

**ARCHITECTS REGULATIONS – SUNSET
COMPETITION POLICY REVIEW OF THE ARCHITECTS ACT
BPAY® FACILITIES FOR ANNUAL FEES**

This Newsletter is an official ARBV communication with architects

COMPETITION POLICY CHANGES TO THE ARCHITECTS ACT 1991

Changes to the Architects Act resulting from competition policy reviews are now before Parliament. Details of the proposed Architects (Amendment) Act 2004 can be found at www.dms.dpc.vic.gov.au, in Parliamentary Documents under 'Bills'. Scroll down to "Architects Amendment Bill". The link 'Introduction print' contains the proposed amendments. See also 'Explanatory Memorandum'.

- **Registration of architects continues.**
- **Approval of Companies and Partnerships continues with some changes.**
- **Protection of the title 'Architect' continues with changes to other derivative words.**
- **Provision for complaints and discipline continues via inquiry and Tribunal; with some changes.**
- **Accreditation of architecture courses continues.**

The main changes to the Act are:

1. title protection

Under competition policy review, restrictions on the terms 'architecture' and 'architectural' were considered to unfairly restrict the conduct of other businesses. The Bill replaces these terms with restriction on the use of three terms: 'architectural services', 'architectural design services' and 'architectural design' in relation to the design and planning of buildings. The Bill also strengthens prohibitions on unregistered persons or firms representing themselves as registered architects or allowing themselves to be represented as registered.

2. Insurance

At present, insurance requirements for architects are specified under the Building Act 1993 and administered by the Building Commission.

The Bill simplifies insurance arrangements by moving them to the Architects Act, to be administered by the Architects registration Board.

Architects will only need to deal with one statutory body for both registration and insurance.

The ARBV will require proof of insurance from all practising architects at the time of registration and annual renewal or when insurance needs change. Employee architects will need to be listed by their Company as covered by insurance.

- 3. Approval of companies and partnerships**
Current ownership and control arrangements for partnerships and companies have been simplified. The Bill reduces these requirements to at least one partner or director who is a natural person must be a registered insured architect responsible for the architectural services of the company or partnership. It is expected that this will simplify structural arrangements for firms.
- 4. Broader membership of the Architects Registration Board**
Competition Policy review found that Board membership was too restricted. Currently there are 8 members, two of whom are community representatives and one represents Allied Industries alongside architects. In future, Board membership will be expanded to include two people representing major building industry organisations who are not architects. This will mean that there will be 5 architects and 5 non-architects on the Board.
- 5. Total separation of Tribunals from the Board**
Currently, while disciplinary Tribunals operate independent of the Board, up to 2 Board members may be members of a tribunal. In future, no Board members will sit on Tribunals. This will ensure that Tribunals are completely independent of the Board. Tribunals will comprise one architect, one non-architect and one person representing consumer interests chosen from a panel of names approved by the Minister. One member of a Tribunal must also have legal knowledge and experience.
- 6. Introduction of alternative dispute resolution via mediation**
The ARBV will be able to offer free confidential mediation services to architects and clients who are in dispute if both parties agree to mediation. This may enable earlier resolution of problems and avoid the need for a Tribunal hearing. If mediation is not successful, further inquiry may occur.
- 7. Links with the Building Practitioners Board**
A member of the ARBV will also be a member of the Building Practitioners Board. This will facilitate better understanding between the Boards and professions.

The Building Commission conducted extensive consultations on proposed NCP changes to the Architects Act with the ACA, RAIA and ARBV. The proposals that have been presented to Parliament are based on those consultations and on the Government response to NCP policy.

Please note that these proposals are still subject to Parliamentary approval and then formal introduction no later than July 2005. Until the revised Act is gazetted, the current, *Architects Act 1991* remains in force.

ARCHITECTS REGULATIONS 2004

The Architects Regulations were due to 'sunset' on 25 May 2004 and are replaced by the Architects Regulations 2004.

After consultation, the Board received four responses, which were generally supportive of the revised regulations. The Board is considering a further review of its Prescribed Course provisions.

The Regulations came in to force on 25 May 2004.

The main changes to the Regulations are simplifications of the Professional Conduct Regulations following Competition Policy review.

The full Regulations are available on the ARBV web site at Legislation.

The revised professional conduct regulations are:

PART 2—PROFESSIONAL CONDUCT Division 1—General Obligations

6. Standard of practice

An architect must perform his or her work as an architect in a competent manner and to a professional standard.

7. Duties

An architect must—

- (a) act in the interest of his or her client or prospective client; and
- (b) not favour his or her own interest over that of his or her client or prospective client.

