



Australian Capital Territory

Architects Act 2004

A2004-20

Contents

| | Page |
|---|------|
| Part 1 | |
| Preliminary | |
| 1 Name of Act | 2 |
| 2 Commencement | 2 |
| 3 Dictionary | 2 |
| 4 Notes | 2 |
| 5 Offences against Act—application of Criminal Code etc | 3 |
| Part 2 | |
| Objects and important concepts for Act | |
| 6 Objects | 4 |
| 7 Meaning of <i>architectural service</i> for Act | 4 |

| | Page |
|---------------------|--|
| Part 3 | Registration |
| Division 3.1 | Registration of architects |
| 8 | Eligibility for registration 5 |
| 9 | Decision on registration application 6 |
| 10 | Registration conditions 7 |
| 11 | Inclusion of details in register 8 |
| 12 | Term of registration 9 |
| Division 3.2 | Architects register |
| 13 | Registrar 9 |
| 14 | Board to keep register 9 |
| 15 | Exception to public inspection 10 |
| 16 | Correction of errors 10 |
| 17 | Information may be shared 11 |
| 18 | Notice of intention to remove from register 11 |
| 19 | Requirement to remove register information 11 |
| 20 | Register information may be removed 12 |
| Division 3.3 | Nominees |
| 21 | Meaning of <i>mandatory requirement</i> for div 3.3 13 |
| 22 | Appointment of nominees 13 |
| 23 | Only nominee is primary nominee 14 |
| 24 | Primary nominee in partnership 14 |
| 25 | Primary nominee in corporation 14 |
| 26 | Change of primary nominee 15 |
| 27 | When person no longer nominee 15 |
| 28 | Nominee's resignation 15 |
| 29 | Revocation of nominee's appointment 15 |
| 30 | Role of nominees 16 |
| 31 | Legislation Act and nominee appointments 17 |
| 32 | Firm to tell board about nominee ceasing 17 |
| Part 4 | Complaints |
| 33 | Meaning of <i>architect</i> for pt 4 18 |
| 34 | Who may complain? 18 |

| | Page |
|--|---|
| 35 | Form of complaint 18 |
| 36 | Withdrawal of complaints 19 |
| 37 | Further information about complaint etc 19 |
| 38 | Investigation of complaint 20 |
| 39 | No further action on complaint 20 |
| 40 | Action after investigating complaint 20 |
| | |
| Part 5 | Disciplinary matters |
| Division 5.1 Disciplinary proceedings | |
| 41 | Meaning of <i>architect</i> for pt 5 22 |
| 42 | Disciplinary grounds 22 |
| 43 | When disciplinary notice may be given 23 |
| 44 | Disciplinary notices 23 |
| 45 | Decision about disciplinary action 23 |
| 46 | Disciplinary action 24 |
| 47 | Public notice of disciplinary action 25 |
| 48 | Giving local registering authorities information about certain disciplinary action 26 |
| | |
| Division 5.2 Disciplinary inquiries | |
| 49 | Notice of inquiry 27 |
| 50 | Inquiry procedure 27 |
| 51 | Evidence at inquiry 28 |
| 52 | Legal representation at inquiry 28 |
| 53 | Board may require appearance, information or documents 28 |
| 54 | Confidentiality and client communications 29 |
| 55 | Witness expenses 29 |
| | |
| Part 6 | Offences |
| 56 | Individual not registered or nominee for pt 6 31 |
| 57 | Individual pretending to be registered 31 |
| 58 | Firm offering architectural services without nominee 31 |
| 59 | Unregistered individual advertising 32 |
| 60 | Individual advertising without details 32 |
| 61 | Firm advertising without details 33 |

Contents

| | Page |
|--|------|
| 62 Firm's business correspondence without required details | 34 |
| 63 Provision of architectural services by third party | 35 |
| Part 7 Architects board | |
| Division 7.1 Establishment and functions of board | |
| 64 Establishment of board | 36 |
| 65 Board functions | 36 |
| 66 Exercise of board functions | 37 |
| 67 Annual report by board | 37 |
| 68 Ministerial directions to board | 38 |
| 69 Board to comply with directions under s 68 | 39 |
| Division 7.2 Board members | |
| 70 Board membership | 39 |
| 71 Term of board member appointments | 40 |
| 72 Board chairperson and deputy chairperson | 40 |
| 73 Disclosure of interests by board members | 40 |
| 74 Ending appointment of board member | 42 |
| Division 7.3 Board proceedings | |
| 75 Calling board meetings | 42 |
| 76 Board procedures | 43 |
| Division 7.4 Board committees | |
| 77 Establishment of committees | 43 |
| 78 Exercise of committee functions | 43 |
| 79 Membership of committees | 44 |
| 80 Reimbursement for committee members | 44 |
| Part 8 Protection and information | |
| 81 Definitions for pt 8 | 45 |
| 82 Protection of participants and people reporting | 45 |
| 83 Protection of officials | 45 |
| 84 Secrecy | 45 |

| | Page | |
|-------------------|---|----|
| Part 9 | Review of decisions | |
| 85 | Reviewable decisions | 48 |
| 86 | Review of decisions | 48 |
| Part 10 | Miscellaneous | |
| 87 | Board examinations | 49 |
| 88 | Code of professional conduct | 49 |
| 89 | Registered architect to give evidence of insurance | 49 |
| 90 | Evidentiary certificates | 51 |
| 91 | Determination of fees | 51 |
| 92 | Approved forms | 51 |
| 93 | Regulation-making power | 52 |
| Part 11 | Transitional | |
| 94 | Meaning of <i>repealed Act</i> for pt 11 | 53 |
| 95 | Legislation repealed | 53 |
| 96 | Members of architects board | 53 |
| 97 | Architects registered under repealed Act | 53 |
| 98 | Suspended registration | 54 |
| 99 | Inquiry under repealed Act | 54 |
| 100 | Disciplinary grounds for s 42 | 55 |
| 101 | Appeals under repealed Act | 55 |
| 102 | New regulations | 55 |
| 103 | Transitional regulations | 56 |
| 104 | Building and Construction Industry Training Levy Regulations 2001, regulation 3 (1) (b) | 56 |
| 105 | Expiry of pt 11 | 56 |
| Schedule 1 | New regulations | 57 |
| Dictionary | | 68 |



Australian Capital Territory

Architects Act 2004

A2004-20

An Act about the provision of architectural services, and for other purposes

The Legislative Assembly for the Australian Capital Territory enacts as follows:

Part 1 Preliminary

1 Name of Act

This Act is the *Architects Act 2004*.

2 Commencement

This Act commences on 1 July 2004.

Note The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

3 Dictionary

The dictionary at the end of this Act is part of this Act.

Note 1 The dictionary at the end of this Act defines certain terms used in this Act, and includes references (*signpost definitions*) to other terms defined elsewhere.

For example, the signpost definition '*architects board*—see section 64.' means that the term 'architects board' is defined in that section.

Note 2 A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see Legislation Act, s 155 and s 156 (1)).

4 Notes

A note included in this Act is explanatory and is not part of this Act.

Note See Legislation Act, s 127 (1), (4) and (5) for the legal status of notes.

5 Offences against Act—application of Criminal Code etc

Other legislation applies in relation to offences against this Act.

Note 1 Criminal Code

The Criminal Code, ch 2 applies to all offences against this Act (see Code, pt 2.1).

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg *conduct*, *intention*, *recklessness* and *strict liability*).

Note 2 Penalty units

The Legislation Act, s 133 deals with the meaning of offence penalties that are expressed in penalty units.

Part 2 Objects and important concepts for Act

6 Objects

- (1) The objects of this Act include the following:
 - (a) to establish a board to regulate the provision of architectural services by architects;
 - (b) to ensure that architects provide services to the public professionally and competently;
 - (c) to provide ways to discipline architects who are found to have acted unprofessionally or incompetently;
 - (d) to ensure that the public has access to information about the qualifications and competence of architects;
 - (e) to establish a register of architects to provide that information.
- (2) In this section:

architect means a registered person.

7 Meaning of *architectural service* for Act

- (1) In this Act:

architectural service means a service provided in connection with the design, planning or construction of buildings that is ordinarily provided by architects.
- (2) The regulations may prescribe services that are, and are not, architectural services.

