

Queensland



# **ARCHITECTS AMENDMENT ACT 1998**

**Act No. 17 of 1998**



# Queensland



## ARCHITECTS AMENDMENT ACT 1998

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Queensland



## **Architects Amendment Act 1998**

**Act No. 17 of 1998**

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**An Act to amend the *Architects Act 1985***

*[Assented to 26 March 1998]*

**The Parliament of Queensland enacts—****Short title**

1. This Act may be cited as the *Architects Amendment Act 1998*.

**Act amended**

2. This Act amends the *Architects Act 1985*.

**Amendment of s 5 (Definitions)**

**3.(1)** Section 5, definitions “**chairperson**”, “**company**” and “**member**”—

*omit.*

**(2)** Section 5—

*insert—*

“**attendance notice**” see section 38(1).

“**chairperson**” means—

- (a) for part 5—the chairperson of the disciplinary panel; and
- (b) other than for part 5—the chairperson of the board.

“**company**” means a company under the Corporations Law.

“**disciplinary panel**” means the Architects Disciplinary Panel established under section 30S.

“**investigator**” means a person appointed under section 30B to investigate the conduct of a registered person.

“**member**” means—

- (a) for part 5—a member of the disciplinary panel; and
- (b) other than for part 5—a member of the board.

“**presiding member**” see section 30ZF(1)(a).’.

**Replacement of pt 5 hdg**

4. Part 5, heading—

*omit, insert—*

**‘PART 5—INVESTIGATIONS AND DISCIPLINARY  
PROCEEDINGS**

*‘Division 1—Preliminary’.*

**Replacement of s 30 (Interpretation)**

5. Section 30—

*omit, insert—*

**‘Definitions for pt 5**

‘30. In this part—

“**client**”, of a registered person, means a person who enters into a commission with the registered person.

“**commission**” means a written or other agreement by which a registered person agrees to provide architectural services to a person, whether or not for fee or reward.

“**company**” means an approved architectural company.

“**registered person**” means—

- (a) an architect; or
- (b) a company.

*‘Division 2—Complaints and investigations*

**‘Complaints**

‘30A. A person aggrieved by the conduct of a registered person may complain in writing to the board.

**‘Appointment of investigator**

‘**30B.(1)** The board may by notice signed by the chairperson of the board appoint a person to investigate the conduct of a registered person for the board if—

- (a) it suspects on reasonable grounds that—
  - (i) the registered person has contravened this Act; or
  - (ii) a ground under section 31 or 32<sup>1</sup> may exist to lay a disciplinary charge against the registered person; or
- (b) a complaint has been made to it about the registered person.

‘**(2)** However, the board must not appoint an investigator because of a complaint if it considers the complaint is frivolous or vexatious.

‘**(3)** The board may only appoint a person as an investigator if it is satisfied the person is appropriately qualified to perform the investigation.

‘**(4)** However, a member of the board or the disciplinary panel must not be appointed as an investigator.

‘**(5)** The registrar may be appointed as an investigator.

‘**(6)** The appointment takes effect when the notice is signed.

‘**(7)** The board must give a copy of the notice to the registered person and the investigator as soon as practicable after the notice is signed.

‘**(8)** In subsection (3)—

**“appropriately qualified”** includes having the qualifications, experience or standing appropriate to perform the investigation.

*Example of ‘standing’—*

A person’s classification level in the public service.

**‘Submissions to investigator about complaint**

‘**30C.(1)** This section applies if an investigator is appointed because of a complaint.

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<sup>1</sup> Section 31 (Grounds for disciplinary charge against architect)  
Section 32 (Grounds for disciplinary charge against company)

‘(2) The investigator must give the registered person the subject of the investigation—

- (a) enough particulars to inform the person of the nature of the complaint; and
- (b) a reasonable opportunity to make representations about the complaint before the investigation ends.

### **‘Investigator’s report and outline**

‘**30D.(1)** An investigator may, and if directed by the board to do so must, report to the board on the investigation being performed by the investigator.

‘(2) If the investigator was appointed because of a complaint, the investigator must as soon as practicable after the investigation ends—

- (a) report to the board about the investigator’s—
  - (i) findings in relation to the complaint; and
  - (ii) opinions based on the findings; and
- (b) give a written outline of the report to the registered person the subject of the investigation.

‘(3) A report may also include a recommendation as to whether—

- (a) the board shall lay a disciplinary charge under this part; or
- (b) the chairperson of the board should authorise a complaint for an offence against this Act.

‘(4) A report must be given in the way required by the board.

‘(5) The outline mentioned in subsection (2)(b) must give a general statement of any findings about the complaint.

‘(6) The outline must not mention any recommendation made by the investigator.

***‘Division 3—Investigator’s powers******‘Subdivision 1—Entry and related powers*****‘Entry to places**

**‘30E.(1)** An investigator may enter a place if—

- (a) its occupier consents to the entry; or
- (b) the entry is authorised by a warrant; or
- (c) it is a place of business of the registered person the subject of the investigation, and the entry is made when the place is open for business.

