

ARCHITECTURAL PRACTICE ACT 2009 (SOUTH AUSTRALIA)

RESTRICTIONS ON THE USE OF THE TITLE ARCHITECT

INFORMATION PAPER

The Architectural Practice Board of South Australia is the statutory authority responsible to the Minister for administering the Architectural Practice Act 2009 (“the Act”) to provide for the registration of architects and architectural businesses; to regulate architectural practice for the purpose of maintaining high standards of competence and conduct by registered architects and registered architectural business; and for other purposes.

The relevant Minister is the Minister for Housing and Urban Development and the Department of Planning, Transport and Infrastructure (DPTI) is the Department responsible for supporting the Minister.

The Board is responsible for maintaining a register of architects, architectural companies and partnerships and for ensuring that only properly qualified and experienced people are listed on the register of architects, and only companies and partnerships which satisfy the requirements of the Act are registered as architect companies and partnerships.

The Board has a statutory role to investigate complaints made against architects and against unregistered persons holding themselves out to be architects. The Board has powers to discipline registered persons and architectural businesses that are found to have contravened the Act.

The Act commenced on 1 January 2011. This Act replaced the former Architects Act 1939 and covers architects, architectural companies and partnerships.

Section 38 of the Act provides for restrictions relating to the provision of architectural services and in particular makes reference to illegal holding out as an architect by a person not registered with the Architectural Practice Board of South Australia.

A copy of Section 38 of the Act is reproduced later in this document for your reference, however principally it provides that a person not hold himself or herself out as an architect or permit another person to do so unless registered on the register of architects. A similar provision also applies for body corporates and partnerships of architects or firms of architects. The section also provides that a person must not hold out a natural person, a body corporate or a partnership as an architect unless that person, body corporate or partnership is registered on the appropriate register of architects.

The maximum penalties for breaches of these provisions are a \$50,000.00 fine or imprisonment for six months. This is a significant increase in penalty from the provision under the former Architects Act 1939 and reflects the seriousness of which Parliament views the holding out of unregistered persons as architects to the public.

The Board seeks your assistance in ensuring that inadvertent and accidental holding out of persons as architects or architectural businesses does not occur. The Board is aware of many recent instances where this has occurred, creating confusion for the public and leading to further investigation of the person or persons concerned by the Board and the potential for prosecution through the Court system.

It is not a defence to prosecution that the person committing the offence was not aware that the person or business referred to as an architect was not registered with the Board. **The holding of a degree in architecture alone does not allow a person or business to use the title “architect”.**

It is a very simple matter to check the registration of an individual or business entity by either contacting the Board or searching the online register on the Board’s website at www.archboardsa.org.au/register-of-architects/. If you are unsure as to whether or not a person or business is actually registered, please do not hesitate to contact the Board for assistance.

Section 40 of the Act also provides that the use of certain titles, descriptions or their derivatives is prohibited as those titles or descriptions may only be used by a registered architect or architectural business. In particular, a natural person, body corporate or partnership may not use a prescribed word or its derivatives to describe themselves or a service that they provide. Prescribed word is defined to mean “architect” or be any other word or expression prescribed by the Regulations to the Act. Section 40 prescribes a maximum penalty of \$50,000.00 for breaches of this section.

The Act does provide for some limited exceptions to the rule under Section 40 at Section 41. These exceptions are:

1. An employee of a registered architect or registered architectural business can use the title or description of “architectural assistant”, “architectural technician” or “architectural drafter”.
2. A person may use the title of “landscape architect”, “naval architect”, “computer systems architect”, “golf course architect”, “information technology architect”, “IT architect” or “system architect”.
3. A person who holds an architectural qualification may describe him or herself as holding that qualification.

4. A person may use the word "architectural" only as indicating that he or she carries on the business of supplying goods in connection with architecture.

Sections 40 and 41 are reproduced later in this document.

It has been the Board's experience that inadvertent misuse of the title architect occurs on a not infrequent basis in the media. For example, editorial in relation to building designers, building work, advertisements for design services or the sale of real estate. The Board seeks to minimise and preferably avoid these occurrences and is seeking to educate persons, businesses and organisations about these issue.

The Board has also published a Guidance Note 2 on the use of the title architect and its derivatives which may be found on the Board's website www.archboardsa.org.au and a copy of which is also enclosed with this information paper.

The Board would appreciate any assistance you can give in informing your staff members and customers of these requirements in order to avoid any unnecessary misrepresentations and the risk of prosecution under the Act. If you have any questions in respect to any of the above, please do not hesitate to contact the Board on the numbers below.

38 – Illegal holding out as architect

- (1) A natural person must not hold himself or herself out as an architect or permit another person to do so unless registered on the register of architects.
Maximum penalty: \$50 000 or imprisonment for 6 months.
- (2) A person must not hold out a natural person as an architect unless that natural person is registered on the register of architects.
Maximum penalty: \$50 000 or imprisonment for 6 months.
- (3) A person must not hold out a body corporate as an architect or permit another person to do so unless the body corporate is registered on the register of architectural businesses.
Maximum penalty: \$50 000 or imprisonment for 6 months.
- (4) A person must not hold out a partnership as a partnership of architects or firm of architects or permit another person to do so unless the partnership is registered on the register of architectural businesses.
Maximum penalty \$50 000 or imprisonment for 6 months.

40 – Use of certain titles or descriptions prohibited

- (1) A natural person who is not a registered architect must not use a prescribed word, or its derivatives, to describe himself or herself or a service that he or she personally provides.
Maximum penalty: \$50 000.
- (2) A body corporate that is not a registered architectural business must not use a prescribed word, or its derivatives, to describe the body corporate or service that the body corporate provides.
Maximum penalty: \$50 000.
- (3) A person who is a partner in a partnership that is not a registered architectural business must not use a prescribed word, or its derivatives to describe the partnership or a service that the partnership provides.
Maximum penalty: \$50 000.
- (4) A person must not, in the course of advertising or promoting a service that he or she, or a partnership in which he or she is a partner, provides, use a prescribed word, or its derivatives, to describe a person who is engaged in the provision of the service or the partnership if the person or partnership is not a registered architect or registered architectural business, as the case requires.
Maximum penalty: \$50 000
- (5) In this section –
Prescribed word means –
 - (a) architect; or
 - (b) any other word or expression prescribed by the regulations.

41 – Exceptions for certain titles and descriptions

Nothing in this Division prohibits-

- (a) an employee of a registered architect or registered architectural business from using the title or description of “architectural assistant”, “architectural technician” or “architectural drafter”; or
- (b) a person from using the title or description of “landscape architect”, “naval architect” or “computer systems architect”; or
- (c) a person who holds an architectural qualification from describing himself or herself as holding that qualification; or
- (d) a person from using the word “architectural” only as indicating that the person carries on the business of supplying goods in connection with architecture; or
- (e) a person from using a name, title or description prescribed by the regulations in such circumstances, and subject to such restrictions, as may be prescribed by the regulations.