



Western Australia

## **Architects Act 2004**

Compare between:

[16 Nov 2005, 00-a0-07] and [22 May 2009, 00-b0-02]



Western Australia

## **Architects Act 2004**

**An Act —**

- **to provide for the registration of natural persons, and the licensing of corporations, as architects;**
  - **to provide for the regulation of the practice of architecture by those persons;**
  - **to repeal the *Architects Act 1921*;**
  - **to consequentially amend the *Constitution Acts Amendment Act 1899* and the *Sentencing Act 1995*,**
- and for related purposes.**

## **Part 1 — Preliminary**

### **1. Short title**

This Act may be cited as the *Architects Act 2004*.

### **2. Commencement**

- (1) Subject to subsection (2), this Act comes into operation on a day fixed by proclamation.
- (2) This Act is not to come into operation before the *State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004* Part 2 Division 8 has come into operation.

### **3. Objects of Act**

The objects of this Act are —

- (a) to ensure that only properly qualified and competent persons are identified as architects or as persons who practise architecture and to regulate the practice of architecture by those persons; and
- (b) to establish, maintain and promote suitable standards of knowledge and skills among architects,

for the purpose of protecting the consumers of architectural and related services in Western Australia.

### **4. Terms used in this Act**

- (1) In this Act, unless the contrary intention appears —
  - Board** means the Architects Board of Western Australia established under section 5;
  - certificate of registration** means a certificate of registration issued under section 38;
  - committee** means a committee of the Board appointed under Schedule 1 clause 16;
  - condition** includes restriction;

**corporation** means —

- (a) a company as defined in the Corporations Act; or
- (b) any other body corporate, or body corporate of a kind, prescribed by the regulations;

**Corporations Act** means the *Corporations Act 2001* of the Commonwealth;

**disciplinary action** means action that can be the subject of an order under section 57(2);

**firm** means an unincorporated body of persons, whether consisting of natural persons or corporations or partly of natural persons and partly of corporations;

**licence** means a licence granted under Part 4;

**licence document** means a licence document issued under section 39;

**licensed** means licensed under Part 4;

**officer**, in relation to a body corporate, has the meaning given to “officer of a corporation” in the Corporations Act but does not include an employee of the body corporate unless the employee is concerned in the management of the body corporate;

**public company** has the meaning given to that term in the Corporations Act;

**register** means the register referred to in section 43;

**registered** means registered under Part 4;

**registrar** means the person appointed to be registrar under section 17;

**regulations** means regulations made under section 71;

**restricted word** means —

- (a) “architect”, “architects”, “architectural” or “architecture”;
- (b) any abbreviation or derivative of a word in paragraph (a); or

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- (c) any other word or combination of letters that sounds or looks like a word in paragraph (a).
- (2) Notes in this Act are provided to assist understanding and do not form part of the Act.

## **Part 2 — The Architects Board**

### **Division 1 — Establishment of Board**

#### **5. Board established**

- (1) The Architects Board of Western Australia is established.
- (2) The Board —
  - (a) is a body corporate;
  - (b) has perpetual succession and a common seal; and
  - (c) may sue and be sued in its corporate name.

#### **6. Board not an agent of the Crown**

The Board does not represent, and is not an agent of, the Crown.

### **Division 2 — The Board**

#### **7. Membership of Board**

- (1) The Board consists of 10 natural persons, of whom —
  - (a) 4 persons are to be appointed by the Minister as persons having knowledge of, and experience in representing, community or consumer interests;
  - (b) 2 are to be appointed by the Minister, on the nominations of bodies that are prescribed by the regulations, as persons having knowledge of, and experience in, matters relating to the profession or practice of architecture; and
  - (c) 4 are to be registered persons who are elected by registered persons in accordance with the regulations.
- (2) Each body prescribed for the purposes of subsection (1)(b) is to provide to the Minister at least 2 nominations from which the Minister is to choose the persons to be appointed under subsection (1)(b).

- (3) If, within 30 days of being requested in writing to do so, a body referred to in subsection (2) has not provided at least 2 nominations, the Minister is to make the appointments from nominations of the other bodies.
- (4) If, within 30 days of being requested in writing to do so, none of the bodies referred to in subsection (2) has provided at least 2 nominations, the Minister is to make the appointments at the Minister's discretion and the persons so appointed are to be regarded as having been nominated under subsection (1)(b).
- (5) A registered person is not eligible for election under subsection (1)(c) unless —
  - (a) the person belongs to a category of registered persons who are required to pay fees for registration and renewal of registration; and
  - (b) the person is not in arrears in respect of those fees.

**8. Constitution and proceedings**

Schedule 1 has effect with respect to the Board and members of the Board and its committees.

**9. Remuneration and allowances**

Any remuneration or allowances of a member of the Board or of a committee are to be those determined by the Minister on the recommendation of the Minister for Public Sector Management.

**Division 3 — Functions and powers**

**10. Functions**

The functions of the Board are as follows —

- (a) to administer the scheme of registration and licensing under Part 4;



- (b) to monitor education in architecture, and provide advice on that education to the Minister and to any other person or body involved in that education;
- (c) to accredit architectural education courses for the purposes of registration requirements;
- (d) to promote and encourage —
  - (i) the continuing education of architects in relation to the practice of architecture; and
  - (ii) increased levels of knowledge, skill and competence in the practice of architecture;
- (e) to perform the other functions that are conferred on the Board by or under this Act or any other Act;
- (f) to promote public awareness in relation to the functions of the Board;
- (g) to advise the Minister on matters to which this Act applies.

**11. Powers**

- (1) The Board has all the powers it needs to perform its functions.
- (2) The Board may not acquire, hold or dispose of real property other than premises used, or to be used, by it as office premises.
- (3) Without limiting subsection (1), the Board may, for the purpose of performing a function —
  - (a) produce and publish information on matters related to the practice of architecture and the education of architects; and
  - (b) develop and turn to account any technology, software or other intellectual property that relates to that function, and, for that purpose, apply for, hold, exploit and dispose of any patent, patent rights, copyright or similar rights.

**12. Powers of investigation and investigator**

- (1) The Board may carry out any investigation that the Board considers necessary or expedient for the purposes of —
  - (a) determining any application or any other matter before the Board;
  - (b) determining whether or not a registered person or a licensed corporation is or has been acting in conformity with the conditions, if any, of the registration or licence and is or has been complying with the requirements of this Act;
  - (c) determining whether any other cause exists that might be considered by the Board a proper cause for disciplinary action;
  - (d) detecting offences under this Act.
- (2) The Board is not to investigate a complaint that is made more than 3 years after the conduct is alleged to have occurred, unless the Board decides that —
  - (a) it is just and fair to investigate the complaint having regard to the delay and the reasons for the delay; or
  - (b) it is in the public interest to investigate the complaint.
- (3) The Board may appoint an investigator to investigate a matter and report to the Board.
- (4) The investigator may —
  - (a) require any person —
    - (i) to give the investigator such information as the investigator requires; and
    - (ii) to answer any question put to the person, in relation to any matter the subject of the investigation;
  - (b) require any person to produce any document to the investigator;

- (c) enter at all reasonable times and search any premises and inspect any documents that the investigator finds on the premises; and
  - (d) make a copy or abstract of any document produced or inspected under this section, or of any entry made in the document.
- (5) A requirement made under subsection (4)(a) —
- (a) may be made orally or by notice in writing served on the person required to give information or answer a question, as the case may be;
  - (b) is to specify the time at or within which the information is to be given or the question is to be answered, as the case may be; and
  - (c) may, by its terms, require that the information or answer required —
    - (i) be given orally or in writing;
    - (ii) be given at or sent or delivered to any place specified in the requirement;
    - (iii) in the case of written information or answers, be sent or delivered by any means specified in the requirement; and
    - (iv) be given on oath or affirmation or by statutory declaration for which purpose the investigator may administer an oath or affirmation and have the authority of a commissioner for declarations.
- (6) A requirement made under subsection (4)(b) —
- (a) is to be made by notice in writing served on the person required to produce a document;
  - (b) is to specify the time at or within which the document is to be produced; and
  - (c) may, by its terms, require that the document be produced —

- (i) at any place specified in the requirement; and
  - (ii) by any means specified in the requirement.
- (7) Where under subsection (4)(a) an investigator orally requires a person to give any information or answer any question, the investigator is to inform that person that the person is required under this Act to give the information or answer the question, as the case may be.
- (8) Where under subsection (4)(a) or (b) a person is required by notice in writing to give any information, answer any question, or produce any document, the notice is to state that he or she is required under this Act to give the information, answer the question, or produce the document, as the case may be.
- (9) Before entering any premises under this section the investigator —
  - (a) is to obtain a warrant to do so from a magistrate or Justice of the Peace which warrant the magistrate or Justice of the Peace is authorised to issue upon being satisfied that the entry is sought in good faith for the purpose of an investigation under this section; and
  - (b) is to display to the person, if any, giving the investigator entry, a document signed by the Board and certifying that he or she is an investigator appointed by the Board.

