

PRIVATE AND CONFIDENTIAL RECEIVED ATTORNEY-GENERAL'S OFFICE

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Hon J Rau MP Minister for Housing and Urban Development GPO Box 464 Adelaide SA 5001

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Dear Minister

Re: The role of Architectural Practice Board of SA ('the Board')

Thank you for attending the recent meeting of the Board to discuss a range of issues, including the Government announcement about Boards and Committees, the role of the Board, the South Australian Civil and Administrative Tribunal and its impact on the Board, and the broader role of architecture within the South Australian urban design context.

The Architectural Practice Board of South Australia

At that meeting, you invited the Board to put forward a submission in letter form, outlining its role and essential purpose in response to the recent government announcement. The Board accepted your invitation, and this letter sets out the Board's views in relation to the essential nature of its roles and functions. It also includes an assessment as to whether there are options for these functions to be administered in any other way.

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Background

The Board (and its predecessors) has been in existence since 1939. Originally established under the Architects Act 1939, the Board is now constituted under the Architectural Practice Act 2009. This Act was proclaimed in January 2011. There were many important changes to the composition of the Board in the new Act, including

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- the appointment of an additional 2 Board members (from 5 to 7 members);
• the introduction of a requirement for the Board to comprise not only architects but people from other backgrounds including a lawyer, a person with qualifications or experience in urban or regional planning, building surveying or the building and construction industry, and a member with qualifications or experience in accounting, business or finance;
• the election of 3 Board members from within the architectural profession in South Australia (the election was held in late 2013), with the remaining 4 members appointed by the Minister;
• setting the maximum number of years a member was able to serve on the Board.

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Established under the Architectural Practice Act 2009

The Board is a 'self-regulating' Board (ie regulated by architects elected by the profession and lay persons appointed by the Minister) implementing legislation as distinct from government regulating the profession directly. The Board is of the view that this model of regulating the profession assists with making sure that important attributes such as independence and impartiality are embedded in the Board's processes. It has a clear role to act in the interests of the public, and set high standards for the profession, and this is indicative of the important role architects have in the broader community. The addition of non-architect members to the Board, the election of 3 of its members, and setting the maximum number of years a member may serve on the Board provides transparency and accountability as well as impartiality in its deliberations on all matters.

While continuing to undertake its primary roles of regulating the architectural profession in South Australia, and accrediting courses of education for the purpose of registration, the current Act also enables the Board to promote education in architecture and to assist students in architecture, and furthering knowledge of architecture among the public in South Australia. The Board considers this is an important additional function that enables it to engage more directly with the wider public and students of architecture.

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## **Role of the Board**

The Board's role is set out in section 13 of the Architectural Practice Act 2009. This section particularises 10 functions (a copy of which is appended to this letter). These functions focus on

- achieving and maintaining high professional standards within the profession in South Australia (by regulating architects);
- accrediting courses of education or training providing qualifications for registration;
- determining the requirements for registration;
- handling complaints against architects;
- promoting education in architecture and furthering knowledge of architecture in the broader community;
- providing advice to the Minister, and carrying out other functions assigned to it by the Minister

Section 13 of the Act also requires the Board to undertake its role with a view to achieving and maintaining high professional standards by registered architects and registered architectural businesses. It enables the Board to prepare Codes and guidelines for the architectural profession; and to establish its administrative processes for complaint handling based on the principles of procedural fairness and natural justice.

The Board considers these functions are essential, and further, that it is in the public interest for the Board to exist to ensure these functions are carried out independently, consistently, and in a transparent manner.

The Board does not consider that registration of architects imposes a regulatory burden in this State. On the contrary, it notes that all other States and Territories, and New Zealand (along with many other countries) require architects to be registered, and mostly via self-regulating professional bodies. Further, the Mutual Recognition Act and the Trans Tasman Mutual Recognition Act ensures there is national and trans-Tasman collaboration in the requirements for registration and accreditation of courses of education, as well as ensuring architects are competent and their conduct is of a professional standard. The model of a self regulating Board comprising of architects and (most often) lay persons performs this role in all these jurisdictions. As noted above, self-regulation of a profession is important as it ensures independence, and consistency in accountability for standards of practice, so that the public interest is protected.

The Board, along with other State and Territory Boards in Australia, also participates in the APEC Architect Register, where architects registered in countries aligned to the Asia Pacific Economic Co-operation agreement may be recognised as achieving a common standard of professional competence. Architects registered in South Australia may also apply to register internationally, including in, but not limited to, APEC aligned countries. Consequently, architects registered in South Australia are recognised internationally, and hence registration is valued by the architectural profession in this State - for a range of reasons including contractual both domestically (ie within Australia), and overseas.

