

# Architects Regulation 2017

[2017-431]



New South Wales

## Status Information

### Currency of version

Current version for 1 July 2020 to date (accessed 28 April 2024 at 17:05)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Does not include amendments by**  
[Licensing and Registration \(Uniform Procedures\) Amendment Act 2022 No 2](#) (not commenced)
- **Editorial note**  
The Parliamentary Counsel's Office is progressively updating certain formatting styles in versions of NSW in force legislation published from 29 July 2019. For example, colons are being replaced by em-rules (em-dashes). Text of the legislation is not affected.  
  
This version has been updated.
- **Staged repeal status**  
This legislation is currently due to be automatically repealed under the [Subordinate Legislation Act 1989](#) on 1 September 2024

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

File last modified 28 July 2023

# Architects Regulation 2017



New South Wales

## Contents

<b>Part 1 Preliminary</b>	3
1 Name of Regulation	3
2 Commencement	3
3 Definition	3
<b>Part 2 Registration</b>	3
4 Qualifications for registration	3
5 Particulars to be recorded in Register	4
<b>Part 3 The Board</b>	5
6 Relevant educational institutions	5
7 Appointment of academic members to Board	5
8 Conduct of elections of architects to Board	6
<b>Part 4 Miscellaneous</b>	6
9 Representations	6
10 Exceptions for names of professional associations of architects	6
11 NSW Architects Code of Professional Conduct	6
12 Professional misconduct	6
13 Savings	7
<b>Schedule 1 Election of architects to the Board</b>	7
<b>Schedule 2 NSW Architects Code of Professional Conduct</b>	16

# Architects Regulation 2017



New South Wales

## Part 1 Preliminary

### 1 Name of Regulation

This Regulation is the [Architects Regulation 2017](#).

### 2 Commencement

This Regulation commences on 1 September 2017 and is required to be published on the NSW legislation website.

**Note—**

This Regulation replaces the [Architects Regulation 2012](#), which is repealed on 1 September 2017 by section 10 (2) of the [Subordinate Legislation Act 1989](#).

### 3 Definition

(1) In this Regulation—

**the Act** means the [Architects Act 2003](#).

**Note—**

The Act and the [Interpretation Act 1987](#) contain definitions and other provisions that affect the interpretation and application of this Regulation.

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

## Part 2 Registration

### 4 Qualifications for registration

- (1) For the purposes of section 16 (1) (a) of the Act, a Bachelor degree or Masters degree in the discipline of architecture accredited by the Architects Accreditation Council of Australia are prescribed architectural qualifications.
- (2) Without limiting subsection (1), the Board may approve such other qualifications and experience in any particular case as the Board sees fit.
- (3) The criteria prescribed for the purposes of section 16 (1) (b) of the Act are—

- (a) that the course is the subject of a recommendation for accreditation by a National Visiting Panel in accordance with the *Australian and New Zealand Architecture Program Accreditation Procedure*, and
  - (b) that the course is included on the list of accredited architectural qualifications maintained by the Architects Accreditation Council of Australia.
- (4) In this clause, ***Australian and New Zealand Architecture Program Accreditation Procedure*** means the document of that name published from time to time by the Architects Accreditation Council of Australia and the Australian Institute of Architects.

## **5 Particulars to be recorded in Register**

- (1) For the purposes of section 25 (5) (a) of the Act, the following particulars are to be recorded in the Register in respect of each architect—
- (a) the registration number of the architect,
  - (b) the business address of the architect or, if the architect has no business address or if the architect so requests, the residential address of the architect,
  - (c) the email address of the architect,
  - (d) whether the architect is a practising architect or a non-practising architect,
  - (e) whether or not the architect has submitted any forms that the architect is required by the Registrar to submit,
  - (f) if the architect is or has been a nominated architect—
    - (i) the name of each corporation or firm for which the architect is or has been a nominated architect, and
    - (ii) the total number of corporations or firms for which the architect is currently a nominated architect, and
    - (iii) the commencement date and end date (if any) for each period during which the architect is or was a nominated architect for the corporation or firm concerned,
  - (g) such other particulars that—
    - (i) the Registrar considers relevant, and
    - (ii) the architect consents to being included.

