



New South Wales

Architects Act 2003 No 89

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New South Wales

Architects Act 2003 No 89

Act No 89, 2003

An Act to provide for the registration and regulation of architects; to repeal the *Architects Act 1921*; and for other purposes. [Assented to 10 December 2003]

The Legislature of New South Wales enacts:

Part 1 Preliminary

1 Name of Act

This Act is the *Architects Act 2003*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Objects of Act

The objects of this Act are:

- (a) to ensure that architects provide services to the public in a professional and competent manner, and
- (b) to provide mechanisms to discipline architects who are found to have acted unprofessionally or incompetently, and
- (c) to ensure that the public is appropriately informed about the qualifications and competence of individuals or organisations holding themselves out as architects, and
- (d) to promote a better understanding of architectural issues in the community.

4 Definitions

- (1) In this Act:

approved fee—see section 69.

architect means a person who is registered as an architect under this Act.

architect corporation or *architect firm*—see section 10.

Architects Fund means the Architects Fund established under section 72.

architectural qualification means a degree, diploma, certificate or other academic award conferred or awarded for a course of study in architecture.

architectural service means a service provided in connection with the design, planning or construction of buildings that is ordinarily provided by architects.

architecture does not include naval architecture, computer architecture or any other architecture not concerned with buildings.

Board means the NSW Architects Registration Board constituted under this Act.

cancellation of registration—see section 23.

conduct includes any act or omission.

Deputy President means the Deputy President of the Board.

exercise a function includes perform a duty.

firm means a partnership or other unincorporated association of persons.

full registration means registration under section 17.

function includes a power, authority or duty.

neighbouring jurisdiction means each other State, Territory and New Zealand.

nominated architect means an architect nominated for the time being under section 27 as an architect responsible for the provision of architectural services by an architect corporation or architect firm.

President means the President of the Board.

Register means the register of architects referred to in section 25.

registered means registered under this Act.

Registrar means the Registrar of the Board.

temporary registration means registration under section 18.

Tribunal means the Administrative Decisions Tribunal.

- (2) Notes included in this Act do not form part of this Act.

5 Act to bind Crown

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

Section 6 Architects Act 2003 No 89

Part 1 Preliminary

6 Mutual recognition laws

This Act does not limit or otherwise affect the operation of:

- (a) the *Mutual Recognition Act 1992* of the Commonwealth, or
- (b) the *Trans-Tasman Mutual Recognition Act 1997* of the Commonwealth.

Part 2 Practice of architecture

Division 1 Code of professional conduct

7 Establishment of code of professional conduct

- (1) The regulations may establish a code of professional conduct setting out guidelines that should be observed by architects in their professional practice.
- (2) The Minister may direct the Board to provide for the Minister's consideration advice or proposed guidelines relating to any conduct of architects that the Minister considers should be the subject of a code of professional conduct.
- (3) The Board is to comply with any direction of the Minister under this section.

8 Effect of code of professional conduct

The provisions of a code of professional conduct are a relevant consideration in determining for the purposes of this Act what constitutes proper and ethical conduct by an architect.

Division 2 Offences relating to the practice of architecture

9 Representing an individual to be an architect

- (1) An individual must not represent himself or herself to be an architect, and must not allow himself or herself to be represented to be an architect unless he or she is an architect.

Maximum penalty: 100 penalty units.

- (2) A person must not represent an individual to be an architect if the person knows, or ought reasonably to know, that the individual is not an architect.

Maximum penalty: 100 penalty units (in the case of an individual) or 200 penalty units (in the case of a corporation).

10 Representing a corporation or firm to be an architect

- (1) A corporation or firm must not represent itself to be an architect, and must not allow itself to be represented to be an architect, unless the corporation or firm has at least one nominated architect who is responsible for the provision of architectural services by the corporation or firm.

Maximum penalty: 200 penalty units.

- (2) A person must not represent a corporation or firm to be an architect if the person knows, or ought reasonably to know, that any such representation by the corporation or firm itself would constitute a contravention of subsection (1).

Maximum penalty: 100 penalty units (in the case of an individual) or 200 penalty units (in the case of a corporation).

- (3) In this Act, a corporation or firm that represents itself to be an architect or that allows itself to be represented to be an architect is referred to as an *architect corporation* or *architect firm* (as appropriate).

11 Architectural services provided by architect corporation or architect firm

- (1) An architect corporation or architect firm must ensure that at all times there is at least one nominated architect who is nominated by the corporation or firm and responsible for the provision of architectural services by the corporation or firm.

Maximum penalty: 200 penalty units.

- (2) An architect corporation or architect firm must ensure that:

- (a) any written business correspondence issued by the corporation or firm bearing the name of the corporation or firm indicates the name of an architect who is a nominated architect responsible for the provision of architectural services by the corporation or firm, and
- (b) the name of an architect who is a nominated architect responsible for the provision of architectural services by the corporation or firm is prominently displayed at each place of

business of the corporation or firm, so as to be clearly visible to a person from outside or immediately on entering the place of business.

Maximum penalty: 200 penalty units.

Note. A temporary project or site office does not constitute a place of business of a corporation or firm.

- (3) The Board may in a particular case grant a corporation or firm an exemption from compliance with a particular provision or provisions of this section. The exemption may be granted unconditionally or subject to conditions.
- (4) An exemption remains in force for such period as the Board may specify or, if no period is specified, until it is revoked by the Board by notice in writing to the corporation or firm concerned.
- (5) Proceedings for an offence against this section are not to be commenced without the written consent of the Board given in the particular case.

12 Services provided using an architect

- (1) If a person (other than an architect) provides an architectural service that the person has offered to provide using an architect or that the person has represented will be provided using an architect, the person is guilty of an offence if the architectural service is not provided by, or under the supervision of, an architect.

Maximum penalty: 100 penalty units (in the case of an individual) or 200 penalty units (in the case of a corporation).

- (2) A person (other than an architect) who provides, or represents that the person will provide, architectural services to a person (*the client*) using an architect must ensure that any correspondence about those services from the person to the client indicates the name of an architect who is responsible for the provision of those architectural services to the client.

Maximum penalty: 100 penalty units (in the case of an individual) or 200 penalty units (in the case of a corporation).

13 Certain representations taken to be representations that person is an architect

- (1) Without limiting the ways in which a person, corporation or firm can be considered to be represented to be an architect, a representation using any of the following titles, names or descriptions constitutes such a representation:
 - (a) the title or description “architect” or “registered architect”,
 - (b) another title, name or description that indicates, or is capable of being understood to indicate, or is calculated to lead a person to infer, that the person is an architect,
 - (c) any title, name or description prescribed by the regulations.
- (2) Without limiting the ways in which a corporation or firm can be considered to be represented to be an architect, a representation that a corporation or firm consists of or comprises one or more architects constitutes a representation that the corporation or firm is an architect.

14 Exceptions for certain titles and descriptions

This Division does not prohibit:

- (a) an employee of an architect from using the title or description of “architectural assistant”, “architectural technician” or “architectural drafter”, or
- (b) a person from using the title or description of “landscape architect”, “naval architect” or “computer systems architect”, or
- (c) a person from using the title or description of “architect” or “registered architect” if:
 - (i) the person is registered as an architect in a neighbouring jurisdiction (within the meaning of section 52) and is normally resident in that jurisdiction, and
 - (ii) the person indicates the jurisdiction in which the person is so registered, and
 - (iii) the person has notified the Board of his or her intention to use such a title or description, or
- (d) a person who holds an architectural qualification from describing himself or herself as holding that qualification, or
- (e) a person from using the word “architectural” only as indicating that the person carries on the business of supplying goods in connection with architecture, or

- (f) a person from using any name, title or description prescribed by the regulations in such circumstances and subject to such restrictions as may be prescribed by the regulations.

15 Extended meaning of “represent”

In this Division, *represent* includes claim and hold out.

Part 3 Registration

Division 1 Entitlement to registration

16 Qualifications for registration

- (1) For the purposes of this Act, an individual has the necessary qualifications for registration as an architect if:
 - (a) the individual has such architectural qualifications as may be prescribed by the regulations, or
 - (b) the individual has successfully completed a course of study that is accredited by the Board as meeting criteria prescribed by the regulations for the purposes of this paragraph, or
 - (c) the individual has passed an examination arranged or approved by the Board to assess the person's competency to practise architecture.
- (2) An educational or training institution may apply to the Board for the accreditation by the Board (under subsection (1) (b)) of a course of study offered by the institution.
- (3) An educational or training institution that has applied to the Board for the accreditation of a course of study offered by the institution may apply to the Tribunal for a review of any decision of the Board not to accredit the course of study.
- (4) In determining for the purposes of subsection (1) (b) whether a particular course of study meets the criteria prescribed by the regulations, the Board may have regard to and rely on any findings made on an assessment prepared for the Board in respect of the course of study.