In addition, the Board, with other State and Territory Boards, are members of the Architects Accreditation Council of Australia (AACAA). This is a national corporate entity. Its functions include assisting Boards to administer the Architectural Practice Examination (APE, a national examination which is part of the stringent requirements for registration of architects); and through state-based Boards, undertaking assessments of graduates from overseas to review the equivalency of their academic qualifications and experience for the purposes of registration. There is clearly a need for these processes to be nationally consistent, and the AACAA works collaboratively with state and territory Boards to achieve national consistency.

## **Other options**

You asked the Board to consider whether there were alternative options to the Board for its functions to be fulfilled. Given the national and international implications, it is difficult to identify another model other than a Board established under legislation. In terms of other organisations in SA

- The Australian Institute of Architects – SA Branch (AIA) is a voluntary member association. While acknowledging the important role the AIA has, it would be inappropriate for a member organization such as the AIA to undertake the Board's role in regulating the profession. Firstly, and importantly, it would be open to criticism from the public as acting in the interests of its members rather than in the public interest. Further, it does not have the mandate to undertake the processes required in registering architects, including conducting the APE and other (national) assessment processes. The Board is therefore strongly of the view that an independent body, accountable to the public, is required to undertake these roles, and not an organisation accountable to its members.

- The Association of Consulting Architects Australia (ACA) is a professional body with a branch in all states and territories, including South Australia. The ACA promotes discussion on business matters in architecture in Australia and is the key body representing architectural employers in Australia. For the same reasons as noted above, the Board considers the ACA has an important role within the profession, but is not an appropriate organisation to regulate the architectural profession in SA.
- South Australian Civil and Administrative Tribunal (SACAT). It is proposed that SACAT will undertake the Board's role in hearing complaints of unprofessional conduct against architects in future, and appeals against some Board decisions. The Board supports this change. While the Board will continue to review complaints against architects of a less serious nature, the Board recognizes that most other States in Australia have established similar civil and administrative tribunals to hear a range of matters, including disciplinary hearings against architects. However, it is difficult to see how the Board's other functions such as registration of architects (including conducting the APE, and assessments of academic equivalence and experience in architectural practice), accreditation of architectural courses for the purpose of registration, prosecution of breaches of the Act in the Magistrates Court, promoting architecture and educating the public, and providing advice to the Minister, could be undertaken through SACAT, which is essentially a tribunal and dispute resolution body.
- Other business licensing bodies in government agencies/Office for Design and Architecture SA. The Board acknowledges that some Government agencies perform a business licensing role. It also recognizes the valuable contribution the Office for Design and Architecture SA provides to government and the community. Nevertheless, the Board considers that there would be resistance from the architectural profession in SA to transferring the Board's regulatory functions to a government agency. Much of the wide range of professional expertise which is required for the successful functioning of the Board is located in the private and educational sectors. Moving the functions of the Board to a government agency may limit the capacity to draw on this wide range of professional expertise and the benefit of that expertise could be lost to the Government, the Board and the profession. Furthermore, self-regulation of a profession is considerably different to 'licensing'. Self regulation includes a range of other specialised functions, including accreditation of university courses; development of professional standards and codes of conduct; and enforcement of professional standards and conduct. In the context of the architectural profession, it also includes managing the Architectural Practice Examination and other assessments of academic equivalency, reviewing national competency standards in architecture, and monitoring changes within the profession. Many of these functions are currently performed, or contributed to, by Board members individually, or members of the profession, either at no cost, or a very modest cost.

### **Funding**

The Board is a self-funding body. Its income is solely derived from registration fees from the architectural profession. Its income is expended on administering the provisions of, and performing its functions under the Architectural Practice Act 2009. It receives no government support (financial, administrative, human resource or other), and it therefore imposes no impost upon the Government. The Board's funding is principally expended on staff (1.2 FTE, including the Registrar), general operating expenses, and its legal fees (to the Crown Solicitor's Office). Sitting fees to Board members are minimal, and Board members volunteer their time outside of Board meetings to ensure the Board undertakes its functions and fulfills its objectives.

### **Recent new directions**

Since the introduction of the Architectural Practice Act 2009, the Board has bedded down its processes under the new Act. It has also established a modest Awards and Prizes program. This is consistent with its role to promote education in architecture, and assist students and further knowledge of architecture among the public. A small annual prize has been awarded to the most accomplished final year student at each of the Universities in the subject 'architectural practice' for some years; new initiatives include a Research Fellowship (open to architects registered in SA); and a Best Practice Prize (where architects are nominated for the Prize by their client/s). The Board is also developing a multi-media project for students and the public entitled 'What does an architect do?'.