### **Note—**

Section 25 (1) of the Act requires the Registrar to establish and maintain a register of architects (the

**Register**) for the purposes of the Act, and for the purposes of Part 3 of the [Licensing and Registration \(Uniform Procedures\) Act 2002](#), as applied by section 22 of the Act. Section 49 of the [Licensing and Registration \(Uniform Procedures\) Act 2002](#) requires the following particulars, which are additional to the particulars set out above, to be recorded in the Register—

- (a) the name of the registered person,
  - (b) the kind of registration it is, whether by reference to the relevant provision of the Act or otherwise,
  - (c) the authority conferred by registration and (in the case of registration that is subject to discretionary conditions) a statement to that effect,
  - (d) the date on which registration comes into force and (in the case of fixed-term registration) the date on which registration expires.
- (2) The Registrar may record that an architect is a non-practising architect for the purposes of subclause (1) (d) only if the Registrar is satisfied that—
- (a) the architect has retired from the practice of architecture, or
  - (b) the architect is not likely to practise as an architect for the foreseeable future.
- (3) If an architect is recorded in the Register as being a non-practising architect, the Registrar may not alter the Register to record that the architect is a practising architect for the purposes of subclause (1) (d) unless the architect has demonstrated to the Board's satisfaction that the architect's architectural skills and knowledge are current.
- (4) The Registrar may publish all or part of the particulars recorded in the Register on the Board's website.
- (5) Despite subclause (4), an architect may make a request in writing to the Registrar that specified particulars relating to the architect not be published on the Board's website and the Registrar may, at the Registrar's discretion, comply with all or part of the architect's request.

## Part 3 The Board

### 6 Relevant educational institutions

For the purposes of the definition of **relevant educational institution** in section 60 (6) of the Act, any University, within the meaning of the [Universities Governing Bodies Act 2011](#), that offers a Bachelor degree or Masters degree in the discipline of architecture accredited by the Architects Accreditation Council of Australia is prescribed.

### 7 Appointment of academic members to Board

- (1) For the purposes of section 60 (1) (c) of the Act, the member of the Board appointed under that paragraph is to be appointed by the governing body of a relevant educational institution on rotation with all other relevant educational institutions.

**Note—**

Clause 3 of Schedule 1 to the Act provides for maximum periods that a member of the Board can hold office.

- (2) The Board is to determine the order in which the governing bodies of the relevant educational institutions are to appoint the member of the Board under this clause.

## **8 Conduct of elections of architects to Board**

For the purposes of section 60 (1) (d) of the Act, the election of architects to be members of the Board is to be held and conducted in the manner set out in Schedule 1.

## **Part 4 Miscellaneous**

### **9 Representations**

For the purposes of section 13 (1) (c) of the Act, the following titles, names and descriptions are prescribed—

- (a) the title or description, or a derivative of the title or description, “architectural designer”, or
- (b) “architectural design” as a description of services provided by the person.

**Note—**

Section 13 (1) (b) of the Act also provides that a 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, constitutes a representation that the person is an architect.

### **10 Exceptions for names of professional associations of architects**

For the purposes of section 14 (f) of the Act, a professional association of architects is not prohibited from using the title or description of “architect” or “registered architect” in the name of the association.

### **11 NSW Architects Code of Professional Conduct**

For the purposes of section 7 (1) of the Act, the NSW Architects Code of Professional Conduct set out in Schedule 2 is established as the code of professional conduct.

**Note—**

Section 7 (1) of the Act enables regulations to be made under the Act for the establishment of a code of professional conduct setting out guidelines that should be observed by architects in their professional practice.

### **12 Professional misconduct**

For the purposes of paragraph (b) of the definition of **professional misconduct** in section 32 of the Act, conduct of an architect that involves a substantial or consistent failure to reach reasonable standards of competence and diligence as an architect is

declared to be professional misconduct.

### 13 Savings

Any act, matter or thing that, immediately before the repeal of the [Architects Regulation 2012](#), had effect under that Regulation continues to have effect under this Regulation.

## Schedule 1 Election of architects to the Board

(Clause 8)

### Part 1 Interpretation

#### 1 Definitions

In this Schedule—

**close of nominations** for an election means the final time and date fixed by the returning officer for the close of nominations for the election.

**close of the ballot** for an election means the final time and date fixed by the returning officer for the close of the ballot for the election.

**election** means an election for the purposes of electing a member or members of the Board in accordance with section 60 (1) (d) of the Act.

**electronic ballot** means a ballot conducted in accordance with Part 7.

**postal ballot** means a ballot conducted in accordance with Part 6.

**returning officer** means—

- (a) the Registrar, or
- (b) the Electoral Commissioner for New South Wales, or
- (c) a person employed in the office of and nominated by the Electoral Commissioner for the purpose of exercising the functions conferred or imposed on a returning officer by this Regulation, or
- (d) a fee-for-service election provider nominated by the Board on the Registrar's recommendation.

**roll** for an election means the roll prepared by the Registrar under clause 10.

### Part 2 Calling of election

#### 2 Notice of election

- (1) As soon as possible after having been notified in writing by or on behalf of the Registrar that one or more members of the Board are required to be elected, the

returning officer must cause notice of that fact—

(a) to be published on the Board's website, and

(b) to be sent by post or email to each architect whose name is recorded in the Register.