Part 3 **Registration**

Division 3.1 **Registration of architects**

*Note about application of the Mutual Recognition Act 1992 (Cwlth) and the Trans-Tasman Mutual Recognition Act 1997 (Cwlth) (the **Commonwealth Acts**)*

The Commonwealth Acts allow people registered in certain occupations in a local jurisdiction to carry on the occupations in another local jurisdiction and set out the method of applying for registration in the ACT or a local jurisdiction. The requirements for registration under this Act cannot validly require anything of people being registered under the Commonwealth Acts that would be inconsistent with those Acts. Accordingly, provisions of this part, such as the requirements for applications, do not apply to the registration of people under the Commonwealth Acts. Also, the Commonwealth Acts set out when conditions may be placed on people registered under those Acts by a registration board. For more information, see the Commonwealth Acts.

8 **Eligibility for registration**

- (1) An individual is eligible to be registered if the individual has relevant expertise and relevant experience.
- (2) An individual has *relevant expertise* if the individual—
 - (a) has—
 - (i) a qualification prescribed under the regulations; or
 - (ii) successfully completed a course of study accredited by the architects board; or
 - (iii) qualifications gained outside Australia that the board is satisfied are adequate to allow the individual to practise architecture in the ACT; and
 - (b) has passed an examination arranged or approved by the board to assess the person's competence to practise architecture.
- (3) An individual has *relevant experience* if—

- (a) the individual has at least 2 years practical experience in the practice of architecture, of which—
 - (i) at least 1 year is postgraduate experience; and
 - (ii) at least 1 year is in Australia; and
- (b) the architects board is satisfied that the period and kind of practise are adequate to allow the individual to competently practise architecture in the ACT.

Example for par (a)

a person worked as an undergraduate in architectural services in Brussels for 18 months, then graduated and worked providing architectural services for 1 year in Melbourne

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (4) The architects board may, in writing, accredit a course for subsection (2) (a) (ii).
- (5) An accreditation is a notifiable instrument.

Note A notifiable instrument must be notified under the Legislation Act.

9 Decision on registration application

- (1) If an individual applies for registration, the architects board must register, or refuse to register, the individual.
- (2) The architects board must refuse to register the individual as an architect if—
 - (a) the board is not satisfied that the applicant is eligible to be registered; or
 - (b) the individual is disqualified from applying for registration.

Note An individual may be disqualified from applying for registration under s 46 (1) (g) or (h).

- (3) The architects board may refuse to register the individual if, because of a relevant circumstance in relation to the individual, the board is satisfied that the public interest will or might be endangered if the individual is allowed to practice architecture in the ACT.
- (4) Each of the following is a *relevant circumstance* in relation to an individual:
- (a) the individual is bankrupt, is applying to take the benefit of any law for the relief of bankrupt or insolvent debtors, is compounding with creditors or making an assignment of remuneration for the benefit of creditors;
 - (b) the individual has been convicted or found guilty of an offence against this Act;
 - (c) the individual has been convicted or found guilty of an offence against a Commonwealth, Territory or State law punishable by imprisonment for 1 year or longer;
 - (d) the individual's registration (however described) under the corresponding law of a local jurisdiction has been cancelled or suspended because of an act or omission of the individual that would, if the individual were registered in the ACT and the act or omission had happened here, have allowed the individual's registration to be cancelled or suspended.

Note *Corresponding law*—see dict.

- (5) To remove any doubt, the architects board may only register an individual.
- (6) Registration may be conditional.

10 **Registration conditions**

- (1) The architects board may put a condition on a person's registration—
- (a) on registration; or

(b) when the registration is renewed.

Note A condition may also be put on a person's registration because of disciplinary action taken against the person (see s 46 (1) (c)).

(2) A condition on registration may relate to—

- (a) the term of the registration; or
- (b) the kind of architecture the person is registered to practise; or
- (c) anything else relating to the practice of architecture that the architects board considers appropriate.

(3) In considering whether to place a condition on a person's registration, the architects board must take into consideration the following:

- (a) any relevant experience;
- (b) any history of complaints about the person's conduct in relation to the provision of architectural services;
- (c) any disciplinary action taken in relation to the person under this Act or a corresponding Act of a local jurisdiction;
- (d) the need to protect the public from harm, for example, by limiting the public's exposure to a financially insecure provider of architectural services.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

11 Inclusion of details in register

- (1) If the architects board registers a person, the board must include in the register details of the person's registration.
- (2) The regulations may prescribe the details required to be included in the register on registration.

12 Term of registration

- (1) Registration is for 1 year.
- (2) However, a condition on a person's registration may provide a shorter registration period.

Division 3.2 Architects register

13 Registrar

- (1) The chief executive must appoint a public servant as registrar.

Note 1 For the making of appointments (including acting appointments), see Legislation Act, pt 19.3.

Note 2 In particular, a person may be appointed for a particular provision of a law (see Legislation Act, s 7 (3)) and an appointment may be made by naming a person or nominating the occupant of a position (see s 207).

- (2) The registrar is responsible for managing the administration of the architects board and maintaining the register.
- (3) The registrar must exercise a function under subsection (2) in accordance with any direction from the architects board.

14 Board to keep register

- (1) The architects board must keep a register (the *register*) that allows the public to get information about who is registered to provide architectural services in the ACT.
- (2) The register may be kept in any form, including electronically, that the architects board decides.
- (3) The register may be kept in 1 or more parts, as the architects board considers appropriate.
- (4) The register must be open for free inspection by the public at reasonable times.

Example

the register may be available on a website

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (5) This section is subject to section 15.

15 Exception to public inspection

- (1) This section applies to a decision of the architects board to take disciplinary action against a person.
- (2) A matter included in the register in relation to the disciplinary action may be open for public inspection under section 14 only if—
- (a) the time for any review of the decision has ended and no application for appeal or review has been made; or
 - (b) an application for review has been made, the decision has been confirmed on review and the time for further appeal has ended.
- (3) If the decision has been reversed or set aside, a matter included in the register in relation to the decision must not be open for public inspection.
- (4) If the decision has been changed (for example, by substitution), this section applies to a matter included in the register in relation to the decision as changed.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

16 Correction of errors

With the approval of the architects board, the registrar may correct a mistake, error or omission in the register.

17 Information may be shared

Information on the register, including information that is not available for public inspection, may be given to a local registering authority for use as part of a joint register of architects between local jurisdictions.

Note **Local registering authority**—see dict.

18 Notice of intention to remove from register

- (1) This section applies if the architects board intends to remove someone's details from the register under section 19 (2) or section 20.
- (2) The architects board must not remove the person's details unless the board has—
 - (a) given the person written notice of the board's intention to take action; and
 - (b) taken into consideration any response received from the person in accordance with the notice.
- (3) A notice under subsection (2) (a) must—
 - (a) state the action the architects board intends to take; and
 - (b) tell the person why the board intends to take the action; and
 - (c) tell the person that he or she may, within 12 business days after the day the person is given the notice, give a written response to the board about the matters in the notice.

19 Requirement to remove register information

- (1) The architects board must remove from the register details of a person's registration if—
 - (a) the person dies; or
 - (b) the person asks for the person's registration to be cancelled; or

- (c) the person is no longer registered (for example, if the person fails to renew registration or pay for renewal); or
- (d) the person's registration is cancelled.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (2) The architects board must remove from the register details of a person's registration if the board is satisfied that—
 - (a) the person has become mentally or physically incapacitated and the incapacity affects the person's ability to provide architectural services; or
 - (b) the person is not eligible to be registered.
- (3) However, the architects board must not remove a person's details under subsection (2) until 15 business days after the day the person is given notice of the intention to remove the details under section 18.

20 Register information may be removed

- (1) The architects board may remove from the register details of a person's registration if—
 - (a) the person becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of remuneration for the benefit of creditors; or
 - (b) the person is convicted or found guilty of an offence against a Commonwealth, Territory or State law punishable by imprisonment for 1 year or longer.
- (2) However, the architects board must not remove a person's details under subsection (1) until 15 business days after the day the person is given notice of the intention to remove the details under section 18.

