



Government of **Western Australia**  
Department of **Mines, Industry Regulation and Safety**  
**Building and Energy**



# Report of the Statutory Review of the *Architects Act 2004*

Decision Regulatory Impact Statement

December 2018

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November 2018

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## EXECUTIVE SUMMARY

The *Architects Act 2004* (the Act) commenced operation in 2005. The objects of the Act are:

- “to ensure that only properly qualified and competent persons are identified as architects or as persons who practise architecture, and to regulate the practice of architecture by those persons; and
- to establish, maintain and promote suitable standards of knowledge and skills among architects,

for the purpose of protecting the consumers of architectural and related services in Western Australia” (section 3).

A statutory review of the Act (the Review) was undertaken to ensure that it is still applicable to the modern functioning of the architectural industry, reduce red tape where possible, and examine the effectiveness of the operation of the Architects Board of Western Australia (the Board). The Review also examined ideas to improve the Act and *Architects Regulations 2005* (the Regulations).

The Review commenced in 2015 with the release of a Consultation Regulatory Impact Statement (CRIS). Following analysis of the issues raised in submissions, consultation with key stakeholders and additional research, a number of recommendations for change have now been finalised in this report, which also constitutes a Decision Regulatory Impact Statement (DRIS).

The Review found that the Board is operating effectively under the current objects of the Act. Some of the key consumer protection measures for clients of architects include:

- strong requirements for registration consistent with the National Standard of Competency for Architects and mandatory professional indemnity insurance;
- complaints about architects are investigated and may be taken to the State Administrative Tribunal;
- requirements for continuing professional development apply requiring architects to keep pace with areas of change; and
- the regular review and accreditation of architecture courses in Western Australia is undertaken, consistent with the national Architecture Program Accreditation Procedure.

The Review recommends significant increases to penalties, clarifying the Board’s capacity to engage external investigators, and improvements to the registration and licensing regime.

The Building Ministers Forum (BMF) comprises Ministers with responsibility for building and construction across Australia. In April 2018, significant new reforms and issues were identified in a report commissioned by the BMF: *Building Confidence: improving the effectiveness of compliance and enforcement systems for the building and construction industry across Australia* by Professor Peter Shergold and Ms Bronwyn Weir (Shergold and Weir Report). The Shergold and Weir Report recommendations about the design sector will be examined further in a separate consultation and review process, subject to legislative priorities.

## LIST OF COMMON ABBREVIATIONS

| <b>Category</b> | <b>Abbreviation</b> | <b>Word/Phrase in Full</b>                                                         |
|-----------------|---------------------|------------------------------------------------------------------------------------|
| Legislation     | the Act             | <i>Architects Act 2004</i>                                                         |
|                 | the Regulations     | <i>Architects Regulations 2005</i>                                                 |
|                 | BSR Act             | <i>Building Services (Registration) Act 2011</i>                                   |
| Organisations   | AIA                 | Australian Institute of Architects                                                 |
|                 | AACA                | Architects Accreditation Council of Australia                                      |
|                 | BDAWA               | Building Designers Association, Western Australian Chapter                         |
|                 | Building and Energy | Department of Mines, Industry Regulation and Safety- Building and Energy Division  |
|                 | the Board           | Architects Board of Western Australia                                              |
|                 | BMF                 | Building Ministers Forum                                                           |
|                 | DMIRS               | Department of Mines, Industry Regulation and Safety                                |
|                 | DPLH                | Department of Planning, Lands and Heritage                                         |
|                 | RGU                 | Better Regulation Unit, Department of Treasury                                     |
|                 | SAT                 | State Administrative Tribunal                                                      |
|                 | WAPC                | Western Australian Planning Commission, Department of Planning, Lands and Heritage |
| Common terms    | APE                 | Architectural Practice Examination                                                 |
|                 | CPD                 | Continuing Professional Development                                                |
|                 | CRIS                | Consultation Regulatory Impact Statement                                           |
|                 | DRIS                | Decision Regulatory Impact Statement                                               |
|                 | IPART               | Independent Pricing and Regulatory Tribunal of New South Wales                     |
|                 | IPART Review        | <i>IPART Reforming Licensing in NSW 2014 review</i>                                |
|                 | Minister            | Minister for Commerce and Industrial Relations                                     |
|                 | NRM                 | National Recognition Model                                                         |
|                 | NEP                 | National Examination Paper                                                         |
|                 | RAE                 | Review of Academic Equivalence                                                     |
|                 | RIA                 | Regulatory Impact Assessment                                                       |
|                 | NPrA                | National Program of Assessment                                                     |
|                 | WA                  | Western Australia                                                                  |

## RECOMMENDATIONS

|                                                                                  |                                                                                                                                                                                                                                                                                                               |
|----------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>PART 1</b>                                                                    | <b>Key issues of regulation, need for continuation of the Board and its effectiveness</b>                                                                                                                                                                                                                     |
| <b><i>Should architects and building designers be regulated?</i></b>             |                                                                                                                                                                                                                                                                                                               |
| <b>1</b>                                                                         | That further consideration of the regulatory model for architects and architectural corporations is included in the relevant review of the Shergold and Weir Report recommendations.                                                                                                                          |
| <b>2</b>                                                                         | That further consideration of the registration of building designers is included in the relevant review of the Shergold and Weir Report recommendations.                                                                                                                                                      |
| <b><i>National recognition of architects</i></b>                                 |                                                                                                                                                                                                                                                                                                               |
| <b>3</b>                                                                         | That the National Recognition Model is implemented subject to agreement with other jurisdictions to proceed and resolution of enforcement issues.                                                                                                                                                             |
| <b><i>The definition of ‘architecture’</i></b>                                   |                                                                                                                                                                                                                                                                                                               |
| <b>4</b>                                                                         | That further analysis and consultation on restricted terms is not undertaken at this time.                                                                                                                                                                                                                    |
| <b>PART 2</b>                                                                    | <b>Administrative matters relevant to improving the operation and effectiveness of the Act</b>                                                                                                                                                                                                                |
| <b><i>Election of members: casting vote of Board members</i></b>                 |                                                                                                                                                                                                                                                                                                               |
| <b>5</b>                                                                         | That regulation 9 and regulation 8(3) are amended to clarify that all Board members registered under Part 4 of the Act (practising and non-practising) are eligible to be selected by the Board to provide a casting vote in an election, whether elected by registered persons or appointed by the Minister. |
| <b><i>Voting process</i></b>                                                     |                                                                                                                                                                                                                                                                                                               |
| <b>6</b>                                                                         | That regulation 9(b) is amended so that each candidate is taken to be elected at the expiry of the incumbent’s term.                                                                                                                                                                                          |
| <b><i>Names of elected members to be published in the Government Gazette</i></b> |                                                                                                                                                                                                                                                                                                               |
| <b>7</b>                                                                         | That regulation 10 is amended to no longer require the publication of names in the <i>Government Gazette</i> .                                                                                                                                                                                                |
| <b><i>Board composition and election of members</i></b>                          |                                                                                                                                                                                                                                                                                                               |
| <b>8</b>                                                                         | That the number of Board members is not changed at this time.                                                                                                                                                                                                                                                 |

### ***Schedule 1 – Board vacancies***

**9**

That amendments are made to the Act and/or Regulations to enable the Board, when an elected Board member vacates their position, to:

- if the remaining term is less than one year, appoint a person to represent the interests of registered persons to the position for the remainder of the expiring member's term; and
- call for the nomination of elected persons during any notice period provided by the resigning elected member to enable the replacement member to be appointed, if possible, by the time the resigning member vacates his or her position.

### ***Schedule 1 – Chairperson and Deputy Chairperson***

**10**

That Schedule 1 is not amended to change the requirements for re-election for the Chairperson and Deputy Chairperson.

### ***Investigation Powers***

**11**

That section 12 of the Act is amended to clarify that the Board may appoint a consultant or any other person to investigate a matter and report to the Board. That a new Board policy or procedure on the appointment of investigators is established following the amendments.

### ***Penalties***

**12**

Subject to advice from Parliamentary Counsel, that the Act is amended to:

- increase the penalties available under the Act to reflect the penalties available for similar legislation in other states/territories and comparable legislation in Western Australia;
- consider penalties for individuals and corporations; and
- consider a significant increase in the maximum penalties available to SAT under section 57.

### ***Accreditation Council of Australia Advice***

**13**

That the Act and Regulations are amended to:

- enable the Board to rely on AACA advice in relation to the equivalence of qualifications and an applicant's standard in relation to the practice of architecture; and
- provide for examination requirements for registration to include the Architectural Practice Examination requirements (currently prescribed in regulations 12 and 13) or any other examination in architectural practice arranged or approved by the Board to enable recognition of AACA assessments.



### ***Registration conditions of natural persons and corporations***

**14**

That new requirements are not introduced at this stage regarding display of registration or licence numbers on all stationery, advertisements, signage and other information given to the public about the applicant's architectural work. The issue may be re-examined in the proposed future consideration of a legislated Code of Conduct in Recommendation 2 or review of Shergold and Weir Report recommendations.

### ***Corporation's constitution***

**15**

That the requirements under section 55 of the Act for licensed corporations to advise the Board of proposed changes to their constitution or governing rules and the outcome are repealed.

### ***Renewal date, insurance and period of registration***

**16**

That the legislation is amended to:

- amend the Regulations, including regulation 16C(4), to align all registration and licensing renewal renewals and payment of fees from 1 July to 30 June, with provision for a 30 day grace period for late payment, small fee to deter late payment and an appropriate lead-in time;
- amend section 37 of the Act to maintain an architect's and architectural corporation's registration status during the above grace period for late payment; and
- repeal regulations 16B, 16C(1)-(3), 16C(4)(b) and 16C(5)-(6).

### ***Examination fees***

**17**

That Part 4 of the Act and Regulations are amended to:

- clarify that the Board may appoint examiners;
- enable the Board to require reasonable fees from candidates, and pay examiners reasonable fees, as may be determined by the Board;
- require that fee changes must not occur more than once in a calendar year;
- enable the Minister to direct the Board by written notice to reduce these fees if the Minister considers the fee to be excessive;
- to minimise impacts on candidates, a lead-in time will be provided for fee increases for candidates; and
- repeal the prescribed fees for examinations in Schedule 1, Architects Regulations 2005.

### ***Amendments to the register***

**18**

That the Regulations are amended to enable the Board to waive a fee for:

- obtaining a certified copy of the register or any part of, or entry in, the register; and
- amending particulars in the register.

### ***Minor disciplinary hearings***

**19**

That the Act is amended to provide the Board with powers to deal with minor disciplinary complaints where a disciplinary matter exists and the Board is of the opinion that a proceeding before the State Administrative Tribunal is not warranted by the nature of the matter. The provisions will be similar to provisions such as section 57 of the *Building Services (Registration) Act 2011* and regulation 31 of the *Plumbers Licensing and Plumbing Standards Regulations 2000*.

### ***Written agreements***

**20**

That Regulations are amended under section 56(1)(a) and 56(2) of the Act to require architects to provide a written agreement containing core information to their clients, with failure to do so resulting in disciplinary action under section 56 of the Act. The core information will be determined through further consultation.

### ***Code of Conduct***

**21**

That further consideration is given to the need to implement a legislated Code of Conduct for architects, following comment from industry and the AACA's review of its model code.

### ***Review of Board decisions***

**22**

That further investigation is not carried out at this stage into the most appropriate process for reviewing Board decisions by the State Administrative Tribunal.

### ***Licensing of non-traditional corporations***

**23**

That further consultation is undertaken with the Board, affected businesses and key stakeholders to clarify which bodies should be entitled to be licensed as 'architectural corporations'.

### ***Term 'retired architect' to be specifically allowed***

**24**

That section 4 and section 68 of the Act are amended:

- to ensure that no offence is committed if a person who has been registered under the Act describes themselves as a 'retired architect'; and
- only persons previously registered will commit no offence by using the term 'retired architect'.

# INTRODUCTION

## The Architectural Occupation in Western Australia

The architectural profession is a fundamental component of the building industry and a key contributor to the quality of the built environment. In 2017/18, it was estimated by industry analyst IBISWorld that the architectural sector would generate an income of \$5.8 billion with a profit of \$1.1 billion<sup>1</sup>.

Architecture businesses are typically small, with only 1.6 per cent employing 20 or more people<sup>2</sup>. The work of an architect is broad and can include work such as:

- core pre-design, design and documentation work (66 per cent of work undertaken by architectural businesses);
- procurement of building services;
- contract administration;
- oversight of building works;
- post-occupancy evaluation;
- consultancy work – including project management and strategic planning;
- training and education; and
- other design services (e.g. interior design, urban design, landscape architecture)<sup>3</sup>.

The architectural client base is drawn from commercial/industrial buildings (25 per cent), single unit residential building (19.2 per cent), multi-unit residential building (28.1 per cent), public works (22.5 per cent) and non-building work (5.2 per cent)<sup>4</sup>.

A large majority of architects in Australia work in small practices with around half of these businesses operating as sole traders<sup>5</sup>. Architectural businesses are changing, however, and a growing number of architects work in major engineering and project management companies.

The Act establishes the Board in Western Australia and the registration regime for architects and architectural corporations. Under the Act, the Board may take disciplinary action against architects who contravene the Act, or act unprofessionally or incompetently. An architect must hold professional indemnity insurance and undertake continuing professional development courses.

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<sup>1</sup> AACA, *Industry Profile: The profession of architecture in Australia*, February 2018, page 4.

<sup>2</sup> AACA, *Industry Profile: The profession of architecture in Australia*, February 2018, page 7.

<sup>3</sup> AACA, *Industry Profile: The profession of architecture in Australia*, February 2018, page 7.

<sup>4</sup> AACA, *Industry Profile: The profession of architecture in Australia*, February 2018, page 7.

<sup>5</sup> AACA, *Industry Profile: The profession of architecture in Australia*, February 2018, page 7.

On 30 June 2018, there were 1,315 registered architects comprising 1,074 practising architects and 241 non-practising architects<sup>6</sup>. On 30 June 2018, there were 236 licensed corporations entitled to practise architecture in Western Australia.

Registration numbers fell by 18 natural persons and 3 licensed corporations from 30 June 2017 to 30 June 2018.

## Statutory Review

Section 81 of the Act requires that the Minister (the Minister for Commerce and Industrial Relations) carries out a review of the operation and effectiveness of the Act as soon as practicable after the expiry of five years from its commencement. The Act commenced on 16 November 2005 and a review became due in November 2010. The review was postponed while the *Building Act 2011* and the other Building Services acts<sup>7</sup> were implemented and more urgent priorities addressed.

The Review has been carried out in accordance with Regulatory Impact Assessment (RIA) processes, as outlined in the State Government's RIA requirements below. An additional perspective was also required due to legislative requirements for the statutory review. Section 81 of the Act requires that in the course of the Review, the Minister have regard to:

- “ (a) the effectiveness of the operation of the Board; and
- (b) the need for the continuation of the functions of the Board; and
- (c) any other matters that appear to the Minister to be relevant to the operation and effectiveness of this Act.”

The operation and effectiveness of the Act are considered in relation to its objects, which are set out in section 3 of the Act, as follows:

- “ (a) to ensure that only properly qualified and competent persons are identified as architects or as persons who practise architecture and to regulate the practice of architecture by those persons; and
  - (b) to establish, maintain and promote suitable standards of knowledge and skills among architects,
- for the purpose of protecting the consumers of architectural and related services in Western Australia.”

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<sup>6</sup> Architects Board of Western Australia, *Annual Report 2016/17*, page 7.

<sup>7</sup> The building related acts include the *Building Act 2011*, *Building Services (Registration) Act 2011*, *Building Services (Complaint Resolution and Administration) Act 2011* and *Building Services Levy Act 2011*. These acts commenced operation on 29 August 2011. The Building Act commenced operation on 2 April 2012.

## State Government's Regulatory Impact Assessment Requirements

The Western Australian Government is committed to a regulatory review process that assesses whether regulatory action is required or if policy objectives can be achieved by alternate measures, with lower costs for business and the community. Government agencies are required to undertake a Regulatory Impact Assessment (RIA) process for all regulatory proposals that could potentially have a negative impact on business, owners or the economy.

### *Consultation Regulatory Impact Statement (Stage 1)- completed*

A Consultation Regulatory Impact Statement (CRIS) is the first stage of the RIA. A CRIS is required where proposed changes to a legislative framework are likely to have a significant impact, for example, to home owners, architectural and building design businesses and the State government/regulator. The CRIS was published and submissions sought in February 2015. The submission period closed on 22 May 2015.

### *Decision Regulatory Impact Statement (Stage 2)- completed*

This report analyses the impact of the various options identified in the CRIS stage, and the Government's preferred options. The report's recommendations were determined after analysis of all of the submissions received in response to the CRIS, further research and targeted consultation with key stakeholders conducted primarily in 2017. This report also constitutes a Decision Regulatory Impact Statement (DRIS) as the final stage of the RIA process.

### *Tabling of Review in Parliament (Stage 3)*

To meet the requirements of section 81(2) of the Act, the report of the Review will be tabled in Parliament.

## Structure of this Report

This DRIS is set out in two main parts to reflect the requirements of section 81 of the Act. It makes recommendations about the 24 proposals raised in the CRIS.

### **Part 1 – Key issues of regulation, need for continuation of the functions of the Board and effectiveness of the operations of the Board**

Part 1 of this Review deals with fundamental issues about why architects are registered, whether building designers should be registered and whether a proposal for a National Recognition Model (NRM) for architects should be supported. Part 1 also examines the need for the continuation of the functions of the Board and effectiveness of the Board consistent with section 81(1)(a) and (b) of the Act.

## **Part 2 – Administrative matters relevant to improving the operation and effectiveness of the Act**

Part 2 of the Review examines a range of other matters relevant to the operation and effectiveness of the Act and ideas for improvement. These include recommendations to introduce minor disciplinary powers, reduce costs relating to the operation of the Board and to clarify governance and other requirements to improve the Board's effectiveness. These were discussed in the CRIS in proposals 5 to 24.

### **Stakeholder Responses to the CRIS**

The CRIS examined and asked for submissions on all aspects of the Act to determine whether the Act was meeting its objectives, with particular attention given to the 24 proposals raised in that paper. The Building Commission received submissions from 20 respondents; four from industry associations, two from State Government entities and 14 from individuals (all of whom work in the architecture/building design industries).