17 Full registration as architect

- (1) An individual is entitled to be registered as an architect if:
 - (a) the Board is satisfied that the individual is of good fame and character, and
 - (b) the individual has the necessary qualifications for registration as an architect, and
 - (c) the Board is satisfied that the individual has acquired such practical experience required by the Board as a prerequisite for entry to the examination referred to in paragraph (d), and

- (d) the individual has, to the satisfaction of the Board, passed an examination in architectural practice arranged or approved by the Board.
- (2) Registration under this section is *full registration*.
- (3) An entitlement to full registration does not prevent conditions being imposed on that registration in accordance with this Act.

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 under this Act, the person is then deemed (by section 25 of that Act) to be registered. See also the *Trans-Tasman Mutual Recognition Act 1997* of the Commonwealth.

18 Temporary registration of overseas architects

- (1) The Board may register an individual as an architect for a limited period if:
 - (a) the Board is satisfied that the individual is of good fame and character, and
 - (b) the Board is satisfied that the individual has architectural qualifications and practical experience in another country of a kind that demonstrates that the individual would be capable of practising architecture in the State with the same level of competence and skill expected of architects with full registration.
- (2) Registration under this section is *temporary registration*.
- (3) A person granted temporary registration is registered as an architect until the temporary registration expires or is cancelled. Temporary registration expires on the date stated in the relevant certificate of registration unless the period of temporary registration is extended.
- (4) The Board may from time to time extend the period for which temporary registration is in force.
- (5) The Board may cancel a person's temporary registration for any reason that the Board considers proper. Cancellation does not affect any application for full registration by the person.
- (6) The Board may impose such conditions as it thinks fit on the temporary registration of a person and may at any time remove, add to or vary those conditions by notice in writing to the registered person.

19 Registration fees

An applicant for full registration or temporary registration must pay the approved fee for such registration before the person can be registered as an architect.

20 Power to refuse or impose conditions on full registration

- (1) The Board may refuse to register a person who would otherwise be entitled to full registration if:
 - (a) the person is bankrupt, has applied to take the benefit of any law for the relief of bankrupt or insolvent debtors, has compounded with his or her creditors or made an assignment of his or her remuneration for their benefit, or
 - (b) the person has been convicted of an offence under Part 2, or
 - (c) the person has been convicted of any other offence, either in or outside the State, and the Board is of the opinion that the circumstances of the offence are such as to render the person unfit in the public interest to practise architecture, or
 - (d) the person's registration, licence, accreditation or certification under an architects registration law has been cancelled or suspended because of conduct that would (if it occurred in New South Wales and the person were an architect under this Act) authorise cancellation or suspension of the person's registration under this Act.
- (2) As an alternative to refusing to register a person under subsection (1), the Board may grant the person registration subject to conditions if the Board considers that refusal of registration is not warranted and that the person should be granted registration subject to appropriate conditions.
- (3) Conditions of registration may relate to the duration of registration, the aspects of the practice of architecture in which the person may be engaged, and any other matters, as the Board thinks appropriate.

Note. The *Mutual Recognition Act 1992* of the Commonwealth and the *Trans-Tasman Mutual Recognition Act 1997* of the Commonwealth also provide for the imposition of conditions on registration. Conditions can also be imposed on a person's registration as a result of disciplinary proceedings to which the person has been subject.
- (4) In this section:

architects registration law means any law of a place outside the State that provides for the registration, licensing, accreditation or certification of architects.

21 Restrictions on registration of de-registered persons

- (1) A person must not apply for registration (and any such application must be rejected) if:
 - (a) the person's registration is cancelled under this Act, or
 - (b) the Tribunal or the Supreme Court orders that the person not be re-registered (a *registration prohibition order*).
- (2) A person may apply for registration despite subsection (1) only if:
 - (a) any period specified in a registration prohibition order during which the person is not to be re-registered has expired and any other condition specified in the order is complied with, or
 - (b) the Tribunal or Supreme Court orders that the person may apply for registration despite subsection (1) (an *application permission order*).
- (3) A person to whom subsection (1) applies may apply for an application permission order:
 - (a) where the Tribunal ordered the cancellation of the person's registration or made the registration prohibition order against the person—to the Tribunal, or
 - (b) where the Supreme Court ordered the cancellation of the person's registration or made the registration prohibition order against the person—to the Supreme Court,but only if a period of at least 12 months has elapsed since the cancellation of the person's registration or the making of the registration prohibition order (as the case may be).
- (4) The Board is to be a party to any proceedings concerning an application for an application permission order.
- (5) The Tribunal or Supreme Court is not to make an application permission order unless it is satisfied that no useful disciplinary purpose is served by continuing to prohibit the person from applying for registration.
- (6) An application permission order made by the Tribunal may be appealed to an Appeal Panel of the Tribunal under Part 1 of Chapter 7 of the *Administrative Decisions Tribunal Act 1997* by a party to the proceedings in which the order is made.
- (7) Nothing in this section affects any entitlement of a person who has failed to pay an annual fee for registration to be re-registered under section 28 on payment of any such fee.

Division 2 Registration procedures

22 Application to registration of Licensing and Registration (Uniform Procedures) Act 2002

- (1) For the purposes of this Act, the Board may grant:
 - (a) full registration under section 17, or
 - (b) temporary registration under section 18.
- (2) Part 3 of the *Licensing and Registration (Uniform Procedures) Act 2002* (**the applied Act**) applies to and in respect of both full registration and temporary registration under this Act, subject to the modifications and limitations prescribed by this Act or the regulations.

Note. See clause 3 of Schedule 3, which temporarily suspends the provisions of the applied Act in relation to the making of applications by way of electronic communication.
- (3) For the purposes of applying Part 3 of the applied Act to full registration and temporary registration under this Act:
 - (a) an application for the granting of registration may only be made by an individual who is at least 21 years of age, and
 - (b) registration may be amended under that Act, and
 - (c) the requirement of section 54 of that Act for a registration administration fee to be paid to the relevant registration authority within 14 days after each anniversary of the date on which the relevant certificate of registration was issued is to be read as a requirement for the approved fee for annual registration to be so paid on or before 31 March in each year.
- (4) Subject to this Act, the regulations may make provision for or with respect to such matters concerning full registration and temporary registration under this Act as are relevant to the operation of Part 3 of the applied Act.

Division 3 Cancellation and suspension of registration

23 Cancellation and suspension of registration

- (1) A person ceases to be registered as an architect if the person's name is removed from the Register.
- (2) A reference in this Act to the cancellation of an architect's registration is a reference to the removal of the architect's name from the Register.

- (3) A person whose registration as an architect is suspended is taken not to be an architect during the period of the suspension, except for the purposes of Part 4 (Complaints and disciplinary proceedings).

24 Removal of architect's name from the Register

- (1) The Board must remove an architect's name from the Register if:
- (a) the architect has died, or
 - (b) the architect has requested the Board in writing to remove his or her name from the Register, or
 - (c) the architect has failed to pay the approved fee for annual registration in accordance with section 28, or
 - (d) the Tribunal or the Supreme Court has ordered that the architect's registration be cancelled.
- (2) The Board may remove an architect's name from the Register if:
- (a) the architect does not possess the qualifications in respect of which he or she is registered, or
 - (b) the architect 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
 - (c) the architect has been convicted of an offence under Part 2, or
 - (d) the architect is convicted in New South Wales of an indictable offence that is punishable by imprisonment for 12 months or more, or if he or she is convicted elsewhere than in New South Wales of an indictable offence that, if committed in New South Wales, would be an offence so punishable, or
 - (e) the architect has been registered by means of any false or fraudulent representation or declaration made either orally or in writing, or
 - (f) the architect has become a mentally incapacitated person.
- (3) Action is not to be taken under subsection (2) unless the Board:
- (a) has caused notice of the proposed action to be given to the architect, and
 - (b) has given the architect at least 28 days within which to make written submissions to the Board in relation to the proposed action, and
 - (c) has taken any such submissions into consideration.
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Division 4 Register of architects

25 Register of architects

- (1) The Registrar is to establish and maintain a register of architects for the purposes of this Act, and for the purposes of Part 3 of the *Licensing and Registration (Uniform Procedures) Act 2002*, as applied by this Act.
- (2) Without limiting subsection (1), the Register is to include the particulars of nominated architects.
- (3) The Registrar is to ensure that the Register is made available to the public, free of charge, at the Board's offices during ordinary office hours.
- (4) The Board may authorise the Registrar to share information (including names and addresses) contained in the Register with neighbouring jurisdictions for the purpose of establishing a common register of architects among the jurisdictions.
- (5) The regulations may make provision with respect to:
 - (a) the particulars to be recorded in the Register, and
 - (b) the manner and form in which the Register is to be maintained.

