

TASMANIA

ARCHITECTS AMENDMENT BILL 2020

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ARCHITECTS AMENDMENT BILL 2020

This Public Bill originated in the House of Assembly, and, having this day passed, is now ready for presentation to the Legislative Council for its concurrence.

SHANE DONNELLY, *Clerk of the House*
18 August 2020

(Brought in by the Minister for Building and Construction, the Honourable Elise Nicole Archer)

A BILL FOR

An Act to amend the *Architects Act 1929*

Be it enacted by Her Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

1. Short title

This Act may be cited as the *Architects Amendment Act 2020*.

2. Commencement

The provisions of this Act commence on a day or days to be proclaimed.

3. Principal Act

In this Act, the *Architects Act 1929** is referred to as the Principal Act.

*No. 42 of 1929

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4. Section 2 amended (Interpretation)

Section 2 of the Principal Act is amended as follows:

- (a) by inserting the following definitions after the definition of *Board*:

complaint means a complaint, made under section 20A, that has not been withdrawn;

complainant means a person who has made a complaint;

continuing professional development requirement means a continuing professional development requirement determined by the Board under section 20G;

- (b) by inserting the following definition after the definition of *member*:

professional misconduct, in relation to a person, means –

- (a) substantial or persistent unprofessional conduct by the person; or
- (b) conduct of the person, whether or not occurring in connection with the practice of architecture, that would justify concluding that the person

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is not a fit and proper
person to be an architect;

- (c) by omitting the definition of *Registrar* and substituting the following definitions:

Registrar means the Registrar appointed under section 7;

unprofessional conduct, in relation to a person, means conduct by the person, in the course of the practice of architecture by the person, that falls short of the standard of competence and diligence that a member of the public is entitled to expect of a reasonably competent person engaging in the practice of architecture.

5. Section 2A inserted

After section 2 of the Principal Act, the following section is inserted in Part I:

2A. Act does not affect mutual recognition

Nothing in this Act derogates from the effect of the *Mutual Recognition (Tasmania) Act 1993*, the *Mutual Recognition Act 1992* of the Commonwealth or the *Trans-Tasman Mutual Recognition Act 1997* of the Commonwealth.

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6. Section 4 amended (Constitution of Board)

Section 4 of the Principal Act is amended as follows:

(a) by omitting subsection (1) and substituting the following subsection:

(1) The Board consists of 5 members as follows:

(a) the President of the Institute;

(b) 2 persons appointed by the Governor, at least one of whom is recommended by the Minister as representing the interests of consumers;

(c) 2 practising architects elected by the council of the Institute in a manner determined by the council.

(b) by inserting in subsection (3) “or she” after “he”;

(c) by inserting in subsection (4) “or she” after “he”;

(d) by inserting in subsection (5) “or she” after “he”;

(e) by inserting in subsection (5) “or her” after “his”;

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- (f) by omitting from subsection (6) “him during his absence” and substituting “the member during the member’s absence”;
- (g) by inserting in subsection (6) “or she” after “he”;
- (h) by omitting subsection (8) and substituting the following subsection:
 - (8) A member of the Board is entitled to be paid the remuneration and travelling allowances fixed by the Minister from time to time in respect of that member.

7. Section 6 amended (Vacancies)

Section 6(1) of the Principal Act is amended as follows:

- (a) by inserting “or she” after “he”;
- (b) by inserting in paragraph (a) “or her” after “his”;
- (c) by inserting in paragraph (b) “or her” after “him”;
- (d) by inserting in paragraph (c) “or her” after “resigns his”;
- (e) by inserting in paragraph (c) “or her” after “under his”.

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8. Section 9 amended (Register of architects)

Section 9 of the Principal Act is amended as follows:

- (a) by inserting the following paragraph after paragraph (b) in subsection (2):
 - (ba) the class of registration and the conditions, if any, imposed on the registration; and
- (b) by inserting the following subsections after subsection (3):
 - (3A) If the registration of a person is cancelled under this Act, the Registrar must remove the name of the person from the register.
 - (3B) The Registrar, on the application of an architect, may, with the approval of the Board, alter the class of registration or the conditions imposed on the registration, or both, entered, in relation to the architect, in the register.
 - (3C) If the class of registration of an architect, or the conditions of registration of an architect, are altered under subsection (3B), the class or conditions are taken to be imposed, on the day on which the register is so altered, on the registration of the architect.

