

2004

LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY

ARCHITECTS BILL 2004

EXPLANATORY STATEMENT

Circulated by authority of the
Minister for Planning
Mr Simon Corbell MLA

Architect Bill 2004

Background

The impetus for reform of the Architects Act 1959 came out of the Productivity Commission's Report no.13, "Review of Legislation Regulating the Architectural Profession" in 2000. The terms of the review required the Commission to examine the existing Australian legislation, identify any public interest rationale for it and consider alternative forms of regulation. The report examined the existing legislation and identified areas in which it could be improved and made two recommendations.

The States and Territories supported the principles outlined in the second recommendation, which would enable each jurisdiction to develop their own legislative and administrative models while maintaining a nationally consistent approach to registration, qualifications and title protection. In June 2002 the Australian Procurement and Construction Council (APCC) agreed in principle to pursue harmonisation of Architects Acts in cooperation with the Boards of Architects from each jurisdiction.

A framework for national harmonisation was adopted and endorsed by the APCC and is being used by the National Competition Council (NCC) as the basis for the assessment of jurisdictions' compliance with reform requirements. The framework for legislative reform recommended that:

- Regulatory boards be constituted with broad industry wide and consumer representation;
- The regulation of architects not include restriction on practice;
- Restriction on the use of the titles "architect" and "registered architect" remain;
- Where an organisation offers the services of an architect, an architect must supervise and be responsible for those services;
- Complaints and disciplinary procedures be made more transparent and provide avenues for appeal; and
- Architectural boards be encouraged to identify and implement means of broadening certification channels.

The existing *Architects Act 1959* does not meet the new framework requirements, and the amount of amendment that would have been required made it more practical to draft a new Bill. This Bill meets the ACT's reform

commitments under the National Competition Policy, and will provide a more transparent and effective registration system for architects in the ACT.

Outline

Part 1 contains the administrative provisions for the operation of the Act. **Part 2** outlines the fundamental concepts that underpin the Bill.

Part 3 provides for the registration of architects, and outlines the eligibility and application process, the requirements for the keeping of a register of architects and the appointment of a registrar. The note at Division 3.1 clarifies that the nothing in the Act affects the ACT's obligations under the *Mutual Recognition Act 1992* (Cwth) and the *Trans-Tasman Mutual Recognition Act 1997* (Cwth).

Part 4 sets out the process for people who wish to complain about the actions of a registered architect or person who was registered at the time they did or did not do something which gave rise to the complaint.

Part 5 outlines the process that the Board must follow when taking disciplinary action against an architect. **Part 6** contains offence provisions for the Act. **Part 7** provides for the establishment and operations of an ACT Architects Board.

Part 8 deals with the protection of complainants, and information dealt with by Board members, the registrar and any person acting under the direction or authority of the Board.

Part 9 deals with reviewable decisions. **Part 10** deals with miscellaneous provisions. **Part 11** deals with the provisions required to ensure the effective transition from the operations of the *Architects Act 1959* to this Act.

Strict Liability Offences

Most offences are now offences of strict liability in accordance with current legal policy for regulatory offences with small or moderate penalties. That means that conduct alone is sufficient to make the defendant culpable and there are no fault elements for any of the physical elements of the offence. Strict liability offences do not have a mental element, termed 'mens rea'. However, the physical actions, do have a mental element of their own, for example, voluntariness. For that reason, the general common law defences of insanity and automatism still apply as they go towards whether a person has done something voluntarily, as well as whether they intended to do the act.

Under the Criminal Code, all strict liability offences will have a specific defence of mistake of fact. Clause 23(3) of the Criminal Code provides that other defences may still be available for use in strict liability offences.

The potential consequences for the community of substandard architectural services are the justification for strict liability provision. Those consequences

range from the consumers being misled about the skills or qualifications of a person offering an architectural service, to architectural services being provided which do not meet the standards of professionalism and conduct that may be specified in a Code of Professional Conduct adopted under the Act. Where appropriate the Bill adds specific additional defences for certain offences.

Notes on clauses

Part 1 Preliminary

Part 1 deals with the administrative elements of the Bill.

Clause 1 provides for the title of the Bill. **Clause 2** stipulates that the Act commences on 1 July 2004 and provides notes about the commencement of the Bill. **Clause 3** explains that the dictionary contained at the end of the Bill is a part of the Bill, and provides notes to explain how the definitions are structured and how they apply to the Bill. **Clause 4** explains that the “notes” that appear in the Bill are aids to interpretation but not part of the Bill.

Clause 5 explains that provisions in other legislation apply to offences committed under the Bill. The notes in Clause 5 explain the application of the *Criminal Code* and *Legislation Act 2001* to the Bill.

Part 2 Objects and important concepts for Act

Part 2 outlines the fundamental concepts that underpin the Bill.

