

ARCHITECTS BILL

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Bill introduced and read a first time.

Second Reading

Ms MEAGHER (Cabramatta—Minister for Fair Trading, and Minister Assisting the Minister for Commerce) [11.10 p.m.]: I move:

That this bill be now read a second time.

Honourable members would be well aware of the Carr Government's record of both maintaining and enhancing consumer protection, and introducing policies to improve the standard of the built environment for all members of the community. As a major part of the Government's initiatives in both these areas, the Government has undertaken extensive review of legislation regulating the architectural profession. The Government sought to undertake reforms in 1998, but decided to hold them in abeyance pending the results of the work of the Productivity Commission, which undertook a review of legislation regulating the architectural profession. The review was handed down in late 2000.

Following the review State and Territory governments agreed to compile a joint response to the report. Under the leadership of New South Wales the joint response provided a framework that was adopted by State and Territory governments. It was also endorsed by the Australian Procurement and Construction Ministerial Council. I am introducing a bill to implement this nationally agreed framework into New South Wales. The bill will achieve greater consumer protection, more effective professional discipline and enable a renamed Architects Registration Board to take a more active role in promoting community discussion on the role of architects in the community. In addition, the new board will have a broader membership than the current board to reflect its redefined role under the legislation.

There has been extensive consultation with the profession over the past 18 months. Organisations consulted include the Royal Australian Institute of Architects, the Association of Consulting Architects of Australia, the Architects Accreditation Council of Australia and the current Board of Architects. There have also been representations from consumers of architectural services regarding deficiencies in the complaint process available under the current Act for unprofessional conduct by architects. The resulting proposals for reform are so extensive that the bill I am introducing repeals the Architects Act 1921 and starts afresh. Enhanced consumer protection is a major plank of the reform, with the legislation guarding the interests of consumers and supported by a board that draws its membership from a wider range of backgrounds and architecture alone.

Community members will predominate on the board and include persons with demonstrated public interest in architecture, representing consumers,

local government, and legal and allied professions. Architect members will include two architects elected by all New South Wales registered architects, the past President of the Royal Australian Institute of Architects New South Wales Chapter, the New South Wales Government Architect, and an academic drawn from one of the schools of architecture in New South Wales. The Government wants the new board to be concerned with consumer issues, and broader public and industry interests in architecture, while at the same time ensuring a strong professional presence is maintained and professional architectural knowledge is applied to the board's activities.

The bill also creates a code of professional conduct for all registered architects and provides for the creation of a model client-architect agreement for use in home design. These will go through the normal process for the making of subordinate legislation, the code itself being in the form of a regulation. The code will define the conduct required of architects; breaches will provide grounds for discipline. The client-architect agreement, when made, as advised by the board will balance the rights and responsibilities of the parties in a fair and equitable manner, and mandate a dispute resolution process. This process must be exhausted prior to more formal proceedings being commenced by either party. Such formal proceedings will also occur in the first instance in the Consumer Trader and Tenancy Tribunal.

The Government intends to take steps to co-ordinate these processes with amendments to home building legislation when they are finalised. Through this new legislation consumers will be provided with the strongest protection of any jurisdiction of which I am aware. It will also protect the interests of competent professional architects and the profession as a whole by creating a robust regime of disincentives to poor conduct, which will enhance public confidence in the profession. The major effect of the current legislation is to protect the use of the title "architect". This will continue in the legislation, but with some changes. Protection will be restricted to the use of the title in connection with building and construction, overcoming the awkwardness of the current Act in dealing with terms such as systems architect and software architect in use in the information technology industry.

Although only registered architects will be able to use the title "architect" and offer services provided by an architect, any corporation or firm that employs an architect may also use the title architect or its derivatives on notifying the board of its nominated architect. The nominated architect is an architect nominated by a corporation as the one who manages and directs the services provided by the corporation. The nominated architect must be normally on duty during business hours at the place at which the services are advertised as being provided. In addition, primary dealings with clients must be with the registered architects employed by the corporation or firm. These provisions of the proposed legislation replace the current requirement that one-third of directors of a company be architects to allow such a company to use the title "architect".

To ensure that the market is properly informed of the nominated architect, firms or corporations will be required to advise the board of the nominated architect, and advise the identity and business location of the nominated architect or architects. The intent is that this advertising would relate to normal business communications, including letterheads, and be prominently displayed in the place of business such that prospective clients would be able to read it. Any corporation, firms or person offering

architectural services in the marketplace to be performed by an architect, or could be reasonably construed as such, will commit an offence if that person is not an architect or if a corporation or firm does not have a nominated architect. The intent is for the market to be clearly informed as to who is and who is not an architect so that prospective clients can make an informed commercial judgment as to whose services to use.