Note. See also section 49 of the *Licensing and Registration (Uniform Procedures) Act 2002* with respect to the particulars to be recorded in the register of architects.

26 List of registered architects to be prepared and published each year

- (1) The Registrar must ensure that, at least once each year, a list of the names and addresses of all architects in the Register is published for the information of the public.
- (2) The list must be published in such form (whether printed, electronic or both) as the Board may specify from time to time.

27 Nomination of responsible architects for architectural services

- (1) A corporation or firm that provides architectural services may nominate one or more architects to be responsible for the provision of architectural services by the corporation or firm.

- (2) A corporation or firm may nominate an architect under subsection (1) only if:
 - (a) the architect is a director or member of the governing body of the corporation or firm, is a partner in the firm or is otherwise concerned in the management of the corporation or firm, or
 - (b) the architect is an employee of the corporation or firm.
- (3) A nomination for the purposes of this section and any revocation or amendment of such a nomination is to be made to the Board in a form approved by the Board and must be accompanied by any approved fee.

28 Annual registration fees

- (1) An architect must, on or before 31 March of each year following the year in which the architect was first registered, pay to the Board the approved fee for annual registration.
- (2) The Board must cause an architect's name to be removed from the Register if the architect has failed to pay the approved fee for annual registration by the due date.
- (3) A person whose name has been removed from the Register for failure to pay the approved fee for annual registration is entitled to re-registration if the person pays to the Board any unpaid annual registration fee or fees together with any approved fee for late payment.
- (4) The entitlement to re-registration is an entitlement to registration on the same terms and subject to the same conditions (if any) as applied to the person's registration immediately before the removal of the person's name from the Register.
- (5) A person registered pursuant to an entitlement to re-registration under this section is taken to have been so registered on and from the day the person's name was removed from the Register or on and from such later day as the Board determines and notifies to the person. However, nothing in this subsection affects any proceedings for an offence instituted against the person before the person was entitled to be re-registered.
- (6) Nothing in this section requires the Board to re-register a person if the Board is satisfied that the person would not be entitled to be registered as an architect but for this section.

- (7) An entitlement to re-registration under this section does not override any other provision of this Act pursuant to which a person's name is authorised or required to be removed from the Register.
- (8) The regulations may exclude or modify the provisions of this section in their application to temporary registration.

29 Change of particulars to be notified

- (1) An architect must comply with the requirements of section 53 (as applied by this Act) of the *Licensing and Registration (Uniform Procedures) Act 2002*.

Maximum penalty: 10 penalty units.

Note. Section 53 of the *Licensing and Registration (Uniform Procedures) Act 2002* makes it a condition of registration for registered persons to provide information regarding changes to their particulars.

- (2) If a nominated architect ceases to be responsible for the provision of architectural services by the corporation or firm concerned, the corporation or firm must notify the Board of that fact within 7 days of that cessation.

Maximum penalty: 50 penalty units.

30 Evidentiary certificates

A certificate:

- (a) that is signed by the Registrar, and
- (b) that certifies that, on a specified date or during a specified period, the particulars contained in the Register as to specified matters were as so specified,

is admissible in any proceedings and is evidence of the matters so certified.

Note. See also section 55 of the *Licensing and Registration (Uniform Procedures) Act 2002* with respect to evidentiary certificates.

Division 5 Review of registration decisions

31 Tribunal may review certain registration decisions

- (1) A person may apply to the Tribunal for a review of any of the following decisions of the Board under this Part:
 - (a) a decision to refuse the person full registration as an architect,
 - (b) a decision to impose conditions on the full registration of the person,

- (c) a decision to remove the person's name from the Register.
- (2) Despite subsection (1), a person is not entitled to apply to the Tribunal for a review of a decision of the Board refusing to register the person as an architect if registration was refused on the ground that the person had failed to pass an examination that the person was required to pass under this Part.

Part 4 Complaints and disciplinary proceedings

Division 1 Interpretation

32 Definitions

In this Part:

complainant means a person who makes a complaint.

complaint means a complaint made under this Part.

disciplinary finding means a finding of unsatisfactory professional conduct or professional misconduct.

professional misconduct means:

- (a) unsatisfactory professional conduct of a sufficiently serious nature to justify the suspension of an architect or the cancellation of an architect's registration, or
- (b) any other conduct that is declared by the regulations to be professional misconduct for the purposes of this Act.

unsatisfactory professional conduct means any of the following:

- (a) any contravention by the architect of the conditions of the architect's registration,
- (b) a failure by the architect to comply with a provision of any code of professional conduct established by the regulations and in effect under section 7,
- (c) any failure without reasonable excuse by the architect to comply with a direction, order or requirement of the Board, Tribunal or Supreme Court,
- (d) any failure without reasonable excuse by the architect to properly supervise the provision of architectural services by an architect corporation or architect firm while the architect is a nominated architect responsible for the provision of those services,
- (e) any failure by the architect to comply with the applicable requirements of the *Licensing and Registration (Uniform Procedures) Act 2002*,
- (f) any contravention by the architect of this Act or the regulations,

-
- (g) any conduct of the architect that demonstrates that the architect is not a fit and proper person to be registered as an architect,
 - (h) any other conduct of the architect that demonstrates incompetence, or a lack of adequate knowledge, skill, judgment or care in the practice of architecture,
 - (i) any other improper or unethical conduct of the architect in the course of the practice of architecture,
 - (j) any conduct that is declared by the regulations to be unsatisfactory professional conduct for the purposes of this Act.

33 Application of Part

- (1) If an architect has died:
 - (a) a person cannot make a complaint against the architect, and
 - (b) the Board is not to investigate (or continue to investigate) a complaint made against the architect or to make an application to the Tribunal for a disciplinary finding, and
 - (c) the Tribunal is not to determine an application for a disciplinary finding against the architect.
- (2) A complaint about an architect may be made and dealt with even though the architect has ceased to be registered. For that purpose, a reference in this Part to an architect includes a reference to a person who has ceased to be registered or whose registration is suspended.
- (3) Despite subsection (2), the Board or the Tribunal may decide not to investigate a complaint or determine an application (or may decide to terminate an investigation or application) if the person to whom the complaint or application relates has ceased to be registered.

Division 2 Complaints

34 Persons who may make complaints

- (1) Any person (including the Board) may make a complaint against an architect in respect of the architect's conduct as an architect.
- (2) Complaints (other than complaints made by the Board) are to be made to the Board and are to be lodged with the Registrar.

- (3) The Board may direct the Registrar to provide reasonable assistance in making a complaint to a person, or a person belonging to a class of persons, specified by the Board from time to time.

35 Withdrawal of complaint

A complaint may be withdrawn by the complainant at any time.

36 Form of complaint

- (1) A complaint must be in writing, must identify the complainant and must contain particulars of the allegations on which it is founded.
- (2) A complaint must be verified by statutory declaration unless the complaint is made by:
- (a) the Board, or
 - (b) a judicial officer within the meaning of the *Judicial Officers Act 1986*, or
 - (c) the Minister, or
 - (d) the Director-General of the Department of Commerce, or
 - (e) the Consumer, Trader and Tenancy Tribunal (or a member of that Tribunal), or
 - (f) a person or body (or a person or body belonging to a class of persons or bodies) prescribed by the regulations.
- (3) The Board may consider and investigate a complaint even if it does not comply with the requirements of this section (except the requirement that it identify the complainant) but must not proceed to deal with the complaint under this Part until they are complied with.
- (4) The Board may require the complainant to provide further particulars of a complaint.

37 Power to dismiss certain complaints

- (1) The Board may dismiss a complaint if the Board is satisfied that the complaint:
- (a) is frivolous or vexatious or otherwise lacking in merit, or
 - (b) is a complaint in respect of a matter that has already been dealt with as a complaint under this Part, or
 - (c) is trivial in nature.

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- (2) The Board may dismiss a complaint under this section without having investigated the complaint under this Part, or following an investigation of the complaint under this Part. The Board is not required to investigate a complaint that has been dismissed under this section.
 - (3) The Board is to notify the architect and complainant concerned of the dismissal of a complaint under this section.
 - (4) If the Board dismisses a complaint under this section, the Board may also issue a caution to the architect against whom the complaint was made in respect of the matter complained of.
 - (5) A person who makes a complaint or the architect against whom a complaint is made may apply to the Tribunal for a review of a decision of the Board to dismiss the complaint under this section.