The industry associations included:

- Australian Institute of Architects (AIA);
- Building Designers Association, Western Australia Chapter (BDAWA);
- Housing Industry Association; and
- Architects Accreditation Council of Australia (AACA).

The State Government entities included:

- the Board; and
- Office of the Government Architect.

A full list of respondents is provided at **Appendix B**. Subsequent targeted consultation was undertaken by the Department of Mines, Industry Regulation and Safety with key stakeholders to discuss the issues and obtain further information. These stakeholders included the Board, Australian Institute of Architects Western Australia (AIAWA), BDAWA and Department of Planning, Lands and Heritage (DPLH).

## Shergold and Weir Report

The National Construction Code (NCC) establishes the performance requirements for the minimum standards that buildings, building elements and plumbing and drainage systems must meet. The NCC is given legal effect by relevant legislation in each state and territory, including the *Building Act 2011* in Western Australia. The NCC is maintained by the Australian Building Codes Board.

Following the Lacrosse fire in Melbourne in 2014, and the Grenfell Tower fire in London in 2017, the BMF increased its focus on building fire safety. In addition, the BMF commissioned the Shergold and Weir Report to provide a broad national best practice model to strengthen the effective implementation of the NCC.

The design and construction of complex buildings involves a range of occupations and experts, such as builders, architects, building designers, building surveyors, project managers and engineers. In Western Australia, builders and building surveyors are currently subject to registration and regulatory obligations in relation to the NCC, through the operation of the *Building Services (Registration) Act 2011* and *Building Act 2011*. The registered building contractor must ensure on completion of the building or incidental structure that it complies with each applicable building standard. The registered building surveyor checks and certifies compliance with building standards during the building permit approvals process and checks the as constructed buildings during the occupancy permit process. Permit authorities, generally Local Governments, grant permits and have powers to take enforcement action. DMIRS investigates and provides industry guidelines on the work of registered builders and building surveyors may take disciplinary action and has a dispute resolution function. Civil litigation action can be taken against the building contractor and any professionals involved if problems occur with the building or contractual requirements are not met.

The Shergold and Weir Report seeks to strengthen the controls in building regulation and identified 24 wide ranging recommendations to improve compliance with the NCC. Some key elements include:

- new registration requirements for a range of building related professions;
- strengthening the statutory requirements for building surveyors;
- mandatory on-site building inspections;
- improved building approval and performance solution documentation;
- greater collaboration between local government, state government regulators and private building surveyors; and
- improved enforcement by local Government and state government.

The BMF and each jurisdiction are currently examining the proposals. A staged process of review and consultation is under development by the Building and Energy Division, Department of Mines, Industry Regulation and Safety (Building and Energy).

The Shergold and Weir Report uses the term “building practitioner” or “practitioner” to refer to a range of building occupations and related professions, including architects and designers/draftpersons. The key recommendations impacting the design sector include:

- That each jurisdiction requires the registration of a number of categories of building practitioners involved in the design, construction and maintenance of buildings, including builder, site or project manager, building surveyor, building inspector, architect, engineer, designer/draftsperson, plumber and fire safety practitioner. (Recommendation 1).
- That each jurisdiction prescribes consistent requirements for the registration of building practitioners, including:
  - certificated training which includes compulsory training on the operation and use of the NCC;
  - additional competency and experience requirements;
  - where it is available, compulsory insurance in the form of professional indemnity and/or warranty insurance together with financial viability requirements where appropriate; and
  - evidence of practitioner integrity based on an assessment of fit and proper person requirements (Recommendation 2).
- That each jurisdiction requires all practitioners to undertake compulsory Continuing Professional Development on the NCC (Recommendation 3).
- That each jurisdiction give regulators a broad suite of powers to monitor buildings and building work so that, as necessary, they can take strong compliance and enforcement action (Recommendation 6).
- That, consistent with the International Fire Engineering Guidelines, each jurisdiction requires developers, architects, builders, engineers and building surveyors to engage with fire authorities as part of the design process (Recommendation 8).
- That each jurisdiction requires building approval documentation to be prepared by appropriate categories of registered practitioners, demonstrating that the proposed building complies with the NCC (Recommendation 13).

The Shergold and Weir Report and BMF Communiques are available on the Building Ministers Forum page on the Department of Industry, Innovation and Science website [www.industry.gov.au](http://www.industry.gov.au).

These design sector recommendations propose major changes to the current regulatory approach, do not represent final Government policy and require further review and consultation in Western Australia. The Shergold and Weir Report proposes mandating the use of suitably qualified registered architects and suitably qualified registered “designers/draftpersons”. A key proposed change from this approach for architects is to the current approach of title protection for architects (Recommendations 1, 2 and 13). In this system, State-based legislation provides for the title “architect” and related restricted terms to be used only by registered persons. Most jurisdictions appear to use this approach for the regulation of architects. In addition to title protection, Tasmania has an additional requirement that registered architects are accredited under the *Building Act 2016* if they undertake architectural design and documentation.



Currently building designers are not subject to registration requirements in Western Australia. The Shergold and Weir Report proposes that registered architects and building designers, and other designers such as registered engineers<sup>8</sup>, should have a stronger legislative role in providing documentation for the building approvals process to demonstrate the proposed buildings will comply with the NCC<sup>9</sup>. The Shergold and Weir Report proposes that the design documentation obligation would apply “at a minimum” for higher risk buildings, such as BCA Class 2-9 buildings<sup>10</sup>.

The Shergold and Weir Report proposals outlined above have significant cost-benefit impacts for building safety, the building industry, building surveyors, architectural and building design businesses, the Board’s registration and enforcement role and Local Government. Professional indemnity insurance for registered occupations may also be affected. Before any legislative amendments are made, consultation and cost-benefit analysis will be undertaken in Western Australia consistent with the Regulatory Impact Assessment process.

## Other Reviews

Other reviews referenced in this report include:

- Productivity Commission reviews (2000, 2010, 2015);
- NSW reviews;
  - 2010 Statutory Review; and
  - IPART Review.

Further information about these reviews is included at **Appendix C**.

## Implementation and Evaluation of the Recommendations of this Review

An examination of the broad regulation of the design sector was raised in two proposals in the Review (Proposal 1 and 2). As outlined above, new concerns and recommendations have since been identified in the Shergold and Weir Report which will require further consultation and review. This new review process, and the implementation of legislative amendments from this Review, will be considered in the context of Building and Energy’s other legislative review projects and priorities.

The issues and recommendations raised by the Shergold and Weir Report may result in significant changes or minor changes to the regulatory model and legislative framework. Accordingly, implementation of the recommendations to implement amendments to the Act are likely to take place after formulation of policy positions on the relevant Shergold and Weir Report recommendations.

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<sup>8</sup> Engineers working in the building and construction industry are not currently registered in Western Australia.

<sup>9</sup> Shergold and Weir Report, page 7, 16 and 29.

<sup>10</sup> Shergold and Weir Report, page 7, 16 and 29.

Amendment Regulations generally occur more quickly than changes to Acts, as such changes are generally less complex and do not require passage through Parliament. Subject to legislative priorities, key Amendment Regulation recommendations may be implemented prior to the Act amendments in consultation with the Board.

The National Recognition Model (NRM) is a national proposal from the AACA, supported by architect boards across Australia, which would enable architects registered in one jurisdiction to automatically operate in other jurisdictions without additional registration costs. The priority given to implementing the NRM in other jurisdictions will impact on the model's implementation in Western Australia.

Any significant changes will be introduced with a lead-in period to allow architects and architectural corporations sufficient time to adjust their processes. This approach will minimise costs to individuals or businesses. Prior to amendments, industry information will be published to update the architectural industry on any changes that may impact them. Many of the changes in the DRIS are administrative or process changes for the Board and are unlikely to impact architectural businesses.

If the current regulatory regime is retained, the next statutory review of the Act will provide a further opportunity for evaluation, consultation and assessment of prior amendments.

# PART 1 – Key Issues of Regulation, Need for Continuation of the Board, and Its Effectiveness

## 1.1 Introduction

The CRIS examined key policy issues and sought submissions on these, including:

- whether architects should continue to be registered in Western Australia and, if so, the most appropriate means by which to achieve this outcome (Part 1.2 below);
- whether registration should be extended to building designers (Part 1.2 below);
- a proposal to implement a National Recognition Model (NRM) for architects (Part 1.4 below); and
- the meaning of the key definitions of “architect”, “architectural” and “architecture” for the purposes of registration (Part 1.5 below).

These policy issues are fundamental to the architectural industry in Western Australia and most submissions made comment on these issues.

Part 1 also examines the need for the continuation of the functions of the Board (Part 1.2 below) and effectiveness of the operations of the Board (Part 1.3 below), consistent with section 81(1)(a) and (b) of the Act.

## 1.2 Should architects and building designers be registered and role of Board

The CRIS made the following proposals to encourage discussion and comment:

### PROPOSAL 1

***That the Act is retained and architects continue to be registered in Western Australia by the Architects Board.***

### PROPOSAL 2

***That consideration of whether to regulate architects and building designers under the Building Services (Registration) Act 2011 be deferred until a review of that act is undertaken.***

## *Objective*

The principal objective of the Act is to protect both the community and businesses by ensuring that consumers can identify if their designer is an architect and have confidence in the entry requirements for architects and other safeguards.

## *Statement of the Issues*

### *Architects*

Architects are registered in every state and territory in Australia through a system of title protection administered by architect industry boards operating under State-based legislation. In Western Australia, for example, a registered architect is entitled to use restricted words such as “architect”, “architects”, “architecture” and “architectural” and can hold themselves out as being an architect. Persons who are not registered may be subject to disciplinary action by the Board and prosecuted for offering or providing services that give the impression the provider is registered (and by extension, qualified) to do so. The registration regime reduces the risk of misrepresentation and enables building owners to check if their designer, or prospective designer, is an architect. Similar obligations apply to body corporates which must be licensed architectural corporations. In Tasmania, additional requirements apply to registered architects to be accredited under the *Building Act 2016* if they undertake architectural design and documentation for building work.

The AACA is a not-for-profit organisation owned by the State and Territory architect registration boards that maintains and updates the National Standard of Competency for Architects and assessment processes used by the registration boards. Registration requirements for architects are nationally consistent and include an accredited tertiary qualification of five years duration, at least two years’ practical experience working in the industry and passing the three part Architectural Practice Examination (APE).

The capacity of the Board to investigate complaints, requirements for continuing professional development and mandatory professional indemnity insurance offers further regulatory protection for clients. The registration and enforcement mechanisms under the Act assist in ensuring persons providing architectural services are appropriately qualified and to provide a robust mechanism for removing rogue operators and incompetent persons from the profession.

The status quo in terms of retaining registration for architects has some broader benefits for the building industry and economy. An architect’s expertise in the more complex buildings provides an important level of choice for developers, owners and builders. A registered architect subject to high educational and experience requirements, continuing professional development requirements and professional indemnity insurance also mitigates commercial and building risk. In complex buildings particularly, registered architects provide the specialised building design expertise necessary to the building sector. The ongoing requirement for architects to continue as a registered high level occupation therefore has a strong economic benefit. The Shergold and Weir Report has identified registration of architects as a necessary part of regulation for building regulation purposes.

## *Building designers*

Registration is one option available to government when regulating an industry or occupation. The registration of an occupation is a high level of regulatory intervention and entails significant financial costs to business. Increased costs to building designers would impact residential home owners in particular and therefore housing affordability.

Unlike architects, building designers in Western Australia are currently not required to be registered, or meet qualification and experience standards, before providing building design services. For employment purposes, most building designers will have completed formal certificate or diploma courses in building design and drafting, however, this is not a mandatory legal requirement. Some may also have a university degree in architecture. Building designers may be employed, for example, by building contractors, architectural businesses or be engaged direct by their clients for their building design services.

Building designers in Western Australia may choose to become a member of the BDAWA, the peak industry association for building designers in Western Australia. The BDAWA has an estimated 168 practising members and 132 additional associate, student and corporate members. The BDAWA provides a voluntary membership for building designers to encourage improved standards for the building design industry. To be eligible to join the BDAWA as a Full Ordinary Member, an applicant must be actively engaged in the profession of building design, hold an approved educational qualification and/or an approved portfolio of self-authored work, have approved work experience and an approved level of professional competence.

The quality, functionality and sustainability of the residential built environment has broader health, wellbeing and investment benefits<sup>11</sup>. DPLH has noted that contemporary and emerging development types, such as multi-storey developments in established areas, are inherently more complex to design in terms of their relationship to established built form, land use and communities<sup>12</sup>.

DPLH has recently sought evidence on the quality of building design services and indicated that it will gather information on the issue. In October 2016, the former Department of Planning advertised the Design WA package to improve the design of the built environment. The Design WA package included draft policies to improve:

- design principles;
- design review; and
- Apartment Design policy.

In addition, the Design Skills discussion paper outlined three alternatives for regulating design services.

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<sup>11</sup> *The Value of Good Design*, UK Commission for Architecture and the Built Environment 2002; Chapter 1, *Active Design Guidelines*, City of New York, 2010.

<sup>12</sup> DPLH, Design Skills Discussion Paper, October 2016, page 6.

Option A proposed to mandate the use of architects for complex apartment buildings. Option B considered introducing competency criteria specific to apartment development that would apply equally to building designers and registered architects. Option C was not to introduce any further regulation of design services. The Design WA package received 200 submissions with submissions closing on 20 December 2016. The analysis of responses and recommendations was submitted to WAPC for approval in late 2018, however, DPLH officers indicate that there is unlikely to be any recommendation to introduce further regulation at this stage. Implementation of the more design-oriented Apartment Design Policy and Design Review measures are likely to result in developers tending towards more competent designers for complex projects, even without the further regulation of design skills.

The DPLH project team will also promote new measures to collect data about Development Applications and built outcomes in the first five years after implementation of Design WA policies, to provide an evidence base for the relationship between designer accreditation, approvals processes and design outcomes. This will then give a stronger basis from which to contemplate further regulation of design services if necessary.

A key factor to consider before implementing a new registration regime from a risk perspective is the protections for clients of building designers that may be provided by current government policy and legislation. As indicated above, DPLH has identified that its planning policies may impact design quality. Planning policies enable the establishment of targeted planning and design parameters to address building design concerns. As particular design concerns emerge, there is scope for planning policies to target key areas of design concern. This provides a targeted form of design regulation.

Current building and consumer legislation can provide recourse and assistance to clients who experience problems with the work of a building designer. Building designers may be employed or contracted by registered building contractors to provide building design expertise. The *Building Act 2011* provides checks and balances to ensure that before a design is approved, it must meet the building standards set out in the *National Construction Code*, which is verified by a registered building surveyor and evidenced by a completed Certificate of Design Compliance. All building work over \$20,000 must be undertaken by a registered building contractor, whose name appears on the building permit and has overall responsibility for the building work. In the event that building disputes occur with a building contractor, these may be resolved with the assistance of DMIRS under the *Building Services (Complaints Resolution and Administration) Act 2011*. Local Government may issue building remedy orders.

National consumer legislation provides broad consumer guarantees for business services. Under Australian Consumer Law, services provided by a business at a cost of under \$40,000 must be provided with acceptable care and skill or technical knowledge, and take all necessary steps to avoid loss and damage, and fit the purpose or give the result that the owner and the business had agreed to<sup>13</sup>. These consumer guarantees are available, for example, to consumers engaging building designers direct for design plans.

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<sup>13</sup> Australian Competition and Consumer Commission website, Consumer Guarantees, 31 August 2016

The national Shergold and Weir Report recommendations provide an opportunity to further examine appropriate regulation for architects and building designers in the context of significant proposed reforms to regulation of design and compliance with the NCC. As noted above, these recommendations will be reviewed separately.

### *Options to address the issues*

In addition to Proposal 1, the CRIS proposed a range of options including retaining the status quo, deregulation and alternative options for regulation. The Shergold and Weir Report has proposed significant new reforms in this area and therefore it is not appropriate to make a finding on the preferred regulation model or role of the Board at this stage. The consultation undertaken during this review process will inform the new review process as the Shergold and Weir Report recommendations are examined. Further consultation will also be undertaken.

### *Impact analysis*

The impact analysis is deferred.

### *Recommendations*

#### **RECOMMENDATION 1**

***That further consideration of the regulatory model for architects and architectural corporations is included in the relevant review of the Shergold and Weir Report recommendations.***

#### **RECOMMENDATION 2**

***That further consideration of the registration of building designers is included in the relevant review of the Shergold and Weir Report recommendations.***

## **1.3 Assessment of the effectiveness of the operations of the Board**

The Board meets on a monthly basis, with strong attendance from Board members<sup>14</sup>. From 2016/17 to 2017/18 the Board met 11 times, with meetings occurring in every month except December<sup>15</sup>. The Board employs a Registrar and one other staff member, with salaries and other expenses funded by revenue from registration and licensing fees. The Board has consistently balanced its budget with a small annual surplus in most years.

Table 1 below provides a brief assessment of the performance of the Board in relation to the current legislative functions of the Board under section 10 of the Act. The Board is effectively meeting its current obligations under the Act.

<sup>14</sup> Architects Board of Western Australia, *Annual Report 2016/17*, p 5.

<sup>15</sup> Architects Board of Western Australia, *Annual Report 2016/17*, p 5.

