

# **ARCHITECTS AMENDMENT BILL 1998**

## **EXPLANATORY NOTES**

### **SHORT TITLE**

*Architects Amendment Bill 1998*

### **GENERAL OUTLINE**

#### **Objective of the Legislation**

The objective of the legislation is to amend the *Architects Act 1985* (the Act) to establish an independent tribunal to hear disciplinary charges against architects and approved architectural companies in Queensland.

#### **Reasons for the Bill**

The current disciplinary process under the Act requires the Board of Architects of Queensland (the Board) to authorise the investigation of complaints against architects, examine the evidence to decide whether a disciplinary hearing should be undertaken, and then to hear the complaint and determine what disciplinary action, if any, is to be taken.

Notwithstanding the Board's impartiality during the investigation of complaints, it is arguable that the procedures in the Act do not allow natural justice or procedural fairness to architects under the Board's review. The proposed tribunal, independent of the Board should better enable natural justice and procedural fairness to be afforded to registered persons the subject of disciplinary charges.

### **ACHIEVEMENT OF POLICY OBJECTIVES**

It is proposed that the powers currently held by the Board to determine the guilt or otherwise of an architect in relation to disciplinary matters will be exercised by the Architects' Disciplinary Panel (the Panel). The Board

will remain responsible for investigating complaints and laying disciplinary charges against architects. However, the responsibility for determining the guilt of and appropriate penalty for that architect, will rest with the Panel. Board members will not be eligible for appointment as Panel members.

The Panel is to consist of a number of appropriately qualified persons (lawyers and architects) from which three (one lawyer and two architects) will be selected to hear individual disciplinary matters. The establishment of the Panel to hear disciplinary matters, is considered to be a reasonable and appropriate method of affording natural justice to architects under disciplinary review.

The Bill requires that the member presiding over the Panel will be a lawyer who will rule on points of law. The inclusion of a legally qualified member of the Panel overcomes the difficulties currently faced by Board members who are not legally qualified and who may experience difficulty in determining the sometimes complex legal issues involved in disciplinary hearings.

## **ASSESSMENT OF ADMINISTRATIVE COST TO GOVERNMENT**

The Board is entirely self-funded through fees generated by architects for registration. The costs of establishing and conducting the Panel in accordance with the Bill are expected to be funded by the Board.

## **CONSISTENCY WITH FUNDAMENTAL LEGISLATIVE PRINCIPLES**

The purpose of implementing the Panel is to ensure that procedural fairness is afforded to architects who are subject to the disciplinary process. This purpose is consistent with the principles of natural justice. Rights of appeal to a court are provided for aggrieved persons. The Bill has sufficient regard to the rights and liberties of individuals and does not make any proposals that are inconsistent with fundamental legislative principles as outlined in the *Legislative Standards Act 1992*.

## **EXTENT OF CONSULTATION**

In addition to the Board, representatives of the following departments

have been consulted: Department of the Premier and Cabinet; Treasury Department; and Department of Justice.

## **NOTES ON PROVISIONS**

*Clause 1* sets out the short title.

*Clause 2* provides that the principal Act to be amended is the *Architects Act 1985*.

*Clause 3* amends the definition section of the Act (section 5). It amends and inserts a number of definitions. It amends the definition of “chairperson” to draw a distinction between the chairperson of the Board and the chairperson of the Panel. It also amends the definition of “member” to draw a similar distinction between members of the Board and members of the Panel. It defines a number of other terms including the “disciplinary panel”, “investigator” and the “presiding member” of the Panel.

*Clause 4* replaces the heading for Part 5 and Division 1 of that part which relates to investigations and disciplinary proceedings.

*Clause 5* inserts 5 divisions within Part 5—Investigations and Disciplinary Proceedings.

### ***Division 1—Definitions***

This Division inserts definitions relevant to the Part 5 investigations and disciplinary proceedings.

### ***Division 2—Complaints and Investigations***

- *section 30A* provides that a person aggrieved by the conduct of an architect or approved architectural company (registered person), may complain in writing to the Board.

