

ARCHITECTS' MODEL STATUTORY CODE OF PROFESSIONAL STANDARDS AND CONDUCT

**[Prepared jointly by the Architects Accreditation Council of Australia
and the Royal Australian Institute of Architects]**

NOTE: It is anticipated that the final document will include addendum highlighting the application of the code in each jurisdiction noting applicable legislation.

INTRODUCTION

- A. The following Code of Professional Standards and Conduct is intended as a model Code containing the core requirements to be adopted in each State and Territory to ensure harmony and consistency in the regulation of architects throughout Australia. It is anticipated that the Code will be supplemented as necessary to meet the requirements of each jurisdiction. In this regard, a principal characteristic of an effective and authoritative code is the importance of uniformity in content and application.
- B. The Code provides *clients* with a statement of the standards required of architects when engaged to provide architectural *services*. It reflects the principle that the public interest is advanced if all architects recognise that the fundamental and overriding obligation of a profession is to serve and promote the public interest. Whilst an architect has a duty to the *client*, the Code is premised on an overriding duty to the public. The application of the Code is subject to the application of the Architects Acts in each State and Territory.
- C. The Code is intended to inform and guide architects as to what is expected of them in their professional conduct and in the provision of *services* to *clients*. It will also enable *clients* to:
- 1.3.1 understand the standards expected of an architect and the level of accountability expected of them in the provision of services;
 - 1.3.2 understand the obligations imposed upon them as *clients*; and
 - 1.3.3 develop reasonable expectations of the *services* to be provided.

D. The Code is divided into two parts under the following headings:

PART A – PRELIMINARY

PART B – CODE OF PRACTICE

- E. PART A includes statements of general principles which are expressed as professional standards and detail specific goals towards which an architect should aspire in professional performance and behaviour. Part A describes the ethical principles which guide the application of the obligations imposed in PART B of this Code. PART A also defines the meanings of terms commonly used in the Code.
- F. PART B details the obligations imposed upon an architect relating to the provision of *services* and the conduct expected of an architect. Architects should use their best endeavors to meet those obligations by applying their professional judgement. The level of compliance required is that which a prudent and responsible architect would apply in the circumstances, and involves the exercise of professional judgement in individual circumstances. A *Professional Regulatory Body* reviewing compliance may consider that having regard to the circumstances, substantial compliance is sufficient.
- G. Failure to comply with the Code may be grounds for disciplinary action. In some instances, this may involve more than one of the professional standards detailed in Part A.
- H. It is intended that the Code should be both sufficiently specific to serve as a point of certainty and sufficiently general to be enduring.

[NOTE: It is anticipated that the Code may be adopted in each State / Territory as the basis for disciplinary proceedings [as contemplated for example by clause 32(b) of the Architects Bill 2003 (NSW)].

PART A: PRELIMINARY

1. OBJECTIVES OF THE CODE

1.1 The objectives of this Code are:

- 1.1.1 to define for the community, architects and *clients* the reasonable standards of conduct expected from architects in the provision of architectural *services*;
- 1.1.2 to facilitate the establishment of professional relationships between architects and their *clients* based on reasonable expectations of professional standards and cost of *services*; and

1.1.3 to promote community confidence in the architectural profession.

2. DEFINITIONS

2.1 In this Code, unless the context requires otherwise, the following terms have the following meanings:

2.1.1 *Architectural Practice*

the totality of acts, performance of services and provision of advice by an architect in or related to designing, constructing, procuring or using buildings.

2.1.2 *Client*

a natural and/or body corporate who together or individually, with or without payment, contract with an architect for the performance of services related to the design, construction procurement or use of buildings or for advice related to the design, construction procurement or use of buildings.

2.1.3 *Professional Regulatory Body*

the body lawfully entitled to register an architect.

2.1.4 *Services*

professional advice or other acts provided for or to a *client* by an architect as or related to *architectural practice*.

3. STATEMENT OF PROFESSIONAL STANDARDS

3.1 An architect must observe and apply the following professional standards in architectural practice:

3.1.1 PROFESSIONAL STANDARD 1

An architect has a fundamental and overriding obligation to serve and promote the public interest.

3.1.2 PROFESSIONAL STANDARD 2

An architect has a responsibility, where possible, to contribute to the quality and sustainability of the natural and built environment and the health and safety of the general public and in particular, to give proper consideration to the:

3.1.2.1 public interest;

3.1.2.2 natural environment whilst striving to improve the built environment and quality of life;

3.1.2.3 conservation of the nation's heritage; and

3.1.2.4 conservation of natural resources.