**Table 1: Effectiveness of operations of the Architects Board of Western Australia**

| <b><i>Legislative Function and Key Tasks</i></b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | <b><i>Board Performance</i></b>                                                                                                                                                                                                                                                                                                                                          |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>1. Administer scheme of registration and licensing under Part 4 of the Act</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                                                                                                                                                                                                                                                                                                                                                                          |
| <ul style="list-style-type: none"> <li>• Review applications from natural persons and corporations</li> <li>• Maintain a register of registered architects and licensed corporations and make available for inspection by general public</li> <li>• Determine Board policies, such as conditions on grant of licences</li> <li>• Review renewal applications from natural persons and corporations on an annual basis, including Continuing Professional Development (CPD) requirements</li> <li>• Carry out any investigation necessary to decide whether an application should be made to SAT to determine if a licence should be suspended or cancelled</li> <li>• Provision of the Architectural Practice Examination (provided by the Board bi-annually)</li> <li>• Preparatory briefing sessions to prospective applications for the Architectural Practice Examination</li> <li>• Review of Western Australian architectural qualifications consistent with national standards</li> </ul> | <p>The Board's website provides a clear and accessible register with search function.</p> <p>Licensing policies and forms are available from the Board's website.</p> <p>Regular action on unlicensed trading takes place.</p> <p>An audit of 5% of practising architects is undertaken to ensure they are meeting continuing professional development requirements.</p> |
| <b>2. Monitor education in architecture and provide education advice to the Minister and others</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                                                                                                                                                                                                                                                                                                                                                                          |
| <ul style="list-style-type: none"> <li>• The Registrar and Chairperson attend the national AACA meetings</li> <li>• The Board provides advice to the Minister and the Government about architecture education</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | <p>The Board represents Western Australia on the AACA to maintain and update the national education standards and assessments for architects.</p> <p>The Board provides submissions to relevant legislative reviews and advice to the Minister and DMIRS.</p>                                                                                                            |
| <b>3. Accredit architectural education courses for the purposes of registration</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                                                                                                                                                                                                                                                                                                                                                                          |
| <ul style="list-style-type: none"> <li>• Reviews new education courses for the purposes of registration in Western Australia</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | <p>The Board undertakes a regular accreditation process for Western Australian architecture courses consistent with national standards.</p>                                                                                                                                                                                                                              |
| <b>4. Promote and encourage the continuing education of architects and increased levels of knowledge, skill and competence</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |                                                                                                                                                                                                                                                                                                                                                                          |
| <ul style="list-style-type: none"> <li>• Architects Board Award</li> <li>• Architects Board Graduate Awards</li> <li>• CPD framework.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | <p>The annual Architects Board Award and two Architects Board Graduate Awards promote strong standards of knowledge, skill and competence.</p> <p>The CPD framework and CPD audit program supports increased levels of knowledge, skill and competence by registered architects.</p>                                                                                     |



| <b>Legislative Function and Key Tasks</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | <b>Board Performance</b>                                                                                                                                                                                                                                                                                                                                                                                                                                |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>5. Other functions conferred by the Act</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| <p><i>Disciplinary proceedings</i></p> <ul style="list-style-type: none"> <li>• Board can investigate licensing applications and other disciplinary action with orders made by SAT</li> </ul> <p><i>Governance requirements</i></p> <ul style="list-style-type: none"> <li>• Board conducts elections and provides nominations to Minister, as required, for Ministerial approval</li> <li>• Remuneration or allowances of Board members are determined by the Minister on the recommendation of the Public Sector Commission</li> </ul> <p><i>Review of experience of prospective architects</i></p> <ul style="list-style-type: none"> <li>• The Board reviews the relevance of practical experience of prospective architects through a 3,000 hour logbook statement of experience against seven mandatory competencies; a national examination paper; and a one hour interview by two Board examiners who are experienced practitioners.</li> </ul> | <p>Numbers of complaints about misconduct of architects are low, with an average of two new complaints received per year in the last five years<sup>16</sup>. The Board investigates complaints as they arise to determine if action before SAT is merited.</p> <p>In the last three years, the SAT decisions database records one application by the Board concerning professional misconduct<sup>17</sup>. The Board's recommendation was upheld.</p> |
| <b>6. Promote public awareness of the functions of the Board</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| <ul style="list-style-type: none"> <li>• Website</li> <li>• Brochure</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | <p>The Board has a well presented and informative website. A brochure on building and renovating is available for consumers.</p>                                                                                                                                                                                                                                                                                                                        |
| <b>7. Provide Ministerial advice on matters to which this Act applies</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| <ul style="list-style-type: none"> <li>• Advice on the operation of the Act, licensing process, complaints or other matters.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | <p>The Board provides advice to the Minister and DMIRS as required and makes submissions to relevant legislative reviews.</p>                                                                                                                                                                                                                                                                                                                           |
| <b>8. Annual report to be provided to the Minister and Parliament with financial statements audited by a registered company auditor</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | <p>The Board provides the annual report, including financial statements and auditor's report, to the Minister for tabling in Parliament within the required legislative timeframes.</p> <p>The Board operates within budget with a small annual surplus in most years.</p> <p>The DMIRS reviews the annual reports and financials and has not identified any substantive issues or concerns.</p>                                                        |

<sup>16</sup>Four complaints in 2017/2018, Architects Board of Western Australia *Annual Report 2017/18*, p 12. One complaint in 2016/17, Architects Board of Western Australia *Annual Report 2016/17*, p 12. One complaint in 2015/16 - Architects Board of Western Australia *Annual Report 2015/16*, p11. One complaint in 2014/15 - Architects Board of Western Australia *Annual Report 2014/15*, p10. Three complaints in 2013/14 - Architects Board of Western Australia *Annual Report 2013/14*, p10.

<sup>17</sup> State Administrative Tribunal decisions database, File no. VR:2/2013

## 1.4 National recognition of architects

The CRIS made the following proposal to encourage discussion and comment:

### **PROPOSAL 3**

**That the National Recognition Model for architects be implemented in Western Australia.**

#### *Objective*

To harmonise the registration system for architects to enable participants to operate seamlessly across state and territory boundaries within Australia.

#### *Statement of the Issue*

Architects wishing to work in a number of jurisdictions in Australia must be registered separately in each state or territory. Under the *Mutual Recognition Act 1992*, registered architects must lodge a written notice with the relevant regulatory authority; pay a licence fee; provide required information and meet any public risk related requirements, such as professional indemnity insurance.

The NRM has been proposed by the AACA and supported by industry boards in each jurisdiction. The NRM would establish a national register of architects to enable improved marketing and the movement of architects from one jurisdiction to another without payment of additional registration fees.

#### *Options to address the issue*

##### **Option 1: Implement a National Recognition Model in Western Australia**

The proposed NRM would be based upon current mutual recognition legislation and would utilise the existing state and territory regulatory frameworks. The NRM would ensure that architects are able to be registered in any jurisdiction in Australia, may register to practise nationally on the basis of a single application and fee, and retain their current registration arrangements.

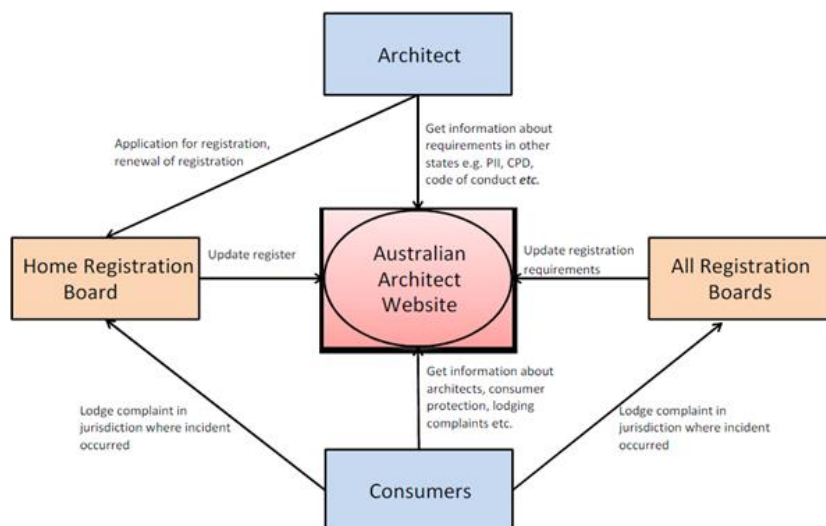
The introduction of national recognition would not affect the requirements for gaining registration as an architect in Australia. It is a requirement that any person who uses the title “architect”, or offers services to the public as an architect, must be registered with the architect board in their jurisdiction.

The AACA is a not-for-profit entity owned by state and territory architect industry boards and maintains the nationally consistent education/experience requirements and assessments for architects. These are implemented in each jurisdiction by architect industry boards that conduct, for example, the APE for candidates using experienced local examiners. The AACA also maintains a list of accredited architectural courses comprising courses that have been accredited by each jurisdiction’s architect board and approved international courses (New Zealand, Singapore and Hong Kong).

An overview of the operation of the NRM is as follows:

## National Recognition Model

(Source: the AACA's National Registration Work Group – Briefing Paper No. 1, October 2011)



### Impact Analysis

The NRM, if implemented in Australia, would enable registered architects with a licence issued in one jurisdiction to be recognised automatically by other jurisdictions without additional licence fees or paperwork. If this national project proceeds, Western Australian architects would have the advantage for overseas projects of being able to market themselves as “Australian Architects”.

Since the publication of the CRIS, the Productivity Commission has released the *Mutual Recognition Schemes: Research Report* which assesses the costs and benefits and ultimately recommends adoption of the scheme. The Productivity Commission’s recommendation is as follows:

“Recommendation 6.1 - Current initiatives to adopt automatic mutual recognition for licensed professionals who provide services across borders on a temporary basis should be implemented.

- The Governments of Western Australia, the Northern Territory and the ACT should, by 31 December 2016, legislate to extend the National Recognition of Veterinarians scheme to their jurisdictions.
- State and Territory Governments should make the legislative changes necessary to implement the proposed National Recognition of Architects’ registration scheme for architects.”<sup>18</sup>

<sup>18</sup> Productivity Commission, *Mutual Recognition Schemes: Research Report*, 25 September 2015, p2.

The Productivity Commission identified that before the NRM is implemented that compliance activity needs to be resolved (e.g. regulators being unaware of activity, differences in compliance costs caused by differences in regulation and responsibility for breaches of legislation), and the issue of loss of regulator revenue through changed funding models<sup>19</sup>.

## **Option 2: No National Recognition Model in WA – status quo**

The NRM would not be adopted and the status quo would continue.

### ***Impact Analysis***

In the short-term this option would have little impact on the architectural profession and the broader community. However, if other states and territories implement the model, it would put Western Australian architects at a disadvantage, as they would have higher barriers to entry in the markets in other jurisdictions including registration costs, and would not have the benefit of marketing themselves as “Australian Architects”.

The Shergold and Weir Report has proposed a greater level of enforcement by regulators to achieve greater compliance with the NCC. Enforcement issues will need to be resolved by participating jurisdictions in any agreement to proceed with the NRM.

### ***Consultation***

Nine submissions were received on this issue. All submissions were in favour of the implementation of the NRM.

The Board submitted a detailed response to this proposal and raised the following key issues:

- “The AACA and corresponding boards in all States and Territories in Australia have agreed, in principle, to pursue such a system of national registration for architects based on the existing mutual recognition legislation...”
- “In order to give effect to such a model, it is anticipated that only minor legislative amendments of the Act would be required.”
- “...the introduction of a national recognition model for architects would necessarily result in a reduction in the number of architects on the register in WA (on the basis that only one registration fee is payable in the home jurisdiction) and, consequently, a reduction in annual renewal fee income for the Board. As the Board is completely self-funded from fees, an increase in renewal fees may be necessary to ensure this position can be maintained.”

The Board anticipated that any increase in fees required would be modest and would not be unreasonable given that renewal fees have not been increased in recent years.

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<sup>19</sup> Productivity Commission, *Mutual Recognition Schemes: Research Report*, 25 September 2015, p13-14, p40.

The following extract from the AIA's submission supports the need to work with other jurisdictions across Australia to ensure that a smooth introduction of the model is achieved:

“...it is suggested that there remain a number of issues which require very careful consideration before this framework is implemented nationally and to proceed in Western Australia in isolation would be detrimental.”

### **Preferred Option**

The benefits of Option 1 on increased labour mobility, marketing opportunities and reduced registration costs for architects operating in other jurisdictions appear to outweigh the small increase in registration fees. Issues of enforcement will need to be resolved by participating jurisdictions.

#### **RECOMMENDATION 3**

***That the National Recognition Model is implemented subject to agreement by the other jurisdictions to proceed and the resolution of enforcement issues.***

## **1.5 The definition of “architecture”**

The CRIS made the following proposal to encourage discussion and comment:

#### **PROPOSAL 4**

**That further analysis and consultation with industry be carried out to determine the feasibility of either:**

- **defining some or all of the terms “architect”, “architectural”, “architecture” or, the use of new terms such as “architectural work services” or “in the work of an architect”, to better define the scope of services provided by architects and to ensure the services provided by building designers are not captured by the Act; or**
- **removing the terms “architectural” and “architecture” in the Act while maintaining restrictions on the use of the words “architect” and “architects” to persons with specific qualifications prescribed in the Regulations.**

### **Objective**

To ascertain whether the restricted words in the Act need to be changed to more clearly distinguish the work of an architect from the work undertaken by other occupations, such as building designers and drafters.

## *Statement of the Issue*

Restricting words and terms associated with architects is a cornerstone of the registration of architects. Other states also restrict terms to ensure that only those who are registered may use them. This is to provide confidence in the architectural industry by ensuring that anyone who represents that they are an architect has the required qualifications and experience.

The term “restricted word” is defined in section 4 of the Act as follows:

- “ (a) “architect”, “architects”, “architectural”, or “architecture”; or
- (b) and any abbreviation or derivative of a word in paragraph (a); or
- (c) any other word or combination of letters that sounds or looks like a word in paragraph (a). “

As the Act does not define the restricted words the dictionary definition applies, which provides a broad meaning and defines ‘architect’ as:

“someone whose profession is to design buildings and superintend their construction.”

and “architecture” as:

“1. The art or science of building, including plan, design, construction, and decorative treatment... 3. The action or process of building; construction.”

Section 64 provides that natural persons and body corporates that are not registered/ licensed must not use the restricted words. For example, section 64(1) provides that:

- “(1) A natural person, other than a registered person, must not –
- (a) Use a restricted word as part of the person’s title or description;
- (b) Hold himself or herself out as being an architect, a person who practises architecture or a person who is qualified to practise architecture; or
- (c) In any way imply that the person is an architect, a person who practises architecture or a person who is qualified to practise architecture.”

If strictly enforced by the Board, the restrictions on the use of the word “architecture” in section 64 the Act may restrict the activities of building designers and drafters, which is not the intent of the Act. Section 68 provides for types of conduct which are not considered an offence under the Act, including exemptions from committing an offence for persons who use the term “architectural drafter” or whose work is described as “architectural drafting”. However, the exemption under section 68(d) relating to the use of the title “architectural drafter”, or for work described as “architectural drafting”, does not appear to adequately address this concern. That is, the Act does not provide a definition of “architectural drafter” and the distinction between where “architectural drafting” and “architecture” begins and ends is not clear. Section 68(i) provides for these exemptions from offences to be extended to other restricted words used in circumstances of a kind prescribed by regulation.

### *Options to address the issue and impact analysis*

**Option 1: Include in the Act specific definitions of some or all of the terms “architect”, “architectural”, “architecture” or use new terms such as “architectural work services” or “in the work of an architect”, to better define the scope of services provided by architects and ensure the activities of building designers are not captured by the Act**

**Option 2: Remove the terms “architectural” and “architecture” from the Act while maintaining restrictions on the use of the words “architect” and “architects” to persons with specific qualifications as prescribed in the Regulations**

**Option 3: Regulating architects and building designers under a broader building design act**

**Option 4: Retain the status quo**

### *Impact Analysis*

The impact of Option 4 - status quo - is that in some instances the Board would continue to experience a lack of clarity in relation to restricted terms. The clarification of restricted terms proposed in Option 1 may resolve a grey area in the legislation for the Board in some circumstances. However, as identified in consultation, the restricted terms are a key part of the consumer protection objects of the Act. If the architectural terms are narrowed then this will limit the Board's capacity to take regulatory action.

The impact analysis for Option 3 will not be undertaken at this time due to the review of relevant Shergold and Weir Report recommendations, consistent with Recommendation 2 above.

### *Consultation*

The submissions on this proposal were mixed with five in support of amendment, five against change and two making other comments.

The Board supported changes to the legislation with consultation to be restricted to the Board or, if wider consultation was necessary, to the architectural profession. The Board noted that it was the only body that has to deal with the management of issues arising from the terms defined in its regulatory role and, therefore, the Board would be best placed to provide feedback. The AIA supported clarification to facilitate more stringent policing by the Board and by the profession, but did not support broad consultation.

The BDAWA supported changes which would facilitate the registration of building designers. This course of action, as noted in Recommendation 2 above, will not proceed at this stage and will be examined in the relevant review of the recommendations of the Shergold and Weir Report.

One submission stated that national consistency and national developments may assist decision making on this issue.

The AACA noted the need for caution:

“This is a complex issue and needs careful consideration before any change to regulation is effected in order to avoid the undermining of the quality of the built environment in Australia; and protection of consumers and the general public.”

Another submission noted a possible impact on the NRM and national consistency:

“The terms related to “architects”, “architecture”, “architectural” etc are the defining points of difference between architects as professionals and other service providers in similar design fields in the construction industry... Removing the derivation of “architect” related terms from the Act would be inconsistent nationally and from that point of view would conflict with the adoption of a national recognition’ model across Australia. Accordingly, the “architect” related terms in the Act should remain and not be amended.”

### **Recommendation**

The AACA raised significant concerns about a reduction in consumer protection if the restricted terms were amended and unintended consequences in this area. Given the significant Shergold and Weir Report recommendations requiring review, it is recommended that further analysis and consultation is not taken at this time.

#### **RECOMMENDATION 4**

***That further analysis and consultation on restricted terms is not undertaken at this time.***



## PART 2 – Administrative Matters Relevant to Improving the Operation and Effectiveness of the Act

### 2.1 Introduction

Part 1 examined the broader questions of regulation and the operation and effectiveness of the Board. In Part 2, the Review examines proposals to improve the operation and effectiveness of the Act. These proposals are generally minor or administrative in nature.

### 2.2 Election of members: casting vote of Board members

#### **PROPOSAL 5**

**That the Act or Regulations are amended to clarify which members of the Board are able to have a casting vote.**

#### *Objective*

To clarify the casting vote requirements for Board members in Board elections, as it is unclear which Board members are entitled to vote.

#### *Statement of the Issue*

Section 7 of the Act provides that the Board consists of 10 natural persons including:

- two persons appointed by the Minister as persons having knowledge of, experience in and representing, community or consumer interests;
- two persons appointed by the Minister on the nomination of prescribed bodies<sup>20</sup>;
- four persons that are registered under Part 4 of the Act; and
- four elected by registered persons in Western Australia in accordance with the Regulations.

