



Association of Consulting Architects  
Australia

Box 17  
Flinders Lane PO  
Melbourne  
VIC 8009  
T: 03 9650 8577  
F: 03 9650 8577  
E: nat@aca.org.au  
W: www.aca.org.au

# National Communique

## May 2013

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### SAFE DESIGN

*Anna Piatkowksa on safe design requirements and the ACA's Safe Design Process.*

Occupational (or Workplace) Health and Safety legislation has existed abroad and in Australia for decades. Australian legislation has varied from state to state since at least 1984, and the Commonwealth Model Work Health and Safety Act 2011 and Regulations (Model Act) was created with the intention of harmonising provisions Australia-wide. In order for this to occur, it must be passed into law by each State. To date all but Victoria and Western Australia have done so, with minor local variations.

Safe design is not a new concept to architects – it has always been an integral part of design, and this should not be forgotten in the current atmosphere of interest and activity. However, precisely because safe design considerations are deeply embedded in the design process, it is not necessarily easy for an architect to produce a clear paper trail that demonstrates all the matters considered, the points at which they been considered, what the result has been, and who has the relevant information.

The Model Act and its state equivalents require these considerations to be undertaken, recorded and communicated in specific ways, not only by architects, but also by all parties involved in a project.

The consequences of failing to do so are very serious, involving potentially significant fines and other criminal penalties.

Codes of Practice are published on State Work Health and Safety websites; while they are not law, adherence to them is a good way of demonstrating compliance with the legislation. Their recommendations may tend towards higher standards than those set by the existing Victorian and WA acts. Clients and contractors that operate Australia-wide may adopt the higher standard for consistency, and require their consultants to do likewise.

Practices should integrate their Safe Design procedures into their project processes – nominate a 'champion' within the practice, create a section in the file index and an item on all meeting agendas – so that they are built into the design and documentation culture, and produce a clear, auditable trail.

The architect must understand certain concepts: PCBU, Workplace, Worker, Structure, Substance, Plant and Officer, in order to respond with minimum fuss and maximum effect. Safe Design should be a practical tool, not a paper chase.

The ACA Safe Design Process assists practices Australia-wide to respond to the provisions of the Model Act under its various state versions. It also provides definitions and an outline of the duties under the Act of a PCBU as a *designer*. It offers guidance for architects in identifying other Duty Holders and in discharging their record-keeping and communication obligations. Important (and some mandatory) documents that appear in an effective Safe Design process include those issued:

- To the Client at the outset, introducing the concept of shared duties, and asking all the relevant questions
- To other Duty Holders as they join the project, again introducing the concept of shared duties and asking relevant questions
- Indicating issue of mandatory reporting during the project
- At the end, with the completed Risk Register and highlighting the importance of addressing Residual Risk.

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ACA's Safe Design Process is still only a guide; we encourage each practice to adapt the process to suit their own working models and provide feedback that will help improve our document. This is particularly important because Safe Design is not just for large projects, it is for *every project*. The process cannot be so cumbersome that it is unworkable for a one-person practice undertaking a small project. A good way of understanding how the documents can work for you is to review AS 4360 (Risk Management) which provides guidance on how to identify, evaluate and manage risk.

All of the above must be seen in terms of the architect as *one member of a group of Duty Holders* in a project. Safe Design is the responsibility of all PCBUs and each is responsible within its own area of control and expertise.

Practices must have a written WH&S policy that recognises their status as a PCBU and their duties as a Designer *and as an Employer* (although the latter is not covered in this note.) A policy should be a simple and straightforward statement, not a treatise.

The fact that the subject is now so widely canvassed will be of great assistance to architects, who will find that clients, contractors and other relevant parties are becoming more attuned and responsive to their shared duties under the new Acts.

## **NATIONAL TOPICS**

### **INTERNSHIPS UPDATE**

Do internships provide a much-needed foot in the door and an opportunity to learn or are they simply exploitation? It all depends on the structure and policies in place, and the integrity with which they are supervised. And, of course, an internship needs work within the Fair Work legislation. There are also differences between internships that are part of a student's course of study and those that are not.

