the persons who attended, or were named during, the conciliation or attempted conciliation; or  
(b) in the case of a document, each of the persons named in the document,

consent to the admission of the evidence or document.

35 **Note:** This section ensures that any information created specifically for the purpose of resolving a complaint by conciliation will be privileged and cannot be used for any purpose other than the conciliation. Source documents, however, and documents that have not been created for the purposes of conciliation will not be subject to this limitation and can continue to be used in legal proceedings.



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**Division 3—Constitution and functions of New South Wales  
Architects Tribunal**

**Constitution of the Tribunal**

- 37.** (1) There is constituted by this Act a tribunal to be known as the New South Wales Architects Tribunal. 5
- (2) The Tribunal is to consist of not fewer than 6 members.
- (3) Of the members:
- (a) at least 2 must be architects; and
- (b) at least 2 must be legal practitioners who hold current practising certificates; and 10
- (c) at least 2 must be persons who are persons not referred to in paragraph (a) or (b).
- (4) A member of the Board is not eligible to be a member of the Tribunal.
- (5) The members of the Tribunal are to be appointed by the Minister after consultation with the Board. 15
- (6) The Minister is required to appoint one of the members of the Tribunal as its president.
- (7) A member of the Tribunal is entitled to receive such remuneration (including travelling and subsistence allowances) as the Board decides in respect of the member. 20
- (8) A matter or thing done by the Tribunal, or by a member of the Tribunal or a person acting with the authority of the Tribunal, does not subject any such member or person personally to any action, liability, claim or demand if the matter or thing was done in good faith for the purposes of this Act. 25
- (9) Schedule 1 has effect with respect to the procedure for convening of the Tribunal and the conduct of its hearings.

**Composition of the Tribunal for a particular hearing**

- 38.** (1) The Tribunal is, for the purpose of conducting the hearing of a complaint, to be constituted by: 30
- (a) one of the members referred to in section 37 (3) (a); and
- (b) one of the members referred to in section 37 (3) (b); and
- (c) one of the members referred to in section 37 (3) (c).



(2) The president of the Tribunal must select the members (who may include himself or herself) who are to constitute the Tribunal for the purposes of a particular hearing.

5 (3) The president of the Tribunal, if selected for a particular hearing, is required to preside at the hearing. Otherwise, the member of the Tribunal nominated by the president is required to preside.

10 (4) A member of the Tribunal appointed as an investigator or conciliator in respect of a complaint that is referred to the Tribunal is not eligible to be a member of the Tribunal that is selected to hear the complaint.

(5) More than one hearing may be conducted by the Tribunal at the same time.

#### **Decisions of the Tribunal**

15 39. A decision supported by all the members of the Tribunal hearing a complaint or by a majority of them is the decision of the Tribunal.

#### **Change of composition of the Tribunal during hearing**

40. (1) If for any reason one of the members (other than the presiding member) constituting the Tribunal for the purpose of conducting a hearing ceases to hold office:

20 (a) before the Tribunal has completed the hearing; or

(b) before the Tribunal has made a decision in respect of the hearing, the hearing may be continued, or a decision may be made, by the remaining members of the Tribunal. If the remaining members of the Tribunal are equally divided as to their support for a particular decision, 25 the decision supported by the presiding member is the decision of the Tribunal.

(2) However, if for any reason the presiding member or more than one other member ceases to hold office before the Tribunal has completed the hearing or made a decision in respect of the hearing, the hearing is 30 terminated. The Tribunal may, for the purpose of conducting a new hearing in respect of a complaint, be reconstituted in accordance with this Division.

(3) A decision of the Tribunal is not invalid only because the constitution of the Tribunal at the time of the pronouncement of the 35 decision is different from the constitution of the Tribunal at the time of making the decision.

**Action that may be taken when unacceptable professional conduct is proved**

- 41. (1)** If the Tribunal finds a complaint alleging unacceptable professional conduct against an architect to be proved, it may make one or more of the following orders: 5
- (a) an order cautioning or reprimanding the architect;
  - (b) an order imposing on the architect a fine not exceeding \$10,000;
  - (c) an order suspending the registration of the architect for a specified period not exceeding 12 months;
  - (d) an order cancelling the registration of the architect; 10
  - (e) an order imposing a condition on the registration of the architect with respect to practising architecture;
  - (f) if the Tribunal orders the registration of an architect to be cancelled—an order imposing conditions as to the re-registration of the architect. 15
- (2)** If the Tribunal finds a complaint alleging unacceptable professional conduct against an architectural practice to be proved, it may make one or more of the following orders:
- (a) an order cautioning or reprimanding any architect who is an architect principal engaged in the practice; 20
  - (b) an order imposing on any architect who is an architect principal engaged in the practice a fine not exceeding \$20,000;
  - (c) an order suspending, for a specified period not exceeding 12 months, the registration of any architect who is an architect principal engaged in the practice; 25
  - (d) an order cancelling the registration of any architect who is an architect principal engaged in the practice;
  - (e) an order imposing a condition on the registration of any of the architects engaged in the practice (including an architect principal so engaged) with respect to practising architecture; 30
  - (f) if the Tribunal orders the registration of an architect who is an architect principal to be cancelled—an order imposing conditions as to the re-registration of the architect.
- (3)** The Tribunal must not cancel or suspend the registration of an architect or an architect principal for having committed an offence unless, having regard to the nature of the offence or the circumstances under which it was committed, the Tribunal believes that the commission of the offence would render the architect or architect principal unfit to be registered. 35



(4) If, as a result of a complaint against an architectural practice, the Tribunal cancels or suspends the registration of the architect principal or, as the case may be, all of the architect principals engaged in the practice, it may make an order cancelling or suspending the registration of the practice. If it does so, it may also make an order imposing conditions as to the re-registration of the practice.

(5) A fine imposed under this section is money recoverable under section 64.

(6) An order under this section in relation to the professional conduct of an architect or an architect principal may be made whether or not the architect or principal has been found guilty of an offence against this Act or the regulations arising from the same conduct. However, the Tribunal, in deciding whether or not to make an order imposing a fine under this section, must have regard to the amount of any penalty imposed for such an offence.

(7) The Tribunal may, on making an order under subsection (1) (b), (c) or (d) or (2) (b), (c) or (d), suspend the operation of the order for a specified period not exceeding 3 years. The suspension of such an order is subject to such conditions as the Tribunal considers appropriate.

(8) If the Tribunal (whether constituted by the same or different members) finds, after further hearing, that a condition subject to which the operation of an order under this section has been suspended is not being or has not been complied with, it may revoke the suspension. If that happens, the order has effect immediately.

(9) If the operation of an order under this section is suspended and the suspension is not revoked within the period for which the order is suspended, the order ceases to have effect at the end of that period.

#### **Division 4—Post-hearing procedure**

##### **Decision of the Tribunal to be notified**

42. (1) As soon as practicable after making a decision under Division 3, the Tribunal must give notice of the decision:

- (a) to the architect or architect principal concerned; and
- (b) to the Board; and
- (c) to the complainant (if not the Board).

(2) The notice must state the reasons for the Tribunal's decision.



**Action to be taken by the registrar in consequence of an order cancelling or suspending registration**

**43. (1)** If the Tribunal makes an order cancelling or suspending the registration of an architect or an architectural practice, the registrar must publish a notice of the cancellation or suspension. The publication may be in such manner and form as the Board considers to be appropriate. 5

**(2)** As soon as practicable after a decision of the Tribunal under Division 3 has been made, the registrar must record the decision in the appropriate place in the relevant register.