(2) If the Registrar is to be the returning officer in the election, the Registrar must take the steps specified in subclause (1) (a) and (b) as soon as possible after the Registrar becomes aware that one or more members of the Board are required to be elected.

(3) The notice must specify the following—

(a) the number of members required to be elected,

(b) how nominations of candidates are to be made,

(c) the time and date for the close of nominations,

(d) whether, in the event that a ballot is required to be held, the election is to be conducted by a postal ballot or an electronic ballot,

(e) if an electronic ballot is to be held—that an architect may choose to vote by means of a postal ballot providing the architect notifies the Board of this choice in writing no later than 21 days after the date on which the notice is published on the Board's website.

(4) The date fixed for the close of nominations must not be earlier than 21 days after the date on which the notice is published on the Board's website.

### **3 Postponement of close of nominations**

(1) The returning officer may postpone the close of nominations for a period not exceeding 14 days by a notice given in the same manner as a notice given under clause 2 (1).

(2) The close of nominations in respect of an election may be postponed under this clause more than once.

### **4 Person may choose postal voting in electronic ballot**

(1) A person who is an architect at the date on which a notice of election is published on the Board's website may notify the Board in writing that, in the event that a ballot is required to be held, the person wishes to receive a ballot paper by post and return the completed ballot paper by post rather than participate in an electronic ballot.

(2) Notice under subclause (1) must be given no later than 21 days after the date on which the notice of election is published on the Board's website.



- (3) A person who has given notice under subclause (1) may, at any time before the end of the 21-day period referred to in subclause (2), notify the Board in writing that the person wishes to change the person's choice and participate in an electronic ballot rather than a postal ballot.

## Part 3 Nominations

### 5 Nomination of candidates

- (1) A person who is an architect as at the beginning of the day on which a notice of an election is published on the Board's website—
- (a) is eligible for nomination as a candidate at an election, and
  - (b) is qualified to nominate a candidate for election.
- (2) A nomination of a candidate—
- (a) must be made by at least 2 persons (other than the candidate) who are qualified to nominate a candidate, and
  - (b) must include the written consent to the nomination of the nominee, and
  - (c) must be lodged with the returning officer before the close of nominations.
- (3) If a candidate has not been nominated by a sufficient number of persons qualified to nominate a candidate, the returning officer must, as soon as practicable, cause notice of that fact to be given to the candidate.
- (4) In the case of an election in which the returning officer is not the Registrar, the returning officer may be assisted by the Registrar in the performance of the returning officer's duties.
- (5) A candidate who has been nominated in an election may withdraw the nomination at any time before the close of nominations by notice in writing addressed to the returning officer.

### 6 Candidate information sheet

- (1) A candidate for election may, at any time before the close of nominations, submit information to the returning officer for inclusion in a candidate information sheet.
- (2) Any information submitted under subclause (1) must be **suitable for inclusion** in a candidate information sheet, being information that is—
- (a) relevant to a candidate's professional standing, suitability for election and ability to carry out the functions of the Board, and
  - (b) accurate and not misleading, and

(c) no more than 200 words in length.

- (3) As soon as practicable after the close of nominations, the returning officer must, if a ballot is required to be held for the election, prepare a candidate information sheet containing the information submitted under subclause (1) (if any) that is, in the opinion of the returning officer, suitable for inclusion.
- (4) If the returning officer rejects information as not suitable for inclusion, the returning officer must give the candidate who submitted the information—
  - (a) notice that the information is rejected, and
  - (b) an explanation as to why the information is not suitable for inclusion, and
  - (c) 7 days in which to provide information that is suitable for inclusion.
- (5) If the candidate does not provide information that the returning officer considers to be suitable for inclusion within those 7 days, no information about the candidate is to be included in the candidate information sheet.

## **7 Uncontested elections**

If the number of persons who have been duly nominated as candidates for an election by the close of nominations does not exceed the number of persons to be elected, each of those persons is taken to have been elected.

## **8 Contested elections**

- (1) If the number of persons who have been duly nominated as candidates for an election by the close of nominations exceeds the number of persons to be elected, a ballot must be held.
- (2) The Board must decide whether the election is to be conducted by a postal ballot or an electronic ballot and must notify the returning officer of the Board's decision as soon as practicable.
- (3) In making a decision under subclause (2), the Board must consult with the returning officer.
- (4) In the case of an electronic ballot, the returning officer must make arrangements for persons who have notified the Board in accordance with clause 4 to vote in the election by means of a postal ballot.

## **Part 4 Calling of ballot**

### **9 Qualifications for voting**

A person who is an architect at the close of nominations is eligible to vote in an election.