The ethics and business implications of internships, particularly the unpaid kind, are the subject of much discussion and debate internationally, where they are also more entrenched (see, for example, Anna Winston's [recent piece](#) on BD Online and Sam Lubell's [editorial](#) on Architect's Newspaper). The RIBA is also taking a stand. The 2012 [RIBA Student Earnings Survey](#) found that "11% of students were not paid in their current or most recent work placement" and the [RIBA has warned that](#) "Practices which take on unpaid students will be stripped of their accreditation", with RIBA President Angela Brady arguing that unpaid work [devalues the profession](#).

Here in Australia the Fair Work Ombudsman has announced it is looking further into unpaid internships following a recent [report](#) *Experience or Exploitation?: The Nature, Prevalence and Regulation of Unpaid Work Experience, Internships and Trial Periods in Australia*. This found that unpaid internships are much more prevalent than expected, and are particularly dominant in professional fields. It also states that "there is reason to suspect that a growing number of businesses are choosing to engage unpaid interns to perform work that might otherwise be done by paid employees" and recommends that "FWO focus on those businesses that are systematically using unpaid work arrangements to exploit workers, and gain competitive advantage over businesses complying with workplace laws".

There is a handy [infographic](#) and a [summary](#) of findings and recommendations. The Fair Work Ombudsman's [Fact Sheet](#) on Internships, Vocational Placements & Unpaid Work is another useful resource. Myriam Robinson outlines that report and some of its implications in an [article](#) on Smart Company. There is also a discussion on internships in the latest issue of [Architect Victoria](#), co-written by a student, Virginia Mannering, and a lawyer, Dimity Mannering.

The ACA is leading the way in providing advice on internships in architecture in Australia and has invested in expert legal opinion from DLA Piper.

This was sent out via the recent [Business Alert](#) and makes it clear that "where the arrangement between an architecture practice and an unpaid student takes on the characteristics of an employer-employee relationship, he or she may be owed minimum entitlements."

This also warns that "just because a person agrees to perform work on a volunteer basis does not mean that an employer-employee relationship will not arise. Employers cannot simply label something a "volunteer arrangement", when in fact it has all the characteristics of an employment relationship." You can find the Business Alert [here](#).



Subsequent to the Business Alert, further questions have been raised regarding the University of Adelaide's proposed Internship Scheme. The SA Branch obtained further legal advice from DLA Piper about this program and its compliance with legislation under the Fair Work Act. The following details the specifics of the University of Adelaide program, but may also provide useful context for other practices when approached about other programs.

The advice is that, because of the lack of clarity in the legislation, to be safe internship should be defined as a "requirement" for the course. Under the Act the definition of vocational placement is:

*"Vocational placement means a placement that is:*

- a) undertaken with an employer for which a person is not entitled to be paid any remuneration; and*
- b) undertaken as a requirement of an education or training course; and*
- c) authorised under the law or an administrative arrangement of the Commonwealth, state or a territory."*

The SA Branch sought confirmation from the university that this was indeed the case. They respond that the Internship Program Agreement makes it clear that the internship qualifies as a "requirement" under the Fair Work Act and the Architect's Award does not apply.

The agreement states:

*The Student is undertaking a Master of Landscape Architecture / Master of Architecture at the University and has enrolled in the elective course 'Architecture Internship (ARCH 7036)' / 'Landscape Architecture Internship (LARCH 7030)' ("Course"). It is a requirement of the Course that the Student undertakes a professional placement within a business, professional practice or government agency ("Internship").*

*The aims of the Internship are to:*

- a) Enable the Student to apply theoretical and other knowledge gained from their program of study in a professional setting;*
- b) Undertake activities consistent with the Course objectives and the University's Graduate Attributes;*
- c) Enable the Student to gain insight into the functions and operations of a professional workplace.*

*The Host Organisation has agreed to host the Student for an unpaid Internship.*

The ACA encourages practices to support the University of Adelaide internship program, but reminds everyone that any students who work beyond the requirements of that internship must be paid in accordance with student award rates. We also recommend that you check with your insurance advisor on any issues relating to the insurance of the student.

The ACA is also confident that by working closely with the universities and the Australian Institute of Architects, it can develop internship programs that provide opportunities for aspiring architects and the practices that engage with them, and do not contribute towards exploitation.

## ACA NATIONAL SALARY SURVEY

The ACA is about to launch the first ACA National Salary Survey, which will provide members with vital information about their position within the broader marketplace. Architects are in a competitive market for both labour and projects and the better informed we are the better we are able to strategise and respond.