The Government does not want to prevent non-architects from engaging in the business of designing buildings, but it does not want anyone to mislead their market in any way as to their professional status. The legislation provides severe penalties for any such misleading. However, a person or company not an architect, who has clearly stated in an offering to the market the qualifications relied upon, obviously will not intend to mislead. If it is found that these provisions do not provide sufficient consumer protection, those terms found to be used in a misleading manner will be proscribed at a later date by a regulation under the new Act. The board will have as part of its role the responsibility of ensuring adequate communication to the market of what the term "architect" means in connection with building and construction. I also point out that the bill should be read in conjunction with the tort law reforms adopted by the previous Parliament.

The reforms introduced a proportionate liability for certain claims and profession-focused defences for professional negligence for professions, including architects. Other features of the legislation are the provision for two levels of misconduct with simpler matters able to be dealt with by the board and more significant matters taken to the Administrative Decisions Tribunal, which will sit with an architectural member. The board's role will be to investigate complaints and take matters to the tribunal where it considers a case can be made against an architect. Penalties for misconduct would be greatly increased, commensurate with the seriousness of misconduct and offences created by the legislation. The maximum penalty will be 100 penalty units or, currently, approximately \$10,000 for an individual and double for corporations and firms.

Penalties of suspension or cancellation of registration will also exist. Greater flexibility in available penalties will be provided with orders possible to require architects to undergo further education and/or mentoring under an architect approved by the board. This brings the regulation of architects into line with the other regulated professions, as the community would expect. All findings against architects will be published to inform both possible clients and other architects. Because entry to registration is of great concern to the board it will be empowered to accredit courses that produce graduates suitable to seek registration. This replaces the current fixed schedule of courses in the regulations under the current Act. It is important to note that the board will be required to provide a pathway to registration that recognises the demonstrated experience of non-architect building designers.

The current board has developed such a pathway in consultation with the Architects Accreditation Council of Australia, named the Built Work Program of Assessment, which is an examination of candidates' built work against published competency criteria. A number of people have already been successfully assessed under the program to meet the criteria established in State environmental planning policy 65. As honourable members know, the policy limits to architects the right to design certain classes of multiple unit residential buildings. The Built Work Program of Assessment ensures that experienced building designers of demonstrated

capability will be able to register as architects without sitting theoretical examination of the knowledge of technical aspects of architectural practice. They will be able to continue designing these classes of multiple unit residential buildings, thus helping to achieve the Government's objective of improved urban built environments.

This will not remove the consumer protection requirement on all candidates seeking registration to pass an examination in professional aspects of architectural practice. One issue that has been of concern to architects who export their services has been the lack of a national register of architects. Of course, given the division of powers under the Australian Constitution it is not possible to legislate to create a national register. However, the legislation allows for the board to join with counterpart boards in other jurisdictions to administratively compile their registers to create a national registry of architects. The Architects Accreditation Council of Australia has undertaken to the Australian Procurement and Construction Ministerial Council to facilitate this.

The bill offers no impediment to the board to work with the Architects Accreditation Council of Australia to achieve national compilation of registers, but rather in its objectives encourage the board to work towards this and other national initiatives to achieve uniformity of administration of architects. The Carr Government committed itself to the finalisation of this legislation during this sitting of Parliament. In moving towards fulfilling this commitment on behalf of the Carr Government, I am pleased to note that consumers of architectural services, the market for building design as a whole, the community and architects who practice in a professional manner will all benefit from the introduction, passage and implementation of the legislation. I commend the bill to the House.

Debate adjourned on motion by Mr Maguire.

ARCHITECTS BILL

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Second Reading

Debate resumed from 21 May.

Mr HARTCHER (Gosford) [9.17 p.m.]: I lead for the Opposition on the Architects Bill. The bill is consistent with and implements National Competition Policy established through the Council of Australian Governments. The bill seeks to set up a regime of registration of architects, and also to lay down guidelines for the qualification of architects. It will ensure the protection of the name of architect and ensure that the professional standards of architecture are developed and enforced. All of those are appropriate measures, and are supported by the Coalition. We are heartened by the strong support for the bill given by the Royal Australian Institute of Architects and, on my understanding, the support of other relevant bodies, including the Building Designers Association. The importance of the bill is enhancement of the professionalism of architects as well as measures to enable community members to know whom they are dealing with, and be assured there is a proper standard of professional qualification. For some time the Royal Australian Institute of Architects has been seeking a policy on registration and regulation of architects, and in fact issued a policy paper to that effect in March 2001. I will not quote from the policy paper, but it is my understanding that the legislation essentially reflects the aspirations and aims of the institute, and accordingly is worthy of support.