**13. Incriminating information, questions, or documents**

Without prejudice to the provisions of the *Evidence Act 1906* section 11, where under section 12 of this Act a person is required to —

- (a) give any information;
- (b) answer any question; or
- (c) produce any document,

the person must not refuse to comply with that requirement on the ground that the information, answer, or document may tend

to incriminate the person or render the person liable to any penalty, but the information or answer given, or document produced, by the person is not admissible in evidence in any proceedings against the person other than proceedings in respect of an offence under section 14(1)(b).

**14. Failure to comply with investigation**

- (1) Where under section 12 a person is required to give any information, answer any question, or produce any document and that person, without reasonable excuse (proof of which shall lie on that person) —
- (a) fails to give that information or answer that question at or within the time specified in the requirement;
  - (b) gives any information or answer that is false in any particular; or
  - (c) fails to produce that document at or within the time specified in the requirement,

the person commits an offence.

Penalty: \$2 000.

- (2) It is a defence in any proceeding for an offence under subsection (1)(a) or (1)(c) for the accused to show —
- (a) that, in the case of an alleged offence arising out of a requirement made orally under section 12, the investigator did not, when making the requirement, inform the accused that the accused was required under this Act to give the information or answer the question, as the case may be;
  - (b) that, in the case of an alleged offence arising out of a requirement made by notice in writing under section 12, the notice did not state that the accused was required under this Act to give the information, answer the question, or produce the document, as the case may be;

- (c) that the time specified in the requirement did not afford the accused sufficient notice to enable the accused to comply with the requirement; or
- (d) that, in any case, the investigator did not, before making the requirement, have reasonable grounds to believe that compliance with the requirement would materially assist in the investigation.

*[Section 14 amended by No. 84 of 2004 s. 82.]*

**15. Obstruction of investigator**

A person must not prevent or attempt to prevent an investigator from entering premises or otherwise obstruct or impede an investigator in the exercise of his or her powers under section 12.

Penalty: \$2 000.

**16. Delegation**

- (1) The Board may delegate any power or duty of the Board under another provision of this Act to —
  - (a) a member of the Board;
  - (b) a committee;
  - (c) the Registrar or any other member of staff of the Board; or
  - (d) a person referred to in section 19(1).
- (2) The delegation must be in writing executed by the Board.
- (3) A person or committee to whom a power or duty is delegated under this section cannot delegate that power or duty.
- (4) A person or committee exercising or performing a power or duty that has been delegated to the person or committee under this section, is to be taken to do so in accordance with the terms of the delegation unless the contrary is shown.

- (5) Nothing in this section limits the ability of the Board to perform a function through the registrar or any other member of its staff or an agent.
- (6) This section does not apply to the execution of documents but authority to execute documents on behalf of the Board can be given under section 23.

#### **Division 4 — Registrar and other staff**

##### **17. Registrar**

- (1) The Board is to appoint a person to be the registrar.
- (2) The registrar has the functions that are conferred under this Act or that he or she is directed by the Board to perform.

##### **18. Other staff and contractors**

- (1) The Board may employ staff.
- (2) This section does not detract from the power that the *Public Sector Management Act 1994* section 100 gives the Board to engage a person under a contract for services or appoint a person on a casual employment basis.
- (3) The Board may, by arrangement on such terms as are agreed with the relevant parties, make use of the services of a person employed by another person.

##### **19. Use of government staff etc.**

- (1) The Board may by arrangement with the relevant employer make use, either full-time or part-time, of the services of any officer or employee —
  - (a) in the Public Service;
  - (b) in a State agency or instrumentality; or
  - (c) otherwise in the service of the State.
- (2) The Board may by arrangement with —

- (a) a department of the Public Service; or
  - (b) a State agency or instrumentality,  
make use of any facilities of the department, agency or instrumentality.
- (3) An arrangement under subsection (1) or (2) is to be made on the terms agreed by the parties.

### **Division 5 — Relationship of Board with the Minister**

#### **20. Minister may give directions**

- (1) The Minister may give written directions to the Board with respect to the performance of its functions, either generally or, subject to subsection (2), in relation to a particular matter and the Board is to give effect to any such direction.
- (2) The Minister must not under subsection (1) direct the Board with respect to the performance of its functions under Part 4 or 5 in respect of —
  - (a) a particular person;
  - (b) a particular qualification; or
  - (c) a particular application, complaint, investigation or other proceeding.
- (3) The Minister must cause the text of any direction given under subsection (1) to be laid before each House of Parliament, or dealt with under subsection (4), within 14 days after the direction is given.
- (4) If —
  - (a) at the commencement of the period referred to in subsection (3) a House of Parliament is not sitting; and
  - (b) the Minister is of the opinion that that House will not sit during that period,



the Minister is to transmit a copy of the direction to the Clerk of that House.

- (5) A copy of a direction transmitted to the Clerk of a House is to be regarded as having been laid before that House.
- (6) The laying of a copy of a direction that is regarded as having occurred under subsection (5) is to be recorded in the Minutes, or Votes and Proceedings, of the House on the first sitting day of the House after the Clerk received the copy.
- (7) The text of a direction under subsection (1) is to be included in the annual report submitted by the Board under section 28.

**21. Minister to have access to information**

- (1) The Minister is entitled —
  - (a) to have information in the possession of the Board; and
  - (b) where the information is in or on a document, to have, and make and retain copies of, that document.
- (2) For the purposes of subsection (1) the Minister may —
  - (a) request the Board to furnish information to the Minister;
  - (b) request the Board to give the Minister access to information;
  - (c) for the purposes of paragraph (b) make use of the staff of the Board to obtain the information and furnish it to the Minister.
- (3) The Board is to comply with a request under subsection (2) and make its staff and facilities available to the Minister for the purposes of subsection (2)(c).
- (4) The Minister is not entitled to have information under this section in a form that —
  - (a) discloses the identity of a person involved in a particular application, complaint, investigation or other proceeding; or

- (b) might enable the identity of such a person to be ascertained,

unless that person has consented to the disclosure.

- (5) In this section —

*document* includes any tape, disc or other device or medium on which information is recorded or stored;

*information* means information specified, or of a description specified, by the Minister that relates to the functions of the Board.

### **Division 6 — General**

#### **22. Protection from liability**

- (1) An action in tort does not lie against a person for anything that the person has done, in good faith, in the performance or purported performance of a function under this Act.
- (2) The Board is also relieved of any liability that it might otherwise have had for another person having done anything as described in subsection (1).
- (3) The protection given by this section applies even though the thing done as described in subsection (1) may have been capable of being done whether or not this Act had been enacted.
- (4) In this section, a reference to the doing of anything includes a reference to the omission to do anything.

#### **23. Common seal of, and execution of documents by, the Board**

- (1) A document is duly executed by the Board if —
  - (a) the common seal of the Board is affixed to it in accordance with subsections (2) and (3); or
  - (b) it is signed on behalf of the Board by a person or persons authorised to do so under subsection (4).

- (2) The common seal of the Board must not be affixed to any document except as authorised by the Board.
- (3) The common seal of the Board is to be affixed to a document in the presence of 2 of its members, and each of them is to sign the document to attest that the common seal was so affixed.
- (4) The Board may, by writing under its seal, authorise one or more of its members or the registrar or another member of staff of the Board to sign documents on behalf of the Board, either generally or subject to the conditions that are specified in the authorisation.
- (5) A document purporting to be executed in accordance with this section is to be presumed to be duly executed until the contrary is shown.
- (6) When a document is produced bearing a seal purporting to be the common seal of the Board, it is to be presumed that the seal is the common seal of the Board until the contrary is shown.

**24. Duty not to make improper use of information**

A member or former member of the Board or a committee must not, whether within or outside the State, make improper use of information acquired by virtue of that position to gain, directly or indirectly, an advantage for himself or herself or for any other person.

Penalty: \$5 000.

## **Part 3 — Finance and reports**

### **25. Funds of Board**

- (1) The funds of the Board consist of —
  - (a) fees received by the Board;
  - (b) pecuniary penalties paid in respect of offences under this Act;
  - (c) other money or property lawfully received by the Board in connection with the performance of its functions; and
  - (d) other money lawfully received by, made available to, or payable to, the Board.
- (2) The funds of the Board may be applied —
  - (a) for the purposes of the administration and enforcement of this Act, including the remuneration of members of the Board and committees and of the registrar and other members of staff of the Board;
  - (b) for the furtherance of education, including public education, and research in relation to architecture; and
  - (c) for any other purpose that would enable the Board to perform its functions or to facilitate the carrying out of the objects of this Act.

### **26. Accounts**

- (1) The Board is to cause to be kept proper accounts and records of the transactions and affairs of the Board and prepare financial statements in accordance with Australian Accounting Standards.
- (2) The financial statements are to be prepared on an accrual basis unless the Board determines otherwise.

### **27. Audit**

The accounts and financial statements of the Board are to be audited at least once a year, at the expense of the Board, by a

registered company auditor (as defined in paragraph (a) of the definition of that term in the Corporations Act) appointed by the Board with the prior approval of the Minister.