Clause 6 outlines the objects of the Act, which define the scope of the Bill. Under the Bill an Architects Board (the Board) will be established to regulate registered architects. One of the important roles of the Board is to ensure that registered architects provide architectural services to the public professionally and competently. The Bill also enables the Board to discipline registered architects who have failed to provide professional and competent architectural services. Public access to information about the qualifications and competence of registered architects is also provided for in this Bill.

Clause 7 defines **architectural services** because it is an important concept and should be highlighted at the front of the Bill. The definition of **architectural services** is required to define the scope of activities that are subject to the provisions of the Bill. Because of the varied nature of work undertaken by architects, the definition is broad and designed to cover the range of work ordinarily undertaken by an architect. **Clause 7** includes the capacity to use regulations to prescribe services that are or are not architectural services. This enables the Bill to adapt to the changing use of terms and technology in the provision of architectural services.

Part 3 Registration

Part 3 provides for the registration of architects, and outlines the eligibility and application process, and the requirements for the keeping of a register of architects. The note at Division 3.1 clarifies that the nothing in the Act affects the ACT's obligations under the *Mutual Recognition Act 1992* (Cwth) and the *Trans-Tasman Mutual Recognition Act 1997* (Cwth).

Division 3.1 Registration of Architects

Clause 8 outlines the eligibility requirements for an individual to be registered as an architect. An individual is required to have both relevant expertise and experience. Relevant expertise requires the applicant to either:

- have a qualification that has been prescribed under the regulations, for example a degree in architecture from a recognised university; or
- have completed a course of study that has been accredited by the architects board; or
- have an overseas qualification that the Board is satisfied is adequate to enable the applicant to practise architecture in the ACT.

In addition to the above, the applicant must also pass an examination set by the board to assess the individual's competence to practise architecture. Relevant experience is defined to require the individual to have at least 2 years practical experience in architecture, with at least one year being postgraduate experience and at least one year's experience gained in Australia. This experience is normally gained prior to the individual sitting the examination set by the Board.

The Board is able to accredit courses and any accreditation is a notifiable instrument.

These requirements are consistent with the qualification requirements of other jurisdictions.

Clause 9 requires the Board, to consider an application by an individual, and make a decision on that application. Only individuals are eligible to apply for registration. The decision can be to register or refuse to register the individual. To decide to register an applicant, the Board must be satisfied that the applicant is eligible to be registered. If not satisfied, the application must be refused. The Board must also refuse to register an applicant who has been disqualified from applying for registration.

There is a range of **relevant circumstances** where the Board has discretion to refuse to register an applicant. If any of those circumstances exist, the Board must be satisfied that public interest will or might be endangered before the Board can refuse registration. The definition of **relevant circumstances**

includes bankruptcy, being convicted or found guilty of an offence under the Bill, being convicted of an offence punishable by imprisonment for 1 year or longer. If the applicant is registered in another jurisdiction and that registration has been cancelled or suspended on grounds that would have resulted in a cancellation or suspension in the ACT, then this is another ground under which the Board may refuse to register an applicant. This Clause will assist to maintain the integrity of the registration system for architects, while recognising a range of circumstances that may or may not be a relevant consideration in an individual application.

The Board has discretion to place a condition on a registration. A decision to refuse to register an individual or place conditions on a registration is appealable to the Administrative Appeals Tribunal.

Clause 10 outlines when the Board may place conditions on a registration, and the type of conditions that may be imposed. A condition may be placed on a registration at the time of the registration, or as a result of disciplinary action. The conditions may restrict the term of the registration, restrict the kind of architectural services that may be provided, or may be in relation to other matters relevant to the provision of architectural services. The Board must have regard to certain matters before making a decision to impose a condition on a registration.

Clause 11 requires the Board to include a registered architect's details in the register. The details to be included in the register, such as name and registration number, are prescribed in the regulations.

Clause 12 specifies that the standard term for a registration is one year, but the Board may place a condition on the registration that provides for a shorter period. This would also cover circumstances where an overseas architect has been brought to the ACT to work on one specific project for a period of less than one year. They could be registered for the period of time required to complete the project, and the provisions of **Clause 10** could also be used to limit the architectural services provided to only that project.

Division 3.2 Architects Register

Clause 13 requires the chief executive to appoint a public servant to be the registrar of architects. The registrar provides administrative support for the Board, and is also responsible for maintaining the register of architects. In carrying out these functions, the registrar is required to work to any direction given by the Board.

The Board is required to keep a register of architects that is available for public inspection. **Clause 14** specifies the requirements for the keeping of a register, including the form in which it may be kept, and that access by the public to the register is free.

Clause 15 provides an exception to certain information on the register being available for inspection by the public. If the Board has taken disciplinary action against a person, the details of the disciplinary action cannot be included in the register until the process has been finalised. This means the time for any review of the decision has ended and no application for review has been made, or an application has been made and the decision reviewed and the time for further appeal has ended.