The survey questionnaire will cover a wide range of roles and positions including professional, technical, and administrative and line management. It will have filters for location, size and type of practice, as well as a question regarding benefits within packages.

The survey is independent and anonymous, and the results will be available to members through a private portal. The survey will be carried out every six months.

We hope to get a strong response to the survey – the more responses the more meaningful the data that we can provide to members on these important issues. An email will be sent out with a link to the survey in the coming days.

## THE COMMUNIQUE

We are developing the Communique over the coming months and are keen to have your input. If you would like to contribute content to the Communique, have ideas about topics to be covered, or suggestions of material elsewhere that might interest members please send an email to [editor@aca.org.au](mailto:editor@aca.org.au)

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## KNOW YOUR AWARD – FEDERAL MINIMUM WAGE INCREASE

The national [minimum wage](#) increase has been [announced](#) and sees a 2.6% increase. Employers will need to increase pay rates to correspond with this in the first pay period on or after 1 July 2013.

This is relevant to all employees who are covered by Modern Awards, including the Architects Award, which covers all architectural practices. It does not directly affect staff paid above award rates, although you may wish to review their salaries accordingly.

To understand what increases will apply to your business you will need to check all the relevant industrial instruments – this could include different awards or enterprise bargaining agreements.

It is important to get onto this promptly so that you don't end up having to pay back payments, with all the attendant complications. Remember you need to keep written records of all time and wages records for all employees for seven years (Fair Work Inspectors can impose fines for not doing so). These records should be readily accessible and comprehensible.

You can [sign up](#) to the Fair Work Ombudsman's email updates to be alerted to updated information, which will be available from July 1.

## EVENT REPORT – ARCHITECTS & ENGINEERS: VENUS & MARS?

The recent ACA SA Roundtable between architects and engineers canvassed a range of topics – the current marketplace, the working relationship between architects and engineers and education – and identified many issues that will be familiar to members across Australia.

There was general concern about the amount of fee cutting and fee competition, with no attendant change in the scope of work expected. The quality of documentation and the quality of document coordination is suffering as a result. The amount of time that senior staff are spending writing submissions is also adding to costs, often with little benefit in the selection of the correct team. The architects in the room noted that when preparing submissions they have very little time to properly assess engineering submissions or to incorporate engineering submissions into their tenders. It was commented that some Local Government and Statutory Bodies have particularly complex tender requirements and onerous contracts, which makes things particularly difficult. The architects and engineers agreed that two-stage selection, with the lead consultant chosen to better define brief and scope before other consultants are brought on board, would reduce submission costs and lead to better team selection and fees that better match the project brief and scope.

What can be done? The roundtable came up with a number of suggestions. Participants asked if the Department of Planning, Transport & Infrastructure (DPTI) – the major government client in SA – keeps statistics that allow consultants' fees to be compared to the quality of documents at the tender documentation review process or in contract administration variations. DPTI replied that it does not currently have any relevant statistics but is looking at options for providing more feedback to industry. DPTI has, however, reduced its tender requirements – there are now smaller tender fields, limited page numbers and so on – but roundtable participants felt that the process could be streamlined further. For example, if a select tender group have been selected because they are qualified can the tenders submission be simpler (under 10 pages?). The engineers support a staged, merit-based fee selection process and the option of two-envelope tenders.

The roundtable suggested that it would be worth collecting data from architects and engineers about time spent on submissions and therefore cost in tendering. This would provide an evidence base when arguing for change. The group also recommended better guidelines be produced on suitable consultant procurement methods.

Engineers at the event noted that current marketplace conditions mean that architects have spare capacity and therefore spend more time on design and redesign. This is resulting in lot of reworking and many changes to the design, with a corresponding reluctance on the part of engineers to commence their design and documentation work, making the projects inefficient. A general discussion followed on how to achieve "real collaboration" in the consultant team and the need for all parties to understand how building design and documentation is put together. There was also concern that there is no real crossover or understanding of the different professions at university and as a result students leave university not knowing "how to talk to each other". It was noted that Adelaide University has a combined engineering/architecture degree, which tries to bridge that gap.