**28. Annual report and other reports**

- (1) The Board, not later than 31 October in each year, is to make and submit to the Minister an annual report of its proceedings for the financial year ending on the preceding 30 June together with a copy of its financial statements for that year and the auditor's report on those statements.
- (2) The Board's annual report is to include details of —
  - (a) the number, nature, and outcome, of —
    - (i) complaints received by the Board;
    - (ii) investigations undertaken by, or at the direction of, the Board; and
    - (iii) matters that have been brought before the State Administrative Tribunal by the Board;
  - (b) the number and nature of matters referred to in paragraph (a) that are outstanding;
  - (c) any trends or special problems that may have emerged;
  - (d) forecasts of the workload of the Board in the year after the year to which the report relates; and
  - (e) any proposals for improving the operation of the Board.
- (3) Despite subsection (2), the identity of a person who has made a complaint under this Act, a person about whom or which a complaint is made or referred under this Act or any other person in relation to an investigation or other proceeding must not be disclosed in an annual report.
- (4) The Minister is to cause a copy of the Board's annual report and financial statements and of the auditor's report submitted under subsection (1) to be laid before each House of Parliament within

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14 sitting days of that House after receipt of the report by the Minister.

- (5) The Board is to ensure that after subsection (4) has been complied with copies of the reports and statements referred to in that subsection are available on request for inspection at its premises.

## **Part 4 — Registration and licensing of architects**

### **Division 1 — Registration, licensing and renewal**

#### **29. Registration of natural persons**

A natural person is to be registered if the person —

- (a) applies to the Board in accordance with section 33; and
- (b) satisfies the Board that the person complies with the requirements prescribed by the regulations for the purposes of this section in relation to that person.

#### **30. Conditions on registration or renewal of registration**

- (1) The registration or renewal of the registration of a natural person is not to be subject to conditions except to the extent that conditions may be imposed —
  - (a) under subsection (2);
  - (b) under section 51(6); or
  - (c) by way of taking disciplinary action.
- (2) The Board may impose as a condition of registration or renewal of registration of a natural person —
  - (a) that insurance cover be in effect in respect of the person's civil liability for anything done or omitted by the person as an architect; and
  - (b) that the insurance cover be of a standard or for an amount prescribed by the regulations.

Note: Under s. 20(5) of the *Mutual Recognition Act 1992* of the Commonwealth, adopted by WA under the *Mutual Recognition (Western Australia) Act 2001*, the Board may impose certain conditions on the registration, in this State, of a person who is already registered in another State or the ACT or the NT.

#### **31. Licensing of corporations**

The Board may grant a licence to a corporation that —

- (a) applies to the Board in accordance with section 33; and
- (b) satisfies the Board that the corporation complies with the requirements prescribed by the regulations for the purposes of this section.

**32. Conditions on grant of licences or renewal of licences**

- (1) The Board may grant a licence or renew a licence subject to the conditions that the Board specifies.
- (2) Without limiting subsection (1), the Board may impose as a condition of the grant of a licence or the renewal of a licence —
  - (a) a requirement to give the Board advice or information about the registered person who has ultimate responsibility for the architectural work done by the corporation;
  - (b) that insurance cover be in effect in respect of the corporation's civil liability for anything done or omitted by the corporation as an architect; and
  - (c) that the insurance cover be of a standard or for an amount prescribed by the regulations.

**33. Applications for registration and licences**

- (1) An application for registration or for the grant of a licence is to be —
  - (a) made in writing in a manner and form determined by the Board; and
  - (b) accompanied by —
    - (i) the application fee prescribed by the regulations in relation to the applicant; and
    - (ii) the registration fee or licence fee (whichever is relevant) prescribed by the regulations in relation to the applicant.



- (2) The applicant is to provide the Board with any further information that the Board requires in any particular case and is to verify the information by statutory declaration if required by the Board to do so.
- (3) The Board may, in writing, require —
- (a) an applicant for registration; or
  - (b) an officer of a corporation that is an applicant for the grant of a licence,
- to attend before the Board for the purpose of satisfying the Board as to a matter relevant to the application and the Board may refuse the application if the person fails to attend as required.
- (4) In considering any application for registration or for the grant of a licence the Board may —
- (a) have regard to any information or advice received from the Architects Accreditation Council of Australia, or any other body selected by the Board, in relation to any applicant who has obtained or sought to obtain qualification in a place other than this State; and
  - (b) pay the fees or disbursements necessary to obtain that advice.
- (5) If, on an application for registration or for the grant of a licence, the Board decides that it will not register, or not grant a licence to, the applicant the registration fee or licence fee referred to in subsection (1)(b)(ii) is to be returned to the applicant.

**34. Effect of registration and licensing**

Subject to this Act, registration or the grant of a licence confers on the registered person or the licensed corporation the right to carry on in the State the practice of architecture under the title of “architect”.

**35. Duration of registration and licences**

Subject to this Act, registration or the grant of a licence has effect until 31 December in the year in which the registration occurs or the licence is granted or for a longer period that is prescribed by the regulations.

**36. Renewal of registration and licences**

- (1) A registration or a licence may be renewed in accordance with the regulations for a period of 12 months or a longer period that is prescribed by the regulations.
- (2) The registration of a person is to be renewed if —
  - (a) the Board is satisfied that the person —
    - (i) continues to comply with the requirements prescribed by the regulations for the purposes of section 29 that are relevant to that person at the time of the renewal of registration;
    - (ii) is complying with any current condition of registration or renewal of registration; and
    - (iii) has attained or maintained a level of knowledge, skill and competence that the Board considers is required at the time of the renewal of registration in the practice of architecture generally or in the practice of a specific aspect of architecture that is likely to be practised by the person if registration is renewed;
  - and
  - (b) the person pays the fee referred to in section 37(1).
- (3) The licence of a corporation is to be renewed if —
  - (a) the Board is satisfied that the corporation continues to comply with the requirements prescribed by the regulations for the purposes of section 31 that are relevant to the corporation at the time of the renewal of the licence;

- (b) the Board is satisfied that the corporation is complying with any current condition of the grant of the licence or the renewal of the licence; and
  - (c) the corporation pays the fee referred to in section 37(1).
- (4) The Board may at any time, in writing, require —
- (a) a registered person or licensed corporation to give information to the Board for the purpose of satisfying the Board as to a matter relevant to the renewal of a registration or licence and to verify the information by statutory declaration;
  - (b) an applicant for the renewal of registration to attend before the Board for the purpose of satisfying the Board as to a matter relevant to the application;
  - (c) an officer of a corporation that is an applicant for the renewal of a licence to attend before the Board for the purpose of satisfying the Board as to a matter relevant to the application; or
  - (d) a registered person to undergo any examination that is necessary for the purpose of satisfying the Board as to a matter referred to in subsection (2)(a)(iii).
- (5) The Board may refuse to renew a person's registration or the licence of a corporation if a requirement under subsection (4) in relation to that person or corporation is not complied with.

**37. Fees for renewal of registrations and licences**

- (1) A registered person or a licensed corporation is to pay to the Board the fee prescribed by the regulations for the renewal of that person's registration or that corporation's licence, and if the fee is not paid on or before the day on which it falls due under the regulations —
- (a) the person ceases to be registered or the corporation ceases to be licensed; and

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- (b) the Board may direct the registrar to remove the name of the person or corporation from the register.
- (2) A person or corporation whose name is removed from the register under subsection (1) is entitled, subject to this Act, to have the name of the person or corporation restored to the register if the person or corporation pays to the Board at any time —
  - (a) all fees that are in arrear;
  - (b) all fees that would be in arrear if the person had continued to be registered or the corporation had continued to be licensed; and
  - (c) any additional amount prescribed by the regulations for the purposes of this subsection.
- (3) The registration of a person, or the licence of a corporation, whose name is restored to the register under subsection (2) is to be regarded as having continued during the period that the name of the person or corporation was removed from the register under subsection (1).
- (4) The Board is to send to the address of a registered person or licensed corporation recorded in the register, at least 28 days before the renewal fee for that person or corporation falls due under the regulations, written notice of —
  - (a) the renewal fee; and
  - (b) the consequences of failing to pay the fee.
- (5) A person or corporation may apply to the Board for the waiver of fees payable by the person or corporation under this section that are in arrear, and the Board may waive those fees in whole or in part.

**38. Certificates of registration**

- (1) The Board is to issue a person with a certificate of registration in a form approved by the Board —

- (a) on the registration of the person; and
  - (b) on the renewal of the person's registration.
- (2) Subject to this Act —
- (a) a certificate of registration issued on the registration of a person has effect for the period in which the person's registration has effect; and
  - (b) a certificate of registration issued on the renewal of a person's registration has effect for the period in which the renewal of registration has effect.
- (3) The period for which a certificate of registration has effect is to be specified in the certificate.
- (4) If the name of a person is entered in a particular division of the register, the division is to be specified in each certificate of registration issued to the person.

**39. Licence documents**

- (1) The Board is to issue a corporation with a licence document in a form approved by the Board —
- (a) on the grant of a licence to the corporation; and
  - (b) on the renewal of the corporation's licence.
- (2) Subject to this Act —
- (a) a licence document issued on the grant of a licence to a corporation has effect for the period in which the licence has effect; and
  - (b) a licence document issued on the renewal of a corporation's licence has effect for the period in which the renewal of the licence has effect.
- (3) The period for which a licence document has effect is to be specified in the licence document.

- (4) If the name of a corporation is entered in a particular division of the register, the division is to be specified in each licence document issued to the corporation.

