

# Architects Regulation 2017

## NSW Architects Code of Professional Conduct

Clause 11



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.

A failure to comply with the Code may constitute 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:

*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 architectural services.

*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.

*the Act* means the Architects Act 2003.

*the Regulation* means the Architects Regulation 2017.

(2) Expressions used in this Code that are defined in the Act have the meanings set out in the Act.

### Part 2 General practice standards

#### 3 Information and disclosures

- (1) An architect must provide information, or disclose a matter, to a client in writing.
- (2) Information may be given, or a disclosure made, to a client orally:
  - (a) if it is reasonable in the circumstances for the information to be given or the disclosure to be made orally, and
  - (b) providing the information or disclosure is not expressly required by a provision of this Code to be given or made in writing.

#### 4 Provision of architectural services generally

- (1) In providing architectural services, an architect must:
  - (a) act with integrity and reasonable care, and
  - (b) provide the services:
    - (i) in a manner that (at the time the services are provided) is widely accepted in Australia by peer professional opinion as competent professional architectural practice, and
    - (ii) in compliance with any laws applicable to the provision of such services.
- (2) An architect must provide architectural services to a client:
  - (a) with reasonable promptness, and
  - (b) in accordance with any agreed time frame or in a reasonable time as far as is permitted by the provision of instructions to the architect by the client.
- (3) An architect must withdraw from the provision of any architectural services if the architect reasonably believes that, in the architect's professional judgment, the provision of the services 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 must only offer to clients architectural services within the architect's skill and competency.
- (5) An architect must advise a client to obtain specialist advice or services from a suitably qualified person other than an architect (such as an engineer) concerning an issue arising in connection with the provision of architectural services if the architect believes that it is in the client's interest to do so.

## 5 Disclosures 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 must:
  - (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) If an 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 architectural services, the architect must disclose this fact to a client, or to a prospective client, for the architectural services.
- (3) An architect must 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 must 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.

## Part 3 Standards concerning dealings with clients

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

- (1) An architect must 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, an architect must take all reasonable steps:
  - (a) to ensure that all information and material provided is truthful, accurate, unambiguous and relevant to the client's interests, and
  - (b) to provide a client with sufficient information to enable the client to make decisions about the provision of the architectural services, including information that clearly identifies the implications of various decisions that could be made, and
  - (c) to avoid making misleading or false comparisons with architectural services provided by competitors.
- (3) An architect must take all reasonable steps to ensure that a client is informed of:
  - (a) the decisions required of the client in respect of the architectural services being provided by the architect, and
  - (b) the implications of those decisions for the performance of the architectural services (particularly those implications related to timeliness, cost and changes to the architectural services).
- (4) An architect must 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 services concerned.

- (5) An architect must not disclose to any person any information agreed as being, or understood to be, confidential that is acquired from or provided by a client in the course of the provision of the architectural services by the architect unless authorised to do so by the client in writing or as required by law.
- (6) An architect must, with reasonable promptness, respond to a client's reasonable requests for information or other communications concerning the architectural services being provided by the architect to the client.

## 7 Client Agreements

- (1) An architect must enter into a written agreement with the client concerning the provision of architectural services.
- (2) If the agreement is prepared by or on behalf of the architect, the agreement must include the following:
  - (a) the parties to the agreement,
  - (b) the name, registration number and contact details of the architect responsible for providing the architectural services,
  - (c) the scope and nature and specific requirements of the architectural services,
  - (d) how the professional fees and costs of the architectural services will be calculated,
  - (e) where possible, reasonable estimates of disbursements,
  - (f) how professional fees and costs, including disbursements, will be paid,
  - (g) how the architect may inform the client of progress in the provision of the architectural services,
  - (h) how the client may authorise the architect to proceed with the architectural services, or any part of the architectural services,
  - (i) a requirement that the architect must inform the client how a change or amendment to the architectural services will affect the professional fees and costs for the architectural services,
  - (j) how the architect may obtain the client's authority to change or amend the architectural services,
  - (k) how variations to the agreement may be made,
  - (l) how any pre-existing agreement to the provision of other architectural services for the client is to be applied,

