

Architects Amendment Bill 2010

Explanatory Notes

Short Title

Architects Amendment Bill 2010

General Outline

Objectives of the Bill

The objectives of the Architects Amendment Bill 2010 (the Bill) are to amend the *Architects Act 2002* (the Act), to:

- introduce a simplified registration scheme which adopts procedures approved by the Architects Accreditation Council of Australia (AACA) and adopted by architects' registration boards in the Australian States and Territories. The amendments will simplify the procedural framework for registering architects by recognising the AACA requirements for Queensland registration. The qualifications and experience required to be registered as an architect will not change as a result of this Bill;
- broaden the fitness to practice provisions to enable the Board of Architects of Queensland (the Board) to request that a registered architect undergo a health assessment if the Board reasonably believes that the registered architect is unable to competently and safely practise as an architect because of their mental or physical health and to ask the Commissioner of Police for a criminal history report providing details of convictions for offences in Queensland or elsewhere in Australia relating to an applicant architect;
- permit a registered architect to register as a non-practising architect in circumstances where they do not intend to practise; and
- introduce a range of miscellaneous amendments in relation to matters such as the powers of the Board in the registration process, restoration of registration, staffing of the Board, disciplinary and penalty

provisions and disciplinary provisions relating to formerly registered architects.

Reasons for the objectives and how they will be achieved

The current provisions in the Act provide for a regulation to prescribe qualifications and competencies in the practice of architecture and the assessment entities which would assess applicant architects against these qualifications and competencies. The assessment entities are also required to conduct competency assessments of registered architects against continuing competency requirements. The Board has experienced difficulties in translating the competency requirements approved by the AACA into the form of a regulation. As a result the Board is operating under the transitional provisions of the Act which allow registration to occur using the provisions of the repealed *Architects Act 1985*.

The Bill seeks to introduce an alternative simplified registration scheme which adopts procedures approved by the AACA and adopted by the Australian States and Territories. Under the scheme there will no longer be a need for assessment entities. The Board will continue to assess fitness to practise requirements, register architects and carry out disciplinary processes.

The Bill also proposes to broaden the fitness to practise provisions to enable the Board to request a written report from the Commissioner of Police about the criminal history of an applicant for registration and to request that an architect undergo a health assessment if the Board reasonably believes that the architect is unable to competently and safely practise as an architect because of the architect's mental or physical health. The amendments relating to criminal history checks and health assessments are consistent with provisions in the *Legal Profession Act 2007* and *Professional Engineers Act 2002*. The provisions support and enhance the Board's existing power to consider an applicant's criminal history (see s11(a)) and mental or physical health (see s11(e)) as part of the assessment of an applicant's fitness to practise as an architect.

The Bill also introduces a further ground for cancellation of registration where an architect has been removed for disciplinary reasons from a register in another jurisdiction in Australia or elsewhere, or from a non-government register.

Improvements to the disciplinary processes are included in the Bill. They include giving the Board a broader range of options for dealing with

discipline matters and giving the Board greater flexibility in the resolution of matters once they reach the Queensland Civil and Administrative Tribunal (the Tribunal), as well as providing a greater range of penalties and enforcement options.

Under the Bill the maximum disciplinary penalty is increased to 200 penalty points (currently \$20,000). This will make disciplinary penalties more proportionate to the offence provisions of the Act and more consistent with similarly regulated professions, such as the professional engineers under the *Professional Engineers Act 2002*.

Administrative cost to Government of implementation

It is anticipated that the Bill will not impose any significant administrative cost to Government.

Consistency with Fundamental Legislative Principles

Sufficient regard to the rights and liberties of individuals

The Bill provides for an amendment of the Act to enable criminal history screening of applicants for registration under that Act. The obligation of the Board to consider the criminal history of an applicant is already included in the Act and the power to obtain the criminal history of an applicant from the Commissioner of Police is to enable the Board to properly carry out its existing obligation. Further, the criminal history information that is to be obtained does not impact on the application of the *Criminal Law (Rehabilitation of Offenders) Act 1986*. This amendment is considered reasonable as it will enable the Board to consider all relevant factors required by section 11 of the Act in deciding an application for registration.

