



20 December 1999

Dr Neil Byron  
Commissioner of Inquiry  
Architects Inquiry  
Productivity Commission  
LB2, Collins Street East  
Melbourne  
Victoria 8003

Dear Dr Byron:

**Review of Legislation Regulating the Architectural Profession**

On behalf of the Board of Architects of New South Wales, I am pleased to enclose a response to the Commission's inquiry into the regulation of the architectural profession.

Also enclosed is a 3.5 inch diskette with the Board's response, in Macintosh Word 98 format.

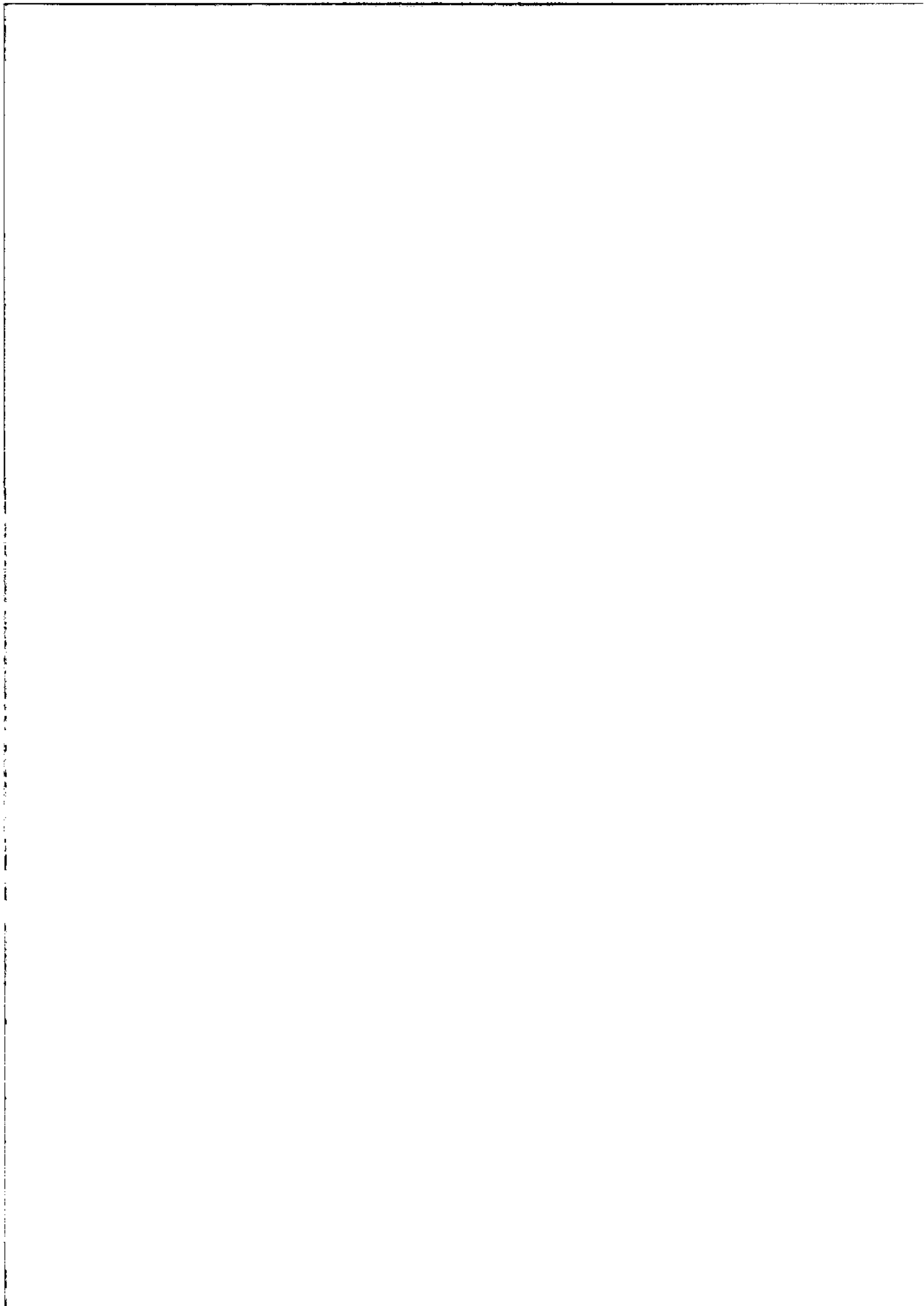
The Board would be pleased to elaborate upon any matters covered in this response.

Yours sincerely

Donald Bailey  
Registrar

*Encls.*







BOARD OF ARCHITECTS OF NEW SOUTH WALES

**Productivity Commission  
Review of Legislation Regulating  
the Architectural Profession —  
*Issues Paper, November 1999.***

*Response to the Issues Paper by the  
Board of Architects of New South Wales  
22 December 1999*

3 Manning Street,  
Potts Point, NSW 2011, Australia  
Telephone: 61 02 9356 4900, Facsimile: 61 02 9357 4780  
Email: [boansw@ozemail.com.au](mailto:boansw@ozemail.com.au)  
<http://www.boarch.nsw.gov.au>



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**Productivity Commission**  
**Review of Legislation Regulating the Architectural Profession**  
**Issues Paper, November 1999 —**  
**Response by the Board of Architects of New South Wales**  
*22 December 1999*

***Foreword:***

The scope of this Inquiry states:

“The Commission is to report on the preferred option for regulation, if any, of the architectural profession in Australia, taking into account the following principles:

- (a) *legislation which restricts competition should be retained only if the benefits to the community as a whole outweigh the costs; and if the objectives of the legislation cannot be achieved more efficiently through other means, including non-legislative approaches; and*
- (b) *the need to promote consistency between regulatory regimes and avoid unnecessary duplication”.*

It is noted that the Commission is to report on the preferred option for regulation, “if any”, of the architectural profession in Australia.

This raises — *inter alia* — the following possible options :

- 1 **National legislation administered by a statutory body — (AACA Inc. could be given authority under legislation to fill this role however the existing jurisdictions would have to cede their powers);**
- 2 **If separate jurisdictions won't cede their powers to the Commonwealth, then there could be enactment of “mirror legislation” by each State and Territory;**
- 3 **Co-regulation — which would mean administration by the professional body, with legislative backing to enforce regulatory aspects;**
- 4 **Maintenance of the ‘status quo’ (i.e. separate State and Territory Acts, as existing);**
- 5 **Deregulation — (rescission of all Architects Acts).**

The most surprising feature of the Commission's Issues Paper is its failure to mention the AACA Inc. This omission, coupled with the frequent reference to the Royal Australian Institute of Architects (RAIA) views on regulatory/statutory issues suggests that the Commission was unaware of the lead role played by the AACA in the regulatory matters under consideration. The need to promote consistency between regulatory regimes is one of the two stated principles on which the Productivity Commission Inquiry is based and the introduction of a centralised national system of regulation is clearly on the agenda. The question is, by whom?

The Architects Accreditation Council of Australia Inc, (AACA) is an amalgam of all State and Territory Registration Boards being Nominating Bodies, and until 1996 also included the Royal Australian Institute of Architects. The RAIA in fact was the catalyst for this body's origin in 1972 when it saw the need for a national body representing registration authorities in order to facilitate inter-recognition agreements with other countries, and the first such agreement was with the National Council of Architects Registration Boards of America (NCARB). However in recent years, the differing objectives of the RAIA, (professional interest) and the Registration Boards (public interest) became apparent and the RAIA decided it could better pursue its objectives outside of this forum.

The Model Guidelines have evolved over some ten years and been agreed by the AACA for recommendation to respective governments for adoption by each State and Territory jurisdiction as and when the opportunity for legislative amendment arises. These Guidelines contain provisions to which those responsible for vouchsafing consumer protection and public interest in the delivery of architectural services *aspire*, in order to meet the essential legislative intent, and community expectations of professional architectural services in the 21<sup>st</sup> century.

It should also be noted that the agreed AACA provisions conform to internationally accepted regulatory standards for architects (such as those recently adopted by the International Union of Architects — UIA) and the principles of good governance and public administration.

It could be argued that Option 1, a national system for regulation of the architectural profession by the AACA already exists, both *de facto* (Legislative Guidelines) and *de jure* (Mutual Recognition Act).

**De facto**, because —

- all jurisdictions in Australia have endorsed common regulatory provisions for registration, thus there is uniformity of regulatory purpose and intention;
- harmonisation of threshold standards of education and professional experience for registration has been achieved through adoption of AACA Competency Standards by all jurisdictions;
- the national examination for admission to registration in each jurisdiction is set and conducted by the AACA Inc.

In other words, harmonised standards for registration have been adopted and a single national legislative framework has been agreed. Uniformity of intention/purpose has been achieved.

**De jure** because —

- The Mutual Recognition Act requires by law implementation of endorsed provisions. There is thus legal backing for the application of most of the agreed AACA registration standards.
- There are no significant provisions in the primary legislation that could not be overridden by the application of the Mutual Recognition Act; in reality it is probable that the only real duplication in the registration process, as things stand, is that multiple application for registration in the different jurisdictions and payment of multiple (nominal) registration fees.
- Appeals (for instance) against decisions by the Registration Board in NSW are dealt with through the Administrative Decisions Tribunal.

Agreement by the B.A.B.s  
- the regulations - Not by the  
States Councils

## 1 OPTIONS FOR REGULATION, OR OTHERWISE

### 1.1 Option 1 — National legislation administered by a statutory body.

1.1.1 This would achieve one of the explicit terms of reference of the Commission's Inquiry. Bearing in mind the national and international implications, the logical outcome would be for the States and Territories to cede their constitutional powers to the Commonwealth, and for the Commonwealth to enact legislation for control of architects. The logical organisation to be given statutory powers to administer this Act would be the AACA Inc.

1.1.2 The NSW Board's response is predicated on its endorsement of commonly agreed AACA policy. Although this is made clear elsewhere in this submission and attachments, in view of the direct relevance of AACA policy to all the issues under consideration and for the avoidance of any uncertainty, this Board's submission to this Inquiry opens with a statement on the functions of AACA. This establishes AACA's existing authority, the position of AACA in the national context, and endorsement of its current policies. (e.g. Legislative Guidelines; Assessment of Overseas Qualifications; Competency Standards; Architectural Practice Examination; NCSA; etc.)

### 1.2 Option 2 — Mirror legislation — identical in each jurisdiction.

1.2.1 This *also* would achieve one of the explicit terms of reference of the Commission's Inquiry i.e. consistency in regulation between jurisdictions, ideally based upon the AACA Model Uniform Legislative Guidelines. Precedent examples of this are the Australian Corporations and Securities Legislation and the Building Code of Australia.

### 1.3 Option 3 — Co-regulation.

1.3.1 The case for and against the regulatory alternatives of statutory registration and deregulation are clearly addressed throughout this Board's response to the COAG/NCPA response. But less has been said about the third regulatory option — proposed by the Commission — that of co-regulation whereby, presumably, the professional association would be invested with statutory authority to act as the national regulatory body. The dangers of such an approach should be mentioned.

1.3.2 The obvious precedent model for co-regulation with a professional association is the Law Society. In the UK, for instance, concerns over the potential for conflict of interest within the Law Society, particularly in conduct matters, became so great that a separate Office for the Supervision of Solicitors (a long way from London) was established to maintain complete detachment. It has proved almost unworkable despite genuine efforts to make it succeed, and has now reached crisis point. This was an attempt to correct an inherently contradictory historic situation.

1.3.3 In the current climate in the UK of consumer awareness and public accountability, it is most unlikely that co-regulation in this form would be an option of first choice.

1.3.4 The Royal British Institute of Architects (RIBA), proposed such a measure when deregulation of the architectural profession was under review in 1993 but the Department of Environment made it clear that this was not an alternative under consideration and the debate revolved around registration by a statutory authority or self-regulation.

1.3.5 The debate concerning regulation by a profession is well argued under "Public Expectations and Good Governance", which appears under item 4.2.15 "Increased Efficiency" later in this submission.

1.3.6 There are obvious parallels with the Australian situation. The potential conflict of interest is most apparent in disciplinary proceedings because the professional association is obliged to act both for the complainant and for the respondent practitioner. Although this conflict could be reduced by the introduction of an external disciplinary body it is likely that this solution would impose a severe and unwarranted cost penalty on all architects, as noted by the NSW Board in its response to similar proposals made by the Attorney General in 1998.

1.3.7 Where regulation is undertaken by a professional association, either with or without statutory backing, substantial additional costs may also be incurred by architects who must pay high annual membership fees (currently of the order of \$500, as against \$100 for registration in NSW), to support the 'learned society' activities of the association, whether or not they have relevance to the individual architect.

1.3.8 For the foregoing reasons, the NSW Board does not consider this to be a viable option.

#### **1.4 Option 4 — Maintenance of the 'status quo' — (differing Acts in each jurisdiction).**

1.4.1 The regulation of architects by means of existing legislation has demonstrable shortcomings, owing to differing and patently inadequate provisions in each existing Act. e.g. in some States, practices are not required to be registered (i.e. NSW) firms and corporations with unidentifiable architect principals provide the vast majority of 'architectural services'; there are no provisions for Professional Indemnity Insurance, Continuing Professional Development, and observance of a Code of professional Conduct, with realistic penalties for misdemeanours as a deterrent to malpractice.

1.4.2 For this reason all State/Territory Boards have pursued as a high priority over the past decade, the objective of achieving the essential legislative objective of serving the public interest through consumer protection, and achieving commonality nationwide through the AACA Uniform Guidelines.

1.4.3 In the light of present day practice and community expectations for the provision and delivery of architectural services, this option is untenable.

1.4.4 However, if all jurisdictions adopted the guidelines, the retention of the present system of control would constitute a viable option.

#### **1.5 Option 5 — De-regulation, (Rescission of all Architects Acts)**

1.5.1 The effect of de-regulation would result in the public interest and consumer protection being abandoned, and self-regulation by the professional body, with all its inherent dangers (as argued later under item 4.2.18, "Public Expectations and Good Governance"), would materialise.

## 2 BOARD RECOMMENDED OPTION.

2.1 Through this submission the NSW Board intends to demonstrate that, *in the overall consumer and public interest*, retention of the 'status quo' is *not* an acceptable option, and should this come to pass, any of the efficiencies flowing from statutory regulation would be lost, and would be tantamount to "putting the vampire in charge of the blood bank"

2.2 Should the option for regulation of the profession by the professional 'guild' be adopted, it will run counter to the essential *public* interest and reinforce the George Bernard Shaw maxim *that "all professions are a conspiracy against the laity"*. It will then take at least two generations to discover that professionals should be facilitators rather than controllers, and that they are incapable of self-regulation, and therefore governments must again intervene in the public interest. In the meantime, irreparable damage will have been done to the fabric of society.

2.3 *In the light of the foregoing, the NSW Board strongly recommends to the Commission that this Inquiry should not be predicated upon the present historically-based legislation but rather on the aspirations of all State and Territory Registration Boards charged with administering legislative controls on architects, and as expressed in the nationally developed and agreed document, the AACA National Uniform Legislative Guidelines.*

2.4 *The NSW Board's considered position, and one which it commends to the Commission, is that Option 1 (a national Act whereby the AACA is the administering authority), is the preferred practical and readily attainable model if States agree, and one which would meet this Inquiry's terms of reference and Government's objectives*

2.5 As the essential generator of his exercise — *productivity* — a major factor of which is reduction of cost together with increased efficiency resulting in economic benefit, these aspects are explored later in some detail



### **3 —THE NSW ARCHITECTS ACT, AND THE BOARD OF ARCHITECTS, IN CONTEXT**

3.1 The NSW Board is the statutory body established to administer an Act of Parliament, the essential purpose of which is consumer protection and public benefit in the provision and delivery of architectural services. The Act, which has been in place since 1921, provides for registration of persons having the required qualifications, experience, skills and objectivity, to be admitted to the register, and the promulgation of this register to the wide community.

3.2 The Act has undergone only minor changes in over three quarters of a century however in administering its provisions, the Board is acutely aware of major difficulties in attainment of the legislative objectives due to shortcomings in its current provisions. The Board therefore has expended significant resources and energy over the past decade in order to redress these deficiencies.

3.3 At the beginning of the present decade, the Board had drafted a Bill for a totally new Act in NSW which would more appropriately meet the historic public interest objectives and be more relevant to the realities of architectural practice in the 21<sup>st</sup> century. However, for reasons outside of the Board's control, including the promulgation of misinformation by others in the building design and procurement industry (and some ill-informed architects), this Bill was aborted in 1994.

3.4 In 1996 a State review of the Architects Act was conducted by the NSW Department of Public Works and Services, in accordance with the Council of Australian Governments/National Competition Policy Agreement requirements.

This Review was all but completed however in 1998, the production of a final report was put on hold, and no further action was taken pending the outcome of this further Review by the Productivity Commission.

3.5 The NSW Board's responded to the previous NCPA Inquiry which had very similar terms of reference. This response was based on parochial issues relating mostly to the provisions of the existing Act. The Board still stands by the principles espoused, and in respect to this current Commission inquiry, the Board, as a Nominating Body to the AACA, gives unqualified endorsement to the submission of the AACA.

## 4 — THE INQUIRY'S TERMS OF REFERENCE, RE-VISITED

### 4.1 Useful definitions and references.

The Board considers it is of value at the outset of this Inquiry to provide some authoritative definitions of some of the terms used in the brief — e.g. 'architect'; 'architecture'; the 'practice of architecture'; 'professionalism'; and 'public interest' in context.

Accordingly some useful references are at

*ANNEXURE 'A'.*

### Scope of Inquiry.

The scope of this Inquiry embraces — inter alia — the following primary considerations:

- (a) **ASSESSMENT OF LEGISLATIVE RESTRICTION ON COMPETITION VIS-À-VIS COMMUNITY COST/BENEFIT;**
- (b) **ACHIEVEMENT OF GREATER EFFICIENCY THROUGH NON-LEGISLATIVE APPROACHES.**

### 4.2 Principle 1

4.2.1 *"legislation which restricts competition should be retained only if the benefits to the community as a whole outweigh the costs; and if the objectives of the legislation cannot be achieved more efficiently through other means, including non-legislative approaches".*

4.2.2 As these issues have been extensively and publicly canvassed in a State Government review of the NSW Architects Act as a result of the COAG/NCPA requirements, and as this Commission's Inquiry's terms of reference have much in common, the Board considers that *its Response to the NSW Review of the Architects Act 1921 — Issues Paper (dated 7 July 1997)* has current and particular relevance to the scope of this Inquiry.

A copy of this Board's response to the COAG/NCPA Inquiry is at

*ANNEXURE 'B'*

4.2.3 Since this COAG/NCPA response was published and promulgated, a few circumstances have changed in the interim and these changes of situation are documented in

*ANNEXURE "C".*

4.2.4 Although this COAG/NCPA response (Annexure 'B') relating to the particular terms of reference of the NCPA Inquiry, because of the comprehensiveness of the issues covered, and of the Board's response to these issues, most, if not all, of the issues in the scope of the Commission's Inquiry have been addressed, including the matter of legislative restriction vis-à-vis community cost/benefit.

4.2.5 The COAG/NCPA response (Annexure 'B') authoritatively defines architecture, architectural practice, and professionalism. It addresses the whole spectrum of delivery of architectural services, from the 'macro' international arena to the 'micro' at regional and domestic levels. It attempts to provide an impartial and objective view on the 'restrictions' imposed by legislation, the costs to the community of these 'restrictions', and the views of the ACCC, and of consumers.

4.2.6 Reference is made to significant shortcomings in existing legislation and to the AACA Model Uniform Legislative Guidelines which, if adopted by all State and Territory governments, will guarantee enhanced consumer protection through the mandatory registration of architectural 'businesses' providing architectural services; the need to comply with an enforceable code of conduct, with significant sanctions for misdemeanours; the implementation of levels of professional indemnity insurance by architectural 'businesses', appropriate to the level of services offered; and a requirement for assurance of a formal continuing professional development program as a condition of annual renewal of registration for practitioners, and 'businesses'.

4.2.7 These Model Guidelines, first adopted in 1992, have been carefully and progressively reviewed in the interim to ensure that they relate to present day realities and community expectations of professional architectural services in the 21<sup>st</sup> century.

4.2.8 All of these requirements will, in time, demonstrably result in an identifiable consumer protection due to 'a higher setting of the bar', and thus, real community benefit. Other factors which cannot be quantified directly but which result in benefits of a social and cultural nature, are also identified. However the cost to the community, and the relative benefits deriving from legislative control of architects cannot be stated in purely financial terms and this raises the question of "definitions".

4.2.9 This inquiry must therefore address the more holistic questions of social, economic and cultural costs of regulation vis-à-vis deregulation, and benefits which will flow from maintaining and enhancing controls. Inestimable benefits flow from reciprocity of registration, an *increasing* rather than *decreasing* practice within our global community, and which brings with it a Government declared desirable cultural diversity in recognition of Australia's place in the world.

4.2.10 AACA is *the* body which has produced, at the Commonwealth Government's directive, Competency Standards which are now the current basis for admitting persons, from within the country and overseas, into the practising architectural profession in Australia.

4.2.11 Until recently, the AACA had historically been funded by the Commonwealth Government to assist, under its migrant assimilation policy, to facilitate the entry of foreign-trained architects into the Australian building industry environment. The success rate of assimilation of migrant architects through this system has been 66%, being a model which governments have sought for other professional disciplines to emulate. The AACA is no longer funded by government although it may receive a grant for special purpose, such as furthering the Government's objectives in APEC.