**40. Suspension or cancellation of licences**

- (1) The Board may, on receiving a complaint or on the Board's own initiative, carry out any investigation necessary to decide whether an allegation should be made under subsection (2) by the Board.
- (2) The Board may make an allegation to the State Administrative Tribunal that the Tribunal should take action under this section against a particular licensed corporation on the ground that —
- (a) the constitution or rules governing the internal management of the corporation has or have been amended in an unacceptable manner;
  - (b) the requirements referred to in section 31 have not been complied with or have ceased to be complied with in relation to the corporation;
  - (c) the corporation has contravened or failed to comply with —
    - (i) a provision of this Act;
    - (ii) a condition imposed under this Act; or
    - (iii) a requirement under this Act to give the Board advice or information;
- or
- (d) the conduct of a natural person is such that the licence of the corporation should be suspended or cancelled in the case where —
- (i) the Tribunal has already determined there is a proper cause for disciplinary action in respect of the person; and
  - (ii) the person at the relevant time was an officer or employee of the corporation.

- (3) If the State Administrative Tribunal, on dealing with an allegation under subsection (2), is satisfied that a ground referred to in that subsection has been made out, it may —
  - (a) suspend a licence for a period, not exceeding 12 months, specified by the Tribunal; or
  - (b) cancel a licence with effect from a specified day.
- (4) If the State Administrative Tribunal cancels a corporation's licence the registrar is to remove the corporation's name from the register.

**41. Suspension of registration or licence: effect**

- (1) Where a person's registration or a corporation's licence is suspended under section 40 or 57, the person or corporation is to be regarded as not being registered during the period of the suspension.
- (2) The Board may, by notice in writing, revoke a suspension or reduce the period of a suspension and may direct in the notice that the revocation has effect from a date specified in the notice, if the Board has applied for, and obtained, the approval of the State Administrative Tribunal to do so.

**42. Surrender of certificates of registration, licence documents**

- (1) If —
  - (a) a person's name is removed from the register under section 47 or 49;
  - (b) a person's registration is suspended by way of disciplinary action being taken; or
  - (c) a person's name is removed from the register and the person's registration is cancelled by way of disciplinary action being taken,

the person is to surrender the person's certificate of registration within 14 days after the day on which the removal, suspension or cancellation takes effect.

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Penalty: \$2 500.

- (2) The Board may require a corporation to surrender its licence document if —
- (a) the corporation's name is removed from the register under section 47; or
  - (b) the Board decides under section 40 to suspend or cancel the licence,

and the corporation is to surrender the licence document within 14 days after the day on which it is required to do so.

Penalty: \$12 500.

- (3) It is a defence to a prosecution for an offence under subsection (1) or (2) if the accused satisfies the court that the accused failed to surrender the certificate or licence document because of the loss or destruction of the certificate or licence document.

*[Section 42 amended by No. 84 of 2004 s. 82.]*

**Division 2 — The register**

**43. The register**

- (1) The registrar is to keep a register in the manner and form determined by the Board.
- (2) The register may have divisions that are prescribed by the regulations relating to different categories of registered persons or licensed corporations.
- (3) When a person is registered or a licence is granted to a corporation, the Board is to cause to be entered in the register (in the appropriate division, if any) —
  - (a) the name of the person or corporation;
  - (b) the date of the initial registration or grant of the licence;
  - (c) the registration or licence number;



- (d) in the case of a natural person, particulars of all of the architectural qualifications recognised by the Board that are held by the person;
- (e) the address of the person or corporation that is specified by the person or corporation;
- (f) any conditions applying to the registration or licence;
- (g) details of any disciplinary action taken in respect of the person except disciplinary action taken with the consent of each of the parties to a conciliation; and
- (h) other information that is prescribed by the regulations.

**44. Inspection and publication of register**

- (1) The register is to be available for inspection, without fee, by members of the public during normal office hours.
- (2) A person may, on application to the registrar and payment of the fee prescribed by the regulations, obtain a certified copy of a part of, or entry in, the register.
- (3) No fee is payable under subsection (2) if the application is made —
  - (a) by an officer of the department of the Public Service principally assisting the Minister in the administration of this Act for the purpose of carrying out the functions of an officer of that department; or
  - (b) on behalf of the State Administrative Tribunal for the purpose of carrying out the functions of the Tribunal.
- (4) The Board may publish, in the manner and at the times determined by the Board, a copy of the register or any part of, or entry in, the register.

**45. Amendment of particulars**

A registered person or a licensed corporation may at any time apply to the Board for the amendment of the particulars entered

in the register relating to the person or corporation, and if the Board is satisfied that the amendment may properly be made, the Board, on payment of the fee prescribed by the regulations, is to direct the registrar to amend the particulars accordingly.

**46. Amendment to ensure accuracy**

The registrar, as the occasion requires but subject to the directions of the Board, is to make the amendments, additions and corrections to the register that are necessary to make the register an accurate record of the particulars required under section 43(3) in relation to all registered persons and licensed corporations.

**47. Voluntary removal from register**

- (1) A registered person or licensed corporation may, in writing, request the registrar to remove the name of the person or corporation from the register.
- (2) The registrar is to refer a request under subsection (1) to the Board and, if the Board so approves, is to remove the name of the person or corporation from the register.
- (3) The Board is not to approve under subsection (2) the removal of the name of —
  - (a) a registered person if the person's conduct is the subject of an investigation under this Act or a proceeding before the State Administrative Tribunal commenced under Part 5; or
  - (b) a corporation if the conduct of a person who is an officer or employee of the corporation is the subject of an investigation under this Act or a proceeding before the State Administrative Tribunal commenced under Part 5.

**48. Removal of names of deceased persons and defunct corporations**

- (1) The registrar, on receiving sufficient evidence in relation to the death of a registered person, is to remove the person's name from the register.
- (2) The registrar, on receiving sufficient evidence that a licensed corporation no longer exists, is to remove the corporation's name from the register.

**49. Removal of name of person without up to date skills who has not practised for 5 years or who has lost qualifications**

- (1) The Board may direct the registrar to remove from the register the name of a person if the Board is satisfied that —
  - (a) the person has not practised architecture in the preceding period of 5 years and has not maintained current knowledge and skills in architecture at a level considered by the Board to be satisfactory; or
  - (b) a qualification that enabled the person to be registered is withdrawn or cancelled by the body that conferred the qualification.
- (2) The Board must not, under subsection (1), direct the removal of the name of a person from the register unless the Board has —
  - (a) given the person written notice of the Board's intention to have the name removed, stating the reasons for the proposed action and giving the person 28 days after the notice is given to make written representations to the Board concerning the proposed action; and
  - (b) considered the representations received within that period.

**50. Effect of removal of name from register**

If the name of a registered person or a licensed corporation is removed under a provision of this Act from the register, the

person or corporation ceases to be registered or licensed, as is relevant to the case.

**51. Restoration of name to register**

- (1) A person or corporation whose name has been removed from the register under section 47 or 49 may at any time apply in a manner and form determined by the Board for the restoration of the name to the register.
- (2) If an applicant under subsection (1) pays the fee prescribed by the regulations to the Board and satisfies the Board of the relevant matters referred to in section 29 or 31, as is relevant to the case, the name of the applicant is to be restored to the register.
- (3) A person whose name has been removed from the register by way of disciplinary action being taken may, not less than 2 years after the removal, apply to the Board in a manner and form determined by the Board to have the person's name restored to the register.
- (4) The Board cannot grant an application under subsection (3) unless it has applied for, and obtained, the approval of the State Administrative Tribunal to do so.
- (5) If the Board decides to grant an application under subsection (3) it is to direct the registrar to restore the applicant's name to the register on payment by the applicant of the fee prescribed by the regulations for the purposes of this subsection.
- (6) Registration of, and the practice of architecture by, an applicant under subsection (3) may be made subject to the conditions that the Board specifies for any particular case.

### **Division 3 — Notifications to Board**

**52. Change of address**

- (1) A registered person or licensed corporation must give the registrar written advice of any change to the address that is recorded in the register in relation to the person or corporation.
- (2) The advice referred to in subsection (1) must be given no later than 30 days after the change to the address.

**53. Loss of qualifications**

- (1) A registered person must give the registrar written advice if a qualification that enabled the person to be registered is withdrawn or cancelled by the body that conferred the qualification.
- (2) The advice referred to in subsection (1) must be given no later than 90 days after the withdrawal or cancellation.

**54. Information about insurance**

- (1) A registered person or a licensed corporation must give the Board the information that is prescribed by the regulations in relation to the insurance cover that is in effect in respect of the person or corporation.
- (2) The information referred to in subsection (1) must be given by the time that is prescribed by the regulations.

**55. Corporations: advice as to intention to amend constitution etc.**

- (1) A licensed corporation that intends to amend its constitution or rules governing the internal management of the corporation must advise the Board by providing it with a copy of any proposed resolution or other form of proposal to give effect to that intention.

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**Division 3** Notifications to Board

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- (2) The copy of the resolution or other form of proposal referred to in subsection (1) must be provided to the Board at least 30 days before the day on which the corporation intends to vote on the resolution or proposal.
- (3) A licensed corporation must advise the Board of the result of the vote on a resolution or other form of proposal referred to in subsection (1) within 30 days of the day on which the result is announced.