Division 3.3 Nominees

21 Meaning of *mandatory requirement* for div 3.3

In this division:

mandatory requirement, of a nominee of a firm, means a written requirement by the nominee that the firm do something, or not do something, to comply with this Act.

22 Appointment of nominees

- (1) A firm may, in writing given to the architects board, appoint an eligible person to be a nominee for the firm.
- (2) The appointment must state—
 - (a) that the person appointed is nominee in relation to all architectural services provided by the firm and is the primary nominee; or
 - (b) if there is, or is to be, more than 1 nominee for the firm—
 - (i) the services in relation to which the person appointed is to be nominee; and
 - (ii) the name of the primary nominee.
- (3) The appointment must also include the details of the person's eligibility to be a nominee.
- (4) For subsection (1), a person is *eligible* to be a nominee for a firm if the person—
 - (a) is registered; and
 - (b) is a director or partner in the firm, or employed by the firm; and
 - (c) agrees in writing to the appointment.

- (5) A firm may change the architectural services for which a nominee is responsible by written notice to the nominee and the architects board.

23 Only nominee is primary nominee

If a firm has only 1 nominee, the nominee is the firm's primary nominee.

24 Primary nominee in partnership

- (1) This section applies if a firm that is a partnership has more than 1 nominee.
- (2) If only 1 nominee is a partner in the firm, that nominee is the firm's primary nominee.
- (3) If more than 1 nominee is a partner in the firm, the firm must nominate 1 nominee who is a partner to be the firm's primary nominee.
- (4) If no nominee is a partner, the firm must nominate a nominee to be the firm's primary nominee.

25 Primary nominee in corporation

- (1) This section applies if a firm that is a corporation has more than 1 nominee.
- (2) If only 1 nominee is a director of the firm, that nominee is the firm's primary nominee.
- (3) If more than 1 nominee is a director of the firm, the firm must nominate 1 nominee who is a director to be the firm's primary nominee.
- (4) If no nominee is a director, the firm must nominate a nominee to be the firm's primary nominee.

26 Change of primary nominee

A firm may change its primary nominee by written notice to the architects board.

27 When person no longer nominee

A nominee of a firm automatically stops being a nominee if the nominee ceases to be eligible to be a nominee.

28 Nominee's resignation

- (1) A nominee of a firm may resign his or her appointment only with the architects board's approval.
- (2) The architects board may approve the resignation of the nominee only if satisfied that—
 - (a) the firm has refused to comply with a mandatory requirement of the nominee; or
 - (b) the nominee cannot exercise his or her functions because of mental or physical incapacity; or
 - (c) the nominee, or firm that appointed the nominee, has arranged for another nominee to take over the nominee's functions; or
 - (d) it is otherwise appropriate to approve the resignation.

29 Revocation of nominee's appointment

- (1) A firm may revoke a nominee's appointment only with the architects board's approval.
- (2) The architects board may approve the revocation of the nominee's appointment only if satisfied that—
 - (a) the nominee cannot exercise his or her functions because of mental or physical incapacity; or
 - (b) the nominee, or firm that appointed the nominee, has arranged for another nominee to take over the nominee's functions; or

(c) it is otherwise appropriate to approve the resignation.

30 Role of nominees

- (1) A nominee of a firm has the function of ensuring that the architectural services for which the nominee is responsible (the *relevant architectural services*) comply with this Act.
- (2) The nominee commits an offence if—
 - (a) the nominee has been given a copy of the nominee's appointment and any change to the appointment; and
 - (b) the nominee fails to ensure that the relevant architectural services comply with this Act.

Maximum penalty: 50 penalty units.

Note A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including regulations (see Legislation Act, s 104).

- (3) Subsection (2) does not apply to a failure of a nominee of a firm if—
 - (a) the nominee had given the nominee's firm a mandatory requirement in relation to the matter that made up the failure; and
 - (b) the nominee had given the architects board a copy of the mandatory requirement; and
 - (c) the failure would not have happened if the mandatory requirement had been complied with.
- (4) A firm that is a corporation commits an offence if a nominee of the firm fails to ensure that the relevant architectural services comply with this Act.

Maximum penalty: 50 penalty units.

- (5) A partner in a firm that is a partnership commits an offence if a nominee of the firm fails to ensure that the relevant architectural services comply with this Act.

Maximum penalty: 50 penalty units.

- (6) It is a defence to a prosecution for an offence for contravening subsection (5) if the partner proves—
- (a) that—
- (i) the partner did not know about the failure; and
- (ii) reasonable precautions were taken and appropriate diligence was exercised to avoid the failure; or
- (b) that the partner was not in a position to influence the other partners in relation to the architectural services or their supervision.
- (7) An offence against this section is a strict liability offence.

31 Legislation Act and nominee appointments

The Legislation Act, part 19.3 (Appointments) does not apply to the appointment of a nominee.

32 Firm to tell board about nominee ceasing

- (1) This section applies if a nominee of a firm ceases to be the firm's nominee other than because the nominee resigns or the nominee's appointment is revoked.
- (2) The firm must tell the architects board in writing about the nominee ceasing within 1 week after the day the nominee ceases to be nominee.

Maximum penalty: 50 penalty units.

- (3) An offence against this section is a strict liability offence.

Part 4 Complaints

33 Meaning of *architect* for pt 4

In this part:

architect, in relation to an act or omission, means a registered person or a person who was registered at the time of the act or omission.

34 Who may complain?

Anyone who believes a disciplinary ground exists in relation to an architect may complain to the architects board.

Examples of people who may complain

a board member, a member of the public, the user of a service

Note 1 **Disciplinary ground**—see s 42.

Note 2 An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

35 Form of complaint

- (1) A complaint must—
 - (a) be in writing; and
 - (b) be signed by the person making the complaint (the *complainant*); and
 - (c) include the complainant's name and address.
- (2) However, the architects board may accept a complaint for consideration even if it does not comply with subsection (1).

- (3) If the architects board accepts for consideration a complaint that is not in writing, the board must require the complainant to put the complaint in writing unless there is a good reason for not doing so.

36 Withdrawal of complaints

- (1) A complainant may withdraw the complaint at any time by written notice to the architects board.
- (2) If the complainant withdraws the complaint, the architects board—
- (a) need take no further action on the complaint; but
 - (b) may continue to act on the complaint if the board considers it appropriate to do so; and
 - (c) need not report to the complainant under section 40 (Action after investigating complaint) on the results of any action on the complaint.

37 Further information about complaint etc

- (1) The architects board may, at any time, require a complainant—
- (a) to give the board further information about the complaint; or
 - (b) to verify all or part of the complaint by statutory declaration.
- (2) When making a requirement under this section, the architects board must give the complainant a reasonable period of time to satisfy the requirement and may extend that period, whether before or after it ends.
- (3) If the complainant does not comply with a requirement under subsection (1), the architects board need not, but may, take further action in relation to the complaint.

38 Investigation of complaint

The architects board must take reasonable steps to investigate each complaint the board accepts for consideration.

Note A complaint must be in writing, but the registrar may accept a complaint that is not in writing (see s 35).

39 No further action on complaint

The architects board must not take further action on a complaint if satisfied that—

- (a) the complaint lacks substance; or
- (b) the complaint is frivolous, vexatious or was not made genuinely; or
- (c) the complaint has been adequately dealt with.

Note The architects board may also take no further action on a complaint if the complainant has not complied with a requirement made under s 37 (1) (see s 37 (3)).

40 Action after investigating complaint

- (1) After investigating a complaint against an architect, the architects board must—
 - (a) if the board is satisfied that a disciplinary ground exists in relation to the complaint—
 - (i) give the architect a disciplinary notice; and
 - (ii) tell the complainant in writing that the notice has been given; or
 - (b) if the board is not satisfied that a disciplinary ground exists in relation to the complaint—
 - (i) tell the complainant in writing that the board will take no further action on the complaint; and

- (ii) take no further action on the complaint.
- (2) Subsection (1) (b) (ii) does not prevent the architects board from taking further action in relation to a complaint if the board becomes satisfied that a disciplinary ground exists in relation to the complaint.

Note The registrar need not notify the complainant under s (1) if the complainant has withdrawn the complaint (see s 36).

