



Government of **Western Australia**  
Department of **Commerce**

CONSULTATION  
REGULATORY IMPACT STATEMENT

**Statutory Review of the**  
***ARCHITECTS ACT 2004***

***February 2015***

## PROVIDING FEEDBACK

The State Government is interested in receiving feedback on the issues presented in this paper. This document has been prepared in compliance with the Western Australian Government's requirements for Regulatory Impact Assessments and to facilitate public consultation on registering of architects and licensing of architectural corporations.

After the consultation period concludes, all responses received will be publicly available on the Building Commission website. Please note that because your feedback forms part of a public consultation process, the government may quote from your comments in future publications. If you prefer your name to remain confidential, please indicate that in your submission. As submissions made in response to this paper will be subject to freedom of information requests, please do not include any personal or confidential information that you do not wish to become available to the public.

Written comments, queries and submissions should be forwarded no later than **CLOSE OF BUSINESS FRIDAY 22 MAY 2015**.

Please provide your comments on the issues to: The Architects Act Review, Industry Development, Building Commission, Department of Commerce, Locked Bag 14, Cloisters Square, WA, 6850 or by email to [architectsreview@commerce.wa.gov.au](mailto:architectsreview@commerce.wa.gov.au). Please label your email with 'Architects Act Review Submission' in the subject header.

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or collected from reception at Building Commission, Level 1, Mason Bird Building, 303 Sevenoaks Street, Cannington 6107. Copies of the paper are also available from the Building Commission's Contact Centre on 1300 489 099.

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February 2015

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## MESSAGE FROM THE BUILDING COMMISSIONER

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

I am pleased to release this *Consultation Regulatory Impact Statement: Statutory Review of the Architects Act 2004*. The current statutory review of the *Architects Act 2004* is required under section 81 of the Act. Section 81 states that the Minister is to carry out a review of the operation and effectiveness of the Act as soon as is practicable after the expiry of 5 years from its commencement.

The purpose of this paper is to prepare a report based on the review and to seek comment on a number of issues affecting the architect industry addressed in the review of the Act.

This paper also constitutes a Consultation Regulatory Impact Statement for the purposes of Regulatory Impact Assessment. Regulatory Impact Assessment requirements have been put in place by the State Government to ensure rigorous analysis of regulatory proposals, effective and appropriate consultation, and transparency of process.

I would urge everyone with an interest in the architecture industry to take the time to consider this paper and to provide their views on its content so that the Building Commission obtains the best understanding we can of the issues currently affecting architects.

**Peter Gow**  
**BUILDING COMMISSIONER**

## EXECUTIVE SUMMARY

This Consultation Regulatory Impact Statement constitutes the first public phase of the statutory review of the *Architects Act 2004* (the Act).

Architects are registered through the Architects Board of Western Australia. The Board is a self-funding board that operates independently of the Department of Commerce. The Minister for Commerce is responsible for the appointment of six board members (four consumer representatives and two industry members) and four members are elected by registered architects.

The review addresses some broad policy issues concerning the need to register architects, the adoption of a national recognition model, whether to extend the registration of architects to other building design para-professionals, and if there is merit in bringing the registration of architects under the *Building Services (Registration) Act 2011*, along with a number of other changes to improve the operation of the Act and remove red tape.

This paper provides 24 proposals for discussion, along with an impact assessment of each of those proposals. The proposals are not final and are designed to focus attention and encourage comment on the key issues in the Act. While comments on all parts of the Act are welcome, this paper concentrates on the key 24 proposals of the review.

In general, this report finds that the Act, and the administration of it by the Architects Board of Western Australia, is working well but some provisions could be changed to improve its operation. The report proposes that further consideration of proposals to regulate architects under the *Building Services (Registration) Act 2011* be deferred until that act is next due for review, which is in August 2016.

## LIST OF COMMON ABBREVIATIONS

Category	Abbreviation	Word/phrase in full
Legislation	The Act	<i>Architects Act 2004</i>
	The Regulations	<i>Architects Regulations 2005</i>
	The BSR Act	<i>Building Services (Registration) Act 2011</i>
Organisations	AIA	Australian Institute of Architects
	AACA	Architects Accreditation Council of Australia
	'the Board'	Architects Board of Western Australia
	SAT	State Administrative Tribunal
Common terms	APE	Architectural Practice Examination
	CPD	Continuing Professional Development
	NEP	National Examination Paper
	RAE	Review of Academic Equivalence
	NPrA	National Program of Assessment
	WA	Western Australia

# 1. OVERVIEW

## 1.1 Terms of reference

Section 81 of the *Architects Act 2004* (the Act) states that:

- (1) *The Minister is to carry out a review of the operation and effectiveness of this Act as soon as is practicable after the expiration of 5 years from its commencement, and in the course of that review the Minister is to consider and have regard to —*
  - (a) *the effectiveness of the operations of the Board;*
  - (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.*
- (2) *The Minister is to prepare a report based on the review made under subsection (1) and as soon as is practicable after the preparation of the report, cause it to be laid before each House of Parliament.*<sup>1</sup>

As the Act commenced on 16 November 2005, a review is now overdue. The review was postponed while the Building Commission dealt with the development and implementation of the *Building Act 2011* and the *Building Services Acts*<sup>2</sup>.

The purpose of this Consultation Regulatory Impact Statement (CRIS) is to identify, examine and make proposals on key issues arising out of the Act and the regulation of the architecture occupation in Western Australia and to determine whether the policy objectives of the Act are still valid.

## 1.2 Commenting on the proposals

This CRIS provides proposals on aspects of the Act that have already been highlighted for potential change by key stakeholders. This document provides an opportunity for the broader industry and community to comment on these proposals.

Comments are welcomed on any aspect of the Act, not just on the proposals put forward.

**The proposals presented in this paper are not final and have been included to encourage and focus comment on key issues.**

**The proposals do not represent the final position of the Building Commission or the Western Australian State Government.**

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<sup>1</sup> The reference to “the Minister” in section 81 is currently the Minister for Commerce. References to the Act also include the *Architects Regulations 2005*, which are made under the Act.

<sup>2</sup> The ‘Building Services Acts’ include the *Building Services (Registration) Act 2011*, the *Building Services (Complaint Resolution and Administration) Act 2011* and the *Building Services Levy Act 2011*.

## 1.3 The review process and the State Government's Regulatory Impact Assessment requirements

### 1.3.1 Regulatory Impact Assessment requirements

The Western Australian Government is committed to a regulatory gatekeeping process aimed at carefully considering the fundamental question of 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 therefore required to undertake a Regulatory Impact Assessment (RIA) process for all regulatory proposals which could potentially have a negative impact on business, consumers or the economy.

### 1.3.2 Review of the Architects Act

*Consultation Regulatory Impact Statement (Stage 1 of the Regulatory Impact Assessment process)*

This paper and the accompanying public call for written submissions constitute the first major stage of the RIA requirements.

A Consultation Regulatory Impact Statement (CRIS) is required where proposed changes to a legislative framework are likely to have significant impacts on stakeholders (including consumers, industry and government). This requires the following to be undertaken:

- outline the policy issues to be addressed;
- explain the objectives for resolving the issues;
- outline options for reform;
- consider the costs and benefits of each option (advantages/disadvantages), and
- provide further opportunity for public comment on the policy proposals.

This paper identifies and analyses the impact of options for reform for the purpose of encouraging discussion on those issues. As such, the proposals are by no means final and should this consultation process identify viable alternative options, these will be further considered and presented for additional comment in the decision stage of this consultation, as outlined below.

*Decision RIS (Stage 2 of the RIA process)*

Following analysis of submissions to the CRIS, a Decision Regulatory Impact Statement (DRIS) will be prepared outlining the recommendations of the review and the Government's preferred options for implementation. The DRIS will analyse the impacts of the various options identified in the CRIS stage and the Government's preferred options.

The RIA process requires that an opportunity for further stakeholder consultation be provided so that relevant stakeholders can address the actual proposals for change that the Government has adopted. The DRIS will be published via the Department of Commerce's website once the Government's decision is made public.

*Final Report (Stage 3)*

A final report of the review will then be prepared and presented to Parliament in accordance with section 81(2) of the Act.



## 1.4 The Architecture Occupation

Architecture is the science of designing buildings and other physical structures whose principle purpose is for human occupancy or use.

The Macquarie Dictionary defines an architect as:

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

Architects are involved in the design of buildings, the technical aspects of building construction, the relationship between the natural and the constructed environment and how architecture relates to people and how they live. Architects consult with associated professionals and clients on matters concerning external area designs, costs and construction and compile and analyse site and community data of geographical aspects, ecology and existing structures. An architect prepares reports, site plans, working drawings, specifications and cost estimates for land development and inspects construction work in progress to ensure compliance with plans. Architects also administer building contracts during construction and facilitate certification of payments.

This review does not discuss the following occupations and professions, which have some functions in common with architects and may have an integral role as part of the architectural process:

- building economist;
- cartographers;
- construction economist;
- electrical engineer;
- hydraulics engineer;
- landscape architects;
- mechanical engineer;
- quantity surveyors;
- structural engineer; and
- surveyors.

There are currently more than 11,000 registered architects across Australia. All jurisdictions regulate architects with separate Architect Acts, have their own Architects Board and are administered by a government department within their region. Some have self-funding Boards with similar administrative staff arrangement as the Architects Board of Western Australia (the Board).

In Western Australia there are 1,318 registered architects, with 1,096 being in the practising division and 222 non-practising. 1,070 architects are registered in the Perth metropolitan area, 146 residing interstate and 31 overseas. A total of 71 architects are registered in regional areas with higher numbers in Broome, Bunbury, Albany and Margaret River. The geographic dispersion of where architects carry out their business is illustrated below.

## Registered Architects (1,318)

<b>Metropolitan</b> (1,070) <i>Practising – 904</i> <i>Non-practising – 166</i>	<b>Interstate</b> (146) <i>Practising – 127</i> <i>Non-practising – 19</i>	<b>Overseas</b> (31) <i>Practising – 14</i> <i>Non-practising – 17</i>
<b>Regional</b> (71) <i>Practising – 51</i> <i>Non-practising – 20</i>		
<b>South West (55)</b> <ul style="list-style-type: none"> <li>• Bunbury</li> <li>• Margaret River</li> <li>• Busselton</li> <li>• Dunsborough</li> <li>• Bridgetown</li> <li>• Albany</li> <li>• Denmark</li> </ul>	<b>Wheatbelt (5)</b> <ul style="list-style-type: none"> <li>• Kalgoorlie</li> <li>• Northam</li> </ul>	<b>West/North West (11)</b> <ul style="list-style-type: none"> <li>• Broome</li> <li>• Geraldton</li> </ul>

The Board grants licences to corporations which confers on the licensee the right to practise architecture under the title of “architect”. There are currently more than 235 corporations operating in Western Australia.

To achieve registration as an architect in Western Australia, applicants must have completed a five year Bachelor or Masters of Architecture degree from an accredited Australian university (or approved equivalent), an approved period of practical experience and successful completion of the Architectural Practice Examination. These standards of education and experience apply to all states and territories in Australia. Applicants who do not have a formal qualification in architecture may be eligible for registration if they have achieved an acceptable standard in the practice of architecture, subject to specific experience and an examination process.

### 1.5 Architects and building designers

The key function of architects in the construction process is the design of buildings. According to estimates by the Building Designers Association, the design of approximately 85 percent of residential buildings and 35 percent of commercial and industrial buildings is carried out by building designers, not by registered architects. While this can’t be substantiated, it is probable that a higher number of buildings are designed by designers or other para-professionals, than are designed by architects. In general, registered architects design larger and more complex buildings and are often in competition with building designers.