**Decision of the Tribunal suspended pending appeal** 10

**44.** A decision of the Tribunal under Division 3 does not take effect:

(a) until the time for lodging an appeal against the decision has expired; or

(b) if before that time an appeal is lodged, until either the appeal is finally determined and the Tribunal's decision has been upheld (either in whole or in part) or the appeal is withdrawn. 15

**PART 6—CANCELLATION OF REGISTRATION BY THE BOARD**

**Cancellation of registration of architects for non-disciplinary matters**

**45. (1)** The Board must cancel the registration of: 20

(a) an architect who dies; and

(b) an architect who does not have or who no longer has the qualification by virtue of which he or she was registered; and

(c) an architect who becomes a mentally incapacitated person.

**(2)** The Board must cancel the registration of an architect if, after inquiry, the Board is satisfied that the registration was obtained by means of a false or misleading representation in a material respect. 25

**(3)** The Board must cancel the registration of an architect who practises architecture alone in his or her own name if, after inquiry, the Board is satisfied that the architect is not complying with section 25. 30

**(4)** The Board may cancel the registration of an architect who practises architecture alone in his or her own name if, after inquiry, the Board is satisfied that the architect:

(a) is failing to comply with section 21 (1) or 26 (2); or

(b) has failed without reasonable excuse to attend a compulsory conference referred to in section 35 (6). 35

5 (5) The Board may, instead of cancelling the registration of the architect under subsection (3) or (4), impose conditions on the architect with which the architect must comply. The Board may immediately cancel the registration of the architect if it is satisfied after inquiry that the conditions are not being complied with.

(6) The Board may, on the application of an architect, cancel the registration of the architect.

10 (7) If the Board decides under this section to cancel the registration of an architect, the registrar must record the cancellation in the appropriate place in the register of architects.

(8) The registration of an architect may be cancelled in respect of a matter referred to in subsection (2), (3) or (4) whether or not the architect has been found guilty of, or could be prosecuted for, an offence arising out of the same matter.

15 **Cancellation of registration of architectural practices for non-disciplinary matters**

46. (1) The Board must cancel the registration of an architectural practice if, after inquiry, it is satisfied that:

- 20 (a) the registration was obtained by means of a false or misleading representation in a material respect; or  
(b) the practice has ceased to operate.

(2) The Board must cancel the registration of an architectural practice if, after inquiry, the Board is satisfied that section 25 is not being complied with in relation to the practice.

25 (3) The Board may cancel the registration of an architectural practice if, after inquiry, the Board is satisfied that:

- (a) there is not at least one architect principal engaged in the practice who has responsibility for the management and control of architectural services provided by the practice; or  
30 (b) the practice is providing architectural services that are not under the direct supervision of an architect who is engaged in the practice; or  
(c) section 21 (2), 26 (3) or 27 is not being complied with in relation to the practice; or  
35 (d) the practice has failed without reasonable excuse to be represented at a compulsory conference referred to in section 35 (6).

(4) The Board may, instead of cancelling the registration of the architectural practice under subsection (2) or (3), impose conditions on the practice. If the Board imposes any such conditions, the nominated



architect principal of the practice must ensure that the conditions are complied with. The Board may immediately cancel the registration of the practice if it is satisfied after inquiry that the conditions are not being complied with.

(5) The Board may, on the application of the nominated architect principal of an architectural practice, cancel the registration of the practice. 5

(6) If the Board decides under this section to cancel the registration of an architectural practice, the registrar must record the cancellation in the appropriate place in the register of architectural practices. 10

(7) The registration of an architectural practice may be cancelled in respect of a matter referred to in subsection (1), (2) or (3) whether or not an architect principal engaged in the practice has been found guilty of, or could be prosecuted for, an offence arising out of the same matter.

**Registrar to give notice when registration is cancelled** 15

47. As soon as practicable after the Board has cancelled the registration of an architect or an architectural practice under this Part (sections 45 (1) (a) and (6) and 46 (5) excepted), the registrar must give notice of the cancellation to the architect or the nominated architect principal of the practice. 20

**PART 7—RIGHT OF APPEAL TO THE DISTRICT COURT**

**Appeal against decisions of the Tribunal and decisions of the Board**

48. (1) An applicant for registration as an architect or an architectural practice whose application is refused may appeal to the District Court against the refusal. 25

(2) However, an applicant for registration as an architect does not have a right of appeal under subsection (1) if he or she:

(a) does not have a qualification in architecture of a kind referred to in section 10 (1) (a); or

(b) has not acquired the practical experience referred to in section 10 (1) (b); or 30

(c) has not passed the examination referred to in section 10 (1) (c), necessary for registration.

(3) An applicant for re-registration, or for the revocation of a suspension of registration, under Division 3 of Part 3 whose application is refused may appeal to the District Court against the refusal. 35



(4) A party to the hearing of a complaint by the Tribunal under Part 5 who is dissatisfied with a decision of the Tribunal relating to the party (including the severity of an order under section 41) may appeal to the District Court against the decision.

5 (5) An architect may appeal to the District Court against a decision of the Board under section 45 (subsection (1) excepted) if the decision relates to the architect.

(6) An architect principal of an architectural practice may appeal to the District Court against a decision of the Board under section 46 if the  
10 decision relates to the practice.

(7) An appeal must be lodged with the District Court:

(a) in the case of an appeal under subsection (1)—not later than 90 days after notice of the Board's decision to refuse the application was given to the applicant for registration; or

15 (b) in the case of an appeal under subsection (3)—not later than 90 days after notice of the Board's decision to refuse the application was given to the applicant; or

(c) in the case of an appeal under subsection (4)—not later than 30 days after notice of the relevant decision was given to the party  
20 concerned; or

(d) in the case of an appeal under subsection (5)—not later than 30 days after notice of the relevant decision was given to the architect concerned; or

25 (e) in the case of an appeal under subsection (6)—not later than 30 days after notice of the relevant decision was given to the nominated architect principal of the architectural practice concerned.

(8) If the Board fails to make a decision in respect of an application for registration or re-registration as an architect or as an architectural  
30 practice, or for the revocation of a suspension of registration, within 60 days after the date on which the application was made to the Board, the applicant:

(a) may treat the application as having been refused; and

35 (b) may lodge an appeal under subsection (1) or (3) as if the Board had refused the application.

Nothing in this subsection affects the operation of subsection (7) (a) or (b).

(9) No appeal lies under this section against a decision of the Board taken in accordance with the Mutual Recognition Act 1992 of the Commonwealth:

- (a) to impose conditions on the registration of a person; or
- (b) to refuse to register a person.

5

**Note:** Section 34 of the Mutual Recognition Act 1992 of the Commonwealth provides that a person may, subject to the Administrative Appeals Act 1975 of the Commonwealth, apply to the Administrative Appeals Tribunal for a review of a decision of a local registration authority in relation to its functions under the first-mentioned Act.

#### **Procedure on appeal**

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49. (1) An appeal is to be made, heard and determined in accordance with rules of court of the District Court and is to be dealt with by way of a new hearing.

(2) Fresh evidence, or evidence in addition to or in substitution for the evidence on which the decision appealed from was based, may, with the leave of the District Court, be given at the hearing of an appeal.

15

#### **Decision of the District Court on the hearing of an appeal**

50. The District Court, in deciding an appeal, may:

- (a) confirm the decision appealed from; or
- (b) quash that decision and make such other decision as the Tribunal or Board could have made on the matter to which the appeal relates; or
- (c) remit that matter to the Tribunal or Board to be dealt with as ordered by the Court.

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#### **Decision of District Court to be implemented**

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51. The decision of the District Court on an appeal (other than a decision remitting a matter to the Tribunal or Board) is taken to be the decision of the Tribunal or the Board and the Tribunal or Board must give effect to it accordingly.

### **PART 8—BOARD OF ARCHITECTS OF NEW SOUTH WALES**

30

#### **Division 1—Constitution and functions of the Board**

##### **Constitution of the Board**

52. (1) There is constituted by this Act a corporation with the corporate name of the Board of Architects of New South Wales.

35

(2) The Board is not and does not represent the Crown for any purpose.