- *section 30B* provides that the Board can investigate the conduct of a registered person if a complaint has been made to the Board about the person; or the Board suspects on reasonable grounds that the registered person has contravened the Act, or that a ground under section 31 or 32 may exist to lay a disciplinary charge against the person. The Board may, by written notice, appoint a suitably qualified person (the investigator) to undertake an investigation. A copy of the notice is to be forwarded to the person under review. The registrar of the Board may be appointed as an investigator but a member of the Board may not. Further, if the Board considers the complaint to be frivolous or vexatious, the Board may not appoint an investigator.
- *section 30C* provides that an appointed investigator must give to the person under review enough particulars to inform that person of the nature of the complaint and a reasonable opportunity to make representations about the complaint during the course of the investigation.
- *section 30D* provides that the Board may seek a report from the investigator in relation to the investigation. It also provides that, when the investigation concludes, the investigator must provide a report to the Board on the investigator's findings and opinions. The investigator may also make recommendations. The investigator must also provide the person being investigated with a written outline of the report which must include a general statement of findings but must not include any recommendations made to the Board.

### *Division 3—Investigator's powers*

#### *Subdivision 1—Entry and related powers*

- *section 30E* outlines the circumstances in which the investigator may enter a place.
- *section 30F* provides that if an investigator intends seeking the occupier's consent to enter a place, the investigator must tell the

occupier the investigator's purpose for entering the place and that the occupier need not provide his or her consent. If the occupier consents, the investigator may ask the occupier to sign an acknowledgment of the consent and must provide a copy of that acknowledgment to the occupier as soon as practicable. The details which must be recorded in the acknowledgment are outlined in the section. The section also provides that where an issue arises in a court proceeding about whether the occupier consents to the entry of an investigator, if an acknowledgment of consent is not produced and if it is not proved that the occupier consented, the Court may presume that the occupier did not consent to the entry.

- *section 30G* empowers the investigator to apply to a magistrate for a warrant to enter a place. The section provides that the warrant may only be issued by the magistrate if there are reasonable grounds for suspecting there is a particular thing that may provide evidence of the commission of an offence against the Act and the evidence is, or may be within the next 14 days, at the place. The section provides for details that must be stated on the warrant.
- *section 30H* provides for the application by the investigator for a warrant in urgent or other special circumstances. The section provides that the investigator may apply for a warrant by phone, fax, radio or another form of communication but is still required to prepare a full written application.
- *section 30I* provides for procedures that must be undertaken by the investigator prior to entry under a warrant.
- *section 30J* outlines the search and seizure powers the investigator may exercise after entering a place. Failure to assist an investigator when requested to do so may attract a penalty. The section also provides protection against self-incrimination if a person fails to give information or produce a document to an investigator.

### ***Subdivision 2—Obtaining documents and information***

- *section 30K* provides that the investigator may by signed notice require an involved person to assist the investigator. Failure to assist without reasonable excuse will attract a penalty. The section provides that self-incrimination is a reasonable excuse.
- *section 30L* provides the investigator with powers of inspection, copy and seizure in relation to documents produced under section 30K.

### ***Subdivision 3—Seized documents or things***

- *section 30M* requires an investigator to give a receipt where the investigator seizes a document or thing.
- *section 30N* provides for the investigator to provide access to and return, things seized by the investigator.

### ***Subdivision 4—Miscellaneous***

- *section 30O* provides limitations on the investigator's powers.
- *section 30P* provides for claims for compensation from the Board if a person incurs loss or expense because of the exercise or purported exercise of a power by an investigator.
- *section 30Q* provides penalties for making or providing false or misleading statements or documents to the investigator.
- *section 30R* provides penalties for threatening or obstructing an investigator in the exercise of a power under the Act.

## ***Division 4—Disciplinary Panel***

### ***Subdivision 1—Establishment, functions and powers***

- *section 30S* establishes the Architects Disciplinary Panel.
- *section 30T* describes the general functions of the Panel.
- *section 30U* establishes the extent of the Panel's powers.

### ***Subdivision 2—Membership***

- *section 30V* establishes that the Panel is to consist of a chairperson and at least two (2) other members; that the chairperson is to be a lawyer; and that at least two (2) other members are to be architects.
- *section 30W* establishes that members are to be appointed by the Governor in Council.
- *section 30X* establishes that a member of the Board may not be a Panel member.
- *sections 30Y, 30Z, 30ZA, and 30ZB* establish the duration, terms and cessation of appointment of members.
- *section 30ZC* makes provision for the disclosure of interests by members.
- *section 30ZD* makes provision for the appointment of a replacement or temporary chairperson.
- *section 30ZE* establishes that the chairperson is responsible for arranging the business of the Panel and for determining the membership of the Panel for a particular proceeding (including replacement members).

### ***Subdivision 3—Disciplinary panels for particular hearings***

This subdivision makes provision for the appointment of a Panel in a particular proceeding or disciplinary matter.

