PRODUCTIVITY COMMISSION INQUIRY

Review of Legislation Regulating the Architectural Profession

Architects Accreditation Council of Australia Incorporated
Response to the Draft Report

June 2000

AACA RESPONSE:

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Appendix 1: Architectural Services IGP and Turnover Calculations

1. INTRODUCTION

The Productivity Commission's review of legislation regulating the architectural profession has been undertaken to assist State and Territory Governments to meet their obligations under the Competition Principles Agreement and to achieve 'greater consistency' in any future regulation of the profession in Australia. National Competition Guidelines adopted by the Productivity Commission place the onus on those arguing for retention of regulation to show that benefits outweigh costs. This test, in the view of the Productivity Commission, has not been met by those supporting retention of a form of statutory accreditation.

Whilst AACA acknowledges the validity of many of the points raised in the Draft Report and some of the weaknesses identified in the existing system, it cannot always accept the evidence presented by the Productivity Commission in support of its conclusions nor does AACA agree with the final recommendation for self-regulation. By placing the onus on proponents of statutory regulation to demonstrate the net social benefit of the Architects Acts, AACA believes that the Productivity Commission itself has not fully assessed the relative merits of the current regulatory system or the consequences, both domestically and internationally, of its recommendation to repeal the Acts.

In this response to the Productivity Commission's Draft Report, AACA provides a rational and constructive case in support of its recommendation for a national system of legislation, not by reiterating the arguments contained in its original document, but by focusing on the Productivity Commission's rationale for the conclusion reached. AACA has accepted the invitation to advance further debate on the international issues surrounding the accreditation and regulation of architects and to comment on other relevant matters.

AACA challenges the Productivity Commission's assertion that the current system of certification fails to address public interest concerns, that it imposes restrictions on competition in the market for building design and related services and that the costs of providing those services are increased.

Despite endorsement, in passing, of many of the proposals for amendment contained in the AACA Legislative Guidelines, it is disappointing that no serious consideration has been given to their national application to provide a regulatory regime that would be acceptable both domestically and internationally.

AACA believes that adopting a system of self-regulation would prove a socially more costly means of assuring the quality of architectural services provided to local and foreign markets, and of building services generally, than would reform of the present system.

2. CERTIFICATION – SIGNIFICANCE OF TITLE

The issue of statutory protection of the title 'architect' is central to the Productivity Commission's review and the conclusions reached.

The Productivity Commission acknowledges that a title or 'label' has value in addressing information asymmetry by signaling qualifications to consumers and proposes that it should continue to be applied by various occupational associations (p 73). The Draft Report, for example, states that a credible label if adopted by a self-regulatory body would 'serve the public interest' (p 135). It finds that 'the alternative of not using the label architect diminishes the quality of information to consumers' (p 144) and, again, unregistered persons (i.e. unable to use the title) are 'not permitted to market their services in *the most effective way* to consumers' (emphases added) and so on.

But the Draft Report is not consistent in this view. It states 'the Commission considers that the public benefits of the current system, in terms of …*information provision*… are *negligible*' (emphasis added) (p 115) and recommends repeal of the Architects Acts.

It is difficult to reconcile these contradictory opinions and to understand the rationale behind them. But in view of their direct relevance to the far-reaching consequences of the final recommendation, it is important to look more closely at the arguments cited to support them.

Basis for Assessment of the Value of Certification

The Productivity Commission has assessed the value of certification in terms of:

- its effectiveness in protecting consumers against physical or financial risk;
- the extent to which it is understood and utilised by consumers;
- the presumption that it may restrict the competitiveness of non-architects.

It bases its findings on a comparison of the participation of architects and non-architects in various segments of a broad market sector.

AACA believes that there are misconceptions and omissions in the limited and often anecdotal evidence tendered that have led the Productivity Commission to reach some of its conclusions. The apparent presumption that architects and non-architects invariably compete to provide identical services may have distorted the evaluation of the significance of certification.

In the first instance, the Draft Report interprets the preference for architects in the public sector as evidence of the anti-competitive effects of certification (pp 45/46), whereas the lower participation of architects in the residential market is said to indicate the failure of certification to address information asymmetries. It fails however to canvass the likelihood that the reverse is in fact true and the choice of an architect rather than a non-architect is an informed decision which reflects the complexity of a project or the client's requirement for a special solution.

The dominance of architects in the public sector is a result of reliance placed on the brand name 'architect' and what it denotes. This is a clear example of the net benefit to consumers of title information in the search for service providers with appropriate skills. Removal of title certification would result in consumer reliance on a limited number of well-known firms and seriously reduce competition within the profession in the complex building design segment. **Restriction of title increases choice rather than reduces it.**

Similarly, the selection of service providers in the residential market for small-scale buildings indicates that the labels work well in this sector and consumers know what they are doing. Non-architects provide a useful service and meet the needs of many. Those who employ architects in this market are usually looking for a tailor-made or innovative solution that may have a specially sought quality. It is an informed choice. Estate agents know that 'architect designed' has market significance.

The Productivity Commission finds that although the anti-competitive effects of certification are limited (and in AACA's view unmeasurable) (p 114), it nonetheless fails to deliver net benefits to the community. This assessment is based on market comparisons between architects and other providers of building design services referred to above. It comes as a surprise therefore that the Productivity Commission's recommendations for change propose that those persons currently registered as architects could assume another restricted title reserved by professional associations for members with professional qualifications (p 134). No investigation of the parallel effects on the market of this exclusive title appears to have been undertaken by the Productivity Commission and no assessment of its impact is offered in the Draft Report. In what way would it differ? The provisions of Fair Trading Acts on use of descriptions denoting affiliation have relevance in this context. (See Section 5.)

AACA cannot agree with the interpretation of the limited evidence presented in relation to competitiveness and certification, particularly as the Draft Report contains no comparable investigation of the market effect on non-architects of the recommendations for adoption of exclusive professional titles by self-regulatory bodies.

Protection or Benefit?

As the Draft Report acknowledges, the definition of the market in which architects compete is, at best, arbitrary and much of the information on provision of services within the sector is unsubstantiated (p 25). AACA believes that the reliance placed on this uncertain analysis has distorted the final conclusions reached.

In the Productivity Commission's view the benefits of the information provided by certification are negligible, partly because it 'focuses on one group of providers who may not have the prime responsibility for *those areas which could cause harm*' (emphasis added) (p 73).

This appears to be an argument against license, not certification. As the Draft Report says, the purpose of certification is to enable a purchaser to measure ex ante the attributes of goods or services. It is effective in situations in which otherwise consumers would only learn about the qualities of the service through ex post experience (p 52). If the intention of legislation is to target sources of harm directly by application of controls on all service providers then it is licensing law not certification.

Architects are not trained in detailed engineering, plumbing or electrical services and the Productivity Commission has perhaps not understood that their profession requires them to appoint specialist consultants when required 'to directly address those practices where there is potential for significant harm for consumers and the community' (p 143). Consistent failure to provide services of appropriate standard result in the certified title being removed by the registration authority.

It is a matter of considerable concern that the Draft Report contains no serious consideration of the enhancement or **benefits** that architects are able to provide other than the negative benefits of risk reduction or avoidance of harm (pp 56, 68). It would help in the consideration of costs and benefits if the uniqueness of the various services provided in this sector by different participants were more fully explored so that the true value of certification to the community could be assessed.

