

Guideline

The provision of architectural services by approved companies or partnerships with unregistered employees

This guideline has been prepared by the ARBV pursuant to regulation 7 of the Architects Regulations 2015. Guidelines provide architects guidance on professional conduct and practice. If the ARBV reasonably believes an architect has not complied with the guidelines, it may give written advice to an architect about compliance, pursuant to regulation 8 of the Regulations. Guidelines also help consumers understand what the ARBV expects of architects. Guidelines are reviewed regularly.

Companies and partnerships approved under the Act which provide architectural services must ensure that a director or partner is responsible for the work and that it is carried out under the supervision of an architect. See Sections 4 and 8D of the *Architects Act 1991* (Vic) (Act).

Employees of approved companies and partnerships involved in the provision of architectural services should be registered as architects or working towards becoming registered. The use of unregistered employees on projects should be subject to close supervision by an architect and to clear representations to clients and the community that they are not architects.

The term ‘architect’ is used in this Guideline to mean a person who holds registration under section 11 of the Act, in accordance with the definition in section 3 of the Act.

Framework

An approved company or approved partnership must not provide architectural services unless:

- a director of the approved company or a partner in the approved partnership who is registered as an architect is responsible for the carrying out of the services; and
- the services are carried out by or under the supervision of a person who is registered as an architect under the Act.¹

A breach of this requirement is an offence. For approved companies, both the company itself and each of its directors and senior management could be prosecuted for the offence.

¹ see section 8 of the Architects Act 1991 (Vic) (Act)

For approved partnerships, each of the partners in the partnership could be prosecuted for the offence.

In addition, the Act prohibits:

- unregistered individuals from representing themselves as being architects or allowing themselves to be represented as such; and
- persons (including companies) from representing unregistered individuals to be architects when they know or ought to know that they are not.¹

A ‘representation’ that a person is an architect can occur in different ways, including by:

- using the title ‘architect;’ or
- using a different title or description from which it could be inferred that the person is registered; or
- representing that the person provides the services of an architect.²

ARBV guidance

1. How does the Act regulate the use by approved companies and partnerships of unregistered staff?

Unregistered staff of approved companies and partnerships cannot provide architectural services unless:

- a director or partner who is an architect is responsible for the carrying out of the services; and
- those services are carried out under the supervision of an architect.

¹ see section 4 of the Act

² see section 7 of the Act

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They also cannot use the title *'architect,'* use the phrases *'architectural services,' 'architectural design services'* or *'architectural design'* to describe their services or hold themselves out or allow themselves to be held out as an architect.

This is to ensure that every project carried out by an approved company or partnership has the supporting expertise of an architect and that a director or partner is accountable for the provision of the architectural services.

2. What does it mean for a director or partner to be 'responsible for the carrying out of the services'?

A director or partner will be *'responsible for the carrying out of architectural services'* where they are an architect and have been formally designated as being the responsible person for the services, such that:

- within the approved company or partnership, it is understood that the director or partner in question has been designated as the responsible person for the project; and
- the person has been nominated to the client as being the director or partner architect who is responsible for the project.

This requirement is consistent with the requirement in the Code of Conduct in the *Architects Regulations* that an architect be named in the Client Architect Agreement as the architect responsible for providing the services.

3. What types of services are 'architectural services'?

The term *'architectural services'* is not defined in the Act. In the context of the Act, the phrase means services relating to the design and construction of a building, which are commonly carried out by architects.

This might include:

- taking instructions from and liaising with clients;
- preparing concept designs, town planning drawings, construction drawings, shop drawings, specifications and other related documents;
- liaising with other consultants, such as engineers, in relation to a building design;
- preparing and lodging consent applications with regulatory authorities, such as planning permit applications, building permit applications and report and consent applications; and
- undertaking contract administration tasks in relation to a building contract.

Unregistered employees who are carrying out work of this sort **must** be supervised in their work by an architect. If they are not supervised by an architect, the approved company or partnership for which they work is committing an offence, as are the directors or partners of that company or partnership.

Example

An approved company working on a residential project is carrying out contract administration services during the construction phase of the project. Under the building contract, progress payment claims are submitted by the builder to the architect. In practice, the progress payments are reviewed by a staff member who has no architectural background but is very experienced and skilled in contract administration, including assessment of claims. Is the staff member providing architectural services?

