

ARCHITECTS.

No. 39 of 1978.

AN ACT to amend the Architects Act, 1921-1969.

[Assented to 29th August, 1978.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

1. (1) This Act may be cited as the *Architects Act Amendment Act, 1978*. Short title and citation.

(2) In this Act the Architects Act, 1921-1969, is referred to as the principal Act. Reprinted as approved for reprint 16th March, 1970.

(3) The principal Act as amended by this Act may be cited as the Architects Act, 1921-1978.

Commence-
ment.

2. This Act shall come into operation on a date to be fixed by proclamation.

Section 2
amended.

3. Section 2 of the principal Act is amended—

(a) by inserting after the section designation “2.” the subsection designation “(1)”;

(b) by inserting in the appropriate alphabetical sequence six new interpretations as follows—

“corporation” has the meaning given to that term in section five of the Companies Act, 1961;

“District Court” means The District Court of Western Australia;

“firm” means an unincorporated body of persons (whether consisting of natural persons or of corporations or partly of natural persons and partly of corporations);

“foreign corporation” means—

(a) a corporation which is not incorporated in the State; or

(b) a corporation which is incorporated in the State but which is a subsidiary, within the meaning given to that term by subsection (1) of section six of the Companies Act, 1961, of a corporation which is not incorporated in the State;

“practising architect” means a natural person whose regular business occupation is that of an architect working—

(a) on his own account;

- (b) for a corporation of which he is a director or member; or
- (c) for a firm of which he is a partner;

“practising corporation” means a corporation which is registered as an architect under this Act;

“practising firm” means a firm which is registered as an architect under this Act; ;

- (c) by deleting the interpretation of the term “Supreme Court”; and
- (d) by adding after subsection (1) two new subsections as follows —

(2) The provisions of this Act apply, with such adaptations as may be necessary, to a practising corporation and to a practising firm, notwithstanding that they are not expressly so applied otherwise than by virtue of this subsection.

“This Act” includes by-laws. Act No. 30 of 1918, s. 4.

(3) Nothing in this Act shall be construed as prohibiting the distribution by way of salary, commission, director’s fees, dividends or otherwise of the profits of a practising corporation or practising firm to the members of that corporation or firm.

4. The principal Act is amended by inserting, after section 5, a new section to stand as section 5A as follows—

Section 5A added.

5A. Notwithstanding the registration of practising corporations and of practising firms as architects pursuant to this Act, no practising corporation or practising firm is eligible to become a member of the Board and the Board shall be comprised of natural persons only.

Eligibility of members.

Section 11
amended.

5. Section 11 of the principal Act is amended by deleting the word "All" being the first word of subsection (2), and substituting the passage "Subject to the provisions of section five A of this Act, all".

Section 12
amended.

6. Section 12 of the principal Act is amended—

(a) as to subsection (1), by deleting the word "persons", in line two of that subsection, and substituting the passage "natural persons, practising corporations and practising firms";

(b) by deleting subsection (3) and substituting a new subsection as follows—

(3) The register shall contain the name and such other particulars as may be prescribed of—

(a) every natural person who has applied to the Board for registration and has satisfied the Board that he possesses the qualifications, experience and knowledge required under this Act;

(b) every practising corporation and every practising firm which has applied to the Board for registration and has satisfied the Board that it complies with the requirements of this Act; and

(c) every natural person, practising corporation, or practising firm registered pursuant to an order of the District Court under section sixteen of this Act.

Section 14
amended.