4.2.12 The AACA has also been called upon to assist the Government to advance prospects for development of trade in goods and services under the GATS and APEC agreements. The global village and the worldwide acceptance of the need for legislative control of the architectural profession all but guarantees that this model will be replicated throughout our civilised world.

**Legislative restriction: costs versus benefits.** (Refer also Annexure 'B', item 8)

4.2.13 It is noted with interest that in making assessment in relation to costs versus benefits of continued regulation of architects, the Commission will have regard to the broader concerns of environmental quality and social and equity considerations. The costs versus benefits of registration are dealt with at some length in the Board's Response to the COAG/NCPA Inquiry, and in particular, at items \*7.10, and 8. Reference to item 6.1.4 of the Board's Response paper, there is a relevant quotation from the (then) Trade Practices Commissioner relating to 'information asymmetry':

*"Professional services normally deal with complex, specialised matters with important cost and other consequences for the clients. Professional services are inherently difficult for actual and potential users to evaluate, either before or after use. Individual clients usually have few opportunities to learn about these services because their purchases are infrequent and the consequences of misjudging the quality of a service or its provider can be very costly in either human or financial terms".*

Regulation of professional markets in Australia, Issues for Review, p22,  
Trade Practices Commission, December 1990.

4.2.14 Whilst the 1992 view of the TPC in the *Report on the Professions — Architects* was before the 1996 COAG/NCPA Inquiry, when the ACCC was asked in 1996 if it still held to the foregoing predecessor's view, this was subsequently confirmed in the affirmative.

**Increased efficiency : by legislative or non-legislative means.** (Refer also Annexure 'B', 7.5)

4.2.15 Productivity is essentially predicated upon the attainment of optimum *efficiency*. Numerous examples demonstrate that a regulated architectural profession is a more effective means of delivering efficiency. One which is of primary economic concern to the consumer is the excessive delay in

approvals of Development and Building Applications submitted to Local Government by unqualified, or under qualified, persons.

4.2.16 It is well known that in the USA, all documents submitted by (qualified) architects, who take on the professional responsibility for their design and documentation for building projects, usually pass directly through the bureaucratic system. Submissions by others may be time consuming and costly, and the 'man or woman in-the-street' is particularly vulnerable as financial gearing can represent a significant on-cost to their project, which might represent the biggest expenditure of a lifetime.

4.2.17 The need for statutory control of architectural services is borne out by the day-to-day NSW Board's experience whereby numerous members of the public wish to lodge a complaint against a person who had provided unsatisfactory services and whom they had thought was an architect until they discovered, after an unfortunate and costly circumstance, otherwise. The regular incidence of claims before the Small Claims Courts for losses suffered at the hands of unqualified and unregulated persons providing services generally in the lower end of the construction industry also bear testimony to the need for controls.

4.2.18 "Non-legislative means" implies self-regulation. In this respect, an extract from a recent submission to a similar inquiry in the UK is relevant:

**"Public Expectations and Good Governance.**

*The central statutory duty of a registration authority is the publication of a professional register. Accordingly it must determine and assess the standards required for admission and maintenance of registration, and, conversely, revoke that registration if it becomes apparent that a registered person no longer satisfies the required standards.*

*These duties are explicit in the enabling legislation. Responsibility for their implementation is placed upon the regulatory body under powers assigned to it by the primary legislation. As their purpose is to serve the public interest, it is essential that the regulatory body should be aware of the expectations of the public with regard to the provision of professional services, and responsive to them in exercising the powers given to it to achieve its statutory objectives.*

*In an increasingly well-informed consumer society, it is no longer sufficient for a profession to assert that its members are properly regulated; the community requires demonstration that this is so. Regulatory bodies are expected to be accessible, open to scrutiny and answerable for their actions.*

*Concerns over the fairness and impartiality of disciplinary arrangements are more likely to arise when they are administered through a process of peer review. The inclusion of measures to enhance public accountability such as consumer representation, appeal procedures for complainants and respondent practitioners, the provision of reasons for decisions and public reporting of sanctions, will help counter such concerns".*

4.2.19 In the event that the option is taken to put control of the profession into the hands of the professional body, this will not only require all architects to become members of what is presently a voluntary association (for the benefit of its members) but also would raise additional doubts in the public mind as to the exercise of objectivity in matters such as complaints in relation to malpractice.

4.2.20 Authoritative views on this matter from the Trade Practices Commission, (and the subsequent ACCC), and from consumer associations are at *ANNEXURE "D"*.

**4.3 Principle 2**

4.3.1 *"the need to promote consistency between regulatory regimes and avoid unnecessary duplication"*

4.3.2 The NSW Board, in common with all State and Territory Registration Boards, has an agreed position whereby "consistency between regulatory regimes and avoidance of duplication" — a fundamental

principle underlying this Inquiry, is a desirable goal. To a large degree, this occurs in practice through the prevailing Federal legislation, the *Mutual Recognition Act*.

4.3.3 In the context of the 'global village', consistency of legislative control of architects to facilitate trade in goods and services between countries through GATS, APEC, and ASEAN protocols is viewed by our Commonwealth Government as an important objective. The AACA and the RAIA had entered into the ASEAN project with the Commonwealth Government in 1996 to investigate, and if feasible, to develop bilateral recognition between registration and professional bodies in Australia and counterpart bodies in the ASEAN region. Visits had been made to Singapore, Malaysia, Indonesia, the Philippines, Thailand and Vietnam.

4.3.4 A Regional Forum on Registration and Reciprocity in the Western Pacific Region was convened in Darwin in May 1999, attended by 40 participants from 12 countries, and this provided a further avenue to progress the aims of the Project. AACA was joint convener with the Architects Education and Registration Board of New Zealand.

4.3.5 At a recent Project meeting, Government representatives put a proposal to the ASEAN Project partners that they might consider extending the Project's work to include APEC countries (thereby embracing many of the countries represented at the Darwin Forum but not members of ASEAN). Some of the principal resolutions flowing from this Forum and relating directly to Registration and Reciprocity included:

- (a) *Proposals for future exchange of information pertaining to architectural education and the registration of architects within the Region;*
- (b) *where appropriate, the exploration of the principle of mutual recognition;*
- (c) *a proposal to identify the criteria and mechanisms required to establish reciprocity agreements within the Region.*

Discussions are ongoing with the Commonwealth Government.

4.3.6 The Trans Tasman Mutual Recognition Agreement (TTMRA) whereby through mirror legislation enacted by each of the Australian and New Zealand Governments, like *registered* trades and professions henceforth have unfettered access to the respective market opportunities in each country.

4.3.7 In a world which has potentially fewer trade barriers in place, the legislative control of architects will ensure that in the international development and building industry which represents up to around between 10% — 12% of GNP, there will at least be ground rules to ensure community health, safety, and welfare is protected.

4.3.8 This appears to confirm that Governments of the respective countries see merit in continued legislative controls, in order to ensure as far as possible in a highly competitive economic situation, that the 'ground rules' are in place, and that *consistency between regulatory regimes prevails*. Refer to the worldwide list of countries where registration by statute prevails, at *ANNEXURE 'E'*. (See also Board response paper, item 11.4).

## 5 —NSW BOARD CONCLUSIONS AND RECOMMENDATIONS

- 5.1 This Inquiry should not be predicated upon the present historically-based legislation 'controlling' use of the title 'architect' but rather on the aspirations of all State/Territory Registration Boards, as expressed in the nationally agreed 1992 document, the National Uniform Legislative Guidelines, which have been recently reviewed in September 1999.
- 5.2 The miniscule 'cost' of regulation is such that deregulation for any perceived but dubious consumer benefit which might flow is of no consequence.
- 5.3 A national Architects Act in accordance with the AACA National Uniform Legislative Guidelines for adoption by all States and Territories, and which has in place competency standards as the basis of entry to the register of persons educated and qualified to provide skilled and objective professional architectural services, is the preferred practical and readily attainable option to ensure consumer protection through maintenance of professional standards and engender consumer confidence, and meet the objectives of the Productivity Commission's Inquiry.
- 5.4 The increasingly ready availability of public information on the Internet from AACA and the Boards (including published registers, how to lodge a complaint against an architect for malpractice, etc.), assists the consumer public in making an informed choice for engagement of professional services. This was in fact recommended by the TPC (now ACCC), in its 1992 *Report on the Professions — Architects*, as a positive benefit and consumer aid. (refer item 4.2.13). A national register is under consideration by AACA.
- 5.5 It is understood that the RATA present policy is to recommend co-regulation whereby the States cede their present regulatory powers to the Commonwealth, and the professional body becomes the recognised administrative authority with legislative backing.  
  
The Board considers that self-regulation by the professional body, where concerns about fairness and impartiality of disciplinary arrangements are more likely to arise when they are administered through a process of peer review, is not an option in an increasingly aware consumer society, and this is borne out by expressed views of consumer bodies
- 5.6 Efficiencies and economies in the delivery of architectural services are more likely to be achieved within the Australian building industry and the client public, when Development and Building Applications to Local Government are submitted by 'architects', holding qualifications as building certifiers.
- 5.7 Regulation of architects is a factor in achieving efficiency gains in the field of residential projects, including alterations and additions, where the vast majority of cases of 'malpractice' occur and wherein the average consumer whose biggest investment of a lifetime is at stake, is most vulnerable.



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Response by Board of Architects of New South Wales —  
*22 December 1999*

***ANNEXURE 'A'***

***USEFUL DEFINITIONS  
AND AUTHORITATIVE REFERENCES***



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## USEFUL DEFINITIONS AND AUTHORITATIVE REFERENCES

Though the terms of reference of this inquiry are clear, it is important to define some of the words used in order to gain a better understanding of the nature of the subject under review.

For instance, one might well ask "*What is architecture?*"

Dictionary definitions are clinical and inadequate for this purpose.

Professor Elmer Botsai, President of the American Institute of Architects in 1978 had this to say:

*"Architecture is the creation of spaces that people live in, play in, work in, and move through from one activity to another. It is the creation of volumes that give form in substance to human aspirations. It is an absolute which leaves its mark for generations to come. It is the single overriding stimulus in an urban society. It surrounds us, it inundates us; we wake up in it, we go to bed in it, we are born into it and a high percentage of us will indeed die in it. It is so all-persuasive and all-pervasive that most of us become oblivious to it...."*

*I yearn for an enlightened citizenry that will demand skills of our profession that we have never dreamed of delivering; for educated clients who will not need to have to be convinced to make good judgements but who will demand that architects will deliver intelligent options so that they can make rational decisions about the building of our cities and the growth of our lifestyle...."*

This is an extract from a philosophical discourse by a passionate advocate with a missionary zeal, but it articulates a view which focusses on *aspirations* of society rather than 'lowest common denominators'; and one which suggests that architecture is altogether too important to be left in the hands of dilettantes!

Here follow some more authoritative definitions:

### **1. Architecture, the environment, and mutual recognition:**

*"Architecture, the quality of buildings, the way they blend in with their surroundings, respect for the natural and urban environment and the collective and individual cultural heritage are matters of public concern; therefore the mutual recognition of diplomas, certificates and other evidence of formal qualifications must be founded on qualitative and quantitative criteria ensuring that the holders of recognised diplomas, certificates and other evidence of formal qualifications are able to understand and give practical expression to the needs of individuals, social groups and communities as regards spatial planning, the design, organisation and construction of buildings, the conservation and enhancement of the architectural heritage and preservation of the natural balance"*

Preamble to Council of European Communities Council Directive, 1985,  
 on Freedom of Provision of Architectural Services throughout the  
 European Community, pursuant to the Treaty of Rome

## 2 Architect

*"The designation 'architect' is generally reserved by law or custom to a person who is always professionally qualified and generally registered/licensed/certified to practise architecture in the jurisdiction in which he or she practises and is responsible for the cultural expression of the society's habitat, in terms of space, forms and historical context.*

*Architects are part of a larger property development, building and construction economic sector peopled by those who commission, conserve, design, build, furnish, regulate and operate our built environment to meet the needs of society".*

Union of International Architects (UIA)  
Accord on International Standards of Professionalism  
in Architectural Practice, adopted by the UIA Council, July, 1996.

## 3 The Practice of Architecture

*"The practice of architecture consists of the rendering of professional services in connection with town planning and the design, construction, enlargement, conservation, restoration or alteration of a building or group of buildings. These professional services include, but are not limited to, planning, strategic and land-use planning, urban design, provision of preliminary studies, designs, models, drawings, specifications and technical documentation, coordination of technical documentation prepared by others as appropriate and without limitation (consulting engineers, landscape architects and other specialist consultants), construction economics, contract administration, monitoring of construction (referred to as supervision in some countries), and project management".*

International Union of Architects (UIA) Guidelines for the Accord Policy  
on Registration/Licensing/Certification, adopted by UIA Council, July, 1996.

## 4 On Regulation of architects:

*"The guiding principle is that legislation should not constrict competition unless it can be demonstrated that the benefits to the community as a whole outweigh the costs of restricting competition and that the objectives of the legislation can only be achieved by restricting competition"*

Council of Australian Governments

## 5 Professionalism, and the Public Interest:

*"Society granted this privileged status to persons with appropriate education and skills, but only on the basis of a guarantee of exercise of objectivity in the delivery of services".*

Dr Peter Miller AM

## 6 Promotion of the Architects Board as a public interest service

Though it may not have been seen as appropriate in the past for statutory bodies controlling architects to actively promote the use of architects vis-a-vis others providing services in the building design industry, a report following a study of the professions conducted in 1992 by the (then) Trade Practices Commission, — inter alia — made this observation:

*"The Commission considers that certification of the title 'architect' and its derivatives does not have a significant effect on competition in the market for building design services. Use of the title is a privilege backed by law, and the Commission considers that the provision of appropriate public information about the certified title and the training and experience it signifies would assist clients to differentiate between service providers in the building design services market, and would be in the public interest".*



Productivity Commission  
Review of Legislation Regulating the Architectural Profession —  
*Issues Paper, November 1999.*

Response by Board of Architects of New South Wales —  
*22 December 1999*

***ANNEXURE 'B'***

*COAG National Competition Principles Review*  
*by the*  
*New South Wales Department of Public Works and Services*

***REVIEW OF THE NSW ARCHITECTS ACT 1921 —***  
***ISSUES PAPER***

***RESPONSE BY NSW BOARD OF ARCHITECTS***  
***7 July, 1997***  
***(53 pp.)***

**National Competition Principles Review**

**NSW Department of Public Works and Services**

**REVIEW OF THE ARCHITECTS ACT 1921  
ISSUES PAPER**

**RESPONSE**

7 July 1997

Board of Architects of New South Wales,  
3 Manning Street, Potts Point, NSW. 2011 Tel: (02) 9356 4900 Fax: (02) 9357 4780

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## **Architects Act National Competition Principles Review**

### **QUESTIONS TO BE ADDRESSED**

Section 7 under the heading "Restrictions on competition arising from the Architects Act" sets down the following:

"In considering how the Architects Act may affect the market for building design services in NSW there are six main questions to address:

- (i) What restrictions, or potential restrictions, on competition exist in the Act?
- (ii) What problems do the restrictions seek to address?
- (iii) Who experiences the problems?
- (iv) What are the effects of the restrictions on the economy?
- (v) What are the costs and benefits of the restrictions and do the overall community benefits outweigh the costs?
- (vi) Are there less restrictive ways of achieving the desired outcomes?

The provisions of the Architects Act which have potential to restrict competition are:

- control of the use of the title 'architect' and its derivatives by individuals;
- control of the use of the title 'architect' and its derivatives by organisations.
- criteria for registration as an architect; and
- grounds for removal of a person's name from the register of architects."

**"The guiding principle is that legislation should not constrict competition unless it can be demonstrated that the benefits to the community as a whole outweigh the costs of restricting competition and that the objectives of the legislation can only be achieved by restricting competition".<sup>1</sup>**



## 1 DEFINITIONS

- 1.1 Before one can review an Architects Act and whether or not any restriction on competition exists as a consequence of the Act, or if it does do the benefits outweigh the restriction, the context and work of an architect must be understood. What is 'architecture', how best might 'architects' be defined, what do they do and what attributes are required of architects to produce architecture, and what community benefits flow, if any??
- 1.2 The Concise Oxford Dictionary defines 'architecture' as: "Art or science of building; thing built; structure; style of building; construction." The Macquarie Dictionary defines 'architecture' as: "1. The art or science of building, including plan, design, construction, and decorative treatment. 2. the style of building. 3. the action or process of building; construction. 4. a building. 5. buildings collectively." Both give as their first definition "The art or science of building...." The 'or' is inclusive and one must look at 'the art of building' as well as the 'science of building'.
- 1.3 The Concise Oxford Dictionary defines 'architect' as "Professor of building, who prepares plans & superintends work; designer of complex structure, esp. the creator." The Macquarie Dictionary defines 'architect' as: "one whose profession is to design buildings and superintend their construction." and defines "profession" as "a vocation of some department of learning or science."

## 2 THE RELEVANCE OF ARCHITECTURE

- 2.1 Architecture has been produced by mankind since time immemorial, examples of which have stood for centuries and present statements of cultural heritage. The making of architecture is a matter of continuing relevance - in the past, equally now, and for the future. It is time honoured as both an art and a science and is an evolving profession in a competitive market.
- 2.2 Architecture is practised as a profession is a service to the community, both to clients, consumers who live, work, play or are entertained within buildings and the community at large who gaze upon works of architecture. The quality of life of users is in part determined by the built environment and its relationship to the natural environment, by the shapes and spaces in and around buildings and buildings as sculpture. As a branch of the Arts it should be nurtured by Governments, so that the architect creators may be recognised by the public and distinguished from providers of plan drawing services who do not have the anywhere near the level of education, training and experience.
- 2.3 "Architecture, the quality of buildings, the way they blend in with their surroundings, respect for the natural and urban environment and the collective and individual cultural heritage are matters of public concern: therefore the mutual recognition of diplomas, certificates and other evidence of formal qualifications must be founded on qualitative and quantitative criteria ensuring that the holders of recognised diplomas, certificates and other evidence of formal qualifications are able to understand and give practical expression to the needs of individuals, social groups and communities as regards spatial planning, the design, organisation and construction of buildings, the conservation and

enhancement of the architectural heritage and preservation of the natural balance."<sup>2</sup>

2.4 Architecture, the quality of buildings and the urban environment, respect for the cultural heritage are matters which impact strongly on the public interest. The profession of architecture has ancient origins and it remains today fundamental to growth and development in the community.

2.5 In view of the long seven year training needed to acquire the complex skills necessary for competence in the practice of architecture some form of regulation of the profession has been in force in most countries for many years. This may take the strictest form of licence whereby the practice of architecture is restricted to those who are registered as architects, as in the USA, Japan, France, Germany and Canada. In other countries, including Australia, Britain and New Zealand, it is the right to use the title architect which is limited by statute to those certified as architects through registration.

### 3 INTERNATIONAL VIEW

3.1 In 1996 the UIA<sup>3</sup> established an Accord on International Minimum Standards of Professionalism in Architectural Practice. The following extracts are pertinent:

*"The practice of architecture consists of the rendering of professional services in connection with the design, construction, enlargement, conservation, restoration or alteration of a building or group of buildings. These professional services include, technical documentation, and the coordination of technical documentation prepared by others as appropriate and without limitation (consulting engineers, landscape architects and other specialty consultants), administration and monitoring of construction (referred to as supervision in some countries) construction economics, and project management.*

*The designation 'architect' is generally reserved by law or custom to a person who is always professionally qualified and generally registered/licensed/certified to practice architecture in the jurisdiction in which he or she practices.*

*The fundamental requirements for registration/licensure as an architect are those skills and abilities that must be mastered through education, training, and experience, and verified by examination, in order to be considered professionally qualified to practice architecture. In August 1985, the Commission of the European Communities adopted Directive 85/384/EEC<sup>4</sup> (now transposed into national law in each EU Member State) which sets down those fundamental skills and abilities and is recommended for adoption as the minimum basis for development of UIA International Standards:*

- *an ability to create architectural designs that satisfy both aesthetic and technical requirements.*

<sup>2</sup> From Preamble to Council of European Communities Council Directive, 1985, on Freedom of Provision of Architectural Services throughout European Community, pursuant to the Treaty of Rome.

<sup>3</sup> UIA = International Union of Architects (Union Internationale des Architectes)

<sup>4</sup> European Economic Community, now the European Community.

- *an adequate knowledge of the history and theories of architecture and the related arts, technologies and human sciences.*
- *a knowledge of the fine arts as an influence on the quality of architectural design.*
- *an adequate knowledge of urban design, planning and the skills involved in the planning process.*
- *an understanding of the relationship between people and buildings and between buildings and their environment, and of the need to relate buildings and the spaces between them to human needs and scale.*
- *an understanding of the profession of architecture and the role of the architect in society, in particular in preparing briefs that take account of social factors.*
- *an understanding of the methods of investigation and preparation of the brief for a design project.*
- *an understanding of the structural design, constructional and engineering problems associated with building design.*
- *an adequate knowledge of physical problems and technologies and of the function of buildings so as to provide them with internal conditions of comfort and protection against the climate.*
- *the necessary design skills to meet building users' requirements within the constraints imposed by cost factors and building regulations.*
- *an adequate knowledge of the industries, organisations, regulations and procedures involved in translating design concepts into buildings and integrating plans into overall planning."*

3.2 The particular distinction between architects and para-professionals such as architectural draftsmen and building designers is essentially the level of education and training, the latter are usually competent at drawing plans of buildings in accordance with the regulations, but those who have para-professional qualifications have not the length of study, nor the level and breadth of knowledge referred to in the foregoing.