## **Part 5 — Disciplinary proceedings**

### **Division 1 — Disciplinary action**

#### **56. Causes for disciplinary action**

- (1) Proper causes for disciplinary action in respect of a person are any of the following things —
- (a) that the person has engaged in unprofessional conduct as an architect;
  - (b) that the person has done or omitted to do something, or engaged in conduct (whether in this State or elsewhere and whether before or after registration) that renders the person unfit to be registered;
  - (c) that the person has contravened or failed to comply with —
    - (i) a provision of this Act;
    - (ii) a condition imposed under this Act; or
    - (iii) a requirement under this Act to give the Board advice or information;
  - (d) that the person has done or omitted to do something in connection with the practice of architecture in a manner or to the extent that falls short of the standard of competence and diligence that a member of the public is entitled to expect of a reasonably competent architect;
  - (e) that the person has engaged in conduct, other than the non-payment of fees, that has caused at any time —
    - (i) the name of a person to cease to appear in the register of architects or other record kept by a board or authority charged with regulating the registration of architects in a place outside the State (other than a place that is a participating jurisdiction as defined in the *Mutual Recognition Act 1992* of the Commonwealth); or

- (ii) the disqualification of a person by such a board or authority from carrying on the practice of architecture.

Note: Under s. 33(1) of the *Mutual Recognition Act 1992* of the Commonwealth, adopted by WA under the *Mutual Recognition (Western Australia) Act 2001*, if a person's registration is cancelled or suspended on disciplinary grounds, then the person's registration in another State or the ACT or the NT is affected in the same way.

- (2) For the purposes of subsection (1)(a) —  
***unprofessional conduct as an architect*** includes, without limiting the general meaning of the term, conduct that is prescribed by the regulations as constituting unprofessional conduct as an architect.

## **57. Taking disciplinary action**

- (1) The Board may allege to the State Administrative Tribunal that there is proper cause for disciplinary action to be taken in respect of —
  - (a) a person who is a registered person; or
  - (b) a person who was a registered person when the unsatisfactory conduct the subject of an investigation allegedly occurred but who is no longer a registered person.
- (2) If in a proceeding commenced by an allegation under this section against a registered person the State Administrative Tribunal is of the opinion that proper cause exists for disciplinary action the Tribunal may order one or more of the following —
  - (a) that the person be cautioned or reprimanded;
  - (b) that the person pay a penalty not exceeding \$5 000;
  - (c) that a condition be imposed on the person relating to the practice of architecture or an aspect of that practice specified in the order;



- (d) that the person undergo and complete the education, training or professional development or learning relevant to the practice of architecture or an aspect of that practice that is specified in the order;
  - (e) that the person practise under the supervision that is specified in the order for a period specified in the order;
  - (f) that the person obtain and implement, within a period specified in the order, advice from a person specified in the order, in relation to the practice of architecture or an aspect of that practice specified in the order;
  - (g) that the person give an undertaking, either with or without security not exceeding \$5 000, for a period specified in the order in relation to —
    - (i) the future conduct of the person as an architect; or
    - (ii) ensuring compliance with another disciplinary action taken in relation to the person;
  - (h) that the registration of the person be suspended for a period, not exceeding 12 months, specified in the order;
  - (i) that the person's name be removed from the register and that the person's registration be cancelled.
- (3) If in a proceeding commenced by an allegation under this section against a person referred to in subsection (1)(b) the State Administrative Tribunal is of the opinion that proper cause exists for disciplinary action the Tribunal may order one or more of the following —
- (a) that the person be cautioned or reprimanded;
  - (b) that the person pay a penalty not exceeding \$5 000.

**58. Failure to comply with disciplinary action**

- (1) If the State Administrative Tribunal makes an order under this Act against a person and payment is not made in accordance with the order, or the order or a condition imposed or an

undertaking given under the order is not complied with or breached, the Tribunal may order that further disciplinary action be taken in respect of the person and the further disciplinary action may be taken in respect of one or both of the following —

- (a) the matter for which the first disciplinary action was taken;
  - (b) the conduct or omission giving rise to the failure to comply with the order, condition or undertaking.
- (2) The power conferred on the State Administrative Tribunal by subsection (1) is in addition to and not in derogation of the powers conferred on it by this Act or by the *State Administrative Tribunal Act ~~2003~~2004*.

*[Section 58 amended by No. 8 of 2009 s. 21.]*

## **Division 2 — Conciliation**

### **59. Conciliation process**

- (1) The Board may refer to a committee a complaint that there is proper cause for disciplinary action in respect of a person, for conciliation of the matter.
- (2) The committee is to commence conciliation procedures within 14 days of the complaint being referred to it under subsection (1).
- (3) The function of the committee as conciliator is to encourage the settlement of the matter by —
  - (a) communicating with the persons concerned, or their representatives;
  - (b) arranging discussions between the persons concerned, or their representatives, and assisting in those discussions;
  - (c) causing the persons concerned, or any of them or their representatives, either separately or together, to appear before the committee; and

- (d) giving advice and making recommendations to assist in the reaching of settlement.
- (4) The Board may, with the consent of each of the parties to a conciliation, by order give effect to a settlement negotiated under this Division.
- (5) If the Board makes an order under subsection (4) —
  - (a) the terms of the settlement reached between the parties referred to in the order are final and binding on those parties; and
  - (b) the order may include any matter that might have been ordered by the State Administrative Tribunal under section 57.
- (6) It is not a function of the Board or a committee of the Board to conduct an arbitration of a dispute.
- (7) Evidence of anything lawfully said or done, or any record prepared and produced for the purpose of conciliation, by a person in the course of the conciliation process is not to be used in any subsequent consideration of the complaint by the Board nor, unless that person waives the right to object, is it admissible in evidence against that person in any subsequent civil proceedings concerning the subject matter of the complaint.

**60. Action if conciliation fails**

- (1) Nothing in this Division prevents the Board from investigating a complaint if —
  - (a) the conciliation process fails to result in the settlement of the complaint;
  - (b) the Board is satisfied that the parties are not cooperating in relation to the conciliation process; or
  - (c) the Board is not satisfied with the result of the conciliation process.
- (2) If a member of a committee that was involved in a conciliation process in relation to a matter is a Board member, the member

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cannot take any further part in dealing with the matter after the conciliation process unless all parties agree to the member doing so.

## **Part 6 — Notifications and review**

### **61. Notice of decisions to affected persons**

- (1) Where the Board makes a decision to which this subsection applies, it is to record the reasons for the decision and, as soon as is practicable but in any case not later than 7 days after making the decision, is to give notice of the decision and the reasons to —
  - (a) the person to whom the decision relates; and
  - (b) the complainant, if any.
- (2) Subsection (1) applies to —
  - (a) the refusal of an application —
    - (i) to register a person;
    - (ii) to grant a licence;
    - (iii) to renew a registration or licence; or
    - (iv) to restore a name to the register;
  - (b) the removal of a name from the register under section 37(1) or 49;
  - (c) the imposition of a condition on a registration or renewal of a registration or on the grant or renewal of a licence otherwise than by consent; or
  - (d) a decision under section 12(2) to investigate a complaint or not to investigate a complaint.

### **62. Publication and records**

- (1) Unless the State Administrative Tribunal orders otherwise the Board may publish, in the manner and to the persons determined by the Board, notice of action taken, or a decision or order made, under this Act in relation to a registered person, a person who was a registered person, or a licensed corporation.
- (2) The Board is to ensure that a record is kept of each investigation and other action taken, and each decision and order made, under

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this Act in relation to a registered person, a person who was a registered person, or a licensed corporation.

**63. Review**

- (1) A person who is aggrieved by a decision referred to in section 61(2)(a) to (c) may apply to the State Administrative Tribunal for a review of the decision.
- (2) A person who is aggrieved by a decision under section 12(2) to investigate a complaint may apply to the State Administrative Tribunal for a review of the decision.

## **Part 7 — Offences**

### **64. False descriptions; pretending to be an architect**

- (1) A natural person, other than a registered person, must not —
  - (a) use a restricted word as part of the person's title or description;
  - (b) hold himself or herself out as being an architect, a person who practises architecture or a person who is qualified to practise architecture; or
  - (c) in any way imply that the person is an architect, a person who practises architecture or a person who is qualified to practise architecture.
  
- (2) A body corporate, other than a licensed corporation, must not —
  - (a) use a restricted word as part of its title or description;
  - (b) hold itself out as being an architect; or
  - (c) in any way imply that it is an architect.
  
- (3) A person must not —
  - (a) use a restricted word as part of the title or description of a firm;
  - (b) hold out a firm as comprising one or more architects; or
  - (c) in any way imply that a firm comprises one or more architects,

unless at least one of the members of the firm is a registered person or a licensed corporation.

Penalty applicable to subsections (1), (2) and (3):

\$5 000 for a first offence.

\$10 000 for a second or subsequent offence.

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**65. Name in which practice may be carried on; use of names**

(1) A registered person or a licensed corporation must not carry on the practice of architecture under any name other than the name of the person or corporation as recorded in the register unless the person or corporation —

- (a) has the written consent of the Board to do so; and
- (b) complies with each condition imposed by the Board in relation to the name of the practice.

