

# Architects Regulation 2004

[2004-346]

## Status Information

### Currency of version

This is the latest version of this legislation.

Legislation on this site is usually updated within 3 working days after a change to the legislation.

This version was last updated on 4 December 2006.

This version relates to the period commencing on 4 December 2006 to date.

### Act under which legislation made

This legislation was made under the [Architects Act 2003](#)

### Date made

25 June 2004

### Provisions in force

The provisions displayed in this version of the legislation have all commenced. See [Historical notes](#)

### Future operation of legislation

See [Related information](#) (if any) for additional information on Bills, uncommenced legislation, repeals, resolutions and other matters that may affect the future operation of this legislation.

### Staged repeal status

This legislation is currently due to be automatically repealed under the [Subordinate Legislation Act 1989](#) on 1 September 2009

## Contents

### Related information

### Part 1 Preliminary

- 1 Name of Regulation
- 2 Commencement
- 3 Definitions

### Part 2 Registration

- 4 Prescribed architectural qualifications for registration as architect
- 5 Prescribed criteria for accreditation of courses of study for registration as architect
- 6 Particulars to be recorded in the Register

### Part 3 Professional conduct

7 NSW Architects Code of Professional Conduct  
8 Professional misconduct

## **Part 4 The Board**

9 Manner of appointment of academic members to Board: sec 60 (1) (c)  
10 Manner of conduct of elections of members to Board: sec 60 (1) (d)  
11 Board cannot charge certain fees in relation to complaints under Part 4 of Act

## **Part 5 Miscellaneous**

12 Persons who may verify complaints made under Part 4 of Act  
13 Relevant educational institutions: sec 60 (6)  
14 Savings, transitional and other provisions

## **Schedule 1 NSW Architects Code of Professional Conduct**

## **Schedule 2 Election of Board members**

## **Schedule 3 Forms**

## **Schedule 4 Savings, transitional and other provisions**

## **Historical notes**

There are 18 hits within this page. Jump to: [First](#) [Last](#)



**New South Wales**

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## **Related information**

**Does not include amendments by:**

[Parliamentary Electorates and Elections Amendment Act 2006 No 68](#) (not commenced)

## Part 1 Preliminary

### 1 Name of Regulation

This Regulation is the Architects Regulation 2004.

### 2 Commencement

This Regulation commences on 30 June 2004.

### 3 Definitions

(1) In this Regulation:

*NSW Architects Code of Professional Conduct* means the code of professional conduct established by clause 7 and set out in Schedule 1.

*the Act* means the Architects Act 2003.

(2) Notes included in this Regulation (other than in Schedule 3) do not form part of this Regulation.

## Part 2 Registration

### 4 Prescribed architectural qualifications for registration as architect

Each of the following architectural qualifications is prescribed for the purposes of section 16 (1) (a) of the Act:

- (a) the Degree of Bachelor of Architecture from the University of New South Wales,
- (b) the Degree of Bachelor of Architecture from the University of Newcastle,
- (c) the Degree of Bachelor of Architecture from the University of Sydney,
- (d) the Degree of Bachelor of Architecture from the University of Technology, Sydney.

### 5 Prescribed criteria for accreditation of courses of study for registration as architect

The following criteria are prescribed for the purposes of section 16 (1) (b) of the Act:

- (a) the course must provide instruction in each of the following:
  - (i) the design of buildings (being the major component of the course),
  - (ii) technological and environmental issues relating to the practice of architecture,
  - (iii) social and cultural issues relating to the practice of architecture,
  - (iv) professional studies relating to the conduct and management of an architectural practice,
- (b) the course must require practical exercises to be completed in the architectural design of buildings,
- (c) the course must provide clear criteria for the evaluation of any practical exercises in the architectural design of buildings that are required for completion in the course.

### 6 Particulars to be recorded in the Register

(1) The following particulars are to be recorded in the Register in respect of each architect:

- (a) the address of the architect,
- (b) whether the architect is a practising architect or a non-practising

- architect,
- (c) whether or not the architect has submitted any forms that the architect is required by the Registrar to submit,
  - (d) if the architect is or has been a nominated architect:
    - (i) the name of each corporation or firm for which the architect is or has been a nominated architect, and
    - (ii) the total number of corporations or firms for which the architect is currently a nominated architect, and
    - (iii) the commencement date and end date (if any) for each period during which the architect is or was a nominated architect for the corporation or firm concerned.

**Note.** Section 25 (1) of the Act provides for the Registrar to establish and maintain a register of architects (the **Register**) for the purposes of the Act, and for the purposes of Part 3 of the Licensing and Registration (Uniform Procedures) Act 2002, as applied by section 22 of the Act. Section 49 of the Licensing and Registration (Uniform Procedures) Act 2002 makes provision with respect to the particulars to be recorded in the Register. These particulars include the following:

- (a) the name of the registered person,
- (b) the kind of registration it is, whether by reference to the relevant provision of the Act or otherwise,
- (c) the authority conferred by registration and (in the case of registration that is subject to discretionary conditions) a statement to that effect,
- (d) the date on which registration comes into force and (in the case of fixed-term registration) the date on which registration expires.

The particulars to be recorded in the Register that are prescribed above are in addition to those required to be recorded under section 49 of the Licensing and Registration (Uniform Procedures) Act 2002.

