

# Architects Regulation 2012

## NSW Architects Code of Professional Conduct

(Clause 13)



**Introductory note.** The following Code of Professional Conduct provides architects and their 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. While an architect has a duty to the client, the Code also recognises that there is a parallel duty to the public.

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 architectural services to clients. It will also enable clients:

- (a) to understand the standards expected of an architect and the level of accountability expected of them in the provision of architectural services, and
- (b) to develop reasonable expectations of the services to be provided.

The Code is divided into 8 Parts. Part 1 defines terms used in the Code and sets out the objectives of the Code.

Parts 2–8 detail the standards of behaviour expected of architects in their professional practice. Architects should use their best endeavours to meet those standards by applying their professional judgment. The standards relate to general practice standards, dealings with clients, insurance coverage, continuing professional development, alternative dispute resolution, dealings with the public and professional relationships with other architects.

A failure to comply with the Code constitutes unsatisfactory professional conduct for the purposes of the Architects Act 2003 and may be grounds for disciplinary action under Part 4 of that Act.

## Part 1 Preliminary

### 1 Name of Code

This Code is the *NSW Architects Code of Professional Conduct*.

### 2 Definitions

- (1) In this Code:
- architect has the same meaning as in the Act.

**Note.**

Section 4 (1) of the Act defines architect to mean a person who is registered as an architect under the Act.

*architectural service* has the same meaning as in the Act.

**Note.**

Section 4 (1) of the Act defines architectural service to mean a service provided in connection with the design, planning or construction of buildings that is ordinarily provided by architects.

*Board* means the NSW Architects Registration Board constituted under the Act.

*client* means a person who engages an architect (whether or not for payment) to *provide* an architectural service.

*document* means any record of information, and includes:

- (a) anything on which there is writing, or
  - (b) anything on which there are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them, or
  - (c) anything from which sounds, images or writings can be reproduced with or without the aid of anything else, or
  - (d) a map, plan, drawing or photograph.
- non-practising architect means an architect who is recorded in the Register kept under the Act as being a non-practising architect.

*the Act* means the Architects Act 2003.

*the Regulation* means the Architect Regulation 2012.

- (2) If a provision of this Code provides that an architect should provide information or disclose a matter to a client, the architect is to provide that information or disclose that matter in writing except where it is reasonable in the circumstances for it to be done orally.
- (3) Nothing in subclause (2) permits an architect to provide information or disclose a matter orally if the provision in question expressly provides for it to be done in writing.

### 3 Objectives of Code

The objectives of the Code are as follows:

- (a) to define for the community, architects and clients the reasonable standards of conduct expected from architects in their professional practice,
- (b) to facilitate the establishment of professional relationships between architects and their clients based on reasonable expectations concerning professional standards and the cost of architectural services,
- (c) to promote community confidence in the architectural profession.

## Part 2 General practice standards

### 4 Provision of architectural services generally

- (1) In providing architectural services, an architect should:
  - (a) act with integrity and reasonable care, and
  - (b) provide the services:
    - (i) in a manner that (at the time the service is provided) is widely accepted in Australia by peer professional opinion as competent professional architectural practice, and
    - (ii) in conformity with any laws applicable to the provision of such services.

- (2) An architect should provide architectural services to a client:
  - (a) with reasonable promptness, and
  - (b) in accordance with any agreed time program or in a reasonable time as far as is permitted by the provision of instructions to the architect by the client.
- (3) An architect should withdraw from the provision of any architectural service if the architect reasonably believes in the architect's professional judgment that the provision of the service would require the architect to act:
  - (a) in a manner that the architect considers unethical, or
  - (b) in contravention of the Act, the Regulation or this Code.
- (4) An architect should not offer to clients, without proper disclosure and the informed consent of the client, architectural services outside the architect's skill, competency or experience or that of other architects under the architect's supervision.
- (5) An architect should advise a client to obtain specialist advice or service from a suitably qualified person other than an architect (for example, an engineer) concerning an issue arising in connection with the provision of an architectural service if the architect believes that it is in the client's interest to do so.

