

## Architects Act 2004

Under the Architects Act 2004 (Act) only certain individuals and corporations are allowed to call themselves an architect in Western Australia. This protection of the title "architect" is for the purposes of protecting consumers of architectural and related services in Western Australia.

This information sheet relates to sections 64, 66, 67 and 70 of the Act, which deals with individuals or corporations who represent to clients and the public that they are architects or architectural corporations when they are not entitled to do so i.e. they are not registered or licensed with the Architects Board of WA (Board).

## Use of the Title Architect

### *Architects*

Only skilled and experienced professionals who are registered with the Board may use the title architect. Architects must have gained approved professional tertiary qualifications or equivalent, have undertaken a minimum two year period of practical experience, and have successfully completed oral and written examinations before becoming eligible to apply for registration and qualify to use the title architect.

### *Architectural Corporations*

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 an architect, and an architect has to have ultimate responsibility for the architectural work done by the corporation. Architects that take on these responsibilities are referred to as "responsible architects".

The registration status of an individual, and the licence status of a corporation and its responsible architect/s, can be checked by visiting the Board's website [www.architectsboard.org.au](http://www.architectsboard.org.au) or by contacting the Board office on (08) 9287 9920.

## Restricted Words

In Western Australia the words "architect", "architects", "architectural", "architecture", and any abbreviation or derivative of these words are restricted words. This means that only people registered and corporations licensed by the Board can use a restricted word as part of their title, business name or description.

## Representing as an Architect

### *False Description – Pretending to be an Architect*

An individual who is not a registered architect, must not:

- (a) use a restricted word as part of their title, business name or description;
- (b) hold himself or herself out as being an architect, a person who practises architecture or a person who is qualified to practise architecture; and
- (c) in any way imply that the person is an architect, a person who practises architecture or a person who is qualified to practise architecture.

Likewise a corporation that is not a licensed corporation, must not use a restricted word as part of its title, business name or description; hold itself out as being an architect; or in any way imply that it is an architect. The penalty for such an offence is \$5 000 in the first instance, and \$10 000 thereafter.

### *Making or Publishing Certain Statements*

A person must not make, publish or allow information that states or implies that that person, or another person, who is not registered is an architect, practises as an architect or undertakes or is willing to undertake work as an architect. The penalty for breaching this section of the Act is \$5 000.

### *Falsely Representing*

The Act also prohibits a third person from representing an individual or corporation as an architect or architectural corporation if there is a reasonable likelihood that the work to be done will not be controlled or supervised by an architect. In addition, a person must not falsely represent any person as being the architect referred to in a certificate of registration or licence documents. The penalty for each offence is \$5 000.

Section 67(5) of the Act allows a person that is induced to enter into a contract with a service provider by a false representation that work will be performed by an architect may, by notice in writing, withdraw from the contract before completion without being liable for damages. The Board has no role to play in any part of the process under section 67(5).

## Exemptions for Certain Titles and Descriptions

The following titles or descriptions are allowed under the Act:

- architect registered in a place other than Western Australia if that person is registered in that place, is in Western Australia temporarily and does not design or superintend the erection of any building whilst in Western Australia;
- naval architect and naval architecture;
- landscape architect and landscape architecture;
- golf course architect and golf course architecture;
- architectural drafter and architectural drafting; and
- architectural technician or architectural assistant who provide support services to an architect.
- Other exemptions include the use of a restricted word:
  - in relation to the manufacture, supply or naming of products or materials for use in the practice of architecture or the construction of buildings;
  - in the title or description of an educational institution in relation to the provision of education in architecture; and
  - in circumstances where the word is clearly not connected with the design and construction of buildings.

## Taking Action

The Board routinely receives information about possible breaches of the Act in media reports, signage, business stationery, advertising, websites or entries in telephone or other directories. Where there is written evidence of a potential breach of the Act, the Board will write to the individual or organisation informing them that they may be in breach of the Act. The individual/organisation will be asked to provide a written response within 14 days explaining how the breach occurred and outlining the steps they have undertaken to address the matter. Alternatively, an undertaking to cease any alleged offence under the Act can be completed and returned to the Board by the due date.

Where the individual/organisation provides a satisfactory written response or undertaking, and appropriate steps to remedy the issue have or are being undertaken, the matter will be closed and the individual/organisation informed accordingly. If a satisfactory response is not received, the Board may request further information from the individual/organisation either itself or via its solicitor, or resolve to appoint an investigator, commence a prosecution or dismiss the matter.

Where an individual/organisation continues to breach the Act, the Board may seek advice from its solicitors on whether there is a reasonable prospect of a conviction. The Board may prosecute if an offence may have been committed and there is a reasonable prospect of a conviction. In these circumstances, the Board prosecutes breaches of the Act in the Magistrates Court.