(2) For the purposes of subclause (1) (a), the address of the architect to be recorded in the Register is to be:

- (a) if the architect has a business address—the business address of the architect or, if the architect so requests, the residential address of the architect, or
  - (b) if the architect has no business address—the residential address of the architect.
- (3) The Registrar may, for the purposes of subclause (1) (a) and (2), record in the Register only the suburb and postcode of an architect's address if:
- (a) the Registrar is satisfied that the disclosure of the full address of the architect in the Register would be likely to place at risk the health or safety of the architect or to place the architect at risk of intimidation or harassment, and
  - (b) the Registrar keeps a separate record of the full address of the architect for the purposes of the administration of the Act.
- (4) The Registrar may record that an architect is a non-practising architect for the purposes of subclause (1) (b) only if the Registrar is satisfied that:
- (a) the architect has retired from the practice of architecture, or
  - (b) the architect has demonstrated that he or she is not likely to practise as an architect for the foreseeable future.
- (5) If an architect is recorded in the Register as being a non-practising architect, the Registrar may not alter the Register to record that the

architect is a practising architect for the purposes of subclause (1) (b) unless the architect has demonstrated to the Board's satisfaction that the architect's architectural skills and knowledge are current.

### Part 3 Professional conduct

#### 7 NSW Architects Code of Professional Conduct

The code set out in Schedule 1 is established as a code of professional conduct for the purposes of section 7 (1) of the Act.

**Note.** Section 7 (1) of the Act enables regulations to be made under the Act for the establishment of a code of professional conduct setting out guidelines that should be observed by architects in their professional practice.

#### 8 Professional misconduct

Conduct of an architect that involves a substantial or consistent failure to reach reasonable standards of competence and diligence for an architect is declared to be professional misconduct for the purposes of the Act.

### Part 4 The Board

#### 9 Manner of appointment of academic members to Board: sec 60 (1) (c)

(1) In this clause, **academic member** means a member of the Board appointed under section 60 (1) (c) of the Act.

**Note.** Section 60 (1) (c) of the Act provides that one of the members of the Board is to be an architect who is to be an academic who teaches architecture at a relevant educational institution and who is appointed by the governing bodies of relevant educational institutions in accordance with the regulations. Relevant educational institutions for this purpose are prescribed by clause 13.

(2) For the purposes of section 60 (1) (c) of the Act, an academic member is to be appointed as provided by this clause.

(3) The first appointment to be made after the commencement of this Regulation is to be made by the Council of the University of Newcastle.

(4) If an academic member appointed by the governing body of a relevant educational institution specified in Column 1 of the Table to this subclause vacates office, the next appointment to the vacated office is to be made by the governing body of the relevant educational institution specified in Column 2 of the Table opposite the name of the governing body that appointed the member who has vacated office.

Table

##### Column 1

Governing body that appointed member vacating office

Council of the University of Newcastle  
Council of the University of New South Wales  
Senate of the University of Sydney  
Council of the University of Technology, Sydney

##### Column 2

Governing body that may appoint new member to vacated office

Council of the University of New South Wales  
Senate of the University of Sydney  
Council of the University of Technology, Sydney  
Council of the University of Newcastle

## 10 Manner of conduct of elections of members to Board: sec 60 (1) (d)

For the purposes of section 60 (1) (d) of the Act, the election of architects to be members of the Board is to be held and conducted in the manner set out in Schedule 2.

## 11 Board cannot charge certain fees in relation to complaints under Part 4 of Act

Any service provided by the Board to another person in connection with any enquiry about the procedures for the making of, or dealing with, a complaint under Part 4 of the Act is prescribed for the purposes of section 68 (2) (b) of the Act.

## Part 5 Miscellaneous

### 12 Persons who may verify complaints made under Part 4 of Act

- (1) The following classes of persons are prescribed for the purposes of section 36 (2) (f) of the Act:
- (a) architects who have been registered as architects for a continuous period of at least 5 years,
  - (b) barristers or solicitors within the meaning of the *Legal Profession Act 1987* who have held practising certificates under that Act for a continuous period of at least 5 years.
- (2) Any period during which an architect was registered as a chartered architect or non-chartered architect under the *Architects Act 1921* is to be taken into account in determining whether an architect has been registered, for the purposes of subclause (1) (a), as an architect for a continuous period of at least 5 years.

### 13 Relevant educational institutions: sec 60 (6)

The following institutions are prescribed for the purposes of the definition of *relevant educational institution* in section 60 (6) of the Act:

- (a) University of New South Wales,
- (b) University of Newcastle,
- (c) University of Sydney,
- (d) University of Technology, Sydney.

### 14 Savings, transitional and other provisions

Schedule 4 has effect.

## Schedule 1 NSW Architects Code of Professional Conduct

(Clauses 3 (1) and 7)

**Introductory note.** The following Code of Professional Conduct provides architects and their clients with a statement of the standards required of architects when engaged to provide architectural services. It reflects the principle that the public interest is advanced if all architects recognise that the fundamental and overriding obligation of a profession is to serve and promote the public interest. While an architect has a duty to the client, the Code also recognises that there is a parallel duty to the public.

The Code is intended to inform and guide architects as to what is expected of them in their professional conduct and in the provision of architectural services to clients. It will also enable clients:

- (a) to understand the standards expected of an architect and the level of accountability expected of them in the provision of architectural services, and

- (b) to understand the obligations imposed on them as clients, and
- (c) to develop reasonable expectations of the services to be provided.

The Code is divided into 8 Parts.

Part 1 defines terms used in the Code and sets out the objectives of the Code.

Parts 2–8 detail the standards of behaviour expected of architects in their professional practice. Architects should use their best endeavours to meet those standards by applying their professional judgment. The standards relate to general practice standards, dealings with clients, insurance coverage, continuing professional education, alternative dispute resolution, dealings with the public and professional relationships with other architects.

A failure to comply with the Code will constitute unsatisfactory professional conduct for the purposes of the Architects Act 2003 and may be grounds for disciplinary action under Part 4 of that Act.

## Part 1 Preliminary

### 1 Name of Code

This Code is the NSW Architects Code of Professional Conduct.

### 2 Interpretation

- (1) In this Code:

**architect** has the same meaning as in the Act.

Note.

Section 4 (1) of the Act defines **architect** to mean a person who is registered as an architect under the Act.

**architectural service** has the same meaning as in the Act.

Note.

Section 4 (1) of the Act defines **architectural service** to mean a service provided in connection with the design, planning or construction of buildings that is ordinarily provided by architects.