### 5 Disclosure of conflicts of interest

- (1) Before an architect enters into a contract or other arrangement to provide architectural services to a client or an employer, the architect should:
  - (a) disclose to the client or employer if a conflict of interest exists, or is likely to exist in the future, between the interests of the client or employer and the interests of the architect (or an existing client of the architect), and
  - (b) if the conflict of interest exists, or could reasonably be expected to arise in the future, because of the interests of an existing client—obtain the informed consent of the existing client to the contract or arrangement.

- (2) An architect should disclose to a client, or to a prospective client, for an architectural service if the architect has received any payment or other advantage for endorsing, or making comments about, any product or service likely to be used in connection with the provision of the architectural service.
- (3) An architect should not accept an engagement to provide architectural services to a client referred to the architect by a third party to whom the architect has given or offered to provide a fee or other benefit for the referral of clients or potential clients unless the architect has first disclosed to the client the architect's arrangement with the third party.
- (4) An architect should not act for a client in any dealing with a third party from whom the architect may receive (whether directly or indirectly) any fee or other benefit in respect of that dealing unless before acting for the client in the dealing:
  - (a) the architect has disclosed to the client in writing the nature and value of any fee or other benefit that may be received by the architect, and
  - (b) the architect has obtained the consent of the client to the dealing.
- (c) avoid making misleading or false comparisons with architectural services provided by competitors.
- (3) An architect should take all reasonable steps to ensure that a client is informed of:
  - (a) the decisions required of the client in respect of the architectural service being provided by the architect, and
  - (b) the implications of those decisions for the performance of the service (particularly those implications related to timeliness, cost and changes to the service and any building or building related work consequential to the service).
- (4) An architect should advise a client on the likelihood of achieving the client's stated objectives having regard to the client's stated budget and time requirements for the architectural service concerned.
- (5) An architect should not disclose to any person any information agreed as, or understood to be, confidential that is acquired from or provided by a client in the course of the provision of an architectural service by the architect unless authorised to do so by the client in writing or as required by law.
- (6) An architect should, with reasonable promptness, respond to a client's reasonable requests for information or other communications concerning an architectural service being provided by the architect to the client.

### Part 3 Standards concerning dealings with clients

#### 6 Provision of information to clients and prospective clients

- (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 architectural services.
- (2) In particular, the architect should take all reasonable steps to:
  - (a) ensure that all information and material provided is truthful, accurate, unambiguous and relevant to the client's interests, and
  - (b) provide a client with information about an architectural service that is sufficient to enable the client to make decisions about the provision of the service and

#### 7 Client agreements

- (1) An architect should enter into a written agreement with the client concerning the provision of an architectural service.
- (2) The architect should ensure that the written agreement:
  - (a) specifies the scope and nature of, and requirements for, the service to be provided, and
  - (b) specifies the cost of the service to be provided and the arrangement for payment (including, where possible,

- estimates of disbursements and arrangements for their payment), and
- (c) specifies the method of reporting to the client on the provision and progress of the service to be provided, and
- (d) states the registration number of the architect responsible for the service to be provided, and
- (e) makes provision for arrangements for:
  - (i) obtaining the client's authorisation to proceed with the service described in the agreement, and
  - (ii) obtaining the client's authorisation to change or amend the service described in the agreement and fees arising from such a change or amendment, and
  - (iii) the application of any pre-existing agreement to the provision of other services for the client, and
- (f) makes provision for the termination of the service by either party, and
- (g) makes provision for the withdrawal by the architect from the provision of the service in the circumstances referred to in clause 4 (3) of this Code, and
- (h) makes provision for contacting the architect at the place of business of the architect within normal business hours.
- (3) The architect should ensure that the cost of architectural services provided to a client:
  - (a) reflects the fee structure specified in such an agreement, and
  - (b) accurately reflects the amount of work done or to be done for the client in the provision of the services (including any variations to the services).
- (4) The architect should enter into such a written agreement before commencing to provide the architectural service concerned. However, if the service to be provided is urgent, the agreement should be provided to the client within 10 business days of commencing to provide the service.