Other Legislation

Building and planning control legislation introduced to set industry standards and control spillover effects were not intended as substitutes for the Architects legislation. It is true that architects are not needed to ensure that a room is of the correct size. It is also true that engineers are required to submit computations to local authorities under the building codes. But the certification of architects is directed towards different objectives. Its purpose is to signal appropriately qualified suppliers of designated services. Licensing of health professionals, lawyers, auditors and so on, takes this identification a step further by defining those qualified service suppliers who **must** provide the designated service. These licensed professions are also subject to the provisions of other legislation targeting specific consumer protection issues. Industry standards complement, rather than replace, regulatory provisions.

As the Draft Report notes, it is difficult to quantify 'quality standards for design' (p 72) but this does not reduce their importance in the consideration of these issues, indeed they are central to it. The experience of the rest of the world indicates that they cannot be dismissed.

The Productivity Commission cites tort and contract law and fair trading legislation as providing alternatives to the Architects Acts for claims against architects and restitution to consumers (p 137). The Draft Report's pre-occupation with the number of complaints received by Boards ignores the very real community benefits provided ex ante by the codes of conduct imposed on registered persons, (see Section 5). These are taken very seriously by registered persons who are subject to them.

The attributes instilled by the education and training of an architect, and the personal responsibility for professional conduct imposed by the Architects Acts, provide consumer benefits that are not addressed by laws targeting outputs.

The Link Between Input and Output

As the Productivity Commission states, for certification to be effective in overcoming information deficiencies, there must be a **direct** link between education inputs and output quality (p 54).

Whilst architects and non-architects at times provide similar services they are not members of the same profession, separated only by an arbitrary title. Although they share some occupational skills, their overall training is directed to the achievement of different competencies and outcomes.

- **Qualifications required to become an architect in Australia** are completion of a five year accredited, design centred, multi-disciplined course in architecture combined with two years of practical experience tested by examination, or equivalent competence. All Australian accredited architecture courses comply with the AACA National Competency Standards for Architecture (NCSA), commissioned by the Commonwealth Government. These in turn conform to internationally accepted threshold standards for the architectural profession. In this context it is relevant to note that Indonesia has adopted the Australian Competency Standards.

- **Qualifications required for other design service providers** range from one to three years.

The educational and training **input** in the architectural profession is of direct and lasting significance in shaping the subsequent approach and abilities of an architect. At the conclusion of the first three years of an architecture course, students have sufficient skill to design simple buildings. The following two years produce a dramatic expansion of conceptual, 3-dimensional perception, iterative approach to resolving and managing complex and conflicting design problems, increased technical knowledge and addressing construction, consumer and procurement priorities.

Several references to the education of architects in the Draft Report reflect the Productivity Commission's unfamiliarity with the disciplines it is investigating. Architectural education is directed at acquiring skills and knowledge that have broad application. The incorporation of a variety of specialist services into an agreed design concept is an integral part of an architect's work. The comments (p 88) that architecture courses do not reflect appropriate 'diversity', that different types of qualification are needed for different markets and that current standards may be artificially high, are mistaken. Those responsible for accreditation of architecture courses are carefully selected to represent a variety of market areas and are highly responsive to consumer interests in setting the course education should take.

Other comments in the Draft Report (p 88/89) are difficult to understand. It is suggested that 'limited competitive pressure on registration' may create a bias towards artificially high registration standards, that 'current registration standards could create unnecessary training costs for architects and provide distorted information to consumers', that faculties providing education for architects have an advantage over those which do not, and so on. It is implied that Boards and others deliberately manipulate the supply of architects. These theories are ill-founded and suggest that the Productivity Commission has not fully understood the significance of the international framework within which the profession operates.

The significance of prescribed professional experience and the practice examination in the education of an architect needs clarification. The Productivity Commission is incorrect in its statement that 'competent alternative providers (ie graduates)…are precluded from registration…'(p 144). The period of 'internship' for students and graduates is an integral part of the education of an architect in an area where 'hands-on' experiential learning to reinforce theory is the most effective way to develop essential management skills. Graduates who have not completed this part of their training have not satisfied an important segment of the National Competency Standards for Architecture and are not competent to practise. (Concerns about the conduct of the oral examination appear to be overstated, this may be because it has not been fully appreciated that the conduct of the Practice Examination has recently been revised.)

The proposal for competitive accreditation is not clear. Is it suggested that Universities vary their standards to acquire students or that they allow course assessment findings to be made public? This would be resisted by the institutions.

AACA argues strongly that rigorous accreditation procedures ensure that the link between input and output is direct, life long and definitive in the architectural profession and that certification provides a reliable and widely recognised signal of professional qualification, both nationally and internationally.

'Architect' - an International Title

Architecture is an internationally defined, recognised and discrete profession. Those who practise it are called architects or an equivalent, unique, title. The professional title 'architect' has global currency and international recognition. It is used worldwide to denote a service sector whose practitioners have acquired common specific skills and knowledge that enable them 'to take up activities under the professional title of architect' (EU Architects Directive).

The levels of competence required for admission to the architectural profession are largely uniform throughout most of the world and further harmonisation is rapidly being sought and achieved globally. International standards have been agreed by the profession itself (International Union of Architects' Accord on Standards was signed by 104 national associations in 1999) and are defined by governments sponsoring multilateral mutual recognition agreements.

3. INTERNATIONAL ISSUES

International Trade in Architectural Services

AACA is currently negotiating a mutual recognition agreement (MRA) with the UK Architects Registration Board (ARB) for reciprocal registration of architects in response to GATS initiatives. Preparation has been painstaking and negotiations are well advanced. Until the release of the Productivity Commission's Draft Report there was every likelihood that the desired outcome would be achieved. Currently Australian architects wishing to register in the UK must have their qualifications assessed, complete 12 months of appropriate practical experience in the UK and sit the architectural practice examination, and vice versa.

Such an agreement has long been sought by AACA. Not only would it provide access to the UK market but it could significantly enhance export of Australian architectural services well beyond the UK jurisdiction.

Whilst the EU Architects Directive would not apply to Australian architects, a reciprocal registration agreement with ARB would provide them with a benchmark of equivalence to European standards that would be the first requirement of the Competent Authority of another EU Member State for determining professional recognition of a third country national. This would be invaluable in unilateral negotiations for access of Australian architects to markets within Europe, EFTA and its aspiring eastern neighbours.

Similar consequential benefits could arise through the Transatlantic Economic Partnership (TEP) current negotiations between Europe and North America which are exploring mutual recognition opportunities in various service sectors. If architecture is included, an Australian/UK MRA could facilitate access for Australian architects to Canadian, US and Mexican markets.

The potential for negotiation of bilateral MRAs or unilateral access to ASEAN member states and other countries in the Asian/Pacific region could also be enhanced by the proposed AACA/ARB Agreement, particularly those such as Singapore, Malaysia, Chinese Hong Kong and the south Asian nations where the profession has historic ties with the British system. (Note: the first steps towards establishing mutual recognition in the region were taken at the Forum of Western Pacific countries held in Darwin in 1999.)