**Board** means the NSW Architects Registration Board constituted under the Act.

**client** means a person who engages an architect (whether or not for payment) to provide an architectural service.

**document** means any record of information, and includes:

- (a) anything on which there is writing, or
- (b) anything on which there are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them, or
- (c) anything from which sounds, images or writings can be reproduced with or without the aid of anything else, or
- (d) a map, plan, drawing or photograph.

**financial year** means a year commencing on 1 July and ending on 30 June.

**home design service** means any architectural service provided to a client by an architect in respect of any existing or proposed building (or any part of any existing or proposed building) that is, or is intended to be, used as a dwelling (within the meaning of the Home Building Act 1989), whether or not by the client.

Note.

Section 3 (1) of the Home Building Act 1989 defines **dwelling** to mean a building or portion of a building that is designed, constructed or adapted for use as a dwelling (such as a detached or semi-detached house, transportable house, terrace or town house, duplex, villa-home, strata or company title home unit or residential flat). It includes any swimming pool or spa constructed for use in conjunction with a dwelling and such additional structures and improvements as are declared by the regulations under that Act to form part of a dwelling. However, it does not include buildings or portions of buildings declared by the regulations under that Act to be excluded from the definition.

**model home design client agreement** means any model client agreement relating to home design developed by the Board for use by architects.

**non-practising architect** means an architect who is recorded in the Register kept under the Act as being a non-practising architect.

**the Act** means the Architects Act 2003.

**the Regulation** means the ~~Architects~~ ~~Regulation~~ ~~2004~~.

- (2) If a provision of this Code provides that an architect should provide information or disclose a matter to a client, the architect is to provide that information or disclose that matter in writing except where it is reasonable in the circumstances for it to be done orally.
- (3) Nothing in subclause (2) permits an architect to provide information or disclose a matter orally if the provision in question expressly provides for it to be done in writing.

### 3 Objectives of Code

The objectives of the Code are as follows:

- (a) to define for the community, architects and clients the reasonable standards of conduct expected from architects in their professional practice,
- (b) to facilitate the establishment of professional relationships between architects and their clients based on reasonable expectations concerning professional standards and the cost of architectural services,
- (c) to promote community confidence in the architectural profession.

## Part 2 General practice standards

### 4 Provision of architectural services generally

- (1) In providing architectural services, an architect should:
  - (a) act with integrity and reasonable care, and
  - (b) provide the services:
    - (i) in a manner that (at the time the service is provided) is widely accepted in Australia by peer professional opinion as competent professional architectural practice, and
    - (ii) in conformity with any laws applicable to the provision of such services.

- (2) An architect should provide architectural services to a client:
  - (a) with reasonable promptness, and
  - (b) in accordance with any agreed time program or in a reasonable time as far as is permitted by the provision of instructions to the architect by the client.
- (3) An architect should withdraw from the provision of any architectural service if the architect reasonably believes in the architect's professional judgment that the provision of the service would require the architect to act:
  - (a) in a manner that the architect considers unethical, or
  - (b) in contravention of the Act, the Regulation or this Code.
- (4) An architect should not offer to clients, without proper disclosure and the informed consent of the client, architectural services outside the architect's skill, competency or experience or that of other architects under the architect's supervision.
- (5) If an architect considers that it would be prudent for a client to obtain any specialist advice or service from a person other than an architect (for example, an engineer) concerning an issue arising in connection with the provision of an architectural service, the architect should inform the client of this if it is reasonably practicable for the architect to do so.

## **5 Disclosure of conflicts of interest**

- (1) Before an architect enters into a contract or other arrangement to provide architectural services to a client or an employer, the architect should:
  - (a) disclose to the client or employer if a conflict of interest exists, or is likely to exist in the future, between the interests of the client or employer and the interests of the architect (or an existing client of the architect), and
  - (b) if the conflict of interest exists, or could reasonably be expected to arise in the future, because of the interests of an existing client—obtain the informed consent of the existing client to the contract or arrangement.
- (2) An architect should disclose to a client, or to a prospective client, for an architectural service if the architect has received any payment or other advantage for endorsing, or making comments about, any product or service likely to be used in connection with the provision of the architectural service.
- (3) An architect should not accept an engagement to provide architectural services to a client referred to the architect by a third party to whom the architect has given or offered to provide a fee or other benefit for the referral of clients or potential clients unless the architect has first disclosed to the client the architect's arrangement with the third party.
- (4) An architect should not act for a client in any dealing with a third party from whom the architect may receive (whether directly or indirectly) any fee or other benefit in respect of that dealing unless before acting for the client in the dealing:
  - (a) the architect has disclosed to the client in writing the nature and value of any fee or other benefit that may be received by the architect, and

- (b) the architect has obtained the consent of the client to the dealing.

### **Part 3 Standards concerning dealings with clients**

#### **6 Provision of information to clients and prospective clients**

- (1) An architect should provide sufficient relevant information with reasonable promptness to enable a client or prospective client to make an informed decision in relation to the provision of architectural services.
- (2) In particular, the architect should take all reasonable steps to:
  - (a) ensure that all information and material provided is truthful, accurate and unambiguous and relevant to the client's interests, and
  - (b) provide a client with information about an architectural service that is sufficient to enable the client to make decisions about the provision of the service and that clearly identifies the implications of various decisions that could be made by the client about the service, and
  - (c) avoid making misleading or false comparisons with architectural services provided by competitors.
- (3) An architect should take all reasonable steps to ensure that a client is informed of:
  - (a) the decisions required of the client in respect of the architectural service being provided by the architect, and
  - (b) the implications of those decisions for the performance of the service (particularly those implications related to timeliness, cost and changes to the service and any building or building related work consequential to the service).
- (4) An architect should advise a client on the likelihood of achieving the client's stated objectives having regard to the client's stated budget and time requirements for the architectural service concerned.
- (5) An architect should not disclose to any person any information agreed as, or understood to be, confidential that is acquired from or provided by a client in the course of the provision of an architectural service by the architect unless authorised to do so by the client in writing or as required by law.
- (6) An architect should, with reasonable promptness, respond to a client's reasonable requests for information or other communications concerning an architectural service being provided by the architect to the client.