If the disciplinary action has been reversed or set aside through the review process, the original decision must not be available for inspection. If the decision has been changed, then the changed decision must be included in the register. These provisions ensure that the person subject to the disciplinary action is afforded the right to a fair and independent review of the decision, and only final decisions are open for public inspection.

Clause 16 enables the registrar, with the approval of the Board, to correct any errors, mistakes or omission in the register, which ensures that the information available for public inspection is accurate.

One of the aims of harmonising architects legislation in Australia is to assist jurisdictions to maintain accurate data bases of registered architects in Australia, which in turn enhances the effectiveness of the mutual recognition process. To assist in achieving harmonisation, **Clause 17** enables the Board and registrar to share information relevant to the registration of architects with other jurisdictions in Australia and New Zealand, for use as part of a joint register of architects.

There are a range of circumstances in which is appropriate for the Board to remove information from the register. **Clauses 18, 19** and **20** outline the process for and circumstances in which the information can be removed. **Clause 19** requires the Board to remove details of a person's registration from the register if the person has died, has asked for their registration to be cancelled, if the person is no longer registered or if the Board has cancelled the person's registration. If as a result of mental or physical incapacity, the Board is satisfied that a person is no longer eligible to be registered as an architect, their information must also be removed. The mental or physical incapacity must affect the person's ability to provide architectural services for it to be a consideration in removing a person's details from the register.

Clause 20 provides discretion for the Board to remove details of a person's registration if the person becomes bankrupt or is found guilty of an offence punishable by imprisonment for one year or longer. In these circumstances, and in the circumstance of mental or physical incapacity, the Board must not remove the details until a notice has been given to the person under **Clause 18**. This Clause requires the Board to give a written notice to the person of the Board's intention to remove their details from the register. The notice must advise the

nature of the action, why the Board intends to take the action, and give the person 12 business days to respond to the notice. If a written response is received the Board must take the response into account before taking action. A decision to remove a person's details from the register is appealable to the Administrative Appeals Tribunal.

Division 3.3 Nominees

The nominee provisions relate to the requirements for firms providing architectural services to have architects nominated to be responsible for the provision of those services.

Clause 21 defines the term **mandatory requirement** for this Division as a written requirement by the nominee that requires the firm to do or not do something in order to comply with the Act. This assists the nominee in exercising their responsibilities under the Act.

Clause 22 requires a firm to give the Board written advice of the appointment of a nominee. The appointment must state the name of the person who is to be a nominee and whether or not they are responsible for all or only some of the architectural services provided by the firm. Where there is more than one nominee appointed, the responsibilities of each nominee must be stated, and one nominee must be the primary nominee. The eligibility of the person to be the nominee must also be included.

To be eligible, the nominee must be registered, and a director, partner or employee of the firm. The nominee must also agree in writing to be the nominee.

Clause 23 specifies that if a firm only has one nominee, he or she is taken to be the primary nominee. The concept of primary nominee is designed to simplify the advertising requirements for firms that have large numbers of registered architects.

Where a firm is a partnership and has more than one nominee, **Clause 24** requires the firm to appoint a primary nominee. If one of the nominees is a partner, that person is the primary nominee. If more than one partner is a nominee, then the firm must advise in writing which of the partners is the primary nominee. Where none of the nominees is a partner, the firm must appoint one as the primary nominee.

Clause 25 is the same as **Clause 24**, only it applies to firms that are corporations.

Clause 26 enables a firm to change its primary nominee by written notice to the Board. This enables the firm to adjust to staffing changes and also ensure that the Board is able to keep their register details up to date.

Clause 27 specifies that a nominee automatically ceases to be a nominee if they are no longer eligible (eg. no longer registered, or no longer an employee, director or partner of the firm).

Clause 28 enables a nominee to resign their appointment as the nominee. The resignation must be in writing and be approved by the Board. The clause prescribes the matter about which the Board must be satisfied before the resignation can be approved. These include;

- the firm failing to comply with a mandatory requirement of the nominee
- the nominee no longer being physically or mentally able to exercise their functions;
- the firm has arranged for another nominee to take over the nominee's functions; or
- there are other appropriate reasons to approve the resignation (for example new carer responsibilities, moving interstate)

The provisions in **Clause 28** and **29** enable the Board to ensure that they have the most up to date information about the status of nominees of firms. It will also enable the Board to advise the firm in circumstances where they may be unaware of the resignation, that they need to arrange for another nominee to be appointed.

Clause 29 enables a firm, with the Board approval, to revoke a nominee's appointment in circumstances where the nominee cannot exercise their responsibilities due to physical or mental incapacity, where another nominee has been appointed, or where there are other circumstances that warrant the revocation. This ensures that a firm can make appropriate management decisions for the efficient operation of their firm, but maintains the requirement to advise the Board of those changes which impact on the nominee arrangements within the firm.