The Board has also continued to develop guidance notes on professional standards and to assist the profession and the public to understand and comply with the new Act, and in 2012 the Code of Conduct was developed by the Board and endorsed by the (then) Minister. Further, in pursuance of the public interest, it has successfully undertaken several prosecutions in the Magistrates Court against persons in breach of the Act.

## **Independent Review**

In mid 2013, the Board commissioned Hender Consulting to undertake an independent review of its governance and operations. The Board adopted the recommendations from the review, and a new governance model has been implemented since February 2014. Essentially, rather than outsource the administrative and Registrar functions to a private accountancy firm (where a senior officer acted as the consulting Registrar), the Board now employs a part-time Registrar and support staff. It has also established and equipped its own office, instead of operating through the office of the accountant. The Board anticipates this will result in some modest savings, and has allocated these savings to other areas of expenditure. This will enable the Board to continue to ensure it fulfills all its obligations and functions under the Act in an effective and efficient manner.

## **Summary**

The Board submits that as a self-regulating professional body, it is best placed to, and should continue to undertake its important roles, in order to protect the interests of the public and set and maintain high standards for the architectural profession in South Australia. It is of the view that the Board has been effective in its role, and it is the most appropriate body to fulfill all the diverse functions of the Architectural Practice Act 2009, because it is

- independent (both of government and the profession), and seen to be independent;
- has a mix of Ministerial appointees and architects elected by the profession in SA;
- has a wide range of skills, experience and competencies to draw on;
- has the support of the profession in South Australia;
- is entirely self funded;
- has recently undertaken an independent review of its operations and implemented the recommendations from that review to improve its operational efficiency and efficacy;
- works collaboratively with similar Boards in other States and Territories, and with the AACA, to achieve national objectives, and promote international goals (eg the APEC initiative).

Thank you for the opportunity to present this submission to you and your colleagues.

Yours sincerely,



**Gary Bonato**  
**PRESIDING MEMBER**

## Functions of the Architectural Practice Board of South Australia

### Section 13 Functions of Board

- (1) The functions of the Board are as follows:
  - (a) to oversee the practice of architecture by registered architects and registered architectural businesses in the public interest;
  - (b) to approve, after consultation with authorities considered appropriate by the Board, courses of education or training that provide qualifications for registration on the register of architects;
  - (c) to determine, after consultation with authorities considered appropriate by the Board, the requirements necessary for registration on the register of architects;
  - (d) to establish and maintain the registers contemplated by this Act;
  - (e) to prepare or endorse, subject to the approval of the Minister, codes of conduct or professional standards for registered architects or codes of conduct for registered architectural businesses
  - (f) to prepare or endorse guidelines on continuing architectural education for registered architects;
  - (g) to take such measures as the Board considers appropriate to promote education in architecture, to assist students in architecture or to further knowledge of architecture among the public;
  - (h) to establish administrative processes for handling complaints received against registered architects and registered architectural businesses (which may include processes under which a person voluntarily enters into an undertaking);
  - (i) to provide advice to the Minister as the Board considers appropriate;
  - (j) to carry out other functions assigned to the Board by or under this Act, or by the Minister
- (2) The Board must perform its functions under this Act with a view to achieving and maintaining high professional standards both of competence and conduct by registered architects and registered architectural businesses.
- (3) If –
  - (a) a code of conduct or professional standard prepared or endorsed by the Board is approved by the Minister; or
  - (b) guidelines are prepared or endorsed by the Board,the Board must –
  - (c) cause a copy of the code, standard or guidelines to be published in the Gazette; and
  - (d) take reasonable steps to send a copy of the code, standard or guidelines to each registered architect and each registered architectural business to whom it applies; and
  - (e) ensure that a copy of the code, standard or guidelines is published on the Internet and kept available for public inspection without charge during normal office hours at the principal office of the Board,(although proof of compliance with paragraphs (c), (d) and (e) is not necessary for the purposes of any proceedings that involve an alleged contravention of or failure to comply with a code of conduct or professional standard).
- (4) The administrative processes established by the Board for handling complaints received against registered architects and registered architectural businesses must be designed –
  - (a) to be fair to both the aggrieved person and the respondent; and
  - (b) to keep both the aggrieved person and the respondent properly informed about the steps taken by the Board in response to the complaint; and
  - (c) to provide, where appropriate, opportunities for the clarification of any misapprehension or misunderstanding between the aggrieved person and the respondent; and
  - (d) to keep both the aggrieved person and the respondent properly informed about the outcome of the processes; and
  - (e) to take into account the needs of particular classes of persons who may otherwise suffer disadvantage in the conduct of those processes.