Penalty: \$5 000.

(2) A licensed corporation must not use, in connection with an architectural service provided by the corporation, the name of —

- (a) a registered person who is not an officer, employee or partner of the licensed corporation; or
- (b) another licensed corporation which is not a partner of the first mentioned licensed corporation.

**66. Making or publishing certain statements or documents**

A person must not make or publish, or permit the making or publishing of, a statement or document that states or implies that that person, or another person, who or which is not registered or licensed —

- (a) is an architect;
- (b) practises as an architect; or
- (c) undertakes or is willing to undertake work as an architect.

Penalty: \$5 000.

**67. Falsely representing that work will be done by an architect**

(1) In this section —

*responsible person* —

- (a) in relation to a service provider that is a natural person, means that person;



- (b) in relation to a service provider that is a firm, means each partner of the firm;
- (c) in relation to a service provider that is a body corporate, means each officer of the body corporate;

***service provider*** means a natural person, firm or body corporate.

- (2) A person must not use a restricted word in relation to services offered by a service provider unless there is a reasonable likelihood that the work to be done by or on behalf of the service provider will be controlled and supervised by a registered person.
- (3) A person must not state or imply that work to be done by or on behalf of a service provider will be done or controlled and supervised by an architect, unless there is a reasonable likelihood that the work will be controlled and supervised by a registered person.
- (4) If —
  - (a) a restricted word is used in relation to services offered by a service provider or it is stated or implied that work to be done by or on behalf of a service provider will be done or controlled and supervised by an architect; and
  - (b) a responsible person for the service provider becomes aware of a reasonable likelihood that the work to be done by or on behalf of the service provider will not be controlled or supervised by any registered person,the responsible person must, as soon as practicable, ensure that the client is so informed.
- (5) A person who enters into a contract with a service provider in respect of whose services a restricted word is used or in respect of whose work it is stated or implied that the work will be done or controlled and supervised by an architect may, by notice in writing given to the service provider at any time before the completion of the contract, withdraw from the contract without

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being liable for damages for repudiation of the contract and despite any provision to the contrary in the contract, if —

- (a) there is no reasonable likelihood that the work, if not yet begun, will be controlled and supervised by a registered person; or
- (b) the work, if already begun, was not, or is not being, controlled and supervised by a registered person.

Penalty applicable to subsections (2), (3) and (4): \$5 000.

**68.        Certain conduct not in breach of this Act**

Despite sections 64 and 67, no offence is committed under this Act by reason only of the fact that —

- (a) a person designs, or superintends the erection of, a building;
- (b) a natural person describes himself or herself as an architect registered in a specified place other than Western Australia, if that person —
  - (i) is registered as an architect in that place;
  - (ii) is in Western Australia temporarily; and
  - (iii) does not design, or superintend the erection of, any building whilst in Western Australia;
- (c) a naval architect, landscape architect or golf course architect is described as such or that person's work is described as naval architecture, landscape architecture, or golf course architecture respectively;
- (d) an architectural drafter is described as such or that person's work is described as architectural drafting;
- (e) a person who provides technical or other support services to an architect is described as an architectural technician or assistant or the person's work is otherwise described in terms of providing a support service to an architect;

- (f) a restricted word is used in relation to the manufacture, supply or naming of products or materials for use in the practice of architecture or the construction of buildings;
- (g) a restricted word is used in the title or description of an educational institution in relation to the provision of education in architecture;
- (h) a restricted word is used in circumstances where the word is clearly not connected with the design and construction of buildings; or
- (i) a restricted word is used in circumstances of a kind prescribed by the regulations.

**69. False or misleading information**

- (1) A person must not do any of the things set out in subsection (2) —
  - (a) in relation to an application under this Act;
  - (b) in relation to the compliance, or purported compliance, with any requirement of this Act to give the Board advice or information; or
  - (c) in relation to an attempt at conciliation under section 59.Penalty: \$5 000.
- (2) The things to which subsection (1) applies are —
  - (a) making a statement which the person knows is false or misleading in a material particular;
  - (b) making a statement which is false or misleading in a material particular, with reckless disregard as to whether or not the statement is false or misleading in a material particular;
  - (c) providing, or causing to be provided, information that the person knows is false or misleading in a material particular; or
  - (d) providing, or causing to be provided, information that is false or misleading in a material particular, with reckless

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disregard as to whether the information is false or misleading in a material particular.

**70. False representations**

A person must not falsely represent any person as being the person referred to in a certificate of registration or licence document.

Penalty: \$5 000.

Note: There are also relevant offence provisions in *The Criminal Code* e.g. s. 409 (fraud), s. 488 (procuring or claiming unauthorised status), s. 513 (personation of a person named in a certificate) and s. 514 (lending certificate for personation).

## **Part 8 — Regulations and rules**

### **71. Regulations**

- (1) The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed, or are necessary or convenient to be prescribed, for giving effect to this Act.
- (2) Without limiting subsection (1) regulations may be made for all or any of the following purposes —
  - (a) providing for the nomination of persons for election and for the election of members of the Board under section 7(1)(c);
  - (b) regulating the meetings and proceedings of, and the conduct of business by, the Board or a committee;
  - (c) making provisions relating to registration and renewal of registration and licensing, including —
    - (i) applications for registration, licences and renewals; and
    - (ii) the obtaining of the Board's preliminary advice or directions in relation to a proposed application and for the recovery of the Board's costs in relation to providing that advice or giving those directions;
  - (d) maintaining the accuracy of the register;
  - (e) regulating the issue, display and use of certificates of registration and licence documents;
  - (f) making provisions relating to obtaining the Board's consent to a name, other than the name of a person or corporation as recorded in the register, under which a person or corporation can carry on the practice of architecture;
  - (g) prescribing the courses of study and training, including practical experience, to be undertaken, and the

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- examinations to be passed, by persons desiring to be registered, and determining the qualifications to be held by persons desiring to be registered under this Act;
- (h) providing for the Board to conduct examinations of applicants for registration or renewal of registration and for related matters including the appointment of examiners and their remuneration;
  - (i) prescribing the advice or information to be given to the Board, and the manner and time in which advice or information is to be given to the Board;
  - (j) prescribing the fees to be paid for the purposes of this Act and the persons liable for payment.
- (3) Without limiting the application of the *Interpretation Act 1984* section 43, regulations made under this Act may adopt wholly or partly any standards, rules, code, or other provisions published by some other body and may adopt them —
- (a) with or without any amendment or modification;
  - (b) as in force at the time of adoption or as amended from time to time.
- (4) Regulations made under this Act may provide for a penalty for contravention of the regulation or a provision of the regulation not exceeding a fine of \$5 000, in the case of an individual, or \$10 000 in any other case.

**72. Rules**

- (1) The Board may make rules providing for —
- (a) the manner of making to the Board any complaint against or concerning a person who is, or was, a registered person, and who may make such a complaint;
  - (b) procedures in relation to carrying out investigations; or
  - (c) procedures in relation to conciliation under section 59.

- (2) A rule made under subsection (1) has no effect unless and until it is confirmed by the Governor.
- (3) Nothing in subsection (2) affects the operation of Part VI of the *Interpretation Act 1984*.
- (4) Where a rule is inconsistent with a regulation the regulation prevails to the extent of the inconsistency.

## **Part 9 — Miscellaneous**

### **73. Recovery of fees**

Fees payable under this Act to the Board may be recovered by the Board in a court of competent jurisdiction.

### **74. Evidentiary**

In the absence of evidence to the contrary —

- (a) a certificate of registration is evidence that the person to whom the certificate is issued is registered for the period specified in the certificate; and
- (b) a licence document is evidence that the corporation to which the licence is issued is licensed for the period specified in the licence.

### **75. Legal proceedings**

- (1) Any proceedings for an offence under this Act, and any civil proceedings in which the Board is a party, may be taken in the name of the Board by the registrar or any other person authorised in that behalf by the Board.
- (2) All proceedings for offences under this Act are to be heard by a court of summary jurisdiction constituted by a magistrate.
- (3) In any proceedings no proof is required of —
  - (a) the appointment or election of a member of the Board or a committee; or
  - (b) the authorisation of a person under subsection (1),but an averment in a prosecution notice that the person is so appointed, elected or authorised is to be taken to be proved in the absence of evidence to the contrary.
- (4) Subsection (1) does not limit the ability of a person to commence or conduct a prosecution of an offence if the person has authority at law to do so.



- (5) In all courts and before all persons and bodies authorised to receive evidence, in the absence of evidence to the contrary —
- (a) a certificate purporting to be issued on behalf of the Board and stating —
    - (i) that a person was or was not registered or licensed;
    - (ii) any condition to which a person's registration or licence was subject;
    - (iii) that a person's registration or licence was suspended or cancelled;
    - (iv) that the name of a person or corporation is or is not entered in a particular division of the register, on any day or days or during a period mentioned in the certificate, is evidence of the matters so stated;
  - (b) a copy of, or extract from, the register or any statement that purports to reproduce matters entered in the register and that is certified by the registrar as a true copy, extract or statement, is evidence of the facts appearing in that copy, extract or statement; and
  - (c) it is to be presumed that a document purporting to have been signed by the registrar for the purposes of paragraph (b) was signed by the registrar.
- (6) This section is in addition to and does not affect the operation of the *Evidence Act 1906*.