**Main functions of the Board**

**53. (1)** The Board has the functions conferred or imposed on it by or under this or any other Act.

**(2)** The Board also has the following other functions:

- 5 (a) making recommendations to the Minister with respect to the qualifications and experience necessary for registration as an architect and the requirements necessary for registration as an architectural practice;
- 10 (b) determining standards of professional competence for the purposes of section 10 (1) (a);
- (c) providing for or conducting examinations of architectural knowledge and skills of persons applying for registration and appointing examiners for that purpose;
- 15 (d) determining the subjects in which examinations of architectural knowledge and skills are to be conducted;
- (e) fixing the fees payable to examiners in architecture and the fees payable by candidates for examination and assessment;
- (f) accrediting courses of study in architecture;
- 20 (g) publishing information of interest or concern to architects and, in particular, information about the Board's activities and about the operation of this Act;
- (h) establishing scholarships, making grants and providing prizes in relation to architectural activities and generally advancing the profession of architecture.

25 **(3)** The amount of a fee fixed under subsection (2) (e) in relation to candidates for examination and assessment must not exceed the amount (if any) prescribed by the regulations.

**Ancillary functions of the Board**

**54.** The Board also has the following ancillary functions:

- 30 (a) acquiring or constructing, and maintaining or disposing of, buildings and equipment (including vehicles);
- (b) making or entering into contracts or arrangements for the carrying out of works or the performance of services or the supply of goods or materials;
- 35 (c) appointing agents, and acting as agent for other persons;
- (d) any other function conferred by section 50 of the Interpretation Act 1987.



**Division 2—Management of the Board****Membership of the Board**

**55. (1)** The Board is to consist of 11 members.

**(2)** Of the members:

(a) one is to be the President of the New South Wales Chapter of the Royal Australian Institute of Architects; and 5

(b) one is to be the immediate past President of that Chapter; and

(c) one is to be the Government Architect; and

(d) three are to be architects elected by architects; and

(e) two are to be teachers of architecture appointed by the governing bodies of prescribed educational institutions; and 10

(f) one is to be an architect appointed by the Minister; and

(g) two are to be persons appointed by the Minister who are not architects but who have knowledge and experience of the interests of users of architectural services. 15

**(3)** Appointments for the purposes of subsection (2) (e) are to be made in accordance with the regulations. In particular, the regulations may make provision for rotating such appointments among the governing bodies of prescribed educational institutions should there at any time be more than 2 such institutions. 20

**(4)** Schedule 2 has effect with respect to the Board.

**Elected and appointed members**

**56. (1)** An election for the members referred to in section 55 (2) (d) is to be held on the date prescribed by or determined in accordance with the regulations and is to be conducted in accordance with the procedures so prescribed. If, at an election held to elect those members or as a result of a failure to hold such an election, there is a failure to elect one or more of those members, the Minister may appoint an architect to be such a member. 25

**(2)** A member appointed under subsection (1) instead of a member referred to in section 55 (2) (d) is nevertheless taken to be an elected member for the purposes of this Act and to have been elected at the time of his or her appointment by the Minister. 30

**(3)** If there is a failure to appoint a member referred to in section 55 (2) (e), the Minister may appoint a person employed as a teacher of architecture at a prescribed educational institution to be the member. 35

(4) A member appointed under subsection (3) instead of a member referred to in section 55 (2) (e) is nevertheless taken to be a member appointed under that paragraph and to have been appointed by the governing body of a prescribed educational institution.

#### 5 **Employment of staff**

57. (1) The Board may employ a registrar and such other staff as it requires to exercise its functions.

(2) The Board may from time to time determine the salary, wages and conditions of employment of its staff in so far as they are not fixed by or under any other Act or law.

#### **Use of staff or facilities of Government departments and public agencies**

58. (1) The Board may arrange for the use of the services of any staff (by secondment or otherwise) or facilities of a Government department or a public or local authority.

(2) For the purposes of this Act, a person whose services are used under this section is taken to be a member of the Board's staff.

### **Division 3—Finance**

#### **Establishment of the Fund**

20 59. There is to be a fund known as the New South Wales Architects Fund.

#### **Payments into the Fund**

60. The Fund comprises the following:

- 25 (a) all fees paid to or recovered by the Board under this Act and all fines paid or recovered in consequence of orders made by the Tribunal under section 41 (1) (b) or (2) (b);
- (b) other money received by or on account of the Board;
- (c) interest that accrues from the investment of money belonging to the Fund;
- 30 (d) money borrowed by or advanced to the Board or appropriated by Parliament for the purposes of the Board;
- (e) other money required by or under this or any other Act or law to be paid into the Fund.

**Payments from the Fund**

**61.** (1) There is to be paid from the Fund:

(a) any remuneration payable to Board members or members of the Board's staff; and

(b) all other expenses incurred in the administration of this Act. 5

(2) The Board may apply any money not required for the purposes of subsection (1) for the purpose of advancing the profession of architecture or architectural education in any manner the Board considers to be appropriate.

**Investment of the Fund**

10

**62.** The Board may invest money held in the Fund:

(a) in such manner as may be authorised by the Public Authorities (Financial Arrangements) Act 1987; or

(b) if that Act does not confer power to invest money held by the Board—in any manner authorised for the investment of trust funds or in any other manner approved by the Minister with the concurrence of the Treasurer. 15

**Financial year of the Board**

**63.** (1) The financial year of the Board is the year commencing on 1 July. 20

(2) A different financial year may be determined by the Treasurer under section 4 (1A) of the Public Finance and Audit Act 1983.

**Recovery of money owing to the Board**

**64.** The Board may, by proceedings brought in a court of competent jurisdiction, recover as a debt any money owing to it. 25

**Division 4—Other matters****Board may delegate functions**

**65.** (1) The Board may delegate to a committee of the Board or to an authorised person the exercise of any of its functions, other than this power of delegation and the functions set out in Parts 5 and 6. 30

(2) In this section, “authorised person” means a Board member or a member of the Board's staff.



**PART 9—ENFORCEMENT****Court orders**

5     **66. (1)** Whenever a person has done, is doing or is proposing to do any act or thing that constituted, constitutes or would constitute a contravention of this Act or the regulations, the Supreme Court may, on the application of the Board or of any person whose interests have been, are being or would be affected by the doing of the act or thing:

- (a) make an order restraining the person from doing that act or thing; and
- 10   (b) if in the opinion of the Supreme Court it is desirable to do so, make a further order requiring the person to do any act or thing.

15     **(2)** Whenever a person has refused or failed, is refusing or failing, or is proposing to refuse or fail, to do any act or thing that the person is required to do by or under this Act or the regulations, the Supreme Court may, on the application of the Board or of any person whose interests have been, are being or would be affected by the refusal or failure to do the act or thing, make an order requiring the person to do the act or thing.

**(3)** An order under subsection (1) or (2) may be made on such terms as the Supreme Court considers appropriate.

20     **(4)** The Supreme Court may grant an interim order pending determination of an application referred to in subsection (1) if in its opinion it is desirable to do so.

**(5)** The Supreme Court may from time to time rescind or vary an order made under this section.

25     **(6)** The power of the Supreme Court to make an order restraining a person from doing an act or thing may be exercised:

- (a) whether or not it appears to the Court that the person intends to do the act or thing again or to continue to do the act or thing; and
- (b) whether or not the person has previously done the act or thing; and
- 30   (c) whether or not there is an imminent danger of substantial damage to any other person if the person does the act or thing.

**(7)** The power of the Supreme Court to make an order requiring a person to do an act or thing may be exercised:

- 35   (a) whether or not it appears to the Court that the person intends to refuse or fail again, or to continue to refuse or fail, to do the act or thing; and
- (b) whether or not the person has previously refused or failed to do the act or thing; and

(c) whether or not there is an imminent danger of substantial damage to any other person if the person refuses or fails to do the act or thing.