Architects play an important role in our society. The design and quality of buildings is something that everyone in the community takes an interest in. The Premier, together with Prince Charles, has made many remarks about building design, many of which are quite appropriate. If we are to have a beautiful city it must be well designed. Everyone would be keen for good standards of design to be developed and maintained through the great profession of architecture. Beauty is in the eye of the beholder. What some people regard as a magnificent design may not be so regarded by others. It is always difficult to get a committee or a standard to determine what is good or bad design. Many of Frank Lloyd Wright's buildings were regarded as avant-garde, adventurous and not in touch with common thinking at the time.

Barcelona has magnificent buildings, including the great Catholic Cathedral of La Sagrada Familia. Design that was regarded as undesirable at the turn of the century has now become a modern landmark. Any legislation to determine good design through either the profession of architecture or government will always be elusive. Most people would agree that some standards of design are not desirable, such as the three-storey, red-brick blocks of home units that dotted Western Sydney and parts of the northern beaches in the 1950s and 1960s. Unfortunately, they will stay with us for some time. I encourage the profession of architecture

in its role in our society. It is responsible for ensuring not only strong and durable buildings, and technically appropriate buildings, but also an attractive, congenial and pleasant society. It is a challenge faced by all architects.

The Coalition wishes architects well. It also wishes well building designers, who play a very important role in house construction in ensuring good quality and affordable housing. I know many of them on the Central Coast. By and large they do a good job. Politicians receive very few complaints about the quality of designers. Most of the complaints deal with the quality of building construction or, in some cases, the inability of councils to ensure a proper and appropriate standard of building construction—I intend no criticism of councils. I acknowledge that the Coalition does not oppose the bill. We extend our good wishes to the great profession of architecture in New South Wales.

Mr PRICE (Maitland) [9.23 p.m.]: I support the bill and acknowledge the support of the spokesman for the Opposition. Since 1921 entry into the profession of architecture has been regulated in New South Wales through the Board of Architects. By this system of regulation the people of New South Wales have been assured that when they employ an architect that person is suitably qualified and subject to a system of professional discipline to discourage unprofessional conduct. The bill continues and enhances that system of protection to meet the needs of the contemporary community. Architecture, like all businesses and professions, has been subject to considerable change over recent decades. It is appropriate that the system of regulation is changed to keep abreast of market and community needs.

Through this bill the Government is doing more than modernising the regulation of a profession: it is advancing its broad program to improve the built environment for all residents of New South Wales, regardless of whether they employ an architect. Architecture is a unique public profession. Its products will affect many more people than those who own or build them. Thus, it is especially important that architects be regulated through a broadly based board that includes the views and insights of more than just architects. The bill establishes an 11-member Architects Registration Board comprising five architects, including two elected by architects, and six non-architects. The non-architects will not only bring to the board the knowledge of other parts of the industry, related professions, consumers and local government it will take to their respective groups deeper insights into architecture and its contribution to the community. This can only be a positive step and advance the cause of architecture in New South Wales.

The New South Wales Government Architect, who is a member of the board, has actively encouraged this more open and community-oriented stance. The bill will allow the new Architects Registration Board to take greater control over the running of its affairs. The board will now set fees, although ministerial oversight will ensure that they do not become excessive. The board will be able to conduct its administration duties under its own auspices. It will be able to investigate complaints more flexibly and transparently. This can include facilitating conferencing between parties who are involved in a complaint, if that would be of assistance. I can assure honourable members that it will, in large part, frequently solve problems as they arise. It is important to note that the board will be able to educate architects and the community by publishing details of complaints that are upheld by either the board's hearing process

or the Administrative Decisions Tribunal.

The code of professional conduct will encourage alternative dispute resolution in contracts between architects and their clients. Responsibilities given to the board under the bill will make it a more active board than the current legislation permits. It will have a role not only in promoting community discussion but also in informing the market about the duties, responsibilities and services that architects are expected to provide. In recognition of the national scope of many businesses, the board will be able to co-operate with other similar boards in neighbouring jurisdictions to ensure that a comprehensive list of architects registered in Australia is compiled. This co-operation will be extended to other aspects of the regulation of architects that will continue the work done by the Architects Accreditation Council Australia, which comprises representatives of State and Territory boards.