9. Section 11 substituted

Section 11 of the Principal Act is repealed and the following section is substituted:

11. Restoration of registration and name on register

(1) The Board –

(a) may register, and restore to the register the name of, any person whose registration has been cancelled, if the cancellation of the registration was in error; and

(b) if a magistrate so orders under the *Magistrates Court (Administrative Appeals Division) Act 2001*, must register, and restore to the register the name of, any person whose registration has been cancelled.

(2) The registration of a person, and the restoration of the name of the person to a register, under subsection (1) is to be done –

(a) if the Board so directs, or the magistrate so orders, without payment of any fee; or

(b) in any other case, upon payment of the prescribed fee.

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10. Sections 12, 13, 14, 15, 16, 17, 17A, 17B and 18 substituted

Sections 12, 13, 14, 15, 16, 17, 17A, 17B and 18 of the Principal Act are repealed and the following sections are substituted:

12. Application for registration

- (1) A person may apply to the Board for registration as an architect.
- (2) An application for registration is to be –
 - (a) made to the Board in a manner approved by the Board; and
 - (b) supported by the evidence that the Board requires; and
 - (c) accompanied by the prescribed fee, if any.

13. Determination of application

- (1) The Board, on receiving an application made by a person under section 12, may register, or refuse to register, the person as an architect.
- (2) The Board must register as an architect a person who has made an application under section 12 if the Board is satisfied that –
 - (a) the person is professionally competent under subsection (5) or

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- (6) to be registered as an architect; and
 - (b) the person is a fit and proper person to be registered as an architect; and
 - (c) the registration of the person is not suspended under section 20E(1)(g); and
 - (d) an order made under section 20E(4) that is in force does not prevent the registration of the person at the relevant time; and
 - (e) the person has the sufficient level of professional indemnity insurance, if any, that the person is required by section 16(1) to have.
- (3) Despite subsection (2), the Board may refuse to register a person as an architect if the Board is satisfied that the registration of the person as an architect under a law of another State or a Territory has been cancelled (or, in effect, cancelled) on grounds on which the registration of the person under this Act could be cancelled under section 20E.
- (4) The Board must refuse to register as an architect a person who has made an application under section 12 if the Board

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may not register the person under subsection (2).

(5) A person is professionally competent to be registered as an architect if –

(a) the person –

(i) holds the architectural qualifications that are prescribed by the regulations; or

(ii) has successfully completed a course of study that is recognised by the Board as meeting criteria prescribed by the regulations for the purposes of this paragraph; and

(b) the person has –

(i) passed an examination or interview, arranged or approved by the Board, to assess the person's competency to practise architecture; and

(ii) paid any fee, set by the Board, for that examination or interview.

(6) A person is professionally competent to be registered as an architect if the Board

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is of the opinion that the person, by reason of his or her ability and competence in the field of architecture, is a person whom it is appropriate to register as an architect.

- (7) If the Board refuses to register a person as an architect, the Board must give notice of the refusal in writing to the person, setting out the reasons for the refusal.
- (8) The Board –
- (a) may provide for different classes of registration; and
 - (b) may impose conditions on the registration of a person, and such conditions may, but are not required to, relate to the class of registration of the person.
- (9) Conditions of registration may relate to –
- (a) the duration of registration; and
 - (b) the aspects of the practice of architecture in which the person may be engaged; and
 - (c) the extent to which an architect must comply with any continuing professional development requirement; and

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- (d) any other matter that the Board considers to be appropriate.
- (10) The registration of an architect expires 3 years after the day on which the registration of the architect is entered on the register or such shorter period, if any, as may be specified in a condition imposed on the architect's registration.

14. Annual registration fee

- (1) Every architect must, on or before 31 January in each year, pay to the Registrar the prescribed registration fee in respect of that year.
- (2) If an architect fails to pay the prescribed annual registration fee within the time specified in subsection (1) or within such further time as the Board in any case may allow, the Board may, under this subsection, cancel the registration of the architect and remove the name of the person from the register of architects.
- (3) The Board must issue to an architect who has paid the prescribed annual registration fee for a year a statement specifying that the person is registered as an architect for the year.

15. Renewal of registration

- (1) An architect may, before, or within 30 days after, the expiration of his or her registration, apply to the Board for

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renewal of his or her registration as an architect.