(8) If an application for an order under this section is made by the Board, the Supreme Court must not require the Board or any other person, as a condition of making an interim order, to give any undertaking as to damages. 5

(9) The Supreme Court may, in addition to or instead of making an order under this section in respect of a person, order the person to pay damages to another person. 10

#### **Offences by corporations**

67. (1) If a corporation contravenes, whether by act or omission, any provision of this Act or the regulations, each person who is a director of the corporation or a person concerned in the management of the corporation is taken to have contravened the same provision if the person knowingly authorised or permitted the contravention. 15

(2) A person may be proceeded against and convicted under a provision under this section whether or not the corporation has been proceeded against or convicted.

(3) This section does not affect any liability imposed on a corporation for an offence committed by the corporation against this Act or the regulations. 20

#### **Offences involving fraudulent or deceptive conduct**

68. A person must not:

(a) falsify or cause to be falsified the register of architects or the register of architectural practices; or 25

(b) falsely represent himself or herself as being the person referred to in a degree, diploma, certificate, document presented to the Board, or in a certificate of registration; or

(c) procure the registration of himself or herself, another person or a business, or obtain a certificate of registration, by engaging in misleading or deceptive conduct; or 30

(d) forge a certificate of registration, or alter a certificate of registration without the authority of the Board; or

(e) make use of, or attempt to make use of, a certificate of registration knowing it to have been forged, or to have been altered without the authority of the Board; or 35



- (f) falsely represent himself or herself as being the person referred to in a certificate of registration or as being an architect principal of, or an architect employed by, an architectural practice; or
- 5 (g) present to the Tribunal or Board as being true a degree, diploma, certificate or other document knowing it to be false or forged; or
- (h) make a statement during a hearing before the Tribunal or an inquiry before the Board, or in a document to be used in evidence before or to be submitted to the Tribunal or Board, knowing the statement to be false or misleading in a material respect; or
- 10 (i) aid or assist a person in the commission of an offence under paragraphs (a)–(h).

Maximum penalty: 100 penalty units or imprisonment for 2 years, or both.

#### **Evidentiary certificates and evidence of entry in registers**

- 15 **69. (1)** A certificate, purporting to have been signed by the registrar, to the effect that:
  - (a) a person or business specified in the certificate was or was not registered as an architect or an architectural practice at a time, or during a period, so specified; or
  - 20 (b) the registration of a person or practice specified in the certificate was suspended at, or during, a time so specified,

is, without proof of the signature of the person purporting to be the signer of the certificate, admissible in any legal proceedings and is evidence of any fact stated in it.

- 25 **(2)** An entry in the register of architects or the register of architectural practices is admissible in any legal proceedings and is evidence of any fact stated in it.

- 30 **(3)** A document purporting to be a copy of an entry in the register of architects or the register of architectural practices, purporting to be signed by the registrar, is, without proof of the signature of the person purporting to be the signer of the document, admissible in any legal proceedings and is evidence of any fact stated in it.

#### **Proof of certain matters not required in legal proceedings**

- 35 **70.** In legal proceedings involving the Tribunal or the Board, proof is not required (unless evidence is given to the contrary) of:

- (a) the constitution of the Tribunal or the election or appointment of a Board member; or
- (b) a decision of the Tribunal or the Board; or

- (c) the appointment of any member of the Tribunal or the registrar or any other member of the Board's staff; or
- (d) the presence of a quorum at any meeting of the Board at which a decision is made or any other thing is done by the Board.

**Power to summon witnesses and take evidence** 5

**71. (1)** The presiding member of the Tribunal or Board:

- (a) may summon a person to appear in proceedings of the Tribunal or Board to give evidence and to produce such documents or things (if any) as are referred to in the summons; and
- (b) may require a person appearing in the proceedings to produce a document or thing. 10

**(2)** The Tribunal or Board may, in proceedings before it, take evidence on oath or affirmation and, for that purpose the presiding member of the Tribunal or Board:

- (a) may require a person who attends the proceedings to give evidence either to take an oath or to make an affirmation in a form approved by the member; and 15
- (b) may administer an oath to or take an affirmation from a person so attending the proceedings.

**(3)** A person served with a summons to appear in proceedings of the Tribunal or Board and to give evidence must not, without reasonable excuse: 20

- (a) fail to attend as required by the summons; or
- (b) fail to attend from day to day unless excused or released from further attendance by the person presiding at the proceedings. 25

Maximum penalty: 20 penalty units.

**(4)** A person attending proceedings of the Tribunal or Board to give evidence must not, without reasonable excuse:

- (a) fail to comply with a requirement to swear or affirm; or
- (b) fail to answer a question that the presiding member puts to the person; or 30
- (c) fail to produce a document or thing that the person is required to produce under this section.

Maximum penalty: 20 penalty units.



**Power to obtain documents**

72. (1) The presiding member of the Tribunal or Board may, by notice served on a person, require the person:

- 5 (a) to attend at a time and place specified in the notice before a person specified in the notice; and  
(b) to produce at that time and place to the person so specified a document specified in the notice.

10 (2) The person specified in such a notice must be a member of the Tribunal or Board or a person authorised by the Tribunal or Board for the purpose.

(3) A person must not, without reasonable excuse, fail to comply with a notice served on the person under this section.

Maximum penalty: 20 penalty units.

**Proceedings for offences**

15 73. (1) Proceedings for an offence against this Act or the regulations are to be disposed of in a summary manner before a Local Court constituted by a Magistrate sitting alone.

20 (2) Proceedings for an offence against this Act or the regulations can be commenced at any time within 12 months after the act or omission alleged to constitute the offence.

**PART 10—MISCELLANEOUS****Division 1—Mutual recognition****Notification of certain matters to other registration authorities**

25 74. (1) The Board must notify without delay the local architects' registration authority of each other State of any decision made by the Tribunal in relation to a complaint against an architect or an architectural practice and of the decision of the District Court on the hearing of an appeal against the Tribunal's decision.

30 (2) The Board may also notify the local architects' registration authority of another State of any decision made by the Board under section 45 cancelling the registration of an architect and of the decision of the District Court on the hearing of an appeal against the Board's decision.

35 (3) The Board must comply with subsection (1) and may comply with subsection (2) despite any law relating to secrecy or confidentiality.

(4) Nothing in this section affects any obligation or power to provide information under section 37 of the Mutual Recognition Act 1992 of the Commonwealth.

(5) In this section:

“**local architects’ registration authority**” of a State means the person or authority in the State having the function conferred by legislation of registering persons as architects in the State; 5

“**registering**” includes licensing, approving, admitting and certifying (including issuing practising certificates), and authorising in any other way. 10

#### **Cancellations and suspensions arising under Mutual Recognition Act to be recorded**

75. If an architect’s registration in another State:

(a) is cancelled or suspended; or

(b) is subject to a condition, 15

and, because of the operation of section 33 of the Mutual Recognition Act 1992 of the Commonwealth, his or her registration in New South Wales is affected in the same way, the registrar must, as soon as practicable after becoming aware of the cancellation, suspension or condition, record in the appropriate place in the register of architects that the architect’s registration in New South Wales is, because of the operation of that section, similarly cancelled or suspended or subject to a similar condition. 20

#### **Division 2—Other matters**

##### **Act to bind the Crown**

76. (1) This Act binds the Crown in right of New South Wales and, in so far as the legislative power of Parliament permits, the Crown in all its other capacities. 25

(2) This section is subject to section 8 (3).

##### **Effect of suspension of registration**

77. While the registration of an architect or an architectural practice is suspended in accordance with this Act, that registration is taken to be cancelled. 30

##### **Service of documents on the Board**

78. A document may be given to or lodged with the Board by leaving it at or sending it by post to any office of the Board. This does not limit 35



the operation of any provision of a law or of the rules of a court authorising a document to be served on the Board in any other manner.

