



PROPOSED AMENDMENTS TO THE ARCHITECTS ACT

REPORT FOR INSTITUTE MEMBERS PREPARED BY JACK WILLIAMSON LFRAIA

Recently the State Government introduced into the Queensland Parliament the **Building Industry Fairness (Security of Payment) and Other Legislation Amendment Bill 2020**.

In this Bill are also amendments to the *Architect Act 2002*, the *Professional Engineers Act 2002* and other Acts. The Bill has had its first reading and is expected to have its second reading in the near future. It is anticipated that the proclamation to bring the amendments to the Architects Act into force will be made sometime after 1 July 2020.

GENERAL COMMENT BY INSTITUTE

The Institute considered that the changes to the Architects Act are very significant, and was given insufficient time (less than a week) to comment on these changes to the Architects Act. The Institute in its submission to the Parliamentary Transport and Public Works Committee stated, “as a matter of courtesy, a consultation document should have been prepared by the government to enable architects in Queensland via the Institute, to be given the opportunity to submit comments or feedback on the proposal to increase significantly the enforcement and disciplinary powers of the Board of Architects.”

The Transport and Public Works Committee only noted the above comment.

SPECIFIC ITEMS RAISED BY THE INSTITUTE

Immediate suspension of registration (s29A)

This power has been expanded. Under the new 29A(1) the board can immediately suspend an architect’s registration if the Board considers that this is needed in the public interest. In the original Act the immediate suspension was only when an architect fails to undertake a health assessment.

The Institute considered that this clause should be amended because as worded, it could be open to misuse and should only be used in very special cases where it is clearly obvious that immediate action is required.

The Transport and Public Works Committee took the view that “it is satisfied that the intent of the provision because any decision to immediately suspend an architect’s registration will require the Board to satisfy itself that the decision is being made in the public interest and therefore did not support the Institute concern.”

Audits of architects (Part 2B)

Under this arrangement the board may approve a program to audit 1 or more architects.

To avoid any criticism that certain architects are being targeted, the Institute proposed that that these audits be undertaken on a random selection basis similar to that used to confirm compliance with the CPD requirements.

Regarding the Institute’s concern the Department of Housing and Public Works stated that “the introduction of performance audit powers was recommended in the Building Confidence Report.”

The Transport and Public Works Committee took the view that it is satisfied that “regulatory practice regarding the proposed audit program will ensure coverage of areas of risk. The committee suggests that in order to avoid any perceived criticism the Board should clearly articulate the purpose, criteria used to select particular architects, and the particular areas to be audited.”



Investigation powers & entry by investigators (Division 7A & 7B)

These powers have been increased to allow (a). Entry by consent and (b). Entry under warrant.

Of particular concern for the Institute is new clause 62 k(1)(b) which allows the investigator to “inspect, examine or film any part of the place or anything at the place.”

The Institute took the view that this power is too wide. The investigator should only be allowed to investigate items, things, etc that are related to the issue to be investigate. Other material and/or information in the architect’s office should remain confidential.

The Department of Housing and Public Works noted “that if an investigator enters a place with the occupier’s consent, the occupier may give consent subject to conditions and this consent may be withdrawn at any time. If consent is not provided, an investigator must apply to a magistrate, who must be satisfied there are reasonable grounds for suspecting there may be evidence of an offence against the Act before granting the warrant.”

“The department also stated that it believes these provisions provide sufficient safeguards for an occupier while enabling an investigator to undertake a search to determine if there is evidence of an offence against the Act.”

Seized item by investigator during investigation (s62P)

The amendment allows the investigator to seize evidence and secure seized thing. If the seized item is equipment, the investigator is allowed if it is necessary to make it inoperable (see new 62P(2)(b)). The Institute noted that there is always a possibility that the equipment may have to be returned to the owner at a later date and should not be damaged, when secured

The Transport and Public Works Committee stated that it is “satisfied that the provisions for investigations and seized items contained in the clause are appropriate for their purpose.”

Compensation (s64)

When immediate suspension occurs under section 29A(1) or an investigation undertaken under Division 7A & 7B later proves to be based on incorrect information or evidence and as a result the architect’s reputation is seriously defamed, then the architect should be entitled to compensation. The existing section 64 Compensation only covers if a person incurs loss or damage (but not if reputation is defamed) because of the exercise or purported exercise of a power under division 6 or 7.

In response to AIA concerns, the Department of Housing and Public Works “noted the submitters’ comments but advised that this issue falls outside the scope of the Bill. However, the department did note that any alleged defamation in Queensland is addressed under the Defamation Act 2005.”

SUMMARY

The Transport and Public Works Committee in its report to Parliament, did not recommend any change to the proposed amendments to the Architects Act and did not accept any of the wording changes proposed by the Institute.