The proper implementation of Building Information Modelling (BIM) could be the catalyst for better cooperation between architects and engineers. BIM relies on true collaboration and the integration of all consultants' work, and workflows must change to reflect that fact. Architects have to clearly state to the consultant team what elements of the design are locked in and when, while engineers have to commit to modelling these elements to meet program deadlines. Perhaps the most successful teams will be those that leave their own planets, and work together in new cooperative relationships here on earth?

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## OF INTEREST ELSEWHERE

### **ACIF CONSTRUCTION INDUSTRY FORECASTING**

ACA is a member of the Australian Construction Industry Forum, the peak forum for all organisations in the construction industry. ACIF has just released their latest industry forecast at breakfast presentations around the country outlining predicted activity over the next year and beyond. ACIF Forecasts are a primary source of market information for the building and construction industry in Australia. ACIF Forecasts are updated twice a year and are delivered as [summaries](#) including commentaries by sector and [state comparisons](#). Updates are released at the [ACIF Briefings](#) in April and October before becoming available online in the month following. [Website subscribers](#) have the opportunity to generate their own data and charts by using the [Customised Forecast](#) tools. ACIF Forecasts also provide [local forecasts](#) of demand and supply for 21 locales around Australia. This is a new initiative and will be gradually added over 2012.

### **FAIR WORK COMMISSION UNFAIR DISMISSALS STATISTICS**

The Fair Work Commission has launched a new [webpage](#) that shows the statistics for the “results and outcomes of applications for unfair dismissal remedy made under s.394 of the Fair Work Act 2009”. This was the subject of a recent [article](#) in the Fairfax press.

### **WOMEN IN MALE-DOMINATED INDUSTRIES – A TOOLKIT OF STRATEGIES**

The Australian Human Rights Commission has just launched the [Women in Male Dominated Industries Toolkit](#), which provides suggestions and examples of workplace strategies in four areas: attraction, recruitment, retention and development of women. It identifies construction as one of three areas of specific interest (along with mining and utilities) and has an interactive component, which allows people to provide feedback and suggestions.

At the launch, Sex Discrimination Commissioner Elizabeth Broderick pointed out that closing the gap on men’s and women’s employment rates could increase GDP by 11%. Related new [research](#) from the Australian School of Business shows strong links between effective work-family support practices and a range of positive business outcomes.

NAWIC has also recently released its report [What Women Want in a Construction Career](#), which also includes recommendations for employers.

There is an enormous amount of discussion about gender and architecture at the moment, and extended discussion about the problems – business and otherwise – that arise from the profession’s lack of diversity.

### **PARLOUR GUIDELINES TO EQUITABLE PRACTICE – FEEDBACK SOUGHT**

Parlour, in association with the Australian Institute of Architects, is developing [guidelines for equitable practice](#). As part of this they are seeking feedback on the draft guidelines, which were released on 30 May. For more details, and a link to the feedback form see [here](#).

The guidelines are aimed at helping architectural workplaces facilitate change towards a more equitable profession. Addressed to both employers and employees, they will provide hints and tips, and guides to thinking on a range of issues relevant to the architecture profession in Australia today.

These guidelines are an outcome of the Australian Research Council Linkage project [Equity and Diversity in the Australian Architecture Profession: Women, Work and Leadership](#).

### **WHAT DO ARCHITECTS DO IN A FINANCIAL CRISIS**

The latest issue of [Architect Victoria](#) canvasses the question “What Do Architects Do in a Financial Crisis?” It can be downloaded [here](#).



## RIBA PLAN OF WORK 2013 and BUSINESS BENCHMARKING SURVEY

The RIBA is producing a lot of material and research at the moment, which may be of interest to ACA members. Although not directly applicable to Australia it provides interesting and potentially useful context. Two worth noting are:

The [RIBA Plan of Work 2013](#) is an update of the document first developed in 1963. This identifies eight work stages, each with clear boundaries and details the tasks and outputs required at each stage. The Plan of Work is available as an online tool, and is designed as a flexible 'kit of parts' that architects can use to develop and download their own customised Plan of Work for particular projects.

[RIBA Business Benchmarking Survey](#). Billed as "Answering the questions every practice should be asking", this survey was completed by all RIBA Chartered Practices and offers a comprehensive account of the state of the profession in Britain. There is some fascinating data – both hopeful and alarming (for example, 62% of practices surveyed did not have a business plan). The [Executive Summary](#) provides a digestible two-page version and is well worth a look.