Yes. In this context, the work of assessing a progress payment claim submitted by a builder is work that is required to be carried out by the architect pursuant to their role in administering the building contract, as agreed in the client architect agreement. If an unregistered person is to review the progress payment claims, the architect must supervise their work.

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4. What does ‘supervision by a registered architect’ mean?

The term ‘*supervision*’ in s8D of the Act is not defined. In the context of the Act, ‘*supervision by a registered architect*’ means that an architect is directing, observing and controlling the work of the unregistered staff member. This may not need to be on a daily basis, but it must be often enough that the work being carried out by the unregistered staff member is regularly monitored and overseen by an Architect and is subject to their overall direction.

The Architect providing the supervision does not need to be a director or a partner. It can be an architect who is an employee of the company or partnership.

Example

An approved partnership is engaged to provide architectural services on a large new residential development on a greenfield site. The partnership decides that a senior employee, who is an architect, will be the project lead and the remainder of the team will work under her supervision. Given the size of the project, there are twenty employees on the project team, most of whom are not registered. The architect meets frequently with the senior members of her team, but the junior members mainly receive direction and supervision from the other senior team members, who are not registered, although the senior team members report regularly to the architect about the junior team members’ work. Are the services being provided by the junior unregistered team members under the supervision of the architect?

No. Where the supervision is occurring via other unregistered employees (albeit senior team members) and that is then filtered upwards to the architect, this does not constitute supervision by the architect. The architect is relying on the senior team members to correctly direct and control the junior team members’ work. This is not consistent with the intention of section 8D which is to ensure that all of the work is subject to the supervision of an architect.

5. Representing an unregistered staff member as an architect

Approved companies and partnerships should be careful to ensure that they are not representing or allowing the representation of their unregistered staff as architects. This goes beyond merely ensuring that those staff members are not described as ‘architects.’

Approved companies and partnerships must not:

- use titles or descriptions for those unregistered staff members which could lead consumers to infer that the person is an architect; and
- represent that the unregistered employee provides the services of an architect.

Clients and consumers more generally should be able to identify whether or not they are dealing with an architect. It may be difficult to describe the work carried out by staff members and their background experience without raising the implication that they are an architect. The easiest way to avoid this inference is to distinguish, in any published material, between those staff who are registered and those who are not. Depending on the context, this may require unregistered staff to be specifically described as being unregistered.

Examples

1. An approved company submits a bid in a competitive tender for architectural services in the design and construction of a large government building in Victoria. The bid documents submitted by the approved company describe the senior staff who would be involved in the project, including their position description, background experience and qualifications. A number of the senior staff named in the bid have architectural degrees and significant experience both overseas and in Australia in the provision of architectural services but are not architects. Their position description is not ‘architect’ but ‘Senior Associate.’ The description in the bid does not refer to the registration status of the staff.

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Examples cont.

It would be open to the government client, from reading the bid documents and noting the type of work done by the senior staff, their academic qualifications and background, to infer that those staff are architects. This could constitute a breach of section 4 of the Act.

2. An approved partnership wins an award for their work on a high profile project. The team leader was registered but other senior members of the team were not. The senior members of the project team are interviewed by a journalist, who then publishes a newspaper article, praising the 'visionary architects of the team,' each of whom is individually named.

The approved partnership did not make the representation in question, but once they are aware of it, they should request that the journalist take steps to correct the record. Otherwise, it could be inferred by readers that each member of the team is an architect.

Conclusion

The provisions in section 8D of the Act, operating together with sections 4 and 7, are intended to make sure that approved companies and partnerships keep a strict control over who carries out architectural services and over the supervision of unregistered staff carrying out that work.

The best way for approved companies and partnerships to ensure compliance with the Act is to:

- encourage all employees or contractors who are eligible for registration to apply for it;
- clearly distinguish in any published material between those staff members who are architects and those who are not;
- identify any work carried out that could constitute 'architectural services' which is carried out by unregistered staff members and put processes in place to ensure that work is supervised by an architect; and
- in respect of each project, ensure that a director, partner, or employee architect is assigned responsibility for the architectural services being carried out and that there is a process in place for that architect to have detailed ongoing knowledge



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