38 Board to notify person against whom complaint is made

- (1) Written notice of the making of a complaint, the nature of the complaint and the identity of the complainant is to be given by the Board to the architect against whom the complaint is made, as soon as practicable after the complaint is made.
- (2) Any such notice must invite the architect to make, within such period (being at least 7 days) as the Board specifies in the notice, such representations to the Board with respect to the complaint as the architect thinks fit.
- (3) Notice is not required to be given if the giving of the notice will or is likely to:
 - (a) prejudice the investigation of the complaint, or
 - (b) place the health or safety of a person at risk, or
 - (c) place the complainant or another person at risk of intimidation or harassment.

39 Board to investigate complaints

- (1) The Board must, subject to this Part, conduct an investigation into each complaint made under this Part.
- (2) The Board may deal with one or more complaints about an architect in an investigation.

- (3) If during an investigation of any one or more complaints it appears to the Board that there is a matter in respect of which another complaint could have been made against the architect concerned, the Board may deal with the matter in its investigation as if a complaint had been made about the matter.
- (4) For the purposes of subsection (3), the Board may deal with a matter that could have been the subject of another complaint:
 - (a) whether that complaint could have been made instead of or in addition to any complaint that was in fact made, and
 - (b) whether or not that complaint could have been made by the same complainant.
- (5) The Board may dismiss any complaint without investigation if further particulars of the complaint are not given, or the complaint or the further particulars are not verified, as required by the Board.

40 Proceedings before Board in respect of complaints

- (1) For the purposes of investigating or determining a complaint, the Board is not bound to observe the rules of evidence but may inform itself of any matter in such manner as it thinks fit.
- (2) Without limiting subsection (1), the Board may meet separately or jointly with the complainant and architect concerned in an attempt to resolve any issue raised by the complaint if it considers the complaint may be resolved expeditiously by doing so.
- (3) The Board may be assisted by any person that it considers has relevant expertise in mediation or alternative dispute resolution in any such attempt to resolve a complaint.
- (4) Nothing in subsection (2) or (3) operates to prejudice the rights of the complainant or architect concerned.

41 Powers of Board in investigation in respect of architects

- (1) For the purpose of investigating or determining any complaint, the Board may, by notice served on any architect, require the architect to do any one or more of the following:
 - (a) provide written information, by the date specified in the notice, and to verify the information by statutory declaration,
 - (b) produce, at a time and place specified in the notice, any document (or a copy of any document) specified in the notice,

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- (c) otherwise assist in, or co-operate with, the investigation of the complaint in the specified manner.
 - (2) The Board may inspect any document produced before the Board under this section and may retain it for such period as the Board thinks necessary for the purposes of an investigation in relation to which it is produced. The Board may make copies of the document or any part of the document.

42 Power to summon witnesses and take evidence

- (1) For the purposes of investigating or determining a complaint, the President or Deputy President may summon a person to appear before it to give evidence and to produce such documents (if any) as may be referred to in the summons.
- (2) The person presiding at a meeting of the Board concerning a complaint may require a person appearing before the Board in respect of the investigation or determination of a complaint to produce a document.
- (3) The Board may, in proceedings before it in respect of a complaint, take evidence on oath or affirmation and, for that purpose, a member of the Board:
 - (a) may require a person appearing in the proceedings to give evidence either to take an oath or to make an affirmation in a form approved by the person presiding, and
 - (b) may administer an oath to or take an affirmation from a person so appearing in the proceedings.
- (4) A person served with a summons to appear in any such proceedings and to give evidence must not, without reasonable excuse:
 - (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 Board.

Maximum penalty: 20 penalty units.
- (5) A person appearing in proceedings before the Board in respect of a complaint to give evidence must not, without reasonable excuse:
 - (a) when required to be sworn or to affirm—fail to comply with the requirement, or
 - (b) fail to answer a question that the person is required to answer by the person presiding, or

- (c) fail to produce a document that the person is required to produce by this section.

Maximum penalty: 20 penalty units.

- (6) In this section, a reference to a person presiding at a meeting of the Board includes a reference to a person presiding at a meeting of a committee established under section 62 exercising functions in relation to a complaint.

43 Decision after investigation of complaint

- (1) After the Board has completed an investigation into a complaint against an architect, the complaint is to be dealt with in accordance with this section.
- (2) The Board may apply to the Tribunal for a disciplinary finding against an architect under Division 3 if it is satisfied that the architect is guilty of unsatisfactory professional conduct or it may instead exercise the functions conferred on it by subsection (4).
- (3) However, the Board must apply to the Tribunal for a disciplinary finding against an architect under Division 3 if it is satisfied that the architect is guilty of professional misconduct.
- (4) If the Board is satisfied that the architect is guilty of unsatisfactory professional conduct (but not professional misconduct), the Board may take any one or more of the following actions:
 - (a) caution or reprimand the architect,
 - (b) order the withholding or refunding of part or all of the payment for the architectural services that are the subject of the complaint,
 - (c) direct that such conditions relating to the architect's practice of architecture as it considers appropriate be imposed on the architect's registration,
 - (d) order that the person complete any educational course or courses specified by the Board,
 - (e) order that the person report on his or her architectural practice at specified times, in a specified manner and to specified persons,
 - (f) order that the person seek and take advice, in relation to the management of his or her architectural practice, from a specified person or persons,

- (g) order the architect to pay a fine of an amount not exceeding 15 penalty units.
- (5) Action is not to be taken under subsection (4) unless the Board:
 - (a) has caused notice of the proposed action to be given to the architect, and
 - (b) has given the architect at least 28 days within which to make written submissions to the Board in relation to the proposed action, and
 - (c) has taken any such submissions into consideration.
- (6) The Board is to dismiss the complaint against the architect if it is satisfied that the architect is not guilty of either unsatisfactory professional conduct or professional misconduct.
- (7) The Board may decline to deal with a complaint if the complainant fails to provide further particulars (including documents and other information) required by the Board.
- (8) The Board is to notify the architect of any action taken by the Board under this section.

44 Person may apply to Tribunal for a review of disciplinary finding of Board

A person in respect of whom the Board has made a disciplinary finding may apply to the Tribunal for a review of that finding and any action taken by the Board under section 43 (4).

45 Delegation of Board's functions under this Part to committee

- (1) Subject to subsection (2), the Board may delegate any of its functions under this Part (other than this power of delegation) to a committee established under section 62 that is constituted as provided by subsection (3).
- (2) If an architect or a complainant makes a written request to the Board for the complaint concerned to be investigated by a committee:
 - (a) the Board is to delegate its functions under this Part in relation to the investigation of the complaint to a committee established under section 62 that is constituted as provided by subsection (3), and
 - (b) the committee is to make recommendations to the Board in respect of the disciplinary action (if any) that would be appropriate.

- (3) A committee to which a function of the Board under this Part may be delegated must be constituted by 3 members of the Board, of whom:
 - (a) one must be a legal practitioner, and
 - (b) one must be an architect, and
 - (c) one must be a member who is neither a legal practitioner nor an architect.
- (4) The member referred to in subsection (3) (a) is to be the chairperson of the committee.

Division 3 Applications to Tribunal for disciplinary findings

46 Board may apply to Tribunal for disciplinary finding

The Board may apply to the Tribunal for a disciplinary finding under this Division against an architect with respect to any complaint against the architect.

47 Functions of Tribunal in applications for disciplinary findings

- (1) If any application is made under this Division for a disciplinary finding in relation to an architect, the Tribunal is to determine whether or not the architect is guilty of unsatisfactory professional conduct or professional misconduct.
- (2) If the Tribunal finds that the architect is guilty of unsatisfactory professional conduct, the Tribunal may make any one or more of the following decisions:
 - (a) caution or reprimand the architect,
 - (b) order the withholding or refunding of part or all of the payment for the architectural services that are the subject of the complaint,
 - (c) direct that such conditions relating to the architect's practice of architecture as it considers appropriate be imposed on the architect's registration,
 - (d) order that the person complete any educational course or courses specified by the Tribunal,
 - (e) order that the person report on his or her architectural practice at specified times, in a specified manner and to specified persons,

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- (f) order that the person seek and take advice, in relation to the management of his or her architectural practice, from a specified person or persons,
 - (g) order the architect to pay a fine of an amount not exceeding 200 penalty units.
- (3) If the Tribunal finds that the architect is guilty of professional misconduct, the Tribunal may (in addition to any decision made under subsection (2)):
- (a) order the suspension of the architect's registration for such period as the Tribunal thinks fit, or
 - (b) order the cancellation of the architect's registration.
- (4) The Tribunal is to dismiss an application under this section if it finds that the architect is not guilty of unsatisfactory professional conduct or professional misconduct.
- (5) If the Tribunal orders the cancellation of the architect's registration, it may also order that the person cannot apply to be re-registered within such period (including the person's lifetime) as may be specified by the Tribunal.
- (6) If an architect's registration is suspended by the Tribunal, the Registrar is to note in the Register the suspension and its date and cause.
- (7) If the architect is not registered, an order or direction can still be given under this section but has effect only so as to prevent the person being registered unless the order is complied with or to require the conditions concerned to be imposed when the person is registered, as appropriate.