#### **7 Client agreements**

- (1) An architect should enter into a written agreement with the client concerning the provision of an architectural service.
- (2) The architect should ensure that the written agreement:
  - (a) specifies the scope and nature of, and requirements for, the service to be provided, and
  - (b) specifies the cost of the service to be provided and the arrangement for payment (including, where possible, estimates of disbursements and arrangements for their payment), and
  - (c) specifies the method of reporting to the client on the provision and progress of the service to be provided, and

- (d) states the registration number of the architect responsible for the service to be provided, and
  - (e) makes provision for arrangements for:
    - (i) obtaining the client's authorisation to proceed with the service described in the agreement, and
    - (ii) obtaining the client's authorisation to change or amend the service described in the agreement and fees arising from such a change or amendment, and
    - (iii) the application of any pre-existing agreement to the provision of other services for the client, and
  - (f) makes provision for the termination of the service by either party, and
  - (g) makes provision for the withdrawal by the architect from the provision of the service in the circumstances referred to in clause 4 (3) of this Code, and
  - (h) makes provision for contacting the architect at the place of business of the architect within normal business hours.
- (3) The architect should ensure that the cost of architectural services provided to a client:
- (a) reflects the fee structure specified in such an agreement, and
  - (b) accurately reflects the amount of work done or to be done for the client in the provision of the services (including any variations to the services).
- (4) The architect should enter into such a written agreement before commencing to provide the architectural service concerned. However, if the service to be provided is urgent, the agreement should be provided to the client within 10 business days of commencing to provide the service.
- (5) If the architect is to provide a home design service, the written agreement may be in the form of the current model home design client agreement (if any).

## 8 Building contracts

- (1) For the purposes of this clause, an architect administers a building contract on behalf of a client if:
- (a) the contract concerns the construction of a building and is entered into by the client with a builder (the *building contractor*), and
  - (b) the architect is not a party to the contract, and
  - (c) the architect has been engaged by the client to inspect and administer the provision of services by the building contractor under the contract.
- (2) If an architect is administering a building contract on behalf of a client, the architect:
- (a) should act with fairness and impartiality in administering the contract, and
  - (b) should discharge the architect's obligations in connection with the administration of the contract diligently and promptly, and
  - (c) should provide the client with relevant information about the administration of the contract in a timely manner, and
  - (d) should not seek or receive any payments or other inducements from any person wishing to influence the architect to administer the contract

for the benefit or detriment of any party to the contract.

## **9 Deposits and retainers**

- (1) Unless otherwise expressly agreed by an architect and the architect's client, the architect should not seek or accept a retainer or deposit for the provision of any architectural services to be provided if that retainer or deposit is more than 10% of the reasonably expected or agreed total fee for the services to be provided.
- (2) Subclause (1) does not apply to an architect in connection with the provision of any architectural service:
  - (a) to any individual who does not reside within Australia, or
  - (b) to any firm or corporation that does not have a place of business within Australia, or
  - (c) in relation to the construction of a building outside of Australia.

## **10 Record keeping**

- (1) If an architect provides an architectural service to a client, the architect should maintain records of the following:
  - (a) correspondence sent and received concerning any such service,
  - (b) financial transactions concerning any such service,
  - (c) client instructions and meetings held with the client concerning the service,
  - (d) drawings, photographs of works in progress, project journals and diaries created in connection with providing the service.
- (2) Any such records may be maintained in hard copy or electronic form.
- (3) If any such records are maintained in electronic form, the architect should maintain adequate electronic copies of the records to enable the records to be restored should one electronic copy be destroyed or damaged.
- (4) Any such records should be maintained for a period that is not less than 6 years after the completion of the architectural service concerned.

## **11 Provision of statements of account**

Unless otherwise expressly agreed by an architect and the architect's client, the architect should provide the client with regular statements of account for any architectural service provided.

## **12 Inspection of documents by client**

- (1) If a client of an architect provides the architect with reasonable notice of the client's wish to inspect documents and records relating to the provision of an architectural service, the architect should (where practicable and during normal business hours) provide the client with a reasonable opportunity:
  - (a) to inspect:
    - (i) documents produced in providing the architectural service, and
    - (ii) records (except confidential business records) relating to the provision of the service, and
  - (b) to make copies (at the client's expense) of any such documents or records.
- (2) An architect should not unreasonably refuse to provide a client with an opportunity to inspect or copy the documents or records referred to in subclause (1).
- (3) Nothing in this clause derogates from any right of an architect to claim a lien over documents or records referred to in subclause (1) or to assert

any intellectual property rights in respect of such documents or records.

### **13 Maintaining knowledge of architectural services to be provided**

An architect in charge of a client's architectural project should maintain a thorough knowledge of the architectural services to be provided in relation to that project and of matters relating to the performance of those services.

### **14 Advising client of inability to follow client's instructions**

An architect should, as soon as is reasonably practicable, advise the client in writing of any thing that would, or would be likely to, prevent the client's instructions relating to an architectural service being followed, including the responsibility of an architect to withdraw from the provision of the service under clause 4 (3) of this Code.

### **15 Provision of copies of this Code**

- (1) An architect should make a copy of this Code available for inspection by a prospective client for an architectural service.
- (2) An architect who is engaged to provide an architectural service to a client should provide the client with a copy of this Code before commencing to provide the service or as soon as is reasonably practicable after commencing to provide the service.