## **10 Roll for election**

As soon as practicable after it becomes apparent to the returning officer that a ballot is required to be held in respect of an election—

- (a) in the case of an election in which the returning officer is the Registrar—the Registrar must prepare—
  - (i) a roll consisting of a list of the full names, addresses (as they appear in the Register), email addresses and registration numbers of all architects as at the date of close of nominations (the **voters**), and
  - (ii) if an electronic ballot is to be held, a list of the full names, addresses (as they appear in the Register), email addresses and registration numbers of all voters who have notified the Board in accordance with clause 4 of the voter's wish to vote by means of a postal ballot, or
- (b) in any other case—
  - (i) the returning officer must cause notice of that fact to be sent to the Registrar, and
  - (ii) the Registrar must prepare, and provide the returning officer with, a roll in accordance with paragraph (a).

## **11 Notice of ballot**

- (1) The returning officer must give notice that a ballot is to be held by—
  - (a) publishing the notice on the Board's website, and
  - (b) by sending the notice by post or email to each voter.
- (2) The notice is to be given—
  - (a) in the case of an election in which the Registrar is the returning officer—as soon as practicable after it becomes apparent to the Registrar that a ballot is required to be held in respect of the election, or
  - (b) in any other case—as soon as practicable after the returning officer receives the roll for the election.
- (3) The notice must—
  - (a) state whether the ballot is to be an electronic ballot or a postal ballot, and
  - (b) fix a time and date for the close of the ballot, and
  - (c) provide instructions on how to vote, including how to access an electronic ballot.
- (4) The close of the ballot must not be earlier than 28 days after the notice is published on the Board's website.

## **12 Postponement of close of ballot**

- (1) The returning officer may postpone the close of the ballot for a period not exceeding 14 days by a notice published in the same manner as a notice stating that a ballot is to be held.
- (2) The close of the ballot in respect of an election may be postponed more than once under this clause.

## **Part 5 Ballot papers**

### **13 Application of Part**

This Part applies to—

- (a) the conduct of an election by a postal ballot, or
- (b) voting in an electronic ballot by voters who have given notice to the Board under clause 4 of the voter's wish to vote by means of a postal ballot, or
- (c) voting in an electronic ballot conducted by email.

### **14 Preparation of ballot papers**

- (1) The order of names on the ballot paper must be determined by lot drawn by the returning officer.
- (2) A ballot paper for an election must state the closing date of the ballot and contain directions as to the manner in which a vote is to be recorded and returned to the returning officer.
- (3) The directions to voters must include directions that—
  - (a) the voter must record a vote for at least the number of candidates to be elected in the order of the voter's preferences for them, and
  - (b) the voter may, but is not required to, vote for additional candidates in the order of the voter's preferences for them.

### **15 Duplicate ballot papers**

- (1) At any time before the close of the ballot, the returning officer may issue to a voter a duplicate ballot paper and envelope if the voter satisfies the returning officer—
  - (a) that the original ballot paper has been spoilt, lost or destroyed, and
  - (b) that the voter has not already voted in the election to which the ballot paper relates.
- (2) The returning officer must maintain a record of all duplicate ballot papers issued

under this clause.

## **Part 6 Postal ballot**

### **16 Application of Part**

This Part applies to—

- (a) the conduct of an election by a postal ballot, or
- (b) voting in an electronic ballot by voters who have given notice to the Board under clause 4 of the voter's wish to vote by means of a postal ballot.

### **17 Distribution of ballot papers**

As soon as practicable, the returning officer must send to each voter—

- (a) a ballot paper for the election, and
- (b) an unsealed reply-paid envelope addressed to the returning officer and bearing on the back the words "NAME AND REGISTRATION NUMBER OF VOTER", together with appropriate spaces for the insertion of a name and a registration number, and
- (c) if applicable, a candidate information sheet.

### **18 Receipt of ballot papers**

- (1) The returning officer must reject any ballot paper if the envelope is not received before the close of the ballot.
- (2) The returning officer must examine the name on the back of the envelope and, without opening the envelope—
  - (a) must accept the ballot paper in the envelope and draw a line through the name on the roll that corresponds to the name on the back of the envelope, if satisfied that a person of that name is included in the roll for the election, or
  - (b) must reject the ballot paper in the envelope if not so satisfied or if a name or a registration number does not appear on the back of the envelope.

## **Part 7 Electronic ballot**

### **19 Application of Part**

This Part applies if the returning officer decides to conduct an election by an electronic ballot.

#### **Note—**

Part 6 applies in relation to voters who have given notice to the Board under clause 4 of the voter's wish to vote by means of a postal ballot in an electronic ballot.