Clause 30 specifies the functions for a nominee of a firm. A nominee is required to supervise the architectural services provided by the firm, and ensure that the provision of these services comply with the Act. The nominee commits an offence if they fail to fulfil their functions, unless the nominee had given the firm and the Board a mandatory requirement, and compliance with the mandatory requirement would have avoided the failure of the nominee to fulfil their functions. The firm also commits an offence if the nominee fails to fulfil their functions. This provision is designed to ensure that appropriately qualified people provide architectural services advertised to be provided or supervised by a registered architect. This has benefits for the consumer of these services in knowing that qualified people are providing the service.

Clause 31 disapplies part 19.3 of the *Legislation Act 2001*, which specifies the process for appointments. This is because the appointment of nominees is

within private firms and therefore not appropriately governed by the process in the Legislation Act.

Clause 32 requires a firm to advise the Board in writing about a nominee's resignation or ceasing within one week after the day the nominee ceased to be the nominee. This is for circumstances other than the nominee resigning or the firm revoking the appointment, for example, if the nominee has died. Again, this provision is to assist the Board in maintaining an accurate register of nominees, which is in the public interest.

Part 4 Complaints

This part sets out the process for people who wish to complain about the actions of a registered architect or person who was registered at the time they did or did not do something which gave rise to the complaint.

Clause 33 defines the term architect for the purpose of Part 4, which is, in relation to an act or omission, a registered person or a person who was registered at the time the act or omission occurred.

Under **Clause 34** anyone who believes a registered or former registered architect has contravened the Act may complain to the Board. **Clause 35** requires the complaint to be in writing and signed by the person making the complaint (the **complainant**). The complaint must include the complainant's name and address. The Board may accept a complaint for consideration even if the complaint does not meet the requirements in **Clause 35**. If the 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 a written complaint not being provided.

Clause 36 enables a complaint to be withdrawn at any time by written notice to the Board. If the complainant withdraws the complaint, the Board need take no further action on the complaint, but may continue to act on the complaint if the Board considers it appropriate. If the complaint is withdrawn the registrar need not report to the complainant under **Clause 40** (Action after investigating complaint) on the results of any action on the complaint.

Clause 37 enables the Board to require a complainant to give the Board further information about the complaint, or to verify all or part of the complaint by statutory declaration. If the Board requires one of these actions the Board must give the complainant a reasonable period of time within which to do so, and may extend that period, whether before or after it ends. If the complainant does not do so the failure may, but need not, end action in relation to the complaint.

Clause 38 requires the Board to take reasonable steps to investigate each complaint the Board accepts for consideration. However, **Clause 39** stipulates

that the Board must not take further action on a complaint if satisfied that the complaint lacks substance, the complaint is frivolous, vexatious or was not made in good faith, or that the complaint has been adequately dealt with.

After investigating a complaint, **Clause 40** requires the Board to give a disciplinary notice to the architect who is the subject of the complaint if satisfied that a disciplinary ground exists. The Board must advise the complainant in writing that the notice has been given. If the Board is not satisfied that a disciplinary ground exists in relation to the complaint, the Board must advise the complainant in writing that no further action will be taken. However, this does not prevent the Board from taking further action on the complaint if subsequent to the decision, grounds exist for disciplinary action to be taken in relation to the complaint. A note indicates that withdrawal of a complaint relieves the Board of the obligation to advise the complainant.

Part 5 Disciplinary matters

Part 5 outlines the process that the Board must follow when taking disciplinary action against an architect.

Division 5.1 Disciplinary proceedings

Clause 41 defines the term architect for the purpose of Part 5, which is, in relation to an act or omission, a registered person or a person who was registered at the time the act or omission occurred.

Clause 42 lists the *disciplinary grounds* in relation to an architect. A *disciplinary ground* must exist for the registrar to commence disciplinary action. The grounds are:

- (a) the architect has contravened or is contravening the 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 another jurisdiction;
- (e) the architect has been found guilty, in the ACT or elsewhere, of an offence involving fraud, dishonesty or violence, that is punishable on conviction by imprisonment for one year or more.

Clause 43 requires the Board to give a disciplinary notice under **Clause 44** if satisfied that a disciplinary ground exists or may exist in relation to an architect. A disciplinary notice given to an architect must include certain information. The notice must state each disciplinary ground that caused the notice to be given, and state the details of each ground that the Board is satisfied would allow a reasonable person to identify the circumstances that give rise to the ground. The

notice must also advise 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 matters in the notice.

Where the Board has given an architect a disciplinary notice, the 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. **Clause 45** requires the registrar to take into account any response given to the Board in accordance with the disciplinary notice and the considerations outlined under **Clause 46**, and may hold an inquiry under Division 5.2 (Disciplinary inquiries), before making the decision on what disciplinary action to take.

If the registrar takes disciplinary action against an architect, the Board must notify the architect in writing about the decision. The Board must include in the notice when the action takes effect, which can be when the notice is given to the architect or on a later date stated in the notice.