There are currently no regulations for building designers in Western Australia nor is there a requirement to achieve accreditation. In comparison with other states and territories, building designers are legislated for in Victoria, Queensland, Tasmania and New Zealand while an accreditation process is available in New South Wales through the Building Designers Association (New South Wales Chapter).

In WA any person without qualifications may call themselves a 'building designer' and design buildings for clients. However, most building designers will have completed formal certificate or diploma courses in building design and drafting or a university degree in architecture.

Building designers in Western Australia may register themselves with the Building Designers Association (WA Chapter), which has approximately 165 building design practices registered.

## **2 REVIEW OF THE STATUTORY PROVISIONS OF THE ACT**

As this is a statutory review, all aspects of the Act are open for comment. For brevity, however, this document will only focus on the sections of the Act that are addressed by the proposals.

The Act is comprised of nine Parts, as follows:

- **Part 1 — Preliminary**
- **Part 2 — The Architects Board**
- **Part 3 — Finance and reports**
- **Part 4 — Registration and licensing of architects**
- **Part 5 — Disciplinary proceedings**
- **Part 6 — Notifications and review**
- **Part 7 — Offences**
- **Part 8 — Regulations and rules**
- **Part 9 — Miscellaneous**

Discussion of issues has been divided into three broad areas, as follows:

- industry policy issues;
- board governance issues; and
- minor amendments.

### **2.1 INDUSTRY POLICY ISSUES**

#### **2.1.1 Registration and licensing of architects**

Part 4, Division 1 of the Act provides for the registration and licensing of architects.

##### ***What it means***

This Part provides that all natural persons and corporations may apply to the Board to be registered or licensed as an architect, and can operate as such with the granting of a registration or licence. The Board determines each application against the requirements in the Act and regulations.

##### ***Issue with the legislation***

The issue is whether architects should continue to be registered or some other means for regulating the industry should be considered.

### ***Discussion: Reasons for registering architects in Western Australia***

Registration schemes are one option available to government when regulating an industry or occupation. Registration is a common response for regulating occupations where the product or service provided involves expertise, skills or knowledge that can make it difficult for consumers to judge the quality of the product or service they are purchasing.

Architects are currently registered in all states and territories across Australia. In Western Australia, legislation regulating architects has been in place since 1921, with the current Act commencing in November 2005.

The purpose of the Act is to protect consumers of architectural services by:

- providing for the registration of architects and the licensing of corporations as architects;
- setting education, examination and competency standards and to accredit courses of architecture and their qualifications;
- regulating the professional conduct of architects;
- providing a procedure for handling complaints against architects; and
- regulating and restricting the use of the words “architect”, “architects”, “architecture” and “architectural”.

The central regulatory control in the Act is the legislative restriction on the use of the title “architect”, and any derivative of the word, to persons with qualifications and experience prescribed in the Regulations.

The intention of the Act is not to prevent anyone from designing buildings or to restrict anyone from practicing architecture; rather the Act serves to give confidence to consumers that when engaging those who call themselves ‘architects’ that they are actually dealing with appropriately qualified professionals. The Act also provides a safeguard to consumers against ‘unprofessional conduct’ by architects once they are registered.

Registration of architects ensures that only suitably qualified persons are registered and able to use the title ‘architect’ when overseeing the design of building projects, many of which involve major financial outlays for clients, whether at a residential or commercial level.

The regulation of the architect profession through registration primarily has the objective of addressing the imbalance of knowledge between providers and consumers about the level of service consumers can expect from an architect (i.e. information asymmetry). The registration scheme offers protection for consumers who may otherwise have difficulty in identifying untrained or substandard providers due to the simple fact that the end product of that service cannot be physically seen prior to purchase.

By contrast, developers and commercial consumers will purchase architectural services many times as part of their business activity and develop relationships, knowledge and experience in dealing with architects.

In addition, the interaction of state regulators with the Architects Accreditation Council of Australia (AACA) has produced a high level of national consistency of education standards and examination/registration processes across jurisdictions, providing confidence to consumers that architects qualified in another state or who practice across multiple state boundaries have undergone similar training.

In Western Australia, the Board manages the registration process for architects as well as issuing licences to corporations.

If the Western Australian registration scheme was repealed, architects based in this state would have to apply for registration in the new state or territory. The majority of younger architects in Western Australia would find this process relatively simple as they would only need to provide evidence of their degree and pass in the Architectural Practice Examination (APE). However, older architects that were registered prior to the introduction of the APE could be required to sit and pass the examinations by the registration board in the other state or territory. Movement between jurisdictions is currently quite easy due to the *Mutual Recognition (Western Australia) Act 2010*. If architects were no longer registered in Western Australia, this pathway to registration in other states would be cut off for architects from this state and they would have to meet the same registration requirements that a new graduate must meet in the state or territory that they wish to register.

The Act enables the Board to discipline registered architects where they have:

- acted inappropriately in their professional work;
- been in breach of the Act;
- rendered themselves as a person unfit to be registered, through personal or criminal conduct;
- been incompetent; or
- been deregistered in other jurisdictions due to unprofessional conduct.

Following the establishment of the State Administrative Tribunal (SAT) in Western Australia in 2004, the legislation incorporates provisions for procedures in disciplinary matters that allow for the SAT to make any findings of professional misconduct. The provision of power to the SAT to determine serious complaints against architects removes any conflict of interest the Board may have in being the registration and disciplinary body. The SAT also has power to review any appeals against a decision of the Board, for example, where the Board refuses to grant a registration or a licence.

The Board may also provide an informal dispute resolution service, with the agreement of the parties to the dispute, by referring less serious complaints about the conduct of architects to a committee for conciliation. If conciliation action fails, the Board is able to consider the complaint, with the option to refer the matter to the SAT for decision.

Table 1 below provides details of complaints against registered architects and offences against the Act since 2007/2008. The number of offences related to the misuse of the title 'architect' have ranged from 40 to 97 over this period, suggesting a significant level of misuse of the title and misleading of consumers that could not be addressed in the absence of regulation.

**TABLE 1**

<b>Summary of complaints and offences</b>				
<b>Reporting period</b>	<b>Complaints</b>	<b>Offences</b>	<b>Prosecution</b>	<b>SAT</b>
<b>2007/08</b>	Two complaints alleging misconduct.	97 individuals or organisations for misuse of the title 'architect'.		
<b>2008/09</b>	One new and one ongoing complaint alleging misconduct.	61 individuals or organisations for misuse of the title 'architect'.	Commenced first prosecution of an offence under the Act. Matter listed for trial in November 2009.	Matter heard regarding the Board's refusal to register a person on basis applicant had not undertaken RAE.
<b>2009/10</b>	One new complaint for allegedly breaching s56(1)(d); one ongoing complaint alleging misconduct and one matter deferred until resolution of legal processes.	97 individuals or organisations for misuse of the title 'architect'.	One successful prosecution in the Magistrates Court.  One minor claim lodged against the Board by an architect in Magistrate's Court.	Application to remove an architect's name from register and have registration cancelled in relation to public indemnity insurance cover. SAT made the orders and the Board withdrew its application.
<b>2010/11</b>	Two new complaints (allegedly breaching s56(1)(a); conduct of an architectural corporation).	49 individuals or organisations for misuse of the title 'architect'.	A minor claim was lodged against the Board by an architect in the Magistrate's Court and was later dismissed.	
<b>2011/12</b>	One new complaint alleging an architect had acted unprofessionally.	40 individuals or organisations for misuse of the title 'architect'.		
<b>2012/13</b>	Two new complaints alleging an architect had acted unprofessionally.	40 individuals or organisations for misuse of the title 'architect'.		
<b>2013/14</b>	Two new complaints alleging an architect had acted unprofessionally. Three matters from over a number of previous reporting periods were resolved, and closed, on the basis of no recent activity.	48 individuals or organisations for misuse of the title 'architect'.		

The Board is entirely self-funded from fees paid by architects and is not a cost to the government or the public. The registration revenue comprises payment from natural persons and corporations becoming registered/licensed architects, as well as from examination fees. Table 2 sets out those fees as at 1 July 2014.

**TABLE 2**

Act or regulations	Type of fee	Fee
s. 33(1)(b)(i)	Application for registration	\$142.00
s. 33(1)(b)(i)	Application for grant of licence	\$255.00
s. 33(1)(b)(ii)	Registration fee	\$204.00
s. 33(1)(b)(ii)	Licence fee	\$355.00
s. 37(1)	Renewal of registration	\$234.00
s. 37(1)	Renewal of licence	\$438.00
s. 71(2)(j) and r. 14(2)	NEP eligibility assessment and taking examination	\$357.00
s. 71(2)(j) and r. 14(2)	Taking the examination by Interview	\$306.00
	Supplementary examination by Interview	\$300.00

The following table sets out the Board's revenue and expenses over the last five financial years:

**TABLE 3**

Financial year	Revenue	Expenses	Surplus/Loss	Reserves
2009/2010	\$380,929	\$336,292	\$44,637	\$305,201
2010/2011	\$406,197	\$362,446	\$43,751	\$348,952
2011/2012	\$424,281	\$365,282	\$58,999	\$407,951
2012/2013	\$448,527	\$374,851	\$73,676	\$481,627
2013/2014	\$491,489	\$424,282	\$67,207	\$548,834

Administrative costs occurring during the financial year relate to monthly rental for The Board's principal place of business, legal costs associating with administering the Act including investigating complaints and conducting disciplinary proceedings and other operational costs such as plant and equipment, salaries and Board member attendance fees.

The repeal of the Act would therefore save the economy almost \$500,000 per year, saving individual architects from having to pay registration renewal fees every year.

### ***Legislation in other states***

State	Legislative requirements
All States	All states and territories register architects through an act of Parliament.

## **Other 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 review explored the need for the statutory certification of architects, assessing whether the current system of regulation served the best interests of the community or if there were more efficient mechanisms available.

It was noted that building and planning codes and legislation relating directly to community standards addressed some of the issues related to the statutory certification of architects, with statutory certification appearing to do very little to promote additional community benefits. Certification of architects did not attend to issues relating to health and safety of buildings or the quality of the built environment, leaving consumers unprotected by existing architect Acts at that time, as explained below:

*“Though community costs are limited because competition in the market for building design and related services is not hindered significantly, the community benefits of current Architects Acts, in terms of consumer protection, information provision, and community-wide effects, are negligible. The Commission, therefore, is of the view that the costs of current legislation regulating architects outweigh the benefits, and that net community benefits are negative.”*

The Productivity Commission assessed that the costs of current regulation outweighed its benefits and that these benefits could be achieved more effectively by becoming a self-regulating profession and using other existing legislation. 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. Self-regulation would be more likely to promote a national registration system than a statutory system.

As a result of the Productivity Commission's initial 2000 report, an intergovernmental working group representing state and territory interests was established to recommend a consolidated response to the Commission's Report. While the working group supported the broad objectives of the findings, it did not follow through with the review's recommended approach. The working group instead recommended retaining and adjusting the existing legislation to remove elements deemed to be anticompetitive and not in the public interest, which was accepted by the Australian Procurement and Construction Ministerial Council in June 2002. Most jurisdictions, including Western Australia, proceeded to either amend their existing legislation or draft new legislation.

In 2007 the Australian Government requested the Productivity Commission to carry out a series of annual reviews over five years that analysed the regulatory burdens on different sectors of the economy. The Productivity Commission's report in 2010 dealt with the regulatory burdens on business and consumer services with Recommendation 4.1 relating to architects:

*“The Australian Government should work with state and territory governments to implement a national register for architects.”*



The report noted that while architects are able to apply for registration in all states and territories under the *Mutual Recognition Act 1992 (Cwlth)*, the requirement for architects to register and pay a separate registration fee in each state and territory they wished to practice in acts as a barrier to architects working across jurisdictions. Implementing a national register based upon mutual recognition principles would enable architects to satisfy the requirements in any one jurisdiction and automatically be permitted to practice in all jurisdictions in Australia without payment of additional fees.