**‘(2)** An investigator, with or without the occupier’s consent or a warrant, may enter—

- (a) a public place when the place is open to the public; or
- (b) the land around premises to ask its occupier for consent to enter the premises.

**‘Consent to entry**

**‘30F.(1)** This section applies if an investigator intends to ask an occupier of a place to consent to the investigator entering the place.

**‘(2)** Before asking for the consent, the investigator must tell the occupier—

- (a) the purpose of the entry; and
- (b) that the occupier is not required to consent.

**‘(3)** If the consent is given, the investigator may ask the occupier to sign an acknowledgment of the consent.

**‘(4)** The acknowledgment must state—

- (a) the occupier has been told—
  - (i) the purpose of the entry; and
  - (ii) that the occupier is not required to consent; and

- (b) the purpose of the entry; and
- (c) the occupier gives the investigator consent to enter the place and exercise powers under section 30J;<sup>2</sup> and
- (d) the date and time the consent was given.

‘(5) If the occupier signs an acknowledgment, the investigator must as soon as practicable give a copy to the occupier.

‘(6) Subsection (7) applies if—

- (a) an issue arises in a court proceeding about whether the occupier of a place consented to an investigator entering the place under section 30E; and
- (b) an acknowledgment is not produced in evidence for the entry; and
- (c) it is not proved the occupier consented to the entry.

‘(7) The court may presume the occupier did not consent.

### ‘Warrants

‘**30G.(1)** An investigator may apply to a magistrate for a warrant to enter a place.

‘(2) The application must be sworn and state the grounds on which the warrant is sought.

‘(3) The magistrate may refuse to consider the application until the investigator gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.

*Example—*

The magistrate may require that additional information supporting the application be given by a statutory declaration.

‘(4) The magistrate may issue a warrant only if satisfied there are reasonable grounds for suspecting—

- (a) there is a particular thing (the “**evidence**”) that may provide evidence of the commission of an offence against this Act; and

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<sup>2</sup> Section 30J (General powers after entering places)

(b) the evidence is, or may be within the next 14 days, at the place.

‘(5) The warrant must state the following—

- (a) that the investigator may, with necessary and reasonable help and force—
  - (i) enter the place; and
  - (ii) exercise the investigator’s powers under this Act;
- (b) the offence for which the warrant is issued;
- (c) any evidence that may be seized under the warrant;
- (d) the hours when the place may be entered;
- (e) the day, within 14 days after the warrant’s issue, the warrant ends.

**‘Warrants—applications made otherwise than in person**

‘30H.(1) An investigator may apply for a warrant by phone, fax, radio or another form of communication if the investigator considers it necessary because of—

- (a) urgent circumstances; or
- (b) other special circumstances, including, for example, the investigator’s remote location.

‘(2) Before applying for the warrant, the investigator must prepare an application that states the grounds on which the warrant is sought.

‘(3) The investigator may apply for the warrant before the application is sworn.

‘(4) After issuing the warrant, the magistrate must immediately fax a copy to the investigator if it is reasonably practicable to fax a copy.

‘(5) If it is not reasonably practicable to fax a copy of it to the investigator—

- (a) the magistrate must—
  - (i) tell the investigator what the terms of the warrant are; and
  - (ii) tell the investigator the date and time the warrant was issued;

and

(iii) record the reasons for issuing the warrant on the warrant;  
and

(b) the investigator must—

(i) complete a form of warrant in the same terms as the warrant issued by the magistrate; and

(ii) write on the warrant form the name of the magistrate and the date and time the magistrate signed the warrant.

‘(6) The facsimile warrant, or the warrant form properly completed by the investigator, authorises the entry and the exercise of the other powers stated by the warrant issued by the magistrate.

‘(7) The investigator must, at the first practicable opportunity, send the magistrate—

(a) the sworn application; and

(b) if the investigator completed a warrant form—the completed warrant form.

‘(8) On receiving the application and any warrant form, the magistrate must attach them to the warrant.

‘(9) Unless the contrary is proven, a court must presume that a power exercised by an investigator was not authorised by a warrant under this section if—

(a) a question arises in a proceeding before the court about whether the exercise of power was authorised by a warrant; and

(b) the warrant is not produced in evidence.

### ‘Warrants—procedure before entry

‘30I.(1) Before executing a warrant, the investigator named in the warrant must—

(a) announce that he or she is authorised by the warrant to enter the premises; and

(b) give any person at the premises an opportunity to allow entry to the premises.

‘(2) However, the investigator need not comply with subsection (1) if the investigator believes on reasonable grounds that immediate entry to the premises is required to ensure the effective execution of the warrant is not frustrated.

‘(3) If an occupier or another person who apparently represents the occupier is present at a place when a warrant is being executed, the investigator must—

- (a) identify himself or herself to the person by producing a copy of the investigator’s notice of appointment; and
- (b) give the person a copy of the execution copy of the warrant.

#### ‘General powers after entering places

‘30J.(1) After entering a place under section 30E,<sup>3</sup> an investigator<sup>4</sup> may exercise a power mentioned in subsection (2) only if—

- (a) the occupier of the place consents to the exercise of the power; or
- (b) the entry was authorised by a warrant.