The Board may decide not to prosecute if a prosecution is not in the public interest such as:

- the offence is stale;
- the matter is trivial in nature;
- a prosecution might bring the law into disrepute;
- the offender has already been dealt with for other offences and so further prosecutions are not appropriate; and
- the Board has limited resources and those resources can be more effectively expended elsewhere.

The Board may publish a report, including the name of the offender, of successful prosecutions.

### 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

### 64. False descriptions; pretending to be an architect

1. A natural person, other than a registered person, must not—
  - (a) use a restricted word as part of the person's title or description;
  - (b) hold himself or herself out as being an architect, a person who practises architecture or a person who is qualified to practise architecture; or
  - (c) in any way imply that the person is an architect, a person who practises architecture or a person who is qualified to practise architecture.
2. A body corporate, other than a licensed corporation, must not—
  - (a) use a restricted word as part of its title or description;
  - (b) hold itself out as being an architect; or
  - (c) in any way imply that it is an architect.
3. A person must not—
  - (a) use a restricted word as part of the title or description of a firm;
  - (b) hold out a firm as comprising one or more architects; or
  - (c) in any way imply that a firm comprises one or more architects,

unless at least one of the members of the firm is a registered person or a licensed corporation.

Penalty applicable to subsections (1), (2) and (3):

\$5000 for a first offence.

\$10000 for a second or subsequent offence.

### 66. Making or publishing certain statements or documents

A person must not make or publish, or permit the making or publishing of, a statement or document that states or implies that that person, or another person, who or which is not registered or licensed—

- (a) is an architect;
- (b) practises as an architect; or
- (c) undertakes or is willing to undertake work as an architect.

Penalty: \$5 000.

### 67. Falsely representing that work will be done by an architect

1. In this section —

#### **responsible person —**

- (a) in relation to a service provider that is a natural person, means that person;

- (b) in relation to a service provider that is a firm, means each partner of the firm;
- (c) in relation to a service provider that is a body corporate, means each officer of the body corporate;

service provider means a natural person, firm or body corporate.

2. A person must not use a restricted word in relation to services offered by a service provider unless there is a reasonable likelihood that the work to be done by or on behalf of the service provider will be controlled and supervised by a registered person.
3. A person must not state or imply that work to be done by or on behalf of a service provider will be done or controlled and supervised by an architect, unless there is a reasonable likelihood that the work will be controlled and supervised by a registered person.
4. If—
  - (a) a restricted word is used in relation to services offered by a service provider or it is stated or implied that work to be done by or on behalf of a service provider will be done or controlled and supervised by an architect; and
  - (b) a responsible person for the service provider becomes aware of a reasonable likelihood that the work to be done by or on behalf of the service provider will not be controlled or supervised by any registered person,

the responsible person must, as soon as practicable, ensure that the client is so informed.

5. A person who enters into a contract with a service provider in respect of whose services a restricted word is used or in respect of whose work it is stated or implied that the work will be done or controlled and supervised by an architect may, by notice in writing given to the service provider at any time before the completion of the contract, withdraw from the contract without being liable for damages for repudiation of the contract and despite any provision to the contrary in the contract, if—
  - (a) there is no reasonable likelihood that the work, if not yet begun, will be controlled and supervised by a registered person; or
  - (b) the work, if already begun, was not, or is not being, controlled and supervised by a registered person.

Penalty applicable to subsections (2), (3) and (4): \$5 000.

### 68. Certain conduct not in breach of this Act

Despite sections 64 and 67, no offence is committed under this Act by reason only of the fact that —

- (a) a person designs, or superintends the erection of, a building;
- (b) a natural person describes himself or herself as an architect registered in a specified place other than Western Australia, if that person—
  - (i) is registered as an architect in that place;
  - (ii) is in Western Australia temporarily; and



- (iii) does not design, or superintend the erection of, any building whilst in Western Australia;
- (c) a naval architect, landscape architect or golf course architect is described as such or that person's work is described as naval architecture, landscape architecture, or golf course architecture respectively;
- (d) an architectural drafter is described as such or that person's work is described as architectural drafting;
- (e) a person who provides technical or other support services to an architect is described as an architectural technician or assistant or the person's work is otherwise described in terms of providing a support service to an architect;
- (f) a restricted word is used in relation to the manufacture, supply or naming of products or materials for use in the practice of architecture or the construction of buildings;
- (g) a restricted word is used in the title or description of an educational institution in relation to the provision of education in architecture;
- (h) a restricted word is used in circumstances where the word is clearly not connected with the design and construction of buildings; or
- (i) a restricted word is used in circumstances of a kind prescribed by the regulations.

#### **70. False representations**

A person must not falsely represent any person as being the person referred to in a certificate of registration or licence document.

Penalty: \$5000

Note: There are also relevant offence provisions in The Criminal Code e.g. s. 409 (fraud), s. 488 (procuring or claiming unauthorised status), s. 513 (personation of a person named in a certificate) and s. 514 (lending certificate for personation).