At the time of the 2010 report, the Productivity Commission noted the merit in having greater deregulation of the architects Acts. However, in the absence of such reform, it would support the introduction of a national register that eliminated multiple registration requirements, as this would contribute to lower costs, greater labour mobility and improved architectural service provision.

### *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 purpose of the review was to determine if the policy objectives were still valid and if the terms of the NSW Act were still appropriate for meeting these objectives.

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.

The review considered whether there was merit in expanding the scope or coverage of the Act to include building professionals that provide similar services to architects, such as building designers. Submissions to the review suggested there was merit in this suggestion on the grounds of consumer protection and addressing a disparity between architects, who are subject to costs related to their registration/licensing, and who must compete with persons that are not required to be registered to carry out design work. The review found, however, that expanding the coverage of the NSW Act was outside of the scope of the review and contrary to Productivity Commission findings.

#### 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.

### ***Expansion or replacement of the Act with a broader building design Act***

There are currently no restrictions in Western Australia on who may design buildings. It could be argued that the building design work of architects sits at the highest end of a wider 'building design spectrum' in terms of qualifications.

Building designers are not currently registered or required to possess professional qualifications in Western Australia. As architects are required to pay registration fees (\$234 for individuals and \$438 for corporations) and are subject to other restrictions under the Act, they are placed at a small competitive disadvantage compared to building designers. Removal of this disadvantage faced by architects would require either the registration of building designers or, the removal of the need for state-based registration of architects.

A scheme of registration covering all occupations involved in building design, including para-professionals such as building designers and architectural draftspersons, could involve having several categories or classes of registration, with 'architect' being the highest class. Architects could be registered under the *Building Services (Registration) Act 2011* (the BSR Act) in the same way as builders, painters and building surveyors.

This would entail abolishing the Board and appointing two architects and two building designers to the Building Services Board, incorporating Board operations into the Building Commission where financial, staff and corporate governance responsibilities are managed by the Department of Commerce. However, establishing a broader registration scheme would likely be more expensive than just registering architects alone, and, if administered by the Building Services Board, the costs would be borne by the State Government. Currently the Board is independent from government and is financially secure. The review believes that under current circumstances there is insufficient evidence to require a broader registration regime.

### ***Options considered***

1. No change (status quo).
2. That the Act is expanded or replaced by a new Act that regulates architects and building designers in a tiered system.
3. That the Act is repealed and there is no registration/licensing of architects or building design professionals of any sort.
4. Negative licensing.
5. That the group of building services providers involved in the design of buildings (including architects) are registered through the Building Services Board under the *Building Services (Registration) Act 2011*, which currently registers builders, building surveyors and painters.

## ***Impact analysis***

### **Option 1: Status quo**

Option 1 will maintain the status quo, which costs the economy approximately \$500,000 per year in fees paid by registered/licensed architects to the Architects Board. While these costs are limited to the architectural profession they are passed onto consumers in the form of higher fees to architects' clients.

Benefits in Western Australia for maintaining the status quo are similar to those discussed in relation to the IPART review carried out in NSW. That is:

1. Abolishing architect registration/licensing in Western Australia is likely to have negative impacts on Western Australian architects, businesses and universities.
2. The planning and building approval laws in Western Australia are currently subject to a comprehensive review, including the new Instant Start initiative announced in November 2014, which may have implications for the regulation of architects, and which make it inappropriate to consider repeal of the Act at this stage.
3. Establishing a self-regulatory model to operate only in Western Australia is likely to be more costly than continuing with the current system of registration.

Registration also provides an efficient and appropriate mechanism for funding disciplinary and complaint resolution processes in relation to architectural services. Where issues arise with either unregistered or registered architects (e.g. misrepresentation, incompetence, etc) the Board has the resources to take action. This action is funded from the registration fees of architects who, along with building owners and consumers generally, benefit from such action. The current system of regulation is in this sense a 'user-pays' system, which is a more appropriate way of dealing with complaints than a tax-payer funded system.

Retention of the Act is also necessary to enable the implementation of the national recognition model, as discussed at 2.1.2 below. This option, which was supported by the Productivity Commission in 2003 in the absence of coordinated repeal of architects' acts across Australia, would enable the introduction of a national register to eliminate multiple registration requirements, lower costs, enhance labour mobility and facilitate improved architectural service provision.

There are significant market imperfections or failures in the building and architecture industries. Without further extensive analysis, it is difficult to determine whether the initial findings of the Productivity Commission remain relevant and valid.

Two significant failures in the building and architecture industry relate to 'information asymmetry' (where builders have significantly greater knowledge of their product than the consumer) and 'split incentives' (where the provider of a product has little interest in its on-going costs, such as maintenance costs, energy efficiency, etc). Due to their professional status and being involved with both the purchaser and the builder throughout the construction, architects can reduce the impact of these market failures. However, the registration and enforcement mechanisms under the Act are necessary to realise these benefits by ensuring persons providing architectural services are appropriately qualified, as well as to provide a robust mechanism for removing rogue operators and incompetent persons from the profession. While it is difficult to accurately quantify the annual financial benefits of registration to consumers in term of improved protection, it is reasonable to assert that \$500,000 per year is a relatively small sum.

For these reasons, the review supports the retention of the Act.

### **Option 2: A new Act regulating both architects and building designers**

Building designers have raised with the Building Commission the possibility of expanding the Act or replacing it with a new act to regulate all persons working in building design, including architects and building designers (Option 2). Architects and building designers would be registered in classes or tiers, with qualification and experience requirements for architects sitting at the highest end of the spectrum. Only persons registered in the 'architect' tier would be able to use the title 'architect' under this proposal.

The main drivers behind Option 2 appear to be a desire to professionalise the building design industry, as well as to address the competitive disadvantage faced by architects when competing with building designers. In relation to professionalism, building designers generally support registration on the grounds that it would give their industry a more professional standing with the public and raise consumer confidence, which in turn would equate to better business conditions and prospects. Mandated qualification and experience requirements, which are key components of a registration system, would also provide a more defined career path for persons to enter the industry.

In relation to the issue of competitive disadvantage, once registered architects must pay a \$234 renewal fee each year (\$438 for corporations), which is a cost that their competitors in the building design industry do not have to pay. Registration of building designers would result in the requirement to pay a similar fee. However, once registered, this cost is not seen as onerous or a significant factor in the cost structure of most architects. Furthermore, registration provides some advantage to architects in being able to provide consumers with a higher level of assurance about the bona fides and competence of the person they are dealing with. Also, it can be argued that architects compete in a different market to designers and drafters and so require a different, more stringent, legislative framework.

Registration of building designers would add other costs to building design businesses. The introduction of minimum qualification and experience requirements would require all persons wishing to enter the industry to pay for and complete mandatory courses prescribed in the regulations. Registration would also introduce probity requirements and likely require applicants to satisfy the registration authority that they are 'fit and proper' persons to work in the industry, for example, by submitting criminal checks, providing evidence of any disciplinary action taken against them in relation to any other registrations held here in Western Australia or in other states or territories (e.g. a builders registration). These would have to be updated at least every three years upon renewal of registration.

Building designers would be subject to other compliance costs associated with registration. The extent of these costs may depend on the regulatory requirements incorporated into the legislation. Some compliance requirements commonly associated with registration systems relate to advertising, signage, display of certificates, notification of change of address, notification when directors change, etc. Penalties usually apply where these requirements are not complied with. Building designers would also be subject to legislated formal complaint resolution processes should a complaint be lodged against them by one of their customers.

The primary reason for introducing registration/licensing to an industry or profession is to protect consumers, not to improve the standing of an industry. The key difficulty with Option 2 is that the Department of Commerce has received few complaints and obtained little evidence of systemic problems with the building design industry to support the registration of building designers.

The review encourages building designers who support the registration of building designers to provide evidence in their responses of consumer detriment being caused by the activities of unqualified or unscrupulous building designers. Until such evidence is forthcoming, the review does not support the implementation of Option 2.

### **Option 3: De-regulation**

Option 3 (de-regulation or repeal of the Act) also provides a level playing field, and eliminates the costs involved with continued registration (\$500,000). It also reduces 'red tape' and allows the market to choose which types of designers provide the most effective services. This option considers that because building designers are unregulated and cause few difficulties, the same would likely apply to architects.

As noted above in relation to option 1, the architecture and building design industries are subject to market failures, particularly information asymmetry, in that the information and service provided by architects and building designers is technical in nature and complex. However, one of the prime purposes of the Act and a key point of difference to building designers is its protection of the use of the title 'architect' to only those persons who are appropriately qualified. De-regulation would allow any person to claim to be an architect, which has the potential to affect the quality and safety of buildings in the state, as well as undermine consumer confidence in architects and the building design industry generally.

The accumulated financial costs of poor building design are difficult to accurately quantify. However, costs associated with remedying building work are often in the thousands of dollars for residential buildings and tens of thousands or more in commercial buildings (which architects are more likely to work on). It is probable that if the title 'architect' was not protected and a robust means in place to fund the identification and removal of sham operators (such as through a registration system), then poor designs would inevitably arise. Rectification costs associated with poor design, while difficult to quantify, would likely exceed savings from the abolition of registration, as well as reduce consumer confidence in the building industry.

There are other reasons why de-regulation is not appropriate at this time.

First, repeal of the Act and removal of the registration requirements for architects in Western Australia alone would disadvantage Western Australian architects and architectural businesses seeking to operate in other states and territories, as well as universities. A consistent stance therefore needs to be developed at a national level before this option can be further considered in Western Australia. This would also require consultation with industry in regard to its ability to fill the regulatory gap through self-regulation.

Second, de-regulation could also have wider ramifications for the role of architects in the planning and building process, which is currently undergoing significant change, as demonstrated by the Instant Start initiative announced in November 2014. Further changes to these processes are possible as these reviews proceed.

#### **Option 4: Negative licensing**

Options 4 considers 'negative licensing', which is a regulatory scheme whereby there is no screening of market entrants but when a market participant breaches key provisions of an act or relevant consumer protection laws, they can be barred from operating in the industry or profession. There is no formal licence or registration issued under such a system, hence the term 'negative licensing'.

This type of scheme can remove or reduce barriers of entry to an industry and create a wider and more competitive marketplace. This, and the removal of registration/licensing fees, may reduce costs to consumers. However, in the case of architects, one of the key purposes of the Act is to ensure that only suitably qualified persons can use the title of 'architect', to ensure the public is protected from persons without adequate qualifications claiming to be architects. While title protection could be incorporated into a negative licensing scheme, there would be some significant consequences for how architects are regulated and enforcement is carried out.

First, architects currently pay for the regulation of their profession themselves by the payment of registration and licensing fees to the Board. The Board is self-funding and requires no support from the government. If a negative licensing regime was implemented for architects (and building designers), the costs of enforcing compliance would be borne entirely by taxpayers.

Second, the removal of the registration/licensing function under a negative licensing scheme would significantly reduce the functions and, therefore, the viability of, having a regulatory board. The enforcement function would most likely need to be carried out by a generalist regulator, which would not have the same level of knowledge and expertise about architectural matters and would be subject to competing demands for its investigative resources. This would lead to a reduced focus on the regulation of the architecture industry. In addition, in such circumstances, the burden of proof of allegations of breaches of broad consumer laws and the Act would likely fall more heavily on consumers making such complaints. A distinct advantage of a specialist regulator is the development over time of 'market intelligence' on the operators in an industry and their practices over time, allowing action to be taken before a problem becomes serious or more swiftly when it does. It is also possible that a reduction in focus and loss of expertise on architectural matters could make investigations and prosecutions more difficult and costly.