*[Section 75 amended by No. 84 of 2004 s. 80.]*

**76. Liability of certain officers of body corporate: offences**

- (1) If a body corporate is charged with an offence under this Act, every person who was an officer of the body corporate at the time of the alleged offence may also be charged with the offence.

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- (2) If a body corporate and an officer are charged as permitted by subsection (1) and the body corporate is convicted of the offence, the officer is to be taken to have also committed the offence, subject to subsection (5).
- (3) If a body corporate commits an offence under this Act, then, although the body corporate is not charged with the offence, every person who was an officer of the body corporate at the time the offence was committed may be charged with the offence.
- (4) If an officer is charged as permitted by subsection (3) and it is proved that the body corporate committed the offence, the officer is to be taken to have also committed the offence, subject to subsection (5).
- (5) If under this section an officer is charged with an offence it is a defence to prove —
  - (a) that the offence was committed without the officer's consent or connivance; and
  - (b) that the officer took all the measures to prevent the commission of the offence that he or she could reasonably be expected to have taken having regard to the officer's functions and to all the circumstances.

**77. Liability of partners: offences**

- (1) If a person who is a partner in a firm is charged with an offence under this Act in relation to the firm, every person who was a partner in the firm at the time of the alleged offence may also be charged with the offence.
- (2) If a person and a partner are charged as permitted by subsection (1) and the person is convicted of the offence, the partner is to be taken to have also committed the offence, subject to subsection (5).
- (3) If a person who is a partner in a firm commits an offence under this Act, then, although the person is not charged with the

offence, every other person who was a partner in the firm at the time the offence was committed may be charged with the offence.

- (4) If a partner is charged as permitted by subsection (3) and it is proved that the person first mentioned in that subsection committed the offence, the partner is to be taken to have also committed the offence, subject to subsection (5).
- (5) If under this section a partner is charged with an offence it is a defence to prove —
  - (a) that the offence was committed without the partner's consent or connivance; and
  - (b) that the partner took all the measures to prevent the commission of the offence that he or she could reasonably be expected to have taken having regard to the partner's functions and to all the circumstances.

**78. Repeal of *Architects Act 1921*, savings and transitional provisions**

- (1) The *Architects Act 1921* is repealed.
- (2) The *Architects' Board of Western Australia By-laws 1965* are repealed.
- (3) Schedule 2 has effect in relation to the repeal effected by subsection (1).

**79. Consequential amendments to the *Constitution Acts Amendment Act 1899***

- (1) The amendments in this section are to the *Constitution Acts Amendment Act 1899*.
- (2) Schedule V Part 3 is amended in the item concerning the Architects Board by deleting “1921” and inserting instead —  
“ 2004 ”.

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**80.        Consequential amendment to the *Sentencing Act 1995***

- (1) The amendment in this section is to the *Sentencing Act 1995*.
- (2) Schedule 1 is amended by inserting in the appropriate alphabetical position the following item —

“

*Architects Act 2004*                      Architects Board of Western  
Australia

”.

**81.        Review of Act**

- (1) The Minister is to carry out a review of the operation and effectiveness of this Act as soon as is practicable after the expiration of 5 years from its commencement, and in the course of that review the Minister is to consider and have regard to —
  - (a) the effectiveness of the operations of the Board;
  - (b) the need for the continuation of the functions of the Board; and
  - (c) any other matters that appear to the Minister to be relevant to the operation and effectiveness of this Act.
- (2) The Minister is to prepare a report based on the review made under subsection (1) and as soon as is practicable after the preparation of the report, cause it to be laid before each House of Parliament.

## Schedule 1 — Constitution and proceedings of the Board

[s. 8]

### Division 1 — General provisions

#### 1. Terms of office of Board members

- (1) Subject to clause 3 —
- (a) a Board member appointed under section 7(1)(a) or (b) holds office for the period (not exceeding 2 years) that is specified in the member's instrument of appointment; or
  - (b) an elected Board member holds office for the period (not exceeding 2 years) for which the member was elected,

and is eligible (if otherwise qualified) for reappointment or re-election.

- (2) A Board member whose term of office expires by the passage of time without a person having been appointed or elected to fill the vacancy continues in office until —
- (a) a person is appointed or elected to fill the vacancy; or
  - (b) a period of 3 months elapses after the expiry of the period of office,

whichever occurs first.

#### 2. Vacancy in the office of an elected member

Whenever the office of an elected Board member is vacant or is due to become vacant an election is to be conducted among registered persons in accordance with the regulations to elect a person to fill the vacancy.

#### 3. Resignation, removal etc.

- (1) The office of a Board member becomes vacant if the member —
- (a) resigns the office by written notice addressed to the Minister;
  - (b) becomes ineligible to hold office as a member;
  - (c) is an elected member and ceases to be a registered person;

**Architects Act 2004**

Schedule 1 Constitution and proceedings of the Board

Division 1 General provisions

**cl. 4**

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- (d) is an insolvent under administration, as that term is defined in the Corporations Act; or
  - (e) is removed from office by the Minister under subclause (2).
- (2) The Minister may remove a Board member from office for —
- (a) misbehaviour or incompetence;
  - (b) mental or physical incapacity, other than temporary illness, impairing the performance of the member's functions under this Act; or
  - (c) absence, without leave or reasonable excuse, from 3 consecutive meetings of the Board of which the member has had notice.
- (3) In subclause (2)(a) —
- misbehaviour* includes conduct that renders the member unfit to hold office even though the conduct does not relate to any function of the office.

**4. Chairperson and deputy chairperson**

- (1) The chairperson and the deputy chairperson of the Board are to be elected by the Board from its members.
- (2) The Board may remove a person from the office of chairperson or deputy chairperson of the Board at any time.
- (3) The office of chairperson or deputy chairperson of the Board becomes vacant if the holder of the office —
- (a) resigns the office by written notice addressed to the Board;
  - (b) ceases to be a Board member; or
  - (c) is removed from the office by the Board under subclause (2).
- (4) The deputy chairperson is to perform the functions of the chairperson —
- (a) when the chairperson is unable to act because of illness, absence or other cause; or
  - (b) during any vacancy in the office of chairperson.

**5. Leave of absence**

The Board may grant leave of absence to a Board member on the terms and conditions determined by the Board.

**6. Board member temporarily unable to act**

- (1) The Minister may appoint a person to act temporarily in the place of a Board member, other than the chairperson or an elected member, when the Board member is unable to act because of illness, absence or other cause.
- (2) A person who is to act temporarily in the place of a member appointed under section 7(1)(a) is to be suitable to represent the respective interests referred to in that provision.
- (3) A person who is to act temporarily in the place of a member appointed under section 7(1)(b) is to be selected from the nominations that were provided to the Minister under section 7(2) for the purpose of appointing the member.
- (4) The Board may appoint a registered person, who is suitable to represent the interests of registered persons, to act temporarily in the place of an elected member when the member is unable to act because of illness, absence or other cause.
- (5) A person who acts in the place of a Board member is to be regarded as a Board member while the person is acting in accordance with the terms of the person's appointment.
- (6) The Minister may, at any time, terminate the appointment of a person to act in the place of a Board member other than the chairperson or an elected member.
- (7) The Board may, at any time, terminate the appointment of a person to act in the place of an elected member.

**7. Saving**

No act or omission of a person acting in place of another under clause 4 or 6 is to be questioned on the ground that the occasion for the person's appointment or acting had not arisen or had ceased.

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Schedule 1 Constitution and proceedings of the Board

Division 1 General provisions

**cl. 8**

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**8. Calling of meetings**

- (1) Subject to subclause (2), meetings of the Board are to be held at the times and places that the Board determines.
- (2) A special meeting of the Board may at any time be convened by the chairperson.

**9. Presiding officer**

- (1) The chairperson is to preside at all meetings of the Board at which the chairperson is present.
- (2) If both the chairperson and the deputy chairperson are absent from a meeting the members present are to appoint one of their number to preside.

**10. General procedures**

Subject to this Act, the Board may determine its own procedures for the calling of meetings of the Board and for the conduct of business at those meetings.

**11. Quorum**

The quorum for a meeting of the Board is at least 5 members.

**12. Voting**

- (1) At any meeting of the Board each member present has a deliberative vote.
- (2) The person presiding at a meeting of the Board has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.
- (3) To have effect —
  - (a) a decision of the Board to register a person or to grant a licence to a corporation must be supported by at least 5 members; and
  - (b) any other decision of the Board must be supported by a majority of the votes cast at a meeting of the Board at which a quorum is present.



**13. Minutes**

The Board is to cause accurate minutes to be kept of the proceedings at each of its meetings and each meeting of its committees.

**14. Resolution without meeting**

A resolution in writing signed by each member of the Board or assented to by each member by letter, facsimile transmission, electronic mail or other written means has effect as if it had been passed at a meeting of the Board.

**15. Holding meetings remotely**

The presence of a person at a meeting of the Board need not be by attendance in person but may be by that person and each other person at the meeting being simultaneously in contact by telephone, or other means of instantaneous communication.

