ARCHITECTS REGISTRATION BOARD OF VICTORIA

RESPONSE TO THE PRODUCTIVITY COMMISSION DRAFT REPORT ON THE *Review of Legislation Regulating the Architectural Profession.(May 2000).*

The draft report appears to reach its conclusions without sufficient evidence, either in relation to the current situation or the proposed alternative. There is insufficient justification for the proposed changes and where explanations or arguments are made, they are often based on surmise or possibilities rather than on careful analysis of the proposed alternatives.

These short comings are reflected in the fact that

The Report fails to meet a number of its Terms of Reference; ie it does not:

> Prove that the legislation restricts competition to the extent that the costs outweigh the benefits
>
> Demonstrate that 'the objectives of legislation can be achieved more efficiently through other means.."
>
> Demonstrate that the 'alternatives to legislated regulation will promote consistency between regulatory regimes and avoid unnecessary duplication"
>
> "Take into account the findings of recent State/Territory legislation reviews of the architects profession, including those in Victoria…."
>
> "Assess and balance the costs and benefits ..of restrictions and their alternatives…."

The report therefore fails to meet the requirements of Competition Policy principles a) and b) as stated in the Terms of Reference.

DOES THE LEGISLATION RESTRICT COMPETITION?

- The report fails to prove its conclusion that the legislation restricts competition.

- It contradicts itself by stating that anyone may compete with architects. Practice is not restricted because the Act protects title only.
  There is further contradiction of the conclusion in the observation that monopoly over title has not protected architects from competition. (p 147) Anyone may compete with architects. (p xiv)

- There are some restrictions in the requirements for Company approval; but these can efficiently be changed as acknowledged by the report.

- Changes to the current system would be more cost effective, more transparent and would demonstrably maintain competition principles.

- The report has not proved that self-regulation would achieve these aims. A monopoly by one professional association favouring its members over others could lead to a monopoly group in the market. A number of associations vying for registration would cause confusion and undermine consistency of policy.

COSTS AND BENEFITS

- The report fails to acknowledge that the legislation exists as a cost effective and simple means of consumers making an informed choice while not inhibiting practice or unduly restricting competition.

- The report fails to acknowledge that Board Tribunal procedures occur at no cost to the public, that complainants receive free legal advice and representation and that other legal proceedings are far more expensive.

- The report fails to acknowledge that the full cost of regulation is borne by the profession at no cost to government or consumers. Annual fees are so low as to have a negligible or no impact on architect fees. The high compliance rate by the profession indicates the value which the profession places on independent scrutiny in addition to protection of title.

- The report acknowledges (p83) the 'continuing success of non-architects' and yet on the same page contradicts this observation by claiming that title distinctions impede competition and limit information; despite the comment (p147) that title has not protected architects. Title provides more information to assist the public distinguish kinds of service.
  There is open competition and fees are low because of this.

- In justifying its view (pxxix) that costs of the Acts outweigh benefits, the report incorrectly attributes failings to the Architects Acts for which they are not responsible. The other legislation referred to does not replace Architects Legislation and cannot deal with the matters under Architects Legislation. The report fails to acknowledge that the registration requirements of architects raise the standards of architectural services, a direct benefit to the users of architects and to the community generally.

- The report fails to analyse the likely costs associated with transfer to self-regulation, including establishing a replacement system, higher legal costs for complainants, higher compliance costs for architects, extra cost and time spent finding appropriate services in a market which relies on advertising claims.

- The current system of regulation and Board services are cost effective and heavily utilised by not only domestic consumers, government departments, Councils, the media and insurance brokers but also by governments in other countries, all of whom rely on the registration process. The process has been demonstrated to serve public interest at no cost to the public.