For these reasons, the implementation of a negative licensing scheme in Western Australia is not supported.

#### **Option 5: Regulating architects (and possibly building designers) under the *Building Services (Registration) Act 2011***

Option 5 involves regulating architects (and possibly building designers) under the *Building Services (Registration) Act 2011*. This would see the abolition of the Board with the regulation of architects being dealt with by the Building Services Board, which currently registers builders, building surveyors and painters. Two registered architects would serve on a board of 11 members. This approach is consistent with the intent behind the creation of the Building Services Board and government policy in reducing the number of boards across government.

Regulating architects under the Building Services Board would have the advantage of reducing costs in operating an independent board and various economies from being part of a larger government agency (e.g. compliance and policy support). However, being part of a large government department would result in some loss of focus on the regulation of architects. Being part of a larger department that regulates other occupations and uses shared facilities would make it more difficult to cost services related to the regulation of architects, leading to some loss of transparency. Savings may also be eroded by additional costs associated with maintaining a larger corporate services support service (e.g. IT, human resources, etc.). Overall, the financial benefit in abolishing the Board and regulating architects under the BSR Act may be minimal.

It should also be noted that the BSR Act is relatively new legislation and has experienced some unexpected difficulties in its implementation and operation under current resourcing levels, particularly in relation to the timeliness of the processing of registrations. Some legislative changes are required to address these issues, which will likely not occur until after this act is due to be reviewed in 2016.

In addition, regulating architects under this act would also require architects to be issued with two registrations (practitioner and contractor registrations) instead of the current single registration. This would introduce some complexity and cumbersomeness in the regulation of architects that the current scheme of architect regulation does not experience. Regulating architects under the BSR Act at this time is therefore not likely to realise the benefits for architects that it otherwise would.

Although government has a policy of reducing the number of boards where possible, partly to reduce government spending, the Board appears to be effective at fulfilling its role, is financially secure with funding from industry and well supported by registered architects. Given the need to amend the BSR Act before this option could be further considered, it is recommended that consideration of this option be deferred until the time when that act is due for review, in August 2016.

### ***Proposals – for comment***

#### **PROPOSAL 1**

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

*Do you support this? Please comment using the Comment Guidelines on p50*

#### **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 due (August 2016).**

*Do you support this? Please comment using the Comment Guidelines on p50*

#### **REQUEST FOR INFORMATION**

**The Department of Commerce has had few complaints about the activities of building designers in this state. Can you provide any examples, information or evidence where the activities of building designers may have caused detriment to consumers in Western Australia?**

*Please comment using the Comment Guidelines on p50*

## 2.1.2 National recognition of architects

### **What it means**

A national recognition scheme involves each Australian state or territory accepting registration or licensing in another state or territory without charging an additional registration fee. Under this scheme, a national register would be established. Inclusion on the national register would entitle the architect to use the title “*Australian Architect*”.

### **Issue with the legislation**

The Productivity Commission’s ‘Research Report Annual Review of Regulatory Burdens on Business: Business and Consumer Services’ in 2010 recommended that a national register of architects be established. This recommendation was made on the following basis:

*“The requirement that architects must register and pay a separate registration fee in each state and territory they wish to practice in acts as a barrier to architect working across jurisdictions. A national register, based upon mutual recognition principles should be implemented so that architects that satisfy the requirements in any one jurisdiction would automatically be permitted to practice in all jurisdictions in Australia.” (page: 135)*

Presently, all architect registration boards in Australia support or are working with the AACA towards achieving a national recognition system for architects.

### **Operation of a national recognition scheme**

A national recognition scheme would be based upon current mutual recognition arrangements and would utilise the existing state and territory legislative frameworks. It would not require additional national legislation or the requirement for a common date for all jurisdictions to join the system. The proposed model would ensure that architects able to be registered in any jurisdiction in Australia can be registered 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 in Australia that, legally, any person who uses the title ‘architect’ or offering services to the public as an architect, must be registered with their jurisdiction’s architects’ board. Application for registration in all states and territories in Australia as set by the AACA is the same and includes the three steps of:

- having a recognised academic qualification in architecture or a pass in the National Program of Assessment (NPrA);
- having a period of training through experience followed by successful completion of the AACA Architectural Practice Examination (APE); and
- applying for registration to the Architects’ Board in the state or territory in which registration is sought.

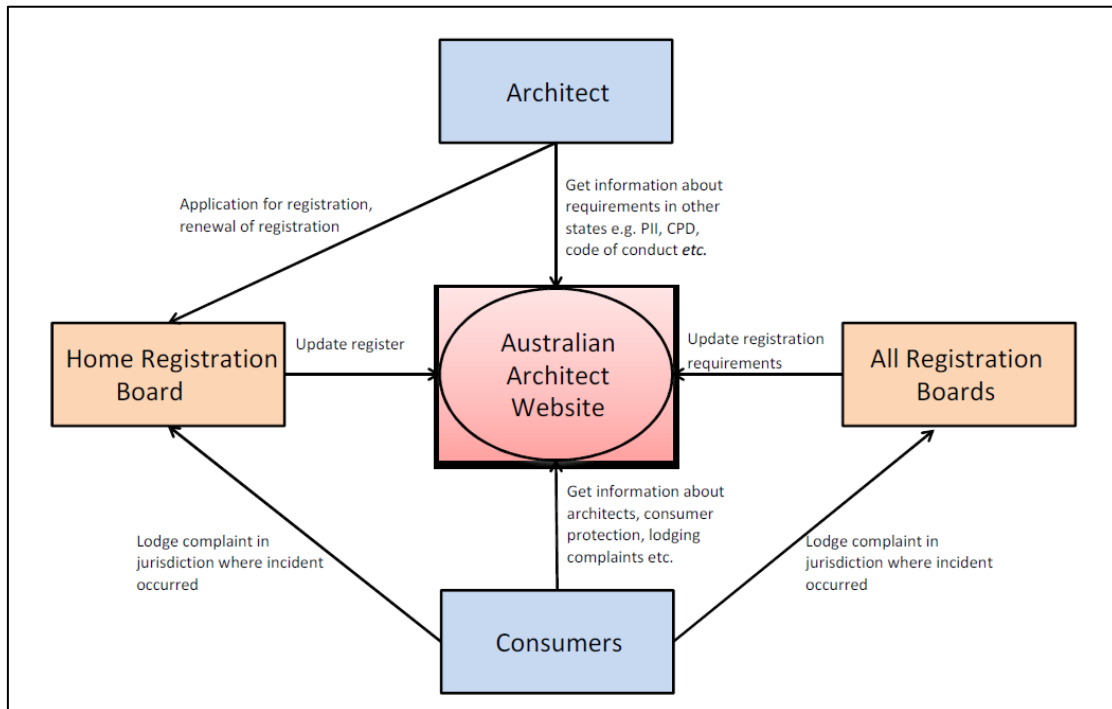
The AACA maintains a listing of accredited architectural courses which is comprised of courses that have been accredited by that jurisdiction’s architects’ registration board and approved international courses (New Zealand, Singapore and Hong Kong).

An overview of the operation of the National Recognition Model is as follows:



# National Recognition Model

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



There are no significant issues with this policy from the review's perspective.

Presently, all architect registration boards in Australia support or are working with the AACA towards achieving a national recognition system for architects.

A national recognition scheme would be based upon current mutual recognition arrangements and would utilise the existing state and territory legislative frameworks. These frameworks would require some amendment to facilitate the implementation of this scheme on a consistent national basis.

## Options considered

1. That the national recognition model for architects be implemented for WA.
2. That the national recognition model for architects not be implemented for WA.

## Legislation in other States

State	Legislative requirements
All States	All states and territories are either supporting or are working towards achieving a national recognition system for architects.

## Impact analysis

Option 1 will allow architects to operate across Australia without the requirement to register with multiple architects boards and incur the associated costs. The total fees to register with all other states and territories are approximately \$1,500 per year.

Option 2 would continue the current situation. This would in some way protect local markets and architects from non-WA based competition, but it would allow the barriers to other state's markets to continue.

### ***Proposals – for comment***

#### **PROPOSAL 3**

**That the national recognition model for architects be implemented in WA.**

*Do you support this? Please comment using the Comment Guidelines on p50*

### **2.1.3 Definition of 'architecture'**

#### ***What it means***

Section 4 of the Act defines as a "restricted word" the words "architect", "architects", "architectural" or "architecture". However, the Act does not further define these terms and, as such, the dictionary definition of those terms applies.

The Building Design Association of Western Australia contends that aspects of the terms "architectural" and "architecture" are performed not only by architects but also by building designers.

As noted above in section 1.3 of this paper, the Macquarie Dictionary defines "architect" as:

*"someone whose profession is to design buildings and superintend their construction."*

The Macquarie Dictionary also defines "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 68(d) of the Act provides for exemptions from committing an offence for persons who use the term "architectural drafter" or who describe their work as "architectural drafting".

#### ***Issue with the legislation***

The above definitions of "architect" and "architecture" are expansive definitions and capture the services provided not only by architects but also building designers, draftspersons, tracers and the like. 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 line between where "architectural drafting" and "architecture" begin and end is not clear.

If strictly enforced, the restrictions on the use of the term "architecture" in section 64 the Act has potential to unfairly restrict the activities of building designers, which is not the original intent of the Act.

### **Options considered**

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 to ensure the activities of building designers are not captured by the Act.
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.
3. Regulating architects and building designers under a broader building design Act.

### **Legislation in other States**

<b>State</b>	<b>Legislative requirements</b>
<b>Victoria</b>	<p>The Victorian Architects Act, section 8, states that ‘a person or body must... not use any of the terms "architectural services", "architectural design services" or "architectural design" in relation to—</p> <p>(a) the design of buildings or parts of buildings by that person or body; or</p> <p>(b) the preparation of plans, drawings or specifications for buildings or parts of buildings by that person or body.</p>
<b>New South Wales</b>	<p>The Architects Act limits the use of the words “architect” or “registered architect” in section 13 by stating:</p> <p>Without limiting the ways in which a person, corporation or firm can be considered to be represented to be an architect, a representation using any of the following titles, names or descriptions constitutes such a representation:</p> <p>(1)(a) the title or description “architect” or “registered architect”, (b) another title, name or description that indicates, or is capable of being understood to indicate, or is calculated to lead a person to infer, that the person is an architect, (c) any title, name or description prescribed by the regulations.</p> <p>(2) Without limiting the ways in which a corporation or firm can be considered to be represented to be an architect, a representation that a corporation or firm consists of or comprises one or more architects constitutes a representation that the corporation or firm is an architect.</p>
<b>Queensland</b>	<p>Under section 114 of the Architects Act:</p> <p>(1) A person who is not an architect must not use— (a) the title ‘architect’ or ‘registered architect’; or (b) another title or name, prescribed under a regulation, that in the context in which the title or name is used suggests that the person is an architect.</p>

(2) A person who is not a practising architect must not use any of the following words to advertise or otherwise promote services provided by the person unless the services are to be provided using a practising architect—

(a) ‘architectural services’, ‘architectural design services’  
or ‘architectural design’;

(b) other words, prescribed under a regulation, that in the context in which the words are used suggest that the services to which the words relate are to be provided using a practising architect.