Following the review of the architectural profession in the United Kingdom and the subsequent rejection of the Warne recommendation for repeal of the Architects Acts, statutory regulation has received a renewed mandate in the UK. The UK Architects Registration Board has intimated its concern at the moves in Australia and the unlikelihood of its entering into reciprocal agreement with a self-regulated body.

The recommendation of the draft report will certainly threaten the negotiations that have been conducted with the UK so far. Its adoption would abort the proposed mutual recognition agreement for reciprocal registration. This would be serious blow for Australia's hopes of expanding overseas markets for export of architectural services.

Similarly The National Council of Architects Registration Boards (NCARB) of the USA has voiced concerns about the Productivity Commission's recommendation which it claims 'would diminish the future opportunities for Australian and United States architects to practice in each other's jurisdictions' (corres. 25.5.2000). Equally, repeal of the Architects Acts would have a serious impact on the reciprocal agreement with New Zealand under the Trans Tasman Mutual Recognition Act.

WTO/GATS Initiatives for Liberalisation of Trade in Services

As the Draft Report observes, the Australian Government is pursuing liberalisation of trade in services through participation in WTO. The Department of Foreign Affairs and Trade submission notes the commitment already made by Australia, as a GATS signatory, to the reduction of barriers to trade in the architectural service sector.

It is also noted that accountancy was the first profession to adopt disciplines on the domestic regulation of professional services under GATS which, essentially, reiterate the provisions of Articles VI and VII of GATS in sector specific terms. Provisions for registration as an architect in Australia appear equally to conform with these disciplines. In all service sectors, 'Australia is working to ensure that regulation is transparent and the least trade-restrictive necessary…' (Department of Foreign Affairs and Trade submission 146). The Freedom of Information Act will ensure the former requirement and mutual recognition agreements could facilitate the latter.

Members of GATS are reminded of the role that mutual recognition agreements can play in facilitating the process of establishing equivalency of service providers and the WTO has published broad guidelines on the subject. The challenge lies in translating the guidelines into an effective, workable regulatory instrument that is acceptable to all parties.

The major multilateral MRAs involving the architectural profession are government sponsored (eg. EU, NAFTA, and the TTMRA) and, in consequence, signatories to the agreements are obliged to make bigger concessions than voluntary negotiators are likely to accept.

The AACA/ARB proposed agreement on the other hand would be voluntary and the application of GATS disciplines in developing detailed procedures for implementation explores new ground. It was intended that the proposed framework would provide a basis for establishing similar bilateral arrangements with a more diverse range of trading partners, particularly in the Asian Pacific region.

Although Australian participation in the overseas market is as yet relatively small, it is poised for expansion. So far as is known, with the exception of Sweden and in certain circumstances Denmark, the architectural profession is, or is about to be, regulated by law in all the developed economies. Australia's traditional or potential trading partners also have varying levels of government intervention in the regulation of architects. These systems rely on structured accreditation processes similar to those adopted by AACA for this purpose.

It is significant that throughout the world statutory accreditation and regulation of the profession has been retained even after examination of its competitive effects. It does

suggest that government is seen to have a role to play that has not been fully investigated by the Productivity Commission.

Contrary to the Productivity Commission's final conclusion that 'current arrangements might have fostered an inward looking attitude amongst architects' (p 147) the registration and accreditation standards and criteria adopted by AACA and the architectural profession in Australia are informed by and conform with internationally defined standards. It could be argued that the profession has never been so outward looking.

Alternative Mechanisms for Overseas Marketing

When importing architectural services or negotiating MRAs, Competent Authorities normally require evidence of registration in the country of origin of an applicant for recognition, whether for right of establishment, temporary enrolment or international competitions etc. They are aware of the varied and sometimes conflicting objectives of professional associations in their own countries, particularly if there is more than one competing organisation, and they look for the quality assurance provided by statute backed registration.

AACA contends that the Productivity Commission's assertion that 'alternative mechanisms could be devised to meet requirements imposed by overseas regulators that would not impede the competitiveness of Australian architects' (p 108) is not supported by the evidence. It suggests for example the option of membership of a professional organisation and cites Sweden and Denmark as models. (Denmark in fact does have a form of statutory certification.)

Sweden is not an appropriate precedent. Although the profession is self-regulating in Sweden and competes on a small scale in Europe, mutual recognition between the 18 EU Member States was only achieved after 17 years of negotiation in which concessions were insisted upon to accommodate variations in regulatory provision of some States so that the Architects Directive could finally be implemented. This outcome is less probable in voluntary negotiations. Even within Europe, under the General System Directives a member of a profession regulated by a self-regulated association in the home country in some cases is only permitted to use the professional title conferred by that organisation rather than the legally controlled title of the host country.

Although there are variations in regulatory provisions between countries (p 117), they are not as extensive as suggested. Japan in fact has a rigorous, government controlled registration system for architects, with educational and training requirements essentially equivalent to those in Australia.

The engineering profession (p 108) does not serve as an appropriate model for the export of architectural services. International recognition procedures for 'professional' engineers are still at an early stage of development and indeed the profession itself does not yet have international definition.

The proposal that a national non-statutory register could be established by the industry specifically for architects seeking to export their services is of concern. It presupposes that the standards for export (ie international standards) in a deregulated environment will be higher than domestic standards. It is surprising that the Productivity Commission would recommend a measure which is predicated on lowering domestic standards which have, until now, been maintained at international levels. It is not clear how this would benefit the nation. Nor are the cost benefits apparent in disbanding one tested and recognized 'export' registration system only to replace it with another, untried and unknown.

The Productivity Commission has questioned the figures provided by the RAIA Insurance Brokers indicating that 22% of all architects' fees earned in Australia by those insured through the RAIA Brokers Ltd was derived from overseas commissions (p 47). It does however acknowledge that exporting to Asia was 'an important and expanding part of architects' revenue' (p 48). What the Draft Report has failed to recognize is the value of the statutory backed title to the exporter of services. The majority of Asian countries look to the statutory certification of 'architect'. In the competitive international arena, why would overseas countries give any cognizance to an Australian designer who does not have statutory certification. Repeal of the Architects Acts will discriminate against the Australian 'architect', resulting in losses of overseas commissions.

The Draft Report states that the Productivity Commission is not aware of any precedents where comparable countries have removed registration (p 108). It is probable that there are none. The Productivity Commission does however refer elsewhere to the 1993 Warne Review of Architects Legislation in the UK but fails to mention that the recommendation for repeal of the Architects Acts in the Report **was rejected by the government.** This is a significant result. The survival of statutory accreditation schemes in generally pro-competitive reforms overseas suggests that the public interest of legislative backing should not be dismissed out of hand. It would have been helpful in consideration of the issues that are the subject of this review if the reasons behind the UK decision had been weighed against the terms of the CPA but apparently no exploration of the subject has been undertaken.

Contrary to the view expressed by the Productivity Commission, there is strong evidence that domestic regulation of the architects' profession in Australia enhances rather than impedes its ability to export its services. The RAIA shares this opinion – 'Removal of regulation and registration of architects by legislation…is likely to significantly impede Australian architects' ability to compete in the world market' (p 107).

The Draft Report states that 'it is difficult to ascertain the impact that such a move (the removal of statutory registration) would have on the international competitiveness of Australian architects. The impact may be negative…' (p 108). That the Productivity Commission should accept experimentation and guesswork as appropriate policies in this area, particularly when the architectural profession in Australia is progressing steadily towards international recognition, is scarcely credible.