7. Section 14 of the principal Act is amended—

(a) by adding after the section designation "14." the subsection designation "(1)";

(b) by inserting before the word "person", in line one, the word "natural";

(c) by deleting paragraph (b) and substituting a new paragraph as follows—

(b) has passed the examinations in architectural subjects conducted by the Board, or has produced evidence satisfactory to the Board of having passed equivalent examinations, and has had not less than six years of experience in the work of an architect; or ;

(d) by adding a new subsection, to stand as subsection (2), as follows—

(2) No corporation or firm shall be registered as an architect unless an application is made on behalf of that corporation or firm to the Architects' Board of Western Australia for registration and the Board is satisfied that the corporation or firm complies with the requirements of this Act. ; and

(e) by adding a new subsection to stand as subsection (3) as follows—

(3) In considering any application for registration the Board may—

(a) have regard to any advice that may be received from the Architects Accreditation Council of Australia or such other body as the Board thinks fit in relation to any applicant who possesses qualifications obtained otherwise than in the State;

(b) pay such fees or disbursements as it thinks fit in the obtaining of that advice; and

(c) require that the applicant pay or contribute towards the whole or any part of those fees or disbursements. .

Section 14A
added.

8. The principal Act is amended by inserting after section 14 a new section, to stand as section 14A, as follows—

Practising
companies.

14A. (1) A corporation that wishes to be, or to continue to be, registered as an architect pursuant to subsection (2) of section fourteen of this Act shall not be eligible to do so unless—

(a) it has a place of business or is carrying on business within the State and the Board is satisfied that the principal executive officer of the corporation in the State is a practising architect;

(b) its memorandum, or in the case of a foreign corporation its charter, statute, or other instrument constituting or defining its constitution, is acceptable to the Board and contains a provision that—

(i) the Board be notified of any intention to amend the memorandum and be furnished with a copy of any proposed resolution to give effect to that intention; and

(ii) a body corporate shall not be eligible to be a director of the corporation;

(c) not less than three-fifths of the directors of that corporation are practising architects, registered under this Act, who between them hold not less than three-fifths of the total voting rights—

(i) of all directors entitled to vote at a meeting of directors of the corporation; and

(ii) of all persons entitled to vote at a general meeting of members of the corporation,

and of whom one has the actual personal supervision and management of the business of the corporation in the State;

- (d) every director, other than a director registered as an architect under this Act is a natural person approved by the Board engaged in a profession or occupation of a prescribed class; and
- (e) all shares not held by a director registered as an architect under this Act, other than the qualifying shares of a director who is a natural person approved by the Board pursuant to paragraph (d), are held by or on behalf of a beneficial owner who is—
 - (i) an engineer, surveyor or member of an allied profession having qualifications approved by the Board; or
 - (ii) a person who complies with such other requirements as the Board may from time to time determine.

(2) The Board may require that where the beneficial interest in any share in a practising corporation is owned by or devolves on a person who the Board determines to be ineligible to hold that interest the remaining share holders acquire that interest within such reasonable time thereafter as the Board shall specify, and that devolution shall not of itself render the corporation ineligible for the purposes of this section until the expiry of the period so specified. .

9. The principal Act is amended by inserting after section 14 a new section, to stand as section 14B, as follows—

Section 14B
added.

14B. (1) Where the Board determines that—

- (a) the memorandum or other instrument constituting or defining the constitution of a practising corporation has

Suspension
or cancella-
tion of the
registration
of a
practising
corporation.

been amended without prior notice to the Board or in a manner which is not acceptable to the Board;

- (b) any director, member or shareholding or beneficial holding of shares ceases to comply with the requirements of section fourteen A of this Act;
- (c) any requirement of this Act as to the lodging of an Annual Statement or other information has not been complied with; or
- (d) a practising corporation has contravened or failed to comply with any condition upon which registration was granted by the Board,

the registration of that practising corporation as an architect under this Act is liable to be suspended or cancelled and the Board shall so notify the corporation.

(2) Where a practising corporation is notified by the Board that the registration of that corporation as an architect is liable to be suspended or cancelled pursuant to subsection (1) of this section a person who is dissatisfied with the decision of the Board may apply to the District Court in the manner provided by section sixteen of this Act as though the decision had been made in relation to an application for registration, and the provisions of that section shall have effect accordingly.

(3) Where the registration of a practising corporation as an architect is liable to be suspended or cancelled under subsection (1) of this section the Board shall not effect that suspension or cancellation until—

- (a) the practising corporation has been notified of the Board's decision; and
- (b) any appeal that may be lodged under section sixteen of this Act has been determined or the time within which such an appeal may be lodged has expired,

but shall, unless the Court otherwise orders, thereafter give effect to the suspension or cancellation by notice published in the *Government Gazette* and record the decision in the register. .

