

Architects Act 2003 Information Sheet SUMMARY OF PROVISIONS OF THE ACT

February 2014

The Architects Act 2003 is available at www.legislation.nsw.gov.au; and the Regulations under the Act, which include the NSW Architects Code of Professional Conduct, available at the Board's website www.architects.nsw.gov.au

The Board's website is regularly updated with news and information for architects and consumers.

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1 Architects Act 2003

The NSW Architects Act 2003 came into force on 30 June 2004, and is currently under review.

The objects of the Act are to register qualified persons; ensure that architects provide services to the public in a professional and competent manner; provide mechanisms to discipline architects who are found to have acted unprofessionally or incompetently; ensure that the public is appropriately informed about the qualifications and competence of individuals or organisations holding themselves out as architects; promote a better understanding of architectural issues in the community.

The Regulations under the Act, which include the NSW Architects Code of Professional Conduct, give important detail to the intent of the Act. The Board strongly recommends that architects and those interested in the provision of architectural services in NSW familiarise themselves with the provisions of the Act which can be downloaded, together with the Regulations and Code, from the Board's website www.architects.nsw.gov.au

2 The NSW Architects Registration Board

The NSW Architects Registration Board to reflect the increased number of industry and consumer representatives on the Board. The Board is responsible to the Minister for Finance and Services.

The NSW Architects Registration Board implements the Architects Act 2003 by maintaining an accurate Register of all architects registered in NSW and a list of architect firms and corporations; informing the public on matters relating to the provision of architectural services in NSW; operating a fair, effective, and open complaints procedure; sanctioning individuals or firms who represent themselves as architects when they are not entitled to do so; administering scholarships and awards; promoting discussion on architecture and the built environment in the community.

The work of the Board is totally funded by fees paid by architects and architect firms or corporations. The income is used to fund the administrative functions of the Board, and implement the Act.

2.1 Board membership

The membership of the NSW Architects Registration Board includes six architects and five non-architects.

Of the non-architect members appointed by the Minister for Finance and Services, four are individuals knowledgeable about the architectural profession and who have particular interest in, respectively, the views of the building industry; the property development sector; local government; and home owners. One is a legal practitioner with expertise in building and construction law. The list of current Board Members is included on the Board's website www.architects.nsw.gov.au

3 NSW Architects Code of Professional Conduct

The Code articulates guidelines for acceptable standards of professional practice for architects. It reflects the principle that architects should recognise that the fundamental obligation of a professional is to serve and promote the public interest. It enables clients to understand the standards expected of architects and the level of accountability expected of them in the provision of architectural services. Importantly, the Code encourages a shared understanding between architects and clients of the nature, extent and cost of service, and the obligations of each party.

As required by the Code an architect who is engaged to provide an architectural service to a client should provide the client with a copy of the Code before commencing provision of services, or as soon as is reasonably practical. The Code may be downloaded from the Board's website www.architects.nsw.gov.au

Part 1 of the Code defines the meanings of terms commonly used in the Code and sets out the objectives of the Code. Parts 2-8 relates to general practice standards, dealings with clients, insurance coverage, continuing professional development, alternative dispute resolution, dealings with the public and professional relationships with other architects.

3.1 General practice standards

An architect should act with integrity and reasonable care and provide architectural services in a manner that is widely accepted in Australia by peer professional opinion as competent professional practice. This part also requires an architect to disclose any conflicts of interests in relation to the provision of architectural services.

3.2 Dealings with clients

The Code encompasses a range of issues relating to an architect's dealings with clients. It requires that an architect provides sufficient relevant information to enable a client or



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prospective client to make informed decisions about the provision of architectural services.

3.2.1 Client agreements

An architect should enter into a written agreement with the client concerning the provision of any new architectural service. The Code specifies the type of information that should be included in such agreements and requires that the registration number of the architect providing the service, or nominated architect if the service is being provided by an architect corporation or firm be included on all business correspondence.

3.2.2 Building contracts

The Code outlines the obligations of an architect who is administering a building contract on behalf of a client.

3.2.3 Deposits and retainers

The Code limits the deposit or retainer that may be sought or required by the architect to 10% of the expected or agreed fee. Exceptions are allowed where the agreement relates to the construction of a building outside of Australia.

3.2.4 Record keeping and provision of statements of account

The Code lists the types and methods of maintaining records in relation to the provision of the architectural services. These records should be maintained for a period of not less than 6 years. Unless otherwise agreed between an architect and the client, regular statements of accounts for any architectural service should be provided.