## **20 Means of voting in electronic ballot**

- (1) An electronic ballot may be conducted by email or by remote electronic voting.
- (2) If an electronic ballot is conducted by means of accessing a voting website, any voter may notify the returning officer in writing that they wish to vote by email, in which case clause 21 applies to that voter.

## **21 Voting by email**

- (1) As soon as practicable after the close of nominations in an election, the returning officer must send by email to each voter the following—
  - (a) an electronic ballot paper prepared in accordance with clause 14,
  - (b) an electronic candidate information sheet, if applicable,
  - (c) directions on how to submit the completed electronic ballot paper.
- (2) Each voter must—
  - (a) vote in accordance with the directions contained on the ballot paper, and
  - (b) submit the vote in accordance with the directions contained in the email.
- (3) The returning officer must ensure that all electronic ballot papers are stored securely in such a way that ensures that the vote recorded by any voter cannot be identified until the counting of the votes begins.

## **22 Voting website**

- (1) If an electronic ballot is to be conducted by means of accessing a website (the **voting website**), the voting website must include the following—
  - (a) instructions on how to vote, including directions that—
    - (i) the voter must record a vote for at least the number of candidates to be elected in the order of the voter's preferences for them, and
    - (ii) the voter may, but is not required to, vote for additional candidates in the order of the voter's preferences for them,
  - (b) the names of all candidates for election,
  - (c) the candidate information sheet, if applicable,
  - (d) the closing date of the ballot.
- (2) The voting website must be established in such a way that—
  - (a) enables the voter to make a declaration stating that the voter is eligible to vote in

the election, and

- (b) ensures that the vote recorded by any voter cannot be identified, and
- (c) allows a voter to review and amend as necessary the voter's recording of a vote before submitting it.

### **23 Secure storage of electronic votes**

The returning officer must ensure that electronic votes are kept secure until the counting of votes is concluded in accordance with Part 8.

### **24 Receipt of electronic votes**

The returning officer must reject any electronic vote not submitted before the close of the ballot.

## **Part 8 Procedures on close of ballot**

### **25 Counting of votes**

- (1) The returning officer must reject a vote as informal if the voter has not indicated a clear preference for at least the number of candidates to be elected.
- (2) If there is only 1 person to be elected in any election—
  - (a) the method of counting the votes so as to ascertain the result of the election is as provided in Part 2 of the Seventh Schedule to the [Constitution Act 1902](#), and
  - (b) for the purpose of applying the provisions of that Part to any such election, a reference in those provisions to the returning officer must be read as a reference to the returning officer under this Regulation.
- (3) If there are 2 persons to be elected in any election—
  - (a) the method of counting the votes so as to ascertain the result of the election is as provided in Part 2 of the Sixth Schedule to the [Constitution Act 1902](#), and
  - (b) for the purpose of applying the provisions of that Part to any such election—
    - (i) a reference in those provisions to the Council returning officer must be read as a reference to the returning officer under this Regulation, and
    - (ii) the quota referred to in those provisions must be determined by dividing the number of first preference votes for all candidates by 3 and by increasing the quotient so obtained (disregarding any remainder) by one.

### **26 Notice of result of election**

As soon as practicable after a candidate or candidates in an election has or have been

elected, the returning officer must—

- (a) notify the Minister and the Registrar, in writing, of the name of each candidate elected, and
- (b) cause notice of the name of each candidate elected to be published on the Board's website.

## **Part 9 General**

### **27 Decisions of returning officer final**

If the returning officer is permitted or required by the Act or this Regulation to make a decision on any matter relating to the taking of a ballot in any election, the decision of the returning officer on that matter is final.

### **28 Offences**

A person must not—

- (a) vote, or attempt to vote, more than once in any election held under this Regulation, or
- (b) vote, or attempt to vote, in any such election in which the person is not entitled to vote, or
- (c) make a false or wilfully misleading statement—
  - (i) to the returning officer in connection with any such election, or
  - (ii) in any document that the person furnishes for the purposes of any such election.

Maximum penalty—5 penalty units.

## **Schedule 2 NSW Architects Code of Professional Conduct**

(Clause 11)

### **Introductory note—**

The following Code of Professional Conduct provides architects and their clients with a statement of the standards required of architects when engaged to provide architectural services.

A failure to comply with the Code may constitute unsatisfactory professional conduct for the purposes of the [Architects Act 2003](#) and may be grounds for disciplinary action under Part 4 of that Act.

## **Part 1 Preliminary**

### **1 Name of Code**

This Code is the *NSW Architects Code of Professional Conduct*.



## 2 Definitions

(1) In this Code—

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

**client** means a person who engages an architect (whether or not for payment) to provide architectural services.

**document** means any record of information, and includes—

- (a) anything on which there is writing, or
- (b) anything on which there are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them, or
- (c) anything from which sounds, images or writings can be reproduced with or without the aid of anything else, or
- (d) a map, plan, drawing or photograph.