Sufficient regard to the institution of Parliament

Under the Bill, the qualifications and competencies for registration as an architect are proposed to change from those prescribed under a regulation to those recognised by the relevant professional body, the AACA. The AACA was established in 1974 by all the State and Territory architects registration boards as the national organisation responsible for establishing, co-ordinating and advocating national standards for architects in Australia. One of the main objects of the AACA is to establish equivalent standards throughout Australia for registration of architects.

By adopting the qualifications and competencies for registration established by the AACA, Queensland is adopting standards which are nationally recognised. It is considered that this approach is the most effective way to achieve nationally consistent standards for the registration of architects.

Extent of Consultation

All Government departments and the Board have been consulted in the preparation of the Bill.

Industry consultation has been undertaken with respect to the amendments to the Act with the Australian Institute of Architects (formerly the Royal Australian Institute of Architects) which has indicated its in principle support for the proposed amendments to the Act.

Notes On Provisions

Short title

Clause 1 sets out the short title as the *Architects Amendment Act 2010*.

Act amended

Clause 2 provides that the *Architects Amendment Act 2010* amends the *Architects Act 2002*.

Insertion of new s 7A

Clause 3 inserts section 7A (Types of registration as an architect) which provides that the types of registration as an architect under the Act are registration as a practising architect or a non-practising architect.

Amendment of s 8 (Applying for registration)

Clause 4 amends section 8(2) to provide that an application for registration must state the type of registration to which the application relates.

Clause 4 omits section 8(2)(b)(ii) as this provision refers to assessment entities which will be no longer provided for under the Act, and re-numbers the remaining sub-paragraphs.

Amendment of s 9 (Eligibility)

Clause 5 inserts subsection 9(2) which provides that an applicant is eligible for registration as a non-practising architect only if the Board is satisfied that the applicant will not carry out, or be responsible for the carrying out of, architectural services within the registration period to which the application for registration relates.

Replacement of s 10 (When applicant is qualified for registration)

Clause 6 omits and replaces section 10. The new section specifies the requirements that an applicant for registration needs to satisfy to qualify for registration. The requirements are 1 or more of either:

- (i) a qualification in architecture recognised by the AACA;
- (ii) a qualification in architecture obtained outside Australia and assessed by the AACA to be equivalent to a qualification mentioned in subparagraph (i); or
- (iii) successful completion of the National Program of Assessment, or another program, coordinated by the AACA; and

Applicants are also required to have successfully completed the AACA's Architectural Practice Examination or another examination arranged or approved by the Board.

The Board may list other programs coordinated by the AACA and examinations arranged or approved by the Board on the Board's website.

Amendment of s 11 (Fitness to practise as an architect)

Clause 7 inserts a new provision in section 11 which allows the Board, in deciding whether an applicant is fit to practise, to have regard to whether an applicant underwent a health assessment as required by the Board or whether the applicant cooperated with the doctor appointed to conduct the health assessment. Health assessments are provided for in Part 2A of the Act.

Amendment of s 12 (Deciding application)

Clause 8 omits section 12(2) as this provision refers to assessment entities which will be no longer provided for under the Act.

Replacement of s 16 (Meaning of continuing competency requirements)

Clause 9 omits and replaces section 16. The new section changes the terminology of what was referred to as 'continuing competency requirements' to be referred to as 'continuing registration requirements'. This creates a more suitable definition which is consistent with current practice within the architectural profession.

Section 16 also specifies what the continuing registration requirements may include and that they are met by an applicant complying with the Board's continuing registration requirements for architecture.

Section 16 also requires the Board to publish its continuing registration requirements on the Board's website and ensure the requirements are available for inspection by the public.

Amendment of s 18 (Applying for renewal)

Clause 10 omits section 18(3)(b)(i) as this provision refers to assessment entities which will be no longer provided for under the Act, and re-numbers the remaining sub-paragraphs.

Amendment of s 20 (Deciding application)

Clause 11 amends section 20(2)(b) to ensure consistency with amendments relating to continuing registration requirements made by clause 9 of the Bill.

Clause 11 omits section 20(4) as this provision refers to assessment entities which will be no longer provided for under the Act.

Clause 11 also inserts new section 20(3) which provides that, for an application for renewal of registration as a non-practising architect, the Board must be satisfied that the applicant will not carry out, or be responsible for the carrying out of, architectural services within the registration period to which the application relates.

Amendment of s 23 (Applying for restoration)

Clause 12 amends references to “person” in section 23(1) to refer to “individual” as only individuals may be registered under the Act.

