

Architects Act 2004

In order for an architectural corporation to be granted a licence, all architectural work carried out by the corporation has to be done under the direct control and supervision of a registered person (Regulation 15(c)), and a registered person has to have ultimate responsibility for the architectural work done by the corporation (Regulation 15(e)). Architects that take on ultimate responsibility for the architectural work done by a corporation are referred to as 'responsible architects'.

Ultimate Responsibility

The expression 'ultimate responsibility' is limited in its application to 'architectural work done by the corporation'. It does not apply to other conduct of the corporation, for example, an offence under section 56 of the Architects Act 2001(Act).

The preamble to the Architects Act 2004 (Act) states that its purposes include "... to provide for the regulation of the practice of architecture...", and so it would be unusual to interpret the Act as having been intended to interfere in contractual relationships or civil disputes between architects and their clients.

A licensed corporation may be liable in a civil action for misleading or deceptive conduct under the Trade Practices Act or the Fair Trading Act; however, a responsible architect would not be personally liable (under those statutes) for loss suffered unless he or she was knowingly concerned in the conduct giving rise to the claim. The expression 'ultimate responsibility' in the Act relates to the architectural work done by the corporation for the purposes of the Act, and not to liability for civil claims.

Liability for Responsible Architects

At law the persons liable for damages for work performed without requisite skill and care would be the contracting corporation and the person who performed the work. There is no difference between the liability of a responsible architect and a registered architect in terms of civil claims by clients.

They are each liable if their conduct infringes a right and causes loss or damage. A responsible architect is not liable simply because they are the responsible architect. They will only have a liability for civil claims if they were involved in the conduct which gives rise to the claim.

The liability of a responsible architect is not affected by their resignation from the corporation.

Length of Liability

For civil claims, the liability is for 6 years from the date of the breach in the case of a contractual claim, and for 6 years after damage is suffered by the client for other claims.

For offences under the Act, the liability is for 12 months after the date of the offence pursuant to section 21 (2) of the Criminal Procedure Act 2004.

Impact of Other's Actions

If the licence of a corporation was suspended due to the actions of the first responsible architect or an employed architect, the registration of a second responsible architect would not be affected. Any registered architect could continue to practise, even if they are a director, as their status would not be affected by a conviction of the corporation, provided they were not involved in the breach.

Disclaimer

The content of this information sheet is based upon the best information available at the date of issue and is subject to change without notice. The Board does not accept any liability to any person for the information or the use of this information. Persons requiring an interpretation of the meaning of the Architects Act or Regulations should seek their own legal advice.

Relevant Sections from the Architects Act 2004 and Architects Regulations 2005

Architects Act 2004

31. Licensing of corporations

The Board may grant a licence to a corporation that—

- (a) applies to the Board in accordance with section 33; and
- (b) satisfies the Board that the corporation complies with the requirements prescribed by the regulations for the purposes of this section.

32. Conditions on grant of licences or renewal of licences

1. The Board may grant a licence or renew a licence subject to the conditions that the Board specifies.
2. Without limiting subsection (1), the Board may impose as a condition of the grant of a licence or the renewal of a licence —
 - (a) a requirement to give the Board advice or information about the registered person who has ultimate responsibility for the architectural work done by the corporation;
 - (b) that insurance cover be in effect in respect of the corporation's civil liability for anything done or omitted by the corporation as an architect; and
 - (c) that the insurance cover be of a standard or for an amount prescribed by the regulations.

76. Liability of certain officers of body corporate: offences

1. If a body corporate is charged with an offence under this Act, every person who was an officer of the body corporate at the time of the alleged offence may also be charged with the offence.
2. If a body corporate and an officer are charged as permitted by subsection(1) and the body corporate is convicted of the offence, the officer is to be taken to have also committed the offence, subject to subsection (5).
3. If a body corporate commits an offence under this Act, then, although the body corporate is not charged with the offence, every person who was an officer of the body corporate at the time the offence was committed may be charged with the offence.
4. If an officer is charged as permitted by subsection (3) and it is proved that the body corporate committed the offence, the officer is to be taken to have also committed the offence, subject to subsection (5).
5. If under this section an officer is charged with an offence it is a defence to prove—
 - (a) that the offence was committed without the officer's consent or connivance; and
 - (b) that the officer took all the measures to prevent the commission of the offence that he or she could reasonably be expected to have taken having regard to the officer's functions and to all the circumstances.

Architects Regulations 2005

15. Licensing requirements

For the purposes of section 31(b), the requirements in relation to a corporation are that —

- (a) the corporation's constitution is, or the rules governing the corporation's internal management are, acceptable to the Board;
- (b) each of the directors of the corporation is acceptable to the Board;
- (c) all architectural work to be done by the corporation is to be done under the direct control and supervision of a registered person who is an officer or employee of the corporation;
- (d) the means by which the corporation proposes to comply with paragraph (c) are acceptable to the Board;
- (e) the person who will have ultimate responsibility for the architectural work to be done by the corporation is a registered person who is an officer or employee of the corporation; and
- (f) the name under which the corporation proposes to carry on the practice of architecture is acceptable to the Board.