Division 2 of the Regulations describes the Board's election process whereby the Board calls for nominations of registered persons as candidates for election to the Board under section 7(1)(c). Regulation 8(3) provides that:

"If 2 or more candidates receive the same number of votes the members of the Board who are also registered persons may, by simple majority, select one of their number to have a casting vote to resolve the matter in respect of those candidates."

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<sup>20</sup> The Royal Australian Institute of Architects; the Association of Consulting Architects – Australia; the University of Western Australia; and Curtin University of Technology (Regulation 4).

The Regulations do not clarify if the Board members appointed by the Minister on the nomination of prescribed architectural/educational bodies, may have a casting vote as well as the elected architect Board members.

### *Options to address the issue*

The CRIS identified the following options:

#### **Option 1: All Board members**

All members of the Board may be eligible to have a casting vote.

#### **Option 2: Four Board members elected by registered persons**

Only the four elected members may be eligible to have a casting vote.

#### **Option 3: Both elected members and the member from a nominated body may be eligible to have a casting vote**

Both elected members and the member from a nominated body may be eligible to have a casting vote.

#### **Option 4: Currently practising registered persons and non-practising registered persons**

Both currently practising registered persons and non-practising registered persons may be eligible to have a casting vote. Regulation 16 divides the register in relation to registered persons into: division 1 for registered persons who are currently practising architecture, and division 2 for registered persons who are not currently practising architecture. Option 4 would clarify that all registered persons could apply regardless of whether they are practising architects.

#### **Option 5: Currently registered persons**

Only currently registered persons, regardless of their position on the Board.

### *Impact Analysis*

This proposal has minor impacts on the Board's election procedure only and is administrative in nature. If a casting vote for an architect Board member is required, it is reasonable that all Board members that are registered architects (practising and non-practising) would have a strong basis of knowledge and experience to provide a casting vote regardless whether the Board member is appointed as an elected Board member or nominated by prescribed architectural/educational bodies. These persons are more likely than non-architects to have an understanding of the necessary skills, expertise and potential contribution of a prospective elected architect Board member.

## Consultation

Three submissions commented on this issue. Two submissions supported casting votes from both elected and nominated Board members registered under Part 4 of the Act. One submission supported all members of the Board having a casting vote. The latter is not considered appropriate as the applicant represents, and is voted in by, registered architects.

The Board had no objection to legislative amendments to clarify “...that a person who is registered under Part 4 of the Act (including practising and non-practising architects) be able to have a casting vote... The Board does not believe that registered persons appointed by the Minister, as opposed to being elected, should be discriminated against in this process and excluded from having a casting vote.”

## Recommendation

It would appear to be reasonable for all Board members that are registered architects to be eligible to provide a casting vote.

### **RECOMMENDATION 5**

***That regulation 9 and regulation 8(3) are amended to clarify that all Board members registered under Part 4 of the Act (practising and non-practising) are eligible to be selected by the Board to provide a casting vote in an election, whether elected by registered persons or appointed by the Minister.***

## 2.3 Voting process

### **PROPOSAL 6**

**That regulation 9(b) is amended to state that each candidate is to be taken to be elected at the expiry of the incumbent’s term.**

## Objective

To ensure incumbent and newly elected Board members have certainty about the term of their appointment and there is no overlapping of terms.

## Statement of the Issue

Regulation 9 provides that if the number of nominated candidates for the office of Board member under section 7(1)(c) does not exceed the number of members to be elected, then it is not necessary to hold an election and each candidate may be taken to be elected. As the Board sends all registered persons a nomination paper seeking nominations for election three months prior to the expiry of sitting members’ terms, the current drafting of regulation 9 may result in a newly elected member being elected before the expiry of the sitting member’s term.

### *Options to address the issue*

#### **Option 1: Clarify that the new candidate's term will commence at the expiry of the incumbent's term**

To amend regulation 9(b) to allow for new candidates to be taken as elected at the expiry of the incumbent's term.

#### **Option 2: Retain the status quo**

No amendments are made.

### *Impact Analysis*

This is a minor administrative change that impacts the Board only. Option 1 would improve the election process for Board members by ensuring there is no overlap of Board appointments made under section 7(1)(c). Option 2 would enable a continuation of uncertainty of Board terms and overlap of Board terms in some circumstances. Cabinet notes Board appointments arising from elections by registered persons so this would not affect Cabinet decision making.

### *Consultation*

There were only three submissions about this proposal. All three supported the change as outlined in Option 1.

### *Recommendation*

It is recommended that Option 1 is adopted and Regulation 9(b) is amended to allow candidates to be taken as elected at the expiry of the incumbent's term. This amendment will remove uncertainty and improve the election process.

#### **RECOMMENDATION 6**

***That regulation 9(b) is amended so that each candidate is taken to be elected at the expiry of the incumbent's term.***

## **2.4 Names of elected members to be published in the Government Gazette**

#### **PROPOSAL 7**

**That regulation 10 is amended to no longer require the publication of names in the Government Gazette.**

### *Objective*

To remove unnecessary administrative processes and costs.

Regulation 10 provides that the Board is to publish the names of elected Board members in the *Government Gazette*. Publishing names of elected Board members in the *Government Gazette* as a means of advertising the results of the election may be an unnecessary additional cost given that names and further background information about Board members is available on the Board's website.

### *Options to address the issue*

#### **Option 1: Remove requirement to publish names of elected Board members**

To amend regulation 10 to no longer require the publication of the names of elected Board members in the *Government Gazette*.

#### **Option 2: Retain the status quo**

To make no change to regulation 10 and continue to publish the names of elected Board members in the *Government Gazette*.

### *Impact Analysis*

Option 1 is a minor change that would result in a small financial saving to the Board. If Option 1 was adopted, members of the architectural profession, and owners, would continue to have access to the names of Board members on the Board's website. In addition, Board annual reports are tabled in Parliament with the names of Board members and an outline of their expertise. In the unlikely event that the Board was unwilling to provide this information in its website, the Minister may direct the Board to do so under section 20 of the Act. Option 2 of retaining the status quo, would result in the Board continuing to incur unnecessary financial and administrative costs.

### *Consultation*

There were five submissions about this issue. All were in favour of Option 1. One submission made the additional suggestion that the names of the new Board members should be advertised in local press to increase transparency. The proposal to advertise the names of Board members in the local press would incur an additional financial cost which would be likely to exceed the cost of the current requirement and is not supported.

### *Preferred Option*

It is recommended that Option 1 is adopted.

#### **RECOMMENDATION 7**

***That regulation 10 is amended to no longer require the publication of names in the Government Gazette.***

## 2.5 Board composition and election of members

### **PROPOSAL 8**

**That, following comment from registered architects, consideration be given to:**

- **reducing the number of members on the Board from 10 to six or seven; and**
- **replacing the process of electing members with a process whereby the Minister selects members based on the nominations of the key associations within the architecture profession.**

### *Objective*

To reduce the cost of Board operations while also maintaining sufficient resources for the Board to meet its obligations under section 3 of the Act.

### *Statement of the Issue*

Cost efficiencies may sometimes be gained by reducing the number of Board members. The Board consists of 10 natural persons including:

- two persons appointed by the Minister as persons having knowledge of, experience in and representing, community or consumer interests;
- two persons appointed by the Minister on the nomination of prescribed bodies<sup>21</sup>; and
- four persons registered under Part IV of the Act and elected by registered persons in accordance with the Regulations (section 7).

The composition of the Board is one of balance between elected architects, representatives of professional architectural bodies/educational institutions (generally architects), and consumer representatives. Many disciplinary, awards and education matters considered by the Board are complex and require architectural knowledge. The architect members provide this expertise, such as the initial assessment of complaints about an architect, which must be assessed by those with an understanding of an architect's role and the contemporary standards of practice. The input from consumer representatives is also important to provide advocacy for owners and an independent perspective. Often one or more consumer representatives will have a legal background.

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<sup>21</sup>The Royal Australian Institute of Architects, the Association of Consulting Architects – Australia; the University of Western Australia and the Curtin University of Technology (Regulation 4).

Other jurisdictions have a range of numbers of members in their architect boards (Table 2 below).

**Table 2: Board membership in other jurisdictions**

| <b>State</b>                                 | <b>Members</b> |               |                |                 |        |            |            |
|----------------------------------------------|----------------|---------------|----------------|-----------------|--------|------------|------------|
|                                              | Elected        | Industry Rep. | Reg. architect | Govt. architect | Lawyer | Cons. Rep. | Educ. Rep. |
| <b>ACT</b><br>5 members<br>Quorum: Majority  |                | 1             | 1              |                 | 1      | 1          | 1          |
| <b>NSW</b><br>11 members<br>Quorum: Majority | 2              | 4             | 1              | 1               | 1      | 1          | 1          |
| <b>NT</b><br>5 members<br>Quorum: 2          |                |               | 3              |                 |        | 2          |            |
| <b>QLD</b><br>7 members<br>Quorum: 4         | 1              | 2             | 1              |                 | 1      | 1          | 1          |
| <b>SA</b><br>7 members<br>Quorum: 4          | 3              | 2             |                |                 | 1      | 1          |            |
| <b>TAS</b><br>5 members<br>Quorum: 3         |                | 1             | 2              |                 |        | 2          |            |
| <b>VIC</b><br>10 members<br>Quorum: 6        | 2              | 4             |                | 1               |        | 2          | 1          |

States of similar size to Western Australia, and thus a similar workload, such as Queensland and South Australia, have seven members. This provides a precedent for the Western Australian Board to potentially follow. South Australia currently operates with six board members with one position vacant<sup>22</sup>.

### *Options to address the issue*

The CRIS sought comment on the composition of the Board.

<sup>22</sup> APBSA website, Board members, 4 October 2016.

### **Option 1: Two consumer representatives, two nominated architect members and two or three registered architects**

Reducing the composition of the Board to consist of six or seven persons (and reducing the quorum for each meeting to four members), of whom:

- two persons are appointed by the Minister to represent the interests of the consumers;
- two persons are appointed by the Minister on the nominations of bodies prescribed by the regulations as persons having knowledge of and experience in matters relating to the profession of architecture; and
- two or three registered architects who are elected by registered architects in accordance with the regulations, with one of these members serving as the Chair.

### **Option 2: Two consumer representatives and four or five members nominated by prescribed bodies – no elected members**

Reducing the composition of the Board to consist of six or seven persons, of whom:

- two persons appointed by the Minister to represent the interests of the consumers; and
- four or five persons appointed by the Minister on the nominations of bodies prescribed by the regulations as persons having knowledge of and experience in matters relating to the profession of architecture (i.e. Option 2 does not provide for elected members).

### **Option 3: Status quo**

No change. The current composition of the Board and number of Board members is maintained.

### **Impact Analysis**

As the Board is industry-funded, mainly from registration and licensing fees, there would be no cost savings for taxpayers by reducing the number of Board members. The proposed changes in Options 1 and 2 to reduce the Board membership to seven members would reduce the operating costs of the Board by approximately \$10,062<sup>23</sup> per year.

Board members are paid for attending Board meetings and subcommittees. Board members undertake unpaid work out-of-session to prepare for meetings. Board members have a specialised role and are paid \$284 per half day (four hours) i.e. \$71.00 per hour. The Chairperson receives \$420 per half day. The hourly rate for senior architectural expertise at Director or Principal level is in the range of \$250 to \$350 per hour.

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<sup>23</sup> Average fees for Board meetings for Board members excluding Chairperson and Deputy Chairperson including \$2,662 per person Board meeting attendance fees x three persons = \$7,986, plus \$692 x 3 = \$2,076 for other Board activities e.g. subcommittees, Architects Board of Australia *Annual Report 2015/16*, p12.



In addition to Board meetings, the Board has two standing subcommittees that are central to its functioning:

- Policy Committee – this committee is charged with developing, and regularly reviewing and updating, the many policies that enable the Board to discharge its duties under the Act. The Policy Committee meets at least three times a year at a minimum (reviewing, and updating, at least five to six policies on each occasion).
- Continuing Professional Development (CPD) Committee – this committee provides support for the Board's requirement that all architects maintain an appropriate level of knowledge, skill and competence. The Board's preferred method for architects to establish this level is through the achievement of 20 CPD points per year. Each year, the Board randomly audits five per cent of practising architects to ensure they are fulfilling their CPD requirements. The CPD Committee makes recommendations to the Board with regard to architects who do not appear to have fulfilled their requirements, updates the Board's CPD framework; and assesses the levels of qualification and experience of candidates applying to return to the practising division of the register.

Other committees are established as required, including: the annual graduate award judging panels; strategic planning review committee; developing comprehensive submissions to government legislative reviews (for example this review and the Design WA review) and Australian and New Zealand Architecture Program Accreditation Procedure submission.

The Board has two full-time staff members, a Registrar and Administration Officer. The work undertaken by Board members reduces the salary costs and overheads of additional staff members. A reduction in the number of Board members is likely to result in the need to engage additional architectural consultants and/or staff members. The work would be difficult to obtain from consultants as it combines expertise in architecture and an understanding of consumer protection, legislative and regulatory requirements.

Option 2 proposes removing elected architect Board members which would be a substantial change to the composition of the Board. The Board advised in its initial submission that election costs are approximately \$5,243 per election comprising printing and mailing costs. In 2017 the Board introduced electronic voting which has removed these costs.

The Board has strong support from the architectural industry and it is partly because the election process enables a cross-section of registered Board members. The proposed change to remove all elected members in favour of nominations from professional bodies would reduce the diversity of Board membership and may centralise, or appear to centralise, influence in key industry and educational organisations.

### **Consultation**

There were five submissions for this proposal. Three submissions supported Option 3 – retain status quo, including submissions from the Board, AIA and an individual. Two submissions supported Options 1 and 2 to reduce the number of Board members.

The Board supported Option 3 - retain the status quo, and opposed a reduction in Board members. The Board noted the reduction in Board members "...would be a false economy as there would be only a negligible reduction in costs but there would be a substantial reduction in the breadth of skills and experience available" given the Board's "...substantial workload covering a broad range of issues", and the participation of Board members on sub-committees. The Board also raised concerns about achieving quorum if Board member numbers were reduced.

The AIA raised similar concerns:

- "While the review document suggests the objective of reducing the size of the Board and the adoption of a Ministerial selection process is largely one of reducing cost, however as indicated, these costs are covered by the membership itself and not the community.
- The Board includes a majority of consumer and industry representatives as part of its existing structure to ensure it fairly reflects the position of the 'layperson' and the community.
- It is also suggested that reducing the number of members on the Board will potentially create difficulties in achieving a quorum and also more critically adversely narrow the diversity of the practical experience and knowledge of its members when making decisions."

One submission supported a reduction of the number of members of the Board:

"I am of the view that the Board should be smaller (7) however the process of selection is critical. Positions should be advertised in addition to nominations being sought from the relevant professional bodies. The Minister should have the widest field of applicants to select from."

It is noted that the election process provides for nomination across all registered architects, and consumer representatives are identified from the Interested Persons Register open to the community. Changes to the field of applicants are therefore not considered necessary at this time.

One submission supported Option 1 or 2 without providing further detail.

### **Recommendation**

It is recommended that Option 3- status quo is adopted. The proposed reduction in the number of Board members is unlikely to result in significant cost savings and may jeopardise the Board's capacity to fulfil its functions.

#### **RECOMMENDATION 8**

***That the number of Board members is not changed at this time.***

## 2.6 Schedule 1 – Board vacancies

### PROPOSAL 9

That clause 1(2) of Schedule 1 to the Act is amended to provide that when an elected member vacates their position early, the Board may:

- appoint a registered person for the remainder of the term if there is less than one year remaining; or
- hold an election in accordance with the Regulations and to appoint the elected member for the remainder of the expiring member's term.

### *Objective*

To ensure additional election costs are not incurred when an elected Board member departs with one year remaining, and the size and composition of the Board is maintained where appropriate.

### *Statement of the Issue*

Clause 2 of Schedule 1 provides that whenever there is an elected member vacancy, an election is to be conducted among registered persons in accordance with the Regulations to elect a person to fill the vacancy. In the rare event that an elected Board member resigns his or her two year position mid-term, this can create additional resourcing costs as an election must be held for a single elected Board member rather than holding the election with other elected Board members at the end of the financial year. In addition, the size and composition of the Board is altered for this period.

### *Options to address the issue*

#### **Option 1: Temporary appointment of elected Board member if a Board member resigns with less than one year remaining or hold an election in accordance with the Regulations**

In the event that an elected Board member resigns his or her position in the middle of his or her term, Option 1 enables the Board to appoint a registered person for the remainder of the term if there is less than one year remaining or, if it chooses to do so, take action to fill the position. If the vacancy is for greater than one year, then an election is to be held in accordance with the Regulations and the new member is to be appointed for the remainder of the vacating member's term.

#### **Option 2: Retain the status quo**

No changes are made. In the event that a Board member resigns mid-term then additional election costs are incurred by the Board.

## *Impact analysis*

The circumstances in which an elected Board member resigns his or her position mid-term are rare. In Option 1, the temporary appointment of an elected Board member would remove the additional administrative work for the Board of holding a separate election. Elected Board members provide architectural expertise particularly necessary in the architectural registration, complaints, education and award activities of the Board.

There are minimal financial implications for the Board, industry or the community for making a temporary Board appointment as the position would be filled within two or three months in any event if an election were held. There is a small additional resourcing cost to the Government in making a temporary appointment as, consistent with the Premier's Circular on this issue, a Cabinet Appointment Minute containing the recommendation of the Board would generally be drafted and noted by the Minister and then Cabinet for registered architect election outcomes<sup>24</sup>.

Similar to the appointment of other elected representatives, the Minister would not become involved in the appointment. Option 1 is also broadly consistent with current Clause 6 of Schedule 1 of the Act, which enables the Minister to appoint a registered person to act temporarily in the place of a Board member:

“The Board may appoint a registered person, who is suitable to represent the interests of registered persons, to act temporarily in the place of an elected member when the member is unable to act because of illness, absence or another cause” (clause 6(4), Schedule to the Act).

Option 1 would, however, provide for a longer period of appointment potentially from one month to one year.

## *Consultation*

There were three submissions for Proposal 9. All were in favour of the amendment.