Clause 12 also amends section 23(2) of the Act to remove reference to assessment entities and allow for an application fee to be charged by the Board for processing restorations of registration.

Amendment of s 24 (Deciding application)

Clause 13 amends section 24(2)(b) to ensure consistency with amendments relating to continuing registration requirements made by clause 9 of the Bill.

Clause 13 omits section 24(4) as this provision refers to assessment entities which will be no longer provided for under the Act.

Clause 13 also inserts new section 24(3) which provides that, for an application for restoration of registration as a non-practising architect, the Board must be satisfied that the applicant will not carry out, or be responsible for the carrying out of, architectural services within the registration period to which the application relates.

Amendment of pt 2, div 6, hdg (Cancellation of registrations)

Clause 14 amends the heading of Part 2, division 6 to make it more descriptive of the provisions.

Amendment of s 28 (Grounds for cancellation)

Clause 15 amends section 28 by inserting provisions which extend the grounds for which the Board may cancel a registered architect’s registration. These include introducing a further ground for cancellation of registration if:

- the architect’s registration to practise as an architect under a law applying, or that applied, in the Commonwealth, another State or a foreign country has been cancelled under that law for disciplinary reasons; or
- the architect’s membership of an association of architects, whether in Australia or a foreign country, has been cancelled under the association’s rules for disciplinary reasons; or

- the architect has contravened a condition of the architect's registration; or
- the assessment in a health assessment report given to the Board under section 35F of the Act is that the architect is currently unable to competently and safely practise as an architect.

Insertion of new s 29A

Clause 16 inserts clause 29A (Immediate suspension of registration) which provides that the Board may immediately suspend an architect's registration if the Board requires the architect to undergo a health assessment under section 35D and the architect does not undergo the health assessment as required or does not cooperate with the doctor appointed to conduct the assessment. The suspension is for the period the Board decides. The Board must end the suspension if satisfied that the ground for suspension no longer exists.

Insertion of new ss 32A and 32B

Clause 17 inserts section 32A which requires that an architect must advise the Board about any disciplinary action taken against the architect in another State or a foreign country in relation to the architect's practice as an architect within 21 days after the event, unless the architect has a reasonable excuse.

Clause 17 inserts section 32B which requires that an architect must notify the Board if the architect is unable to competently and safely practise as an architect for a continuous period of 6 months because of the architect's mental or physical health, unless the architect has already notified the Board in writing of the incapacity or unless the architect has a reasonable excuse.

Penalties apply for failure to comply with sections 32A and 32B.

Amendment of s 34 (Form of certificate of registration)

Clause 18 inserts section 34(2)(c) which provides that a certificate of registration must state whether the architect is a practising or non-practising architect.

Insertion of new ss 35A and 35B

Clause 19 inserts section 35A (Inquiries about fitness to practise as an architect). Section 35A permits the Board to make inquiries about applicants, architects applying for renewal and persons applying for restoration of their registration to help in deciding whether the person is, or continues to be, fit to practise as an architect.

Clause 19 inserts section 35B (Report about relevant person's criminal history). Section 35B allows the Board to ask the commissioner of the police service for a written report about the criminal history of an applicant for registration, an architect applying for renewal or a person applying for restoration of their registration. This amendment will provide further assistance to the Board when assessing an applicant architect's criminal history pursuant to section 11 of the Act.

Insertion of new pt 2A

Part 2A Health assessments

Clause 20 inserts section 35C (Definitions for pt 2A) which provides for definitions for Part 2A.

Clause 20 inserts section 35D (Health assessment) which provides that, if the Board reasonably believes an architect is unable to competently and safely practise as an architect because of the architect's mental or physical health, the Board may require the subject architect, by information notice given to the architect, to undergo a health assessment by a doctor (the health assessor) appointed by the Board.

Section 35D requires that the information notice include:

- (a) a stated date, time and place, for the assessment; and
- (b) the name and qualifications of the health assessor appointed by the Board to conduct the assessment; and
- (c) the possible consequences of failing to undergo, or cooperate during, the assessment.

The stated date must be no sooner than 14 days after the information notice is given to the subject architect, unless there has been agreement to an earlier date. The stated time and place must be reasonable having regard to the circumstances of the subject architect as known to the Board.

