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**Competency Based Assessment
in Architecture**

A REFERENCE GUIDE FOR CANDIDATES

for the AACA

ARCHITECTURAL PRACTICE EXAMINATION (APE)

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Bibliography

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PREAMBLE

This document is a guide to the matters which may be referred to by the Assessors in conducting the Architectural Practice Examination. It is not an exhaustive statement of all the matters which may be raised; neither is it an indication of the depth and detail of the knowledge which may be required. It is intended only as an indication of the scope of the Examination and is not a substitute for the references set down in Section 6 of this document.

The document *NCSA GC A Guide for Candidates* should be consulted for details of the required practical experience and for details of the conduct of the examinations.

1 THE PROFESSION

1.1 HISTORICAL AND SOCIAL CONTEXT

- History of the profession in Australia
- The position of the profession in the community
- Responsibility to the community
The architect's obligation to clients and the community in the advancement of architecture and consideration of the environment: the balance of conflicting responsibilities
- Community influence
The role and responsibility of architects to exercise their skill and professional expertise for the benefit of the community as a whole

1.2 REGULATION OF THE PROFESSION

1.2.1 Architects Act and Regulations/By-laws:

Registration Authorities

NSW	New South Wales Architects Registration Board
Victoria	Architects Registration Board of Victoria
Queensland	The Board of Architects of Queensland
SA	The Architects Board of South Australia
WA	Architects Board of Western Australia
Tasmania	Board of Architects of Tasmania
ACT	ACT Architects Board
NT	Northern Territory Architects Board.

Main Object of the Architects Act

Protection of the public (not architects) by the maintenance of academic and other standards.

Function of the Architects Act

- Establish a regulatory authority to administer the Act, Regulations and By-laws
- Powers, functions and regulatory role (differs from state to state)
- Board members elected by the profession, or appointed by the Government, or both.

Prohibited Practices and Behaviour

For registered persons the requirements differ from state to state. However, provisions generally cover the committing of offences; misconduct in accepting secret commissions; failure to account, etc. codes of ethics exist in some states, not in others.

Prohibit unregistered persons from using the title 'Architect' and certain derivatives thereof, with exceptions, such as Naval Architects, Landscape Architects, Public Servants, etc. (Varies from state to state.) In some states, restrict the nature of practice to persons registered to perform certain prescribed work.

Practising through Companies

Rules relating to control, shareholding, and indemnity insurance (varies from state to state).

1.2.2 Professional Responsibility:

As a professional

In business and community activities maintain high ethical and legal standards.

1.3 REQUIRED QUALIFICATIONS FOR REGISTRATION

In each state and territory of Australia it is a legal requirement that any person using the title 'Architect', or offering services to the public as an architect, must be registered with the registration authority in that jurisdiction.

Generally, the following three steps outline the requirements for registration as an architect in a State or Territory of Australia:

1. an approved academic qualification in architecture **OR**
a pass in the National Program of Assessment (NPrA) **OR**
a pass in the relevant Registration Board Prescribed Examinations where offered

AND

2. a period of training through experience followed by successful completion of the AACA Architectural Practice Examination (APE)

AND

3. application for registration to the registration authority in the state or territory in which registration is sought.

1.4 REPRESENTATIVE BODIES

1.4.1 Architects Accreditation Council of Australia (AACA):

The Architects Accreditation Council of Australia is a national body formed by the Registration Boards of each state and territory for the consideration of matters of common concern or interest.

The main objective of the Council is the recognition, accreditation and coordination of acceptable academic standards and registration practices in the interest of national and international professional reciprocity in architecture.

1.4.2 Australian Institute of Architects (AIA):

Objectives include:

- To advance architecture
- To represent the profession
- To preserve professional integrity
- To serve and promote interests of the membership
- To foster public appreciation of architecture
- To advance the standards of architectural education, training, practice and research
- To recognise and reward architectural merit.