3.3 The UIA Accord also defined the following principles of professionalism:

*"Members of the architectural profession are dedicated to standards of professionalism, integrity, and competence, and thereby bring to society special and unique skills and aptitudes essential to the development of the built environment of their societies and cultures. Principles of professionalism are established in legislation, as well as in codes of ethics and regulations defining professional conduct:*

*Expertise: Architects possess a systematic body of theory developed through education, training, and experience. The process of architectural education, training, and examination is structured to assure the public that, when an architect is engaged to perform professional services, that architect has met acceptable standards enabling proper performance of those services. Furthermore, members of most professional societies of architects and, indeed, the UIA, are charged to maintain and advance their knowledge of the*

*art and science of architecture, to respect the body of architectural accomplishment, and to contribute to its growth.*

*Autonomy: Architects provide expert advice to the client, independent of any self-interest. Architects are charged to uphold the ideal that learned and uncompromised professional judgement should take precedence over any other motive in the pursuit of the art and science of architecture. They are also charged to embrace the spirit and letter of the laws governing their professional affairs and to thoughtfully consider the social and environmental impact of their professional activities.*

*Commitment: Architects bring a high level of selfless dedication to the work done on behalf of their clients. Members of the profession are charged to serve their clients in a competent and professional manner and to exercise unprejudiced and unbiased judgement on their behalf.*

*Accountability: Architects accept responsibility for the unqualified, independent advice provided to their clients. Architects undertake to perform professional services only when they, together with those whom they may engage as consultants, are qualified by education, training, or experience in the specific technical areas involved.*

*The UIA, through the programs of the UIA Professional Practice Commission, seeks to establish principles of professionalism and professional standards in the interest of public health, safety, and welfare, and supports the position that interrecognition of standards of professionalism and competence is in the public interest, as well as the profession's."*

- 3.4 From the foregoing one may say that almost without exception it is only persons who have the education, training and experience who are competent to produce architecture.
- 3.5 The education and training of an architect is long, demanding and specialised. There is a surprising degree of uniformity of approach to architectural education throughout the world. Although variations in standards and focus exist, as a rule professional courses in architecture are of five years duration and are conducted by universities or advanced technical colleges of similar standing. Educational levels for admission to courses are therefore high and the courses themselves continue the selective procedure. Most schools, internationally and in Australia, recognise the value of training through work experience to complement academic study. Increasingly countries are introducing a requirement of structured practical experience, often post-graduate and tested by examination, as a pre-requisite for professional recognition.
- 3.6 In broad terms educational programs in architecture are required to develop competence in architectural design, an understanding of technical systems and their requirements, a knowledge of the historical and social and environmental context of architecture and a comprehension of the role and the responsibilities of the architect. Programs of professional architectural education and training are subject to continuous evaluation and revision to reflect the evolving role of the architect in society in response to changing values and aspirations, technology and resources. In Australia the accreditation of courses of study, recognition of qualifications in architecture and examination of practical experience for the purpose of professional recognition, are conducted on a national basis. Because educational standards are believed to be of particular relevance to the issues

addressed by this paper, these procedures are described in greater detail in the attached document, "Standards and Accreditation Procedures for Entry to the Profession".

- 3.7 The world is the stage upon which architects practise, all of the foregoing sets the stage for international understanding and practice. The relevance is international, national and inter State as well as intra State and Territory. The COAG Agreement must be concerned with policies and legislation which restricts competition, not only to the receivers of services but also the providers of services. If the Government did not recognise and legislate in accordance with the international principles, architects in New South Wales would not be able to compete interstate nor internationally with other architects registered in other States and Territories where legislation exists in accordance with the international principles.

#### 4 THE NATIONAL VIEW

- 4.1 The Architects Accreditation Council of Australia (AACCA) on behalf of all State and Territory Registration Boards, and the Royal Australian Institute of Architects produced the Model Legislative Guidelines which are referred to and have been included in the Issues Paper.
- 4.2 The Guidelines are in accord with the principles espoused by the EC and the UIA and recognises the international situation and that architects practise both interstate and internationally.
- 4.3 Courses in architecture in Australia are a minimum of five years in length, and requirements for registration require a two years of practical experience and the passing of a national AACCA Examination in architectural practice. In essence the minimum time to become registered is seven years from starting a course in architecture. A course in architectural draughting is only two years in duration.
- 4.3 The Trade Practices Commission (now the ACCC) supported the Model Legislative Guidelines in that it did not find the provisions anti-competitive and in fact urged publicity of the services of architects in the public interest.
- 4.4 Proposed revisions to the NSW Architects Act have not been under consideration in isolation. As Nominating Body of the Architects Accreditation Council of Australia, the NSW Board has played a major role in orchestrating uniform legislative guidelines over a decade and which have been adopted in toto by all State and Territory Registration Boards, for implementation as and when legislative change is expedient.
- 4.5 As geographic borders simply do not exist in interstate (and indeed international) trade, all Boards accept a role in facilitating mobility of architects, uniformity of standards, monitoring of performance, and in the assimilation of migrant architects.

#### 5. THE STATE VIEW

- 5.1 The Board of Architects of New South Wales fully accepts the COAG review, its purpose and procedure to bring clear thinking to the review of the Architects Act, and urges the Government to consider the national and international implications of the legislation, or lack thereof.

- 5.2 The Board endorses the Model Uniform Guidelines with one minor exception relating to the composition of an architectural practice. Such exception being supported by the ACCC and referred to later.
- 5.3 The Board considers the provisions of the existing Act as being deficient in many respects, both in respect of consumer advice and protection, and of penalties for breaches by architects and non-architects, details of which are later set down.

## 6. WHY HAVE AN ACT?

### 6.1 The Need for regulation

- 6.1.1 Government intervention by legislative measures is deemed to be necessary when the evidence indicates that self-regulation within certain defined service industries proves to fall short of community expectations. Invariably it is only a proportion of persons who may not always act responsibly. This results in loss of consumer confidence and is against the public interest.
- 6.1.2 This public interest is above and beyond partisan politics, and should stand the test of time. Legislation in the public interest must be realistic, practical, and readily understood by the public it is intended to serve.
- 6.1.3 There is also an obligation to ensure that legislation which is anachronistic, and which no longer serves the public interest, is subject to 'sunset' provisions. This requires constant surveillance and a good understanding of society's dynamically changing manners and morés.
- 6.1.4 A Regulatory Impact Statement prepared in 1993 set down cogent reasons for regulation, which have been included herein as follows:

*The purpose of regulation of the architectural profession, as it exists in Australia, is to give protection to the public who may rely on the skill implied by the use of the title architect. It serves as a means of distinguishing those who have acquired a known level of competence in the practice of architecture through education, practical experience and examination, from semi-trained or unqualified practitioners. It also serves to monitor professional conduct and to protect the consumer against malpractice on the part of those who are registered.*

#### **Market Information**

*Architects carry a heavy financial and technical responsibility for their clients and need to be properly trained to do so. Many clients know little of the dangers involved and less about the professional assistance they need and that is available. There is a wide variety of building consultants to choose from and the risk to the public is unacceptable if unqualified or inexperienced people are commissioned in ignorance to do work for which they are not adequately trained.*

*In its paper "Regulation of Professional Markets in Australia: Issues for Review" the Trade Practices Commission discusses the problem of information asymmetry.*

*"Professional services normally deal with complex, specialised matters with important cost and other consequences for the clients. Professional services are inherently difficult for actual and potential users to evaluate, either before or after use. Individual clients usually have few opportunities to learn about these services because their purchases are*

*infrequent and the consequences of misjudging the quality of a service or its provider can be very costly in either human or financial terms."*<sup>5</sup>

*Without the definition of attained standards provided by the registration of architects it would often not be possible for clients to distinguish the competent from the possibly incompetent provider of architectural services. It is believed that this would inevitably lead to a greater use of the services of third parties in the selection process with consequent increase in the cost of transactions.*

*In the United States the practice of architecture is regulated specifically under the constitutional right accorded each state ~ "to guard the health, safety and welfare of the people". It cannot be overstressed that impact on the public interest is not only in relation to the structural stability and general facility of buildings but to buildings as long lasting and highly visible components of the urban environment. While it is not contended that architects will automatically produce an aesthetic result acceptable to all, nor that registration provide a guarantee of quality, the likelihood of achieving good design is infinitely more probable when those responsible are highly trained designers than if they are not. It is a question of quality, not only of cost.*

*In respect of actual costs which may be imposed on third parties through the provision of building design services, the Trade Practices Commission has this to say -*

*"Self-regulation in the professions may also assist in reducing the risk of external costs by establishing required standards of professional and ethical conduct, by requiring continuing education and training, by monitoring professional standards and performance, and by disciplining identified instances of negligent or incompetent practice"*<sup>6</sup>.

*An important change from the existing requirements under the current Act is the statutory requirement for architects to be covered by professional indemnity insurance against action for professional negligence, or action arising from misadventure. Registration, and the holding of recognised academic or professional qualifications, are normally pre-requisite requirements of insurance companies who provide professional indemnity insurance.*

*It is also believed that the conciliation measures and disciplinary procedures recommended for inclusion in the revised Architects Act will provide a specialised and cost effective means of dealing with unsatisfactory performance and disputes.*

### **Reciprocity**

*A compelling reason for the continuation of registration of architects in New South Wales is to maintain interstate reciprocity and international recognition for professionally trained architects.*

5 Regulation of Professional Markets in Australia, Issues for Review, p22, Trade Practices Commission, December 1990.

6 Ibid, p25.

*The Board of Architects is one of the Nominating Bodies of the Architects Accreditation Council of Australia (AACA), the national body created by State and Territory Architects Registration Boards and the Royal Australian Institute of Architects (RAIA) to deal with recognition and regulatory issues which require national response. The AACA plays a major role in maintaining uniformity of registration standards between the autonomous state/territory authorities.*

*State and Territory registration requirements for architects are uniform throughout Australia and registration in one state is qualification for registration in another.*

*The AACA has produced and endorsed legislative guidelines for a national model act for the registration of architects. These guidelines have been favourably reviewed by the Trade Practices Commission.*

*The policies contained in the Model Act are essentially those incorporated in the proposed NSW Architects Act. Unilateral deregulation by New South Wales would preclude architects in this state from representation on the national body, thereby denying reciprocal registration to NSW architects and, perhaps more seriously, isolating the state and its schools of architecture from national accreditation and recognition. Equally, revocation of nationally agreed regulation policy by NSW could seriously jeopardise interstate recognition of its architects. The implications of such a move with regard to the maintenance of standards and quality are a matter for extreme concern.*

*The international consequences for NSW architects would be equally serious. Without the recognition of professional training accorded other Australian architects by registration they would be severely disadvantaged in competing for overseas contracts.*

*A critical aspect of international recognition arises from the recently signed protocol between the Governments of Australia and New Zealand concerning Trade in Services. The force of this document is to require a registration or licensing process to exist in both countries. Without it, the architects of one member state (e.g., NSW) could not be admitted to practise in another (e.g., NZ). This would be contrary to the anti-discriminatory provisions of the ANZCERTA Protocol.*

### **Standards**

*Central to the concept of occupational regulation through certification of title is the determination and maintenance of standards of training and conduct which both define the occupation and those who practise it. There is little doubt that registration of architects has been an important factor in the development of high architectural standards in Australia.*

*The rigorous accreditation procedures for recognition of qualifications in architecture play an important part in maintaining architectural education standards. The registration boards themselves play an active role in the assessment process.*

*Registration boards also seek to promote and maintain high professional standards in the practice of architecture. Their disciplinary powers enable them to impose sanctions on architects who fail to meet acceptable standards of conduct or levels of performance. It is proposed in the amended Architects Act that architects be required to undertake a program*



*of continuing professional development each year as part of their commitment to maintaining professional levels.*

*Less tangible, but equally valuable, are the benefits to be derived from participation in the national and international market place on an equal footing with fellow professionals. Higher levels of skill are needed here and overseas in order to deal with an increasingly complex building environment. Recognition of the professional standing of Australian architects would be significantly eroded if national standards were not imposed through regulation.*

#### **Accountability**

*A form of statute-backed industry regulation or co-regulation of the architectural profession has been in force in NSW since 1921, and it provides the basis of the proposed legislative revisions. The statutory body set up to administer the Architects Act is responsible to the Minister for Public Works. Under this system the architects board may be structured to incorporate consumer interests through lay membership while retaining professional expertise through both ministerial and ex-officio appointment and election of architects. In this way the board is able to fulfil its obligations as a public interest body and maintain public accountability."*

## **6.2 The Precedent-**

The Architects Act came into being in 1921 for reasons which essentially still prevail — that is — notwithstanding that a body of persons claim expertise and objectivity in a particular discipline, market failure can (and does) occur due to human frailty, errors and omissions. The body of architects, who must take at least seven years' study and experience to enjoy use of the protected title, claims 'professional status' which has an inherent and implied obligation to observe self-regulation through the professional association. But human nature being as it is, there are inevitably shortcomings in behaviour and performance, thus it falls to government to intervene, in the public interest.

## **6.3 The Reality**

The Board of Architects, in administering the Architects Act which can be said to restrict competition, has had significant experience of market failure. This is sufficient to clearly indicate the need for legislative control in order to retain and enhance public confidence in the architectural profession, and in the Board's role in identifying those with the education and skills expected by the client public in the building procurement area. However the legislative provisions in the current Act have been found, through long experience, to fall far short of the Act's public interest intent. Therefore it becomes necessary to address the realities of present day practice, and to embrace provisions relative to present day community expectations.

## **6.4 The Cost**

- 6.4.1 Whilst removing controls on architects may ostensibly appear to offer a short term lessening of the initial cost of procurement of building plan services, the long term additional costs to the community in both monetary and cultural terms would be incalculable in the Board's view.

6.4.2 In addition, the legislative controls upon architects in New South Wales, which are mirrored throughout other States and Territories of Australia ensures that uniformity of standards of performance are maintained. The Board considers that this is fundamentally important in the provision of appropriate architectural services in interstate and overseas transactions. Thus there is real potential for significant market loss to New South Wales enterprise in this area were there to be no legislative control.

6.4.3 See also Section 8.

## 6.5 The Community at large

The consumer benefit not mentioned in the Issues Paper is the quality of the environment and the long term affect on the community if designers did not aspire to achieve the highest standards in education. Architects are educated and trained very largely at community expense through the funding of universities; HECS payments only partly contribute to the the cost of educating architects. The community at large, as distinct from the immediate consumer, should expect some return for its investment. This return is largely cultural and evident particularly in large projects such as the Olympic facilities. Architecture is after all one of the oldest visual arts. If designers were not encouraged to achieve a title reserved to those with high educational qualifications and strive for excellence, the community would suffer in the long term. It is the role of Governments to encourage the arts and maintaining the protection of the title is a small measure it can take to assist towards this end, particularly as the funding for administering the Act is provided by architects and not State revenue.

## 6.6 The Client Community.

6.6.1 Without legislation anybody would be able to call themselves an architect. Client users of services would not readily be able to distinguish between providers of "architectural" services who have a high level of education, training and experience, those who have some training and those who have none at all. Restriction of the use of the term 'architect' and derivatives such as 'architectural services' and 'architectural design' by persons and organisations which are not, or do not have adequate and recognised qualifications, will lead to losses being suffered by clients, by users and by the community at large.

6.6.2 The Royal Australian Institute of Architects (RAIA) has for many years operated a service through which members of the public may ring the Institute about any problem or query they have about architects' services, including problems they have with their architect". A large percentage of these calls are about services provided by persons who are not architects. The caller is asked the name of the person who provided the services and on checking with the Board of Architects the caller is advised that the person is not an architect, or in some cases if the person is an architect, he/ she is not a member of the RAIA. The caller is given advice irrespective in order to assist. Nearly all of these calls are from home owners having a house built or alterations and additions carried out to their home. The RAIA receives between 25 and 30 such calls per week. This is about the same number the Board of Architects receives from the public (not from the RAIA) The foregoing is indicative of the confusion which exists now by members of the public, the absence of meaningful penalties in the present legislation in prosecuting non architects who use misleading titles is part cause of the problem. The absence of an Act would exacerbate the problem.

- 6.6.3 The results of research<sup>7</sup> commissioned by the Board indicate that the public know that architects have qualifications whereas there exists uncertainty as to whether other service providers possess qualifications. The matter of qualifications is therefore not an issue when persons select an architect.
- 6.6.4 Legislation which results in the registration of architects, which establishes a high level of academic qualifications as being a requirement for registration, which provides for the assessment of academic qualifications and for the examination of practical experience provides some measure of consumer protection at the outset, that is prior to having services carried out..
- 6.6.5 Without adequate legislation consumers may not be able to readily identify persons and organisations which offer 'architectural' services as having the required skill to provide and carry out services at a level to meet their needs at all. Certainly inexperienced consumers would not be in a position to do so. Consumers who are "one off", those that are making the largest investment in their lives, namely potential home owners, need the protection of legislation. It is only by the reservation of the title architect and derivatives by legislation that consumers may be assured that they receive the services of a qualified person or organisation.

#### **6.7 The business community and the various arms of Government.**

- 6.7.1 Experienced clients, mainly those consisting of large corporations, are able to identify providers of services to meet their needs without the benefit of legislation, however the consumers which run small businesses or who are inexperienced in having buildings built are those which need the protection of legislation. The Board sees advance identification and advice as the best consumer protection measure.
- 6.7.2 The serious difficulties created by the omission of a register of architectural practices in the present Act, or the provision for Practice Certificates has lead to uncertainty in the client, business communities as well as for Departments of Australian, NSW and Local Governments . It is important to note that Government Departments and instrumentalities (Department of Housing, Department of Fair Trading, Australian Securities Commission), banks, financial institutions, and local authorities as well as individual members of the public rely on information as to whether or not a firm or company provide the services of an architect. The Board's inability at present to provide a response at all to these enquirers is known to have disadvantaged third parties on occasions. In the absence of appropriate legislation this consumer problem would continue.

#### **6.8 The Community of Architects and the Economy.**

- 6.8.1 The absence of an Act would make it difficult for present architects and those who would qualify for registration under the present act, to use the title in other States and Territories. The present Mutual Recognition Act could not apply as it is only applicable for registration in another State if you are registered in your home State.
- 6.8.2 Figures provided by RAI Insurance Brokers Ltd indicate that 22% of the total fees earned by architects are derived from overseas commissions, this is an

<sup>7</sup> "Research to Determine Public Perceptions of the Term 'Architect' and its derivatives" UTS (1995)

important export earner for the country and provides many jobs to NSW architects. NSW architects would lose the opportunity to continue to gain overseas commissions, as registration in your own country is a pre-requisite to carry out work in Asian and other countries.

- 6.8.3 The loss of a protected title could well mean a loss of incentive for students to attain the high academic qualifications required presently of architects, the result could well be a lessening of numbers qualified in the profession.

## 6.9 The Conclusion:

- 6.9.1 The Board of Architects of New South Wales, from long experience in administering the Architects Act, and as the interface with the public, is convinced that legislative constraints are indeed necessary. However the Board believes the legislative provisions of the present Act must be extensively revised, particularly to embrace control of architectural firms in order to effectively serve the public benefit. The result of this would be at only very nominal cost.

## 7. THE TITLE RESTRICTIONS OF THE ARCHITECTS ACT

### *Discussion point 3:*

- (i) *Comment is sought on the findings of the TPC study in relation to those who may need assistance to access architectural services.*
- (ii) *Are there any sections of the population that may suffer significant disadvantage if they are unable to distinguish between an architect and another provider of building design services?*

### 7.1 What restrictions?

- 7.1.1 The main restriction is to limit the use of the term 'architect' and its derivatives such as 'architectural' to persons registered as architects, with some exceptions which permit a person to state the qualification they hold or to describe their occupation, being one not one of providing services normally provided by an architect.

### 7.2 Why the restriction?

- 7.2.1 To enable the public to distinguish between persons who have been fully educated and trained to possess high levels of skill at a professional level from others who, by the use of the terms, would imply they have attained the same standards. In short to avoid misrepresentation by stealth.

### 7.3 Who experiences the problems?

- 7.3.1 Recognising the high degree of incidence of complaints against non-architects brought before the Board, and also heeding the Trade Practices Commission's observations, the Board in its consumer protection role under the Act has in recent times made budgetary provision (in anticipation of changes to the Act) for a pro-active program to increase public awareness of the cost-benefit of engaging an architect, vis-a-vis para-professionals and others, for professional services and non professional services relative to building design and administration of building contracts.

- 7.3.2 Due to the shortcomings of the Act in its present form this program has not been pursued as yet, but with more 'teeth' in the provisions, the Board would be in a better position to promulgate the cost-benefits to consumers of engaging an architect vis-a-vis others, as suggested by the TPC.
- 7.3.3 The sections of the population most vulnerable to suffer significant disadvantage at the hands of amateurs would undoubtedly be lower income persons and families whose need is to have a house or extensions and renovations to a house designed, and built, and this probably represents the single biggest investment in their lives. It is these people who generally do not know the difference between a professional adviser and other providers of services. The Board regularly receives, and deals with, complaints where architects have provided unsatisfactory service but it also receives numerous complaints against persons who prove not to be architects and where the Board is virtually powerless, under present legislative provisions, to take appropriate remedial action. (refer also to 6.6.5 and 6.7.1)
- 7.3.4 The full extent of this problem is not known to the Board but statistics from the small claims courts and other consumer protection instruments would no doubt prove the need for clients to be able to distinguish between fully professional and unqualified providers of services.