- As stated in the Victorian NCP Review
  It is not clear that this alternative will reduce administrative costs and compliance costs. RAIA membership fees are currently about four times higher than ARBV registration fees. In addition to existing functions performed by the RAIA, the RAIA would need to undertake further functions to achieve the same benefits as are currently procured by the architects legislation.…The promotion of RAIA membership as an indicator of superior qualifications and design skills is costly and is likely to exert upward pressure on RAIA membership fees. ..additional administrative functions may also inflate RAIA's costs. , (p39)

- This alternative would, on current membership figures, affect only about 50% of architects anyway. The RAIA regularly refers non-members or clients of non-members to the ARBV for advice and assistance.

- The costs of improving the current system would be significantly lower than costs to establish new procedures and inform the community of the changes.

- A profession regulated by its association or any number of associations is less transparent and less accessible to the community than one regulated by an independent Board with community representation and an Act subject to Parliament

- The report recommends consumer responsibility for extensive research on the shaky grounds that consumers have plenty of time (consequently resources) to search and that they should do this because it is an important decision. Secondly, that the public must rely on market forces and advertising to get its information. Or on the advice of a professional body which does not represent all architects and whose membership is voluntary.

- The level of risk and cost to consumers increases rather than diminishing. The likely impact of the repeal of legislation is increased consumer confusion, increased misrepresentation of expertise by unscrupulous practice and misleading advertising.

GREATER EFFICIENCY, CONSISTENCY BETWEEN STATES, AVOIDING UNNECESSARY DUPLICATION

- The report fails to give sufficient credence to the existence of a national framework of regulation through the AACA and its coordination of State based processes, with its proposed common legislative guidelines which include provision for PI Insurance and requirements for continuing professional development.

- It is not sufficient to claim that the features of the AACA framework were not part of the terms of reference. These have been adopted by all States and Territories as guidelines for development of national consistency. The so-called 'unknowns' in this framework are less doubtful than those associated with the ill-prepared proposal for diverse agencies, voluntary involvement by architects, reliance on advertising with likely increased public confusion.

- It is not sufficient to argue (p105) that, because the Legislative Guidelines have not been implemented, they have done little to address issues. The intention and capacity to implement them are clear. Any alternative system would have to introduce its own guidelines for registration and regulation.

- The report identifies some areas for improvement in current regulation. The AACA national framework is the most efficient and cost effective way of addressing those issues – more effective than relying on some other bodies to undertake the developments as a new initiative with the inevitable costs of set up and publication involved.

- There is currently considerable difference in operation between States in the RAIA. Policy would have to be reinforced to ensure efficiency across jurisdictions. The framework for Boards to achieve this is already in place.

- The report suggests that a number of associations could undertake registration and other services provided by Boards. There is evidence that quite diverse organisations may be interested; some which now represent groups quite distinct from architects. The potential here is that architects could be registered with a number of different bodies with different aims and principles of operation and different requirements for registration. Greater confusion for the public and less consistency of application.

- Competition between a number of regulatory bodies would not foster consistency or avoidance of duplication.

- The Commission has received evidence of national achievements through mutual recognition and recent developments in that area. It is important that Australian architects are represented overseas with consistency and efficiency. The framework already in place through AACA achieves that.

- The report ignores the impact on existing mutual recognition commitments with New Zealand and the likelihood that that would disintegrate. It gives insufficient weight to the importance of Statutory regulation to other countries, particularly SE Asia. While the export of architectural services may be characterised as relatively small, it is not insignificant and has the potential to increase.

- Justification for self-regulation is unconvincing.
  The legislation does not create a "monopoly" for architects. The report acknowledges the level of competition for practice. The legislation provides a convenient labelling distinction for consumers and a measure of confidence in expertise for some. A professional body cannot ensure credibility of labels any more than legislation can. And as noted above, this attempt would only affect members, rather than all architects as under the Act.

- The report characterises Boards as dominated by the profession and insufficiently representative of public interest yet it then concludes that the solution is to hand over concern for professional conduct to the profession which has no provision for public involvement.