1.4.3 Association of Consulting Architects (ACA):

The Association of Consulting Architects was formed in July 1988 to represent architectural practices. It is a national organisation with members in all states and territories. It has a membership in excess of 600 practices.

One of ACA's major roles is to represent the interests of architectural practices on industrial bodies and to government as well as providing ongoing advice on industrial relations matters to its members.

1.4.4 Other Organisations

- Architects' Association of Australia (AAA)
- Commonwealth Association of Architects (CAA)
- International Union of Architects (UIA)

2 THE CONSTRUCTION INDUSTRY

2.1 PARTICIPANTS

2.1.1 Building Owners:

Referred to as the client, proprietor, principal or employer

May be an individual, a corporation, a partnership, an unincorporated association, a statutory corporation or a government department.

2.1.2 Contractors:

Builders, main contractors and subcontractors

May be an individual though more often will be a corporation.

2.1.3 Professions:

Architects, engineers (all types) and specialist consultants

May be a sole practitioner, a partnership or, where incorporation is permitted, a corporation.

2.1.4 Government:

Commonwealth, state and local

Often as a regulatory body controlling building, planning and construction. May also be the Client.

2.1.5 Others:

- Manufacturers and Suppliers
- Research Organisations
- Educational Institutions
- Financial Institutions
- Unions
- Media

2.2 SOME REPRESENTATIVE BODIES (may vary in the different jurisdictions):

- Property Council of Australia (PCA)
- Master Builders Associations (State) (MBA)
- Australian Institute of Building (AIB)
- Building Industry Sub-Contractors Organisation of Australia (BISCOA)
- Building Industry Suppliers Association (BISA)
- Building and Construction Council (NSW) (BCC)
- Building Science Forum (BSF)
- Australian Institute of Building Surveyors (AIBS)
- Local Government Association (LGA)
- Standards Association of Australia (SAA)
- Commonwealth Scientific & Industrial Research Organisation (Division of Building Research) (CSIRO)
- National Association of Testing Authorities (NATA)
- Australian & New Zealand Architectural Science Association (ANZASA)
- State and/or territory builders registration authorities

2.3 ROLE IN THE NATIONAL ECONOMY

The diversity of the industry, direct and indirect employers, consumers of goods and services, relationship to national economic growth and productivity and use as an economic regulator through monetary and fiscal policies.

2.4 ORGANISATIONS

2.4.1 Companies:

- **Australian Securities and Investment Commission Act 2001** maintains data base of Australian companies
- **Companies Act** (each state) controls the formation, management and transfer of ownership of companies
- **Business Names Act**
- **Limited Liability Company** - most common form
 - Liability is limited to the value of the share capital of the company
 - Members' (shareholders) liability is limited to the value of shares held. A company is a separate legal entity
- **Proprietary Company** (private) Pty Ltd
 - May not make public floats and share transfers are limited
 - Minimum of two, maximum of fifty members
- **Public Company**
 - Shares freely transferable, more strictly regulated
- **Memorandum and Articles of Association** (Constitution)
 - Set out the objects and powers of the company
 - Regulate the operation of the company including share transfers, meetings, powers and duties of directors and payment of dividends

2.4.2 Partnerships:

Relationship which subsists between persons carrying on a business in common with a view to profit

- Partnership Act (each state) sets out indicia of the existence of a partnership
- No form of agreement is prescribed
- Number of partners is limited to twenty by the Companies Act or fifty for some professions

2.4.3 Unincorporated Associations:

Informal group associated for some common purpose

- Some states have legislation allowing limited incorporation of such organisations
- Must know the constitution of the association, the authority of officers to incur debts, etc., and whether an adequate common fund exists for such liabilities.