AACA has grave concerns at the damage the repeal of the Architects Acts could do to international trade in architectural services and urges the Productivity Commission to reconsider its recommendations and their impact on this vital aspect of the review.

Export of Education

From a national perspective, trade in services not only relates to the export of architectural services, but also the export of education.

Education
Currently over 20% of the total student undergraduate population studying architecture at the 15 accredited schools of architecture in Australia are international students. The total income of one school alone from international student activity is estimated to be about $1.3 million. There is concern that most, if not all, international students will be attracted to countries that have architectural registration as a part of their legal fabric. One school estimates that loss of international recognition would result in the shedding of at least 10 staff members[1]. Reduction in student numbers will directly impact on the viability of the respective schools. This will also have a flow-on effect on the Australian economy generally. In addition, innovative measures taken by schools, such as the establishment of schools offshore, will be under threat in a deregulated environment.

Based on the experiences of other self-regulated professions such as accounting and engineering, the Draft Report suggests (p 136) that overseas students are still likely to be attracted to architecture courses that are accredited by the profession. But this will not be the case in a profession that is almost universally regulated by statute.

Australian schools of architecture rely on their accredited status under the Architects Acts to maintain their export market, a market that has become highly selective when judging quality outcomes for money.

The 'value' of architecture
While the international issues addressed by the Productivity Commission in the main are identified in economic terms there would be losses to the community in other areas if the Architects Acts were repealed. The social value of cross-cultural education has not been given due recognition in the Draft Report. Australia has benefited greatly through the international interaction of staff and student exchanges together with Australian graduates who are employed throughout South East Asia as a result of this interaction. Because of the importance placed on statutory accreditation in these markets, adopting self-regulation and self-accreditation in Australia would seriously undermine the attractiveness of study here with the loss both of export of educational services to these markets and of export contract opportunities for Australian architects as their contacts with local firms and clients are weakened.

AACA believes that Australia and its economy would be all the poorer for the loss of its international standing as a professionally accredited educator and the loss of its recognized standards, particularly when viewed in the light of the entire Australian education system.

[1] Curtin University of Technology

In this context Government participation can be thought of as analogous to other forms of intervention to create a property right or title to facilitate the creation of a market, or conforming to an international standard to facilitate trade. Australian architects have skills that could be marketed overseas and teach courses in architecture that would attract foreign students, but only if these skills and courses are backed by statutory accreditation. Without Government intervention the market will fail, foreigners will go elsewhere to obtain these services and qualifications, and Australian architectural skills will not be exportable.

By supporting a statutory regulatory scheme at an appropriate standard, the Australian Governments allow Australian architects to present their services as comparable to those already traded internationally, and give foreigners incentives to gain internationally recognised (tradeable) qualifications from Australian institutions.

Whether or not a statutory regulatory scheme is justifiable solely on the net cost or benefit of its domestic usefulness, the absence of statutory regulation would be a barrier to participation in international trade. In assessing the net benefits of statutory regulation it is not clear that the Productivity Commission has properly accounted for the net benefits to Australians from facilitating participation in the international market for architectural services.

4. COMMUNITY BENEFITS OF REGULATORY AUTHORITIES

Although there are several references in the Draft Report to 'the Boards' limited accountability' there is no mention of the services they perform for the public. Boards provide impartial general information both within Australia and overseas, the value of which is often overlooked. Not only are the names of registrants available from Board offices, but information and guidance is also provided on architecture courses, alternative methods of obtaining registration, overseas qualification assessment, employment agency details, overseas student enquiries etc.

In addition to potential clients, builders and others within the industry, confirmation of registration is regularly sought by various local authorities, credit card services, government departments and agencies, publishers and so on. The national accreditation and assessment functions undertaken by the Boards on behalf of AACA and the statutory reporting obligations imposed by other legislation are referred to below.

If regulation of the profession were placed in the hands of rival professional associations, this valuable national service facility would be lost. It is unlikely that a professional body established to promote the interests of its members, would be in a position to provide the general public with the range of information currently available at Board offices.

Impartiality of Boards

Boards are charged with partiality (XXV) – 'Architect domination of the Boards and committees and a general lack of procedural transparency, at the very least, contribute to a perception that legislation may serve the interests of architects rather than consumers'. There is said to be a perception 'that the focus of these (disciplinary) procedures is more about protecting the profession than protecting consumers' (p 71). Not only the Boards but AACA is labelled as 'architect-dominated' (p128). This is at present technically correct, but only just. Council currently has nine architect members and seven non-architect members. Boards are thought to be unwilling to impose significant penalties on architects. These imputations of self-serving and bias on the part of Board members and those appointed as statutory officers to administer the Acts, cannot go unchallenged.

In the first instance, despite popular perception, members of any profession have little to gain, either financially or in terms of professional standing, by protecting the black sheep among their number.

While currently the majority of Boards are not required to have lay representation there is provision for relevant Ministers to appoint lay representatives as the Ministerial appointees; and indeed many Boards do include at least one non-architect on their Board. The AACA Legislative Guidelines provide for at least 25% non-architect representation. At present it is the norm for professional registration authorities in all disciplines to have a majority of professional members to provide the necessary expertise on occupational standards.

The role of Registrars must also be recognised. They are statutory appointees and they are obliged to administer the legislative provisions of the Acts of Parliament for which they are responsible with complete impartiality.

It is worth noting that attempts by some of the Boards to embark on major improvements in their information provision, complaints procedures and where possible, to amend their legislation, have been stalled by successive investigations of their regulatory arrangements. The Boards are in fact eager to improve the service that they offer to the public and would welcome the opportunity to do so.

The Productivity Commission's Draft Report appears contradictory in that it claims that the Registration Boards are not impartial enough (p 71), but subsequently recommends that a professional body, which has no public representation or controls, replace them.

Boards' functions are maintained for the benefit of the public. AACA believes that in a self-regulated environment the actual and perceived levels of impartiality will disappear.

Transparency and Accountability

The Productivity Commission makes the equivocal statement that 'It might be considered that self-regulation suffers from the same *lack of independent scrutiny as current Boards*' (italics added, p 146) but assures the reader that the self interest of professional associations vying for credibility of a label for their respective members would apparently counter any such likelihood. The Productivity Commission is mistaken.

No reference has been made in the Draft Report to the overriding significance of the Freedom of Information Acts that apply ONLY to Government agencies. They ensure that the Boards are transparent in their dealings, fully accountable and meet community expectations of good governance. Registration Boards are also subject to accountability provisions in other jurisdictional legislation. In New South Wales for example the Annual Reports (Statutory Bodies) Act 1984 requires the Board to submit a detailed annual report of its operations and financial management to the responsible Government department, to Parliament and to make it available to the public.

Professional associations are NOT subject to the provisions of these Acts. Not only do the Boards uphold the highest professional standards but they are also completely open to 'independent scrutiny'. The reverse would be true if the profession were self-regulated.

The Productivity Commission's final conclusion that 'certification of architects is subject to negligible external comment, independent scrutiny and influence' (p 143) is strongly challenged. It fails to assess the far-reaching impact of the

Freedom of Information Acts and the accountability provisions of other State and Territory legislation or to mention that they apply only to government agencies. In reality, it would be the self-regulatory bodies that 'suffered from lack of independent scrutiny'.