If the Board decides to take disciplinary action in relation to an architect, **Clause 46** enables the Board, having considered a range of stated matters, to do one or more of the following:

- (a) reprimand the architect ;
- (b) require the architect to complete a specific course of training to the satisfaction of the Board or another stated person;
- (c) impose a condition on the architect's registration, or vary an existing condition;
- (d) order the licensee to pay to the Territory a financial penalty of not more than \$1 000;
- (e) suspend the registration for a stated period or until a certain thing happens;
- (f) cancel the architect's registration;
- (g) cancel the architect's registration and disqualify the architect from applying for registration for a period or until a certain thing happens;
- (h) disqualify the architect from applying for registration for a period, or until a certain thing happens.

A financial penalty under (e) can be recovered by the Territory as a debt. The capacity to impose a financial penalty enables the Board to consider action that imposes a sanction that is commensurate to the disciplinary ground, while not unnecessarily inconveniencing the clients of the architects. The imposition of the financial penalty plus another action such as requiring the completion of a training course, may be a better alternative to suspension of registration, which may inconvenience the clients, particularly where they wish the architect to complete their contractual commitments. The right of the architect to appeal a decision of the Board to take disciplinary action also provides a capacity for independent review, which is an appropriate check and balance on the imposition of disciplinary action.

Clause 47 outlines the requirements for a public notice of the Board's decision to take disciplinary action against an architect. The Board may notify the public of the relevant matters (defined at the end of the clause) by publishing those matters in relation to the decision in a daily ACT newspaper and in any other way the Board considers appropriate. The decision may only be publicly notified if the time for any review of the decision has ended and no application for appeal or review has been made or application for review has been made, and the decision has been confirmed on review and the time for further appeal has ended. If the decision has been reversed, the decision must not be publicly notified. If the decision has been altered, the public notification applies to the decision as altered. This provision complements the requirements in Clause 15 relating to exemption of certain information on the public register.

Clause 48 requires the Board to advise each local registering authority of architects of any cancellation, suspension or disqualification of an architect's registration. The information to be provided must include the name of the architect, a description of the disciplinary grounds, which led to the cancellation, suspension or disqualification, and the period of effect of any suspension or disqualification. This provision contributes to the aim of harmonisation of architects regulation in Australia, but does not limit any other requirement under law to give information to other registering authorities.

Division 5.2 Disciplinary inquiries

If the Board decides to hold an inquiry in relation to an architect, **Clause 49** requires the Board to give the architect at least two weeks written notice of the inquiry. The notice must be accompanied by a copy of the disciplinary notice given to the architect under **Clause 44**. The notice must state whether the Board considers that any disciplinary ground no longer applies, or has changed, because of any written response made by the architect and, if a ground has changed, how it has changed. The notice must also explain that the inquiry may result in the taking of disciplinary action against the architect and tell the architect where and when the inquiry will be held. **Clause 50** enables the Board to decide any procedure for an inquiry that is not prescribed under this Act, and the Board may also adjourn an inquiry.

Under **Clause 51**, when an inquiry is held, the Board may take evidence on oath or affirmation and is not bound by rules of evidence but may inform itself in anyway the Board considers appropriate. At an inquiry, an architect whose actions are being inquired into may call witnesses. **Clause 52** allows an architect to be represented at an inquiry by a lawyer who may examine witnesses and address the Board on behalf of the architect. The Board may appoint a lawyer to examine witnesses in an inquiry and advise the Board on any matter relating to the inquiry.

Clause 53 enables the Board to require in writing, a person to appear before the inquiry on a stated date to give evidence, produce any document or thing in the possession, custody or control of the person or both. The Board may set aside a requirement for a person to give evidence or produce documents or other evidence.

The Board may give a party to the inquiry leave, subject to conditions, to inspect a document or thing produced under this clause and make copies of a produced document for the inquiry. A person is taken to have complied with a requirement to produce a document if the person delivers the document or thing to the Board before the date stated in the requirement.

A person commits an offence if they fail to comply with a requirement made of them under this section. This is an offence of strict liability, which narrows the range of defences available and reflects that failure to assist an inquiry may allow an architect to continue providing substandard architectural services, with potential negative consequences for the consumers of those services.

There may be circumstances where an architect, as either a witness or as the subject of the inquiry, must give information to the inquiry that was provided to them in confidence by a client. This may be necessary to explain why certain actions were or were not taken at the time. **Clause 54** provides that the giving of that information does not make the architect liable for providing this confidential information.

Where a person is required to attend an inquiry to give evidence or produce a document or something else, **Clause 55** requires the notice to be accompanied by an undertaking to appear, to be signed by the person and returned to the Board by the stated date. It must also include a form to be completed by the person to claim the reasonable costs and expenses of attendance at the inquiry. A person, however, is not entitled to refuse to comply with the requirement only because the requirement was not accompanied by the form.