2.5 INDUSTRIAL LAW

2.5.1 Federal System:

- Constitutional limitation

2.5.2 State/Territory Systems:

Wages Boards

- Each jurisdiction maintains an award fixing authority

2.5.3 The Unions:

- Association of Professional Engineers, Scientists and Managers, Australia
- Construction Forestry Mining and Energy Union
- Numerous Craft Unions
for example: The Amalgamated Society of Carpenters and Joiners (ASC & J)
Plumbing
Metalwork
Electrical

2.5.4 Legislation Affecting Employment:

- State Industrial Acts
- Annual Holidays Acts
- Long Service Leave Act
- Workers Compensation Act
- Occupational Health and Safety Act
- Superannuation Guarantee (Administration) Act

Legislation referred to above is subject to change from time to time.

3 CONSULTANTS

3.1 SOME REPRESENTATIVE BODIES - Institutes and Associations

- Consulting Engineers
Association of Consulting Engineers of Australia (ACEA)
Engineers Australia
- Quantity Surveyors
Australian Institute of Quantity Surveyors (AIQS)
- Surveyors
Australian Institution of Surveyors (AIS)
- Planners
Planning Institute of Australia (PIA)
- Landscape Architects
Australian Institute of Landscape Architects (AILA)

3.2 SELECTION

Matters for architect to check

- Capacity
- Past performance with other architects
- Indemnity insurance
- Size of firm related to services to be performed
- Experience in field of project
- Timetable and scope of services

3.3 APPOINTMENT

3.3.1 Engaged by Client (traditional model)

It is recognised that there are diverse practice models, but fundamentally the role of the architect involved in the traditional form of client/architect relationship is understood as follows:

- Architect, if principal consultant, to ensure that sub-consultants communicate through the architect to the client, and vice versa – including the issuing of:
 - Instructions
 - Accounts
 - Enquiries
 - Letters
- Conditions of engagement are consistent with those of the architect
- Fees are included in overall budget advice to client by architect
- Consultant professional indemnity insurance is in place and is adequate
- Any Conditions of Engagement that may be to the disadvantage of the client, such as Limitation of Liability Clauses, are drawn to the attention of the client
- Advantages
 - To client
 - Direct legal relationship with each consultant
 - To architect
 - Minimisation of professional liability
- Disadvantages
 - To client
 - More than one entity to account for damages suffered
 - To architect
 - Demarcation/co-ordination difficulties may arise

3.3.2 Engagement by Architect:

Architect to ensure in addition to items above:

- Liability of consultant is not limited by terms of engagement
- Method of resolving disputes is not in conflict with architect's Professional Indemnity Insurance
- Fee agreement as to amount and periods of payment is defined
- Client is aware of, and accepts liability for, increased architect's fees
- The arrangement is satisfactory to the architect's insurer

3.4 Types of Consultant – examples but not limited to

- Engineers
 - Civil, structural, mechanical, hydraulic, traffic and electrical
- Quantity Surveyors
- Landscape Architects
- Town Planners
- Land Surveyors
- Interior Designers
- Acoustic Consultants
- BCA Consultants

4 LEGAL ASPECTS OF ARCHITECTURAL PRACTICE

4.1 CONTRACTS

4.1.1 Essential Elements of contracts:

- intention
- offer and acceptance
- consideration
- capacity
- consent
- legality of purpose.

4.1.2 Building Contracts:

Characteristics:

- provisions to vary the contract work
- pay progressively on account
- complete within specified time
- extend time to complete
- rectify defective work
- settle disputes
- award liquidated damages for late completion
- determination of employment
- handle bankruptcy or insolvency of either party.