- (2) An application under subsection (1) for renewal of registration as an architect is to be –
 - (a) made to the Board in a manner approved by the Board; and
 - (b) supported by the evidence that the Board may require; and
 - (c) accompanied by the prescribed fee, if any.
- (3) The Board may renew, or refuse to renew, the registration as an architect of a person who has made an application under subsection (1) for renewal of registration as an architect.
- (4) The Board must renew under subsection (3) the registration of a person as an architect if the Board is satisfied that the architect –
 - (a) is, under section 13, professionally competent to be registered as an architect; and
 - (b) has complied with each of the continuing professional development requirements, except if a condition of the registration of the person does not require compliance with such a

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- requirement or section 25A(8)
applies; and
- (c) is a fit and proper person to be registered; and
 - (d) has complied with all relevant Codes of Practice; and
 - (e) has the sufficient level of professional indemnity insurance, if any, that the architect is required by section 16(1) to have; and
 - (f) satisfies any other prescribed requirements.
- (5) The Board must refuse under subsection (3) to renew the registration of a person as an architect if the Board may not renew the registration of the person under subsection (4).
- (6) If the Board renews the registration of an architect under subsection (3), the registration is renewed from the day on which the architect's current registration would expire or has expired.
- (7) When the Board renews the registration of an architect under subsection (3), the Board may alter the class of registration or the conditions imposed on the registration, or both.

- (8) If the Board refuses under subsection (3) to renew the registration of a person as an architect, the Board must give notice of the refusal in writing to the person setting out the reasons for the refusal.

16. Insurance

- (1) The Board is not to register a person as an architect, or renew the registration of an architect, unless the Board is satisfied that the person has a sufficient level of professional indemnity insurance.
- (2) Subsection (1) does not apply in relation to a person who is to be registered, or re-registered as an architect, in a class of registration to which a determination under subsection (5) relates.
- (3) A person who is required under subsection (1) to have a sufficient level of professional indemnity insurance must notify the Board of any significant change in his or her professional indemnity insurance within 7 days of that change occurring.
- (4) Without limiting the circumstances in which the Board may be satisfied that a person has a sufficient level of professional indemnity insurance, a person is taken, for the purposes of this Act, to have a sufficient level of professional indemnity insurance if –

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- (a) he or she is employed or engaged by a company, firm or authority to carry out architectural work; and
 - (b) an insurance policy held by that company, firm or authority covers that work.
- (5) The Board may determine that all architects who are registered in a class of registration specified in the determination are not required to have a sufficient level of professional indemnity insurance.

17. Certificates of registration

- (1) The Board may, on the application of an architect and on payment of the prescribed fee, issue a certificate of registration in relation to the architect.
- (2) A certificate of registration is to be in the form approved by the Board.
- (3) A person must, as soon as practicable after ceasing to be an architect, return to the Board a certificate of registration in relation to the architect.

Penalty: Fine not exceeding 10 penalty units.

18. Right of appeal if registration or renewal of registration refused

A person who has been refused registration, or renewal of registration, under this Act on a ground other than that he or she has not passed the examination referred to in section 13(5)(b)(i), may appeal to the Magistrates Court (Administrative Appeals Division) under the *Magistrates Court (Administrative Appeals Division) Act 2001* against the decision to refuse registration, or renewal of registration.

11. Section 19 amended (Prohibited practices)

Section 19 of the Principal Act is amended as follows:

- (a) by inserting in subsection (1) “or she” after “that he”;
- (b) by inserting in subsection (1) “or she” after “which he”;
- (c) by inserting in subsection (3) “or her” after “on by him”;
- (d) by inserting in subsection (3) “or her” after “exercised by him”;
- (e) by inserting in subsection (3) “or her” after “done by him”;
- (f) by inserting in subsection (3) “or herself” after “himself”;

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- (g) by inserting in subsection (3)(c) “or she” after “he”;
- (h) by inserting in subsection (3A) “or herself” after “himself”;
- (i) by inserting in subsection (3A) “or she” after “he”;
- (j) by omitting subsection (4) and substituting the following subsections:

(4) A person must not contravene a provision of this section.

Penalty: In the case of –

- (a) a body corporate,
a fine not exceeding 150 penalty units; or
- (b) an individual, a fine not exceeding 75 penalty units.

(4A) If a person is found guilty of an offence against subsection (4) consisting of a breach of subsection (2), the court may direct the Board to remove the name of the person from the register.