Part 6 Offences

Part 6 contains offence provisions for the Act.

Clause 56 clarifies that for the purposes of Part 6, an individual is not taken to be registered or (where applicable) a nominee if their registration is suspended.

Clause 57 stipulates that it is an offence for a person who is not registered to pretend to be registered. There is a range of terms used by other professions, such as landscape architect, which are clearly not an attempt by a person to hold themselves out as an architect. The regulations may prescribe the use of terms that would not be an offence under this clause.

Under **Clause 58** a firm must not offer architectural services if they do not have a nominee. Each partner in a partnership commits an offence if the partnership advertises or otherwise offers to provide an architectural service if they do not have a nominee. However, it is a defence to a prosecution for an offence if a partner proves that they did not know the partnership did not have a nominee and took all reasonable steps to avoid committing the offence or that they were not in a position to influence the advertising or the offers made by the partnership.

Clause 59 stipulates that it is an offence if a person advertises that the person provides, or will provide, an architectural service and is not registered. If a registered architect advertises to provide an architectural service and does not include the person's full name and registration number in the advertisement, they commit an offence under **Clause 60**. **Clause 61** provides the same offence as **Clause 60** in relation to advertising by firms, which requires the firm to include the name and registration number of their primary nominee in the advertisement. These offences are strict liability, which narrows the range of defences available.

It is an offence under **Clause 62** for a firm to advertise that it will provide an architectural service, and fails to include in its written business correspondence the name of the firm's primary nominee and their registration number.

It is an offence under **Clause 63** for a person to offer an architectural service to be provided by another person, if the person is reckless about whether the person who is to provide the architectural service, is a registered architect. Under the Criminal Code recklessness can be proved by proving knowledge that the person offering the service either knew that the person to provide the service was not a registered architect, or did not make reasonable effort to find out if they were a registered architect.

Part 7 Architects Board

Part 7 provides for the establishment and operations of an ACT Architects Board.

Division 7.1 Establishment and functions of Board

Clause 64 establishes the ACT Architects Board as a body corporate.

Clause 65 stipulates the Board's function, which are to:

- a) Register architects;
- b) Investigate complaints;
- c) Take disciplinary action where necessary;
- d) Consider and report to the Minister about matters referred to it by the Minister;
- e) Advise the Minister in relation to the practice of architecture;

- f) Further the harmonisation of architects legislation in Australia through cooperation with other jurisdictions;
- g) Accredit courses of study in architecture; and
- h) Provide general advice to consumers about the professional conduct and standards of competence expected of registered architects.

The Board is also able to exercise any other function given to it by this Act or any other Territory law.

Clause 66 makes it clear that the Board is to operate independently and in the public interest. This does not however, remove the obligation of the Board to respond to directions from the Minister.

The Minister is able to give the Board written directions about the exercise of the Board's functions, but a direction can only be given if the Minister believes it is in the public interest to do so. The direction is given under **Clause 67**, but a direction cannot be given in relation to the registering of individual architects, including renewal, cancellation, disciplinary action or refusal to register. The Minister is required to advise the Board of the proposed direction, give the Board the opportunity to comment and consider any comment given prior to making a direction. Where a direction is given, it is a notifiable instrument.

Clause 68 stipulates that the Board must comply with a direction given under **Clause 67**.

Division 7.2 Board Members

Clause 69 specifies the requirements for each member of the Board. The Minister must appoint the five members: one nominated by an entity that has as a main purpose the promotion of the interests of architects, one who is or has recently been an academic architect, one architect, one commercial lawyer and one member who is not an architect to represent community interests. The membership requirements are designed to ensure that while the Board will have architects as the majority members, there is appropriate representation from the community, with the assistance of a lawyer, particularly where a disciplinary process is being undertaken.

Under **Clause 70**, each member is appointed for a term not longer than three years. **Clause 71** outlines the procedure for the election of the chair and deputy chair, and stipulates that both positions must be occupied by architects. In the absence of the Board chair, or when the position is vacant, the deputy chair acts in the position of the Board chair.

There may be circumstances where the Board is required to consider an issue that presents a conflict of interest for a Board member. **Clause 72** requires the member who has the conflict of interest to disclose the nature of the interest at a

board meeting as soon as practicable after the relevant facts have become apparent. The disclosure must be recorded in the Board's minutes, and (unless the Board decides otherwise) the Board member with the conflict of interest must not be present when the Board considers the issue, or take part in any decision on the issue.

The Minister is required to end the appointment of a board member if the member has failed, without reasonable excuse, to declare a conflict of interest, or has been convicted of an offence punishable by imprisonment for at least one year. **Clause 73** also specifies circumstances where the Minister has a discretion to terminate a Board appointment. Those circumstances are where the member is absent from three consecutive meetings without the approval of the Minister, if the member no longer has the attributes for which they were appointed, for misbehaviour or physical or mental incapacity that affects the exercise of their functions, or if the member becomes bankrupt. A member can also resign their appointment.