‘(2) The investigator may do the following—

- (a) search any part of the place;
- (b) if entry was authorised by a warrant—seize the evidence for which the warrant was issued;
- (c) in any case—seize a thing if the investigator reasonably believes that—
  - (i) the thing is evidence of an offence against this Act; and
  - (ii) the seizure is necessary to prevent the thing being—
    - (A) hidden, lost or destroyed; or
    - (B) used to commit, continue or repeat an offence against this Act;

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<sup>3</sup> Section 30E (Entry to places)

<sup>4</sup> For the power of a police officer to help the investigator, see the *Police Powers and Responsibilities Act 1997*, section 11 (Exercise of powers under other Acts).

- (d) inspect, examine, photograph or film anything in the place;
- (e) copy a document in the place;
- (f) take into the place the persons, equipment and materials the investigator reasonably requires for exercising a power under this Act;
- (g) require a person in the place to give the investigator reasonable help to exercise the powers mentioned in paragraphs (a) to (f).

‘(3) A person must comply with a requirement under subsection (2)(g), unless the person has a reasonable excuse.

Maximum penalty—20 penalty units.

‘(4) It is a reasonable excuse for an individual to fail to give information or produce a document (other than a document required to be kept by the individual under this Act) if doing so might tend to incriminate the individual.

### *‘Subdivision 2—Obtaining documents and information*

#### **‘Notice to produce documents or give information**

‘**30K.(1)** An investigator may, by signed notice require an involved person to do one or more of the following at a stated reasonable time and place—

- (a) produce stated documents of which the person has custody or control that relate to conduct being investigated;
- (b) give the investigator all reasonable help in an investigation;
- (c) appear before the investigator and give the investigator information that relates to the registered person the subject of the investigation.

‘(2) The person must comply with a requirement unless the person has a reasonable excuse.

Maximum penalty—20 penalty units.

‘(3) It is a reasonable excuse for an individual to fail to give documents or information if doing so might tend to incriminate the individual.

‘(4) In subsection (1)—

**“involved person”** means—

- (a) the registered person the subject of an investigation; or
- (b) if the registered person the subject of an investigation is a company—an executive officer of the company; or
- (c) another person involved in the conduct of a registered person being investigated if the other person—
  - (i) is or has been an officer, employee or agent of the registered person; or
  - (ii) has a document concerning the registered person; or
  - (iii) was a party to the creation of a document concerning the registered person; or
- (d) a person whom the investigator reasonably believes is capable of giving information concerning the conduct of the registered person.

#### **‘Powers if document produced**

**‘30L.** If a document is produced to an investigator under section 30K, the investigator may—

- (a) inspect or copy the document; and
- (b) seize the document if the investigator reasonably believes—
  - (i) the document is evidence of an offence against this Act; and
  - (ii) the seizure is necessary to prevent the document being—
    - (A) hidden, lost or destroyed; or
    - (B) used to commit, continue or repeat an offence against this Act.

***‘Subdivision 3—Seized documents or things*****‘Receipt for seized things**

**‘30M.(1)** As soon as practicable after a document or thing is seized by an investigator under this division, the investigator must give a receipt for it to the person from whom it was seized.

**‘(2)** The receipt must—

- (a) describe generally each thing seized and its condition; and
- (b) if a seized thing was damaged in the exercise of a power under this division—give particulars of the damage.

**‘(3)** However, if for any reason it is not practicable to comply with subsection (1), the investigator must leave the receipt at the place of seizure, in a reasonably secure way and in a conspicuous position.

**‘Access to and return of seized things**

**‘30N.(1)** The investigator must allow a person who would be entitled to a seized document or thing if it were not in the investigator’s possession—

- (a) to inspect it at any reasonable time; or
- (b) if it is a document—to copy it.

**‘(2)** The investigator must return the seized thing to the person at the end of—

- (a) 1 year; or
- (b) if a prosecution for an offence involving it is started within 1 year—the proceeding and any appeal from the proceeding.

**‘(3)** Despite subsection (2), the investigator must return the seized thing to the person if the investigator is satisfied—

- (a) its retention as evidence is no longer necessary; and
- (b) its return is not likely to result in its use in repeating the offence.

***Subdivision 4—Miscellaneous*****‘Limits on powers**

**‘30O.(1)** An investigator is subject to directions of the board.

**‘(2)** The powers of an investigator may be limited—

- (a) under a regulation; or
- (b) under the investigator’s instrument of appointment; or
- (c) by written notice given by the board to the investigator.

**‘Compensation**

**‘30P.(1)** A person may claim compensation from the board if the person incurs loss or expense because of the exercise or purported exercise of a power under this division.

**‘(2)** Payment of compensation may be claimed and ordered in a proceeding for—

- (a) compensation brought in a court of competent jurisdiction; or
- (b) an offence against this Act brought against the person making the claim for compensation.

**‘(3)** A court may order the payment of compensation for the loss or expense only if the court is satisfied it is just to make the order in the circumstances of the particular case.