3.2.5 Inspection of documents

With reasonable notice an architect should facilitate a client's access to documents and records in relating to the provision of the architectural service. The Code outlines some guidance in this matter, and specifically states that nothing derogates from any right of an architect to claim a lien over documents or records or to assert any intellectual property rights in respect of documents or records.

3.2.6 Maintaining knowledge of architectural services to be provided

An architect in charge of a project should maintain a thorough knowledge of the architectural services to be provided, and should, as soon as is reasonably practicable, advise the client in writing of any matters likely to prevent the client's instructions being followed.

3.3 Professional Indemnity Insurance

Architects should maintain professional indemnity (PI) insurance appropriate to the architectural services they are providing, and provide each client with information relating to that insurance. This requirement does not apply to any non-practising architect, or if the architect is providing the service as an employee of an architect corporation or firm.

On application to the Board an exemption to this clause may be granted if the Board is satisfied that the architect had commenced practice only very recently, or there are other circumstances where the Board is satisfied that it would not be appropriate in the circumstances for the architect to comply.

On their annual application for renewal of registration, architects certify that they have appropriate professional indemnity insurance (PI) cover. The Board publishes guidance regarding architects and PI. See Architect's section of the Board's website.

3.4 Professional Development

Each year on their annual registration renewal form architects certify that they have taken reasonable steps to maintain and improve the skills necessary for the provision of the architectural services that they normally provide. In most circumstances the Board considers that the minimum number of hours of CPD an architect should undertake is 20 hours (points) of which 10 must be formal. For more information on CPD see the Board's website.

3.5 Dispute resolution

An architect should inform a prospective client that the written agreement between the architect and the prospective client may provide for alternative dispute resolution to resolve disputes between the parties instead of court proceedings.

3.6 Standards concerning the public

The architect has a responsibility to act in a way that maintains public confidence in the architectural profession, and should, given the architect's circumstances and opportunities, promote the advancement of architecture and reflect current standards of professional practice.

3.6.1 Dealings with the public

The Code articulates standards relating to the presentation of information to the public. A key

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feature of this section of the Code is the requirement to state accurately the architect's qualifications, experience and authorship of any work or publications. Importantly, the architect's registration number should be included on any stationery, sign boards, construction documents, public notices or advertisements related to the architect's professional practice.

The architect should not provide any endorsement of any product or service in connection with the provision of an architectural service in a misleading manner and should disclose any endorsements to the client.

3.6.2 Representations concerning architectural work

An architect should not allow their name to be used in relation to any work, document or publication that misleadingly implies authorship.

Likewise an architect should not sign as checked, approved or supervised any drawings or other documents if in fact they have not done so.

3.7 Professional relationships with other architects

Architects should maintain a high standard of integrity and act honestly and fairly in their dealings with other architects in their professional practice. This section of the Code also articulates the responsibilities of architects when a new architect assumes responsibility for the provision of an architectural service to a client from another architect whose services are discontinued.

4 Register of Architects

Architects are skilled and experienced professionals. In order to be registered with the NSW Architects Registration Board, they firstly must have a university qualification in architecture, or other qualification that the Board deems equivalent. This may include an appropriate overseas qualification. Individuals not having a qualification in architecture must pass a rigorous assessment of relevant experience benchmarked against the same competency standards that is met by all graduates of Australian architecture programmes.

In addition to holding an approved qualification, an applicant for registration must have at least two years approved experience,

pass the Architects Accreditation Council of Australia's Architectural Practice Examination (APE) held by the Board and apply to the Board to be enrolled before they are registered. Only persons so registered can use the title "architect". Registration is renewed annually.

The Board publishes the NSW Register of Architects. The registration status of an individual can be checked by logging on to the Board's website www.architects.nsw.gov.au or by contacting the Board's office.

4.1 Non-practising architects

The Board may record on the Register that a person is a non-practising architect if the architect demonstrates that they have retired from practice or is not likely to be practising as an architect for the foreseeable future. The description can only apply to architects who have previously been on the Register

Individuals may apply to have their record changed from non-practising to practising only if they can demonstrate to the Board's satisfaction that their architectural skills and knowledge are current, and that they have PI insurance appropriate to the architectural services they are providing.

4.2 Architects registered in neighbouring jurisdictions

Persons registered as an architect and normally resident in another State or Territory in Australia or New Zealand who notify the Board of an intention to practise in NSW will be included on the NSW Register indicating their registration status in their home jurisdiction.