4.1.3 Standard Forms:

- ASIC suite of contracts
- Standards Australia – AS 4000 and AS 2124

4.1.4 Architect's Position (traditional model):

- Generally as the agent of the proprietor with a duty to act fairly between the parties
- Role defined in Conditions of Engagement

4.1.5 Contract Conditions:

Prescribe the procedures for provision of design, documentation and/or administration, the performance of obligations and the sanctions for non-performance

4.1.6 Legal Liabilities:

Refer to Section 4.3.1

4.2 TORTS

Definition:

A civil wrong, other than a breach of contract, the remedy for which is an action for damages

4.2.1 Negligence:

Elements:

- A duty of care recognised by the law
- A breach of that duty of care, i.e. failure to exercise the required standard of care
- Physical damage or injury

4.2.2 Negligent Misstatement:

A person in the business of giving advice or who undertakes an equivalent responsibility may be liable for losses suffered by another person who acted in reliance on negligently given advice irrespective of the existence of a contract between the persons concerned

4.2.3 Nuisance:

- Private
The indirect or consequential interference with the land of others or with their enjoyment or use of that land
- Public
A substantial and unreasonable interference with the comfort or convenience of the public

4.2.4 Trespass:

A direct interference with the land of others or with their use or enjoyment of the land

4.2.5 Defamation:

Statements (written or spoken) made by a person about another which tend to lower that person in the estimation of others by making them think less of the person

4.2.6 Liability of Occupiers:

To:

- contractors
- invitees
- licensees
- trespassers

For:

- dangerous property or operations

4.2.7 Vicarious Liability:

By employers to:

- employees
- independent contractors

4.2.8 Limitation of Actions:

By contract and by Common Law

4.3 LEGAL LIABILITIES OF THE ARCHITECT

4.3.1 In Contract:

Duty to client to exercise reasonable skill in the performance of professional activities

- Liability for six years from date of breach of contract (Signed)
- Liability for fifteen years from date of negligent act for contracts under seal (Deeds)

4.3.2 In Tort:

General duty of care to persons who may suffer loss or injury due to the negligent act of an Architect not exercising reasonable skill

- Liability for six years from date injury occurs
- Liability for financial loss for six years from the date that defect is discovered or becomes discoverable
- May vary in some jurisdictions

4.3.3 Insurance to Cover Liability:

- Professional Indemnity
- Workers Compensation
- Public Liability
- Refer to 4.6.1

4.3.4 Some Examples of Negligence:

- Failure to observe statutory requirements
- Failure properly to inspect
- Dimensional errors
- Structural inadequacy
- Omissions from drawings or specification
- Failure properly to estimate
- Design does not satisfy function
- Failure to undertake proper site investigations
- Exceeding authority

4.4 DISPUTE RESOLUTION

4.4.1 In Building Contract:

Disputes which arise in building contracts have traditionally been brought to finality by negotiation, arbitration or litigation

4.4.2 Common Procedures:

Common dispute resolution procedures are:

- negotiation
- facilitated negotiation (mediation)
- binding or non binding expert appraisal arbitration
- litigation

It is common for contracts to provide a hierarchy of procedures from voluntary informal (negotiation) to litigation (formal adversarial)

4.4.3 Mediation:

- Basis
 - Voluntary, as binding as parties wish it to be
- Purpose
 - Expeditious resolution of disputes not necessarily on legal principles seeks to preserve relationships
- Mediator
 - Frequently but not necessarily a building professional or lawyer
- Prerequisite
 - Mediation agreement conducted on a “without prejudice” basis
- Notice of dispute
 - The first step in the process
 - Generally some form of statement of issues will be required
- Preliminary Conference
 - Frequently conducted to refine the nature of the issues in dispute and to educate the parties about the mediation process
- Common disputes
 - Failure to meet payments
 - Faulty workmanship
 - Treatment of variations/time extensions
 - Valuation of contract sum adjustments

4.4.4 Adjudication

- Security of Payments legislation.
- Interim determination to facilitate the flow of funds within the industry.
- May vary between jurisdictions.