### ***Impact analysis***

There appears to be a considerable degree of overlap in the work of architects and building designers. Option 1 suggests defining some or all of the terms “architect”, “architectural” or “architecture” in a way that provides a clear delineation between the work of architects, architectural drafters and building designers. Alternately, defining a new term “architectural work services” may be a way to focus a definition on the services provided by the different professions or parties working in this field. Another possibility is to include the term “in the work of an architect” as an undefined term or a term with a specific definition. Advice from architects and building designers on precisely where the scope of their work begins and ends is required before the possibilities in Option 1 can be further considered.

Option 2 suggests consideration be given to address the concerns of building designers without weakening protection of the title “architect” to suitably qualified persons. Removal of the terms “architectural” and “architecture” from the Act while maintaining restrictions on the words “architect” and “architects” to persons possessing specific qualifications prescribed in the Regulations, if feasible, may address this issue. This may enable building designers to perform architectural work without being entitled to use the term “architect” or any derivative of it. Given the importance of these terms in the Act, careful consideration and analysis of the impact of implementation of Option 2 on the operation of the Act, including extensive consultation with industry, would need to be carried out to ensure no unintended consequences arise that undermine the original intent of the Act.

In relation to option 3, proposal 2 of this paper recommended that consideration of whether to regulate architects and building designers under the BSR Act be deferred until August 2016 when a review of that act is due. This option is therefore not considered further.

All of the options outlined above should also be considered in the context of their ability to satisfy the overriding object of the Act, which is to protect consumers of architectural and related services in Western Australia. The potential implications for these consumers which may arise from defining some, or all, of the above-mentioned terms, and thereby drawing technical distinctions between them, include even more confusion and misunderstanding than that which currently exists.

### ***Proposals – for comment***

It is proposed that following receipt of comments on this paper, further analysis and consultation with industry be carried out to determine the feasibility of options 1 and 2.

#### **PROPOSAL 4**

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

- **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.**

*Do you support this? Please comment using the Comment Guidelines on p50*

## **2.2 BOARD GOVERNANCE ISSUES**

### **2.2.1 Election of members: casting vote of Board members**

#### ***What it means***

Division 2 of the Regulations describes the Board's election process whereby the Board calls for nominations of registered persons as candidates for election under section 7(1)(c). Regulation 5 sets out the circumstances under which the Board is to call for nominations and describes the process of seeking nominations, which includes sending each registered person a nomination paper, written notice about the process and when to send these. The Board is to prepare a list of candidates for election from these nominations, following the criteria set out in regulation 6.

Regulations 7, 8 and 9 describe the processes for the format and distribution of the voting papers, counting the votes once they are returned to the Board and the steps to be taken for nominations not exceeding vacancies.

Should two or more candidates receive the same number of votes, the current process to resolve the deadlock, as described in regulation 8(3), is for members of the Board who are also registered persons to, by simple majority, select one of their number to have a casting vote to resolve the matter in respect of those candidates. The same process is applied to regulation 9(c).

#### ***Issue with the legislation***

While this process may successfully resolve the issue for candidates who receive the same number of votes, there is lack of clarity about which members of the Board the term 'registered persons' may apply to and therefore who is able to have a casting vote. Based upon the composition of the Board as listed in section 7, this applies to up to six members, including; the four elected members; the member from a nominated body (i.e. the Australian Institute of Architects or the Association of Consulting Architects); and the educational representative from the University of Western Australia or Curtin University of Technology, who are not required to be registered architects.

The review finds that further clarification is needed in the Act or Regulations to determine which members who are registered persons are able to have a casting vote. It is not clear if 'registered persons' specifically relates only to currently practising registered persons or if it includes non-practising persons as defined by the register. This could be an issue for the member from a nominated body and the educational representative, who may fall under the category of registered person (practising or non-practising).

#### ***Options for comment***

Some options to address which Board members may have a casting vote include:

- all members of the Board;
- only the four elected members;
- both elected members and the member from a nominated body;
- both currently practising registered persons and non-practising persons; and
- only currently registered persons, regardless of their position on the Board.

Comment is also sought on whether:

- members being re-elected should be excluded from voting in a deadlock; and
- preferential voting should be instituted.

### ***Impact analysis***

There is little impact of this change outside of the Board.

### ***Proposals – for comment***

#### **PROPOSAL 5**

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

*Do you support this? Please comment using the Comment Guidelines on p50*

### ***2.2.2 Voting process***

#### ***What it means***

The Board has advised that the voting process is working well, however, there is concern with the process for each candidate in the list of candidates under regulation 9(b).

#### ***Issue with the legislation***

As the call for nominations occurs 3 months prior to the expiry of sitting members' terms, this may result in a newly elected member being elected prior to the expiry of the sitting member. A preferred option recommended by the Board is to amend regulation 9(b) to allow for each candidate to be taken as being elected at the expiry of the incumbent's term.

#### ***Impact analysis***

This is a technical change and has little impact outside of the Board.

### ***Proposals – for comment***

The review finds that to prevent confusion and the possibility of the numbers of members exceeding required Board numbers while the elections are in progress, that the Regulations be amended to allow that each candidate is taken to be elected at the expiry of the current member's term.

#### **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.**

*Do you support this? Please comment using the Comment Guidelines on p50*

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

#### ***What it means***

Regulation 10 describes in what format the Board is to publish the names of the elected members to the Board.

*The Board is to publish in the Gazette the names of the persons –*  
*(a) who are elected under regulations 7 and 8; or*  
*(b) who, under regulations 9(b) or (c), are to be taken to be elected.*

Since the establishment of the Board, names of elected members have been published in the *Government Gazette* in accordance with the regulations. In recent years, the names of all Board members have been published on the Board's website.

### ***Issue with the legislation***

Publishing names of elected board members in the *Government Gazette* as a means of advertising the formal election of members is an unnecessary cost.

### ***Impact analysis***

There is little impact of this change outside of the Board.

### ***Proposals – for comment***

The review finds that it is no longer necessary to publish the names of elected members in the *Government Gazette* as publishing the names of Board members on the Board's website offers sufficient accountability.

#### **PROPOSAL 7**

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

*Do you support this? Please comment using the Comment Guidelines on p50*

## ***2.2.4 Board composition and election of members***

### ***What it means***

The structure of the current Board is made up of 10 members with six Ministerial appointments (four consumer representatives and two industry members) and 4 members elected by architects. The Board's composition commonly results in five to six members being registered architects and four to five members representing the interests of consumers and the education of architecture.

The composition of the Board is one of balance between professional and consumer representatives. The Board is of the view that the election of four members by registered architects is appropriate as it is vital that practising architects are members of the Board, since many matters that come before the Board are complex and require persons with expert knowledge from within the architecture profession. The elected architect members are able to provide this expertise, such as for 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.

### ***Issue with the legislation***

Government policy is aimed at rationalising the number of boards, primarily for the purpose of reducing the costs of regulation. In cases where a board is retained, any opportunities by which the operational costs of a board can be reduced, such as by reducing the size of a board's membership, must be examined as part of the review.



It is possible that the number of Ministerial nominees could be reduced from six to four members, whilst still providing a sufficient level of expertise and representation on the Board. Reducing the number of consumer representatives from four to two would also bring this representation in line with other boards in Australia.

Another option for reducing costs relates to the process of electing members. Currently, four members are elected at an estimated total cost of \$5500. Much of this cost could be eliminated through the appointment of members by the Minister.

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

State	Members						
	Elected	Industry Rep.	Reg. architect	Govt. architect	Lawyer	Cons. Rep.	Educ. Rep.
<b>Victoria</b> 10 members <b>Quorum:</b> 6	2	4		1		2	1
<b>NSW</b> 11 members <b>Quorum:</b> Majority	2	4	1	1	1	1	1
<b>Queensland</b> 7 members <b>Quorum:</b> 4	1	2	1		1	1	1
<b>Sth Australia</b> 7 members <b>Quorum:</b> 4	3	2			1	1	

### ***Options for comment***

Proposals 1 and 2 recommend the retention of the Board and that further consideration of its future be deferred until at least 2016 when the BSR Act is reviewed.

Comment is therefore sought on the future composition of the Board on the assumption it is retained for the foreseeable future.

Some options include:

- reducing the composition of the Board to consist of 6 or 7 persons (and reducing the quorum for each meeting to 4 members), of whom:
  - 2 persons appointed by the Minister to represent the interests of the consumers;
  - 2 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; and
  - 2 or 3 registered architects who are elected by registered architects in accordance with the regulations with one of these members serving as the Chair.
- reducing the composition of the Board to consist of 6 or 7 persons, of whom:
  - 2 persons appointed by the Minister to represent the interests of the consumers; and

- 4 or 5 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. having no elected members).

### **Impact analysis**

The proposed change would reduce operation costs of the Board by \$5500 per year. The proposed changes would still enable the Board to fulfil its functions.

### **Proposals – for comment**

The review finds that while the current Board structure works well, some opportunities for reducing operating costs should be considered, such as reducing the size of the Board membership from 10 to six or seven. Further consideration should also be given to replacing elected members with members appointed by the Minister on the nomination of the key associations within the architecture profession.

#### **PROPOSAL 8**

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

- **reducing the number of members on the Board from 10 to 6 or 7; 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.**

*Do you support this? Please comment using the Comment Guidelines on p50*

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

#### **What it means**

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.

Under clause 3, the office of a Board member becomes vacant if the member:

- (a) resigns the office by written notice addressed to the Minister;*
- (b) becomes ineligible to hold office as a member;*
- (c) is an elected member and ceases to be a registered person;*
- (d) is an insolvent under administration, as that term is defined in the Corporations Act; or*
- (e) is removed from office by the Minister under subclause (2).*

The Minister may remove a Board member from office for reasons of:

- (a) misbehaviour or incompetence;*
- (b) mental or physical incapacity, other than temporary illness, impairing the performance of the member's functions under this Act; or*
- (c) absence, without leave or reasonable excuse, from 3 consecutive meetings of the Board of which the member has had notice.*

Misbehaviour includes conduct rendering the Board member unfit to hold office even if the conduct does not relate to any function of the office.

### ***Issue with the legislation***

The Board has raised the issue that the Schedule does not address the procedure for filling a vacancy following the early resignation of a member under clause 2. Currently, the vacancy of an elected member cannot be filled until an election can be held under clause 1(2). Holding an election early may not be appropriate as it will interfere with the election term arrangements held at the end of each financial year. If a new member is appointed mid-term, Schedule 1(2)(b) does not clarify if the member is to be voted in for a new two year term or for the remaining period of vacancy.

### ***Impact analysis***

The change in the regulations is a minor amendment to ensure proper coverage of members of the Board. There are no financial implications for the Board, industry or the community.

### ***Proposals – for comment***

To address this situation, it is proposed that in the event of an elected member vacating their position within one year of their term expiring under Clause 1(3), that clause 1(2) be amended to allow for the Minister, upon receiving a recommendation of the Board, to appoint a registered person to the vacancy for the remainder of the term. 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 expiring member's term.

#### **PROPOSAL 9**

**That clause 1(2) of Schedule 1 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.**

*Do you support this? Please comment using the Comment Guidelines on p50*

### ***2.2.6 Schedule 1 – Chairperson and deputy chairperson***

#### ***What it means***

Clause 4 of Schedule 1 states that:

- (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.*

### ***Issue with the legislation***

The Board has noted that clause 4 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. Currently, 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.

A comparison of the appointment process for the chairperson and deputy chairperson for other states and territories notes that the wording is quite similar to Western Australia's Architects Act:

- **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.

### ***Impact analysis***

The change in the Regulations is a minor amendment to ensure proper coverage of members of the Board. There are no financial implications for the Board, industry or the community.