The council sets competency standards and examinations, and reviews the quality of education provided by schools of architecture. It has been involved in consultation in the preparation of the bill, and it has undertaken to assist in the drafting of a national code of professional conduct that may be suitable for use as the code to be made under this bill. In all, the bill will provide real advances for the community in the role of architecture in contributing to the comfort and enjoyment of the built environment. It creates a flexible board of suitably widely cast membership. It creates a well-defined system of regulation and professional discipline, and it requires the board to lead discussion as well as regulate.

As the bill is the result of extensive consultation and conforms to the Government's implementation of the national competition policy, it provides a new impetus for the profession of architecture and the community to join in making our built environment one that will enhance our public life and serve community needs. A number of aspects of the bill will be greeted by all levels within our community. It will certainly regulate the industry in a far more recognisable fashion and it will allow for a qualification system of recognition that will be acceptable to the profession at all levels and to the community. It will be recognised easily and applied in the same way. I commend the bill to the House.

Mr McLEAY (Heathcote) [9.29 p.m.]: I congratulate the new Minister for Fair Trading, and Minister Assisting the Minister for Commerce. She is doing an excellent job and I am sure she will continue to do so. The Government is to be commended for introducing a bill that will achieve for the community and practising architects reforms that are long overdue. An important aspect of these reforms is the bill's support for promoting discussion on architecture. The profession desires to engage the public in discussion of a topic of vital importance to us all: the utility and enjoyment of our cities and towns.

Few professions have such a broad impact on the community as do architects. Although a private individual or company might engage an architect, we are all influenced by the consequences of that engagement when the building is finally completed and in use. Few other professions have such an immediate and enduring impact on our built environment as architects have—a fact commented on by the honourable member for Maitland, who preceded me in this debate.

This bill sets out to achieve a greater interaction between the architecture

profession and the community in two ways. It provides that the Architects Registration Board members have a wider range of backgrounds and skills than was previously required of its members, and, importantly, that the board comprise more non-architects than architects. There will be enough architects on the board to provide the necessary professional experience and insight, but it is important that the community perceives a board that is in contact with other spheres of industry and public activity.

Non-architect board members will act as a conduit to take back to the groups from which they are drawn the considered views of architects. Such a two-way discussion and flow of information can only be an advantage. The second means of achieving broader discussion is by the bill directly providing that the board undertake broader discussion. The board will be empowered to engage in appropriate public education activities and, to assist in educating practitioners, will be able to publish the outcomes of case studies and the like involving complaints against architects. This has long been a desire of the board, which considers that the current legislation is not broad enough to facilitate this work.

An important appointment that the Minister will be required to make to the board will be the member who represents local government. In keeping with the Government's continuing desire to improve the quality of the urban environment, the voice of local government on the Architects Registration Board will ensure that there is open communication between the profession and local government. As many honourable members know, local government is the sphere in which many decisions affecting our built environment are made.

The bill also requires a number of other appointments of the board to represent various industry and other groups. These members are expected not to push for the special interests of their group; first and foremost, they will be board members. The Government has recognised that people from particular industry and other professional backgrounds will bring their special knowledge and experience to the board. By contributing these special endowments, the bill seeks to encourage benefits for the community at large.

This bill will be of great benefit to architects and the community, which will enjoy and prosper from their work. It will enable the board to stimulate a level of discussion about architecture and the built environment that previous boards have not been empowered to support. It will provide architects with the opportunity to engage in public discussion in a way that was not provided for under the 1921 Act. All this is to the public good. I commend the bill to the House.

Ms D'AMORE (Drummoyne) [9.33 p.m.]: Successive Carr Governments have been at the forefront of advancing the interests of consumers. This Government is no different; it continues the tradition of ensuring that consumers obtain the best possible deal from their suppliers. The Government's continued responsiveness on home building matters is an outcome of concern and that responsiveness is furthered for the building industry more broadly by this bill. The current Architects Act 1921 is long out of date. The Board of Architects of New South Wales has advised that the Act is inflexible and fails to give sufficient certainty on what might constitute a breach of professional discipline.

Furthermore, a board that is almost exclusively composed of architects has allowed the perception to develop in some quarters that the board

amounts to architects looking after their own. I assure honourable members that this has not been the case. The current board has discharged its responsibilities with integrity, but the time has come to modernise the regulation of architects.

To provide greater certainty for architects and their clients regarding the standards of professional behaviour, the bill provides for a code of professional conduct. The profession is contributing to the formulation of the code through preparation by the Architects Accreditation Council of Australia of what is hoped will be the basis for a national code. This continues the close involvement of the architectural profession in the development of this bill. Honourable members should be reassured that this code will not be brought into force without their scrutiny. The bill empowers the Minister to finalise the code. As the code will be made a regulation, it will undergo the full process required by the Subordinate Legislation Act 1989.