#### 7.4 Effects of the restrictions on the economy.

##### *Discussion point 4:*

*Poor understanding of architectural services by some segments of the market may be due to lack of promotion of the certified title and the standard of qualifications it represents.*

*In some professions, the professional associations play an active role in promoting the benefits of using a member of the relevant professional association when consumers are seeking professional services.*

*Would promotion of the architecture profession by the RAIA provide an adequate service to consumers who need assistance in deciding whether or not to engage an architect?*

- 7.4.1 It should be borne in mind that the RAIA, being a voluntary organisation whose objectives are to advance architecture and the interests of its members, does not, and cannot, act and speak for *all* architects, representing as it does at any time probably two-thirds of architects. The RAIA however endeavours to ensure that it can reasonably claim speak on behalf of the majority and to ensure that the performance of its members match, as far as possible, community expectations.
- 7.4.2 The RAIA, has, particularly since the early '70s, engaged in promotion and marketing of the services provided by its members. Some of these exercises have proven successful, particularly the Architects Advisory Service which provides full or partial professional advice to the 'man and woman in the street' at an 'affordable' level of cost. This service which was 'kick started' by the RAIA is however basically self-funding and the shortcoming in reaching a wider audience is hampered due to the need for an abundance of regular promotional funding which reasonably would be expected to come from those architects who are operating within the service, but who are not in a position to finance such promotion.

- 7.4.3 The RAIA does however expend a great deal of financial and human resources in promotion of its members' services through awards programs and publicity generally. Some of these exercises can be counter-productive for they can tend to emphasise an 'elitist' position of its members and generally address the upper end of the market, which further discourages smaller consumers from accessing architects. And many of the architects who provide services at the lower end of the market may not be RAIA members.
- 7.4.4 The building industry, and *particularly* the housing industry, is probably *the* enterprise most vulnerable to market failure, as evidenced by the number of cases of consumers suffering at the hands of operatives in building design and procurement. Cases of shoddy work, bad design, and costly errors are brought regularly to public attention through investigative journalism in the popular media. It is patently clear that the freedom enjoyed in the building design and procurement industry is at significant social and economic cost to the consumer, and that there is a need for intervention by legislation to remedy the situation.
- 7.4.5 The historic legislative restriction on the use of the terms 'architect' and 'architectural' has had some beneficial effect in lessening market failure though this could be enhanced through extended legislative provisions, and the promotion of this as an effective means of consumer protection to the wider community.
- 7.4.6 Additionally there should be greater legislative controls over the many and varied other operatives in the building design and procurement industry.
- 7.4.7 Market failure, being essentially based upon economics, can be due to a general loss of confidence within the consumer public and this can be a function of a lack of public awareness of the building design and procurement industry as the incidence of unsatisfactory performers in the industry. The Board believes that both of these factors need addressing and appropriate legislative provisions made.

## 7.5 Less restrictive alternatives.

### *Discussion point 5:*

*Comment is invited on the alternatives to the current restriction on the use of the term 'architect' and its derivatives.*

#### *(i) No legislative control - self regulate through professional bodies.*

- 7.5.1 Self regulate through the RAIA in a fashion similar to the Australian Society of Certified Practising Accountants and the use of the term 'certified practising accountant'. In other words the RAIA advertising "use an RAIA Architect". There is a significant difference in the event of there being no legislative restriction on the use of the term 'architect' or derivatives. The difference being that users of architects' services in the domestic sector entrust their greatest investment or asset into the hands of person when they commission a new house or alterations and additions to a house, whereas the same user engaging an accountant at domestic level usually does so for assistance on a tax return where potential losses are relatively small by comparison.. The potential losses are far greater to the public in the case of a person not using a fully qualified person such as architect as presently defined by the Act, particularly if the Act did not require an architect to hold professional indemnity insurance. No Act - No protection.

7.5.2 This suggestion does not take into consideration:

- that the RAIA has members who do not practice by way of offering architectural services to the public. These include employees of Government, Financial Institutions, Universities and Colleges, and retired architects to name some.
- other consumer measures existing and proposed, particularly in respect of compulsory PII which can only be achieved through legislation.
- the fact that the RAIA draws its membership from individuals and not practices.
- proper concern for consumer protection through preventative measures and for national uniformity and inter State and international access for architects which can only be achieved through legislation.

7.5.3 Architects in this State would be disadvantaged by not being able to register in other States and Territories through Mutual Recognition.

- (ii) *No legislative control - scheme for architects under the Professional Standards Act.*

7.5.4 This Act enables members of a participant professional organisation (RAIA) to be covered by limiting liability and for consumers to receive a limited level of compensation. Not all members of the RAIA would be required to come under the provisions of the Act, nor would it be necessary when many members are not practising and are not employees of practices. In addition the Act specifically does not cover death and personal injury claims. Compulsory PII is required of architectural practices if the consumer is to be fully protected.

- (iii) *Legislative control of term like 'registered architect' or 'chartered architect'*

7.5.5 The introduction of the divisions of the title 'architect' and 'chartered architect' in amendments to the Architects Act in 1985 has caused much confusion both to the public and to architects who do not know the limitations imposed by the provisions of the Act. This division into two categories has also caused this State to be out of step with all of the other States and Territories. For these reasons the Board is seeking to revert to one protected title, namely 'architect'

- (iv) *Legislative control of term 'architect' but not the word 'architectural'.*

7.5.6 As the Research<sup>8</sup> has indicated the public believe that if one is receiving architectural services it is believed that they are receiving the services of an architect. Enough confusion has resulted through the inadequacies of the provision of the current protection by the penalties being completely inadequate to stamp out the practice.

*Discussion point 6:*

*NSW has legislation providing general protection for consumers of goods and services and for the planning and construction of buildings, particularly residential buildings.*

*Are there any additional consumer benefits which would justify a continuation of the use of the terms 'architect' and 'architectural services'?*

- 7.5.7 The NSW legislation in respect of building regulations and licensing of builders safeguards consumers if the regulations are observed. It is generally believed that Council Building Surveyors oversee construction by making site inspections, however that is not so as the Council is not obliged to carry out inspections and in any event much work is carried out which does not require inspection. It is the Applicant who is required to ensure that the building is built in accordance with the regulations and the Applicant is usually the Home Owner who has no idea if the work is carried out properly or not. Builders not building in accordance with the regulations, if detected, may be prosecuted. The catch is who does the detecting? Prevention is better than cure. The engagement of an architect who is the professional with the required skill will provide that degree of quality assurance that the work will be carried out properly. Prevention is better than cure! If the titles 'architect' and 'architectural services' were de-regulated the inexperienced consumer would not know whether they were engaging a true professional or not.
- 7.5.8 Though it is only the title 'Architect' which has been historically controlled, it is in the extension which embraces the use of derivatives of the title, such as 'architectural', as in 'architectural services', which in fact includes a number of sub-disciplines, such as 'architectural drafting'. It is in these areas that problems of public perception, and misconception, in the Board's experience, have been in evidence.
- 7.5.9 The title 'Architect' has commonly been associated with the provision of 'architectural services' in Australia, and in most Western countries of the world. The controlled title 'Architect' has received community acceptance in the same way as 'Doctor' and 'Lawyer' in the provision of professional services has in medical and legal practice.
- 7.5.10 The providers of these services in today's dynamic world wherein professional practitioners are very mobile, requires that the title and the historically accepted meaning behind the title gives assurance to the public in advance of taking a decision to acquire these services, that the body of knowledge and skills will be available, and in the event that the services given prove less than satisfactory, there is recourse to discipline the offenders in a practical, efficient and effective way.
- 7.5.11 Professional bodies, by and large, endeavour to achieve quality assurance from their members by various means in order to ensure a reasonable degree of continued public acceptance of the enjoyment of the title, which can be a marketable commodity. Whereas medical and legal practitioners enjoy 100% membership within their professional organisations, with their titles — and practices — having the protection of the law, the professional body of architects is voluntary only and represents around two-thirds of the profession at any time. Thus cases of misconduct or unprofessional behaviour of architects brought before the Board do not necessarily involve members of the RAIA.
- 7.5.12 Whilst members of the public who suffer loss at the hands of non-professionals have recourse to the courts and other consumer protection instruments, this is invariably after the event, causes considerable trauma, and is costly in terms of time and money.
- 7.5.13 It is considered that the fore-knowledge of assurance of professional services from those with the controlled title 'architect', and what it represents, is an



important additional benefit. More benefit would flow however were penal sanctions to be significantly increased for unprofessional service as a real additional deterrent and this would be seen by the client public to be meaningful.

## 7.6 Control of the use of the title by organisations

### *Discussion point 7*

- (i) *Are there any sections of the population that will suffer significant disadvantage if they have difficulty determining whether a firm is capable of providing architectural services?*
- (ii) *Is there any evidence of market failure based on misleading listings in the telephone directory?*

7.6.1 It should be reiterated that it is the 'man and woman in the street', the member of the public who (understandably) views a design or re-design of a residence as the biggest single investment decision in their lives, who will suffer disadvantage at the hands of those who are on the fringe of the building procurement industry, and who have as their essential goal, commercial gain.

7.6.2 If a consumer is unable to determine whether or not the firm they are considering engaging can provide the professional services of an architect as against the services of a technician, and they do not have any Government authority from which they may seek guidance, Government is not providing the consumer protection it should and which is provided by legislation in other States and Territories.

7.6.3 It has been suggested that the Board might be able to determine which firms are capable of offering architect's service by requiring architects to annually provide the names of their employers, and thereby the Board will be in a position to advise consumers. Reference to Annexure 'A' will confirm that adoption of this procedure will not in any way provide a reliable and relevant list of firms.

7.6.4 The organised profession is seen as a conspiracy, so where can the 'man or woman in the street' go for assistance? This is the reason for Government intervention, to in effect, underwrite the performance of architects as professionals.

7.6.5 The RAIA has for many years operated a service through which members of the public may ring the Institute about any problem or query they have about architects' services, including problems they have with their "architect". A large percentage of these calls are about services provided by persons who are not architects, or firms, but the latter cannot be members as membership is restricted to individuals. Callers are asked the name of the person who provided the services and on checking with the Board of Architect's callers are advised that the person is not an architect, or in some cases is not a member of the RAIA. Nearly all of these calls are from home owners having a house built or alterations and additions carried out to their home.

7.6.6 The RAIA receives between 25 and 30 such calls per week. This is about the same number the Board of Architects receives from the public (not from the RAIA). As firms are not members of the RAIA, nor registered by the Board consumers are left uninformed. Not a very good service from an arm of government.

- 7.6.7 The telephone directory is commonly the very first point of reference when people seek information on the supply of goods and services. It would be reasonable to presume that the telephone directory, particularly the "Yellow Pages" is relied upon by those who seek to use an architect for the first time. These are the people most vulnerable when entries are false and misleading.
- 7.6.8 The Board is the **only** consumer protective 'watchdog' in this area, and is acutely aware that in this role, in spite of its best intentions, it falls far short of its goals in this respect. Though constant monitoring occurs, there are considerable difficulties in ensuring that the publisher lists only those persons and firms legally entitled to the title 'architect', appear in the classification "Architects". But there is another classification entitled "Drafting Services" which embraces a plethora of persons and firms which offer 'architectural services'.
- 7.6.9 The Board regularly advises enquirers as to whether a person is an architect in advance of their intent to engage professional services. In the case of firms and corporations, though the Board maintains a Voluntary List of Practices and therefore can immediately and confidently advise enquirers as to the status of those on the list, this represents a proportion only of the firms in operation which may comply with the Act however this would need a search of the ASC, which is cumbersome and time-consuming.
- 7.6.10 The extent of market failure evidenced by the Board after the event of unacceptable service by non architects is significant enough to warrant corrective measures.

## 7.7 Effects of the restrictions on the composition of firms

### *Discussion point 8:*

*A large number of architects appear to practise through small firms controlled by architects. For example, the RAlA advises that 80% of its members practise in firms of less than 4 people.*

*Does the current permitted use of the title 'architect' by organisations cause any restrictions on the way architects would prefer to practise?*

- 7.7.1 Some large firms seeking to organise themselves into multi disciplinary practices have contacted the Board regarding the difficulties they have with the present one third requirement, and the Board acknowledges and accepts the reality of present day multi-disciplinary practices which provide comprehensive building design and procurement services. Design and construct, financing and marketing services, project management and cost control, site evaluation, landscaping, mechanical and electrical services, fitouts, all are components of a complete 'architectural service'. This is often provided by a 'one-stop-shop'.
- 7.7.2 The Board is unaware of any restriction on the way firms, particularly small firms, prefer to practise, caused by the present requirement that at least one-third of principals or directors are architects. However, the Board believes that any firm should be free to offer architectural services, and to use the title 'architect' as long as the 'architectural services' offered by that firm is under the direct control and supervision of an architect. In this way the responsibility for supervision and direction of the architectural services will always rest with the architect who is subject to legislative provisions.

- 7.7.3 Since the amendment to the Act in 1985 the Board has not received any complaints about firms with only one third of control being in the hands of architects, as against fifty percent or more as suggested by the RAIIA.
- 7.7.4 Some less restrictive alternatives suggested such as removing any control over the use of the title by firms, or by allowing any firm with architects in any capacity to use the title would result in the Board still not being able to advise the public as to whether a firm could offer architect's services.

## 7.8 Criteria for registration as an architect.

### 7.8.1 Qualifications and experience (regarding two tier registration)

- .11 The basic qualification for registration as an architect in all States and Territories, excepting NSW is the completion of a five year degree course, two years practical experience and passing the AACA examination in architectural practice.
- .12 In NSW one may be registered as an architect after qualifying for a degree, and as a chartered architect after completing the latter requirements.

#### *Discussion point 9:*

*There are suggestions that the two registration categories of chartered and non-chartered architect has caused confusion for the profession and the public. At 31 March 1997 only 94 of the 3130 (corrected number) architects registered with the Board were non-chartered.*

*Are there any consumer benefits in retaining the register of non-chartered architects?*

- .13 The category of 'Non-Chartered Architects' was introduced in 1988 in order to give recognition of academic achievement only to persons having obtained a degree in architecture which is of five years' duration. Also in recognition that many who obtain the degree do not go on to practise architecture but find employment in related or other fields, but should still be enabled to legally enjoy the earned title.
- .14 The intention was to distinguish, for the client public, between those qualified, skilled, and experienced in practice, by drawing a distinction between those merely with the qualification, and those having a further 2 years of experience and the appropriate testing of knowledgs and skills, the 'Chartered Architect'.
- .15 In the event this only led to further confusion, both amongst consumers and the profession and the Board now sees no consumer benefit in continuing with this division of the register.

### 7.8.2 Age restriction

#### *Discussion point 10.*

*Is there any value in retaining an age restriction on entry to the architecture profession?*

- .21 The Board agrees that the age restriction is redundant, and that there is therefore no value in retaining it.

### 7.8.3 Character assessment

#### *Discussion point 11*

*It has been suggested that the current subjective assessment of 'good character' required before registration as an architect has the potential to include issues of behaviour unrelated to future professional practice.*

*Is there any evidence of refusal to register on behavioural grounds unrelated to professional practice?*

- 31 Experience by the Board would suggest there is a strong case to require evidence of good **fame** and character in **respect of business dealings**, as a pre-condition for registration for the reason that a high degree of ethics is required of a professional person, particularly when entrusted with planning the expenditure of large sums of money. It is the Board's view for example that should an architect be de-registered for accepting a bribe, that re-admission after serving the penalty imposed by the Tribunal, if not precluded by the Tribunal, should depend at least on providing subsequent evidence of good fame and character in business dealings.

### 7.9 Grounds for removal.

#### *Discussion point 12*

(Correction: Para 5: In the period 1992-97, the Board of Architects received 23 complaints of improper conduct and eight of these resulted in disciplinary action).

*The receipt of 23 complaints in five years does not suggest a market failure associated with the behaviour of architects.*

*Is there any other evidence of the behaviour of architects leading to market failure?*

- 7.9.1 As one can not be 'just a little bit dishonest', or 'just a little bit immoral', or exercise 'just a little bit less than reasonable skill and care', so some would say that market failure has occurred were only one or two cases of unprofessional behaviour to have occurred in a discipline which holds itself out to enjoy "professional" status, ie. the body of people whose claim to title relies upon skills, expertise, and objectivity.
- 7.9.2 The 23 complaints referred to in the period 1992-97 are those which have been dealt with by the Board. Some eight cases requiring disciplinary action have been determined. But this does not include the numerous incidences of cases where complainants do not take the complaint further on learning of the time-consuming procedure to be followed, and the very limited options for penal provisions, with no prospect of cost recovery in the case of loss.
- 7.9.3 As a result of complaints from the public which have been proceeded with, two persons have been removed from the register in the last two years for reasons which the Board considered amply justified. This is not only a penalty for misdemeanours but a salutary warning to other architects that proper standards of behaviour and practice is a public expectation for the continued right to the title, and enjoyment of professional status that this implies.

7.9.4 Such action does not prevail in non-regulated enterprises, and were the architectural profession to be de-regulated, there is every reason to believe that the scale and incidence of market failure would almost certainly increase as anyone could use the title 'architect'

7.9.5 Market failure at *any* scale can erode community confidence to a point where the public will avoid the use of professional architectural services which are controlled essentially for public benefit, for self-regulation has proven, over time, to be largely ineffectual.

**7.10 Cost to the NSW economy, benefits of registration, costs v benefits.**

*"The direct costs of the Architects Act are the operational expenses of the Board of Architects which were \$348 000 in 1995-96 and are estimated at \$408 000 for 1996-97".*

7.10.1 Though these costs do represent a tax of a kind, the Board in administering the Act in the public interest is funded entirely from the architectural profession through registration roll fees. Seen in this light, the tax on a very small sector of the community results in significant cost-benefit in terms of consumer protection.

7.10.2 Additionally, the funds levied are applied to monitoring standards of education of professional practitioners, and those of migrants, which underwrites an insurance for the future client public.

7.10.3 The Board takes issue with any assertion that "rectification costs might be, at least in part, offset by lower initial costs of the building design services" (in provision of substandard or unethical services). The reality is that building rectification as a result of unsatisfactory and/or faulty design and contract administration is invariably at cost out of all proportion to that of the design service component, not to mention the on-cost of litigation, loss of occupancy time, inconvenience, and erosion of consumer confidence.

*Discussion Point 13*

(i) *Given that there is already a professional body which actively seeks to increase standards within the profession, what are the additional consumer benefits of statutory registration, and do these benefits exceed the costs of restricting competition in this way?*

7.10.4 Whilst the benefits to consumers of statutory registration of architects cannot be readily quantified, there is ample evidence to clearly indicate the scale of the unnecessary costs, (60% or more of the costs being mainly legal in the often unsatisfactory attempts to resolve disputes through PII claims) due to less than satisfactory operators in the building design and procurement fields.

7.10.5 The benefits therefore are in avoiding these situations, wherever possible. And whilst, human nature being as it is, problems can occur due to the less than satisfactory performance by architects, the checks and balances in place due to statutory registration of architects are insurance to minimise occurrences of this kind.

7.10.6 The cost of administering the Act to control the title and its meaning are nominal only, being an annual tax of (currently) \$86 per registrant, and this is met, not by government, but entirely by the 3000 or so on the roll. In *any* terms, these

costs of statutory registration would pale by comparison measured against the very significant and largely avoidable costs of rectification of shoddy and unsatisfactory work, and in litigation due to building disputes.

7.10.7 Membership of the professional body, being voluntary, accounts for around two-thirds of architects, certainly not all who enjoy the controlled title. Were membership of the RAIA to be mandatory, this would materially alter the situation for the public which would be in a better position to recognise those architects who were RAIA members, and who presumably would be seen to comply with all the conditions relating to the provision of professional services expected by the client public. However legally enforceable sanctions would need to be put in place, and the threat of removal from membership would need to represent a real deterrent to errant behaviour, which it presently is not.

7.10.8 It should be remembered that the RAIA is a national body, the annual cost of membership, currently around \$500, would almost certainly need to be significantly increased for all members in Australia to cover the increased costs due to the NSW members.

7.10.9 It is true the RAIA seeks to maintain and improve professional standards, and this in the end result, is in the public interest. It also is actively (and commendably) involved in issues of public concern such as environment, conservation, urban planning, energy conservation, design for disabled and so forth. And though the RAIA, having as it does its first stated objective the advancement of architecture, it is still basically a guild for the advancement of architects and in this regard it is difficult to change entrenched public perception that, as Shaw contended, "All professions are a conspiracy against the laity".

7.10.10 The fact remains that the Board's 'raison d'être' is the public interest of the community at large, consumers as well as architects, whereas that of the RAIA must primarily be the best interests of its members.