**‘False or misleading statements or documents**

**‘30Q.(1)** A person must not—

- (a) state anything to an investigator the person knows is false or misleading in a material particular; or
- (b) give an investigator a document containing information the person knows is false or misleading in a material particular.

Maximum penalty—20 penalty units.

**‘(2)** Subsection (1)(b) does not apply to a person who, when giving the

document—

- (a) tells the investigator, to the best of the person’s ability, how it is false, misleading or incomplete; and
- (b) if the person has, or can reasonably get, the correct information—gives the correct information to the investigator.

‘(3) It is enough for a complaint against a person for an offence against subsection (1) to state the statement made or the document given was false or misleading to the person’s knowledge without stating which.

### **‘Threatening or obstructing investigator**

‘**30R.(1)** A person must not threaten or obstruct an investigator, or a person helping an investigator, in the exercise of a power under this Act, unless the person has a reasonable excuse.

Maximum penalty—20 penalty units.

‘(2) If a person obstructs an investigator in the exercise of a power under this Act and the investigator decides to exercise the power, the investigator must warn the person.

‘(3) In warning the person, the investigator must tell the person—

- (a) it is an offence to obstruct the investigator, unless the person has a reasonable excuse; and
- (b) the investigator considers the person’s conduct is an obstruction.

‘(4) In this section—

“**obstruct**” includes hinder and attempt to obstruct.

## *‘Division 4—Disciplinary panel*

### *‘Subdivision 1—Establishment, functions and powers*

#### **‘Disciplinary panel**

‘**30S.** A panel called the ‘Architects Disciplinary Panel’ is established.

**‘Functions**

**‘30T.** The disciplinary panel has the following functions—

- (a) to hear any disciplinary charge laid against a registered person;
- (b) to make a finding whether or not the person is guilty of the charge;
- (c) to make an appropriate order or direction under section 39F or 39G<sup>5</sup> if the person is found guilty;<sup>6</sup>
- (d) to keep a record of—
  - (i) its proceedings; and
  - (ii) its decision on each charge and the reasons for the decision; and
  - (iii) the documents produced to it for each charge;
- (e) to report to the Minister on its work and activities for each financial year;
- (f) to perform other functions conferred on it under this Act.

**‘Powers—general**

**‘30U.(1)** The disciplinary panel has power to do all things necessary or convenient to be done to perform its functions.

**‘(2)** Without limiting subsection (1), the panel has the powers conferred on it by this Act.

***‘Subdivision 2—Membership*****‘Membership**

**‘30V.(1)** The disciplinary panel is to consist of a chairperson and at least 2 other members.

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<sup>5</sup> Section 39F (Orders on finding of guilt)  
Section 39G (Suspension direction)

<sup>6</sup> Section 39F (Orders on finding of guilt)

‘(2) A person may only be appointed chairperson if the person is a retired judge of an Australian court or a lawyer of at least 5 years standing.

‘(3) A person may only be appointed as another member if the person is—

- (a) a retired judge of an Australian court or a lawyer of at least 5 years standing; or
- (b) an architect of at least 5 years standing.

‘(4) At least 2 of the other members must be architects of at least 5 years standing.

#### **‘Appointment of members**

‘30W.(1) The members are to be appointed by the Governor in Council.

‘(2) The members must be appointed under this Act and not the *Public Service Act 1996*.

#### **‘Restriction on appointment**

‘30X. A member of the board must not be appointed as a disciplinary panel member.

#### **‘Duration of appointment**

‘30Y. The appointment of a member is for the term, no longer than 7 years, stated in the member’s instrument of appointment.

#### **‘Terms of appointment**

‘30Z.(1) A member holds office on a part-time basis.

‘(2) A member is to be paid the remuneration and allowances decided by the Governor in Council.

‘(3) A member holds office on the terms, not provided for in this Act, decided by the Governor in Council.

**‘Vacation of office**

**‘30ZA.** The office of a member becomes vacant if—

- (a) the member resigns by signed notice given to the Minister; or
- (b) the member ceases to be qualified to be appointed as a member; or
- (c) the member’s appointment is ended by the Governor in Council.

**‘Ending appointment**

**‘30ZB.** The Governor in Council may end the appointment of a member if the member—

- (a) engages in misbehaviour; or
- (b) fails to act as a member; or
- (c) becomes incapable of performing the duties of a member because of physical or mental incapacity; or
- (d) is an undischarged bankrupt or is taking advantage of the laws in force relating to bankruptcy or insolvent debtors.

**‘Disclosure of interests**

**‘30ZC.(1)** This section applies if—

- (a) a member is, or is to be, a member of the panel to hear a disciplinary charge; and
- (b) the member has or acquires an interest (whether financial or otherwise) that could conflict with the proper performance of the member’s functions in relation to the hearing.

**‘(2)** The member must disclose the interest to the parties to the hearing as soon as practicable.

**‘(3)** The member may only take part in the hearing or exercise a power for the hearing if, after making the disclosure, the parties agree.