48 Tribunal may award costs

The Tribunal may award costs under section 88 of the *Administrative Decisions Tribunal Act 1997* in respect of proceedings commenced by an application under this Division.

49 Appeals to Appeal Panel against decisions and orders of Tribunal under this Division

An order or other decision made by the Tribunal under this Division may be appealed to an Appeal Panel of the Tribunal under Part 1 of Chapter 7 of the *Administrative Decisions Tribunal Act 1997* by a party to the proceedings in which the order or decision is made.

Division 4 Confidentiality issues

50 Duty of confidentiality of client communications

- (1) An architect must comply with a requirement under this Part to answer a question or to produce information or a document despite any duty of confidentiality in respect of a communication between the architect and a client (but only if the client is the complainant or consents to its disclosure).
- (2) An architect may disclose a matter to the Board, a committee of the Board or the Tribunal in breach of any duty of confidentiality if the Board, committee or Tribunal is satisfied that it is necessary for the architect to do so to rebut an allegation in the complaint.

51 Statement of reasons of Tribunal need not contain confidential information

- (1) The Tribunal is not required to include confidential information in the statement of reasons given under section 89 or 117 of the *Administrative Decisions Tribunal Act 1997*. If a statement would be false or misleading if it did not include the confidential information, the Tribunal is not required to provide the statement.
- (2) When confidential information is not included in the statement of a decision provided to a person or the statement is not provided to a person because of subsection (1), the Tribunal must give a confidential information notice to the person.
- (3) A ***confidential information notice*** is a notice that indicates that confidential information is not included or that the statement will not be provided (as appropriate) and gives the reasons for this. The notice must be in writing and must be given within one month after the decision is made.
- (4) This section does not affect the power of a court to make an order for the discovery of documents or to require the giving of evidence or the production of documents to a court.
- (5) In this section:
confidential information means information that:
 - (a) has not previously been published or made available to the public when a written statement of a decision to which it is or may be relevant is being prepared, and

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- (b) relates to the personal or business affairs of a person, other than a person to whom the Tribunal is required (or would, but for subsection (1), be required) to provide a written statement of a decision, and
 - (c) is information:
 - (i) that was supplied in confidence, or
 - (ii) the publication of which would reveal a trade secret, or
 - (iii) that was provided in compliance with a duty imposed by an enactment, or
 - (iv) the provision of which by the Tribunal would be in breach of any enactment.

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

52 Notice of disciplinary action to other Boards

- (1) When the registration of an architect is cancelled or suspended or any condition is imposed on the registration of an architect:
 - (a) the Board must without delay notify particulars of that action to the local registration authority of each neighbouring jurisdiction, and
 - (b) the Board may notify particulars of that action to the local registration authority of any other jurisdiction.
- (2) The Board is required or authorised to act under this section despite any law relating to secrecy or confidentiality.
- (3) This section does not affect any obligation or power to provide information under the *Mutual Recognition Act 1992* of the Commonwealth or the *Trans-Tasman Mutual Recognition Act 1997* of the Commonwealth.
- (4) In this section:

local registration authority of a jurisdiction means the person or authority in the jurisdiction having the function conferred by legislation of registering persons in connection with the carrying on of architecture in the jurisdiction.

registration includes the licensing, approval, admission, certification (including by way of practising certificates), or any other form of authorisation, of a person required by or under legislation for the carrying on of the practice of architecture.

Division 6 Publicising disciplinary action

53 Definitions

In this Division:

architect includes a former architect.

disciplinary action means any of the following actions (whether or not taken under this Part):

- (a) the suspension or cancellation of the registration of an architect,
- (b) the refusal to register a qualified person as an architect,
- (c) the removal of the name of an architect from the Register,
- (d) any direction or order made by the Board or Tribunal in respect of an architect following a disciplinary finding in respect of the architect.

54 Publicising disciplinary action

- (1) The Board may publicise disciplinary action taken against an architect in any manner the Board thinks fit.
- (2) However, the Board must publicise disciplinary action taken against an architect (including the name and other identifying particulars of the person against whom the disciplinary action was taken).
- (3) Without limiting subsection (1), it is sufficient compliance with subsection (2) if the Board provides to the Registrar sufficient information to enable the Registrar to exercise the Registrar's functions in respect of the register of disciplinary action required to be kept under this Division.
- (4) The requirement to publicise disciplinary action applies only to disciplinary action taken after the commencement of this section. However, the Board may publicise disciplinary action taken under the *Architects Act 1921* before the commencement of this section in accordance with this Division.
- (5) This section extends to disciplinary action taken outside this State, to the extent that the particulars of that disciplinary action are known to the Board.

55 Register of disciplinary action

- (1) The Registrar must keep a register of disciplinary action taken against architects.

- (2) The register is to include the following:
 - (a) the name and other identifying particulars of the person against whom the disciplinary action was taken,
 - (b) particulars of the disciplinary action taken.
- (3) The Registrar is to ensure that the register is made available to the public, free of charge, at the Board's offices during ordinary office hours and in any other manner that the Board directs.
- (4) The Registrar may, on request, provide information recorded in the register to members of the public in any other manner.
- (5) The Registrar may correct any error in or omission from the register.
- (6) The requirement to keep a register of disciplinary action applies only to disciplinary action taken after the commencement of this section. However, the Registrar may include in the register disciplinary action taken before the commencement of this section, or publicise such action in any other manner, in accordance with this Division.
- (7) This section extends to disciplinary action taken outside this State, to the extent that the particulars of that disciplinary action are known to the Registrar.

56 Quashing of disciplinary action

- (1) If disciplinary action is quashed on appeal or review after the action was publicised by the Board under this Division, the result of the appeal or review is to be publicised with equal prominence by the Board.
- (2) If the disciplinary action was recorded in the register kept by the Registrar under this Division, any reference to that disciplinary action is to be removed from the register.

57 Liability for publicising disciplinary action

- (1) No liability is incurred by the State, the Board, the Registrar or any person acting at the direction of the Board or Registrar in respect of anything done in good faith for the purpose of:
 - (a) publicising disciplinary action under this Division, or
 - (b) exercising the functions of the Board or Registrar under this Division.

- (2) No liability is incurred by a person publishing in good faith disciplinary action, or a fair report or summary of disciplinary action, recorded in a register kept by the Registrar, or otherwise publicised by the Board or Registrar, under this Division.
- (3) In this section:
liability includes liability in defamation.

58 General

- (1) The provisions of this Division are subject to any order made by the Tribunal under section 75 of the *Administrative Decisions Tribunal Act 1997*.
Note. Section 75 of the *Administrative Decisions Tribunal Act 1997* allows the Tribunal to make an order prohibiting or restricting the disclosure of information.
- (2) If disciplinary action involves the suspension or cancellation of the registration of a person, or a refusal to register a person, as an architect because of the infirmity, injury or mental or physical illness of the person, the reason for the suspension, cancellation or refusal, and any other information relating to the infirmity, injury or mental or physical illness of the person, is not to be recorded in the register kept under this Division or otherwise publicised.
- (3) Despite subsection (2), the name and other identifying particulars of the person against whom the disciplinary action was taken, and the kind of disciplinary action taken, must be publicised, and recorded in the register kept under this Division, in accordance with the requirements set out in this Division.

Part 5 NSW Architects Registration Board

Division 1 Constitution

59 Constitution of the Board

There is constituted by this Act a body corporate with the corporate name of the “NSW Architects Registration Board”.