Part 5 Disciplinary matters

Division 5.1 Disciplinary proceedings

41 Meaning of *architect* for pt 5

In this part:

architect, in relation to an act or omission, means a registered person or a person who was registered at the time of the act or omission.

42 Disciplinary grounds

- (1) Each of the following is a *disciplinary ground* in relation to an architect:
 - (a) the architect has contravened, or is contravening, this Act;
 - (b) if a professional conduct code has been adopted under this Act—the architect has contravened a requirement of the code;
 - (c) the architect has contravened, or is contravening, a condition of his or her registration;
 - (d) the architect has been convicted, or found guilty, of an offence against a corresponding law of a local jurisdiction;

Note *Corresponding law*—see dict.

 - (e) the architect has been found guilty, in the ACT or elsewhere, of an offence involving fraud, dishonesty or violence that is punishable by imprisonment for 1 year or more.
- (2) A disciplinary ground applies to an architect who is no longer registered if the disciplinary ground applied to the architect while registered.

43 When disciplinary notice may be given

If the architects board is satisfied that a disciplinary ground exists, or may exist, in relation to an architect, the board may give the architect a disciplinary notice.

44 Disciplinary notices

A notice (a *disciplinary notice*) given to an architect must—

- (a) state each disciplinary ground which caused the notice to be given; and
- (b) state details of each ground that the architects board is satisfied would allow a reasonable person to identify the circumstances that give rise to the ground; and
- (c) tell the architect that he or she may, within 12 business days after the day the architect is given the notice, give a written response to the board about the notice.

45 Decision about disciplinary action

- (1) This section applies if the architects board has given an architect a disciplinary notice.
- (2) The architects board may take disciplinary action in relation to the architect if satisfied on reasonable grounds that a disciplinary ground is established in relation to the architect.
- (3) In making a decision about whether to take disciplinary action in relation to the architect, the architects board—
 - (a) must take into account—
 - (i) any response given to the board in accordance with the disciplinary notice; and
 - (ii) the considerations mentioned in section 46 (2); and
 - (b) may hold an inquiry under division 5.2 (Disciplinary inquiries).

- (4) If the architects board takes disciplinary action against the architect—
- (a) the board must tell the architect in writing about the board's decision; and
 - (b) the action takes effect when the notice is given to the architect or on the later date stated in the notice.

46 Disciplinary action

- (1) If the architects board may take disciplinary action in relation to an architect, the board may do 1 or more of the following:
- (a) reprimand the architect;
 - (b) require the architect to complete a stated course of training to the satisfaction of the board or another stated person;
 - (c) impose a condition on the architect's registration, or amend an existing condition;
 - (d) impose a financial penalty of \$1000 or less;
 - (e) suspend the architect's registration for a stated period or until a stated thing happens;
 - (f) cancel the architect's registration;
 - (g) cancel the architect's registration and disqualify the architect from applying for registration for a stated period or until a stated thing happens;
 - (h) disqualify the architect from applying for registration for a stated period or until a stated thing happens.
- (2) In deciding what disciplinary action to take in relation to the architect under subsection (1), the architects board must consider the following:
- (a) the degree of responsibility of the architect for the act or omission that made up the disciplinary ground;

- (b) any injury, loss or damage caused, or that could have been caused, by the act or omission that made up the disciplinary ground;
 - (c) the extent to which it is necessary to discourage the architect and others from doing something, or not doing something, that made up the disciplinary ground;
 - (d) whether, and the extent to which, it is necessary to protect the public from the architect;
 - (e) the desirability of making the architect responsible for the consequences of the architect's actions or omissions;
 - (f) the desirability of maintaining public confidence in the regulatory system set up by this Act.
- (3) The architects board may consider any other relevant consideration.

47 Public notice of disciplinary action

- (1) If the architects board decides to take disciplinary action against an architect, the board—
- (a) must tell the public about the disciplinary action by publishing the relevant details of the action in a daily ACT newspaper; and
 - (b) may tell the public about the disciplinary action by publishing the relevant details of the action in any other way the board considers appropriate.
- (2) However, the details of the disciplinary action may be published under this section only if—
- (a) the time for any review of the decision to take the disciplinary action has ended and no application for appeal or review has been made; or
 - (b) an application for review has been made, the decision has been confirmed on review and the time for further appeal has ended.

- (3) If the decision has been reversed, details of the disciplinary action must not be published under this section.
- (4) If the decision has been changed (for example, by substitution), this section applies in relation to the decision as changed.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (5) In this section:

relevant details, of the disciplinary action, means—

- (a) the name and any other identifying details of the architect; and
- (b) a short description of the disciplinary ground on which the disciplinary action was based; and
- (c) a description of the disciplinary action.

48 Giving local registering authorities information about certain disciplinary action

- (1) This section applies if the architects board cancels or suspends an architect's registration or disqualifies an architect from applying for registration.
- (2) The architects board must give each local registering authority the following information about the architect:
 - (a) the name and any other identifying details of the architect; and
 - (b) a short description of the disciplinary ground on which the disciplinary action was based; and
 - (c) whether the registration has been cancelled or suspended or the architect disqualified; and
 - (d) if the registration has been suspended—the period of suspension; and

- (e) if the architect has been disqualified—the period of disqualification.
- (3) This section does not limit any other requirement or power, under this Act or another law in force in the ACT, to give information to a local registering authority.

Division 5.2 Disciplinary inquiries

49 Notice of inquiry

- (1) If the architects board decides under section 45 (3) to hold an inquiry in relation to an architect, the board must give the architect at least 12 business days written notice of the inquiry.
- (2) The notice must—
 - (a) be accompanied by a copy of the disciplinary notice given to the architect; and
 - (b) state whether the board considers that any disciplinary ground no longer applies, or has changed, because of any written response made by the architect in accordance with the disciplinary notice and, if a ground has changed, how the ground has changed; and
 - (c) explain that the inquiry may result in the taking of disciplinary action against the architect; and
 - (d) tell the architect where and when the inquiry will be held.

Note If a form is approved under s 92 for a notice, the form must be used.

50 Inquiry procedure

- (1) The architects board may decide any procedure for an inquiry that is not prescribed under this Act.
- (2) The architects board may adjourn an inquiry.

51 Evidence at inquiry

- (1) At an inquiry, the architects board—
 - (a) may take evidence on oath or affirmation; and
 - (b) must comply with the rules of natural justice; and
 - (c) is not bound by rules of evidence but may inform itself in the way it considers appropriate.
- (2) At an inquiry, the architect whose actions are being inquired into may call witnesses.

52 Legal representation at inquiry

- (1) An architect may be represented at an inquiry by a lawyer who may examine witnesses and address the registrar on behalf of the architect.
- (2) The architects board may appoint a lawyer to examine witnesses in an inquiry and advise the board in relation to the inquiry.

53 Board may require appearance, information or documents

- (1) For an inquiry, the architects board may, in writing, require a person to appear before the inquiry on a stated date—
 - (a) to give evidence; or
 - (b) to give evidence and produce a document or thing in the possession, custody or control of the person; or
 - (c) to produce a document or thing in the possession, custody or control of the person.

Note The Legislation Act, s 170 and s 171 deal with the application of the privilege against selfincrimination and client legal privilege.

- (2) The architects board may give a party to the inquiry leave, subject to any condition, to—

- (a) inspect a document or thing produced under this section; and
 - (b) make copies of, or take extracts from, a produced document for the inquiry.
- (3) A person is taken to have complied with a requirement under subsection (1) (c) if the person gives the document or thing to the architects board before the date stated in the requirement.
- (4) The architects board may set aside a requirement under subsection (1).
- (5) A person commits an offence if the person fails to comply with a requirement made of the person under this section.

Maximum penalty: 50 penalty units.

- (6) An offence against this section is a strict liability offence.

54 Confidentiality and client communications

- (1) This section applies if—
- (a) an architect is required to give confidential information to the architects board for an inquiry in relation to the architect; or
 - (b) the architect believes on reasonable grounds that it is necessary to give confidential information to the board to explain an act or omission of the architect.

- (2) The architect is not civilly liable for giving the information to the architects board.

- (3) In this section:

confidential information, in relation to an architect, means information given to the architect by a client in confidence.