3.1.3 PROFESSIONAL STANDARD 3

An architect, in providing architectural *services* should endeavour to ensure that confidence in and respect for the profession of architecture is engendered. An architect must act honestly and fairly, and with competence and diligence in the provision of architectural *services*.

3.1.4 PROFESSIONAL STANDARD 4

An architect must demonstrate a consistent pattern of reasonable care and competence and must apply and improve the technical knowledge and skill which is ordinarily applied by architects of good standing practising in the same locality.

3.1.5 PROFESSIONAL STANDARD 5

An architect, in carrying out professional activities, must not discriminate on the basis of race, religion, gender, national origin, age or sex.

3.1.6 PROFESSIONAL STANDARD 6

An architect has a responsibility to communicate with the public in a professional and responsible manner.

3.1.7 PROFESSIONAL STANDARD 7

An architect has a responsibility to other architects in maintaining standards and integrity within *architectural practice*.

PART B: CODE OF CONDUCT

4. SERVICE AND CONDUCT STANDARDS

- 4.1 An architect must act with integrity and reasonable care in the provision of *services* and conform with the normal standard of the practice of architecture, applicable laws, statutory rules, codes, published standards applicable to any professional services provided and published eligibility standards.

[NOTE: Eligibility standards are defined by reference to the National Competency Standards in Architecture published on behalf of the Architects Board or Architects Registration Board in each State and Territory by the Architects Accreditation Council of Australia.]

- 4.2 An architect:

- 4.2.1 must not, without the informed consent of a person who may be detrimentally affected by the conduct of the architect, enter into a contract or like arrangement with a *client* or employer where an actual or potential conflict of interest would exist or would be considered likely to arise; and
- 4.2.2 must inform the *client* or employer of the existence or likelihood of conflict between the architect's personal or business interests and those of the *client* or employer.

- 4.3 An architect should seek to provide *services* with reasonable promptness according to time programmes agreed for the provision of the *services*, or in a reasonable time as far as is permitted by the provision of instructions to the architect by the *client*.

- 4.4 An architect must act with fairness and impartiality in administering building contracts and without giving or receiving inducements to show favour, nor show disfavour to any party to the contract.

- 4.5 An architect must withdraw from the provision of any *services* where the architect reasonably believes in the architect's professional judgement that the provision of the *services* would require the architect to act in:

- 4.5.1 a manner contrary to the public interest; or
- 4.5.2 breach of the Architects Act or Regulations; or
- 4.5.3 breach of this Code.

- 4.6 An architect must express opinions or make public statements in an honest and truthful manner and on the basis of adequate knowledge and experience.
- 4.7 An architect must during the performance of services for a *client* and for six years after the completion of *services* maintain records of correspondence, documents sent and received, financial transactions, *client* instructions and meetings related to *services* provided to *clients*, photographs of works in progress, project journals or diaries or the like and drawings and other documents whether in electronic or other form. If in electronic form, an architect should, maintain adequate copies to enable records to be restored should one copy be destroyed or damaged.
- 4.8 An architect must disclose to a client or to a prospective client if there has been any payment or other advantage for any endorsement given or comment made about products or *services* likely to be used in connection with the design, construction, use or occupation of buildings. If such endorsement or comment is made in an advertisement or any publication the disclosure must be included in the advertisement or published matter.
- 4.9 An architect must not sign as checked, approved or supervised any drawings or other documents which the architect has not checked, approved or supervised.
- 4.10 An architect must not permit the architect's name to be used in relation to any work, document or publication to misleadingly imply authorship of, responsibility for or agreement with the content or form of the work, document or publication.
- 4.11 An architect should not offer to *clients*, without proper disclosure and the informed consent of the client, *services* outside the architect's skill, competency or experience or that of other architects under the architect's supervision.

5. CLIENT RELATIONSHIPS

- 5.1 An architect should provide sufficient relevant information with reasonable promptness to enable a *client* or prospective *client* to make an informed decision in relation to the provision of *services* and in particular, seek to:
- 5.1.1 ensure that all information and material provided is truthful, accurate and unambiguous and relevant to the *client's* interests;
 - 5.1.2 ensure that all information and material provided does not encourage unrealistic expectations on the client's part; and
 - 5.1.3 avoid making misleading or false comparisons with *services* provided by competitors.