4.4.5 Arbitration:

- Statutory Basis
 - Arbitration Act (relevant state) - vary between states
 - Supreme Court Act (relevant state).
- Purpose
 - Private and speedier resolution of disputes (usually contractual).
- Arbitrator
 - In building disputes normally an Architect or Builder (or both), sitting in a judicial capacity
 - In RAI/MBA Contracts the Arbitrator(s) is (are) nominated by the Chair of the State Chapter of the Institute of Arbitrators and Mediators Australia.
- Normal prerequisite to Arbitration
 - Clause in contract referring to arbitration any disputes that may arise and cannot be resolved by the Architect
 - Note: in some jurisdictions there are restrictions on the reference of disputes to arbitration in contracts for residential building works.
- Notice of dispute
 - The first step in the process. Must be issued and served strictly in accordance with the conditions of contract.
- Subpoena(s)
 - May be issued through the Court on behalf of either party for production of documents and/or requiring the personal attendance of witnesses.
- Discovery and Inspection
 - Disclosure and examination of all documents held by the parties (usually before the hearing during pleadings).

- Preliminary Conference
 - The hearing first held for the purpose of arranging a timetable for the serving and receiving of pleadings on behalf of the parties, i.e. Claim, further and better particulars, Defence (and Counter claim, etc.). Also arranging hearing date and agreement and orders as to costs and lodgement of security deposits.

- Common Disputes
 - Failure to meet payments
 - Faulty workmanship
 - Valuation of contract sum adjustments.

4.4.6 Litigation

Formal and binding determination by Court.

4.5 COPYRIGHT

4.5.1 Owner of Copyright:

Architects normally maintain copyright in their plans and the works constructed from those plans. Some organisations require the architect to assign copyright as part of the fee for the architect's service.

4.5.2 Statute:

- Copyright Amendment (Moral Rights) Act (Commonwealth)
- Licence - implied
Architects give implied licence to owner when they prepare sketch plans and receive proper remuneration.
- Licence - not implied
Drawings prepared for specifically nominated purpose, e.g. development consent and a nominal fee charged, may not be used for other purposes without consent of architect.
- Copy
Proof must be given that a copy has been made of the drawings or of the special design embodied in the drawings or the building.

4.6 INSURANCE

4.6.1 Professional Indemnity:

- To cover loss or damage sustained by a Client through the negligent actions of the architect
- To cover loss or damage sustained by a third party through the negligent actions of the architect (torts)
- To enable the Architect to meet the cost of loss or damage through negligent acts of the architect and to protect the private assets of the Architect
- Excess (The amount the Architect elects to pay as the first part of any successful claim).

4.6.2 Workers Compensation:

- Architect usually not covered for activities outside of normal architectural practice e.g. construction management
 - Limit to activities covered by policy.
- Architect
 - Insurance required by statute
 - Architect must take out cover for employees for losses sustained by the employee resulting from accidents or illness caused by or through employment.
- Builder
 - As above, but applicable to employees of builder
 - Usual condition of contract
 - Architect should ensure that builder has such insurance by calling for receipts of policy payments.

4.6.3 Public Liability:

- Architect
 - To cover the liability of the architect to members of the public for injury or damage suffered as a result of the negligence of the architect, principally in the case of premises owned (or leased by the architect if a condition of lease) and through negligent acts of the architect and/or employees to members of the public.

- Builder
 - As above, but applicable to the builder
 - Usual condition of contract
 - Architect should ensure that builder has effected such insurance by calling for receipts of policy payments and a copy of the policy.

4.6.4 Loss of Profits:

Usually an extension to a fire/burglary policy to cover damage to or loss of work in progress and consequent loss of profits.

4.6.5 Life and Accident:

Sole practitioners, and partners in some cases, to cover loss through illness, injury or death.

4.6.6 Superannuation

For principals and employees.

4.6.7 Building Insurance:

To cover the cost of practice accommodation against fire, burglary, damage from external forces etc.