## **Part 4 Standards concerning insurance coverage**

### **16 Professional indemnity insurance**

- (1) Subject to any requirements of the Act or the Regulation, an architect should:
  - (a) maintain a policy of professional indemnity insurance during each financial year appropriate for the architectural services being provided by the architect, and
  - (b) provide each client of the architect with information relating to the insurance maintained by the architect for the architectural services to be provided to the client.
- (2) On the application of an architect, the Board may, by order in writing, grant an exemption to the architect from the provisions of subclause (1) if:
  - (a) the Board is satisfied that the architect has commenced practice as an architect only very recently, or
  - (b) the Board is otherwise satisfied that it would not be appropriate in the circumstances for the architect to comply with the provisions of subclause (1).
- (3) Subclause (1) does not apply to:
  - (a) any architect in respect of the provision of an architectural service if:
    - (i) the person engaged to provide the service is not the architect, and
    - (ii) the architect is providing the service only as an employee of that person and not on the architect's own account, or
  - (b) any non-practising architect, or
  - (c) any architect who has been granted an exemption by the Board under subclause (2).

## **Part 5 Standards concerning continuing professional education**

## **17 Continuing professional education**

- (1) An architect should take all reasonable steps during each financial year to maintain and improve the skills and knowledge necessary for the provision of the architectural services that the architect normally provides through:
  - (a) undertaking such activities that the Board is satisfied demonstrate the maintenance and improvement of the architect's skill and knowledge, or
  - (b) such other means as may be approved by the Board from time to time.
- (2) Subclause (1) does not apply to any non-practising architect.

## **Part 6 Standards concerning dispute resolution**

### **18 Architects to promote alternative dispute resolution mechanisms**

- (1) An architect should inform a prospective client that a written agreement between the architect and the prospective client in respect of the provision of architectural services may provide for alternative dispute resolution to be used to resolve disputes between them instead of court proceedings.
- (2) Without limiting subclause (1), an architect complies with subclause (1) in relation to a prospective client for the provision of a home design service if:
  - (a) the current model home design client agreement (if any) includes provisions for alternative dispute resolution, and
  - (b) the architect draws the prospective client's attention to those provisions.

## **Part 7 Standards concerning the public**

### **19 Maintaining public confidence in architectural profession**

An architect should seek to avoid undermining the confidence of the public in the architectural profession by the architect's conduct in his or her professional practice.

### **20 Promotion of architecture and current standards**

An architect should, in the architect's professional practice, take reasonable steps, given the architect's circumstances and opportunities, to promote the advancement of architecture and reflect the current standards of architectural proficiency, education, research and practice.

### **21 Dealings with the public**

- (1) When dealing with the public in the course of an architect's professional practice, an architect should ensure that:
  - (a) the architect's qualifications, experience and authorship of any work, document or publication are stated accurately, and
  - (b) the architect is identified clearly and accurately on stationery, sign boards, public notices and in publications, and
  - (c) the architect's registration number is included on any stationery, sign boards, public notices or advertisements used or placed by the architect in connection with the architect's professional practice, and
  - (d) if the architect claims to have received any award or honour for the provision of architectural services, all persons or bodies that shared in the award or honour are identified accurately in the claim.
- (2) When dealing with the public in the course of an architect's professional practice, an architect:

- (a) should not provide any endorsement of any product or service in connection with the provision of an architectural service in a misleading manner, and
- (b) should disclose in the material conveying the endorsement whether or not a fee has been received for or relating to that endorsement.

## **22 Representations concerning architectural work**

- (1) An architect should not, in the course of the architect's professional practice, sign as checked, approved or supervised any drawings or other documents that the architect has not in fact checked, approved or supervised.
- (2) An architect should not, in the course of the architect's professional practice, permit the architect's name to be used in relation to any work, document or publication in a manner that misleadingly implies authorship of, responsibility for or agreement with the content or form of, the work, document or publication.

## **Part 8 Standards concerning professional relationships with other architects**

### **23 Dealings with other architects**

- (1) In any dealings with other architects in the course of the architect's professional practice, the architect should maintain a high standard of integrity and act honestly and fairly.
- (2) If an architect (the *new architect*) is assuming responsibility for the provision of an architectural service to a client from another architect who is to discontinue providing the service (the *former architect*), the former architect should, to the extent that it is commercially reasonable and without breaching any duty of confidentiality:
  - (a) inform the new architect of any matters that the former architect could be reasonably supposed to consider important concerning the provision of the service, and
  - (b) not withhold any information from the new architect that may assist the new architect to understand the history and nature of the service.

## **Schedule 2 Election of Board members**

(Clause 10)

### **Part 1 Interpretation**

#### **1 Definitions**

- (1) In this Schedule:

*close of nominations* for an election means the final time and date fixed by the returning officer for the close of nominations for the election.

*close of the ballot* for an election means the final time and date fixed by the returning officer for the close of the ballot for the election.

*election* means an election for the purposes of electing a member or members of the

Board in accordance with section 60 (1) (d) of the Act.

**returning officer** means:

- (a) the Electoral Commissioner for New South Wales, or
- (b) a person employed in the office of and nominated by the Electoral Commissioner for the purpose of exercising the functions conferred or imposed on a returning officer by this Regulation.

**roll** for an election means the roll provided to the returning officer under clause 11.

- (2) In this Schedule, a reference to a Form is a reference to a Form set out in Schedule 3.

## **Part 2 Calling of election**

### **2 Notice of election**

- (1) As soon as possible after having been notified in writing by or on behalf of the Minister that one or more members of the Board are required to be elected, the returning officer must cause notice of that fact:
  - (a) to be sent to the Registrar, and
  - (b) to be published in a newspaper circulating generally throughout the State.
- (2) The notice to be published in the newspaper:
  - (a) must state that an election is to be held, and
  - (b) must specify the number of members required to be elected, and
  - (c) must call for nominations of candidates, and
  - (d) must specify the time and date for the close of nominations, and
  - (e) must advise where nomination forms may be obtained and where nominations may be lodged, and
  - (f) must specify the qualifications that qualify a person to nominate a candidate or be nominated as a candidate.
- (3) The date fixed for the close of nominations must not be earlier than 21 days, or later than 28 days, after the date on which the notice is published.