#### **How notice is to be given under this Act**

5     **79.** (1) A requirement of this Act or the regulations that a person be given or served notice is a requirement that the person be given or served notice in writing either personally or by post or by such other means as may be prescribed by the regulations.

10    (2) For the purposes of section 76 of the Interpretation Act 1987, a notice served by post on a person for the purposes of this Act or the regulations is to be treated as being properly addressed if it is addressed to the last address of the person known to the Board.

#### **Regulations**

15     **80.** (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) In particular, the Governor may make regulations for or with respect to the matters set out in Schedule 3.

20     (3) A provision of a regulation may create an offence punishable by a penalty not exceeding 5 penalty units.

#### **Review of Act**

**81.** (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.

25     (2) The review is to be undertaken as soon as possible after 5 years after the date of assent to this Act.

(3) A report of the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

#### **Repeals**

30     **82.** (1) The Architects Act 1921 is repealed.

(2) The Architects Regulation 1983 and the Architects (Members Fees) Regulation 1984 are repealed.

#### **Savings and transitional provisions**

**83.** Schedule 4 has effect.

**Amendment of other Acts**

**84.** Schedule 5 has effect.

**First election of elected members of the reconstituted Board**

**85.** For the purpose only of enabling the Board to be reconstituted, an election to elect the members of the Board referred to in section 55 (2) (d) may be held in accordance with Part V of the Architects Regulation 1983 at any time after the passing of this Act and before the commencement of section 52.

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**SCHEDULE 1—TRIBUNAL PROCEDURE**

(Sec. 37 (9))

**Tribunal sittings**

- 5 1. The Tribunal is required to meet at the times, dates and places decided by the member appointed to preside over its proceedings.

**Notice of Tribunal proceedings to be given**

2. (1) Whenever the Tribunal decides to hear a complaint, it must, at least 14 days before the hearing, serve on the architect or the nominated architect principal of the architectural practice concerned a notice:

- 10 (a) outlining the complaint; and  
(b) specifying the date, time and place of the hearing; and  
(c) inviting the architect or architect principal to respond to the complaint in writing.

(2) The Tribunal must also give a copy of the notice to the complainant and to the Board (if not the complainant) at least 14 days before the hearing.

**15 Public and private hearings**

3. (1) The Tribunal may hear a complaint in public or private, or partly in public and partly in private.

- 20 (2) The Tribunal may give directions as to the persons who may be present at a hearing when it is being held in private. A person must not be present at a hearing in contravention of any such direction.

(3) A person who fails to comply with a direction given to the person under this clause is guilty of an offence.

Maximum penalty: 10 penalty units

**Parties to Tribunal hearings**

- 25 4. (1) The following persons are entitled to appear at a hearing by the Tribunal of a complaint:

- (a) the architect against whom, or any architect principal of the architectural practice against which, a complaint has been made;  
(b) the complainant;  
30 (c) the Board (if not the complainant).

(2) The Tribunal may grant leave to any other person to appear at a hearing if it is satisfied that it is appropriate for the person to appear at the hearing.

- 35 (3) If the architect or an architect principal of the architectural practice fails to attend at the time, date and place fixed for the hearing, the Tribunal may conduct the hearing in his or her absence.

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 SCHEDULE 1—TRIBUNAL PROCEDURE—*continued*
**Representation at Tribunal hearings**

5. (1) A person who is entitled to appear at a hearing of a complaint by the Tribunal, or is granted leave to appear at such a hearing, is entitled to appear personally at the hearing. 5

(2) At the hearing such a person is entitled to be represented by a legal practitioner or a person qualified to be admitted as such a practitioner only if the Tribunal grants leave.

(3) The Tribunal must grant leave if it has reason to believe there is a real possibility that the registration of an architect, an architect principal or an architectural practice may be cancelled or suspended should the complaint be found to be proved. 10

(4) A corporation (including the Board) may be represented at the hearing by a member of its governing body or by one of its employees. However, this subclause is subject to subclause (2).

(5) If the Tribunal grants leave under subclause (3) to an architect or an architect principal, it must allow the complainant to be represented by a legal practitioner or by a person qualified to be admitted as such a practitioner. 15

**Procedure and evidence at Tribunal proceedings**

6. (1) At a hearing of a complaint by the Tribunal, the following provisions apply:

- (a) the Tribunal may, subject to this Schedule, conduct the hearing in such manner as it thinks fit; 20
- (b) the Tribunal may inform itself on any matter in such manner as it thinks fit;
- (c) the Tribunal may receive written or oral submissions;
- (d) the Tribunal is not required to conduct the hearing in a formal way;
- (e) the Tribunal is not bound by the rules of evidence but is bound by the rules of procedural fairness. 25

(2) The Tribunal may adjourn the hearing of a Tribunal whenever the Tribunal considers it appropriate to do so. An adjournment is to be to a time, date and place specified by the Tribunal.

**Disqualification of a member of Tribunal**

7. A member of the Tribunal who has a personal interest in the subject-matter of a complaint is disqualified from participating as a member in the hearing of the complaint. 30

**Tribunal can award costs**

8. (1) At the end of the hearing of a complaint, the Tribunal may make an order directing a party to the hearing to pay such costs to such other party to the hearing as the Tribunal may direct. Those costs may include: 35



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 SCHEDULE 1—TRIBUNAL PROCEDURE—*continued*

- (a) the expense incurred in constituting the Tribunal and in hearing the complaint; and
  - (b) the reasonable expenses incurred by the Board in investigating the complaint.
- 5 (2) When an order for costs has taken effect, the Tribunal must, on the application of the person to whom the costs have been awarded, issue a certificate setting out the terms of the order and stating that the order has taken effect.
- (3) The person to whom the certificate is issued may file it in the District Court, together with an affidavit by the person as to the amount of the costs unpaid. The
- 10 Registrar of the District Court is required to enter judgment for the amount unpaid together with any fees unpaid for filing the certificate.

**Evidence of other proceedings**

9. The Tribunal may, at a hearing of a complaint, admit as evidence:
- 15 (a) the judgment and findings of a court (whether civil or criminal and whether or not of New South Wales) or of a tribunal; and
  - (b) the verdict or findings of a jury of such a court; and
  - (c) a certificate of the conviction of any person; and
  - 20 (d) a transcript of the depositions or of shorthand notes, certified by the registrar or clerk of the court or tribunal as correct, of the evidence of witnesses taken in such a court or tribunal,
- if satisfied that the judgment, findings, verdict, certificate or evidence is relevant to the hearing.

**Additional complaints**

- 25 10. (1) The Tribunal may, at a hearing, deal with more than one complaint about an architect or an architectural practice.
- (2) If at a hearing it appears to the Tribunal that, having regard to any matters that have arisen, another complaint could have been made against the architect or architectural practice concerned:
- 30 (a) whether instead of or in addition to the complaint which was made; and
  - (b) whether or not by the same complainant,
- the Tribunal may take that other complaint to have been referred to it and may deal with it at the same hearing.
- (3) If another complaint is taken to have been referred to the Tribunal under subclause (2), the complaint may be dealt with after such adjournment (if any) as the
- 35 Tribunal considers to be fair in the circumstances.

*Architects 1994*SCHEDULE 1—TRIBUNAL PROCEDURE—*continued***Tribunal may direct certain information not to be disclosed**

11. (1) If of the opinion that it would be appropriate to do so, the presiding member of the Tribunal may, in relation to a hearing of the Tribunal:

- (a) direct that the name of any witness is not to be disclosed at the hearing; or 5
- (b) direct that all or any of the following matters are not to be published:
- the name and address of any witness;
  - the name and address of a complainant (other than the Board);
  - the name and address of an architect or architectural practice;
  - any specified evidence; 10
  - the subject-matter of a complaint.

(2) The presiding member may give a direction whether or not a party to the proceedings has requested the direction.