- (m) how the agreement may be terminated and for what reasons,
  - (n) a reservation of the right of an architect to withdraw from the provision of the architectural services in the circumstances referred to in clause 4 (3),
  - (o) notice of the existence of this Code and how the client can obtain a copy,
  - (p) notice that alternative dispute resolution will apply to disputes and how alternative dispute resolution mechanisms will apply.
- (3) The architect must ensure that the cost of architectural services provided to a client:
    - (a) reflects the fee structure specified in the agreement, and
    - (b) accurately reflects the amount of work done or to be done for the client in the provision of the architectural services (including any variations to the architectural services and the incurring of any liabilities to pay employees overtime).
  - (4) The architect must enter into the agreement before commencing to provide the architectural services unless:
    - (a) it is not reasonable to do so in the circumstances, or
    - (b) the architectural services to be provided are urgent, in which case, the agreement must be provided to the client within a reasonable time after commencing to provide the architectural services.

## 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) In administering a building contract on behalf of a client, an architect:
  - (a) must act with fairness and impartiality, and
  - (b) must discharge the architect's obligations diligently and promptly, and
  - (c) must provide the client with relevant information in a timely manner, and

- (d) must 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 must 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 architectural services to be provided.
- (2) Subclause (1) does not apply to an architect in connection with the provision of any architectural services:
  - (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) An architect must keep the following records concerning architectural services provided to a client:
  - (a) correspondence sent and received,
  - (b) financial transactions,
  - (c) client instructions and meetings held with the client,
  - (d) drawings, photographs of works in progress, project journals and diaries created in connection with providing the architectural services.
- (2) The records may be maintained in hard copy or electronic form.
- (3) If the records are maintained in electronic form, the architect must maintain adequate electronic copies of the records to enable the records to be restored if one electronic copy is destroyed or damaged.
- (4) The records must be kept for at least 6 years after the completion of the architectural services concerned.

## 11 Provision of statement of account

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

## 12 Inspection of documents by client

- (1) A client may ask to inspect an architect's documents and records relating to the provision of architectural services to the client.
- (2) The architect must respond within a reasonable period of time to the client's request to inspect documents and records by giving the client (where practicable and during normal business hours) a reasonable opportunity:
  - (a) to inspect:
    - (i) documents produced in providing the architectural services, and
    - (ii) records (except confidential business records) relating to the provision of the architectural services, and
  - (b) to make copies (at the client's expense) of any, or any part, of the documents or records.
- (3) An architect must not unreasonably refuse to provide a client with an opportunity to inspect or copy the documents or records referred to in subclause (2).

## 13 Maintaining knowledge of architectural services to be provided

An architect in charge of a client's architectural project must 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 architectural services.

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

An architect must, 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 the architectural services being followed, including the responsibility of an architect to withdraw from the provision of the architectural services under clause 4 (3) of this Code.

## Part 4 Standards ensuring insurance coverage

### 15 Professional indemnity insurance

- (1) Subject to any requirements of the Act or the Regulation, an architect must:
  - (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 architectural services if:
    - (i) the person engaged to provide the architectural services is not the architect, and
    - (ii) the architect is providing the architectural services 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

### 16 Continuing professional development

- (1) An architect must 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 requested by the Board to do so, report to the Board on all the steps taken by the architect under subclause (1) during the current registration period.
  - (3) Subclauses (1) and (2) do not apply to a non-practising architect.

## Part 6 Standards concerning public

### 17 Dealings with public

- (1) When dealing with the public in the course of an architect's professional practice, an architect must 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) When dealing with the public in the course of an architect's professional practice, a nominated architect responsible for the provision of architectural services by an architect corporation or an architect firm must ensure that:

- (a) the architect 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) 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 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) must not provide any endorsement of any product or service in connection with the provision of architectural services in a misleading manner, and
  - (b) must disclose in the material conveying the endorsement whether or not a fee has been received for or relating to that endorsement.

## 18 Representations concerning architectural work

- (1) An architect must 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 must 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 7 Standards concerning professional relationships with other architects

### 19 Dealings with other architects

- (1) In any dealings with other architects in the course of the architect's professional practice, the architect must 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 architectural services to a client from an other architect who is to discontinue providing the architectural services (the former architect), the former architect must, 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 architectural services, and
  - (b) not withhold any information from the new architect that may assist the new architect to understand the history and nature of the architectural services.