- In making this conclusion, the report gives insufficient weight to the Victorian example of a combination of architect and non-architect representation (2 members nominated by Minister for Consumer Affairs, one of whom is not an architect and one non- architect nominated by the Minister for Planning) ie: three of the eight members with a mandate to consider public interest. It is worth noting that the whole Board considers that this is its mandate and that they exist to act on behalf of the community and not to serve professional interests; which is the aim of Professional associations.

- The report misrepresents the purpose of architects legislation by failing to acknowledge the separate and equally important emphasis on professional conduct requirements as distinct from building and planning codes and fair trading laws, all of which complement one another.

- It ignores the full range of Board responsibilities by reducing public interest to the simplest level thereby neglecting such matters as accreditation of government subsidised tertiary courses in architecture which act in the public interest and produce significant contributions to the budget through catering for overseas fee paying students.

- The report recommends a system of unknowns in favour of a known system with potential for improvement.

RECENT STATE/TERRITORY REVIEWS OF ARCHITECTS LEGISLATION

- The report also appears to ignore or totally discount the conclusions of the Victorian NCP Review as there is no discussion of or refutation of the conclusions from that review, despite the Terms of Reference including this and other reviews in the scope of the inquiry.

- The Victorian NCP Review recommended that title restrictions and registration provisions achieve net public benefits for the community and there is no alternative mechanism which would clearly achieve higher net benefits.

- That independent review reported as follows:

> *Because architectural services contain elements of 'experience goods' ie that their quality can only be assessed after their provision, and in particular because domestic consumers do not consume architectural services frequently, the added protection provided by the legislation over and above that provided by consumer protection legislation is considered to be valuable. Existing consumer protection legislation generally offers ex-post facto protection in its application to services which contain such qualities, and it therefore tends to be reactive. Legal avenues of redress tend to be time-consuming and costly.*
> *Similarly, other legislation such as the Planning and Environment Act !987, which does not address standards of design, would not provide the same levels of ex-ante public protection from substandard architectural services as is provided by the statutory registration provisions.* (p39)

Put simply, if legislation assists with selection of quality service, this is preferable to lengthy, costly and often unresolvable legal proceedings undertaken after the problems have occurred, with all likelihood that they won't be resolved within the budget of most consumers.

- As noted in the Victorian NCP Review:
  The fact that a person has certain qualifications or has satisfied standards of entry into a regulated occupation, generally indicates to the public that they may expect service of a particular quality. In this way the cost of search is decreased to the consumer. (p17)

Going beyond Australian experience to that of other countries, the Commission quotes from the 'Warne Report' (UK); but fails to acknowledge that the recommendations were overturned by re-introduction of Regulation.

THE FINDINGS

Section 4 - Finding page 59:

> *Information deficiencies exist… .particularly for consumers who purchase these services infrequently…..the market and general legal remedies alone may not sufficiently address community standards. Government intervention therefore may be justified, provided the benefits of such intervention can be demonstrated to outweigh the costs.*

This finding acknowledges that consumers benefit from having information about the expertise of the groups they are considering.
The finding also acknowledges the risks and costs associated with general legal remedies.
It then emphasises the question of comparative costs. This last point is used elsewhere in the report to justify a conclusion which is counter to this Finding; ie that the costs of regulation are not justified.

In reaching its conclusion, the report does not sufficiently acknowledge the following:

- The Act supplies ex-ante protection not supplied by other legislation which works after the problems have arisen with ex-post facto protection. (See Vic NCP Review p39 quoted above)

- General legal remedies are significantly more expensive than Board Tribunal processes which are free to complainants

- The costs of regulation AND Tribunal procedures are borne entirely by the profession. There is no government funding. These costs are so low as to not figure in architects' fees to clients. Competition between architects and other forms of service is healthy.

- There is a developed national framework already in place via Boards and AACA which is funded within current cost structures at no cost to the community; which can be enhanced an implemented more quickly and efficiently than alternatives while also retaining a level of independence and impartiality.