- 5.2 Where an architect intends to provide *services* to a *client*, the architect must enter into an agreement with the *client* in writing providing the:
- 5.2.1 specific requirements as to the services to be provided to the client;
 - 5.2.2 scope and nature of the *services* to be provided;
 - 5.2.3 cost of the *services* and arrangements for payment, including where possible estimates of disbursements and arrangements for their payment;
 - 5.2.4 method of reporting to the *client* on the provision and progress of the *services*;
 - 5.2.5 registration number of the architect responsible for providing the *services*;
 - 5.2.6 arrangements for:
 - 5.2.6.1 obtaining the *client's* authorisation to proceed with *services* as described in the agreement;
 - 5.2.6.2 obtaining the *client's* authorisation to change or amend the *services* described in the agreement and fees arising from such change; and
 - 5.2.6.3 the application of any pre-existing agreement to the provision of other *services* for the *client*.
 - 5.2.7 dispute resolution methods to be used between the architect and the *client* as required by clause 8 of this Code;
 - 5.2.8 termination of the *services* by either party for specified or other reasons;
 - 5.2.9 arrangements for the withdrawal of a *service* or *services* pursuant to clause 4.5 of this Code;
 - 5.2.10 contacting the architect at the place of business of the architect within normal business hours.

[NOTE: Clause 5.2 provides that a client/ architect agreement must be in writing. There will be circumstances in which it is unreasonable or impractical to enter into a formal written client/architect agreement. Provision should be made for exemption from this requirement by the *professional regulatory body* in circumstances such as where:

- (a) the value of the services is to be provided within a short time frame (as determined by the *professional regulatory body*);
- (b) the value of the services is less than \$1,000.00 (or such other amount as the *professional regulatory body* may determine);

- (c) services are provided without payment;
- (d) services are provided on an on-going basis or to a repeat client; or
- (e) in such other circumstances as the *professional regulatory body* may determine from time to time.

The intention of this exemption provision is not to fundamentally alter the obligations of the architect to the client, otherwise than in relation to the necessity for a written client/architect agreement.]

- 5.3 An architect in charge of a *client's* project should maintain a thorough knowledge of the *services* to be provided and of matters relating the performance of those *services*.
- 5.4 An architect should take reasonable steps to ensure that the *client* is informed of decisions required of the *client* in respect of the *services*.
- 5.5 An architect must, in relation to an agreement for *services*, ensure that the cost of the *services* reflects the fee structure detailed in the agreement, is fair and accurately reflects the amount of work done or to be done for the *client* in the provision of the *services*.
- 5.6 An architect must not disclose to any person any information, agreed or understood to be confidential, which is acquired from or provided by the *client* in the course of the provision of the *services* unless authorised to do so by the *client* in writing or as required by law.
- 5.7 An architect should promptly advise the *client* in writing of any thing which would or would be likely to prevent the *client's* instructions related to the *services* being followed, including the obligation of an architect to withdraw from the provision of *services* in accordance with clause 4.5 of this Code.
- 5.9 An architect should respond to a *client's* reasonable requests for information or other communications made in the course of providing the *services* with reasonable promptness.
- 5.10 Unless otherwise expressly agreed between the architect and the *client*:
 - 5.10.1 an architect should provide the *client* with regular statements of account for the *services* performed; and
 - 5.10.2 if a retainer or deposit is to be paid to an architect for *services* that retainer or deposit should not be more than 10% of the reasonably expected or agreed total fee for the *services* or related *services*.
- 5.11 An architect should ensure that an architect of suitable skill and experience is in charge of a client's project in any agreement for the provision of *services*.

- 5.12 An architect should where practicable, and during normal business hours, allow *clients* reasonable opportunity to inspect documents produced in performance of the *services* and records relating to the *services*.

6. INSURANCE

- 6.1 Subject to the Architects Act, an architect must maintain professional indemnity insurance appropriate for the *services*, and if requested by the *client*, provide to the *client* information relating to the insurance maintained by the architect relating to the *services*.

7. CONTINUING PROFESSIONAL EDUCATION

- 7.1 An architect must maintain and improve skills and knowledge necessary for the provision of the *services* through structured programmes of professional education or other approved means as determined by the *professional regulatory body*.

[Note: This clause may need to be reviewed once the requirements for compulsory professional development have been settled by the joint AACA/RAIA working group on professional development.]

8. DISPUTE RESOLUTION

- 8.1 As required by clause 5.2.7, an architect must include in an agreement provisions in the following terms:
- 8.1.1 If either party is dissatisfied with an act or omission of the other party in relation to the agreement that party may give a written notice of dispute to the other party within 14 days of the act or omission;
- 8.1.2 A notice of dispute must include sufficient information for the other party to understand and assess the issue/s;
- 8.1.3 Within 7 days of the other party receiving a notice of dispute the parties must meet in an attempt to clarify and resolve the issue;
- 8.1.4 If the issue is not resolved within 21 days of receipt of a notice of dispute by a party, or such later period as the parties may agree, and the dissatisfied party notifies the other party that it wishes to continue to pursue the issue/s to which the notice of dispute refers, the parties agree to refer to the matter issue/s to an independent expert for assessment and to pursue mediation or other agreed

dispute resolution process prior to the institution of court proceedings. An agreed dispute resolution process may, with the consent of the parties, include any process or procedure of an industry organisation or government agency.