## 8 Building contracts

- (1) For the purposes of this clause, an architect administers a building contract on behalf of a client if:
  - (a) the contract concerns the construction of a building and is entered into by the client with a builder (the **building contractor**), and
  - (b) the architect is not a party to the contract, and
  - (c) the architect has been engaged by the client to inspect and administer the provision of services by the building contractor under the contract.
- (2) If an architect is administering a building contract on behalf of a client, the architect:
  - (a) should act with fairness and impartiality in administering the contract, and
  - (b) should discharge the architect's obligations in connection with the administration of the contract diligently and promptly, and
  - (c) should provide the client with relevant information about the administration of the contract in a timely manner, and
  - (d) should not seek or receive any payments or other inducements from any person wishing to influence the architect to administer the contract for the benefit or detriment of any party to the contract.

## 9 Deposits and retainers

- (1) Unless otherwise expressly agreed by an architect and the architect's client, the architect should not seek or accept a retainer or deposit for the provision of any architectural services to be provided if that retainer or deposit is more than 10% of the reasonably expected or agreed total fee for the services to be provided.
- (2) Subclause (1) does not apply to an architect in connection with the provision of any architectural service:
  - (a) to any individual who does not reside within Australia, or
  - (b) to any firm or corporation that does not have a place of business within Australia, or
  - (c) in relation to the construction of a building outside of Australia.

## 10 Record keeping

- (1) If an architect provides an architectural service to a client, the architect should maintain records of the following:
  - (a) correspondence sent and received concerning any such service,
  - (b) financial transactions concerning any such service,
  - (c) client instructions and meetings held with the client concerning the service,
  - (d) drawings, photographs of works in progress, project journals and diaries created in connection with providing the service.
- (2) Any such records may be maintained in hard copy or electronic form.
- (3) If any such records are maintained in electronic form, the architect should maintain adequate electronic copies of the records to enable the records to be restored should one electronic copy be destroyed or damaged.
- (4) Any such records should be maintained for a period that is not less than 6 years after the completion of the architectural service concerned.

## 11 Provision of statements of account

Unless otherwise expressly agreed by an architect and the architect's client, the architect should provide the client with regular statements of account for any architectural service provided.

## 12 Inspection of documents by client

- (1) If a client of an architect provides the architect with reasonable notice of the client's wish to inspect documents and records relating to the provision of an architectural service, the architect should (where practicable and during normal business hours) provide the client with a reasonable opportunity:
  - (a) to inspect:
    - (i) documents produced in providing the architectural service, and
    - (ii) records (except confidential business records) relating to the provision of the service, and

- (b) to make copies (at the client's expense) of any such documents or records.
- (2) An architect should not unreasonably refuse to provide a client with an opportunity to inspect or copy the documents or records referred to in subclause (1).
- (3) Nothing in this clause derogates from any right of an architect to claim a lien over documents or records referred to in subclause (1) or to assert any intellectual property rights in respect of such documents or records of any such documents or records.

## 13 Maintaining knowledge of architectural services to be provided

An architect in charge of a client's architectural project should maintain a thorough knowledge of the architectural services to be provided in relation to that project and of matters relating to the performance of those services.

## 14 Advising client of inability to follow client's instructions

An architect should, as soon as is reasonably practicable, advise the client in writing of any thing that would, or would be likely to, prevent the client's instructions relating to an architectural service being followed, including the responsibility of an architect to withdraw from the provision of the service under clause 4 (3) of this Code.

## 15 Provision of copies of this Code

- (1) An architect should make a copy of this Code available for inspection by a prospective client for an architectural service.
- (2) An architect who is engaged to provide an architectural service to a client should provide the client with a copy of this Code before commencing to provide the service or as soon as is reasonably practicable after commencing to provide the service.