### ***Proposals – for comment***

While the term lengths for the chairperson and deputy chairperson appear to be adequately addressed by the Board's policy, there is benefit in amending the Schedule to clarify that once elected, the chairperson or deputy chairperson remain in this position without requiring re-election unless they leave or are removed from that position under clause 4(3).

## **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.**

*Do you support this? Please comment using the Comment Guidelines on p50*

## **2.3 MINOR AMENDMENTS**

### **2.3.1 Investigation powers**

#### ***What it means***

Section 12(9)(a) and (b) of the Act describe the requirements under which investigators may enter any premises:

*(a) is to obtain a warrant to do so from a magistrate or Justice of the Peace which warrant the magistrate or Justice of the Peace is authorised to issue upon being satisfied that the entry is sought in good faith for the purpose of an investigation under this section; and*

*(b) is to display to the person, if any, giving the investigator entry, a document signed by the Board and certifying that he or she is an investigator appointed by the Board.*

Currently, the Board attempts to gather 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, etc, to conduct investigations.

#### ***Issue with the legislation***

An amendment to the Act is required to clarify the Board's ability to delegate an investigation to a person or agency external to the Board.

#### ***Impact analysis***

There is little impact of this change outside of the Board as any investigation will still be pursued, but with a potentially different investigator.

#### ***Proposals – for comment***

It is proposed that the Act be amended to enable the Board to delegate the power of entry to other persons as it determines.

## **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.**

*Do you support this? Please comment using the Comment Guidelines on p50*

## 2.3.2 Penalties

### **What it means**

Since the Act was first drafted in 2003, the penalties available 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.

Under section 12, a person is required to give information, answer questions, or produce documents. Under section 13 a person must not refuse to comply on the basis that the information may incriminate the person. Under section 14, an offence is committed if a person fails to comply with an investigation warranted by section 12, which includes withholding information, giving false information or not providing relevant documentation within the specified time frame. Section 15 outlines that an offence is committed if a person attempts to obstruct an investigation by preventing an investigator from entering the premises or the exercise of their powers under section 12. The maximum penalty that may be imposed in these circumstances is \$2,000.

It is an offence under section 24 if a member or former member of the Board makes improper use of any information acquired to gain an advantage for themselves or any other person, incurring a penalty of \$5,000.

### **Issue with the legislation**

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 any action.

### **Legislation in other States**

State	Legislative requirements
Queensland	s56(2) Offences Maximum penalty \$5,750 s67(1) Obstructing the Board or investigators Maximum penalty \$11,500
South Australia	s45 Offence to hinder etc. inspector Maximum penalty \$2,000 Breaching confidentiality in the administration of the <i>Architectural Practice Act 2009</i> Maximum penalty \$10,000

<p><b>New South Wales</b></p>	<p>s9 Representing an individual to be an architect</p> <p>(1) An individual must not represent himself or herself to be an architect, and must not allow himself or herself to be represented to be an architect unless he or she is an architect. Maximum penalty: 100 penalty units. (\$11,000)</p> <p>(2) A person must not represent an individual to be an architect if the person knows, or ought reasonably to know, that the individual is not an architect. Maximum penalty: 100 penalty units (\$11,000) (individual) or 200 penalty units (\$22,000) (corporation).</p> <p>s10 Representing a corporation or firm to be an architect</p> <p>(1) A corporation or firm must not represent itself to be an architect, and must not allow itself to be represented to be an architect, unless the corporation or firm has at least one nominated architect who is responsible for the provision of architectural services by the corporation or firm. Maximum penalty: 200 penalty units (\$22,000).</p>
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The current penalty for section 24 relating to the improper use of any information gained in the course of previously or currently carrying out Board duties is considerably lower than South Australia.

The BSR Act sets out a penalty of \$25,000 for the disclosure of confidential information by a person who has been engaged in the performance of functions in the administration of this act.

The *Building Services (Complaint and Resolution) Act 2011*, which applies to builders, building surveyors and painters, sets out the penalty for obstructing an authorised person, or a person assisting an authorised person, as \$10,000.

***Impact analysis***

An increase in penalties will have a negative impact on the person required to pay them. However, it does provide a greater deterrent and so it is expected that fewer penalties would be required.

***Proposals – for comment***

The review finds that the current penalties for sections 14 and 15 relating to the failure to comply with an investigation and obstructing an investigation are considerably lower than those of similar legislation despite the work being carried out by investigators to be the same. It is proposed that the penalties be increased to bring them in line with similar registration Acts in other states/territories.

**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.**

*Do you support this? Please comment using the Comment Guidelines on p50*

### 2.3.3 Accreditation Council of Australia advice

#### **What it means**

The Board reports that the registration process is, in general, working well. However, there have been some issues since the enactment of the Act for the Board with the use of Architects Accreditation Council of Australia (AACCA) advice.

The AACCA is a national umbrella body which is responsible for establishing, coordinating and advocating national standards for the registration of architects in Australia, the recognition of Australian architects overseas by relevant Registration Authorities, encouraging consistency between states and territories, and more recently establishing the Australian Architects website which will include a national listing of registered architects. It is the body nominated by the Federal Government for assessment of overseas qualifications.

The AACCA is a not for profit company and its members are the Chairperson and Registrar from each of the state and territory boards in Australia. It works in an integrated manner with all boards regarding registration examinations, accreditation of qualifications, national policies and competency standards, relying on recommendations from the boards for examiners, assessors, working group members and review panel members.

In 2008, the Board refused to register an applicant on the basis that he had not satisfied the obligation to demonstrate 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, 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 has introduced its own processes to determine if a person meets regulation 12(a)(ii) and (iii), which has resulted in the Board no longer following nationally agreed standards for registration. The SAT acknowledged that maintaining consistent national standards is a commendable objective, but the current legislation does not allow for such an approach.

Section 33(4)(b) provides for the Board to pay fees or disbursements necessary to obtain advice from AACCA 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 AACCA for RAE, RGE and NPrA assessments, provision needs to be made 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."



As a result of the SAT decision, the Board is now uncertain in the interpretation of regulation 12(b). The SAT decision refers to:

*“...the reference to eligibility to sit the examinations can only sensibly be a reference to having satisfied the qualification requirements set out in Regulation 12(a)(i), (ii) or (iii).....There is no basis to conclude that there exists some other criteria for registration beyond being qualified under Regulation 12(a), and passing the examination required under Regulation 12(b).”*

The examinations referred to in regulation 13 are the National Examination Paper (NEP) and Examination by Interview set by AACA. These two examinations are components of the APE, which is set by AACA and used by all state and territory registration Boards. The APE has three parts:

- Part 1 – Eligibility
- Part 2 – NEP (written paper)
- Part 3 – Examination by Interview

The Board is of the view that the statement “*has been assessed as eligible to sit*” in regulation 12(b) refers to part 1 of the APE, which is an assessment of a candidates’ log of at least two years of practical experience along with a statement of practical experience. In contrast, the SAT interpreted this statement in regulation 12(b) as a reference to having satisfied the qualification requirements set out in regulation 12(a)(i), (ii) or (iii). Accordingly, the Board seeks to amend the legislation to make it clear that candidates have to sit and pass parts 1, 2 and 3 of the APE in accordance with the Guide for Candidates published by the AACA.

Regulation 13 describes the examinations that are to be passed by a person wishing to become registered that includes the NPE set by the AACA, conducted in accordance with the Procedures for Candidates published by the AACA. Regulation 14 sets out the conditions for the Board to conduct examinations.

### ***Issue with the legislation***

The Board seeks to amend the legislation to allow the adoption of national standards through the use of the RAE, RGE, NPrA or other AACA processes. Section 33(4)(a) and regulation 12(a)(ii) and (iii) allows for the Board to have regard to the advice of AACA. The Board would like to expand these sections of the Act to allow it to not only have regard the advice of AACA, but also have the discretion to rely on this advice, as is the case for other states in Australia.

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

State	Legislative requirements
<b>New South Wales</b>	<p><i>Architects Act 2003</i> provides the requested power to the Architects Registration Board of NSW in section 16(4) as:</p> <p><i>(4) In determining for the purposes of subsection (1) (b) whether a particular course of study meets the criteria prescribed by the regulations, the Board may have regard to and rely on any findings made on an assessment prepared for the Board in respect of the course of study.</i></p>

### ***Impact analysis***

This regulation change is a 'removal of doubt' provision to enable the Board to better undertake its duties in ensuring that persons requesting registration as an architect have the correct qualifications and competencies.

### ***Proposals – for comment***

It is proposed that the Board should be able to have regard to and rely on any advice from the AACA in relation to an applicant's qualifications or standard in relation to the practice of architecture (regulation 12(a)(ii) and (iii)).

#### **PROPOSAL 13**

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

- **enable the Board to rely on AACA 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 AACA assessments.**

*Do you support this? Please comment using the Comment Guidelines on p50*

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

#### ***What it means***

Section 30 sets out that there are to be no conditions on registration or renewal of registration of a natural person except where they have been imposed by way of disciplinary action or in relation to insurance to cover the architect's civil liability.

Section 32 (1) provides that the Board may grant or renew a licence with respect to a corporation subject to the conditions specified by the Board.

Section 30 and regulation 25(3) limits the ability of the Board to require natural persons to display their registration number on items such as 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.

#### ***Issue with the legislation***

The Board wishes to have the power to require all natural persons and corporations to display their registration and licence numbers. Monitoring the display of registration details for some architects, but not others, can result in a substantial administrative burden with the public being confused as to why not all architects display registration and licence number information.

## ***Impact analysis***

This is a minor change to the legislation and will add a minor burden to those architects (natural persons) or corporations who do not currently display their registration or licence numbers, requiring a change of stationery and marketing materials. This burden is considered to be outweighed by the improvements it will provide in relation to transparency to the public and consistency in the application of signage requirements in the Act.

## ***Proposals – for comment***

It is proposed that to ensure consistency and in the best interests of the public, that the Regulations be amended to require all natural persons and corporations to display their registration or licence numbers.

### **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.**

*Do you support this? Please comment using the Comment Guidelines on p50*

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

### ***What it means***

Section 55 of the Act requires that a licensed corporation must advise the Board 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(3) sets out 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.

Under section 31, 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. Regulation 15 describes the licensing requirements for corporations as being:

- (a) the corporation's constitution is, or the rules governing the corporation's internal management are, acceptable to the Board;*
- (b) each of the directors of the corporation is acceptable to the Board;*
- (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;*
- (e) the person who will have ultimate responsibility for the architectural work to be done by the corporation is a registered person who is an officer or employee of the corporation; and*
- (f) the name under which the corporation proposes to carry on the practice of architecture is acceptable to the Board.*

### ***Issue with the legislation***

The requirement for corporations to advise the Board of an intention to change its constitution, and the outcomes, appears to serve little practical purpose. The Board has advised that this notification causes unnecessary cost to architecture corporations and the Board in processing the notification and should be deleted.

The Board has raised the issue that in order to license a corporation, regulation 15(a) states that a corporation's constitution is, or the rules governing the corporation's internal management are, acceptable to the Board. The cornerstone provisions for regulating corporations, however, are dealt with in regulation 15(c) and (e), which effectively require all architectural work carried out by a corporation to be supervised by a registered person who is an officer or employee of the corporation and who takes full responsibility for that work. It therefore appears that regulation 15(a) is unnecessary as it is unlikely a corporation's constitution would be inconsistent with those requirements.

### ***Impact analysis***

Deleting these requirements will reduce costs for corporations and the Board without reducing consumer protection and as such will have positive impacts on the economy. Section 55 and regulation 15(a) are effectively unnecessary red tape that should be deleted.

### ***Proposals – for comment***

It is proposed that the constitution of a corporation would include provisions that would be inconsistent with regulations 15(c) and (e) and, as a consequence, the requirement in regulation 15(a) for a corporation's constitution to be acceptable to the Board can be removed.