**the Act** means the [Architects Act 2003](#).

**the Regulation** means the [Architects Regulation 2017](#).

(2) Expressions used in this Code that are defined in the Act have the meanings set out in the Act.

## Part 2 General practice standards

### 3 Information and disclosures

- (1) An architect must provide information, or disclose a matter, to a client in writing.
- (2) Information may be given, or a disclosure made, to a client orally—
  - (a) if it is reasonable in the circumstances for the information to be given or the disclosure to be made orally, and
  - (b) providing the information or disclosure is not expressly required by a provision of this Code to be given or made in writing.

### 4 Provision of architectural services generally

- (1) In providing architectural services, an architect must—
  - (a) act with integrity and reasonable care, and
  - (b) provide the services—
    - (i) in a manner that (at the time the services are provided) is widely accepted in

Australia by peer professional opinion as competent professional architectural practice, and

(ii) in compliance with any laws applicable to the provision of such services.

(2) An architect must provide architectural services to a client—

(a) with reasonable promptness, and

(b) in accordance with any agreed time frame or in a reasonable time as far as is permitted by the provision of instructions to the architect by the client.

(3) An architect must withdraw from the provision of any architectural services if the architect reasonably believes that, in the architect's professional judgment, the provision of the services would require the architect to act—

(a) in a manner that the architect considers unethical, or

(b) in contravention of the Act, the Regulation or this Code.

(4) An architect must only offer to clients architectural services within the architect's skill and competency.

(5) An architect must advise a client to obtain specialist advice or services from a suitably qualified person other than an architect (such as an engineer) concerning an issue arising in connection with the provision of architectural services if the architect believes that it is in the client's interest to do so.

## **5 Disclosure of conflicts of interest**

(1) Before an architect enters into a contract or other arrangement to provide architectural services to a client or an employer, the architect must—

(a) disclose to the client or employer if a conflict of interest exists, or is likely to exist in the future, between the interests of the client or employer and the interests of the architect (or an existing client of the architect), and

(b) if the conflict of interest exists, or could reasonably be expected to arise in the future, because of the interests of an existing client—obtain the informed consent of the existing client to the contract or arrangement.

(2) If an architect has received any payment or other advantage for endorsing or making comments about any product or service likely to be used in connection with the provision of architectural services, the architect must disclose this fact to a client, or to a prospective client, for the architectural services.

(3) An architect must not accept an engagement to provide architectural services to a client referred to the architect by a third party to whom the architect has given or offered to provide a fee or other benefit for the referral of clients or potential clients

unless the architect has first disclosed to the client the architect's arrangement with the third party.

- (4) An architect must not act for a client in any dealing with a third party from whom the architect may receive (whether directly or indirectly) any fee or other benefit in respect of that dealing unless, before acting for the client in the dealing—
  - (a) the architect has disclosed to the client in writing the nature and value of any fee or other benefit that may be received by the architect, and
  - (b) the architect has obtained the consent of the client to the dealing.

### **Part 3 Standards concerning dealings with clients**

#### **6 Provision of information to clients and prospective clients**

- (1) An architect must provide sufficient relevant information with reasonable promptness to enable a client or prospective client to make an informed decision in relation to the provision of architectural services.
- (2) In particular, an architect must take all reasonable steps—
  - (a) to ensure that all information and material provided is truthful, accurate, unambiguous and relevant to the client's interests, and
  - (b) to provide a client with sufficient information to enable the client to make decisions about the provision of the architectural services, including information that clearly identifies the implications of various decisions that could be made, and
  - (c) to avoid making misleading or false comparisons with architectural services provided by competitors.
- (3) An architect must take all reasonable steps to ensure that a client is informed of—
  - (a) the decisions required of the client in respect of the architectural services being provided by the architect, and
  - (b) the implications of those decisions for the performance of the architectural services (particularly those implications related to timeliness, cost and changes to the architectural services).
- (4) An architect must advise a client on the likelihood of achieving the client's stated objectives having regard to the client's stated budget and time requirements for the architectural services concerned.
- (5) An architect must not disclose to any person any information agreed as being, or understood to be, confidential that is acquired from or provided by a client in the course of the provision of the architectural services by the architect unless authorised to do so by the client in writing or as required by law.

- (6) An architect must, with reasonable promptness, respond to a client's reasonable requests for information or other communications concerning the architectural services being provided by the architect to the client.