**‘(4)** If the member fails to disclose the interest and the chairperson becomes aware of the failure, the chairperson must—

- (a) direct the member not to take part, or continue to take part, in the

hearing; or

- (b) disclose the interest to the parties.

#### **‘Acting chairperson**

**‘30ZD.** The Governor in Council may appoint a person, who is qualified for appointment as the chairperson, to act as chairperson—

- (a) when there is a vacancy in the office; or
- (b) when the chairperson is absent from duty or can not perform the chairperson’s duties; or
- (c) to hear a disciplinary charge in which the chairperson has an interest of a kind mentioned in section 30ZC.

#### **‘Chairperson’s directions about arrangement of business**

**‘30ZE.(1)** The chairperson may give directions about—

- (a) the arrangement of the disciplinary panel’s business; and
- (b) subject to section 30ZF, the members who are to make up the panel to hear and decide a disciplinary charge.

**‘(2)** The chairperson may cancel the direction and make a new direction if the hearing of a charge has not started or if a member becomes unavailable to hear the charge before it is decided.

#### ***‘Subdivision 3—Disciplinary panels for particular hearings***

#### **‘Establishment**

**‘30ZF.(1)** The disciplinary panel to hear and decide a disciplinary charge must consist of—

- (a) a member (the **“presiding member”**), who is a retired judge of an Australian court or a lawyer of at least 5 years standing; and
- (b) 2 other members who are architects of at least 5 years standing.

**‘(2)** The chairperson may, but need not, be the presiding member.

‘(3) The panel may sit as follows—

- (a) by all of its members, to hear and decide the charge;
- (b) by the presiding member alone, to give directions for the hearing of the charge.

**‘Directions by presiding member**

‘**30ZG.(1)** Only the presiding member may give directions for the hearing of a disciplinary charge.

‘(2) The presiding member may only give directions about the following—

- (a) whether an investigator has complied with sections 30C(2) and 30D(2)(b);<sup>7</sup>
- (b) the way or sufficiency of giving of a notice of a disciplinary charge;
- (c) the sufficiency of particulars of a charge, and whether further and better particulars of the charge should be given;
- (d) giving leave to amend a notice of a charge;
- (e) requiring a person making an affidavit for the hearing to be present at the hearing for cross-examination;
- (f) admissions about facts or documents;
- (g) the place, time and length of the hearing;
- (h) issuing attendance notices;
- (i) giving evidence at the hearing;
- (j) exchanging affidavits of proposed witnesses;
- (k) disclosing reports of expert witnesses before the hearing;
- (l) whether the whole or part of the hearing should not be open to the public;
- (m) applying for further directions.

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<sup>7</sup> Section 30C (Submissions to investigator about complaint)  
Section 30D (Investigator’s report and outline)

**‘Unavailability or vacancy of member**

**‘30ZH.(1)** This section applies if—

- (a) the disciplinary panel has started to hear a disciplinary charge; and
- (b) before the panel has made its decision on the charge—
  - (i) a member becomes unavailable to hear the charge; or
  - (ii) a member’s office becomes vacant.

**‘(2)** The chairperson must give a direction under section 30ZE<sup>8</sup> for a new panel to hear the charge if—

- (a) the member is or was the presiding member; or
- (b) only 1 remaining member is available to hear the charge.

**‘(3)** If the member is or was a member other than the presiding member—

- (a) the chairperson may give a direction for a new panel to hear the charge; or
- (b) if a direction has not been given and the parties to the hearing agree—the remaining members may continue to hear and decide the charge.

**‘(4)** If the remaining members continue to hear the charge, their decision has the same effect as if all the original members had heard and decided the charge.

**‘(5)** If a new panel is made up, it must rehear the charge.

**‘(6)** However, the new panel may have regard to any record of the hearing before the former panel, including any evidence taken by it.

**‘Sitting places**

**‘30ZI.** The disciplinary panel may sit at any place in the State.

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<sup>8</sup> Section 30ZE (Chairperson’s directions about arrangement of business)

***‘Division 5—Disciplinary proceedings******‘Subdivision 1—Starting proceedings*****‘When disciplinary charge may be laid**

**‘30ZJ.** The board may lay a disciplinary charge against a registered person if—

- (a) it has been given a report about the person by an investigator; and
- (b) after considering the report and any submissions made to the investigator or the board, the board considers that a ground under section 31 or 32 exists to lay the charge.’.

**Amendment of s 31 (Grounds for exercise of disciplinary powers against architect)**

**6.(1)** Section 31, words before subsection (1)(a)—  
*omit, insert—*

**‘Grounds for disciplinary charge against architect**

**‘31.(1)** For section 30ZJ, the following are the grounds for a disciplinary charge against an architect—’.

**(2)** Section 31(1)(f), ‘pursuant to section 35’—  
*omit, insert—*

‘under section 39F<sup>9</sup>’.

**(3)** Section 31(2), ‘principal’—  
*omit, insert—*

‘architect’s client’.

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<sup>9</sup> Section 39F (Orders on finding of guilt)

(4) Section 31(2)(f), ‘principal’s’—  
*omit, insert—*  
‘client’s’.