55 Witness expenses

- (1) A requirement under section 53 (1) (a) or (b) must be accompanied by—

- (a) an undertaking to appear to be signed by the person and returned to the architects board by the stated date; and
 - (b) a form to be completed by the person to claim the reasonable costs and expenses of attendance at the inquiry.
- (2) A person is not entitled to refuse to comply with the requirement only because the requirement was not accompanied by the form.

Part 6 Offences

56 Individual not registered or nominee for pt 6

For this part—

- (a) an individual is taken not to be registered if the individual's registration is suspended; and
- (b) an individual is taken not to be a nominee if the individual's registration is suspended.

57 Individual pretending to be registered

- (1) An individual must not pretend to be registered.

Maximum penalty: 100 penalty units.

Example of pretending to be registered

using 'architect' or 'registered architect' on letterhead, entry sign or other advertisement

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (2) Subsection (1) does not apply to the use of a term prescribed under the regulations.

58 Firm offering architectural services without nominee

- (1) A corporation must not offer an architectural service unless the corporation has a nominee.

Maximum penalty: 100 penalty units.

- (2) Each partner in a partnership commits an offence if—
 - (a) the partnership offers an architectural service; and
 - (b) the partnership does not have a nominee.

Maximum penalty: 100 penalty units.

- (3) It is a defence to a prosecution for an offence for contravening subsection (2) if the partner proves—
- (a) that—
 - (i) the partner did not know that the partnership did not have a nominee; and
 - (ii) reasonable precautions were taken and appropriate diligence was exercised to avoid the contravention; or
 - (b) that the partner was not in a position to influence the other partners in relation to the appointment of a nominee.

59 Unregistered individual advertising

- (1) An individual commits an offence if—
- (a) the individual advertises that the individual provides, or will provide, an architectural service; and
 - (b) the individual is not registered.

Maximum penalty: 50 penalty units.

- (2) An offence against this section is a strict liability offence.

60 Individual advertising without details

- (1) An individual commits an offence if—
- (a) the individual advertises that the individual provides, or will provide, an architectural service; and
 - (b) the individual does not include the following in the advertisement:
 - (i) his or her name as recorded in the register;

- (ii) his or her registration number.

Maximum penalty: 50 penalty units.

Example

An individual's registered name is D&E Smith Architects. The individual trades under the name ABC Architects. When advertising, the individual must include the registered name in the advertisement to allow the public to check the individual's register entry.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (2) An offence against this section is a strict liability offence.

61 Firm advertising without details

- (1) A corporation commits an offence if the corporation—
 - (a) advertises that it provides, or will provide, an architectural service; and
 - (b) does not include the following in the advertisement:
 - (i) the name of the corporation's primary nominee, as recorded in the register;
 - (ii) the primary nominee's registration number.

Maximum penalty: 10 penalty units.

- (2) A partner commits an offence if the partnership—
 - (a) advertises that it provides, or will provide, an architectural service; and
 - (b) does not include the following in the advertisement:
 - (i) the name of the partnership's primary nominee as recorded in the register;

- (ii) the primary nominee's registration number.

Maximum penalty: 10 penalty units.

- (3) It is a defence to a prosecution for an offence for contravening subsection (2) if the partner proves—
 - (a) that—
 - (i) the partner did not know that the partnership had not included the information in the advertisement; and
 - (ii) reasonable precautions were taken and appropriate diligence was exercised to avoid the contravention; or
 - (b) that the partner was not in a position to influence the other partners in relation to the advertisement.
- (4) An offence against this section is a strict liability offence.

62 Firm's business correspondence without required details

- (1) A corporation commits an offence if the corporation—
 - (a) provides, or advertises that it will provide, an architectural service; and
 - (b) does not include the following in each item of written business correspondence:
 - (i) the name of the corporation's primary nominee, as recorded in the register;
 - (ii) the primary nominee's registration number.

Maximum penalty: 10 penalty units.

- (2) A partner commits an offence if the partnership—
 - (a) provides, or advertises that it will provide, an architectural service; and

(b) does not include the following in each item of written business correspondence:

- (i) the name of the partnership's primary nominee, as recorded in the register kept under this Act;
- (ii) the primary nominee's registration number.

Maximum penalty: 10 penalty units.

(3) It is a defence to a prosecution for an offence for contravening subsection (2) if the partner proves—

(a) that—

- (i) the partner did not know that the information was not included in the business correspondence; and
- (ii) reasonable precautions were taken and appropriate diligence was exercised to avoid the contravention; or

(b) that the partner was not in a position to influence the other partners in relation to the business correspondence.

(4) An offence against this section is a strict liability offence.

63 Provision of architectural services by third party

A person commits an offence if—

- (a) the person offers an architectural service to be provided by someone else; and
- (b) the provider of the service is not a registered architect; and
- (c) the person is reckless about whether the provider is a registered architect.

Maximum penalty: 100 penalty units.

Part 7 Architects board

Division 7.1 Establishment and functions of board

64 Establishment of board

- (1) The Australian Capital Territory Architects Board (the *architects board*) is established.
- (2) The board—
 - (a) is a body corporate; and
 - (b) must have a seal.

65 Board functions

- (1) The architects board has the following functions:
 - (a) to register architects;
 - (b) to investigate complaints given to the board about registered people and people who have been registered;
 - (c) to consider whether it is necessary to take disciplinary action against registered people and people who have been registered and, if it is, to take the necessary action;
 - (d) to consider and report to the Minister about issues referred to the board by the Minister for advice;
 - (e) to advise the Minister in relation to the practice of architecture, for example, about codes of professional conduct;
 - (f) to further a common and harmonious approach to the administration of legislation about architects by cooperation with local jurisdictions;
 - (g) to accredit courses of study in architecture;

- (h) to provide general advice to consumers about the professional conduct and standards of competence expected of registered architects.

Example for par (f)

the board chairperson or registrar, or both, becoming a member of an accreditation organisation for architects in local jurisdictions

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (2) The architects board may exercise any other function given to the board under this Act or another Territory law.

Note A provision of a law that gives an entity (including a person) a function also gives the entity powers necessary and convenient to exercise the function (see Legislation Act, s 196 and dict, pt 1, def *entity*).

66 Exercise of board functions

- (1) The architects board must exercise its functions independently, impartially and in the public interest.
- (2) This section is subject to section 69 (Board to comply with directions under s 68).

67 Annual report by board

- (1) The architects board is a public authority for the *Annual Reports (Government Agencies) Act 2004*.
- (2) A report prepared by the architects board under the *Annual Reports (Government Agencies) Act 2004* for a financial year must include the details prescribed under the regulations.

Note **Financial year** has an extended meaning in the *Annual Reports (Government Agencies) Act 2004*.

68 Ministerial directions to board

- (1) The Minister may give a written direction to the architects board about the exercise of the board's functions if satisfied that it is in the public interest to do so.

Examples of directions

- 1 direct the board to report on a particular issue within a particular time
- 2 direct the board to follow a policy, standard or other instrument applying to an administrative unit
- 3 direct the board to give the Minister a proposed professional conduct code, or an amendment of a professional conduct code, relating to particular behaviour (see s 88)

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (2) However, the Minister must not direct the board about any of the following:
- (a) whether to register or refuse to register a person;
 - (b) whether to renew or refuse to renew a person's registration;
 - (c) whether or not to cancel someone's registration or take other disciplinary action in relation them.

Example of direction not prevented by s (2)

the Minister may have received complaints about a particular architect and may direct the architects board to give the Minister information about any action being taken in relation to the architect

- (3) Before giving a direction, the Minister must—
- (a) tell the architects board about the proposed direction; and
 - (b) give the board reasonable opportunity to comment on the proposed direction; and
 - (c) consider any comment made by the board.

- (4) A direction is a notifiable instrument.

Note A notifiable instrument must be notified under the Legislation Act.

69 Board to comply with directions under s 68

The architects board must comply with a direction given under section 68.

Division 7.2 Board members

70 Board membership

- (1) The Board consists of the following members (the *board members*):
- (a) 1 member nominated in writing by a representative body;
 - (b) 1 member who is, or has recently been, an academic architect;
 - (c) 1 member who is registered;
 - (d) 1 member who is a commercial lawyer;
 - (e) 1 member to represent community interests who is not registered.
- (2) The Minister must appoint the board members.