(ii) *Is registration of architects the best way of ensuring public confidence in architectural services?*

7.10.11 Due to a number of factors, the term 'architectural services' means different things to different people. Though it would appear that 'architectural services' means those services provided by an 'architect', (as borne out by the Board's research project into public perceptions of 'Architect' and 'Architectural Services') many would say that architectural services are provided by designers, drafters, project managers, builders, and the like. Much of the problem is one of definition — ie. what, indeed, is *architecture*? In this regard the term has been so widely and loosely used so that, covering everything, it means nothing.

7.10.12 Whilst architecture is commonly defined as the art and science of building, more precisely it is "the primary discipline involved with individual buildings and groups of buildings and spaces up to the scale at which the design of the individual buildings ceases to be a major concern in relation to the level of detail under consideration. Beyond that, other disciplines take the lead" (*R Butterworth, 1973*)

7.10.13 Thus, the Architects Act is about architects, as educated, skilled and objective professional advisers in the specific discipline of providing architecture to the community, services to consumers, regulation of the qualifications and performance of architects and protecting the public against those of lower or no qualifications who imply they are architects.

7.10.14 In the case of other professions, particularly the well-recognised professions of medicine and law, whilst the public may not necessarily be altogether confident that their problems will be resolved, at least in approaching a member of those professions there is general confidence that they will receive impartial, objective advice, and have access to a learned body of skills and expertise. For those who seek advice from other sources, certainly in quasi-medical and quasi-legal fields, it is ever a case of 'caveat emptor'.

7.10.15 It is therefore the responsibility of the Board, in administering the enacted legislation, and of the professional body, the RAlA, to ensure as far as possible that through insisting upon high standards of professionalism, and being seen to discipline defaulters, that public confidence in the provision of "architectural services", at least by 'architects', is vouchsafed.

7.10.16 But public confidence in architectural services, that is services provided by architects, also requires a mechanism whereby the public can have assurance (through wide promotion) that defaulters and imposters are dealt with effectively and expeditiously, which is simply not possible under the present arrangements.

(iii) *Would the development of a scheme for architects under the Professional Standards Act provide adequate consumer protection?*

7.10.17 Any professional association which comes under the Professional Standards Act may offer to its members the protection under the Act. However not all members of the association are required under the Act to be covered under the scheme therefore only partial protection is available to the public from those who seek to join the scheme.

7.10.18 Importantly the Professional Standards Act does not cover liability in cases of personal injury, the client public therefore would not be covered under the Professional Standards Act. Thus the only comprehensive way of providing adequate consumer protection is by embracing a comprehensive PII policy under the Architects Act.

## **8. COSTS OF REGULATION vs COSTS OF DE-REGULATION**

### **8.1 The cost of restriction.**

8.1.1 The cost of restricting the use of the title 'architect' are minimal (less than \$100.00 per year per architect) and is borne by architects. If averaged over the charges made by architects for services to clients it would be minimal. In other words the registration fees paid by architects have little bearing on the costs to consumers of the services provided by architects.

8.1.2 The annual registration fees paid by architects fund the expenses of the Board of Architects, including those expenses charged to the Board by NSW and Australian Government Departments and agencies.

8.1.3 The NSW Government does not provide any funding to the Board of Architects, and in fact derives revenue from any fines imposed as a consequence of breaches to the Act.

8.1.4 It could be argued that adding a requirement of compulsory professional indemnity insurance (PII) will increase the cost of services by the premium paid.

The Board would argue that most responsible architects carry PII anyway and the increase would apply to the clients of those architects who do not carry insurance. From the consumers point of view the certain protection provided would provide value for the small consequential increase, if any, in fees from architects not currently insured.

- 8.1.5 The costs of restriction also includes the cost to the individual in undertaking academic qualifications, gaining practical experience and the cost of sitting for an architectural practice examination. Nevertheless the international and national view is that the requirements leading to these qualifications are essential and are included in legislation in all States and Territories in Australia and in other countries. (refer to Sections 2, 3, 4 and 5)

## 8.2 The costs of de-regulation.

- 8.2.1 De-regulation would remove the only consumer loss prevention protection available prior to engaging services. This, if the Act was suitably amended, would enable the consumer to enquire as to the status of a provider from the Board prior to the provider being engaged.

- 8.2.2 There are statutory and common law remedies available once a person has suffered loss or damage due to the negligent provision of services, but these all require legal action in some form or other and considerable expense in preparing the action, and no or little compensation would be available in the event of the provider becoming bankrupt. A statutory requirement for the provider to have PII would provide the safeguard.

- 8.2.3 Some Board members have acted as Court Referees and Arbitrators and have observed instances where civil actions against architects have been successful but as some architects do not carry professional indemnity insurance the successful litigant has not been able to recover the damages awarded, nor their costs. Compulsory professional indemnity insurance would overcome this problem suffered by consumers, but only can be achieved through legislation.

- 8.2.4 Other losses would be suffered by the community and by architects which are referred to earlier in section 6 "Why have an Act?".

## 10. THE ARCHITECTS ACT AND OTHER CONSUMER ACTS .

### *Discussion point 2:*

- (i) *The problems outlined at the time of the original Act appear to relate to the overall operation of the building industry as well as to the way architects behaved.*
- (ii) *Given the existence of the consumer protection legislation outlined in Section 4 (of the Issues Paper) would these problems still exist in the absence of registration of architects?*
- (iii) *Is there an information failure in the market that is not already being adequately addressed by the market and/or existing Government regulation. If so, is a legislative restriction on the use of the terms 'architect' and 'architectural' the best way to address such a failure?*



## 9.1 Background to the Architects Act.

- 9.1.1 Prior to the introduction of legislation to control the title, bribery and corruption were rife throughout the building industry, and "architects" were as culpable as any. Today the behaviour of architects is vouchsafed by the ever-present and very real prospect of losing the legal enjoyment of the title which, in the case of de-registration, is seen (by architects) as deprivation of their future potential for income earning.
- 9.1.2 The assumption that, left to themselves, consumers may have difficulty avoiding unqualified, unscrupulous or substandard providers of building drafting services is still relevant, as borne out by long experience by the Board, being at the 'coal face', in endeavouring to properly administer the public interest provisions of the Act.
- 9.1.3 Whilst it is true that several instruments of consumer protection legislation have been introduced in the intervening period, these measures prove largely time-consuming and unwieldy, and the difficulties still prevail. Thus consumers regularly contact the Board to complain about the malpractice of an "architect", only to find that the problems they have experienced, were at the hands of a sub-professional, or even an amateur, and this is invariably at significant cost. As such, the alternative consumer protection devices appear to be unsuccessful in application due perhaps to the unique and complex problems of the building industry.
- 9.1.4 Regrettably complaints often are lodged with the Board after the event, due to lack of knowledge and understanding on the role of the professional expert in building design and contract administration. The Board sees this problem as being due in part to a shortcoming in the profession in appropriate ongoing public awareness programmes, which would serve better the public interest, in a timely way. Delays in reporting complaints are also in part due to design and/or construction faults which are manifested some time after handover and occupation of a building. The Board at present is unable to publicise its ability to advise the public as to which firms are architects and which are not, due to the absence of identification provisions in the Act.

## 9.2 Trade Practices Act and the Fair Trading Act.

- 9.2.1 These acts provide for consumers to take action for the recovery of damages suffered as a consequence of breaches, which in essence parallel some sections of the Architect's Act. However success in an action does not guarantee compensation in the event of a company going into liquidation or an individual becoming bankrupt as the quantum of a claim in some cases may run into hundreds of thousands of dollars, beyond the resources of the average architect without professional indemnity insurance. Nor can a successful action cause the de-registration of the company as an architect or the individual. Both Acts are "after the loss" legislation and not "loss preventative" legislation.
- 9.2.2 It has been claimed that an enquiry to the Department of Fair Trading would reveal the names of the principals of a firm, however the only information available would be that provided under the **Business Names Act** at the time the name was registered, not necessarily those at the time of the enquiry by the consumer. The Architects Act is required in order to provide accurate consumer information

### **9.3 Professional Standards Act**

- 9.3.1 Refer to Section 7, paragraphs 7.5.4, 7.10.17 and 7.10.18

### **9.4 Australian Securities Commission.**

- 9.4.1 It has been claimed that consumers (or the Board for that matter) may seek information about the directors of a company to ascertain whether an architect is a director, all by way of a search. The information is only as accurate at the last date the relevant company submitted a return, therefore it cannot be relied upon to provide the present day status. In addition the procedure effectively puts a bar to an inexperienced consumer by having to make and pay for the application, and wait for the reply. Not nearly as easy as ringing the Board and being provided with the information instantly, which would be the case if the present Architects Act was suitably amended.

### **9.5 Consumer information restricted by legislation.**

- 9.5.1 A research project undertaken during 1995 by a team of researchers at the University of Technology, NSW, headed by Ms Lynn Crawford set out to determine public perceptions of 'Architect', 'Architectural', and 'Architectural Services'.
- 9.5.2 A wide range of consumers of services were canvassed for their views. The research showed that 'Architectural' services are almost considered synonymous with 'Architects' services and knew that architects had qualifications. As to 'Building Designers', and 'Drafting' services, the ranking of qualifications, license and registration rated very low from all groups responding to the surveys. This would suggest an information failure, and this can be attributable in part to shortcomings by the statutory body having the ability under the present Act to identify firms of architects and then to promote the virtues of using a qualified professional who needs the controlled title to continue to function in a market at a professional level.
- 9.5.3 Oligopolies and most large corporations have directors with awareness to engage professional architectural services appropriate to their commercial needs, and the means at their disposal to take appropriate action in the event that their expectations are not fulfilled.
- 9.5.4 However the experience of the Board clearly indicates that a large cross section of the community is not aware of the pitfalls in engaging designers and advisers for building projects, of inadequate qualifications, skills and expertise, in a very complex industry which is commonly and regularly found, at considerable cost, to have a vast majority of operators with at most, dubious claims to expertise in building 'design', documentation and contract administration.
- 9.5.5 The problems brought before the Board are invariably after the event. This suggests that there is a definite information failure in the market which is neither being addressed by the profession nor the government. On balance however, the Board is of the view that appropriate regulatory measures, combined with an ongoing programme of public information, would materially assist in amelioration of the problems suffered at the hands of non professionals in the building design and procurement marketplace.
- 9.5.6 Refer to 6.6.2 and 6.7.2 for examples of information failure caused by the provisions of the current Act to identify firms of architects.

- 9.5.7 Legislative restriction of the use of the terms 'architect', 'architectural' and other terms derived therefrom by persons other than architects when used in the context of building plan services provided in the course of conducting a business would be effective if provisions were made for significant penalties for breaches. Note the underlining, the restriction need not be a blanket restriction but only related to business in that context.

## 10. SHORTCOMINGS OF THE EXISTING LEGISLATION

- 10.1 The community which procures architecture needs to be able to identify architects and organisations which offer architectural services. The Board administering the Act and under its provisions does not have the information necessary to make the necessary identification and to advise enquirers from the public. The Board sees advance identification and advice as a consumer protection measure.
- 10.2 Prosecutions are hampered by the provisions of the Justices Act which requires prosecutions to be lodged within 6 months of the offence being committed.
- 10.3 The penalties for breaches of the Act by non architects using the title are completely inadequate and do little to deter offenders.
- 10.4 The type of penalties for breaches of the Act by architects are inadequate.
- 10.5 Whilst there is provision in the Act for corporations to use the title 'architect' there are no provisions to prosecute corporations for breaching the Act.
- 10.6 There is no consumer protection mechanism in the Act to compensate losses.
- 10.7 There is no requirement in the Act to ensure that architects keep up to date.
- 10.8 There is no requirement in the Act to ensure that architects are required to have written agreements with their clients.
- 10.9 There is no requirement in the Act to ensure that the service provided by a firm of architects was carried out under the control and supervision of an architect.
- 10.10 The existence of two tier registration (chartered and non chartered architects) has lead to confusion both to the public and to architects.

## 11. PROPOSALS FOR CHANGE BY THE BOARD

### 11.1 Single registration category (for individuals)

#### *Discussion point 14*

- (i) *What are the consumer benefits and costs requiring all architects to have a minimum of two years experience and pass a practical examination in addition to obtaining a degree?*
- (ii) *Are there any benefits to consumers or the profession in retaining the two registration categories?*
- 11.1.1 It should be noted that the AACA was commissioned through NOOSR (National Office for Overseas Skills Recognition) of DEET (Department of Employment

Education and Training) to produce National Competencies in Architecture. These are used for the assessment of the qualifications of immigrants in cases where the status of their academic qualifications is unknown. The Standards have been adopted by all State and Territory Registration Boards and are used in the assessment of architecture courses in Australia.

- 11.1.2 The route to achieve recognition of an academic standard is not limited to achievement through a university. The AACA has a programme of assessment through the National Assessment Program which enables immigrants and residents who believe they have the required competencies to be assessed, and if successful all State and Territory Registration Boards will recognise success in this program as meeting the academic requirement for registration. This is an avenue open to those with lesser qualifications who have also gained knowledge through experience to become registered without going to university.
- 11.1.3 The syllabus for a (5 year duration) degree in architecture usually makes provision for only limited work experience. It does not provide sufficient opportunity for application of the acquired knowledge, which throughout Australia and indeed the Western world, registration authorities see as a minimum of at least two years' practical experience in an approved work situation, following the obtaining of the Degree.
- 11.1.4 The benefits to consumers of dealing with a qualified person vis-a-vis an amateur or para-professional have been previously addressed, as have the costs to the community of statutory registration. The requirement for a minimum of at least two years approved practical experience, together with the passing of an examination in architectural practice is a universally accepted means of ensuring that a registered architect, and the obligations that this entails, not only has the qualification but the skills and experience to put the academic attainment into practice. This is generally seen, from world-wide experience, as the best way of ensuring that the public can be assured of the 'value added' ingredient in engaging an architect, for architectural services.
- 11.1.5 Reference to the national requirements indicate that the world wide consensus is that a graduate requires at least two years of practical experience to become competent to practise.
- 11.1.6 As to the two registration categories refer also to 7.8.1 (Discussion Point 9)

## 11.2 Educational requirements

### 11.2.1 Compulsory continuing professional development

*Discussion point 15*

*Is there any evidence that the current arrangements for continuing professional development of architects through the RAIA are inadequate and have resulted in market failure?*

The RAIA experience in this field is in its infancy so that it is not possible at this stage to assess whether or not the system in place is adequate or otherwise. This will take time. But the intent is worthy and given time, should prove to alleviate market failure through an essentially voluntary system of professional development, which most professionals undertake, in any case, to keep abreast of the 'state of the art' of the practice of architecture. And in the event of complaints from the public against RAIA architects for unsatisfactory

performance, any investigation would need to address whether the architect had maintained a structured CPD program.

There is evidence from professional indemnity insurance claims, civil claims and from some complaints lodged with the Board that some architects are not keeping up to date which have led to consumers suffering as a consequence.

### 11.2.2 Assessment of courses for recognition

#### *Discussion point 16*

*Is there any evidence to support the need for an increased role for the Board of Architects in the architecture degree courses offered in NSW?*

- 11.2.2.1 The Board is not seeking an increased role in the monitoring or accreditation of degrees from the schools of architecture in NSW. It is merely currently seeking to regularise a system which has worked well historically in all States of Australia, and the ACT, namely that of monitoring and ongoing accreditation of the courses leading to degrees in architecture from the schools named in the Act, in partnership with the RAIA.
- 11.2.2.2 The present Act, unlike (some) other States, makes no specific provision for the NSW Board to conduct this function and therefore the Board is seeking to have the matter regularised.
- 11.2.2.3 There needs to be a provision in the Act for the Board withdrawing recognition of courses after a given date and for restoration at a later date in the event that a course does not in the opinion of the Board meet the standards required.

### 11.3 Recognition of architectural organisations.

#### 11.3.1 Use of the title 'architect' by organisations

#### *Discussion point 17*

*Three other less restrictive alternatives to the current provisions were listed in Section 7.2.5. (of the Issues Paper)*

*Comment is invited on the benefits to consumers of both more and less restrictive alternatives to the current restrictions on the use by organisations of the terms 'architect' and 'architectural'.*

- 11.3.1.1 The current restrictions in NSW on the use of the title 'architect' and 'architectural' by firms and companies cover composition of the corporate body only, ie. to enjoy the descriptors, at least one-third of the partners or directors must be architects'. But the Act falls short in setting down the means whereby corporate bodies must comply with the Act's provisions in the same way as must individuals.
- 11.3.1.2 If there are provisions pertaining to individuals, and bearing in mind the reality that the vast majority of architects operate through a corporate structure, then it is logical, and appropriate, that firms and corporations must also conform to the provisions of the Act, including importantly, a code of professional behaviour.
- 11.3.1.3 If the argument for consumer benefit —because of the control of the title — holds for individuals, then surely the Act is in need of review to apply to the vast

majority of architectural practices which are currently operating as incorporated bodies.

### 11.3.2 Registration of architectural practices

#### *Discussion point 18*

- (i) *What additional consumer benefits might derive from a formal registration process for organisations as well as individuals, and would those benefits justify the additional costs to the community?*

11.3.2.1 Additional consumer benefits through registration of organisations has already been addressed in the previous item and in paragraphs 6.7.1, 6.7.2, 7.6.2, 7.9.9 and 10.1.

11.3.2.2 The additional costs to the community would indeed be minimal, and even inconsequential in the overall administration of the Act, providing the system adopted for 'registering' corporate bodies through the individually registered architect were to be implemented, so that additional costs to the community would not constitute a consideration.

11.3.2.3 The Board has put forward a paper on the need for the registration of architectural practices. This is included as Annexure 'A'

11.3.2.4 As an acceptable alternative to the registration of practices the Board puts forward the use of Practice Certificates for individuals, firms and corporations who operate an architectural practice as part of their enterprise. This is included as Annexure 'B'

- (ii) *Would a data base linking the names of architects to the organisations through which they practise provide sufficient information to enable consumers to identify organisations able to provide architectural services?*

11.3.5. The Board has previously given consideration to this proposals and has concluded that there are some very real problems in implementation. These concerns have been conveyed to the Department by a paper dated 5 March, 1997, which — inter alia — sets down some case studies indicating the nature of the potential problems. This paper is at Annexure 'C'. The main problem arising is that there would not be the sort of safeguards necessary to immediately identify to the client public architectural organisations providing architectural services, by architects.

11.3.6 From the consumer view also the organisation should be subject to the Act in the case of a breach of the Code of Conduct or for other breaches, and it should be required to have professional indemnity insurance.

### 11.4 Professional behaviour — code of professional conduct

#### *Discussion point 19*

- (i) *Is there evidence of socially undesirable outcomes as a result of the behaviour of architects?*

11.4.1 There have been some notable examples of misbehaviour of architects acting in their 'professional' capacity. Some of these have even resulted in gaol sentences. (One indeed in Australia!). These socially undesirable outcomes

have been evidenced by having been proven by the courts. Though this is fortunately not a common occurrence, it is sufficient to erode confidence in architects generally.

- 11.4.2 The Board in administering the controlling legislation takes a serious view of any occurrence which is likely to erode public confidence in architects, and in the controlled title, and acts accordingly. For this reason, the Board has, as previously mentioned, taken steps to publicly reprimand architects who have given less than proper professional service, and in two extreme cases, has removed them from the register, thereby from enjoyment of the title, and its 'marketability'. This latter factor has been seen by the recipients as severe punishment, indicating the value that architects place upon registration and the controlled title.

*(ii) Does the RAlA's code of conduct cover a sufficient proportion of the profession to effectively maintain professional standards of behaviour?*

- 11.4.3 Within limits, the RAlA, representing as it does two-thirds of the NSW architects, is largely successful in representing the profession and endeavouring to ensure that professional standards are maintained by its members. But the RAlA code of conduct, while setting down desirable standards of behaviour, is found in practice to be difficult to enforce compliance, and in an increasingly litigious climate, sanctions such as removal from membership have ramifications which require very careful consideration, including potentially large defence litigation costs, before such drastic action is taken.

- 11.4.4 Thus, potential sanctions for professional misbehaviour have been found to be insufficient deterrent in many cases for RAlA members to strictly and zealously observe the (albeit changing) manners and morés of the present day, as articulated by the provisions of the RAlA Code. This can result in attendant socially undesirable outcomes.

- 11.4.5 RAlA membership also entails a significant annual cost factor, which some perceive as having dubious advantages, generally self-interest advantages which pertain to membership of other 'guilds'. Thus it cannot be expected, unless RAlA membership is made mandatory, and significant and enforceable sanctions for breach imposed, that standards of professional behaviour can be guaranteed by voluntary means.

*(iii) Would a mandatory code provide a significant level of additional benefits for consumers?*

- 11.4.6 A mandatory code would do what all legislation would do — give authority to monitor, and police, in proven cases of misconduct, impose penal provisions upon defaulters, as in the case of most civil and criminal offences. This would constitute a real deterrent to those who may lose sight of their professional obligations in the pursuit of purely commercial objectives, and also, represent a significant benefit to consumers by not having to suffer loss at the hands and minds of unsatisfactory operators.

- (iv) *Would professional indemnity insurance be more effective than a compulsory code of conduct for protecting consumers against any instances of incompetence, recklessness or negligence by architects?*

11.4.7 It must be said that most members of the accepted professions would agree that self-regulation is preferable to regulation imposed by statute. Indeed continued enjoyment of professional status is predicated upon those members of the professions constantly upgrading their body of knowledge and skills, and being, and being seen to be, exercising objectivity in all of their dealings, and observing appropriate codes of conduct.

