

### THE ARCHITECTS ACT 2002 AND THE PROFESSIONAL ENGINEERS ACT 2002

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Both Acts, which took effect on 1 January 2003 endeavour to enforce more stringent registration procedures and professional standards, with transparency and consumer protection as the two key themes of the changes.

#### PREVIOUS ARCHITECT'S LEGISLATION

Under the previous legislation of 1985, an architect could be registered by paying an annual fee and by passing prescribed examinations with sufficient and relevant architectural experience. Registration could be provided to an individual, or an architectural firm. Whilst the Board of Architects Qld (BAQ) had the power to discipline an architect for misconduct, impose penalties and suspend or remove the architect from the roll, there was no positive obligation to maintain, improve and upgrade his or her professional standards and skills.

#### PREVIOUS ENGINEERS LEGISLATION

Similar to the architects legislation, the new engineers legislation replaces the 1988 *Engineers Act*. Previous legislation allowed an engineer to be registered with appropriate tertiary qualifications and five years engineering experience, or without tertiary qualifications, seven years engineering experience.

#### THE CHANGES

Both Acts are virtually identical and for the present analysis we can refer to an architect or an engineer collectively as a 'professional'.

#### THE BOARD

The BAQ and the Board of Professional Engineers Qld (BPEQ) have both been dissolved and re-established. The Boards' role is now more clearly defined with a somewhat different membership structure to include a combination of professional and lay representatives.

#### REGISTRATION

The new Acts require any person responsible for the delivery of professional services to be registered, as opposed to firm membership, with eligibility dependent upon 'qualifications' and relevant 'competencies'. Corporate entities can no longer be registered.<sup>1</sup> This brings all professionals under the competency and disciplinary scrutiny of the Board.

#### Qualifications

The new legislation has more general requirements with a number of different benchmark standards for various levels of qualification and proficiency.<sup>2</sup> The benchmarks should also allow for professionals qualified overseas, if they meet the benchmark level, to become registered.

#### Competencies

Applicants for registration must show competency in practice under the new Acts to include:

- (a) the nature, extent and period of practice in the profession;
- (b) the nature and extent of any research, study or teaching undertaken, relating to the profession; and
- (c) the nature and extent of any administrative work performed.<sup>3</sup>

#### Fitness to Practice

An applicant for registration must also demonstrate 'fitness to practice' relating to factors including charges, bankruptcy and previous orders made under the Acts.

#### Renewal and Restoration

A major change in the new legislation is that registration lasts only one financial year and that renewal is contingent on meeting competency requirements, rather than simply the payment of an annual registration fee.

## Cancellation

The Board also has the power to cancel a professional's registration. Section 28 provides three broad discretionary grounds for such cancellation including:

- (a) the Board believes that the professional was registered on the basis of false or misleading evidence;
- (b) the professional is affected by bankruptcy action; or
- (c) the professional is the officer of a corporation that is subject to control action.

There are extensive provisions relating to appeals of cancellation including notice requirements. Procedural fairness principles have been adopted.

## COMPLAINTS AND INVESTIGATIONS

There are three grounds for disciplining a professional under the new regime including:

- (1) the professional has behaved in a way that constitutes unsatisfactory professional conduct;
- (2) failure to comply with the Acts or the repealed Acts; or
- (3) the professional is convicted of an offence (State or Federal) related to the practice of the profession.

The disciplinary grounds underpin a two-step process of complaint and investigation. Firstly, a written complaint must go to the Board which can either be rejected if they think it frivolous, vexatious or trivial, or take the complaint to the next stage. If taken to the next stage, the complaint is investigated by the Board before a decision is made to:

- (a) start a disciplinary proceeding;
- (b) enter into an undertaking with the professional about professional conduct;
- (c) caution or reprimand the professional; or

(d) take no further action.

Even if they investigate and make a decision in terms of the above matters, the Board retains the right to prosecute the professional for an offence.<sup>4</sup> Once a decision is made, the Board must give an information notice describing the decision to the professional and the complainant.

## Reviews & Disciplinary Proceedings

Part 8 of the Acts gives jurisdiction to the Queensland Building Tribunal ('the tribunal') to review:

1. Decisions of the Board relating to registration or cancellation;
2. Cautions or reprimands administered by the Board; or
3. A decision of the Board not to take action on a complaint against a professional.

The tribunal has the power to conduct disciplinary proceedings on application by the Board. An important factor in proceedings is that legal representation is not an automatic entitlement. It is anticipated that individuals will represent themselves. However, representation by a lawyer may be allowed by the tribunal if the parties agree, if the proceedings are disciplinary, or if the tribunal considers that it is in the interests of justice to allow representation.

## Codes of Practice

By the end of September 2003, the Boards must create a Code of Practice, reviewable every three years, for each profession to provide guidance to their members as to appropriate professional conduct or practice.

Regulations of the *Trade Practices Act 1974* might prescribe the Codes of Practice as mandatory or voluntary and this might give rise to a cause of action in damages against a professional for breach of the code pursuant to section 51AD of the *Trade Practices Act*.

## IN SUMMARY

Continuing development and training is a by-word of the new legislation. In addition, these changes demonstrate the Federal and State governments' commitment to self-regulation in the professions. The Act opens new doors in relation to professional liability and standards—it will be interesting to watch the development of these matters in the courts.

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## REFERENCES

1. The registration of corporate entities ceased upon commencement of the legislation and there will be a pro-rata entitlement to a refund of yearly roll fees.
2. Section 10.
3. Section 10(2).
- 4 Section 73(4) of the Act.

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