10. The principal Act is amended by inserting after section 14 a new section, to stand as section 14C, as follows—

Section 14C
added.

14C. (1) A firm that wishes to be, or to continue to be, registered as an architect pursuant to subsection (2) of section fourteen of this Act shall not be eligible to do so unless—

Practising
firms.

- (a) it has a place of business or is carrying on business within the State and the Board is satisfied that the managing partner is a practising architect;
- (b) it carries on business within the State under a name registered under the Business Names Act, 1962, and not otherwise;
- (c) it is a partnership, other than a limited partnership, constituted pursuant to a deed of partnership which is acceptable to the Board and contains a provision that no amendment thereto shall be made or have effect in the State without the prior approval of the Board;
- (d) not less than three-fifths of the members of the firm are practising architects, registered under this Act, of whom one has the actual personal supervision and management of the business of the firm in the State;

- (e) every member of the firm, other than such as are practising architects registered under this Act, is—
 - (i) an engineer, surveyor or member of an allied profession having qualifications approved by the Board; or
 - (ii) a person who complies with such other requirements as the Board may from time to time determine; and
- (f) where the partnership includes a corporation amongst its members, that corporation is eligible to be registered as an architect under this Act. .

Section 14D
added.

11. The principal Act is amended by inserting after section 14 a new section to stand as section 14D, as follows—

Suspension
or cancella-
tion of the
registration
of a practis-
ing firm.

14D. (1) Where the Board determines that—

- (a) the deed of partnership of a practising firm has been amended without the prior approval of the Board;
- (b) the provisions of section fourteen C of this Act have not been complied with or have ceased to be complied with in relation to any practising firm;
- (c) any requirement of this Act as to the lodging of an Annual Statement or other information has not been complied with; or
- (d) a practising firm has contravened or failed to comply with any condition upon which registration was granted by the Board,

the registration of that practising firm as an architect under this Act is liable to be suspended or cancelled and the Board shall so notify the firm.

(2) Where a practising firm is notified by the Board that the registration of that practising firm as an architect is liable to be suspended or cancelled pursuant to subsection (1) of this section a person who is dissatisfied with the decision of the Board may apply to the District Court in the manner provided by section sixteen of this Act as though the decision had been made in relation to an application for registration, and the provisions of that section shall have effect accordingly.

(3) Where the registration of a practising firm as an architect is liable to be suspended or cancelled under subsection (1) of this section the Board shall not effect that suspension or cancellation until—

- (a) the practising firm has been notified of the Board's decision; and
- (b) any appeal that may be lodged under section sixteen of this Act has been determined or the time within which such an appeal may be lodged has expired,

but shall, unless the Court otherwise orders, thereafter give effect to the suspension or cancellation by notice published in the *Government Gazette* and record the decision in the register. .

12. Section 15 of the principal Act is amended—

Section 15
amended.

(a) as to subsection (1),—

- (i) by deleting the words "by any person to be registered shall be", in lines one and two of that subsection, and

substituting the words "for registration as an architect under this Act shall be made"; and

- (ii) by deleting the words "made by the applicant", in line six of that subsection, and substituting a new passage as follows—

made—

- (a) by the applicant, being a natural person;
- (b) by a person who is registered as an architect under this Act and who is a director of that corporation, where the application is for the registration of a corporation as a practising corporation; or
- (c) by a person who is registered as an architect under this Act and who is a member of that firm, where the application is for the registration of a partnership as a practising firm. ;
- (b) by adding a new subsection, to stand as subsection (1a), as follows—

(1a) Where a corporation or firm is desirous of obtaining registration as an architect a preliminary application may be made to the Board in the prescribed manner for the directions of the Board as to whether or not, in the opinion of the Board, that corporation or firm is capable of complying with the requirements of this Act and, if not so capable, the matters which require amendment. ;

and

- (c) by deleting subsection (4) and substituting a new subsection as follows—

(4) Every such application shall be accompanied by such registration fee as may be prescribed, which shall be returned to the applicant if the application is refused. .

