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## SUBMISSION TO PARLIAMENTARY COMMITTEE

### Building Industry Fairness (Security of Payment) and Other Legislation Amendment Bill 2020

#### AMENDMENT OF ARCHITECTS ACT 2002

##### Increased powers of BOAQ – General comments

The proposed changes to the Architects Act are significant. One would normally expect that a report would have been prepared to enable architects to give comments or feedback on the proposal to increase significantly the enforcement and disciplinary powers of the Board of Architects. The only explanation provided to-date is the comments in the Explanatory Notes to the Bill.

##### Immediate suspension of registration (s29A)

This power has been expanded. Under 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 when an architect fails to undertake a health assessment.

As worded, it is considered that this clause could be open to misuse and should only be used in special cases where it is clearly obvious that immediate action is required. To stress this concern, it is suggested that the clause be amended as follows

##### **Amendment of s 29A (Immediate suspension of registration)**

Section 29A(1)—  
*omit, insert—*

1. This section applies if the board reasonably believes **after carefully reviewing the relevant information**—
  - a. it is in the public interest to immediately suspend the architect's registration.

##### **Audits of architects (Part 2B)**

The board may approve a program to audit 1 or more architects.

It is suggested that these audits be undertaken on a random selection basis similar to that used to confirm compliance with the CPD requirement. This suggestion will avoid any criticism that certain architects are being targeted.

##### **Part 2B needs to be amended to include the above proposal.**

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

These powers have been increased to allow –

- a. Entry by consent
- b. Entry under warrant

62 k(1)(b) allows the investigator to “inspect, examine or film any part of the place or anything at the place.” 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 is to remain confidential. It is suggested that 62K be amended as follows –



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### **62K General powers**

(1) The investigator may do any of the following **procedures provided they are part of the issue being investigated** (each a *general power*)—

- c. search any part of the place;
- d. inspect, examine or film any part of the place or anything at the place;
- e. take for examination a thing, or a sample of or from a thing, at the place;

### **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 62P(2)(b)). There is always the possibility that the equipment may have to be returned to the owner at a later date and be not damaged when secured. It is suggested that 62P be amended as shown below -

#### **62P Power to secure seized thing**

1. Having seized a thing under this division, an investigator may—
  - a. leave it at the place where it was seized (the place of seizure) and take reasonable action to restrict access to it; or
  - b. move the thing from the place of seizure.
2. For subsection (1)(a), the investigator may, for example—
  - a. seal the thing, or the entrance to the place of seizure, and mark the thing or place to show access to the thing or place is restricted; or
  - b. for equipment—make it inoperable **but not damage it**; or

### **Seized item that becomes the property of board (62Y)**

In those cases where the seized thing becomes the property of the board, the board may deal with the thing as the board considers appropriate, including, for example, by destroying it or giving it away (see 62Y(1)). Destroying an item that is a usable equipment should not be allowed. It is suggested the wording of 62Y(1) be amended as follows -

#### **62Y How property may be dealt with**

3. The board may deal with the thing as the board considers appropriate, including, for example, by destroying it **(provided the thing is not usable equipment)** or giving it away.

### **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 damaged, then the architect should be entitled to compensation. The existing section 64 Compensation only covers if a person incurs loss or damage because of the exercise or purported exercise of a power under division 6 or 7. It is suggested that the existing Compensation clause be amended to include serious damage to one's reputation as follows

#### **64 Compensation**

1. This section applies if a person incurs loss or damage **or serious damage to a person's reputation** because of the exercise or purported exercise of a power under division 6 or 7.



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## **AMENDMENT OF BUILDING ACT 1975**

The proposed amendments are accepted

## **AMENDMENT OF BUILDING INDUSTRY FAIRNESS (SECURITY OF PAYMENT) ACT 2017**

### **Extension of project trust accounts to the private sector**

Included in the Bill is an amendment 215 that extends at a later date, project trust accounts to the private sector where the contract price is \$10 million or more. Based on advice to-date it is anticipated that the proclamation for this amendment is will be made on **1 July 2021**. This means the private sector has only 16 months to prepare this situation. It is considered a longer period is needed to ensure that the necessary education and training is undertaken by those who will be affected.

**It is proposed that the proposed date for proclamation of clause 215 be no earlier than 1 January 2022.**

### **Architects as superintendent**

Until the requirement to extend the project trust account system to the private sector, architects are not currently engaged as a superintendent for a trust account project.

Not covered in the current Building Industry Fairness (Security of Payment) Act and its proposed amendments is the situation that when project trust accounts are extended to the private sector, architects will in many cases be engaged as the superintendent of a private project that requires a project trust account. In this situation the architect will take on most of the responsibilities of the principal.

**There is a need for the BIF Act to be amended to cater for this situation before the project trust accounts are extended to the private sector.**

### **Architect as subcontractor**

One of the positive outcomes of the proposed amendments is when an architect is a subcontractor. Where an architect is novated to the head contractor or is engaged directly by a head contractor and the project requires a project trust, then the architect is a subcontractor and is entitled to the benefits of the project trust.

## **AMENDMENTS TO OTHER ACTS LISTED.**

Accepted.