### **Amendment of s 32 (Grounds for exercise of disciplinary powers against company)**

7.(1) Section 32, words before subsection (1)(a)—  
*omit, insert—*

#### **‘Grounds for disciplinary charge against company**

‘32.(1) For section 30ZJ, the following are the grounds for a disciplinary charge against a company—’.

(2) Section 32(1)(d), ‘pursuant to section 35’—  
*omit, insert—*  
‘under section 39F<sup>10</sup>’.

(3) Section 32(2)(a), ‘principal’—  
*omit, insert—*  
‘company’s client’.

### **Replacement of ss 33–39**

8. Sections 33 to 39—  
*omit, insert—*

#### **‘How disciplinary charge laid**

‘33.(1) A disciplinary charge is laid by filing the charge with the chairperson.

‘(2) The charge must state the ground on which the charge is based.

‘(3) The board must give a copy of the charge to the person charged.

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<sup>10</sup> Section 39F (Orders on finding of guilt)

***Subdivision 2—Hearings*****‘Steps to be taken by chairperson**

**‘34.(1)** If a disciplinary charge is laid, the chairperson must—

- (a) take all necessary steps to have the disciplinary panel formed to hear and decide the charge; and
- (b) give written notice to the person charged of the place, day and time of the hearing at least 30 days before the day fixed for the hearing.

**‘(2)** The notice must—

- (a) state, or attach a copy of, the charge; and
- (b) advise the person charged of the person’s right to legal representation or representation by an agent.

**‘Conduct of hearings**

**‘35.(1)** When conducting a hearing, the disciplinary panel—

- (a) must observe natural justice; and
- (b) must proceed quickly with as little formality and technicality as is consistent with a fair and proper hearing of the disciplinary charge being heard; and
- (c) is not bound by rules or practice about evidence; and
- (d) may inform itself of anything in the way it considers appropriate.

**‘(2)** Subject to subsection (1), the chairperson may give directions about the procedure to be followed in a hearing.

**‘(3)** A person nominated by the presiding member for the purpose may administer an oath or affirmation, or take a statutory declaration, required by the presiding member.

**‘(4)** The panel may adjourn a hearing.

**‘(5)** The panel may hear the charge in the absence of the person charged if the person—

- (a) has been given notice of the hearing under section 34(1)(b); and
- (b) fails to attend or continue to attend the hearing.

### **‘Representation**

‘36. The board and the person charged may be legally represented at the hearing or represented by an agent.

### **‘Hearings are open**

‘37.(1) A disciplinary panel hearing is open to the public.

‘(2) However, the presiding member may close the hearing or part of the hearing to the public if opening the hearing to the public would be unfair to the person charged or contrary to the public interest.

‘(3) However, any person representing the board or the person charged may be present while the hearing is closed.

### **‘Attendance notice**

‘38.(1) The presiding member may by written notice (an “**attendance notice**”), require a person to attend at a disciplinary panel hearing at a stated time and place until excused, for 1 or more of the following—

- (a) to give evidence;
- (b) to produce a stated document or thing;
- (c) to establish a reasonable excuse claimed for a stated document or thing the person is required to produce.

‘(2) An attendance notice must state, so far as reasonably practicable, the general nature of the matters about which the person may be questioned at the hearing.

‘(3) However, subsection (2) does not stop the person from being questioned about something relating to the disciplinary charge being heard.

**‘Attendance notice must not be contravened**

**‘39.(1)** A person who is given an attendance notice must not, unless the person has a reasonable excuse, fail to—

- (a) attend the hearing; or
- (b) continue to attend the hearing until excused; or
- (c) produce a document or thing stated in the notice.

Maximum penalty—8 penalty units.

**‘(2)** It is a reasonable excuse for an individual to fail to produce a document or thing if producing the document or thing might tend to incriminate the individual.

**‘Inspection of documents**

**‘39A.(1)** If a document or thing is produced to the disciplinary panel, the panel may—

- (a) inspect it; or
- (b) copy it, if it is relevant to the disciplinary charge being heard.

**‘(2)** The panel may take possession of the document or thing for as long as is reasonably necessary for the hearing.

**‘(3)** While the panel has possession of the document or thing it must allow the person who would be entitled to the document or thing if it were not in the panel’s possession—

- (a) to inspect it at any reasonable time; or
- (b) if it is a document—to copy it.

**‘(4)** The panel must return the document or thing to the person as soon as practicable after the period mentioned in subsection (2).

**‘Refusal to take oath or affirmation or answer question**

**‘39B.(1)** A person attending as a witness at a disciplinary panel hearing must not fail—

- (a) to take an oath or make an affirmation when required by the presiding member; or

- (b) without reasonable excuse, to answer a question put to the person at the hearing.

Maximum penalty—8 penalty units.

‘(2) It is a reasonable excuse for a person to fail to answer a question if answering the question might tend to incriminate the person.