The Board supported Option 1 to enable it to immediately appoint a registered person to the position. Option 1 would save the costs and administrative time expended in holding an additional election and provide for the full complement of Board members.

In its submission, the Board identified the need for an amendment regulation to enable nominations for elected Board members to be sought when the position is due to become vacant rather than waiting until the Board member has actually resigned. This would enable earlier action to fill a vacancy and correct a drafting error in regulation 5(1)(a) to make the regulation consistent with Schedule 1 of the Act, clause 2 and 3.

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<sup>24</sup> Premier's Circular, State Government Boards and Committees, 2010/02.

## **Recommendation**

It is recommended that Option 1 is adopted. As suggested by the Board, an additional amendment regulation is also proposed to enable the Board to call for the nomination of elected persons when a Board member's position is due to become vacant. This will enable quicker action to fill a position if an elected Board member vacates his or her position mid-term.

### **RECOMMENDATION 9**

***That amendments are made to Schedule 1 of the Act and Regulation 5(1)(a) to enable the Board, when an elected Board member vacates their position, to:***

- if the remaining term is less than one year, appoint a person to represent the interests of registered persons to the position for the remainder of the expiring member's term; and***
- call for the nomination of elected persons during any notice period provided by the resigning elected member to enable the replacement member to be appointed, if possible, by the time the resigning member vacates his or her position.***

## **2.7 Schedule 1 – Chairperson and Deputy Chairperson**

### **PROPOSAL 10**

**That Schedule 1 be amended to clarify that once elected, the chairperson or deputy chairperson remain in their positions without requiring re-election unless they leave or are removed from that position by a vote of the Board members.**

## **Objective**

To clarify the terms of the Board's chairperson and deputy chairperson and under what circumstances they may continue in their position without re-election.

### *Statement of the Issue*

The CRIS noted that clause 4 of Schedule 1, the Act, appears to be deficient as none of the four sub-clauses provide for the term length of the chairperson and deputy chairperson and when an election process should fall due. Clause 4 states:

- “(1) The chairperson and the deputy chairperson of the Board are to be elected by the Board from its members.
- (2) The Board may remove a person from the office of chairperson or deputy chairperson of the Board at any time.
- (3) The office of chairperson or deputy chairperson of the Board becomes vacant if the holder of the office —
  - (a) resigns the office by written notice addressed to the Board;
  - (b) ceases to be a Board member; or
  - (c) is removed from the office by the Board under subclause (2).
- (4) The deputy chairperson is to perform the functions of the chairperson -
  - (a) when the chairperson is unable to act because of illness, absence or other cause; or
  - (b) during any vacancy in the office of chairperson.”

The CRIS noted that the Board has adopted a policy that the position falls vacant at the end of each term of the incumbent with a new election for the position being held even if the incumbent is returned to the Board following the re-election or reappointment of that member to the Board. It could be argued that once the member is elected to the position of chairperson or deputy chairperson, they remain in that role from one term to the next continuously.

The following comparison in the CRIS noted the appointment process for the chairperson and deputy chairperson for other states and territories:

- Victoria – the chairperson and deputy chairperson hold office for their period of appointment until he or she resigns from the position;
- New South Wales – the President and Deputy President (chairperson and deputy chairperson equivalent) vacate their office if removed from office by the Board, resign in writing or cease to be a member;
- Queensland – the chairperson and deputy chairperson hold office for the term decided by the Governor in Council. A vacancy occurs if the person resigns their office in writing to the Minister or stops being a member; and
- New Zealand – the chairperson and deputy chairperson holds office until the person resigns from that office, is removed by the Minister or ceases to be a Board member. A chairperson and deputy chairperson may without resigning as a member, resign from their position by written notice to the Minister.

### *Options to address the issue*

#### **Option 1: Chairperson and deputy chairperson may remain in position without requiring re-election for re-appointment by the incumbent/s**

Option 1 proposes amending Schedule 1, clause 4 to clarify that once elected, the chairperson or deputy chairperson remain in their positions without requiring re-election unless they leave or are removed from that position by a vote of the Board members.

#### **Option 2: Chairperson and deputy chairperson may remain for no more than two years and re-election is not required for re-appointment by the incumbent/s**

Option 2 proposes amending Schedule 1, clause 4 to align with the current Board policy on the terms of the chairperson and deputy chairperson, as follows:

“The terms of chairperson and deputy chairperson are for a period of no more than two years, and are aligned with the term of office of the incumbent. The incumbent can nominate for reappointment and, if successful, serve consecutive terms.”

#### **Option 3: Retain the status quo**

Make no amendment and continue with the current wording.

### *Impact analysis*

The change is a minor amendment. There are no financial implications for the Board, industry or the community. Retaining the status quo would have minimal impact as Schedule 1 appears to provide the necessary legislative framework including:

- election of the chairperson and deputy chairperson by the Board;
- provision for two year appointments for these office holders;
- provision for reappointment;
- the circumstances in which the office becomes vacant; and
- the circumstances in which the Minister may remove Board members from office.

### *Consultation*

Proposal 10 was not well supported with three submissions opposing the proposal. The Board submitted that these are internal, operational issues best managed by way of Board policy rather than legislative amendment. The Board stated that its operational policy is effective in this area and provided clarification of its policy:

“The terms of Chairperson and Deputy Chairperson are for a period of no more than two years, and are aligned with the term of office of the incumbent. The incumbent can nominate for reappointment and, if successful, serve consecutive terms.”

One submission stated:

“This proposal is not supported as more clarity is required than currently exists in the Act.

From time to time the Board may wish to review the performance of incumbents holding the positions of Chair and deputy to ensure the smooth and collaborative running of the Board. This might require to be advanced by displace the incumbent for whatever reason (sic) but with a minimum of disruption to the harmony and operations of the Board.

By attaching the position to the term of the member it allows an ordered and natural process of re-assessment and renewal of Board positions without conflict unless unusual circumstances arise in which case the other existing sub-clauses in the Act allow the Board to replace the Chair and/or deputy”.

### **Recommendation**

It is recommended that Option 3- status quo is retained as the Board policy and Schedule 1 provides sufficient clarity.

#### **RECOMMENDATION 10**

***That Schedule 1 is not amended to change requirements for re-election for the Chairperson and Deputy Chairperson.***

## **2.8 Investigation powers**

#### **PROPOSAL 11**

**That the Act be amended to clarify the power of the Board to delegate its inspection and investigation powers, including the power of entry, to other persons as it determines.**

### **Objective**

To clarify and place beyond doubt that the Board may delegate its inspection and investigation powers.

### **Statement of the Issue**

The Board’s relatively small number of staff (two) enables it to operate with low overheads. The Board gathers information from the parties directly involved in a complaint or breach of the Act in the first instance. If this is unsuccessful, the Board will appoint a private investigation agency or, in some instances, a senior architect or lawyer to conduct investigations. The Board may employ staff, and by arrangement make use of the services of a person employed by another person (section 18). The Board may appoint an investigator to investigate a matter and report to the Board (section 12(3)). An amendment is sought to place beyond doubt the capacity for the Board to engage external investigators.



### *Options to address the issue*

#### **Option 1: Board may delegate its power of entry and investigation etc. to persons external to the Board or Board staff**

That the Act is amended to clarify the Board's ability to delegate the power of entry and investigation to other persons as it determines, including investigators that are external to the Board or Board staff.

#### **Option 2: Retain the status quo**

No amendment is made.

### *Impact analysis*

This measure seeks to clarify beyond doubt the Board's capacity to appoint an investigator external to the Board and the Board's staff. If an owner lodges a complaint with the Ombudsman's Office of Western Australia, the Ombudsman may look into the complaints handling and other operations of the Board, and the Minister may also direct the Board under section 20 of the Act. These mechanisms enable owners to appeal a complaints handling or investigation process if they wish to do so.

Investigators have considerable powers under the Act to obtain documents and enter premises, and industry boards must appear to be above perceptions of conflict of interest. As a result, it may be appropriate to introduce a Board policy or procedure on investigations appointments to address this issue.

### *Consultation*

There were three submissions, all of which supported the proposed amendment. The Board recommended "...that the Act should be amended to expressly provide that there are no restrictions as to whom the Board may appoint as an investigator pursuant to sub-section 12(3) of the Act." The Board noted that "The term 'investigator' is not defined so whilst it's arguable that there are not any restrictions as to whom the Board can appoint as an investigator, it is not explicitly stated that the investigator can be a person, or agency, who is external to the Board and the Board staff."

### *Recommendation*

It is recommended that Option 1 is adopted with a minor amendment. Given the position of responsibility of investigators under the Act, and potential perceptions of conflict of interest, the recommendation also proposes the introduction of Board policy or procedures in relation to the appointment of investigators.

#### **RECOMMENDATION 11**

***That section 12 of the Act is amended to clarify that the Board may appoint a consultant or any other person to investigate a matter and report to the Board. That a new Board policy or procedure on the appointment of investigators is established following the amendments.***

## 2.9 Penalties

### **PROPOSAL 12**

**That the penalties available under the Act be increased to reflect the penalties available for similar legislation in other states/territories, as well as other occupational registration legislation in Western Australia.**

#### *Objective*

To consider increasing the penalties under the Act to provide a substantial deterrent.

#### *Statement of the Issue*

Since the Act was first drafted in 2003, the penalties have not increased. The maximum penalty for an offence against the Act (i.e. pretending to be an architect) is \$5,000 for a first offence and \$10,000 for a second or subsequent offence. The maximum penalty that may be imposed on a registered or licensed architect in relation to a disciplinary matter is \$5,000, although a \$12,500 maximum penalty may be applied to a corporation under section 42 for failing to surrender its licence documents following cancellation of its licence by the Board.

Other penalties in the Act include:

- failure to comply with an investigation, provision of false information, failure to produce required documents – maximum penalty \$2,000; and
- a person must not prevent or attempt to prevent an investigator from entering premises or otherwise obstruct or impede an investigator in the exercise of his or her powers under section 12- maximum penalty \$ 2,000.

Penalties for similar offences in the building services legislation is from \$10,000, and can be up to \$25,000. This increases to \$100,000 for repeat offenders of the same offence.

The penalties available under the Act have become outdated and are too low to encourage compliance with the Act. Increasing penalties will provide a greater deterrent to any non-compliance. However, any penalty should be proportionate to the seriousness of the action.

#### *Options to address the issue*

##### **Option 1: Increase penalties consistent with building industry registration Acts in other jurisdictions and occupational registration legislation in Western Australia**

Penalties be increased to bring them in line with similar building industry registration Acts in other states/territories and occupational registration legislation in Western Australia.

##### **Option 2: Retain status quo**

The current level of penalties is retained.

## **Impact analysis**

An increase in penalties will have a negative impact on the person required to pay them. However, there are a small number of complaints and the impact of increased penalties will apply only to those found by SAT to have breached an offence provision. Option 2 - retain the status quo, does not provide sufficient penalties to deter offences under the Act.

## **Consultation**

This proposal was supported by three out of the four submissions that made comment on the proposal. The Board supported the proposal and provided several additional suggestions including:

- imposing different penalties for individuals and corporations in Part 7 Offences and failure to comply with an investigation (section 14(1));
- introducing a penalty under sub-section 65(2) to require licensed corporations not to use in connection with an architectural service the name of a registered person who is not an officer, employee or partner of the licensed corporation; or another licensed corporation which is not a partner of the first mentioned licensed corporation; and
- a significant increase in the \$5,000 penalty available to SAT regarding maximum penalties for a disciplinary finding made against an architect (section 57).

One submission noted that some national consistency may assist in adoption of the NRM. The only submission against the proposal provided no further information. Another submission noted the need for formal warnings and prosecutions of unlicensed operators.

## **Recommendation**

It is recommended that Option 1 is adopted to increase penalties in the Act, with some minor changes. The introduction of an offence provision to sub-section 65(2) as proposed by the Board may impact subcontracting and commercial flexibility and has therefore not been adopted. Other proposals by the Board to consider penalties for both individuals and corporations for some offences, and increasing the maximum penalties that SAT may order for registered persons with disciplinary findings made against them, have been added to the recommendation. Parliamentary Counsel's Office will determine the appropriate approach to penalties.

### **RECOMMENDATION 12**

***Subject to advice from Parliamentary Counsel, that the Act is amended to:***

- ***increase the penalties available under the Act to reflect the penalties available for similar legislation in other states/territories and comparable legislation in Western Australia;***
- ***consider penalties for individuals and corporations; and***
- ***consider a significant increase in the maximum penalties available to SAT under section 57.***

## 2.10 Accreditation Council of Australia advice

### **PROPOSAL 13**

**That section 33(4) of the Act be amended to:**

- **enable the Board to rely on AACCA advice in relation to an applicant's qualifications or standard in relation to the practice of architecture; and**
- **provide for applicants to pay for the cost of AACCA assessments.**

### *Objective*

To remove doubt surrounding the legal interpretation of the requirements under section 33(4) of the Act and regulation 12(a)(ii) and (iii), and to allow the Board to rely on advice from the AACCA in relation to an applicant's qualifications or standard in relation to the practice of architecture.

### *Statement of the Issue*

The AACCA is a peak national body which is responsible for establishing, coordinating and advocating national standards for the registration of architects in Australia and encouraging consistency between states and territories. The AACCA's members are the Chairperson and Registrar from each of the state and territory boards in Australia. Financial support is provided to the AACCA by these boards.

The AACCA works in an integrated manner with all boards regarding registration examinations, accreditation of qualifications, national policies and competency standards. The AACCA relies on recommendations from the boards for examiners, assessors, working group members and review panel members. For example, the Board coordinates the delivery of the APE for applicants in Western Australia and the AACCA maintains the APE and pays the examiners. In 2008, the Board did not register an applicant with overseas academic qualifications on the basis that the person had not demonstrated that he held a qualification equivalent to an architectural education course accredited by the Board. The applicant later made an application to the SAT requesting that the Board's decision to refuse his application for registration be set aside. The SAT found that that the Board had failed to properly apply the requirements of the Act and the Regulations by relying exclusively on the advice of the AACCA.

Prior to the SAT decision, similar to other jurisdictions, the Board relied on AACCA's Review of Academic Equivalence (RAE) and Review of Graduation Excellence (RGE) to determine if a person met the requirements of regulation 12(a)(ii), and AACCA's National Program of Assessment (NPrA) to determine if a person met regulation 12(a)(iii). Following the SAT decision, the Board needed introduce its own processes to determine if a person meets regulation 12(a)(ii) and (iii), which has resulted in unnecessary additional work and delays. The Board seeks to amend the Act to ensure that it has the discretion to rely on AACCA advice, as is the case in other jurisdictions.

The charging of AACA related fees also requires review. Section 33(4)(b) provides for the Board in considering any application for registration or the grant of a licence to pay fees or disbursements necessary to obtain advice from AACA in relation to any applicant who has obtained a qualification in a place other than in this state. This advice relates to regulation 12(a)(ii) only, however, and it would be preferable if it also applied to regulation 12(a)(iii).

As candidates pay fees directly to AACA for assessments, it may be more appropriate for applicants, rather than the Board, to pay those fees as was previously provided in section 14(3)(c) of the previous legislation (i.e. the *Architects Act 1921*), which stated that the Board could:

“...require that the applicant pay or contribute towards the whole or any part of those fees or disbursements.”

### *Options to address the issue*

#### **Option 1: Board may rely on advice from AACA and for applicants to contribute to or pay for AACA processes**

To amend the Act and Regulations to allow the Board to have discretion to rely on advice from AACA, and for applicants to pay or contribute to AACA examinations and assessments.

#### *Impact analysis*

The AACA owns the National Standard of Competency for Architects which underpins all assessment processes for registration boards across Australia. The AACA comprises 16 members nominated by State and Territory architects registration boards. The Board's Chairperson and Registrar are AACA members and provide direction and input into the AACA and its assessments. All architects registration boards across Australia rely on the AACA's materials and programs to ensure applicants are assessed consistent with national standards. The Board identifies Western Australian experienced examiners or assessors to assess against the National Standards with the assessment then finalised by the AACA.

If a suitable amendment was introduced similar to Option 1, it would significantly increase efficiencies for the Board. Applicants would receive registration up to a month earlier resulting in costs savings. In addition, candidates undertaking the nationally consistent AACA-run “Experienced Overseas Practitioner” assessment could be granted initial registration in Western Australia.

#### **Option 2: Retain the status quo**

To make no change to the Act and Regulations.

#### *Impact analysis*

Option 2 would result in the Board continuing to have to conduct unnecessary additional work in addition to AACA assessments. Delays of up to a month will occur for some applicants as they wait for the monthly Board meeting. Applicants in the AACA-run “Experienced Overseas Practitioner” assessment would continue to have to register in another jurisdiction and then apply via mutual recognition incurring two sets of registration fees.

## Consultation

Five submissions were received about this issue and all were in favour of Option 1.

One submission noted:

“Currently, so as to satisfy itself about AACAA’s advice, the WA Board has to adopt a mechanism to make its own consideration of an applicant’s qualifications in addition to the AACAA process that has already assessed an application. All other States accept the AACAA processes and recommendations as part of an otherwise nationally consistent process.”

The Board stated:

“The Board... seeks an amendment to the Act to remove any doubt as to the Architectural Practice Examination (APE) requirements for applicants for registration. Recognition of AACAA processes would be consistent with all other States and Territories and would also be consistent with ‘national recognition’...”.

## Recommendation

It is recommended that Option 1 is adopted with some amendments to further clarify that the Board can rely on AACAA advice in relation to the equivalence of qualifications and standard of practice. The related examination fee recommendations are in Recommendation 17.

### **RECOMMENDATION 13**

***That the Act and Regulations are amended to:***

- ***enable the Board to rely on AACAA advice in relation to the equivalence of qualifications and an applicant’s standard in relation to the practice of architecture; and***
- ***provide for examination requirements for registration to include Architectural Practice Examination requirements (currently prescribed in regulations 12 and 13) or any other examination and/or assessment in architectural practice arranged or approved by the Board.***

## 2.11 Registration conditions of natural persons and corporations

### **PROPOSAL 14**

**That the Act be amended to allow for all natural persons and corporations to display their registration or licence numbers on all stationery, advertisements, signage and other information given to the public about the applicant’s architectural work.**

## *Objective*

To require all natural persons and corporations to display their registration/licence number on all stationery, advertisements, signage and other information given to the public.