5 ARCHITECTURAL PRACTICE

5.1 MODES OF PRACTICE

Refer also to state and territory Architects Acts

5.1.1 Sole Practitioner:

- Liability
 - Liable for own acts and those of employees in the course of their duties
- Taxation
 - Personal income

5.1.2 Partnership:

- Liability
 - Joint and several liability of acts of all partners and of employees in the course of their duties
- Taxation
 - Partnership submits a return but is not subject to taxation. Individual partners taxed as sole principals above
- Statutory Requirements
 - Partnership, subject to provisions of Partnership Acts
 - Refer to 2.4.2
- Agreement
 - Partnership agreement usually covers:
 - division of profits
 - term of partnership
 - authority of partners
 - retirement of partners
 - method of valuing goodwill on retirement or death of partner
 - arrangements as to partners' drawings
 - arrangements as to capital and interest
 - nature of business
- Consult
 - Solicitor should be consulted before entering into a partnership and to frame any agreement

5.1.3 Company:

- Liability
 - Directors are not normally liable for the actions of a company unless there is specific provision in the relevant Registration Act; however a director may have a direct liability to a client in his professional role. One director is not usually personally liable for the actions of other directors. A company is liable in contract and tort to fullest extent of its assets
- Taxation
 - Directors' salaries: Unlike sole principals and partners, directors may be salaried and have tax deducted from salary as an employee.
 - Company taxed on profits; shareholders' dividends also taxable in addition to company tax. Dividend imputation
- Statutory Requirements
 - Company governed by Companies Act and in some States by the Architects Act
- Constitution
 - Acts of the company must be in accordance with the Memorandum and Articles of Association (the Constitution)
- Formation
 - Consult solicitor and accountant

5.1.4 Other Areas of Professional Activity:

- Government (all levels)
- Statutory corporations
- Public and private companies
- Institutions and associations
- Research organisations
- Academic and education bodies

5.2 ENGAGEMENT OF THE ARCHITECT

5.2.1 Contract of Engagement:

- Basic Contents
 - Scope of services
 - Information to be provided by client
 - Fees Breakdown for different stages
 - Time for payment
 - Travelling and other charges
 - Engagement of consultants
- Written Agreement
 - Frequently RAIA client/architect agreement
 - Alternatively agreements may be reached by negotiation and recorded as formal agreements prepared by others or by an exchange of letters
- Verbal Agreement only
 - Difficulties may be encountered through misunderstandings; difficult to prove agreement, but verbal agreement is binding
Note: Architects Acts in some jurisdictions make verbal agreements unenforceable by the Architect or make such agreements offences against the Act or associated legislation
- Where no concluded Agreement
 - Architect cannot rely on either time charge (AIA or other rate) or percentage scale (RIA Guide or other). Remuneration may have to be determined in Court

5.2.2 Fees:

- Percentage Fee
 - The percentage fee may be applied to either:
'Cost of works tendered'
'Cost of works – executed'
'Cost of works – estimated'
- Lump Sum Fee
 - The client and the architect may agree on a single lump sum fee for the Architect's services. This may be based on a percentage of estimated cost or on an assessment of the work involved
- Time Charges
 - Calculated on office overhead and profit assessment
- Combined Fee
 - The architect and client may agree on a percentage or lump sum to cover the Architect's services and all consultants' fees payable by the Architect
- Reimbursements
 - Expenses and overheads not forming part of the agreed fee.

5.3 VARIOUS CATEGORIES OF PRACTICAL EXPERIENCE

Mandatory categories of practical experience, i.e. Prescribed Competencies, are described in *NCSA GC A Guide for Candidates* and, set out in both the *NCSA LB Log Book of Experience in Architectural Practice* and the *NCSA LS Project Based Log Sheet*.

6 REFERENCES

The following list of references may be of assistance to Candidates preparing for the Examination

AIA

Advisory Notes - AIA Practice Services
Project Questionnaire
The Architect and Claims of Professional Negligence - M Chapman and R Beaton
AIA Revised Edition (1996) Guide letters as amended from time to time
AIA Office Manual Generic Manual to meet AS/NZ ISO 9000 – PC5090

GOVT (STATE/TERRITORY)

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