### **3 Postponement of close of nominations**

- (1) The returning officer may postpone the close of nominations for a period not exceeding 14 days by a notice in a form similar to, and published in the same manner as, a notice calling for the nomination of candidates.
- (2) The power conferred on the returning officer by this clause may be exercised more than once in respect of an election.

## **Part 3 Nominations**

### **4 Qualifications for nominating candidates**

A person is qualified to nominate a candidate for election as an elected member of the Board if the person is an architect as at the close of nominations.

### **5 Eligibility for nomination**

A person is eligible for nomination as a candidate at an election if the person is an architect as at the close of nominations.

### **6 Nomination of candidates**

- (1) A nomination of a candidate:
  - (a) must be in Form 1, and
  - (b) must be made by at least 5 persons (other than the candidate) who are qualified to nominate a candidate, and
  - (c) must include the written consent to the nomination by the nominee, and
  - (d) must be lodged with the returning officer before the close of nominations.
- (2) If the returning officer is of the opinion that an insufficient number of the persons by whom a candidate has been nominated are qualified to nominate a candidate, the returning officer must, as soon as practicable, cause notice of that fact to be given to the candidate.
- (3) For the purpose of enabling the returning officer to form an opinion:
  - (a) as to whether a person by whom a candidate in an election has been nominated is qualified to nominate a candidate, or
  - (b) as to whether a person who has been nominated is eligible for nomination,  
the returning officer may require the Registrar to furnish the returning officer with such information regarding the person as the returning officer may specify.
- (4) A candidate who has been nominated in an election may withdraw the nomination at any time before the close of nominations by notice in writing addressed to the returning officer.

## **7 Uncontested elections**

If the number of persons who have been duly nominated as candidates for an election by the close of nominations does not exceed the number of persons to be elected, each of those persons is taken to have been elected.

## **8 Contested elections**

If the number of persons who have been duly nominated as candidates for an election by the close of nominations exceeds the number of persons to be elected, a ballot must be held.

## **9 Candidate information sheets**

- (1) At any time before the close of nominations, a candidate may submit to the returning officer a statutory declaration, in Form 2, containing information intended for inclusion in a candidate information sheet.
- (2) If more than the required number of persons have been nominated as candidates by the close of nominations, the returning officer must draw up a candidate information sheet consisting of the information contained in the statutory declarations submitted by the candidates.
- (3) In drawing up a candidate information sheet, the returning officer may omit (or, with the consent of the candidate, correct) so much of the information contained in a candidate's statutory declaration as the returning officer considers:
  - (a) to be false or misleading, or
  - (b) to be inappropriate for inclusion in the candidate information sheet, or
  - (c) to exceed the maximum amount of information that is suitable for inclusion in the candidate information sheet.
- (4) If a candidate does not submit a statutory declaration to the returning

officer, the returning officer may, in drawing up a candidate information sheet, include in the sheet in respect of the candidate the words “NO INFORMATION RECEIVED”.

- (5) The names of the candidates must be listed on the candidate information sheet in the same order as they are listed on the ballot-paper for the election.

## **Part 4 Calling of ballot**

### **10 Qualifications for voting**

A person who is an architect at the close of nominations is qualified to vote in an election.

### **11 Roll for the election**

- (1) As soon as practicable after it becomes apparent to the returning officer that a ballot is required to be held in respect of an election, the returning officer must cause notice of that fact to be sent to the Registrar.
- (2) The Registrar must provide the returning officer with:
  - (a) a roll consisting of a list of all architects as at the date of close of nominations, and
  - (b) an appropriately addressed label or an appropriately addressed envelope for each person whose name is included in that roll.
- (3) The roll:
  - (a) must contain the names (consecutively numbered and listed in alphabetical order) and addresses of the architects included in the roll, and
  - (b) must be certified by the Registrar in accordance with Form 3.
- (4) This clause does not apply to an election held as a consequence of an earlier election that has failed if a roll for the earlier election has already been provided to the returning officer.

### **12 Notice of ballot**

- (1) As soon as practicable after receiving the roll for the election, the returning officer must cause notice that a ballot is to be held to be published in a newspaper circulating generally throughout the State.
- (2) The notice:
  - (a) must state that a ballot is to be taken, and
  - (b) must fix a time and date for the close of the ballot.
- (3) The close of the ballot must be not earlier than 28 days after the notice is published.

### **13 Postponement of ballot**

- (1) The returning officer may postpone the close of the ballot for a period not exceeding 14 days by a notice in a form similar to, and published in the same manner as, a notice stating that a ballot is to be held.
- (2) The power conferred on the returning officer by this clause may be exercised more than once in respect of an election.

## **Part 5 Ballot**

### **14 Printing of ballot-papers**

- (1) As soon as practicable after the close of nominations in an election, the returning officer:
  - (a) must determine the order in which the candidates' names are to be listed on a ballot-paper by means of a ballot held in accordance with the procedure prescribed for the purposes of section 82A of the Parliamentary Electorates and Elections Act 1912, and
  - (b) must cause sufficient ballot-papers to be printed to enable a ballot-paper to be sent to each person included in the roll for the election, and
  - (c) if a candidate information sheet has been drawn up, must cause sufficient copies to be printed so that a copy may be sent to each person included in that roll.
- (2) A ballot-paper for an election must contain:
  - (a) the names of the candidates arranged in the order determined in accordance with subclause (1) (a), with a small square set opposite each name, and
  - (b) if the returning officer considers that the names of 2 or more of the candidates are so similar as to cause confusion, such other matter as the returning officer considers will distinguish between the candidates, and
  - (c) such directions as to the manner in which a vote is to be recorded and returned to the returning officer as the returning officer considers appropriate.
- (3) The directions to voters must include a direction that:
  - (a) the voter must record a vote for at least the number of candidates to be elected by placing consecutive numbers (beginning with the number "1" and ending with the number equal to the number of candidates to be elected) in the squares set opposite the candidates' names in the order of the voter's preferences for them, and
  - (b) the voter may, but is not required to, vote for additional candidates by placing consecutive numbers (beginning with the number next higher than the number of candidates to be elected) in the square set opposite the candidates' names in the order of the voter's preferences for them.

