



31 January 2023

The Hon. Sonya Kilkenny MP
Minister for Planning
16/8 Nicholson St
East Melbourne VIC 3002

via email: sonya.kilkenny@parliament.vic.gov.au

Dear Minister,

BUILDING AND PLANNING LEGISLATION AMENDMENT BILL (2022) AND THE ARCHITECTS ACT

The Australian Institute of Architects (the Institute) is writing to you in relation to the proposed amendments to the *Architects Act 1991* as contained in the *Building and Planning Legislation Amendment Bill 2022* currently before parliament.

The Institute would first like to indicate that we broadly support the Bill and have advocated for harmonisation of regulation and accreditation of architects across jurisdictions for many years. The Bill will assist architects (and others in the construction sector) to more easily work in multiple jurisdictions, and ensure appropriate regulation and safeguards without unwarranted duplication of compliance requirements.

While we generally support the Bill, there are two proposed amendments we believe require further consultation with the profession as a matter of urgency. Unfortunately, the Institute was not contacted prior to tabling the Bill, as this would have afforded us the opportunity to raise our concerns at a more opportune moment.

Below are the two key issues we have identified in relation to these amendments.

ISSUE 1. ADDITIONAL ANNUAL FEES

Provisions of the Bill: Clause 23 of the Bill introduces a new Section 9A “Proof of required insurance for persons intending to rely on automatic deemed 5 registration” New subsection 9A(3) provides that,

“(3)The person must ensure that the written proof is accompanied by the prescribed fee for the examination of the written proof by the Board.”

Clause 27 of the bill creates a new subsection 15A(2) in the Architects Act which follows on from the existing Section 15A “Proof of required insurance”. New subsection 15A(2) specifies that,

(2) An architect must ensure that the written proof is accompanied by the prescribed fee for the examination of the written proof by the Board.

Section 9 of the Act pertains to application for registration and the new Section 9A specifically pertains to those persons seeking to practice under automatic mutual recognition (AMR) arrangements for the first time.

Section 15 of the Act pertains to annual fees only (i.e annual renewal)

The new subsection 15(A)(2) does not distinguish whether the annual recurring fee for examination of written proof of insurance applies only to architects who pay their annual registration in another state and are seeking to practice in Victoria under AMR or if it applies to *all* Architects - including those already registered in Victoria.

Identified risk: Victorian architects may be levied with a second annual fee that is additional to their annual registration renewal.

Institute response:

1. **The Institute recommends that a recurring annual fee for architects from another state to review their written proof of holding required insurances is justified to ensure the Board can adequately execute its functions without unnecessary time delays.**
2. **The Institute recommends that as new subsection 15(A)(2) is unclear as to its application then,**
 - a. **clause 27 of the Bill should be amended to ensure the new subsection 15A(2) leaves no doubt that it only applies those Architects who are registered in another state, or**
 - b. **if the Clause 27 is intended to levy a second annual fee on Victorian architects, for reviewing submitted proof of insurance the Institute opposes new subsection 15(A)(2). The reason is that submitting proof of insurance is not a new measure and has been a long-standing requirement. There has been no business case provided to justify an additional annual charge on Victorian architects.**

ISSUE 2 MAINTAINING INFORMATION ABOUT CRIMINAL SANCTIONS ON THE REGISTER AND WEB PUBLICATION

Provisions of the Bill: Clause 28 of the Bill introduces new subsection 16(2).

- "(2) The Register may include details of—
- (a) any criminal sanction imposed on an architect; and
 - (b) any disciplinary sanction imposed on an architect."

Clause 29 of the Bill among other new provisions includes subsections 16A(1)-(3) as follows:

"16A Time for inclusion of information in the Register of Architects

- (1) If the regulations require any details specified in section 16(2) to be included in the Register of Architects, the Board must record that information in the Register as soon as practicable after the prescribed period after the criminal sanction or disciplinary sanction is imposed.
- (2) Information about a disciplinary sanction is to remain on the Register of Architects for 5 years after the sanction is imposed or ceases to have effect, whichever is the later.
- (3) Information about a criminal sanction is to remain on the Register of Architects for 5 years after the sanction is imposed or ceases to have effect, whichever is the later."