Clause 20 inserts section 35E (Appointment of health assessor) which requires that, before appointing a doctor as a health assessor, the Board must be satisfied the doctor does not have a personal or professional connection with the subject architect that may prejudice the way in which the doctor conducts the assessment.

Clause 20 inserts section 35F (Health assessment report) which provides that a health assessor conducting all or part of a health assessment of an architect must prepare and give a health assessment report to the Board and a copy to the architect. The health assessment report must include the health assessor's findings as to whether the subject architect is currently unable to competently and safely practise as an architect, and, if required, the health assessor's recommendations as to any conditions that could be imposed on the architect's registration to overcome the inability.

Clause 20 inserts section 35G (Payment for health assessment and report) which provides that the Board is liable for the cost of the health assessment and the preparation of the report. However, if the assessment is that the subject architect is currently unable to competently and safely practise as an architect, the Board may require the architect to pay the Board the amount of the cost of the assessment and preparation of the health assessment report.

Clause 20 inserts section 35H (Use of health assessment report) which specifies how a health assessment report can be used, including that it is not admissible in any proceeding, and a person can not be compelled to produce the report or to give evidence about the report or its contents in any proceeding. This does not apply to a proceeding under the Act or if the report is produced in a proceeding with the consent of the health assessor who prepared the report and the architect to whom the report relates. A health assessment report may only be used for the purposes of the Act and must be destroyed as soon as practicable after it is no longer needed for those purposes.

Insertion of new pt 3, div 1AA

Division 1AA Extended application of part 3

Clause 21 inserts section 36AA (Application to former architects) to enable the commencement of disciplinary action against an architect who was an

architect at the time of the conduct relating to the action, but who is no longer an architect.

Insertion of new s 69AA

Clause 22 inserts section 69AA (Application of pt 4 to certain former architects) which provides that a former architect mentioned in section 36AA(1) is taken to be an architect for the purposes of applying Part 4 (Reports and board's decisions about investigations) of the Act.

Amendment of s 73 (Board's decision on investigation about architects)

Clause 23 amends section 73(2) so that, on the preparation or receipt of an investigation report about an architect, the Board may pursue one or more of the disciplinary options contained in section 73(2).

Clause 23 replaces section 73(2)(b) and section 73(2)(d) and inserts section 73(2)(e) to further expand the options for the resolution of disciplinary matters relating to architects, to include the entry of an undertaking by the architect about the provision of architectural services, to impose an agreed condition of registration or to take no further action about the investigation.

Clause 23 inserts a new section 73(3) which provides that if the architect does not comply with an undertaking entered into under section 73(2)(b), the Board may decide to take another action mentioned in section 73(2).

Amendment of s 74 (Notice of result of investigation about architects)

Clause 24 amends section 74. This amendment is consequential to changes to section 73.

Insertion of new s 74A

Clause 25 inserts section 74A (Publishing of certain decisions on investigation about architect) which permits the Board to provide details on its website of decisions it makes under section 73(2)(c) or (d) of the Act and the reasons for those decisions, after particulars of the decisions are included in the register.

Amendment of s 75 (Board's decision about other investigations)

Clause 26 amends section 75(2) so that, on the preparation or receipt of an investigation report about a person other than an architect, the Board may pursue one or more of the disciplinary options contained in section 75(2).

Clause 26 inserts a new section 75(3) which provides that if the person does not comply with an undertaking entered into under section 75(2)(b), the Board may decide to take another action mentioned in section 75(2).

Amendment of s 76 (Board to take action as soon as practicable)

Clause 27 makes consequential amendments to section 76 so that it is consistent with the amendments made to section 73.

Amendment of s 80 (Functions of board)

Clause 28 amends section 80(1) to remove references to assessment entities and to include as functions of the Board to advance education in architecture and professional standards of architects.

Clause 28 omits section 80(2) as this provision refers to assessment entities which will be no longer provided for under the Act.

Amendment of s 82 (Membership of board)

Clause 29 omits the word 'Royal' from section 82(b)(i) of the Act. The Royal Australian Institute of Architects has recently changed its name by omitting the word 'Royal'.

Amendment of pt 5, div 7 hdg (Registrar of board)

Clause 30 amends the heading of Part 5, division 7 to read 'Registrar of board and other staff'.