(3) The presiding member may amend or revoke a direction at any time.

(4) A direction may be given before or during a hearing of the Tribunal. However, a direction may be given before a hearing only if the presiding member has given to each party to the hearing notice of the time, date and place fixed for consideration of the matter. 15

(5) A person who contravenes a direction given under this clause is guilty of an offence. 20

Maximum penalty: 50 penalty units in the case of a corporation and 20 penalty units in any other case.

**SCHEDULE 2—PROVISIONS RELATING TO THE BOARD**

(Sec. 55 (4))

**PART 1—PRELIMINARY** 25**Definitions**

1. In this Schedule:

“**academic staff member**” means a Board member referred to in section 55 (2) (e);

“**appointed member**” means an academic staff member or a Minister-appointed member; 30

“**elected member**” means a Board member referred to in section 55 (2) (d);

“**ex-officio member**” means a Board member referred to in section 55 (2) (a), (b) or (c);

“**Minister-appointed member**” means a Board member referred to in section 55 (2) (f) or (g). 35



SCHEDULE 2—PROVISIONS RELATING TO THE BOARD—*continued***PART 2—THE BOARD****President and vice-president of the Board**

5 2. (1) As soon as practicable after the Board is reconstituted, and as soon as practicable after each anniversary of the Board's reconstitution, the Board must elect one of the Board members to be the Board's president and another of them to be the Board's vice-president.

10 (2) A Board member elected as president or vice-president is eligible for re-election to that office if the period for which the member was elected or appointed would not expire before the end of his or her term as president or vice-president.

(3) A person who is president or vice-president of the Board vacates office as president or vice-president if the person ceases to be a Board member.

**Alternate members**

15 3. (1) A person:  
(a) may, in accordance with this clause, become an alternate member for a Board member; and

(b) may (but only with the agreement of the Board) act in the office of a Board member during the member's illness or absence from office.

20 (2) While so acting, an alternate member has all the functions of the Board member concerned and is taken to be a Board member.

(3) An ex-officio member may nominate a person to be his or her alternate member.

(4) Alternate members for the elected members are taken to be elected in accordance with this subclause. Those alternate members are to be:

25 (a) if there are only 3 or fewer unsuccessful candidates for election as Board members who consent to be alternate members for the elected members—those unsuccessful candidates; or

30 (b) if there are more than 3 unsuccessful candidates for election who consent to be alternate members for the elected members—the 3 unsuccessful candidates for election as Board members who, at the election, recorded the highest numbers of votes after the successful candidates.

The regulations may prescribe the method for determining which of the alternate members for the elected members is to act in the office of an elected member during that member's illness or absence from office.

35 (5) The prescribed educational institution that has appointed an academic staff member may appoint a teacher of architecture employed at the institution as the alternate member for the academic staff member.

(6) The Minister may appoint a person as the alternate member for a Minister-appointed member. A person appointed as alternate member for a Minister-appointed member must be qualified for appointment.

*Architects 1994*SCHEDULE 2—PROVISIONS RELATING TO THE BOARD—*continued*

- (7) An ex-officio member who has nominated an alternate member may remove the alternate member from office.
- (8) The governing body of a prescribed educational institution that has appointed an alternate member for an academic staff member may at any time remove the alternate member from office. 5
- (9) The Minister may at any time remove from office the alternate member appointed for a Minister-appointed member.
- (10) If fewer than 3 alternate members are taken to be elected under subclause (4), the Minister may appoint an architect to be an alternate member for an elected member. A person so appointed is taken to have been elected under that subclause. 10
- (11) If there is a failure to appoint an alternate member for an academic staff member, the Minister may appoint a person employed as a teacher of architecture at a prescribed educational institution to be the alternate member.
- (12) For the purposes of this clause, a vacancy in the office of a Board member is taken to be an absence from office of the member. 15

**Terms of office of Board members other than ex-officio members**

4. (1) Subject to this Schedule, an elected member, an appointed member and an alternate member for an elected or appointed member each hold office for 4 years from and including the date on which he or she enters office. 20
- (2) However, one of the first academic staff members appointed after the commencement of section 52 and the alternate member for that academic staff member are to hold office for only 2 years from and including the date on which they enter office. Which of those staff members are to be the member and alternate member to which this subclause applies is to be determined in accordance with the regulations. 25
- (3) For the purposes of this clause, an elected member, an appointed member and an alternate member for an elected or appointed member enter office on the date specified in the regulations and on each subsequent fourth anniversary of that date, except as provided by subclause (4).
- (4) The first successors to the academic staff member, and the alternate member for that member, to whom subclause (2) applies enter office on the second anniversary of that date and then their successors enter office on each subsequent fourth anniversary of that date. 30
- (5) If otherwise qualified, an elected member, an appointed member or an alternate member for an elected or appointed member is eligible for re-election or re-appointment. 35

**Remuneration of Board members**

5. A Board member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Board may from time to time determine in respect of the member with the approval of the Minister.



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 SCHEDULE 2—PROVISIONS RELATING TO THE BOARD—*continued*
**Vacancy in office of Board members and alternate members**

6. (1) The office of an elected member or an appointed member becomes vacant if the member:
- 5 (a) dies; or  
 (b) completes a term of office and is not re-elected or re-appointed; or  
 (c) being an elected member—resigns the office in writing addressed to the Board;  
 or  
 (d) being an academic staff member:
- 10       • resigns the office in writing addressed to the governing body of the  
           prescribed educational institution that appointed the member; or  
           • is removed from office under subclause (5); or
- (e) being a Minister-appointed member:
- 15       • resigns the office in writing addressed to the Minister; or  
           • is removed from office under subclause (6); or
- (f) is absent from 3 consecutive meetings of the Board of which reasonable notice  
 has been given to the member personally or in the ordinary course of post,  
 except on leave granted by the Board or unless, before the end of 4 weeks after  
 the last of those meetings, the member is excused by the Board for having been  
 20 absent from those meetings; or
- (g) becomes bankrupt, applies to take the benefit of any law for the relief of  
 bankrupt or insolvent debtors, compounds with his or her creditors or makes an  
 assignment of his or her remuneration for their benefit; or
- (h) becomes a mentally incapacitated person; or
- 25 (i) is convicted in New South Wales of an offence which is punishable by penal  
 servitude or imprisonment for 12 months or more or is convicted elsewhere than  
 in New South Wales of an offence which, if committed in New South Wales,  
 would be an offence so punishable; or
- (j) ceases to hold any qualification required in order to hold the office.
- 30 (2) The office of an alternate member for an elected member or an appointed member  
 becomes vacant if the alternate member:
- (a) dies; or
- (b) becomes bankrupt, applies to take the benefit of any law for the relief of  
 bankrupt or insolvent debtors, compounds with his or her creditors or makes an  
 35 assignment of his or her remuneration for their benefit; or
- (c) becomes a mentally incapacitated person; or
- (d) is convicted in New South Wales of an offence which is punishable by penal  
 servitude or imprisonment for 12 months or more or is convicted elsewhere than  
 in New South Wales of an offence which, if committed in New South Wales,  
 40 would be an offence so punishable; or
- (e) ceases to hold any qualification required in order to hold the office.