**16. Committees of the Board**

- (1) The Board may, from time to time, appoint committees to assist it in the performance of its functions, and may discharge or alter any committee so appointed.
- (2) A committee may include persons who are not members of the Board but must include at least one person who is a member of the Board or the registrar or another member of staff of the Board.
- (3) Subject to this Act and to any directions of the Board, a committee may determine its own procedures for the calling of meetings of the committee and for the conduct of business at those meetings.

**Division 2 — Disclosure of interests, etc.**

**17. Meaning of “member”**

In this Part —

*member* means a member of the Board or a member of a committee.

**18. Disclosure of interests**

- (1) A member who has a material personal interest in a matter being considered or about to be considered by the Board must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Board.

Penalty: \$5 000.

- (2) A disclosure under subclause (1) is to be recorded in the minutes of the meeting.

**19. Voting by interested members**

A member who has a material personal interest in a matter that is being considered by the Board —

- (a) must not vote whether at a meeting or otherwise —
- (i) on the matter; or
  - (ii) on a proposed resolution under clause 20 in respect of the matter, whether relating to that member or a different member;

and

- (b) must not be present while —
- (i) the matter; or
  - (ii) a proposed resolution of the kind referred to in paragraph (a)(ii),

is being considered at a meeting.

**20. Clause 19 may be declared inapplicable**

Clause 19 does not apply if the Board has at any time passed a resolution that —

- (a) specifies the member, the interest and the matter; and
- (b) states that the members voting for the resolution are satisfied that the interest should not disqualify the member from considering or voting on the matter.

**21. Quorum where clause 19 applies**

- (1) Despite clause 11, if a member of the Board is disqualified under clause 19 in relation to a matter, a quorum is present during the consideration of the matter if at least 4 members are present who are entitled to vote on any motion that may be moved at the meeting in relation to the matter.
- (2) The Minister may deal with a matter in so far as the Board cannot deal with it because of subclause (1).

**22. Minister may declare clauses 19 and 21 inapplicable**

- (1) The Minister may by writing declare that clause 19 or 21 or both of them do not apply in relation to a specified matter either generally or in voting on particular resolutions.
- (2) The Minister must cause a copy of a declaration made under subclause (1) to be laid before each House of Parliament within 14 sitting days of that House after the declaration is made.

## Schedule 2 — Savings and transitional provisions

[s. 78(3)]

### 1. Terms used in this Schedule

In this Schedule —

*commencement* means the commencement of this Act;

*the former Board* means The Architects' Board of Western Australia established under the repealed Act;

*the new Board* means Architects Board of Western Australia established under this Act;

*the repealed Act* means the *Architects Act 1921*.

### 2. Interpretation Act 1984 not affected

The provisions of this Schedule do not prejudice or affect the application of the *Interpretation Act 1984* to and in relation to the repeal effected by section 78(1).

### 3. Board (body corporate) continues

(1) The new Board is the same entity as, and a continuation of, the former Board, and the rights and liabilities of or in relation to the former Board continue as rights and liabilities of or in relation to the new Board.

(2) If in a written law or other document or instrument there is —

- (a) a reference to the former Board; or
- (b) a reference that is read and construed as a reference to the former Board,

the reference may, where the context so requires, be read as if it had been amended to be a reference to the new Board.

(3) If in a written law or other document or instrument there is —

- (a) a reference to the chairman or member of the former Board;
- or

- (b) a reference that is read and construed as a reference to the chairman or a member of the former Board,

the reference may, where the context so requires, be read as if it had been amended to be a reference to the chairperson or a member of the new Board.

#### **4. Membership of new Board**

- (1) The persons who, immediately before commencement, were members of the former Board go out of office as members of the Board on commencement.
- (2) Despite Schedule 1 clause 1(1)(a), in the case of the first 4 members of the new Board appointed under section 7(1)(a) —
- (a) 2 members are to be appointed to hold office for 2 years; and
  - (b) 2 members are to be appointed to hold office for 1 year.
- (3) Despite Schedule 1 clause 1(1)(a), in the case of the first 2 members of the new Board appointed under section 7(1)(b) —
- (a) one member is to be appointed to hold office for 2 years; and
  - (b) one member is to be appointed to hold office for 1 year.
- (4) Despite section 7(1)(b), the Minister is to appoint the first 2 members of the new Board under that paragraph from at least 4 nominations of the Royal Australian Institute of Architects (WA Chapter) and section 7(4) applies as if that body were prescribed by the regulations for the purposes of section 7(1)(b).
- (5) Despite Schedule 1 clause 1(1)(b), in the case of the first 4 members of the new Board to be elected under section 7(1)(c) —
- (a) 2 members are to be elected to hold office for 2 years; and
  - (b) 2 members are to be elected to hold office for 1 year.
- (6) Despite the repeal effected by section 78(1), the First Schedule to the repealed Act continues to have effect for the purposes of the first election of members of the new Board under section 7(1)(c) and, for that purpose, references in that Schedule to “the Board” are to be regarded as references to the first 4 members of the new Board appointed under section 7(1)(a) and the first 2 members of the new Board appointed under section 7(1)(b).

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**5. Registrar and other staff**

- (1) The registrar of the former Board who held office immediately before commencement continues in office, under and subject to this Act, as the registrar of the new Board.
- (2) The other officers of the former Board who held office immediately before commencement continue in office, under and subject to this Act, as officers of the new Board.
- (3) A person mentioned in subclause (1) or (2) is to be regarded as having been employed or engaged, as is relevant to the terms of the person's appointment, under this Act.
- (4) Except as otherwise agreed by a person mentioned in subclause (1) or (2), the remuneration, existing or accrued rights, rights under a superannuation scheme or continuity of service of the person are not affected, prejudiced or interrupted by the operation of subclause (1) or (2) or the repeal of the *Architects Act 1921*.
- (5) The rights under a superannuation scheme of a person who was a registrar or officer of the former Board are not affected, prejudiced or interrupted by the repeal of the *Architects Act 1921*.

**6. Persons registered under repealed Act**

- (1) The registration of a natural person who immediately before commencement was registered under the repealed Act continues, under and subject to this Act, as a registration under this Act —
  - (a) until 31 December in the year of commencement or for a longer period that is prescribed by the regulations; and
  - (b) on the same terms as applied under the repealed Act to the registration.
- (2) A person mentioned in subclause (1) is to be regarded as having been registered under this Act.
- (3) The registration of a corporation that immediately before commencement was registered under the repealed Act continues, under and subject to this Act, as a licence under this Act —
  - (a) until 31 December in the year of commencement or for a longer period that is prescribed by the regulations; and

(b) on the same terms as applied under the repealed Act to the registration.

(4) A corporation mentioned in subclause (3) is to be regarded as having been licensed under this Act.

**7. Register**

The register under the repealed Act as it exists immediately before commencement continues, under and subject to this Act, as the register under this Act.

**8. Certificates under repealed Act**

(1) A certificate of registration that was issued under the repealed Act to a natural person and that is in effect immediately before commencement continues, under and subject to this Act, as a certificate of registration for the purposes of this Act and has effect until 31 December in the year of commencement or for a longer period that is prescribed by the regulations.

(2) A certificate of registration that was issued under the repealed Act to a corporation and that is in effect immediately before commencement continues, under and subject to this Act, as a licence document for the purposes of this Act and has effect until 31 December in the year of commencement or for a longer period that is prescribed by the regulations.

**9. Transitional provision as to applications for registration**

(1) An application by a natural person for registration under the repealed Act that is not finalised before commencement is to be dealt with as if sections 14, 14A, 14C and 15 of the repealed Act had not been repealed by this Act.

(2) An application by a corporation for registration under the repealed Act that is not finalised before commencement is to be dealt with as if the application had been made under section 33(1) for the grant of a licence to the corporation.

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**10. First annual report**

- (1) In its first annual report under section 28 the new Board is also to report on the proceedings of the former Board for the period from 1 January in the preceding year to commencement.
- (2) Subclause (1) does not apply to the extent that the former Board has reported under section 35 of the repealed Act on those proceedings.

**11. Powers in relation to transitional provisions**

If there is no sufficient provision in this Schedule for dealing with a transitional matter the Governor may make regulations prescribing all matters that are required, necessary or convenient to be prescribed in relation to that matter.



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## Notes

- <sup>1</sup> This is a compilation of the *Architects Act 2004* and includes the amendments made by the other written laws referred to in the following table.

### Compilation table

Short title	Number and year	Assent	Commencement
<i>Architects Act 2004</i>	75 of 2004	8 Dec 2004	16 Nov 2005 (see s. 2 and <i>Gazette</i> 15 Nov 2005 p. 5597)
<i>Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004</i> s. 80 and 82	84 of 2004	16 Dec 2004	2 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7129 (correction in <i>Gazette</i> 7 Jan 2005 p. 53))
<a href="#"><u><i>Statutes (Repeals and Miscellaneous Amendments) Act 2009</i></u></a> <a href="#"><u>s. 21</u></a>	<a href="#"><u>8 of 2009</u></a>	<a href="#"><u>21 May 2009</u></a>	<a href="#"><u>22 May 2009 (see s. 2(b))</u></a>