12. Section 20 amended (Continued use of name)

Section 20 of the Principal Act is amended by inserting “, her” after “him”.

13. Part IVA inserted

After section 20 of the Principal Act, the following Part is inserted:

PART IVA – COMPLAINTS AND DISCIPLINARY MATTERS

20A. Person may make complaint

- (1) Any person (including the Board) may make a complaint against an architect –
 - (a) in respect of the architect’s conduct as an architect; or
 - (b) if the person is of the opinion that there are grounds on which an order could be made in relation to the architect under section 20E.
- (2) A complaint (other than a complaint made by the Board) is to be made to the Board and is to be lodged with the Registrar.
- (3) A complaint –
 - (a) is to be in writing; and
 - (b) must identify the complainant; and

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- (c) must contain particulars of the allegations on which it is founded.
- (4) The Board may require the complainant to provide further particulars of a complaint.
- (5) The Board may direct the Registrar to provide, to a person specified by the Board or to each member of a class of persons that is specified by the Board, reasonable assistance in making a complaint.

20B. Withdrawal and dismissal of complaint

- (1) A complaint may be withdrawn by the complainant at any time.
- (2) The Board may dismiss a complaint if the Board is satisfied that the complaint –
 - (a) is frivolous or vexatious or otherwise lacking in merit; or
 - (b) is in respect of a matter that has already been dealt with under this Act; or
 - (c) is trivial in nature.

20C. Board to notify person against whom complaint is made

- (1) As soon as practicable after a complaint is made, the Board is to give the architect against whom it is made written notice of –
 - (a) the making of the complaint; and
 - (b) the nature of the complaint; and
 - (c) the identity of the complainant.
- (2) A notice under subsection (1) must invite the architect to make, within the period, of not less than 7 days, that the Board specifies in the notice, the representations to the Board, in respect of the complaint, that the architect thinks fit.
- (3) Notice is not required to be given under subsection (1) if the giving of the notice will or is likely to –
 - (a) prejudice the investigation of the complaint; or
 - (b) place the health or safety of a person at risk; or
 - (c) place the complainant or another person at risk of intimidation or harassment.

20D. Board may investigate complaint

- (1) The Board may conduct an investigation of a complaint.
- (2) The Board may determine the manner in which a complaint is to be investigated and may appoint any person to assist in the investigation of a complaint.
- (3) Without limiting the generality of subsection (1) or (2), the Board may conduct a hearing for the purposes of an investigation of a complaint.
- (4) In conducting an investigation of a complaint, the Board may regulate its own proceedings and is not bound to observe the rules of evidence but may inform itself of any matter in the manner it thinks fit.

20E. Determination of complaint

- (1) The Board may, after completing an investigation of a complaint in relation to an architect, determine the complaint by making any one or more of the following orders:
 - (a) an order dismissing the complaint;
 - (b) an order administering a caution or reprimand to the architect;

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- (c) an order requiring the architect to complete a course of training specified by the Board;
 - (d) an order adding a condition to the registration of the architect, or adding to, or altering, the conditions of registration of the architect;
 - (e) an order requiring the architect to ensure the rectification of work, carried out by the architect, that was defective;
 - (f) an order requiring the architect to pay the reasonable costs of the Board related to carrying out the investigation of the complaint;
 - (g) an order suspending the registration of the architect for a period not exceeding the unexpired period of registration or until the architect complies with another order made under this subsection in relation to the architect;
 - (h) subject to subsection (3), an order cancelling the registration of the architect.
- (2) Without limiting the grounds on which an order suspending the registration of an architect may be made under

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subsection (1)(g), the registration of an architect may be suspended if –

- (a) the registration of the person as an architect under a law of another State or a Territory has been suspended or cancelled on grounds on which the registration of the person under this Act could be suspended or cancelled; or
 - (b) the person has engaged in professional misconduct or unprofessional conduct; or
 - (c) the person has failed to comply with any condition imposed on his or her registration.
- (3) The Board may only make an order under subsection (1)(h) cancelling the registration of an architect if –
- (a) the grounds on which he or she was taken to be professionally competent to be registered as an architect under section 13(5) no longer exist or never existed; or
 - (b) the architect has failed to comply with a summons issued to the architect under section 22; or
 - (c) the architect is convicted in Tasmania of an indictable offence that is punishable by imprisonment for 12 months or