*Architects 1994*SCHEDULE 2—PROVISIONS RELATING TO THE BOARD—*continued*

- (3) The office of an alternate member for an elected member also becomes vacant if:
- (a) the elected member ceases to hold office and the alternate member becomes an elected member under clause 7; or
  - (b) the elected member's term of office expires; or 5
  - (c) the alternate member resigns the office in writing addressed to the Board.
- (4) The office of an alternate member for an appointed member also becomes vacant if:
- (a) the appointed member's term of office expires; or
  - (b) in the case of an alternate member for an academic staff member, the alternate member: 10
    - resigns the office in writing addressed to the governing body of the prescribed educational institution that appointed the alternate member; or
    - is removed from office under clause 3; or
  - (c) in the case of an alternate member for a Minister-appointed member, the alternate member: 15
    - resigns the office in writing addressed to the Minister; or
    - is removed from office under clause 3.
- (5) The governing body of a prescribed educational institution that has appointed an academic staff member may at any time remove the member from office. 20
- (6) The Minister may at any time remove from office a Minister-appointed member.
- Filling a vacancy in the office of a Board member or an alternate member for an elected member**
7. (1) If the office of an elected member becomes vacant, an alternate member for an elected member, as determined in accordance with the regulations, is taken to be elected to fill the vacancy for the balance of the term for which the member was elected. 25
- (2) If the office of an academic staff member becomes vacant, the governing body of the prescribed educational institution which appointed the member may appoint another teacher of architecture employed at the institution to fill the vacancy for the balance of the term for which the member was appointed. 30
- (3) If the office of a Minister-appointed member becomes vacant, the Minister may appoint a person to fill the vacancy for the balance of the term for which the member was appointed. The person must be a person who is qualified for appointment.
- (4) If the office of an alternate member for an elected member becomes vacant, the Minister may appoint an architect to be the alternate member for the balance of the term for which the member was elected or is taken to have been elected. 35

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 SCHEDULE 2—PROVISIONS RELATING TO THE BOARD—*continued*
**Disclosure of pecuniary interests**

8. (1) A Board member who has a direct or indirect pecuniary interest:
- 5 (a) in a matter that is being considered, or is about to be considered, at a meeting of the Board; or
- (b) in a thing being done or about to be done by the Board,
- must, as soon as possible after the relevant facts have come to his or her knowledge, disclose the nature of the interest at a meeting of the Board.
- (2) A disclosure by a Board member at a meeting of the Board that the member:
- 10 (a) is a member, or is in the employment, of a specified company or other body; or
- (b) is a partner, or is in the employment, of a specified person; or
- (c) has some other specified interest relating to a specified company or other body or to a specified person,
- 15 is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subclause (1).
- (3) The Board must ensure that particulars of any disclosure made under this clause are recorded in a book kept for the purpose and that the book is kept open at all reasonable hours for inspection by any person.
- 20 (4) After a Board member has disclosed the nature of an interest in any matter or thing in accordance with this clause, the member must not, unless the other Board members otherwise determine:
- (a) be present during any deliberation of the Board, or take part in any decision of the Board, with respect to the matter; or
- 25 (b) exercise any functions under this Act or the regulations with respect to that thing.
- (5) For the purposes of making a determination by the Board under subclause (4), if a Board member has a direct or indirect pecuniary interest in a matter to which the disclosure relates, he or she must not:
- 30 (a) be present during any deliberation of the Board for the purpose of making the determination; or
- (b) take part in the making by the Board of the determination.
- (6) A contravention of this clause does not invalidate any decision of the Board or the exercise of any function under this Act or the regulations.
- 35 (7) This clause does not apply to or in respect of an interest of a Board member in a matter or thing that arises merely because the member is an architect or engaged in an architectural practice.
- (8) A reference in this clause to a meeting of the Board includes a reference to a meeting of a committee of the Board.



*Architects 1994*SCHEDULE 2—PROVISIONS RELATING TO THE BOARD—*continued***Effect of certain other Acts**

9. (1) Part 2 of the Public Sector Management Act 1988 does not apply to or in respect of the appointment of a Board member.

(2) If, by or under any Act, provision is made: 5

(a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office; or

(b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office or the office of Board member, or from accepting and retaining any remuneration payable to the person under this Act as a Board member. 10

**Liability of Board members and others**

10. A matter or thing done by the Board, a Board member, the registrar or a person acting with the authority of the Board does not subject the member, registrar or person personally to any action, liability, claim or demand if the matter or thing was done in good faith for the purposes of this Act. 15

**PART 3—PROCEDURE OF THE BOARD****General procedure**

11. The procedure for convening meetings of the Board and for the conduct of business at those meetings is, subject to this Act and the regulations, as determined by those members. 20

**Quorum**

12. The quorum for a meeting of the Board is 6.

**Presiding member**

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13. (1) If present, the president of the Board must preside at a meeting of the Board.

(2) In the absence of the president, the vice president of the Board must, if present, preside at a meeting of the Board.

(3) In the absence of the president and vice president, another member elected by the Board members present must preside at a meeting of the Board. 30

(4) The person presiding at a meeting of the Board has a deliberative vote and, in the event of an equality of votes, has a casting vote.

*Architects 1994*SCHEDULE 2—PROVISIONS RELATING TO THE BOARD—*continued***Board may establish committees**

14. (1) The Board may establish committees to assist it in connection with the exercise of any of its functions.

5 (2) A member of a committee need not be a Board member.

(3) The procedure for the calling of meetings of a committee and for the conduct of business at those meetings is as determined by the Board or (subject to any decision of the Board) by the committee.

**Voting**

10 15. A decision supported by a majority of the votes cast at a meeting of the Board at which a quorum is present is the decision of the Board.

**Transaction of business outside meetings or by telephone**

15 16. (1) The Board may, if it thinks fit, transact any of its business by the circulation of papers among all the Board members for the time being, and a resolution in writing approved in writing by a majority of those members is taken to be a decision of the Board.

20 (2) The Board may, if it thinks fit, transact any of its business at a meeting at which Board members (or some Board members) participate by telephone, closed-circuit television or other means, but only if any Board member who speaks on a matter before the meeting can be heard by the other Board members.

(3) For the purposes of:

(a) the approval of a resolution under subclause (1); or

(b) a meeting held in accordance with subclause (2),

25 the president and each other Board member have the same voting rights as they have at an ordinary meeting of the Board.

(4) A resolution approved under subclause (1) must, subject to the regulations, be recorded in the minutes of the meetings of the Board.

(5) Papers may be circulated among Board members for the purposes of subclause (1) by facsimile or other transmission of the information in the papers concerned.

**30 Minutes of meetings to be kept**

17. The Board must ensure that full and accurate minutes are kept of the proceedings of each meeting of the Board.

**Seal of Board**

35 18. The registrar is required to keep the seal of the Board. That seal may be affixed to a document only:



*Architects 1994*SCHEDULE 2—PROVISIONS RELATING TO THE BOARD—*continued*

- (a) at the direction of the Board; and
- (b) by the registrar or a Board member; and
- (c) with an attestation by the signature of the registrar or member of the fact of the affixing of the seal.

5

## SCHEDULE 3—MATTERS ON WHICH REGULATIONS CAN BE MADE

(Sec. 80)

**Election of Board members**

- 1. (1) The procedure for the election of those Board members who are required to be elected.
- (2) The qualifications for electors to vote at an election of elected members.

10

**Qualifications for registration**

- 2. The qualifications for registration as an architect, including the examinations to be undergone and passed and the experience to be gained in the practice of architecture.

**Architecture examinations**

- 3. The conduct of examinations leading to registration as an architect.

15

**Registration formalities**

- 4. Applications for the registration of persons as architects and of businesses as architectural practices, the issue of certificates of registration and the suspension and cancellation of registration.

20

**Registrar**

- 5. The functions of the registrar.

**Forms and notices**

- 6. Forms and notices required or desirable for the purposes of this Act.

**Fees**

- 7. Fees for the purposes of this Act; limits on the amounts that the Board may charge as fees.

25

**Inquiries by the Board**

- 8. The procedure for holding inquiries by the Board.

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SCHEDULE 3—MATTERS ON WHICH REGULATIONS CAN  
BE MADE—*continued*

**Procedure of Board meetings**

- 5 9. The procedure for convening and holding meetings of the Board and committees of the Board.