- 8.1.5 So far as is practicable, contractual obligations will continue to be performed by both parties during any dispute resolution process. Where an issue in a dispute relates to non payment of fees or insolvency on the part of the client, an architect may discontinue the architect's obligations to the client in accordance with the agreement.
- 8.1.6 Where an issue in a dispute relates to non-payment of fees or insolvency on the part of the client, an architect may institute court proceedings without having referred the issue to any dispute resolution process.

9. COMMUNICATION WITH THE PUBLIC

- 9.1 An architect must ensure that the architect's qualifications, experience and authorship are stated accurately.
- 9.2 An architect must ensure that the architect is identified clearly and accurately and on stationery, sign boards, public notices and in publications.
- 9.3 An architect must ensure that the architect's registration number be included, where applicable, on stationery, sign boards, public notices, and advertisements placed by the architect.
- 9.4 An architect should take all reasonable steps to ensure the attribution of participants in all awards or honours received for the provision of *services* is accurate.
- 9.5 In the conduct or promotion of an architect's practice, an architect must not accept an engagement to provide architectural *services* to a client, who has been introduced or referred to the architect by a third party to whom the architect has given or offered to provide a fee, benefit or reward for the referral of clients or potential clients, unless the architect has first disclosed to the client referred the architect's arrangement with the third party.
- 9.6 An architect must not act for a client in any dealing with a third party from whom the architect may receive, directly or indirectly, any fee, benefit or reward in respect of that dealing unless the:
 - 9.6.1 architect is able to advise and, in fact, advises the client free of any constraint or influence which might be imposed on the architect by the third party;

- 9.6.2 architect's advice is fair and free of any bias caused by the architect's relationship with the third party;
- 9.6.3 nature and value of any fee, benefit, or reward, which may be received by the architect, are:
 - 9.6.3.1 fair and reasonable, having regard to objective commercial standards; and
 - 9.6.3.2 are disclosed fully in writing to the client before the dealing is commenced.

10. OBLIGATIONS TO OTHER ARCHITECTS AND TO THE PROFESSION OF ARCHITECTURE

- 10.1 An architect should maintain a high standard of integrity and act honestly and fairly, and with competence and diligence in dealings with other architects.
- 10.2 An architect should act at all times in a manner which sustains the confidence of the public in the profession of architecture.
- 10.3 An architect should take reasonable steps, given the architect's circumstances and opportunities, to promote the advancement of architecture and reflect the standards of architectural proficiency, education, research and practice.
- 10.4 An architect should take reasonable steps to inform the client of the obligation the client may have in respect of moral rights' arising from the proposed *services*.
- 10.5 An architect should have due regard to those Codes by which associated professional consultants are obliged to conduct themselves.
- 10.6 As a professional courtesy, an architect should, when assuming responsibility for the provisions of services from another architect, ensure that the architect is reasonably informed as to the nature of the *services* to be provided and the nature of the agreement between the *client* and the former architect.

PROVISIONS SPECIFIC TO NEW SOUTH WALES

Definitions

2.1.3 *Home Design*

Architectural practice related to a building or buildings or associated buildings (such as outhouses) or the intended or current use of a building or buildings or associated buildings as a dwelling or dwellings for their own habitation by a client who is a natural person or members of that *client's* family or a person or persons for whom the *client* is an agent for this purpose.

Contractual Dispute Resolution

8.2 Notwithstanding clause 8, an architect must ensure that in home design contracts provisions in the following or equivalent terms are included in any contract relating to the provision of *services*:

8.2.1 A party will notify the other in writing when a dispute arises between them;

8.2.2 The parties will confer promptly to clarify the nature and extent of the dispute and seek to resolve the dispute.

8.2.3 Should resolution not achieved, the parties will within 7 days seek an opinion from an independent expert appointed by the President of the Architects Registration Board in relation to the issues in dispute and the nature of the rights and responsibilities of the parties. Upon receipt of the written opinion of the independent expert by both parties the parties will within 7 days seek mediation of the dispute through a Community Justice Centre or similar third party mediation process.

8.2.4 Where an issue/s in a dispute relates to non payment of fees or insolvency on the part of the client an architect may institute court proceedings without having referred the issue/s to any dispute resolution process.