Legal Services

Under the current statutory arrangement, Boards carry all legal expenses, provide free advice to complainants, and free administration of tribunals. The expenses are borne by the minimal architects' annual registration fees, at no cost to the client, community or government. These impartial services are available to all members of the public and to all architects**.**

In a self-regulated environment, such a service would not survive. Any disciplinary action would be restricted to members of the professional body only. In addition, the possibility of civil action under self-regulation would increase pressure on the professional body to assist its members, reducing or destroying its ability to credibly discipline members - professional bodies serve their members not the public.

AACA believes that the Productivity Commission may not have been aware of the breadth of these legal services - that they are provided by Boards at no fee to consumers - and accordingly wishes to bring the matter to the Productivity Commission's attention.

Education Accreditation

Currently the Australian schools of architecture are accredited through a joint Board/RAIA accreditation/recognition process. The tangible costs are shared by the Boards and the RAIA, that is to say these costs are borne by the profession. To a certain extent this is an unusual situation. In the vocational sector, for example, education providers are required to contribute towards the cost of accreditation. In a self-regulated environment it is doubtful that a professional body could afford to absorb all the expenses of accrediting 15 schools, nationwide, involving major panel visits every five years, in addition to interim annual visits.

AACA suggests that in a self-regulated regime schools would be required to contribute financially to the accreditation processes, the cost of which could inevitably be passed on to students. The negative effects of this could be numerous. It would impact on student numbers, impact on staff numbers and lead to devaluation of course standards.

Community Perceptions and Transitional Issues

Perhaps one of the most worrying aspects of the Draft Report is its failure to recognise and seriously consider the difference between devising a regulatory process de novo and demolishing one which has been known to the community for generations and which, despite the Productivity Commission's assertions, is widely understood as a generic descriptor of a defined profession.

It is unrealistic to suggest that both the nation and the world can quickly be made aware that this perception is no longer valid. The alleged 'distortion' of the market created by the controlled title is in fact evidence of the value placed on it by the consumer.

Indeed the Draft Report itself seems not to grasp the significance of what it is proposing. It states (p 134) that following repeal of the Architects Acts, 'there would be no compulsion on architects to be members of any professional association in *order to use the title architect*' (emphasis added), but then, of course, there would be no architects as such. And, finally, *'Architects have unique skills and expertise to offer the community and it is in the community's interests that they market and use their skills as well as possible. In the Commission's view, repeal of the Architects Acts would provide them with the appropriate incentive.'*

How is not revealed, but nor does it matter because, in fact, they would no longer have unique skills and expertise since there would no longer be any connection between the two.

Since the Productivity Commission's stated purpose in recommending repeal of the Architects Acts would be to make the current controlled title available to all, the Draft Report's supposition that 'non-architects' are not likely to use it is scarcely credible.

If the Architects Acts were abolished it could be expected that many competitors in the building design/ construction industry would make the most of a commercial opportunity to benefit from the residual perception in the community that architects are qualified professionals. They would be able to use the title to promote themselves for so long as it retained any credibility and the public remained unaware that the professional connotation no longer existed, but any marketing success would be based on deception.

Tacit acknowledgement of this serious flaw in the Draft Report's recommendations (p 134) is evident in the ideas floated that other specialised titles could be adopted by various groups to replace that which was lost.

Has the Productivity Commission seriously considered these consequences? Its assessment of transitional effects is largely based on guesswork and the questions go unanswered. How many years would it take the community to learn that it was meaningless to appoint an architect because an architect need have no qualification or experience at all? At what cost would this lesson be learnt?

What about the affect on architects themselves? The Draft Report gives Warne the final word (p148). '…registration' he says 'could well have been harmful to the architectural profession because it has tended to encourage introspection and an excessive preoccupation with what it, the profession, feels to be important'. The basis for such a view is unknown but it must be pointed out that the Warne Report was discredited and rejected and this statement does not have great credibility.

5. EVALUATION OF PRODUCTIVITY COMMISSION PREFERRED APPROACH

Self Regulation - Alternative Models, Parallel Provision

A noticeable feature of the draft report is the number of recommendations that support regulatory measures in a self-regulated environment (assuming the RAIA would be the dominant professional association) which appear identical to those that have been found to be without public benefit when applied by a registration authority. These include:

- Proposals for consumer dependence on a professional title restricted by law such as 'chartered' or 'certified architect' without consideration of consequent anti-competitive costs to the community.
- Recognition of the continued use of the nearest professional equivalent to a registered architect, (ie professional membership of a self-regulatory body), by informed consumers such as the public sector, notwithstanding that the effect on the market would be as it is under the current system.
- Regulation by bodies composed entirely of architects without lay membership, consumer representation or any general statutory obligation of disclosure.
- Disciplinary procedures "enforced by architects against architects" without lay participation or separation of investigatory and judicial functions.
- Penalties for professional misconduct limited to removal from membership, with no provision for remedy for the complainants.
- Acceptance of the same education, practical experience and practice examination for membership that are currently required for registration, despite the questions raised that artificially high standards impose 'entry' costs.
- No provision for admission to membership at 'professional' level of competent, service providers.
- High costs of membership compared with the minimal costs of registration.
- High administrative costs incurred by the professional association to establish and implement the many functions currently carried out by the Boards and to advertise its multiple and competitive role.

The recommendation for repeal of the Architects legislation results from concerns about anti-competitive effects of certification on non-architect participants in the building design sector. But despite the weight given to their views in the initial analysis of the market, the benefits of the proposed self-regulated environment for these service providers have not subsequently been identified. Instead the Commission's assessment focuses exclusively on those with 'professional' qualification.

The draft report does not assess the anti-competitive effect on non-architects of the proposed adoption of a professional title comparable to that currently restricted by certification.

A Voluntary Title?

The Productivity Commission proposes that professional bodies replace the controlled title 'architect' with their own titles to signal to consumers those service providers who have professional standards of education and training. It compares the compulsion placed on architects to register under the 'legislated monopoly' of the present Architects Acts with the perceived benefits of 'voluntary membership' of a professional body. In theory, it is said, 'because membership of a professional association would not be compulsory, architects would seek membership only if the benefits of membership exceeded membership expenses' (p 130). The Draft Report notes that in the voluntary system, 'if additional service or quality differentiation is demanded by consumers of architectural services, architects are likely to devise their own labelling or certification systems - for example they may describe *themselves as chartered, certified, registered or consulting architects'* (p 134, emphasis added).

As the use of such descriptions is restricted under State and Territory Fair Trading Acts to those entitled to assume them, the conclusions of the Productivity Commission with regard to information provision and distortion of the market appear contradictory. Current registration is **voluntary** in the sense that a person who does not wish to use the title is not compelled to register. Conversely, if the Productivity Commission's recommendation were adopted, professional associations would appear to have a **monopoly** on the use of a designation that would be promoted and perceived as denoting the professional level of competence within the industry sector, particularly if the association maintained a national register. 'Architects' would be **compelled** to join an association and to pay for services they did not need in order to access the **'voluntary'** professional title.