Another aspect of reform to professional discipline is the introduction of a broader range of sanctions and flexible complaints management. For breaches of a less serious nature, orders will be available for mentoring by a senior architect or for completion of a defined course of study. For serious matters, penalties reflective of the Government's concern to protect the good name of the profession and discourage harm of consumers are introduced. While these penalties are not as high as penalties that apply to the legal profession, maximum fines of 100 penalty units for an individual and 200 penalty units for a corporation are provided.

The bill reforms the whole process of making a complaint, the board's investigation of it and the approach to hearings. Consumers will be given far more advice and assistance than is currently possible. Serious misconduct matters will be brought before the Administrative Decisions Tribunal, which will comprise, among others, one member who is an architect. All this is to the good of the industry. All this has been guided by the current board in the light of its experience of the current Act. The need to achieve a strong regulatory regime for architects is prompted by the economic consequences to individuals and the community of unprofessional behaviour. The need has also been given weight by the considerable influence that architects have over the built environment—an influence that often outlives any individual.

This bill provides not only a flexible approach to professional discipline but also strong protection for the use of the title "architect". The misuse of this title by unqualified people can seriously mislead consumers and must be prevented without limiting the market for the provision of building design services. The bill can only bring benefits to the community in providing a modern and flexible system of regulation for architects while restricting use of the title to people who are professionally qualified. I commend the bill to the House.

Ms MEAGHER (Cabramatta—Minister for Fair Trading, and Minister Assisting the Minister for Commerce) [9.37 p.m.], in reply: I thank honourable members for their contributions to the debate. This bill has been some years in coming to fruition to provide the people of New South Wales and registered architects with a modern, effective and transparent regime of consumer protection and professional regulation. The bill has awaited the agreement of all States and Territories to proceed with a harmonised approach to the reform of legislation which will regulate the

architectural profession following a report of the Productivity Commission on that matter.

The Government has been well assisted in the preparation of this bill by close consultation with relevant stakeholders. The Royal Australian Institute of Architects and the Association of Consulting Architects Australia have willingly provided constructive comments on issues related to the preparation of the bill over the past 12 months. It has not always been possible to take up some of the ideas offered by these organisations, but their co-operation has been appreciated. In the bill's provisions the Government has struck a balance between its commitments resulting from the National Competition Policy Agreement and agreements made in ministerial councils, as well as through the intergovernmental working group which met under the auspices of the Council of Australian Governments [COAG], and the needs of industry and consumers.

The Government has also been closely guided by the New South Wales Board of Architects, which has long practical experience of administration under the 1921 Act and has worked within the Act's limitations for many years. This experience has led to many of the provisions of this bill and therefore to a bill that is workable and effective. The board has brought to the Government's attention limitations in the 1921 Act, as they affect both complainants and respondents. The consumer protection and professional conduct framework which will be established by this bill will be transparent for all parties and will bring greater certainty to architects and their clients in the conduct of the business of architectural practice.

The board will have increased flexibility in investigating and hearing complaints; and architects responding to complaints will have the benefit of serious matters being taken before a tribunal where judicial expertise and appeal rights will assist in producing just outcomes. The community will benefit from the increased flexibility in the offering of services by architects which the bill provides, and the community and architects will benefit from the board's new role in promoting community discussion of architecture. As honourable members know, the Carr Government has long been committed to improving the built environment as a benefit to all. The promotion of discussion of related issues can only lead to improving the environment and helping to make our everyday lives more comfortable and enjoyable inasmuch as they are affected by the quality of our buildings.

One of the problems the community has to contend with is people who are not architects setting out to mislead the market about their professional status. The Government fully appreciates the work that experienced, non-architect building designers do and it recognises that they make a valid contribution to business and consumers in New South Wales. However, it remains important that business and consumers are able to easily establish whether their source of design service is an architect. Under this bill the offence of holding out to be an architect by people or companies that are not an architect, or do not employ an architect in a responsible capacity, is given due weight, as reflected in the sizeable penalties for acts of such commercial deception. The board will vigorously prosecute those who set out to mislead people.

The end result of this bill is intended to be a community actively discussing architecture that is contributing to its wellbeing, a community that is serviced by architects who have a robust professional framework and a flexible system of professional discipline. The benefits will be a more

transparent profession of architecture, clearly articulated to community needs and conducting its business within a regulatory regime that is simply administered and easily worked within. I commend the bill to the House.

Motion agreed to.

Bill read a second time and passed through remaining stages.