13. Section 16 of the principal Act is amended— Section 16 amended.

- (a) by deleting the words “If any person who applies for registration”, in lines one and two, and substituting the words “Where an application is made for registration as an architect under this Act and the applicant”;
- (b) by deleting the word “him”, in line three and substituting the words “the applicant”;
- (c) by deleting the words “Local Court”, in line six, line eight and line twelve, and substituting in each case the words “District Court”;
- (d) by deleting the words “register him”, in line seven, and substituting the words “effect registration”;
- (e) by deleting the words “the person applying” in lines eight and nine, and substituting the words “the applicant”; and
- (f) by deleting the word “he”, in line nine, and substituting the words “the applicant”.

14. Section 17 of the principal Act is amended— Section 17 amended.

- (a) by deleting the words “person has become registered”, in line one, and substituting the words “registration is effected”; and
- (b) by deleting the word “him”, in line two, and substituting the words “the applicant”.

Section 18
amended.

15. Section 18 of the principal Act is amended—

- (a) by deleting the passage “, not exceeding twenty dollars,” in line four of subsection (1);
- (b) by deleting the word “he” in line eleven of subsection (1);
- (c) as to subsection (2)—
 - (i) by deleting the words “by him” in line three of that subsection; and
 - (ii) by deleting the passage “such member, he shall cease to be registered”, in lines six and seven and substituting the words “that architect the registration shall be deemed to have ceased”; and
- (d) as to subsection (3)—
 - (i) by deleting the words “Any architect whose name”, in line one of that subsection, and substituting the words “Where the name of any architect”;
 - (ii) by inserting after the word “register”, in line two, the words “the architect”;
 - (iii) by deleting the words “is served on him”, in line three and substituting the words “was served”;
 - (iv) by deleting the word “he”, in line five, and substituting the words “the name”; and
 - (v) by deleting the word “his”, in line six, and substituting the word “the”.

16. The principal Act is amended by inserting after section 19 a new section, to stand as section 19A, as follows—

Section 19A
added.

19A. (1) Every practising corporation shall—

Notices and
statements
required of
practising
corporations.

- (a) within one month after any person becomes or ceases to be a director or member of that corporation lodge with the registrar a notice stating the full names and usual residential address of that person and the fact that he has become or ceased to be a director or member; and
 - (b) in the month of July in each year lodge with the registrar an Annual Statement in the prescribed form.
- (2) The Annual Statement shall state—
- (a) the full name and usual residential address of every person who on the thirtieth day of June preceding the lodging of the return was a director or member of the corporation;
 - (b) the number of shares in the corporation held by each person and the number of votes which he is entitled to cast at a meeting of directors or members of the corporation;
 - (c) in relation to each director and each member, whether he is a practising architect;
 - (d) where the provisions of section twenty-two C of this Act apply, the name of the insurers by whom the foreign corporation is insured under a policy of professional indemnity insurance and the limit, if any, on the amount for which the insurer is liable; and

- (e) any other matters, necessary or convenient for the administration of this Act, which are indicated in the form. .

Section 19B
added.

17. The principal Act is amended by inserting after section 19 a new section, to stand as section 19B, as follows—

Notices and
statements
required of
practising
firms.

19B. (1) Every practising firm shall—

- (a) within one month after any person becomes or ceases to be a member of the firm, or becomes or ceases to be a director or member of a corporation included amongst the members of the partnership, lodge with the registrar a notice stating the full names and usual residential address of that person and the fact that he has become or ceased to be a member of that firm or a director or member of that corporation, as the case may require; and
- (b) in the month of July in each year lodge with the registrar an Annual Statement in the prescribed form.