Mirror provisions in Fair Trading legislation in all Australian jurisdictions provide that a person shall not, in connection with the promotion by any means of the supply of services 'represent that the person has a sponsorship, approval or affiliation the person does not have', (NSW Fair Trading Act 1987 Section 44 (f)). The label available to a 'professional' architect as a member of a professional association would thus also be a title controlled by law, unavailable to others in the market.

The recommendation for repeal of the Architects Acts is based on an analysis of the participation of architects and non-architects in the building design market. It finds that legal reservation of the title architect restricts competition, relates to only one group of providers and appears to be poorly understood. (p 143) It must therefore be assumed that a 'certification system' adopted by a professional association would also restrict competition and apply to only one group of providers. Why is there no analysis in the Draft Report of the comparable effects on the market and other service providers of this alternative form of registration under a title also restricted by law?

There are indications in the comments on self-regulation that the Productivity Commission has assumed that the architectural profession would mirror the accounting profession and establish rival associations, if the Acts were repealed. The consequent competition for membership, it is said, could enhance professional standards. However no evidence is presented to support this theory and in any event the architectural profession in Australia (under 9000 members compared with approximately 100,000 accountants) is probably not big enough to support rival professional bodies with the same professional standards.

Government Guarantee

The notion that government intervention could imply a government guarantee of the services provided is unconvincing. This is not a view that is **ever** put to registration Boards which would be on the receiving end of any such expectation. Nor does it appear to be a general perception in the health professions, law or other licensed occupations. A visit to the dentist is not usually made in the belief that a government guarantee is attached to whatever is about to happen nor are such hopes raised when the plumber comes to call.

Threat to Standards

The Draft Report asserts that competition between rival professional bodies would encourage high professional standards to 'protect the reputation of its members' (146). The reality is likely to be the reverse. To survive as a competitive organisation, a new professional body would quickly need to establish a viable membership. The most effective way to achieve this would be to broaden the membership base by reducing admission standards to tap into another sector of service providers.

The Draft Report goes on to suggest (pp 146/147) that the professional association 'could establish a voluntary national register of persons who have met certain qualifications or standards', pointing out 'that domestic consumers could also use this list as a screening device', although it is not clear how this would be achieved by rival bodies.

What does this statement mean? Is it an acknowledgment that the professional standards of members of an occupational association are likely to be lower than Australian statutory registration standards, currently accepted as meeting recognised international standards for architects? Comments on p88/89 of the Report appear to support this possibility. How would Australia's overseas competitiveness be enhanced if its standing and consequent access to overseas markets were diminished?

Or is this proposed register based on the premise that the professional body would be open to a range of service providers with different levels of experience and qualification? If this is the case then the organisation would not only be obliged to re-establish a professional register, but also to adopt a recognisable title to denote what was formerly an architect. What would be the advantage of this system over the present arrangement?

Conflict of Interest

It is difficult to ignore the contradiction between the allegations of partiality on the part of Registration Boards and the Productivity Commission's proposal that regulatory responsibility be vested in bodies whose prime function to serve the interests of their members. The two professional associations most likely to dominate in a self-regulated environment have this to say in their mission statements:

- **The Royal Australian Institute of Architects** states that the first of eight principles guiding it in its mission 'to unite architects and advance architecture' is to 'Represent and promote the interests of members'.

- **The Building Design Association of Australia** includes in its Aims and Objectives its intention 'To be a credible and powerful advocate for the interests of building designers throughout Australia'.

These are both entirely proper objectives for professional associations, but they are **not** appropriate for a regulatory authority whose primary interest must be directed to that of the consumer.

In contrast case law quoted in the introduction to the **NSW Annual Reports (Statutory Bodies) Act** states, inter alia, that 'While a member may be appointed or elected to the Board (of a statutory body) as a representative of a group, his primary allegiance is owed not to them, but to the company or statutory body'.

The NSW Board of Architects for example is thus bound to promote the 'interests and purposes of that statutory authority' at all times. Despite perceptions to the contrary, new Board members quickly accept the responsibility placed on them to implement the provisions of the Act.

As the Productivity Commission has already noted, the potential for conflict of interest, particularly in disciplinary proceedings, cannot be ignored, nor will it be resolved by appointing an external tribunal to conduct hearings. This is a serious matter that requires objective assessment. Such a conflict has recently been highlighted by the co-regulation of solicitors in England where:

> The society (The Law Society of England and Wales), struggling to maintain its twin roles as regulator in the public interest and trade union for its solicitor-members, has until the end of the year to put its complaint-handling in order, or face being placed under a new regulatory ombudsman. (Frances Gibb, The Times (London) March 25, 2000)

Confusion in 'Labelling'

What does membership of the ACA, the ACBDP, the ACP, the AILA, the BDAA, the DIA, the MBA, the PCA, the RAIA or the RAPI mean? Who knows the occupational niche of an NIA? How accurately can consumers identify the discipline these acronyms refer to, let alone understand the level of skill and professionalism they denote? What conduct assurance do they provide? It would be difficult for a domestic client to answer these questions. It would be almost impossible for an overseas importer or exporter of architectural services to do so.

The Draft Report suggests that self-regulated associations could adopt and promote their own labels such as chartered or certified architect. There have in fact been chartered and non-chartered architects in NSW since 1983, the former able to practise under the title, the latter not. Members of the public do not notice the distinction, it simply creates confusion. It is the word '**architect'** that consumers recognise. The public will **not** pick up the subtlety of such titles in the event of repeal of the Acts.

The suggestions floated in the report for a system of national registration managed by the professional bodies could only add to their confusion. Would they be required to make a choice between rival associations? What body would actually act as the Competent Authority in any mutual recognition arrangement? Would it become necessary to establish a separate joint national authority if, as the report appears to envisage, there were competing associations. Whatever the answer to these questions, the costs would outweigh the benefits of the present system.

Other Models

In reaching its conclusions, the Productivity Commission has relied on the experiences of accountants, engineers and to a lesser extent town planners and landscape architects. However each profession is different in structure and market focus and comparisons with the architectural profession are not always valid.

For example:

- the small number of engineers registered to seek work overseas is not an indication of their marketing skills but simply reflects the fact that engineering is neither defined as a discrete profession nor registered as such in most overseas markets. The reverse is true for the architectural profession;
- in accountancy, the practice of many activities is licensed and the reliance on labels provided by the professional associations is diminished accordingly;
- town and regional planners are almost exclusively employed by the public sector and, again, the regulatory situation is not comparable with that of architects;
- landscape architects operate largely in the domestic market and receive indirect statutory protection of title as the report has noted.

It is important to note that professional engineers and accountants are likely to have an informed clientele. Accountants do not usually provide one-off services which allows the consumer an extended opportunity to assess the service provider. This makes the variety of membership categories and brand names used in these professions less of a problem than they would be in the building design sector.

Comparisons with self-regulated professions must be treated with caution, they do not necessarily provide valid models.

Comparison of administrative costs – statutory v self regulation

The Draft Report states that the financial cost of operating the Architects Boards is less than $2m (p 95) in a market estimated by the Productivity Commission to be around $700m in 1998-99 (p 34). (The market value may actually be nearer to $800m according to other estimates received by AACA)[2].