60 Membership of the Board

- (1) The Board is to consist of the following 11 members:
 - (a) the immediate past President of the New South Wales Chapter of the Royal Australian Institute of Architects,
 - (b) the NSW Government Architect,
 - (c) one architect who is to be an academic who teaches architecture at a relevant educational institution and who is appointed by the governing bodies of relevant educational institutions in accordance with the regulations,
 - (d) 2 architects who are elected by architects in accordance with the regulations,
 - (e) one architect who is to be appointed by the Minister, who the Minister is satisfied will represent the interests of practising architects and who is not an office holder in any Australian architectural industry organisation,
 - (f) 5 persons who are to be appointed by the Minister in accordance with subsection (2) who are not architects (unless the Minister otherwise determines in a particular case).
- (2) The members to be appointed by the Minister are to be persons who the Minister considers have sufficient knowledge and understanding of the architectural profession to be of assistance to the Board in the exercise of its functions. The members appointed are to be as follows:
 - (a) one person who the Minister is satisfied has taken a public interest in architectural matters and who the Minister is satisfied will represent the views of home owners as consumers of architectural services,
 - (b) one person who the Minister is satisfied has expertise in the property development industry,

- (c) one person who the Minister is satisfied has particular knowledge and awareness of the views of local government in respect of the quality of building,
 - (d) one person who is a legal practitioner and who the Minister is satisfied has expertise in building and construction law,
 - (e) one person who the Minister is satisfied has expertise in the building industry.
- (3) Without limiting subsection (1) (c), the regulations may make provision for rotating an appointment for the purpose of that paragraph among the governing bodies of relevant educational institutions should there at any time be more than one such institution.
- (4) If a person is not appointed for the purposes of subsection (1) (c) in accordance with this Act or the regulations:
- (a) the Minister may appoint an architect who is an academic teaching architecture at a relevant educational institution to be a member instead of the person required to be appointed, and
 - (b) the person appointed by the Minister is taken to be a member appointed under subsection (1) (c) and to have been appointed by the relevant educational institutions referred to in that paragraph at the time of his or her appointment by the Minister.
- (5) If a person is not elected for the purposes of subsection (1) (d) in accordance with this Act or the regulations:
- (a) the Minister may appoint an architect to be a member instead of the person required to be elected, and
 - (b) the person appointed by the Minister is taken to be a member elected under subsection (1) (d) and to have been elected at the time of his or her appointment by the Minister.
- (6) In this section, *relevant educational institution* means an institution at which architecture is taught that is prescribed by the regulations.

Division 2 Functions of the Board

61 Functions of the Board

- (1) The Board has the following functions:
- (a) the registration of architects,
 - (b) the investigation of complaints against architects,

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

Division 3 Committees and staff

62 Committees

- (1) The Board may establish committees to assist it in connection with the exercise of any of its functions.
- (2) It does not matter that any or all of the members of a committee are not members of the Board.
- (3) A member of a committee, while sitting on the committee, is entitled to be paid by the Board such amount as the Minister from time to time determines in respect of the member.
- (4) The procedure for the calling of meetings of a committee and for the conduct of business at those meetings may be determined by the Board or (subject to any determination of the Board) by the committee.
- (5) This section has effect subject to the provisions of sections 45 and 65.

63 Staff

The Board may:

- (a) employ a Registrar and such other staff as may be necessary to enable the Board to exercise its functions, and
- (b) arrange for the use of the services of any staff (by secondment or otherwise) or facilities of a government department, an administrative office or a public or local authority, and
- (c) engage such consultants as it requires to exercise its functions.

Division 4 General provisions

64 Examinations conducted by Board

- (1) The Board may conduct such examinations as may be required for the purposes of this Act, and may appoint examiners in respect of those examinations.
- (2) The subjects to be examined are such as may, from time to time, be determined by the Board.
- (3) The fees to be paid to examiners and the fees to be paid by candidates for examination are such as may, from time to time, be determined by the Board.

65 Delegation of functions

- (1) The Board may delegate any of its functions (other than this power of delegation) to:
 - (a) the President, or
 - (b) the Deputy President, or
 - (c) a committee consisting of 2 or more members of the Board, or
 - (d) the Registrar or any other member of staff of the Board.
- (2) The Board must not delegate any of its functions under Part 4 (Complaints and disciplinary proceedings) to the Registrar or any other member of the staff of the Board.
- (3) The Registrar may delegate to a member of the staff of the Board the exercise of:
 - (a) any of the functions of the Registrar under this Act, other than this power of delegation, or

- (b) any functions delegated to the Registrar by the Board, unless the Board otherwise provides in its instrument of delegation to the Registrar.
- (4) This section has effect subject to the provisions of section 45.

66 Exclusion of personal liability

Anything done or omitted to be done:

- (a) by the Board, a Board member or a person acting under the direction of the Board or a Board member, or
- (b) by a committee established by the Board, a committee member or a person acting under the direction of any such committee or committee member,

does not subject the Board member, committee member or person so acting personally to any action, liability, claim or demand if the thing was done, or omitted to be done, in good faith for the purpose of executing this Act.

67 Other provisions relating to the Board

Schedule 1 has effect with respect to the members and procedure of the Board.

Part 6 Finance

Division 1 Fees

68 Board may charge fees for certain services it provides

- (1) The Board may charge and recover a reasonable fee for any service it provides under this Act or the regulations.
- (2) However, nothing in subsection (1) authorises the Board to charge or recover a fee in respect of:
 - (a) the inspection of the Register at the offices of the Board during ordinary business hours, or
 - (b) any other service, or class of services, prescribed by the regulations.

69 Approved fees

- (1) The Board may approve fees for the purposes of any provision of this Act in which the expression *approved fee* is used.
- (2) However, the Board may approve a fee for the purposes of a provision of this Act only once in any calendar year.
- (3) An approved fee in relation to a provision of this Act must not exceed the maximum amount (if any) prescribed by the regulations for that provision or generally.

70 Minister may direct Board to reduce excessive fees

- (1) The Minister may direct the Board by written notice to reduce an approved fee or any other fee to an amount specified by the Minister if the Minister considers the fee to be excessive.
- (2) If the Minister gives a direction under subsection (1):
 - (a) the Board must comply with the direction, and
 - (b) in relation to an approved fee—section 69 (2) does not operate to prevent the Board approving the new fee.

71 Waiver and reduction of fees by Board

- (1) The Board may in a particular case waive a requirement to pay a fee imposed by or under this Act or may reduce the fee payable if it considers it appropriate to do so in the circumstances.

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- (2) If a requirement to pay an approved fee is waived or the fee is reduced under this section:
- (a) in the case of a waiver of the requirement—any requirement under this Act to pay the approved fee is taken to have been satisfied, and
 - (b) in the case of a fee reduction—any requirement under this Act to pay the approved fee is taken to have been satisfied when the reduced fee is paid.

Division 2 Architects Fund

72 Establishment of Architects Fund

The Board is to establish and maintain a fund to be known as the Architects Fund.

73 Payments into Architects Fund

The following are to be paid into the Architects Fund:

- (a) any fees or monetary penalties (other than for offences) paid to, or recovered by, the Board under this Act,
- (b) any other money received by or on account of the Board.

74 Payments from Architects Fund

- (1) Money may be paid out of the Architects Fund for any of the following purposes:
 - (a) the payment of any allowances and remuneration to members of the Board,
 - (b) the payment of remuneration to members of staff of the Board,
 - (c) the payment of any other expenses in connection with the exercise of the Board's functions under this Act.
- (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 that the Board considers to be appropriate.

75 Investment of Architects Fund

The Board may invest money held in the Architects 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.

Division 3 General

76 Financial year for Board

- (1) The financial year of the Board is the year commencing on 1 July.
- (2) A different financial year may be determined by the Treasurer under section 4 (1A) of the *Public Finance and Audit Act 1983*.

77 Recovery of money

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

Part 7 Miscellaneous

78 How notice is to be given

- (1) A requirement of this Act that a person be given notice is a requirement that the person be given notice in writing either personally or by post.
- (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 is to be treated as being properly addressed if it is addressed to the address of the person last known to the Registrar or last recorded in the Register.

79 Service of documents on Board

A document (other than a complaint made under Part 4) may be served on the Board by leaving it at or sending it by post to any office of the Board. This section does not affect 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.

80 Written statement of decisions

- (1) If the Board, the President or a member authorised by the Board makes a decision concerning a person under any provision of this Act, the person may request in writing that the Board, President or member provide the person with a written statement of the decision.
- (2) Any such request is to be made no later than 60 days after the decision to which it relates.
- (3) The Board, the President or the member is to provide a written statement of the decision within 30 days after receiving such a request.
- (4) A written statement of a decision must give the reasons for the decision.
- (5) The Board, the President or the member is not required to include confidential information in the statement of a decision. If a statement would be false or misleading if it did not include the confidential information, the Board, the President or the member is not required to provide the statement.