(2) The Annual Statement shall state—

- (a) the full name and usual residential address of every person who on the thirtieth day of June preceding the lodging of the return was a member of the firm;
- (b) in relation to each member, whether he is a practising architect;
- (c) where the partnership includes a foreign corporation amongst its members the like information relating to professional indemnity insurance as is required in relation to such a corporation pursuant to subsection (2) of section nineteen A of this Act; and

- (d) any other matters necessary or convenient to the administration of the Act, which are indicated in the form. .

18. Section 22 of the principal Act is amended— Section 22 amended.

- (a) by deleting the words “or whose names have been removed from the register by order of the Board or the Local Court”, in line three to line five, and substituting the passage “all practising corporations struck off the register of companies pursuant to section three hundred and eight of the Companies Act, 1961, or dissolved, and all names ordered to be removed from the register by the Board or the District Court”; and

- (b) by adding a new subsection as follows—

(3) The Board shall cause notification of the fact that the name of any person or corporation has been erased from the register pursuant to this section to be published in the *Government Gazette*.

19. Section 22A of the principal Act is amended— Section 22A amended.

- (a) as to subsection (1)—

(i) by inserting after the word “himself”, in line five, the words “or a practising firm of which he is a member or a practising corporation of which he is a director or a member”; and

(ii) by inserting after the word “architect” in line six, the words “or use his name in connection with an architectural practice”;

- (b) by inserting a new subsection, to stand as subsection (1a), as follows—

(1a) Without prejudice to the provisions of subsection (2) of section two of this Act instead of proceeding against

the corporation or firm in question the Board or the District Court may exercise any of the powers conferred by this section in relation to a director or a member of a practising corporation or a member of a practising firm in the same manner as those powers may be exercised in relation to a person practising solely on his own account. ;

- (c) as to subsection (5), by deleting the words "Local Court", in line six, line eight and line ten of paragraph (c), and substituting in each case the words "District Court";
- (d) as to subsection (6), by deleting the words "Local Court", in line six, line eight and line ten of paragraph (b) and substituting in each case the words "District Court";
- (e) as to subsection (8), by deleting the words "Local Court", in lines six and seven of that subsection, and substituting the words "District Court"; and
- (f) as to subsection (9), by deleting the words "Local Court", in line two of that subsection, and substituting the words "District Court".

Section 22B
added.

20. The principal Act is amended by inserting after section 22A a new section to stand as section 22B, as follows—

Liability for
damages, etc.

22B. (1) The directors of a corporation practising as an architect pursuant to this Act, and any person who was at the time the cause of action arose a director of that corporation, shall be jointly and severally liable for the acts or omissions of that corporation in a professional respect in the course of or in connection with its practice as an architect to the same extent as they would be so liable if that corporation were a firm and the directors

were members of the firm, and where, at the relevant time, there is only one director he shall be liable to the same extent as if practising on his own account.

(2) The provisions of subsection (1) of this section shall be construed as being in aid of and not in derogation from any remedy exercisable apart from this Act. .

21. The principal Act is amended by inserting after section 22A a new section, to stand as section 22C, as follows—

Section 22C
added.

22C. (1) Subject to subsection (3) of this section, a foreign corporation shall at all times when it is carrying on business as an architect have and maintain in force a policy of professional indemnity insurance which complies with this section and on which the premiums are fully paid, and failure to maintain such insurance shall be deemed to be improper conduct in a professional respect.

Duty of
foreign
corporation
to insure.

(2) Every policy of professional indemnity insurance issued for the purposes of this section—

- (a) must be issued by a company carrying on insurance business as defined in the Insurance (Deposits) Act 1932-1973, of the Commonwealth as from time to time amended;
- (b) must indemnify the insured corporation against liability which may be incurred by that corporation for negligence or misfeasance in respect of any work done by or on behalf of that corporation in the course of the practice of architecture;
- (c) may stipulate a limit on the amount for which the insurance company is liable in the aggregate or in respect of any one claim, not being an amount less than the appropriate amount prescribed by by-laws made by the Board; and

(d) must comply with any other requirements prescribed by by-laws made under this Act.