## *Statement of the Issue*

Section 30 and regulation 25(3) limit the ability of the Board to require natural persons to display their registration number on items such as advertising, signage and stationery to only those persons that are trading under a name other than that name recorded in the register. In contrast to natural persons, section 32(1) allows the Board to impose a condition to display licence number information on all licensed corporations irrespective of their use of a trading name or not. The Board has indicated its support for all natural persons and corporations to be required to display their registration and licence numbers on signage and stationery for consumer protection purposes.

## *Options to address the issue*

### **Option 1: All natural persons and corporations must display registration or licence numbers on promotional material and public signage**

The Regulations are amended to require all natural persons and corporations to display their registration or licence numbers on their promotional materials and public signage.

### **Option 2: All natural persons and corporations must display a recognised stamp**

Amend the Regulations to allow for the creation of a recognised “stamp” to provide the registration/licence number and also a further degree of authority to aid in consumer confidence.

### **Option 3: Retain status quo**

Make no change to the Regulations.

## *Impact analysis*

Options 1 and 2 will add administrative and resourcing costs to those architects (natural persons) or corporations who do not currently display their registration or licence numbers, requiring a change of stationery, advertisements, signage and other material.

Although the cost of letterhead is relatively minor, as generally these are printed off as required, the need to obtain signage products and pay for additional length in advertisements will add minor additional costs for the business. In cases where more than one architect is working on a project, or the architect changes during the course of the project, the signage information could be complex and confusing for clients. A registered architect’s logo is available from the Board’s website for optional use by architects that wish to market their services in this way.



Regulation 21 of the Building Services (Registration) Regulations 2011 provides requirements for signage on building sites identifying the name and registration number of the building contractor, contact telephone and name and registration number of the nominated supervisor for the building contractor. In addition, the online register of architects on the Board's website is available to enable consumers to check if a designer is a registered architect. Consumers have sufficient information to identify if their designer is an architect via the building contractor and/or the Board's online register.

Option 3 – retain the status quo, would enable continuation of the current arrangements whereby only those persons and corporations trading under a different name than that in the register may have signage and stationery obligations placed upon them. No additional costs will be incurred by architectural businesses in Option 3. Consumers have sufficient information to identify if their designer is an architect via the building contractor and/or the Board's online register.

The majority of jurisdictions including Western Australia, South Australia, Northern Territory, Queensland and Tasmania do not have mandatory signage and advertising requirements for registered architects. The Australian Capital Territory has advertising requirements only. New South Wales and Victoria have signage and advertising requirements in Codes of Practice. There appears to be little adverse impact in maintaining the status quo.

### **Consultation**

Five submissions were made on Proposal 13, all of which supported the proposed new requirements. In addition one submission suggested that a "recognised stamp" be developed:

"...Other parts of the world use this as standard practice and gives the authorities and consumers peace of mind that they've received documentation (either drawings or specifications) that have been created and reviewed by a registered architect."

This idea was considered in Option 2.

### **Recommendation**

It is recommended that Option 3 - retain the status quo is adopted. Given the costs for architectural businesses involved, and the availability of the architects register online, it appears unnecessary to introduce new mandatory advertising and signage costs at this stage. However, the issue may be re-examined in the proposed future consideration of Code of Conduct (refer to Recommendation 21) or the review of the Shergold and Weir Report recommendations.



#### **RECOMMENDATION 14**

***That new requirements are not introduced at this stage regarding display of registration or licence numbers on all stationery, advertisements, signage and other information given to the public about the applicant's architectural work. The issue may be re-examined in the proposed future consideration of a legislated Code of Conduct in Recommendation 21 or review of the Shergold and Weir Report recommendations.***

## 2.12 Corporation's constitution

#### **PROPOSAL 15**

**That:**

- **the requirement under section 55 of the Act for licensed corporations to advise the Board of proposed changes to their constitution be repealed; and**
- **regulation 15(a), which requires that a corporation's constitution is, or the rules governing the corporation's internal management are, acceptable to the Board, be deleted.**

#### **Objective**

To remove unnecessary reporting requirements for licensed architectural corporations.

#### **Statement of the Issue**

Under section 31 of the Act, corporations can be granted a licence to use the word "architect" in their business name provided the Board is satisfied that the corporation complies with the prescribed regulations. In addition, on the renewal of a licence of a corporation, the Board must also be satisfied the corporation continues to comply with prescribed requirements in this area (section 36(3)(b)).

Section 55 of the Act requires that a licensed corporation must advise the Board by providing it with a copy of any proposed resolution or other form of proposal if it intends to amend its constitution or rules governing its internal management. A copy of any proposed resolution or intention is to be provided to the Board at least 30 days before the day on which the corporation intends to vote on the resolution or proposal (section 55(2)). Section 55(3) provides that the licensed corporation must advise the Board of the result of the vote within 30 days of the day on which the result is announced. Regulation 15(a) states that a corporation's constitution is, or the rules governing the corporation's internal management are, acceptable to the Board at the time of licensing. Given the provisions for the Board to review these matters at the time of annual licensing and renewal, section 55 may no longer be necessary.

### *Options to address the issue*

#### **Option 1: Remove requirement for architectural corporations to notify the Board of forthcoming changes to the constitution or governing rules and the outcome**

That section 55 and Regulation 15(a) are repealed to remove the requirement for architectural corporations to advise the Board of proposed changes to their constitution or governing rules and the outcome.

#### **Option 2: Retain the status quo**

Architectural corporations are required to continue to provide the information about proposed changes to the constitution or governing rules and the outcome.

### *Impact analysis*

The requirements in section 55 provide minor administrative costs to architectural corporations in providing the information and the Board in processing the notifications. Licensing provisions enable sufficient review processes about the constitution and governing rules at the time of licensing renewal. Option 1 would remove these requirements and reduce costs. Regulation 15(a), however, continues to serve a purpose to enable the Board to examine the constitution and rules on renewal of an architectural corporation's licence and should be retained for consumer protection purposes.

### *Consultation*

Four submissions were received for this proposal. All were in favour of the proposal, except one submission, which was generally in support of the proposal but also raised an issue with regulation 15(c) and (e) that architectural work is done under the direct supervision and control of a registered person, and the person who will have ultimate responsibility for the architectural work done by the corporation, is an officer or employee of the corporation. This submission proposed that the word "employee" is deleted, stating:

"As it seems anyone could have an employee who is registered but how do you prove they have direct control when they don't have any 'buy in' to the corporation?"

This proposal is not considered to be practical as the proposal may impact the structure of corporations and the Board may already seek evidence of direct supervision at renewal.

### *Recommendation*

It is recommended that Option 1 is adopted and section 55 is repealed.

#### **RECOMMENDATION 15**

***That the requirements under section 55 of the Act for licensed corporations to advise the Board of proposed changes to their constitution or governing rules and the outcome are repealed.***

## 2.13 Renewal date, insurance and period of registration

### PROPOSAL 16

That:

- the existing date by which fees for renewal of registration are due to be paid be changed from 30 September to 30 June;
- a provision similar to section 12(3)(a) of the *Building Services (Registration) Act 2011* be introduced that maintains an architect's registration status for up to three months until the renewal fee is paid (along with a late payment penalty);
- the Board be able to remove architects from the register that have not provided their insurance details on time;
- regulations 16A, 16B and 16C(1), (2) and (3) be repealed; and
- the Regulations be amended to introduce three year registration/licence renewals for architects.

### Objective

To improve the efficiency of the registration and licensing requirements.

### Statement of the Issue

**Proposal 16(a) and (b) - Align existing date by which fees for renewal of registration/licences are due to be paid with due date for fees, provide for late payment and clarify status of applicant during payment period**

Section 35 and Regulations 16A(a) and 16A(b) provide for the renewal date for registrations/licences each year to be 1 July yet Regulation 16C(4) requires that payment for renewal is not required until 30 September. The Board advises that many architects will put the renewal notice aside as payment is not due for three months and then forget about making the payment. This can be confusing for architects, creates ambiguity as to the registration status of an architect during this time and substantial work for the Board, such as sending reminder letters, removing people from the register for non-payment and restoring a person's name to the register. It would also be appropriate to clarify the registration status of the registered person if they provide a late payment.

**Proposal 16(c) – The Board be able to remove architects from the register that have not provided their insurance details on time at the time of renewal**

If applicants do not provide their professional indemnity insurance details within the required time frame then the Board must apply to SAT to have the applicant removed from the register. This is a resource intensive approach for the Board and SAT and could be simplified by enabling the Board to cancel registrations in these circumstances as it does for non-payment of renewal fees in section 37(1).

### **Proposal 16(d) – Regulations 16A, 16B and 16C(1), (2) and (3) be repealed**

These are transitional licensing provisions that are no longer required.

### **Proposal 16(e) – Amend the Regulations to introduce three year registration/licence renewals for architects**

Registration and licence renewals are made on an annual basis. However, a three year time period may provide administrative and cost benefits for the architectural industry and consumers.

### ***Options and impact analysis***

The proposals and impact analysis are provided below with the alternative option being the retention of the status quo. Proposal 16(d) is a minor administrative change to remove transitional provisions so an impact analysis is not necessary.

### **Proposal 16(a) and (b) - Align existing date by which fees for renewal of registration are due to be paid with due date for fees, provide for late payment and clarify status of applicant during payment period**

#### **Option 1: Align renewal date with due date for fees, provide for late payment and clarify status of applicant during late payment period**

In Option 1, the renewal date for registration would be aligned with the due date for payment of the renewal of registration with provision for a 30 day late payment period for applicants. The registration status of the applicant will be clarified to ensure an architect's registration is recognised during the late payment period.

Proposal 16 in the CRIS noted that the BSR Act provides for registered persons to pay the renewal of registration fee after the date their registration expires. Section 15(2) of the BSR Act provides for applicants to submit their renewal up to six months after the expiry day (subject to a late fee) while section 12(3)(a) provides that the applicant's registration "...continues to have effect on and from the expiry day until the Board renews or refuses to renew the registration or the applicant withdraws the application, unless the registration is sooner cancelled." These provisions together ensure that late lodgement of an application and fees to renew registration does not result in cancellation of registration and a need to reapply as if new to the industry.

The inclusion in the Act of a provision similar to section 12(3)(a) of the BSR Act but applying for a period of up to 30 days after the expiry date, along with an amendment to regulation 16C(4)(a) to make the payment due date the same as the expiry date, may better resolve this issue. Architects would be required to pay their renewal fee by 30 June and if they do not, their registration remains valid if they meet the requirements and pay the fee within 30 days of their registration expiring.

| <b>Costs</b>                                                                                                                                                                                                                                                                                                                                                                                       | <b>Benefits</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none"> <li>• Board must advise applicants of changes to payment requirements and manage change process</li> <li>• Applicants that do not pay on time would no longer have a three month period for payment, however, a 30 day late payment period would apply. The effects of this may be allayed by the introduction of a lead-in time for this provision.</li> </ul> | <ul style="list-style-type: none"> <li>• Applicant's registration status is unclear between lapsed renewal and payment period removing potential uncertainty in dealings with, for example, employers, clients and professional indemnity insurers</li> <li>• The dates for renewal and payment are less confusing for applicants as they are consistent with other bills such as car registration fees, driver's licences and house insurance</li> <li>• Increased efficiencies result in reduction of administrative work for the Board including double handling and more reminder letters</li> <li>• A more straightforward message for applicants about renewal and payment.</li> </ul> |

### **Option 2: Retain status quo**

| <b>Costs</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | <b>Benefits</b>                                                                                                                             |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none"> <li>• Applicants continue to be confused about the two dates for renewal and payment which is inconsistent with most other bills</li> <li>• Applicant's registration status is unclear between lapsed renewal and payment period leading to potential uncertainty in dealings with, for example, employers, clients and professional indemnity insurers</li> <li>• Mixed messages lead to Board needing to send more reminder letters</li> <li>• Mixed messages lead to applicants being removed from the register temporarily and then reinstated</li> </ul> | <ul style="list-style-type: none"> <li>• Applicant has effectively a three month grace period to pay their registration renewal.</li> </ul> |

### **Proposal 16(c) - The Board be able to remove architects from the register that have not provided their insurance details on time at the time of renewal**

This proposal has been removed following further research and consultation. The capacity to remove architects from the register is provided for in the operation of section 30(2)(b) as insurance is required as a condition of registration.

### **Proposal 16(d) – Regulations 16A, 16B and 16C(1), (2) and (3) be repealed**

Minor administrative change only - no impact analysis required. Regulation 16A will be retained as it is required for the purposes of establishing the date of renewal of registration. Regulation 16(C)(4)(a) or another similar provision will be retained to establish the fee for payment of renewal. Regulation 16B and 16C(1)-(3) will be repealed. Following further consultation, the Board advised that regulation 16C(4)(b), 16C(5) and (6) are not used and may be repealed to improve the clarity of the Regulations.

## **Proposal 16(e) – Amend the Regulations to introduce three year registration/licence renewals for architects**

### **Option 1: Regulations are amended to introduce three year registration/licence renewals for architects**

The annual processing of registration and licence renewals may be inefficient compared to three year renewals and results in an additional administrative burden on applicants. Administrative savings could be made by replacing annual renewals with a three year renewal cycle. The Act and the Regulations could also be amended so that registered persons and corporations who leave the industry within 12 months of renewing their registration could be subject to a partial refund of their fee.

| <b><i>Costs</i></b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | <b><i>Benefits</i></b>                                                                                                                                                                                                                                                                                                                                            |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none"> <li>• The Board effectively manages its budget to meet the objects of the Act, however a significant reduction in income from registration/licensing fees would adversely impact its capacity to meet its functions</li> <li>• Capacity to require compliance with CPD significantly reduced as evidence is currently required on registration renewal resulting in increased compliance costs- the Shergold and Weir Report identifies CPD as an important requirement for architects (Recommendations 1 and 2)</li> <li>• Capacity to require compliance with professional indemnity insurance (PII) requirements for architects is currently required on renewal resulting in increased risks to consumer and architects and increased compliance costs- the Shergold and Weir Report identifies PII as an important requirement for architects (Recommendations 1 and 2)</li> <li>• Upfront cost of triennial registration would increase with adverse effects on some small businesses</li> <li>• The Board's budget is from architects only with no income required from the Consolidated Revenue Fund however this may change if triennial licensing is introduced</li> </ul> | <ul style="list-style-type: none"> <li>• Administrative savings for architects in submitting three year renewals rather than one year renewals</li> <li>• Minor cost savings for architects in an overall reduction in registration fees over a three yearly period</li> <li>• Resource savings for the Board in processing renewals every three years</li> </ul> |

## Option 2: Retain the status quo- annual registration and licence fees are retained

| <b>Costs</b>                                                                                                                                                                                                                                                                                                                                            | <b>Benefits</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none"><li>• Administrative costs for architects to submit renewals on an annual rather than three yearly basis</li><li>• Increased Board costs in processing renewals annually rather than every three years</li><li>• Higher overall registration/licensing costs for architects compared to a three year period</li></ul> | <ul style="list-style-type: none"><li>• Consistent with other professional bodies such as health practitioners and lawyers</li><li>• The Board's budget is from architects only however further funding for compliance and other functions are likely to be necessary if triennial licensing is introduced</li><li>• The Board manages its budget to meet its legislative requirements and this may be at risk if three yearly registration/licensing is introduced</li><li>• Fees paid annually are likely to require a lower upfront payment than a three yearly licence fee with potential benefits for small business</li><li>• Provides stronger capacity for the Board require compliance with PII and CPD requirements- the Shergold and Weir Report identifies these as important requirements (Recommendation 1 and 2)</li></ul> |

### Consultation

Proposals 16(a) to (d) were supported by all five submissions that provided comment.

Three stakeholders (the Board, the AIA and a submission from an individual) strongly disagreed with Proposal 16(e) to move from an annual to triennial licensing/registration period. The Board raised the following concerns:

- registration renewal periods for other regulated professionals such as health practitioners and lawyers are only one year and the registration period for architects should be consistent with this;
- a three year renewal period would not relieve the administrative burden as it would be replaced by an even greater active monitoring of insurance and continual professional development during the three year period.; and
- it would be more difficult to ensure consumers of architectural services were being protected and the objects of the Act achieved.

The AIA advised against the introduction of a three year registration/licence renewal:

- education and continual professional development should continue to be assessed annually; and
- the suggested benefits of a three year registration renewal are very limited in terms of savings to the Board and potentially negated by the adverse impact on individuals or small firm members.

The two submissions supporting the introduction of a three year registration/licence renewal supported all elements of Proposal 16 and did not provide any further information on the issue.

## **Recommendation**

It is recommended that to improve the effectiveness of the registration and licensing system, amendments will be made to align the date of registration and licensing renewal and payment for renewal with provision for a 30 day grace period and to repeal some transitional or redundant regulations.

The Board operates effectively within budget under current resourcing. However, the proposed transition from annual to three year registration/licence renewals would result in a loss of income together with increased compliance obligations as it could not rely on annual renewal requirements to achieve compliance. The annual registration/licensing arrangements are consistent with other professions such as health professionals and lawyers and were supported by submissions on this issue. In addition, the one year term provides improvements for compliance with PII and CPD which were identified as important measures in Recommendations 1 and 2 of the Shergold and Weir Report.

The removal of various transitional regulations that are no longer required will provide greater clarity to the regulations.

### **RECOMMENDATION 16**

***That the legislation is amended to:***

- ***amend the Regulations, including Regulation 16C(4), to align all registration and licensing renewals and payment of fees from 1 July to 30 June, with provision for a 30 day grace period for late payment, small fee to deter late payment and an appropriate lead-in time;***
- ***amend section 37 of the Act to maintain an architect's and architectural corporation's registration status during the above grace period for late payment; and***
- ***repeal Regulations 16B, 16C(1)-(3), 16C(4)(b) and 16C(5)-(6).***

## **2.14 Examination fees**

### **PROPOSAL 17**

**That:**

- **examination fees contained in Schedule 1 of the Regulations be removed and a regulation be made enabling fees for those examinations to be based on the fees set by the AACA for all states and territories; and**
- **repeal the fee in Schedule 1 of the Regulations relating to the Supplementary Examination by Interview.**



## *Objective*

To enable the Board to charge an applicant for registration the full cost of examinations set by AACA.