Division 7.3 Board proceedings

Clause 74 requires the Board to meet at least four times each year. Under **Clause 75** the Board chair presides at meetings, and in his or her absence, the deputy chairs the meeting. A quorum of three members is required for a meeting, including at least two architects and the chair or deputy chair. Decisions may be made by a majority vote of members present at the meeting, and where the vote is equally divided the deciding vote rests with the member presiding at the meeting. The Board is required to keep minutes of its meetings.

Division 7.4 Board Committees

Clause 76 enables the Board to establish committees to assist the Board in exercising its functions. **Clause 77** enables the Board to decide how a committee is to exercise its functions and the procedures to be followed for meetings of the committee, including such matters as the keeping of minutes and making of decisions. **Clause 78** stipulates that a committee consists of people appointed by the Board, and can consist completely or partly of Board members.

A non-Board committee member is not entitled to be paid for the exercise of a member's functions, however **Clause 79** requires the Territory to reimburse a non-Board committee member for expenses reasonably incurred in exercising a member's function.

Part 8 Protection and information

Part 8 deals with the protection of complainants, and information dealt with by Board members, the registrar and any person acting under the direction or authority of the Board.

Clause 80 defines **informed person** as anyone who is or has been an **official**. The word **official** is defined as a member of the Board, the registrar, or anyone who is or has been acting under the direction or authority of the Board.

In order for a complaints system to work effectively, a complainant or participant in a complaint proceeding must be confident that they are protected against civil action when they are making a complaint. **Clause 81** provides that protection by stipulating that an action or proceeding does not lie against them provided they have acted honestly.

Clause 82 stipulates that an official does not incur civil or criminal liability for something done or not done when acting in the capacity of an official, provided they have acted honestly and without negligence under this Act. In these circumstances, the liability attaches to the Territory.

Clause 83 provides definitions for **court**, **tribunal** and **protected information**. An informed person is prohibited from making a record or communicating protected information, or giving, producing or allowing access to a document given to them under this Act. There are exceptions to this provision, which includes divulging or making a record of protected information as part of exercising a function under this Act, or with the consent of the person from whom the information was obtained. An informed person is also able to give protected information to a person administering architects legislation in another jurisdiction, or to a law enforcement authority. It is not mandatory for an informed person to give protected information to a court unless it is necessary for this Act or another Act.

Part 9 Review of decisions

Part 9 deals with reviewable decisions.

Clause 84 stipulates the decisions of the Board that are reviewable by the Administrative Appeals Tribunal. Those decisions are:

- 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 28; and
- f) Taking disciplinary action against a person under section 46.

Under **Clause 85** applications for review are to be made to the Administrative Appeals Tribunal. Where the Board makes a reviewable decision, it must give a written notice to each person affected by the decision, and the notice must

comply with the code of practice under the *Administrative Appeals Tribunal Act 1989*.

Part 10 **Miscellaneous**

Part 10 deals with miscellaneous provisions.

Clause 86 enables the Board to conduct examinations and to appoint examiners to conduct the examinations. The Board is also able to determine the fees to be paid to examiners and fees to be paid by candidates for examination. A determination under the clause is a notifiable instrument. This clause will be used primarily for the purpose of **Clause 8(2)(b)**.

One of the key documents that will underpin the Act is the code of professional conduct. The code will establish the standard of conduct and professionalism that each registered architect will be expected to comply with, when providing architectural services. **Clause 87** enables regulations to be made, which can adopt in whole or part, a code of professional conduct.

Professional indemnity insurance is not mandatory for registered architects, however, consumers have a right to make an informed decision when choosing an architect, and professional indemnity insurance is a relevant issue for consideration. **Clause 88** requires a registered architect to give a client evidence of what professional indemnity insurance they hold (including if they have no professional indemnity insurance) in relation to the architectural services to be provided, before providing that service. The registered architect can ask the client to sign and acknowledgement that the information has been provided, and must give a copy of the acknowledgement to the client. If a question arises as to whether the advice was given, failure to produce a signed acknowledgement is taken by the Board to be evidence that the client was not advised of what professional indemnity insurance the architects holds.

A registered architect is taken to have given evidence of insurance if they have advertised the information in a way likely to come to the attention of the client, such as including the information in a yellow pages advertisement relating to the provision of architectural services.

Under **Clause 89** the Board may issue evidentiary certificates which state that on a date or during a stated period, a named individual was or was not registered, or was or was not a nominee or primary nominee. That certificate is taken to be evidence of the matters stated in it.

Clause 90 enables the Minister to determine fees for the Act, and any determination under this clause is a disallowable instrument.

The Board may under **Clause 91**, approve forms for this Act, relating to registration and nominees. Where a form is approved, it must be used for that purpose, and is a notifiable instrument.