(3) The Minister may, by instrument in writing served on the corporation, for the time being exempt any foreign corporation from the operation of subsection (1) of this section, and the provisions of that subsection shall not apply to or in relation to that corporation for as long as that exemption subsists, but the Minister may, at any time, revoke any such exemption either by instrument in writing so served or by notice in the *Government Gazette*.

Section 25
repealed and
re-enacted.

22. Section 25 of the principal Act is repealed and re-enacted with amendments as follows—

Resignation
of architects.

25. (1) Where the name of any architect has been enrolled on the register, that architect may by writing addressed and delivered to the registrar of the Board give notice of resignation and request that the Board remove the name from the register.

(2) No notice of resignation shall be accepted by the Board if the professional conduct of the architect giving that notice, or in the case of a practising corporation any director of that corporation, is the subject of an investigation by or on behalf of the Board.

(3) Where the resignation of any architect is accepted by the Board that architect shall thereupon cease to be registered under this Act and the name shall be removed from the register.

Section 27
amended.

23. Section 27 of the principal Act is amended—

(a) as to subsection (1), by deleting the passage “, and, subject to the proviso to subsection (1) of section eighteen and the by-laws, to vote”, in line four to line six of that subsection;

- (b) as to subsection (3), by deleting the passage "The chairman shall have an original, and in case of an equality of votes, a second or casting vote.", being the second sentence of that subsection, and re-enacting the passage to stand as subsection (5); and
- (c) by adding a new subsection, to stand as subsection (4), as follows—

(4) A practising corporation or a practising firm shall not, as such a corporation or firm, be entitled to a vote, but subject to the proviso to subsection (1) of section eighteen of this Act and the by-laws every natural person registered as an architect under this Act shall be entitled to vote in person or by proxy. .

24. Section 28 of the principal Act is amended by adding after the word "same", being the last word of paragraph (e) of subsection (1), the passage "prescribing the statements to be submitted by practising corporations and practising firms and the fees to be payable thereon, and fixing the conditions of the professional indemnity insurance required of foreign corporations".

Section 28
amended.

25. Section 29 of the principal Act is amended—

Section 29
amended.

- (a) by deleting subsection (1) and substituting a new subsection as follows—
- (1) A person, other than a registered architect, who or which—
- (a) takes, uses or adopts the title or description of architect, or architectural practitioner; or
- (b) uses any name, title, words, letters, additions, or descriptions implying or leading to the belief that such person is, or by words

or conduct holds out or in any way implies that such person is—

- (i) registered under this Act;
- (ii) qualified under this Act to practise as an architect;
or
- (iii) is carrying on the practice of architecture,

commits an offence.

Penalty: One thousand dollars.

(b) as to subsection (3)—

- (i) by deleting the word “person”, in line one, and substituting the word “architect”; and
- (ii) by deleting the word “he”, in line two, and substituting the passage “the person, corporation, or firm so suspended”;

(c) by adding two new subsections as follows—

(4) A person who makes or publishes a document which states, or may reasonably be interpreted as indicating, that a person not registered under this Act is an architect, or practises as an architect, or undertakes or is willing to undertake work as an architect, commits an offence whether the person referred to in the document is the person who made or published it or some other person.

Penalty: Five hundred dollars.

(5) Notwithstanding the provisions of subsection (1) and subsection (4) of this section a person who carried on business or is employed as a naval architect, landscape architect, golf course architect,

or architectural draftsman, may use that title, or be so described in any document. .

26. Section 30 of the principal Act is amended— Section 30 amended.

- (a) by deleting the words “himself or any other”, in lines one and two of paragraph (d), and substituting the word “any”;
- (b) by deleting the word “himself”, in line one of paragraph (e), and substituting the words “any person”;
- (c) by deleting paragraph (g) and substituting a new paragraph as follows—
 - (g) falsely advertises or publishes that any certificate of registration under this Act has been obtained, or any such registration effected, or permits any such advertisement or publication, ; and
- (d) by deleting the words “one hundred” in the second last line and substituting the words “one thousand”.

27. Section 31 of the principal Act is amended by deleting the words “Local Court”, in line two, and substituting the words “District Court”. Section 31 amended.