## *Statement of the Issue*

As the examination fees are prescribed in Schedule 1 of the Regulations, the Board cannot charge examination fees following a review of fees by AACA without amending the Regulations. Consequently, examination candidates in Western Australia can be charged different examination fees to candidates undertaking the examinations in other states and territories. The Board currently absorbs any shortfall in examination fees between the regulated fees and the fees charged by AACA. This, in effect, means that all architects are paying for this difference rather than a “user pays” system.

## *Options to address the issue*

### **Option 1: the Board may align the fees for examinations with those set by the AACA**

To amend the regulations to allow for the Board to align the fees for examinations with those set by the AACA for all states and territories.

### **Option 2: Retain status quo**

To make no change to the regulations. The Board continues to absorb the cost of examination fees.

## *Impact analysis*

At the moment, applicants for registration are receiving a slightly lower examination cost which is subsidised by the Board and all registered architects. If cost recovery is required, as proposed in Option 1, then persons undertaking the APE National Examination paper assessment will need to pay \$425 rather than \$357 and the Examination by Interview will be \$370 rather than \$306.

It seems reasonable that a “user pays” system applies for applicants under these two registration pathways consistent with the approach in other jurisdictions. Industry boards have input into fees and cost setting by the AACA. This would enable the Board to charge the same examination related fees as other architects industry boards across Australia.

The *Architects Act 2003* (NSW), for example, provides for the NSW Architects Board to appoint examiners, conduct such examinations as may be required for the purposes of the Act, determine the subjects to be examined, determine the fees to be paid to examiners and by candidates for examination as may, from time to time, be determined by the Board (section 64). These changes to fees are limited to once in a calendar year. In Western Australia, the Minister may make a written direction to the Board if necessary (section 20). This provision could be extended to include a similar provision to New South Wales, which enables the Minister to direct the NSW Architects Board to reduce a fee it has determined if the Minister considers it to be excessive (section 70). A lead-in time for cost changes would enable new candidates to prepare for the fee change and minimise impacts.

## Consultation

Five submissions were submitted for Proposal 17 and all were in favour of the proposal.

## Recommendation

It is recommended that Option 1 is supported and further detail is provided to support this change and the implementation of Recommendation 13. A lead-in time will enable candidates to be informed in advance about changes to fees.

### **RECOMMENDATION 17**

***That Part 4 of the Act and Regulations are amended to:***

- ***clarify that the Board may appoint examiners;***
- ***enable the Board to require reasonable fees from candidates, and pay examiners reasonable fees, as may be determined by the Board;***
- ***require that fee changes must not occur more than once in a calendar year;***
- ***enable the Minister to direct the Board by written notice to reduce these fees if the Minister considers the fee to be excessive;***
- ***to minimise impacts on candidates, a lead-in time will be provided for fee increases for candidates; and***
- ***repeal the prescribed fees for examinations in Schedule 1, Architects Regulations 2005.***

## 2.15 Amendments to the register

### **PROPOSAL 18**

**That sections 44 and 45 of the Act be amended to allow that charging a fee be discretionary rather mandatory for:**

- **obtaining a certified copy of the register or any part of, or entry in, the register; and**
- **amending particulars in the register.**

## Objective

To allow the Board to use its discretion when charging a fee for certified copies of the register and amendments to the register.

## Statement of the Issue

A registered person or corporation may apply to the Board to amend their details currently entered in the register (section 45). If the Board is satisfied that the amendment may properly be made, the Board, on payment of the prescribed fee (\$25.50) directs the registrar to amend the particulars accordingly (section 45).

As the Board wishes to encourage registered persons and licensed corporations to keep the Board informed of any changes to their contact details, the Board is considering introducing a process that would allow an architect to update their details on-line. As a result, the Board has suggested that charging a fee for amending the register be discretionary rather than mandatory.

### *Options to address the issue*

#### **Option 1: Amend the Act to enable discretion to charge for certified copy and amend the register**

To amend sections 44 and 45 of the Act to allow the Board discretion to charge for a certified copy of the register, or part of the register, and for a licensed/registered architect to change their particulars on the register.

#### **Option 2: Retain the status quo**

Make no amendment to the Regulations.

### *Impact analysis*

Minor savings for registered architects or corporations if Option 1 proceeds. No savings would apply in Option 2.

### *Consultation*

All four submissions supported Proposal 18.

### *Recommendation*

It is recommended that Option 1 is supported as the amendment will reduce red tape for persons and corporations registered and licensed under the Act.

#### **RECOMMENDATION 18**

***That the Regulations are amended to enable the Board to waive a fee for:***

- ***obtaining a certified copy of the register or any part of, or entry in, the register; and***
- ***amending particulars in the register.***

## 2.16 Minor disciplinary hearings

#### **PROPOSAL 19**

**That section 57(2) of the Act be amended to allow the Board to deal with minor disciplinary matters.**

## *Objective*

To allow the Board to deal with minor disciplinary matters to increase regulatory role and reduce the need for actions to be dealt with by SAT.

## *Statement of the Issue*

When considering a disciplinary matter, the Board currently has the power to conduct an initial investigation to determine if there is cause for disciplinary action. If the Board determines that there is cause for disciplinary action, then it can conciliate the matter if both parties agree, or refer the matter to the SAT if conciliation action fails under section 60. As a result, relatively minor matters where conciliation fails must be referred to SAT.

The Board seeks the ability to caution or reprimand, or undertake disciplinary procedures in relation to minor disciplinary matters. SAT has previously supported this type of action as outlined by the then President of the Tribunal, the Hon Justice Michael Barker. Justice Barker confirmed in a letter dated 5 June 2008 that in general terms it would be appropriate for vocational bodies to have appropriate summary powers in respect of minor disciplinary matters, for example:

- To caution or reprimand.
- To impose a fine not exceeding \$5,000.
- To require appropriate further education or training in relation to a matter revealed by an inquiry.
- To accept an undertaking to take or refrain from action specified in the recommendation.
- To take note of action.
- To attempt to settle a complaint by mediation or conciliation.

The Standing Committee on Legislation's inquiry into the jurisdiction and operation of the SAT in 2009 supported vocational Boards having jurisdiction to make minor disciplinary decisions. Recommendations 55 and 56 from the Committee's report state the following:

"Recommendation 55:

The Committee recommends that the government:

- (a) take note of any drafting instructions it receives from vocational regulatory bodies in relation to their disciplinary functions and powers; and
- (b) undertake a review of the legislation for the vocational regulatory bodies which have had, or will have, their disciplinary functions transferred to the SAT, in order to develop a standard set of summary disciplinary functions and powers for all of these bodies in relation to minor disciplinary matters.

Recommendation 56: The Committee recommends that, where a vocational regulatory body has had, or will have, its disciplinary functions transferred to the SAT, but retains or is conferred an original jurisdiction to make minor disciplinary decisions, the Tribunal will be empowered to review those decisions."

### *Options to address the issue*

#### **Option 1: Amend to enable the Board to deal with minor disciplinary matters**

To amend section 57(2) of the Act to allow the Board to deal with minor disciplinary matters.

#### **Option 2: Retain status quo**

To make no amendment to section 57(2) of the Act.

### *Impact analysis*

Under the current complaints based regulatory regime and objects of the Act, levels of complaints are low. In 2017/18, four new complaints were received alleging that an architect had acted unprofessionally. From the five years from 2013/14 to 2017/18, an average of two complaints were received per year.

Notwithstanding the relatively low level of complaints, architects are in a highly responsible role and regularly make decisions which affect a building's safety and amenity. The decisions of an architect can significantly affect the investment of homeowners and the safety of building occupants. The capacity to take minor disciplinary action would enable the Board to have a stronger regulatory presence in the architectural industry.

The capacity to decide on minor complaints is held by comparable bodies in the legal and building sectors. The Legal Profession Complaints Committee (WA) is a comparable statutory body for a profession. The Committee can deal with a matter summarily if an investigation is complete and the Committee is satisfied:

- that there is a reasonable likelihood that the practitioner would be found guilty by the SAT of unsatisfactory professional conduct (but not professional misconduct);
- that the practitioner is generally competent and diligent;
- that exercising summary conclusion is justified, having regard to all the circumstances of the case (including the seriousness of the conduct concerned) and whether any other substantiated complaints have been made against the practitioner; and
- the practitioner concerned consents to the Committee exercising its summary conclusion powers.

If the Committee resolves that it is satisfied that the preconditions to it exercising its summary conclusion powers have been met, under section 426(2) the Committee may do one or more of the following:

- Publicly reprimand the practitioner or, if there are special circumstances, privately reprimand the practitioner.
- Order the practitioner to pay a fine of up to \$2,500.
- Make a compensation order.
- Order that the practitioner seek and implement, within a specified period, advice from the Board, or from a person specified in the order, in relation to the management and conduct of the practitioner's practice, or a specified aspect of the practice.

The Committee is constituted as a Committee of the Board with powers conferred directly by the Act to ensure the exercise of its functions are independent of the Board. Appeals to the Committee's decisions can be made to SAT. There is a separation of complaints and investigations functions for legal practitioners.

The Building Services Board (BSB) registers builder, building surveyor and painting practitioners and contractors. The BSB may deal with minor disciplinary complaints under section 57 of the *Building Services (Registration) Act 2011*. If the Board is satisfied that a disciplinary matter exists in relation to the provider, the Board is of the opinion that a proceeding before the SAT is not warranted, and the provider consents to the exercise of power by the Board, the BSB may:

- Order that the registration of the provider be amended;
- Caution or reprimand the provider;
- Require the provider to give an undertaking to the Board for such a period as is specified; and
- Order the provider to pay the Building Commissioner a fine of a specified amount not exceeding \$5,000 (section 57).

The more recent provisions of Regulation 31 of the *Plumbers Licensing and Plumbing Standards Regulations 2000* provides stronger powers of this kind for the plumbing regulator in that the provider's consent is not required. The capacity for the Board to consider minor disciplinary matters will enhance action on complaints about architects for the purposes of consumer protection consistent with the objects of the Act.

### **Consultation**

There were four submissions to Proposal 19. All were in favour of making an amendment as proposed.

## **Recommendation**

It is recommended that Option 1 is supported. Other DRIS recommendations will also strengthen the Board's disciplinary role, including clarifying beyond doubt the use of external investigators (Recommendation 11) and increased penalties (Recommendation 12).

### **RECOMMENDATION 19**

**That the Act is amended to provide the Board with powers to deal with minor disciplinary complaints where a disciplinary matter exists and the Board is of the opinion that a proceeding before the State Administrative Tribunal is not warranted by the nature of the matter. The provisions will be similar to provisions such as section 57 of the *Building Services (Registration) Act 2011* and Regulation 31 of the *Plumbers Licensing and Plumbing Standards Regulations 2000*.**

## **2.17 Written contracts**

### **PROPOSAL 20**

**That a section be inserted into the Act stating that architects must provide a written agreement to their clients and failure to do so would result in disciplinary action under the Act.**

## **Objective**

To reduce disputes by ensuring architects have a written agreement with their clients.

## **Statement of the Issue**

Currently, architects in Western Australia are not required to have a written agreement with their clients. This situation can result in the client's expectation about the cost and content of the architectural service being substantially different to that of the architect. The absence of a written agreement is more likely to occur for small residential projects where the client is building or renovating and using an architect for the first time. The cost of misunderstandings for the client can be significant.

The Board has recommended that a written agreement signed by both parties before work can proceed be introduced into the Act, thereby rendering a written agreement compulsory. If architects are required to have a written agreement with their clients, owners would be better protected, particularly as the circumstances where a written agreement is not used commonly involves owners who do not have experience with an architect.

The inclusion of written contracts varies between the states and territories. Where a Code of Practice exists, written contracts have been included.

### *Options to address the issue*

#### **Option 1: Compulsory requirement for architects to have a written contract with clients for all architectural work**

To add a clause to the Act to make it compulsory for architects to have a written contract with clients for all architectural work, of any value.

#### **Option 2: Retain the status quo**

To continue with the current situation where there is no legislated requirement for a contract.

### *Impact analysis*

The additional regulatory burden on the profession is minimal as most architects already use written agreements with their clients to clarify the rights and obligations of architect and client. Written agreements would benefit owners in terms of better aligning client expectations for architectural services with their architect. While an additional regulatory burden will fall on the few architects that do not currently use written agreements, the proposal will support confidence in the industry. Most other larger jurisdictions require written contracts, including New South Wales, Queensland, South Australia and Victoria.

### *Consultation*

Five submissions were received for Proposal 20. All but one were in favour of the proposal. The one submission that was not in favour did not give any reasons for the position.

### *Recommendation*

It is recommended that Option 1 is supported as it increases consumer protection and supports confidence in the architectural industry.

#### **RECOMMENDATION 20**

***That the Regulations are amended under section 56(1)(a) and 56(2) of the Act to require architects to provide a written agreement containing core information to their clients, with failure to do so resulting in disciplinary action under section 56 of the Act. The core information will be determined through further consultation.***

## **2.18 Code of Conduct**

#### **PROPOSAL 21**

**That further consideration is given to the need to implement a legislated Code of Conduct for architects, following comment from industry.**



## Objective

To determine if a Code of Conduct should be legislated in some form and further consultation undertaken.

## Statement of the Issue

The intended purpose of a Code of Conduct is to provide the basis for the professional conduct of architects and be a foundation for disciplinary proceedings under the Act.

The Board has raised the issue of the inclusion of a Code for architects in Western Australia. Other states and territories that have adopted a Code have found it useful when dealing with disciplinary matters. A Code is best introduced under an act to provide power for enforcement, particularly if a matter needs to be referred to the SAT.

The Act currently provides for a Code under section 71(3), which states:

- “(3) Without limiting the application of the *Interpretation Act 1984* section 43, regulations made under this Act may adopt wholly or partly any standards, rules, code, or other provisions published by some other body and may adopt them —
- (a) with or without any amendment or modification;
  - (b) as in force at the time of adoption or as amended from time to time.”

The Board initially proposed that the model Code of Conduct developed jointly by the AACAA and the AIA in 2003 be adopted in Western Australia. In 2003, when the Act and the Regulations were being developed, the Board proposed the Code of Conduct developed by the AACAA and the AIA be adopted in the Act. At the time of drafting the regulations, Parliamentary Counsel strongly advised against incorporating a provision in the Act for the Board to prescribe a Code as it would have been required to be specified in full in the Regulations and would have had a legal effect. A breach of the Code would then automatically constitute ‘unprofessional conduct as an architect’ and be a breach of the law, meaning there would be no inquiry allowable by the Board or hearing by the SAT and the architect would be prosecuted. Parliamentary Counsel cited a number of reasons against introducing a Code through the Act including:

- It would be fundamentally unfair to architects.
- A breach of the Code may not constitute conduct at a level of seriousness that amounts to unsatisfactory conduct.
- If the recommended Code were to be incorporated into the Regulations, it would have needed to be completely reworked and be very tight and specific, rather than reflect aspirational standards and not be generalised as is the case with most codes.
- If prescribed under the regulations, then a breach of the Code will need to be taken into account when deciding registration, licensing and renewal matters.
- No other professional registration Acts in Western Australia refers to a Code of Conduct except for the Nurses Act.

Since Parliamentary Counsel's findings, having a Code of Conduct is increasingly being referred to and introduced by other professional registration Acts in Western Australia, including the *Electricity Industry Act 2004*, the *Real Estate and Business Agents Act 1978*, the *Settlement Agents Act 1981*, the *Land Valuers Licensing Act 1978*, the *Legal Profession Act 2008* and the *Finance Brokers Control Act 1975*.

Parliamentary Counsel advised that the Code should not be specified in the Act, that it should have no legal effect and instead become a Board administrative matter. If handled in this manner, a breach of the Code would enable the Board to have the power to conduct an inquiry under section 12(1)(c) and allege to the SAT that there is proper cause for disciplinary action. It would also allow the Code to be amended and updated far easier and quicker if not specified in legislation. As a result, section 56(1)(a) provides for disciplinary action to be taken in respect of a person who has engaged in unprofessional conduct. To enable the content of specific provisions of the Code to be added to, if considered appropriate, section 56(2) was introduced:

“(2) For the purposes of subsection (1)(a) —

**unprofessional conduct as an architect** includes, without limiting the general meaning of the term, conduct that is prescribed by the regulations as constituting unprofessional conduct as an architect.”

The AACA Code of Conduct as currently published may not be appropriate for the needs of the Act due to the aspirational and general provisions of the Code that include parts (for example) that are:

- Not of a level serious enough to warrant a breach being a proper cause for disciplinary action, rather the suggestions are included for a preferred way of taking action (e.g. Code Part A).
- A replication of an obligation under legislation or an insurance policy (e.g. Code provisions 4.7, 7.1, 9.2 and 9.3).
- A replication of other laws such as tort law that would apply anyway (e.g. Code provision 4.1 “act with reasonable care”).

In 2007 advice was sought from the State Solicitor's Office, which provides legal advice to government agencies, about the possible adoption of the AACA and AIA Code of Conduct into the Regulations. While the SSO agreed with much of the opinion of Parliamentary Counsel, it also advised it would be possible to adopt the Code in accordance with section 71(3) of the Act. This provision provides for regulations to adopt wholly or partly any standards, rules, code of other provisions published by some other body with penalties for contravention. However, the proposed Code would need to expressly provide that the Code was adopted as a guide and that breach of the Code was not intended to be a cause for disciplinary action in itself.

### ***Legislation in other States***

A Code of Conduct (or similar instructions) that set out the specific rules or standards of ethical conduct for architects has been provided for in architects acts in the states of Victoria, New South Wales, Queensland, South Australia, as well as in New Zealand. These are set out in regulations (Victoria, New South Wales, New Zealand) and as separate documents (Queensland, South Australia). There is no code of conduct or similar requirements in Tasmania, Northern Territory or the Australian Capital Territory.