- (6) When confidential information is not included in the statement of a decision provided to a person or the statement is not provided to a person because of subsection (5), the Board, the President or the member must give a confidential information notice to the person.
- (7) A *confidential information notice* is a notice that indicates that confidential information is not included or that the statement will not be provided (as appropriate) and gives the reasons for this. The notice must be in writing and must be given within one month after the decision is made.
- (8) This section does not affect the power of a court to make an order for the discovery of documents or to require the giving of evidence or the production of documents to a court.
- (9) In this section:
confidential information means information that:
- (a) has not previously been published or made available to the public when a written statement of a decision to which it is or may be relevant is being prepared, and
 - (b) relates to the personal or business affairs of a person, other than a person to whom the Board, the President or the member is required (or would, but for subsection (5), be required) to provide a written statement of a decision, and
 - (c) is information:
 - (i) that was supplied in confidence, or
 - (ii) the publication of which would reveal a trade secret, or
 - (iii) that was provided in compliance with a duty imposed by an enactment, or
 - (iv) the provision of which by the Board, the President or the member would be in breach of any enactment.

81 Authentication of certain documents

Every certificate, summons, process, demand, order, notice, statement, direction or other document requiring authentication by the Board may be sufficiently authenticated without the seal of the Board if signed by:

- (a) the President or the Registrar, or
- (b) any officer of the Board authorised to do so by the Registrar.

82 Liability of members of firms

If a firm contravenes (whether by act or omission) a provision of this Act or the regulations, the firm is not guilty of an offence in respect of that contravention but a person who is a member of the firm (in the case of a partnership) or a member of the governing body of the firm (in any other case) is taken to have contravened the same provision if the person knowingly authorised or permitted the contravention and is liable on conviction to any penalty specified for a contravention of the provision.

83 Liability of directors and managers of corporations

- (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 who is concerned in the management of the corporation is taken to have contravened the same provision if the person knowingly authorised or permitted the contravention.
- (2) A person may be proceeded against and convicted under a provision pursuant to subsection (1) whether or not the corporation has been proceeded against or has been convicted under the provision.
- (3) Nothing in this section affects any liability imposed on a corporation for an offence committed by the corporation under this Act or the regulations.

84 Regulations

- (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) Without limiting subsection (1), the regulations may make provision for or with respect to the following:
 - (a) the procedure for the election of those members of the Board who must be elected under this Act and the qualifications of electors to vote in any such elections,
 - (b) the duties of officers and members of the Board,
 - (c) the functions of the Registrar,
 - (d) the qualifications for registration, including the examinations to be undergone and passed and the experience to be gained in the practice of architecture,

- (e) the procedure for the investigation and determination of complaints by the Board (or a committee of the Board),
 - (f) the conduct of examinations leading to registration as an architect,
 - (g) requirements for architects, architect corporations, architect firms or persons providing architectural services using an architect to have professional indemnity insurance,
 - (h) the standard of educational attainments required for candidates at an examination conducted by the Board.
- (3) A regulation may create an offence punishable by a penalty not exceeding 20 penalty units.

85 Proceedings for offences

Proceedings for an offence under this Act or the regulations may be dealt with summarily by a Local Court.

86 Repeal of Architects Act 1921 No 8 and related regulations

The following are repealed:

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

87 Amendment of other Acts and Regulations

The Acts and Regulations specified in Schedule 2 are amended as set out in that Schedule.

88 Savings, transitional and other provisions

Schedule 3 has effect.

89 Review of Act

- (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.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.
- (3) A report on 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.

Schedule 1 Constitution and procedure of Board

(Section 67)

Part 1 General

1 Definitions

In this Schedule:

appointed member means a person who is appointed as a member of the Board:

- (a) by the Minister, or
- (b) as provided by section 60 (1) (c).

elected member means a person who is elected to be a member of the Board as provided by section 60 (1) (d).

ex officio member means a person who is a member of the Board by virtue of section 60 (1) (a) or (b).

member means any member of the Board.

Part 2 Constitution

2 President and Deputy President of the Board

- (1) The Board is to elect:
 - (a) one of its members to be President of the Board, and
 - (b) another of its members to be Deputy President of the Board.
- (2) The Board may remove a member from office as the President or Deputy President.
- (3) A person who is President or Deputy President vacates office as President or Deputy President if the person:
 - (a) is removed from office by the Board, or
 - (b) resigns that office by instrument in writing addressed to the Board, or
 - (c) ceases to be a member.

3 Terms of office of members

Subject to this Schedule and the regulations:

- (a) an appointed member holds office for a period of 2 years or for such greater period (not exceeding 4 years) as may be specified in the instrument of appointment, and
- (b) an elected member holds office for a period of 2 years.

4 Remuneration

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

5 Deputies

- (1) Unless the Minister directs otherwise, a member may, from time to time, appoint a person to be the deputy of the member, and may revoke any such appointment.
- (2) In the absence of a member, the member's deputy may, if available, act in the place of the member.
- (3) While acting in the place of a member, a person has all the functions of the member and is taken to be a member.
- (4) For the purposes of this clause, a vacancy in the office of a member is taken to be an absence of the member.
- (5) The Minister may:
 - (a) direct a member not to appoint a person or any person as a deputy of the member, or
 - (b) revoke an appointment of a deputy made by a member, or both.
- (6) This clause does not operate to confer on the deputy of a member who is the President or Deputy President the member's functions as President or Deputy President.

6 Vacancy in office of member

- (1) The office of an appointed or elected member becomes vacant if the member:
 - (a) dies, or
 - (b) completes a term of office and is not re-appointed, or

- (c) resigns the office by instrument in writing addressed to the Minister, or
 - (d) is removed from office by the Minister under this clause, or
 - (e) is absent from 3 consecutive meetings of the Board of which reasonable notice has been given to the member personally or by post, except on leave granted by the Board or unless the member is excused by the Board for having been absent from those meetings, or
 - (f) 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
 - (g) becomes a mentally incapacitated person, or
 - (h) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable, or
 - (i) in the case of a member appointed under section 60 (1) (c), ceases to be employed as an academic at a relevant education institution or to be an architect, or
 - (j) in the case of a member elected under section 60 (1) (d), ceases to be an architect.
- (2) The Minister may remove an appointed or elected member from office at any time.

7 Filling of vacancy in office of appointed or elected member

If the office of any appointed or elected member becomes vacant, a person is, subject to this Act and the regulations, to be appointed to fill the vacancy.

8 Disclosure of pecuniary interests

- (1) If:
- (a) a member has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the Board, and
 - (b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,

the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Board.

- (2) A disclosure by a member at a meeting of the Board that the member:
- (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,
- 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) Particulars of any disclosure made under this clause must be recorded by the Board in a book kept for the purpose and that book must be open at all reasonable hours to inspection by any person on payment of the fee determined by the Board.
- (4) After a member has disclosed the nature of an interest in any matter, the member must not, unless the Minister or the Board otherwise determines:
- (a) be present during any deliberation of the Board with respect to the matter, or
 - (b) take part in any decision of the Board with respect to the matter.
- (5) For the purposes of the making of a determination by the Board under subclause (4), a member who has a direct or indirect pecuniary interest in a matter to which the disclosure relates must not:
- (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.
- (7) This clause applies to a member of a committee of the Board and the committee in the same way as it applies to a member of the Board and the Board.

9 Effect of certain other Acts

- (1) Chapter 2 of the *Public Sector Employment and Management Act 2002* does not apply to or in respect of the appointment of an appointed member.
- (2) If by or under any Act provision is made:
 - (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 and also the office of an appointed member or from accepting and retaining any remuneration payable to the person under this Act as a member.

Part 3 Procedure

10 General procedure

The procedure for the calling of meetings of the Board and for the conduct of business at those meetings is, subject to this Act and the regulations, to be as determined by the Board.

11 Quorum

The quorum for a meeting of the Board is a majority of its members for the time being, at least 2 of whom are architects.

12 Presiding member

- (1) The President (or, in the absence of the President, the Deputy President, or in the absence of both the President and the Deputy President, a person elected by the members of the Board who are present at a meeting of the Board) is to preside at a meeting of the Board.
- (2) The presiding member has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

13 Voting

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.

14 Transaction of business outside meetings or by telephone

- (1) The Board may, if it thinks fit, transact any of its business by the circulation of papers among all the members of the Board 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.
- (2) The Board may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone, closed-circuit television or other means, but only if any member who speaks on a matter before the meeting can be heard by the other 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),the presiding member and each member have the same voting rights as they have at an ordinary meeting of the Board.
- (4) A resolution approved under subclause (1) is, subject to the regulations, to be recorded in the minutes of the meetings of the Board.
- (5) Papers may be circulated among the members for the purposes of subclause (1) by facsimile or other transmission of the information in the papers concerned.