11.4.8 However, human nature being as it is, although the vast majority of architects act professionally, it is inevitable that misconduct by a few can bring the entire architectural profession into disrepute. Thus, an enforceable code of professional conduct with effective penal sanctions for proven breach would appear to be necessary in order to provide a deterrent to "incompetence, recklessness and negligence", and thus a degree of consumer protection. Nevertheless this does not offer redress in the case of financial loss suffered due to an errant architect's actions.

11.4.9 Compulsory professional indemnity insurance, taken out at a level appropriate to the scale and nature of the architect's business, provides a means of ensuring some recovery of loss suffered due to an architect's unsatisfactory performance.

11.4.10 The Board is of the view that both an enforceable code of professional conduct and PII are necessary provisions in adequately protecting the consumer public.

## **11.5 Consumer information and protection**

### **11.5.1 Professional indemnity insurance**

#### *Discussion point 20*

- (i) *Is there any evidence that the current voluntary arrangements for professional indemnity of architects are inadequate?*

11.5.1.1 There is an ongoing argument that the greater the PII cover, the greater the risk of unscrupulous clients attempting to dip into the "deep pocket" provided by the insurance pool, and to an extent, this occurs. There are some architects who 'go bare', (in insurance cover terms), divest themselves of all personal assets, and inform their clients accordingly — *indeed should they retain any* — of the situation. The Board, and most probably the profession at large, would view this action as irresponsible, and not in the interest of the client public.

11.5.1.2 From a purely professional viewpoint, it would be unconscionable for an architect to practise at *any* level, as a leading large scale practitioner, or as a lowly part-time adviser offering honorary services, without adequate PII cover. The fact remains however that many choose to not take cover, for reasons that are economically based, or on the pretext that they will not make a mistake. This has been proven to be costly to the architect, and has disadvantaged the consumer.

11.5.1.3 In view of the evidence\* that there are numerous cases wherein architects are found to be uninsured, or under-insured, the Board considers that voluntary arrangements are not only a potential disaster for the architect, but also, and more importantly, a disservice to the client community.

*\*(obtainable from RAIA Insurance Brokers)*



- (ii) *Would consumer education about the value of selecting an architect, or other building designer with professional indemnity insurance, provide as good or better consumer protection than making professional indemnity insurance compulsory for all architects?*

11.5.1.4 In an age where consumer's rights are part of our culture and litigation is rife, professionals must be increasingly vigilant for every client becomes a potential adversary. It has been often said, with more than a little irony, that on taking on a commission, an architect should immediately notify his PII underwriter of a potential claim, to prevent voiding of cover.

11.5.1.5 There can be no doubt that were it possible and/or practicable for the present aggregated costs of litigation to be transferred to programs of consumer education, this would significantly assist in public understanding of the building design and procurement industry, in which, unlike (say) the car manufacturing industry, each project is invariably a "one-off", involving personal input, and a working partnership with the consumer of the service.

11.5.1.6 Education is not only expensive, but also a long-term process. Meanwhile PII remains the practical and prudent means of ensuring consumer protection, notwithstanding the ever-present tendency for unscrupulous clients to use the PII pool as a means of financing their project.

- (iii) *Should professional indemnity insurance be taken out by individual architects or by the organisation through which they practise?*

11.5.1.7 This depends upon the circumstances, but in general, the body contracting with the purchaser of the services is usually a company. If the company is not forced by law to carry PII and, for instance, wishes to dismiss the architect, who carries PII and is in charge of the professional services offered, the firm could commit a negligent act and the party suffering loss would have no redress.

11.5.1.8 The Board considers that *all* practice entities which offer architectural services to the public need to have in place appropriate and current PII cover and ensure that the employees of the firm are covered by the same policy. The Board's view is that were *all* architects required to have PII cover, this would discourage persons with qualifications from becoming registered, and if registered, the situation would be extremely onerous when, in the course of their business, they are additionally covered by the firm's policy.

11.5.1.9 If however the architect advice in 'spare time' in an honorary capacity to a welfare organisation or otherwise, in an individual capacity, then the architect is vulnerable should that advice prove to be inadequate, or unsatisfactory. Thus it behoves the professional to act professionally, and in order to protect the public interest, it is incumbent upon the architect to ensure that a PII cover, at an appropriate level, is in place to cover all eventualities.

- (iv) *Comment is sought on the merits of professional indemnity insurance and codes of professional conduct as alternative means of achieving consumer protection objectives.*

(Comment has already been given earlier under this section)

## 11.5.2 Consumer information

### *Discussion point 21*

*Is there any evidence that consumers who deal with architectural firms have difficulty in identifying the person in the firm who is responsible for the service they are receiving?*

11.5.2.1 Generally, no. To have it otherwise would deny access to the essential face-to-face service the client expects of an architect. However there are numerous situations wherein a firm which offers 'architectural' services is a developer, and consumers are misled into believing that they are receiving professional advice, on a one-to-one basis, which doesn't occur. The result is often cause for complaint to the Board.

## 11.6 Complaints handling and discipline

### 11.6.1 Complaints and their handling

#### *Discussion point 22*

*Comment is invited on the adequacy of the penalties available under the current Act and the suggestions for change.*

11.6.1.1 As previously mentioned, the penalties under the present Act, both as a consumer protection device, and as a deterrent to misdemeanours, is totally inadequate, in scope of cover, and in penal provisions. In the case of architects found guilty of a misdemeanour, there is provision for reprimand, or alternatively the imposition of a \$200 fine. In the worst case, there is provision for removal from the register. Removal from the register, being seen as a very serious penalty for it has the effect of denying future income earning potential, is only rarely applied. In the case of unregistered persons illegally 'holding out' as an architect, the penalty upon conviction is presently \$2000, with \$200 per day for each day the offence continues.

11.6.1.2 The Board considers that there should be significant penalties imposed in cases of proven breach of a legally enforceable code of professional conduct, and these have been articulated in the Board's proposals for revisions to the Act. The Board also believes that readily enforceable penal provisions should be applied to unregistered persons found in breach of the Act, as a deterrent to misleading the consumer.

### 11.6.2 Illegal use of the term 'architect' or its derivatives

#### *Discussion point 23*

(i) *Does the level of complaints about non-architect providers of building design and related services justify intervention to prevent socially undesirable outcomes arising from the building design process?*

11.6.2.1 This has been previously addressed. The only measure the Board has is the extent and nature of the complaints it receives. From an average of 10 callers a day concerning status of persons assumed to be architects, the majority, on investigation, prove to be not on the register.

11.6.2.2 The Act places no obligation upon the Board to enforce prohibition of the use of the controlled title by non-registered persons, however the Board as a consumer aid, regularly undertakes monitoring of this occurrence and seeks undertakings from the offenders to cease and desist. If no such assurances are received, then the Board may decide to prosecute, in the knowledge however that success cannot be assured.

11.6.2.3 To be effective as a consumer aid in assisting the public in avoiding potential problems stemming from amateur advice in provision of 'architectural' services, legislation should be enacted to give the Board more direct authority in this matter, together with enforceable and significant penalties as a deterrent.

(ii) *Where can consumers refer complaints about non-architect providers of building design services?*

11.6.2.4 The Consumer Claims Tribunals, and the respective associations or through the Magistrate's, District, and Supreme Courts.

### **11.6.3 Tribunal to hear and determine complaints**

#### *Discussion Point 24*

*Are there special circumstances in the hearing of complaints against architects which might justify the establishment of a specialised tribunal?*

11.6.3.1 The circumstances giving rise to problems due to poor and inadequate building design and construction and contract administration, particularly in the residential sector of the market, are often extremely complex and require, in addition to the usual legal or quasi-legal participants in the conduct of a hearing, experts in the architectural design and building construction process. For this reason the Board suggests that a specialised tribunal would be justified, on which at least two architects, known for their skills, expertise and objectivity, would serve, in addition to a legal practitioner and a lay person.

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### **11.6.4. Extension of time to commence prosecutions**

#### *Discussion point 25*

*What is the extent of potential prosecutions for breaches of the Architects Act which are not pursued because of the existing time limitation?*

11.6.4.1 The services provided in connection with the design and documentation of a building extend over a long period and often evidence does not come to light until a problem surfaces, which by the time the Board has the evidence, may be

longer than six months after the offence was committed. Prosecution is then barred by the Justices Act.

(ii) *Is the proposed extension of time appropriate?*

11.6.4.2 Experience of the Board would indicate that the proposed extension of time to twelve months for commencing prosecutions, with an extension to eighteen months under exceptional circumstances, would be both practical and effective.

### 11.6.5 Other changes

#### *Discussion point 26*

*Comment is invited on the purpose of consumer representatives on the Board of Architects and their method of selection.*

11.6.5.1 It is commonly accepted (sometimes erroneously) that a 'lay' person is one without prejudices and with the ability to think logically and act intelligently in all matters, thus being appropriately assigned and trusted to fairly represent the public interest. It is also accepted (commonly but erroneously) that the professions 'look after their own'.

11.6.5.2 In order to properly represent the public interest in matters as complex as design and contract management disputes in the building industry, the Board takes the view that more than 'a little knowledge' of the industry is required to properly serve the purpose. Thus the Board considers that it is best placed to prepare and submit a short list of names of suitable persons, together with CV's, to the Minister for consideration for appointment. Two such lay persons would be appropriate, and would provide adequate public representation.

## 12 BEYOND NSW

### 12.1 Movement between States

#### *Discussion point 27*

*It is known that a number of architects who live in NSW practise outside the State, eg. through large practices operating in several States, on occasional interstate commissions or as a regular part of practice near a State border.*

*How significant to NSW architects is interstate practice and is it expected to change in the next few years?*

12.1.1 It is common for some larger practices to have its principals or directors registered in some, or even all, States and Territories of Australia. This is because it would be otherwise illegal to use the controlled title even though they might be well established and recognised in their home State. Many NSW registered architects have multiple registration for this reason, particularly as some of their clients operate Australia-wide.

12.1.2 An examination of the ACT roll will reveal a large number of interstate architects who may do work in the Capital Territory, so too the roll in NSW will reveal many ACT and Victorian based architects, and this is not confined to architects within larger practices only. Whilst this situation is expected to continue in the foreseeable future, the Board does not expect any marked change in the present ratios of multiple registration.

## 12.2 Movement in and out of Australia

### *Discussion point 28*

*How significant are the export and import markets for architectural services?*

- 12.2.1 The minimum requirement for registration of architects internationally, e.g. UK, USA, Hong Kong, Singapore, and New Zealand is that pertaining to New South Wales and other States and Territories of Australia. There is an inter-recognition agreement in place between Australia and New Zealand which depends upon standards required for registration which accord with those applicable in NSW.
- 12.2.2 NSW architects, particularly the larger practices, have a large stake in the export of services to the Middle East, and to South-East Asia. All the signals point to this increasingly occurring. In this it is fundamental to success that those offering services come with the right credentials, considered so important by other cultures wherein they will be working, usually in association with indigenous firms.
- 12.2.3 The Commonwealth government through GATT is endeavouring to clear the way for lower the present barriers to trade-in- services, but this will require certain minimum professional standards to be met. These will most definitely include the standards historically accepted according to the architects registration process, and as historically established and maintained by the NSW Board.
- 12.2.4 As mentioned earlier 22% of all architects fees earned in Australia by those insured through the RAIA Insurance Brokers Ltd is derived from overseas commissions. This is a significant export earner for Australia.

## 13. THE OBJECTIVES OF AN ARCHITECTS ACT

### *Discussion point 1:*

*What are or should be the objectives of the Architects Act?*

The objectives of an Architects Act relevant to society now might be stated as:

- 13.1 To reserve the use of the title 'architect' and derivatives thereof to persons who, and architectural practices which, are registered and maintain registration.
- 13.2 To actively discourage the use of the title 'architect' or 'architectural' or derivatives thereof by those who are not entitled to use such terms, in order to minimise the opportunity for the public being misled by persons who are not architects.
- 13.3 To provide an efficient, effective, and economical means of affording public protection and minimise risk in the procurement of building design and related services; and particularly, the procurement of the art and science of architecture.
- 13.4 To vouchsafe integrity and objectivity through the mandatory observance of a code of professional conduct, by architects, with sanctions for breach, in the public interest.

- 13.5 To make this service known and readily available to the public and to publicise the distinctions between architects and others providing drafting and associated services.
- 13.6 To maintain and enhance levels of standards of education, undergraduate, post-graduate, and continuing education for the architectural profession's practitioners, through effective and regular peer monitoring of performance, in the public interest.
- 13.7 To facilitate accreditation and mobility of architects between States and other countries, to reinforce the historically accepted value of the title 'architect', and the professional standard that this signifies.
- 13.8 To ensure that members of the client public who suffer loss at the hands of errant architects may have access to means of financial redress, and that legislative provisions serve as an effective deterrent to architects who might be proven to have given less than satisfactory professional performance in the provision of architectural services.
- 13.9 To enable architects in New South Wales to compete with architects on a national and international level.

## ANNEXURE 'A' Registration of architectural practices

### SUBJECT: REGISTRATION OF ARCHITECTURAL PRACTICES

This paper is produced to explain the need as seen by the Board for a register of architectural practices entitled to use the title 'architect' and derivatives of the word 'architecture' to describe the services offered, and to propose requirements to be included as amendments to the Act.

#### 1 INTRODUCTION

All Architects' Registration Boards in Australia have as their prime purpose the administration of their respective Architects' Acts. The Acts in existence are essentially intended for consumer protection as well as the public benefit:

- by ensuring that architects have a high level of education, training, experience and objectivity to benefit the public at large and clients in particular, and
- by regulating and disciplining architects who breach the requirements of the Act in respect of the performance of their services and their behaviour, and
- by preventing persons not on the Register from misleading the public by implying they are architects.

All Architects' Registration Boards in Australia register persons who may use the title 'architect'. It is the title only that is reserved to architects, and unlike the medical and legal professions the services they provide are not reserved.

In the NSW Act there is little to deter persons illegally implying they are architects. The penalties are miniscule and the time bar for prosecutions invoked by the Justices Act is inappropriate<sup>9</sup>

The TPC (now ACCC) has advocated the registration and control of architectural practices as an important additional consumer protection device. (see later note 7)

#### 2. THE NEED

The registration boards are not able to determine whether all firms enquired about or complained against are those of architects or not<sup>10</sup>. It is natural for the public to ring a

<sup>9</sup> The documentation and construction of buildings involves a process taking a long period of time, sometimes years. The offence may not be discovered until problems arise which are often a year or more after the Act was breached. The Justices Act imposes a time limit for prosecution of six months from the date of the offence.

<sup>10</sup> Many architects practise through incorporated companies, some practise using a business name which may or may not indicate the firm is one of architects, some use a partnership title in which the names are those of dead or retired architects appear, thus requiring the registration of a business name. Others practise using a partnership title or as sole practitioners, the latter both using their own names in their firm title which does not require the registration of a business name. The name architect may or may not be used in the title of the practice. Other providers of building documentation services also conduct their businesses in similar ways with similar types of titles.

board and complain about a service or to enquire about a firm. The NSW Board receives up to ten telephone enquiries each day about businesses, but unless the business is an architectural practice listed on the voluntary register of practices kept by the Board, or the business is titled with names of architects, the Board is unable to provide an answer. The public finds it incredible that the Board is unable to answer a very simple question<sup>11</sup>. The Act is understandably viewed as a "toothless tiger" and the Board as inefficient and ineffectual.

There are 3,210 architects on the roll of chartered architects in NSW of whom 150 reside in other countries and 250 reside in other States or Territories. In the 1996 Sydney Yellow Pages Telephone Directory, apart from regional and country directories, there are 1,194 names listed under the heading "architects". One cannot from this determine which are architectural practices as not all those named are conducting an architectural practice. Some names are those of academics, some are retired and many are principals of practices which are separately listed. Of the 1,194 names listed 435 are incorporated companies, 340 are partnerships or are entities using business names, 405 are single names of persons who may or may not be conducting an architectural practice as sole practitioners and 14 are suppliers of architectural products entitled under the Act to use the descriptor.

The Board in an attempt to provide a better public service and in anticipation of changes to the Act, has for the past two years maintained a list of architectural practices provided voluntarily. There are 440 practices on the list for the whole of NSW of which 171 are incorporated companies, 88 are partnerships or are business names, 186 are sole practitioners. As one can see from the numbers the Board can only respond to enquirers in respect of less than one half of those listed in the Sydney Telephone Directory.

The State and Territorial Boards<sup>12</sup> have collectively addressed this problem and the mechanisms for ensuring firms carry appropriate professional indemnity insurance<sup>13</sup> as

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11 The Board could advise the caller in the case of a business name to enquire from the Department of Fair Trading (however although legally required to register a business name some firms do not) or in the case of an incorporated company advise the enquirer to pay and have a search carried out through the Australian Securities Commission. Alternatively the Board has to write to the firm (which if not architects are not obliged to reply) or to enquire itself from the Department of Fair Trading or have a search carried out (at a fee) by the Australian Securities Commission in attempts to ascertain the status of the firm.

12 The State and Territorial Boards meet annually at the Council Meeting of the Architects Accreditation Council of Australia and have long discussed the inadequacies of the respective Acts under which they operate. As a consequence Model Legislative Guidelines were developed and to which they all agreed and resolved to put forward to their respective Governments. In developing the guidelines the Boards considered it necessary :

- To require that all architectural practices maintain a professional indemnity insurance policy to ensure that persons suffering loss as a consequence of incompetence or unprofessional behaviour by an architect receive recompense.
- To require architects to maintain professional standards through formal programs of continuing professional development.
- To require all architectural practices to register annually and for a Roll to be published.

13 It is only necessary for architectural practices, as distinct from individual architects on the Register, to carry professional indemnity insurance as they are the entities contracting with the public to provide



well as implementing a continuing professional development program for employee architects.

Thus the need to register businesses using the title 'architect' in its name or in describing its services is based on the Board being able to give the public information when enquiries are made and for the Board to be able to monitor adherence to insurance and continuing education requirements. In addition the penal provisions are a real deterrent to architectural practices not to observe the tenets of the professional services expected by the client public.

The spectre of increasing the burden upon business at a time when there is a climate of de-regulation by governments has been raised. The Board considers that a simple system of annual renewal of a practice certificate is but a small price to pay by architectural practices to make the Act effective to ensure public protection. Practices would accept as a trade-off that there is benefit in the Board being able to inform the public of their credentials and the fact that so many practices have voluntarily registered to be on a roll of architectural practices bears witness to a high degree of acceptance of practice registration.

Another concern has been raised, that of the need to comply with the National Competition Policy. In this respect, the Board received confirmation by the Trade Practices Commission in 1992, and re-confirmed recently by the ACCC, that the proposal to restrict the use of the term 'architect' and its derivatives has little effect on competition and that the Commission favours the proposal to register architectural practices to use the title 'architect'<sup>14</sup>.

### 3. THE METHOD

Many architectural practices are incorporated, some of which are public companies, they are all separate legal entities and not a person. As control of companies is ultimately in the hands of shareholders there is little point in requiring a director to be an architect and consequently believing the control of the company is in the hands of an architect as far as architectural services are concerned. Attempts to have a majority controlling shares in the hands of an architect(s) would run against architects publicly being able to practise through a public company or through a multi-disciplinary company or for that matter with a building company, and would therefore run against such companies having the opportunity to include 'architects' in their descriptor of services, all of which would be anti-competitive. The Board is of the view that it is in the interest of consumers that if possible all entities employing architects and which offer architectural services should be able to use the title and therefore come within the control of the Act. It is for these reasons that the Board disagrees with the RAI A policy, and in this only instance the legislative guidelines, that "more than 50% of the control shall be in the hands of architect principals". The Trade Practices Commission agrees<sup>15</sup> with the view of the Board to this exception.

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architectural services, and their employees are covered under the firms policy. In order for the Board to know which firms are required to carry professional indemnity insurance it was been suggested that when architects re-register each year, each architect be required to disclose the name of their employer and as a result the names of all practices would be known. As many architects are direct employees of businesses not providing architectural services, one would not be able from that to determine which firms require professional indemnity insurance cover. Many companies employ architects but do not use the title 'architect' or derivatives thereof in conducting their business and would not be required to have insurance.

<sup>14</sup> Trade Practices Commission - "Study of the Professions - Final Report - September 1992". pp.52,56

<sup>15</sup> Trade Practices Commission - "Study of the Professions - Final Report - September 1992". p.56

It should be noted that the registration or de-registration of a company, firm or individual as an architectural practice, to use the title 'architect' in no way affects that entity's ability to conduct a business, but affects their ability to use the title.

Who would be the person responsible to the Board as all principals would be employees of a company? The Board foresaw the need for each practice to nominate an architect principal (a person who had the charge of the architectural work in the company) who would be responsible to the Board under the Act for the professional affairs of the company, that is, responsible to certify the company maintains professional indemnity insurance cover, responsible for the implementation of a continuing education programme, and responsible for the conduct of the company when providing architectural services and from whom the client public can seek redress. The same provision would apply to other architectural practices which are not incorporated. Thus the mechanism for control of the architectural practice of an entity using the title 'architect' would be through an architect on the Roll nominated as the Architectural Principal by the firm. The proposals put forward in the 1994 Bill spell out in detail the mechanisms that would be appropriate.