**Table 3: Legislation in other jurisdictions**

| <b><i>State</i></b> | <b><i>No legislative provision</i></b> | <b><i>Legislative provision</i></b> | <b><i>Code of Practice</i></b> |
|---------------------|----------------------------------------|-------------------------------------|--------------------------------|
| <b>ACT</b>          | ✓                                      |                                     |                                |
| <b>NSW</b>          |                                        | ✓                                   | ✓                              |
| <b>NT</b>           | ✓                                      |                                     |                                |
| <b>QLD</b>          |                                        | ✓                                   | ✓                              |
| <b>SA</b>           |                                        | ✓                                   | ✓                              |
| <b>TAS</b>          | ✓                                      |                                     |                                |
| <b>VIC</b>          |                                        | ✓                                   |                                |

### ***Options to address the issue***

#### **Option 1: Further comment sought about Code of Conduct**

It is proposed that further inquiry and comment is required at this stage before a decision is made as to whether a Code of Conduct is needed and the best means by which to introduce this. The adoption of the AACA Code of Conduct could only be considered if:

- the Code was rewritten for the purpose of adoption under the Act;
- the Board identifies those parts of the Code that are considered serious enough to warrant a breach constituting a proper cause for disciplinary action and to include those parts in the Regulations (however, there do not appear to be many serious items that are not already covered in the Regulations);
- a Code of Conduct is written into the Regulations using as a basis the Code of Conduct for South Australia, which sets out the standards architects are expected to meet; and
- the Board introduces a Code of Conduct that would enable it to have the power to conduct inquiries and refer cases to SAT for disciplinary action, which would allow the Code to be amended by the Board and updated according to ongoing requirements.

## Impact analysis

During the development of the proposed draft Code of Conduct, the impact of the recommendations will be considered as part of the Regulatory Impact Assessment process.

## Consultation

Of the six submissions on this proposal, five were in support and one was not in support the proposal. Those that were in support noted the need to ensure that a Code of Conduct was nationally consistent. Also, the AACA stated:

“The Model Code has not been reviewed or updated in light of experiences in the jurisdictions where a Code of Conduct has been applied. The AACA will consult with the architect registration boards to review the Model Code and provide the outcomes of that Review to all jurisdictions in Australia.”

## Recommendation

It is recommended that Option 1 is supported and further consideration is given to the need to implement a legislated Code of Conduct following comment from industry. A minor amendment has been made to reflect the need to consider the AACA’s review of its Model Code.

### **RECOMMENDATION 21**

***That further consideration is given to the need to implement a legislated Code of Conduct for architects, following comment from industry and the AACA’s review of its model code.***

## 2.19 Review of a Board decision

### **PROPOSAL 22**

**That further investigation is carried out about the process available for review of a Board decision by the State Administrative Tribunal.**

## Objective

To provide legislative certainty for owners to be able to request SAT to review a decision made by the Board.

## Statement of the Issue

The Act does not provide an appeal mechanism to SAT by person who lodges a complaint. In contrast, a person or company affected by a registration or licensing decision may appeal the decision to SAT.

Table 4 below outlines the requirements in other jurisdictions for persons that lodge a complaint to an architect’s board and want to seek review of that complaint.

**Table 4: Complaints appeal process in other jurisdictions**

| <b>State</b> | <b><i>Appeals process for persons making a complaint to the Board</i></b>                                                                                                                                                                                                                                                                                           |
|--------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>ACT</b>   | A person whose interests are affected by the decision may appeal to the ACT Civil and Administrative Tribunal (s.86A, <i>Architects Act 2002</i> )                                                                                                                                                                                                                  |
| <b>NSW</b>   | The Board may choose to dismiss certain complaints without proceeding to investigation. If the Board dismisses a complaint, a person who makes a complaint, or the architect against whom a complaint is made, may apply to the New South Wales Civil and Administrative Tribunal for a review of the Board's determination (s.37(5), <i>Architects Act 2002</i> ). |
| <b>NT</b>    | A complainant who is aggrieved by a determination of the Board may apply to the Minister to review the determination with no provision to appeal to the court ( <i>Architects Act</i> ).                                                                                                                                                                            |
| <b>QLD</b>   | A person who makes a complaint may appeal to the Tribunal if the Board decides to take no further action following the Board's preparation of a written report about the investigation (s.121(2)(e), <i>Architects Act 2002</i> ).                                                                                                                                  |
| <b>SA</b>    | The right of appeal to the District Court may be made in relation to a decision made by the Board by complainants (s.50, <i>Architectural Practice Act 2009</i> ).                                                                                                                                                                                                  |
| <b>TAS</b>   | A complainant does not have a right of appeal ( <i>Architects Act 1929</i> ).                                                                                                                                                                                                                                                                                       |
| <b>VIC</b>   | A person who makes a complaint may apply to the Victorian Civil and Administrative Tribunal for review of the Board's determination that an inquiry should not be held into an architect's fitness to practise or professional conduct (s.42(2), <i>Architects Act 1991</i> ).                                                                                      |

### ***Options to address the issue***

#### **Option 1: That further investigation is carried out about the process available for review of a Board decision by the State Administrative Review Tribunal**

To continue investigation into the available processes to allow a complainant to request a review of a Board decision by an independent tribunal which in Western Australia would be the SAT.

#### **Option 2: Retain status quo**

No change to the legislation for allowing complaints by the Board to be investigated by the SAT. Owners cannot take action in SAT about Board decisions regarding complaints.

### ***Impact analysis***

Option 1 proposes further consideration of the processes to allow a person that has lodged a complaint to request a review of a Board decision. Most other jurisdictions enable a person lodging a complaint with an architect's board to appeal the determination in certain circumstances, for example following a Board's determination not to investigate or determination that no further action is required following an investigation. The latter proposal is more appropriate in the Board's case as the Board is obliged to investigate all complaints.

Option 1 would require minimal resource requirements for SAT and the Board at this point in time as the Board has received an average of two complaints in the last five years. However, it may not be necessary as the Ombudsman Western Australia may investigate complaints about the Board and the Minister may provide written directions to the Board if concerns arise about the Board's approach to investigations (section 20).

Option 2 – retain the status quo, would not increase resourcing impacts on SAT or the Board and if owners are concerned about the progress of complaints then the Ombudsman Western Australia may investigate the issue.

### **Consultation**

A mixed response was received in the five submissions on Proposal 22. Three submissions supported the proposal (with one of these highlighting the need for consistency with other jurisdictions), and two submissions did not support it.

The Board and the AIA were not in support. The AIA considered that as the mechanisms provide appeals for registrants that no review was necessary. Another submission supported the proposal, but only if the terms of any investigation provided for consistency with the rights of appeal for legislation in comparable professional/vocational bodies in Western Australia.

### **Recommendation**

It is recommended that Option 2- status quo is approved. Further research has determined that the Ombudsman WA can investigate concerns by consumers that have lodged a complaint with the Board and are concerned about a decision, action or inaction by the Board. The Ombudsman WA lists complaints made against government boards on an annual basis. The Minister may also give written directions to the Board with respect to the performance of its functions, although not in relation to a particular person or complaint (section 20). These controls seem sufficient to provide oversight at this stage.

#### **RECOMMENDATION 22**

***That further investigation is not carried out at this stage into the most appropriate process for reviewing Board decisions by the State Administrative Tribunal.***

## **2.20 Licensing of non-traditional corporations**

### **PROPOSAL 23**

**That further analysis and consultation be carried out with non-traditional corporations (NTC's) and the wider architectural profession to determine the feasibility of defining the term "architectural work services" to better delineate the architectural and non-architectural services of NTC's.**

## *Objective*

To improve the registration and licensing framework by identifying what services are covered by the term “architectural work” and “direct control and supervision” for registration and licensing of non-traditional corporations (NTCs) and traditional corporations.

## *Statement of the Issue*

Corporations that provide architectural services are required to be licensed under section 31 of the Act. Licensed corporations tend to fall into two broad categories:

1. businesses which provide traditional architectural services, where those services are the primary business of the corporation (i.e. traditional corporations); and
2. businesses for which architectural services are only a minor or secondary part of the business and whose core business is something else, possibly a multi-disciplinary consultancy practice, building or drafting firms (i.e. non-traditional corporations or “NTC’s”).

Traditional corporations form the vast majority of applications received by the Board. Examples of applications received by Board which fall into the NTC category are as follows:

- corporations which predominantly provide building services but which also offer services related to architectural design. The architectural work component may be limited to the preparation of sketches and plans and not extend further to documentation of the project or contract administration;
- corporations which offer services as an architect (architectural work services) as well as drafting services; and
- corporations which offer architectural work services to particular types of client (e.g. government) only – with services to others not purporting to be architectural work.

The Board advises that there are currently 241 corporations licensed by the Board. Out of that total, six fit clearly within the NTC definition. Another 55 could possibly fit into the definition but further research would be required to confirm this.

Under section 31 of the Act, the Board may grant a licence to a corporation that applies in the correct manner and form and satisfies the Board that it complies with the requirements prescribed by regulation 15. Subsections (c) and (d) of regulation 15 provide that the Board must be satisfied that:

- (c) all architectural work to be done by the corporation is to be done under the direct control and supervision of a registered person who is an officer or employee of the corporation;
- (d) the means by which the corporation proposes to comply with paragraph (c) are acceptable to the Board.

When considering licensing applications from NTC’s, the Board has experienced difficulty in identifying what services are covered by the term “architectural work”, as this term is not defined in the Act or Regulations. Similarly the Board has found it difficult to determine what is meant by the undefined term “direct control and supervision”. As a result, it has been challenging for the Board to assess licensing applications from NTC’s against these criteria.

Further questions also arise as to how the Board should properly regulate an NTC in circumstances where only some of the services provided by that corporation are delivered by architects and under architectural supervision. In assessing licensing applications from NTC's, it is possible that consumers of architectural services may not be protected in that clients of the NTC may, if it was licensed, believe they were receiving an architectural service from that NTC when they were receiving one of the other services offered by the NTC.

### *Options to address the issue*

#### **Option 1: Further analysis and consultation with non-traditional corporations and the wider architectural profession to determine the feasibility of defining the term “architectural work services” to better delineate the architectural and non-architectural services of NTC's**

Further analysis and consultation is undertaken to develop ideas to address these concerns with non-traditional corporations and wider architectural profession.

#### **Option 2: Retain the status quo**

No changes to the current Act and Regulations regarding non-traditional corporations.

### *Impact analysis*

This proposal requires further consultation and policy development, as a result an impact analysis will be developed when recommendations have been finalised. The Board has advised that sharper legislative definitions are required to assist in clarifying the requirements for architectural corporations. Changes to potentially tighten obligations for architectural corporations would impact currently registered non-traditional corporations (up to 55 businesses) and these entities and stakeholders would need to be consulted on any proposed changes. However, as the Act regulates title protection it impacts a business's registration as an architectural corporation and use of the word “architect” or “architectural” or a derivative rather than the ability of the business to provide building design services.

### *Consultation*

None of the five submissions on this proposal were in support of redefining the work of a non-traditional corporation in the way proposed. The main concern was that this proposal was confusing and could conflict with the restricted terms under consideration in Proposal 4.

The Board proposed instead an amendment to the Act and/or Regulations so that only corporations that provide non-traditional architectural services, where those services are the primary business of the corporation, can be licensed by the Board under section 31 of the Act.

The AIA stated:

“It is suggested clear definitions as highlighted under Proposal 4 would in fact provide greater clarity to the services regulated by the Act.”



Another submission stated:

“Whilst some further investigation may be required the consumer protection aspects of the Act need to ensure that ‘NTC’s’ are not and cannot be conflicted in the provision of the services they provide to their clients in relation to the various elements of an NTC’s business operations.”

### **Preferred Option**

Option 1 was not supported in consultation, however, it is a key issue of concern for the Board. It is therefore proposed that further work be undertaken to clarify reasonable requirements for architectural corporations in consultation with the Board, stakeholders, consumer representatives and affected businesses.

#### **RECOMMENDATION 23**

***That further consultation is undertaken with the Board, affected businesses and key stakeholders to clarify which bodies should be entitled to be licensed as “architectural corporations”.***

## **2.21 Term “retired architect” to be specifically allowed**

#### **PROPOSAL 24**

**That section 68 of the Act is amended to include the term “retired architect”.**

### **Objective**

To allow for retired architects to be able to use the term ‘architect’ without committing an offence.

### **Statement of the Issue**

When some architects retire from the architectural industry, they may wish to refer to themselves as a “retired architect” even though they are no longer involved in the design and construction of buildings. However, under section 68 of the Act there is no clear provision that allows retired architects to use this term.

### **Options to address the issue**

#### **Option 1: exempt the term ‘retired architect’**

It is proposed that the use of the term “retired architect” is included in section 68 to make clear its use is exempt from breaching the Act, as well as to make it an offence for persons to falsely represent that they have previously been registered or licensed under the Act.

#### **Option 2: retain the status quo**

No change to the legislation.

### **Impact analysis**

There is minimal impact beyond retired architects. There is no financial aspect to this proposal. There is no adverse impact on owners as it will apply only to architects that are no longer practising.

### **Consultation**

Six submissions were received for this proposal (Option 1) and all were in favour of it. The Board further proposed that the term retired architect should be defined in section 4 of the Act to ensure that only persons who were previously registered under Part 4 of the Act or prior legislation commit no offence by using the term.

### **Recommendation**

It is recommended that Option 1 is approved, with the result that no offence will be committed under the Act by persons describing themselves as a retired architect. The Board's additional legislative proposal has been added to provide further clarity.

#### **RECOMMENDATION 24**

***That section 4 and section 68 of the Act are amended to ensure that:***

- no offence is committed if a person who has been registered under the Act describes themselves as a 'retired architect'; and***
- only persons previously registered will commit no offence by using the term "retired architect".***

## APPENDIX A

### List of Respondents

|                                               |
|-----------------------------------------------|
| <b><i>Industry Associations</i></b>           |
| Australian Institute of Architects            |
| Architects Accreditation Council of Australia |
| Building Designers Association (WA)           |
| Housing Industry Association                  |
| <b><i>Government Entities</i></b>             |
| Architects Board of Western Australia         |
| Office of the Government Architect            |
| <b><i>Individuals</i></b>                     |
| Alan White                                    |
| Alex Willis                                   |
| Ante Zubac                                    |
| Brian Kloppe                                  |
| Bruce Callow                                  |
| Diego Quevedo                                 |
| Florian Heise                                 |
| Heath Moloney                                 |
| Ian Baxter                                    |
| Kate Fitzgerald                               |
| Kent Lyon                                     |
| Paul Reilly                                   |
| Paul Wilson                                   |
| Roger Joyner                                  |

## APPENDIX B

### Previous Reviews

#### **Productivity Commission review (2000 and 2010)**

In 2000, the Productivity Commission conducted a review of state and territory legislation regulating the architectural profession.

The Productivity Commission found that:

- the costs of current regulation outweighed its benefits; and
- these benefits could be achieved more effectively by becoming a self-regulating profession and using other existing legislation to provide consumer protections.

It was suggested architect Acts could be improved by establishing a national system of registration, reduce title restrictions and promote transparency and accountability of the existing architects' boards.

The preferred option of the Productivity Commission was to repeal architect registration or licensing legislation across Australia, remove statutory certification and introduce self-regulation that would involve developing non statutory certification and a course accreditation system.

#### *Response to the Productivity Commission's 2000 report*

An intergovernmental working group representing state and territory interests was established to recommend a consolidated response to the Commission's Report. The working group did not support the repeal of architect registration or licensing and recommended retaining and adjusting the existing legislation to remove elements deemed to be anticompetitive and not in the public interest. These proposals were accepted by the Australian Procurement and Construction Ministerial Council in June 2002.

#### *Mutual Recognition Schemes: Research Report*

In 2015, the Productivity Commission released the *Mutual Recognition Schemes: Research Report* which reviewed the coverage, efficiency and effectiveness of mutual recognition schemes in Australia and New Zealand. The report recommended a form of Automatic Mutual Recognition which would permit architects registered in one jurisdiction to operate in another jurisdiction without paying additional licensing costs. Recommendation 6.1 recommended that 'Current initiatives to adopt mutual recognition for licensed professionals who provide services across borders on a temporary basis should be implemented... State and Territory Government should make the legislative changes necessary to implement the proposed National Recognition of Architects' Registration Scheme'<sup>25</sup>.

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<sup>25</sup> Productivity Commission, *Mutual Recognition Schemes: Research Report*, 25 September 2015, p. 178.

The report also noted the complexities involved in implementing such a scheme, such as:

- loss of revenue for regulators which are typically reliant on licence fee revenue to fund their regulatory functions<sup>26</sup> which may result in a need for regulators to change their funding model<sup>27</sup>
- increase in compliance workload; and
- need for clearly defined legislative responsibility and regulatory cooperation on enforcement as visiting service providers would, for example, be subject to all local regulations and sanctions<sup>28</sup>.

## **NSW reviews**

### *2010 Statutory Review*

In September 2010, the final report of the statutory review of the New South Wales *Architects Act 2003* was released.

The review concluded that the objectives of the NSW Act remained valid. Some changes were recommended, including:

- changing the NSW Act so that the use of the term ‘architectural’ with ‘design services’ is taken to be a representation that the person is an architect; and
- a regulation be made to prescribe professional associations as a corporation or firm which may use the term ‘architect’ in their title, without breaching the Act.

### *IPART Review*

In July 2010, the NSW Government asked the Independent Pricing and Regulatory Tribunal (IPART) to examine all licence types in NSW and identify those where reform would produce the greatest reduction in regulatory burden for business and the community. A draft final report was released in July 2014 and the final report (unpublished) was submitted to the NSW Government on 29 September 2014. The NSW’s Government has not responded to the report at the time of writing.

While the draft final report of the IPART review agreed with the Productivity Commission’s assessment of architect registration, it concluded that there are several complicating factors to abolishing architect registration in NSW and, as a result, did not recommend abolishing architect registration in NSW at this time, for three reasons:

1. Abolishing architect registration in NSW alone is likely to have negative impacts on NSW architects, NSW architectural businesses and universities.
2. Architect registration is intertwined with current and proposed planning laws that would require review if architect registration is abolished.
3. Establishing a self-regulatory model to operate only in NSW is likely to be more costly than continuing with the current system of registration.

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<sup>26</sup> Productivity Commission, Mutual Recognition Schemes: Research Report, 25 September 2015, p. 183

<sup>27</sup> Productivity Commission, Mutual Recognition Schemes: Research Report, 25 September 2015, p. 183.

<sup>28</sup> Productivity Commission, Mutual Recognition Schemes: Research Report, 25 September 2015, p. 186-188.