Clause 92 enables the Executive to make regulations for this Act, including regulations relating to who may be nominate to be a board member and how that nomination is to occur.

Part 11 **Transitional**

Part 11 deals with the provisions required to ensure the effective transition from the operations of the *Architects Act 1959* to this Act.

Clause 93 defines **repealed Act** as the *Architects Act 1959* (repealed).

Clause 94 repeals the *Architects Act 1959*, the Architects (Board) Appointment 2001 DI2001-253, and the Architects (Fees) Revocation and Determination 2003 (No 2) DI2003-308.

Clause 95 stipulates that a member of the Board under the repealed Act is taken to be a member under this Act until the new Board is appointed. However the appointment expires three months after the commencement of the Act whether or not a new Board has been appointed.

Clause 96 deals with individuals who were registered under the repealed Act immediately before it is repealed, even if they did not have a current practising certificate. The registration of that individual does not expire until 30 June 2005 and any information about them on the register of the repealed Act must be included in the register under this Act. As renewals of practising certificates under the repealed Act are due in March, this provision provides a three month extension to coincide with the new annual registration requirements, which will align with the financial year.

Clause 97 specifies that if a person's registration was suspended immediately before the *Architects Act 1959* is repealed, that suspension continues under this Act until the stated period of the suspension ends.

If an inquiry had commenced but was not completed under the repealed Act, **Clause 98** stipulates that the inquiry is deemed to be an inquiry under this Act, which enables the inquiry process to be completed, including the taking of disciplinary action as a result of the inquiry.

Clause 99 clarifies that, for the purposes of section 42 (disciplinary grounds), a reference to **this Act** in relation to a contravention of the Act, includes the repealed Act. This enables disciplinary action to be taken under this Act, for contraventions of the repealed Act where that was the relevant Act at the time the contravention took place.

Clause 100 enables a person who had an appealable decision made against them under the repealed Act, to appeal the decision to the Supreme Court if the time for appeal had not ended immediately before the repealed Act was repealed.

Clause 101 states that the provisions at Schedule 1 are on commencement of the section, regulations made under section 93 of the Act. The provisions are taken to have met the notification and presentation requirements of the *Legislation Act 2001*.

Clause 102 enables the regulations to prescribe savings or transitional matters necessary to be prescribed because of the enactment of this Act. The regulations may also modify the operation of this Act if a matter has not been adequately dealt with.

Clause 103 is a consequential amendment amends the *Building and Construction Industry Training Levy Regulations 2001* to make reference to the *Architects Act 2004* instead of the *Architects Act 1959*, in the definition of qualified valuer.

Clause 104 expires the transitional provisions on 30 June 2005.

Schedule 1 New Regulations

Part 1 Preliminary

Regulation 1 identifies the regulations as the *Architects Regulations 2004*.

Regulation 2 explains that the dictionary contained at the end of the Regulations is a part of the Regulations, and provides notes to explain how the definitions are structured and how they apply to the Regulations.

Regulation 3 explains that the “notes” that appear in the Regulations are aids to interpretation but not part of the Regulations.

Part 2 Registration

Regulation 4 explains that the qualifications in schedule 1, are the prescribed qualifications for the purpose of section 8(2)(a)(i) of the Act.

Regulation 5 prescribes the details that are to be included in the register of architects for the purposes of section 11 of the Act.

Regulation 6 specifies for the purposes of section 57(2) of the Act, that where a person uses the terms landscape architect, naval architect, or computer systems

architect to describe the services they provide, they are not committing an offence under section 57(1) of the Act.

Regulation 7 allows a person to use the term architectural where their business is the supply of goods in relation to architecture, without committing an offence under section 57(1). The regulation also allows an employee of a registered architect to use the terms architectural assistant, architectural technician and architectural drafter to describe the services they provide without committing an offence under section 57(1).

Under **Regulation 8** the terms **architect** and **registered architect** may be used in the ACT by an interstate person who is registered in another jurisdiction. The conditions that apply to the use of these terms by a person registered interstate is that the person has told the Board in writing that they would be using the term, and provides a document that indicates the jurisdiction in which they are registered.

Under **Regulation 9**, a person does not commit an offence under section 57(1) when they use a term to describe an architectural qualification that they hold.

Regulation 10 prescribes the nomination process for the Board member position of architect. During the prescribed period, which is a one month period commencing 7 months before the end of the architect member's appointment, the registrar must publish a notice in a daily ACT newspaper. The notice must state the details to be provided in the nomination, and ask for nominations for the architect member position and invite written nominations from registered architects by a specified date.

The registrar is required to tell each nominee if their nomination was received before the closing date. Once a decision has been made on the appointment of the architect member, the Minister is required to tell each nominee whose nomination was received before the closing date, who has been appointed as the new architect member of the Board.

Schedule 1 lists the prescribed qualifications for the purpose of section 8(2)(a)(i) of the Act.

The **Dictionary** contains definitions for the purposes of the Regulations.