[2] See annexure 1: Access Economics

It is noted that 'the cost of operating the eight State and Territory Architects Boards is relatively small and in most jurisdictions is entirely met by annual registration fees paid by architects [in the order of $100 per natural person] and other income of the Boards' (p 95). The Report concludes that the tangible costs, ie the financial costs to the community of the current architects' legislation are negligible. AACA agrees with this view and makes the point that such costs do not impact on architects' fees, and accordingly are not passed on either to the community or to Governments.

The Draft Report has also indicated that in the main the intangible 'anti-competitive costs of restrictions on the use of the title architect and derivative terms appear to be limited' but adds that they cannot be ignored (p 114).

The Productivity Commission believes that 'It is unlikely that repeal of all architects' legislation would generate significant additional financial outlays to consumers or architects' and that the current membership fee of the professional body might only 'increase in line with an expansion of the scope of their membership' (p 140). In reaching this conclusion it has drawn on the experiences of accountants and engineers. But comparison between the current statutory regime and self-regulated professions is more complex than may at first appear and, in AACA's view, repeal of the Architects Acts will generate higher costs.

The current RAIA corporate membership fee is around $530. If a professional body also maintains a national register those who wish to avail themselves of the service would incur additional fees. The fees charged by the Institution of Engineers are an example. In addition to membership fees, those who wish to be on the National Register of Professional Engineers must pay an additional $60 pa (for members), or $250 pa (for non-members).

Costs are also generated by the duplication of professional bodies within the industry sector. For example there are two peak professional bodies representing accountants: the Institute of Chartered Accountants in Australia (annual fees in excess of $1000); and the Australian Society of Certified Practising Accountants (annual practice fees in excess of $600). Both professional bodies actively seek to attract new membership and many accountants are members of both bodies – resulting in cost duplication not only for the professional bodies, but also for their members in the form of dual membership fees.

The issue is further complicated by the public's unfamiliarity with the respective charter of each professional body (evidenced by the complexity of advice given to prospective 'accountant' migrants), and the fact that any Government liaison or negotiations must embrace both bodies. Joint arrangements must also be established to deal with international issues. All these issues duplicate costs – to members, to clients, the community and Government. Members must pay for services they do not require in order to have access to a restricted title.

The intangible anti-competitive costs generated by reliance on reputation or word of mouth recommendation in the choice of a service provider cannot be measured.

AACA contends that the current system of statutory registration and its administration is more cost efficient and less confusing to the public than the self-regulatory models identified by the Productivity Commission.

Financial Costs of Setup and Transition

While the anticipated cost of membership of a professional body in a self-regulated regime has been addressed above, setup and transition costs have not been discussed. Setup costs will have to embrace all of the professional bodies' new administrative arrangements, legal issues such as amendment to constitutions, establishment of specialist panels, information provision and even new premises. Inevitably these will be costs borne by members, and passed on to clients.

The Draft Report suggests that an education program could be implemented during the transition period (p 140) by Governments and professional bodies to publicize the changes. This begs an observation: generally Government does not participate financially in the administration of the Architects Acts, what would be its commitment in a deregulated environment? Will not the education program in reality be the responsibility of the professional body?

In the early 1990s the accountants ran a campaign to inform consumers on how to ascertain whether or not they were dealing with an accountant. At that time the cost of the program was approximately $5m. On the basis of the architect population as set out in the Draft Report (8640) this would mean that each architect would be required to contribute an additional $500pa. If the current Australian membership of the RAIA were used (Productivity Commission estimate 4470), then on the basis that membership would remain constant and not decrease in a self regulated regime, the resultant additional cost per member would be over $1000. Such significant costs would inevitably be passed on to the consumer.

Again, the intangible costs of the uncertainty and confusion that would be created in the period of transition are not measurable but they would be significant and extend long beyond the two year period suggested by the Commission.

AACA believes that the financial costs of setting up a system of self-regulation and the associated transitional public education arrangements have not been adequately examined for their impact on practitioners, consumers, the public and Governments. They are likely to be high.

Intangible Costs, a Remedy?

The Productivity Commission (p 114) identifies the intangible costs of the current legislation in relation to the alleged anti-competitive effects of

1. interaction of the certification system and other regulations (Qld) and practices (as referenced by preferred choice of architects by the public sector)
2. restrictions on ownership of architectural practices
3. restrictions on advertising by architects
4. onerous registration requirements imposing 'entry' costs
5. duplication of cost of registration, and
6. inconsistent registration requirements for companies.

The Draft Report acknowledges that the issues at point 1 are 'not fully attributable to the Architects Acts' (p 114). The 'entry costs' of registration referenced in point 4, would also apply to the membership eligibility costs of a professional organization under self-regulation (Currently the eligibility criteria for Corporate RAIA membership are the same as for registration.)

AACA points out that the proposed amendments to architects' legislation contained in the AACA Legislative Guidelines address the issues raised by the Commission at points 2, 3 and 6. Issues raised in point 5, would be negated by national registration, or remedied by harmonisation and co-operation between jurisdictions, as proposed by AACA

In summary AACA believes the adoption of its Legislative Guidelines would diminish the arguments and resolve the Productivity Commission's concerns with regard to anti-competitive costs.

6. RETENTION OF STATUTORY CERTIFICATION

Review of Architects Legislation in the United Kingdom, 1993. The Warne Report

In response to proposals put by the Architects Registration Council (ARCUK) for amendment of the Architects (Registration) Acts, the sponsoring Ministry of the UK Government undertook a major review in 1993 to 'examine the effectiveness and continued justification for the statutory registration of Architects…'. The resultant Warne Report recommended that the registration Act be repealed and that regulation of the profession be undertaken by the Royal Institute of British Architects.

These recommendations were rejected by national consumer bodies and HM Government. In 1997 the amendments originally proposed by ARCUK for strengthening the 'good governance' provisions of the existing legislation were enacted.

Regulation of the architectural profession in the UK is very similar to that of Australia and the arguments presented and conclusions reached in the Warne Report have direct relevance to the review now being undertaken by the Productivity Commission. In the UK, the Warne Report conclusions were largely based on anecdotal evidence submitted by other occupational groups in the building design/construction sector; the Registration Council's clients were not adequately consulted. Tacit endorsement of the existing statutory arrangements was apparent in the final recommendations which proposed that the Royal Institute of British Architects assume self-regulation of the profession, subject to its adoption of the regulatory mechanisms and procedures already in place at ARCUK.

The Commission is urged to consider the outcome of the Warne review and, in particular, the amendments to the Architects Acts that resulted from it.

Legislative Guidelines

It was in the context of ensuring that architects legislation in Australia was relevant to contemporary issues that the AACA developed the National Legislative Guidelines, endorsed by all Architects' Boards in 1992 and updated in 1999

AACA contends that these Guidelines address many of the Productivity Commission's criticisms of the current Architects Acts such as:

- inconsistency of State/Territory legislation
- duplication of legislation requiring multiple registrations
- minimum ownership provisions
- advertising restrictions and other archaic provisions
- restrictions on use of derivatives of the description 'architect'
- no requirements for architects to keep up to date
- no lay representation on Boards
- no provision for independent investigation of disciplinary matters and channels for appeal
- modification of APE examination process to ensure national consistency and enhance openness and transparency.

AACA's support of the removal of ownership provisions may not have been adequately expressed in the documentation forwarded to the Productivity Commission.