- more, or is convicted elsewhere than in Tasmania of an indictable offence that, if committed in Tasmania, would be an offence so punishable; or
- (d) the architect has been registered by means of any false or fraudulent representation or declaration made either orally or in writing; or
 - (e) the architect is a mentally incapacitated person; or
 - (f) the architect has failed to comply with a continuing professional development requirement; or
 - (g) the architect does not have a sufficient level of professional indemnity insurance, within the meaning of section 16, that the architect is required to have; or
 - (h) the architect has engaged in unprofessional conduct; or
 - (i) the architect has failed to comply with an order made under subsection (1).
- (4) If an order is made under subsection (1) cancelling the registration of a person, the order must specify –

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- (a) that the person must not be registered under this Act during any period; or
 - (b) the period, of not more than 5 years, in which the person must not be registered under this Act.
- (5) The Board must, after determining a complaint under subsection (1), give notice in writing of that determination, any orders contained in the determination, the findings of the Board, and the reasons for the determination, to –
- (a) that person; and
 - (b) all other State, Territory and national registration authorities; and
 - (c) the Administrator, within the meaning of the *Occupational Licensing Act 2005*; and
 - (d) the complainant, unless the complainant is the Board.

20F. Appeal against determination of complaint

A person who has made a complaint, or an architect against whom a complaint is made, may appeal to the Magistrates Court (Administrative Appeals Division) under the *Magistrates Court*

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(Administrative Appeals Division) Act 2001 against –

- (a) the dismissal of the complaint under section 20B; or
- (b) the determination of the complaint, and the making of any order, under section 20E.

14. Section 20G inserted

Before section 21 of the Principal Act, the following section is inserted in Part V:

20G. Continuing professional development requirements

- (1) The Board may determine the continuing professional development requirements for the purposes of this Act.
- (2) As soon as practicable after determining under subsection (1) the continuing professional development requirements for the purposes of this Act, the Board –
 - (a) is to provide to architects a copy of the requirements or a notice of the determination of the requirements and of the electronic address at which a copy of the requirements may be viewed under paragraph (b); and
 - (b) is to ensure that a copy of the professional development

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requirements is available for viewing at an electronic address of the Board at all times while the requirements remain in force.

- (3) The Board may revoke a determination under subsection (1).
- (4) As soon as practicable after revoking under subsection (3) a determination under subsection (1), the Board –
 - (a) is to notify architects of the revocation of the determination; and
 - (b) is to ensure that notice of the revocation of the determination is available for viewing at an electronic address of the Board for not less than 12 months after the revocation is made.

15. Section 22 amended (Power to summon witnesses)

Section 22(2) of the Principal Act is amended as follows:

- (a) by inserting “or her” after “him”;
- (b) by omitting “penalty of \$20” and substituting “penalty of 125 penalty units”.

16. Section 25A inserted

After section 25 of the Principal Act, the following section is inserted in Part V:

25A. Transitional provisions

(1) In this section –

amending Act means the *Architects Amendment Act 2020*;

commencement day means the day on which section 14 of the amending Act commences.

- (2) A person who was, immediately before the commencement day, registered under this Act, is to be taken, on and from that day, to have had his or her registration renewed under this Act on that day.
- (3) If, before the commencement day, a person had paid the annual registration fee, referred to in section 11 as in force before that day, for a calendar year, the person is to be taken to have paid the annual registration fee under section 14 for that year.
- (4) A certificate of registration issued under this Act as in force immediately before the commencement day is to be taken to be a certificate of registration issued under this Act as in force after the commencement day.

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- (5) Part IVA of this Act as inserted by the amending Act applies in relation to an architect as if the Part, as so inserted, applied before the commencement day.
- (6) If an application for registration made under this Act as in force before the commencement day has not been determined by the Board before that day, the application is to be taken to have been made under section 12 on the commencement day.
- (7) An order made under section 16 of this Act as in force before the commencement day is to be taken after the commencement day to be an order made under section 20E.
- (8) The Board may not refuse under section 15(5) to renew the registration of an architect within the 2-year period after the commencement day on the ground that the person has not, within that period, complied with section 15(4)(b).
- (9) A complaint may be made in relation to an activity or behaviour of an architect whether the activity or behaviour occurred before or after the commencement day.

17. Section 26 amended (Regulations)

Section 26 of the Principal Act is amended by omitting paragraph (ba).

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18. Repeal of Act

This Act is repealed on the first anniversary of the day on which the last uncommenced provision of this Act commenced.