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The Architects Act 2003 and

The New South Wales

Architects Registration Board

Discussion Paper - Outline of the Architects Act 2003 and the NSW Architects Registration
Board's Complaint Process

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I Background

In 2003, the Architects Act 1921 was repealed and the new Architects Act 2003 (NSW) ("Act") was assented to. The Act came into operation in 2004 and is administered by the NSW Architects Registration Board ("Board").

Prior to the commencement of the Act, the profession of architecture was formally administered by the Board of Architecture of New South Wales, which was established to administer the Architects Act 1921.

The stated objects of the Act are to:

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

The Act has various Parts to it, which are as follows:

Part 1 - Preliminary - this Part sets out the objects, definitions and some administrative sections to the Act.

Part 2 - Practice of Architecture - this Part sets out the establishment of a code of professional conduct and regulates those who are entitled to call themselves architects, as well as those who are able to provide professional architectural services.

Part 3 - Registration - this Part deals with the entitlement of people to be registered as architects and the procedures for registration, as well as the cancellation and suspension of a person's registration.

Part 4 - Complaints and Disciplinary Proceedings - this Part sets out the definitions of unsatisfactory professional conduct and professional misconduct, details the complaints process and prescribes the requirement of an architect to comply with directions in relation to the complaints process, confidentiality and publicity.

Part 5 - NSW Architects Registration Board - this Part deals with the constitution and functions of the Board.

Part 6 - Finance - this Part deals with the fees to be paid in the administration of the Architects Fund.



Part 7 - Miscellaneous - this Part deals with the various administrative requirements of the Board and incorporates the Architects Regulations 2004 ("Regulations") that are to be read with the Act.

By operation of Part 2 (sections 7 and 8), the Act incorporates the NSW Architects Code of Professional Conduct ("Code"), which is to be read in conjunction with the obligations set out under the Act.

The Code was developed by a joint working party to ensure exceptional standards of professional practice for architects operating in NSW. In practice, the Code also has the effect of enabling clients to develop reasonable expectations of the services to be provided to them by giving them an understanding of the standards expected of architects, the level of accountability expected of architects and the obligations imposed upon the general public as clients.

One of the key changes from the 1921 Act to the 2003 Act is that membership of the Board now comprises 11 members: 6 architects and 5 non-architects. The non-architects have relevant industry expertise from the following areas:

- home ownership;
- local government;
- building and construction;
- property development; and
- legal (a legal practitioner with expertise in building and construction law).

In relation to the 6 member architects, they are comprised of the following:

- the NSW Government Architect;
- the immediate past President of the New South Wales Chapter of the Royal Australian Institute of Architects;
- an architect appointed by the Minister;
- two architects elected by the registrants; and
- an academic.

The intent of the Act in drawing from a wide background of Board members is to have diversity in the influences each member brings to the Board in administering the requirements of the Act.



2 Non-Architects

The relevant Part of the Act which deals with persons who are not registered as architects but seek to provide architectural services is Part 2 (particularly sections 9 and 10). These sections prevent any person or corporation from representing or allowing themselves to be represented as an architect when they are not a registered architect.

The Board has put in place a specific process in relation to dealing with potential breaches of this Part of the Act. It involves the Board notifying an offending person or corporation of the requirements of the Act and of their breach of the Act. The offender is then requested to provide a statutory declaration confirming that the offence will be discontinued.

If there is a continuation of the breach, the Board is entitled to commence proceedings to obtain a court order in relation to the breach.

3 Complaints Against an Architect

The various sections relating to complaints are as follows:

- (a) section 32 - provides the definition of professional misconduct and unsatisfactory professional conduct;
- (b) section 33 - deals with the application of the Act to deceased architects and architects who are no longer registered or who have ceased to be registered;
- (c) section 34 - deals with who may make a complaint;
- (d) section 35 - allows for the withdrawal of a complaint;
- (e) section 36 - specifies the form of a complaint, namely that a complaint must be verified by statutory declaration unless the complaint is made by the Board, a judicial officer, the Minister, the Director-General of the Department of Commerce, the Consumer, Trader and Tenancy Tribunal (or a member of that Tribunal) ("Tribunal") or a person or body prescribed by the Regulations;
- (f) section 37 - provides that the Board can dismiss a complaint (without having investigated the complaint) if it is frivolous or vexatious, is a complaint in respect of a matter that has already been dealt with under Part 4, or is trivial in nature;
- (g) section 38 - deals with notification of complaints, namely that the Board is required to give notice to an architect that a complaint has been made unless it will prejudice the investigation, place the health and safety of a person at risk, or place the complainant or another person at risk of intimidation;
- (h) section 39 - requires the Board to investigate complaints and allows the Board to dismiss a complaint if particulars of the complaint are not provided by the complainant. The Act provides to the Board a wide range of investigative powers, for



example, the Board can deal with one or more complaints at the same time and can investigate potential complaints that have not been incorporated into the initial complaint;