#### **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.**

*Do you support this? Please comment using the Comment Guidelines on p50*

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

#### ***What it means***

##### **Fees due by date**

The annual renewal date for registrations and licences under regulation 16A is 1 July. The due date for payment of renewal fees under regulation 16C is three months later, on 30 September of the renewal year.

The Board has raised concerns that this three month period within the renewal period creates some ambiguity as to the registration status of an architect. For example, if an architect has not renewed the architect's registration as at 25 September, nearly three months into the renewal period, the Board questions whether it is appropriate for the architect to still be on the register. If an architect then renews their registration on 26 September, the person is issued with a certificate stating that they have been registered for the period 1 July to 30 June.

### Insurance

Regulation 18 and regulation 19 require that the registered person or licensed corporation must supply information about insurance within 14 or 28 days (depending on whether the registration/licence granted relates to an initial or renewal of registration) of being granted registration or a licence.

### Period of registration

Section 36 of the Act provides for registrations and licences to be renewed for a period of 12 months or a longer period that is prescribed by the regulations. At present, the regulations only provide for a 12 month renewal period.

### ***Issue with the legislation***

#### Fees due by date

The three month payment window results in many architects missing the payment deadline. Many architects will put the renewal notice aside as it is not due for three months and then forget about making the payment. This creates substantial administrative work for the Board in sending out reminder letters or removing people from the register for non-payment. Once payment is received, the Board must then restore those persons' names back to the register over the preceding month.

The Board is of the view that registration and licence fees for architect registration renewal should be changed to align with the last day of the renewal period (30 June). This approach will address issues concerned with the registration status of architects and corporations and improve the efficiency of renewal processing.

The BSR Act also provides for persons registered under that statute to pay their renewal of registration fee after the date their registration expires. Section 15(2) 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. However, applicants must also satisfy the Building Services Board that the reason for late lodgement of the application and fee was due to reasons beyond the applicant's control or because of 'special circumstances', the grounds for which are narrow.

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 three months after the expiry date, along with an amendment to regulation 16C(4) to make the payment due date the same as the expiry date, may better resolve this issue. That is, architects would be required to pay their renewal fee by 1 July and if they don't, their registration remains valid if they pay the fee within three months of their registration expiring, along with the payment of an additional late payment fee.

## Insurance

The 14 day period in which an architect or corporation is required to provide insurance information during registration or licence renewal is administratively problematic. The current process results in double handling for renewals. When the application for renewal is initially processed, the same application is required to be processed again 14 days later to match the insurance information with the originally processed renewal application form. As there are over 1,100 renewal applications to process, the double handling and matching process is time consuming and inefficient to Board operations.

The Board has proposed that the collection of evidence of insurance should occur only once a year, preferably at the time of registration or licence renewal. The Board also proposes that the time for providing evidence of insurance be changed to the time of renewal rather than 14 days after renewal, thereby making it a precondition of renewal of registration or license. The Board supports retaining the 28 day time period for providing evidence of insurance on initial registration or licence.

If a natural person or corporation does not provide evidence of insurance within the specified time, the Board has to make application to the SAT to remove the person's or corporation's name from the register. The process of enforcing insurance requirements is expensive for both the Board and the SAT and could be simplified. In contrast, the Board has the power under the Act to remove a person or corporation from the register for failure to pay renewal fees under section 37(1). The Board therefore requests similar power to remove a person or corporation from the register if the person fails to provide evidence of insurance within the specified time.

## Period of registration

The annual processing of registration and licence renewals is inefficient compared to three year renewals. 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.

## ***Impact analysis***

### Fees due by date

Aligning the due date for fees with the renewal period will produce some administrative efficiencies for the Board with negligible effects on architects. Inclusion of a provision similar to section 12(3)(a) of the BSR Act will enable those architects who are late with their renewal payment, for whatever reason, to remain registered for a period of up to three months until the renewal fee is paid (along with a late payment penalty).

## Insurance

Changing the process for enforcing the requirement to provide evidence of insurance coverage from taking action in the SAT to a decision of the Board to remove a person or corporation from the register will simplify the enforcement process and reduce costs.

### Period of registration

Changing the period of registration from an annual to a three year renewal cycle will create administrative efficiencies and savings. Some smaller architecture businesses may find the cost of paying a three year renewal fee upfront a burden. However, the benefits of red tape reduction through this reform are considered to outweigh its costs.

### ***Proposals – for comment***

#### Fees due by date

It is proposed that to improve the Board's efficiency for renewal processing, the existing date upon which fees for renewal of registration are due be changed from 30 September to 30 June. To remove any uncertainty as to the registration status of an architect or corporation that does not pay their renewal fee on time, it is recommended that a provision similar to section 12(3)(a) of the BSR Act be introduced that maintains their registration status for up to three months until the renewal fee is paid (along with a late payment penalty).

It is also proposed that regulations 16A, 16B and 16C (1), (2) and (3) be deleted as they were put in place to allow for a transition position for the implementation of the Act transition from a calendar year to a financial year. Regulations 16C(4)(a), 16C(5) and 16C(6) will also need to be amended to reflect the renewal registration date as being 30 June.

#### Insurance

The Board has stated that the current process for collecting information about insurance from a registered person and the corporation is both cumbersome and unproductive. It is proposed that to simplify the current process the collection of evidence only be required once per year at renewal time, rather than 14 days after renewal and whenever the insurance policy changes. Additionally, it is proposed that the Board be given the power to remove a person or corporation from the register if evidence of insurance is not provided on time, rather than having to take the matter through the SAT.

#### Period of registration

That the Regulations be amended to introduce three year registration/licence renewals for architects.

## PROPOSAL 16

That:

- the existing date upon which fees for renewal of registration are due 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 deleted; and
- the Regulations be amended to introduce three year registration/licence renewals for architects.

*Do you support this? Please comment using the Comment Guidelines on p50*

### 2.3.7 Examination fees

#### **What it means**

Schedule 1 of the Regulations includes three fees that are related to examinations. The examinations are national examinations set by the AACA. The AACA recommends fees to be charged for the examinations, which are agreed to by all state and territory registration boards.

#### **Issue with the legislation**

As the examination fees are listed in Schedule 1 of the Regulations, the Board cannot change 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.

In order to address this national inconsistency, the Board requests examination fees to be removed from the Schedule 1 in the Regulations and be determined by the Board after having regard to the advice of AACA.

#### **Impact analysis**

If examination fees in Schedule 1 of the Regulations are deleted and a regulation made to enable the Board to charge fees set by AACA, the Board will be able to charge nationally consistent fees. This will enable a level fee structure that will aid the introduction of national recognition.

Persons undertaking the NEP assessment and examination would, if this proposal is implemented, be subject to a charge of \$425 instead of the current prescribed amount of \$357. Persons taking the Examination by Interview would be charged \$370 instead of \$306.

The change will increase costs on those taking the examinations but achieve consistency with fees charged in other states and better reflect cost recovery.



### ***Proposals – for comment***

It is proposed that in order to align the examination fees with other states and territories for candidates in Western Australia undertaking national examinations set by the AACA, the examination fees as set out in Schedule 1 of the Regulations are removed. In its place a regulation is inserted enabling fees to be based on those set by the AACA.

It is also proposed that the Supplementary Examination by Interview be removed from Schedule 1 of the Regulations as supplementary examinations are no longer offered.

#### **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**
- **delete the fee in Schedule of the Regulations relating to the Supplementary Examination by Interview.**

*Do you support this? Please comment using the Comment Guidelines on p50*

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

#### ***What it means***

Under section 45, a registered person or corporation may apply to the Board to amend their details as currently entered in the register. If the Board approves the amendment, the applicant is to pay a fee of \$25.50 as prescribed in Schedule 1 of the Regulations.

#### ***Issue with the legislation***

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 of the proposed change in procedure, the Board requests that charging a fee for amending the register be discretionary rather than mandatory.

#### ***Impact analysis***

Minor impact as the cost to amend details on the register is the lowest of all the fees in Schedule 1 of the Regulations, and individuals may save the expense or may be required to pay the fee.

### ***Proposals – for comment***

It is proposed that, as the Board plans to introduce an electronic process that would allow registered persons and licensed corporations to amend their details on-line, the fee for amending the register is to be discretionary rather than mandatory.

## **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.**

*Do you support this? Please comment using the Comment Guidelines on p50*

### **2.3.9 Minor disciplinary proceedings**

#### ***What it means***

When considering a disciplinary matter, the Board currently has the power to conduct an initial investigation into the matter 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 the Tribunal.

#### ***Issue with the legislation***

This situation is unsatisfactory to the role of the Board as it is not able to caution or reprimand, or undertake other simple disciplinary procedures in relation to relatively minor disciplinary matters.

The Board is of the view that the Act should be amended to allow the Board to have minor disciplinary powers. This position is supported by the SAT as outlined by the then President of the Tribunal, Hon Justice Michael Barker in December 2007. In a letter dated 5 June 2008, Justice Barker confirmed 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 \$5000;
- 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; and
- 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 also supports 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.*

### **Impact analysis**

Allowing the Board to deal with minor disciplinary matters itself will increase its costs. However, this is likely to be more than offset by reductions in costs associated with taking cases to the SAT and improvements in compliance outcomes.

### **Proposals – for comment**

It is proposed that the current process of referring relatively minor matters to the SAT is unsatisfactory and that the Board be given jurisdiction to carry out minor disciplinary procedures itself.

#### **PROPOSAL 19**

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

*Do you support this? Please comment using the Comment Guidelines on p50*

### **2.3.10 Written Contracts**

#### **What it means**

Currently, architects in Western Australia are not required to have a written agreement when making business commitments with their clients. This situation can result in the client's expectation of an architect in terms of the service they will receive and the cost of that service, being substantially different to that of the architect. The absence of a written agreement is most common with small residential projects where frequently the client is building or renovating and using an architect for the first time.

#### **Issue with the legislation**

The absence of a written or adequate agreement is also the most common cause of complaints before the Board. 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, the Board believes consumers would be better protected, particularly as the circumstances where a written agreement is not used commonly involves consumers who do not have experience with an architect.

The inclusion of written contracts varies between the states and territories, as detailed in the table below. Where a Code of Practice exists, written contracts have been included. However, in Victoria, the Regulations set out the specific rules for professional conduct of architects that includes defining the terms of engagement in written contracts.

## Legislation in other States

State	Legislative requirements
Queensland	A written agreement is required for services exceeding \$1,500.
ACT	Written contracts may be provided for should a Code of Practice be developed under section 88.

## Impact analysis

The additional regulatory burden on the profession is expected to be minimal as most architects already use written agreements with their clients. Written agreements would benefit consumers in terms of better aligning client expectations for architectural services with their architect. While an additional regulatory burden will fall on those architects that do not currently use written agreements, the benefits of the proposal in increased consumer protection and reduced complaints to the Board is considered to significantly exceed those costs.

## Proposals – for comment

It is proposed that the Act be amended to require agreements between architects and their clients to be in writing.

### 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.**

*Do you support this? Please comment using the Comment Guidelines on p50*

## 2.3.11 Code of Conduct

### What it means

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

### Issue with the legislation

The Board has raised the issue of the inclusion of a Code for architects in Western Australia. Other states and territories who have adopted a Code have found it to be 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 recommends that the model Code of Conduct developed jointly by the AACA and the AIA in 2003 be adopted in Western Australia. The Board previously recommended in 2003 when the Act and the Regulations were being developed, that the Code of Conduct developed by the AACA 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; and
- 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 also 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(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.