4.3 Temporary registration of overseas architects

The Board may register an individual with an overseas qualification as an architect for a defined, limited period if the Board is satisfied that the individual has architectural qualifications and practical experience in another country of a kind that demonstrates that the individual would be capable of practising architecture with the same level of competence and skills expected of architects with full registration.

This temporary registration is designed only to apply to those individuals who are in Australia on a temporary basis as evidenced by their visa status.

5 Architectural services provided by an architect corporation or firm

Architect corporations or firms are required to ensure that at all times there is at least one architect “nominated” by the corporation or firm who is ultimately responsible for the provision of architectural services. The corporation or firm must inform the Board of the name/s of its “nominated” architect/s, and prominently display the details of the “nominated” architect/s at each place of business. The name and registration number of the nominated architect/s should also be included on any business correspondence, construction documents, advertisements, public notices.

An architect who is operating as a sole trader is not required to list a nominated architect, but may choose to do so in order to be included on the publicly available List maintained by the Board.

6 Complaints against architects

The Board must investigate complaints made against architects relating to their conduct in the course of professional practice. The Board also has the power to investigate matters on its own initiative. The NSW Architects Code of Professional Conduct (see Section 3) is a relevant consideration in determining what constitutes proper and ethical conduct by an architect.

The Board may dismiss any complaint without investigation if sufficient particulars of the complaint are not given or verified as required by the Board. Upon full investigation of a matter, the Board may make a finding of professional misconduct or unsatisfactory professional conduct. It may dismiss a complaint if it is satisfied that the complaint is frivolous or vexatious, has already been dealt with as a complaint, or is trivial in nature.

The Board has guidelines for persons who wish to make a complaint against an architect. Contact the office of the Board for more information on this matter or see the Consumer section on the Board’s website www.architects.nsw.gov.au.

6.1 Professional misconduct

The definition of professional misconduct is: “unsatisfactory professional conduct of a sufficiently serious nature to justify the suspension of an architect or the cancellation of an architect’s registration” or “unsatisfactory professional conduct where the conduct is such that it involves a substantial or consistent failure to reach reasonable standards of competence and diligence for an architect”.

6.2 Unsatisfactory professional conduct

Unsatisfactory professional conduct includes, but is not limited to, a failure to comply with the NSW Architects Code of Professional Conduct; any contravention of the Architects Act; any conduct which indicates the architect is not a fit and proper person to be registered; any conduct that demonstrates incompetence, or a lack of adequate knowledge, skill, judgment or care in the practice of architecture; any other improper or unethical conduct of the architect in the course of his/her practice; or any failure by a nominated architect to supervise properly the provision of architectural services.

6.3 Disciplinary action against architects

Under Section 43 of the Architects Act, the Board has the power to make a disciplinary finding that the architect is guilty of unsatisfactory professional conduct, and to

take disciplinary action against the architect. Disciplinary actions the Board may take for this breach are also set out in Section 43. They include, but are not limited to, reprimanding or cautioning the architect; ordering that payment for architectural services be withheld or refunded; putting conditions on the architect’s registration; or fining the architect a maximum of a sum set by Regulation, presently \$1,650.

If the Board is satisfied that the architect is guilty of the more serious breach of professional misconduct (as opposed to unsatisfactory professional conduct), then the Board must apply to the NSW Civil and Administrative Tribunal for a disciplinary finding. If the Tribunal finds the architect guilty it may order various actions against the architect as outlined above and also may order the suspension or cancellation of the architect’s registration under Section 47 of the Architects Act.

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See the Board's Information Sheet on Complaints against Architects in the Consumer section of the Board's website.

7 Representing as an architect

Penalties will be imposed on individuals or organisations that represent themselves or others as architects when they are not on the Board's Register of Architects or List of Architect Corporations and Firms. To represent as an architect means that an unregistered person claims and holds out as an architect. The maximum penalty is set by Regulation presently \$11,000 in the case of an individual or \$22,000 in the case of a corporation or firm.

Other titles or descriptions that infer or are calculated to lead a person to infer, that a person is an architect, for example architectural designer, 'graduate architect' or that a person or firm provides 'architectural services' or architectural design services also constitute breaches of the Act.

7.1 Exceptions for certain titles and descriptions

An employee of an architect may use the title or description of *architectural assistant*, *architectural technician*, or *architectural drafter*. There are no restrictions placed upon a person using the title or description of landscape architect, naval architect or computer systems architect.

A person who holds an architectural qualification may describe themselves as holding that qualification. No restriction applies to a person from using the word architectural to describe the business of supplying goods in connection with architecture.

See the Board's Information Sheet on Illegal Representation as an Architect available in the Consumer section of the Board's website.

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