Insertion of new s 100A (Other staff)

Clause 31 inserts section 100A (Other staff) which provides that, with the Board's consent, public service employees may be engaged by a public sector unit to provide services for the Board or be deployed to the Board to provide services for the Board.

Replacement of s 101 (Board to reimburse cost of registrar's services)

Clause 32 replaces section 101 of the Act. The new section provides that the Board must reimburse the public sector unit in which the registrar or a public service employee is employed the reasonable costs of the services provided by the registrar or public service employee for the Board.

Amendment of s 114 (Using titles or names etc.)

Clause 33 amends section 114(2) to prohibit the use of certain titles or names by a person who is not a practising architect.

Omission of s 118 (Information for advertisements)

Clause 34 omits section 118 as the obligations set out in that section relate to professional practice and it is preferable that they be considered by the Board for inclusion in the code of practice for registered architects rather than being in the Act.

Amendment of s 121 (Review of particular decisions)

Clause 35 makes consequential amendments to section 121(2)(e) so that it is consistent with the amendments made to section 73.

Amendment of s 130 (Orders relating to architect)

Clause 36 amends section 130(2) to increase from 40 to 200 penalty units the maximum penalty the Tribunal may order an architect to pay if a disciplinary ground is established. This will make disciplinary penalties more proportionate to the offence provisions of the Act and more consistent with similarly regulated professions, such as professional engineers under the *Professional Engineers Act 2002*.

Amendment of s 131 (Orders relating to former architect)

Clause 37 replaces section 131(1) of the Act which now provides for orders to be made by the Tribunal against a person who is not an architect at the time of the Tribunal's decision.

Clause 37 increases from 40 to 200 penalty units the maximum penalty the Tribunal may order a former architect to pay if a disciplinary ground is established.

Clause 37 omits and replaces section 131(2)(b). The new section provides that if a disciplinary ground is established against a former architect the Tribunal may:

- order the person to pay a penalty;
- make an order reprimanding the person; and/or
- make an order disqualifying, indefinitely or for a stated period, the person from obtaining registration as an architect.

Clause 37 also omits section 131(3) and section 131(4) as a consequence of the other amendments made by this clause 37.

Amendment of s 138 (Summary proceedings for offences)

Clause 38 redrafts section 138(2) of the Act. The amendment updates the wording of the existing section to accommodate current drafting practices.

Amendment of s 141A (Notice and record for corporations)

Clause 39 amends section 141A so that it is extended to include partnerships or other unincorporated associations, and makes consequential changes to section 141A.

Replacement of pt 11, div 2, hdg (Transitional provisions)

Clause 40 amends the heading of Part 11, division 2.

Amendment of s 159 (Existing registrations)

Clause 41 amends section 159(5) so that it is consistent with amendments made by clause 4.

Amendment of s 162 (Continuing effect of qualifications under repealed Act)

Clause 42 amends section 162(1)(b) so that a person will only be qualified for registration as an architect under the requirements of the repealed Act until the commencement of the *Architects Amendment Act 2010*.

Insertion of new pt 11, div 3

Division 3 Transitional provision for Architects Amendment Act 2010

Clause 43 inserts section 166 (Certain applications to be dealt with under pre-amended Act) which provides that the pre-amended Act continues to apply to applications for registration, renewal and restoration that have not finally been dealt with before commencement of section 166.

Clause 43 inserts section 167 (Prospective application of ss 36AA and 69AA) which provides that the new sections 36AA and 69AA do not apply to a person who, before the commencement, stopped being an architect if the relevant conduct of the person mentioned in section 36AA(1) happened before the commencement of section 167.

Amendment of sch 2 (Dictionary)

Clause 44 makes a number of amendments to Schedule 2 of the Act required as a consequence of this Bill.

Regulations amended

Clause 45 provides that the schedule to the Bill amends the regulations mentioned in it.

Amendment of regulations does not affect powers of Governor in Council

Clause 46 provides that the amendment of a regulation in the schedule to the Bill does not affect the power of the Governor in Council to further amend the regulation or to repeal it.

Schedule Consequential amendments

The schedule provides for consequential amendments to be made to:

- the *Architects Regulation 2003* so that it is consistent with amendments made by this Bill; and
- the *Cooperatives Regulation 1997* to replace references to the *Architects Act 1985*, which is repealed, with references to the *Architects Act 2002*.

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