The American Institute of Architects produced a similar survey last year – [The Business of Architecture: 2012 AIA Survey Report on Firm Characteristics](#).

## **BRANCH NEWS**

### SOUTH AUSTRALIA

#### **WHS Progress**

After our successful joint seminar with the Australian Institute of Architects on the new Work Health and Safety legislation, a small working group was formed by ACA SA to rationalise the information presented and provide information to architects. It consists of Ric D'Andrea (Hardy Milazzo), Thanh Tran (Thomson Rossi), Peter Morris (Swanbury Penglase) and Ian Hore (Walter Brooke) with John Held as convenor. To date the work has entailed:

- Client hazard analyses and checklists – formulating a standard approach to obtaining the information we legally need to obtain from clients
- Additions to briefing guidelines to incorporate WHS issues
- Risk analysis tools for designers to comply with the Safe Design Code
- Specification clauses to ensure the information in the Residual Risk register is formally transferred on to the Contractor.

We have been working closely with DPTI to ensure a uniform approach to the legislation whether the client is government or private. We are almost at the stage where the draft documentation can be circulated for comment and trial on actual projects. If you would like to participate in this process, contact John Held at [sapres@aca.org.au](mailto:sapres@aca.org.au)

#### **Keith Neighbour Graduate Study Program**

A second group of graduates has finished their study program sponsored by ACA-SA and has sat for their registration exams. Registration of interest is now open for a third group – if you have a graduate who is considering sitting for the exam in the near future, contact Ian Hore 8272 4166 or [ian.hore@walterbrooke.com.au](mailto:ian.hore@walterbrooke.com.au). This program will be coordinated by Anne-Marie Borges and Jonathon Kirby.

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## VICTORIA / TASMANIA

### **Committee Farewell Struan Gilfillan**

On 2 May 2013 the ACA–Vic/Tas Branch Committee held a Committee luncheon to thank retiring Committee Founder Struan Gilfillan, a member since 1985. Struan has served the committee and the profession with distinction as Immediate Past Vice President and as key member of the Industrial Committee over many years.

The ACA–Vic/Tas wishes Struan all the very best for his retirement.

### **Architects Registration Board of Victoria**

We have received no further advice as to the future status of the Architects Registration Board and will continue to monitor the situation in conjunction with the Australian Institute of Architects.

## WEST AUSTRALIA

### **Members' Luncheon**

Our next Members Luncheon is scheduled for Friday 21 June. Invitations will be sent out in the next few weeks. Meanwhile, put it in your diaries for a good old Friday lunch, just like the old days!

### **Government Contracts**

Through the Built Environment Design Professions (BEDP) the ACA – WA branch is maintaining an active role in a working party engaging with the Building Management & Works over the conditions of engagement of the new Architectural Services Panel 2012. As previously reported we are responding to the general dissatisfaction with the new conditions, which have caused considerable waves amongst the profession and we are fighting extremely hard to change some of the unfair amendments to AS4122-2010 with a particular emphasis on:

- BMW contracting out of current legislation in regard to proportionate liability
- Limiting liability
- The large number of Special Conditions
- Removing the requirements for Architects to engage sub-consultants.

The working party is meeting on a regular basis and hopefully we will have some definitive news to report in the next edition of the Communique.

### **Administrative Support**

In line with the ACA's new Strategic Plan, the WA branch has recently engaged Theo Gaunt as a part-time administrative assistant to assist us in improving our services to members and ultimately increasing membership. We welcome Theo and look forward to the benefits that she will bring to us.

## NEW SOUTH WALES

### **NSW Government Conditions of Contract**

The Department of Finance and Services committee meeting to draft new model conditions of contract for engagement of consultant services on all NSW Government projects, on which the architectural industry is represented by the ACA, is progressing successfully and intends to have the first draft of the new document ready by late 2013.

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**NSW Branch Committee meetings.**

The schedule of NSW Branch Committee meetings for the remainder of 2013 is as follows:

Date: Thursday 13 June  
Thursday 15 August  
Thursday 26 September  
Thursday 24 October  
Thursday 28 November

Venue: Kennedy Associates  
Level 3 / 1 Booth Street  
Annandale NSW 2038  
P. 02 9557 6466

Time: 5pm – 6.30pm