#### ‘**Allowances for witness**

‘**39C.(1)** A person attending a disciplinary panel hearing as a witness is entitled to be paid the allowances and expenses payable to a person appearing as a witness in a hearing before a Magistrates Court.

‘(2) Subsection (1) applies whether the person attends under an attendance notice or at the request of a party to the hearing.

‘(3) The allowances and expenses must be paid by—

- (a) if the person attended at the request of a party or because of an attendance notice issued at the request of a party—the party; or
- (b) if paragraph (a) does not apply—the board.

#### ‘**Deciding questions before disciplinary panel**

‘**39D.(1)** A question before the disciplinary panel must be decided according to the opinion of—

- (a) the majority of the panel members for the hearing of the disciplinary charge being heard; or
- (b) if the members are equally divided on the question—the presiding member.

‘(2) However, a question of law to be decided by the panel may only be decided by the presiding member.

***Subdivision 3—Disciplinary panel’s decision*****‘When a finding of guilt may be made**

**‘39E.(1)** The disciplinary panel may find a person charged with a disciplinary charge guilty of the charge if on hearing the charge it is satisfied on the balance of probabilities that the ground on which the charge is based has been made out.

**‘(2)** If the ground is the ground mentioned in section 31(1)(f),<sup>11</sup> the reference in section 31(1)(f) to the board is taken to be a reference to the panel.

**‘(3)** If the panel does not find the person guilty, it must dismiss the charge.

**‘Orders on finding of guilt**

**‘39F.(1)** This section applies if the disciplinary panel finds a person charged with a disciplinary charge guilty of the charge.

**‘(2)** The panel may make an order that—

- (a) no action be taken by the panel; or
- (b) the person be cautioned or reprimanded; or
- (c) the person pay the board, by way of a penalty, an amount (of no more than 40 penalty units) fixed by the panel; or
- (d) if the person is an architect—the person’s registration be cancelled; or
- (e) if the person is a company—the person’s approval as a company be cancelled; or
- (f) the person be disqualified, indefinitely or for a stated period, from obtaining—
  - (i) if the person is an individual—registration; or
  - (ii) if the person is not an individual—approval as a company;

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<sup>11</sup> Section 31 (Grounds for disciplinary charge against architect)

or

- (g) the person pay the board all or part of the costs of and incidental to either or both of the following—
  - (i) the hearing of the charge;
  - (ii) any investigation under this part because of which the charge was laid.

‘(3) The panel may also order that the person be disqualified, indefinitely or for a stated period, from acting as an executive officer of a company if—

- (a) the finding of guilt is because the panel is satisfied a ground mentioned in section 31(1)(c)<sup>12</sup> has been made out; and
- (b) the person is, or has acted as, an executive officer of a company.

‘(4) If the panel orders the person to pay a penalty or costs, the order must state—

- (a) the amount to be paid; and
- (b) the time or times for payment.

### ‘**Suspension direction**

‘**39G.(1)** This section applies if the disciplinary panel orders a person to pay an amount by way of penalty or for costs.

‘(2) The order may also direct that, if the person does not pay the amount within a stated period (the “**payment period**”), the person’s registration or the person’s approval as a company be suspended until the amount is paid.

‘(3) If the person does not pay the amount within the payment period, the registration or approval is suspended until the amount is paid.

### ‘**Effect of cancellation, suspension or disqualification**

‘**39H.(1)** If the disciplinary panel orders a person’s registration or a person’s approval as a company to be cancelled or if the registration or approval is suspended under section 39G—

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<sup>12</sup> Section 31 (Grounds for disciplinary charge against architect)

- (a) the registration or approval ends; and
- (b) the board must take the person's name off the register or any list of approved architectural companies.

‘(2) However, if the suspension ends, the registration or approval revives and the board must restore the person's name to the register or list.

‘(3) Subsection (2) is subject to parts 3 and 4.<sup>13</sup>

‘(4) If a person is disqualified from obtaining registration or approval as a company, the board must not register or approve the person while the disqualification is in effect.

#### **‘Notice of decision and reasons**

‘**39I.(1)** The disciplinary panel must give written notice of any decision to the board and the person charged as soon as practicable after making the decision.

‘(2) The notice must state the following—

- (a) the decision;
- (b) the reasons for the decision;
- (c) that the board or the person may appeal against the decision to a District Court within 28 days;
- (d) how an appeal may be started.<sup>14</sup>

‘(3) In this section—

**“decision”** means—

- (a) the panel's finding as to whether or not the person is guilty of the disciplinary charge; or

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<sup>13</sup> Part 3 (Registration of architects)  
Part 4 (Approval of architectural companies)

<sup>14</sup> For how to start an appeal, see section 45 (Appeals).

- (b) an order under section 39F; or
- (c) a direction under section 39G.<sup>15</sup>

#### *‘Subdivision 4—Miscellaneous*

#### **‘Appeals from disciplinary panel’s decisions**

**‘39J.(1)** The following persons may appeal<sup>16</sup> to a District Court against the following decisions of the disciplinary panel—

- (a) the person charged—a finding of guilt of the person or a disciplinary order against the person;
- (b) the board—a disciplinary order.