Clause 29 also provides for new subsection 16C

"16C Publication of information on Register of Architects

(1) The Board must publish on its website the information on the Register of Architects that is required by the regulations to be published.

(2) The Board may publish on its website the information on the Register of Architects that is permitted by the regulations to be published."

The Minister's first reading speech noted the information as necessary to enable the operation of AMR.

"Criminal sanction" has no definition in the Bill, the Architects Act 1991, the Architects Regulations 2015, the Interpretation of Legislation Act 1984, the Crimes Act 1958, the Summary Offences Act 1966 nor the Spent Convictions Act 2021.

Other information necessary to understand these provisions.

In respect of offences the Act's current Section 10A *Probity Matters* provides that for registration purposes,

"10A Probity matters

In determining whether a person is a fit and proper person under section 10(a), the Board must have regard to the following matters—

(a) whether in the past 10 years the person has been convicted or found guilty (whether in or outside of Victoria) of any offence involving fraud, dishonesty, drug trafficking or violence that was punishable by imprisonment for 6 months or more;

(b) whether in the past 10 years the person has been convicted or found guilty of an offence under any law regulating architectural services or architects;

In current Section 32 - Grounds for disciplinary action against a registered architect, subsection 32(e) permits the tribunal to make one or more determinations leading to a range of potential disciplinary actions if,

"(e) the architect has been convicted in Victoria of an indictable offence or has elsewhere been convicted of an offence which if committed in Victoria, would be an indictable offence; or"

Under current Section 36A Immediate suspension of registration, the grounds for immediate suspension includes subsection 36A(1)(d),

(d) the architect has been convicted of an indictable offence involving fraud, dishonesty, drug trafficking or violence;

Note that the types of offences included under subsections 10A(a) and 36A(1)(d) are the same.

Also note that current Regulation 17 of the Architects Regulations 2015 presently does not prescribe that the register publishes information about criminal sanctions, disciplinary sanctions or offences.

Identified risk: There is a risk of a disproportionate measure of making publicly available specified information about criminal sanctions and offending history of an architect for no less than five years that may not be relevant to the public interest.

This raises a question, as an example, whether an architect with a dangerous driving conviction leading to death or serious injury under the Crimes Act¹ presents a risk to consumers and

¹ Crimes Act 1958

institutional clients? Similarly, do certain summary offences under the Summary Offences Act² pertaining to disorderly conduct or posting bills present a public interest risk?

Institute recommendations:

- 1. The Institute recommends that a working definition is provided in the Architects Act 1991 for the term “criminal sanctions” that specifies the applicable types of offending for which “criminal sanctions” have been imposed. The applicable types of offending should accord with those already given in subsections 10A(a), 10A(b) and 36A(1)(d) of the Act**
- 2. The Institute recommends the working definition for “criminal sanctions” also distinguishes between the applicable types of sanction such as fines, community service orders, wholly or partly suspended sentences or served periods of incarceration.**
- 3. The Institute also recommends that current Section 10A(a) and 36A(1)(d) offences should be broadened to include serious sexual offences, offences relating to child abuse material etc. as per the Crimes Act 1958 that are relevant to the public interest.**

Concluding remarks

While we support the majority of the proposed amendments as set out in the Bill, these are two matters of concern to the profession. The Institute is happy to meet with you, or your advisor, on these two issues to have them resolved quickly, prior to the bill passing into law. Our National Advocacy and Policy Manager, Paul Zanatta, can be contacted via mobile 0400 340 292 or paul.zanatta@architecture.com.au to arrange a time to meet to discuss our concerns

Minister, I would also like to note that the Institute stands ready to assist you in reviewing future draft legislation that impacts the profession, in particular with regard to the Architect's Act, before it is submitted to the Legislative Assembly. In this way we can provide detailed advice from the profession's perspective and advise of any implications that may not have been intended.

Equally, we are ready to assist you with broader policy issues on the built environment. You or your advisors are welcome to contact me via my mobile number below. Written and email correspondence can be sent, attention to me, via the heading details in this letter.

Yours sincerely,

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Australian Institute of Architects
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² Summary Offences Act 1966