## 15 Distribution of ballot-papers

As soon as practicable after the printing of the ballot-papers for an election, the returning officer must send to each person included in the roll for the election:

- (a) a ballot-paper initialled by the returning officer (or by a person authorised by the returning officer) or that bears a mark prescribed as an official mark for the purposes of section 122A (3) of the Parliamentary Electorates and Elections Act 1912, and
- (b) an unsealed reply-paid envelope addressed to the returning officer and bearing on the back the words "NAME AND ADDRESS OF VOTER" and "SIGNATURE OF VOTER", together with appropriate spaces for the insertion of a name, address and signature, and
- (c) if applicable, a candidate information sheet.

## 16 Duplicate ballot-papers

- (1) At any time before the close of the ballot, the returning officer may issue to a voter a duplicate ballot-paper and envelope if the voter satisfies the returning officer by statutory declaration:
  - (a) that the original ballot-paper has been spoilt, lost or destroyed, and

- (b) that the voter has not already voted in the election to which the ballot-paper relates.
- (2) The returning officer must maintain a record of all duplicate ballot-papers issued under this clause.

## **17 Recording of votes**

In order to vote in an election, a person:

- (a) must record a vote on the ballot-paper in accordance with the directions shown on it, and
- (b) must place the completed ballot-paper (folded so that the vote cannot be seen) in the envelope addressed to the returning officer, and
- (c) must seal the envelope, and
- (d) must complete the person's full name and address on, and must sign, the back of the envelope, and
- (e) must return the envelope to the returning officer so as to be received before the close of the ballot.

## **Part 6 Scrutiny**

### **18 Receipt of ballot-papers**

- (1) The returning officer must reject (without opening it) any envelope purporting to contain a ballot-paper if the envelope is not received before the close of the ballot or is received unsealed.
- (2) The returning officer must examine the name on the back of the envelope and, without opening the envelope:
  - (a) must accept the ballot-paper in the envelope and draw a line through the name on the roll that corresponds to the name on the back of the envelope, if satisfied that a person of that name is included in the roll for the election, or
  - (b) must reject the ballot-paper in the envelope, if not so satisfied or if a name, address or signature does not appear on the back of the envelope.
- (3) The returning officer may reject a ballot-paper in an envelope without opening the envelope if, after making such inquiries as the returning officer thinks fit:
  - (a) the returning officer is unable to identify the signature on the back of the envelope, or
  - (b) it appears to the returning officer that the signature on the back of the envelope is not the signature of the person whose name and address appear on the back of the envelope.

### **19 Ascertaining result of ballot**

The result of a ballot must be ascertained by the returning officer as soon as practicable after the close of the ballot.

### **20 Scrutineers**

Each candidate in a ballot is entitled to appoint, by notice in writing, a scrutineer to represent the candidate at all stages of the scrutiny.

### **21 Scrutiny of votes**

- (1) The scrutiny of votes in a ballot is to be conducted as follows:
  - (a) the returning officer must produce unopened the envelopes containing the ballot-papers accepted for scrutiny,
  - (b) the returning officer must then open each such envelope, extract the ballot-paper and (without unfolding it) place it in a locked ballot-box,
  - (c) when the ballot-papers from all the envelopes so opened have been placed in the ballot-box, the returning officer must then unlock the ballot-box and remove the ballot-papers,
  - (d) the returning officer must then examine each ballot-paper and reject those that are informal,
  - (e) the returning officer must then proceed to count the votes and ascertain the result of the election.
- (2) At the scrutiny of votes in a ballot, a ballot-paper must be rejected as informal if:
  - (a) it is neither initialled by the returning officer (or by a person authorised by the returning officer) nor bears a mark prescribed as an official mark for the purposes of section 122A (3) of the Parliamentary Electorates and Elections Act 1912, or
  - (b) it has on it any mark or writing that the returning officer considers could enable any person to identify the voter who completed it, or
  - (c) it has not been completed in accordance with the directions shown on it.
- (3) A ballot-paper must not be rejected as informal:
  - (a) merely because there is any mark or writing on it that is not authorised or required by this Regulation (not being a mark or writing referred to in subclause (2) (b)) if, in the opinion of the returning officer, the voter's intention is clearly indicated on the ballot-paper, or
  - (b) if the voter has recorded a vote by placing in one square the number "1":
    - (i) merely because the same preference (other than a first preference) has been recorded on the ballot-paper for more than one candidate, or
    - (ii) merely because there is a break in the order of preferences recorded on the ballot-paper.

## 22 Counting of votes

- (1) If there is only one person to be elected in any election:
  - (a) the method of counting the votes so as to ascertain the result of the election is as provided in Part 2 of the Seventh Schedule to the Constitution Act 1902, and
  - (b) for the purpose of applying the provisions of that Part to any such election, a reference in those provisions to the returning officer is to be read as a reference to the returning officer under this Regulation.
- (2) If there are 2 persons to be elected in any election:
  - (a) the method of counting the votes so as to ascertain the result of the election is as provided in Part 2 of the Sixth Schedule to the Constitution Act 1902, and
  - (b) for the purpose of applying the provisions of that Part to any such

election:

- (i) a reference in those provisions to the Council returning officer is to be read as a reference to the returning officer under this Regulation, and
- (ii) the quota referred to in those provisions is to be determined by dividing the number of first preference votes for all candidates by 3 and by increasing the quotient so obtained (disregarding any remainder) by one.