- (i) section 40 - specifies that for the purposes of investigating a complaint, the Board is not bound or required to observe the rules of evidence, though it must observe the rules of natural justice. This section also states that the Board may attempt to resolve a complaint by meeting with the complainant and architect separately or jointly;
- (j) section 41 - specifies that the Board has the power to direct an architect to provide written information or documents, or any other form of cooperation, in the investigation or determination of a complaint;
- (k) section 42 - provides to the Board when investigating a complaint the ability to summon witnesses;
- (l) section 43 - specifies how a complaint is to be dealt with after the Board has completed an investigation. If the Board determines that the architect is guilty of professional misconduct, it must refer the complaint to the Tribunal to deal with. If the Board determines that the architect is guilty of unsatisfactory professional conduct, there are a range of penalties that can be imposed against the architect by the Board;
- (m) section 44 - allows the architect to apply to the Tribunal for a review of any disciplinary finding made by the Board;
- (n) section 45 - specifies that in the investigation of a complaint the Board is able to delegate to a committee which must be comprised of a legal practitioner, an architect and a person who is neither a legal practitioner nor an architect;
- (o) section 46 - 49 incl - specifies the mechanisms by which the Board can apply to the Tribunal for a disciplinary determination; and
- (p) section 50 - 52 inc - specifies the mechanisms by which disciplinary findings are to be notified to the architect and then published.

4 Investigation of Complaints

The Board has put in place a standard process for dealing with complaints. It involves the following:

- (a) The complainant is to provide to the Board a statutory declaration setting out the facts and circumstances relating to the complaint.



- (b) The complaint is issued to the architect and a response is requested within a particular timeframe, subject to any concerns which may arise in relation to endangerment or harassment of the complainant by the architect.
- (c) The architect's response is then provided to the complainant for further reply.
- (d) The architect may be given a final opportunity to comment on the complainant's response to the architect's reply before the Complaints Committee (which is formed by the Board) considers the complaint and makes a recommendation to the Board.
- (e) In most cases the decision in relation to the merits of a complaint is made by the Board at this time.

There are opportunities throughout this standard process for the Board, the complainant or the architect to make further enquiries or submissions regarding the information provided in the documents referred to in the above.

Subject to the nature of the information provided, the Board may hold the view that it is in a position to determine the complaint or alternatively that it may be assisted in the determination of the complaint by adopting other mechanisms which include the following:

- (a) asking specific questions of the complainant and/or the architect;
- (b) interviewing the architect and/or the complainant;
- (c) directing the complainant and/or the architect to provide further documentation; and/or
- (d) conducting an oral hearing of the issues concerning the complaint.

The Board has adopted all these measures in various complaints since the commencement of the Act in 2004.

5 Commercial vs Conduct

Commercial Issues

The complaint and disciplinary finding process deals with circumstances relating to the professional conduct of architects, and is designed to ensure that a high level of expertise is maintained throughout the profession.

The obligation to maintain professional conduct standards is sometimes confused with commercial imperatives that arise between the architect and the client. The Board is very conscious of separating professional conduct issues from commercial issues. Where a complaint deals with commercial issues as opposed to professional conduct issues, the Board will generally advise the client that a tribunal or court is the appropriate forum in which to deal with those issues.



The Board has received a number of complaints which have clearly been designed to be used as leverage in commercial negotiations concerning the payment of outstanding fees and/or work of the architect. The Board's view in relation to this type of complaint is that once the complaint is sought to be withdrawn, the Board is entitled under the Act to continue to investigate the complaint if the Board is of the view that it should continue to do so.

The Board has also received numerous complaints arising from the performance of the architect's retainer which has led to circumstances where the complainant seeks to recover fees that have been paid. To date, the Board has not made any award for a refund of fees in such situations. Again, the disciplinary process is designed to ensure professional standards are maintained.

6 Common Complaints

(a) Frivolous and vexatious complaints

The Board receives a small number of complaints which can be categorised as frivolous and/or vexatious. An example is the owner of an adjoining or nearby building who does not like the design of the architect, or where the complaint is with Council processes rather than an issue of professional conduct of the architect.

(b) Administrative issues

- The failure to have an architect or client retainer agreement.
- The failure of an architect to comply with a requirement of the Code.
- The failure of an architect to clearly articulate the services to be provided and the fees to be charged.
- The failure of an architect to clarify exactly what role the architect is to play in the architect/client relationship.
- The failure to clearly articulate who in the architect's office is performing what role, the fees that are being charged for that particular person and the likely extent of the involvement of the various people throughout the architect's office.

(c) Communication

There have been a significant number of complaints that relate to the failure of the client and architect to communicate properly, appropriately and in a timely manner, or to communicate at all.

The failure to communicate is generally a consequence of other underlying difficulties which are magnified due to the communication issues.



Consistently what occurs is that the architect fails to perform their obligations in a timely and professional manner, such that their drawings, by way of example, are not prepared in time, are prepared incorrectly, do not meet the requirements of local council for their approval process, or are not what the client required. These issues are some of the specific examples of failure to communicate which ultimately end up in a dispute about the quality of work performed and the fees which have been charged.

7 Summary

The Act, the Code and the Regulations provide the framework within which the Board is to investigate and determine complaints.

In most circumstances, a complaint can be investigated and determined on the papers. However, there have been occasions where the complainant or the architect has been interviewed, or the conduct of a hearing has occurred, to enable the Board to complete its investigation and issue its determination.

The Board's investigation and determination processes are considered to be best practice and provide an efficient mechanism by which to deal with the various circumstances that prevail in complaints from time to time.

NSW Architects Registration Board