## **7 Client agreements**

- (1) An architect must enter into a written agreement with the client concerning the provision of architectural services.
- (2) If the agreement is prepared by or on behalf of the architect, the agreement must include the following—
  - (a) the parties to the agreement,
  - (b) the name, registration number and contact details of the architect responsible for providing the architectural services,
  - (c) the scope and nature and specific requirements of the architectural services,
  - (d) how the professional fees and costs of the architectural services will be calculated,
  - (e) where possible, reasonable estimates of disbursements,
  - (f) how professional fees and costs, including disbursements, will be paid,
  - (g) how the architect may inform the client of progress in the provision of the architectural services,
  - (h) how the client may authorise the architect to proceed with the architectural services, or any part of the architectural services,
  - (i) a requirement that the architect must inform the client how a change or amendment to the architectural services will affect the professional fees and costs for the architectural services,
  - (j) how the architect may obtain the client's authority to change or amend the architectural services,
  - (k) how variations to the agreement may be made,
  - (l) how any pre-existing agreement to the provision of other architectural services for the client is to be applied,
  - (m) how the agreement may be terminated and for what reasons,
  - (n) a reservation of the right of an architect to withdraw from the provision of the architectural services in the circumstances referred to in clause 4 (3),
  - (o) notice of the existence of this Code and how the client can obtain a copy,

- (p) notice that alternative dispute resolution will apply to disputes and how alternative dispute resolution mechanisms will apply.
- (3) The architect must ensure that the cost of architectural services provided to a client—
  - (a) reflects the fee structure specified in the agreement, and
  - (b) accurately reflects the amount of work done or to be done for the client in the provision of the architectural services (including any variations to the architectural services and the incurring of any liabilities to pay employees overtime).
- (4) The architect must enter into the agreement before commencing to provide the architectural services unless—
  - (a) it is not reasonable to do so in the circumstances, or
  - (b) the architectural services to be provided are urgent, in which case, the agreement must be provided to the client within a reasonable time after commencing to provide the architectural services.

## 8 Building contracts

- (1) For the purposes of this clause, an architect administers a building contract on behalf of a client if—
  - (a) the contract concerns the construction of a building and is entered into by the client with a builder (the **building contractor**), and
  - (b) the architect is not a party to the contract, and
  - (c) the architect has been engaged by the client to inspect and administer the provision of services by the building contractor under the contract.
- (2) In administering a building contract on behalf of a client, an architect—
  - (a) must act with fairness and impartiality, and
  - (b) must discharge the architect's obligations diligently and promptly, and
  - (c) must provide the client with relevant information in a timely manner, and
  - (d) must not seek or receive any payments or other inducements from any person wishing to influence the architect to administer the contract for the benefit or detriment of any party to the contract.

## 9 Deposits and retainers

- (1) Unless otherwise expressly agreed by an architect and the architect's client, the architect must not seek or accept a retainer or deposit for the provision of any architectural services to be provided if that retainer or deposit is more than 10% of the

reasonably expected or agreed total fee for the architectural services to be provided.

- (2) Subclause (1) does not apply to an architect in connection with the provision of any architectural services—
- (a) to any individual who does not reside within Australia, or
  - (b) to any firm or corporation that does not have a place of business within Australia, or
  - (c) in relation to the construction of a building outside of Australia.

## **10 Record keeping**

- (1) An architect must keep the following records concerning architectural services provided to a client—
- (a) correspondence sent and received,
  - (b) financial transactions,
  - (c) client instructions and meetings held with the client,
  - (d) drawings, photographs of works in progress, project journals and diaries created in connection with providing the architectural services.
- (2) The records may be maintained in hard copy or electronic form.
- (3) If the records are maintained in electronic form, the architect must maintain adequate electronic copies of the records to enable the records to be restored if one electronic copy is destroyed or damaged.
- (4) The records must be kept for at least 6 years after the completion of the architectural services concerned.

## **11 Provision of statements of account**

Unless otherwise expressly agreed by an architect and the architect's client, the architect must provide the client with regular statements of account for any architectural services provided.

## **12 Inspection of documents by client**

- (1) A client may ask to inspect an architect's documents and records relating to the provision of architectural services to the client.
- (2) The architect must respond within a reasonable period of time to the client's request to inspect documents and records by giving the client (where practicable and during normal business hours) a reasonable opportunity—

- (a) to inspect—
  - (i) documents produced in providing the architectural services, and
  - (ii) records (except confidential business records) relating to the provision of the architectural services, and
- (b) to make copies (at the client's expense) of any, or any part, of the documents or records.
- (3) An architect must not unreasonably refuse to provide a client with an opportunity to inspect or copy the documents or records referred to in subclause (2).
- (4) Nothing in this clause derogates from any right of an architect to claim a lien over documents or records referred to in subclause (2) or to assert any intellectual property rights in respect of the documents or records.

### **13 Maintaining knowledge of architectural services to be provided**

An architect in charge of a client's architectural project must maintain a thorough knowledge of the architectural services to be provided in relation to that project and of matters relating to the performance of those architectural services.