## **23 Notice of result of election**

As soon as practicable after a candidate or candidates in an election has or have been elected, the returning officer must notify the Minister, in writing, of the name of the candidate or candidates elected.

## **Part 7 General**

### **24 Decisions of returning officer final**

If the returning officer is permitted or required by the Act or this Regulation to make a decision on any matter relating to the taking of a ballot in any election, the decision of the returning officer on that matter is final.

### **25 Death of a candidate**

If a candidate dies after the close of nominations and before the close of the ballot:

- (a) the returning officer is to cause notice of the death to be published in the Gazette, and
- (b) all proceedings taken after the Minister notified the returning officer that the election was required to be held are of no effect and must be taken again.

### **26 Offences**

A person must not:

- (a) vote, or attempt to vote, more than once in any election held under this Regulation, or
- (b) vote, or attempt to vote, in any such election in which the person is not entitled to vote, or
- (c) make a false or wilfully misleading statement (not being a statement verified by statutory declaration):
  - (i) to the returning officer in connection with any such election, or
  - (ii) in any document that the person furnishes for the purposes of any such election.

Maximum penalty: 5 penalty units.

## **Schedule 3 Forms**

(Schedule 2, clause 1 (2))

### **Form 1 Nomination of candidate**

(Schedule 2, clause 6 (1) (a))

(←Architects→\_←Regulation→←2004→)

We nominate .....  
[name in full]

of .....  
[residential address]

being an architect who is\*/is not\* carrying on the business of an architect at  
.....  
[specify place or places at which candidate is carrying on business]

as a candidate for the following election:  
.....  
[specify the election to which the nomination relates]

We declare that we are each entitled to vote in the election.

Name in full	Address	Signature	Date
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....

Note.

This nomination must be completed by not less than 5 persons (other than the candidate), each of whom is an architect.

[The following is to be completed by the nominee]

I .....  
consent to being a candidate at the election to which this nomination relates.

Postal address: .....

Postcode: ..... Telephone No: .....

Date of birth: .....

Dated: .....

Signed: .....

\* Delete whichever is inapplicable.

**Form 2 Statutory declaration**

(Schedule 2, clause 9 (1))

(←Architects→\_←Regulation→←2004→)

I, ..... of .....

do solemnly and sincerely declare that:

1. My full name is .....
2. My residential address is .....  
.....  
..... Postcode: .....
3. My date of birth is .....
4. I am practising on my own account and my place of business is .....\*

OR

I am employed by .....\*  
[specify name of employer]  
of .....  
[specify address of employer]  
OR

I am a partner in\*/director of\* .....\*  
[specify name of firm or company]  
of .....  
[specify address of firm or company]

5. I hold the following qualifications (academic/trade/professional):  
.....
6. I am a member of the following organisations:  
.....
7. I hold the following offices (other than employment):  
.....
8. ....  
.....  
..... (See Note)

And I make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of the Oaths Act 1900.

Declared at ..... this ..... day of ..... 20..,

Before me:  
.....  
Justice of the Peace  
.....

[signature]  
Note.

A candidate may include further information relating to the candidacy. Such information should not exceed 4 lines of typescript.

\* Delete whichever is inapplicable.

### Form 3 Certificate

(Schedule 2, clause 11 (3) (b))

(←Architects→ ←Regulation→ ←2004→)

I certify that this roll contains the names (consecutively numbered and listed in alphabetical order) and addresses of those architects whose names were on the register as at ....., being the date of the close of nominations for the election in relation to which this roll has been prepared.

The first and last entries in the roll are as follows:

First entry: No: .....  
Name: .....  
Address: .....  
Last entry: No: .....  
Name: .....  
Address: .....  
Dated: ..... Signed: .....

## Schedule 4 Savings, transitional and other provisions

(Clause 14)

### 1 Use of nominated architects

(1) In this clause:

**6-month transitional period** means the period commencing on 30 June 2004 and ending on 31 December 2004 (inclusive).

- (2) Section 10 (1) of the Act does not operate to prohibit an architect corporation or architect firm from representing itself to be an architect (or allowing itself to be so represented) during the 6-month transitional period if the corporation or firm has at least one architect who is responsible for the provision of architectural services by the corporation or firm.
- (3) Section 11 (1) of the Act does not operate to require an architect corporation or architect firm to have a nominated architect at any time during the 6-month transitional period if the corporation or firm has at least one architect who is responsible for the provision of architectural services by the corporation or firm at that time.
- (4) An architect corporation or architect firm is taken to have complied with the provisions of section 11 (2) (a) of the Act during the 6-month transitional period if the name of an architect who is responsible for the provision of architectural services by the corporation or firm is set out on its written business correspondence.
- (5) Section 11 (2) (b) of the Act does not apply to an architect corporation or architect firm during the 6-month transitional period.

### 2 Client agreements

(1) In this clause:

**12-month transitional period** means the period commencing on 30 June 2004 and ending on 29 June 2005 (inclusive).

- (2) Clause 7 of the *NSW Architects Code of Professional Conduct* does not apply during the 12-month transitional period to an architect in respect of the provision of an architectural service to an existing client.
- (3) A person is an existing client of an architect for the purposes of subclause (2) if:
- (a) the architect was on retainer to provide architectural services for the person immediately before 30 June 2004, or
- (b) the architect was otherwise engaged (whether by contract or under another arrangement) to provide architectural services to the person immediately before that date.

## Historical notes

### Table of amending instruments

✚ [Architects](#) ✚ ✚ [Regulation](#) ✚ ✚ [2004](#) published in Gazette No 104 of 25.6.2004, p 4388. This Regulation has been amended as follows:

6 120 [ute Law \(Miscellaneous Provisions\) Act \(No 2\) 2006](#). Assented to 4.12.2006.  
Date of commencement of Sch 2, assent, sec 2 (2).

## **Table of amendments**

5                      2006 No 120, Sch 2.4.