To enable the content of specific provisions of the Code to be added to if considered appropriate, section 56(2) was introduced to expand upon section 56(1)(a) that provided for disciplinary action in respect of a person who has engaged in unprofessional conduct as an architect to include:

(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 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 (eg. Code Part A);
- a replication of an obligation under legislation or an insurance policy (eg. Code provisions 4.7, 7.1, 9.2 and 9.3); and
- a replication of other laws such as tort law that would apply anyway (eg. Code provision 4.1 “act with reasonable care”).

The AACA Code of Conduct has also similar subject matters to those already included in the Regulations and some parts of the Code are considered to not be specific enough or confusing in their intent.

In 2007 advice was sought from the State Solicitor’s Office (the SSO), 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. 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).

State	No legislative provision	Legislative provision	Code of Practice
Victoria		✓	
NSW		✓	✓
Queensland		✓	✓
ACT	✓		
Sth Australia		✓	✓
Northern Territory	✓		
Tasmania	✓		

### ***Proposals – for comment***

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.

### **PROPOSAL 21**

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

*Do you support this? Please comment using the Comment Guidelines on p50*

### **2.3.12 Review**

#### ***What it means***

Section 63 sets out that any person who is aggrieved by a decision of the Board may apply to the SAT for a review of the decision. A person who is aggrieved by a decision under section 12(2) may apply to the SAT for a review of the decision.

#### ***Issue with the legislation***

The current provisions of the Act do not apply to the Board's decisions about complaints.

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

In other states and territories, the steps a complainant may take in relation to a decision of the Board includes:

<b>Review of complaints in other states and territories</b>	
<b>Region</b>	<b>Decision review process</b>
<b>Victoria</b>	The person to apply to the Victorian Civil and Administrative Tribunal for review of a decision by the Board to not to refer a matter to an Architects Tribunal inquiry.
<b>New South Wales</b>	The person may apply to the Tribunal for a review of that finding and any action taken by the Board. The Board may also apply to the Tribunal for a disciplinary finding against an architect with respect to any complaint against the architect.
<b>Queensland</b>	The tribunal may review the decision of the Board stated for the person lodging the complaint. The tribunal may also, on application by the Board, conduct a disciplinary proceeding to decide whether a disciplinary ground is established. The Code of Practice provides that the Board may take further action against the architect.
<b>Australian Capital Territory</b>	The Board's decisions about disciplinary action can be appealed in the ACT Civil and Administrative Tribunal.

<b>South Australia</b>	The right of appeal to the District Court may be made in relation to a decision made by the Board. A decision may be brought about by the complainant or the respondent in the proceedings in which the decision was made.
<b>Northern Territory</b>	A complainant, or a registered architect against whom a complaint was made, who is aggrieved by the Minister's decision, may appeal to the Local Court against the decision.
<b>Tasmania</b>	A person may appeal to the Supreme Court in matters concerning registration refusal or orders made against them. The Board is bound to comply with an order of the Supreme Court.
<b>New Zealand</b>	A person may appeal to a District Court against any decision of the Board in relation to registration refusal, suspension or cancellation or disciplinary penalties.

### ***Proposal – for comment***

It is proposed that the current process does not allow persons making a complaint and who are aggrieved at the Board's decision to have the decision reviewed by an independent tribunal. The review finds that further investigation is required about the process available for review of a Board decision by SAT.

#### **PROPOSAL 22**

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

*Do you support this? Please comment using the Comment Guidelines on p50*

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

#### ***What it means***

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. Those which provide traditional architectural services, where those services are the primary business of the corporation (i.e. 'traditional corporations'); and
2. Those where architectural services are only a minor or secondary part of a business and whose core business is something else, possibly a multi-disciplinary consultancy practice, builders 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.



### ***Issue with the legislation***

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 very 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 subject to the protections afforded by the Act.

In addition, section 3 of the Act specifies that the overriding object of the Act is the protection of consumers of architectural and related services in Western Australia. In assessing licensing applications from NTC's, the Board has, in the past, been faced with a situation where it is not satisfied that granting the licence would be consistent with the overriding object of the Act. This is because NTC's provide services other than architecture, so it is possible that consumers of architectural services may not be protected if a licence were to be granted 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. This further illustrates the difficulties experienced by the Board in assessing licensing applications from NTC's"

### ***Options for comment***

One option identified to address this issue would be to provide a definition in the Act and/or regulations of 'architectural work services' to give greater clarity to the services regulated by the Act. The need for clear definitions of similar key terms used in the Act is also discussed at proposal 4.

### ***Impact analysis***

Providing clear and specific definitions of the types of services for which registration or a licence under the Act is required would address much of the uncertainty about the types of services that are regulated and those which are not, and, as a consequence, those services within an NTC that a registered architect must supervise. However, a potential problem with including specific definitions in the Act is that once included, they are difficult to change if a problem later arises with the definition.

For example, the precise meaning of some words used in the definition may include services that were inadvertently not intended to be captured by that definition or, conversely, may exclude those that were. Changes within an industry or profession over time may also render a definition obsolete.

To provide flexibility and reduce the risks of this occurring, it may be possible to amend the Act to provide for definitions to be prescribed in the regulations, which is a relatively quick way of making changes should a problem with a definition arise. The BSR Act is an example of legislation that uses this approach.

The review notes that the vast majority of registered architects and licensed architectural corporations operate within traditional structures where the current operation of the Act is not as problematic. Given the primary purpose of the Act is to protect consumers of architectural services, and the public, from the activities of unqualified persons who may purport to be architects, it could be asserted that the status quo should remain until evidence of NTC's causing difficulty for their clients occurs. However, as discussed in relation to proposal 4, there appears to be a need to further analyse and consult on the feasibility of defining the terms used in the Act to better delineate between the scope of services provided by architects with those of building designers. It would be reasonable, therefore, to use this opportunity to examine whether the architectural and non-architectural services provided by NTC's can be defined at the same time. This will require consultation with NTC's and the wider architectural profession.

### ***Proposals – for comment***

It is proposed that further analysis and consultation is undertaken before defining 'architectural work services' and related definitions (as discussed in Proposal 4) before a final recommendation can be made in regard to developing definitions of the services provided by NTC's. Comments from NTC's and architectural professionals are sought as to how best to define this and related terms.

#### **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.**

*Do you support this? Please comment using the Comment Guidelines on p50*

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

#### ***What it means***

Section 68 prescribes that despite the requirements set out in sections 64 and 67 involving false description and false representation of being a registered architect or licensed corporation, an offence is not committed under the Act if:

- (a) ...;
- (b) a natural person describes himself or herself as an architect registered in a specified place other than Western Australia, if that person —
  - (i) is registered as an architect in that place;
  - (ii) is in Western Australia temporarily; and

*(iii) does not design, or superintend the erection of, any building whilst in Western Australia;*

*(c) a naval architect, landscape architect or golf course architect is described as such or that person's work is described as naval architecture, landscape architecture, or golf course architecture respectively;*

*(d) an architectural drafter is described as such or that person's work is described as architectural drafting;*

*(e) a person who provides technical or other support services to an architect is described as an architectural technician or assistant or the person's work is otherwise described in terms of providing a support service to an architect;*

*(f) a restricted word is used in relation to the manufacture, supply or naming of products or materials for use in the practice of architecture or the construction of buildings;*

*(g) a restricted word is used in the title or description of an educational institution in relation to the provision of education in architecture;*

*(h) a restricted word is used in circumstances where the word is clearly not connected with the design and construction of buildings; or*

*(i) a restricted word is used in circumstances of a kind prescribed by the regulations.*

### ***Issue with the legislation***

When some architects retire from the 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 there is no clear provision that allows retired architects to use this term.

Although using derivatives of the word "architect" is restricted, section 68 does allow the use of derivatives that describe a recognised competency and do not misleadingly imply a person is registered, or a corporation is licensed, under the Act. This includes occupations such as landscape architect, naval architect, and architectural draftsman. Section 68(h) also provides for a restricted term such as 'architect' to be used in circumstances where the word is clearly not connected with the design and construction of buildings.

It is proposed that the use of the term 'retired architect' be specifically included in this section 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.

### ***Impact analysis***

Impact will be minimal as the proposal is a minor change for retired architects who are no longer practising.

### ***Proposals – for comment***

It is proposed that the term "retired architect" be included under section 68 to allow persons who have retired from practising architecture to be able to use the term.

## **PROPOSAL 24**

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

*Do you support this? Please comment using the Comment Guidelines on p50*

### **3 TRANSITIONAL ARRANGEMENTS**

This paper proposes that architect registration and licensing be retained (Proposal 1) and that consideration of any major changes to this scheme, such as registering architects under the BSR Act (Proposal 2), be deferred until a later date.

Implementation of the national recognition model (Proposal 3) will require amendments to be made to the Act. A key outcome of the proposal is that once all jurisdictions implement the model, architects would only need to be registered/licensed in one jurisdiction and pay one registration/licensing fee to be able to operate across Australia. However, as no other jurisdiction has implemented the national recognition model at this date, it would place Western Australian architects at a competitive disadvantage as they would be unable to use the term ‘Australian Architect’ when operating in other jurisdictions when no such legislation existed, while architects from those jurisdictions operating in Western Australia could. The Board would also not receive any fees from inter-state based architects operating in Western Australia.

It is therefore proposed that amendments to the Act to provide for the implementation of the national recognition model in Western Australia would not become operational until a time when a sufficient number of other jurisdictions are in a position to enable national recognition in their legislation.

The remaining proposals fall into two broad categories:

- those that require amendment to the Act (Proposals 4-5, 8-20 and 22-24).
- those that require amendment to the Regulations (Proposals 5-7, 15-16, 21).

The proposals that require amendment to the Act, if supported, can be implemented soon after the amendments pass through the Parliament and receive the Royal Assent. Transitional provisions will be prepared and included in the amending bill before consideration by Parliament to ensure a smooth transition. The bill will also be provided to industry for consultation prior to its introduction to the Parliament.

The proposals that require amendment to the Regulations, if supported, can be implemented soon after the Minister for Commerce endorses the final report or decision regulatory impact statement.

## COMMENT GUIDELINES

*To submit comments to the Building Commission, please use the guidelines below.*

Comments are welcome on any aspects of the Act. However the proposals address the areas of most concern that have already been raised by stakeholders.

Written comments, queries and submissions should be forwarded no later than close of business **Friday 22 MAY 2015**.

### ***Format of written submissions***

When responding please use the number of the proposal and either a précis of the proposal, or the section number of the Act as a sub-heading.

When commenting on another aspect of the Act, please use the section number and title of the section as a sub-heading (e.g. s.16 – Delegation).

It would be helpful if you could include the reasons behind your suggestions as this will help the Review to better understand your viewpoint and will also assist in developing options for inclusion in the next stage of the Review. For example, you could couch your views as follows:

- I think the national recognition model should not be implemented in WA **because...**
- I believe that registering architects is beneficial **because...**

If possible, please provide evidence to support your views. This will assist the Review in developing suitable options or responses to your areas of concern.

### ***By Email***

Please email to [architectsreview@commerce.wa.gov.au](mailto:architectsreview@commerce.wa.gov.au) with 'Architects Act Review Submission' as the subject header.

### ***By Post***

Please send your letter to:

Architects Act Review,  
Building Commission,  
Department of Commerce,  
Locked Bag 14, CLOISTERS SQUARE, WA, 6850

After the consultation period concludes, all responses received will be publicly available on the Building Commission website. Please note that because your feedback forms part of a public consultation process, the government may quote from your comments in future publications. If you prefer your name to remain confidential, please indicate that in your submission. As submissions made in response to this paper will be subject to freedom of information requests, please do not include any personal or confidential information that you do not wish to become available to the public.