15 Authentication of documents

Any document requiring authentication by the Board is sufficiently authenticated if it is signed by:

- (a) the member who presided at the meeting that dealt with the proceedings with respect to which the document was prepared, or
- (b) in the absence of that member, any other member who was present at that meeting.

16 First meeting

The Minister may call the first meeting of the Board in such manner as the Minister thinks fit.

Schedule 2 Amendment of Acts and Regulations

(Section 87)

2.1 Administrative Decisions Tribunal Act 1997 No 76

[1] Schedule 2 Composition and functions of Divisions

Insert before “*Boxing and Wrestling Control Act 1986*” in clause 2 (1) of Part 4:

Architects Act 2003

[2] Schedule 2, Part 4

Insert at the end of the Part (with appropriate clause number):

Architects Act 2003 (Original and reviewable decisions)

- (1) For the purposes of exercising a function conferred or imposed on the Tribunal by or under the Act, the Tribunal is to be constituted by the following members:
 - (a) 1 Division member who is a judicial member,
 - (b) 1 Division member who is a non-judicial member and an architect,
 - (c) 1 Division member who:
 - (i) is a non-judicial member, and
 - (ii) is not an architect, and
 - (iii) was assigned to the Division on the recommendation of the relevant Minister to represent the interests of consumers of architectural services.

- (2) In this clause:

architect has the same meaning as it has in the Act.

relevant Minister means the Minister administering the Act.

the Act means the *Architects Act 2003*.

2.2 Environmental Planning and Assessment Regulation 2000

Clause 3 Definitions

Omit “*Architects Act 1921*” from the definition of *qualified designer* and the note to the definition wherever occurring.

Insert instead “*Architects Act 2003*”.

2.3 Home Building Act 1989 No 147

Section 40 Renewal or restoration of authorities (as amended by the Home Building Legislation Amendment Act 2001)

Omit “*Architects Act 1921*” from section 40 (2F) (a).

Insert instead “*Architects Act 2003*”.

2.4 Home Building Regulation 1997

Clause 8 “Residential building work”—certain work excluded

Omit “*Architects Act 1921*” from clause 8 (1) (f) (i).

Insert instead “*Architects Act 2003*”.

2.5 Licensing and Registration (Uniform Procedures) Act 2002 No 28

Schedule 2 Registration to which Part 3 of Act applies

Insert in alphabetical order of Acts and statutory rules:

Architects Act 2003

section 22 (1) (a), full registration as architect

section 22 (1) (b), temporary registration as architect

2.6 Public Finance and Audit Act 1983 No 152

Schedule 2 Statutory bodies

Omit “Board of Architects of New South Wales”.

Insert in alphabetical order “NSW Architects Registration Board”.

Schedule 3 Savings, transitional and other provisions

(Section 88)

Part 1 General

1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:
this Act
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (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:
 - (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 its publication.

Part 2 Provisions consequent on enactment of this Act

2 Definitions

In this Part:

the 1921 Act means the *Architects Act 1921*.

the former Board means the Board of Architects of New South Wales constituted under the 1921 Act.

the new Board means the NSW Architects Registration Board constituted under this Act.

3 Electronic applications for registration

- (1) Despite Part 3 of the *Licensing and Registration (Uniform Procedures) Act 2002* (as applied by section 22 of this Act), an application referred to in section 41 of that Act may not be made by means of electronic communication.

- (2) Subclause (1) does not limit the effect of the *Electronic Transactions Act 2000*.
- (3) This clause ceases to have effect on a day to be appointed by proclamation.

4 Continuation of Board

- (1) The new Board is taken to be a continuation of, and the same legal entity as, the former Board.
- (2) A person who, immediately before the repeal of the 1921 Act, held office as an elected or appointed member of the former Board ceases to hold office on the repeal of the 1921 Act.
- (3) A person to whom subclause (2) applies is not entitled to any remuneration or compensation because of the loss of office but is, if qualified, eligible for election or appointment to the new Board.
- (4) If a person is not appointed or elected as a member as provided by section 60 (1) (c) or (d) on or before the commencement of section 59:
 - (a) the Minister may appoint a person instead of that person as provided by section 60 (4) or (5) (as appropriate), and
 - (b) a reference to a relevant educational institution in section 60 (4) is, for the purposes of paragraph (a), to be read as a reference to an institution referred to in clause 30 of the *Architects (Elections and Appointments) Regulation 1995* (as in force immediately before its repeal), unless the regulations have prescribed any institution for the purposes of the definition of **relevant educational institution** in section 60 (6) on or before that commencement.
- (5) Despite anything to the contrary in this Act or the regulations, a person who is appointed as a member as provided by subclause (4) ceases to hold office on the expiry of the period of 6 months after the member's appointment (unless the person is removed from office sooner).

5 Staff members

A person holding office as an officer of the former Board under the 1921 Act immediately before the repeal of that Act is, on that repeal, taken to have been appointed as a member of the staff of the new

Board 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.

6 Architects Fund

The Architects Fund established under this Act is a continuation of the Architects Fund constituted under the 1921 Act.

7 Register of Architects

The Register kept under the 1921 Act is taken to be the Register kept under this Act.

8 Chartered and non-chartered architects

- (1) Any individual who, immediately before the repeal of the 1921 Act, was a chartered architect (within the meaning of that Act) is taken to have been registered as an architect under this Act, subject to the same conditions as those to which the individual's registration was then subject.
- (2) Any individual who, immediately before the repeal of the 1921 Act, was a non-chartered architect (within the meaning of that Act) is taken to have been registered as an architect under this Act until the end of the period of 12 months after the commencement of this clause, subject to the same conditions as those to which the individual's registration was then subject.
- (3) Nothing in subclause (2) or Division 2 of Part 2 authorises:
 - (a) an individual to whom subclause (2) applies to represent himself or herself to be an architect (or to allow himself or herself to be represented to be an architect) unless the representation also indicates that the individual was a non-chartered architect, or
 - (b) another person to represent an individual to whom subclause (2) applies to be an architect unless the representation also indicates that the individual was a non-chartered architect.
- (4) Nothing in this clause prevents an individual to whom subclause (1) or (2) applies from seeking registration under the provisions of this Act if otherwise qualified to be so registered.

9 Annual fees

- (1) If an annual roll fee paid by an architect under the 1921 Act before its repeal wholly or partly relates to a period occurring after the repeal of that Act, the fee is taken to have been paid as an annual registration fee payable under this Act in relation to that period.
- (2) A failure by an architect to pay the annual roll fee under the 1921 Act is taken to be a failure to pay the annual registration fee under this Act.
- (3) An architect who was not registered under the 1921 Act immediately before its repeal because his or her name had been removed from the Register of Architects kept under that 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.

10 Applications for registration

- (1) An application for registration as an architect under the 1921 Act that had not been determined by the former Board before the repeal of that Act is taken to be an application for full registration under this Act and any inquiry for the purposes of such an application may be continued and completed accordingly.
- (2) Anything done under the 1921 Act in respect of any such application is taken to have been done under this Act.

11 Continuation of complaints, inquiries and appeals

- (1) The provisions of the 1921 Act continue to apply to and in respect of a complaint made, or an inquiry or application for review made to the Tribunal commenced, under that Act and pending immediately before the repeal of that Act.
- (2) A decision or determination resulting from a hearing, inquiry or application for review referred to in subclause (1) is taken to have been made under the corresponding provisions of this Act and is to have effect accordingly.

12 Complaints relating to previous conduct

A complaint may be made under this Act (and dealt with as provided by this Act) in respect of any conduct of an architect who was registered under the 1921 Act if that conduct could have been the subject of a complaint under the 1921 Act if that Act had not been repealed.

13 Construction of certain references

In any Act or instrument (other than this Act):

- (a) subject to paragraph (b), a reference to the 1921 Act is taken to include a reference to this Act, and
- (b) a reference to a provision of the 1921 Act is taken to include a reference to the corresponding provision or provisions (if any) of this Act, and
- (c) a reference to a chartered architect or non-chartered architect under the 1921 Act is taken to include a reference to an architect registered under this Act.

14 General saving

Subject to this Schedule and the regulations:

- (a) anything begun under a provision of the 1921 Act before its repeal for which there is a corresponding provision in this Act may be continued and completed under the 1921 Act as if this Act had not been enacted, and
- (b) subject to paragraph (a), anything done under a provision of the 1921 Act for which there is a corresponding provision in this Act (including anything arising under paragraph (a)) is taken to have been done under the corresponding provision of this Act.

[Second reading speech made in—

Legislative Assembly on 21 May 2003

Legislative Council on 16 September 2003]

BY AUTHORITY