

## Factsheet

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# NOMINATING A RESPONSIBLE ARCHITECT FOR A CORPORATION OR FIRM

The [Architects Act 2003](#) (the 'Act') requires any business that provides architectural services in NSW to nominate a responsible architect to oversee the provision of those services. Businesses are required to make it clear who the nominated architect(s) is to ensure consumers know they are dealing with an architect, and to ensure the competent delivery of those architectural services.

Under the [Act](#), a business entity that has a nominated responsible architect is referred to as an architect corporation or architect firm and is placed on the publicly searchable [NSW List of Architect Corporations and Firms here](#), on the website of the NSW Architects Registration Board (the 'NSW ARB').

**Architects who practice through a corporation registered with the Australian Securities and Investments Commission (ASIC), and architects who practice through a partnership or other unincorporated association of persons must nominate a responsible architect for their business if they wish to provide architectural services.**

The only type of business entity exempt from the requirement to nominate a responsible architect is a sole trader (with an [individual / sole trader ABN](#)).

## How to nominate a responsible architect

To nominate an architect to be responsible for the provision of architectural services in NSW on behalf of a business entity use the [online Form 04 available here](#) and pay the associated fee to the NSW ARB.

## Relevant extracts from the Act

[Section 10 of the Act](#) states that:

### 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 (\$22,000).

- (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) (\$11,000) or 200 penalty units (in the case of a corporation) (\$22,000).

[Section 11 of the Act](#) states that:

**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 (\$22,000).

**Who can be the nominated architect for a business entity**

[Section 27 of the Act](#) provides for the nomination of one or more architects to be responsible for the provision of architectural services. A corporation or firm may nominate an architect to perform this duty 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.

**It is the NSW ARB's view that a consultant or contractor cannot perform the role of nominated architect.** At the very least the nominated architect must be an employee and be present and across the business and practice activities of the business entity.

**Responsibilities of the nominated architect**

In the NSW ARB's view, the nominated architect must

- (a) be aware of the nature and scope of the architectural services being provided by the corporation or firm
- (b) know the identity, qualifications and experience of those individuals designated to provide, or assist in providing, those services
- (c) have processes in place to ensure that individuals report relevant information to the nominated architect
- (d) have written directives or written policies in place to make clear to colleagues their obligations to the nominated architect
- (e) either work from the same location as those providing the services or have a regime of regular meetings to ensure the nominated architect is familiar with the work being undertaken
- (f) not assume the role of nominated architect for a volume of work that is beyond the reasonable capabilities of one person to administer, and
- (g) not be the nominated architect for more than one corporation or firm if such an arrangement would prevent the proper discharge of their obligations as listed above.

## **Name and registration number of nominated architect(s) must be prominently displayed**

It should be easy for consumers to identify the name(s) and registration number(s) of the nominated architect(s).

[Section 11\(2\) of the Act](#) requires that a corporation or firm providing architectural services 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.

Clause 17 of the [NSW Architects Code of Professional Conduct](#) (the 'Code') further provides that:

- (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.

## **Notifying the NSW ARB of changes to nominated architect(s) and/or business details**

To notify the NSW ARB of changes to nominated architects and/or business details use [Form 08CF – Notification of changes to recorded details available here](#) and pay the associated fee.

The NSW ARB must be notified within 7 days if a nominated architect ceases to be responsible for the provision of architectural services by the corporation or firm, as per the requirements of [section 29\(2\) of the Act](#). A failure to notify the NSW ARB may incur a maximum penalty of 50 penalty units (\$5,500).

The NSW ARB must be notified within 14 days of any changes to the recorded details of the corporation or firm, as per the requirements of [section 29\(1\) of the Act](#). A failure to do so may incur a penalty of 10 penalty units (\$1,100).

## **Standards concerning dealings with the public**

The NSW ARB is aware that some architects, who have their own practice, may also allow their name to be used as the nominated architect by another business entity. In these instances, architects are reminded of the provisions of [clause 18 of the Code](#) that states that:

- (1) An architect should 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 should 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 any manner that misleadingly implies authorship of, responsibility for or agreement with the content or form of, the work, document or publication.

## Provision of architectural services for Class 2 buildings in NSW

In a benchmark decision of the Downing Centre Local Court in 2019, the NSW ARB successfully prosecuted a company and its director for failing to have a nominated responsible architect supervising its provision of architectural services on a Class 2 multi-residential apartment building. The court ordered the company and its director to pay in total the amount of \$35,000.

## Other relevant NSW legislative regimes

### ***Environmental Planning and Assessment Regulation 2021 and State Environmental Planning Policy (Housing) 2021 (Housing SEPP)***

The [Environmental Planning and Assessment Regulation 2021](#) defines a 'qualified designer' as a registered architect who is on the NSW Register of Architects. The involvement of a 'qualified designer' is required in new residential buildings or significant alterations to residential buildings that are of a certain size and complexity as outlined in the Housing SEPP.

The SEPP regime requires that a 'qualified designer' must design or direct the design of multi-residential projects and submit a statement to verify this. Thus, if a corporation or firm wishes to design multi-storey residential buildings in compliance with Housing SEPP and the [Architects Act 2003](#), it must have at least one nominated architect (who is either part of management or an employee) supervising the provision of the relevant architectural services.

### ***Design and Building Practitioners Act 2020***

From 1 July 2021, the [Design and Building Practitioners Act 2020](#) ('D&BP Act') and [Design and Building Practitioners Regulation 2021](#) ('D&BP Regulation') provide additional safeguards in NSW around compliance with the Building Code of Australia and other matters for multi-residential buildings by requiring those who design buildings that are Class 2 or have a Class 2 part to go through an additional registration process. The D&BP legislative regime requires submission of compliance drawings and undertakings for certain 'building elements' at various stages of the construction process. It also has additional requirements for registrants, including a minimum 5 years recent relevant practical experience.

To work on certain types of complex residential buildings under the D&BP legislative regime, an individual must be a registered architect in the Practising category. Similarly, a body corporate may only carry out such work if it has at least one such architect among its employees.

Thus, the D&BP legislative regime augments the requirement for a nominated architect in the [Architects Act 2003](#) by requiring any entity that seeks to register as a 'design practitioner–body corporate' to have at least one registered architect (with 5 years' experience) as an employee.

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#### Disclaimer

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