- The current system of regulation and Board services are cost effective and heavily utilised by not only domestic consumers but also government departments, Councils, the media and insurance brokers all of whom rely on the registration process. The process has been demonstrated to serve public interest at no cost to the public.

- There will be significant costs if Board responsibilities are shifted elsewhere. Administrative and set up costs would be borne by, for example, the RAIA who would add costs of regulation to their already higher membership fees and then would not cover all architects anyway because it would be a voluntary system.

Section 4 – Finding page 66

> *Spillovers…may be significant. Non Regulatory responses may be limited because spillovers often affect the community at a broad, than localised level.…..*

- The government has targetted this issue in recent initiatives, acknowledging its importance for the community as a whole. While architects Acts may not currently address this issue directly, their purposes and requirements for professional competence make an important contribution to the avoidance of these problems. There is insufficient evidence in the report that deletion of statutory controls will provide the same level of protection of community interests. The community and government cannot be confident that market forces and alternatives to statutory regulation will provide the same service.

In this context, the Commission's assessment (page 143) can be challenged:

- Architects Acts do relate to only one group of providers but that is an important group to target. The potential for significant harm exists already because standards may be less than desirable in all service groups. This potential can only increase if legislation specific to architects disappears. Architects often protect the community from spillover problems by supervision of other service providers.

- Architects Acts do not address issues in other practices and should not have to.

- The level of community utilisation of regulation has not been demonstrated. The relatively low level of complaints does not prove lack of understanding. Use of other avenues is appropriate, depending on the nature of the complaint. Other agencies such as the RAIA regularly refer clients to the Board because they are not clients of RAIA members. Alternatives to Board systems will not improve the situation unless their systems change. This said, Boards can improve public understanding and access to information about the public service role of Boards.

The conclusion that Boards are subject to negligible external, independent scrutiny and influence fails to acknowledge the following:

- The purpose of legislation is to serve public interest. Boards take on that role with responsibility. Legislation gives the public direct access to the rules and the Minister.

- The Victorian Act requires public involvement in Board business and consumer scrutiny responsible to the Minister for Consumer Affairs. While this is noted in the body of the report, its relevance for improving the current system is not sufficiently acknowledged.

- To hand over regulation to the profession is to move the process further away from the public and even more firmly within the profession.

Section 6 – Finding page 91

> *The anti-competitive effects of the Architects Acts appear to be limited…..restrictions on the use of derivative terms (restricts) competition.*

- The anti-competitive effects of the Acts are **demonstrably** limited
  - Conclusion of Victorian NCP Review
  - TPC conclusion 1992
  - Page 83 this report: "the continuing success of non-architects"
  - Low architect fees.

- The reference to the Queensland situation is given disproportionate emphasis

- Restrictions on title provide the public with more information rather than less. Architectural draftspersons and others are able to use the terms. Title restrictions do not restrict competition in practice.

- The title would not disappear under self-regulation; but the use of it would become even more confusing, with attendant potential for misinformation and increased consumer

dissatisfaction. There could also be potential for increased legal action and therefore increased cost to the public.

THE VICTORIAN CONTEXT

- While the Review technically did not include the Victorian context, it did have the opportunity to consider the Victorian Act and Regulations and the Victorian NCP Review.

- The Victorian Act meets many of the reservations about legislation in other States/territories and the Regulations demonstrate the public interest purposes of statutory regulation by stressing the importance of professional conduct in the interest of clients.

- The Board acknowledges that there are aspects of legislation which could be improved and these initiatives are being undertaken at the national level to ensure national consistency.

- The NCP review has recommended retention of statutory regulation as no other alternative offers improved cost benefits.

- The Victorian chapter of the RAIA does not offer services to non-members or their clients and its membership includes about 50% of registered architects. There would have to be major changes to RAIA practice in a range of areas, all of which would incur costs greater than those associated with changes needed in the statutory framework.