#### 4 MODEL UNIFORM GUIDELINES

The Model Uniform Guidelines previously referred to were developed in an attempt to have uniform legislation developed in each State and Territory in Australia. The guidelines were submitted to the Trade Practices Commission (as it then was) consultations followed and the Commission in its Executive Summary<sup>16</sup> in part concluded:

"The main focus of the report is on the State and Territory legislative arrangements and how they interrelate. This legislation, which is administered by autonomous architects registration boards, varies between each State and Territory. The lack of uniformity in the regulations has been the cause of some difficulties for architects practising in more than one State.

Model Architects Act legislative guidelines are being prepared by the Architects Accreditation Council of Australia (AACA) in consultation with State and Territory architects registration boards. When implemented the guidelines will overcome the difficulties caused by lack of uniformity and also address the majority of issues of concern to the Commission. The Commission applauds this initiative and encourages all States and Territories to amend their existing architects' legislation to adopt the proposals incorporated in the guidelines at the earliest opportunity."

As mentioned previously (footnote 4, p.2) the legislative guidelines include the registration of practices as an essential element of its provisions.

Two State Governments, namely Victoria and Queensland, as well as the ACT Government have already incorporated the registration of practices in their legislation. If New South Wales followed suit there would be uniformity in the eastern seaboard and a

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"The Commission favours the proposal adopted by the New South Wales Registration Board to register practices to use the title 'architect'. This proposal appears the least restrictive means of achieving the objective of the regulation of architectural practices.

However the Commission considers rules which require that a simple majority of the ownership of practices be controlled by architects may not pose anti-competitive problems."

16 Trade Practices Commission - "Study of the Professions - Final Report - September 1992". pp.ix & x.

present a very strong motive for South Australia, Western Australia, Tasmania and the Northern Territory to follow suit.

The Royal Australian Institute of Architects also supports for the Model Legislative Guidelines.

## **5. THE BOARD, ITS ROLE IN ADMINISTERING THE ACT AND ITS INTENT, AND REGISTRATION OF PRACTICES**

Successive governments have delegated to the Board of Architects of New South Wales, through the Architects Act, responsibility for administering the Act.

The Board<sup>17</sup> has severe problems in practice in administering the present Act. These are largely due to shortcomings, particularly with s.17 and s.19 which deal with the means by which architects may be disciplined and pretenders prosecuted. The penal provisions in both cases are so minimal as not to act as deterrents, and the time restrictions too limiting. The lack of a register of practices exacerbates the problem.

All State and Territory Boards have together a considerable body of experience in administering their respective Acts and are the day by day interface with the public. It is respectfully submitted that Boards are well placed to advise their respective Governments on ways and means whereby the intent of the legislation will be best served, and relevant to community expectations of architects in the professional and commercial realities of the present day.

The Board commends the registration of architectural practices to the NSW Government.

<sup>17</sup> The Board is comprised as follows:

- Three architects elected by the architects on the Roll, who having been elected by their peers, have considerable knowledge of, and experience and skills in, the architectural profession and in the main have had many years experience on the Board.
- Two nominees of the Minister, one is a prominent architect and Councillor and Deputy Lord Mayor of the Sydney City Council and one is the lay member who is an eminent Q.C. and a former Chief Judge of the Land and Environment Court.
- The President and Immediate Past President of the NSW Chapter of the Royal Australian Institute of Architects.
- The Government Architect.
- Two representatives of the Universities which have approved courses in architecture.

**ANNEXURE 'B'** Practising certificate**AMENDMENTS TO THE ARCHITECTS ACT****Proposal for architects and architect's practices to hold a current practising certificate.**

Attached is a background paper setting out the need for amendments to the Act to include a requirement for all architects' businesses and architects hold a current practising certificate to ensure that all architects business are subjected to the same requirements, which is not the case at present.

The Board at its meeting on 26 March resolved the foregoing as an absolute necessity for the proper administration of the Act and for the protection of the public, given that the registration of architects' practices is not to be included as part of the amendments.

The Board recommends the following requirements be included in the amendments:

1. That all practising architects, including corporations using the title 'architect', who offer and/or are engaged or employed in providing the services of architects to the public be required to hold a current practising certificate. The requirement would not apply to those who are registered as architects who are not engaged in providing services to the public in NSW. eg: academics, writers, retirees, overseas and interstate registrants not practising in NSW to name some exemptions.
2. That a practising certificate is current for one year and is renewable.
3. That all practising architect's businesses nominates an architect principal, or where none of the principals are architects, an architect engaged in the business holding a current practising certificate, as its "nominated architect" for the purpose of identifying that the corporation is entitled to use the title 'architect'.
4. That all holders of current practising certificates be required to have prescribed professional indemnity insurance cover.
5. That all holders of current practising certificates are subject to the Code of Conduct and other requirements of the Act.
6. That the term 'practising architect' be defined.

I would appreciate the opportunity of meeting with you to discuss these proposals should you have some concerns about including these amendments. We would like to include these proposals in the Issues Paper.

## REGULATING THE PROFESSIONS AND THE ARCHITECTS ACT

One of the main reasons that professions are regulated is to ensure that the public receive the services of one who has achieved a standard of education at tertiary level together with other training in order to practise the relevant profession, whether it be one of law, medicine, dentistry or architecture. A second reason is to regulate the standard of performance of those in a profession and to take action against those who transgress.

In the case of architecture it is the use of the title which is restricted, whereas in law and medicine it is the practice. However, whichever the case the public knows that if they go to a solicitor, barrister, medical practitioner or architect, they will receive the services of one who has been, and is continuing to be educated to and at a high standard.

The singular difference applied to practices in the professions compared with other businesses is one that generally relates to professional standards and indemnity. All business including practices are subjected the general relevant regulations of of Fair Trading, Australian Securities Commission, ACCC, etc. The professions are subject to additional requirements.

In order to deal with this singular difference and to identify to the public, and to the regulating authority, those who are qualified and entitled to practise some procedural requirement is essential. The procedure in law is to have regulations which require a business, whether it be an individual or a corporation, to hold a current practising certificate. The requirement in the case of architects should not be any different; the need is the same.

A solicitor (under the Legal Profession Act) is defined as "a legal practitioner who holds a current practising certificate, and includes a corporation". Thus the public know that if an individual or corporation hangs up a shingle as a solicitor they will receive the services of a solicitor, or if they wish to check by means of a telephone call to the Law Society, an answer may be given by referring to the list of those holding practising certificates. In addition, all solicitors, including corporations, are subject to the regulations which make provision for effectively dealing with incompetence, unprofessional or improper conduct.

The same should apply in the case of architects, firstly so that the Board can advise the public the names of architectural practices and be in a position to publish a directory for the information of the public at large, which includes Local Government, State, Federal Departments and agencies, and financial institutions as well as individuals (from whom the Board receives on average ten telephone queries per day); and secondly so that all architectural practices are subject to the same regulations, no matter what form the practice takes.

The providers of legal services (apart from conveyancing) are limited to those holding practising certificates, similarly in the case of architects, the use of the title in situations where architects are providing services, the same limitation should apply. It does not licence or register the provider of services, it merely restricts the use of the title to those with a certificate. It does not affect others who provide drafting or building design services. This was acknowledged by the Trade Practices Commission.

As far as architects are concerned the term 'practising architect' might be used and perhaps defined as "an architect, who uses the title 'architect' in the course of carrying out a business, and who holds a current practising certificate, and includes a corporation".

The important aspect of this is that it produces a "level playing field". All the businesses of architects, whether by an individual practitioner, partnership or corporation would be subject to the same regulations requiring a proper standard of conduct. At present corporations may use the title 'architect' providing "one third in number of the directors or partners are chartered architects<sup>18</sup>". In the case of solicitor corporations a voting shareholder is required to be a solicitor holding an unrestricted practising certificate<sup>19</sup>. A voting shareholder may also be a solicitor corporation holding an unrestricted practising certificate. Whichever the case the authority responsible for administering an Act (in this case the Law Society) must have knowledge of those who fall under their administration, and is through the issue of annual practising certificates that this knowledge is obtained.

In the case of architects, because architects often practise as part of a team in multi disciplinary practices, the Board recommends that the present requirement under the Act that in the case of corporation or firm, at least one third in number of directors or partners are chartered architects be relinquished, however a requirement that the corporation hold a current practising certificate should apply to ensure that the corporation is required to abide by the same rules as individuals and individuals in partnership, particularly as a significant proportion of architects practise through their own corporation.

As it is accepted that architects will not necessarily have any role as a director of a corporation entitled to use the title 'architect', there is a need to identify the architect who will be responsible for ensuring that the architectural services carried out by the corporation are carried out under the direct control and supervision of a practising architect. It is proposed by the Board that each corporation when applying for a practising certificate, nominates one of its architects who holds a current practising certificate as its "nominated architect" for the purposes of identifying that the corporation is entitled to use the title, and that person is responsible for ensuring that the architectural services provided by the corporation are carried out under the direct control and supervision of a practising architect. Thus the practising certificate, as in the case of the legal profession, is the one basic requirement for the consumer protection intent of the legislation.

18 s. 19.(3A)(b) of the Architects Act 1921, No8 as amended

19 s. 172(F) Legal Profession Act 1987 No. 109

## ANNEXURE 'C' Identification of firms

**Addressing The Practicalities of Identifying Firms  
through a (Registered) Practising Architect.**

The Architects Act simply protects the use of the title, "Architect", by individuals and corporations/firms, *not* the architectural work performed.

Though some architects practise as individuals, the great majority practise through corporations and firms, and thus there are some essential practical difficulties in any proposal to identify a corporation/firm through the "employment status" of an individual, which must be addressed and solutions found, in order to bring about the legislative intent, which *should* be at least, one law for all.

The Board recognises and accepts the current climate of business de-regulation, so that registration of practices 'per se' is *not* an option.

However should it be possible to devise ways and means of ensuring that persons who engage an "architect", *individual or corporate* as covered by present legislation, can be assured that the architectural work is in fact executed under the direct supervision of an architect, and that the corporation "architect" is responsible to comply with the provisions of the Act through the person of *that* architect, then there is no longer the need for "at least one-third in number of the directors or partners to be architects, as at present applies under the Act.

Here follows some hypothetical case studies, based upon situations which the Board administration has identified through long experience.

### Case Study 1

An architect forms a company, ABC P/L, and is employed by that company. ABC P/L contracts to do work for other architects, builders, and/or developers and entrepreneurs. The architect complies with the Act's requirements on re-registration, but the company, XYZ P/L with which ABC P/L contracts, *does architectural work, under the supervision of an architect*, and therefore legally uses the title "Architect", but the Board would have no knowledge of its existence.

There needs to be a requirement that for a corporation or firm to legally enjoy the controlled title, "Architect", it must have at least one principal or employee architect who has direct control and supervision of the architectural work that corporation or firm executes.

### Case Study 2

A publishing house, Archipress P/L, which does not carry out any architectural work at all, employ Bill Jones, and Bob Brown, each of them architects and talented illustrators, in their marketing department. Bill and Bob do not in fact carry out any architectural work, for their employer. However Bill and Bob nevertheless execute architectural work on their own behalf at weekends and after hours, and therefore they responsibly declare their status as that of "practising architects", yet as the employer's name of Archipress P/L is provided

by Bill and Bob to the Board it would be falsely listed as a corporation legally able to enjoy the title "Architect".

In this case the Board would be providing false and misleading information to enquirers.

There needs to be on the data base provisions to clearly indicate whether or not the employer corporation or firm undertakes architectural work.

### Case Study 3

A West Australian architectural company, EW Partners P/L, operating as an entity in New South Wales, employs a WA based architect, Joe Bloggs, who, through mutual recognition, is registered in New South Wales. On annual re-registration, Joe provides the required information to comply with the provisions of the Act.

The firm EW Partners executes architectural work in NSW and rightly uses the title "Architect" but there is no way (*short of considerable intrusion into the respective business affairs of the company and the architect, and this is not the Board's role*) of proving that the architectural work is in fact executed under the supervision and direction of the architect, Joe Bloggs, though there is a strong chance that through geographical remoteness, this is an impossibility. The "notional employee" who is registered, is all that is needed for the NSW firm to use the title "Architect". This constitutes an administrative difficulty and is not an aid to consumers.

What is needed is at least a requirement that the architect has direct control in supervising and directing the architectural work of the corporation or firm on a day to day basis, for it to legally use the title "Architect".

### Case Study 4

A practising architect, Charlie Brown, has a brother Bill who operates a construction company, "Brown Brothers Architects & Builders Pty Ltd". Charlie has his own practice but on occasion, Bill calls upon him to provide some nominal architectural drafting services. Bill thus is reasonably comfortable declaring to clients that his company, as the name implies, is an "Architect", because brother Charlie supervises and directs what he refers to as "the architectural work of his company". The public would not be any the wiser, and the Board would not be helpful.

What is needed is a definition of "architectural work", which should cover the whole range of professional service which the client public would indeed reasonably expect of any architect on the Register.

### Case Study 5

OZWORKS and PUBWORKS competes with the private sector in the provision of architectural services for the nation's infrastructure. Its architects are required to be on the Register, i.e as "practising architects", which requires compliance with all the provisions of the Act, including PI, CPD, Code, name and registration number on all documents, etc. But though the architects involved may comply with the CPD on a voluntary basis or otherwise, there is considerable resistance, and reasonably so, to the requirement to comply with the rest. There would be pressures for exemptions.



However in terms of the current competition policy and privatisation, there perhaps should be one law for all, excepting only the current incumbent of the historical "Government Architect" position.

There needs to be a requirement that the government, and any other employer ensures that all architect employees comply with the Act.

### Case Study 6

Jane Eyre is the employed and salaried architect in charge of the property portfolio of a major Bank. Jane personally supervises and directs the all of architectural work executed by the Bank, which *may* involve third parties, on occasion.

Jane, or the Bank, would be required to take out PII. This may be an inhibition to employing an "Architect" if the Bank would be required to take out PII cover.

### Case Study 7

At any one time there are numerous expatriate NSW registered architects overseas, and interstate, working outside NSW for perhaps one to several years, some in positions — such as arms of government or private employ — which require that they remain registered as architects.

There needs to be provision for exemptions for practising architects employed in situations outside of NSW.

### Footnote:

In a dynamic world, there would doubtless be many more instances whereby the provisions of the Act fall short in terms of the reality of architectural practice, and the consumer protection intent. It could be expected that, as with all legislative change, these unfolding situations will need to be accommodated by amending legislation. It is to be hoped however that the need for such changes prove to be minimal.

### The Anomaly

The present legislation requires that in the case of a corporation or firm (taking the title, "Architect"), then at least one-third in number of the directors or partners are (chartered/ "practising") architects.

There is provision under Section 19 for the Board to prosecute individuals and companies for breach, when the person or company illegally takes the title, "Architect". It seems reasonable that whether the misdemeanour is by an individual or a company, either can be prosecuted for a breach of the Act. But there is presently no means of prosecuting companies however under Section 17, for breach of conduct by architects.

As has been pointed out, as so many architects practise through a company structure, the anomaly will remain that whilst the Board, under Section 17 can prosecute a "practising architect" for being "guilty of misconduct in a professional respect", including transgressing the code of professional conduct and other provisions of the proposed legislation, no action will be able to be taken against companies.

This suggests *discrimination*, with one law for companies, and another for individuals. This essential shortcoming in the present Act must be addressed, in the public interest.

### Epilogue:

Bearing the current "De-Regulation Mode" in mind, the Board considers that there *are* ways to formulate legislative provisions to ensure whether architects practise as individuals, or through corporations and firms, that *all* are required to conform to the standards to meet present day community expectations of professional performance, and that *all* are subject to penalties for misdemeanours.

The trick is to ensure that the legislation, and its essential intent, is, as far as possible, readily understood by the profession and the laity, and above all, practical in application.

One of the matters which has not been directly addressed, but which the Board recognises as fundamentally important, is the need to be pro-active in promoting the public benefit of engaging architects vis-a-vis others in the building procurement industry.

Although this may appear to be a marketing device for the benefit of architects, this is one of the strong recommendations of the Trade Practices Commission in its 1992 "Report on the Professions — Architects". Erroneous responses to public enquiry but particularly the *promulgation* of misleading information would quickly erode public confidence in the Board in the administration of the legislation. This simply reinforces the need for the data base on architects and architectural corporations to be *accurate, timely and reliable*, to serve as an effective consumer aid.



Productivity Commission  
Review of Legislation Regulating the Architectural Profession —  
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Response by Board of Architects of New South Wales —  
*22 December 1999*

<b><i>ANNEXURE 'C'</i></b>
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***CHANGES IN CIRCUMSTANCE —***  
*since the Board's 1997 response(Annexure 'B')*  
*to the NSW Department of Public Works and Services*  
*COAG/NCPA REVIEW Issues Paper*

**Productivity Commission  
Review of Legislation Regulating the Architectural Profession —  
Issues Paper, November 1999.  
Response by Board of Architects of New South Wales —  
22 December 1999**

**CHANGES IN CIRCUMSTANCE** —since the Board's 1997 response to the NSW Department of Public Works and Services *Issues Paper*, (July 1997) prepared in compliance with the COAG/NCPA Review of the Architects Act 1921

**1 Foreword:**

The reference document (ANNEXURE 'B') was in response to an Issues Paper prepared by the NSW Department of Public Works and Services which addressed terms of reference established by the COAG/NCPA in April 1995 :

*"The guiding principle is that legislation should not constrict competition unless it can be demonstrated that the benefits to the community as a whole outweigh the costs of restricting competition and that the objectives of the legislation can only be achieved by restricting competition".*

The present Productivity Commission *Review of Legislation that Regulates the Architectural Profession* has similar terms of reference in that it seeks to *explore*:

*"a preferred option for regulation of the architectural profession, if any, legislation which restricts competition should be retained only if the benefits to the community as a whole outweigh the costs; and if the objectives of the legislation cannot be achieved more efficiently through other means, including non-legislative approaches; and*

*the need to promote consistency between regulatory regimes and avoid unnecessary duplication".*

Though the Board's April 1997 submission responds to the particular terms of reference of the NCPA inquiry, in the main the overwhelming tenor of the Board's response to this is directly relevant to this Inquiry. The response to the NCPA Review is comprehensive, and covers most, if not all, of the issues raised by the current Productivity Commission Review and still retains validity. However in a few instances, circumstances have changed to some extent since it was submitted in mid-1997, and accordingly these changes are listed hereunder:

**2 National Uniform Legislative Guidelines**

**2.1 Registration of Practices**

The current agreed position is that:

- a separate register of all businesses entitled to use the title 'architect' or its derivatives shall be established and maintained so that those businesses may be immediately identified by both registration authorities and members of the public;
- architectural and combined practices using the title 'architect' or its derivatives be required to renew registration annually.

## 2.2 Professional Indemnity Insurance

- the requirements for annual renewal of registration shall be: evidence of an appropriate professional indemnity insurance policy in force in respect of the business at all times;

for every architectural business entity to have an appropriate professional indemnity insurance policy in force at all times;

*("appropriate" means appropriate to the architect or architectural practice concerned, having regard to the architectural services provided or offered by the architect or practice).*

that the architectural practice, as a condition of registration and annual renewal of registration must provide certification from its broker or insurer that an appropriate and current professional indemnity insurance policy is in force, and that the insurer is registered as a local or foreign insurer under Australian Government insurance legislation.

## 2.3 Continuing Professional Development

- that in relation to standards of conduct to be observed in relation to CPD as a condition for renewal of annual registration :

taking into account the wide range of practice activities and of professional and technical tasks which are particular to the work of each architect whether they be undertaking architectural work , business management, marketing or other activities, it is not proper nor desirable to proscribe the form or method of CPD to be undertaken by the architect;

instead, as part of a prescribed Code of Conduct, an architect shall be required each year to formulate and implement a systematic and structured program of CPD suited to develop the practice activities envisaged to be undertaken.

## 2.4 Admission requirements: Qualifications

There should be statutory provision for recognising mutual recognition agreements with other jurisdictions, where those agreements have been nationally coordinated through the AACA and where there has been acceptance by all registration authorities.

## 2.5 Prescribed qualifications

Prescribed academic qualifications in architecture approved by a registration authority for registration as an architect.

## 2.6 Prescribed registration as an architect.

- Current registration in a jurisdiction with whom a registration authority has a mutual recognition agreement.

## 2.7 Regulation of Architectural Practices

For a business conducting an architectural practice, to use the description architect or its derivatives:

- all architectural work shall be carried out under the direct control and supervision of an architect; and
- the name of the architect shall be clearly identified on the business's letterhead and office stationery; and

- an architect or architects who have overall control of the architectural work shall be a principal or principals of the business and shall be nominated as such to the registration authority as being in control of the architectural work.

### **3 Registration in the United Kingdom**

Having pursued a proposal for deregulation of architects in the UK, after undertaking a review which included considerations of the effects of this taking account of registration in the countries of the European Union, and options for regulation by the Royal Institute of British Architects, the Architects Registration Council of the United Kingdom (ARCUK) has been re-formed (*and streamlined*) and statutory registration is now again firmly in place.

### **4 Trans Tasman Mutual Recognition Agreement**

Mirror legislation in both New Zealand and Australia now makes provision for free flow of like *registered* professions and trades between the two countries. (Other governments in the South Pacific Region have similar proposals to progress free trade agreements with other countries, on their agendas).