### **14 Advising client of inability to follow client's instructions**

An architect must, as soon as is reasonably practicable, advise the client in writing of any thing that would, or would be likely to, prevent the client's instructions relating to the architectural services being followed, including the responsibility of an architect to withdraw from the provision of the architectural services under clause 4 (3) of this Code.

## **Part 4 Standards concerning insurance coverage**

### **15 Professional indemnity insurance**

- (1) Subject to any requirements of the Act or the Regulation, an architect must—
  - (a) maintain a policy of professional indemnity insurance appropriate for the architectural services being provided by the architect, and
  - (b) provide each client of the architect with information relating to the insurance maintained by the architect for the architectural services to be provided to the client.
- (2) On the application of an architect, the Board may, by order in writing, grant an exemption to the architect from the provisions of subclause (1) if—
  - (a) the Board is satisfied that the architect has commenced practice as an architect only very recently, or

- (b) the Board is otherwise satisfied that it would not be appropriate in the circumstances for the architect to comply with the provisions of subclause (1).

(3) Subclause (1) does not apply to—

(a) any architect in respect of the provision of architectural services if—

(i) the person engaged to provide the architectural services is not the architect, and

(ii) the architect is providing the architectural services only as an employee of that person and not on the architect's own account, or

(b) any non-practising architect, or

(c) any architect who has been granted an exemption by the Board under subclause (2).

## **Part 5 Standards concerning continuing professional development**

### **16 Continuing professional development**

- (1) An architect must take all reasonable steps to maintain and improve the skills and knowledge necessary for the provision of the architectural services that the architect normally provides through—
  - (a) undertaking such activities that the Board is satisfied demonstrate the maintenance and improvement of the architect's skill and knowledge, or
  - (b) such other means as may be approved by the Board from time to time.
- (2) An architect must, when requested by the Board to do so, report to the Board on all the steps taken by the architect under subclause (1).
- (3) Subclauses (1) and (2) do not apply to a non-practising architect.

## **Part 6 Standards concerning public**

### **17 Dealings with public**

- (1) When dealing with the public in the course of an architect's professional practice, an architect must ensure that—
  - (a) the architect's qualifications, experience and authorship of any work, document or publication are stated accurately, and
  - (b) the architect is identified clearly and accurately on stationery, sign boards, public notices and in publications, and
  - (c) the architect's registration number is included on any stationery, presentation or



construction documents (including drawings, specifications and schedules), illustrations, sign boards, public notices and architectural plans, and in publications, used or placed by the architect in connection with the architect's professional practice, and

- (d) if the architect claims to have received any award or honour for the provision of architectural services, all persons or bodies that shared in the award or honour are identified accurately in the claim.

(2) When dealing with the public in the course of an architect's professional practice, a nominated architect responsible for the provision of architectural services by an architect corporation or an architect firm must ensure that—

- (a) the architect is identified clearly and accurately as the nominated architect for the architect corporation or architect firm on stationery, sign boards and public notices, and in publications, used or placed by the architect corporation or architect firm in connection with the provision of architectural services, and
- (b) the architect's registration number is included on any stationery, presentation or construction documents (including drawings, specifications and schedules), illustrations, sign boards, public notices and architectural plans, and in publications, used or placed by the architect corporation or architect firm in connection with the provision of architectural services.

(3) When dealing with the public in the course of an architect's professional practice, an architect—

- (a) must not provide any endorsement of any product or service in connection with the provision of architectural services in a misleading manner, and
- (b) must disclose in the material conveying the endorsement whether or not a fee has been received for or relating to that endorsement.

## **18 Representations concerning architectural work**

- (1) An architect must not, in the course of the architect's professional practice, sign as checked, approved or supervised any drawings or other documents that the architect has not in fact checked, approved or supervised.
- (2) An architect must not, in the course of the architect's professional practice, permit the architect's name to be used in relation to any work, document or publication in a manner that misleadingly implies authorship of, responsibility for or agreement with the content or form of, the work, document or publication.

## **Part 7 Standards concerning professional relationships with other**

## architects

### 19 Dealings with other architects

- (1) In any dealings with other architects in the course of the architect's professional practice, the architect must maintain a high standard of integrity and act honestly and fairly.
- (2) If an architect (the **new architect**) is assuming responsibility for the provision of architectural services to a client from another architect who is to discontinue providing the architectural services (the **former architect**), the former architect must, to the extent that it is commercially reasonable and without breaching any duty of confidentiality—
  - (a) inform the new architect of any matters that the former architect could be reasonably supposed to consider important concerning the provision of the architectural services, and
  - (b) not withhold any information from the new architect that may assist the new architect to understand the history and nature of the architectural services.