Note 1 For the making of appointments (including acting appointments), see Legislation Act, pt 19.3.

Note 2 Certain Ministerial appointments require consultation with an Assembly committee and are disallowable (see Legislation Act, div 19.3.3).

- (3) In this section:

academic architect means a person who teaches architecture at an educational institution.

commercial lawyer means a lawyer with experience in either or both of the following areas:

- (a) consumer protection law;

(b) trade practices law.

representative body means an entity that has as a main purpose the promotion of the interests of architects.

Note The board can still function with a vacancy in membership (see Legislation Act, s 199 (5)).

71 Term of board member appointments

An appointment must be for a term of not longer than 3 years.

Note A person may be reappointed to a position if the person is eligible to be appointed to the position (see Legislation Act, s 208 and dict, pt 1, def *appoint*).

72 Board chairperson and deputy chairperson

- (1) This section applies if there is no chairperson or no deputy chairperson for the architects board.
- (2) The board members must elect a member to be the board chairperson or deputy chairperson.
- (3) However, the board members must not elect a member to be the board chairperson or deputy chairperson unless the member is registered.
- (4) The board deputy chairperson acts in the position of board chairperson—
 - (a) during all vacancies in the position; and
 - (b) during all periods when the board chairperson cannot for any reason exercise the functions of the position.

Note The Legislation Act, div 19.3.2, deals with acting appointments

73 Disclosure of interests by board members

- (1) A board member who has a relevant interest in an issue being considered by the architects board or about to be considered by the board must, as soon as practicable after the relevant facts have come

to the board member's knowledge, disclose the nature of the interest at a board meeting.

- (2) The disclosure must be recorded in the board's minutes and, unless the board otherwise decides, the board member must not—
 - (a) be present when the board considers the issue; or
 - (b) take part in a decision of the board on the issue.
- (3) Any other board member who also has a relevant interest in the issue must not—
 - (a) be present when the board considers whether to make a decision under subsection (2); or
 - (b) take part in the decision.
- (4) The board chairperson must, within 7 days after the end of each financial year, give the Minister a statement that sets out the details of all disclosures under this section made during the financial year.
- (5) The Minister must give to the relevant committee of the Legislative Assembly a copy of a statement received under subsection (4) within 14 days after the day the Minister receives the statement.
- (6) In this section:

relevant committee means—

- (a) a standing committee of the Legislative Assembly nominated by the Speaker for this section; or
- (b) if no nomination under paragraph (a) is in effect—the standing committee of the Legislative Assembly responsible for the scrutiny of public accounts.

relevant interest, in an issue, means a direct or indirect financial or other interest in the issue.

74 Ending appointment of board member

- (1) The Minister must end the appointment of a board member if the Minister becomes aware that the member—
 - (a) has failed to comply with section 73 without reasonable excuse; or
 - (b) has at any time been convicted, in Australia or elsewhere, of an offence punishable by imprisonment for 1 year or longer.
- (2) The Minister may end the appointment of a board member—
 - (a) if the member is absent from 3 consecutive meetings of the board other than on leave approved by the Minister; or
 - (b) if the Minister is satisfied that the member is no longer qualified to be appointed to the member's position; or
 - (c) for misbehaviour or physical or mental incapacity, if the incapacity affects the exercise of the member's functions; or
 - (d) if the member becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of remuneration for the benefit of creditors.

Note A person's appointment also ends if the person resigns (see Legislation Act, s 210).

Division 7.3 Board proceedings

75 Calling board meetings

- (1) The architects board meets at the times and places the board chairperson decides.
- (2) However, the architects board must meet at least 4 times each year.
- (3) The board chairperson must ensure that board members have reasonable notice of meetings.

76 Board procedures

- (1) The board chairperson presides at meetings of the architects board.
- (2) However, if the chairperson is absent from a meeting, the deputy chairperson presides at the meeting.
- (3) Business may be carried on at a board meeting only if—
 - (a) at least 3 board members are present, including at least 2 architects; and
 - (b) the board chairperson or deputy chairperson is present.
- (4) A question arising at a meeting may be decided by a majority of the votes of members present and voting.
- (5) If the votes of the architects board on a question are equally divided, the decision of the member presiding is the decision of the board on the question.
- (6) The board may decide its own procedure in relation to anything for which a procedure is not provided under this Act.
- (7) The board must keep minutes of its meetings.

Division 7.4 Board committees

77 Establishment of committees

The architects board may establish committees to help the board in the exercise of its functions.

78 Exercise of committee functions

- (1) The architects board may decide—
 - (a) how a committee is to exercise its functions; and
 - (b) the procedure to be followed for meetings of the committee, including—

- (i) the calling of meetings; and
 - (ii) the number of committee members to be present at meetings (including requirements that particular members be present); and
 - (iii) the committee member who is to preside at meetings; and
 - (iv) how questions arising at a meeting are to be decided; and
 - (v) the keeping of minutes of meetings.
- (2) Subject to any decision of the architects board under subsection (1), a committee may decide its own procedures.

79 Membership of committees

- (1) A committee consists of the people appointed by the architects board.

Note 1 For the making of appointments (including acting appointments), see Legislation Act, div 19.3.

Note 2 In particular, an appointment may be made by naming a person or nominating the occupant of a position (see s 207).

- (2) A committee may consist completely or partly of board members.

80 Reimbursement for committee members

- (1) A committee member is not entitled to be paid for the exercise of the member's functions.
- (2) However, the Territory must reimburse a committee member for expenses reasonably incurred in the exercise of the member's functions.
- (3) This section does not apply to a committee member who is also a board member.

Part 8 Protection and information

81 Definitions for pt 8

For this part:

informed person means anyone who is, or has been, an official.

official means—

- (a) a member of the architects board; or
- (b) the registrar; or
- (c) anyone acting under the direction or authority of the board.

82 Protection of participants and people reporting

- (1) This section applies to a person who is or has been a complainant or participant in a proceeding about a complaint.
- (2) A proceeding does not lie against a person to whom this section applies in relation to anything done, or omitted to be done, honestly in that capacity.

83 Protection of officials

- (1) An official does not incur civil or criminal liability for an act or omission done honestly and without negligence for this Act.
- (2) A civil liability that would, apart from this section, attach to an official, attaches instead to the Territory.

84 Secrecy

- (1) In this section:

court includes any tribunal, authority or person with power to require the production of documents or the answering of questions.

produce includes allow access to.

protected information means information about a person that is disclosed to, or obtained by, an informed person because of the exercise of a function under this Act.

- (2) A person commits an offence if—
- (a) the person is an informed person; and
 - (b) the person—
 - (i) makes a record of protected information; or
 - (ii) directly or indirectly, divulges or communicates protected information to someone else; and
 - (c) the record is not made, or the information is not divulged or communicated, in relation to the exercise of a function, as a protected person, under this Act.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (3) Subsection (2) does not apply if the informed person makes the record, or divulges or communicates the information, in relation to the exercise of a function, as a protected person, under this Act or another Territory law.
- (4) Subsection (2) does not prevent an informed person from divulging or communicating protected information—
- (a) with the consent of the person from whom the information was obtained; or
 - (b) to a person administering or enforcing a corresponding law of a local jurisdiction; or
 - (c) to a law enforcement authority.

Note *Corresponding law*—see dict.

- (5) An informed person need not divulge or communicate protected information to a court, or produce a document containing protected information to a court, unless it is necessary to do so for this Act or another Act.

Part 9 Review of decisions

85 Reviewable decisions

The following decisions of the architects board are *reviewable decisions*:

- (a) refusing to register a person under section 9;
- (b) registering a person under section 9 subject to a condition;
- (c) deciding to remove a person's name from the register under section 19 (2) or section 20;
- (d) refusing to approve a nominee's resignation under section 28;
- (e) refusing to approve the revocation of a nominee's appointment under section 29;
- (f) taking disciplinary action against a person under section 46.

86 Review of decisions

- (1) Application may be made to the AAT for review of a reviewable decision.
- (2) If the architects board makes a reviewable decision, the board must give a written notice of the decision to each person affected by the decision.
- (3) The notice must be in accordance with the requirements of the code of practice in force under the *Administrative Appeals Tribunal Act 1989*, section 25B (1).