- *section 30ZF* establishes that, for a particular proceeding, the Panel is to be made up of one lawyer, who is to be a presiding

member, and two (2) architects. It also clarifies that the chairperson need not be the presiding member and that the presiding member alone may give directions for the hearing of a charge.

- *section 30ZG* describes the matters in which the presiding member may give directions.
- *section 30ZH* outlines the procedure to be followed if a member of the Panel ceases to be available, whether before, during or after the conduct of the hearing.
- *section 30ZI* establishes that the Panel may sit from time to time as required at any place in the State.

### ***Division 5—Disciplinary proceedings***

#### ***Subdivision 1—Starting proceedings***

- *section 30ZJ* provides for circumstances in which the Board may lay a disciplinary charge.

*Clause 6* makes minor amendments to section 31 of the Act relating to the grounds for exercise of disciplinary powers against an architect. These amendments include replacing reference to “principal” with “client”.

*Clause 7* makes minor amendments to section 32 of the Act relating to the grounds for exercise of disciplinary powers against an approved architectural company. These amendments include replacing reference to “principal” with “client”.

*Clause 8* removes sections 33 to 39 of the Act and inserts Subdivisions 2, 3 and 4 of Division 5—Disciplinary Proceedings.

- *section 33* establishes that disciplinary charges are to be filed with the Panel’s chairperson; that the charge must state the grounds upon which the charge is based; and that the Board must give a copy of the charge to the person charged.



***Subdivision 2—Hearings***

- *section 34* establishes that the chairperson is responsible for constituting the Panel to hear and determine the charge; that the chairperson must give the person charged written notice of the particulars of the hearing at least 30 days before the day fixed for hearing; and that the notice must state or attach a copy of the charge.
- *section 35* establishes matters in relation to the conduct of hearings.
- *section 36* establishes that the person charged and the Board are entitled to legal or other representation.
- *section 37* establishes that the hearing is to be open to the public unless the Panel determines otherwise.
- *sections 38 and 39* establish the procedures for the issue of notices requiring the attendance of persons before a disciplinary panel hearing. A penalty may be imposed for contravention of an attendance notice, without reasonable excuse. Self-incrimination is established as a reasonable excuse for failure to produce a document or thing.
- *sections 39A, 39B and 39C* establish matters in relation to the inspection of documents or things produced to the Panel; the consequences of a failure to take an oath or affirmation or to answer a question; and allowances for witnesses to attend a disciplinary panel hearing.
- *section 39D* establishes that questions before the Panel are to be decided by the majority of opinion of the members. However, if the Panel members are equally divided on a question, the question is to be decided according to the opinion of the presiding member. All questions of law are to be decided by the presiding member.

***Subdivision 3—Disciplinary panel's decision***

- *section 39E* establishes that a finding of guilt may be made by the Panel if it is satisfied, on the balance of probabilities, that the ground on which the charge is based has been made out. It also establishes that if a finding of guilt is not made, the panel must dismiss the charge.
- *section 39F* establishes the orders that may be made by the Panel if a finding of guilt is made.
- *section 39G* provides for suspension of a person's registration if the panel orders a person to pay a penalty or costs and payment is not made within a stated period.
- *section 39H* provides for the removal from registration or approval as a company in the event of cancellation, disqualification or suspension of such registration or approval.
- *section 39I* requires that the Panel must give written notice of its decisions, including reasons, and rights of appeal, to the Board and to the person charged.

#### ***Subdivision 4—Miscellaneous***

- *section 39J* establishes the rights of appeal from a decision of the disciplinary panel.
- *section 39K* makes provision for the publication of an order of the Panel by gazette notice that the person's registration be cancelled or disqualified.
- *section 39L* makes provision for the surrendering of a certificate of registration upon the order by the Panel of cancellation or suspension of the person's registration.
- *section 39M* provides that the Board may recover an amount for penalty or costs as a debt in the court of appropriate jurisdiction.

*Clause 9* removes section 43 of the Act which provided the Board with powers of a commission of inquiry.

*Clause 10* makes minor amendments to section 45 (Appeals) to include reference to orders of the Panel.

*Clause 11* replaces section 53 (Judicial Notice) with a new provision that the signature of the chairperson of the Panel is to be judicially noticed.

*Clause 12* removes provision for the making of regulations in relation to the conduct of disciplinary proceedings. It also amends the regulation making power prescribing fees and allowances, to include reference to the Panel.

*Clause 13* provides for the numbering and renumbering of the Act when it is next reprinted.

*Clause 14* inserts a new Part 8 establishing transitional provisions.