8. Notice of conflict of interest

(1) An architect who—

- (a) acts, or proposes to act, on the same project in the capacity of—
 - (i) an architect and a developer; or
 - (ii) an architect and an estate agent; or
- (b) has any other conflict of interest with a client

or prospective client—

must give the client or prospective client written notice of the scope of each of those roles or that conflict of interest.

(2) Notice given under sub-regulation (1) must be given—

- (a) in the case of a client, when the conflict

arises or appears likely to arise; or

(b) in the case of a prospective client, prior to acting for that person.

9. Client's consent

(1) After giving notice under regulation 8, an architect must obtain written consent to act for a client or prospective client within fourteen calendar days of the day of giving notice under regulation 8(1).

(2) In the case of an existing client, if consent is not obtained in accordance with sub-regulation (1), an architect must immediately cease to act for that client.

(3) In the case of a prospective client, if consent is not obtained in accordance with sub-regulation (1), an architect must refrain from acting for that prospective client until written consent to act is given by that person.

Division 2—Specific Obligations

10. Administering contract conditions

An architect who is commissioned to administer conditions of contract must do so impartially between the parties to that contract.

11. Source of remuneration

An architect must be remunerated for his or her architectural services by either—

- (a) the professional fee; or
- (b) other benefits specified in the contract of engagement; or
- (c) the salary and any other benefits payable by the architect's employer.

12. Correctness of advertising material

An architect must ensure representations made in connection with the supply or possible supply of architectural services or in connection with the promotion or advertising by any means of the supply of architectural services are accurate and current.

13. Disclosure of name of architects

(1) An architect who is a sole practitioner must ensure that the letterhead of his or her practice discloses his or her name.

(2) An architect who is a member of an architectural partnership must ensure that the letterhead of the partnership discloses the names of all architect members of the partnership and states that they are architects.

(3) An architect who is a director of an architectural company must ensure that the letterhead of the company discloses the name of the principal executive officer of the company and the names of all architect directors of the company and states that they are architects.

14. Defining the terms of engagement

Before an architect accepts an engagement to provide architectural services or services as a developer or services both as an architect and a developer and as soon as practicable after any change to the terms and conditions or scope of engagement becomes known to the architect, he or she must—

- (a) in writing, set out the description, terms and conditions of the engagement or the change; and
- (b) supply a copy of that document to the client.

Division 3—General

15. Conduct of architectural partnerships and architectural companies

If an architect who provides architectural services to clients on behalf of an architectural partnership or an architectural company contravenes one or more of regulations 6 to 14, then that regulation is also contravened by—

- (a) in the case of an architectural partnership, each partner in that architectural partnership who is an architect; or
- (b) in the case of an architectural company, each director of that architectural company who is an architect.

16. Unprofessional conduct

Without limiting the meaning of "unprofessional conduct"—

- (a) an architect who contravenes one or more of regulations 6 to 14 is guilty of unprofessional conduct; and
- (b) a partner of an architectural partnership or a director of an architectural company who contravenes one or more of regulations 6 to 14 by operation of regulation 15 is guilty of unprofessional conduct.

17. Guidelines

- (1) The Board may prepare guidelines on professional conduct and practice for architects, architectural companies and architectural partnerships.
- (2) The Board must cause a copy of the guidelines made by the Board—
 - (a) to be made available for inspection by any person at the offices of the Board during the usual office hours of the Board; and
 - (b) to be available to every architect on the Register.

The Board considers these changes to be reasonably self explanatory. However, it will, in the near future,

publish a new set of guidelines to accompany the Regulations.

Other minor or machinery changes have been made to parts of the forms used for registration.

The changes to the Professional Conduct Regulations were consulted on extensively with ACA and RAIA during the NCP process with the Building Commission. Peak bodies received the proposals with an RIS from the Board during April 2004. these documents were also available on the ARBV website.

Please note that these revised Regulations relate to the Architects Act 1991. When the proposed changes to the Architects Act are approved, there will be subsequent changes to the Architects Regulations.

ANNUAL REGISTRATION FEES

Notices regarding annual fees have been sent to all architects and architectural companies.

Payment is due by 30 June, by either BPay, cheque, or cash.

If architects wish to use BPay, please consult your bank.

It is important that the invoice form is returned when paying by cheque or presented when paying by cash.

Cheques presented without the whole invoice form for all architects represented in the payment are very difficult to trace and record of payment by the due date may not be possible.

ARBV ARCHITECTURAL SERVICES AWARD

The Board has had an excellent response to this new award, with a number of nominations received so far.

The closing date is 30 June 2004. To be eligible, an architect must have at least 2 separate nominations.