### **5 COAG/NCPA Reviews**

Since the Board's response was submitted in July 1997, the near complete and comprehensive final report to the Government by the NSW Department of Public Works and Services was put 'on hold' pending the conduct of this further review. The benefit of the published conclusions and recommendations of this research is therefore not publicly available nor is likely to be during the period of this current Review. COAG/NCPA Reviews have since been concluded in NT, WA, SA, and Victoria.

### **6 ASEAN Project**

AACA and the RAlA have entered into the ASEAN Project with the Commonwealth Government to investigate, and if feasible, develop bilateral reciprocal recognition arrangements between registration and professional bodies in Australia and counterpart bodies in the ASEAN Region. Proposals to extend the Project's work to include APEC countries is under consideration.

### **7 Regional Forum on Registration and Reciprocity in the Western Pacific Region, Darwin, May 1999.**

This Forum of registration authorities in the Region was attended by 40 participants from 12 countries, (including Japan, Singapore, Vietnam, Fiji, and Hong Kong) and resulted in proposals to exchange information pertaining to architectural education, the exploration and identification of criteria and mechanisms to establish reciprocity agreements within the Region.

### **8 Competency Standards**

The AACA developed Competency Standards have since been introduced and is being successfully applied to bring about a truly national and uniform basis for examination of candidates for entry to the profession, from traditional and non-traditional sources.

**9 Changes in RAlA Policy**

Prior to 1996, the RAlA supported the statutory regulation of architects generally through the legislative mechanisms in place. It is understood that this policy has since changed to one which regulates architects through the professional organisation.

**10 NSW Board 'user friendly' website**

Taking up the advice of the (former Trade Practices Commission, now) ACCC, in the interests of consumers, the NSW Board has launched a pro-active program of disseminating easily accessible information on the roll of architects, how to chose an architect, how to lodge a complaint, appeals procedures and so forth.

This addresses the 'information assymetry' problem identified in the NCPA Review, and reinforces the essential consumer protection role of the Board as a statutory body acting in the public, rather than the professional, interest.





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***ANNEXURE 'D'***

***CONSUMER ASSOCIATION VIEWPOINTS  
ON REGULATION OF ARCHITECTS***

**Productivity Commission**  
**Review of Legislation Regulating the Architectural Profession —**  
**Issues Paper, November 1999.**  
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**CONSUMER ASSOCIATION VIEWPOINTS  
 ON REGULATION OF ARCHITECTS**

**Australia:**

*"The Australian Consumers' Association believes that it is important that consumers have accurate and reliable information about the competence of service providers they may choose. We have been at the forefront in calling for the continuance of a system of licensing for builders, based on competence, in NSW. While consumers may not always require the services of a professional architect, the Consumers' Association thinks that it is essential that consumers be able to differentiate between professional architectural services and simple drafting and basic design. Obviously there are important elements of consumer education here ....*

*While it is possible that professional bodies can to some degree regulate their profession outside a regulatory framework, the Consumers' Association does not think this is satisfactory and would cite the example of engineers as an object lesson. It has taken decades for professional engineers to develop what amount to barely adequate controls on the delivery of competent services. Fortunately, this weakness has not greatly impacted upon consumers except perhaps with regard to structural engineers. In sum then, we believe that it is essential that the title "architect" be reserved for persons and practices that are determined by appropriate criteria to be competent and to have in place systems for maintaining competence. Also, it should be required that these people carry sufficient and appropriate insurance to protect consumers should there be a failure in the service that is delivered".*

*Norm Crothers, Development Manager  
 Research & Interactive Services Australian Consumers' Association, July 1997*

• **The U.K.:**

*"... repeal of the Architects Act will cause confusion among consumers and act to their detriment. Our chief concern is for ordinary people, rather than businesses who regularly undertake construction work and can be expected to have some understanding of services offered by different professionals. At present any person who is not a regular user of architectural services but who feels the need to employ an architect might well look in the Yellow Pages for a list of names. We believe that such a person would think that a person called 'architect' had professional qualifications.....and would expect anyone using the word, or derivatives..... to have undergone training. If the name 'architect' is no longer protected, anyone will be able to set up in business as an architect, without any training.*

*Ordinary people use solicitors and architects to a large extent to ensure that their chief investment (their home) is protected. Their use is not compulsory. But failure to use a qualified professional in either case could result in loss or diminution of value of that investment. What deregulation would do is to take away protection for consumers.*

*We believe it should be a condition of continuing protection that the profession should develop an adequate and open system of disciplinary procedures and redress for consumers ...*

*If consumers are to put their trust in the fact that they are dealing with a professional if they employ an architect, they should be sure that if they have cause to complain about professional standards or conduct, their complaints will be dealt with fairly and speedily.....with adequate and meaningful sanctions for breach of professional standards".*

*A scheme which gives adequate and accessible redress for those with complaints, combined with protection given by the knowledge that any person using the title 'architect' is professionally qualified, is in the best interests of consumers. Indeed these two features are in our view fundamental to the whole concept of a profession with a reserved title".*

*Lady Wilcox, Chairman  
 National Consumer Council, UK*



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***ANNEXURE 'E'***

***REGULATION OF ARCHITECTS WORLDWIDE***

Productivity Commission  
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**REGULATION OF ARCHITECTS IN FIFTY COUNTRIES WORLDWIDE**

*Source of information: A survey conducted in 1996 by  
 The National Council of Architects Registration Boards of America —  
 "Overseas Architects Practice Standards"*

- 1 *National registration, or differing in regions?*
- 2 *Registration of 'title' or to practise?*
- 3 *Registration by government agency, or professional association?*
- 4 *Registration specific to architects or multi-disciplinary?*
- 5 *Registration requirement for market access by foreign firms?*

**Australia**

- 1 State by State
- 2 Registration of title
- 3 By government
- 4 Specific for architects
- 5 Persons offering architectural services to the public as 'architects' must be registered with the respective State or Territory in which they operate.

**Austria**

- 1 National
- 2 License to practise
- 3 Federal Ministry of Economic Affairs
- 4 Specific for architects
- 5 Foreigners must be represented by an Austrian architect

**Belgium**

- 1 National
- 2 License to practise
- 3 By National Order of Architects — an independent organisation established by law as the sole agency entitled to issue architecture licenses
- 4 Specific for architects
- 5 Obtaining a planning or building permit requires the signature of a licensed architect. An architect licensed in another EU state is entitled to practise. Non-EU persons may obtain a license for a single assignment after obtaining a local work permit.

**Bermuda**

- 1 National
- 2 Registration of title, *and* license to practise
- 3 By the Architects Registration Council, having the power of law
- 4 Specific for architects
- 5 Foreign architects must associate with a registered Bermudian architect.

## Brazil

- 1 Regional
- 2 Registration by title, *plus* license to practise
- 3 The professional association The Instituto de Arquitetos do Brasil
- 4 Specific for architects
- 5 Persons not registered as architects may not sign plans for any project.

## Canada

- 1 Regional
- 2 Registration by title, *also* license to practise
- 3 The professional associations in accordance with legislative statutes, enacted by the provincial government
- 4 Specific for architects
- 5 Foreign architects must collaborate with a Canadian architect and obtain a temporary license, or be licensed by the relevant Provincial authority.

## China

- 1 National
- 2 Registration by title, *also* license to practise
- 3 The Administration Board of Architectural Registration (NABAR) registers individual architects, and the State General Bureau of Industry and Commerce is responsible for the licensing of architectural firms
- 4 Specific for architects
- 5 All design documents must bear the seal of a licensed architectural firm. General practice is to carry out joint design with a locally licensed firm.

## Columbia

- 1 National
- 2 License to practise
- 3 Licenses are approved by the Consejo Profesional Nacional de Ingenieria y Arquitectura, qualifications for entry being approved by the Ministry of Education
- 4 Includes Engineers
- 5 Foreign architects may seek authorisation to work; valid for one year (renewable).

## Czech Republic

- 1 National
- 2 Registration by title, *also* license to practise
- 3 The Czech Chamber of Architects which is the licensing agency
- 4 Specific for architects
- 5 Persons require a valid license from their country of origin. An architectural firm must collaborate with a local architect as a so-called executive architect.

## Egypt

- 1 National
- 2 Registration by title, *also* license to practise
- 3 Egyptian Engineering Syndicate; Egyptian Architects Society; and Egyptian Engineering Society — professional bodies
- 4 Specific to architects and engineers
- 5 Local registration required to obtain building permit. Foreign architects must have an Egyptian-registered architect partner or associate.

### **El Salvador**

- 1 National
- 2 Registration by title, *also* a license to practise
- 3 Registro Nacional de Arquitectos e Ingenieros, administered by the Ministry of Labor
- 4 Specific to architects and engineers
- 5 Registration required to obtain a building permit. Documents for building approval must be signed and sealed by legally authorised architects.

### **France**

- 1 National
- 2 Each practising architect must hold a government approved diploma
- 3 Practising architects are registered at the Conseil Regional de l'Ordre des Architectes . For practising architects, membership of this body is mandatory
- 4 Specific to architects
- 5 No license required to practise architecture but each practising architect must obtain a government approved diploma.  
All architectural, design and construction work is guaranteed for 10 years against faulty design and/or execution.

### **Germany**

- 1 Regional
- 2 Registration by title, *also* license to practise.
- 3 The foregoing are given by Chambers of Architects, being public authorities.
- 4 Specific to architects
- 5 Construction plans are approved only if a licensed architect has submitted them.  
Foreign architects need proof of meeting respective authority's requirements.

### **Greece**

- 1 National
- 2 License to practise (and to use title)
- 3 The Technical Chamber of Greece (TEE).  
Members of professional associations are also are obliged by law, to be members of the TEE
- 4 Specific to architects
- 5 Foreign firms cannot practise without associating with an architect licensed in Greece and/or in EU.

### **Guatamala**

- 1 National
- 2 Registration by title, *also* license to practise
- 3 Colegio de Aquitectos is the licensing authority
- 4 Specific to architects
- 5 Foreign architects must pass a written exam at the University of San Carlos.

### **Honduras**

- 1 National
- 2 Registration by title, and *also* license to practise
- 3 The Colegio de Arquitectos de Honduras is the licensing authority
- 4 Specific to architects
- 5 Written examination or internship for foreign architects. Foreign firms must have a local associate.



### **Hong Kong**

- 1 National
- 2 Registration by title
- 3 Protected by Hong Kong Institute of Architects or Hong Kong Registration of Architects
- 4 Specific to architects
- 5 Only "authorised persons" may submit plans for approval and supervise construction. Design does not require an authorised person.  
The Registration Committee 'recognises' some Commonwealth credentials, e.g. RIBA.

### **Hungary**

- 1 National
- 2 License to practise
- 3 The Registration Board of Ministry of Environmental Protection & Regional Development
- 4 Specific to architects
- 5 Submission of plans for building approval must be by a person licensed in Hungary.
- 6

### **Iceland**

- 1 National
- 2 Registration by title, and also license to practise
- 3 License granted by the Ministry of Industry upon the recommendation of the Association of Icelandic Architects
- 4 Specific to architects
- 5 Foreign architects must have an degree approved by the Association of Icelandic Architects, and two years on-the-job experience.

### **India**

- 1 National
- 2 Registration of title
- 3 Five elected representatives of the Indian Institute of Architects serve for a three year duration on the Board of the Council of Architecture, the governmental agency responsible for registration
- 4 Non-architects can be given Surveyor's Licenses or be accepted as Licensed Technical Persons by local authorities to design buildings and supervise construction.
- 5 Professional registration is necessary with the Council of Architecture, New Delhi. Otherwise there are no particular barriers.

### **Indonesia**

- 1 Regional
- 2 License to practise
- 3 Indonesian Institute of Architects and the Municipal Governments at the related place of practice
- 4 Specific to architects
- 5 Foreign firms must associate with a citizen of the country. Registration requires clearance by the professional body. Licensing required from planning submissions onwards.

### **Israel**

- 1 National
- 2 Registration of title, and license to practise
- 3 Israeli law requires architect licensure upon submission of the "request for project authorisation". With this step, an architect is required to fill in his registration number
- 4 Specific to architects
- 5 Foreign firms are required to practise through an Israeli license holder.

**Italy**

- 1 Regional
- 2 Registration of title, and license to practise
- 3 The 90 provincial rolls of architects are under the jurisdiction of the National Council of Architects. The controlling government body is the Italian Ministry of Justice and Pardon
- 4 Specific to architect
- 5 Non-EU persons holding foreign qualifications cannot practise until equivalence has been approved by government authorities, or a member/partner is a EU architect.

**Jamaica**

- 1 National
- 2 Registration of title, and license to practise
- 3 The Architects Registration Board under the Architects Registration Act, 1987
- 4 Specific to architects
- 5 Foreign firms must be registered locally or associate with a local firm.

**Japan**

- 1 National
- 2 Registration of title, and license to practise
- 3 The Ministry of Construction issues licenses for "first class architects" and "second class architects" depending upon the use, scale, and type of structures involved.
- 4 Specific to architects
- 5 Foreign firms must establish a Japanese office with a founder and a licensed person.

**Jordan**

- 1 National
- 2 Registration of title, and license to practise
- 3 The Jordan Engineers Association is responsible for licensing and the Ministry of Industry and Trade is responsible, by law, for registration of (architectural practices)
- 4 Specific to architects
- 5 Foreign firms must have a citizen as local representative and a joint venture approved by the association and registration as required by law.

**Kenya**

- 1 National
- 2 Registration of title, and license to practise
- 3 The Board of Registration of Architects and Quantity Surveyors, and the law requires an architect to be registered on project inception
- 4 Architects and Quantity Surveyors
- 5 Foreign firms must be registered and licensed.

**Korea**

- 1 National
- 2 Registration of title, and license to practise
- 3 The Ministry of Construction is responsible for licensing.
- 4 Specific to architects
- 5 Representative of a foreign firm must be locally licensed, and, for this purpose, are required to pass a written examination in Korean on Korean Law and submit an architectural design.

### Lebanon

- 1 National
- 2 Registration of title, and license to practise
- 3 The Order of Engineers and the Ministry of Public Affairs
- 4 (Presumably) architects *and* engineers.
- 5 Design and execution drawings may be done without prohibition. However construction cannot start without submission of a construction permit document, signed by a registered architect.

### Luxembourg

- 1 National
- 2 Registration of title, and license to practise
- 3 The Ministry of Education and Youth, for registration of title. For right to practise, the Ministry of Middle Class and the Order of Architects and Consulting Engineers
- 4 Unclear . (Presumably) architects *and* engineers
- 5 Defined by the directives of the EU.

### Malaysia

- 1 National
- 2 Registration of title, *and* license to practise
- 3 The agency for licensing is the Board of Architects Malaysia, established by virtue of the Architect Act 1967.
- 4 Specific to architects .
- 5 Foreign (registered) architects may apply for a renewable temporary registration or license for a period not exceeding one calendar year, if residency is required for not less than 180 days. Foreign architects cannot practise in Malaysia except at the invitation of a local architect for a joint venture requiring prior approval by the Board of Architects, Malaysia.

### Mexico

- 1 National
- 2 License to practise
- 3 The Secretary of Public Education is responsible for the licensing process through the General Directorate of Professions. Laws vary among states; however the authority over this sector is maintained by the state Secretariat or Department of Education.
- 4 Specific to architects
- 5 Foreign architects must associate with a Mexican architect.

### Netherlands

- 1 National
- 2 Registration of title
- 3 The authority is the Stichting Bureau Architecten register, a department of the Dutch government
- 4 Specific to architects
- 5 Foreign architects are subject to the EU Architects Directive. and a license is granted by the Dutch government on a case-by-case basis. Any service designated as "architectural" requires registration.

### New Zealand

- 1 National
- 2 Registration of title
- 3 A current annual 'practising certificate' is required by all practising architects under the Architects Act 1963.
- 4 Specific to architects
- 5 Through an AACA Inter-recognition Agreement, facilitation of registration of Australian architects is available.

### Nicaragua

- 1 National
- 2 Registration of title, and license and certification to practise
- 3 The Ministry for Construction and the state-run University of Engineering.
- 4 Specific to architects
- 5 Other than registration requirements, no specific barriers to foreign architects.

### Panama

- 1 National
- 2 Registration of title; and license to practise
- 3 The Junta Tecnica, a government entity, and this, together with the Sociedad Panamena de Ingenieros y Arquitectos is the responsible authority
- 4 Specific to architects
- 5 Foreign architects must have a degree in architecture from a recognised authority, with written examinations for graduates of some foreign universities. Law prohibits practising without a degree, and registration.

### Philippines

- 1 National
- 2 Registration of title; and license to practise
- 3 The Professional Regulation Commission accredits the United Architects of the Philippines, an independent professional organisation whose members are licensed architects
- 4 Specific to architects
- 5 Foreign architects are not allowed to practise architecture in the Philippines , except when hired through foreign-funded government projects.

### Poland

- 1 National
- 2 License to practise
- 3 Provincial government offices are responsible for issuing licenses
- 4 Specific to architects
- 5 Only a licensed Polish architect may design a project in Poland.  
Projects designed by foreign architects must be signed by a licensed Polish architect.

### Romania

- 1 National
- 2 Registration of title; and license to practise
- 3 A section of the Union of Romanian Architects is the licensing agency
- 4 Specific to architects
- 5 Foreign architects must be registered in their home country. A degree, experience in architecture, and an examination are required for registration.  
All projects must be signed by a (State) registered architect.

### Russia

- 1 National
- 2 License to practise
- 3 Russian License Architectural Centre (state institution)
- 4 Specific to architects
- 5 Foreign architects may practise if provided by an international agreement with the Russian Federation. If there is no agreement, collaboration with an architect-citizen having a license is required to practise in Russia.

### **Saudi Arabia**

- 1 National
- 2 Registration of title; and license to practise
- 3 Ministry of Commerce
- 4 As the professional architectural organisation within the country is the Engineering Committee and Al-Umran Saudi Association, it is assumed that the controls cover engineers as well as architects
- 5 Foreign architects must have local representation by a local architect-citizen. Submission for building applications require to be by licensed practitioner.

### **Singapore**

- 1 National
- 2 Registration of title; *and* license to practise
- 3 The Board of Architects, a statutory body
- 4 Specific to architects
- 5 Foreign architects , to practise, must be registered with the Board of Architects. For licensed corporations, at least two-thirds of the directors should be registered architects and allied professionals.

### **South Africa**

- 1 National
- 2 Registration of title; and license to practise
- 3 South African Council of Architects of 12 members, nominated by the Institute of Architects of South Africa.
- 4 Specific to architects
- 5 Only registered architects may design, plan or supervise the creation of buildings in excess of 500 square metres in area. The person in charge of an office in South Africa must be an architect registered in South Africa.

### **Spain**

- 1 Regional
- 2 Registration of title; and license to practise
- 3 Colegios de Arquitectos in each of the (18) autonomous regions
- 4 Specific to architects
- 6 Foreign architects need a degree recognised or validated by the Spanish State. Architects need their signature registered in order to authorise and or sign (documents for approval).

### **Switzerland**

- 1 Regional
- 2 License to practise, but only in the French and Italian speaking cantons, namely Geneva, Fribourg, Neuchâtel, Valais, and Ticino
- 3 Schweizerisches Register der Ingenieure, Architekten und Techniker
- 4 Specific to architects
- 5 Temporary work permits may be available to foreign architects, but cooperation with local firms is recommended due to the differing regulations between cantons and cities.

### **Taiwan**

- 1 National
- 2 License to practise in gained in two stages — passing an architect examination permits practice under a certified architect; secondly, with two years' experience under a certified architect, a certificate to practise may be obtained
- 3 Construction and Planning Administration (MOI)
- 4 Specific to architects

- 5 Foreign architects must have an association with a local certified architect who maintains an office. An architect's certification of drawings and specifications is necessary for building construction.

### Turkey

- 1 National  
 2 License to practise  
 3 The Chamber of Turkish Architects is responsible for licensing. If it is proposed to work with government agencies, it is necessary to file references with the Ministry of Public Works and Settlement.  
 4 Specific to architects  
 5 Foreign architects are not required to have a resident representative. In order to practise, registration documents of architects must accompany designs submitted for planning and building approval.

### United Kingdom

- 1 National  
 2 Registration of title  
 3 ARCUK is the licensing agency, established by an Act of Parliament  
 4 Specific to architects  
 5 Foreign architects must be registered with ARCUK in order to use the title, though this does not constitute a prohibition to otherwise practise architecture.

### United States of America

- 1 Regional  
 2 A license is required in *all* jurisdictions to use the title 'architect' and in *nearly* all jurisdictions to practise architecture.  
 3 Each jurisdiction has its own licensing board which is responsible for issuing licenses (to individuals only) for practice in that jurisdiction. NCARB sets standards for registration and licensure and issues a Certificate to architects which facilitates registration in other jurisdictions.  
 4 Specific to architects  
 5 As long as foreign architects gain registration and licensing in the State in which they intend to practise, there are no other formal prohibitions or discriminations.

### Venezuela

- 1 National  
 2 Registration of title; and license to practise  
 3 The Colegio de Ingenieros, Arquitectos y Profesioncs de Venezuela  
 4 Specific to architects  
 5 Foreign architects do not necessarily require to collaborate with a local architect, or retain local representation.

### Summary of 50 countries of registration of title, license to practise, or both.

- Registration of *title only* — 6
- License to *practise* — 12
- Registration of title, *and* license to practise — 32
- Of around 6 or 7 countries where the professional body is the regulator, most are overseen by the respective government.