**‘(2)** In subsection (1)—

**“disciplinary order”** means an order under section 39F or a direction under section 39G.<sup>17</sup>

#### **‘Publication of cancellation or disqualification**

**‘39K.(1)** This section applies if the disciplinary panel orders—

- (a) a person’s registration or a person’s approval as a company to be cancelled; or
- (b) that the person be disqualified from obtaining registration or approval.

**‘(2)** The board must publish the order by gazette notice.

**‘(3)** However, the notice must not be published within 28 days of the making of the order.

**‘(4)** If an appeal against the order is started, the notice may only be

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<sup>15</sup> Section 39F (Orders on finding of guilt)  
Section 39G (Suspension direction)

<sup>16</sup> For how to start an appeal, see section 45 (Appeals).

<sup>17</sup> Section 39F (Orders on finding of guilt)  
Section 39G (Suspension direction)

published if—

- (a) the appeal is finally decided or is otherwise ended; and
- (b) the result of the decision on the appeal or the ending of the appeal is that the registration or approval is or remains cancelled.

### **‘Return of registration or approval certificate**

**‘39L.(1)** A person must, unless the person has a reasonable excuse, surrender the person’s certificate within 14 days after—

- (a) the disciplinary panel orders the person’s registration or the person’s approval as a company to be cancelled or suspended; and
- (b) the person has been given notice under section 39I.<sup>18</sup>

Maximum penalty—20 penalty units.

**‘(2)** If a suspended certificate is returned, the board must return it to the person at the end of the suspension period.

**‘(3)** In this section—

**“certificate”** means a certificate of registration under section 19 or certificate of approval under section 26.<sup>19</sup>

### **‘Recovery of penalty or costs**

**‘39M.(1)** This section applies if—

- (a) the disciplinary panel orders a person to pay the board an amount as a penalty or for costs; and
- (b) the amount is not paid within the time stated in the order.

**‘(2)** The board may recover the amount from the person as a debt in a court having jurisdiction for the amount.’.

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<sup>18</sup> Section 39I (Notice of decision and reasons)

<sup>19</sup> Section 19 (Certificates of registration)  
Section 26 (Certificate of approval and renewal)

**Omission of s 43 (Board to have powers of commission of inquiry)**

9. Section 43—

*omit.*

**Amendment of s 45 (Appeals)**

10.(1) Section 45, ‘shall’—

*omit, insert—*

‘must’.

(2) Section 45, after ‘decision of the board’—

*insert—*

‘or the disciplinary panel’.

(3) Section 45(a), ‘the board’s decision’—

*omit, insert—*

‘the decision’.

(4) Section 45(c), ‘order of the board’—

*omit, insert—*

‘decision’.

**Replacement of s 53 (Judicial notice)**

11. Section 53—

*omit, insert—*

**‘Judicial notice**

‘53. The signatures of the following persons are to be judicially noticed—

- (a) the chairperson of the board;
- (b) the chairperson of the disciplinary panel;
- (c) the registrar.’.

**Amendment of s 54 (Regulation-making power)**

**12.(1)** Section 54(2)(aa)—

*omit.*

**(2)** Section 54(2)(f)—

*omit, insert—*

‘(f) fees and allowances that may be paid to members of the board and the disciplinary panel; and’.

**Insertion of new s 55**

**13.** After section 54—

*insert—*

**‘Numbering and renumbering of Act**

‘**55.** In the next reprint of this Act produced under the *Reprints Act 1992*, the provisions of this Act must be numbered and renumbered as permitted by the *Reprint Act 1992*, section 43.’.

**Insertion of new pt 8**

**14.** After section 56—

*insert—*

**‘PART 8—TRANSITIONAL PROVISIONS FOR  
ARCHITECTS AMENDMENT ACT 1998****‘Definitions for pt 8**

‘**57.** In this part—

“**commencement**” means the commencement of this part.

“**former section 33**” means section 33<sup>20</sup> as in force immediately before the commencement.

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<sup>20</sup> Former section 33 (Commencement of disciplinary proceedings)

**‘Investigators**

‘58. A person is taken to be an investigator if, immediately before the commencement, the person held an appointment to conduct an investigation under former section 33.

**‘Proceedings for which hearing not started**

‘59.(1) This section applies if immediately before the commencement—

- (a) an architect or approved architectural company has been served with a summons and complaint under former section 33; and
- (b) the board has not started to hear the complaint.

‘(2) The summons and complaint is withdrawn.

‘(3) However, the board may consider any investigator’s report given under former section 33 that it considered for the summons and complaint as if the report is a report by an investigator under part 5.

**‘Pending proceedings**

‘60.(1) This section applies if immediately before the commencement—

- (a) an architect or approved architectural company has been given a summons and complaint under former section 33; and
- (b) the board has started to hear the complaint, but the hearing has not been completed.

‘(2) The proceeding may be continued before, and completed by, the board as if the *Architects Amendment Act 1998* had not been enacted.

**‘Expiry of pt 8**

‘61. This part expires 1 year after it commences.’.