- The ARBV is particularly concerned about the deleterious effects internationally of the loss of statutory regulation and government to government assurances about educational and professional standards. Board accredited tertiary courses have the respect of overseas governments and the industry generally. The clear risk of loss of trade and loss of export of educational services is serious, not only for the profession but also for the economy. The Review comments on these matters are not convincing.

- The ARBV is committed to the national framework coordinated by the AACA and believes that this framework is more readily implemented than alternatives and more clearly meets public concerns for impartiality than any professional body can achieve.

- Public use of the Board's services is broad, dealing with clients of architects, Councils, Government departments, Insurance brokers and numerous people referred by the RAIA because their services don't cater for all architects or all public inquiries.

- Compliance with registration in Victoria is very high and was noted in the NCP Review as being an important factor. The Board is particularly concerned that loss of compulsory registration and reliance on voluntary membership will lead to greater public confusion and dissipation of information, possibly an increase in mis-information due to market forces

THE ARCHITECTS REGISTRATION BOARD OF VICTORIA POSITION

- Statutory Regulation exists at no cost to community or Government.
- There is high compliance by the profession.
- This is an independent service to consumers, with access to free legal representation at Tribunals.

- It is important to avoid capture by the profession, reliance on voluntary registration and advertising as the primary method of advice to the public, all of which have potential for increased misinformation in the market, greater public confusion and greater cost.

- Statutory regulation supports export of services and education and mutual recognition arrangements between countries.

The Board is most willing to undertake a review of its legislation in the national context with a view to improving its functions for the profession and the community and to enhance the standing of Australian architects in the international arena.

The Architects Registration Board of Victoria supports proposals to move towards a national system of regulation of architectural and related services and makes the following recommendations:

- The primary purpose of any system of regulation of a profession should be to protect the public interest.

- Such legislation will function more effectively if all related services or professions are clearly defined in relation to one another and subject to complementary legislation

- Consistency throughout Australia will improve legislation and make Australian services more effective overseas

- Clarity, transparency and simplicity of access to legislative functions are important for consumers

- The profession must have a clear definition of what is expected of it in terms of entry to the profession, conduct, on-going practice and safeguards for the community
- The legislation should define terms of entry to the profession, registration, conduct, on-going practice and safeguards for the community, functions, powers and procedures of the authority.

- Related services/professions should be subject to Regulation which is complementary to Architects legislation. Legislation for the related services/professions should be reviewed to ensure there is no conflict of interest.

- The scope and nature of services of the related professions should be defined for the public.

- Procedures for public access to the services of the legislation should be clearly explained and readily available.

- The Architects legislation should refer to a code of conduct, requirements for continuing professional development and public indemnity insurance and review of fitness to practice. These functions should be detailed in accompanying documentation and administered by the Statutory authority.

- Architectural technicians should be registered by the same authority which registers architects and subject to similar legislative requirements.

- Disciplinary proceedings under the legislation should be administered by an authority independent of the profession

- The public interest is best served by an independent statutory authority that avoids any suggestion of capture of the profession or conflict of interest. This authority should be established by legislation and have its purposes and functions defined in that legislation.

- This authority could be national or state/territory based.

    If a national authority, administration could be state based.
    If State based, there should be national consistency and coordination through a body which appropriately represents the independence of the legislation.

The Victorian Review concluded that the Board and its legislation have been a cost effective mechanism. There is no evidence to show that a professional body would be as cost effective; however, there is evidence that the independence of inquiry and discipline under professional bodies can be questioned.
It is important, therefore, that in the national context, an appropriately independent body is identified to take a national role to ensure consistency across jurisdictions.

The Board submits that the Architects Accreditation Council of Australia (AACA) is well placed and sufficiently experienced to fulfil this purpose. There is already an effective coordination of State and Territory initiatives with a constructive development towards consistency with legislation, requirements for continuing professional development and insurance.