It is the intent of the Legislative Guidelines that ownership restrictions be removed so that any firm may offer architectural services and use the title 'architect', as long as the 'architectural service' offered by the firm is under the direct supervision of an architect. All Registration Boards have endorsed this policy for inclusion in the AACA Guidelines.

The Draft Report assertion that 'continued restrictions on the use of derivative terms are strongly supported in the AACA National Legislative Guidelines' overstates the position. The Guidelines explain that restriction is intended to avoid confusion that might exist with terms such as Architectural Consultants and Architectural Designers; they provide for exemption in many other instances. The rationale for this is not to restrict competition, but to avoid 'consumer confusion and frustration' (comment by Fisher H). The fact is that should the Productivity Commission be able to evidence an error in this logic then the AACA would agree the complete removal of restriction on the use of derivatives.

Whilst the Legislative Guidelines have not yet been incorporated into primary legislation in any jurisdiction, their influence on achieving greater national procedural uniformity and harmonisation should not be underestimated. Some of the provisions can be implemented through secondary legislation or by policy decision. It is believed that, with Government support of this initiative, much could be done to achieve the measures that both the Commission and AACA agree are important.

AACA contends that the majority of Productivity Commission's concerns relating to the existing legislation could be corrected by the adoption of the Legislative Guidelines.

A case for National Legislation

In the Commission's view (p 126)

> If restriction on the use of the title architect were retained, a national system of registration would improve the current jurisdiction-based system (provided that the national system did not increase the level of restriction). The choice of model for implementing a new system would rest largely on the preferences of the State, Territory and Commonwealth Governments.

AACA acknowledges the problems created by the inconsistencies between current state and territory legislation. As stated above, in the late 1980s the registration authorities, as constituent members of AACA, jointly addressed the problem by developing the nationally agreed legislative guidelines which were published by AACA in 1992.

AACA believes that the way forward is the introduction of a national system of registration, either by the States and Territories ceding their powers to the Commonwealth or, if that is unrealistic, adoption by all jurisdictions of uniform or harmonised legislation. Much could be achieved immediately through amendment of secondary legislation and policy agreement, to complement the provisions of the Mutual Recognition Acts.

7. CONCLUSION AND RECOMMENDATION

AACA remains committed to reform of the present system to remove any anachronisms in the existing Acts and to achieve greater consistency in future regulation of the architectural profession in Australia.

AACA does not believe that the Productivity Commission has shown that the existing regulatory regime has a net public cost or that the objectives of the legislation can be achieved more efficiently by other means. Neither, in the view of AACA, has the Commission properly taken into account the direct consequences of repeal of the Architects Acts nor given adequate consideration to the economic costs they would impose on the community.

In this response AACA has taken the opportunity to review the Productivity Commission's interpretation of its market analysis, to point out the extensive services provided to the community by the registration Boards and to question the Productivity Commission's proposals for change. This response expresses AACA's concern that the impact of the Productivity Commission's recommendation on international trade in architectural services has not been adequately assessed and that its proposals could cause damage to expansion in this area.

The Commission has of necessity relied on opinions expressed in the individual submissions received but it must be stressed that these views are influenced by personal experience and could often be countered by equally informed opposing views. The predominance of personal opinion and hypothesis presents difficulties in establishing the credibility of the cost/benefit conclusions of the current regulatory regime and the validity of the ideas advanced as alternative measures. This may have led to undue reliance being placed on comparisons with other professions.

In this response AACA has set out its grounds for being unable to agree with the four major reasons given by the Productivity Commission (p143) for its conclusion that certification fails to promote public interest objectives. AACA's views are as follows:

. the conclusions drawn from the argument that certification applies only to one group of providers relates more directly to issues of license and would in any case apply equally in a self-regulated environment;
. the statutory regulation of all professions is complementary to laws setting industry standards, it is not intended to replace them;
. contrary to the conclusion that certification is poorly understood and utilised, market participation indicates that the attributes of service providers are well understood and consumers make an informed choice accordingly;
. the assertion that certification is subject to negligible external scrutiny has doubtful justification.

AACA is concerned that the Productivity Commission has approached the Review as if it were assessing the introduction of a regulatory process de novo instead of investigating the effect of the abolition of a system that has been operating effectively for up to eighty years. It is considered that further consideration should be given to the consequences and costs, both social and financial, that will be incurred in dismantling the present regimes and re-establishing viable institutions to replace them.

The Productivity Commission's premise that the anti-competitive effects of certification 'relate to the extent to which restrictions are at odds with common use of… words and phrases ('architect' and its derivatives)' (p 114) contains an unexplored and unproven presumption that such a discrepancy exists. AACA believes that it does not. The Productivity Commission itself acknowledges 'that it is very difficult to quantify the magnitude of (any anti-competitive) effects' (p114).

That the registration authorities take their mandates seriously and are committed to the promotion of the public interest purposes of the legislation they administer is evidenced by the possibly unique undertaking of the development and, after lengthy negotiation, national adoption of the Legislative Guidelines. The Productivity Commission has referred to them frequently and given credence to many of their provisions. It is therefore disappointing that support of their implementation was not given more serious consideration as a viable and preferred solution to the difficulties perceived in the present arrangements, although the Productivity Commission's constraints on this point are understood.

Although the Draft Report has tended to dismiss the Guidelines as ineffective because they have not yet been enacted, this is not quite the negative result that it seems. As mentioned before they have had a lasting effect in harmonising policy issues not explicit in legislation and, coupled with provisions of the Mutual Recognition Act, have created a largely uniform national regulatory environment. It should perhaps be pointed out that the TPC, COAG and now the PC reviews have effectively stalled initiatives to amend legislation until the outcomes are known.

As stated above, AACA supports the introduction of a national system of registration, either by the enactment of Commonwealth legislation or, if that is not possible, by the adoption of uniform or harmonised regulatory provisions by all national jurisdictions.

Accordingly, AACA would welcome the support and guidance of the Productivity Commission in facilitating the achievement of the amendments proposed in the Legislative Guidelines which would address many of its concerns and provide a tested and uniform regulatory system that would be competitive nationally and recognised internationally.

Architectural Services IGP and Turnover Calculations

	Financial years							AE Est
	1992-93	**1993-94**	**1994-95**	**1995-96**	**1996-97**	**1997-98**	**1998-99**	**1999-00**
Australian Real GDP ($b)	457.6	476.4	498.1	520.5	540.3	565.9	591.6	618.0
Non-farm GDP	444.7	462.9	489.8	508.2	524.7	550.3	573.5	599.7
Ratio of current year to 1992-93 real GDP		1.041049	1.088542	1.137467	1.180825	1.236612	1.292761	1.350436
Architects' IGP based on real GDP growth ($m)	574.1	597.7	624.9	653.0	677.9	709.9	742.2	775.3
Australian Nominal GDP ($b)	427.2	449.7	474.7	508.1	534.0	566.0	594.1	628.2
Ratio of current year to 1992-93 nominal GDP		1.052514	1.110999	1.189382	1.249843	1.324724	1.390638	1.470323
Architects' IGP based on nom GDP growth ($m)	574.1	604.2	637.8	682.8	717.5	760.5	798.4	844.1
Architects' Turnover based on nom GDP growth ($m)	945.2	994.8	1050.1	1124.2	1181.4	1252.1	1314.4	1389.7

Source: Access Economics