Part 10 Miscellaneous

87 Board examinations

- (1) The architects board may—
 - (a) conduct an examination if it considers it appropriate to do so for this Act; and
 - (b) if it decides to conduct an examination—appoint an examiner to conduct the examination.
- (2) The architects board may, in writing, determine—
 - (a) the fees to be paid to examiners; and
 - (b) the fees to be paid by candidates for examination.
- (3) A determination is a notifiable instrument.

Note A notifiable instrument must be notified under the Legislation Act.

88 Code of professional conduct

- (1) The regulations may adopt, completely or partly, a code of professional conduct (a *professional conduct code*) that sets out guidelines to be followed by architects in their professional practice.
- (2) The regulations may adopt a professional conduct code with or without amendment or modification.

Note The Minister may give the architects board directions about a professional conduct code (see s 68).

89 Registered architect to give evidence of insurance

- (1) Before providing an architectural service to a person (the *client*), a registered architect must give the client evidence of what professional indemnity insurance the architect holds in relation to the service to be provided.

- (2) The registered architect may ask the client to sign an acknowledgment that the client has been told about the architect's professional indemnity insurance.
- (3) The acknowledgment must state the time and date it was given.
- Note* If a form is approved under s 92 for an acknowledgment, the form must be used.
- (4) If the client signs the acknowledgment, the registered architect must immediately give the client a copy of it.
- (5) The architects board may assume that the client was not told about the professional indemnity insurance the registered architect holds if—
- (a) a question arises whether the client was told about the architect's insurance; and
 - (b) an acknowledgment under this section is not produced; and
 - (c) it is not proved that the architect told the client about the insurance.
- (6) The registered architect is taken to have given evidence of what insurance the architect holds before providing an architectural service to a person if the architect advertised the insurance held at the time of providing the services in a way likely to come to the attention of the client.

Example of advertising insurance held

- 1 including details of insurance in the telephone directory, if the details are correct at the time the service is provided
- 2 having details of insurance on the vehicle used to provide the service or transport to the location to provide the service, if the details are correct at the time the service is provided

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

90 Evidentiary certificates

- (1) The architects board may issue a certificate, signed by the board—
 - (a) stating that on a date or during a period stated a named person was or was not registered; and
 - (b) if the person was registered—including details of the person’s registration.
- (2) The architects board may issue a certificate, signed by the board—
 - (a) stating that on a date or during a period stated, a named person was or was not a nominee, or the primary nominee, for a firm; and
 - (b) if the person was a nominee—including details of the person’s registration.
- (3) A certificate under this section is evidence of the matters stated in it.
- (4) Unless the contrary is proved, a document that purports to be a licence or certificate under this section is taken to be such a document.

91 Determination of fees

- (1) The Minister may, in writing, determine fees for this Act.

Note The Legislation Act contains provisions about the making of determinations and regulations relating to fees (see pt 6.3).
- (2) A determination is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

92 Approved forms

- (1) The architects board may approve forms in relation to registration and nominees for this Act.

- (2) If the architects board approves a form for a particular purpose, the approved form must be used for that purpose.

Note The Legislation Act contains provisions about forms (see s 255).

- (3) An approved form is a notifiable instrument.

Note A notifiable instrument must be notified under the Legislation Act.

93 Regulation-making power

- (1) The Executive may make regulations for this Act.

Note Regulations must be notified, and presented to the Legislative Assembly, under the Legislation Act.

- (2) The regulations may make provision in relation to who may be nominated to be a board member and how the person may be nominated.

Part 11 Transitional

94 Meaning of *repealed Act* for pt 11

In this part:

repealed Act means the *Architects Act 1959* (repealed).

95 Legislation repealed

The following legislation is repealed:

- *Architects Act 1959* A1959-3
- *Architects (Board) Appointment 2001* DI2001-253
- *Architects (Fees) Revocation and Determination 2003 (No 2)* DI2003-308.

96 Members of architects board

- (1) A member of the board under the repealed Act (the *previous member*) is taken to be a member of the architects board until a member of the architects board is appointed under this Act.
- (2) However, the appointment of the previous member under subsection (1) is taken to end 3 months after the day this section commences.

97 Architects registered under repealed Act

- (1) A person who was registered under the repealed Act immediately before its repeal is taken to be registered under this Act.
- (2) The person's registration under this Act ends on 30 June 2005.
- (3) Any information about the person in the register under the repealed Act must be included in the register under this Act.

- (4) The registrar may ask the person for any information in relation to the person that is required to be included in the register under this Act that was not included in the register under the repealed Act.

Note A failure to comply with this section is a disciplinary ground.

- (5) To remove any doubt—
- (a) this section applies whether or not the person had a practising certificate under the repealed Act; and
 - (b) the person need not be eligible to be registered under this Act to be registered under this section.

98 Suspended registration

- (1) This section applies if, immediately before the repeal of the repealed Act, a person's registration under that Act was suspended.
- (2) The person's registration under this Act is taken to be suspended until the time the suspension would have ended if the repealed Act had not been repealed.

99 Inquiry under repealed Act

- (1) This section applies if—
- (a) an inquiry had been begun under the repealed Act; and
 - (b) immediately before the repeal of the repealed Act—
 - (i) the inquiry had not been finished; or
 - (ii) the inquiry had been finished but no action had been taken in relation to the findings of the inquiry.
- (2) The inquiry is taken to be, or have been, a disciplinary inquiry under this Act, division 5.2.
- (3) The inquiry is not affected only because something required to be done in relation to the inquiry under this Act was not required to be done under the repealed Act.

100 Disciplinary grounds for s 42

In section 42:

this Act, in relation to a contravention, includes the repealed Act.

101 Appeals under repealed Act

- (1) This section applies to a decision made under the repealed Act if, immediately before the repeal, the time for appealing against the decision had not ended.
- (2) A person entitled to appeal against the decision under the repealed Act may appeal against the decision to the Supreme Court until the time for appeal under the repealed Act would have ended if that Act had not been repealed.

102 New regulations

- (1) The provisions set out in schedule 1 are taken, on the commencement of this section, to be regulations made under this Act, section 93 (Regulation-making power).
- (2) To remove any doubt and without limiting subsection (1), the provisions set out in schedule 1 may be amended or repealed as if they had been made as regulations by the Executive under this Act, section 93.
- (3) To remove any doubt, the regulations mentioned in subsection (1) are taken—
 - (a) to have been notified under the Legislation Act on the day this Act is notified; and
 - (b) to commence on the day this Act commences; and
 - (c) not to be required to be presented to the Legislative Assembly under the Legislation Act, section 64 (1).

- (4) Subsections (1), (2) and (3) are laws to which the Legislation Act, section 88 (Repeal does not end effect of transitional laws etc) applies.
- (5) This section expires on the day it commences.

103 Transitional regulations

- (1) The regulations may prescribe transitional matters necessary or convenient to be prescribed because of the enactment of this Act.
- (2) The regulations may modify the operation of this Act to make provision in relation to anything that, in the Executive's opinion, is not, or not adequately, dealt with in this part.

104 Building and Construction Industry Training Levy Regulations 2001, regulation 3 (1) (b)

substitute

- (b) an architect registered under the *Architects Act 2004* or a corresponding State law; or

Note *State* is defined in the Legislation Act, dict, pt 1.

105 Expiry of pt 11

This part expires on 30 June 2005.

Schedule 1 New regulations

(see s 102)



Australian Capital Territory

Architects Regulations 2004

Subordinate Law SL2004-

made under the

Architects Act 2004

Part 1 Preliminary

1 Name of regulations

These regulations are the *Architects Regulations 2004*.

2 Dictionary

The dictionary at the end of these regulations is part of these regulations.

Note 1 The dictionary at the end of these regulations defines certain terms used in this Act.

Note 2 A definition in the dictionary applies to the entire regulations unless the definition, or another provision of the regulations, provides otherwise or the contrary intention otherwise appears (see Legislation Act, s 155 and s 156 (1)).

3 Notes

A note included in these regulations is explanatory and is not part of these regulations.

Note See Legislation Act, s 127 (1), (4) and (5) for the legal status of notes.