## Part 4 Standards concerning insurance coverage

### 16 Professional indemnity insurance

- (1) Subject to any requirements of the Act or the Regulation, an architect should:
  - (a) maintain a policy of professional indemnity insurance appropriate for the architectural services being provided by the architect, and
  - (b) provide each client of the architect with information relating to the insurance maintained by the architect for the architectural services to be provided to the client.
- (2) On the application of an architect, the Board may, by order in writing, grant an exemption to the architect from the provisions of subclause (1) if:
  - (a) the Board is satisfied that the architect has commenced practice as an architect only very recently, or
  - (b) the Board is otherwise satisfied that it would not be appropriate in the circumstances for the architect to comply with the provisions of subclause (1).
- (3) Subclause (1) does not apply to:
  - (a) any architect in respect of the provision of an architectural service if:
    - (i) the person engaged to provide the service is not the architect, and
    - (ii) the architect is providing the service only as an employee of that person and not on the architect's own account, or
  - (b) any non-practising architect, or
  - (c) any architect who has been granted an exemption by the Board under subclause (2).

## Part 5 Standards concerning continuing professional development

### 17 Continuing professional development

- (1) An architect should take all reasonable steps to maintain and improve the skills and knowledge necessary for the provision of the architectural services that the architect normally provides through:

- (a) undertaking such activities that the Board is satisfied demonstrate the maintenance and improvement of the architect's skill and knowledge, or
- (b) such other means as may be approved by the Board from time to time.
- (2) An architect must, when submitting the approved fee for annual registration under section 28 of the Act, report to the Board on all the steps taken by the architect under subclause (1) during the current annual registration period.
- (3) Subclauses (1) and (2) do not apply to any non-practising architect.

## Part 6 Standards concerning dispute resolution

### 18 Architects to promote alternative dispute resolution mechanisms

An architect should inform a prospective client that a written agreement between the architect and the prospective client in respect of the provision of architectural services may provide for alternative dispute resolution to be used to resolve disputes between them instead of court proceedings.

## Part 7 Standards concerning the public

### 19 Dealings with the public

- (1) When dealing with the public in the course of an architect's professional practice, an architect should ensure that:
  - (a) the architect's qualifications, experience and authorship of any work, document or publication are stated accurately, and
  - (b) the architect is identified clearly and accurately on stationery, sign boards, public notices and in publications, and
  - (c) the architect's registration number is included on any stationery, presentation or construction documents (including drawings, specifications and schedules), illustrations, sign boards, public notices and architectural plans, and in publications, used or placed by the architect in connection with the architect's professional practice, and

- (d) if the architect claims to have received any award or honour for the provision of architectural services, all persons or bodies that shared in the award or honour are identified accurately in the claim.
- (2) A nominated architect responsible for the provision of architectural services by an architect corporation or an architect firm should ensure that:
  - (a) he or she is identified clearly and accurately as the nominated architect for the architect corporation or architect firm on stationery, sign boards and public notices, and in publications, used or placed by the architect corporation or architect firm in connection with the provision of architectural services, and
  - (b) his or her registration number is included on any stationery, presentation or construction documents (including drawings, specifications and schedules), illustrations, sign boards, public notices and architectural plans, and in publications, used or placed by the architect corporation or architect firm in connection with the provision of architectural services.
- (3) When dealing with the public in the course of an architect's professional practice, an architect:
  - (a) should not provide any endorsement of any product or service in connection with the provision of an architectural service in a misleading manner, and
  - (b) should disclose in the material conveying the endorsement whether or not a fee has been received for or relating to that endorsement.

## 20 Representations concerning architectural work

- (1) An architect should not, in the course of the architect's professional practice, sign as checked, approved or supervised any drawings or other documents that the architect has not in fact checked, approved or supervised.
- (2) An architect should not, in the course of the architect's professional practice, permit the architect's name to be used in relation to any work, document or publication in a manner that misleadingly implies authorship of, responsibility for or agreement with the content or form of, the work, document or publication.

## Part 8 Standards concerning professional relationships with other architects

### 21 Dealings with other architects

- (1) In any dealings with other architects in the course of the architect's professional practice, the architect should maintain a high standard of integrity and act honestly and fairly.
- (2) If an architect (the **new architect**) is assuming responsibility for the provision of an architectural service to a client from another architect who is to discontinue providing the service (the **former architect**), the former architect should, to the extent that it is commercially reasonable and without breaching any duty of confidentiality:
  - (a) inform the new architect of any matters that the former architect could be reasonably supposed to consider important concerning the provision of the service, and
  - (b) not withhold any information from the new architect that may assist the new architect to understand the history and nature of the service.