SCHEDULE 4—SAVINGS AND TRANSITIONAL PROVISIONS

(Sec. 83)

PART 1—PRELIMINARY

**Definitions**

- 10 1. In this Schedule:
- “old Board” means the Board of Architects of New South Wales constituted under the repealed Act;
- “reconstituted Board” means the Board of Architects of New South Wales reconstituted by this Act;
- 15 “the repealed Act” means the Architects Act 1921.

**Regulations**

2. (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act.
- 20 (2) Any such provision may, if the regulations so provide, take effect from the date of assent to this Act or a later day.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
- 25 (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication; or
- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of the publication.

30 **PART 2—PROVISIONS CONSEQUENT ON THE ENACTMENT OF THIS ACT**

**Continuation of the Board**

3. (1) The reconstituted Board is a continuation of, and the same legal entity as, the old Board.
- 35 (2) A person who, immediately before the commencement of section 52 of this Act, held office as an elected or appointed member of the Board ceases to hold that office on that commencement. Such a person is not entitled to any remuneration or compensation because of the loss of that office, but is, if qualified, eligible for election or appointment to the reconstituted Board.

*Architects 1994*SCHEDULE 4—SAVINGS AND TRANSITIONAL PROVISIONS—*continued***The registrar and other members of the Board's staff**

4. (1) A person holding office as an officer under the repealed Act immediately before the repeal of that Act is, on that repeal, taken to have been appointed as a member of the Board's staff under this Act and to have been appointed to the same position and subject to the same terms and conditions as applied to the position immediately before that repeal. 5

(2) In this clause, "an officer" means an officer of the Board and includes the registrar.

**The Architects Fund**

5. The New South Wales Architects Fund established under this Act is a continuation of the Architects Fund constituted under the repealed Act. 10

**The register of architects**

6. (1) The division of chartered architects in the register of architects kept under section 9 of the repealed Act forms part of the register of architects kept under this Act. 15

(2) The division of non-chartered architects in the register of architects kept under section 9 of the repealed Act is abolished.

**Registration as an architect**

7. A person who was registered as a chartered architect under the repealed Act immediately before the repeal of that Act is taken to be registered as an architect under this Act, but a person who was registered as a non-chartered architect under the repealed Act immediately before the repeal of that Act is not, and is taken not to be registered as, an architect under this Act. 20

**Annual fees**

8. (1) If an annual roll fee paid by a chartered architect under the repealed Act before its repeal wholly or partly relates to a period occurring after that repeal, the fee is taken to have been paid as an annual registration fee payable under this Act in relation to that period. 25

(2) A failure by a chartered architect to pay the annual roll fee under the repealed Act is taken to be a failure to pay the annual registration fee under this Act. 30

(3) A chartered architect who was not registered under the repealed Act immediately before its repeal because his or her name had been removed from the register of architects kept under the repealed Act for failure to pay the annual roll fee is taken to have had his or her registration cancelled under this Act for failure to pay the annual registration fee. 35



*Architects 1994*SCHEDULE 4—SAVINGS AND TRANSITIONAL PROVISIONS—*continued***Applications for registration**

- 5 9. An application for registration as a chartered architect under the repealed Act which had not been determined by the old Board before the repeal of that Act is taken to be an application for registration under section 11 of this Act and any inquiry for the purposes of such an application may be continued and completed accordingly.

**Continuation of complaints, inquiries and appeals**

- 10 10. (1) The provisions of the repealed Act continue to apply to and in respect of a complaint made, or an inquiry or appeal commenced, under that Act and pending immediately before the repeal of that Act.

(2) Any decision or determination resulting from a hearing, inquiry or appeal to which this clause applies is taken to have been made under the corresponding provisions of this Act and is to have effect accordingly.

**Complaints relating to previous conduct**

- 15 11. (1) A complaint may be made, or an inquiry may be held, under this Act with respect to the conduct of an architect or any other matter or thing that occurred before, or partly before and partly after, the commencement of the provisions of this Act under which the complaint is made, or the inquiry is held.

- 20 (2) Such a complaint may be made, or such an inquiry may be held, only if it is a complaint or charge that could have been made, or an inquiry that could have been held, under the repealed Act.

**Determinations of the Board in disciplinary proceedings under repealed Act**

- 25 12. (1) A determination of the Board under section 17 (1) (c), (d), (e), (f) or (g) of the repealed Act removing from the register of architects kept under that Act the name of any person for an indefinite period is taken to be a decision of the Board under this Act cancelling the registration of the person as an architect.

- 30 (2) A determination of the Board under section 17 (1) (c), (d), (e), (f) or (g) of the repealed Act removing from the register of architects the name of any person for a finite period is taken to be a decision of the Board under this Act suspending the person's registration as an architect for that period, but from the time specified in the determination or, if no time was specified, from the time of the determination.

(3) A fine imposed under section 17 (5) of the repealed Act but not paid or recovered before the commencement of this Schedule may be recovered by the Board under section 64 of this Act.

- 35 (4) The enrolment of a chartered architect as a non-chartered architect (whether under section 17 (6) of the repealed Act or otherwise) is revoked.

*Architects 1994*SCHEDULE 4—SAVINGS AND TRANSITIONAL PROVISIONS—*continued*

(5) A reference in this clause to a determination of the Board under a provision of section 17 of the repealed Act includes a reference to a determination under that provision as applied by clause 10.

<b>Construction of certain references</b>	5
13. On and from the repeal of the repealed Act:	
(a) a reference in any other Act or in an instrument of any other kind to the old Board is to be read as a reference to the reconstituted Board; and	
(b) a reference in any other Act or in an instrument of any other kind to the registrar under the repealed Act is to be read as a reference to the registrar under this Act; and	10
(c) a reference in any other Act or in an instrument of any other kind to the register kept under the repealed Act is to be read as a reference to the register of architects kept under this Act; and	
(d) a reference in any other Act or in an instrument of any other kind to the registration of a person as a chartered architect under the repealed Act is to be read as a reference to the registration of the person as an architect under this Act.	15

## SCHEDULE 5—AMENDMENT OF OTHER ACTS

(Sec. 84)

<b>Minors (Property and Contracts) Act 1970 No. 60</b>	20
Second Schedule ( <b>Savings of specific enactments</b> ):	
Omit the matter relating to the Architects Act 1921.	
<b>Defamation Act 1974 No. 18</b>	
(1) Section 17Q:	
After section 17P, insert:	25
<b>Hearings and inquiries under the Architects Act 1994</b>	
17Q. (1) There is a defence of absolute privilege:	
(a) for a publication to or by:	
(i) the Board of Architects of New South Wales; or	
(ii) the New South Wales Architects Tribunal; or	30
(iii) a member of either of those bodies as such a member, for the purpose of investigating, hearing or deciding any complaint made under the Architects Act 1994; and	
(b) for a publication to or by that Board, or a member of that Board as such a member, for the purpose of inquiring into any other matter under that Act; and	35

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SCHEDULE 5—AMENDMENT OF OTHER ACTS—*continued*

5 (c) for a publication by that Board or Tribunal, or a member of either of those bodies, of a report of a decision in respect of a complaint, inquiry or other matter under that Act and of the reasons for the decision.

(2) In this section:

- 10 (a) a reference to the Board of Architects of New South Wales includes a reference to a committee of the Board; and  
(b) a reference to a member of the Board includes a reference to a member of such a committee.

(2) Schedule 2 (**Proceedings of public concern and official and public documents and records**):

(a) After clause 2 (20) in Schedule 2, insert:

15 (21) without limiting the operation of any other subclause, proceedings of the Board of Architects of New South Wales, or the New South Wales Architects Tribunal, under the Architects Act 1994.

(b) After clause 3 (6) in Schedule 2, insert:

- 20 (7) a document that consists of a report made:  
(a) by the New South Wales Architects Tribunal of its decision in respect of a complaint made under the Architects Act 1994 or of the reasons for that decision; or  
(b) by that Board in respect of an inquiry held by it under that Act.
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