Part 2 Registration

4 Prescribed qualifications for registration—Act, s 8 (2) (a) (i)

A qualification mentioned in schedule 1 is prescribed.

5 Details in register—Act, s 11 (2)

The following details are prescribed in relation to a registered architect:

- (a) full name;
- (b) business phone and fax number and email address (if any);
- (c) business address;
- (d) if the architect's registration is conditional—each condition on the registration;
- (e) details of any suspension of registration;
- (f) details of any cancellation of registration;
- (g) details of any disqualification from being registered;
- (h) if the architect is, or has been, a nominee—
 - (i) the name of each firm for which the architect is or was a nominee;
 - (ii) whether the architect is or was the primary nominee or not;
 - (iii) the date when the architect became the nominee;
 - (iv) the date (if any) when the architect stopped being the nominee.

6 Use of terms not pretending registration—s 57 (2)

The Act, section 57 (1), does not apply to the use of the following terms:

- (a) landscape architect;
- (b) naval architect;
- (c) computer systems architect.

7 Use of *architectural*—Act, s 57 (2)

- (1) The Act, section 57 (1) does not apply to the use of the term *architectural* by a person who carries on a business that supplies goods in relation to architecture to indicate that the person carries on that business.
- (2) The Act, section 57 (1) does not apply to the use of the following terms by an employee of a registered architect to describe the employee:
 - (a) architectural assistant;
 - (b) architectural technician;
 - (c) architectural drafter.

8 Use of *architect* and *registered architect*—Act, s 57 (2)

- (1) The Act, section 57 (1) does not apply to the use of the terms *architect* and *registered architect* by an interstate architect if—
 - (a) the use of the term is accompanied by something that indicates the local jurisdiction where the architect is registered; and
 - (b) before the use, the architect told the architects board in writing that the architect would be using the term in the ACT.

(2) In this regulation:

interstate architect means an architect who—

- (a) is registered (however described) in a local jurisdiction; and
- (b) is normally resident in that jurisdiction.

9 Use of term describing architectural qualification—Act, s 57 (2)

The Act, section 57 (1) does not apply to the use by a person of a term describing an architectural qualification held by the person.

10 Nominations for architects board member

- (1) Within the prescribed period for the appointment of an architects board member, the registrar must publish a notice in a daily ACT newspaper—
 - (a) asking for registered people to nominate themselves for appointment as an architects board member (a *new member*); and
 - (b) stating that only registered people may nominate; and
 - (c) stating the date for close of nominations (the *close date*);
 - (d) stating the information required for nomination.
- (2) The date stated for close of nominations must be not less than 2 weeks after the day the notice is published.
- (3) A nomination must—
 - (a) be in writing, signed by the nominee; and
 - (b) include the following:
 - (i) the nominee's contact details;
 - (ii) the nominee's registration number;

- (iii) a brief description of the nominee's experience as a registered architect in the ACT.
- (4) The registrar must tell each nominee whether his or her nomination was received before the close date as soon as practicable after receiving the nomination.
- (5) The Minister must tell each nominee whose nomination was received before the close date in writing about the appointment of the new member.
- (6) In this regulation:
- prescribed period*, for the appointment of an architects board member, means the period starting 7 months before the day the term of the architects board member's appointment ends and ending 6 months before that day.

Part 3 Miscellaneous

11 Definitions for pt 3

In this part:

architect—

- (a) means a person registered under the Act; and
- (b) includes—
 - (i) for a complaint—a person who was registered when the thing complained of happened; and
 - (ii) for a disciplinary action—a person who was registered when the contravention happened.

contravention, for disciplinary action against an architect, means what the architect did that caused disciplinary action to be taken.

12 Information in annual report—Act, s 67

- (1) The architects board's annual report for a financial year must include the following information about complaints:
 - (a) the total number of complaints made in the year;
 - (b) the number of complaints made about architects;
 - (c) the number of complaints made about architects who are not registered;
 - (d) a description of the kinds of complaints made about architects.

- (2) The architects board's annual report for a financial year must include the following information about disciplinary action:
- (a) the name of each architect against whom disciplinary action was taken during the financial year;
 - (b) for each person mentioned in paragraph (a)—
 - (i) the contravention; and
 - (ii) the disciplinary action taken; and
 - (iii) the result of any review of the decision to take disciplinary action.
- (3) The architects board annual report for a financial year must report about other activities undertaken by the architects board.

Example of board activity

general advice given to consumers by the architects board

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

Schedule 1 Prescribed qualifications

(see reg 4)

| column 1 item | column 2 issuing institution | column 3 name of higher education award |
|--------------------------|--|---|
| 1 | University of Canberra | Bachelor of Architecture |
| 2 | University of Sydney | Bachelor of Architecture |
| 3 | University of New South Wales | Bachelor of Architecture |
| 4 | University of Technology, Sydney | Bachelor of Architecture Diploma of Technology (Architecture) |
| 5 | University of Newcastle | Bachelor of Architecture |
| 6 | Queensland University | Bachelor of Architecture Master of Architectural Studies |
| 7 | Queensland University of Technology General Practice Stream | Bachelor of Architecture Graduate Diploma of Architecture Diploma of Architecture |
| 8 | University of Adelaide | Bachelor of Architecture |
| 9 | University of South Australia | Bachelor of Architecture Diploma of Technology (Architecture) |

Schedule 1 New regulations

| column 1 item | column 2 issuing institution | column 3 name of higher education award |
|--------------------------|--|---|
| 10 | University of Tasmania | Bachelor of Architecture Graduate Diploma of Architecture Diploma of Architecture |
| 11 | University of Melbourne | Bachelor of Architecture Master of Architecture (Coursework) - Option C |
| 12 | Royal Melbourne Institute of Technology | Bachelor of Architecture Associate Diploma in Architecture Fellowship Diploma in Architecture |
| 13 | Deakin University | Bachelor of Architecture Master of Architecture (Practice) |
| 14 | University of Western Australia | Bachelor of Architecture |
| 15 | Curtin University of Technology or West Australian Institute of Technology | Bachelor of Architecture Associate in Architecture |

Dictionary

(see reg 3)

Note 1 The Legislation Act contains definitions and other provisions relevant to this Act.

Note 2 For example, the Legislation Act, dict, pt 1, defines the following terms:

- ACT
- in relation to
- month
- under.

Note 3 Terms used in these regulations have the same meaning that they have in the *Architects Act 2004* (see Legislation Act, s 148). For example, the following terms are defined in the *Architects Act 2004*, dict:

- daily ACT newspaper
- local jurisdiction
- registered.

architects board member means a board member mentioned in the Act, section 70 (1) (c).

Dictionary

(see s 3)

Note 1 The Legislation Act contains definitions and other provisions relevant to this Act.

Note 2 For example, the Legislation Act, dict, pt 1, defines the following terms:

- disallowable instrument (see s 9)
- function
- notifiable instrument (see s 10)
- penalty unit (see s 133)
- under.

architect—

(a) for part 4 (Complaints)—see section 33.

(b) for part 5 (Disciplinary matters)—see section 41.

architectural service—see section 7.

architects board—see section 64.

board members—see section 70 (1).

corresponding law means any law of a local jurisdiction that regulates architects in the jurisdiction.

daily ACT newspaper means a newspaper published and circulating in the ACT.

disciplinary ground—see section 42 (1).

disciplinary notice—see section 44.

firm means a corporation or partnership.

informed person, for part 8 (Protection and information)—see section 81.

local jurisdiction means the Commonwealth, a State or New Zealand.

local registering authority means the entity responsible for regulating the architect profession under a corresponding law.

mandatory requirement, for division 3.3 (Nominees)—see section 21.

official, for part 8 (Protection and information)—see section 81.

registered means a person registered under this Act.

register means the register kept under this Act.

registrar means the registrar appointed under section 13.

registration number, for a person, means a unique identifying number given to the person on registration.

reviewable decision—see section 85.

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 4 March 2004.

2 Notification

Notified under the Legislation Act on 7 April 2004.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

I certify that the above is a true copy of the Architects Bill 2004 which was passed by the Legislative Assembly on 1 April 2004.

Clerk of the Legislative Assembly

© Australian Capital Territory 2004